

**UNIVERSITY OF SWAZILAND**  
**INSTITUTE OF DISTANCE EDUCATION**  
**DEPARTMENT OF LAW**  
**MAIN EXAMINATION PAPER MAY 2017**

**TITLE OF PAPER** : **LAW OF DELICT**  
**PROGREAMME** : **DIPLOMA IN LAW II**  
**COURSE CODE** : **DL 025**  
**TIME ALLOWED** : **THREE (3) HOURS**  
**MARKS** : **100**  
**INSTRUCTIONS** : **(a) ANSWER ANY FOUR (4) QUESTIONS.**  
**(b) ADDITIONAL MARKS WILL BE GIVEN FOR**  
**USE OF CASE-LAW AND RULES OF COURT**  
**WHERE APPROPRIATE**

**QUESTION 1**

Briefly discuss the following:

- a) *Dolus Eventualis* [5 Marks]
- b) *Dolus* and *culpa* [5 Marks]
- c) Patrimonial loss [5 Marks]
- d) Duty of care [5 Marks]
- e) Contributory negligence [5 Marks]

**Total Marks [25 Marks]**

**QUESTION 2**

If a reasonable person, in the same external circumstance as the defendant, would have foreseen harm to the plaintiff then the defendant ought to have foreseen such harm. If a reasonable person would have taken steps to guard against such harm to the plaintiff occurring, then the defendant is negligent if he or she did not take the requisite reasonable steps to guard the eventuality.

Discuss fully what you understand of the above statement and in your answer refer to relevant case law.

**Total Marks [25 Marks]**

**QUESTION 3**

Simelane was arrested in connection with labour disturbances and deported to South Africa. Soon after the deportation, Zwane addressed a meeting of the Federation of Swaziland Employers at which he called Simelane "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. Simelane was later permitted to return.

Simelane is desirous of suing Zwane for defamation.

Advise Simelane whether he has any prospects of success and in your answer, refer to relevant case law.

**Total Marks [25 Marks]**

**QUESTION FOUR**

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 *actio iniuriarum* (patrimonial loss)
2. The action for pain and suffering; and
3. The *actio iniuriarum* for infringement of dignity -*contumelia*

Discuss and advise Shongwe.

**Total Marks [25 Marks]**

**QUESTION FIVE**

Damages will not be recoverable, if their extent or nature were not foreseeable or were too remote. To sustain a course of action it is necessary that the defendant must have caused the harm.

Discuss fully what this element entails. Illustrate your answer by reference to decided cases.

**Total Marks [25 Marks]**