

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION PAPER, JULY 2009

TITLE OF PAPER : **LAW OF DELICT**

COURSE CODE : **DL 025**

TIME ALLOWED : **THREE (3) HOURS**

INSTRUCTIONS : **1. ANSWER ANY FOUR (4) QUESTIONS.**

2. YOUR ANSWER MUST BE COGENT, REASONED AND WELL ORGANISED.

3. READ AND UNDERSTAND WHAT THE QUESTION REQUIRES OF YOU.

4. ALL QUESTIONS CARRY EQUAL MARKS.

THIS PAPER SHOULD NOT BE OPENED UNTIL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR.

Delict Supplementary exam 2009

Instructions

- a) Answer any four (4) questions
- b) Your answer must be cogent, reasoned and well organised
- c) Read and understand what the question requires of you
- d) All questions carry equal marks

QUESTION 1

Conduct is negligent if the actor does not observe that degree of care which the law of delict requires. The standard of care which the law demands is ordinarily that which a reasonable man would exercise in the same situation.

In light of the decision in *Cape Town Municipality v Paine* 1923 AD 207, discuss what you understand about the afore going statement.

(25)

QUESTION 2

Write short notes on the following

- a) Provocation,
- b) Superior orders
- c) Capacity
- d) Negligence
- e) *volenti non fit injuria*

(25)

QUESTION 3

The Plaintiff must allege and prove the causal connection between the negligence of the Defendant and the damages suffered by the Plaintiff. What is the test for determining factual and legal causation.

(25)

QUESTION 4

A defendant, Gawulalite is being sued by a former head of government for defamation. He feels that the following words uttered by the defendant amounts to defamation of character. This happened at the cattle byre when the two met to dance the "Little Incwala".

"You are responsible for the breakdown in the rule of law and pushing the country into financial condemnation by attempting to purchase a cruiseliner for the exclusive use by government top brass."

State what defence you intend to raise to rebut these allegations. State why the other defences might not be relevant.

(25)

QUESTION 5

To succeed in a delictual action, the Plaintiff must allege and prove the act or omission which is the basis of his cause of action. Liability for omission will only arise where the Defendant has by prior positive conduct created a potential risk of harm and has failed to take reasonable steps to prevent the risk materializing.

Discuss the above statement in relation to; prior conduct, control of dangerous things, relationship of the parties, public office and statute.

(25)

QUESTION 6

The action *injuriarum* protects the dignity of Plaintiff. Dan Khrame, a Swazi graduate from the university of Oxford desirous of being a true Swazi warrior, decided to undergo the initiation process (kubutseka) and the regiments gave him a name "Buso benfene" (monkey face) to which he did not take kindly and stormed out of the cattle byre in protest.

Two weeks later Dan served the authorities manning the cattle byre with summons claiming the sum of E500.000 as compensation for defamation.

Advise Dan whether he has any prospects of success and cite relevant case law in support of your answer.

(25)

QUESTION 7

Jack Daniels whilst he was crossing White Horse Street, was knocked down by Peroni's car and was fatally injured. You have now been appointed as an Executor / executrix of the estate of Jack Daniels.

Discuss whether you can institute an action for : pain and suffering; loss of amenities of life; medical expenses and hospital expenses; funeral expenses and future loss of earnings

Substantiate your reasons with relevant case law.

(25)