



# UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, NOVEMBER 2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW303

TITLE OF PAPER: DELICT I

TIME ALLOWED: 3 HOURS

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## Instructions

1. Answer any 4 other questions

*Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must **NOT** write anything else until the start of the examination period is announced.*

*No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.*

**DO NOT turn examination paper over until instructed to do so.**

### **Question 1**

Muzi Mazibuko is a hardworking businessman aged 19 years. He lives with and takes care of his blind mother and pregnant girlfriend. One day he wakes up shivering violently and profusely sweating. His girlfriend recalling that Muzi had travelled to Luggedzeman, a malaria hotspot, two weeks before, quickly organises an ambulance to take him to SitaSive Clinic. At the Clinic he is seen by Dr. Mavaza, who has worked for a continuous 13 hours by the time he sees Muzi. A mere 30 minutes before Muzi's arrival, Dr. Mavaza had informed the clinic administrator that he was now fatigued and needed to call it a day. The clinic administrator had urged him to work two more hours at a premium overtime rate. Excited by the prospect of making half his monthly salary in two hours, Dr. Mavaza continues working, after all it's just two more hours. Upon learning that Muzi had travelled to a malaria hotspot, Dr. Mavaza immediately gives him two shots of a powerful antibiotic without taking his vitals and notwithstanding that Muzi is wearing a visible wristband signalling that he is allergic to antibiotics. He dies two hours later as a result of his allergic reaction to the antibiotics.

His family and dependants are aggrieved and want to take action. They have had rumours however to the effect that a mother and unborn child cannot do not have a cause of action in the case at hand. With the aid of decided cases, advise the family on what action they can take, against whom? And their prospects of success.

**Total 25 marks**

### **Question 2**

Maggie and Cynthia are at Zukkie's bar enjoying their alcohol. They meet Mandla, their neighbour, from whom they request a lift home as the bar is about to close. Mandla agrees but says they should give him 30 minutes to enjoy his last few bottles. Cynthia is concerned with the fact that Mandla will be driving drunk but Maggie assures her that Mandla is a champion driver who has driven them home successfully whilst in a far worse state of intoxication than he is today. Cynthia is satisfied with that answer and gets into the car with Maggie. Just before arriving at their village, Mandla sleeps at the wheel such that his car encroaches onto the path of an oncoming lorry. A head on collision accident happens between Mandla's car and the lorry. Maggie and Cynthia suffer serious injury but survive, Mandla is not so lucky and dies and the lorry driver, who

was not wearing his seatbelt at the time of the accident, suffers head injuries he would not have suffered had he been wearing his seatbelt.

The estate of the late Mandla is being sued for damages by Maggie, Cynthia and the lorry driver. They have come to you, a renowned lawyer in their town, for advice. With the aid of decided cases, fully advise them.

**Total 25 marks**

### **Question 3**

Magwabane is a Member of Parliament [MP] who is currently facing acute financial difficulty. At a board meeting of private company, he appeals to be granted an interest free loan. Mavis replies to the effect that company is not a charitable organisation especially for MP's that "stole their vote to Parliament" dishing out money they did not have in the first place. Magwabane is infuriated at this and informs Mavis that "she is the last person to talk as she is a thief who stole the E500,000.00 of the company's money. Mavis was arrested but never convicted on the disappearance of the said E500,000.00 two years ago.

Mavis feels defamed and approaches you for advice as she intends to sue Magwabane.

- i. Fully advise her on the law on defamation 15 marks
- ii. What are her prospects of success given that Magwabane is a member of Parliament? 5 marks
- iii. Can Magwabane counter sue Mavis? Discuss. 5 marks

**Total 25 marks**

### **Question 4**

Briefly define the following:

- i. *Novus actus interveniens* 5 marks
- ii. *Talem Qualem* 5 marks
- iii. *Pactum de non petendo in anticipando* 5 marks
- iv. *Res ipsa loquitar* 5 marks
- v. *Vis Major* 5 marks

**Total 25 marks**

### **Question 5**

Mehluli, a well know party animal, is brutally attacked by Sehlo in January 2019. He suffers a lung puncture as a result of the assault. He is however successfully treated for his assault injuries at Mvasi Clinic and life continues blissfully. In June 2019, he suddenly falls seriously ill and passes away in hospital within 24 hours of admission. The post mortem reveals that he died of lung related complications caused by years of smoking.

The family are not convinced that the lung complications are solely attributable to Mehluli's smoking habit. They believe all this was triggered by the lung puncture he suffered during the assault in January. As a student of the law of delict:

- i. Fully unpack the law pertaining to factual and legal causation  
15 marks
- ii. Distinguish between the two main tests for legal causation  
10 marks

**Total 25 marks**