

**NATIONAL UNIVERSITY OF LESOTHO**

**FACULTY OF LAW**

**LL.B - FINAL EXAMINATIONS**

**L283 – THE LAW OF DELICT**

**MAY 2018**

**MARKS: 100**

**TIME: 3 HOURS**

**INSTRUCTIONS:**

1. Underline any decided cases that you refer to in support of your arguments;
2. Answer **FOUR (4)** questions **ONLY**;
3. You may use a clean copy of the **COURSE OUTLINE**; and
4. In answering questions **ONE**, and/or **FIVE**, try to deal with as many of the likely issues as possible given time constraint. If you believe that additional information is needed to deal with an issue, say so. Where appropriate, make whatever assumptions seem most reasonable.

### QUESTION ONE

SELSI 1983 (Pty) Ltd was registered in Lesotho in 1983. Since then it has been in the business of designing, manufacturing and supplying home furniture such as wardrobes, bedroom suits, mattresses and kitchen units together with some office and school furniture. In the same year, that is, 1983, it designed, *inter alia*, two varieties of wardrobes and a three-piece mini kitchen unit. The designs of the said wardrobes and a mini kitchen unit have served as a pattern for wardrobes and mini kitchen units, which SELSI has manufactured and sold in large quantities ever since 1983. One of the above-mentioned varieties of wardrobes bears the phrase "CENTRE MIRROR ROBE" on the back; presumably because there is a mirror right in the centre of the wardrobe. The other type of wardrobe is branded "MINI COMPACTUM 4' ROBE" and the kitchen unit is labelled "SELSI 3PC KITCHEN SET ROBE" on the back. Around 2004, SELSI's two competitors emerged, namely, JUBILA and Mr FURNITURE. These companies manufacture and sell wardrobes and kitchen units whose design features are identical to CENTRE MIRROR ROBE, MINI COMPACTUM 4' ROBE and SELSI 3PC KITCHEN SET ROBE. Moreover, JUBILA's wardrobes are labelled MINI COMPACTUM and CENTRE MIRROR on the back.

SELSI intends to file suit against JUBILA for unlawful competition. Prepare a written legal advice, which provides an assessment of the likelihood of SELSI's success on this claim.

[25 MARKS]

### QUESTION TWO

With the help of decided cases critically examine the notion of 'a reasonable person'.

[25 MARKS]

### QUESTION THREE

Briefly, explain the following doctrines:

- |                             |         |
|-----------------------------|---------|
| (a) <i>Res perit domino</i> | 5 Marks |
| (b) Abuse of right          | 5 Marks |
| (c) A 'but for' test        | 5 Marks |
| (d) Goodwill                | 5 Marks |
| (e) Pure economic loss      | 5 Marks |

[25 MARKS]



#### QUESTION FOUR

In the case of Attorney-General of Lesotho v 'Mopa 2002(6) BCLR 645, para.30, the Court of Appeal of Lesotho made the following passing remarks with regard to the law of defamation:

The present case... entails a claim of defamation. What amounts to defamation, its publication, and defences are not without complication. This is more so when the effect of the Constitution on the pre-existing law of defamation is yet to be the subject of an authoritative ruling in Lesotho.

In view of the foregoing *obiter dicta*, the National University of Lesotho has organised a conference on the constitutionality of the common law of defamation. Experts have been invited to make presentations on a wide range of issues concerning this theme.

You are one of the experts who have been invited and you have agreed to present a paper entitled '*Striving to strike a balance between the right to reputation and the right to freedom of expression: What values merit consideration?*' Set out and critically discuss the main points of your paper.

**[25 MARKS]**

#### QUESTION FIVE

During Easter break this year, members of the Department of Biology picnicked at Khotsong Lodge. As they were picnicking, an ostrich walked from the trough towards them. Prof. Seth, one of the picnickers, then threw a stone at the ostrich in order to scare it away. Instead of being scared off, the ostrich chased him. He tripped and fell. The ostrich stopped and looked at him. He then picked himself up and once again attempted to run away from the ostrich, but he stepped awkwardly and injured his Achilles tendon. The ostrich turned and walked away.

Prof. Seth has requested you to prepare a written advice on whether Khotsong Lodge (pty) Ltd, the owner of the ostrich that chased him that day, is liable under *actio de feris* for his injured Achilles tendon. Set out and critically discuss the main points of your advice.

**[25 MARKS]**

#### QUESTION SIX

Critically discuss the extent to which moral values have infiltrated the law of delict.

**[25 MARKS]**