

Patient Consent & the Doctor's Duty: Negotiating the Minefield of the Changing Law on Informed Consent and the Doctor's Duty of Care

Session A*: Tuesday, 10 April, 2018 and Wednesday, 11 April 2018

(6:30pm-9:30pm on both days)

Session B*: Friday, 13 April 2018 (6:30-9:30pm) and Saturday, 14 April, 2018
(9:30am-12:30pm)

(*Session A and B are identical)

Session A : DAY ONE		
TUESDAY 10 April	6:15-6:30pm	Registration
	6:30-6:50pm	Introduction to the Speakers, the Objectives & Methodology of the Workshop, and Topics to be Covered Speakers: James Badenoch, Q.C. and Dr Colm McGrath
	6:50-7:30pm	Topic 1: An Overview of Tort and Medical Negligence <i>An overview of the basic principles of tort law in the context of both the English and Hong Kong common law system will be presented. The essential elements (duty of care, standard of care, breach and proof damage) of the specific tort of medical negligence will be discussed in the context of the classic formulation in the case of Bolam v Friern Hospital [1957] WLR 582 of the doctor's 'global duty of care' for competent diagnosis, information and advice, and for treatment will be discussed.</i> Speaker: Dr Colm McGrath
	7:30-7:55pm	Seminar Discussion on Topic 1
	7:55-8:10pm	Break
	8:10-8:50pm	Topic 2: The New Law – The Doctor's Duty to Advise and to Obtain Informed Consent <i>On 11 March 2015, the Supreme Court of the United Kingdom handed down its judgment in the landmark case of Montgomery v Lanarkshire Health Board [2015] UKSC 11. In this decision, the UK Supreme Court decided to overturn the approach held for nearly half a century since the case of Bolam v Friern that it was essentially for the medical profession to decide what was sufficient information for the</i>

TUESDAY 10 April	8:10-8:50pm	<p><i>patients, and what was not. This doctor-centric approach was firmly rejected by the UK Supreme Court in Montgomery in favour of a more patient-centric test of sufficient disclosure. This is by far the most important development in the law in the UK and in Hong Kong regulating the obligations of doctors to their patients in five decades.</i></p> <p><i>Mr James Badenoch, of Queen's Counsel (Q.C.) who led the successful appeal for the appellants in the case of Montgomery v Lanarkshire will deliver the lecture. He will examine the change in the law governing the doctor's duty to advise and to obtain informed consent, and the implications of this recent change in the law for clinical practice. He will also discuss how this reformulation of the doctor's standard of care in relation to the duty to advise and to obtain informed consent affects the remaining duties under the classic Bolam rule – and why the recent changes ought not to worry the prudent medical practitioner.</i></p> <p>Speaker: James Badenoch, Q.C.</p>
	8:50-9:15pm	Seminar Discussion on Topic 2
	9:15-9:30pm	<p>Summary and Wrap-Up by Course Instructors</p> <p>Speakers: James Badenoch, Q.C and Dr Colm McGrath</p>
Session A : DAY TWO		
WEDNESDAY 11 April	6:30-6:40pm	<p>Introduction to the Topics to be Covered in Day 2</p> <p>Speakers: James Badenoch, Q.C and Dr Colm McGrath</p>
	6:40-7:20pm	<p>Lecture – Topic 3: Who is Liable?</p> <p>Part I: Understanding Liability in Medical Negligence</p> <p><i>Not all medical treatment which fail to achieve their intended effect (or worse, result in further deterioration of the patient's condition, or in rare cases, cause actual harm to the patient) result in liability for the doctor – not all medical errors or 'mistakes' constitute actionable negligence (acts of negligence for which doctors may be sued). Mr James Badenoch Q.C. discusses the general public policy considerations applied by the courts in the sphere of medical practice, and makes the point that it is not the intent or function of the law (or the courts) to hold medical practitioners and healthcare professionals in terrorem of the law. For example, the law will not apply hindsight in judging the conduct of doctors, and will generally be sympathetic to doctors acting in emergency situations with little vital clinical information available. The law has to draw a delicate but fair balance between the public interest of encouraging doctors to do their best in good faith for their patients (taking such reasonable risks as may be necessary in the circumstances), and the right of patients to decide for themselves whether or they wish to accept the risks of the medical intervention.</i></p> <p>Speaker : James Badenoch, Q.C.</p>

WEDNESDAY 11 April	7:20-7:45pm	Seminar Discussion on Topic 3
	7:45-8:00pm	Break
	8:00-8:40pm	<p>Lecture – Topic 4: Who is Liable?</p> <p>Part II: The Liability of Hospitals, Vicarious Liability, Causation and Loss of Chance</p> <p><i>A majority of doctors in both the UK and in Hong Kong practice in an institutional setting (whether in the public or private sector) in which they work with other doctors as part of a group, institutional or governmental practice, and/or in which they are employees. What are the liabilities of a hospital, institution or a public authority for an act of medical negligence by a doctor working in such a setting? In this final lecture, the principles of causation is also discussed: in order for an aggrieved patient to successfully recover damages from a doctor who has committed a proven act of negligence, the patient has to show that she or he has suffered injury or other damage as a result, which but for the act of negligence the injury or damage would not have occurred. This requirement of causation has proved to be a bigger challenge for aggrieved patients in many cases than proving the act of negligence itself. Finally, claims for a loss of chance will also be discussed: may a plaintiff claim that he or she suffered a loss of opportunity for a better outcome as a result of an act of negligence on the part of the doctor?</i></p> <p>Speaker : Dr Colm McGrath</p>
	8:40-9:05pm	Seminar Discussion on Topic 4
	9:05-9:30pm	<p>Final Open Q&A covering all topics / Final Summary and Wrap-Up</p> <p>Speakers : James Badenoch, Q.C. and Dr Colm McGrath</p>
End of Session A		

