



University of Malawi
KAMUZU COLLEGE OF NURSING

BSc in Nursing and Midwifery

Module 18

ETH 208: ETHICS AND LAW

No of hours: 25 hours

Credits: 2.5

AUTHOR:

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ABBREVIATIONS

AIDS : Acquired Immune Deficiency Syndrome

HIV : Human Immune Virus

ART : Antiretroviral Therapy

OVERVIEW OF THE MODULE

The module provides the learner with the opportunity to develop and synthesize knowledge, skills and appropriate attitudes necessary for implementation of good nursing and midwifery practice. The relationship between the existing ethical theories, principles, ethical decision framework, legal issues and human rights will be explored. The module will also promote an in-depth understanding of moral issues and value clarifications in Nursing and Midwifery practice.

MODULE DESCRIPTION

This module builds on previous knowledge, skills and attitudes acquired from professionalism module and is designed to promote a deeper understanding of the ethical and legal issues that impart on nursing and midwifery practice.

HOW TO USE THIS MODULE

While using this module, the learner is expected to:

- (i) Read widely the content area under each unit utilizing books, journals and internet
- (ii) Consult widely on each topic including collaboration with colleagues and lecturers.
- (iii) Participate actively in class and seminar presentations
- (iv) Do all activities for each unit in the order in which they are presented
- (v) Keep notes from readings, presentations or activity work in a file as these are handy for revision

HOW THE MODULE FITS INTO THE PROGRAMME

The knowledge contained in this module shall be integrated /applied in nursing/midwifery practice, education, management, and research. Ethical and legal theories shall form the framework for clinical decision making. The philosophical and moral values will entrench the required professional conduct on the nurse/midwife.

OVERALL LEARNING OUTCOMES

At the end of the learning experiences the learner shall be able to:

- Discuss the concepts in ethics, legal issues and human rights.
- Analyse ethical theories, principles, rules and the legal frameworks.
- Discuss the significance of ethics, law and human rights in nursing and midwifery practice.
- Discuss the ethical decision making models in nursing and midwifery practice

ASSESSMENT CRITERIA

<u>Overall learning outcomes</u> <i>At the end of the learning experiences the learner shall be able to:</i>	<u>Assessment Criteria</u> <i>To ensure that the learner has acquired the intended learning outcomes, the learner shall be able to:</i>
<ul style="list-style-type: none">• Discuss the concepts in ethics,• Analyse ethical principles, theories, and rules, and the legal frameworks.• Discuss the significance of ethics, law and human rights in nursing and midwifery practice.• Discuss the ethical decision making models.	<ul style="list-style-type: none">• Explain the concepts in relation to ethics, laws and human rights issues in nursing/midwifery practice• Describe ethical legal frameworks that influence the operations of nursing/midwifery practice• Explain ethical decision making models• explain ethical and legal issues in nursing and midwifery practice

ASSESSMENT METHODS:

Group Project	40%
Examination	60%

TIME ALLOCATION

Module content	Lectures	Seminar Tutorial	Total Hours	Credit Hours
Ethics & Law	15	10	25	2.5

LEARNING CONTRACT

Students' Role

- ◆ You are responsible for your own meaningful learning
- ◆ You need to continuously monitor your progress and reflect on whether you are achieving the learning outcomes
- ◆ You are to carry out all activities stipulated in this module in a logical sequences
- ◆ Submit all assignment on time
- ◆ You are expected to attend all classes and actively participate in class seminars/discussions
- ◆ Actively participate in group projects

Lecturer's Role

- ◆ Provide students with modules containing expected learning outcomes, content areas, students' activities, assessment criteria and methods
- ◆ Provide guidance and support to achieve learning outcomes
- ◆ Monitor and evaluate performance of students' learning activities
- ◆ Facilitate students' discussion and seminars

I will complete this module within the specified period in order to gain the appropriate knowledge, skills and attitudes. I am aware that I have to achieve the stipulated outcomes in readiness for clinical placement and assessments.

Student Name:

Student's Signature :

Date:.....

MODULE CON TENT

UNIT 1: INTRODUCTION TO ETHICS

Learning Outcomes:

At the end of the learning experience the learners shall be able to:-

- Define the concepts ethics, morality, legal issues, ethical dilemmas and human rights.
- Discuss the different world views that have an influence on nursing and midwifery practice.
- Critically reflect on professional values as a base for ethical decision making in nursing and midwifery practice

Assessment Criteria

To ensure that the learner has acquired the intended learning outcomes, the learner shall be able to:

- Explain the following concepts: ethics, morality, human rights, ethical dilemmas and legal issues.
- Describe the different world views that influence the practice of nursing and midwifery
- Explain the basic moral principles and their relationship with ethical principles, theories, legal issues and human rights
- Explain the basic professional values that influence the practice of nursing

and midwifery practice.

UNIT CONTENT

INTRODUCTION

Nursing is informed caring for the wellbeing of others, how nurses view persons and define personhood sets the stage for who the clients of Nursing are and what constitutes the practice, environments and goals of nursing care. Nurse professionals are expected to be trustworthy, competent and ethical in their practical activities.

In nursing and midwifery, ethics refers to history of nursing, the ethical values and traditional norms which are important in the nursing profession as well as applicable legislation which regulate nursing. However, the philosophical foundations of nursing are therefore important frameworks for any nurse's personal world view. . The way in which nursing is practiced therefore is directly influenced by the views and philosophical convictions of the practitioner, the group and the profession as a whole.

DEFINITIONS OF CONCEPTS

Ethics is a branch of philosophy which investigates the principles governing human actions in terms of their goodness, rightness and wrongness. It is also concerned with making decisions about what we ought or ought not to do. Ethics is an extremely important branch of philosophy because it directs our attention to human morality and values.

Ethics (moral philosophy) is concerned with values which apply to personal actions, opinions and decisions i.e. moral values.

Activity

Make certain that you are familiar with the following concepts:

Ethics	Values
Ethical Principles	Professional values
Ethical issues	Meta-ethics
Ethical dilemmas	Descriptive ethics
Moral and morality	Normative ethics
Value judgments	Deontology
	Utilitarianism

Definition of concepts

TERM	DEFINITION
Absolutism	View that there is only one correct moral principle or code for which there are no exceptions
Altruism	Behavior motivated by concern for the well-being of others and that is intended to benefit others
Amoral	State or quality of being indifferent to morality
Categorical imperative	From Immanuel Kant's ethics, the view that for an act to be moral, it must be able to be applied to everyone
Cultural relativism	View that there is enormous variety in the mores and morals of people in different cultures and times, and no single cultural position is correct
Descriptive ethics	Focuses on what people actually do in given situations
Ethics	Specific area of study of morality that concentrates on human conduct and human values (from the Greek <i>ethos</i> , meaning character, habitual uses, customs)
Ethical/Moral egoism	When one considers only his or her own good or self-interest
Ethical/Moral nihilism	View that no universally valid or true moral principles exist
Ethical/Moral objectivism	View that universally valid and true moral principles exist
Ethical/Moral relativism	View that no universally valid or true moral principles exist but, rather, that all moral principles are valid relative to culture or individual choice
Ethical/Moral skepticism	View that we cannot know whether there are universally valid moral principles
Ethics of care	Focuses on those traits valued in intimate personal relationships, such as compassion, love, sympathy, and trust
Hedonism	View that good can be defined as that which is pleasurable
Meta-ethics	Deals with the extent to which moral judgments are reasonable or justifiable
Moral	Generally accepted as dealing with what is good and what is bad, what is right and what is wrong
Moral agent	Person capable of making distinctions between what is right and what is wrong
Moral philosophy	Branch of philosophy that examines beliefs and assumptions about the nature of certain human values
Moral thought	Individual cognitive evaluation of right and wrong, good and bad
Naturalism	View of moral judgment that regards ethics as dependent on human nature and psychology
Normative ethics	Examines individual rights and obligations as well as common good
Philosophy	Intense and critical examination of beliefs and assumptions (from the Greek words <i>philia</i> , meaning love or friendship, and <i>sophia</i> , meaning wisdom)
Practical ethics	Use of ethical theory and analysis to examine moral problems
Situational ethics	View that one's actions are governed entirely by the situation rather than by principles or rules
Subjectivism	View that moral principles are applicable to the agent alone, that what is right for one might not be right for another
Virtue ethics	Places emphasis on the agents or people who make choices and take actions

Adopted from Ellis & Hatley (2007)

THE FOUNDATIONS OF NURSING AND MIDWIFERY KNOWLEDGE

Ethos refers to the characteristics of a profession. These characteristics determine the nature of the profession and thus also provide the social and professional foundation of a profession.

Carper (1978) had described the 4 patterns of knowing that nurses have valued and used in practice and these are:

- Ethics: Is the component of moral knowledge in nursing
- Esthetics: Art of nursing
- Personal: Knowing in nursing
- Empirics: The science of nursing

PERSON'S WORLD VIEW

- Is the way in which the person thinks about life and the world, linked to the values which the person sets for himself within the context of this school of thought
- It's established during the process of socialization.
- A person's culture and accompanying influence determine his initial world view.

- These convictions/views indicate what people think about the world as well as their attitude towards life itself.
- A person's world view is a model or guideline whereby he/ she lives, it becomes a way of life and it forms the basis of one's belief/value system.

World view is always shared and is communal, in nursing, this forms the basis of the profession's professional philosophy. Every culture presents a coherent and meaningful pattern which is rooted in the dominant world view of that community. Specific culture presents a framework of orientation for the socialization of its members and a mutual influence exists.

NB

***The variables and factors which have a decisive influence on a person's world view and the development of a value system are the education and educational background to which the individual is subjected, customs and traditions in respect of health care, laws and legal institutions of the society which form values with regard to right and wrong, art, environmental concerns, the family, religious institutions and politics.**

When world view is analysed the following questions are asked, thus:

- How does the person regard the world?
- How does the person regard nursing?
- What is wrong with the world and/or people?
- What is the solution or prescription?

TYPES OF WORLD VIEW OR PHILOSOPHY

- **Humanism**

In humanism a person as an individual is at the center.

Existential/atheistic

- Believes in the absolute individual of the person
- Focus is on the individual, the importance and aims of the individual
- Absolute freedom of choice which the individual enjoys in life
- Individual makes own decisions about attitudes, convictions, objectives, values and way of life.
- Denies existence of God
- Life in itself has no meaning or purpose
- No godly laws regulating peoples existence
- People are lonely and ostracized and completely self supporting
- Only foundation for human values is human freedom – there is no justification for the choice and acceptance of values by people
- Diagnosis relates to people's despair – escape is an illusion because people are free.
- Awareness of person's freedom is painful and we try to avoid it.
- There are no prescribed guidelines except to condemn bad fault.
- A person can choose to avoid responsibility follows object to any standards or guidelines for nursing acts.
- *The insignificant value of people's existence will also have a negative effect on the nurse's approach to health*

- **Behaviourism**

- Focuses on person as an individual as well as on the external environment which is believed has manipulative effects on the person's behaviour.
- External environment is central to the determination of people's behaviour and heredity.
- Conditioning is central
- Science, observing and experimenting determines the truth and provides answers to questions about man and creation.
- There is no scientific basis for faith in God. It is believed that religion is used to influence social institutions with a view to manipulating people's behaviour and that cultural customs are applied or followed for manipulative purposes and survival.
- Values are pursued as a result of conditioning.
- Empirical study of human behaviour is only true way in which to find out the truth about people, with emphasis on analysis of cause and effect.
- Decision making by people is based on the causes of the problem and reaction or response of people, thus conditioning to survive.
- Person must determine or shape his own circumstances – change social

environment purposely so that human product can provide more acceptable specifications or guidelines for behaviour.

