

# Principles of negligence in nursing references



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This paper will investigate the principles of negligence and critically explore the requirement for an awareness and understanding of the laws that are involved for safe practice in the health service (NHS Education for Scotland, 2014). It will consider ethical issues that nurses will face in practice and the difficult clinical decision-making process. Not all medical injuries are because of the result of negligence. All health professionals strive to run a safe medical practice, however still within the medical system errors are being made. Negligence is defined as 'a failure to take proper care of something', and this seems a reasonable concept and yet stepping to professional medical negligence it rises to three elements of negligence. Professional negligence is a complex area of the law where, medical negligence can only be proved if all components of the three-part test are present on the balance of probabilities (civil law) or beyond reasonable doubt (criminal prosecution) (Bryden & Storey, 2011). The three-part test consists of certain considerations between the health professional and the delivery in their duty of care. The test is based on the reasonable foreseeability of harm (Griffith & Tengnah, 2017). These three elements for the duty of care will not always be separately identifiable, at times they may overlap and include other influences (Griffith & Tengnah, 2017).

A nurse has an obligation and accountability within their responsibility to deliver a duty of care to patients, families and carers (Nursing and Midwifery Council, 2015). Nurses are duty bound to adhere to The Code, and although not specified it suggests that in this section Prioritise People, "nurses must make patients care and safety their main concern, and ensure that patients' needs are recognised, assessed and responded to" (Nursing and Midwifery

Council, 2015). According to (Beauchamp & Childress, 2013) framework, nurses work to promote their patients' best interests and non-maleficence. These four principles suggest that all healthcare professionals should act to benefit his/her patient. This framework is widely used and considers the medical ethics in a clinical setting and despite their limitations since their introduction they are used to teach and evaluate ethical dilemmas in healthcare (Page, 2012). Duty of care for personal injury was initially established by Lord Atkin naming it the neighbour test. His seminal judgement suggests that 'you should treat others as you would want to be treated yourself', his use of the words of the parable of the good Samaritans (Thomson Reuters, 2016). This was introduced following the case of *Donoghue v Stevenson* [1932] UKHL 100, (Chapman, 2009). Although in the summary of this case Donoghue was unable to sue Stevenson for breach of contract it was concluded that Stevenson owed a duty of care to his consumers, so it was decided that injury was sustained through negligence in his duty of care (Bryden & Storey, 2011).

In comparison the case of *Caparo Industries Plc v Dickman* [1990] UKHL 2 however was more diverse with regards to the question to breach of duty of care. This case was a different situation, where there were arguments of public policy documents, so to determine negligence the three-fold test needed to be established (Hartshorne, 2007). For this to exist there has to be a relationship of proximity between the claimant and the defendant and the foreseeability of the defendant's actions and the claimant's injuries and whether it is reasonable to impose a duty of care (Tan, 2010). This case was ruled that there was not a duty of care to the entire public who may or may

not place dependence on the report when forming financial decisions (Hartshorne, 2007). Everyone has the right to respect for his/her private and family life (Human Rights Act, 1998). However, a nurse's involvement with others is complicated because the duty of care exists the moment that the patient or client presents for treatment or care including a stranger on the street (Dowie, 2017). According to (Young, 2009), there still stands a dilemma around what the duty of care means for a nurse in practice. Can it be argued that there is not a legal duty to nurses all the time. A duty of care will combine a legal duty, professional and ethical duty, along with accountability on all these levels (Bond & Paniagua, 2009) suggest that nurses are not considered everyday citizens. There is no legal requirement from a legal perspective to a nurse to help in an accident or incident unless they are the cause, however from a professional and ethical viewpoint they do have a duty (Dimond, 2015). It is important to balance rights and obligations and to consider a deontological perspective in practice (Mandal, et al., 2016).

In all cases it is for the claimant to prove that the defendant was negligent on the balance of probabilities, this being the case giving the civil burden of proof (Stauch, et al., 2003). Once established that a duty of care exists between parties it is then that the claimant must prove that a duty of care was breached (Gerard, 2008). Establishing a breach is one of the three elements in proving negligence (Owen, 2007). Demonstrating that the defendant is not negligent if the damage to the claimant was not a reasonably foreseeable consequence of their conduct (Beever, 2007) It is the likelihood of harm and whether the defendant had taken all practical

