



AMPERSAND

ADVOCATES

Clinical Negligence Case Law Update

Ayla Iridag
29 September 2022



Scope of Duty: Meadows v Khan [2021] UKSC 21

- The claimant was tested for the haemophilia gene before she tried to conceive a child
- Incorrect tests were ordered and she was subsequently told that she was not a carrier.
- She fell pregnant 4 years later and gave birth to a son. The son was diagnosed with haemophilia and autism.
- The defendant admitted liability, agreed to pay damages in respect of the hemophilia but denied she was liable for the costs associated with the autism.



Scope of Duty:

Meadows v Khan [2021] UKSC 21

- Six questions which should be asked:
 - (1) Is the harm (loss, injury and damage) which is the subject matter of the claim actionable in negligence? (the actionability question)
 - (2) What are the risks of harm to the claimant against which the law imposes on the defendant a duty to take care? (the scope of duty question)
 - (3) Did the defendant breach his or her duty by his or her act or omission? (the breach question)
 - (4) Is the loss for which the claimant seeks damages the consequence of the defendant's act or omission? (the factual causation question)
 - (5) Is there a sufficient nexus between a particular element of the harm for which the claimant seeks damages and the subject matter of the defendant's duty of care as analysed at stage 2 above? (the duty nexus question)
 - (6) Is a particular element of the harm for which the claimant seeks damages irrecoverable because it is too remote, or because there is a different effective cause (including novus actus interveniens) in relation to it or because the claimant has mitigated his or her loss or has failed to avoid loss which he or she could reasonably have been expected to avoid? (the legal responsibility question)



Admissions of fault:

SD v Grampian Health Board [2022] CSOH 63

- This was an obstetric claim where the pursuer alleged:
 - (1)The midwives failed to progress her labour quickly enough
 - (2)The doctor failed to perform a c-section early enough
- Lady Wise was unable unable to prefer the view of one expert over another and accordingly negligence was not established.
- The midwives essentially conceded fault but Lady Wise did not consider these concessions relevant to the issue of liability.



The importance (or lack thereof) of guidance: Thorley v Sandwell & West Birmingham Hospitals NHS Trust [2021] EWHC 2604 (QB)

- The claimant alleged that the Dr was negligent for giving incorrect advice regarding the use of medication either side of an angiogram.
- As a result of stopping the medication earlier than ought to have been advised he suffered a stroke.
- The claimant relied upon the defendant's guidance on the topic.
- The court was satisfied that this guidance didn't apply to this procedure, however they also considered what the approach would be if the guidance had applied.
- The court held that if the clinician acts in accordance with a practice accepted as proper by a responsible body of practitioners in that field which has a logical basis, the defence is made out whether there is applicable guidance or not.



Who to sue?:

Hughes v Rattan [2021] EWHC 2032 (QB)

- The claimant in this case has suffered allegedly negligence dental treatment provided by 'self-employed associated dentists' in a practice owned by a single individual.
- The court found that there was a relationship between the owner of the practice and the associate dentists which was sufficiently akin to employment.
- The court also confirmed that the duty of care in terms of that vicarious duty was a non-delegable one.



A question of consent: McCulloch v Forth Valley Health Board [2021] CSIH 21



- Pursuer alleged that a consultant cardiologist had been negligent in failing to prescribe NSAIDs and failing to carry out an ECG before discharge.
- “The patient's right is to decide whether or not to accept a proposed course of treatment. That right can only be exercised on an informed basis, which means that the patient must in such a situation be advised of the risks involved in opting for that course of treatment, or rejecting it. If alternative treatments are options reasonably available in the circumstances the patient is entitled to be informed of the risks of these accordingly. But where the doctor has rejected a particular treatment, not by taking on him or herself a decision more properly left to the patient, but upon the basis that it is not a treatment which is indicated in the circumstances of the case, then the duty does not arise. The doctor may of course, have made an error, but if so the consequences of that error, and an assessment of whether there was negligence, would be assessed on the standard Hunter v Hanley basis” [40]



“Ampersand fields a formidable team of Advocates”

Chambers & Partners

