



UNIVERSITY OF JOHANNESBURG

FACULTY OF LAW (AUCKLAND PARK CAMPUS)

**SUBMISSION OF FINAL EXAMINATION PAPERS
JUNE/JULY 2017**

MODULE NAME: Law of Delict

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LECTURER (S): Prof D Millard

HEAD OF DEPARTMENT: Prof M M Watney

EXIT MODULE: YES/ NO _____

FOR EXIT MODULES:
EXTERNAL MODERATOR: _____

EXTERNAL MODERATOR FORM ATTACHED: _____

INSTRUCTIONS:

1. How many of the following items will be required per student?

Examination script (4 pages) _____

Scanner sheet _____

Other (please specify) _____

2. How many students are still attending lectures (with a view to the number of examination papers required)?

SIGNATURE OF LECTURER:

[Signature]

DATE:

15/5/2017

SIGNATURE AS HEAD OF
DEPARTMENT
(AS INTERNAL MODERATOR)

M. M. Watney

DATE:

15/05/2017

FOR ADMINISTRATIVE PURPOSES:

Noted: _____

Date: _____



UNIVERSITY OF JOHANNESBURG

KINGSWAY CAMPUS

FACULTY OF LAW

TEST: 23 MAY 2017

<u>SUBJECT NAME:</u>	LAW OF DELICT
<u>SUBJECT CODE:</u>	DER 0000/LDL41Y0
<u>DURATION:</u>	1 HOUR 30 MINUTES
<u>MARKS:</u>	60
<u>EXAMINER:</u>	PROF D MILLARD (UJ)
<u>INTERNAL MODERATOR:</u>	PROF M M WATNEY (UJ)

NB: THIS PAPER RUNS TO FOURTEEN (14) PAGES

INSTRUCTIONS:

1. Read the questions carefully.
 2. Only answer what is asked.
 3. Write legibly.
 4. Substantiate all your answers by referring to applicable case law.
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QUESTION 1: MULTIPLE CHOICE QUESTIONS

ANSWER THE FOLLOWING QUESTIONS AT THE BACK OF YOUR EXAM SCRIPT.

1. A wrongdoer who caused damage could be delictually liable only if there was fault (intent or negligence) on his part. This view of the basis of delictual liability is briefly referred to as the _____.
A. *conditio sine qua non*-theory
B. liability without fault theory
C. will theory
D. fault theory
E. acceptance theory. (1)

2. As far as a theoretical basis for instances of strict liability is concerned, the interest or profit theory proposes that:
A. Where a person acts in his own interest, and causes harm to another, he does not bear the burdens and disadvantages that his activities bring about.
B. Where a person acts in his own interest, and causes harm to another, he bears the burdens and disadvantages that his activities bring about.
C. where a person's activities create a considerable increase in the risk or danger of causing damage, ie, an increased potential for harm, there is sufficient justification for holding him liable for damage even in the absence of fault.
D. where a person's activities create a considerable increase in the risk or danger of causing damage, ie, an increased potential for harm, there is sufficient justification for not holding him liable for damage.
E. None of the above options are correct. (1)

3. As far as a theoretical basis for instances of strict liability is concerned, the risk or danger theory suggests that:
A. Where a person acts in his own interest, and causes harm to another, he does not bear the burdens and disadvantages which his activities bring about.
B. Where a person acts in his own interest, and causes harm to another, he bears the burdens and disadvantages which his activities bring about.
C. where a person's activities create a considerable increase in the risk or danger of causing damage, such as an increased potential for harm, there is sufficient justification for holding him liable for damage even in the absence of fault.
D. where a person's activities create a considerable increase in the risk or danger of causing damage, such as an increased potential for harm, there is sufficient justification for not holding him liable for damage.
E. None of the above options are correct. (1)

