

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
FINAL EXAMINATION, MAY 2007

TITLE OF PAPER : LAW OF DELICT

COURSE CODE : DL 025

TIME ALLOWED : THREE (3) HOURS

**INSTRUCTIONS : 1. ANSWER ANY FOUR (4) QUESTIONS.
 2. YOUR ANSWER MUST BE COGENT, REASONED
 AND WELL ORGANISED
 3. READ AND UNDERSTAND WHAT THE
 QUESTION REQUIRES OF YOU
 4. ALL QUESTIONS CARRY EQUAL MARKS.**

TOTAL MARKS : 100

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THE INVIGILATOR**

QUESTION 1

Mkhonta, an enterprising businessman of his area is campaigning to be the area's member of parliament. He is standing against Sikhondze another enterprising businessman of the area who is, however, not as popular as Mkhonta. Amongst other positions, Mkhonta is an elder in the local church, committee chairman of the only High School of the area and also chairman of the area's crime prevention committee.

Realising that the odds are against him, Sikhondze causes to be published the fact that twenty years previously Mkhonta had been jailed for fraud and Robbery.

Advice Mkhonta about the action that he can institute against Sikhondze, and about the prospects of success. (25 Marks)

QUESTION 2

Differentiate between the two forms of causation. Also discuss, with reference to case law, the tests that must be employed to establish whether the two forms of causation are present in a given set of facts. (25 Marks)

QUESTION 3

- (a) Explain the differences between necessity and private Defence. In your answer include a discussion of the requirements of each Defence. (10 MARKS)
- (b) Although the test for negligence is in principle uniform for all Defendants, the test adapted in the case of the following tends to differ:-
- i. Children and
 - ii. Experts

Discuss with reference to relevant case law the need for a different test.

(15 Marks)

QUESTION 4

The wrongfulness of a conduct is tested using legal convictions of the community (*boni mores*), discuss the role of this element in establishing delictual liability in relation to the judgment of *Universiteit van Pretoria v Tommie Meyer Films* (Edms) Bpk 1977 (4) SA 376. (25 Marks)

QUESTION 5

In Mbalane City, the paved sidewalks are in a poor condition due to erosion. Several holes and furrows have developed in the sidewalks. The municipality neglects to repair the sidewalks despite requests to this effect by several of the residents. One day Mrs. Mkhwanazi, an aged resident, inadvertently steps into a hole in a sidewalk, falls and suffers serious injuries for which she is hospitalised for a month.

Mrs. Mkhwanazi wishes to recover damages against the Municipality in a delictual action.

Discuss whether the conduct of the Municipality was wrongful. Refer in your answer to relevant case Law. (25 Marks)

QUESTION 6

Discuss the role of Fault in establishing a delictual liability. In your answer, include the test for negligence as formulated in *Kruger v Coetzee* 1966 (2) SA 428; the standard of a reasonable man and discuss also whether or not negligence and intent could overlap.

(25 Marks)

QUESTION 7

Write Short notes on the following:-

- (a) Passing off. (5)
- (b) Nuisance (5)
- (c) "The media can be held strictly liable for defamation"
Is this statement correct? substantiate your answer (5)
- (d) *Actio de pastu*. (5)
- (e) *Actio de pau peri*. (5)

(Total 25 Marks)