



SCHOOL OF LAW

COURSE NAME:	Medico-Legal Issues
COURSE NO:	LA 337
TIME ALLOWED:	Three (3) hours
READING TIME:	Ten (10) minutes
NUMBER OF PAGES:	Six (6) including this page
NUMBER OF QUESTIONS ON PAPER:	Five (5)
NUMBER OF QUESTIONS TO BE ANSWERED:	Five (5)
MARK ALLOCATED FOR EACH QUESTION:	Question 1: ten (10) marks Question 2: ten (10) marks Question 3: ten (10) marks Question 4: ten (10) marks Question 5: ten (10) marks
TOTAL MARKS:	Fifty percent (50%) of result.

MATERIALS PERMITTED IN EXAMINATION ROOM:

None

SPECIAL INSTRUCTIONS

1. You must complete questions 1, 2 & 3.
2. You must complete one (1) topic from Question Four (4) & one (1) topic from Question Five (5).
3. You must NOT complete more than one (1) topic from Question Four (4) & not more than one (1) topic from Question Five (5).
4. The examination is worth fifty (50) marks.
5. Read the questions and the instructions for each question CAREFULLY.
6. Do NOT re-write the question as part of your answer.

Approved.
J. Roper (HOS) 19/05/2007

LA 337 MEDICO-LEGAL ISSUES

SEMESTER ONE 2007

FINAL EXAMINATION

YOU MUST ANSWER QUESTIONS ONE, TWO AND THREE.

YOU MUST ANSWER ONLY ONE (1) TOPIC FROM QUESTIONS FOUR & FIVE.

Question One

[10 marks]

Sahara Desert is 24 years old and was born and brought up as a Muslim. Her parents separated when she was 10 years old, after which Sahara went to live with her mother. Both Sahara and her mother later became members of the Church of Divine Nature, fundamentalist brethren who fanatically reject the use or consumption of animals or animal products of any kind for any purpose whatsoever.

At 16 Sahara was diagnosed with a congenital heart condition that eventually required surgery. In January 2005, aged 22 and as part of preparation for the surgery, Sahara signed an advance directive refusing the administration of any drugs or treatment derived from animal based products during the course of her medical treatment. The directive also stipulated that revocation of the advance directive could only be done in writing. Corrective heart surgery was carried out in December 2005 without the use of animal based products.

Six months later Sahara was betrothed to be married to Saleem, a strict Muslim, on the condition that she reverted to being a Muslim. Sahara immediately stopped attending Church of Divine Nature meetings.

In December 2006 Sahara becomes seriously ill and is taken to hospital in an ambulance. At this time she tells her brother, who goes with her in the ambulance, that whatever happened she does not want to die. By the time Sahara reaches the hospital she is unconscious and requires urgent surgery that can only be carried out using anticoagulant drugs derived from fish eggs. Without the anticoagulants, the blood will not clot and Sahara will bleed to death. At the hospital her mother, who is still a practising member of the Church of Divine Nature, tells the doctors about the advance directive, which has not been revoked, and insists that they comply with it. Sahara's father, who is a devout Muslim, is furious and files an urgent application with the court for an order to allow emergency treatment including the anticoagulants.

Imagine you are the judge hearing this application. Write a judgment outlining the relevant legal issues and case law, as well as your final conclusion.

Question Two

[10 marks]

Betty Blue lives in Coral Atoll and has suffered from a chronic mental illness since she was 20. She has had many admissions to Rockpools Psychiatric Hospital both as a voluntary and involuntary patient. Usually her psychotic episodes respond to medication but Betty is reluctant to take the prescribed medication regularly as it makes her tired and lethargic, she is unable to think clearly and she puts on a lot of weight. Her condition has deteriorated over the years, has been less responsive to treatment and is complicated by an addiction to alcohol. Betty frequently suffers from bouts of severe depression and has attempted, unsuccessfully, on two occasions to take her own life.

After a serious relapse following the sudden death of her mother, Betty took an overdose of sedatives and anti depressants and was discovered several hours later by her neighbour who called an ambulance. Betty was transferred to hospital and remained in a coma for 3 months. She eventually regained consciousness but has suffered significant brain damage. This means she will be hospitalised and ventilator dependent for the rest of her life in addition to continuing to suffer from episodes of severe mental illness. However, most of the time she is still capable of understanding her condition and making decisions about treatment. At this time she is 38 years old.

Betty has no wish to continue to live in this way; in fact she had little will to live before she took the overdose. She asks her husband Basil if he will help her to die. Basil has agreed as long as the DPP agree not to charge him with assisting suicide, which is a criminal offence in Coral Atoll and carries a sentence of life imprisonment. The DPP will not agree and Basil, on Betty's behalf, comes to you for legal advice.

