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**UNIVERSITY OF ESWATINI  
INSTITUTE OF DISTANCE EDUCATION  
BACHELOR OF LAWS/DIPLOMA IN LAW  
FINAL EXAMINATION PAPER NOVEMBER 2019**

<b>TITLE OF PAPER</b>	:	LAW OF DELICT
<b>COURSE CODE</b>	:	IDE LAW303
<b>TIME ALLOWED</b>	:	THREE (3) HOURS
<b>INSTRUCTIONS</b>	:	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 concept of voluntary conduct mean? [5]
- b) With reference to examples, distinguish between absolute compulsion, and relative compulsion (*vis compulsiva*) [5]
- c) Write a short note on the concept of *actio libera in causa*, giving an example [5]
- d) "The difference between a commission and omission is not of importance for the purposes of the law of delict." Do you agree with this statement? Discuss briefly [5]
- e) Describe the two steps involved in an inquiry into wrongfulness [5]

**Total marks: [25]**

### **Question 2**

*Passenger Rail Agency of South Africa v Moabelo (1082/2016) [2017] ZASCA 144 (2 October 2017)*

Discuss the issues that arise from the case. [25]

### **Question 3**

In the case of *Theresa-Marie Earnshaw Zeeman vs. The Women and Children's Hospital and Another (1264/12) [2018] SZHC* it was held:

*The Plaintiff has established on balance of probabilities that the Defendants were negligent in the discharge of their duty towards her, and Defendants ordered to pay special damages and general damages for pain and suffering, permanent disability and loss of amenities of life.*

Discuss how this judgment was reached.

**Total marks: [25]**

**Question 4**

- a) There is dry grass on P's farm. P fails to cut the grass. A fire breaks out in the grass and spreads to his neighbour, Q's farm, where it causes some damage. Can P be held liable for Q's damage? Briefly discuss with reference to liability for an omission [10]
- b) "The negligence of an act must always be judged in the light of the circumstances of the particular case". Discuss this statement and name the factors that play a role when evaluating the circumstances of the case. [10]
- c) Briefly explain what is meant by the concept of an egg-skull case. [5]

**Total marks: [25]****Question 5**

X, Y, and Z are stranded on a small, uninhabited island. There is fresh water on the island, but nothing to eat. Z is already very weak. To stay alive, X and Y kill Z and eat him. Did X and Y act wrongfully? Would it make a difference to your answer if X and Y were picked up by a rescue boat one day later and, according to the evidence of a doctor on board the rescue boat, they were healthy enough to have survived several days without food, thus making the killing of Z unnecessary? Discuss with reference to case law.

**Total marks: [25]****Question 6**

Briefly explain the meaning of the following concepts (using examples). Also explain the similarities and differences between them, as well as their effect on the possible liability of the defendant:

- a) consent to injury [5]
- b) consent to the risk of injury [5]
- c) *volenti non fit iniuria* [5]
- d) voluntary assumption of risk [5]
- e) contributory negligence [5]

**Total marks: [25]**