4. The most obvious characteristics, which are present in most instances of strict liability, are the following:
- i) Fault is not required for liability in claims for compensation.
 - ii) Fault is required for liability in claims for compensation.
 - iii) *Vis maior* (act of God) and fault on the part of the prejudiced person are generally recognised as defences.
 - iv) *Vis maior* (act of God) and fault on the part of the prejudiced person are generally not recognized as defences.
 - v) Strict liability is usually imposed – either by legislation or judicial pronouncement – in cases involving activities that as a rule create extraordinary increases in the risk of harm to the community.
 - vi) Strict liability is never imposed – either by legislation or judicial pronouncement – in cases involving activities which as a rule create extraordinary increases in the risk of harm to the community.
 - vii) In instances where strict liability has been imposed by legislation, the extent of the liability is usually curtailed by fixing maximum amounts of compensation.
 - viii) Liability without fault is restricted in most cases to damage to life, limb and property (and therefore does not include pure economic loss).
 - ix) Liability without fault is never restricted.
- A. i, ii, iii, iv and v are correct
 - B. ii, iii, iv, v and vi are correct
 - C. iii, iv, v, vi and vii are correct
 - D. iv, v, vi, vii and viii are correct
 - E. i, iii, v, vi and viii are correct (1)
5. After initial doubt about whether *actio de pauperie* had fallen into disuse, the Appellate Division in _____ decided that it is still part of our law.
- A. *Da Silva v Otto* 1986 3 SA 538 (T)
 - B. *Thysse v Bekker* 2007 3 SA 350 (E)
 - C. *O'Callaghan v Chaplin* 1927 AD 310
 - D. *Green v Naidoo* 2007 6 SA 372 (W)
 - E. *Fourie v Naranjo* 2008 1 SA 192 (C) (1)
6. Liability without fault is the basis of two forms of *iniuria*, i.e. _____ and _____.
- A. wrongful deprivation of liberty, defamation
 - B. wrongful deprivation of liberty; wrongful attachment of property
 - C. defamation, wrongful attachment of property
 - D. wrongful attachment of property, seduction
 - E. None of the above options are correct. (1)

7. When an agent (ie, someone who is authorised to perform a legal act – usually concluding a contract– on behalf of his principal) acting in the execution of his authority commits a delict, his principal is fully liable for the damage. As with an employer, the _____ provides the most acceptable explanation for the principal's liability.
- A. interest or profit theory
 - B. *culpa in eligendo*
 - C. identification theory
 - D. risk theory
 - E. None of the above options are correct. (1)
8. Liability for damage caused by defective products was restricted to the fault-based _____ until the commencement of the Consumer Protection Act 68 of 2008.
- A. *actio iniuriarum*
 - B. action for pain and suffering
 - C. interdict
 - D. Aquilian action
 - E. none of the above options are correct. (1)
9. The following defences may be raised by a person against liability in terms of the Consumer Protection Act 68 of 2008:
- (i) the defect in a product that results in harm, is wholly attributable to compliance with a public regulation;
 - (ii) the alleged defect was not present in the product at the time it was supplied by the defendant to another person alleged to be held liable; or if the alleged defect is wholly attributable to compliance of the defendant with instructions given to him by the supplier of the goods, in which case the defence just mentioned is not applicable;
 - (iii) it is unreasonable to expect the distributor or retailer (defendants) to have discovered the defect in the product, having regard to another person's role in marketing the goods to consumers;
 - (iv) a claim for damages for death, injury, illness, damage to property or resultant economic loss caused by a defective product, is brought more than six years after the death or injury of a person, or more than six years after the earliest time at which a person had knowledge of the material facts about his illness or the damage to his property, or more than three years after the last date on which a person suffered resultant economic loss;
 - (v) a claim for damages for death, injury, illness, damage to property or resultant economic loss caused by a defective product, is brought more than three years after the death or injury of a person, or more than three years after the earliest time at which a person had knowledge of the material facts about his illness or the damage to his property, or more than three years after the last date on which a person suffered resultant economic loss.

