



*“Investing in Africa’s future”*

**COLLEGE OF HEALTH, AGRICULTURE AND NATURAL SCIENCES**

**SHA201: HEALTH LAW**

**END OF SECOND SEMESTER FINAL EXAMINATIONS**

**APRIL/MAY 2019**

**LECTURER: C. MUNGUMA**

**DURATION: 3 HRS**

---

### **INSTRUCTIONS**

Answer **QUESTION 1** from **Section A (COMPULSORY)**

Answer any **THREE** questions from **Section B**

Marks allocated to each question are indicated in brackets at the end of the question.

DO NOT repeat material.

### **SECTION A**

### **Question 1**

On the 2<sup>nd</sup> of February 2019, students from Herentals College who were coming from a sports function were involved in a traffic accident close to Flash Private Medical Hospital (FPMH). 15 of the students were seriously injured in the accident. Of the 15 seriously injured, 10 had head injuries while the other 5 had leg injuries. Passersby assisted the injured students by taking them to the nearby hospital which was FPMH. On receiving the injured students the medical superintendent advised the well-wishers who brought the injured that they would admit only 3 patients on the basis that the hospital did not have expertise to manage head injuries and that the injured students would not likely afford the private hospital fees.

Despite the protestations and requests by members of the public to admit the students, the hospital was adamant. As a result, the rest of the injured had to be ferried 70 kilometers away to the next available public hospital. The journey to the next hospital took 30 to 45 minutes of road travel. By the time of arrival at the public hospital, three of the head injury cases had died. Two of the injured developed complications because of delayed medical attention. The rest were treated successfully by the Public Hospital. The three admitted by the FPMH recovered fully in two months of treatment. The government is not happy with the conduct of FPMH and is contemplating laying criminal charges against the medical superintendent and the private hospital, while the parents of the deceased students want to sue the hospital for damages for its conduct in refusing to provide emergency medical treatment. You are required to advise on the following:

- a) Discuss whether there is justification to lay criminal charges against FPMH and its medical superintendent in the above case.

[6]

- b) Whether the private hospital breached any of its public duties in the above case. If so what were these?

[12]

- c) Whether FPMH can be liable for damages to the parents of the students refused admission at the hospital.

[7]

## SECTION B

### **Question 2**

- a) Compare and contrast the role and jurisdiction of:
  - i) The High Court and the Supreme court
  - ii) Administrative Court and the Labour Court. [15]
- b) Discuss the difference between:
  - i) Private law and public law?
  - ii) Substantive and procedural law? [10]

### **Question 3**

- a) With the aid of case law analyse the grounds of liability under the Aquilian action (*actio legis Aquiliae*) in Zimbabwean law. [18]
- b) “Under the law of Delict a person can be liable on the basis of negligence or intention”. Distinguish between intention and negligence. [7]

### **Question 4**

- a) Compare and contrast the common law and Statute as sources of law in Zimbabwe. In your analysis provide examples of some Health Law statutes in Zimbabwe [13]
- b) What are some of the defences that a professional who is sued in Delict may raise to repel the claim? [12]

### **Question 5**

- a) In our law when does liability for an omission arise? [8]
- b) Analyse the level of skill required for professionals (such as doctors, engineers and physiotherapists). [15]
- c) Which statute governs mental health related matters in Zimbabwe? [2]

### **Question 6**

- a) The Public Health Act is an important piece of legislation in Zimbabwe as it touches on a wide spectrum of public health issues that affect the public health wellbeing. Analyse the various public health areas that the statute regulates. [12]
- b) What do the principles of public health and practice in Public Health Act provide? [8]

- c) In your view does Local Authorities in Zimbabwe carry out their Public Health duties effectively? [5]

**Question 7**

- a) Identify and explain the major aspects of one Public safety piece of legislation in Zimbabwe. [10]
- b) What is the role of the Mental Health Review Board in Zimbabwe? [6]
- c) Jenny a medical practitioner operates on a child who is suffering from hernia. Jenny works 12 hours daily at the local general hospital. During the operation Jenny who is overworked and overwhelmed forgets a cotton swab inside the child's tummy. As a result of the oversight, the child has severe stomach pain for two weeks before the oversight is discovered by a specialist. By that time a serious infection had developed. As a result, the specialist carries out a successful operation to remove the cotton swab from the body of the child. The parents of the child approaches you with intent to sue Jenny the doctor for negligence. They among other things require compensation in the form of a reimbursement of all the fees they paid to the specialist. Explain whether the parents can have a case against the doctor.

[9]

**End of Paper**