

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF HEALTH SCIENCES**  
**MAIN EXAMINATION PAPER, MAY 2011**

**TITLE OF PAPER** : **ASPECTS OF LAW FOR HEALTH PRACTICE**

**COURSE CODE** : **LH305**

**TIME ALLOWED** : **3 HOURS**

**INSTRUCTIONS** (1) ANSWER QUESTION ONE (1) WHICH  
IS COMPULSORY AND ANY  
OTHER THREE (3) QUESTION OF YOUR  
CHOICE  
(2) MARKS FOR QUESTIONS OR PARTS HEREOF  
INDICATED IN BRACKETS

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## **QUESTION 1**

Mr. Marios last will and testament contains the following clause:

"My daughter Angel inherits E100 000 and her children who are alive at the time of my death, each inherits E50 000.00".

Mr. Marios died on the 24<sup>th</sup> of March 2009. Angel's third child Naude was born on the 18<sup>th</sup> of January 2010. Angel has two other children, Meryl and Sheila.

(a) Who will inherit from Mr. Marios?

Explain your answer with reference to authority.

**(20 marks)**

(b) Below follows is a list of clauses from a testator's will. In each instance C was already conceived at the time of the testator's death, but only born alive after the testator's death. Indicate and briefly explain in which one of the following examples C would not be able to inherit:

(i) "I bequeath my estate to my children." At the time of his death, the testator had two children, A and B, and his wife was expecting a third child, C.

(ii) "I bequeath my estate to my children A and B, and any other child (ren) that my wife expects at the time of my death." At the time of his death, the testator had two children, A and B and his wife was expecting a third child, C.

(iii) "I bequeath my estate to my children who are alive at the time of my death." At the time of his death, the testator had two children, A and B, and his wife was expecting a third child, C.

- (iv) "I bequeath my estate to my children A and B". At the time of his death, the testator had two children, A and B, and his wife was expecting a third child, C. **(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 patient's consent commits an assault for which he is liable in damages."*

(a) Discuss the requirements for consents to treatment. **(16 marks)**

(b) Discuss briefly the three (3) exceptions to consent to treatment.

**(9 marks)**

**Total: [25 marks]**

## **QUESTION 3**

Mrs. Moyo has been married to Professor Moyo without an ante-nuptial contract for the past (4) years. Mrs Moyo 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. Moyo 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 Moyo has been kept completely ignorant about all these developments but 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 Moyo stop this operation on his wife from going ahead? If so, on what grounds? **(15 marks)**
- (b) Does Professor Moyo have any legal basis to compel the doctor to disclose the diagnosis of his wife to him? **(10 marks)**

**Total: [25 marks]**

#### **QUESTION 4**

- (a) What is meant by vicarious liability? **(5marks)**
- (b) In the context of the medical profession, what are the two (2) requirements that must exist for a vicarious liability claim to succeed? **(10 marks)**
- (c) Dr Mnisi is employed as a full time neurologist at Mkhiva Clininc in Manzini. Occasionally he is contracted on a consultancy basis by RFM Hospital in Manzini to handle cases deserving his expertise. From one botched operation by Dr Mnisi at the RFM Hospital, the hospital is now facing a vicariously liability claim. Is the RFM Hospital vicariously liable for Dr. Mnisi's negligence? **(10 marks)**

**TOTAL: [25marks]**

### **QUESTION 5**

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 an 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.

**[25 marks]**

### **QUESTION 6**

- (a) What is the function of criminal law in our society? **(5 marks)**
- (b) What is the difference between public and private law? **(5 marks)**
- (c) Briefly explain the essence of the general rule pertaining to legal personality. **(5marks)**
- (d) Is there a difference between law and morality? If so, what is it? **(5 marks)**
- (e) In the context of contract law, what is meant by consensus? **(5marks)**

**[TOTAL: 25 marks]**