



SAMLA COURSE 1

FOUNDATIONS OF MEDICO-LEGAL PRACTICE

The South African Medico-legal Association (SAMLA) has, based on the determination of a need for advanced academic training in medico-legal practice, undertaken to design and present, in conjunction with the University of Cape Town, a course called Foundations of Medico-legal Practice.

This course is the first in a planned series.

Subjects

The course consists of six subjects:

- Subject 1: South African law applicable to personal injury litigation
- Subject 2: Ethical conduct in medico-legal practice
- Subject 3: Psychology and communication in medico-legal practice
- Subject 4: Logical reasoning
- Subject 5: Medical science applicable to medico-legal practice
- Subject 6: Other sciences applicable to medico-legal practice

Desired outcome

Ethical professionals who demonstrate competence in medico-legal practice.

Definition of terms

Ethical: Practitioners who, in addition to the ethical requirements of their respective disciplines, understand the additional ethical requirements of medico-legal practice, and commit to ethical practice in their own field and in the medico-legal field.

Professionals: Suitably qualified medical practitioners, psychologists, therapists, attorneys, advocates or judges.

Demonstrate: Prove to examiners through practical assignments and examinations.

Competence: Practitioners who, in addition to knowledge, understanding and experience in their respective disciplines, manifest:

- 1) Understanding of the purpose and role of expert witnesses in litigation
- 2) Logical reasoning skills
- 3) Understanding of the relevance of, and difference between:
 - a) Facts specific to a case
 - b) General scientific knowledge
 - c) Conclusions drawn by logical reasoning

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- d) Opinions
- 4) Knowledge of select portions of law that are relevant to personal injury claims and medical malpractice claims
- 5) Knowledge of select portions of medicine that are relevant to common cases involving personal injury claims and medical malpractice claims
- 6) Skills specific to their particular medico-legal roles, i.e.
 - a) Medical experts – investigation, report writing, expert minutes, expert evidence in respect of diagnosis, nexus, impairment, treatment and prognosis.
 - b) Testing experts – investigation, report writing, expert minutes, expert evidence in respect of previous functional status, current functional status, losses and disability.
 - c) Attorneys – investigation, referral to mediation, appointment of and interaction with necessary experts, settlement negotiation, pretrial preparation, procurement of expert minutes and litigation.
 - d) Advocates – pretrial evaluation of evidence, settlement negotiation, apply knowledge of medical methods and logical reasoning in leading evidence, cross examination and argument.
 - e) Judges – case management and certification of trial readiness, appropriate sanctions for default, appropriate use of assessors, keeping questions relevant, preventing abuse of time leading to part-heard matters and evaluation of expert evidence by logical reasoning.

SUBJECT 1: Foundations of medico-legal practice in civil litigation

Curriculum and objectives

By the time that the students have completed subject 1, the students would have had a working knowledge and an understanding of the following fields and concepts:

1. What constitutes a cause of action in South African law?
2. What constitutes medical negligence in South African law?
3. What are the different elements of a delict in South African law and, more particularly, what constitutes causation in South African law?
4. Understanding the RAF Amendment Act and Regulations, limitation of compensation for patrimonial and non-patrimonial damages and problems in practice.
5. What are the grounds of justification which may be raised as defences in a claim for medical negligence? (The difference between grounds of justification which exclude lawfulness and those grounds of justification which exclude fault.)
6. What are the general principles of evidence in South African law and what type of evidence is required to prove a claim in medical negligence?
7. The interaction which exists between a claim for medical negligence, other claims for personal injury and claims which might arise in the workplace.
8. What constitutes expert evidence and generally what type of expert evidence would be required to prove a claim for medical negligence?

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SUBJECT 2: Ethical conduct in medico-legal practice

Purpose and outcome

The purpose of this group of lectures is to enhance the motivation of all to want to be ethical, and to discuss the most important aspects of morality and ethics that are relevant to medico-legal practice. Ethical conduct is the bedrock of any professional practice. SAMLA emphasises the paramount importance of ethical conduct by all involved in medico-legal practice.

