



UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, FEBRUARY 2021

FACULTY OF HEALTH SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LH305

TITLE OF PAPER: ASPECTS OF LAW FOR HEALTH PRACTICE

TIME ALLOWED: 3 HOURS

Instructions

1. This paper consists of four (4) pages other than this cover page.
2. All questions are compulsory.
3. Answer all four questions in a chronological order.

Special Requirements

None

Additional Material (s)

None

*Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must **NOT** write anything else until the start of the examination period is announced.*

No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.

DO NOT turn examination paper over until instructed to do so.

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 24th of March 2009. Angel's third child Naude was born on the 18th 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 consent to treatment. [16 marks]

- (b) Discuss briefly the three (3) exceptions to consent to treatment. [9 marks]

Total: [25 marks]

Question 3

- (a) What is meant by vicarious liability? [5 marks]

- (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 Mkhwa Clinic 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 vicarious liability claim. Is the RFM Hospital vicariously liable for Dr. Mnisi's negligence? [10 marks]

Total: [25 marks]

Question 4

- (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? [5 marks]

Total: [25 marks]

Total possible marks: [100 marks]