

Medical Jurisprudence, Acts and Legal Procedure

LONG QUESTIONS

1. **Define professional negligence along with its various components and types. What are the normal defences against negligence?** (Sher-i-Kashmir Institute, Srinagar Supple 2019) (North Eastern Hill University Shillong 2018, Gujarat Supple 2017)

Define negligence. Name the different types of negligence. Discuss medical negligence. (North Eastern Hill University, Shillong Supple 2019) (VNS, Gujarat 2017)

Ans:

Definition of Professional Negligence

It is defined as lack of reasonable care and skills on part of a doctor that resulted in injury/death of the patient.

Components of Medical Negligence (4D's)

1. **Duty** of doctor
2. **Dereliction** of duty
3. **Damage** to patient
4. **Direct** causation

For a case of medical negligence to be established, all four conditions must be present.

Types of Negligence

1. Civil negligence
2. Criminal negligence

Civil negligence	Criminal negligence
Injury or damage is mild	More serious than civil negligence as injury is very serious
The patient goes to civil court or consumer court to ask for the compensation as the injury or damage suffered by him can be compensated by money	The patient/ family reports the matter to the police
Punishment—in form of fine, no imprisonment for doctor E.g. Failure to take consent for blood transfusion	Gross negligence on part of doctor leads to serious injury/death of the patient Sec. 304 A IPC deals with criminal negligence—punishment of 2 years of imprisonment and fine E.g. Operation on wrong limb

Civil and Criminal Negligence

When patient goes to the civil court or consumer court and also reports the matter to police. In this case, medical negligence can be fought in both civil and criminal courts simultaneously.

For examples of medical negligence—Refer to long question no. 2.

Defences against Negligence

- No duty owed to patient:** The doctor did not treat the patient, so no duty exists.
- Res judicata:** The things have already been decided by the court, it cannot be tried again by the same court.
- Contributory negligence:** Not only doctor, even patient is also found to be negligent. So, doctor can take this as a defence.
- Therapeutic misadventure**
 - Occurrence of damage or mishap with the patient due to some drug or procedure.
 - Doctor is not liable
 - For example:* Hypersensitivity to penicillin, fatal complications with blood transfusion
- Limitation:** The case against the negligence of doctor should be filed within 2 years from the date of alleged negligence.
- Error of judgement:** It has been recognized by the courts and law. Since a doctor's decision turned out to be wrong, he cannot be liable for medical negligence.
- Products liability:** When a manufacturer supplies defective drug/instrument which was prescribed by the doctor to the patient and the patient sustains injury. In this case, the manufacturer is held responsible for the injury.
- Informed consent for the act:** The patient was duly informed of the consequences.

2. Define professional negligence. What are the various instances wherein a registered medical practitioner can be held guilty of professional negligence? What will be the punishment, if he/she is found guilty? (Sardar Patel University, Gujarat 2020, Supple 2018) (Delhi University 2015)

Ans:

Definition of Professional Negligence

Refer to long question no. 1.

Various Examples of Medical Negligence

- General examination**
 - Failure to examine the patient himself/herself.
 - Failure to attend a patient with consequent damage.
 - Failure to obtain informed consent for any procedure.
 - Making a wrong diagnosis in the absence of skill and knowledge.
- Surgery**
 - Delayed diagnosis of acute abdominal lesions (e.g. appendicitis).
 - Retention of instruments, sponges, swabs, etc in operation sites.
 - Operating on the wrong patient, wrong limb/organ, etc.

3. **Emergency medicine**

- Missing fractures
- Overtight or prolonged use of plaster casts
- Inadequately treated hand injuries
- Undiagnosed intracranial hemorrhage

4. **Obs-Gynae**

- Performing abortion without indication
- Mismanagement of delivery (under influence of alcohol/drug)
- Unwanted pregnancy due to failed tubal ligation

5. **Medicine:** Failure to diagnose MI**Punishment for Professional Negligence**

1. Fine
2. Imprisonment
3. Warning
4. Penal erasure

Sec. 304-A IPC deals with criminal negligence where the doctor may be punished with imprisonment for 2 years and fine.

Penal erasure: It is the removal of the name of a doctor from the State Medical Register as a penalty which can be temporary or permanent.

