

LPL409G

(422291)

May/June 2009
Mei/June 2009

**LAW OF DAMAGES (LAW OF DAMAGES (LLB))
SKADEVERGOEDINGSREG (PRIVAATREG) (LLB)**

Duration 2 Hours
Tydsduur 2 Uur100 Marks
100 Punte**EXAMINERS / EKSAMINATORE**FIRST / EERSTE
SECOND / TWEEDEPROF TB FLOYD
PROF C-J PRETORIUS

PROF L STEYNBERG

**This paper consists of 22 pages plus instructions for the completion of a mark-reading sheet. /
Hierdie vraestel bestaan uit 22 bladsye plus instruksies vir die voltooiing van 'n merkleesblad**

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STUDENT NUMBER					-					
STUDENTENOMMER										

INSTRUCTIONS

- This paper consists of Section A: Multiple-choice questions (to be answered on the mark-reading sheet) and Section B: Fill-in questions (to be answered on the fill-in question paper) You will not receive an examination book**
- You must hand in the complete examination paper plus the mark-reading sheet
- The unique number to be filled-in on the mark-reading sheet is **422291**
- Answer all the questions in the designated spaces only. Answers outside such spaces will not be read
- Do not write in the margins** - this space is reserved for the examiners
- Do your rough work on page 2**. This page will not be read by the examiners
- The English version of each question is followed by the Afrikaans version
- This paper counts **100 marks**. Divide your time accordingly
- Plan each answer carefully before you write it down and refer to the relevant authority whenever possible

INSTRUKSIES

- Hierdie vraestel bestaan uit Afdeling A: Multikeusevrae (wat op die merkleesblad beantwoord word) en Afdeling B: Invulvrae (wat op die invulvraestel beantwoord word)**. U ontvang geen eksamenboek nie
- U moet die hele vraestel inlewer, asook die merkleesblad
- Die unieke nommer wat op die merkleesblad ingevul moet word is **422291**
- Beantwoord al die vrae net in die ruimtes daarvoor aangedui. Antwoorde buite sodanige ruimtes sal nie gelees word nie
- Moenie in die kantlyne skryf nie** - die ruimte is vir gebruik deur die eksaminatore
- Doen u rofwerk op bladsy 2**. Die bladsy sal nie deur die eksaminatore gelees word nie
- Die Afrikaanse weergawe van elke vraag volg direk na die Engelse weergawe
- Die vraestel tel **100 punte**. Deel u tyd daarvolgens in
- Beplan u antwoord deeglik voordat u dit neerskryf en verwys waar moontlik na relevante gesag

[TURN OVER / BLAAI OM]

ROUGH WORK / ROFWERK

SECTION A : MULTIPLE-CHOICE QUESTIONS AFDELING A : MULTIKEUSEVRAE

NB ANSWER THESE QUESTIONS ON THE MARK-READING SHEET!
NB : BEANTWOORD HIERDIE VRAE OP DIE MERKLEESBLAD!

Unique number / **Unieke nommer : 422291**

(1) The delictual remedy used to claim damages for patrimonial loss caused wrongfully and negligently is the

- 1 *actio legis Aquiliae*
- 2 *actio iniuriarum*
- 3 action for pain and suffering
- 4 *actio de pastu*
- 5 interdict

(2)

(1) Die deliktuele remedie wat gebruik word om skadevergoeding te eis vir vermoenskade wat onregmatig en nalatig veroorsaak is, is die:

1. *actio legis Aquiliae*
2. *actio iniuriarum*
3. aksie vir pyn en lyding
4. *actio de pastu*
5. interdik

(2)

(2) The delictual remedy used to obtain a *solatium* for intentional infringement of personality rights is the

- 1 *actio legis Aquiliae*
- 2 *actio iniuriarum*
- 3 action for pain and suffering
- 4 *actio de pastu*
- 5 interdict

(2)

(2) Die deliktuele remedie waarmee 'n *solatium* vir die opsetlike aantasting van 'n persoonlikheidsreg geëis word, is die:

- 1 *actio legis Aquiliae*
2. *actio iniuriarum*
3. aksie vir pyn en lyding
4. *actio de pastu*
5. interdik

(2)

[TURN OVER / BLAAI OM]

(3) The delictual remedy used to claim compensation for negligent infringement of the *corpus* is the

- 1 *actio legis Aquiliae*
- 2 *actio iniuriarum*
- 3 action for pain and suffering
- 4 *actio de pastu*
- 5 interdict

(2)

(3) Die deliktuele remedie wat gebruik word om vergoeding te eis vir nalatige aantasting van die *corpus*, is die:

1. *actio legis Aquiliae*
2. *actio iniuriarum*
3. aksie vir pyn en lyding
4. *actio de pastu*
- 5 interdik

(2)

(4) Which statement best explains the position in the South African law regarding a claim for loss suffered due to inconvenience, disappointment or anxiety?

