

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**MAIN EXAMINATION, MAY 2009**

**TITLE OF PAPER** : **THE LAW OF DELICT**

**COURSE CODE** : **L 306**

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

**INSTRUCTIONS** :

- 1. ANSWER ANY FOUR (4) QUESTIONS.**
- 2. MARKS ARE INDICATED AT THE END OF EACH QUESTION.**
- 3. CANDIDATES ARE THEREFORE ADVISED TO ALLOCATE THEIR TIME ACCORDINGLY**

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR**

### **QUESTION 1**

Bheki is employed by the R Transport Company as a motor transport driver. He drove his truck past a stop sign and collided with Cebile's car. In the resulting accident Cebile is injured. There is no doubt that Bheki was solely responsible for the accident. His defence is that suddenly and without warning he had become insane and was labouring under an insane delusion that his truck was under remote electrical control from the R Transport Company's Head Office as a result of which he could not control the speed of the vehicle or stop it.

Advise Cebile of her legal rights.

[25 marks]

### **QUESTION 2**

Xaba fractures a leg in a motor accident caused by Winile's negligent driving. Xaba is hospitalised and the leg is placed in a cast. Immediately after the leg has healed, Xaba leaves the hospital, falls over a pipe which protruded from a sidewalk of a public road and fractures his leg again.

Xaba wants to sue Winile and the UNISWA Municipal Council which laid the pipe, will he succeed?

[25 marks]

### **QUESTION 3**

The cricket field of the Manzini Cricket Club adjoins a freeway. During a match one of the players of Manzini Cricket Club hits the ball, which shatters the windshield of Bhembe's sportscar. Bhembe who has been speeding at 120km/h loses control over his car and is killed in the ensuing accident. In response to the delictual claim by Zethu, Bhembe's wife, Manzini Cricket Club denies any liability on the ground of lack of negligence on its player's part.

Discuss the merits of this defence.

[25 marks]

### **QUESTION 4**

X, a motorcyclist who was not wearing a crash-helmet, is in a stationery position at a red traffic light. He is struck from behind by Y who has not been applying his mind to his driving, but has been busy joking with the passengers in his car. The accident causes serious injuries to X; E1000 damage to his motor cycle; E4000 for medical treatment following a fracture of one of his legs; E24 000 in consequence of head injuries (a brain haemorrhage). Evidence shows that X would have sustained no head injuries, if he had been wearing a crash helmet as required by law.

Consider X's position.

[25 marks]

**QUESTION 5**

Mkhonta, was in the past a notorious bank robber. Twenty (20) years ago, he stopped robbing banks and after serving a prison sentence he settled down to leading a respectable life. During his settled life he has done many good works, amongst which are; he has started a neighbourhood care point for orphaned and vulnerable children, he plants his fields with beans, maize, vegetables which he uses to feed the children, with the help of sponsors he has opened a kindergatten for the children, further, with the help of sponsors he receives cloths and blankets which he distributes to the children. A well known magazine hears of Mkhota's new life and publishes a picture of him in his new surroundings. "Retired bank robber, not even the neighbours knew of the past life of the new Messiah", ran the caption to the photograph.

Has an injuria been committed against Mkhonta?

[25 marks]