- Happier life is possible if a person exchanges freedom for determination and accomplishes conditioning of human behaviour.
- Forces person to conform to standards because manipulation and positive social engineering will provide a better life.
- In nursing, behaviourist feel safe when his behaviour is determined by rigid rules and regulations.
- If not conforming to regulations punishment results whether positive or negative re-enforcement.

Examples of theories of nursing reflecting different overviews:

- Orem's theory is based on Humanistic world view.
- Johnson's theory is based on behaviouristic nursing theory.
- According to Johnson as cited by "George" nursing has a primary goal that is it has to foster equilibrium within the individual nursing implementation. may focus on alterations of behaviour that is not supportive to maintaining equilibrium for the individual.
- Paterson and Zderad describe a humanistic theory derived from nursing practitioners' existential encounter in the health world. Theory becomes philosophical perspective that is derived from nurses' existential encounter in the health world.

- Sister Callista Roy: Regards a person as a system which adapts to the external environment by responding purposefully whilst utilizing coping mechanism. Adaptation model.
- **Socialism**

This view focuses on a society as a whole – the majority in community.

- The development of humankind and the world is based on the historical economic demands and is central to this theory.
- Person is shaped by her/his circumstances
- Certain social tendencies in the world and people structure and determine their own super structures with a resultant class struggle and striving towards capitalism.
- People are active, productive beings and produce life as they live it.
- No nursing theory for this.
- Principle of oneness is important also known as monism.
- A divinity is recognized but God is impersonal.
- Principle of pantheism is held i.e. that God is everything and is equalized with the powers and forces of nature and the universe.
- Person regarded as a spiritual being
- Self-actualization plays an important role in this view.
- Principle of reincarnation is acknowledged
- Motivation and training are at the center therefore various motivation courses are offered which teach participants to charge his awareness to maximize his potential. People are given the spiritual power to accomplish self-actualization.

BASIC MORAL PRINCIPLES

These are fundamental principles which guide our moral thinking. The five basic principles important to our moral lives are:

- the value of life principle
- the principle of goodness or rightness
- the principle of justice or fairness
- the principle of veracity, truth-telling or honesty
- the principle of autonomy, individual freedom.

The basic moral principles form a base for professional nursing practice. All nursing activities are to adhere to these.

Self-Activity

Reflect on the clinical experience you have had since 1st year until now. Did you base your actions on the above world views?

- *How do you intend to improve on this?*
- *Write summary of your reflections.*
- *Write short notes on the application of basic moral principles to professional life.*

VALUES

Values are ideals, beliefs, customs, modes of conduct, qualities or goals that are highly prized or preferred by individuals, groups or society. Omery (1989:500)

noted that the fundamental nature of values includes a pattern of a subjective, strongly motivation preference or disposition toward a person, object or idea that is more likely to be manifested in an affective situation, and more likely to be mobilized by the individual in a hierarchical order.

Important to note is that, values which are learned in both conscious and unconscious ways, become part of a person's make up. Values provide direction and meaning to life and a frame of reference for integrating, explaining and evaluating new experiences, thoughts and relationships.

Value Clarifications

For Nursing/midwifery to be responsive to the needs of the society, nursing and midwifery care must be based on human values and concern for the welfare of others. Therefore, practice, necessitates unreserved commitment to impartial and human values. Nursing as a profession is based on caring for others. Nursing/midwifery values are embodied in various codes, pledges and oaths.

Those entering the nursing profession often do not realize that their chosen sphere will involve difficult decisions which may call their own personal convictions and values in question. Identifying the values that determine one's personal life and professional role offers an opportunity to assess how personal and professional values, relate to one another. It is important for nurses to realize the strength of their personal values in shaping their professional values. Professional values are ultimately an expansion and reflection of one's personal values.

During the socialization process nurses are to adopt and discover the professional approach to nursing/midwifery in terms of values, attitudes and practical skills. The risk of conflict between these personal and professional values is at its highest during socialization process to the extent that a nurse is

supposed to adopt for him/herself the values of the profession. Nurses need the foundation provided by a well-defined philosophy of practice to enable them integrate and establish their values in health hierarchy. Once nurses have understood and accepted what the profession believes and values, they have a clear idea of what constitutes ethical practice.

Acquiring Values

Personal ethical behaviour comes from values held by an individual that develop over time. Many values are formally adopted by groups and are written in professional codes of ethics, religions doctrines, societal laws and statements of an organization's societal laws and statements of an organization's philosophy. Socialization and role modeling are other ways values are acquired, and lead to more subconscious learning. Some values stay with us for much of our lives.

Self-Activity

1. Think of three ideals or beliefs that you prize in nursing and midwifery. Try to trace each belief or ideal back to the earliest time in your life when you were aware of its importance or presence.
 - when and how you learn to view each belief or ideal as important
 - how have they changed or evolved over time
 - how prevalent are these beliefs or ideals among other people
 - what do you think of people who hold different beliefs or ideas
 - think of a time in your life when one of these beliefs or ideas has been challenged. How did you feel? How did you react?
2. Discuss how self-awareness has influenced your interactions with clients

in nursing/midwifery practice.

- How have you enhance your self-awareness skills in clinical settings.
- How do you rate your socialization process at KCN and how do you perceive KCN's institution values
- How do you rate your socialization process at KCN and how do you perceive KCN's institutional values.
- Discuss why values clarification is important to both personality and professionally

Because there is no arbitrary standard of right and wrong, the study of ethics helps each individual nurse identify her own moral positions and biases.

Morals are defined as the 'should and ought's' of life.

The principles of professional practice arise from several sources thus laws entrenching the rights of citizens, cultural heritage and ethics of the society of which the nurse forms a part. The philosophy of nursing as viewed by the majority of the members of the profession, the parameters of practice of other health professionals.

Respect for person as a total being, body, psychology and spirit, individuality, beliefs and traditions

- Privacy and right to confidentiality
- Right to self-determination
- Possessions
- Vulnerability in the absence of the necessary strength, will or

knowledge.

Respect for human life, that is:

- The value of life
- Beginning of life
- The vulnerability of life
- The quality of life
- The inviolability of life
- Commitment to accountable safe practice
- Compassionate involvement
- Personal integrity

UNIT 2: ETHICAL THEORIES AND PRINCIPLES

Learning Outcomes

At the end of the learning experience the learners shall be able to:

- Discuss the importance of ethical theories and principles in nursing and midwifery practice.
- Critically reflect on ethical theories as a base for ethical decision making in nursing and midwifery practice
- Discuss the relationship of ethical principles and ethical theories to nursing and midwifery practice.
- Discuss the differences in beliefs about the origin of ethical rules

Assessment Criteria

To ensure that the learners have acquired the intended learning outcomes, the learners shall be able to:

- Explain concepts ethical principles and theories
- Explain the significance of ethical principles and theories in nursing and midwifery practice
- Describe the relationship of ethical principles and theories to nursing and midwifery practice
- Analyse the different beliefs about origin of ethical rules.

UNIT CONTENT

INTRODUCTION

Ethical issues are commonly examined in terms of ethical principles and theories. Ethical principles are basic and obvious moral truths that guide deliberations and action. However major ethical theories utilize many of the same principles, though either the emphasis or meaning may be somewhat different in each. It is important for nurses to understand ethical principles and be able to apply them meaningfully and consistently. Nurse/midwives are to recognize ethical components of practice and engage in a structured ethical decision making process.

Important to note is that nurse/midwives must have willingness and courage to participate in work that is emotionally painful. Therefore, ethical problems deal with issues of great significance to those involved, as their very nature have no easy or obvious solutions. There is need to have a solid knowledge base that prepares us to identify circumstances that involve ethical components. The knowledge and insight of personal values, cultural norms, moral development, and ethical theories are necessary for practicing nurse/midwives. This requires nurse/midwives to be sensitive, patient and insightful.

Recognition of subtle clues that may indicate when a situation is laden with ethical components demands that we are attentive to all facets of the predicament. Ethical decision making models and theories offer a variety of methods for coming to a final conclusion. Willingness, courage, knowledge and moral sensitivity must all be present for us to participate effectively in ethical decision making.

Ethical principles and theories serve as guidelines to moral decision making and are important when professionals make moral judgments. They provide

guidelines to the practitioner when he or she has to decide on what should or should not be done in circumstance (Pera & van Tonder, 1996; 21).

The fundamental ethical principles are autonomy, beneficence, non-maleficence and justice. However, confidentiality, fidelity and veracity play vital roles in ethical considerations

KEY CONCEPTS

Autonomy	Beneficence	Boundary violations
Chemically impaired	Professional	Codes of ethics
Cultural relativism	Deontology	Distributive justice
Ethical dilemma	Ethics	Fidelity
Ideal observer theory	Justice	Morality/Morals
Natural law	Nonmaleficence	Paternalism
Right	Standard of best Interest	
social justice	Utilitarianism	Values
Values clarification	Values conflict	Veracity

Self-Activity

Read prescribed literature.

- *Analyze the significance of the ethical principles to nursing and midwifery practice.*
- *Critically reflect on the similarities of moral principles and ethical principles.*

- *Write short notes on how the reinforcement of moral principles and ethical principles in nurses' behavior might improve the nursing image.*
- *Discuss the relevance of the following ethical principles and ethical consideration:*
 - *Beneficence*
 - *Principle of non-maleficence*
 - *Principle of autonomy*
 - *Principle of justice*
 - *Principle of veracity*
 - *Principle of confidentiality*
 - *Principle of fidelity*
 -
- *Identify ways in which the concept of beneficence has shaped nursing and midwifery care provided to patients.*

ETHICAL THEORIES

Ethical theories are tools that provide the practitioner with theoretical framework, a point of departure in determining whether an action or a decision is morally sound (Mulaudzi, Mokoena and Troskie; 2001:19).

Sometimes in nursing, it is difficult to adhere to only one of the theories because each theory has areas of conflict with ethical standards. Bioethical standards and ethical theories are often difficult to bring together, because conflict arises between action and feelings.

Ethical theories are complete philosophical systems and their relevance to nursing is that caring has to be supplemented with competence and knowledge. However, a decision is only ethical if it is based on something firm and theories supply that firm ground.

There are two ethical theories and these are:

(a) **Utilitarianism/teleology theory / consequentialism**

The theory supports the idea that the greatest number of people should experience the most benefit. Utilitarianism is an important ethical philosophy that has its basis in naturalism.

In utilitarianism it cannot be explained why an individual's rights and autonomy are not considered. In solving problems a distinction is to be made between rule utilitarianism and act utilitarianism.

- Rule utilitarianism states that the patient's representative should adhere to certain rules that could bring about the greatest good for the greatest numbers of people.
- Act utilitarianism claims that the value of an action is determined by the goal, which means that the person making the decision should have a specific goal to achieve the greatest good for the greatest number of people.

Paternalism (Utilitarian theory)

- The principle of utility shows that government laws, policies, practices or regulations increase the general happiness, they are justified, even if they restrict the individuals freedom of choice or action because for utilitarianism such freedom has no absolute value i.e. if physician believes

can protect patients unnecessary suffering or can relieve pain by keeping him in ignorance, lying, placebos then these actions are morally legitimate.

Kents theory:

believes a person is a rational and autonomous agent, entitled to receive information relevant to making such decisions and is entitled to the truth, no matter how painful it might be (no placebos) considers confidentiality as absolute.

Ross's principles

recognize that everyone has a moral right to be treated as autonomous agent entitled to make decisions affecting own life. Everyone is entitled to the truth and to be educated in helpful ways.