Session B : DAY ONE

FRIDAY 13April	6:15-6:30pm	Registration
	6:30-6:50pm	Introduction to the Speakers, the Objectives & Methodology of the Workshop, and Topics to be Covered Speakers: James Badenoch, Q.C., with Dr Colm McGrath
	6:50-7:30pm	Topic 1: An Overview of Tort and Medical Negligence <i>An overview of the basic principles of tort law in the context of both the English and Hong Kong common law system will be presented. The essential elements (duty of care, standard of care, breach and proof damage) of the specific tort of medical negligence will be discussed in the context of the classic formulation in the case of Bolam v Friern Hospital [1957] WLR 582 of the doctor's 'global duty of care' for competent diagnosis, information and advice, and for treatment will be discussed.</i> Speaker: Dr Colm McGrath
	7:30-7:55pm:	Seminar Discussion on Topic 1
	7:55-8:10pm	Break
	8:10-8:50pm	Topic 2: The New Law – The Doctor’s Duty to Advise and to Obtain Informed Consent <i>On 11 March 2015, the Supreme Court of the United Kingdom handed down its judgment in the landmark case of Montgomery v Lanarkshire Health Board [2015] UKSC 11. In this decision, the UK Supreme Court decided to overturn the approach held for nearly half a century since the case of Bolam v Friern that it was essentially for the medical profession to decide what was sufficient information for the patients, and what was not. This doctor-centric approach was firmly rejected by the UK Supreme Court in Montgomery in favour of a more patient-centric test of sufficient disclosure. This is by far the most important development in the law in the UK and in Hong Kong regulating the obligations of doctors to their patients in five decades.</i> <i>Mr James Badenoch, of Queen’s Counsel (Q.C.) who led the successful appeal for the appellants in the case of Montgomery v Lanarkshire will deliver the lecture. He will examine the change in the law governing the doctor’s duty to advise and to obtain informed consent, and the implications of this recent change in the law for clinical practice. He will also discuss how this reformulation of the doctor’s standard of care in relation to the duty to advise and to obtain informed consent affects the remaining duties under the classic Bolam</i>

FRIDAY 13 April	8:10-8:50pm	<i>rule – and why the recent changes ought not to worry the prudent medical practitioner.</i> Speaker: James Badenoch, Q.C.
	8:50-9:15pm	Seminar Discussion on Topic 2
	9:15-9:30pm	Summary and Wrap-Up by Course Instructors Speakers: James Badenoch, Q.C, and Dr Colm McGrath
Session B : DAY TWO		
SATURDAY 14 April	9:30-9:40am	Introduction to the Topics to be Covered in Day 2 Speakers: James Badenoch, Q.C, and Dr Colm McGrath
	9:40-10:20am	Lecture – Topic 3: Who is Liable? Part I: Understanding Liability in Medical Negligence <i>Not all medical treatment which fail to achieve their intended effect (or worse, result in further further deterioration of the patient’s condition, or in rare cases, cause actual harm to the patient) result in liability for the doctor – not all medical errors or ‘mistakes’ constitute actionable negligence (acts of negligence for which doctors may be sued). Mr James Badenoch Q.C. discusses the general public policy considerations applied by the courts in the sphere of medical practice, and makes the point that it is not the intent or function of the law (or the courts) to hold medical practitioners and healthcare professionals in terrorem of the law. For example, the law will not apply hindsight in judging the conduct of doctors, and will generally be sympathetic to doctors acting in emergency situations with little vital clinical information available. The law has to draw a delicate but fair balance between the public interest of encouraging doctors to do their best in good faith for their patients (taking such reasonable risks as may be necessary in the circumstances), and the right of patients to decide for themselves whether or they wish to accept the risks of the medical intervention.</i> Speakers: James Badenoch, Q.C.
	10:20-10:45am	Seminar Discussion on Topic 3
	10:45-11:00am	Break
	11:00-11:40am	Lecture – Topic 4: Who is Liable? Part II: The Liability of Hospitals, Vicarious Liability, Causation and Loss of Chance

SATURDAY 14 April	11:00- 11:40am	<p><i>A majority of doctors in both the UK and in Hong Kong practice in an institutional setting (whether in the public or private sector) in which they work with other doctors as part of a group, institutional or governmental practice, and/or in which they are employees. What are the liabilities of a hospital, institution or a public authority for an act of medical negligence by a doctor working in such a setting? In this final lecture, the principles of causation is also discussed: in order for an aggrieved patient to successfully recover damages from a doctor who has committed a proven act of negligence, the patient has to show that she or he has suffered injury or other damage as a result, which but for the act of negligence the injury or damage would not have occurred. This requirement of causation has proved to be a bigger challenge for aggrieved patients in many cases than proving the act of negligence itself. Finally, claims for a loss of chance will also be discussed: may a plaintiff claim that he or she suffered a loss of opportunity for a better outcome as a result of an act of negligence on the part of the doctor?</i></p> <p>Speaker : Dr Colm McGrath</p>
	11:40- 12:05pm	Seminar Discussion on Topic 4
	12:05- 12:30pm	Final Open Q&A covering all topics / Final Summary and Wrap-Up Speakers : James Badenoch, Q.C., and Dr Colm McGrath
End of Session B		