- 1 No such claim exists if it was caused by damage to property
- 2 In *Administrator, Natal v Edouard* 1990 3 SA 581 (A) the court held that no such claim exists if it was caused by breach of contract
- 3 In *Union Government v Warneke* 1911 AD 657 the court held that no such claim exists if it was caused by damage to property
- 4 1 + 3
- 5 All of the above

(2)

(4) Welke stelling verduidelik die posisie in die Suid-Afrikaanse reg ten opsigte van skade gely as gevolg van ongerief, teleurstelling of angs die beste?

- 1 Geen sodanige eis bestaan as dit deur saakbeskadiging veroorsaak is
- 2 In *Administrator, Natal v Edouard* 1990 3 SA 581 (A) het die hof beslis dat geen sodanige eis bestaan as dit deur kontrakbreuk veroorsaak is
- 3 In *Union Government v Warneke* 1911 AD 657 het die hof beslis dat geen sodanige eis bestaan as dit deur saakbeskadiging veroorsaak is
4. 1 + 3
- 5 Al bogenoemde.

(2)

(5) In which case did the majority decide that only positive interesse could be claimed for breach of contract where the contract had been cancelled?

- 1 *Probert v Baker* 1983 3 SA 229 (D)
- 2 *Hamer v Wall* 1993 1 SA 235 (T)
- 3 *Mainline Carriers (Pty) Ltd v Jaad Investments CC* 1998 2 SA 468 (C)

[TURN OVER / BLAAI OM]

- 4 *Lavery v Jungheinrich* 1931 AD 156
- 5 *Shatz Investments v Kalovyrnas* 1976 2 SA 545 (A)

(2)

- (5) In watter saak het die meerderheid beslis dat slegs positiewe interesse weens kontrakbreuk geëis kan word waar die kontrak gekanselleer is?

1. *Probert v Baker* 1983 3 SA 229 (D)
2. *Hamer v Wall* 1993 1 SA 235 (T)
3. *Mainline Carriers (Pty) Ltd v Jaad Investments CC* 1998 2 SA 468 (K)
4. *Lavery v Jungheinrich* 1931 AD 156
5. *Shatz Investments v Kalovyrnas* 1976 2 SA 545 (A)

(2)

- (6) In which case did the court decide that negative interesse could be claimed for breach of contract without first cancelling the contract?

- 1 *Probert v Baker* 1983 3 SA 229 (D)
- 2 *Hamer v Wall* 1993 1 SA 235 (T)
- 3 *Mainline Carriers (Pty) Ltd v Jaad Investments CC* 1998 2 SA 468 (C)
- 4 *Lavery v Jungheinrich* 1931 AD 156
- 5 *Shatz Investments v Kalovyrnas* 1976 2 SA 545 (A)

(2)

- (6) In watter saak het die hof beslis dat negatiewe interesse weens kontrakbreuk geëis kan word, sonder om eers die kontrak te kanselleer?

1. *Probert v Baker* 1983 3 SA 229 (D)
2. *Hamer v Wall* 1993 1 SA 235 (T)
3. *Mainline Carriers (Pty) Ltd v Jaad Investments CC* 1998 2 SA 468 (K)
4. *Lavery v Jungheinrich* 1931 AD 156
5. *Shatz Investments v Kalovyrnas* 1976 2 SA 545 (A)

(2)

- (7) In which case did the court decide that negative interesse could be claimed for breach of contract, provided that the contract has been properly cancelled

- 1 *Probert v Baker* 1983 3 SA 229 (D)
- 2 *Hamer v Wall* 1993 1 SA 235 (T)
- 3 *Mainline Carriers (Pty) Ltd v Jaad Investments CC* 1998 2 SA 468 (C)
- 4 *Lavery v Jungheinrich* 1931 AD 156
- 5 *Shatz Investments v Kalovyrnas* 1976 2 SA 545 (A)

(2)

- (7) In watter saak het die hof beslis dat negatiewe interesse weens kontrakbreuk geëis kan word, op voorwaarde dat die kontrak behoorlik gekanselleer was?