- Confidentiality is promise keeping that has to be kept.

- Ross principles rule out paternalism, deception, and violations of confidence

Rauls theory of social and political morality

- No laws, practices or policies can legitimately violate the rights of individuals

Self-activity

Read prescribed literature on utilitarianism and critically reflect and analyze the following case studies:

CASE 1

1. *Steven has been diagnosed as suffering from AIDS. He does not want his family to know. His girlfriend is coming home from college. His family wants it to be a surprise for him as he is extremely weak. What is the best possible action.*

CASE 2

2. *Competition for scarce resources.*

Two adult patients with AIDS, Taona and Kondwani, both want to have ARVs and another experimental medication Aloe Vera. Taona has serious cardiac and kidney problems, however there is not enough of the medication for both of them. The nurse in-charge decides to give Kondwani ARVs and aloe vera as an experimental medication. Taona is denied the aloe vera because of his other health problems and that he has a poorer chance of living longer. Taona dies soon afterwards.

(b) Deontology (non-consequentialism) Theory

Defines right by considering intrinsic features of an action, largely independent of its consequences, thus the decision depends on the action itself.

Central to deontological thinking are the ideas of duty and the basic rightness or wrongness of actions.

- **Deontology** can be further divided into either act deontology or rule deontology.
 - **Act deontology**, in order to do the right thing, all the relevant data is gathered first and then a decision is made about what to do.
 - **Rule deontology** relates to principles that guide our actions. The rules have to be followed even if the circumstances change.

Self-Activity

From the discussions of the two theories it is clear that there could be far-reaching conflicts between bioethical standards/principles and the two theories. Therefore you should understand the importance of bioethical standards to ensure that you act professionally. The most important thing is that you should understand where your individual beliefs, values and ethics are based and then try to understand and allow for other people's beliefs, values and ethics.

CASE STUDY 1

An HIV positive man refuse to allow anyone to inform his wife about his HIV status. He also refuse to promise the nurse that he will practice safe sex with this wife. He states that he once tried using a condom but he felt nothing during the act and because of this, he does not like using condoms.

- (b) *Should this patient's autonomy be upheld in this case?*
- (c) *Is the right to autonomy of this patient infringing on the rights of his wife?*
- (d) *Do you, as a nurse, have a moral obligation to his wife as well? So what is your role?*
- (e) *How are you going to handle the situation?*

CASE STUDY 2

During community assessment in Mitundu village you come across a family with suspected genetic problems. In this family the mother is deaf and all the four children. The youngest child who is 5 years old has contractures in the right arm. History from mother indicates that the child was burnt when she was young and has no pain from this arm. After thorough discussions on the need to refer the child for release of contractures the family refuses and indicates this is normal since the child is growing well.

- (a) *Discuss how you as a nurse can convince this family to accept referral to cure hospital.*
- (b) *Do you as a nurse have a moral obligation to the girl?*
- (c) *Which moral principles should be used to help this family?*

ENRICHMENT ACTIVITY:

Read prescribed literature. Critically reflect on

- ***Teleological and deontological theories.***
- ***Moral principles and moral rules.***

VIRTUE ETHICS

Sometimes called character ethics, represents the idea that individuals' actions are based upon a certain degree of innate moral virtue. The concept of virtue ethics presents a challenge to deontological and utilitarian theories. These theories conceive of the demands of morality. Similarly, ethics provides guidelines to action which begins with the question, what morally ought we to do?. In contract virtue ethics does ask this question, instead it posits that the morality rests on the character of persons. Virtue is a character trait that is socially valued. A moral virtue is a character trait that is morally valued such as truthfulness, kindness or honesty. Important to note is that a person with moral virtue has both consistent moral action and a morally appropriate desire.

Self- Activity

Ariskoke's traits of a virtuous character provided three criteria;

- (1) Virtuous acts must be chosen for their own sake*
 - (2) Choice must proceed from a firm and unchangeable character*
 - (3) virtue is a disposition to choose the mean*
-
- a) List and describe the virtues that you feel are important for nurses.*
 - b) Two nursing students are discovered to have cheated on several assignments. After being questioned by the clinical instructor, both students deny having cheated, even though the evidence is irrefutable.*

- (i) *Discuss these students in terms of virtue ethics and Kantian ethics*
 - (ii) *Do these students have integrity?*
 - (iii) *Do these students have the character to become good nurses*
 - (iv) *How would you apply the categorical imperative?*
- c) ***Beauchamp & Childress propose that there are four focal virtues that are more pivotal than others in characterizing a virtuous person.***
 - (i) *Explain why good character is the cornerstone of good nursing and that the nurse with virtue will act according to principle*
 - (ii) *Analyze the four focal virtues of compassion, discernment, trustworthiness and integrity*
- d) *Discuss the **Aristotelian virtue** theory in nursing/midwifery ethics*
- e) *Discuss the virtue theory approach.*

UNIT 3: LEGAL ISSUES IN NURSING AND MIDWIFERY

Learning outcomes

At the end of the learning experience the learners shall be able to:

- Discuss legal trends in health, nursing and midwifery
- Explain law relating to professional nursing and midwifery practice
- Discuss instances in which nurses might be accused of breaches of public law.
- Discuss methods that nurses and midwives can use to limit liability

Assessment criteria

To ensure that learners have acquired the intended learning outcomes, learners shall be able to:

- Describe legal trends in health, nursing and midwifery professional practice.
- Discuss law relating to nursing and midwifery professional practice.
- Describe methods that nurses can use to limit liability
- Explain instances in which nurses might be accused of breaches of public law

UNIT CONTENT

INTRODUCTION

The law establishes rules that define our rights and obligations and sets penalties for people who violate them. In a civilized society a system of laws promotes order, protects the rights of citizens and provides the framework for a wide variety of relationships. The law has following basic functions in society thus;

- To describe what constraints may be applied to maintain rules and by whom they may be applied
- To furnish solutions to problems
- To redefine relationships between people and groups when circumstances of life change

The vulnerability of our communities places an ethical responsibility on the nurses to practice safely. In today's health care system where there is advanced technology, escalating health care costs, , social and economic pressures shortage of nurses and health care resources, increased disease burden due to HIV and AIDS, and other chronic conditions the professional nurse must be conversant with all legal issues that surround patient care.

Four different sources of law affect the practice of nursing and these are:

- Constitutional law
- Statutory/legislative law
- Administrative law
- Common law

However law can be divided into two different types thus public and private.

Public law defines a person's obligations in relation to the government and describes the various divisions of government and their powers. One important branch of public law is **criminal law**. Nurse/midwives can be accused of a variety of criminal offences, for example, nurse/midwife can be accused of directly injuring a patient either **intentionally or unintentionally**. Nurses can also be accused of crimes related to their actual relationship with the government like falsifying narcotic records, failure to renew licenses and fraudulent billing. Crimes are delineated according to seriousness as either felonies or

misdemeanors.

The principles of professional practice arise from several sources thus:

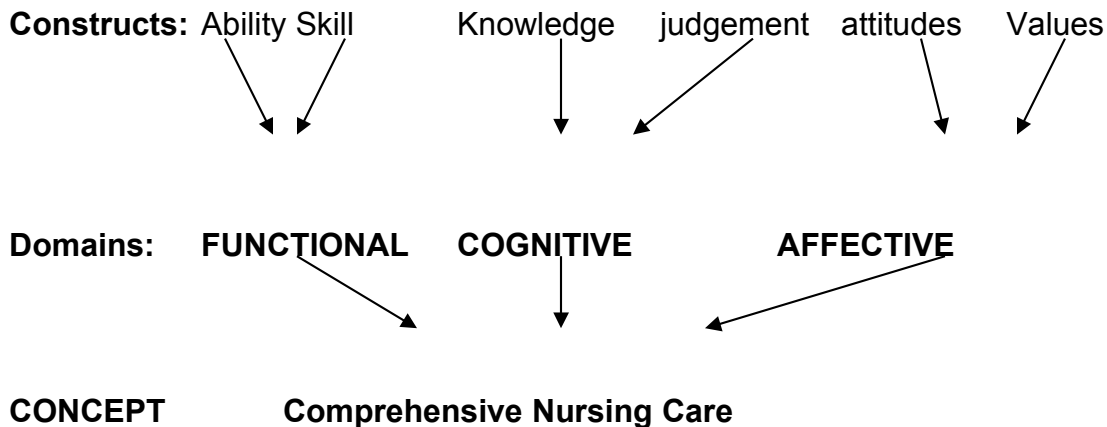
- Laws entrancing the rights of citizen
- Cultural heritage
- Ethics of society
- Philosophy of nursing
- Parameters of practice
- Central concepts of discipline thus person, environment, health, nursing

KEY TERMS		
Administrative ruling	Emancipated minors	Misdemeanor
Advance directive	Enacted law	Negligence
Assault	Ethics	Patient Self-Determination Act (PSDA)
Battery	Expert witness	Perjury
Civil law	False imprisonment	Plaintiff
Common law	Felony	Privileged communication
Consent	Fraud	Prudent professional
Constitutional law	Futile	Reckless endangerment
Crime	Guardian	Regulatory law (administrative)
Criminal law	Informed consent	Standard of care
Criminal negligence	Intentional tort	Standard of practice
Defendant	Judicial law (decisional or case law)	Statute
Deposition	Law	Statutory law
Directive to physicians	Lawsuit	Substitutionary decision-maker
Discovery	Liability	Testimony
Do not resuscitate (DNR) (No Code)	Living will	Tort
Durable power of attorney for health care	Malpractice	Witness to fact
	Mature minor	

Adopted from Ellis & Hartley (2007)

A professional climate builds trust, enhances communication and development of autonomy and accountability. Nurses assume a number of roles and sub roles to provide comprehensive care to clients with multiple disorders. These are functional, cognitive and affective domains utilizing skills, abilities, knowledge, judgment, attitudes and values to develop sets of appropriate nursing actions (see model).

NURSING CARE MODEL



LEGAL CONCEPTS

Law, refers to those man made rules which regulate human social conduct in a formally prescribed and legally binding manner.

Human beings are affected by various types of laws which determine man's behaviour and psychological motivation, regulate man's social conduct in a legally binding manner and determine and influence man's physical environment.

Laws which regulate human social conduct are derived from two basic sources. One source of law finds expression in formal legislative enactments referred to

as statutes when law is formally expressed in a statute it is referred to as statutory. The distinguishing features of statutory law is that it,

- Legislates human social conduct
- Is one of two basic kinds of law
- Derived from formal legislative enactments sources of law.

However, while all statutes are the result of formal legislative enactments, a statute enacted by the legislative body of one jurisdiction would have no legal effect outside that jurisdiction. Thus, the Nurses and Midwives Act No. 16 of 1975 of Malawi would not apply to nurses in Zimbabwe or Mozambique.

How does the common law differ from statutory law?

- **Common law** is not the result of a legislative enactment. However, statutory law and common law have the following features in common thus statutory law has to be enacted by a legislative body and only common law is derived from court decisions, nevertheless they both regulate social conduct.
- **The Nurses and Midwives Act** is an example of statutory law as it represents a specific legislative enactment.
- **The trial judge's ruling** is an example of common law, it lays down a legal principle which will be binding on other courts.
- **An act** which is expressly prohibited either by common law or by a specific statute is called crime.

Classification of law

Criminal law and **civil law** are two of the major classification of law.

Criminal law deals with offences against society as whole and criminal actions are accordingly brought by the appropriate local government authority.

