

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION, JANUARY 2019

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

J had been travelling on a train, having been given a free pass by the Railways. His free pass was conditional on the fact that he accepted all risk of injury to himself and would not hold the Railways liable. J died when the train was involved in an accident and his children sued the Railways for damages. The Railways wish to raise the existence of the contract as a defence to their claim.

Discuss.

(25 marks)

QUESTION 2

X a funeral undertaker and his friend Y go to their local pub for drinks one Saturday afternoon. After having one too many they decide that it would be fun if they drove around in the hearse-the vehicle for conveying the dead to the grave. On their return from collecting the vehicle they team up with two lady friends whom they decide to take for a ride.

X and his lady friend sit in the front while Y and his friend jump into an empty casket at the back of the car. As X slows down at an intersection Y and his lady friend open wide the lid of the casket.

Q, a motorist following from behind on seeing this suffers from severe emotional shock that he loses control over his car which veers off the road and injures P who was taking his dog for a walk.

Since Q is hypertensive and diabetic the shock affects him considerably so that he has to spend three months in hospital. While in hospital Q contracts pneumonia due to the fact that his bed is close to a draughty window – this prolongs his recovery period by a further two months.

Discuss all the issues brought out by this problem.

(25 marks)

QUESTION 3

X, a motorcyclist who is not wearing a crash-helmet, is a stationery position at a red traffic light. He is suddenly struck from behind by Y who has not been applying his mind to his driving, but has been busy joking with the passengers in his car. The accident causes serious damage to X: E1 000 damage to his motor cycle; E4 000 for medical treatment following a fracture of one of his legs; E24 000 in consequence of head injuries (a brain haemorrhage). Evidence shows that X would have sustained no head injuries, if he had been wearing a crash helmet as required by law.

Consider his position.

(25 marks)

QUESTION 4

Dube, a diabetic, was suddenly struck by a distressing and debilitating stomach ache which was accompanied by vomiting and diarrhoea. His wife immediately rushed him to the RFM hospital's casualty department. The nurses told Dube to wait for the doctor responsible for the casualty department, and did nothing for Dube, even though he was obviously in great pain, and further, the wife told them that he being a diabetic she is worried because his body expelled all the little sustenance he had taken at home. The doctor eventually showed up after three and a half hours by which time Dube had gone into a diabetic coma, he died the next day.

What are Mrs. Dube's chances of success should she sue the RFM hospital. (25 marks)

QUESTION 5

Zwane is walking by the shops at Mahhala when he is suddenly struck by a barrel falling from the upstairs shop of Melisa. Melisa and her employees do not know how the barrel got ejected through their shop window.

Zwane suffers severe injuries. Advise Zwane. (25 marks)