- Temporary erasure—the doctor is not allowed to practise his medical profession for a specified period (may be days, weeks, months or years) in which his name remains removed from the register.
- Permanent erasure of name—is also known as **professional death sentence**.

But the doctor can appeal to Central Health Ministry/Central Government (within 30 days of the decision) which forwards to NMC and the decision is given.

3. Define professional misconduct. Illustrate with suitable examples. What is the action taken against the guilty doctor and by whom? (Adesh, Bathinda 2018) (AIIMS Patna 2019, 2017) (Rajiv Gandhi University, Bengaluru 2015) (Sai Tirupati University, Rajasthan 2019)

Define professional misconduct. Describe various instances wherein a registered medical practitioner can be held guilty of professional misconduct. Differentiate professional misconduct with professional negligence. (Sardar Patel University, Gujarat 2019, 2018) (AIIMS Patna 2017)

Ans:

Definition of Professional Misconduct

Any conduct on part of doctor which is considered disgraceful or dishonourable as judged by professional men of good repute and competence.

Some Examples of Professional Misconduct (6A's)

1. **Adultery:** Voluntary sexual intercourse between a man (married or unmarried, does not matter) and a married woman.

2. **Advertisement:** A physician should not overadvertise himself. He should not
 - a. Affix a signboard on a chemist shop
 - b. Use touts or agents to procure patients
 - c. Advertise himself through manufacturing firms directly or indirectly.
3. **Association with unqualified persons**
4. **Addiction:** To drugs, e.g. cocaine, LSD, etc.
5. **Alcoholism:** The doctor should not practise under the influence of alcohol which interferes with proper practice of medicine.
6. **Abortion:** Doctor performing an illegal abortion is against the medical ethics.
7. **Dichotomy:** (Fee-splitting or fee sharing). It is giving or receiving commission from fellow doctors, manufacturers or chemists.
8. **Issuing a false certificate:** In connection with sickness, insurance, passport, public services, attendance in court
9. **Sex determination test** with an intention of female foeticide.
10. If a doctor does not maintain the **medical records** of indoor patients for a period of 3 years.

Punishment

1. Warning	2. For serious professional misconduct—penal erasure
<ul style="list-style-type: none"> • Disciplinary action is taken by the Medical Council • Which is issued to the doctor who is guilty of the professional misconduct 	<ul style="list-style-type: none"> • It is the removal of the name of a doctor from the State Medical Register as a penalty • Which can be temporary or permanent • In temporary erasure—the doctor is not allowed to practise his medical profession for a specified period in which his name remains removed from the register. • In permanent erasure—also known as professional death sentence. • But the doctor can appeal to Central Health Ministry/ Central Government (within 30 days of the decision) which forwards to NMC and then decision is given

Difference Between Professional Misconduct and Professional Negligence

Refer to difference no. 4.

4. A young man of 25 years allegedly assaulted by some persons brought to the emergency in unconscious state. On examination, there is bleeding scalp wound on the right-side scalp. Just during CT scan within half an hour, the man regained consciousness and wanted to tell something.

- a. How will you proceed to record the dying declaration?
- b. Duties of emergency medical officer in management of this case.
- c. In case of death what is the probable autopsy findings determining the cause of death? (West Bengal Supple 2019)

Ans:

- a. Steps in recording of dying declaration
 1. Ideally, Magistrate should be informed to record the dying declaration in presence of witness. But in case the person is about to die, then statement should be recorded by the doctor in presence of two or more witnesses.

2. The preliminary particulars of the patient is noted—name, age, sex, address, Reg. No., MLC No., police station, date and time of admission, location of patient (ward, hospital), ID marks, etc.
3. The doctor should certify that the patient is conscious and fit for giving statement (i.e. *compos mentis*)—orientation to time, place and person, GCS, BP, pulse, respiratory rate, temperature, ability to speak.
4. Oath is not required (as it is believed that dying person speaks the truth)
5. Statement should be recorded in simple narrative without any alterations, in patient's own words. Date and time of commencement of recording and completion of statement, mode of statement (writing/speech/gesture).
6. If possible, the written statement should be read over to the patient so that it can be rechecked.
7. After taking the dying declaration, it should be signed by the doctor (along with registration no.) and witness.
8. Declaration is sealed and handed over to concerned police officer along with the receipt.

