

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
MAIN EXAMINATION PAPER MAY 2016

TITLE OF PAPER : **LAW OF DELICT**

COURSE CODE : **DL 025**

TIME ALLOWED : **THREE (3) HOURS**

MARKS : **100**

INSTRUCTIONS : **(a) ANSWER ANY FOUR (4) QUESTIONS.**
(b) QUESTION 3 IS COMPULSORY.
(b) ADDITIONAL MARKS WILL BE GIVEN FOR
USE OF CASE-LAW AND RULES OF COURT
WHERE APPROPRIATE

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QUESTION 1

Write short notes on what the following mean:

- a) Foreseeability [5 Marks]
- b) *Animus injuriandi* [5 Marks]
- c) Patrimonial Loss [5 Marks]
- d) Duty of care [5 Marks]
- e) *Volenti non fit injuria* [5 Marks]

Total Marks [25 Marks]

QUESTION 2

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 forms of harm are not recognized 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.

Total Marks [25 Marks]

QUESTION 3

Mark Hutton, 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 bemfene" (monkey face) to which he did not take kindly and he stormed out of the cattle byre in protest.

Two weeks later, Mark served the authorities manning the cattle byre with summons claiming the sum of E5 00,000.00 as compensation for defamation.

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

Total Marks [25 Marks]

QUESTION FOUR

Mabuza fractures a leg in a motor accident caused by Motsa's negligent driving.

Mabuza is hospitalized and the leg is placed in a cast.

Immediately, after the leg has healed, Mabuza leaves the hospital, falls over a pipe which protruded from a sidewalk of a public road and fractures his leg again.

Mabuza wants to sue Motsa and the Manzini Municipal Council which laid the pipe, will he succeed?

Total Marks [25 Marks]

QUESTION FIVE

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.

Total Marks [25 Marks]