1. *Probert v Baker* 1983 3 SA 229 (D)
2. *Hamer v Wall* 1993 1 SA 235 (T)

- 3 *Mainline Carriers (Pty) Ltd v Jaad Investments CC* 1998 2 SA 468 (K)
- 4 *Lavery v Jungheinrich* 1931 AD 156
5. *Shatz Investments v Kalovyrnas* 1976 2 SA 545 (A)

(2)

- (8) In which decision of the court was it uncertain whether the contemplation principle or the convention principle was applied?

- 1 *Probert v Baker* 1983 3 SA 229 (D)
- 2 *Hamer v Wall* 1993 1 SA 235 (T)
- 3 *Mainline Carriers (Pty) Ltd v Jaad Investments CC* 1998 2 SA 468 (C)
- 4 *Lavery v Jungheinrich* 1931 AD 156
- 5 *Shatz Investments v Kalovyrnas* 1976 2 SA 545 (A)

(2)

- (8) In watter beslissing van die hof was dit onseker of die kontemplasie-beginsel of die konvensie-beginsel toegepas is?

1. *Probert v Baker* 1983 3 SA 229 (D)
- 2 *Hamer v Wall* 1993 1 SA 235 (T)
- 3 *Mainline Carriers (Pty) Ltd v Jaad Investments CC* 1998 2 SA 468 (K)
- 4 *Lavery v Jungheinrich* 1931 AD 156
5. *Shatz Investments v Kalovyrnas* 1976 2 SA 545 (A)

(2)

- (9) In which case did the court decide that the convention principle still reflects the current legal position in the event of special damage?

- 1 *Probert v Baker* 1983 3 SA 229 (D)
- 2 *Hamer v Wall* 1993 1 SA 235 (T)
- 3 *Mainline Carriers (Pty) Ltd v Jaad Investments CC* 1998 2 SA 468 (C)
- 4 *Lavery v Jungheinrich* 1931 AD 156
- 5 *Shatz Investments v Kalovyrnas* 1976 2 SA 545 (A)

(2)

- (9) In watter saak het die hof beslis dat die konvensie-beginsel steeds die geldende reg ten opsigte van spesiale skade weerspieel?

1. *Probert v Baker* 1983 3 SA 229 (D)
2. *Hamer v Wall* 1993 1 SA 235 (T)
3. *Mainline Carriers (Pty) Ltd v Jaad Investments CC* 1998 2 SA 468 (K)
4. *Lavery v Jungheinrich* 1931 AD 156
5. *Shatz Investments v Kalovyrnas* 1976 2 SA 545 (A)

(2)

- (10) X buys shares from Y for R50 000. The market value of the shares is R60 000. X pays R50 000 to Y but Y commits breach of contract and refuses to deliver the shares. X's "restitution interest" in this set of facts is

- 1 R60 000
- 2 R50 000

- 3 R10 000
- 4 R0
- 5 minus R10 000

(2)

(10) X koop aandele van Y vir R50 000. Die markwaarde van die aandele is R60 000. X betaal R50 000 aan Y maar Y pleeg kontrakbreuk en weier om die aandele te lewer. X se "restitution interest" in hierdie feitestel is:

- 1 R60 000
- 2 R50 000
- 3. R10 000
- 4 R0
- 5 minus R10 000

(2)

(11) X buys shares from Y for R50 000. The market value of the shares is R60 000. X pays R50 000 to Y but Y commits breach of contract and refuses to deliver the shares. X's "expectation interest" in this set of facts is

- 1 R60 000
- 2 R50 000
- 3 R10 000
- 4 R0
- 5 minus R10 000

(2)

(11) X koop aandele van Y vir R50 000. Die markwaarde van die aandele is R60 000. X betaal R50 000 aan Y maar Y pleeg kontrakbreuk en weier om die aandele te lewer. X se "expectation interest" in hierdie feitestel is:

- 1 R60 000
- 2 R50 000
- 3 R10 000
- 4 R0
- 5. minus R10 000

(2)

