

UNIVERSITY OF SWAZILAND

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INSTITUTE OF DISTANCE EDUCATION

DIPLOMA IN LAW

SUPPLEMENTARY EXAMINATION PAPER – JULY 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

Since the purpose of the law of Delict is to compensate a person, in appropriate circumstances for loss suffered. A pre requisite for liability is that the plaintiff must have suffered harm. Not all harm is actionable, however some form of harm are not recognised in law for purposes of compensation. To found a claim in delict, a plaintiff must have suffered patrimonial or pecuniary loss or an injury to an interest of personality or pain and suffering.

Discuss fully what you understand the purpose of the law of delict to be in light of the above statement. Use decided cases to illustrate your answer.

[25 marks]

QUESTION 2

Dan Khrame, a Swazi graduate from the University of Oxford, desirous of being a true Swazi warrior, decided to undergo the initiation process (kubutseka) and the regiments gave him a name "Buso benfene" (monkey face) to which he did not take kindly and he stormed out of the cattle byre in protest.

Two weeks later Dan served the authorities manning the cattle byre with summons claiming the sum of **E500,000.00** as compensation for defamation.

Advise Dan whether he has any prospects of success and cite relevant case law in support of your answer.

[25marks]

QUESTION 3

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

[25 marks]

QUESTION 4

Write short notes on the following;

- a) Foreseeability (5 marks)
- b) Superior orders (5 marks)
- c) Capacity (5 marks)
- d) Contributory Negligence (5 marks)
- e) *volenti non fit injuria* (5 marks)

(25 marks)

QUESTION 5

To succeed in a delictual action, the Plaintiff must allege and prove that 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 and use decided cases to illustrate your answer.

[25 marks]

QUESTION 6

“The blameworthiness of the defendant’s conduct depends on an evaluation of subjective factors involved in the case. The relevant subjective factors are the defendant’s state of mind and the degree of care exercised at the time of the wrongful conduct”.

Discuss fully what the requirements of this element are for purposes of establishing delictual liability.

[25 marks]

QUESTION 7

Gciyane Dlamini is a woman who is HIV positive and has had her status disclosed in a magazine for the youth. She is desirous of instituting legal action as she feels that it was in appropriate for the publishers of the Youth magazine to disclose her name without her consent.

She has approached you for legal advice. You are required to identify all the legal issues herein. State in particular whether, there has been a violation of her rights and what they are.

[25 marks]