

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
SUPPLEMENTARY EXAMINATION PAPER, JULY 2010

TITLE OF PAPER	:	LAW OF DELICT
COURSE CODE	:	1DE – DLO25
TIME	:	THREE HOURS
INSTRUCTIONS	:	ANSWER ANY FOUR QUESTIONS
TOTAL MARKS	:	100

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

QUESTION 1

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 2

Write short notes on the following

- a) Conduct / act (5)
- b) Superior orders (5)
- c) Factual causation (5)
- d) The objective test (5)
- e) *volenti non fit injuria* (5)

(total 25)

QUESTION 3

Now that you have completed this course, what do you consider to be its essential features and what does the law of delict seek to achieve. Your answer should be restricted to the elements necessary to sustain a cause of action. Cite applicable case law to expound on your answers

(25)

QUESTION 4

Wrongfulness involves the infringement of a legally protected right or interest. Discuss the role of the element in establishing delictual liability.

(25)

QUESTION 5.

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.

Discuss the above statement with reference to:

- a) Foreseeability test
- b) The reasonable man
- c) Children

(25)

QUESTION 6

- a) A delict has been defined by stating what it is not. Define what a delict is, and include in your answer what you perceive / understand to be the purpose of the law of delict.

(15)

b) What is the distinction between remedies and defences? In your answer, state the circumstances under which they can be utilized.

(10)

QUESTION 7

To establish delictual liability, the law requires, not merely that the defendant perpetrate unlawful conduct, but also that this unlawful conduct cause harm.

Discuss fully what this element entails. Use decided cases to illustrate your answer.

(25)