**A brief brainstorm of a rough POSSIBLE plan semester 2, 2020**

**IMPORTANT**

**This is an example only, it may not be relevant to your scenario this year**

* This information is **only one way** a plan can be made for the essay, you will need to develop your own plan for YOUR essay considering **your scenario** **and the three legal issues you select**
* The headings are a guide only – think about how you can write your own headings but maintain terminology
* This brainstorm/plan provides **only some legal concepts as an example** – **it does not include all relevant legal concepts for the example issues of consent and negligence**.
* **You need to read** the Moodle material and the textbook to identify the relevant legal concepts and relevant legal sources for the three legal issues you choose.
* As you read through the Moodle material and the textbook- ask yourself questions to assist you to identify legal concepts and to apply the legal concepts to your case study – *some example questions have been provided to assist you to do this (highlighted in green)*

**Remember the typical structure of a paragraph for this essay** - define/describe the legal concept using relevant legal resources, textbook/s, books & periodical articles and apply/discuss the concept in relation to the scenario.

**INTRODUCTION**

Introduction to the entire essay

**LEGAL ISSUE 1 NEGLIGENCE**

Define negligence *What references might you use?*

*Wrongs Act 1958* (Vic) + *other legal documents presented in the lectures related to negligence? The text book? (Staunton & Chiarella, 2020)?*

4 elements

Plaintiff

**Duty of Care**

Define/describe duty of care *What references might you use?* case of *Donoghue v Stevenson* (1932)

*Is a test for proximity relevant to your scenario?,* *If so* - define with REF/s, apply to people in the case study/ *proximity between X and Y can be established*

*What actions were taken that could be forseen as causing potential harm? Is a test for foreseeability relevant to your scenario?* *If so* - define with REF/s, apply to people in the case study

establish duty of care for . . . / *Therefore X, X owe a duty of care to Mr N*

**Breach of Duty of Care**

Define/describe breach of duty of care - *What references might you use?* legal sources?/ text book?/ journal article/s? NMBA code of conduct?

*What care would a reasonable nurse provide?*

*What should the RNs & Dr have done / known? Whose conduct was below the standard of care?*

*Did the RN/Dr meet the standard of care? Who has breached the duty of care?*

*What legal concepts relate to breach of duty of care? – check the NUR5011 Moodle site*

*Is the Bolam test relevant?*

**Damage**

Define/describe injury or damage *What references might you use?*

*What type of damage is it?* State what damage the patient experienced caused by breach of duty of care

**Causation**

Define/describe causation *What references might you use?*

Caused by breach of duty of care

*Is a but for test relevant to your scenario?* - *but for RN X doing something Mr N would not have* . .

*Is remoteness relevant to your scenario*?

*Can causation be proved? What is the likelihood for causation to be proved? What defences may exist to an action of negligence?*

**LEGAL ISSUE 2 LAW OF CONSENT**

General description / definition of consent *What references might you use?* (text book, journals, legal sources?)

Types of consent

Legal validity– 4 elements of consent

**Freely and voluntarily given**  (you can use other headings this is only an example)

Define/describe *the first element is which means* . . . . *What references might you use?*

*What is voluntary consent? Was voluntary consent given? What should have occurred for voluntary consent to occur?*

**Must cover procedure / treatment**

Define/describe *What references might you use?*

*What procedures required consent in the case study?*

*Were the procedure/s undertaken within the scope of the consent?*

*What cases are relevant? Murray v Murchy (1949)??*

*What concepts relate to this element of consent? -Trespass? Battery?*

*When is consent required? Is it required for all procedures?*

*Is consent required for emergency situations? What was discussed in the lectures?*

**Must be informed**

Define/describe *What references might you use?*

*What must be disclosed to the patient? Does the patient need to understand this?*

*When is informed consent required?*

**Must have legal capacity**

Define/describe *What references might you use?*

Guardianship and Administration Act other legal REFs?

Does the Medical Treatment Planning and Decision Act relate to this case study? Will you discuss this under consent or in detail as a separate legal issue?

*What is legal capacity? What cases / principles might be relevant to this case study?*

*Who can make a decision for Mr N? Who can make a decision for each procedure?*

*Who has legal capacity in different situations? What situations are relevant to this case study?*

**LEGAL ISSUE 3**

**. . . .**

**CONCLUSION**

Conclusion to the entire essay

Separate page, title centred

**REFERENCES**