

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2009

TITLE OF PAPER: ASPECTS OF LAW AND HEALTH

COURSE CODE: LH305

TIME ALLOWED: 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

Mrs Adibo has been married without an antenuptial contract to her husband for the past two years. She has no children from the marriage yet. She occasionally suffers from pains in her abdomen, hence she went to see a doctor for advise and treatment. Dr Mandla advised her that she would need an operation for this treatment and further informed her that although the operation was likely to bring the pains in her abdomen to an end, unfortunately she may from time to time experience difficulties when having sexual intercourse. Mrs Adibo nevertheless freely and voluntarily gave Dr Mandla her consent to proceed with the operation and the operation is due in two weeks time. Somehow Mr Adibo has learnt about this looming operation and when he confronts his wife about it, she is adamant that she is going ahead with it. He proceeds to Dr Mandla who also informs him that he has secured the necessary consent from his patient and will, as planned, proceed with the operation on its due date.

- (a) Can Mr Adibo stop this operation on his wife from going ahead? Whichever side you take, please provide a legal basis for your stance. (20)
- (b) What is the effect of withdrawal of consent by a patient? (5)

TOTAL: [25 MARKS]

QUESTION 2

- (a) What is vicarious liability in the context of a medical institution? (5)
- (b) Briefly discuss the two (2) requirements that must be met for vicarious liability to obtain. (10)

- (c) Dr Busenga operates a fully- fledged medical private practice trading as Busenga Medical Services. He is a specialist neurologist. Dr Busenga is occasionally contracted by the Mbabane Government Hospital whenever the institution has cases deserving his expertise. In the course of one of his many operations conducted at the hospital, things went horribly wrong resulting in a claim for damages against the hospital. Is the Mbabane Government Hospital vicariously liable for Dr Busenga's medical malpractice? (10)

TOTAL: [25 MARKS]

QUESTION 3

In any case where medical practitioners are alleged to have acted unlawfully, naturally you expect the alleged victims of their alleged unlawful conduct to file or institute claims for damages. When and if they do so, medical practitioners have to their disposal certain defences which may negate their alleged unlawful conduct.

Identity all the defences and discuss them fully.

[25 MARKS]

QUESTION 4

Medical practitioners and nurses respectively subscribe to the so-called Hippocratic Oath as well as the Florence Nightingale Pledge.

- (a) Analyse the basic essence of the two oaths. (10)
- (b) Discuss the circumstances which may go against their spirit. (15)

[25 MARKS]

QUESTION 5

Write short notes on the following:

- (a) The hierarchy of the Court's structure in Swaziland. (5)
- (b) A distinction between public and private law (5)
- (c) A distinction between a contract and a delict . (5)
- (d) An Act of Parliament and a Decree. (5)
- (e) In legal terms when does human life begin? (5)

TOTAL: [25 MARKS]