

TAKE HOME EXAMINATION

Academic declaration MUST appear on page 1 of your portfolio.

FACTUAL SCENARIO 1 – DELICTUAL DAMAGES

On the morning of Friday the 19th May 2017 Shaun McFeast (of 12 Bergrivier drive, Kempton Park) assaulted his fiancé Ursula McLeod (of 72 Oranjerivier drive, Kempton Park) out of jealousy with the intent to cause her grievous bodily harm. He slapped her across the face and pushed her down the stairs. Ursula broke her arm and seriously injured her back. Shaun left her in pain and rushed out of her apartment into the parking lot of the complex. He jumped into his modified Fast and Furious Ford Ranger Wild-track and took off like a man in a hurry.

Still seething from the anger of what he termed inappropriate conduct by her fiancé, Shaun's mind was not on the wheel. This is so because he drove through a red robot at the corner of Kwartel Road and Mooifontein road and crashed into James Brown's small Kia Picanto on the left hand side. Shaun's negligent driving was the sole cause of the accident. Shaun's 4x4 only had minor damage, but James's vehicle was a complete write off due to the impact. Both motor vehicles were insured against damage.

At the time of impact, James had his safety belt on and as a result only suffered minor bruises. He was hospitalized at the Arwyp private hospital and was treated for shock and the minor bruises. James was released from hospital on the morning of Sunday the 21st May 2017.

James's pregnant wife, Tiffany, and their 5-year-old daughter, Angelique, both sitting on the left hand side in the vehicle, were seriously injured in the motor vehicle accident. Tiffany, 8 months into her pregnancy, was also wearing a safety belt and went into labour due to the accident. Young Matilda was born a few hours later, but her mother sadly died on Saturday morning, 20 May 2017, due to severe loss of blood. Matilda was born with deformities due to the motor vehicle accident and will need special care for the rest of her life.

At the time of impact, Angelique, who usually sits in her little baby seat at the back, had just loosed her safety belt to pick up some sweets that fell on the car seat. Unfortunately, she broke her left leg and her right shoulder in the accident. She had to undergo three operations to correct the fracture in her left leg. She will walk with difficulty for the rest of her life and her mobility has been affected by her injuries.

A month on from the tragic accident that claimed his wife's life and left his two daughters with physical hardships, James suffered post-traumatic stress and had to receive psychiatric treatment for 12 months.

James had indemnity insurance to cover the damage to his vehicle, but because he was retrenched 3 months before the accident, he decided to cancel his full medical aid insurance and only had a hospital plan to cover the family at the time of the accident. Tiffany was a partner in a

successful architect firm and James was the beneficiary of life insurance cover over her life (Tiffany) to the value of R10m. James sold the shares Tiffany held in the architect firm for R5m.

Question 1 (Topic 5)

Unless otherwise specifically stated, the questions in this section emanates from the bodily injuries and consequent losses suffered Angelique as a result of the motor vehicle accident.

From the outset, assume that there has been compliance with the provisions of section 24 of the Road Accident Fund Act 56 of 1996.

- 1.1. Decide on the type of proceedings to be instituted; that is action or application proceedings. Write a short essay in support of your choice. **(5)**
- 1.2. Draft only the Particulars of Claim or the Founding Affidavit in respect of Angelique claim(s). **(25)**
- 1.3. Based on your averments in respect of costs in 1.2 above, write a short commentary on the different types of costs and general practice relating to costs. **(5)**
- 1.4. Critically reflect on the impact of the principle of prescription and comment on its applicability to Angelique. **(10)**
- 1.5. Provide a brief summary on appeals and appeal courts' powers. **(5)**

Instructions iro 1.2: kindly please note that you are not allowed to create your own set of facts. Any new fact not covered by the factual scenario will be assessed as incorrect. Note further that registration details of the motor vehicles must be accurate for whatever province you so choose to go with. In fact we urge you to use the registration numbers and letters of wherever you are within the borders of South Africa. Those of you who are elsewhere, you may contact any of the lecturers for this information.

(50 marks)

Question 2 (Reflections on the semester work and the field of study)

2.1 Learning experience from marked assignments (25 marks)

Supply **five (5) examples** from your marked assignments as evidence of your learning experience in this module. These examples should

illustrate what you have learned after reading the comments on the marked assignments or comparing your answer to the Feedback placed on the LPL4802-site. It can either be that you have answered a difficult part of an assignment question correctly, or it could be that you have made a mistake in an assignment question and now have a better understanding of that part of the work after you have read the Feedback on the assignment and/or the comments on your marked assignment. Copy only that part of the assignment as evidence to illustrate your learning experience. In other words, do not copy and paste the complete assignment, but only a small section that will be proof of your learning experience. Indicate clearly from which assignment you have taken the example. **NO MARKS WILL BE GIVEN FOR THE COPY AND PASTE OF YOUR ASSIGNMENT ANSWER.** Marks will only be given for your explanation of what you have learned. Each example with the explanation of your learning experience on that aspect will count 5 marks, adding to a total of 25 marks (5 x 5 marks). *Be sure to supply enough information on your learning experience in each example to validate the 5 marks (ie mention at least 5 things). Answer this question by using the following headings: Example 1 from Assignment X; Example 2 from Assignment X; Example 3 from Assignment X; Example 4 from Assignment X; Example 5 from Assignment X. You may use answers from the multiple-choice questions.*

Each experience will be assessed once. Therefore, if you indicate time management as the most significant lesson derived from the nature of this module, you may not indicate this multiple times. You will definitely not earn more marks for saying the same thing! Furthermore, there is no indication of lessons learned if you regurgitate the multiple choice options. As 4th year students, you are expected to reflect critically on your work and self-correct and/or educate. We will provide an example of both a well thought out reflection and a lazy one under Announcements on Tuesday 17 October 2017.

2.2 Learning experience from peer interaction (10 marks)

Supply **two (2) examples** where you have had a learning experience in this module through interaction with your peers (fellow students). Peer interaction is where a fellow-student supplied information or evaluated material on the module-site either directly to you or to someone else, or even in general. This could have been as a posting/message on the Discussion page during the completion of Group Activity 2 or Group Assignment 5 or in any of the general discussions on the Discussion Forum. Be specific on where the learning experience took place (ie where on the module-site) and what you have learned (from which section of the study material). Each example with the explanation of your learning experience on that aspect will count 5 marks, adding to a total of 10 marks (2 x 5 marks). *Be sure to supply enough information on your learning experience in each example to validate the 5 marks (ie mention at least 5 things). Answer this question by using the following headings: Example 1 from Assignment X; Example 2 from Assignment X.*

2.3 Critical evaluation of the law of damages (not the structure of this module, but this field of SA law – common law, statutory law or case law) (15 marks)