

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2016

TITLE OF PAPER : THE LAW OF DELICT

COURSE CODE : L306

TIME ALLOWED : THREE (3) HOURS

- INSTRUCTIONS :**
- 1. ANSWER ANY FOUR (4) QUESTIONS.
MARKS ARE INDICATED AT THE END OF
EACH QUESTION.**
 - 2. CANDIDATES ARE THEREFOR ADVISED TO
ALLOCATE THEIR TIME ACCORDINGLY.**

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THE INVIGILATOR.**

QUESTION 1

While driving at 100 km/h along a freeway, Gama has a heart attack which causes him to lose consciousness after a few seconds. His car veers out of control and collides with a vehicle next to his moving in the same direction. Dlamini, a passenger in that vehicle is injured and in the subsequent action, the third party insure of Gama's vehicle, UNISWA Insurance Corporation, raises the defence that Dlamini's damage was not caused by any conduct of Gama, because Gama had been unconscious at the moment of collision.

Discuss the merits of this defence.

[25 marks]

QUESTION 2

Khoza a blind man while walking along the pavement in a residential area in Manzini on his way to work tripped over an obstacle placed by servants of the Zenith Electricity Board near the end of a trench which they were excavating in the pavement under statutory authority. The obstacle had been placed there to protect pedestrians from the trench and to divert them into the road. Khoza who was alone had approached with reasonable care waving his white stick in front of him to detect objects in his way but the stick missed the obstacle and his leg caught it causing him to fall and suffer sever injuries. The obstacle gave adequate warning of the trench for normally sighted persons. Evidence was given during the court hearing that one in five hundred people were blind.

Discuss the legal position of Khoza.

[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 cases.

[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 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

The **Times of UNISWA** published an article on the People's United Democratic Movement (PUDEMO) to the effect that:

1. The leaders of the Movement are all illiterate, social misfits, uncivilized, good-for-nothings.
2. The general membership of the Movement are eighty per cent thieves, robbers, unemployed dregs of society with nothing better to do with their time.
3. Their main aim is to cause anarchy, civil unrest and perpetuate acts of criminality in the country.
4. The Movements' constitution seems like it was drawn by a group of persons with the brains equal to that of a chicken.

Next to the article are pictures of the leadership of the Movement, published without the consent of the leaders.

PUDEMO is considering suing the **Times of UNISWA** for defamation and for the invasion of its privacy of the leaders due to the publication of the photographs.

Advise PUDEMO.

[25 marks]