

Medical Negligence

National Judicial Academy, Bhopal

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By

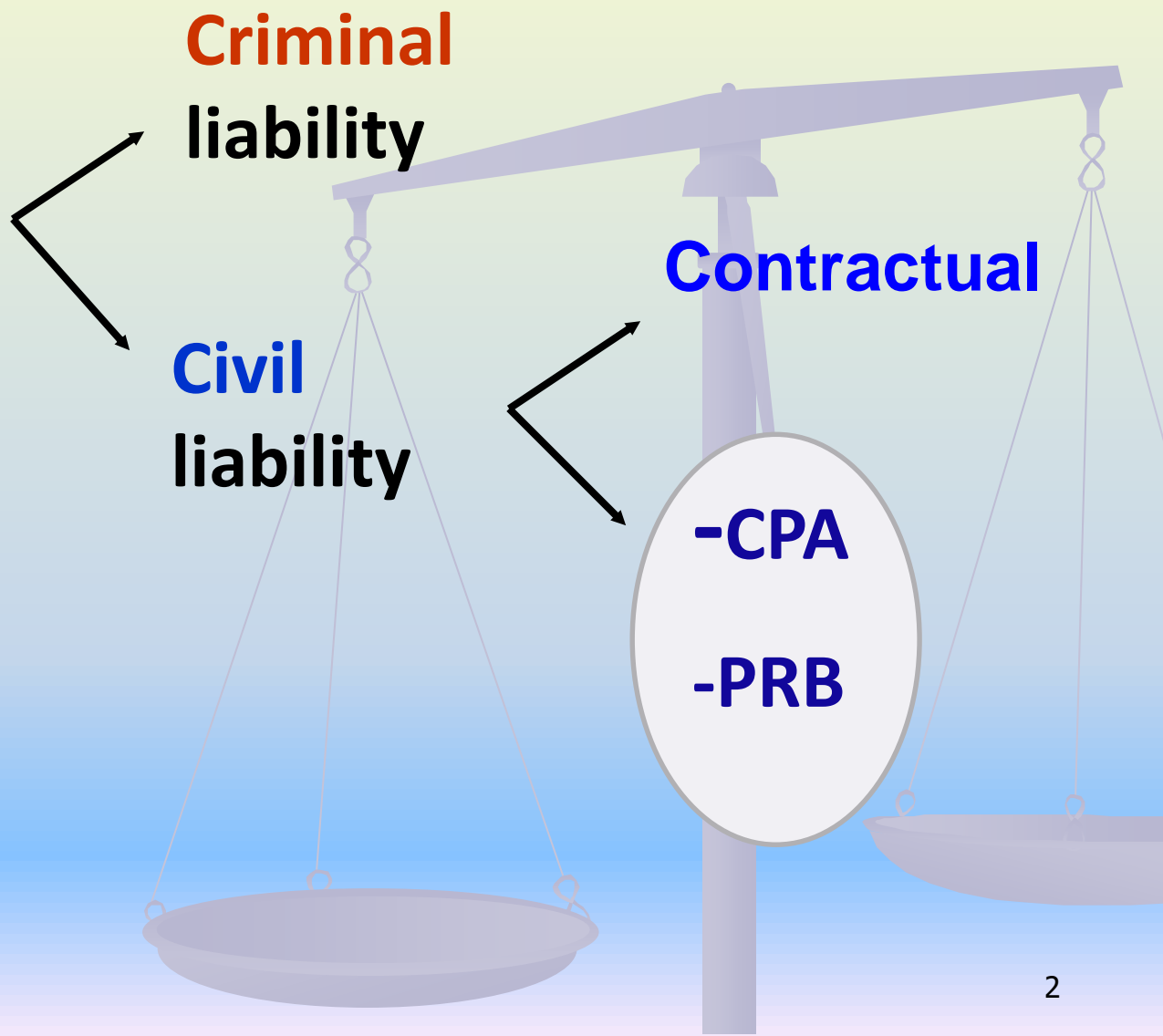
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**Doctor's
liability
for
Wrongful
Act**



Principles of Medical Law

“...the practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care.

Neither the very high nor a very low degree of care

Competency judged in the light of the particular circumstances of each case is what the law requires...”

