

UNIVERSITY OF SWAZILAND

50

SUPPLEMENTARY EXAMINATION PAPER, JULY 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

SUPPLEMENTARY EXAM – JULY 2011

Instructions:

- a) Answer any four (4) questions
- b) All questions carry equal marks

QUESTION 1

There are various defences to a defamation suit. Discuss with the aid of decided cases what these defences are?

[25 marks]

QUESTION 2

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 your understanding of the above statement.

[25 marks]

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 marks]

QUESTION 4

Skhokho is a self employed “bush mechanic” and earns a monthly salary of E4,000.00 when business is good. On 13th November 2010 he was arrested by members of The Royal Swaziland Police on charges of rape. Since this offence is now classified as a schedule IV offence and bail is fixed at E15,000 he could not afford the bail and has been in custody for over three years. He now suffers from pneumonia which he contracted whilst in custody.

During his (Skhokho’s) trial at the High Court, the complainant when asked to identify him, failed to do so positively and the Court released him on the basis that the description given by the complainant does not match that of Skhokho.

- (a) Has Skhokho suffered any damage?
- (b) Regardless of your answer to the above question, would the Apportionment of Damages Act No.4 of 1970 apply?
- (c) What would your comment be with regard to the once and for all rule and mitigation of damages principles?

[25 marks]

QUESTION 5

Write short notes on the following;

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

[25 marks]

Question 6

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 7

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]