



# Legal Issues/Consent



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# The fine print

- This presentation is not legal advice.
- This presentation is for education purposes.
- Cases mentioned in this presentation are available open-source.
- If you have a specific legal matter, you are encouraged to seek legal advice.

# The Post Anaesthetic Care Unit

The PACU Nurse should understand that the essence of their Speciality Practice is establishing trust , creating a safe environment and blending expert clinical and theoretical knowledge with caring practices.

**PACU NURSING COMBINES THIS CARING  
WITH RAPIDLY CHANGING TECHNOLOGY**

# The Post Anaesthetic Care Unit

- The commentary by Judge Dohm in a Canadian malpractice case places the purpose and function of the PACU into proper perspectives.



# The Post Anaesthetic Care Unit

- “That this is the most important room in a hospital and the one in which the patient requires the greatest attention because it is fraught with the greatest potential danger to the patient”
- This known hazard carries with it in my opinion a high degree of duty owed by the hospital to the patient.

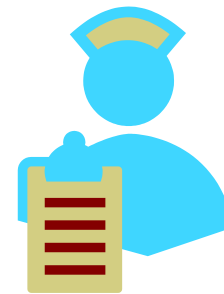
# Objectives

- Criminal Law vs Civil Law
- Cases & Outcomes
- Assault/Consent Issues
- Legal Responsibilities
- Topical Current Events



# Criminal Law V Civil Law

- Commence Proceedings
  - Arrest
  - Summons
- Parties to the litigation
  - Crown, Police, DPP, Queen
  - Trial
  - By judge(s) & jury (12-15) for all serious offences
- Standard of Proof
  - Beyond Reasonable Doubt
- Presumption of Innocence/Right to Silence
- Result
  - Fine, prison, community service order etc
- Statement of claim (generally)
  - Plaintiff and Defendant
  - Burden of proof on the Plaintiff
  - Often by judge alone or with jury of 6 if requested
  - Balance of Probabilities
  - Damages (\$), Injunctions



# Vercoe v Jackson SCSA

## 17 January 1992

- Plaintiff undertakes surgery to straighten the nasal septum and remove nasal polyps.
- During surgery, forceps were used with excessive force, rupturing the dura.
- Cerebrospinal fluid started to leak from nose two months after the operation. Plaintiff advised surgeon of clear discharge from nostril but this was not immediately acted on.

# Vercoe v Jackson cont

- Plaintiff became critically ill with meningitis, requiring a craniotomy to repair the dura. Meningitis resulted in brain damage.
- Surgeon found liable for negligence for both applying forceps with excessive force and failing to diagnose the problem during post-operative care.

# Canterbury Hospital v Cappelletto NSWCA 17 May 1991

- Plaintiff undertakes routine cholecystectomy.
- After surgery, blood pressure dropped from 140/90 to 60/40 in the space of a few hours.
- Doctors failed to act until one week later when blood pressure reached 45/30.
- Intra-abdominal haemorrhage discovered along with two litres of blood in the abdomen.

# Canterbury Hospital v Cappelletto

## NSWCA 17 May 1991 cont

- Plaintiff undergoes three laparotomies and spends 3 months in hospital, some time in intensive care.
- During that time, became infected with *candida albicans* as a result of weakened condition and intravenous cannulae. Infection travelled to plaintiff's eyes causing blindness.
- Doctors found to be negligent in failing to act when blood pressure initially dropped.

# Giurelli v Girgis (1980) 24 SASR 264

- Plaintiff breaks arm, requiring a plate to hold bones in place.
- Complained to doctor for several months afterwards of severe pain in the area. Ignored as malingering (dry your eyes, princess).
- Eventually discovered that plate was not holding bone immobile, was not healing .
- Doctor negligent in ignoring symptoms.

# Murray v McMurchy [1949] 2 DLR 442

- Patient admitted for, and only consented, to a C-section.
- Doctor found fibroid tumours in a patient's uterus.
- Doctor tied the patient's fallopian tubes to spare her the hazards of another pregnancy.
- Doctor liable for damages because no evidence that tumours were, a time of the procedure, dangerous to her life or health.
- Medical treatment or procedures applied without the patient's consent can as a general rule, may be the subject of suit for trespass/battery.

