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UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, NOVEMBER 2013

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.**

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QUESTION 1

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Dube, in the execution of what he seems to have regarded as a practical joke, represented to Mrs Maseko that he was charged by her husband with a message to her to the effect that her husband was smashed up in an accident, and was admitted at the UNISWA Government Hospital in a critical condition. All this was false.

The effect of the statement on Mrs Maseko was a violent shock to her nervous system, producing vomiting and other more serious and permanent physical consequences at one time threatening her reason and entailing weeks of suffering and incapacity to her as well as expense to her husband for medical attendance.

The Masekos are desirous of suing Dube, advise them.

(25 marks)

QUESTION 2

During a friendly squash game between two brothers Siphon and Jabu, Siphon's racket slipped from his hand, struck Jabu against his head and injured one of his eyes. Jabu had to be hospitalised for a week as a result of this injury. On leaving hospital Jabu who owns a farm adjacent to that of his brother came to Siphon's farm to inquire as to why his own brother, who was also responsible for his injuries did not come to visit him while he was in hospital. Tempers became frayed as heated, abusive and insulting words were exchanged by the brothers.

On his way home Jabu cut across Siphon's field which was overgrown with grass and fell into a hole his brother had dug in his efforts to repair his boundary fence and broke his leg.

Advise Jabu.

(25 marks)

QUESTION 3

Mlotshwa was a director of Manpower and Human Resources Development in the Matsapa Town Council. Infact, he was one of the longest serving officers of the Council. On retirement, he still wanted to remain associated with the Council, this time as an elected councillor representing the Tubungu suburb of Matsapa. His opponent for the seat was Nsibande, a well known socialite and owner of the successful Matsapha Bazaars. The campaign was stiff, dirty and sometimes confrontational. On one of the campaign rallies, Mlotshwa accused Nsibande of being a crook and a man who could not be trusted with public funds. He further alleged that Nsibande's wealth was accumulated through the use of muti. He also alleged that Nsibande was of loose moral turpitude citing an incident in which he had been implicated in a rape scandal of which Nsibande was subsequently acquitted by the Court. On his part Nsibande characterised Mlotshwa as a failure in life and a man without a home since for all his working life he had not managed to build even a medium-sized house for his family. He retorted, that if indeed the public had any cause for worry regarding public funds, such worry should be directed at Mlotshwa to whom he referred as a "slimy, insolent, hungry and good for nothing person". In the process he also cited his "abysmal performance" as Director of Manpower.

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Eventually, Mlotshwa won the municipal elections. Nsibande has now brought an action against Mlotshwa alleging that the latter's campaign statements had adversely affected his reputation as well as his business prospects.

You are a clerk to the presiding judge.

Advise him on how he should decide the case. (25 marks)

QUESTION 4

Msibi sustained severe injuries when she fell off a moving bus driven by Gule. Gule had approached the bus stop slowly with the front door open, having forgotten to close it after a previous stop. Gule had seen that there were a number of passengers waiting at the bus stop, and had known that there would be scramble to board the bus before it stopped. Msibi carrying a heavy parcel, had been one of those who had tried to board before the bus stopped, and she had lost her balance and fallen under the wheel.

Msibi wishes to sue Gule on the ground that Gule was negligent. Advise her, illustrating your answer with decided cases. (25 marks)

QUESTION 5

Mr Katx is a Rabbi and head of the Jewish Synagogue in Mbabane. In January 2012, he carried out circumcision rites on a young infant, David.

At the time, apart from a momentous shriek from David, the entire operation seemed fairly routine and for that matter successful. Six months later the parents realised, that David's private parts was developing a swelling around the area of the operation. Further medical consultation revealed that a vital nerve had been severely lacerated during the circumcision and that the disfigurement was bound to be permanent. The parents of David have filed a suit against the Rabbi and the Jewish Mission in Swaziland which he represents. They are arguing that the Rabbi was negligent and more importantly that the disfigurement would constitute an embarrassment to David when he finally gets married. David's family belongs to Orthodox Jews whose major tenet forbids sex before marriage and they intend to bring up David in accordance with those tenets.

Discuss the cogency of the case against Dr Katx. (25 marks)