(12) X buys shares from Y for R50 000. The market value of the shares is R60 000. X pays R50 000 to Y but Y commits breach of contract and refuses to deliver the shares. When applying the general principles of the calculation of damages, X would recover the following amount of damages

- 1 R60 000
- 2 R50 000
- 3 R10 000
- 4 R0
- 5 minus R10 000

(2)

(12) X koop aandele van Y vir R50 000. Die markwaarde van die aandele is R60 000. X betaal R50 000 aan Y maar Y pleeg kontrakbreuk en weier om die aandele te lewer. By die toepassing van die algemene beginsels by die berekening van skadevergoeding, behoort X die volgende bedrag vergoeding te verhaal:

1. R60 000
2. R50 000
3. R10 000
4. R0
5. minus R10 000

(2)

The following set of facts is relevant for questions (13) – (23)

Susan and her husband, Frank, were wrongfully and intentionally assaulted on 10 February 2005 by John in a road rage incident. John is a very wealthy businessman with a short temper. Apart from smashing Susan's car with his golf club, John also hit Susan and Frank. Frank was seriously injured and admitted to the intensive-care unit of the local hospital. Susan, who was also admitted to the hospital, was discharged two weeks later. Frank died one month later on 10 March 2005. Susan's attorneys issued summons against John for the damage to her vehicle during January 2008. On 15 February 2008 they applied for the amendment of the summons to include a claim for medical expenses, pain and suffering and loss of support due to Frank's death. Susan was totally dependent on Frank and he was 40 years of age at the time of his death. Frank was employed by an international company and Susan received a lump-sum pension payment from Frank's employer after his death. Susan was also the beneficiary of a life-insurance policy on Frank's life.

Die volgende feitestel is van toepassing op vrae (13) – (23)

Op 10 Februarie 2005 is Susan en haar man, Frank, onregmatig en opsetlik deur Johan aangerand in 'n padwoede-aanval. Johan is 'n baie ryk besigheidsman met 'n vinnige humeur. Johan het met sy gholfstok nie net Susan se motor vol duike geslaan nie, maar ook vir Susan en Frank aangerand. Frank is ernstig beseer en in die intensiewe-sorgeenheid van die plaaslike hospitaal opgeneem. Susan, wat ook in die hospital opgeneem is, is twee weke later ontslaan. Frank sterf een maand later op 10 Maart 2005. Gedurende Januarie 2008 dagvaar Susan se prokureurs Johan vir die skade aan haar voertuig. Op 15 Februarie 2008 doen hulle aansoek om die dagvaardiging te wysig om 'n eis vir mediese uitgawes, pyn en lyding en verlies aan onderhoud vanwee Frank se dood by te voeg. Susan was ten volle afhanklik van Frank en hy was 40 jaar oud ten tyde van sy dood. Frank was in diens van 'n internasionale maatskappy en Susan het na sy dood 'n "lumpsom"-pensioenuitbetaling van sy werkgewer ontvang. Susan was ook die begunstigde van 'n lewensversekeringspolis op Frank se lewe.

(13) Susan's claim for damage to her vehicle will/has prescribe(d) on the following date

1. 11 February 2006
2. 11 February 2007
3. 11 February 2008
4. Issuing of summons interrupted the running of prescription
5. None of the above

(2)

(13) Susan se eis vir skade aan haar voertuig sal/het verjaar op die volgende datum:

1. 11 Februarie 2006
2. 11 Februarie 2007
3. 11 Februarie 2008
4. Betekening van die dagvaardiging het die verloop van verjaring gestuit
5. Geeneen van bogenoemde nie (2)

(14) Susan's claim for medical expenses and pain and suffering will/has prescribe(d) on the following date

1. 11 February 2006
2. 11 February 2007
3. 11 February 2008
4. Issuing of summons interrupted the running of prescription
5. None of the above (2)

(14) Susan se eis vir mediese uitgawes en pyn en lyding sal/het verjaar op die volgende datum:

1. 11 Februarie 2006
2. 11 Februarie 2007
3. 11 Februarie 2008
4. Betekening van die dagvaardiging het die verloop van verjaring gestuit
5. Geeneen van bogenoemde nie (2)

(15) The answer in (14) is based on the following approach

1. Single-cause approach as applied in *Oslo Land v Union Government* 1938 AD 584
2. Single-cause approach as applied in *Green v Coetzer* 1958 2 SA 697 (W)
3. *Facta-probanda* approach as applied in *Evins v Shield Insurance* 1980 2 SA 814 (A)
4. Sum-formula approach as applied in *Santam v Byleveldt* 1973 2 SA 146 (A)
5. None of the above (2)