MLI: If the declarant survives, the declaration is not admitted, but has corroborative value.

- b. The emergency medical officer should maintain the ABC of the patient. He should make a quick examination and try to settle the patient.
 - Any bleeding should be dressed and fractures stabilized with temporary splint.
 - He should be sent for CT scan head and X-rays of any suspected fracture.
 - A neurosurgery consult should be arranged immediately.
- c. The patient must have had extradural hemorrhage (EDH). Since the initial injury was concussion, subsequently middle meningeal bleed caused the ensuing decompensation from the expanding blood collection leading to coma.

Autopsy Findings

1. Laceration on right side temporal scalp.
2. Hematoma in the epidural space on removal of the skull cap.
3. There may be fissure fracture of the temporal bone.
4. Diffuse brain swelling and cerebral contusions may be seen.
5. Subfalcine herniation extending from the side of the hematoma to the opposite side.
6. Swelling of the cerebral hemisphere under the hematoma with smooth appearance of the brain.

5. What do you mean by evidence? Write the procedure of recording of evidence of a witness in a court of law. (North Eastern Hill University, Shillong, 2017)

Ans:

Definition of Evidence

It is defined as legal means to prove or disprove any medico-legal fact under inquiry.

Procedure of Recording of Evidence

1. Oath	<ul style="list-style-type: none"> The witness has to take oath that whatever he will say, he will speak the truth, whole truth and nothing but the truth. MLI-Perjury: When person gives false evidence under oath, he is punishable under Section 193 IPC.
2. Examination-in-chief	<ul style="list-style-type: none"> Definition: It is the examination of witness by the party who calls him or by the prosecution lawyer (in case of criminal cases). Main purpose: To place all the facts known by the witness in front of court. <i>Leading questions</i> are not asked in examination-in-chief except when witness is declared hostile by the court.
3. Cross-examination	<ul style="list-style-type: none"> Definition: It is the examination of the witness by the opposite party or the lawyer of the accused party. Main purpose <ol style="list-style-type: none"> To elicit facts favourable to the case. To test the accuracy of the statements of the witness To modify victim's statements To give a new look to the case Leading questions are allowed in cross-examination. Witnesses must be very careful while answering the questions in cross-examination as defence lawyer will try to weaken the evidence of witness. There is no time limit for cross-examination.
4. Re-examination	<ul style="list-style-type: none"> Definition: It is the examination of a witness subsequent to the cross-examination by the party who called him/ prosecutor lawyer. Main purpose <ol style="list-style-type: none"> To clarify the doubts that has been raised. To explain some facts more deeply, to avoid misinterpretations New points are not discussed.
5. Court questions	<ul style="list-style-type: none"> Judge can ask any question at any stage of examination.

6. What is a summon? How is it served? Briefly describe the different steps of recording of evidence of a witness in the court of law. (North Eastern Hill University, Shillong Supple 2018)

Ans:

Definition of Summon

It is a written document issued by the court, which compels the attendance of the witness in the court of law, on a particular day, at a particular date and time, under penalty.

- It is also known as 'subpoena' and Section 61-69 CrPC deals with summon.
- It is issued by the court in writing, in duplicate signed by the Magistrate and bears the seal of the court.
- It is delivered to the witness through a police officer or an officer from the court.
- On getting the summons, the witness keeps a copy and signs on the back of the other copy of summon.

- The witness must appear before the court on the specified date and time with proper records.
- A witness must attend the court unless there are valid and urgent reasons for not attending.

A. If a Doctor Gets More than one Summon on the Same Date

But from two different courts	Then he should attend the: 1. Criminal court (given priority over civil court) 2. Higher court
Same type of court	Should attend the court from which he received the summons first and should inform the other court.

B. In Case Witness Fails to Attend the Court

1. With valid reason (like illness)	2. Without any valid reason
Then message must be conveyed to the court, so that a new date of hearing will be issued to him	<ul style="list-style-type: none"> • Civil cases—liable to pay damages • Criminal court—court may issue notice and asks the reason for nonattendance. In case of no justification, he may be imposed a fine or/and imprisonment and warrant may be issued against him

Recording of Evidence in Court

Refer to long question no. 5

7. Write in detail about medical evidence and its types. (Pondicherry 2015) (VNS, Gujarat 2017)

Ans:

Definition of Evidence

It is defined as legal means to prove or disprove any medico-legal fact under inquiry.

