



<b><u>FACULTY</u></b>	: Law
<b><u>DEPARTMENT</u></b>	: Private Law
<b><u>CAMPUS</u></b>	: APK
<b><u>MODULE</u></b>	: LDL41Y0 Law of Delict
<b><u>SEMESTER</u></b>	: First
<b><u>EXAM</u></b>	: 16 July 2019

<b><u>DATE</u></b>	: 16 July 2019	<b><u>SESSION</u></b>	: 08:30-10:30
<b><u>ASSESSOR(S)</u></b>	: Prof M Njotini		
<b><u>MODERATOR</u></b>	: Prof M Watney		
<b><u>DURATION</u></b>	: 2 HOURS	<b><u>MARKS</u></b>	: 70

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NUMBER OF PAGES: 10 PAGES

INSTRUCTIONS:

1. Answer ALL THE SECTIONS.
  2. Number your answers clearly
  3. Answer section A and section B in separate books
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## **SECTION A**

### **Question 1**

- 1.1 Distinguish between a “delict” and “crime”. (2)
- 1.2 With specific reference to the case of *Carmichele v Minister of Safety and Security (Centre for Applied Legal Studies Intervening)*, discuss the relevance of the Constitution of the Republic of South Africa, 1996 on the law of delict. (4)
- 1.3 In terms of the law of delict, when does an act or conduct become delictually wrongful? (1)
- 1.4 The well-known case of *Universiteit van Pretoria v Tommie Meyer Films (Edms) Bpk* 1977 (4) SA 376 (T) is remembered for accepting the doctrine of subjective rights.
- 1.4.1 Briefly explain the fundamental premise or premises of the doctrine of subjective rights. (2)
- 1.4.2 Discuss the nature of subjective rights. (3)
- 1.4.3 Describe the process (or investigation) to determine whether a subjective right has been infringed. (2)
- 1.5 Differentiate between the *boni mores* test and the test for negligence. (2)
- 1.6 Explain the relevance of the reasonable person (*diligens paterfamilias*) test in cases where the wrongdoer is a child. (4)
- (20)

### **Question 2**

- 2.1 A is the director of company B. A makes a fraudulent misrepresentation to C and causes C to invest R100 000. Did company B act for purposes of the law of delict?
- (a) No. A is a natural person and, thus, has nothing to do with company B.

- (b) No. Company B is a juristic person and cannot act for purposes of the law of delict.
- (c) Yes. A juristic person may act through its organs and A's misrepresentation will constitute an act for purposes of a delictual action.
- (d) Yes. A and company B are considered as one person.
- (e) None of the above options is correct. (1)

2.2 If we say that a human action only constitutes conduct if it is performed *voluntarily*, it means:

- (a) The wrongdoer must have willed or desired his conduct.
- (b) The wrongdoer's conduct should be rational or explicable.
- (c) The wrongdoer was provoked.
- (d) That the wrongdoer in question has sufficient mental ability to control his muscular movements.
- (e) That the wrongdoer in question does not have sufficient mental ability to control his muscular movements. (1)

2.3 A tickles B from behind. B gets a fright, turns around and stabs A to death. Will a defence of automatism succeed?

- (a) No, because in accordance with *S v Chretien* 1981 (1) SA 1097 (A) 1104, impulsive or spontaneous acts do not really amount to reflex movements and are usually regarded as voluntary.
- (b) No, because in accordance with *R v Victor* 1943 TPD 77, impulsive or spontaneous acts do not really amount to reflex movements and are usually regarded as voluntary.
- (c) Yes, because in accordance with *S v Chretien* 1981 (1) SA 1097 (A) 1104, impulsive or spontaneous acts do amount to reflex movements and are usually regarded as voluntary.
- (d) Yes, because in accordance with *CS v Smit* 1963 (4) SA 824 (G), impulsive or spontaneous acts do amount to reflex movements and are usually regarded as voluntary.
- (e) None of the above options is correct. (1)

2.4 Sane automatism is:

- (a) Where the automatism is a consequence of wrongfulness.
- (b) Where the automatism is a consequence of fault.