Civil law deals with private legal rights and interests and the unsuccessful party in a civil action is usually required to pay money to the successful party.

Private Law

Also called civil law, determines a person's legal rights and obligations in many lands of activities that involve other people. There are six branches of private law thus:

- Contract and commercial law
- Tort law
- Property law
- Inheritance law
- Family law
- Corporation law

The branches of private law must be applicable to nursing practice are contract law and tort law.

Self-activity

- *Discuss the influence of public and private law to nurse/midwifery practice*

- *Discuss instances in which nurses can be charged with crimes of public law, even though acts were committed without malice in the process of giving nursing/midwifery care*
- *Discuss specific examples of unintentional torts of which nurses have been accused in Malawian clinical settings.*
- *Discuss areas of potential liability for nurse/midwife and the present health care delivery system*
- *How can you protect yourself from being accused of an unintentional tort.*
- *In what instances can nurses be charged with intentional torts, even though they follow a professional code of ethics*

CATEGORY OF CIVIL LAW

Law of Tort

A tort is a legal wrong committed by one person against the person or property of another. To compensate for such a private legal wrong, the law permits the Harmed person to bring a civil action against the wrongdoer to recover a sum of money. Civil law consists of many different categories of law. A tort may be either an intentional wrong i.e. assault, battery, false imprisonment, invasion of privacy or unintentional wrong i.e. negligence.

There are many types of torts and one that relates directly to nursing is negligence. Negligence law is a broad field of law which includes many types of negligent conduct in carrying out one's legal responsibilities to others. It embraces the area referred to as malpractice law.

Malpractice law is concerned with the negligent conduct of all professional persons.

Concept of Negligence

At **law** every person is always responsible for conducting himself in a reasonable and prudent manner, when a person fails to conduct himself in this requested manner and thereby does harm to another it is said he is legally negligent. The law characterizes a person who fails to act in a reasonable and prudent manner as being negligent.

Concept of Malpractice

Refers to the negligent acts of persons engaged in professions or occupations in which highly technical or professional skill are employed.

Negligence

Negligence is a general term embracing all negligent acts while malpractice is a specific term used in referring to negligent conduct in the rendering of professional services by a person with professional education and training.

A negligent act committed by a professional person constitutes malpractice only if it involves negligence in carrying out his professional duties.

Duty & breach of duty

When a person is held legally responsible for his negligent conduct, we say he is legally liable. A person held legally liable in a civil suit for harm caused by another is required to pay money damages to the latter.

When an Act of nursing malpractice occurs, the law holds the nurse legally liable

to the patient because of the particular legal relationship which exists between the nurse-patient relationships.

Personal Liability: is a rule which holds everyone personally liable for his tortuous conduct.

Doctrine of respondent superior

Doctrine of respondent superior: to a legal doctrine which holds an employer liable for the negligent acts of his employees which occur while carrying out his orders legal effect of the doctrine of respondent act superior creates liability on the part of an employer for the negligent acts of his employees.

Fundamental Principles of Law

- Principle of justice and fairness: Its aim is to create social order by protecting the rights of one party from infringement by the acts and omissions of another party.
- Fundamental principle of change in response to societal change. .
- Judgment contains a universal concept of what a reasonable and prudent person would do in similar circumstances.
- Every human being has rights and responsibilities.

The nurse has three dimensions of legal roles

- Professional role
- Private practice role
- Role of citizen

Self-Activity

DEFINE THE FOLLOWING LEGAL CONCEPTS

- *Constitutional law*
- *Public international law*
- *Private international law*
- *Civil law*
- *Common Law*
- *Crimes*
- *Delicts*

Disciplinary action or trials

The Council abides by:

- Concept of adversary system (argue without intervention)
- The concept of burden of proof - prosecuting party must prove his case because the accused is presumed innocent until proved guilty.
- Concept of producing witness
- Concept of rule of evidence ensures absolute fairness by ensuring evidence.

FUNDAMENTAL CONCEPTS INHERENT IN A NURSE/MIDWIFE ACT

The ethical code of the profession ensures that the application of the provisions of the Act is aimed at the well-being of the society. The core concepts in a Nurse Practice Act concern.

SELF ACTIVITY: Study the Nurse and Midwife Act No. 16 of 1995

- *Who is a nurse/midwife*
- *What must she know to be a nurse/midwife*
- *Where will she obtain this knowledge*
- *Who will ensure that the knowledge is of a level commensurate with public safety*
- *How will the public know she is a nurse/midwife*
- *How must she behave as a professional person*
- *How is she dealt with when she has committed a **misdemeanor***
- *How are non-nurses prohibited from practicing for gain*
- *How is the public protected against incompetence, unethical behaviour and exploitation at the hands of the nurse/midwife*
- *Who is placed in control of the profession in so far as the public well-being and the credibility of the qualifications and ethical code are concerned*
- *What body is in control of the implementation of the provisions of the Act*
- *How may it organize its affairs as the watch-dog of the public well-being*
- *What are its powers*
- *How do its regulations acquire the force of the law*

The Purpose of a Nurse/Midwife Act

Nursing Practice Acts usually contain broad statements of purpose that include the protection of life, the promotion of health and the prevention of illness. However, the fundamental purpose of a **Nursing Act** is to:

- Ensure societal approval of the nursing/midwifery profession by providing for the regulation of the profession by statutes with the aim of ensuring a competent and ethically controlled nursing and midwifery services to all citizens.
- Exclude all those who have not become or are not members of the profession in terms of the provisions of the Act from practicing for gain.
- Provide for the aspirations of the profession by providing for peer group control in the form of a prescribed statutory body
- Ensure that the nursing profession has a statutory relationship with other health professions so that orderly cooperation is possible.
- Provide for the nursing profession to contribute to the development of health professions so that orderly manner that will not only safeguard the public wellbeing, but will also enable the practitioner to acquire recognized qualifications which have value as marketable commodities, so enhancing the socio-economic status of the profession.

Fundamentals that form the framework of a profession in the Act

1. Nursing legislation:-

Set the professional practitioner apart from other citizens and place grave responsibilities on her. This is to ensure that the relationship of trust between patient and practitioner and other members of the health professions is

safeguarded. Ethical codes serve as guidelines to each member so that he may protect his own name and professional standing and also protect the well being of the public plus the name and image of the nursing profession. Protection of the society is the primary concern of all professional legislation and of all professional ethical codes.

2. The main reason for the existence of the nursing/midwifery profession is the society's needs for nursing care. Those who undertake to give nursing care have to make patient well-being their primary concern.
3. Every member of the profession, from the neophyte entering nursing school to the most senior member of the profession has a duty to protect and enhance the image of the profession. This image depends on the image projected by each member of the profession as this influences the image projected by each member of the profession~ to the public, other professions.

NB: According to Searle & Pera (1998:74) "A special interest group such as nursing cannot survive unless each individual behaves in accordance with the norms and requirements of the group. Individuals must gain a sense of identity with and of belonging to the specific group so as to entrench the moral rules and values of the group. This protects both the image of the profession and the well-being of the public."

POWERS OF THE NURSES/MIDWIVES ACT

Nursing practice Act authorizes a board to interpret and enforce the act. A board of nursing practice usually has both regulatory and ad judicatory power.

1. The regulatory power authorizes the Council to develop rules and

regulations for nursing licensure, nursing education and nursing practice.

2. The adjudicatory power authorizes the Council to investigate, hear and decide complaints that involve violations of the Act or the rules and regulations promulgated by the Council.

In most jurisdictions the board of nursing practice is responsible for:

- Determining the eligibility of the applicants for license
- Administration of examinations to applicants for license
- Issuing of certificates to qualified applicants
- Establishing re-licensure procedures
- Establishing minimum standards for approving educational programs that prepare a person for license
- Overseeing mandatory continuing education programs
- Investigating complaints against licenses and taking disciplinary action
- Promulgating rules that regulate nursing practice.

PROCESS IN THE ACT

Refers to the manner in which the Council carries out its regulatory and adjudicatory functions.

- **Rule-making process:-**

Determines the procedures that the Council for nurses must use in adopting, enforcing, amending and repealing its rules and regulations.

- **Adjudicatory process:-**

Determines scope of power to decide cases involving violations of the nurse/midwife Act. The nurse practice Act authorizes the board of nursing practice to discipline a nurse by reprimand, denial, suspension, or revocation of the nurse's licence. The Act also indicates the grounds for discipline.

- **Due process:-**

States the nursing license is constitutionally protected property and right and charge of violation is guaranteed due process in its investigation, hearing and decision.

- **Judicial review:-**

Rehearing or review of the Council's decision

Self-Activity

Critically reflect and summarizes the following:-

1. *What is meant by the following terms according to the Nurses Midwives Act*
 - a. *register*
 - b. *roll*
 - c. *enrolled nurse*
 - d. *registered nurse*
2. *Identify sections in the Act that provide for:*
 - a. *the control of education and training*

b. disciplinary control of the profession

c. acts or omissions in respect of which disciplinary action may be taken

3. *Definition of nursing practice*

4. *Standards for nursing education*

5. *Appropriate nursing functions*

6. *Domain of nursing practice*

7. *Scope of nursing's accountability*

8. *Principles of tort law*

- Right to reasonable standard of care

-Negligence and malpractice

-Consent and informed consent

-Assault

-False imprisonment

-Confidentiality

-Invasion of privacy- 4 kinds thus appropriation of a person's name or likeness, intrusion on a person's seclusion, public disclosure of private facts about a person, placing a person in a false light in the public eye.

-Defamation, slander, libel written defamatory statement.

-Nursing documentation, proving the standard of care, evaluating nurses notes for complete, accurate and timely account of the patients involvement and response to the nursing process.

Self-activity

(i) It is very important that nurses/midwives must familiarize themselves with the law and legal system as:

- the law authorizes and regulates nursing/midwifery practice
- the legal system scrutinizes nursing actions and commissions
- knowledge of legal principles is a necessary component of ethical decision making

(2) Discuss why the three reasons above require the nurse/midwife to understand the law in Malawian clinical settings.

Professional regulations is central to professionalism

There are two sides to professional regulation whilst the government has entrusted the profession to regulate itself by enabling legislation, various forms of professional regulation have to be known by nurse/midwives.

(3) Discuss legislation that influence the practice of nurse/midwives in Malawi.

- Discuss the need for the nursing profession to define its own scope of practice
- Explain the role of a professional council in the regulation of a profession.

You have taken a new position as a community health nurse. One of your patients is an elderly woman with a long history of diabetes who has a leg ulcer. Your role is to assess the patient in relationship to her diabetic management

and wound care, and teach as needed. While you are in the home, her husband tells you that he has been having pain in his knee and asks if you would examine it and tell him whether it is all right to use a heating pad on it, and whether he should take ibuprofen or some Tylenol.

- *Do you have a duty to help him?*
- *Why or why not?*
- *What will your response be?*
- *What legal issues are involved in this situation?*

If you advise him and your advice turns out to be incorrect, what legal action could he take?

Self-regulation is an important aspect of the professional status, as it defines framework within which the professionals practice. According to the international council of nurses, professional regulation is the way that order, consistency and control are brought to a profession and its practice. The agents entrusted with professional regulation could be:

- the individual practitioner
- the government
- the profession itself
- the employer

A scope of practice is so much more than just a description of practice. It is the missions statement of the profession, defining the unique characteristics peculiar to that profession. If we depend on practice descriptions alone to educate what nurses may or may not do, the profession of nursing will die and only the occupation of nursing will remain (Mulaudzi, Mokoena & Troskie (2000:37).