- A. i, ii and iii are correct
 B. ii, ii and iv are correct
 C. iii, iv and v are correct
 D. i, iii and v are correct
 E. i, ii iii and v are correct (1)
10. The *conditio sine qua non* theory, also known as the “but for” test, is explained as follows:
 A. An act is the cause of a result of the act was wrongful.
 B. An act is the cause of a result if the act was intentional.
 C. An act is the cause of a result if the act cannot be thought away without the result disappearing simultaneously.
 D. An act is the cause of a result if the result cannot be thought away without the act disappearing simultaneously.
 E. None of the above options are correct (1)
11. In _____ the court formulated the *conditio sine qua non* approach with regard to positive conduct as follows:
 “The first [enquiry] is a factual one and relates to the question whether the defendant’s wrongful act was a cause of the plaintiff’s loss. This has been referred to as “factual causation”. The enquiry is generally conducted by applying the so-called “but-for” test, which is designed to determine whether a postulated cause can be identified as a *causa sine qua non* of the loss in question. In order to apply this test one must make a hypothetical enquiry as to what probably would have happened but for the wrongful conduct of the defendant . . . If it would in any event have ensued, then the wrongful conduct was not a cause of the plaintiff’s loss; *aliter*, if it would not so have ensued. If the wrongful act is shown in this way not to be a *causa sine qua non* of the loss suffered, then no legal liability can arise.”
 A. *Portwood v Swamvur* 1970 4 SA 8 (RA) 15
 B. *Lee v Minister of Correctional Services* 2013 2 SA 144 (CC) 162
 C. *International Shipping Co (Pty) Ltd v Bentley* 1990 1 SA 680 (A) 700
 D. *S v Mokgethi* 1990 1 SA 32 (A)
 E. None of the above options are correct. (1)
12. Although the expression *conditio sine qua non* is still widely accepted –its underlying principles have been subjected to convincing logical criticism. The following points have been leveled as criticism against the test:
 i. The *conditio sine qua non* theory is used to determine legal causation only.
 ii. The *conditio sine qua non* theory is used to determine wrongfulness only.
 iii. The *conditio sine qua non* theory is based on a clumsy, indirect process of thought that results in circular logic
 iv. The *conditio sine qua non* test fails completely in cases of so-called cumulative causation

- v. The *conditio sine qua non* test is in fact not a test of causation, because it is merely an ex post facto way of expressing a predetermined causal nexus.
- A. i and ii are correct.
 B. i, ii and iii are correct.
 C. iii, iv and v are correct.
 D. iii and iv are correct.
 E. iv and v are correct. (1)
13. Cumulative causation occurs where more than one act actually causes a particular consequence, for example, where X and Y simultaneously, but independently of each other, fire a fatal shot at Z's head. The *conditio sine qua non*-test does not provide a solution to this problem. The following solution is suggested:
 A. The direct consequences theory: both X and Y caused Z's death.
 B. The direct consequences theory: neither X nor Y caused Z's death.
 C. The flexible approach: both X and Y caused Z's death.
 D. The "direct common-sense approach of the man in the street" gives a satisfying answer: both X and Y caused Z's death.
 E. None of the above options are correct. (1)
14. The case that supports the answer in 5 above, is:
 A. *International Shipping Co (Pty) Ltd v Bentley* 1990 1 SA 680 (A).
 B. *Portwood v Swamvur* 1970 4 SA 8 (RA) 15.
 C. *Lee v Minister of Correctional Services* 2013 2 SA 144 (CC).
 D. *First National Bank of South Africa Ltd v Duvenhage* 2006 5 SA 319 (SCA).
 E. *Silver v Premier, Gauteng Provincial Government* 1998 4 SA 569 (W) 575. (1)
15. In _____ policemen neglected to search for children who had fled into the night and later died of exposure. The question was whether the children's death was caused by the omission to search for them. From the judgment it appears that the court attempted to test the causal connection between the omission and the death by asking whether reasonable search would have prevented the children's death; in other words, the court "inserted" positive conduct in the place of the omission. This approach is viewed as an application of *conditio sine qua non* by our courts.
 A. *International Shipping Co (Pty) Ltd v Bentley* 1990 1 SA 680 (A).
 B. *Portwood v Swamvur* 1970 4 SA 8 (RA) 15.
 C. *Lee v Minister of Correctional Services* 2013 2 SA 144 (CC).
 D. *First National Bank of South Africa Ltd v Duvenhage* 2006 5 SA 319 (SCA).
 E. *S v Van As* 1967 4 SA 594 (A). (1)

