

46

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DIPLOMA IN LAW
MAIN EXAMINATION PAPER – MAY 2012

TITLE OF PAPER	:	LAW OF DELICT
COURSE CODE	:	DL025
TIME	:	THREE (3) HOURS
INSTRUCTIONS:		1. ANSWER ANY FOUR (4) QUESTIONS 2. ALL QUESTIONS CARRY EQUAL MARKS
TOTAL MARKS	:	100

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

QUESTION 1

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 marks]

QUESTION 2

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 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 answer.

[25 marks]

QUESTION 4

An award for damages for defamation serves two broad purposes; vindication of the plaintiff's reputation and providing him or her with a *solatium* for wounded feelings.

[*Lawsa Vol 8, par 155*]

What are the elements that the plaintiff should prove to succeed in his / her action.

[25 marks]

QUESTION 5

"Wrongfulness involves the infringement of a legally protected right or interest". With the aid of decided cases, discuss the role of this element in establishing delictual liability.

[25 marks]

QUESTION 6

In the case of *Bourhill vs Young* (1942) 2 ALL ER (HL) the House of Lords held that, the Appellant had failed to establish that the cyclist owed any duty of care to her at the time of the collision.

Discuss what you understand by the duty of care. Cite cases to illustrate your answer.

[25 marks]

QUESTION 7

Discuss the impact of the Constitution of The Kingdom of Swaziland No.1 of 2005 on the law of delict.

[25 marks]