All professionals should commit to ethical conduct and should strive to maintain and enhance their ethical standards. In addition to the rich rewards of personal satisfaction, ethical conduct attracts respect and admiration. Ethical conduct also keeps the practitioner safe from adverse findings and from prosecution for negligent harm.

While there are authoritative publications on morality, legal ethics and medical ethics, the field of medico-legal ethics is less well documented. Expert witnesses are often faced with situations and ethical challenges for which they need to look to mentors for guidance, but for which there are no authoritative written guidelines.

The only legitimate reason for lawyers and expert witnesses to be paid for the provision of professional medico-legal services, is to assist the courts and ADR processes to reach fair and just adjudication or settlement of medical disputes. This is hampered by any form of unethical conduct, which at best leads to wasteful and unnecessarily costly litigation, and at worst to unfair and unjust outcomes. Additionally, that which is written about professional fees is often at odds with what occurs in practice. Practitioners would benefit by properly informed ethical reasoning in this regard.

The intention is that these lectures and ensuing discussions will form the foundation for future publication of SAMLA Ethical Guidelines for Medico-Legal Practice.

SUBJECT 3: Psychology and communication in medico-legal practice

The purpose is to make the professional aware of the impact of his or her deportment and behavioural preferences on his or her ability to present as an ethical and competent professional. Exposure to these lectures will help the professional understand individual psychological make-up, inherent motivations for behaviour, patterns of behaviour and communication, and the possible impact of those on an audience. It is intended that awareness will contribute to increased self-reflective and introspective behaviour in order to enhance competence.

In addition, attention is also paid to matters relating to diversity, transformation and special circumstances.

The four lectures that will be presented are:

1. The psyche of the human being: The purpose of the lecture is to help students gain an understanding of human nature, including intrapsychic needs and wants.
2. Ego states and their behavioural manifestation: This lecture will help students develop an awareness of ego states from a transactional analysis perspective (in themselves, as well as in their clients, colleagues and other participants in the medico-legal process) and how they manifest and impact professional presentation in different settings. Specific examples will be discussed.
3. Communication skills: This lecture will focus on communication, encompassing speech and language, gestures and mannerisms, pragmatics of communication and communication styles in court.
4. Communication skills: Diversity and special circumstances: The purpose of this lecture is to make students aware of attributions that they may make regarding motivations for behaviour of professionals of different culture, race, gender, age, religion or who are living with physical disabilities.

SUBJECT 4: Logical reasoning

Purpose and overview

The purpose of the subject is to teach the importance of logical reasoning in medico-legal practice, to motivate practitioners to want to reason logically, and to improve the capacity of practitioners to reason logically and to recognise logical and illogical reasoning.

Logic is the science that evaluates arguments. This subject introduces principles of reasoning with an emphasis on deductive and inductive logic. It will provide delegates with experience in identifying a range of correct and incorrect argument forms. The subject will also include a treatment of fallacies.

The objective of the subject is to develop delegates' ability to analyse and critically evaluate arguments from a logical point of view. It will provide delegates with a basic understanding of such concepts as reasons, implication, validity, and fallacies. Students will learn the logical principles of deductive and inductive inferences and techniques of applying them for determining the validity of arguments. Elements of good reasoning from an informal perspective will also be covered.

Learning outcomes

By attending the subject lectures, delegates are expected to develop the ability to:

- Identify and explain the basic concepts, principles and other essential elements in logic and critical thinking – truth analysis, argument identification and classification
- Identify and explain the basic concepts, principles and other essential elements in inductive argument examination – basic inductive forms, argument assessment (strength and defeasibility)
- Identify and explain the basic concepts, principles and other essential elements in deductive argument examination – basic deductive forms, argument assessment (validity and soundness)
- Analyse how an argument goes wrong – formal and informal fallacy analysis

Learning activities

Learning activities will mainly include lectures and in-class group discussions, with the possibility of additional tutorials and short video clips. There will be two training sessions dealing with an introduction to logical reasoning, followed by two training sessions dealing with examples of logical- and illogical reasoning by experts, advocates and judges, one by an expert witness and one by a senior counsel. There will be a final exam.

