

UNIVERSITY OF FORT HARE  
FACULTY OF LAW  
(East London Campus)

LAW OF DELICT A  
LPD312/3E

MAIN DEGREE EXAMINATION  
JUNE 2023

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Time: 3 hours  
Subject: LAW OF DELICT A (LPD312/3E)  
Marks: 100

This paper consists of 3 pages including the  
cover page

Internal Examiners  
Mr J Mahler-Coetzee  
Ms L Gomomo

INSTRUCTIONS

1. Answer ALL questions.
  2. For 'fill in the missing word' questions, only insert only one word/ term
  3. Terms of art/ legal terms, etc. must be spelled correctly
  4. Pay careful attention to marks allocated.
  5. WRITE LEGIBLY.
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## SECTION A

### (General Theory)

#### QUESTION 1 [12 Marks]

Distinguish Delict, Contract and Crime from each other in South African law.

#### QUESTION 2 [12 Marks]

A boy and his dog are walking across a pedestrian crossing on a public road. A negligent driver fails to give the boy right of way and crashes into him and his dog. The dog is killed instantly. The boy suffers broken legs for which he is hospitalized for 6 months. During this time he is in severe pain, misses school and cannot earn pocket money (he usually works during lunch breaks at the cafeteria). The boy also suffers depression because of the loss of his companion animal.

Using examples from the above scenario, briefly identify the three broad categories of **harm**, describe their nature, and their corresponding actions, as contemplated by the law of Delict. Fill in the table below (as provided in the answer sheet attached) to answer this question.

	<b>Delictual Harm Type 1</b>	<b>Delictual Harm Type 2</b>	<b>Delictual Harm Type 3</b>
<b>Type of Harm (loss) in English</b>			
<b>Latin term for the Type of Harm (loss)</b>			
<b>Name of Action that is instituted for the Harm (loss)</b>			
<b>Example/ Fact from the scenario (a single phrase or word will do)</b>			

## **SECTION B:**

### **(Application of the 5 Delictual Elements/ Problem- solving)**

#### **QUESTION 3 [40 Marks]**

Examine the 3 parties in the picture below.



If the driver of the vehicle were to have an accident directly after this picture was taken and all the 3 parties visible in the picture were to suffer some form of harm, discuss how you would arrive at a final determination of FAULT of the any/ all of parties in this picture. You should apply the METHOD/S (and test/s included therein) for determining CONDUCT, CASUATION, WRONGFULNESS & FAULT as we have learnt. Your answer should include reference to the 'METHOD SHEET' PROCESS DIAGRAMS for each of these elements showing how at each stage you have applied the process to the facts. Use the answer sheet provided for this purpose.

## **SECTION C: (Claim Drafting)**

#### **QUESTION 4 [36 Marks]**

Draft concise particulars of claim, making the basic necessary averments, for damages arising from a situation in which a nurse failed to take proper instructions from an 8 ½ month pregnant patient who was admitted for assistance with birth at a public hospital. Specifically, the nurse failed to ascertain that the pregnant patient had had complications with a previous birth, had required an emergency Caesarian section previously and was on diabetic medication. Although the patient was in severe distress, she was left to monitor her foetus's heartbeat herself unattended by the nurse for 3 hours. The nurse did indeed summon the doctor on duty, but he failed to respond to the first call and only arrived after 3 hours in response to second call. The doctor immediately scheduled an emergency Caesarian section operation, but the foetus was found to be dead due to in vitro oxygen starvation (anoxia). It is common cause that if the operation had taken place immediately at the time of admission of the patient, the foetus would have been born alive. Add your own facts/ consequences where necessary. Formal headings are not required.

**TOTAL MARKS [100]**

**END OF EXAMINATION**