(15) Die antwoord in (14) is gebaseer op die volgende benadering:

1. *Single-cause*-benadering soos toegepas in *Oslo Land v Union Government* 1938 AD 584
2. *Single-cause*-benadering soos toegepas in *Green v Coetzer* 1958 2 SA 697 (W)
3. *Facta-probanda*-benadering soos toegepas in *Evins v Shield Insurance* 1980 2 SA 814 (A)
4. Sommeskadeleer soos toegepas in *Santam v Byleveldt* 1973 2 SA 146 (A)
5. Geeneen van bogenoemde nie (2)

(16) Susan's claim for loss of support will/has prescribe(d) on the following date

1. 11 February 2006
2. 11 February 2008
3. 11 March 2008
6. Issuing of summons interrupted the running of prescription
7. None of the above (2)

(16) Susan se eis vir verlies aan onderhoud sal/het verjaar op die volgende datum.

1. 11 Februarie 2006
 2. 11 Februarie 2008
 3. 11 Maart 2008
 4. Betekening van die dagvaardiging het die verloop van verjaring gestuit
 5. Geeneen van bogenoemde nie
- (2)

(17) The answer in (16) is based on the following approach

1. Single-cause approach as applied in *Oslo Land v Union Government* 1938 AD 584
 2. Single-cause approach as applied in *Green v Coetzer* 1958 2 SA 697 (W)
 3. *Facta-probanda* approach as applied in *Evins v Shield Insurance* 1980 2 SA 814 (A)
 4. Sum-formula approach as applied in *Santam v Byleveldt* 1973 2 SA 146 (A)
 5. None of the above
- (2)

(17) Die antwoord in (16) is gebaseer op die volgende benadering:

1. **Single-cause-benadering soos toegepas in *Oslo Land v Union Government* 1938 AD 584**
 2. **Single-cause-benadering soos toegepas in *Green v Coetzer* 1958 2 SA 697 (W)**
 3. ***Facta-probanda*-benadering soos toegepas in *Evins v Shield Insurance* 1980 2 SA 814 (A)**
 4. **Sommeskadeleer soos toegepas in *Santam v Byleveldt* 1973 2 SA 146 (A)**
 5. Geeneen van bogenoemde nie
- (2)

(18) In calculating Susan's claim for loss of support the following will be taken into account

1. The compensation she received from John for the damage to her vehicle
 2. The lump-sum pension payment
 3. The payment in terms of the life insurance policy
 4. Susan's earning capacity
 5. None of the above
- (2)

(18) In die berekening van Susan se eis vir verlies aan onderhoud sal die volgende in ag geneem word:

1. Die vergoeding wat sy van Johan ontvang het vir die skade aan haar voertuig
 2. Die "lumpsom"-pensioenuitbetaling
 3. Die uitbetaling ingevolge die lewensversekeringspolis
 4. Susan se verdienvermoe
 5. Geeneen van bogenoemde nie
- (2)

(19) The authority for the answer in (18) is

1. *Dippenaar v Shield Insurance* 1979 2 SA 904 (A)
 2. *Burger v President Versekeringsmaatskappy* 1994 3 SA 68 (T)
 3. *Standard General Ins Co Ltd v Dugmore* 1997 1 SA 33 (A)
 4. *Santam v Byleveldt* 1973 2 SA 146 (A)
 5. None of the above
- (2)

(19) Die gesag vir die antwoord in (18) is:

1. *Dippenaar v Shield Insurance* 1979 2 SA 904 (A)
2. *Burger v President Versekeringsmaatskappy* 1994 3 SA 68 (T)
3. *Standard General Ins Co Ltd v Dugmore* 1997 1 SA 33 (A)
4. *Santam v Byleveldt* 1973 2 SA 146 (A)
5. Geeneen van bogenoemde nie

(2)

(20) Which measure of damage could be utilised to assess the damage to Susan's motor vehicle?

1. Diminution in its market value
2. The difference between the market value before and after the damage-causing event
3. Reasonable cost of necessary repairs
4. 2 + 3
5. All of the above

(2)

(20) Watter skademaatstaf kan aangewend word om die skade aan Susan se motorvoertuig te bepaal?

