

NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF LAW

LL.B. EXAMINATION

L2305 – LAW OF DELICT I

JANUARY 2024

100 MARKS

3 HOURS

Instructions:

1. There are six questions in total.
2. Answer four questions: **TWO (2)** questions from SECTION A and **TWO (2)** questions from SECTION B.
3. All answers must be numbers correctly.
4. It is in the student's interest to write legibly.

SECTION A

QUESTION 1

Briefly discuss the following concepts:

- | | | |
|------|--------------------------|---------|
| i. | Patrimonial Harm | 5 Marks |
| ii. | Non-Patrimonial Harm | 5 Marks |
| iii. | <i>Talem Qualem</i> Rule | 5 Marks |
| iv. | Concurrence of action | 5 Marks |
| v. | Once and for all rule | 5 Marks |

[25 MARKS]

QUESTION 2

Identify and discuss any five defences that excludes intention in delict.

[25 MARKS]

QUESTION 3

Identify and discuss four interests that are protected under the law of delict. In your answer, discuss the delictual actions that protect each of these interests.

[25 MARKS]

SECTION B

QUESTION 4

Sihle Shenge and Kimberly Jones were involved in a romantic relationship for five years. During the course of their relationship, Sihle supported Kimberly and her family financially. He even paid Kimberly's outstanding tuition at a local university and helped her secure a job. Their relationship however came to an end in July 2022 when Kimberly decided to reignite her relationship with Thato Kaibe, her ex-

boyfriend from high school. Sihle felt Kimberly had used him. He therefore vowed to hurt Kimberly.

During their relationship, Sihle and Kimberly had taken explicit photos of themselves. Kimberly had also sent Sihle her nudes. One day, Sihle, who was still looking for a way to hurt Kimberly, decided to upload Kimberly's nudes on his Instagram account. A minute after uploading the photos, Sihle felt that what he had done was wrong and unnecessary. He immediately deleted the photos before anyone could comment or react to them. Unbeknown to Sihle, Themba who is one of his followers on Instagram had viewed and taken screenshots of the photos before they were deleted. Themba then shared the photos in several WhatsApp groups. Before long, the photos were all over the internet.

When Kimberly became aware of the publication of her nudes, she was distraught. She decided to sue Sihle for infringing her privacy. She claims that it was Sihle's act of sharing the photos that caused the harm to her. Sihle disputes this. He argues that, since he had deleted the photos before anyone could react to them, he had not caused any harm to Kimberly. He further argues that the harm suffered by Kimberly was as a result of the taking of screenshots and subsequent sharing of the photos by Themba.

With reference to case law, discuss the principle of causation in delict. In your answer, advise Sihle whether it was his conduct or that of Themba that had caused the harm suffered by Kimberly.

[25 MARKS]

QUESTION 5

Steve is a 28-year-old man who works for an accounting firm in Maseru. Recently, he bought a Volkswagen Golf GTI. One Saturday afternoon, Steve went out to drink with his friends Harry, Joe and Gladys. After consuming considerable amount of

alcohol, Steve told his friends that he wanted to show them how his “beast” of a car performs. He invited them to take a ride with him.

Steve was driving at 160km/hr. As he was negotiating a curve, a tractor that was traveling at a very slow speed and was heading in the same direction as Steve suddenly appeared. Steve thought of overtaking the tractor but he saw a lorry coming from the opposite direction and was about 50 metres. Steve decided to avoid ramming into the tractor by overtaking it from the left side. Unfortunately, because of the narrow and damaged road, Steve lost control of the vehicle, which overturned several times. Harry who was occupying the front passenger seat and was not wearing a seat belt was flung several metres into the air before landing on his head. He suffered a broken neck and a fractured skull. Steve and the rest of his friends suffered minor injuries.

Harry decided to sue Steve. He alleges that the accident was a result of Steve’s negligent driving. In turn, Steve believes that Harry had no reason to complain as he had willingly accepted to go on a ride knowing fully well that Steve had consumed alcohol. In the alternative, Steve argues that there was contributory fault on the part of Harry since he had not put his seatbelt.

- a.** Discuss whether Steve was negligent? 20 Marks

- b.** Advise Steve on how the law deals with apportionment of damages where there is contributory fault. 5 Marks

[25 MARKS]

QUESTION 6

“Knowledge, appreciation, cogent these are the essential elements; but knowledge does not invariably imply appreciation, and both together are not necessarily equivalent to consent”. – Innes CJ in *Waring & Gillow Ltd v Sherborne* 1904 TS 340.

With reference to the quotation above, discuss the requirements for consent as a ground of justification in delict.

[25 MARKS]