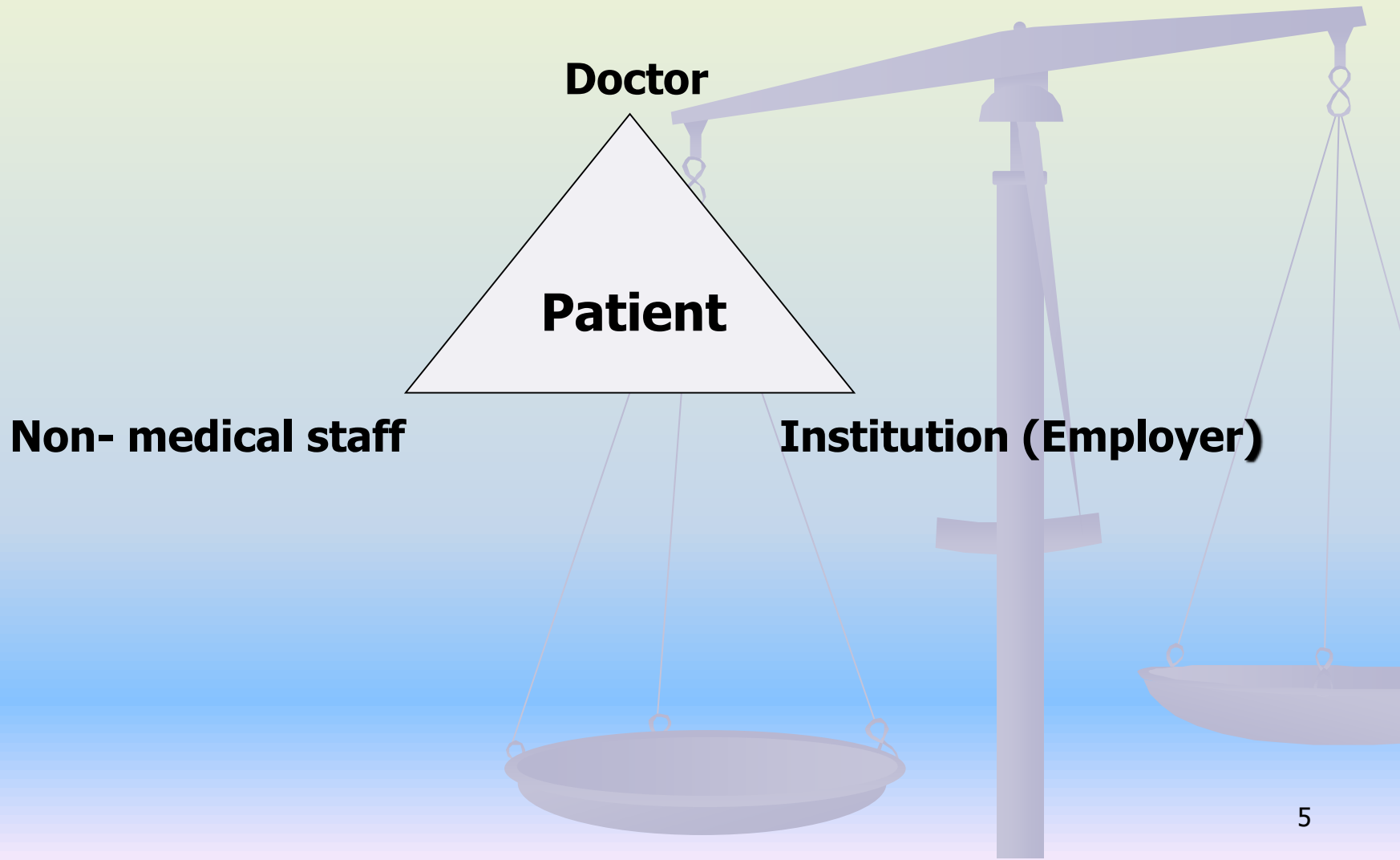
- SC in Lakshman Balkrishna Joshi (1969)

Proof of Negligence – 4 D's

The essentials of negligence are **four "D"**:
For successful claim Pt has to prove Dr's-

1. **Duty** towards patient
2. **Deficiency** in duty
3. **Directly** - resulted injury (causa causans)
4. **Damage** which may be physical, mental or financial loss to patient or relatives.

Liability in Medical Negligence



Responsibility Vs Liability

- Before we can raise liability we need to establish responsibility
- Could we establish responsibility? Whose fault was it? Who is to blame?
- Sometimes difficult to demonstrate the harm caused by the health professional's conduct.
- Variety of possible explanations of an adverse impact of treatment due to the complexity and complications of medicine

Duty of Care- Different Stages

Stage I

Deciding – whether to undertake the case

Stage II

Deciding – what treatment to give

Stage III

Actual administration of the treatment

Duty of Care

- Establishes doctor-patient relationship,
- "once a doctor begins treatment he must do all he reasonably can to save the rescue, who is now his patient".
- In the emergency circumstances, the duty arises when the patient presents himself at the emergency unit even before he consulted a doctor.

