



UNIVERSITY
OF
JOHANNESBURG

<u>FACULTY</u>	: LAW
<u>DEPARTMENT</u>	: PRIVATE LAW
<u>CAMPUS</u>	: KINGSWAY CAMPUS
<u>MODULE</u>	: LDL41Y0 LAW OF DELICT
<u>SEMESTER</u>	: TWO
<u>EXAM</u>	: MAIN EXAMINATION

<u>DATE</u>	: 16 NOVEMBER : 2020	<u>EXAM TIME:</u>	:
<u>ASSESSOR(S)</u>	: DR F KHAN		
<u>MODERATOR</u>	: PROF M WATNEY		
<u>DURATION</u>	: 4 HOURS	<u>MARKS</u>	: 60

NUMBER OF PAGES: 6 PAGES

INSTRUCTIONS TO STUDENTS

1. This paper consists of 5 Questions. Answer **ALL** questions.
2. **Please ensure your surname, initials, student number and email address are on the word doc.**
3. **Please ensure your answer is legible.**
4. Do not type your answers in bold and capital letters.
5. **Submit your answer paper via blackboard. If students are experiencing connectivity issues then you can email your answer by no later than the end of the exam to franaazk@uj.ac.za. Late submissions WILL NOT BE MARKED. In the subject line of your email it should have the following info: YOUR NAME, STUDENT NO, DELICT FINAL EXAM NOVEMBER**
6. **Submit only ONCE.** Attach a read receipt if you need proof that it was received.

If you have any enquiries during the EXAM, please email me.

7. Please take note: You may not seek assistance of a fellow student or the tutor. You may not use any part of another students' answers to complete this assessment. You are reminded that all relevant rules and policies of the University and the Faculty applies to this test. In regard to the assessment, the normal academic integrity rules apply. For example, this means that you cannot cut-and-paste material other than your own work as answers for this assessment.

By undertaking this online assessment, you will be deemed to have made the following declaration:

"I certify that my submitted answers are entirely my own work and that I have neither given nor received any unauthorized assistance in this assessment."

8. Good luck
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QUESTION 1

Fred, a student at UKZN, is walking home late one night after studying on campus. Suddenly a police vehicle drives up to him and three police officers confront him. They grab Fred and bundle him into the back of the police vehicle, despite his pleas and objections that he has done nothing wrong. He is taken to the police station and is thrown into a cell where he has to wait for a few hours before a detective comes to talk to him.

It turns out that Fred fitted the description of a trespasser who was spotted on a nearby property and who ran down the road that Fred was walking on. The police mistakenly thought that Fred was the trespasser and arrested and detained him until a detective could talk to him. Once the error is discovered, Fred is immediately released.

1.1 What delictual action could Fred institute in this case? Explain. [5 marks]

1.2 What requirements have to be established for this action? [5 marks]

[Total Q1: 10 marks]

QUESTION 2

Three schoolboys published a computer-generated image in which the faces of the principal and the deputy principal of their school are superimposed on an image of two naked men sitting in sexually suggestive poses. The men's hands are depicted in the area of each other's genitals, but both hands and genitals are strategically covered by the school's crest.

The schoolboys apologised, and their apology was accepted by the school principal. However, the deputy principal, Johnny Walker, was outraged and claimed that the image was defamatory of him. He alternatively claimed that it affronted his dignity because the average reasonable person looking at the picture would assume he approved of indecent exposure, is of low moral character, and that he was a homosexual and/or in a homosexual relationship.

The schoolboys admitted their role in the publication of the image, but disputed that the image is defamatory. They explained that the idea of publishing the picture came from an episode of *South Park*, an adult cartoon series on television.

- 2.1 Advise Johnny Walker whether the image is defamatory of him, and indicate his prospects of success in claiming for damages.

[10 marks]

- 2.2 Assuming Johnny Walker is unsuccessful in his defamation claim, advise him of his prospects of success in a claim based on an alleged violation of his right to dignity

[10 marks]

[Total Q2: 20 marks]

QUESTION 3

According to the once-and-for-all rule, a person has to claim compensation for all loss, past and future, and patrimonial and non-patrimonial loss, in a single action – if the action is based on a single cause of action. This rule, however, does not apply in all cases under all circumstances as there are both common law and statutory exceptions.

Discuss this statement and refer to case law in your answer. [10 Marks]

[Total Q3: 10 marks]

QUESTION 4

Explain the factors in detail that one needs to prove in order to be successful in obtaining an interdict [10 marks]

[Total Q4: 10 marks]

QUESTION 5

Discuss the different approaches taken by South African courts to the question of apportionment of delictual damages in cases of contributory negligence.

[10 marks]

[Total Q5: 10 marks]

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