

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2010

TITLE OF PAPER: ASPECTS OF LAW AND HEALTH

COURSE CODE: LH305

TIME ALLOWE: 3 HOURS

**INSTRUCTIONS: (1) ANSWER QUESTION ONE (1) WHICH
IS COMPULSORY AND ANY OTHER TWO (2)
QUESTIONS OF YOUR CHOICE.**

**(2) MARKS FOR QUESTIONS OR PARTS THEREOF ARE
INDICATED IN BRACKETS**

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

QUESTION 1

Mr. Maziya's will contains the following clause:

"My daughter Linda, inherits E50, 000 and her children who are alive at the date of my death, each inherits E20, 000."

Mr Maziya dies on 15th August 2006. Linda's third child, Lindo, is born on 15th May 2007. Linda has two other children, Lindz and Landy.

(i) Who will inherit from Mr Maziya? [20 marks]

(ii) What would the position have been if Lindo died while his mother was giving birth to him?

[5 marks]

TOTAL: [25 marks]

QUESTION 2

In the case of *Schloendorff v Society of New York Hospital 211 NY 125 (1914)*, Justice Cardozo made the following statement with regards to every patient's right to consent to treatment.

"Every human being of adult years and sound mind has the right to determine what shall be done with his body and a surgeon who performs an operation without his patients consent commits an assault for which he is liable in damages."

(a) Discuss the requirements for consent to treatment? [15 marks]

(b) Discuss briefly the three (3) exceptions to Justice Cardozo's statement.

[10 marks]

Total: [25 marks]

QUESTION 3

Mrs Xaba has been married to Professor Xaba without an antenuptial contract for the past (4) years. Mrs xaba has no children from the marriage yet. She occasionally suffers from a swollen uterus, for which she has been constantly seeing a doctor for treatment. Her doctor has now advised her to undergo an operation wherein her uterus will be removed and replaced with an artificial one. Mrs Xaba has freely and voluntarily given the doctor her consent to proceed with the operation and it is due in a week's time. All along Professor Xaba has been kept completely blank about all these developments and somehow he has learnt about what has been going on behind the scenes. He wants to stop the operation and when he confronts the doctor about his intentions, the doctor tells him frankly that with his patient's consent no one can intervene.

(a) Can Professor Xaba stop this operation on his wife from going ahead? If so, on what grounds? [15 marks]

(b) Does Professor Xaba have any legal basis to compel the doctor to disclose the diagnosis of his wife to him?

Total: [25 marks]

QUESTION 4

Lord Denning in the case of *Hucks v Cole (1968) 118 NLJ 469* said the following:

"A charge of professional negligence against a medical practitioner is serious ...it affects his professional status and reputation. The burden of proof was correspondingly greater. With the best willing the world, things sometimes went amiss in surgical operations or medical treatment. A doctor was not to be held negligent simply because something went wrong ... he was not liable for taking one choice out of two or favouring one school rather than another..."

(a) What is the test for medical negligence? [15 marks]

(b) What are the tools used to prove negligence? [10 marks]

Total: [25 marks]

QUESTION 5

A Medical practitioner may be confronted with a particularly delicate situation where the patient's condition, including her/his chances of recovery, could be prejudiced by revealing the full extent of her/his condition.

Is the Medical practitioner obliged to divulge to the patient that she/he is suffering from a chronic and almost incurable disease and by so doing endanger the healing process? Or is she/he entitled for therapeutic reasons to withhold the diagnosis of such a serious disease from the patient?

[25 marks]

QUESTION 6

Due to the complexity and inherent dangers surrounding the performance of an operation, it is inevitable that errors may sometimes occur despite the exercise of reasonable care and skill by the medical practitioner. The mere setting of a complication during an operation does not therefore justify the automatic inference of negligence. However, there are errors which always virtually point to negligence on the part of the medical practitioner.

Briefly discuss the four (4) instances from which a medical practitioner's liability for operations can emanate.

[25marks]