precautions to prevent harm, something that is considered what a reasonable man would do (de Villiers, 2015). The case of *Bolton v Stone* [1951] AC 850, [1951] 1 All ER 1078 has characteristics within this case in judgement to viewing safety from the defendant's side (Wilson, 2011). The defendant took all reasonable measures of safety in to account, however there was always a conceivable possibility that harm could occur, but this being so extreme an obligation of care that unable to be imposed in all cases. The Bolam test is an assessment that came about from the case of *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582. It is used to assess the standard of reasonable care in negligence cases (Abraham, 2017). As with (*Wilsher v Essex Area Health Authority* [1988] AC 1074, , 1988) on the balance of probability could the hospital be held liable, in this case the defendant failed to provide services as per the standards set by the governing body (Kline & Khan, 2013) Initially the Court found the defendant, Essex Area Health Authority, liable for the infant's injuries, citing *McGhee v National Coal Board* [1973] 1 WLR 1 (Mandal, et al., 2016). Since the case was complex due to there being a multitude of consequences, proving liability on the defendant could not be entirely found (Mandal, et al., 2016). However, the defendant was still liable to give a standard of care of that of a qualified doctor, and in the first instance McGhee had been wrongly cited. So due to the number of possible causes it was for the claimant to establish the likelihood of causation. However, harm is unacceptable regardless of the consequences (Mandal, et al., 2016)

In the case of *Chester v Afshar* [2004] UKHL 41) in comparison to *Bolton v. Stone* [1951] AC 850, [1951] 1 All ER 1078 not all reasonable precaution

wastaken with Afshar in giving all information to the patient and ensuring the patient was aware of all risks involved (Thomas, 2009). The principal issues of autonomy, confidentiality, justice, beneficence, and non-maleficence are significant factors that a doctor should be mindful and considerate of when making decisions every day (Thomas, 2009). Although it could not be proven entirely that the lack of information was the cause for further discomfort, it can be recognised that “but for” the lack of information Chester may not have continued with surgery. Conversely the “but for” test does not provide a complete or exclusive test of causation in the law of tort (Stapleton, 2015). On these facts the judge found that the claimant had established a causal link between the breach and the injury she had sustained and held that the defendant was liable in damages (Parliament, 2003).

Causation of injury is the most difficult principle to prove under the principles of negligence (Alvarez, 2012). In proving causation, it is not enough to show that the defendant's conduct caused the injury to happen, it is generally the person harmed that must prove that the standard of care fell below what is expected of what a reasonably competent person would give (Voyiakis, 2018). Considering this part of negligence, the other elements need to be fulfilled so firstly it needs to be established what effect did it have on the patient (Griffith & Tengnah, 2017). So, finding a causal link needs to be obtained (Avery, 2017). When claiming for a negligent act compensation is sometimes awarded for damages caused (Bryden & Storey, 2011). There is a three-year window for claiming negligence from the alleged negligence occurring, or from when aware of a negligent act (Bryden &

Storey, 2011). This assists forminors until they mature and come of age (Bryden & Storey, 2011).

It is well represented in the case law of (Barnett v Chelsea [1968] 2 WLR 422, n. d.) even though the defendant was in breach of their duty of care, they did not however cause the injury. Though, in this case it could be asked could the patient have suffered due to the breach in care also considering possible psychological trauma to the family. However, this was a civil action, had it been determined that Chelsea was the cause of death then this would have become a gross negligence hearing as with the case of R v Adomako [1995]. Gross negligence does not signify an intention to cause harm, if it was to be intentional this would be classed as murder (Ferner & Mc Dowell, 2006). It needs to be ascertained that a breach in the standard of care that was given caused harm (Griffith & Tengnah, 2017). The court are aware that negligence can also induce psychological upset, so as a result of this there are instances when the court will award damages to the claimant (Avery, 2017). However contrary to this there is a distinction made for this to happen, this is primary and secondary victims (Sowersby, 2014). The distinction lays between direct involvement and those who become distressed upon discovering about negligence on another person (Sowersby, 2014). This is well noted in the case law of (Alcock and others v Chief Constable of Yorkshire Police, 1992) AC 31091-2 Likewise, the case of (Jaensch v Coffey [1984] 155 CLR 549,, n. d.) it was determined that it was more than reasonable foreseeability, proximity was also relevant, doctrine was extended beyond those who perceive with their eyes (Vandhana & Dharshini, 2018). So, does this warrant a relationship between psychiatric illness and careless

conduct (Raz, 2010). However, in this case are there ways to have been more aware and demonstrated more empathy, and did they practice non-maleficence, is this just behaviour. Harm must be proven by an act of negligence or omission (Dowie, 2017). It is important to understand that carelessness is not classified as negligence; these acts are a lack of being unmindful, forgetful and inconsiderate (Raz, 2010). In spite of the elements required to prove negligence, there is the case of “*Res Ipsa loquitur*”, this is the principle that incidents can occur where it is appropriate to imply a negligent act (Brenner & Bal, 2015). This is where an act “speaks for itself” (Brenner & Bal, 2015). This must meet three conditions to establish a negligent act, as in the case of *Cassidy v Ministry of health* [1951].

