



SCHOOL OF LAW

NLLB204 LAW OF DELICT

END OF FIRST SEMESTER EXAMINATIONS

NOVEMBER/DECEMBER 2023

LECTURER: MR N MAPHOSA

DURATION: 3HRS

GENERAL INSTRUCTIONS TO CANDIDATES

- 1. Do NOT write your name on the answer sheet.**
2. Write legibly.
3. Students **MAY NOT** take any material into the examination.
- 4. Answer ALL questions from Section A and FOUR questions from Section B.**
5. You are advised to read all questions carefully before attempting to answer any.
- 6. Begin your answer for each question on a new page.**
- 7. Refer to RELEVANT authorities to support your arguments.**
- 8. This examination paper consists of five pages.**

SECTION A

THIS SECTION IS COMPULSORY.

QUESTION ONE

I. Mr and Mrs Smiley are involved in a car accident which is caused by the negligence of the other driver. Mrs Smiley is badly injured and immediately slips into unconsciousness. Mr Smiley is slightly injured. He spends two days in hospital and is released. His injuries do not leave him with any permanent damage. Mr Smiley institutes action against ABC Insurers, the insurer of the other driver. Mr Smiley claims for his past medical expenses.

Six months later, and four months after Mr Smiley instituted the first action against ABC Insurers, Mrs Smiley passes away. Mr Smiley decides to institute another action against the insurers for loss of support. At the same time Mr Smiley realizes that he has also suffered loss in respect of the repairs to his car, and he includes a claim for the repair costs in the same summons as the claim for loss of support (the second summons). Upon receiving the second summons from Mr Smiley, ABC insurers are advised by their legal practitioners that Mr Smiley is not entitled to the damages claimed in the second summons.

You are required to consider this advice provided to ABC insurers by their legal representative and comment on the correctness or otherwise of it. What would your advice have been to ABC insurers? **[10 Marks]**

II. List the differences between patrimonial and non-patrimonial loss. **[5 Marks]**

III. Outline the five theories of legal causation. **[5 Marks]**

SECTION B

QUESTION TWO

I. Jemma was a 24 year-old mother of two children and an aspiring actress. On 1 April Jemma, a front seat passenger in her father's car, was on her way to an important audition. Jemma's father religiously fastened his seat belt when getting into a car. Jemma, however, did not wear her seat belt because she thought it would crease her clothes and might spoil her make-up.

On her way to the audition, Jemma was severely injured in a head on collision between her father's car and a motor vehicle driven by Edward. Edward, a young businessman, had been driving recklessly because he was late for a meeting. The accident occurred when Edward recklessly overtook a truck around a blind bend in the road. Jemma sustained serious head and spinal injuries. Her face had also been horribly disfigured by glass. Experts found that, if she had worn her seat-belt, Jemma would have sustained relatively minor injuries.

Advise with reference to relevant case law and stating reasons, what effect Jemma's failure to wear a seat-belt would have on her claim for damages against Edward. **[10 Marks]**

II. Describe the test for wrongfulness and the test for negligence and name the factors that may be applied to distinguish between the two tests. **[10 Marks]**

QUESTION THREE

I. Mr Joshua is the owner of a private beach resort in Cape Town. Mr Joshua employs a full time life-guard at the beach who is trained to give basic medical treatment in the event that a guest is in trouble. On the day in question, Amy takes her 5 year old daughter, Carly swimming in the ocean. Whilst in the water, Amy receives some attention from young male onlookers and goes over to talk to them. Whilst Amy flirts with her admirers, Carly drifts into deeper waters. Nearby, Mark, a 21 year old surfer is getting out of the water and accidentally bumps Carly's head with his surfboard. Mark notices the life-guard looking over and waves to him indicating that everything is okay; but when Mark sees the hot "jocks" flirting with a pretty young woman, he feels embarrassed and runs away. Confused by the blow Carly can no longer keep herself above the water and begins to drown. Jason, the life-guard noticed Carly splashing and frantically but assumes by Mark's gesture that Mark was attending to her. Carly hit her head on a rock and is rendered unconscious before some other onlookers drag her out of the water. Amy brings a delictual action on Carly's behalf for the damages sustained by Carly.

