

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2007

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

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GRANTED BY THE INVIGILATOR.**

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Question 1 (Compulsory)

P is a married lady of 30 years of age. Q who is her husband is a very close friend of Dr R. P falls seriously sick and Q takes her to Dr R for medical attention. Dr R discovers that P has a lump in her abdomen and must operate on her immediately to remove it. However, before the operation Dr R must do tests on P's blood to determine her blood type and also her HIV status. Dr R discovers that P has HIV. Nevertheless he does the operation successfully and P fully recovers. Q presented to Dr R his medical aid card which covers both Q and P in lieu of cash as payment.

(a) Dr R says he has not yet been paid for the operation. Does he have any right against P? (10 marks)

(b) If Dr R had refused to conduct the operation due to P's HIV status, would P have had any redress against Dr R? (10 marks)

(c) Having done the HIV test on P and having obtained a positive result, is Dr R at liberty to tell his friend Q of the result? (20 marks)

(Total marks= 40)

Question 2

A is a young man of 24 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. According to Dr Dlamini's diagnosis A requires an operation otherwise his condition will gradually worsen after a few days. Dr Dlamini does the operation there and then without telling A of the diagnosis and A's without consent.

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(a) What should Dr Dlamini have done before operating on A? (20 marks)

(b) Would A's consent be sufficient if he was a 19 year old young man?
(4 marks)

(c) Describe the rights and duties of each party in relation to the other in (a) above.
(6 marks)
(Total marks= 30)

Question 3

E is a young lady of 26 years of age. She is married to F in community of property. She is pregnant and decides to approach Dr G for purposes of having an abortion carried out on her. Dr G agrees to do the abortion; he makes an assessment of her and then informs E that she will never be able to have children again after the abortion. G signs the consent form and the abortion is then carried out by Dr G.

Two (2) months after the abortion is carried out E experiences very serious complications and she has to be flown to South Africa for specialised medical attention. She survives and then decides to sue Dr G for breach of contract.

(a) Can E sue Dr G successfully? (25 marks)

(b) Has Dr G done anything wrong? (5 marks)

(Total marks= 30)

Question 4

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

(b) What is vicarious liability? (10 marks)

(c) How are rights classified? (10 marks)

(Total marks= 30)

Question 5

(a) Distinguish between a civil case and a criminal case. (10 marks)

(b) How may a patient prove that a medical practitioner has been negligent? (10 marks)

(c) Under what circumstances may a medical practitioner administer treatment or conduct an operation on a patient without that patient's consent? (10 marks)

(Total marks= 30)

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