16. In _____ the Constitutional Court emphasised that the application of the *conditio sine qua non* approach with regard to both positive conduct and omissions is not inflexible since the strict application of this approach would result in an injustice in certain cases.
- A. *Lee v Minister of Correctional Services* 2013 2 SA 144 (CC)
 - B. *First National Bank of South Africa Ltd v Duvenhage* 2006 5 SA 319 (SCA)
 - C. *S v Van As* 1967 4 SA 594 (A)
 - D. *International Shipping Co (Pty) Ltd v Bentley* 1990 1 SA 680 (A)
 - E. *Portwood v Swamvur* 1970 4 SA 8 (RA) 15 (1)
17. In _____ the flexible approach was formulated as follows:
- "With reference to the onus resting on plaintiff, it is sometimes said that the prospect of avoiding the [damage] through the hypothetical elimination of the wrongful conduct must be more than 50%. This is often followed by the criticism that the resulting all-or-nothing effect of the approach is unsatisfactory and unfair. A plaintiff who can establish a 51% chance, so it is said, gets everything, while a 49% prospect results in total failure. This, however, is not how the process of legal reasoning works. The legal mind enquires: What is more likely? The issue is one of persuasion, which is ill-reflected in formulaic quantification. The question of percentages does not arise ... Application of the 'but for' test is not based on mathematics, pure science or philosophy. It is a matter of common sense, based on the practical way in which the ordinary person's mind works against the background of everyday-life experiences."
- A. *Lee v Minister of Correctional Services* 2013 2 SA 144 (CC)
 - B. *First National Bank of South Africa Ltd v Duvenhage* 2006 5 SA 319 (SCA)
 - C. *Minister of Finance v Gore* 2007 1 SA 111 (SCA) 125
 - D. *International Shipping Co (Pty) Ltd v Bentley* 1990 1 SA 680 (A)
 - E. *Portwood v Swamvur* 1970 4 SA 8 (RA) 15 (1)
18. X stabs Y with a knife and Y is then taken to hospital where, as a result of the negligent conduct of a nurse, he falls off his bed, suffers a fractured skull and dies. The following statement correctly reflects the legal position:
- A. The fractured skull is the cause of death because medical science identifies it as such.
 - B. The fractured skull is the cause of death because factual causation identifies it as such.
 - C. The initial stabbing as well as the negligent conduct of the nurse is the cause of death because factual causation identifies it as such.
 - D. The initial stabbing as well as the negligent conduct of the nurse is the cause of death because medical science identifies it as such.
 - E. None of the above options is correct. (1)

19. Our law does not merely accept liability based on the factual causing of a harmful consequence and uses the criteria of legal causation to limit liability. The question of _____ arises when determining which harmful consequences actually caused by the wrongdoer's wrongful, culpable act he should be held liable for.
- accountability
 - fault
 - mistake
 - legal causation
 - damages.
- (1)
20. The best-known theories for determining legal causation are:
- the flexible approach
 - the theory of adequate causation
 - the *condition sine qua non*-criterion
 - the "direct consequences" criterion
 - the theory of fault
 - the *volenti non fit iniuria*-criterion.
 - the reasonable foreseeability criterion.
- i, ii, iii; iv
 - ii, iii, iv, v, vii
 - i, ii, iv, v, vii
 - iv, v, vi
 - i, ii, vi
- (1)
21. In _____ Van Heerden JA held that there is no single and general criterion for legal causation which is applicable in all instances. A flexible approach is accordingly suggested.
- Lee v Minister of Correctional Services* 2013 2 SA 144 (CC)
 - First National Bank of South Africa Ltd v Duvenhage* 2006 5 SA 319 (SCA)
 - International Shipping Co (Pty) Ltd v Bentley* 1990 1 SA 680 (A)
 - S v Mokgethi* 1990 1 SA 32 (A)
 - Portwood v Swamvur* 1970 4 SA 8 (RA) 15
- (1)
22. In applying the flexible approach to legal causation, the basic question is whether there is a close enough relationship between the wrongdoer's conduct and its consequence for such consequence to be imputed to the wrongdoer in view of policy considerations based on _____.
- the *boni mores*.
 - reasonableness, fairness and justice.
 - an approximation of what is correct.
 - the Constitution.
 - the intention of the wrongdoer.
- (1)

