

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2010

COURSE NAME : THE LAW OF DELICT

COURSE CODE : L306

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

Dlamini who was driving with negligence lost control of his car which veered onto the pavement knocking down Bheki who was walking with his friend Nathi. Bheki sustained severe injuries which included a fractured leg. Bheki spent three months in hospital. He now walks with a permanent limp because of the fracture, and his leg is no longer as strong as it was before the accident. Bheki is employed by UNISWA as a motor mechanic, he also runs an unlicensed garage at his home at Scelwini where he does private jobs in his free time.

Bheki has come to you for advice, he wants to sue Dlamini for:

1. loss of earnings;
2. loss of earning capacity;
3. disfigurement;
4. pain and suffering. (25 marks)

QUESTION 2

Boy Boy who was a member of the notorious mdodi gang fifteen years back is now a born again Christian and a responsible and respectful member of his community. During the national elections last year he stood for the Kwaluseni constituency. The Times of UNISWA wrote an article about his activities while a member of the gang and naturally he lost the elections.

He wants to sue the paper since he says he is now a reformed person and the paper had no business to rake up his past. Advise him. (25 marks)

QUESTION 3

A raging fire started in Matsebula's field the origin of which Matsebula did not know. He phoned the fire department and together with members of his household they attempted to put out the fire. On that day there were fierce winds running at a speed of 100 km/hr, and because of this they failed to put out the fire which spread onto Simelane's home.

Simelane feels that Matsebula was negligent or alternatively that he was in charge of a dangerous situation or that he introduced a new source of danger. Advise Simelane (25 marks)

QUESTION 4

In some cases the plaintiff is assisted in his proof of negligence by the application of the rule expressed in the maxim, "*res ipsa Loquitur*". Outline the operation of this rule, illustrating your answer with case law authorities. (25 marks)

QUESTION 5

Jele bought a house from Bhembe. During the negotiations Jele asked Bhembe if the house is structurally sound and Bhembe replied "it is as good as new my friend". Two months after occupying the house Jele sees huge cracks on the walls which Bhembe had painted over, he now wishes to rescind from the contract.

Advise him.

(25 marks)