**Conclusion** So, what does this mean to nursing practice, a nurse is always duty bound by the NMC code of conduct to adhere to being candid. It is established that it is unethical in medical practice to deliver substandard care. It is important to understand that actions should be based on the right intentions. A nurse should understand their principles of duty and recognise their obligations and the rights of others. Recommendations for nursing practice would be to always develop and follow through with a good nursing care plan and remain up to date on the organisation's policies and procedures. It is important to recognise scope for practice and standards within a work place, and always identify and know their limitations and always ask for clarification when not fully understanding a task.

## References

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- Abraham, T., 2017. *A Short History of the Bolam Test- A Key Stone of Medical Negligence Law for 60 Years*. [Online] Available at: <https://www.gponline.com/short-history-bolam-test-keystone-medical-negligence-law-60-years/article/1441675> [Accessed 17th November 2018].
- *Alcock and others v Chief Constable of Yorkshire Police* (1992).
- Alvarez, M., 2012. Review: Action, Ethics, and Responsibility & Causing Human Actions: New Perspectives on the Causal Theory of Action. *Oxford Journals*, 72(One), pp. 190-193.
- Avery, G., 2017. *Law and Ethics In Nursing and Healthcare*. 2nd ed. London: Sage.
- *Barnett v Chelsea [1968] 2 WLR 422* (n. d.).
- Beauchamp, T. L. & Childress, J. F., 2013. *Principles of Biomedical Ethics*. 5th ed. Oxford: Oxford University Press.
- Beever, A., 2007. *Rediscovering the Law of Negligence*. First ed. Oxford: Hart Publishing.
- *Bolton v Stone AC 850*, (1951).
- Bond, P. & Paniagua, H., 2009. Understanding the Law and Accountability. *Practice Nursing*, 20(8), pp. 406-408.
- Brenner, L. H. & Bal, B. S., 2015. Medicolegal Sidebar: The Law and Social Values: Res Ipsa Loquitur. *Clinical Orthopaedics and Related Research*, 473(1), pp. 23-26.
- Bryden, D. & Storey, I., 2011. Duty of Care and Medical Negligence. *British Journal of Anaesthesia*, 11(4), pp. 124-127.
- Bryden, D. & Storey, I., 2011. Duty of Care and Medical Negligence. *Continuing Education in Anaesthesia Critical Care & Pain*, 11(4).

- *Caparo Industries Plc v Dickman* [1990] UKHL 2 (1990).
- *Cassidy v Ministry of health* . (1951).
- Chapman, M., 2009. *The Snail and The Ginger Beer A Singular Case of Donoghue v Stevenson*. First ed. London: Wildy Simmonds & Hill Publishing.
- *Chester v Afshar* [2004] UKHL 41) (2004).
- de Villiers, M., 2015. Forseeability Decoded. *Minnesota Journal of Law, Science & Technology*, 16(1).
- Dimond, B., 2015. *Legal Aspects of Nursing*. 7th ed. Harlow: Pearson.
- *Donoghue v Stevenson* [1932] UKHL 100, (1932).
- Dowie, I., 2017. Legal, ethical and Professional Aspects of Duty of Care for Nurses. *Nursing Standard*, 32(16-19), pp. 47-52.
- Dowie, I., 2017. Legal, Ethical and Professional Aspects of Duty of Care for Nurses. *Nursing Standard*, 16-19(32), pp. 47-52.
- Ferner, R. E. & Mc Dowell, S. E., 2006. " Doctors Charged With Manslaughter in the Coarse of Medical Practice". *Journal of The Royal society of Medicine*, Volume 99, pp. 309-14.
- Gerard , P., 2008. What Happens When a Breach of The Duty of Care Results in Death?. *Guidelines in Practice*.
- Griffith, R. & Tengnah, C., 2017. *Law and Professional Issues in Nursing*. Fourth ed. London: Sage Publications.
- Hartshorne, J., 2007. *Confusion, Contradiction and Chaos Within the Hous of Lords Post Caparo v Dickman*. [Online] Available at: [https://ira.le.ac.uk/bitstream/2381/27596/4/J\\_Hartshorne\\_article\\_.pdf](https://ira.le.ac.uk/bitstream/2381/27596/4/J_Hartshorne_article_.pdf) [Accessed 09 November 2018].