Types

1. Oral evidence
2. Documentary evidence

1. Oral Evidence

It means all statements (oral or verbal) which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry.

Types of oral evidence

1. Direct evidence
2. Hearsay evidence/indirect evidence

MLI: Oral evidence is more important than documentary evidence, as it permits cross-examination.

Documentary evidence is accepted by the court only after oral testimony by the person concerned.

Exceptions to it are:

1. Dying declaration
2. Matter written in the books
3. Evidence given by witness in lower court
4. Reports of certain scientific experts. (ballistic expert, fingerprint expert, DNA fingerprint expert)
5. Public records
6. Hospital records, etc

2. Documentary Evidence

All the documents (written or printed) that are produced for the inspection of the court.

Different Types of Documentary Evidence are

1. Medical certificates	These are issued by Registered Medical Officer, e.g. <ul style="list-style-type: none"> • Fitness Certificate • Illness Certificate • Birth Certificate • Death Certificate • Disability Certificate • Mental illness Certificate
2. Medico-legal certificates	Doctors must retain one duplicate copy of these certificates <ul style="list-style-type: none"> • Reports prepared by a doctor at the request of the investigating officer/victim, usually in criminal cases, e.g. <ol style="list-style-type: none"> a. Injury report b. Wound certificate c. Post-mortem report d. Report after examination of victim of sexual assault <p>These reports do not serve as evidence, until the doctor attends the court and testifies to the facts under oath.</p>
3. Dying declaration	Definition: It is written or oral statement which is made by the dying person as a result of unlawful act, leading to his or her death. Section 32 IEA deals with dying declaration.
4. Dying deposition	<ol style="list-style-type: none"> 1. It can only be recorded by the magistrate. 2. In the presence of accused party/lawyer. 3. Oath is taken. 4. Cross examination is permitted. <p>MLI</p> <ul style="list-style-type: none"> • Has more legal value as acts as bedside court • Not followed in India

8. Define evidence. Discuss documentary evidence. (Sher-i-Kashmir Institute, Srinagar
Supple 2017)

Ans: Refer to long question no. 7.

9. Discuss briefly the duties of a doctor in court while giving evidence. (Adesh, Bathinda supple 2018)

Ans:

The Duties of a Doctor in Court While Giving Evidence are:

1. He should attend the court punctually
2. He should be well prepared before entering the witness box
3. Take all records and relevant reports as required by court
4. He should be well dressed
5. He should switch off the mobile or keep the mobile in silent mode
6. He should not discuss the case with anyone in the court except prosecutor lawyer
7. He should speak slowly, distinctly and audibly and should use simple language (not technical language)
8. He should address the Judge by his proper title such as 'Sir' or 'Your honor'
9. If a question is not understood, he can ask the lawyer to explain it better
10. He should be pleasant, polite and courteous in the court
11. He should not lose temper
12. He should not volunteer any information beyond what is asked until or unless he feels that his answer to a particular question does not reflect the whole truth.
13. If he does not wish to make any statement, he can say 'no opinion' or 'no comments.'
14. He should avoid speaking on a subject in which he has little or no practical experience.

10. A surgeon attends a late night new year party where he consumes substantial amount of alcohol. While returning home, he receives an emergency call for appendicitis surgery of a young patient. He goes to the hospital and undertakes the surgery. During surgery, the small intestine sustains cuts by the surgeon which remains unnoticed. The patient reports back with complications for which another surgery was done. Three months later patient files the case of negligence against the doctor. (Rajasthan University 2017)

- a. Does the case fulfil the criteria for criminal negligence when the second surgery is successful and does not leave any complications? Give reasons for your answer.
- b. Does the surgeon's behavior amount to unethical practice and why?
- c. What should the surgeon have done on receiving the emergency call while returning home?

Ans:

- a. Yes, the case fulfils the criteria for criminal negligence. During surgery small intestine sustained cuts by the surgeon leading to an injury which resulted in complications to the patient (damage). Any damage suffered is negligence. Successful second surgery does not vitiate (annul) the wrongdoing done in the first surgery.

