

UNIVERSITY OF SWAZILAND

FACULTY OF HEALTH SCIENCES

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2012

TITLE OF PAPER: ASPECTS OF LAW FOR HEALTH PRACTICE

COURSE CODE: LH305

TIME ALLOWED: 3 HOURS

INSTRUCTIONS: (1) ANSWER ALL THREE (3) QUESTIONS

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

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GRANTED BY THE INVIGILATOR**

Question 1

Mrs Kamalandwe through her Last Will and Testament bequeath a 5 bedroom house situated at Beverly Hills in Mbabane to Nonzuko, her only daughter. The bequest to Nonzuko is subject to the condition that she must within a year after the death of the testator give birth to a child. Mrs Kamalandwe subsequently passed on and Nonzuko was 22 years of age when this happened. Within one year of her mother's death, Nonzuko did indeed give birth to a child, however, the child died during the birth process, as her mother was undergoing a caesarean section to extract the child.

- a) In their chronological order, what are the principal requirements for the application of the *nasciturus* fiction?

[15 marks]

- b) Does the *nasciturus* fiction apply in this case? If so, how?

[5 marks]

- c) Will Nonzuko successfully lay a claim to the inheritance in this case?

[15 marks]

- d) Assuming that whilst still pregnant, Nonzuko was involved in a car accident which was by the sole negligence of the other driver, and assuming further that the child was eventually

born and lived but was diagnosed with cerebral paralysis and brain damage as a result of the accident. Can Nonzuko pursue a claim for damages on behalf of her child as against the other driver on the basis of the *nasciturus* fiction?

[15 marks]

TOTAL: [50 marks]

Question 2

Bhekisisa Mdziniso is a young man of 19 years of age. He feels unwell and decides to go to hospital for medical attention. At the hospital Dr Nadgee attends to him and does a check up on him. In his diagnoses, Dr Nadgee, determines that Bhekisisa requires an operation immediately otherwise his condition will worsen after a few a days. Dr Nadgee does the operation instantly without telling Bhekisisa of the diagnosis and seeking his consent.

- a) Is Dr Nadgee guilty of any unethical professional conduct?

[10 marks]

- b) Would Bhekisisa's consent be sufficient considering that he was only a 19 year-old young man?

[5 marks]

(c) List the requirements for consent to treatment.

[10 marks]

TOTAL: [25 marks]

Question 3

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

Dr Futhi does the operation and Mcolisi gains a crystal clear vision after his eyes have healed. About six (6) months later, Mcolisi's eye sight gradually deteriorated. Eventually, he becomes partially blind, but in a worse condition than he was before the operation by Dr Futhi.

Mcolisi has now instituted legal proceedings against Dr Futhi for his lost eye sight.

What would Dr Futhi need to prove in order to succeed in his defence?

[25 Marks]