

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF HEALTH SCIENCES**  
**DEPARTMENT OF MIDWIFERY**  
**SUPPLIMENTARY EXAMINATION PAPER, JULY 2005**

|                       |          |                                   |
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| <b>TITLE OF PAPER</b> | <b>:</b> | <b>ASPECTS OF LAW AND HEALTH</b>  |
| <b>COURSE CODE</b>    | <b>:</b> | <b>LH 305</b>                     |
| <b>TIME ALLOWED</b>   | <b>:</b> | <b>TWO (2) HOURS</b>              |
| <b>TOTAL MARKS</b>    | <b>:</b> | <b>75</b>                         |
| <b>INSTRUCTIONS</b>   | <b>:</b> | <b>ANSWER ANY THREE QUESTIONS</b> |

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

### Question 1

A, a patient approaches Y, a doctor with an undisclosed illness and requests treatment. Y examines A and makes a diagnosis. Thereafter Y treats A until she recovers. However, A has not yet paid Y his fees.

- (a) Is there a contract between A and Y? [4 marks]
- (b) If there is, what type of rights are created by such a contract? [2 marks]
- (c) Discuss the rights and duties which each party has in respect of the other. [6 marks]
- (d) What remedy does Y have against A? [5 marks]
- (e) If A were to allege that Y has been negligent, who bears the onus to prove negligence, how may it be proved, and what is the standard of proof applicable? [8 marks]

[Total marks=25]

### Question 2

Generally, a patient must consent to treatment or operation. What are the requirements for consent? [25 marks]

### Question 3

For a patient to succeed in terms of the Aquilian action six (6) elements must be proved. Discuss those elements. [25 marks]

### Question 4

- (a) What is vicarious liability? [15 marks]
- (b) If a medical practitioner has been negligent, a patient may suffer patrimonial loss. What is meant by patrimonial loss? [10 marks]

[Total marks=25]