

MAIN EXAMINATION PAPER, MAY 2011

TITLE OF PAPER : LAW OF DELICT

COURSE CODE : IDE - DL 025

TIME : THREE (3) HOURS

INSTRUCTIONS : 1. Answer any four (4) questions
2. All questions carry equal marks

TOTAL MARKS : 100

Introduction

1. Answer any (4) Questions.
2. All questions carry equal marks.
3. Time: 3hours

Question 1

Section 2(1) of The Constitution of the Kingdom of Swaziland provides that The constitution is the supreme law of the country and that any law which is inconsistent with the constitution is to the extent of the inconsistency null and void.

In light of the above section, discuss the impact which the constitution has on the law of delict.

[25 marks]

Question 2

The primary object of an award of damages is to compensate the person who has suffered harm. Under the *lex aquilia* damages serve to restore the Plaintiff's patrimony and as far as possible, to place the plaintiff in a position s/he, would have been in had the delict not been committed.

Under the *actio injuriarum* or other non-patrimonial loss, damages do not serve a compensatory function for such loss does not have an economic pecuniary value.

Discuss the essential aspects of this element in its entirety.

[25 marks]

Question 3

48

The concept of unlawful competition is self explanatory. It encompasses any act which is directed at gaining an advantage over a competitor in the competitive struggle.

There are a great variety of acts qualifying as competitive conduct which may for different reasons be wrong.

Identify what those acts are and indicate the appropriate legal remedy open to the aggrieved party.

[25 marks]

Question 4

The law of delict governs recovery of damages to a motor vehicle arising from a motor vehicle collision. A Plaintiff seeking to recover damages inflicted upon his/her vehicle must satisfy five requirements.

Identify and discuss what these requirements are.

[25 marks]

Question 5

Causation as an essential element of delictual liability requires the existence of a causal nexus between the Defendant's conduct and the harm suffered by the plaintiff.

Discuss the full requirements of this element and cite relevant case law to support your answer.

[25 marks]

Question 6

49

Describe the test for negligence as set out in *Kruger v Coetzee* which aims to establish a Standard of care against which conduct of the defendant can be measured.

[25 marks]

Question 7

The test for determining defamatory meaning is whether a reasonable person of ordinary intelligence might reasonably understand the words of the article to convey a meaning defamatory of the Plaintiff.

Discuss the elements necessary to sustain a cause of action based on defamation.

[25 marks]