



SCHOOL OF LAW

COURSE NAME: Medico-Legal Issues
COURSE NO: LA337
TIME ALLOWED: Three (3) hours
READING TIME: Ten (10) minutes
NUMBER OF PAGES: Two pages excluding this page
NUMBER OF QUESTIONS ON PAPER: Six (6)
NUMBER OF QUESTIONS TO BE ANSWERED: Five (5) only
MARK ALLOCATED FOR EACH QUESTION: Equal
TOTAL MARKS: 50

**MASTER
COPY**

MATERIALS PERMITTED IN EXAMINATION ROOM:

None

SPECIAL INSTRUCTIONS

1. ANSWER FIVE QUESTIONS ONLY
2. Read the questions and the instructions carefully.
3. All answers should be clearly written and should refer to relevant cases and/or statutory provisions.
4. Some questions have a number of parts in which case all parts are to be attempted.

Approved
[Signature]
12/1/06

Question 1 (10 marks)

Referring to the relevant case law, comment on the following issues as they relate to the law concerning consent to medical treatment:

- (a) A person consents to a particular form of anesthesia only after continued and persistent requests by the medical and nursing staff. (2 marks)
- (b) A patient is informed generally and in broad terms about a particular eye treatment and consents, but is not told of certain small risks that might cause serious damage. (2 marks)
- (c) A patient signed a consent form for the removal of his appendix. The form included the words "and I agree to any other treatment which might be considered necessary". During the operation the doctor found and removed a certain growth near the kidneys which, while not life-threatening would have required removal within the next six months. The removal has the effect that the patient is unable to consume alcoholic drinks. The patient has now objected to this additional treatment having been given. (3 marks)
- (d) A 17 year old girl needs to be given a general anesthetic in order to have a rotting tooth removed. The child's parents are away and cannot be located. (3 marks)

Question 2 (10 marks)

Dr Joseph works at a private health clinic in Port Vila. He has become aware of the fact that one of his patients has contracted a notifiable disease (namely AIDS). Dr Joseph is considering whether he should advise the wife of the patient as to the condition of her husband. What concerns the doctor most is that the patient has requested him not to make known to anyone the fact that he (the patient) has the disease; and the fact that the patient does not seem prepared to change his lifestyle or take precautions because of the disease. (5 marks)

The patient also has a concern, namely that the doctor has written adverse comments in the clinic's medical records as to how he contracted the disease – namely by having an affair while visiting PNG. The patient wishes to access his medical records to see what in fact has been written. (5 marks)

Advise Dr Joseph in relation to the law on each of these issues supporting your advice by reference to relevant authorities.

Question 3 (10 marks)

"There is a fundamental difference between, on the one hand, diagnosis and treatment and on the other hand, the provision of advice or information to a patient". (Per Mason, CJ Brennan, Dawson, Toohey and McHugh JJ in *Rogers v Whitaker* (1992) 175 CLR 479)

Discuss this statement in terms of the duty of care owed to a patient by a doctor.

Question 4 (10 marks)

- (a) In what circumstances will taking a patient off a life support system NOT amount to an unlawful killing such as the crime of failing to provide the necessities of life? Support your answers by reference to relevant authorities (5 marks)

(b) What is meant by palliative care and how did the English courts distinguish between the care provided by Dr Adams in *R v Adams* and the care provided by Dr Cox in *R v Cox*? (5 marks)

Question 5 (10 marks)

- (a) What is meant by a "taking" source and a "giving" source in respect of organ and tissue donation? (3 marks)
- (b) What is the difference between the 'common law definition of death' and 'brain death' and why is the distinction important so far as the transplantation of organs is concerned? (3 marks)
- (c) "The harvesting of tissue or organs from deceased persons raises the immediate question of whether the law recognizes any property rights in a corpse or the tissue or organs removed from a corpse." (4 marks)

Discuss

Question 6 (10 marks)

In the case of *State v Tabua* [1992] FJCA 17 (27th August 1992) the court noted:

"The respondent was charged on two counts under s.172 of the Penal Code Cap 17 that, with intent to procure the miscarriage of a woman, he unlawfully used instruments. He pleaded not guilty and following a trial, he was acquitted on both counts. The Director of Public Prosecutions now appeals against those acquittals upon matters of law.

Section 172 provides:

Any person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever, is guilty of a felony, and is liable to imprisonment for fourteen years.

.....

In his summing-up the Judge directed the Assessors that if in each case the respondent formed an opinion, based on reasonable grounds, and with adequate knowledge available to him, that the probable consequence of the continuance of the pregnancy would be to make the woman a physical or mental wreck then he would not have acted unlawfully in procuring a miscarriage. In giving this direction the Judge said that this interpretation of the law of Fiji was derived from the English cases."

Discuss the legal interpretation of s.172 by reference to relevant English, Australian and New Zealand cases.

END OF PAPER