23. In _____ the court appeared to understand flexibility to also have the effect that "if the application of any or all of the known criteria should lead to a result which is untenable, legal causation will not be found". This seems to mean that even where a consequence is found to be foreseeable and a direct consequence of the act, flexibility would enable a court to deny liability should the result appear to be so unjust or unfair that it can be regarded as untenable.
- A. *Fourway Haulage SA (Pty) Ltd v SA National Roads Agency Ltd* 2009 2 SA 150 (SCA)
 - B. *S v Mokgethi* 1990 1 SA 32 (A)
 - C. *Cape Empowerment Trust Limited v Fisher Hoffman Sithole* 2013 5 SA 183 (SCA) 198
 - D. *Portwood v Swamvur* 1970 4 SA 8 (RA) 15.
 - E. *First National Bank of South Africa Ltd v Duvenhage* 2006 5 SA 319 (SCA) (1)
24. According to the adequate causation theory:
- A. An actor is liable for all the "direct consequences" of his negligent conduct.
 - B. The wrongdoer is liable only for those consequences in respect of which he had fault; in other words, those consequences covered by his fault are imputed to him.
 - C. Reasonable foreseeability should not be seen as the single, decisive criterion for establishing liability.
 - D. Factual causation is the only criteria for establishing legal causation.
 - E. A consequence which has in fact been caused by the wrongdoer is imputed to him if the consequence is "adequately" connected to the conduct. (1)
25. According to the direct consequences theory:
- A. An actor is liable for all the "direct consequences" of his negligent conduct.
 - B. The wrongdoer is liable only for those consequences in respect of which he had fault; in other words, those consequences covered by his fault are imputed to him.
 - C. Reasonable foreseeability should not be seen as the single, decisive criterion for establishing liability.
 - D. Factual causation is the only criteria for establishing legal causation.
 - E. A consequence which has in fact been caused by the wrongdoer is imputed to him if the consequence is "adequately" connected to the conduct. (1)

26. According to the fault theory:
- A. An actor is liable for all the "direct consequences" of his negligent conduct.
 - B. The wrongdoer is liable only for those consequences in respect of which he had fault; in other words, those consequences covered by his fault are imputed to him.
 - C. Reasonable foreseeability should not be seen as the single, decisive criterion for establishing liability.
 - D. Factual causation is the only criteria for establishing legal causation.
 - E. A consequence which has in fact been caused by the wrongdoer is imputed to him if the consequence is "adequately" connected to the conduct. (1)
27. According to the reasonable foreseeability theory:
- A. An actor is liable for all the "direct consequences" of his negligent conduct.
 - B. The wrongdoer is liable only for those consequences in respect of which he had fault; in other words, those consequences covered by his fault are imputed to him.
 - C. Reasonable foreseeability should not be seen as the single, decisive criterion for establishing liability.
 - D. Factual causation is the only criteria for establishing legal causation.
 - E. A consequence which has in fact been caused by the wrongdoer is imputed to him if the consequence is "adequately" connected to the conduct. (1)
28. A *novus actus interveniens* (new intervening cause) is:
- A. An independent event which caused the consequence concerned.
 - B. An independent event which contributed to the consequence concerned.
 - C. An independent event which, after the wrongdoer's act has been concluded, either caused or contributed to the consequence concerned.
 - D. An independent event that divides the damage into patrimonial and non-patrimonial loss.
 - E. An independent event that erases wrongfulness. (1)
29. Where a *novus actus interveniens* completely extinguishes the causal connection between the conduct of the wrongdoer and the consequence, with the result that the wrongdoer's act can no longer be considered to be a factual cause of the consequence:
- A. The actor (alleged wrongdoer) pays a reduced fine.
 - B. The actor (alleged wrongdoer) is only partially to blame for the damages.
 - C. The actor (alleged wrongdoer) goes free.
 - D. The actor (alleged wrongdoer) goes free as there is no fault.
 - E. The actor (alleged wrongdoer) goes free as there is no wrongfulness. (1)

