



**ZIMBABWE EZEKIEL GUTI UNIVERSITY**

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**FACULTY OF LAW, BUSINESS INTELLIGENCE AND ECONOMICS**

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**DEPARTMENT OF LAW AND LEGAL SERVICES**

**EXAMINATION PAPER**

**COURSE CODE : LLB 212**

**COURSE TITLE : Law of Delict**

**DURATION : 3 Hours**

**LEVEL : 2.1**

**13 APR 2023**

**INSTRUCTIONS TO CANDIDATES:**

1. This paper contains 7 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

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 2

- a) Should a media institution which publishes a story which turns out to be inaccurate be able to have as a defence to an action for defamation that it published the story in the public interest after taking all reasonable steps to check that the story was accurate?
- b) Why are our courts reluctant to grant interdicts to prevent the publication of allegedly defamatory stories and can a commercial company sue for defamation?

**[25 marks]**

### Question 3

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 4

- a) Clearly differentiate between—
  - i) the delict of malicious abuse of legal proceedings; and
  - ii) the delict of unlawful arrest or imprisonment.
- b) Discuss the contention that, in the modern society, the delict of adultery is completely archaic and outmoded and should be abolished.

**[25 marks]**

### Question 5

Speedy Trucking has despatched its driver, Mr Ngoni, in a truck to deliver some goods to a company which requires these goods as quickly as possible. Instead of going straight to the company concerned, Mr Ngoni diverts away from the route and travels five kilometres to go to his house to pick up some papers that he needs in order to apply for a passport. He picks up the papers and, soon after leaving his house, he enters a major road without giving way at the intersection where he is required to give way to traffic on the major road. Mr Chiweshe was driving his vehicle on the major road. He sees the truck entering the road in front of him without giving way. He applies his brakes but, because he is travelling at a speed of 170 kph in an area where the speed limit is 70kph, he is unable to stop his vehicle in time and collides with the truck. Mr Chiweshe suffers serious injuries, injuries that would not have been as bad if he had been wearing his seat belt. Mr Chiweshe's car is also badly damaged, as is the truck, but Mr Ngoni does not suffer any physical injuries. Both Mr Chiweshe and Speedy Trucking hold fully comprehensive motor insurance.

What are the respective delictual rights and liabilities of the parties involved in this matter and will any damages which they can claim against the defendants be reduced by the amounts they have recovered from their insurance companies?.

**[25 marks]**

### Question 6

How sound, if at all, are the considerations of policy underpinning the doctrine of vicarious liability?

**[25 marks]**

### Question 7

You have been asked to lead a discussion on the interplay between the law of defamation and the constitutional right to freedom of expression. Prepare your paper for the discussion, in which you must consider any areas of the law which require change.

**[25 marks]**

**END OF EXAM PAPER**