You should note that the Constitution of Coral Atoll contains a right to self-determination and freedom of expression.

What advice would you give Betty and Basil and what legal and ethical arguments would you present to the court supporting their application? [7 marks]

Would your advice be any different if Betty's doctor was seeking the court's permission to assist her suicide? [2 marks]

What legislation in **your country** currently covers this situation? [1 mark]

Question Three

[10 marks]

Frances Flowerpot is a single mother who lives with her 14 year old daughter, Freesia, in Port Paradise. When Frances was a teenager she had an abortion, after which she suffered guilt and severe depression for many years. She does not want her daughter to go through the same experience and wants to ensure that, if Freesia seeks medical advice on sexual matters while she is under the age of 16, Frances will be informed and consulted as her parent.

The Department of Youth Health in Port Paradise has published brochures and other material advising teenagers on sexual matters including contraception, sexually transmitted diseases and abortion. The Department has also issued guidelines for health clinic staff stating that teenagers under the age of 16 can be given confidential advice and treatment without their parents being notified in certain circumstances.

The age of majority in Port Paradise is 18.

Unbeknown to Frances, Freesia has already been to the Youth Health Clinic seeking a prescription for the 'morning after' pill as she fears she might become pregnant after several sexual encounters with Freddy Foxtrot, a singer in the local string band. In fact, preliminary tests indicate that Freesia is already four weeks pregnant. Freesia does not want to proceed with the pregnancy and is desperate that her mother not find out that she has been having sex with Freddy. Freesia is terrified that Frances' new boyfriend, Frankenstein, who frequently assaults Frances, will throw her out of the house or send her to boarding school.

Frances has seen the Departmental brochures and one morning, while driving through town, she sees Freesia leaving the Youth Health Clinic. When confronted, Freesia refuses to tell her mother why she was at the clinic. Frances then goes to the clinic and demands to speak to the staff about her daughter. None of the clinic staff will give her any information or provide access to Freesia's medical records without Freesia's consent.

Frances comes to you for legal advice and wants you to get a court order stating that the Department's guidelines are unlawful and that as a parent she has a right to be informed about the provision of any advice or treatment to her daughter on sexually related matters including access to her medical records.

What advice will you give Frances?

You should refer to relevant case law to support your advice and discuss all the significant legal and ethical issues relating to confidentiality and access to medical records.

Question Four

[10 marks]

You must select and complete ONE (1) topic from this list.

Do NOT answer any more than ONE (1) topic.

You must identify which topic you have chosen to answer.

- A. Describe the four (4) principles of health care ethics. [2 marks] Using at least two (2) of these principles, illustrate how a South Pacific country considering the legalisation of abortion might apply them in relation to some of the legal and ethical issues particularly relevant to the USP region. [8 marks]

OR

- B. What is the test for causation in relation to failure to advise in the context of medical negligence, as outlined in the Australian High Court decision of *Chappel v Hart*? Briefly outline the facts in this case. [5 marks] On the basis of this decision, do you think doctors should be under a duty to advise patients (a) about their particular levels of skill and competence and (b) that there may be more experienced practitioners who could perform the procedure the patient is about to undergo? [5 marks]

OR

- C. 'The McNaghten rule has been legitimised by statute in the Pacific and those same jurisdictions provide for the indefinite detention of the insane accused 'at the Governor's pleasure'.'
- Describe the McNaghten rule. [2 marks]
 - What are the legal implications for a person who is held 'at the Governor's pleasure'? [2 marks]
 - Discuss some of the arguments that have been put forward over the years either in support of or against the abolition of the insanity defence. Do you think the rule should be abolished in the Pacific region? Why / why not? [6 marks]

Question Five

[10 marks]

You must select and complete ONE (1) topic from this list.

Do NOT answer any more than ONE (1) topic.

You must identify which topic you have chosen to answer.

- A. Assume you have been asked to prepare the first draft of new surrogacy legislation for the Pacific region.
- a. What is the difference between altruistic surrogacy and commercial surrogacy? Would you recommend that either form of surrogacy be legalised? Why / why not? [5 marks]
 - b. Do you think the legislation should allow for the harvesting of sperm from a dead person for insemination in a woman whom the donor never knew and who would then bear his child? In answering this question you should canvass the substantive ethical issues that might arise from this scenario. [5 marks]

OR

- B.
- a. What is the difference between regenerative and non-regenerative tissue? [2 marks]
 - b. What is the current legal position both at common law and under statute in relation to the removal of body parts in your country? [2 marks]
 - c. Do you think that, in the future, children in your country should be allowed to donate tissue or organs? Discuss some of the ethical issues involved particularly in relation to the Pacific region and some of the protective measures that could be implemented if this course of action were to be considered. [6 marks]

THIS IS THE END OF THE PAPER