- Human Rights Act , 1998. *Gov. uk*. [Online] Available at: <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/I/chapter/7> [Accessed 09 November 2018].
- Iwan, D., 2017. Legal, Ethical and Professional Aspects of Duty of Care for Nurses. *Nursing Standard*, 32(16), pp. 47-52.
- *Jaensch v Coffey (1984) 155 CLR 549*, (1984).
- *Jaensch v Coffey [1984] 155 CLR 549*, (n. d.).
- Kline, R. & Khan, S., 2013. Duty of Care of Healthcare Professionals. *Public World*.
- Mandal, J. H., Ponnambath, D. K. & Parija, S. C., 2016. Utilitarian and Deontological Ethics In Medicine. *Tropical Parasitology*, 6(1), pp. 5-7.
- NHS Education for Scotland, 2014. *Professionalism and Professional Accountability in Clinical Skills Practice*. [Online] Available at: [http://www.csmen.scot.nhs.uk/media/1318/professionalism\\_and\\_professional\\_accountability.pdf](http://www.csmen.scot.nhs.uk/media/1318/professionalism_and_professional_accountability.pdf) [Accessed 18th Novemeber 2018].
- Nice, 2011. *Making Difficult Choices: Ethical Commissioning*. [Online] Available at: <https://www.evidence.nhs.uk/search?q=ethical+principles+in+healthcare+research> [Accessed 30th October 2018].
- Nursing and Midwifery Council, 2015. *The Code*. [Online] Available at: <https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf>
- Owen, D. G., 2007. The Five Elements of Negligence. *Hofstra Law Review*, 35(4), pp. 2-9.

- Page, K., 2012. The Four Principles: Can They Be Measured and Do They Predict Ethical Decision Making. *BMC Medical Ethics*, 13(1), p. 1.
- Parliament, 2003. *Opinions of the Appeal for Judgement In the Cause*. [Online] Available at: <https://publications.parliament.uk/pa/ld200304/ldjudgmt/jd041014/cheste.pdf> [Accessed 11 Novemeber 2018].
- *R v Adomako* (1995).
- Raz, J., 2010. Resposability and the Negligence Standard. *Oxford Journal of Legal Studies*, 30(1), pp. 1-18.
- Sowersby, R., 2014. *Psychiatric damage: Primary and Secondary Victims*. [Online] Available at: <http://www.guildhallchambers.co.uk/pdfs/guildhall-1794.pdf> [Accessed 17th Novemeber 2018].
- Stapleton, J., 2015. An “ Extended But-For Test For” The Casual Relation In The Law Of Obligations. *Oxford Journal of Leagal Studies*, Volume 35.
- Stauch, M., Wheat, K. & Tingle, J., 2003. *Medical Law*. Second ed. London: Cavendish .
- Tan, D., 2010. The Salient Features of Proximity: Examining the Spandek Formulation for Establishing a Duty of Care’. *Singapore Journal of Legal Studies*, pp. 459-83.
- Thomas, J., 2009. Ethical and Legal Issues in Medical Practice. *US National Library of Medicine*, 25(3), pp. 335-336.
- Thomson Reuters, 2016. *Principles and Progress*. [Online] Available at: [http://sites.thomsonreuters.com.au/journals/files/2018/07/Justice\\_Peter\\_Applegarth\\_2016-90-ALJ-711.pdf](http://sites.thomsonreuters.com.au/journals/files/2018/07/Justice_Peter_Applegarth_2016-90-ALJ-711.pdf) [Accessed 07 Novemeber 2018].

- Vandhana, R. & Dharshini, P., 2018. A Test of Proximity and Forseeabilty With Respect To The Tort Of Negligence: An International Perspective. *International Journal of Pure and Applied Mathematics*, 120(5), pp. 453-462.
- Voyiakis, E., 2018. Causaton and Oppertunity In Tort. *Oxford Journal of Legal Studies*, 38(1), pp. 26-47.
- *Wilsher v Essex Area Health Authority [1988] AC 1074*, (1988).
- Wilson, J., 2011. The Delight of Everyone. *New Law Journal*, Issue 7482.
- Young, A., 2009. Review: The Legal Duty of Care for Nurses and Other Healthcare Professonals. *Journal of Clinical Nursing*, Volume 18, pp. 3071-3078.