- (c) Where the automatism is a consequence of mental illness.
- (d) Where the automatism is not a consequence of mental illness.
- (e) None of the above options is correct. (1)

2.5 Insane automatism is:

- (a) Where a mental disease renders a person unable to control his bodily movements.
- (b) Where the automatism is a consequence of fault.
- (c) Where the automatism is a consequence of mental illness.
- (d) Where the automatism is not a consequence of mental illness.
- (e) None of the above options is correct. (1)

2.6 Complete the sentence: Liability for \_\_\_\_\_ is in general more restricted than liability for \_\_\_\_\_.

- (a) A delict, a crime.
- (b) A commission, an omission.
- (c) An omission, a commission.
- (d) A positive act, an omission.
- (e) A positive act, a crime. (1)

2.7 A drives his car through a stop street into another car. This is an example of:

- (a) Legally deficient or negligent conduct. A did act but he failed to do so with care.
- (b) An omission.
- (c) Both an omission and legally deficient or negligent conduct
- (d) Neither an omission nor legally deficient conduct.
- (e) None of the above options is correct. (1)

2.8 Wrongfulness is:

- (a) The infringement of a constitutionally protected interest.
- (b) The infringement of a legally protected interest in a morally reprehensible way.

- (c) The infringement of a constitutionally protected interest in a criminal way.
- (d) The infringement of a legally protected interest in a legally reprehensible way.
- (e) None of the above options is correct. (1)

2.9 As a point of departure, wrongfulness should be determined by taking into account all the relevant facts and circumstances that were really present and all the consequences that really ensued. This means that wrongfulness is determined \_\_\_\_\_ and \_\_\_\_\_.

- (a) Objectively, *in vacua*.
- (b) Subjectively, *in vacua*.
- (c) Subjectively, *ex post facto*.
- (d) Objectively, *ex post facto*.
- (e) None of the above options is correct. (1)

2.10 Which criterion is or may be used to determine whether an interest is worthy of protection, as well as whether its infringement is legally unacceptable?

- (a) The legal convictions of the community or *boni mores* criterion.
- (b) The legal convictions of parliament or *boni mores* criterion.
- (c) The legal convictions of the high court or *boni mores* criterion.
- (d) The legal convictions of the constitutional court or *boni mores* criterion.
- (e) None of the above options is correct. (1)

2.11 An act may generally be described as delictually wrongful only when it has as its consequence the infringement of a legally protected interest. Whether such a consequence is present, normally requires a concrete investigation of the relevant facts through an analysis of the available evidence.

- (a) Morally protected interest.
- (b) Legally protected interest.
- (c) Community-based interest.
- (d) Constitutional interest.

(e) None of the above options is correct. (1)

2.12 X races down Johannesburg's main street, a 60km/h zone, at 120 km/h in peak hour traffic. Miraculously, he does not cause a collision. The question whether his act be considered wrongful in delict is best answered by the following statement:

- (a) No, because he did not commit a crime.
- (b) No, because an act may only be described as delictually wrongful only when it has as its consequence the infringement of a legally protected interest.
- (c) Yes, because an act may only be described as delictually wrongful only when it has as its consequence the infringement of a legally protected interest.
- (d) Yes, because he committed a crime.
- (e) None of the above options is correct. (1)

2.13 The *boni mores* test is an objective test based on the criterion of reasonableness. The basic question that needs to be asked in order to establish whether there was wrongfulness is:

- (a) Whether, according to the convictions of the court and in light of all the circumstances of the case, the defendant infringed the interests of the plaintiff in an unreasonable manner.
- (b) Whether, according to the legal convictions of the community and in light of all the circumstances of the case, the defendant infringed the interests of the plaintiff in an unreasonable manner.
- (c) Whether, according to the legal convictions of parliament and in light of all the circumstances of the case, the defendant infringed the interests of the plaintiff in an unreasonable manner.
- (d) Whether, according to the legal convictions of the community and in light of all the circumstances of the case, the defendant infringed the interests of the plaintiff in a criminal manner.
- (e) None of the above options is correct. (1)

2.14 In balancing the various interests to determine whether there was wrongfulness, the balancing process entails:

- (a) The *ex post facto* balancing or weighing-up of the interests which the defendant promoted by his act and the interests he protected.

- (b) The *ex post facto* balancing or weighing-up of the community's interests and the interests of the victim.
- (c) The *ex post facto* balancing or weighing-up of the community's interests and the interests of the wrongdoer.
- (d) The *ex post facto* balancing or weighing-up of, on the one hand, the interests which the defendant promoted by his act, and on the other, those which he infringed.
- (e) None of the above options is correct. (1)

2.15 Complete the sentence: In \_\_\_\_\_, Nicholas AJA accepted the viewpoint of Van der Merwe and Olivier that the "legal convictions of the community" must be seen as the legal convictions of the legal policy makers of the community, such as the legislature and judges. In his role as interpreter of the legal convictions of the community, a judge nevertheless does not elevate his personal viewpoint regarding right and wrong to the sole measure of wrongfulness. A judge who does that, impermissibly makes the law whilst his main task is to apply the law.