30. A *novus actus interveniens* may be brought about by the (culpable) conduct of the plaintiff himself, by the (culpable) conduct of a third party, or by natural factors such as wind and rain. An event will qualify as a *novus actus interveniens* only if the event was not _____.
- intentional.
 - wrongful.
 - negligent.
 - reasonably foreseeable.
 - culpable.

(1)
[30]

QUESTION 2

Match column A with Column B. On your answer sheet, you only need to write the number and the answer, e.g. "1 Z".

A	B
1. <i>Kruger v Coetzee</i> 1966 2 SA 428 (A).	A. Acceptance of the concrete or relative approach to foreseeability does not obviate the important role of legal causation as a criterion to limit liability, especially where "remote consequences" are concerned.
2. <i>Jones v Santam Bpk</i> 1965 2 SA 542 (A).	B. For the purposes of liability <i>culpa</i> arises if- (a) a <i>diligens paterfamilias</i> in the position of the defendant- (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and (ii) would take reasonable steps to guard against such occurrence; and (b) the defendant failed to take such steps.
3. <i>Weber v Santam Versekeringsmaatskappy Bpk</i> 1983 1 SA 381 (A).	C. <i>In casu</i> the plea of self defence was successful. Because the policeman's act was not wrongful, it was not necessary to rule on the issues of intent and negligence.
4. <i>Van Wyk v Lewis</i> 1924 AD 438.	D. Wrongfulness and negligence are separate elements of the delict. Scott JA (incorrectly) stated that without negligence the issue of wrongfulness does not arise "for conduct will not be wrongful if there is no negligence."
5. <i>Roxa v Mtshayi</i> 1975 3 SA 761 (A).	E. In this case, as in <i>Jones v Santam Bpk</i> 1965 2 SA 542 (A), the court distinguished clearly between the tests for accountability and negligence.

6. <i>Durr v Absa Bank Ltd</i> 1997 3 SA 448 (SCA).	F. Acceptance of the concrete or relative approach to foreseeability obviates the important role of legal causation as a criterion to limit liability, especially where "remote consequences" are concerned.
7. <i>Mukheiber V Raath</i> 1999 3 SA 1065 (SCA).	G. The question of wrongfulness is highly contentious in the so-called "slippery shop floor" cases, since the courts do not generally accept that there is a legal duty on the shop owner to take steps to prevent injuries caused by slipping on spillages.
8. <i>Sea Harvest Corporation v Duncan Dock Cold Storage</i> 2000 1 SA 827 (SCA).	H. Failure to wear a seat belt does not constitute contributory negligence.
9. <i>S v Mokgethi</i> 1990 1 SA 32 (A).	I. <i>In casu</i> the plea of self defence could not succeed. Although the policeman's act was wrongful, both intent and negligence were absent, with the result that the widow's claim for damages did not succeed.
10. <i>Gouda Boerdery Bpk v Transnet</i> 2005 5 SA 490 (SCA).	J. As far as the medical profession is concerned, the same expertise can be expected from a general practitioner as from a specialist.
	K. In the determination of legal causation, not one of the existing criteria for legal causation is satisfactory in all cases. Therefore the <i>condition sine qua non</i> -test should rather be adopted.
	L. Wrongfulness and negligence are separate elements of the delict. Scott JA (correctly) stated that without negligence the issue of wrongfulness does not arise "for conduct will not be wrongful if there is no negligence."
	M. The maxim <i>res ipsa loquitur</i> has no general application and its use should not be extended to the kind of occurrence to which it is not intended to apply. It may apply where the cause of damage is unknown but the fact of the occurrence giving rise to the damage, without more, compels the inference that it would probably not have happened without negligence on the part of the defendant.
	N. As far as the medical profession is concerned, the same expertise cannot be expected from a general practitioner as from a specialist.

