

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
FINAL EXAMINATION, DECEMBER 2017

TITLE OF PAPER: THE LAW OF DELICT
COURSE CODE: L306
TIME ALLOWED: 3 hours
INSTRUCTIONS: ANSWER ANY FIVE (5) QUESTIONS

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THE INVIGILATOR**

Question 1

With reference to relevant case law, discuss the elements of a delict.

[20 marks]

Question 2

Two super –tankers carrying oil collide off the coast of Bantwini Island. The collision is caused by the negligence of the officer in command of the one tanker, Oil Movers, which is owned by Oil Proficient (Pty) Ltd. The oil in Oil Movers spills into the sea and washes up onto a nearby beach where it pollutes the water and sand. Marcus owns a hotel on this beach which had been fully booked for the holiday season, but, after the news of the tanker collision and subsequent pollution has been published in the print and visual media, his hotel is only twenty per cent [20%] full. The authorities are only able to clear the oil away after 3 weeks of concerted effort.

Marcus estimates he has lost E500, 000.00, which constitutes board and lodging tariff the holiday makers who cancelled immediately after the tanker disaster would have paid. One of the holiday makers, Leroy, braves the adverse conditions and stays at Marcus's hotel. He is determined to enjoy his holiday at the coast, no matter what. Leroy is warned about the oil pollution by Marcus. He is, however, not deterred and proceeds to surf the sea waters, sure that his huge surfing board will allow him little contact with water. Whilst surfing, oil enters his eyes such that his vision is temporarily blurred. He gets out of the water but slips and falls on nearby rocks, thus injuring his leg.

(a) Can Marcus recover his E500, 000 loss from Oil Proficient (Pty) Ltd?

[10 marks]

(b) Can Leroy recover his damages (for medical expenses for his injured leg) from Marcus?

[5 marks]

(c) How are Marcus's prospects of recovering his damages against Oil Proficient (Pty) Ltd?

[5 marks]

Question 3

Describe the test for negligence as set out in **Kruger v Coetzee** which aims to establish a standard of care against which conduct of the defendant can be measured.

[20 marks]

Question 4

Sicelo, a school teacher, requested James, a chemist, to supply him with hydro-carbon oxide suitable for use in a classroom for the preparation of hydrogen. James sells Sicelo a powder which he purchased from his "connection", Mazwi, who works for Tillers Manufacturing company, known in the chemistry industry for manufacturing and selling industrial hydro-carbons alloy powder. Tillers Manufacturing Company products all have a label written "examine and test before use." James made no such examination or test nor did he advise Sicelo to do so but he gives him the powder in its original packaging. Mphilo, one of Sicelo's chemistry students is injured by the powder when it explodes whilst Sicelo is conducting his experiment in class. Advise Mphilo and his parents on their right of action against

- i. Tillers Manufacturing Company
- ii. James, the chemist
- iii. Sicelo, the teacher
- iv. Mazwi, the connection

[20 marks]

Question 5

The test for determining defamatory meaning is whether a reasonable person of ordinary intelligence might reasonably understand the words of the article to convey a meaning defamatory to the Plaintiff.

Fully discuss the elements necessary to sustain a cause of action based on defamation.

[20 marks]

Question 6

Briefly discuss the following:

- | | |
|---|-----------|
| 1. Contributory Negligence | [4 marks] |
| 2. Volenti non fit iniuria | [4 marks] |
| 3. Talem qualem | [4 marks] |
| 4. Strict liability | [4 marks] |
| 5. Pactum de non petendo in anticipando | [4 marks] |

Question 7

With aid of case law, fully discuss the element of causation, including the various theories thereof.

[20 marks]