

**UNIVERSITY OF SWAZILAND**  
**INSTITUTE OF DISTANCE EDUCATION**  
**DEPARTMENT OF LAW**  
**SUPPLEMENTARY EXAMINATION PAPER JULY 2016**

**TITLE OF PAPER :      LAW OF DELICT**

**COURSE CODE     :      DL 025**

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

**INSTRUCTIONS    :      1. ANSWER ALL QUESTIONS**  
**2. ALL QUESTIONS CARRY EQUAL MARKS**

**TOTAL MARKS     :      100**

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INVIGILATOR**

### **QUESTION 1**

Magdelene 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 inappropriate 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]

### **QUESTION 2**

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.

Analyze the above statement with the aid of cases.

[25 Marks]

### **QUESTION 3**

A policeman ordered Shongwe, for no reason, to get into a police van. When Shongwe refused to do so, and resisted attempts to put him into the van by clinging to the wire mesh surrounding the van's passenger compartment, the policeman used a wooden police baton to beat Shongwe's hands loose. He broke two fingers on Shongwe's right hand.

Shongwe wishes to sue the Minister responsible for Police under:

1. The Acquillian action (patrimonial loss)
2. The action for pain and suffering; and
3. The actio injuriarum for infringement of dignity - contumella

Discuss and advise.

[25 Marks]

**QUESTION 4**

Dlamini was arrested in connection with labour disturbances and deported to South Africa. Soon after the deportation, Gule addressed a meeting of the Federation of Swaziland Employers at which he called Dlamini "not a fanatic" but a criminal in the fullest sense of the word." He stated that the government had acted correctly and urged that he should not be allowed to return. Dlamini was later permitted to return.

Dlamini is desirous of suing Gule for defamation.

Advise him.

**[25 Marks]**