Self-activity

- Why are the four agents entrusted with professional regulation
- Discuss the importance of the scope of practice in nursing and midwifery
- Is the scope of practice regulation really necessary in Malawian clinical settings with the prevailing human resource shortage.

THE PURPOSE OF PROFESSIONAL REGULATION.

The three main purposes of regulation are:

- to protect the public from unsafe practices
- to set professional ethical standards to ensure quality service
- to confer accountability, identity and professional status upon the practitioners

The key elements in professional regulation are:

- Professional register
- Advice, guidance and standards
- Maintaining competence
- International council of nurses principles
- Positive benefits

Self-activity

- Discuss the key elements in professional regulation
- Discuss the ICN principles in relation to nursing and midwifery practice in Malawi

-

The professional regulation is located mainly within nursing council board who are empowered by the Nurses Practice Act. The responsibilities of the Nursing Council are:

- Determination of the eligibility of applicants for licensure
- Adoption and administration of examinations of applicants for licensure
- Issuing of licenses to qualified applicants
- Setting of procedures for relicensure
- Establishment of minimum standards for approval of educational programmes in nursing
- Approval of mandatory continuing education
- Investigation of complaints against those who are licensed
- Imposition of disciplinary action as authorized
- Promulgation of rules that regulate nursing
- Providing opinions and rulings on safe nursing practice
- Overall enforcement of the provisions of the statute as promulgated in regulation

MENTAL HEALTH ACT IN RELATION TO NURSING PRACTICE

- Patients admitted on voluntary basis should not exceed 40 days either they should be admitted on reception order.
- Powers and duties of police in respect of wandering or dangerous persons of unsound mind and such persons cruelly treated or not under proper care and control.
- Significance of scope of practice: scope of practice legal questions concern primary the nurses' legal authority to carry out a particular assignment procedure.

It is important to realize that the laws and regulations that control professional practice are made to protect the public and assist the professional not bind her. They tell the professional what she may do without trespassing on the equal liberty of other professionals and on the rights of citizens.

PROFESSIONAL DISCIPLINE

Professional discipline is inextricably entwined with the whole theme of responsibility. To be self-disciplined and to act responsibly are positive virtues, since without them all the knowledge and skill we possess will consistently fail to provide care of a high standard. Professional discipline is at two levels that is individual level, self-discipline of the members of the profession, their individual determinations to act in responsible way and in accordance with the moral principles in their profession. At collective level in a process by which the profession of nursing/midwifery operate that section of the law that permits the application of appropriate sanctions to its capable members impaired by illness.

Self-activity

- *Discuss the relationship of professional discipline to nursing/midwifery practice*
- *Explain the nurse/midwives role in professional discipline*
- *Discuss why responsibility and accountability are core elements in professional discipline*
- *Explain the different types of accountability*

CODE OF ETHICS

One of the primary defining characteristics of a profession is that it has a code of ethics to which all practitioners must closely adhere to in their practice.

A professional code of ethics is a unifying mechanism which brings persons of diverse cultures, religions, beliefs and practices into a common system of behaviour according to which they subscribe to the same norms and values within a given context. That is, ethical codes for professionals set the parameters of the responsibilities the nurse owes her patient, Fenner (1980) quoted in Searle and Pera (1998:150) cite professions adopt and promulgate ethical codes as a means of establishing standards of behaviour to protect the recipient of service. Such codes also protect the reputation and credibility of the profession.

Professional ethics are moral dimensions of attitude and behaviour based on values, judgement, responsibility and accountability which the practitioner takes into account when weighing up the consequences of his professional actions. Ethical standards provide a guideline to what is right and reasonable, giving personal satisfaction and meaning to their lives and contentment to others.

Self-Activity

(1) *Critically analyze the code of nursing ethics for Malawi with interpretive statements:*

- *Are the functions discussed above reflected in the statement?*
- *How would you reinforce ethical behaviour among colleagues at ward level, college level, hospital level and individual level*

(2) *Read the famous ethical codes i.e. Hippocratic Oath, the Geneva, Declaration of Geneva, Declaration of Helsinki, Florence Nightingale Oath.*

Analyse basic concepts in these codes relevant to nursing and midwifery practice

Core concepts of the ethics of nursing have widespread acceptance.

- The fundamental responsibility of the nurse/midwife is to conserve life, promote health and alleviate suffering.
- The nurse must provide nursing care in accordance with human need and with respect for the dignity of man without consideration of race, creed, nationality and social or political and economic standing.
- The nurse does not use her knowledge to the detriment of society.
- The nurse keeps in confidence all confidential information about her patients.
- The nurse/midwife must be a law-abiding citizen
- The nurse/midwife has a duty to uphold the efforts of her profession.
- The nurse/midwife must continue to develop her professional competence and assist others to do the same.

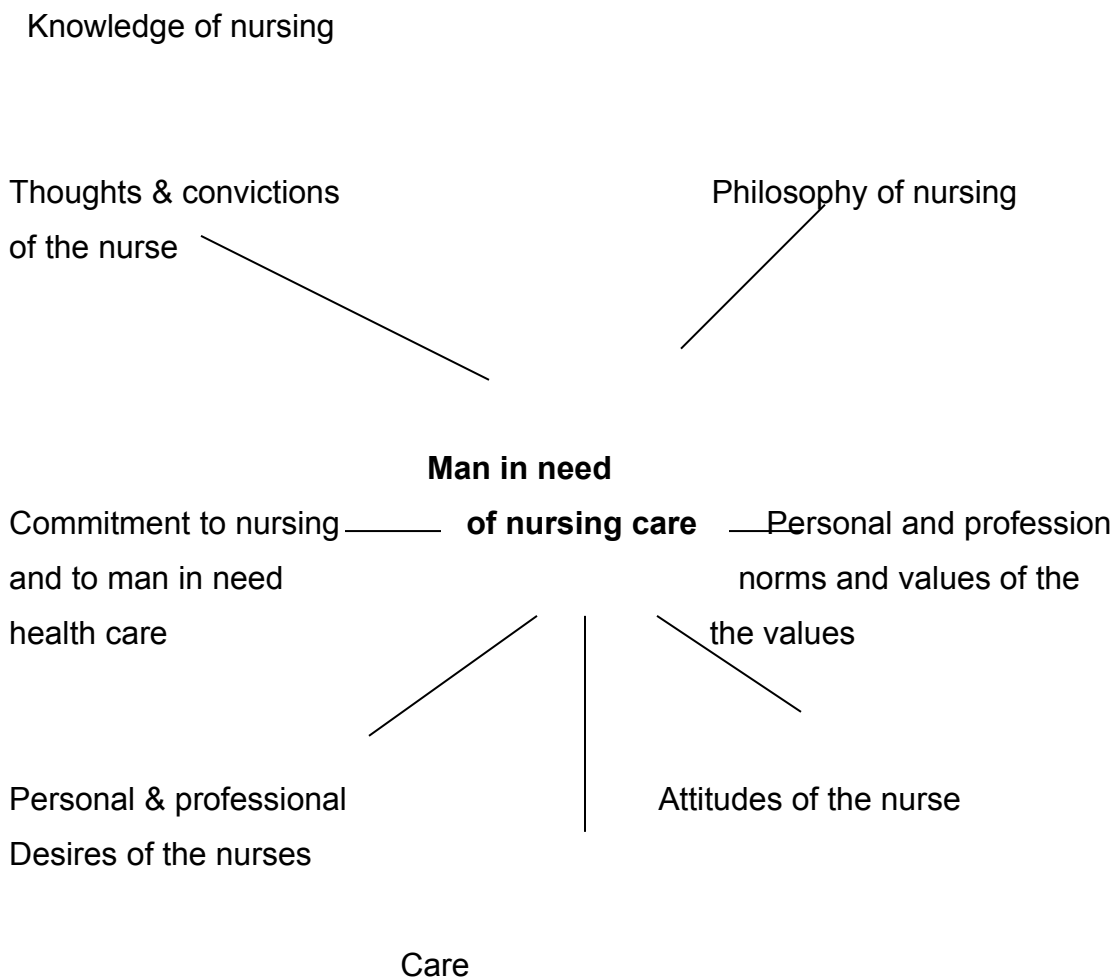
- The nurse/midwife helps to establish and maintain professional standards in nursing
- The nurse/midwife must be concerned with all legislation affecting health care of the human being.
- The nurse/midwife does not advertise.
- The nurse/midwife has a duty to teach those she works with and to prevent unskilled or unauthorized persons from performing tasks that may harm patients.
- The nurse/midwife collaborates harmoniously with other members of the health team. Patients safety can be ensured only if all member of the health team co-operate.
- The nurse/midwife does not participate in unethical practices. The nurse/midwife jealously guards the trust placed in her by refraining from unethical practice.
- The nurse/midwife is accountable.

Self-activity

The international code sets the standards for ethical practice by nurses throughout the world.

- *In your views do you think this is significant to nursing/midwifery practice?*
- *Analyse four ethical codes from five countries including Malawi?*
- *Design an ethical code that you would use in the promotion of your practice?*

Nursing profession is invariably characterized by centrality of a caring paradigm where commitment, compassion, conscience, confidence and competence are required. A paradigm that is associated with professional behavior and has these elements:



Self-Activity

*We all have been in a situation in which we experienced a **values conflict**. This occurs when we must choose between two things, both of which are important to us. For example, if you are a second year student nurse at KCN, you probably would like to spend all of your time studying; however, if you also must help provide nursing/midwifery home based care, and that requires leaving the College for Mitundu, you would have values conflict.*

- *Would you go or not? If no or yes; explain,*
- *Would this interfere with your personal and philosophical Values?*
- *Discuss your perspectives in your groups*

CASE STUDY

Mr and Mrs Nqyumayo live in Mbetete Village next to lake Malawi. They are both blind and have seven children. The fourth born is a girl named Dikira who is now 10 years old and has Talipes that was not surgically corrected at birth and limps as she walks.

*During your home visit to this village you identify Dikira's Talipes leg as a problem requiring an intervention. The family is counseled on the need for Dikira to go for Talipes repair at **CURE Hospital** in Blantyre. However, the parents indicate that they cannot take Dikira to Hospital because she is not sick.*

Discuss how you would handle this situation?

HUMAN RIGHTS

Learning Outcomes

At the end of the learning experience, the learners shall be able to:

- Discuss the relationship of human rights to nursing/midwifery practice
- Explain patient's bill of rights
- Discuss legal and moral rights of nurses
- Explain threats to human rights in nursing/midwifery practice

Assessment Criteria

To ensure that learners have acquired the intended learning outcomes, the learners shall be able to:

- Describe the relationship of human rights to nursing/midwifery practice
- Identify patient's rights in clinical settings
- Explain legal and moral rights of nurses
- Discuss threats to human rights in nursing/midwifery practice

Introduction

To ensure that the rights of human beings are protected and that the citizens know exactly how to behave in a particular situation, society has developed systems of behavior known as rules of the society. These fundamental rules operate throughout society and form the basis for the control of professions. It is a feature of ethos of all professions that the rights of the public are always paramount. In making provision for the education, the recognition through

qualification and registration and the control of a particular vocational or professional group, society demands accountability from those it has favored. It must always be remembered that an Act to regulate a profession does not belong to the council, board, commission or profession concerned, but to society. It is there to protect the public by ensuring certain standards of knowledge recognition and control of behavior of knowledgeable worker.

The right of the public to safe nursing care is reflected in the right of each individual person, group or community to acceptable, accessible, affordable, knowledgeable, legally and ethically safe nursing in whatever dimension this is provided. Under common law the patient is entitled to the safety of this person, his name and the property he has with him while under the care of the health team. Bill of rights for patients forms part of the accepted standards of practice of the professions. The courts will use such statements in evidence where a professional practice issue involving patient care is before a court. All teaching about ethics, professional practice, methodology and standards of care has been and still is centered on the rights of the patient to knowledgeable, competent, legal and ethically based care.