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SUBJECT 5: Medical science applicable to medico-legal practice

Purpose and outcome

This subject assumes that students who are medical specialists are already adequately qualified in medicine and in their specialist disciplines. The purpose of this group of lectures is to teach the most important aspects of medical science, relevant to common and contentious injuries and impairments, to other experts, lawyers, etc. The level of teaching is intended to be digestible by other experts, lawyers, etc.

There are certain injuries and impairments that commonly form the subject matter of medico-legal assessments. Some of these commonly become the subject of medico-legal misunderstandings, disagreements and cross-examination.

The evidence of medical experts in relation to these conditions needs to be understood and interpreted by medical experts in other fields, experts in allied healthcare sciences, actuaries, attorneys, advocates, mediators and judges.

SUBJECT 6: Other sciences applicable to medico-legal practice

Objectives

Subject 6 is a natural progression of the aforementioned subjects and the knowledge gained in these. It culminates in a better understanding of the general role that expert witnesses play in medico-legal practice and of the specific duty of the healthcare professional and actuary, in the assessment and the evaluation of the impact that the personal injury has on the client's functional status.

Subject 6 also builds on the knowledge already gained by the students practicing as health-care professionals in the fields of occupational therapy, physiotherapy, speech therapy and psychology. The lectures aim to enhance their specialised knowledge of medico-legal practice, not only with regard to their chosen disciplines, but also in a holistic manner by deepening their understanding of the roles played by experts of disciplines other than their own. The last lecture on capitalised losses demonstrates the possible financial effect on the client who has sustained a personal injury affecting one or more of her or his functions due to altered conditions and circumstances.

The lecturers will also consider the application of their particular subject matter in mediation and in litigation.

Outcomes

The specific outcomes of Subject 6 are that:

1. Healthcare expert witnesses, by means of the assessment of previous functional status, current functional status, losses and disability, will acquire skills in respect of, and be capable of justifying, their diagnosis, assessment of impairment, recommendations for, and possible outcomes of, treatment, prediction of recovery and the relationships between these, after a personal injury has been sustained
2. Medical experts from other disciplines will be informed of the most common conditions, circumstances, misunderstandings and disagreements between the healthcare professionals in medico-legal practice and thereby acquire a deeper understanding of the multiple challenges facing the client
3. Legal professionals will become cognisant of the most common misunderstandings, circumstances, conditions and disagreements between the healthcare professionals in medico-legal practice, thereby recognising which factors may be of material importance in a specific case

The general outcome of subject 6 is ethical medical and legal professionals who are competent in medico-legal practice. In order to achieve this goal, the lectures described in this paper are to be supplemented by a discussion following the formal delivery of the lecture, and the students' knowledge and understanding will be assessed by means of assignments, written examinations, or multiple choice examinations.

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Provisional reading list

A comprehensive reading list will be provided for background reading and reference purposes. This provisional list will be expanded by lecturers from time to time.

It will not be necessary to obtain any of these publications in order to pass the exams, which will be based on the lecture notes and any other materials that will be provided by the lecturers. Extensive reading is, however, recommended for deepening of knowledge and strengthening of skills in a competitive and adversarial environment.

