

# UNIVERSITY OF FORT HARE

LPD 321E

## MAIN EXAMINATION

November 2019

Time: 3 hours

Subject: Law of Delict B

Marks: 100

This paper consists of 6 pages including the cover page

### Internal Examiner

Mr. J. Mahler-Coetzee

### Moderator

Mr. A. Katarura

### Instructions

Answer SECTION A and SECTION B on the ANSWER SHEET provided.  
Answer SECTION C in the ANSWER BOOK provided.  
HAND IN ANSWER SHEET inside ANSWER BOOK.

## SECTION A (THEORY)

1. Product liability/ manufacturer's liability may arise where
  - A. A manufacturer puts into circulation potentially harmful things
  - B. Where a consumer who lawfully acquires a commodity is thereby exposed to danger in the use thereof without reasonable warning
  - C. Where harm is caused to users of defective products as a result of such defect
  - D. All of the above(4)
2. In *Ciba-Geigy (Pty) Ltd v Lushoff Farms (Pty)Ltd* it was held that
  - A. A contractual nexus between the manufacturer and the consumer is not necessary to found product liability against the manufacturer
  - B. A contractual nexus between retailer and consumer is necessary to found product liability against the retailer
  - C. Product liability results from the manufacture and distribution of a product which causes harm to the eventual consumer
  - D. A & C above(4)
3. Under the Consumer Protection Act, the following could be held liable for harm caused by a defective product:
  - A. The consumer
  - B. The Consumer Council
  - C. The importer
  - D. A & B above(4)
4. Circumstances that the courts have held might give rise to a 'psychological lesion' include
  - A. Where one has fear for the safety of one's fiancée
  - B. Where one's son has been found lying on the street after an accident
  - C. Where one has discovered that one has not got the job that one has applied for
  - D. A & B only(4)
5. In *DE v RH (CC)* the Constitutional Court held in regard to adultery that
  - A. An innocent spouse can no longer claim for insult or injury to their self-esteem
  - B. An innocent spouse can no longer claim for the loss of comfort and society of their spouse
  - C. An innocent spouse can no longer claim for the patrimonial harm (loss of services) suffered they have suffered through the loss of consortium of the adulterous spouse
  - D. All of the above(4)
6. An *iniuria* in relation to *fama* can occur
  - A. When a person's self-worth is lowered
  - B. When a person is maliciously prosecuted
  - C. When private facts of a person are recorded
  - D. A & C above(4)
7. A ground/s excluding *animus iniuriandi* as an element of defamation include
  - A. Mistake
  - B. Jest

- C. Fair comment  
D. A & B above (4)
8. In an infringement of *Dignitas*, wrongfulness consists in the  
A. Factual infringement of subjective feelings of dignity of the claimant  
B. Behaviour which is *contra bonos mores*  
C. A factual infringement of a legal object and a violation of a legal norm  
D. None of the above (4)
9. An individual condition of life characterised by seclusion from the public and publicity to the extent determined by the individual themselves is termed  
A. Corpus  
B. Dignitas  
C. Privacy  
D. Animus (4)
10. Liability without Fault means  
A. That Conduct is not Wrongful  
B. Strict liability  
C. Accountability for Negligence  
D. None of the above (4)
11. Where an animal owned by a defendant causes damage by eating plants, the plaintiff  
A. May expect that the defendant will be held liable without fault  
B. Will use the *actio de pauperie* to claim for loss  
C. Can use the *actio de pastu* for appropriate relief  
D. A & C only (4)
12. Nuisance involves  
A. The unreasonable use of property by one neighbour to the detriment of another  
B. An abuse of rights  
C. The reasonable use of property by one neighbour to the detriment of another  
D. A & B only (4)
13. In relation to 'abuse of rights' in neighbour law, reasonableness is measured  
A. by the degree of disproportion between benefit and prejudice  
B. by asking the defendant  
C. by asking the plaintiff  
D. with reference to the Mayor's office (4)
14. The *Civil Aviation Act 13 of 2009* provides for strict liability for damage caused by an aircraft  
A. Unless the owner of an aircraft can establish that the prejudiced person had intent or negligence  
B. Unless the owner of the aircraft was being very careful  
C. Unless the pilot of the aircraft was drunk  
D. None of the above. (4)
15. The user of genetically modified organisms

- A. Is liable for harm caused when the GMO is in the possession of an inspector if the user did not foresee the harm
- B. Is strictly liable for harm caused in the course of such use by implication of section 17(2) of the *Genetically Modified Organisms Act 15 of 1997*
- C. Is indemnified by the Act for harm caused as a result of such use
- D. Is indemnified by the manufacturer of the GMO for harm caused by such use (4)

[15x4marks = 60]

**SECTION B (APPLICATION/ PROBLEM SOLVING)**

A single mother of 4 minor children buys a ticket for a ferry to cross the Buffalo River to her work. The conditions of the passage are printed on the reverse of the ticket This includes a term which excludes the liability of the carrier for any harm that may befall the passenger i.e. that the passenger or his estate will not sue the carrier for potential harm suffered. The ferry sinks as a result of the negligence of the Captain; the mother is drowned. The children now have no means of support.

In relation to a special form of *Damnum Iniuria Datum* in the law of Delict, briefly deconstruct the basic problem provided above in the table provided on the ANSWER SHEET. Use meaningful single words or phrases wherever possible.

Name of the Special Form of <i>Damnum Iniuria Datum</i>	(2)
Name the directly Relevant Case	(2)
Briefly explain the two primary requirements for the action	1.(2)
	2.(4)
What is the relationship giving rise to a duty of the support here?	(2)
What legal term would you use to describe the	(2)

undertaking not to sue the carrier?	
What effect if any would the undertaking not to sue have on the action you have and named above in relation to this scenario and why?	(6)

(20)

### SECTION C (PRACTICE)

A 16 year old girl of Hindu faith, Fatima, is married to a young Hindu man of 17 years old, Pasha, in a traditional Hindu ceremony, with an agreement (made between the respective family members assisting the minors) to also engage in a civil ceremony at the Magistrates Court three months after the traditional ceremony. In the intervening period the young couple have sex and the girl falls pregnant. At the agreed day of the civil ceremony the young man does not arrive; his father informs the Fatima's father that Pasha has changed his mind and does not want to go through with the marriage.

**IN YOUR ANSWER BOOK** draft a simple appropriate Particulars of Claim (**2 PAGES MAX.**), making the basic necessary averments, for relevant delictual compensation potentially arising from the scenario. (20)

**TOTAL MARKS [100]**

**END OF EXAMINATION**

STUDENT #:..... STUDENT NAME:.....

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ANSWER SHEET

SECTION A (60 marks)

#	SELECTION A,B,C,D or T, or F	Admin
1		
2		
3		
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SECTION B (20 marks)

<b>Name of the Special Form of <i>Damnum Iniuria Datum</i> (2)</b>	
<b>Name the directly Relevant Case (2)</b>	
<b>Briefly explain the two primary requirements for the action (6)</b>	1 <sup>st</sup>
	2 <sup>nd</sup>
<b>What is the relationship giving rise to a duty of the support here? (2)</b>	
<b>What legal term would you use to describe the undertaking not to sue the carrier? (2)</b>	
<b>What effect if any would the undertaking not to sue have on the action you have and named above in relation to this scenario and why? (6)</b>	

SECTION C (20 marks)

Answer Section C in the ANSWER BOOK PROVIDED.

END OF ANSWER SHEET