Self-activity

Ensuring patient rights requires commitment from the nurse. Discuss how you as a nurse/midwife will maintain

- Commitment to the social contract
- Commitment to the right of the public to a safe nursing
- Commitment to the ethical code of the profession
- Commitment to accountability
- Commitment to maintaining
- Standards of quality nursing
- Commitment to the employer

- Commitment to other members of the health team
- Commitment to good management
- Commitment to professionalism
- Commitment to nursing profession
- Commitment to the growth of professional knowledge
- Commitment to networking and professional assertiveness

THREATS TO THE RIGHTS OF THE PATIENT

In different health care systems, indifferent incompetent or negligent practice of a profession, unethical research that invades the right of the patient to the safety of his body and his name, misuse of his body parts or products are not the only issues that threatens the rights of the patient to appropriate quality health care.

Self-activity

- Explain why patients' bill of rights forms part of the accepted standards of practice of the profession
- Discuss why knowledgeable competent, legal and ethical based care is core to the rights of a patient.
- Describe the threats to patient's rights that you have seen during your clinical practice
- Discuss how human rights can be promoted in the clinical settings.
- Analyze the constitution of Malawi in relation to clients/patient's rights

HUMAN RIGHTS AS PATIENT RIGHTS

The rights of patients are a subdivision of general human rights, human rights arise from natural rights, which are rights that have a right of existence, irrespective of place or time. Natural rights are rights which people possess precisely because they are people. Husted & Husted (1991:217) point out that even if these natural rights are not recognized, honored or protected, they are inalienable and cannot be denied. Human rights are therefore based on the principles of natural justice and for this reason patient rights also arise out of the general principles of natural laws.

Important to note is that during illness the human rights of patients gain greater prominence, as does the importance of human rights in the nurse-patient relationship. The state of illness in itself and the proportions which it may assume make the patient vulnerable to abuse. Furthermore, the state of illness gives rise to new fundamental needs which must be met in order to retain patient's integrity as a unique individual.

Therefore, in nursing, human rights form the basis for the determination of moral values.

Self-activity

- Discuss basic human rights in health care context
- Discuss the rights of hunger strikers in relation to the United Nations principles for coercive measures to force prisoners to eat in order to save their lives.
- Explain the rights, duties and responsibilities of the nurse/midwife

- Discuss the legal and moral rights of the nurse/midwife

The international council declares that nurses have the right to perform nursing care within the codes of ethics and nursing Act. The legal rights of nurses in Malawi are found in the Nurse's and Midwives Act No. 16 of 1995, as amended, and in other relevant health legislation.

Self-activity

- *Explain the rights and responsibilities of professional nurses and midwives*
- *Critically evaluate the rights, duties and responsibilities of nurses/midwives*
- *Discuss human rights as the rights of nurses/midwives*
- *Explain the legal and moral rights of nurse/midwives*
- *Discuss the right of the nurse to strike*

The Kamuzu College of Nursing students' Body has staged a strike over their book and stationery allowance. On the fourth day of the strike, there is a very bad road traffic accident at Nanjiri involving 3 cars that were carrying school pupils from Lilongwe city. The victims arrive at Kamuzu Central Hospital. There are 12 deaths and 66 passengers are critically injured. The principal has contacted the students' body through their president to help in the triage management at the hospital. Three representatives are against the idea of going to the hospital to help.

- *How would you resolve this?*
- *Discuss how this could be a threat to clients rights?*

- *Analyse the Malawi constitution chapters 1, 2, 3, 4 and 5. How do they relate to nursing and midwifery practice.*

HUMAN RIGHTS/PATIENTS RIGHTS DEFINED

Analysis of human/patient's rights is necessary. Questions like, what are the rights of the patients and her/his family?

Are these rights explicit or entrenched?

Are these rights enforceable?

VERY IMPORTANT TO NOTE:

- NB:**
- 1. The human rights cannot, however be explicitly distinguished from common law principles.**
 - 2. The constitution of the country makes provision for a charter of human rights which is also supposed to be considered when making ethical decision making.**

The following human rights are important for consideration during ethical decision making by nurse and midwife:-

- Equality on the part of every person before the law, as well as fundamental equity. Accessibility and treatment – therefore no discrimination.
- Respect for and protection of human dignity: beneficence and prevention of or protection against harm.
- Life

- Personal
- Privacy and confidentiality
- Freedom of conscience, religion, thoughts/reason
- Conviction and opinion
- Freedom of choice, speech and expression
- Political rights
- Freedom of association, meetings, protest and petitions.
- Freedom of movement to stay/leave

Information and informed decision making/consent:

- Administrative and natural justice
- Property and the protection thereof
- Participation in economic activities
- Fair labour practices and industrial relations
- A clean and health environment
- Language and culture
- Child care
- Education and training, as well as equal accessibility

Self-Activity

- a) *Within the charter of human rights, the ethical principles are enforceable rights critically reflect why this is like this*
- b) *A client has a fundamental right to be informed of any health treatment and to be able to make an informed decision, discuss why?*

- c) *The principle of justice which addresses the equality of all people in terms of health services, is enforceable, why discuss?*

PROFESSIONAL ISSUES

LEARNING OUTCOMES

At the end of the learning experience the learners shall be able to:

- Explain professional issues in nursing/midwifery practice
- Discuss the relationship among the concepts of expertise, ethics and professional status
- Discuss professional autonomy in relation to nursing/midwifery practice
- Explain the core elements of the professional status

ASSESSMENT CRITERIA

To ensure that the learners have acquired the intended learning outcomes, the learners shall be able to:

- Identify professional issues in nursing/midwifery
- Describe the relationship among the concepts of expertise, ethics and professional status
- Explain professional autonomy in nursing/midwifery practice
- Describe the core elements of the professional status

Introduction

Acknowledgement of professional status is dependent upon meeting particular criteria that include but are not restricted to expertise, autonomy, authority, accountability and unity. As society allows professionals a monopoly over services they provide, ethics demands that those services must be provided with expertise. There are legal and ethical imperatives for the individual nurse/midwives to practice autonomously. Therefore, autonomy does not mean full and absolute control over every aspect of practice.

The mechanisms of accountability include codes of nursing ethics, standards of nursing practice, Nurse Practice Acts, nursing theory and practice. The authority for nurse/midwives to practice is granted through the legal processes of society. Ethics is a commonly cited criterion for judging the professional status of an occupation, in order to discuss professional issues in nursing/midwifery rationally, one must examine the meaning and historical context of the profession.

Self-activity

Expertise relates to the characteristics of having a high level of specialized skill and knowledge. A composite of knowledge base gained through long years of study in an academic setting.

Jameton (1984:21) cited professions maintain their autonomy through their claim to maximal competence.

- *Discuss your beliefs concerning an ethical requirement to maintain expertise in the area of practice*

- *How do you intend to acquire expertise as you progress in your training?*

THE CENTRAL CONCEPTS OF THE DISCIPLINE OF NURSING.

One of the most important features of a profession is that it has a professional code of ethics based on personal morality which is the foundation of trust for the patient and the community. The individual's moral integrity is regarded as the key to a safe standard of practice.

The nurse/midwife who abuses the ethical trust placed in her by her profession, employer patient and fellow professionals does not commit a criminal offence unless the act also has criminal intent or implications, but betrays a professional trust and brings the profession into disrepute.

Responsibility for ethical behaviour is an individual matter. The great religions of the world recognize man's dignity and the sanity of his person, however the ten commandments have also had a profound effect in instilling moral responsibility.

Self-Activity

- *Identify situations you might have confronted in nursing practice in which your personal, religious or philosophic values would be involved.*
- *What would be the consequences of following the dictates of your value system?*
- *Do conflicts exist between your value system and actions required by the situation?*
- *If so, how will you recognize the differences and how will you deal with them?*

- *Are there any other alternatives?*
- *What might they be?*

NB: People need to reflect on fundamental questions. Since these questions concern us all as thinking people, we should respond to them in the most reflective, systematic and critical way we can.

Why is critical reasoning important in nursing and midwifery practice?

- How do you recognize an argument?
- What is the structure of an argument?
- How do we distinguish good arguments from bad arguments?
- What constitutes a sound argument?
- What is morally good?
- What is right?
- Are there absolute moral principles? And if there are not how can I go about deciding what is the morally right thing to do?
- Should abortion be allowed?
- Should capital punishment be banned?
- Should there be redistribution of wealth?

REFLECTION

Remember to keep these key questions in mind when studying to create a broad framework for your reading. You need to return to them once you are familiar with the content.

PROFESSIONAL PHILOSOPHY

PHILOSOPHY SOURCE OF PROFESSIONAL POWER

- Philosophy is the art of reason; reason is an attempt to put what is perceived about life's phenomena together results to sense of assistance is one of the major sources of human power.
- Nurses often surrender their power to others, their self-identify and the direction of their own affairs.

Causes of powerlessness

- Ignorance, lack of confidence, lack of technology, lack of resources, lack of unity or organization.
- Nursing increasing power is attained through a common philosophy which is articulated in self-appropriate, self-experienced and dynamically applied to practice, resulting in collaboration with other groups in the solution of common problems and much greater control over its own future and affairs.
- Unification of some common philosophical elements for all nursing may be a source of power that will help nursing make sense of the world saving as a sense of identity, security and confidence and ultimately will enable a clear or a better identification of purpose, evolution of a system to achieve that purpose and a creation of new approaches to nursing problems.
- Philosophy should act as a checklist for practice implementation so it has to be detailed.

- There is a need to display to the public reader some clues about the philosophical commitments of each nursing program so that the individual nature of each program can be clearly expressed.
- For usefulness in curriculum building there needs to be a clear and detailed statement of philosophy so that it is useful as a chart for curriculum decisions.
- Makes it acceptable for each individual to make personal choices about nursing care, alternative healing methods, ways to achieve goals and the use of medical and nursing advice
- Philosophy provides a comprehensive view of education as is concerned with development of a coherent logical outlook through extensive search of literature.
- Philosophical analysis has a unique contribution in that it provides a look at such problems in a critical, holistic and ethical fashion.
- Philosophy helps to organize various elements of the problem in a clear and concise way so that it can be treated more intelligently.
- Philosophy of education has its own the critical investigation of forms of Philosophy provides a framework
- Philosophy helps to make choices about curriculum, subject matter and teaching/learning methods.

PHILOSOPHY OF NURSING MUST CONTAIN THE FOLLOWING ELEMENTS

1. Statements about the values on which the nursing education is based

thus, future of nursing practice, moral, ethical or religious context of skill, scope and limits of education provided and characteristics of people.

2. Statements about nature of nursing
3. Statements about the nature of clients their problems and needs
4. Statements about health, wellness and illness and their relationships to nursing.

Self-Activity

Discuss why philosophy is source of professional power in nursing midwifery practice.

Professions have a vested interest in the conduct of their members for a number of reasons and these are:

- *Protecting the people the profession serves*
- *Ensuring the competence of members*
- *Safeguarding the integrity and trustworthiness of the discipline*
- *Discuss how these are achieved in Malawian clinical settings, and internationally.*
- *Discuss the philosophical basis of ethical theories in relation to naturalism and rationalism*

STEPS FOR DEVELOPING A PHILOSOPHY

- Identify key concepts
- Discuss specific beliefs about each concept

- Show relationships between and among concepts
- Develop propositions

FOUR BASIC THEORIES OF PHILOSOPHY ARE

- Asceticism
- Romanticism
- Pragmatism
- Humanistic existentialism

These rose at different times and have given rise to different choices in nursing development. These values are uncultured into novices so that their continuation is assured from generation to generation of practicing nurses.