1. Vermindering in die markwaarde daarvan.
2. Die verskil tussen die markwaarde voor en na die skadestigende gebeurtenis
3. Redelike koste van noodsaaklike herstelwerk.
4. 2 + 3
5. Al bogenoemde.

(2)

(21) Assume that the claim for Frank's medical expenses has not prescribed. How will this claim be instituted?

1. A claim for the full medical expenses can be instituted against the Road Accident Fund
2. Since Frank died, no claim can anymore be instituted
3. The executor of Frank's estate can institute the claim against Johan
4. Susan can institute the claim against Johan in her personal capacity
5. None of the above

(2)

(21) Aanvaar dat die eis vir Frank se mediese uitgawes nie verjaar het nie. Hoe sal hierdie eis verhaal kan word?

1. 'n Eis vir die volle mediese uitgawes kan teen die Padongelukfonds ingestel word.
2. Aangesien Frank gesterf het, kan geen eis meer ingestel word nie.
3. Die eksekuteur van Frank se boedel kan die eis instel teen Johan.
4. Susan kan in haar persoonlike hoedanigheid die eis instel teen Johan.
5. Geeneen van boegenomde

(2)

- (22) In determining Susan's claim for loss of support an annuity must be calculated. The following principles will apply
- 1 The total amount of loss of support during the relevant period must be reduced to its present value
 - 2 The immediate receipt of the total amount of loss of support may give Susan an improper advantage if the interest that may be earned on it is not taken into account
 - 3 Usually a net rate of interest is used
 - 4 1 + 2
 - 5 All of the above
- (2)
- (22) In die vasstelling van Susan se eis vir verlies aan onderhoud moet 'n annuïteit bereken word. Die volgende beginsels sal van toepassing wees.
1. Die totale bedrag onderhoud vir die betrokke tydperk moet verminder word na sy huidige kapitaalwaarde.
 2. Die onmiddellike ontvangs van die totale bedrag onderhoud mag moontlik vir Susan 'n onbehoorlike voordeel gee indien die rente wat sy daarop kan verdien nie in berekening gebring word nie
 3. Gewoonlik word van 'n reële rentekoers gebruik gemaak.
 4. 1 + 2
 5. Al bogenoemde
- (2)
- (23) The executor of Frank's estate can claim the following for funeral costs
- 1 The reasonable cost of preparing the body for interment or cremation
 - 2 The cost of a hearse
 - 3 The expense of erecting a tombstone
 - 4 1 + 2
 - 5 All of the above
- (2)
- (23) Die eksekuteur van Frank se boedel kan die volgende verhaal vir begrafniskoste:
1. Die redelike koste in verband met die voorbereiding van die lyk vir begrafnis of verassing.
 2. Die koste van die lykswa.
 3. Die uitgawes om 'n grafsteen op te rig.
 4. 1 + 2.
 5. Al bogenoemde
- (2)

- (24) In *D'Ambrosi v Bane* 2006 5 SA 121 (C) the court held the following in respect of the plaintiff's claim for medical expenses and loss of earning capacity
- 1 The benefits received from the plaintiff's medical aid should be deducted from his claim for medical expenses
 - 2 The saving in living expenses should be deducted from the plaintiff's claim for loss of earning capacity
 - 3 The saving in living expenses is too speculative and should therefore not be taken into account in calculating the loss of earning capacity
 - 4 1 + 2
 - 5 1 + 3
- (2)
- (24) In *D'Ambrosi v Bane* 2006 5 SA 121 (K) het die hof die volgende beslis ten opsigte van die eiser se eis vir mediese uitgawes en verlies aan lewensgenieting:
1. Die voordele ontvang vanaf die eiser se mediese fonds moet van sy eis vir mediese uitgawes afgetrek word.
 2. Die besparing in lewensuitgawes moet van sy eis vir verlies aan verdienvermoe afgetrek word
 3. Die besparing in lewensuitgawes is te spekulatief en moet daarom nie in berekening gebring word by sy eis vir verlies aan verdienvermoe nie.
 4. 1 + 2
 5. 1 + 3.
- (2)
- (25) In *Fose v Minister of Safety and Security* 1997 3 SA 786 (CC) the court held the following in respect of the infringement of the plaintiff's rights after he was assaulted and tortured by the police
- 1 The plaintiff must succeed with his claim for constitutional damages
 - 2 The plaintiff's rights would properly be vindicated by delictual damages
 - 3 An additional amount of punitive constitutional damages would be necessary to properly vindicate the infringement of the plaintiff's rights under the circumstances
 - 4 1 + 3
 - 5 All of the above
- (2)
- (25) In *Fose v Minister of Safety and Security* 1997 3 SA 786 (KH) het die hof die volgende beslis ten opsigte van die inbreukmaking op die eiser se regte nadat hy aangerand en gemartel is deur die polisie.
- 1 Die eiser moet slaag met sy eis vir konstitusionele skadevergoeding.
 2. Die eiser se regte sal na behore gevindiseer word deur deliktuele skadevergoeding.
 - 3 'n Addisionele bedrag as bestraffende konstitusionele skadevergoeding sal onder die omstandighede nodig wees om na behore die inbreukmaking van die eiser se regte te vindiseer
 4. 1 + 3.
 5. Al bogenoemde.
- (2)

