

MEDICAL NEGLIGENCE. BY MICHAEL A. JONES. [London: Sweet & Maxwell. 1991. xlix + 448 pp. (including index). Hardcover: £65.00.]

THROUGHOUT the common law world, interest in the legal aspects of medical practice (and in medical negligence in particular) has grown rapidly over the last decade. Although as far back as the 1950s students were referred to cases such as *Roe v. Minister of Health* [1954] 2 Q.B. 66; [1954] 1 W.L.R. 915; 98 S.J. 319; [1954] 2 All E.R. 131; C.A. (*affirming*) [1954] 1 W.L.R. 128; 98 S.J. 30 in which the courts had to consider the standards and practices which could be expected of doctors, the area was not, until recently, sufficiently developed to merit independent analysis. Nowadays, though, many universities offer courses in medico-legal subjects as part of their undergraduate and post-graduate degrees. For legal practitioners, too, medical negligence is a subject which invites greater attention

– both because of the increasing number of cases and because of the seriousness of the injuries suffered as a result of medical negligence. Consequently, the literature in such matters has increased rapidly. In 1991 alone, three new books, including “Jones”, were published.

The author is Senior Lecturer in Law at the University of Liverpool, and is also the author of a general textbook on the law of torts (currently in its third edition). In the preface to this book he refers to the growing number of law firms specialising in medical negligence, and to the fact that the book is aimed primarily at legal practitioners.

Although it is indeed likely that practitioners will find the greatest need for this book, it must be said that so comprehensive, well-written and clear a work deserves (and can surely expect) a far wider market. Indeed, the thoroughness of Mr Jones’ analysis of the various areas in which medical negligence is an issue means that the reader is informed about far more than simply the law relating to medical matters. The ten chapters offer a treasure trove of rules and authorities not only on tort, but also on contract, product liability, damages and procedure. And all the information is presented in such an approachable way that even the non-lawyer will (as the author hopes in the preface) find much to interest and educate.

Although the book concentrates on English law, it also draws extensively on Commonwealth authorities, and one of its great strengths is the sheer volume of cases (both reported and unreported) referred to, whether in the main text or in footnotes. Each of the chapters deals with a distinct area of law, and every chapter is then broken down to deal with specific topics within that area. This system, together with the use of a comprehensive index, appendix, and a full glossary of medical terms, means that it is easy both to locate the discussion of a specific issue and to understand what is being said about it, even when the subject-matter becomes technical.

The glossary is particularly useful given that the book is likely to be read primarily by lawyers with very limited medical knowledge. One slight criticism, however, is that the rationale for inclusion or exclusion of terms in the glossary is not always clear. For example, the meaning of “carotid endarterectomy”, which is referred to on page 241, is explained, while “thyroidectomy”, referred to on page 142, is not. Additionally, some common medical expressions (such as, for example, “contra-indication”, which is often encountered in relation to reactions to drugs) do not appear at all. Furthermore, the author’s laudable (and generally very successful) attempts to simplify terms for the layman sometimes result in minor inaccuracies (such as in the description of a “keloid” as a “scar which is thickened and deep pink”, when in fact the deep pigmentation is generally only present in the early stages of formation).

These are, however, minor quibbles. The acid test of any book is the way in which it handles difficult cases and uncertain areas of the law. The book passes this test with flying colours. For example, the decision of the House of Lords in *Wilsher v. Essex Area Health Authority* (1988) 132 S.J. 418; [1988] 1 All E.R. 871; (1988) 138 New L.J. 78 has led to considerable discussion of whether its own earlier decision in *McGhee v. National Coal Board* [1973] 1 W.L.R. 1; 116 S.J. 967; [1972] 3 All E.R. 1008; 13 K.I.R. 471 can now survive. *McGhee’s* case allowed a plaintiff who was able only to show a material increase in the risk of damage on the part of a negligent defendant (as opposed to proving that the defendant actually caused the damage) to succeed in an action for negligence. On different, but arguably parallel, facts, *Wilsher’s* case (which, unlike *McGhee’s* case, actually concerned medical negligence) rejected such a test as being sufficient to give rise to liability. However, it did not actually overrule *McGhee’s* case, and there are several rather

complex points on which the two cases could be distinguished (such as, for example, the distinction between cumulative and discrete causes). The author takes his reader through a very full and clear discussion of the area, comparing and contrasting all aspects of the two decisions and indicating the respects in which they can, and cannot, be reconciled. The discussion of these cases is typical of the depth of analysis and research exhibited elsewhere in the book.

There is also a very interesting chapter on the direct liability of hospitals. The book was, of course, written in the context of British hospitals, and the extent to which the principles of non-delegable duty apply in other jurisdictions may vary. One situation which may be relevant locally is the position of the "honorary doctor" (see *Ellis v. Wallsend District Hospital* (1989) 17 N.S.W.L.R. 553). Honorary doctors do practice in private hospitals in Singapore, although approval must be given by the Singapore Medical Council. These are usually foreign doctors who are invited to practice by private consultant doctors in Singapore and who do so under the guidance of these consultants. The question of who else bears responsibility for the negligence of such "honorary doctors" in Singapore has yet to be considered.

One area which is, perhaps, slightly neglected by the author is that of concurrent liability in tort and contract. Academically, this issue is still fertile material (see, for example, Holyoak, "Concurrent Liability in Tort and Contract" 1990 Professional Negligence 113). Having raised the topic of concurrent liability, and having discussed cases such as *Dodd v. Wilson* [1946] 2 All E.R. 691, the author could perhaps have done more to distinguish the concept of concurrent liability from that of alternative claims in contract and tort. His legal audience might not feel the need for an explanation of the distinction, but his medical audience might have appreciated it.

Overall, this is an excellent, admirably researched, and extremely accessible work. It is a landmark in its field and can be highly recommended both for the wealth of authorities to which it refers and for the lucidity with which it is written.

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