Establish whether Mark's (the surfer) omission to save Carly is wrongful. **[10 Marks]**

II. Describe the test for wrongfulness and the test for negligence and name the factors that may be applied to distinguish between the two tests. **[10 Marks]**

QUESTION FOUR

I. Name the appropriate common law action or type of liability that the plaintiff will use against the defendant in the following scenarios, bearing in mind that there was no fault on the part of the defendant:

a) The defendant steals the plaintiff's cellphone and the cellphone is then stolen from the possession of the defendant by a third party. **[1 Mark]**

b) The defendant erects a wall on his property which causes rainwater to flow onto the property of the plaintiff causing damage to the plaintiff's property. **[1 Mark]**

c) A plaintiff walks behind a horse, belonging to the defendant, to touch the horse's tail, the horse kicks the plaintiff. **[1 Mark]**

d) The defendant's goats escaped into the plaintiff's garden and ate the plaintiff's prized roses. **[1 Mark]**

e) Z, an employee of the defendant, drives negligently while acting within the scope of his employment and causes a motor vehicle accident in which the plaintiff sustains patrimonial loss. **[1 Mark]**

II. Discuss the Constitution's potential to influence legal developments in the Law of Delict.

[15 Marks]

QUESTION FIVE

Radius Mabena is the leader of the ABC Youth League and a prominent political figure. One afternoon, he is part of a public debate on government building tenders. A journalist from the GP Herald speaks out of turn and states, "I have evidence to suggest that every successful tender belongs to your extended family. What do you say to these allegations?" Mabena refuses to address the allegations and chases the journalist out of the room accusing him of being a "bloody agent with racist tendencies".

That evening the GP Herald again asks Mabena to comment on the allegations but no comment is forthcoming. The next day, the GP Herald publishes a headline which states "Mabena steals building tenders". Mabena is very sensitive and is devastated by the headline. He believes that his credibility amongst his supporters has been shattered.

I. Discuss the elements required to establish a prima facie case of defamation in this case.

[10 Marks]

II. Discuss the defences which the publisher may raise in its defence.

[10 Marks]

QUESTION SIX

John and Thembi are married and have a five year old daughter, Precious. John was a successful auditor, practicing at a large auditing company. Thembi was a stay at home mother, but was a qualified chartered accountant. Precious attended nursery school, and was a bright child with a good future ahead of her. During the past financial year John was the best fee earner at the auditing practice, for which he was paid a bonus of US 1 million. John decided to buy a new car with his bonus, a Maserati sports car. To celebrate his success and the new car, John, Thembi and Precious went on a 'road trip' to the coast.

On the road to the coast a taxi collided with their vehicle causing serious injury to all members of the family. John suffered from various injuries and spent three excruciating weeks in hospital. Thereafter he was unable to return to work for a further 2 months. While recovering John's employer continued to pay him his salary (sick leave) as the employer valued John as an employee and did not want to lose him. John was also a member of the Compulsory Medical Aid, which paid for all his medical expenses in terms of the contract. Due to the damage, John's car was written off. Experts predicted that it would cost 900 000 to repair the vehicle, while the pre-accident value of the vehicle was 750 000. John also had to hire a replacement vehicle after returning home from the hospital in order to continue with his day life and visit his family in hospital.

Thembi hit her head on the windshield at the moment of impact and as a result she was knocked unconscious. At the hospital, the doctors informed John that Thembi was in a permanent vegetative state and would remain that way for life (there was no prospect of her recovering). Thembi had to be fed by a gastric tube, and she was totally unaware of her surroundings. Doctors estimated that

Thembi's life expectancy was only another 10 years. Thembi however only lived for another 6 years, and died 8 weeks after the close of pleadings.

Precious sustained a brutal injury to her head, as a result of which her mental capacity was permanently diminished. Precious was rendered unconscious immediately at the time of the accident due to the head injury, but regained consciousness shortly thereafter. Doctors predicted that Precious would be able to care for herself and would not need any special treatment, however, she would never be able to finish school or study further due to her limited concentration span resulting from the injuries. She will be required to attend a special needs school in future. She will also never be able to work in an office environment as her ability to concentrate has been affected dramatically. Precious also has significant scarring on her face. Precious was not covered by a medical aid policy. Precious was the beneficiary of a disability insurance policy, taken out by her parents, which paid out an amount of 50 000.

I. John decides to institute action, in his capacity and his representative capacity on behalf of Precious, against the negligent driver responsible for the accident. With reference to case law, discuss the compensation John and Precious (not Thembi) are entitled to, as well as the rules relating to such claims for compensation. **[10 Marks]**

II. John consults an attorney as he wishes to institute action against the negligent taxi driver on behalf of Thembi. The attorney informs John that they may not be successful in claiming damages under the action for pain and suffering on Thembi's behalf given her condition. John approaches you for a second opinion. Discuss whether John, on Thembi's behalf, will be successful in a claim for damages for Thembi under the action for pain and suffering only. **[10 Marks]**

TOTAL MARKS:

100

END OF QUESTION PAPER