- Foundational Principles of South African Medical Law (Carstens and Pearmain)
- Expert Evidence in Clinical Negligence – A Practitioner’s Guide (Patrick Van Den Heever & Natalie Lawrenson)
- The Practitioner’s Guide to Medical Malpractice in South African Law (Ian Dutton)
- SAMLA 2015 Mock Trial Document (Adv Carlos Da Silva SC).
- Medical Law (Prof McQuoid-Mason)
- A-Z of Nursing Law (Prof McQuoid-Mason)
- Medico-Legal experience in Obstetrics and Gynaecology (Craig and Rösemann)
- Medico-Legal Reporting in Orthopaedic Trauma (Foy and Fagg)

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SUBJECT DETAILS

	SUBJECT	SUBJECT LEADER AND SUB-COMMITTEE	TOTALS
1	South African law applicable to personal injury litigation	Dr Henry Lerm Dr Herman Edeling Adv. John Mullins SC Dr Rita Kellerman Dr Lucille Butow-Dutoit Mrs Elzeth Jacobs	Lectures: 9 Hours: 22.5
2	Ethical conduct in medico-legal practice	Dr & Adv. Anton van den Bout Judge Neels Claassen Dr Henry Lerm Dr Willem Moore Dr Herman Edeling	Lectures: 4 Hours: 10
3	Psychology and communication in medico-legal practice	Mr Trevor Reynolds Adv. Natalie Lawrenson Dr Hanneltjie Edeling Adv. Albert Lamey	Lectures: 4 Hours: 10
4	Logical reasoning	Dr Herman Edeling Adv. Patrick van den Heever Dr Hanneltjie Edeling Adv. John Mullins SC Adv. Jimmy Kyriacou Dr David Klatzow	Lectures: 4 Hours: 10
5	Medical science applicable to medico-legal practice	Prof Charles Lautenbach Dr Frank Snyckers Dr Hans Enslin Dr Herman Edeling Adv. Albert Lamey	Lectures: 6 Hours: 15

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6	Other sciences applicable to medico-legal practice	Adv. Lucille Bütow-Dûtoit Mr Trevor Reynolds Dr Henry Lerm Dr Rita Kellerman Adv. Ian Dutton	Lectures: 6 Hours: 15
GRAND TOTALS:			Lectures: 33 Hours: 82.5

For more details on the individual lectures, please see the separate Provisional Timetable.

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SAMLA FACULTY

Appointed by the SAMLA Board on 27 May 2016

Faculty EXCO

Chairperson: CLAASSEN, Judge Neels – (Gauteng) Retired Judge

Course leader: EDELING, Dr Herman – (Gauteng) Neurosurgeon

Consultant: VAN DEN HEEVER, Adv./Prof Patrick – (Western Cape) Advocate

Convener: BÜTOW-DÛTOIT, Adv. Lucille – (Gauteng) Mediator

UCT Liaison Officer: VAN DEN BOUT, Dr/Adv. Anton – (Western Cape) Orthopaedic Surgeon

Faculty members

BECKER, Prof Hennie – (Gauteng) Surgeon

CARSTENS, Prof Pieter – (Gauteng) Professor of Criminal and Medical Law; UP Head of Department of Public Law

[DA SILVA SC, Adv. Carlos – (Gauteng) Advocate] RESIGNED

DUTTON, Adv. Ian – (KwaZulu Natal) Advocate

EDELING, Dr Hanneljje – (Gauteng) Psychologist

ENSLIN, Dr Hans – (Gauteng) Orthopaedic Surgeon

KELLERMAN, Prof Rita – (Gauteng) Industrial Psychologist

LAMEY, Adv. Albert – (Gauteng) Advocate

LAUTENBACH, Prof Charles – (Gauteng) Orthopaedic Surgeon

LAWRENSON, Adv. Natalie – (Western Cape) Advocate

LERM, Dr Henry – (Eastern Cape) Attorney

MULLINS SC, Adv. John – (Gauteng) Advocate

NELSON SC, Adv. Alan – (Western Cape) Advocate; Mediator Trainer*

REYNOLDS, Mr Trevor – (Gauteng) Neuropsychologist

SNYCKERS, Dr Frank – (Gauteng) Neurosurgeon

*Adv. Nelson was appointed in January 2017 to replace Adv. Da Silva.