

BOOK REVIEWS

Essentials of Medical Law BY YEO KHEE QUAN ET AL [Singapore: Thomson Sweet & Maxwell Asia, 2004. xxxvii + 374 pp. Hardcover S\$90 (excl. GST)]

Essentials of Medical Law is a book that has been put together by eminent doctors, lawyers and an academic. The respective Presidents of the Singapore Medical Association and the Law Society of Singapore have written forewords highlighting the importance of such a text, bringing together as it does the legal and medical professions. Many of our medico-legal problems stand a better chance of resolution if there is greater collaboration and inter-disciplinary sensitivity between doctors and lawyers. This book is a step in that direction. It could have been a giant leap had the contributors represented a more diverse body of experts and covered a broader range of issues. Of the six contributors, two are doctors who have concerns about medical litigation and three are lawyers who have acted as part of the defence teams for doctors or hospitals in medical negligence cases. The book, instead of being an objective analysis and discussion of medical law, is more of a resource book for doctors on how to avoid liability.

One theme in the book, which is repeated in several chapters, is the almost reverent support for the negligence test enunciated in *Bolam v. Friern Hospital Management Committee* [1957] 1 W.L.R. 582 (*Bolam*) and the dire warnings against any dilution of it that will allow judges to objectively assess whether or not a medical practitioner was negligent. One gets the sense from the contributors that medical practitioners in Singapore truly fear being easily sued for negligence, despite the contributors' own acknowledgement that there are so few local cases of medical negligence that they had to constantly look beyond the local shores. Indeed, Singapore cases account for well below 10% of the cases mentioned in the book. One reason for such a scarcity of medical negligence cases in Singapore is the fact that most claims are settled and all details kept confidential. This shuts out public debate on the issue and rhetoric, rather than fact, provides the backdrop to the medical malpractice predicament in Singapore.

The fact remains that in Singapore, the Court of Appeal in *Dr Khoo James & Anor v. Gunapathy d/o Muniandy* [2002] 2 Sing. L.R. 414 (*Gunapathy*) has actually fortified the role of *Bolam* and it is almost impossible to successfully sue a medical practitioner in negligence. There have been only two reported cases of medical negligence since *Gunapathy*; in both the doctor was held not negligent and there have been no appeals. Medical practitioners should take heart from the recently

expressed judicial sentiment on this matter, echoing earlier views:

It is often said that doctors should not play God. By the same token, doctors should also not be easy targets for unmeritorious claims by disgruntled patients. Medical specialists should not be scapegoats and be made to pay for the sins of omission or commission of their patients, after they have discharged their duty of care to those patients. (*JU and Another v. See Tho Kai Yin* [2005] SGHC 140 at [94])

Leaving aside the ideological underpinning of the book, it does represent a valuable resource for medical practitioners in educating them about some of the legal rules on medical liability, both substantive and procedural. Chapter Two provides an overview of medical negligence and concludes with some helpful guidelines for doctors to avoid accusations of negligence. Chapter Four provides a step-by-step guide from the commencement of a claim through to its trial, settlement, or mediation. Chapter Five contains an extensive discussion of causation principles, including the landmark House of Lords decision of *Fairchild v. Glenhaven Funeral Services* [2003] 1 A.C. 32. Curiously, the contributor justifies *Fairchild* as an extension of the *res ipsa loquitur* doctrine; it is suggested here that *Fairchild* went well beyond the application of the maxim *res ipsa loquitur*. Chapter Six provides some practical guidance on keeping good medical records. Chapters Eight and Nine on professional regulation and medical research stand out for their objectivity and clarity of exposition.

Overall, while the book does contain some useful material on the Singapore medical legal system, regulatory framework, and research guidelines, it is overly focused on a misconceived fear of liability. Chapter Three, on risk management and quality assurance, is slightly discomfiting as the contributor, at some points, appears to advocate that medical errors need not—even should not—be disclosed to patients unless inevitable. Chapter Seven, on medical responsibility and third parties, seems to suggest that doctors could be liable for wrongs committed by their colleagues. While there are situations where a doctor could be liable to a third party or be held liable for the tort of another doctor, the situations and the law described in this chapter are not entirely accurate or relevant.

In terms of structure, it would have been an improvement if the chapters in the book, written independently by different authors, had been arranged in a thematic manner. Chapters Two, Four, Five and Seven, which respectively deal with medical negligence, procedures for prosecuting a claim, principles of causation and third party liability could have been grouped together under the theme of medical liability. Chapters Three, Six, Eight and Nine, which respectively deal with risk management, medical records, professional regulation and medical research, could have been grouped together under the theme of regulation and ethics. There is a fair amount of overlap and repetition across the chapters that should have been avoided.

It is also unfortunate that the work omits discussion of issues such as abortion, euthanasia, assisted reproduction, organ transplantation, consent, patient's rights and mental health, which are some of the burning issues in medical law today. The book, with some minor exceptions, is informative of the areas it covers, but more importantly, it reveals that there exists within the medical profession—or at least within a small proportion of it—a real fear of litigation based on a misconception of

the law relating to medical liability. It is important that this be urgently corrected to allay the concerns of medical practitioners and ensure that any law reform or policies relating to medical practice and governance are not misguided.

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