



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW, BUSINESS INTELLIGENCE AND ECONOMICS

DEPARTMENT OF LAW AND LEGAL SERVICES

EXAMINATION PAPER

COURSE CODE : LLB 212

COURSE TITLE : Law of Delict

DURATION : 3 Hours

31 JUL 2023

LEVEL : 2.1

INSTRUCTIONS TO CANDIDATES:

1. This paper contains 8 Questions.
2. Answer any 4 Questions.
3. Each question carries 25 marks.
4. When drafting documents, devise your own data unless it is supplied in the questions.

Question 1

“Although the main purpose of the law of delict is to compensate injured parties, making wrongdoers pay damages has an important deterrent and educative effect in society and this helps to reduce the number of accidents. However, where proof of negligence is required for delictual liability, the outcome in such cases is frequently uncertain as it is often difficult for plaintiffs to establish that there has been negligence. This is because the test applied for negligence requires a value judgement rather than the application of a precise test. This unpredictability as to whether there will be liability adversely affects the securing of compensation by plaintiffs and lessens the deterrent impact of the law of delict.”

Using case illustrations, comment upon the accuracy of this statement.

[25 Marks]

Question 2

Differentiate between a delict, a contract and a crime. Can a person sue in delict if the same act constitutes both a delict and a breach of contract?

[25 Marks]

Question 3

Is it correct to say that persons practising professions such as legal practitioners and medical practitioners must exercise the highest possible standard of care and that they will always be held delictually liable whenever they make mistakes during the course of carrying out their professional duties?

[25 Marks]

Question 4

- a) Using selective case law illustrations, describe how the wrongfulness requirement is used to limit the scope of liability for causing purely economic loss.
- b) Comment on the assertion that there is no need to rely upon the criterion of the legal convictions of the community to create a new legal duty in respect of omissions because it will always be possible to fit cases into one or other of the traditionally recognised categories of liability for omissions.

[25 marks]

Question 5

“There are compelling reasons for making manufacturers of products strictly liable for harm caused by defects in their products instead of requiring the injured parties to discharge the heavy burden of proving that the manufacturers were at fault.”

Critically discuss this contention with reference to relevant case law. **[25 Marks]**

Question 6

Mr Moyo had a problem with the braking system on his car so he took the car to Reliable Garage and asked them to carry out the necessary repairs to the braking system. A few days later he collected his car. The mechanic at the garage assured him that the brakes were now in good working order. When Mr Moyo was proceeding through an intersection where he had right of way, Mr Ngoni, who was supposed to stop and give way to Mr Moyo, came straight out in front of Mr Moyo. Mr Moyo applied his brakes in an effort to avoid a collision with Mr Ngoni's vehicle. Unfortunately, the brakes failed completely and Mr Moyo's vehicle rammed into Mr Ngoni's vehicle. Mr Moyo was not injured but his front seat passenger, Mr Sithole, who was not wearing his seat belt, hit his head on the windscreen and suffered serious head injuries. The engine of Mr Moyo's car was badly damaged.

Mr Moyo and Mr Sithole seek your advice on whether and against whom they can recover delictual damages and how this matter will be dealt with by the court. Advise them.

[25 marks]

Question 7

Write notes on any THREE of the following:

- a) Mitigation of damages
- b) ~~Res inter alios acta~~
- c) ~~Talem qualem rule~~
- d) Legal causation
- e) Res ipsa loquitur
- f) The once and for all rule.

[25 marks]

Question 8

In each of the following cases decide what delictual remedies the injured party has, if any:

- a) Both P and D sell fast food. In order to induce customers to buy his food rather than the food of P, D tells P's customers that P's food contains poisonous additives. This is entirely untrue.
- b) D, a doctor, without the consent of P, her patient, discloses to some of her friends at a party, that P has HIV. P learns that her doctor has done this.
- c) A prison guard carelessly leaves the main door to the prison unlocked and a dangerous rapist is able to escape. Before the criminal can be recaptured, he rapes P.

- d) D, who is very intoxicated to the knowledge of P, offers P a lift in his car. P realised that D is not in a fit state to drive but nonetheless he accepts the lift. D drives at an excessive speed and, due to his drunken state, he loses control of the car which overturns. P is seriously injured.
- e) D, who is already married to another woman in a monogamous marriage, purports to marry P. P does not know that D is committing bigamy but later finds out about this.

[25 Marks]

END OF EXAM PAPER