

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION, 2019 (MAIN)

TITLE OF PAPER: THE LAW OF DELICT

COURSE CODE: L306

TIME ALLOWED: 3 HOURS

INSTRUCTIONS: ANSWER ANY FOUR (4)
QUESTIONS

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GIVEN BY THE INVIGILATOR.**

Question 1

Zanele and Mavis work as maids, respectively, for the Dlamini and Mkhwanazi families. These two families are immediate neighbours at Fairview, Manzini, such that Zanele and Mavis have become good friends who frequently and openly visit each at their bosses' homes. On one particular weekend the Dlamini's went on a holiday. The patriarch of the family left Zanele with the instruction that strangers were not allowed to sleep over as he had instructed the guard to unleash the dog, bobby, in the evenings. On Saturday evening, Mavis, in the company of her two year old child, who was visiting her for the first time since she had started working at Fairview, decided to visit Zanele. Zanele, enjoying her friend's company, let both of them sleep over as she decided that Mavis was known to her employer, and surely a two year old cannot be viewed as a stranger. Early the next morning Mavis's child, slipped out of the maid's quarters without either Mavis or Zanele noticing him. At the same time, the guard was preparing to place the dog on its leash. Upon seeing the child, the dog got excited and broke off the guard's grip. It proceeded to terribly bite the child. Mavis sued the Dlamini family over her child's injuries and other associated damages suffered. The court *aquo* found that she was partially liable for her child's injuries and therefore did not award her the full damages sought. She is dissatisfied with the court *aquo's* decision and has instructed you to appeal the same.

- i. What was the initial action she moved in the lower court? With the aid of relevant cases fully discuss the requirements of this action?
[15 marks]
- ii. Will your client succeed in overturning the decision that she was partially liable? Fully discuss.
[10 marks]
[25 marks]

Question 2

With the aid of decided cases and opinion writers, critically discuss the principles governing the liability of municipalities under the law of delict.

[25 marks]

Question 3

Gugu, has been suffering from acute pain on her backside for the past 24 months. She, has to no success, consulted a number of specialists. Most inform her that only a spinal cord specialist can be able to treat her. One day whilst driving to work with her friend Thembi, she notices a board advertising the practice and services of Dr. Marvellous. The board proclaims the said doctor to be a neurosurgeon specialising on diseases afflicting the brain and spinal cord. Gugu immediately stops the car with the stated intention of consulting Dr. Marvellous. Thembi, promptly cautions her not to as she had heard rumours that this Dr. Marvellous was in fact a general practitioner who had been disbarred from practising as a medical practitioner, 5 years ago, by the Council of Dentists and Doctors. This is the council with the mandate to license, disbar and generally regulate the medical professionals in the country. Gugu says she hears her friend but she is going to consult him for the following two reasons;(1) she has been in too much pain for too long, and (2) if this doctor had been disbarred he would not brazenly practice and advertise his services a mere 300 metres away from the regional offices of the Council of Dentists and Doctors. She indeed sees the Dr. and he verbally (but untruthfully) confirms that he is an expert on spinal cord diseases. He orders that Gugu instantaneously undergo an operation under his specialist hand. As a result of this operation, Gugu becomes paralysed from the waist down. She comes to you for advice as she intends to sue:

- i. Dr. Marvellous
- ii. The Council of Dentists and Doctors

Advise her on her prospects of success. Also discuss the principle of *imperitia culpa adnumeratur*.

[25 marks]

Question 4

Fully discuss the *actio legis aquiliae* and distinguish it from the *actio injuriarum*. Refer to relevant case law.

[25 marks]

Question 5

Maxwell Matse is an elected member of Parliament (MP) for Nsingweni constituency. During a heated debate in Parliament on the annual performance report of the Ministry of Finance, Economic Planning and Trade, he refers to both the Minister, Senator Petros Siwela, and the Principal Secretary(PS), Masisi Ndlela, as "...unmitigated thieves who had met their match in him... as they had been stealing from the state coffers for too long already...". Senator Petros Siwela decides to take no action as he says he is a politician used to political stunts. The Principal Secretary, however, says she is no politician and the words of the MP are not only false but maliciously defamatory. So she sues the MP for defamation. Will she succeed? Commence your answer by fully discussing the essential elements of defamation before addressing the aspect on the PS's prospects of success.

[25 marks]