These theories adequately describe the attitudes, values and behaviours of a period of nursing history. The value systems influence judgements and decisions and provides some material for nursing practice and educational behaviours.

Asceticism (F. Nightingale's period)

Centres on self-denial, identified with christianity.

- Early Christians were willing to sacrifice their lives, safety and comfort for the ideal religion, an avenue for salvation and achievement of higher spiritual states throughout christianity states.
- Proposes that rigorous self-discipline and self-denial are valued ways to achieve internal harmony on earth and rewards in the hereafter.

- Was a basis for a nursing framework concerned about neither the approach to care nor the emphasis on a perception of the client's health. Client considered a spiritual being and his salvation was most important.
- Emphasis on self on the enrichment of her own spiritual growth and attainment.
- Curriculum development was less importance due to emphasis on duty, service, self-denial and spiritual growth.

Romanticism (18th Century)

- Supports behaviour without factual basis in logical precision.
- Means to operate from a visionary view point
- Full of feelings, attitudes of romance, adventure and escape from reality and practicality.
- The romantic notion of Florence Nightingale as the lady with lamp reflects this attitude, personal glory, pride in devotion, and knowing I have done best for my client.
- This value system influenced adoption of a curriculum's conceptual framework called medical models and hospital patient housing patterns.
- Romanticism supported and sustained a dependence on physicians and a lack of autonomy, assertiveness, or independence.
- Nursing assessment, history attributed to romanticism

Pragmatism

- A method of logic for determining the meanings of intellectual concepts.
- Requires to look at specific practical consequences of acts, ideas or concepts
- A method for looking directly at a question to determine its use, its function

thus its practicality

- Holds that no idea has meaning unless there is some direct or indirect application of it to something real – value is based on practical use and consequences
- Severe shortage of nurses during and after the war forced them to become very pragmatic in dealing with the problems of nursing care. Categories of nursing personnel emerged from this thus technicians, assistants' aides.
- Clients admitted to physicians specialization focus were on problem, disability, convalescents and rehabilitation units emerged.

Humanism (1950)

Non hospital settings for nursing care of clients increased in prominence and the community rose as a primary place where clients received nursing care. This came because of shift in nursing's value system.

- Nurses became increasingly concerned with wholes. Humans become most important factor to nurses.
- Nursing curricula altered through creating a model for clients that was holistic rather than divided.

Abdellah's twenty-one nursing problems and Maslow's hierarchy of needs models were developed for assessing clients' needs – gave rise to content integration as a curriculum format for teaching nursing.

Concepts and threads were woven throughout patient centred problems.

- Patient's problems tended to follow physiological and psychological systems – comprehensive nursing care.
- Nurses began to be accountable to clients.

Humanistic Existentialism

- Holds that each person is unique and inexplicable by scientific or metaphysical systems
- Proposes that the whole of a human being is different from his parts.
- Humans are thinking beings who make choices – freedom to choose
- Accountable to self and fellow humans for their consequences
- Concerned action geared to human ideals, human existence and quality of life
- Characterised by a value system that places great importance and high priority on caring about people
- Normal maturational philosophy for nursing – implies orientation to people as the central and basic priority of all nursing activity.
- Proposes that a human being is an organismic whole, complete and unified that cannot be treated as component parts.
- Makes it acceptable for each individual client to make personal choices about nursing care, alternative healing methods, ways to achieve goals and the use of medical and nursing health advice.

UNIT 4: ETHICAL DECISION MAKING IN NURSING

LEARNING OUTCOMES

- Explain concepts ethical dilemma, ethical decision making, euthanasia, assisted reproduction, ethical codes
- Critically reflect on various concepts underlying ethical decision making and ethical decision committee.
- Discuss approaches to ethical decision making.
- Identify pressing ethical problems confronting the nurse in the 21st Century
- Discuss the composition, functions, purposes and value of ethics committee.

ASSESSMENT CRITERIA

To ensure that the learners have acquired the above learning outcomes, the learners shall be able to:

- Describe the concepts of ethical dilemma; ethical decision making; Euthanasia; assisted reproduction;
- Explain the various concepts underline ethical decision making
- Describe the approaches to decision making
- Describe the ethical problems and issues confronting the twenty first century nurse

UNIT CONTENT

INTRODUCTION

Professionals bear significant ethical responsibilities in their delivery of services to the public. To behave in a manner that is inconsistent with the ethics of one's profession violates the professional covenant between the profession and those it has vowed to serve. Nurses should have strong commitment to maintaining ethical practice at the highest level to ensure the health and well-being of those entrusted to our care.

Four basic features constitute every type of decision thus:

- A problem must exist
- There must be two alternatives solutions from which to choose
- Every action implies uncertainty
- Every implemented decision, combined with the uncertainties brings about an outcome

Nurse and Midwives are to make an effort to articulate and examine their core values and their relationship to nursing and institutional standards. To join decision making groups they are to become fluent in the language of nursing and bioethics and learn to appreciate the diverse moral perspectives of patients and colleagues.

Competing values

Tschudin (1994) defines an ethical issue as one in which two or more values or principles are present but a conflict has not occurred between them. An ethical problem is when there is a conflict between these competing values and

principles (Purtilo, 1993).

Self-activity

Read prescribed literature and critically reflect on the concepts ethical dilemma, ethical decision making, euthanasia, assisted reproduction, ethical codes, moral uncertainty, moral integrity, empowerment

- Discuss the significance of cognitive dissonance in competing values in nursing/midwifery practice
- There are, some pitfalls to be aware of in working through this step of the process. By learning to identify and correct fallacies in reasoning, effective and justifiable decision making can be facilitated.

Discuss how a practicing nurse/midwife could deal with the following fallacies:

- the is ought fallacy
- appeal to force
- abuse of the person
- appeal to populace
- appeal to authority
- the slippery slope fallacy
- slothful induction
- the fallacy of accident
- the complex question

ETHICAL DECISION MAKING

Ethical decision making in nursing is the purposeful mental and spiritual judgement of the nurse/midwife in order to perform a moral act and to justify or account for such an act, according to her or his moral values, responsibilities and obligations. The nurse's world-view also directs her/his moral acts.

Ethical dilemmas occur at least in two forms, thus;

- a) Some evidence indicates that Act X is morally right and some evidence indicates that Act X is morally wrong but the evidence on both sides is inclusive.
- b) An agent believes that moral grounds he/she ought and not to perform Act X. In an ethical dilemma of this form an agent is obligated by one or more moral norms to do X and obligated by one or more moral norms to Y. The reasons behind alternatives X and Y are good and weighty and neither set of reasons is obviously dominant.

Dilemmas can be created by conflicting moral principles and rules.

Examples of ethical problems are

- Conflicting obligations
- Extending scope of practice-epidural analgesic
- Insubordination
- Consent for and conflict about Euthanasia
- Doctor-patient relationship especially telephone orders

- Refusal of treatment for minors (family planning)
- The rights of the elderly
- Unethical conduct of role models i.e. tutor
- Resuscitation
- Confidentiality of patients records
- Patients right to know
- Nurses right to tell
- Human dignity of patients
- Refusal of blood transfusion
- Nurse in an off duty capacity
- Strike, collective bargaining
- Team leadership
- Sex role differences
- Use of machines
- Consent for cadaver
- Birth control
- Surrogate motherhood

Self-activity

The positive attributes of an affective ethical decision maker include:-

- *Sensitivity, compassion and caring*
- *Responsibility*
- *Empowerment*
- *Patience and willingness to deliberate*

- i) *Critically reflect why the five are positive attributes in ethical decision making.*
- ii) *Have you already developed these in your nursing and midwifery practice*
- iii) *Reflect on a situation in the clinical area during your clinical placement when you lacked ethical-decision making skills.*
- iv) *Analyse moral distress, moral outrage and moral reckoning in nursing and midwifery practice*
- v) *How might legal considerations affect the process of making ethical decisions.*
- vi) *Discuss the interactions among moral development, moral perspective and ethical decision making.*
- vii) *Use the ethical-decision making process to revisit an ethical dilemma that you encountered during the first year of your training.*
- viii) *Search an online data base for full-text articles related to nurses ethical decision making. How do other models compare to the one presented this..*

STEPS FOR RESOLVING ETHICAL DILEMMAS

- Case as remembered
- Does the case represent an ethical problem or an ethical dilemma.

- If a problem motivate why it is on ethical problem
- If a dilemma, motivate why it is an ethical dilemma
- Identify and clarify the ethical, legal and other issues underlying the case
- Analyse (massage the specific ethical problems with regard to:
 - Background information
 - The individuals involved in making a decision
- Identify possible courses of action
- Explain action taken
- Describe ethical ideal

Self -Activity

Enrichment Activity: Make sure you view, the video – Fatal Judgement

The video fatal judgement is a true life story of a nurse Annie who was convicted of murdering a patient Martha.

Analyse the scenario as portrayed in the film and discuss the following aspects.

- a) *The Nurse Manager's role and responsibilities in ethical dilemmas in hospital settings.*
- b) *Describe the situation in which Nurse Annie was, was it an ethical dilemma/issue.*
- c) *Discuss the ethical principles that she might have used to reach the*

solution.

d) Discuss four (4) ideal ethical decision models that she might have used for this situation.

APPROACHES IN ETHICAL DECISION MAKING

A lot of approaches are used, however only three are outlined in this handout. Please put an effort to analyse more models/approaches.

Egoistic Approach

In this approach the nurse only considers own interests and the acts to be performed are judged according to the following questions.

- How will this decision or act affect me?
- What do I want
- What decisions or act will be the best for me
- How can I benefit from this Act?
- What advantages or disadvantages will this act have for me?
- How will the consequences of this Act affect my career

Critical issues are examined before using the approach and these are:

- The act must be judged on the basis of legal prosecution or professional discipline by council.
- There is no respect for clients/families choice
- All ethical principles are denied to guide.

The purpose of an act is therefore directed at the egoist's own comfort and pleasure.

Self-Activity

- *Analyze your clinical experience for the past two years, identify dilemma cases that you in practice.*
- *Discuss factors that influence ethical decision making*

Deontological Approach

In this approach the nurse's general duties, regardless of the specific circumstances or situation are important. Golden rules are followed based on the practitioners values and religious convictions. The approach focus on the moral importance of the practitioners values, duties and obligations. The following questions are important:

- How do I regard human kind
- How do I regard death
- What is my view of right or wrong in the situation and act that I have to perform.

The Utilitarian Approach

Scientific analysis is made of all the advantages and disadvantages for the patient and her family. The approach is based on the humanistic-socialistic view that is the highest amount of good/happiness for the largest number of people.

- The choice of act is made according to a scientific analysis of the highest amount of good for the largest number of people.

- Good/happiness is compared with evil
- The ethical problem is analysed in respect of the patient's quality of life, the amount of emotional suffering that the family will experience and even the financial expenditure involved.
- The norm of good/happiness is assessed and a balance is found between good/evil.

NB:

The good/happiness or benefit is calculated according to the following criteria:

- **Intensity of good/happiness or benefit**
- **The duration of good/happiness or benefit**
- **The degree of certainty or uncertainty that can be linked to good/happiness or benefit.**
- **The closeness, remoteness (long term) of good or benefit that will affect the relevance of the Act.**
- **The increasing possibilities of good/benefit**
- **The pureness of good/happiness or benefit**

This approach is also described as calculus morality and distributive justice, in community practice utilitarian decision making is used to ensure maximum benefits.

