

Medical Negligence

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Professional Negligence

‘Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.’

- Baron Alderson

Blyth vs Birmingham Waterworks Co.

Act of omission /Act of commission

Omission to do some thing a reasonably competent medical man, guided by such medical knowledge & practice current at that time & place, would do or doing something (commission) which a competent man would not do.

Professional Negligence/Malpraxis/ Malpractice

‘Lack of reasonable care & skill or willful negligence on the part of a medical practitioner in the treatment of a patient whereby the health or life of a patient is endangered’ .

It is not mere neglect or carelessness: it is neglect or carelessness where there is a legal duty to take care & failure in that duty causes damage.

Types of Negligence

Civil Negligence

- Simple absence of care/skill
- Proof of Negligence
Balance of probabilities
- Tried in Civil Court
- Liable to pay damages

Criminal Negligence

- Gross absence of care/skill
Beyond reasonable doubt
- Tried in Criminal Court
- Liable for imprisonment

304(A) IPC-whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment up to 2 years , or with fine , or with both.

Ethical Negligence- Violations of the provisions of the code of medical ethics.

Elements of Negligence

- Duty of Care
- Dereliction of Duty
- Direct Causation
- Damage

Duty of Care

- Legal duty not moral duty
- Therapeutic intent
- Doctor – Patient Relationship
- Emergency Situations
- Reasonable foreseeability

Dereliction of Duty

- Standard of care
- Degree of care
- Magnitude of risk
- Standard/Approved Practice

- Deviation from normal practice
- Mistaken Diagnosis
- Error of Clinical Judgement
- Defensive Medicine – Is it Justified ?

Direct Causation

- 'Cause and effect' relationship
- 'But – for' test

Damage

- Injury or Disability
- Damages
 - General Damages
 - Special Damages
 - Punitive Damages

Res Ipsa Loquitur

- No occurrence without negligence
 - Exclusive control over circumstances
 - No contributory negligence
- Rebuttal of presumption of negligence

- Contributory Negligence
- Composite Negligence
- Corporate Negligence

Vicarious Liability

- ‘Respondent superior’ doctrine
- ‘Captain of the ship’ doctrine
- ‘Borrowed servant’ doctrine

- Third party liability
- Medical product liability
‘risk/utility’ test
- Concept of ‘no fault compensation’

Defenses for the Doctor

- Absence of duty of care
- No breach of duty
- Standard of care maintained
- Abuse of process/ frivolous complain

- Therapeutic Misadventure
- Medical Maloccurrence
- Novus actus interveniens
- Calculated risk doctrine

Thank You