

UNIVERSITY OF SWAZILAND

FACULTY OF HEALTH SCIENCES

MAIN EXAMINATION PAPER, MAY 2018

TITLE OF PAPER : ASPECTS OF LAW FOR HEALTH PRACTICE

COURSE CODE : LH305

TIME ALLOWED : 3 HOURS

TOTAL MARKS : 100

INSTRUCTIONS : 1. ANSWER ANY FOUR QUESTIONS OF YOUR CHOICE.

2. MARKS FOR QUESTIONS OR PARTS OF A QUESTION ARE INDICATED IN BRACKETS.

3. EACH QUESTION CARRIES 25 MARKS.

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QUESTION 1

Write short notes on the following:

- (a) Distinction between law and morality (6 marks)
 - (b) Distinction between private law and public law (6 marks)
 - (c) Distinction between the *Aquilian* Action and *Actio Injuriarum* (5 marks)
 - (d) Distinction between the onus of proof in civil and criminal matters (8 marks)
- [Total: 25 marks]

QUESTION 2

- (a) The Nurses and Midwives Regulations, 1971, proscribes certain conducts by a nurse or midwife as improper and disgraceful. Fully discuss those conducts. (19 marks)
 - (b) Discuss what punishment may be imposed by the Swaziland Nursing Council after such a nurse or midwife has been found guilty of an improper and disgraceful conduct? (6 marks)
- [Total: 25 marks]

QUESTION 3

Referring to case law, discuss the essential elements of a valid contract. [25 marks]

QUESTION 4

Mr X is the father of a baby who at 16 weeks of age had been a patient in the Valley Hospital. Y, a nurse at the Valley Hospital, was left alone in the neonatal intensive care unit with the baby. The baby had a tracheostomy tube inserted on her for ventilation purposes. Nurse Y had been sitting at the corner of the small unit and texting on her phone. It happened that the tracheostomy tube inserted on the baby fell out of place, and the baby was distressed and lost consciousness. All of this happened in a space of one minute, the nurse missed all of it and by the time she became aware, the child was already unconscious. As a result, the baby suffered permanent brain damage and she was reduced to a vegetative state which she would remain in for the rest of her life. Mr X is now suing the hospital for the negligence of nurse Y.

(a) Discuss the test for medical negligence in civil and criminal cases. (10 marks)

(b) Making reference to decided cases and your answer in (a), critically evaluate if nurse Y is guilty of any negligent conduct. (15 marks)

[Total: 25 marks]

QUESTION 5

In the case of *Buthelezi v Ndaba* [2013] ZASCA 72, Brand JA referred to the case of *Van Wyk v Lewis* 1924 AD 348, as a *locus classicus* in medical practice and pointed that “the maxim *res ipsa loquitur* rarely find application in cases based on alleged medical negligence. The human body and its reaction to surgical intervention is far too complex for it to be said that because there was a complication, the surgeon must have been negligent in some respect”.

Do you agree with this statement? Substantiate your answer with reference to decided cases.

[25 marks]

TOTAL : 100 MARKS