GUIDELINES FOR ETHICAL DECISION MAKING IN NURSING AND MIDIWIFERY PRACTICE

ETHICAL FRAMEWORK

- The pledge of service of nurse/midwife forms the basis of this ethical framework. According to the pledge the patient is always considered first in any nursing intervention. The nurse has an ethical obligation to act in the interest of the patient.
- Policy of profession on specific issue also forms ethical framework. Therefore policy statements published by organized regulatory professions must always be consulted to confirm the view of the profession. Examples of policy statements are:
 - Termination of pregnancy
 - The responsibility of the nurse/midwife in times of public unrest
 - HIV/AIDS – a strategy for nursing
 - Industrial action by nurses
 - The patient and a living will
 - Euthanasia
- Philosophical basis/foundations of nursing, thus the philosophical framework on which a health service, nursing service or training school is based, even the philosophy of a nursing unit.

LEGAL PROFESSIONAL – ETHICAL FRAMEWORK

- Proposed Act is analysed according to legal authorization granted to nursing and midwife to perform the act.

- The Nursing Act and related regulations form the core of this analysis.
- Ask questions on professional responsibilities in terms of the scope of practice regulations.
- Rules set down in Acts and Commissions regulations that might give rise to professional discipline by the professional council.
- Consideration of common law, the principle of reasonableness is an important common law principle that is considered during court cases (The reasonableness of the act is tested by the question what would any other nurse and midwife have done in this situation).

THE PRACTITIONER'S VALUES

Value relates to modes of conduct and primarily refers to the right and wrong convictions held by the practitioners to determine or justify the reasons for her/his actions.

VERY IMPORTANT TO NOTE

Values function as screens of interpretation that provide evaluation criteria to use when people interact with the world around them.

- **The nurse has a fundamental rights in terms of the constitution which include the right to object, based on conscience based beliefs and values. The nurse has the right in terms of a specific ethical problem, to lodge a conscientious objection to a nursing interaction being carried out in termination of pregnancy.**

CASE STUDY: 1

Mrs Janet Abrahams is fifty years old and suffers from terminal ovarian carcinoma. Her chemotherapy has been suspended temporarily as a result of a low blood count. She is a widow and has two children – Andrew, in Grade 10, and Sally, in Grade 7. Although her children will be left uncared for, Mrs Abrahams is outspoken about the fact that death would come as a blessing to her. She also suffers from hypertension and has decided not to visit the clinic for her anti-hypertensive medication. She has made a living will, in which she states that she is terminally ill and that she does not want to undergo any treatment that will prolong her life. A week later she is admitted to casualty, unconscious, her blood pressure 190/130 and with all the signs of brain haemorrhage. She is linked to a ventilator and admitted to the critical care unit. A neurologist is called and requests that the patient be prepared for an emergency operation. The intensive care nurse, Sister Zondi, is requested to obtain consent from the Superintendent of the hospital as Mrs Abrahams is unconscious and cannot give consent herself. Sister Zondi draws the attention of the doctor to the fact that Mrs Abrahams is wearing a bracelet with the words: 'No treatment – contact (lawyer's number)'. The lawyer confirms Mrs Abrahams' living will and requests that her wish be fulfilled. The Superintendent has, in the meantime, given permission for emergency brain surgery.

Discuss the principles of ethical decision making by the critical care and theatre nurses.

- Identify the ethical problems with which both the critical care and theatre nurse are confronted.
- Consider the ethical codes/philosophical framework of the profession in respect of a living will (standards of practice and policy statements).
- Analyse the legal dimensions/variables for the termination of treatment for this patient.

- Analyse the patient's rights
- Analyse your own beliefs, values and rights
- Make and justify a decision.

WHISTLE BLOWING

Is an ancient art of bringing to light wrong doings in any area of life. Bok (1984) defined whistle blowing as the act of disclosing information, based on an individual's beliefs of the organization or profession, which calls attention to negligence, abuses or dangers that threatens the public interest. A whistle blower within an organization, whether it be industry or the national health service is in effect blowing the whistle to stop play within the organization when perceived wrong doing, incompetence, abuse of authority or inefficient policies.

Whistle blowing has positive and negative attributes therefore it becomes a very complex concept to analyse. When an individual is caught in a whistle blowing dilemma, much thought needs to be given to all the implications of this concept before any action can be considered. The three identified elements within whistle blowing that need careful examination according to Bok (1980) are

- dissent
- breach of loyalty
- accusation

The three elements form only part of the wider concept of whistle blowing and as such any discussion of whistle blowing must have four ethical concepts:

- Accountability
- Loyalty or fidelity

- Justice
- Truth or veracity

Self-activity

- (i) *Discuss why accountability has become enshrined in the code of professional conduct and in whistle blowing*
- (ii) *Explain why loyalty and fidelity are fundamental to other ethical principles and form basis for accountability*
- (iii) *Justice refers to the obligation to be fair to all people and has three major areas of application, thus:*
- *retributive justice (punishment for wrongdoing)*
 - *procedural justice (fairness on procedures)*
 - *distributive justice (allocation of scarce resources)*
- Consider issues of the global funds and the ART Therapy in Malawi, would you blow a whistle?*
- (iv) *Truth or veracity, the obligation not only to tell the truth but also not to lie or deceive others. It is the foundation for respect, trust and loyalty between ourselves, or patients and our employers.*
Why is veracity core to whistle blowing?

COMMON SENSE PRECAUTIONS THAT CAN BE TAKEN IN WHISTLE BLOWING ARE

- Before you blow the whistle talk to your family and friends about the implications and consequences of the action.
- Aim to build up a network of support within the organization
- Depending on the circumstances of the situation, consider and use internal mechanisms for resolution before going outside and make certain that you are aware of what these internal mechanisms are:
 - Be respectful and treat all members of staff as you would wish to be treated

- Make certain that you have documented everything
- Ensure that you have made copies of all relevant documents prior to disclosure because depending on the nature of the situation access to records could be denied
- Do not attempt to go ahead alone without support or advice, finally, make certain that you have discussed the situation with either your trade union, your professional representative or another specialist at the earliest possible stage.

References

A framework for thinking ethically.
<http://www.scu.edu/ethics/practicing/decision/framework.htm/>.retrieved
 07/02/2008.

Adams, R.A., Dollatute, D.C., Gilbert, K.R. & Keim, R.E. (2001). The development and teaching of ethical principles and guidelines for family scientists. Family relations . vol. 50. No. 1.

Beauchamp, T. (2001). Principles of Biomedical Ethics. London: Oxford Press.

Blades, D.W. (2006) Levings and on Ethics Sceince Education. Educational philosophy and theory. Vol. 38 no. 5: 647 – 664.

Blondeau, D. (2002). Nursing art as a practical art: the necessary relationship between nursing art and nursing ethics. Nursing philosophy 3: 252 -259.

Bosek, M.S. (1999). Ethics in Practice. Jona. September. Vol. 1 Number 3:16-19.

Burkhart M. and Nathaniel A. (2002). Ethics and issues in Contemporary Nursing. New York: Delmar Thomson.

Cady, RF. (1999). The Legal Forum. Jona. September. Vol. 1 No. 3:10-12

Cady, RF. (1999). Malpractice Litigation Trends for the new Millennium. Jona September. Vol. 1NO. 3:8-9

Cady, RF. (2000). The Legal Forum. Jona. June Vol. 2 No.2 :50-53.

Cady, RF. (2000). The Legal Forum. Jona. September. Vol. 2 No 3

Creasia, IL. & Parker, B. (1991). Conceptual Foundations of Professional Nursing practice. St. Louis: Mosby.

Deloughery, G.L. (1991). Issues and Trends in Nursing. St. Louis Mosby.

Ellis JR & Hartley, CL. (2007) Nursing in Todays World – Trends, Issues and Management. Ohio, St. Louis.

Flarey, D.L. (2000) Is Certification the Current Gold Standard. Jona. June: Vol. 2 No.2: 43-45.

Forbes, D.A., King, K.M., Kaysi, E.K. Letourneau, N.L., Myrick, A.F., Profetto-McGrath J. (1999). Warrantable evidence in nursing science. Journal of Advanced Nursing. 29 (2), 373 -379.

Friedman, A. (2008). Beyond Accountability for reasonableness. Biomedics. Vol. 22 No. 2 101-112.

Grace H. (2001). Current Issues in Nursing. London: Mosby.

Guido, GW (2001). Legal and ethical issues in Nursing; New Jersey, Prestince-Hall.

Hendrick, J. (2004) Law and Ethics. Sydney: Nelson Thornes Ltd.

Held, V.C (1983). The validity of moral theories Zygon. Vol.18: no. 2: 167 – 181.

Johnstone, M.J. (1994). Bioethics. A nursing perspectives. 2nd edition chapter 3. Sydney: WB Saunders.

Liaschenko, J. & Peter, E. (2004). Nursing Ethics and Conceptualization of Nursing: Profession, Practice and work. Journal of advanced Nursing 46 (5) 488 – 495.

Malawi Government. Nurses and Midwife Act No16 of 1995. Zomba: Govt. Print

Malawi Government (2004). The Constitution of the Republic of Malawi

McCarthy, J. (2006). A pluralist view of nursing ethics. Nursing Philosophy. Vol.: 157-164.

McHale, J. & Gallagher, A. (2004). Nursing and Human Rights. London: Butterworth Heinemann.

McGaughey, D.R. (2006), Kent on Religion and science: Independence or integration. Zygon. Vol.4.1 No.3:727-746.

Miller, M. (2003). Nursing Dynamics. 3rd Edition. Sandtown: Heinemann.

Mulaudzi, F.M., Mokoena, J. & Jroskie(2002). Basic Nursing Ethics in Practice. Sandtown: Heinemann.

Peter, E. & Morgan, K.P. (2001) Explorations of a trust approach for nursing ethics. Nursing Inquiry. 8: 3-10.

Racine, E. (2008). Which Naturalism for Bioethics? A defense of moderate (pragmatic) naturalism. *Bioethics* vol. 22: 92-100.

Saarni, S.I., Parmynne, P. and Halila, R. (2008). Ethically problematic treatment decisions, a physician survey. *Bioethics* vol. 22 No 2. Pages 121 -129.

Searle, C. & Pera, S.A. (1998). *Professional Practice. A Southern African Nursing Perspective*. 3rd Edition Sandton. Heinemann.

Symon, A. (2005)/ *Ethics in Midwifery*. (2nd Edition). Mosby: Elsevier

Thompson, I.E., Melia, K.M. Boyd, K.M. & Horsburgh, D. (2006). *Nursing Ethics*. (5th Edition). Churchill Livingstone: Elsevier.

Tschudin, V. (1995). *Ethics. Professional Issues*. London. Scutari Press

Tschudin, V. (1994). *Ethics. Conflict of Interest*. London: Scutari Press

Tschudin, V. (2002). *Ethics in Nursing: The Caring Relationship*. London: Heinemann.

Tschudin, V. (2003). *Approaches to Ethics: Nursing Beyond Boundaries*. London. Heinemann

Tschudin, V. (2006). Report: Cultural and Historical Perspectives on Nursing Ethics: Listening to each other-report of the conference in Taipei.

Taiwan.<http://nej.sagepub.com>.February 9, 2008.

United Nations (2006). Human Rights 50th Anniversary/Universal Declaration:
<http://www.un.org/rights/50/decla.htm>

www.kcn.unima.mw

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REFERENCES