



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW, BUSINESS INTELLIGENCE AND ECONOMICS

DEPARTMENT OF LAW

2024 EXAMINATION

COURSE CODE : LLB 212

COURSE TITLE : LAW OF DELICT

DURATION : 3 HOURS

EXAMINER : G. MHISHI

Authorised Material: NONE

INSTRUCTIONS:

11. APR 2024

1. This paper contains 7 Questions.
2. Answer any FIVE (5) Questions.
3. Each question carries 20 marks.
4. **NOTE: When drafting documents, devise your own data unless it is supplied in the questions.**

NB: DO NOT TURN OVER THE QUESTION PAPER OR COMMENCE WRITING UNTIL INSTRUCTED TO DO SO.

Question 1

Demonstrate your understanding of a delict, a contract and a crime. Discuss whether a person can sue in delict if the same act constitutes both a delict and a breach of contract? **[20 Marks]**

Question 2

a) Clearly differentiate between the delict of malicious abuse of legal proceedings and the delict of unlawful arrest or imprisonment. **[10]**

b) Discuss the contention that, in the modern society, the delict of adultery is completely archaic and outmoded and should be abolished. **[10]**

[20 Marks]

Question 3

For vicarious liability to be imposed on an employer it is not necessary to prove that the employer was negligent, for example, by failing properly to supervise the employee or by employing an incompetent employee; all that has to be proven is that the employee, who was not an independent contractor, committed a delict in the course of his employment which caused harm to the plaintiff.

Comment on the accuracy of this statement.

[20 Marks]

Question 4

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.

[20 Marks]

Question 5

The school hours for Excellence Primary School are from 8.00 am to 4.00 pm. The school advises all parents to collect their children promptly at 4.00 pm. On the day in question one of the teachers ended his class at 3.30. He advised the children in the class to go and play in the playground in the school grounds until their parents came to pick them up. The playground was located next to a busy road but there was a one

metre high fence between the field and the road. There was no teacher at the playground to supervise the children. The children started to play with a soccer ball. When David Bere, aged eight, kicked the ball it flew over the fence onto the road. David immediately climbed over the fence and, without looking, ran straight out onto the road. Sam Deve was driving along the road at a speed that was within the prescribed speed limit for this area. When David ran out onto the road Sam applied his brakes and tried to swerve to avoid hitting David but unfortunately the car hit David and badly injured him, causing him severe spinal injuries that will mean that he will never be able to walk again and will have to use a wheelchair.

You have been approached by David's parents for legal advice. Advise the parents on the following matters:

- a) Who can the parents sue in delict for the injuries caused to their son; and
- b) What damages can they claim?
- c) Was their son guilty of contributory negligence? **[20 Marks]**

Question 6

Dan Stalker, who is mentally very unstable, has a number of previous convictions for sexual assaults upon women. Dan has become fixated on Ms Moyo, a single woman. Dan has been following her wherever she goes and has been watching her house. Ms Moyo reports this to the police and the police arrest Dan and take him into custody. The police know that he is mentally disturbed and is very dangerous. However, one evening Constable Unreliable fails to lock the cell door and Dan escapes and it is several hours before the police realise that he has escaped. Dan immediately goes to Ms Moyo's house where he breaks in, violently rapes her and then runs away. He is apprehended by the police soon thereafter.

Two months later Ms Moyo discovers that she was impregnated by the rapist. She goes to the police who inform her that she is entitled to have a lawful termination of the pregnancy but only after Dan has been successfully prosecuted for rape. One month later she was told by a woman's organisation that she does not have to wait for the trial of the rapist before obtaining a termination. The organisation then assists her to make the application to a magistrate seeking a certificate authorising the application. The application is accompanied by the required affidavit from Ms Moyo that the pregnancy was as a result of rape. However, there is an extended delay before a magistrate considers the matter and grants the certificate and the doctors refuse to carry out the

termination because the pregnancy is now so advanced that it would be unsafe. Thereafter Ms Moyo gives birth to a child.

Advise Ms Moyo whether she has any delictual remedy—

- a) for the negligence of the police in allowing Dan to escape from custody and rape her;
 - b) for her inability to obtain a termination of pregnancy whilst it was still medically safe for her to do so.
- [20 Marks]**

Question 7

Write notes on any FIVE 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.

[20 marks]

END OF EXAM PAPER

0/53 (pm)