

UNIVERSITY OF SWAZILAND
FACULTY OF HEALTH SCIENCES
DEPARTMENT OF MIDWIFERY
FINAL EXAMINATION PAPER, MAY 2005

TITLE OF PAPER : **ASPECTS OF LAW AND HEALTH**
COURSE CODE : **LH 305**
TIME ALLOWED : **TWO (2) HOURS**
TOTAL MARKS : **75**
INSTRUCTIONS : **ANSWER QUESTION 1 WHICH IS
COMPULSORY AND ANY OTHER
TWO (2) QUESTIONS**

**THIS QUESTION PAPER SHOULD NOT BE OPENED UNTIL PERMISSION
HAS BEEN GRANTED BY THE INVIGILATOR**

Question 1 (Compulsory)

After an operation conducted by Dr K on him, P developed life threatening complications. During the operation a piece of the forceps that Dr K was using fell into P's body, but Dr K did not notice this. Thereafter, Dr K sewed P up. Then complications arose and P's life was saved by a very costly emergency operation conducted by a doctor from another hospital. At the time he conducted the operation Dr K was employed by XY Hospital situated in Manzini. P alleges that Dr K was negligent and wants to be compensated.

(a) Who is liable to compensate P and on what basis? [20 marks]
Refer to decided case(s) where appropriate.

(b) Should P invoke the maxim *Res Ipsa Loquitur*? [5 marks]

[Total marks=25]

Question 2

(a) A contract is made up of an offer and acceptance. What is an acceptance and what effect does it have? [10 marks]

(b) How does an offer lapse? [8 marks]

(c) How does a breach of contract arise and what form of remedies may the party who is not in breach seek from the court against the party who is in breach? [7 marks]

[Total marks=25]

Question 3

(a) Relo is a young man of 25 years of age. He feels unwell and decides to go to hospital for medical attention. He goes to Dr Dlamini who does a check-up on him. Dr Dlamini discovers that Relo needs medical treatment otherwise his condition will get worse. Dr Dlamini has the necessary medication and can properly administer it.

Discuss the legal position. [15 marks]

(b) A is a medical practitioner working at The Clinic based in Mbabane. She is approached by B a pregnant young lady of 20 years of age. A and B enter into an oral agreement under which A will carry out an abortion on B. On the agreed date, A decides that she will not carry out the abortion. B plans to take A to court because she says there is contract between the two of them.

Advise B on her prospects of success. [10 marks]

[Total marks=25]

Question 4

Discuss the two (2) defences known to the law that exclude unlawfulness on the part of the actions of a medical practitioner. Refer to decided cases. [25 marks]

Question 5

- (a) Distinguish between *damage* and *damages* in delictual actions. [5 marks]
- (b) State two (2) characteristics of a legal object. [5 marks]
- (c) Distinguish between a real right and a personal right. [5 marks]
- (d) What is contractual capacity? [5 marks]
- (e) What is a legal subject? [5 marks]

[Total marks=25]