



UNIVERSITY OF ESWATINI
INSTITUTE OF DISTANCE EDUCATION
DIPLOMA IN LAW
FINAL EXAMINATION PAPER NOVEMBER 2021

TITLE OF PAPER : LAW OF DELICT II
COURSE CODE : IDE LAW 304
TIME ALLOWED : THREE (3) HOURS
INSTRUCTIONS : ANSWER ANY FOUR (4) QUESTIONS

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GIVEN
BY THE INVIGILATOR**

Question 1

- a) What does the "compensatory function of the law of delict" mean? [10]
- b) Define patrimonial loss. [5]
- c) Briefly explain the "once and for all" rule. [5]
- d) Briefly explain what the collateral source rule is. [5]

Total marks: [25]

Question 2

Mrs Lloyd, an accountant, was travelling on the highway on 6 March 2021. She was driving below the speed limit and noticed what appeared to be a green Ford Fiesta speed right past her and then suddenly swerve into her lane of travel. In an effort to avoid striking the Ford Fiesta, Mrs Lloyd swerved to her right, lost control of the motor vehicle she was driving, a Toyota Corolla, and struck the steel crash barrier situated in the middle of the highway. As a result of the accident, Mrs Lloyd sustained a brain injury, a broken nose, and serious disfigurement to her face.

At the time of the accident, Mrs Lloyd was employed and earned R50 000 per month. As a result of the injuries she had sustained from the accident, Mrs Lloyd was unable to resume work, and remained in hospital for a period of three months. Her employment contract allowed her only one month paid sick leave. Because her boss felt sorry for her, he gave her one-month's salary *ex gratia*. According to the neurosurgeon and the plastic surgeon, Mrs Lloyd would in future have to undergo extensive surgery. Mrs Lloyd had become self-conscious about her appearance since the day of the accident and became emotionally distraught. Mrs Lloyd has approached you, an attorney specialising in the MVA claims.

Advise Mrs Lloyd on:

- a) the heads of damages she is entitled to claim. [15]
- b) the documentary proof she must submit in order to succeed with her claims.

[10]

Total marks: [25]

Question 3

- a) G and F are members of a town council. Both of them want to be the mayor of the town. During a public meeting that G arranges in order to address the townsfolk, F reveals that G was expelled from a university years ago because he was found guilty of cheating during an examination. G wants to sue F for defamation. Discuss. [15]
- b) Discuss the grounds excluding intent in the case of defamation. [10]

Total marks: [25]

Question 4

- a) Explain in detail, the difference between compensation for loss of future earnings and loss of earning capacity. [10]
- b) X is the owner of a motor vehicle which he uses as a taxi (business purposes). The taxi is damaged due to the negligence of Y. He incurs repair costs, and loss of profits due to not being able to use the taxi. What are these losses? [10]
- c) Causation is determined with reference to a consequence. Explain. [5]

Total marks [25]

Question 5

With reference to case law discuss the different forms of prospective loss.

Total marks: [25]

Question 6

- a) A plaintiff is involved in a car accident and suffers the following injuries:

- i. A broken leg which caused the plaintiff a severe pain;
- ii. As a result of the leg injury, the plaintiff walks with a limp;
- iii. The plaintiff cannot participate in certain physical activities he previously enjoyed; and
- iv. There is visible scarring on his leg from the leg injury.

Discuss the forms of physical-mental injury suffered by the plaintiff? [10]

- b) The action for pain and suffering is actively non-transmissible. Discuss. [5]
- c) Name the requirements for an employer to be vicariously liable for a delict of an employee. [5]
- d) Discuss the requirements for the *actio de pauperie*. [5]

Total marks: [25]