Sec. 304-A IPC deals with criminal negligence where the doctor may be punished with imprisonment up to 2 years and fine.

- b. Yes, the surgeon's behavior amounts to unethical practice. It is considered 'professional misconduct' as per the **Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations**. He should not "be drunk and disorderly so as to interfere with proper practice of medicine."
- c. He should have informed that he had alcohol and not in a position to operate when he received the call. He should have delegated this duty one of his colleagues and should not have established therapeutic relationship with the patient.

11. A patient had undergone laparotomy for acute abdomen. He died after 14 days of operation. During the postoperative period, he constantly complained of abdominal pain which was treated symptomatically by the surgeon. Alleging negligence in treatment, the relatives asked for a postmortem examination. At autopsy, two gauze pieces were recovered from the peritoneal cavity and cause of death was found to be septic shock following peritonitis. With reference to the case, answer the following questions: (Sardar Patel University, Gujarat 2016)

- a. In the terminology of medical negligence, what does findings of gauze piece amount to?
- b. Who all can be held liable for the negligence act and why?
- c. What all punishments would each of the guilty be liable to be awarded? Explain with reasons.

Ans:

- a. In the terminology of medical negligence, finding of gauze pieces amounts to gross negligence and comes under "**Doctrine of Res ipsa loquitur**" which means thing/fact speaks for itself. The negligence is so gross and obvious that patient does not need to prove any negligence (which is required in other cases).
For application of this rule, three conditions which must be fulfilled are very clear:
 - i. **In the absence of negligence, the injury would not have occurred**—it occurred due to negligence of surgeon; the surgeon should have been more careful in instructing his staff to get the gauze pieces counted before closing the abdomen.
 - ii. **The doctor had a full control over the treatment resulting in injury the patient**—the surgeon operated on the patient.
 - iii. **Patient is not guilty of contributory negligence**—which is obvious, as this happened postoperative and was under the care of surgeon.
- b. The surgeon along with the support staff will be held responsible as they were responsible for the well-being of the patient. There was dereliction of duty on the part of surgeon which resulted in damage (death) of the patient and he was directly involved in the causation.
- c. The surgeon will be tried under **Sec. 304-A IPC** which is death due to rash and negligent act (criminal negligence) and the doctor may be punished with imprisonment up to 2 years and fine. There may be penal erasure by the State Medical Council.

12. Define inquest. What are the types of inquest? Describe various types of inquest in brief. (AIIMS Patna 2015)

Ans:

Definition of inquest

It is an inquiry or investigation by legal authorities into the cause of death where death is due to unnatural means.

Types of Inquest	Conducted by
Police inquest	Police
Magistrate inquest	Magistrate
Coroner's inquest	Coroner
Medical examiner system	Medical examiner

1. Police Inquest: Section 174 CrPC

- **Definition:** The investigation or inquiry by the police into the cause of death is called police inquest.
- **Most common** type of inquest in India.
- Which is held routinely
- Investigation is done by the police officer/investigation officer not below the cadre of **Senior Head Constable**.

Purpose of police inquest

To find out the

- Identity of the deceased
- Place of death
- Time of death
- Cause of death

Procedure

1. Information of death is given to the police
2. Police officer informs the nearest Executive Magistrate in order to proceed with the inquest
3. Preparation of Panchnama
 - Investigating officer holds an inquiry into the matter, in the presence of two witnesses (neighbours of that locality—panchas)
 - Statements are also recorded from the family members
 - Finally, inquest report is prepared which is called **panchnama**
 - It is then signed by the investigating officer himself and by the **panchas**
4. In case of foul play/when unnatural death is suspected: Investigating officer forwards the body for postmortem examination with the copy of inquest papers
5. Then, report is finally forwarded to the magistrate.

2. Magistrate Inquest: Section 176 CrPC

- **Definition:** The inquiry into the case of death conducted by magistrate is called Magistrate Inquest.
- It may be conduct by executive magistrate or judicial magistrate.

Magistrate inquest is conducted in:

1. Death of person in prison
2. Death in police custody
3. Death of person due to police firing
4. Rape in police custody
5. Dowry death
6. Exhumation

In India, only Police and Magistrate Inquest is allowed

3. Coroner's Inquest

Definition: It is the inquiry into the cause of death conducted by coroner.

