

Medical Negligence

Duty of Care

- duty to become and remain competent
- duty to ensure delegated jobs are to someone with sufficient experience and skill- 'vicarious liability'. Also true for trusts
- doesn't include exam for insurance, drink-drive, pre-employment etc-i.e. not exam to provide treatment

Breach of the duty of care

- fails to reach the standard of a professional body of opinion of his peers, - 'Bolam principal', or standard considered to be appropriate by the COURT even if not of his peers –Bolitho/Sideaway
- Ignorance no defence eg junior doctor must know to ask for help, patients are entitled to optimum care -Wilsher (1986)
- commission (done) or failed to do (omission)

Actionable Harm or Damage

- complainant must have suffered quantifiable harm, e.g. loss of earnings, reduced quality of life, disfigurement, disability or mental anguish
- may be an element of contributory negligence which can effect damages awarded

Causation

link between the failure of duty of care and the actionable harm

The burden of proof is on the claimant and it is to the civil standard, i.e. the balance of probabilities, unless the facts are so obvious that the health professional must prove he was not negligent (*res ipsa loquitur*)

The case must be brought within 3 years of the date of knowledge, turning 18 or recovering from mental illness, or at the courts discretion.

Bolam vs Friern Hospital management committee 1957:

Claimant was given ECT and suffered bilateral hip fractures as a result. Claim dismissed by Mr Justice Nair because this was standard practice at the time i.e defendant acted in accordance with a responsible and competent body of opinion at the time

Bolitho vs City and Hackney Health Authority 1997:

2 year old Patrick Bolitho suffered cardiac arrest and died from upper airways obstruction. Senior Paediatric Registrar failed to attend and the question arose whether she would have intubated anyway and if not, causation would have not been shown. The expert witnesses gave opposing views on whether they would have intubated or not. The Bolam principal was upheld but the opinion of the one expert witness was taken as the more expert. The court reserved the right to go against established medical opinion if it was not felt to be 'reasonable', 'responsible' or 'logical'.

Definition

In order for a negligence claim to succeed, the claimant must prove ALL four of the following:

1. The defendant had a *duty of care*
2. There was a *breach* in that duty of care
3. The claimant suffered *actionable harm or damage*
4. The damage was caused by the breach (*causation*).