Proximate Cause

- the patient adversely affected by treatment not only has to demonstrate the **existence of a duty of care,**
- the **breach of this duty** and the negligence of the health professional, but
- **a direct link between the negligence and his/her injury.**

Who is Liable? Doctor / Hospital/Others

Contract of Service !-Vicarious
(employee-employer contract)

Contract for Service !- Doctor
(contractor-client contract)

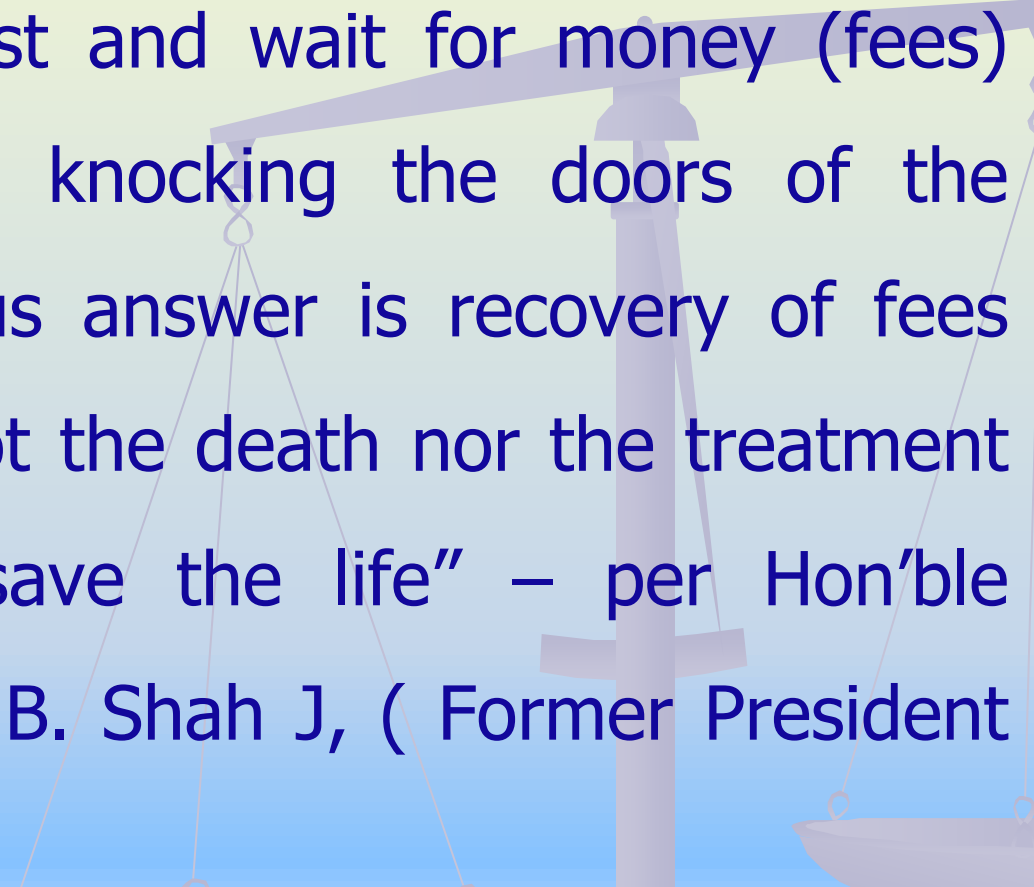
Independent Contractor

Hospital/Corporate Liability

- Denial of Medical Services
- Negligent maintenance of equipment
- Negligent hiring and retention of employees/agents
- Negligent granting of staff privileges
- Negligent supervision of staff physicians
- Failure to adopt and enforce adequate policies to ensure acceptable quality of care

Parvat Kumar Mukherjee v Ruby General Hospital

"can doctors insist and wait for money (fees) when death is knocking the doors of the patient? Obvious answer is recovery of fees can wait but not the death nor the treatment for trying to save the life" – per Hon'ble Justice Mr. M. B. Shah J, (Former President NCDRC)