- Coroner is a person with medical and legal knowledge of the rank of first-class judicial Magistrate, appointed by State Government.
- It was followed earlier in Kolkata and Mumbai but was abolished subsequently.
- At present, it is followed in countries such as UK, USA, etc.
- It is similar to magistrate inquest in quality.
- Coroner is authorised only to conduct inquest; he is not authorised to conduct trial.

4. Medical Examiner System

- This type of inquest is conducted in the USA.
- It has a Board Certified Forensic Pathologist who visits the crime scene, gather evidence and interviews the people to gather information and even conducts autopsy
- Best system for inquest.

13. Define 'consent'. What is informed consent? Discuss about the privileged communications with suitable examples. (Pondicherry 2017)

Describe rules of consent in brief. (AIIMS Patna 2016)

Ans:

Definition of Consent

It means voluntary agreement, compliance or permission for some act.

Types of Consent

1. Implied consent

- When a patient comes to the doctor for his medical examination and treatment
- It neither expressed in words nor in written form
- It is basically limited to inspection, palpation, percussion and auscultation

2. Expressed consent: It is the consent which is specifically expressed by the patient

Oral consent	Written consent
Obtained for minor procedures	Obtained for: 1. All major diagnostic/ therapeutic procedures 2. General anaesthesia

Informed Consent

Also called *Doctrine of Informed Consent*

The doctor should explain

- The condition or nature of illness
- The need for diagnostic tests to be done
- All the treatment options
- And the alternative procedures
- Risk benefit ratio of the procedures
- Associated complications or consequences
- Prognosis of the treatment
- Duration and treatment cost

It should be in simple and proper language so that patient can decide if he/she wants to undergo the treatment or not.

Exceptions to informed consent:

1. In case of **emergency**—as per Section 92 IPC
2. **Therapeutic privilege:** If doctor feels that full disclosure to patient can cause anxiety, then doctor can disclose full information to any of the family members. For example, cancer report
3. **Therapeutic waiver:** The patient having full faith in the doctor may waiver his/her rights of informed consent
4. **Prisoners:** Convicted person has no right as any other citizen
5. Medical examination requested by the police officer of an arrested accused—under Sec. 53 (1) CrPC
6. Treatment of notifiable diseases for community interest
7. **Medico-legal postmortem**—as per Section 174 CrPC.

RULES OF CONSENT

1. Should be free, voluntary, cleared, informed and there should not be any undue influence, fraud, misinterpretation of facts.
2. All the procedures beyond routine physical examination requires expressed consent.
3. When written consent is obtained, it should also be signed by some other witness.
4. In case of children less than 12 years of age and in case of insane person, the consent comes from the parent or guardian.
5. As per Section 90 IPC—consent given by an insane or intoxicated person, is not valid.
6. As per Section 92 IPC—in case of emergency, if a patient is unconscious and no guardian is available to give consent, then doctor can perform emergency procedure/surgery without the consent, if it is essential to save the life of the patient.
7. Any person of more than 18 years of age can give valid consent.

8. Consent given for a diagnostic procedure cannot be considered as consent for therapeutic treatment or for some other procedure.
9. No consent is required in case of medico-legal autopsies.
10. Consent of both partners (husband and wife) is required for contraceptive sterilisation and artificial insemination.
11. Pregnant female (>18 years) alone can give consent for termination of pregnancy
12. Husband or wife has no right to deny the treatment for his or her spouse.
13. For examination of victim of a criminal case (e.g. rape), consent is mandatory.

PRIVILEGED COMMUNICATION

Definition of Privileged Communication

Disclosure of confidential information by the doctor to the concerned public authority due to his legal, moral and social duty to protect the interest of the community.

- It is an exception to professional secrecy.
- The doctor has the moral duty to keep the information about the illness of his patient secret or confidential. But he also has a moral duty to protect the interests of the community. So here, privileged communication plays an important role.
- The doctor will not be liable to damage because it is in the interest of the community.