	O. The court tested first for accountability and then for negligence.
	P. The plaintiff's failure to wear a crash helmet constituted contributory negligence. This approach was confirmed in <i>Bowkers Park Komga Cooperative Ltd v SAR and H</i> 1980 1 SA 91 (E).
	Q. In this case, as in <i>Jones v Santam Bpk</i> 1965 2 SA 542 (A), the court did not distinguish between the tests for accountability and negligence.
	R. In the determination of legal causation, not one of the existing criteria for legal causation is satisfactory in all cases. Therefore a flexible approach should rather be adopted.
	S. The court adopted the approach followed in <i>Van Wyk v Lewis</i> 1924 AD 438. It means that the standard of care expected of an expert in a specific field, is the general level of skill and diligence possessed and exercised at the time by the members of the branch of the profession to which the practitioner in question belongs.
	T. The concrete or relative approach to foreseeability was followed in this case.
	U. The test of the <i>diligens paterfamilias</i> should not be reduced to a reasonable child test.
	V. The degree of the plaintiff's negligence is only one of the considerations which the court can take into account in order to diminish the plaintiff's damages.
	W. The plaintiff's failure to wear a crash helmet did not constitute contributory negligence. This approach was criticised in <i>Bowkers Park Komga Cooperative Ltd v SAR and H</i> 1980 1 SA 91 (E).
	X. The court rejected the approach followed in <i>Van Wyk v Lewis</i> 1924 AD 438.
	Y. The degree of the plaintiff's negligence is the only consideration which the court can take into account in order to diminish the plaintiff's damages.
	Z. The question of wrongfulness is uncontentious in the so-called "slippery shop floor" cases, since the courts generally accept that there is a legal duty on the shop owner to take steps to

	prevent injuries caused by slipping on spillages.
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[10]**QUESTION 3**

On 2 January 2016 Jerome was involved in a car accident. The accident was caused when a vehicle driven by Naledi failed to stop at a traffic light. Jerome's car was written off completely and the value at the time was R580 000.

- 3.1 Assume that although Naledi was by far more negligent than Jerome but because Jerome was speeding at the time, the trial court found that he was 20% to blame for his own damages. If the court were to apply the *dictum* in *South British Insurance Company Ltd v Smith* 1962 3 SA 826 (A), what is the amount that Jerome may claim from Naledi? Substantiate your answer. (2)
- 3.2 Assume that the court finds on the facts that Jerome was 20% to blame and that Naledi was 60% to blame. What is the amount that Jerome may claim from Naledi? Substantiate your answer with reference to case law. (4)

[6]**QUESTION 4**

Mandla suffers from Type 1 Diabetes. Mandla receives a monthly script for his insulin from his doctor and renews the script every 30 days. On 1 February 2017 Mandla again renewed his script from CareFul Pharmacists. When he injected himself that evening, he started feeling very ill and on his way to the bathroom, he fell and hit his head very hard. He went into a coma and his wife rushed him to hospital. His treating doctor discovered that the insulin that was given to Mandla had expired a year ago. The doctor reckons that Mandla lost consciousness and then fell. The next day, Mandla's wife went to CareFul Pharmacists with the medication. Once there, the teller informed her that the owner of the pharmacy, Matty, conducts rigorous training and ensures that all medicine is checked for expiry dates before it is dispensed. The pharmacist who was on duty when Mandla renewed his script was a newly qualified pharmacist called Joel. She suspected that Joel simply did not follow these strict protocols and because Matty was on leave, he frequently left early and did not do all the administration that was entrusted to him by Matty.

Understandably, Mandla is very upset when he hears the news. The admission to hospital caused him a lot of money and his doctor informed him that had he not been with his wife, he might have died. He suffers from shock and has bruises all over his face from the fall. Mandla wants to issue summons against the manufacturers of the insulin, Strata Health. Advise Mandla as to whether this is a viable option and whether there is perhaps the possibility of recovering his damages from someone other than Strata Health. Substantiate your answer with reference to case law.

[14]**TOTAL: [60]**