

**UNIVERSITY OF FORT HARE
NELSON R MANDELA SCHOOL OF LAW
(East London Campus)**

LEGAL SKILLS: B

LEG 122L

MAIN EXAMINATIONS

NOVEMBER / DECEMBER 2019

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Time: 3 hours

Subject: LEG 122L

Marks: 100

This paper consists of FOUR (4) pages including the cover page

INTERNAL EXAMINER

Adv S. Seti

INTERNAL EXAMINER

Mr A Katurura

INSTRUCTIONS

1. Answer ALL (5) questions.
2. Do not separate subsections of questions.
3. Pay careful attention to marks allocated.
4. Refer to relevant authorities, where applicable.
5. Write legibly.

QUESTION 1

- 1.1 Before a conduct can be classified as a delict from which delictual liability could arise, the conduct concerned must comply with all the requirements or elements of delict.

What are the elements or requirements of delict?

[5]

- 1.1 Abel Achebe is a 21-year old university student who has been renting a house, situated at 1 Devon Road, Berea in East London, for two years. One of his neighbours is Ben Baxter, who lives at 3 Devon Road. Ben is a 30-year old car salesman. Abel had a habit of parking his car, a 1988 Nissan Sentra, in his yard, under the branches of a tree growing in Ben's yard. These branches jutted into Abel's yard and provided welcome shade for Abel's car. On 4 July 2019, Ben decided to trim this tree. In the course of trimming the tree, he cut a branch that fell onto Abel's car. The branch smashed the windscreen, dented the bonnet and cracked the dashboard. Abel and a water-meter inspector (who happened to be on Abel's property at that time) also saw Ben cut the branch, and saw the branch fall onto Abel's car. Up to that stage, Abel and Ben had been on good terms. Abel's car was not insured, and he obtained three quotations for the repair of the damage to his car.

These were the quotations he received: 1 Ace Panelbeaters: R5 600,00; 2 Blake Panelbeaters: R6 000,00; 3 Chariot Panelbeaters: R5 850,00. On 10 July 2019, he went to Ben's house with the quotations to discuss the damage to his car. Ben received him in a friendly fashion, and told Abel to leave the quotes with him as he 'wanted to think about the matter'. After two weeks, Abel had still not heard from Ben, and decided to institute civil proceedings against him.

Discuss fully whether Ben's conduct has complied with all the requirements or elements of delictual liability or not? In your discussion, apply the rules of law (requirements of delict) to the above facts.

[20]

[25 Marks]

QUESTION 2

"Having decided which division of the High Court has jurisdiction, a legal practitioner must determine the form in which the proceedings should be brought. **The two fundamental [main] forms of procedure in the High Courts are applications and trial action.**" (Hebstein and Van Winsen 'The Civil Practice of the High Courts of South Africa' 5 ed (1) 2009 at page 288)

In light of the above statement answer the following questions relating to the forms of proceedings:

- 2.1 Compare and contrast the differences between motion (application) and action (trial) proceedings. [10]
- 2.2 What are the determining factors that should be considered when deciding which form of proceedings should be used in a particular case? [3]
- 2.3 Discuss the concept of dispute of facts in civil proceedings? [7]
- 2.4 In *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) the court stated that: '*motion proceedings are all about the resolution of legal issues based on common cause facts. They cannot be used to resolve issues where there is a dispute of facts because they are not designed to determine probabilities.*'

What is the court's approach when faced with a situation where in motion proceedings disputes of fact have arisen on the affidavits? [5]

[25 Marks]

QUESTION 3

Write explanatory notes about the following concepts and give examples:

- 3.1 Inductive reasoning [5]
- 3.2 Deductive reasoning [5]
- 3.3 PRES formula [5]
- 3.4 SQ3R [5]

[20 Marks]

QUESTION 4

4.1 Discuss fully two methods of interpretation with reference to the Constitution and other relevant authorities. [15]

4.2 Discuss the law making process in South Africa. In your discussion explain the role of courts in the law making process and whether can the courts make laws? [10]

[25 Marks]

QUESTION 5

Write brief explanatory notes on appeal and review procedures. [5]

[05 Marks]

TOTAL: 100 MARKS

-END OF EXAMINATION-