- (a) *Ex parte Die Minister van Justisie: In re S v Van Wyk* 1967 (1) SA 488 (A).
- (b) *S v Makwanyane* 1995 (3) SA 391 (CC) 449.
- (c) *Jonker v Schultz* 2002 (2) SA 360 (O) 367.
- (d) *Schultz v Butt* 1986 (3) SA 667 (A) 679.
- (e) None of the above options is correct. (1)

2.16 X violently resists a lawful arrest by Z because he incorrectly believes the arrest to be unlawful. Select the correct answer:

- (a) Subjective factors, such as the defendant's mental disposition, knowledge and motive, normally plays a role in determining wrongfulness. X's honest mistake does not make his conduct lawful.
- (b) Subjective factors, such as the defendant's mental disposition, knowledge and motive, normally do not play a role in determining wrongfulness. X's honest mistake does not make his conduct lawful.
- (c) Subjective factors, such as the defendant's mental disposition, knowledge and motive, normally do not play a role in determining wrongfulness. X's honest mistake makes his conduct lawful.

- (d) Subjective factors, such as the defendant's mental disposition, knowledge and motive, normally plays a role in determining wrongfulness. X's honest mistake makes his conduct lawful.
- (e) None of the above options is correct. (1)

2.17 X plants deciduous trees along the boundary of his property for the sole purpose of injuring his neighbour by causing leaves to fall onto his nearby threshing-floor. Select the correct answer:

- (a) X's improper motive will render his apparently reasonable conduct wrongful. This is because subjective factors do play a part in the determination of wrongfulness in the area of neighbour law.
- (b) X's improper motive will not render his apparently reasonable conduct wrongful. This is because subjective factors do play a part in the determination of wrongfulness in the area of neighbour law.
- (c) X's improper motive will not render his apparently reasonable conduct wrongful. This is because subjective factors do not play a part in the determination of wrongfulness in the area of neighbour law.
- (d) X's improper motive will render his apparently reasonable conduct wrongful. This is because subjective factors do not play a part in the determination of wrongfulness in the area of neighbour law.
- (e) None of the above options is correct. (1)

2.18 The *boni mores*-criterion can be vague and it is often not of much practical use. In applying the *boni mores* criterion in practice, what is often indicative of wrongfulness?

- (a) Private defence.
- (b) Fault.
- (c) Improper motive.
- (d) A factual infringement.
- (e) None of the above options is correct. (1)

2.19 Every right has a correlative duty. This means that:

- (a) If a person has a right to an object, damage rests where it falls.
- (b) If a person has a right to an object, other persons have competing rights to it.



- (c) If a person has a right to an object, he has a duty to protect that thing.
- (d) If a person has a right to an object, other persons have a duty not to infringe that right.
- (e) None of the above options is correct. (1)

2.20 The nature of a subjective right is determined by:

- (a) The usefulness of the right for the individual.
- (b) The nature of the object of the particular right.
- (c) The nature of the holder of the particular right.
- (d) The nature of the monetary value of the particular right.
- (e) None of the above options is correct. (1)

(20)

(40)

## **SECTION B**

### **Question 3**

3.1 Mr Yako is a resident at house No 9, Windsor Street, Hilbrow, Johannesburg (apartment flat). Mr Yako has just bought himself a 9mm pistol that he intends to use in protecting himself. He is excited about his new acquisition. However, he has never owned and used a pistol before. Mr Yako then leaves his room to test the pistol in the balcony of his apartment flat. While in the balcony, Mr Yako shoots one bullet in the air. Thereafter, he enters his room and puts the pistol in the designated safe. An hour later (that is, after Mr Yako has entered his room), Mr Yako hears a knock in the door of his apartment flat. When he opens the door, police officers confronts Mr Yako and makes a claim that a bullet was shot in Mr Yako's apartment flat. The said bullet allegedly hit and killed a rugby spectator (Mr Maya) at Ellis Park stadium while the latter was watching a rugby match between the Golden Lions and DHL Stormers.

3.1.1 Identify and discuss the form of intent or *dolus* demonstrated in the facts mentioned above. In your answer, refer to relevant case law.

(10)

3.1.2 Will your answer in 3.1.1 above be different if Mr Yako saw Mr Maya sitting behind a closed window, takes out his pistol and shoots at Mr Maya. However, the bullet shatters a window-pane and fatally wounds Mr Cooks? Explain fully. (5)

- 3.2 What is “consciousness (knowledge) of wrongfulness”? Use examples to substantiate your answer. (5)

(20)

**Question 4**

- 4.1 Define negligence. (2)

- 4.2 Describe “gross negligence”. (2)

- 4.3 With specific reference to relevant case law, state the circumstances under which negligence and intention overlaps. (2)

- 4.4 Discuss fully the criteria that is or could be used for the “apportionment of damages”. (4)

(10)

**(30)**

**Total: [70]**