



FACULTY OF LAW

ZIMBABWE EZEKIEL GUTI UNIVERSITY

Department of Private law

LLB 202

Law of Delict

November examination 2018

28 NOVEMBER 2018

**Instructions**

- (i) Answer all questions in section A. All questions in this section are compulsory. Each question carries 25 marks.
- (ii) Answer any two questions from section B. Each question carries 25 marks.
- (iii) Students may bring into the exam un-annotated and clean texts of applicable legislation and the 2013 Zimbabwean Constitution. Copies with notes inside shall not be allowed and may be confiscated. No student is allowed to share his/her copy with another.
- (iv) Number your answers accordingly

## **SECTION A**

### **Question 1**

Indicate and/or fill in the correct answer in the correct row and column.

<b>Action</b>	<b>Type of animal</b>	<b>Type of harm covered</b>	<b>Person against whom action is brought</b>	<b>Whether negligence is a requirement Yes/No</b>
<b>Acquilian</b>				
<b>Pauperian</b>				
<b>Quasi Pauperian</b>				
<b>Edictum de feris</b>				
<b>Actio de pastu</b>				
<b>Nuisance</b>				

[25]

### **Question 2**

(a) Critically analyse the legal convictions of community as a basic test for wrongfulness.

(15)

(b) Identify and discuss the strengths and limitations of the legal convictions of the community as a test for wrongfulness.

(10)

## **SECTION B**

### **Question 3**

Mr Leo was arrested on a drunk driving charge. The doctor took a blood sample and conducted a surface physical examination. He then left him in the police cell. Mr Leo complained that he was in a lot of pain but the police waited for about two hours before taking him to the surgeon. The surgeon examined Mr Leo and told the police that they should take him to the hospital immediately. Another two hours passed before the

police called the ambulance. Just as the ambulance arrived at the surgery and Mr Leo died. Medical evidence showed that it was highly probable that he would have lived if he got there earlier. Mr Leo's wife Hailey sued the Minister of Police for negligently causing the death of her husband.

With reference to decided cases, discuss whether the Minister of Police can be held vicariously liable for Mr Leo's death.

[18]

Identify and discuss possible defences available to the Minister of Police against vicarious liability for Mr Leo's death. **(7 marks)**

#### **Question 4**

Martha, an estranged wife who suspects her husband of having an affair employed a private detective to install a secret monitoring device in the house to enable her to listen and record her husband's conversations. She later released the recordings on social media. Her husband sued her and the detective for violating his right to privacy as well as serious violation of his right to dignity.

Discuss the main elements of the principles that apply in this case and evaluate the prospects of success of the husband in this delictual claim. **[20]**

What defences are available to MARTHA in this case **(5 marks)**

#### **Question 5**

Causation in the law of delict gives rise to two distinct problems. The first is a factual one and relates to the question as to whether the negligent act or omission in question caused or materially contributed to the harm suffered. The second problem is legal causation which can be determined using various accepted approaches.

Discuss, using case law, how the courts have dealt with the issue of causation. **[25]**

#### **Question 6**

At 8pm on a Friday night, David, a Greenlight resident lights an old paraffin lamp as he has no electricity due to scheduled load shedding of electricity. He leaves the old paraffin lamp burning in his bedroom with the bedroom window open and went to prepare his dinner. A strong wind blows the lamp over and as a result of this a fire starts and spreads rapidly and spreads to his neighbour's house. His neighbour Connie, is holding a party in the garden of her house and when the smoke and flames are spotted her guests panicked. Richard [her husband] drops a tray containing their special wine jar, one of which cuts the arm of Lisa, a haemophiliac, who bleeds to

death before hospital treatment can be obtained. Connie's house is destroyed in the fire. A haemophilic is a person whose blood does not clot, so they bleed badly when cut.

Connie wishes to sue David to recover the damages caused by the destruction of her house and its contents as well as the loss of the tray of the wine jar and Lisa's husband Rob who is currently unemployed wants to sue David for the loss of support caused by Lisa's death. While David admits that he was negligent and that this negligence caused the destruction of Connie's house he denies that he is the cause of the destruction of the glasses or of Lisa's death.

Advise David on his liability in delict, if any through a discussion of applicable legal principles. Limit your answer solely to a discussion as to whether David is the cause of the destruction of the wine jar and Lisa's death. **[25]**