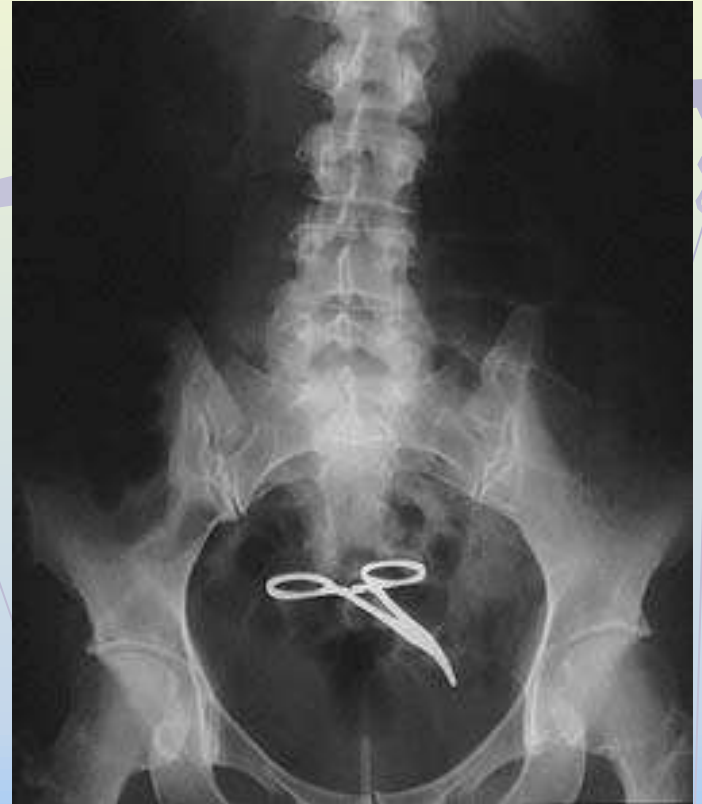


Vicarious Responsibility

- Liability of the master (employer) in spite of absence of blame worthy conduct on his part.
- Negligence
- Employer responsible for negligent acts of his servants.
- Within the scope of his employment/range of services.
- Tort of occupier's liability (*e.g. visitor injured on hospital grounds*).

Res Ipsa Loquitor

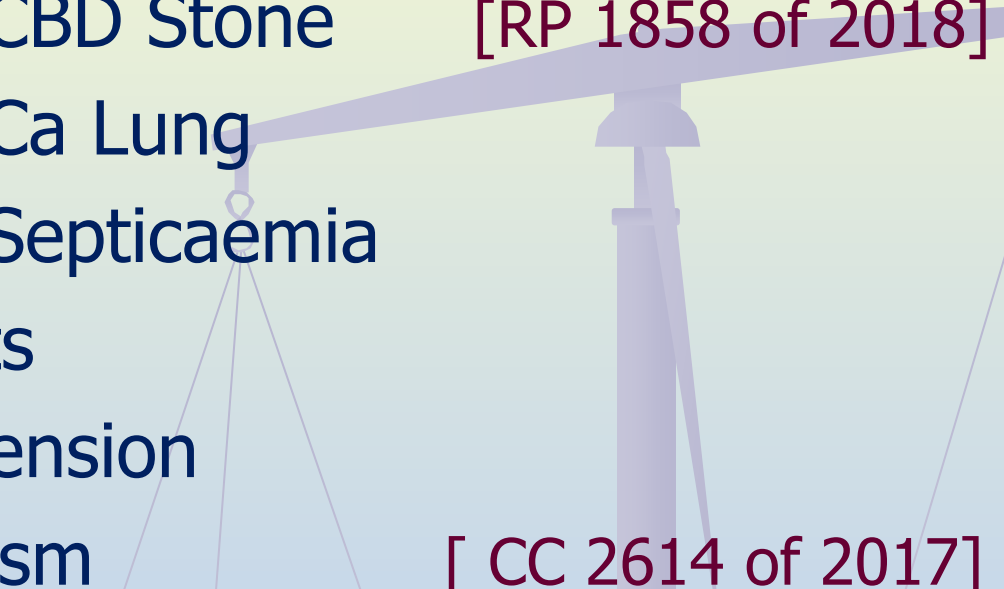
- Articles left in patient's body.
- Operation on wrong side/ part of body
- Not operating in time.



Contributory Negligence

- Concurrent negligence by the patient and the doctor, resulting in delayed recovery or harm to the patient.
- Defense for the doctor in civil cases.
- Burden of proof on doctor.

Wrong Appreciation

- Gall Stone – CBD Stone [RP 1858 of 2018]
 - Urinary Stent – Ca Lung
 - Haemorrhage – Septicaemia
 - Values of Lab Tests
 - Diabetes – Hypertension
 - Thrombo – Embolism [CC 2614 of 2017]
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Some Interesting Cases

Case Number	Subject matter
CC No.2614 of 2017	Frivolous complaint
OP No. 372 of 2001	Std. of Practice
OP No. 104 of 2002	Birth Asphyxia
CC No. 199 of 2001	Choice of treatment by Neurosurgeon
OP No. 112 of 2002	Lasik Surgery
OP No. 179 of 2002	Gauze Piece Spine Surgery
OP No. 42 of 2003	Appendicular Perforation
CC 950 of 2015	No Cure No Negligence
CC No. 35 of 2012	Inflated Claim dismissed
RP 732 of 2010	Defective consent
RP No. 3077 of 2011	Cholecystectomy by Urologist
RP No. 4236 of 2014	HIV Mis diagnosis
RP No. 3830 of 2014	Omission Medical Negligence
RP 4469 of 2014	Medical negligence
RP 2074 of 2015	Ortho Medical Negligence
FA No. 192 of 2005	Hernia en Glasside
FA 218 of 2011	Standard of Practice
FA 1140 of 2014	Medical Negligence



Thank you

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