

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2006

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| TITLE OF PAPER | : | ASPECTS OF LAW AND HEALTH |
| COURSE CODE | : | LH 305 |
| TIME ALLOWED | : | TWO (2) HOURS |
| INSTRUCTIONS | : | ANSWER QUESTION 1 WHICH IS <u>COMPULSORY</u> AND ANY OTHER TWO (2) QUESTIONS. |
| TOTAL MARKS | : | 100 |

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN
GRANTED BY THE INVIGILATOR.**

Question 1 (Compulsory)

York is a partially blind young man of 27 years of age. He goes to Dr Q for an eye operation in pursuit of crystal clear vision. Dr Q gives him all the necessary information *including that such operations do not always work and that there are less risky alternatives*. In particular, he tells York that this would be a very risky operation for him due to his blood type and that his eyesight might deteriorate as a result of the operation. Nevertheless, York indicates his willingness to undergo the operation and accordingly signs the consent form.

Dr Q does the operation and York gains crystal clear vision after the eyes have healed. About six (6) months later, York's eyesight gradually deteriorates. Eventually, he becomes partially blind, but is in a worse condition than he was before the operation by Dr Q.

York indicates to Dr Q that he will file legal proceedings against him and the hospital for this. The doctor says he has a defence which he will raise successfully in court.

- (a) What defence may Dr Q raise? [10 marks]
- (b) What should Dr Q prove in order to succeed in his defence? [30 marks]
- [Total marks: 40]

Question 2

- (a) What is negligence? [7 marks]
- (b) What is concurrent liability? [3 marks]
- (c) How are rights classified? [8 marks]
- (d) How may a patient prove that a medical practitioner has been negligent? [12 marks]
- [Total marks: 30]

Question 3

A is a young lady of 25 years of age. She is married to B out of community of property. She goes to Dr S, a plastic surgeon to have an operation for the reduction of her nose. Dr S agrees to do the operation. Before Dr S does a series of tests on A including blood tests, B confronts him. B threatens Dr S with legal action if he does the operation on A without his (B's) consent. He also tells Dr S that he (B) wants to know the HIV status of A which he (Dr S) would have determined after having done the blood tests on A.

- (a) What is your legal opinion regarding B's threats against Dr S? [5 marks]
- (b) After having carried out the blood tests on A, should Dr S tell B of A's HIV status?
[18 marks]
- (c) If Dr S were to decide not to do the operation would A have any redress?
[7 marks]
[Total marks: 30]

Question 4

- (a) What is vicarious liability? [10 marks]
- (b) What is contractual capacity? [5 marks]
- (c) Distinguish between *damage* and *damages* in delictual actions. [5 marks]
- (d) Under what circumstances may a medical practitioner administer treatment on a patient without that patient's consent?
[10 marks]
[Total marks: 30]

Question 5

A plaintiff must prove six (6) elements in order to succeed in terms of the Aquilian Action. Discuss. [30 marks]