

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2008

TITLE OF PAPER	:	ASPECTS OF LAW AND HEALTH
COURSE CODE	:	LH 305
TIME ALLOWED	:	TWO (2) HOURS
INSTRUCTIONS	:	ANSWER QUESTION 1 WHICH IS <u>COMPULSORY</u> AND ANY OTHER TWO (2) QUESTIONS.
TOTAL MARKS	:	100

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN
GRANTED BY THE INVIGILATOR.**

Question 1 (Compulsory)

(a) A patient may prove that a medical practitioner's actions have caused him or her harm or damage and as such entitling that patient to damages. To this end, a patient may prove amongst other things, loss of earning capacity and medical expenses incurred as a result of the medical practitioner's actions.

What else should a patient prove in order to succeed on a claim for damages in terms of the *Actio legis Aquiliae*? (25 marks)

(b) Under what circumstances may a medical practitioner be criminally liable? (12 marks)

(c) Is a medical practitioner entitled to remuneration when he or she has breached the contract between himself or herself and a patient? (3 marks)

[Total marks=40]

Question 2

(a) Discuss the two (2) defences known to the law any of which a medical practitioner may raise when accused of having acted unlawfully. (19 marks)

(b) What is breach of contract and what choice of remedies does the party who is not in breach have against the party in breach? (11 marks)

[Total marks=30]

Question 3

(a) What is an offer? (16 marks)

(b) How does an offer lapse? (14 marks)

[Total marks=30]

Question 4

(a) A medical practitioner's actions may give rise to contractual or delictual liability to his or her patient. On what basis is a medical practitioner contractually liable to his or her patient? (16 marks)

(b) X is a young man of 25 years of age. He feels unwell and decides to go to hospital for medical attention. Dr Dlamini does a check-up on him and discovers that X requires immediate treatment otherwise his condition will get worse. Dr Dlamini has the necessary medication and can properly administer it.

What should Dr Dlamini do? (14 marks)

[Total marks=30]

Question 5

Discuss negligent malpractice. (30 marks)