TOTAL SECTION A / TOTAAL AFDELING A : [50]

[TURN OVER / BLAAI OM]

SECTION B : FILL-IN QUESTIONS
AFDELING B : INVULVRAE

ANSWER THESE QUESTIONS IN THE SPACES BELOW THE QUESTIONS !
BEANTWOORD HIERDIE VRAE IN DIE SPASIES NA DIE VRAE !

Question 1 / Vraag 1

Distinguish between the following concepts

Onderskei tussen die volgende begrippe:

1.1 damage and damages

skade en skadevergoeding

(5)

- 1 2 the concrete and abstract (sum-formula) concepts of damage
die konkrete en abstrakte (sommeskadeleer) benaderings tot skade (5)
- 1 3 nominal damages and nominalism
nominale skadevergoeding en nominalisme (3)

- 1 4 compensation and satisfaction
kompensatie en genoegdoening (5)

- 1 5 *res inter alios acta* and compensating advantage
res inter alios acta en voordeeltoerekening (2)

Question 2 / Vraag 2

2.1 Furnish the basic formula for the calculation of damages on account of loss of earning capacity

(4)

Gee die basiese formule vir die bepaling van skadevergoeding weens verlies van verdienvermoe.

(4)

(1)

(2)

(3)

(4)

2.2 Discuss the onus of proof of patrimonial damage and the damages to be claimed in instances where the loss is not capable of precise calculation

(6)

Bespreek die bewyslas by vermoenskade en die bedrag skadevergoeding in gevalle waar die skade nie presies berekenbaar is nie

(6)

- 2.3 Suppose X's vehicle is damaged by Y in January 2008. The damage amounts to R1 500. After numerous futile attempts by X to get the money from Y, he finally decides in January 2009 to sue Y in the Small Claims Court. The rate of inflation during 2008 was 10%. Advise X on what amount he can claim from Y. (5)

Gestel X se voertuig word in Januarie 2008 deur Y beskadig. Die skade beloop R1 500. Na verskeie vrugtelose pogings deur X om die geld by Y te kry, besluit hy uiteindelik in Januarie 2009 om Y in die Hof vir Klein Eise te dagvaar. Die inflasiekoers gedurende 2008 was 10%. Adviseer X oor die bedrag wat hy van Y kan verhaal. (5)

2.4 State the forms of non-patrimonial loss that can be claimed with the action for pain and suffering (5)

Noem die vorme van nie-vermoenskade wat met die aksie vir pyn en lyding verhaal kan word. (5)

(1)

(2)

(3)

(4)

(5)

[20]

Question 3 / Vraag 3

Discuss the application of the market price rule in instances where a debtor refuses to deliver goods in terms of a contract of sale. Refer in your answer to instances where the contract remains in force, as well as instances where the contract has been cancelled. Explain with reference to case law (10)

Bespreek die toepassing van die markprysreel in gevalle waar 'n skuldenaar versuim om 'n saak ingevolge 'n koopkontrak te lewer. Verwys in u antwoord na beide die geval waar die kontrak in stand gehou word, asook waar die kontrak gekanselleer word. Verduidelik aan die hand van regspraak. (10)

[TURN OVER / BLAAI OM]

[10]

TOTAL SECTION B / TOTAAL AFDELING B : [50]

TOTAL PAPER / TOTAAL VRAESTEL : [100]