# Daskalopoulos v Health Care Complaints Commission [2002]

- Each health care team member is responsible for the performance of his/her duties in an operating theatre – however, each member is entitled to rely upon each other member of the team to perform those duties.
- Incorrectly dispensed contrast medium in procedures that had caused increased adverse effects in patients over a period of some months.
- RN insisted that he check the substance label.

# What is Assault?

- Assault = unlawful touching of another without their consent/trespass
- Elements -
  - D must have intended to (as opposed to accidentally) touch P,
  - D must have actually touched P, AND
  - P must NOT have consented!

# Intentional Touching

- = direct physical contact or by means of an instrument or machine (*R v Mobilio* 1991).
- P need not be aware of the touching at the time (eg. asleep or unconscious).
- Damages may be payable.



# Consent

- Must obtain valid consent before giving any medical treatment otherwise assault/trespass
- Why?
- What about an emergency situation?



# Valid Consent

- Consent may be -
  - Oral
  - Written
  - Implied
- Consent must be -
  - Voluntary
  - Cover treatment performed
  - Given by person with legal capacity



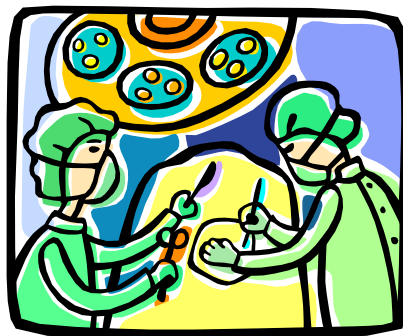
# What should you inform a patient to acquire a “valid consent”?

- Must advise and acquire consent in respect of -
  - nature of the proposed procedure (to avoid claim of assault), AND
  - risks and complications involved (to avoid claim of negligence)



# Case about Consent

- Chatterton v Cerson: wrong operation was undertaken – a circumcision instead of a tonsillectomy.
- Shaw v Wright: operation on the wrong body part – removing a cataract from the wrong eye.



# Statute of Limitation



- An aggrieved patient may not decide to take civil action against an individual for a number of years.
- An individual may bring a civil action of negligence to court any time within the 3 year period from the date of the incident (Note amendments to LAA – 6 to 3 yrs).
- In the case of children/paediatrics the time is even longer as a child does not have legal rights until they are 18.



# Legal Issues

- These types of claims demonstrate the importance of good documentation.
- Try to remember something in detail - a nursing action - that took place three years ago!!
- Only accurate evidence is good documentation.
- Accurate documentation is part of the duty of care the nurse owes to the patient.
- Failure to meet the required documentation standard (that of the reasonable nurse in the same situation) can put the nurses competence and credibility under question.

# Topical Current Events

- Anderson's case.
- Responsibility to keep up to date.
- Nurse's duty of care outside hospital premises –  
Lowns v Woods and Wrongs and Other Acts  
(Vic) 2002.



# References



- Edginton, J. 1995, 'Law for the Nursing Profession and Allied Health Care Professionals – 3rd Edition', CCH Australia, North Ryde.
- Finlayson, B. 1996, 'The Expert and Lay Witness: Guidelines for Nurses called to give Evidence – 2nd Edn', HLE Publications, Toowoomba.
- McFarlane. P 2000, 'Health Law in Australia and New Zealand: Commentary and materials (3rd edn.)', The Federation Press. Sydney.
- Staunton, P and Whyburn, B. 2000, 'Nursing and the law – 4th Edition', Harcourt, Sydney.

# Useful Web-links



- Australasian Legal Information Institute  
[www.austlii.du.au](http://www.austlii.du.au)
- World Health Organization  
[www.who.int](http://www.who.int)
- Royal College of Nursing Australia  
[www.rcna.org.au](http://www.rcna.org.au)
- Supreme Court of Victoria  
[www.supremecourt.vic.gov.au](http://www.supremecourt.vic.gov.au)

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