

**UNIVERSITY OF ESWATINI**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION, DECEMBER 2018**

**TITLE OF PAPER : THE LAW OF DELICT**

**COURSE CODE : LAW 303**

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

**INSTRUCTIONS :**

- 1. ANSWER ANY FOUR (4) QUESTIONS.**
- 2. MARKS ARE INDICATED AT THE END OF EACH QUESTION OR PART OF A QUESTION.**
- 3. CANDIDATES ARE THEREFORE ADVISED TO ALLOCATE THEIR TIME ACCORDINGLY.**

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR TO DO SO.**

## **QUESTION 1**

Mr. Mbulu is a managing partner of Archplan International Ltd., a firm of architects and quantity surveyors based in London with a branch in Swaziland. Through its Mbabane Office, Archplan was contracted by Kima Brothers Ltd, a company of world repute in steel fabrication, to draw designs and structural details for their proposed factory expansion Phase II and III to be located in the Matsapha Industrial Area. Phase II would deal with smelting and processing of iron ore while Phase III would be solely devoted to designed fabrications. Archplan subcontracted Mira Associates to work out the structural details as well as to carry out the necessary soil analysis. These were completed on schedule and were submitted to Archplan who subsequently submitted them together with the designs to Kima Brothers Ltd. Thereafter Kima further contracted Archplan “to undertake and/or supervise” the construction, who in turn subcontracted Mosi Contractors (Pty) Ltd to carry out the construction in accordance with the designs and structural details submitted earlier to Kima Brothers Ltd. The construction of both Phase II and III was finished within a year and on schedule and the plant was duly handed over to Kima Brothers, but without a guarantee clause. Six months later the new factors was commissioned by the Minister of Commerce and Industries. The projected output for Phase II was 10 000 tons of iron per month while phase III was expected to be 2, 000 structures a year. Within twelve months of its operation, Phase II structure started showing cracks in the foundation as a result of which its operations were scaled down to 3, 000 tons per month. Kima had also to seek the services of Supersteel Ltd, to process the balance of its iron ore in order to meet outstanding customer commitments. These adjustments also affected the output of Phase III which could now process a mere 100 structures a month. In the first year of operation Kima has incurred a loss of 54 million rands being:

- (i) 17 million – repairing Phase II structure
- (ii) 14 million – for hiring Supersteel Ltd. to process its excess iron ore.
- (iii) 8 million in increased bank interest charges occasioned by rescheduling of payments on the overdraft.
- (iv) 15 million in lost profits for the year.

Advise Kima Brothers Ltd.

(25 marks)

## **QUESTION 2**

Tsabedze his Khumalo three blows in the face with the fist. As a result of this assault, Khumalo suffers severe physical injury, in particular injuries to the brain, head, face and neck. Simelane, the doctor in attendance at the hospital administers a tranquilizer to which Khmalo unfortunately responds with a violent allergic reaction, which worsen his condition. (The drug is still a new one in the market).

The reactions to the tranquilizer ultimately culminates in Khumalo losing 90% of his eye sight. A month after being discharged from hospital while taking a leisurely walk along the main street into Manzini City he tripped over a pipe (which had been laid by the

Manzini City Council) which protruded from a sidewalk of the public road, thus fracturing his left leg.

He wants to institute an action for satisfaction for shock, pain, suffering discomfort, loss of amenities of life, loss of earnings and loss of earning capacity.

Advise him.

(25 marks)

### **QUESTION 3**

Mazibuko was involved in a motor accident which was caused solely by the negligence of Mamba the driver of the other vehicle insured by Mdzimba Insurance Co. Ltd. Mazibuko's injuries caused him to be absent from work for six months. He would have lost his wages during this period were it not for the fact that he had been entitled, in terms of his contract of employment, to sick leave on full pay. His injuries were so severe that they left him virtually unfit for work. However, his employer out of compassion and generosity re-instated him and paid him the same wages as before.

Whilst not denying liability for the accident Mdzimba Insurance Company want the payments made to Mazibuko by virtue of his contract of employment while he was on sick leave and the wages paid to him on account of his employer's compassion after the accident to be taken into account in the assessment of damages.

Discuss the legal position illustrating your answer with decided cases.

(25 marks)

### **QUESTION 4**

While driving his brand new Mercedes Benz along the Mbabane-Manzini freeway at around 2 a.m., X slows down as he approaches traffic lights. The traffic lights are red and as X prepared to bring the car to a complete stop, a crowd of three men emerge from the nearby bushes seemingly heading for X's car. Sensing danger on account of the rising number of car hijackings X accelerates, thereby colliding with Y for whom the lights were green. On impact Y who is not wearing his seat belt gets thrown out of the car through the windscreen and lands on the pavement sustaining severe injuries on his head, arms and legs. A few seconds later Y's car catches fire and is completely gutted down. On seeing this Y suffers severe emotional shock and loses consciousness.

Meanwhile the three men who X had originally seen, confront X with guns, demanding his car keys. X gives them the keys whereupon they push X into his car's boot and drive off with him at very high speed. X managed to open the boot and takes out one of his arms which is bleeding profusely from the accident with Y's car. P driving on the next lane on seeing this gets so terribly frightened that he bumps into D's car who is also driving on the same road, causing it extensive damage.

Discuss.

(25 marks)

### **QUESTION 5**

Mr. Shabangu drives in his new car along a highway in the municipal area of Mbabane at a speed of 80km/h. It has rained heavily for the past two weeks and it is still raining when the accident occurs at dusk (at approximately 6 p.m.). At a turn in the road, where the road passes through a cutting, his car is struck from above by heavy boulders that have become dislodged from the mountain side, as a result of the heavy rains. Mr. Shabangu sustains a fractured left arm and serious head injuries. His car is a total write-off. Rock falls of this kind had previously occurred after heavy rains. Two years previously a similar accident claimed the life of a female driver. After the death of this road user the City Engineer erected two “falling-rock” signs: the one sign is 500 m from the spot for motorists travelling in the same direction as Mr. Shabangu, the other sign is 1km from the spot for traffic moving in the other direction.

Shabangu is considering suing the Mbabane Municipality. Advise him. (25 marks)