Some Examples of Privileged Communication are:

1. **Court of law:** In court of law, doctor cannot claim professional secrecy concerning the facts about illness of his patient.
2. **Civic benefit:** In case drivers are suffering from epilepsy, alcoholism, drug addiction, color blindness, the doctor should advise him to change the employment because of the dangers of his present occupation both to himself and to the public. If he refuses, then doctor can disclose this information to the concerned authority.
3. **Venereal disease:** If the person is suffering from syphilis or HIV infection and is going to marry, it is the duty of the treating doctor to advise him not to marry till he is cured. If patient refuses, doctor can disclose the details of the disease to the other party.
4. **Suspected crime:** If the physician comes across any suspected crime, such as assault, traffic offence or homicidal poisoning while treating the patient, he should inform police (Sec. 39 CrPC).
5. **Notifiable clauses:** It is the duty of the doctor to notify births, deaths, stillbirths, infectious diseases, epidemic and food poisoning to public health authorities.
6. **In patient's interest:** Doctor may disclose patient's condition to his relatives in case person is suffering from certain symptoms like suicidal tendencies, so that he can be treated properly.

SHORT NOTES

1. Functions of State Medical Council. (Adesh, Bathinda supple 2020) (KHMS 2016) (Rajasthan University 2016) (Rajiv Gandhi University, Bengaluru 2015)

1. Maintaining the medical register	<ul style="list-style-type: none">• Maintains a register of medical practitioners within its jurisdiction• After passing the medical degree, provisional registration is done, and after completing the internship, permanent registration is given• Permanent registration certificate has to be renewed after every 5 years• For renewal, it is mandatory for doctor to show certificate of participation in CME programmes for at least 30 hrs• State Medical Council has the power of taking disciplinary control over the doctor found indulging in unethical practice by:<ol style="list-style-type: none">1. Issuing warning2. Suspension3. Penal erasure (temporary/ permanent)
2. Renewal of registration	
3. Disciplinary control	

2. Consent (BFUHS, Punjab supple 2020, 2017, 2016) (Andhra Pradesh 2016, supple 2016) (VNS, Gujarat supple 2018) (JIPMER supple 2018)

Ans: Refer to long question no. 13.

3. Implied consent (Uttarakhand University 2015)

Implied consent is one which is not expressly granted by a person (verbally or written), but rather implicitly granted by a person's actions and the facts and circumstances of a particular situation (or in some cases, by a person's silence or inaction).

Implied consent can be:

- a. When a patient comes to the doctor's clinic for medical examination and treatment.
It is basically limited to inspection, palpation, percussion and auscultation.
- b. Medical treatment given to an unconscious patient is implied, despite the unconscious person being unable to expressly grant consent for that treatment.

4. Defences available to registered medical officer against alleged medical negligence (Sardar Patel University, Gujarat 2015) (AIIMS, Patna 2016)

Ans: Refer to long question no. 1.

5. Contributory negligence (BFUHS, Punjab supple 2020) (North Eastern Hill University, Shillong supple 2020)

Ans:

Definition of Contribution Negligence

Any unreasonable conduct from the part of the patient/attendant which combined with the doctor's negligence contributed to the injury complained of, as a direct cause and without which the injury would not have occurred.

Patient contributes to his negligence when he:

- Fails to follow doctor's instructions regarding medicines
- Fails to give proper medical history to the doctor (not informing about the drug allergies)
- Fails to follow up (in spite of doctor's suggestion)

Example: Doctor applied a tight plaster cast on the patient's hand (doctor's negligence) As a result, the patient developed numbness in his fingers, but he did not inform the doctor (patient's negligence). Consequently, the patient had suffered permanent injury as it is resulted to the formation of gangrene.

Limitations to Contributory Negligence

1. Last clear chance doctrine
2. Avoidable consequences rule

MLI:

1. Acts as a good defence for the doctor in civil cases but burden of proof lies with the doctor
2. Not act as defence in case of criminal cases

6. Professional negligence. (Rajiv Gandhi University, Bengaluru 2020) (Uttarakhand University 2017) (KHMS, Tamil Nadu 2018, 2017, 2016) (North Eastern Hill University, Shillong 2017) (Himachal Pradesh 2017) (Sher-i-Kashmir, Srinagar supple 2015) (JIPMER 2016)

Ans: Refer to long question no. 1.

7. Documentary evidence. (Andhra Pradesh supple 2015) (Pondicherry, 2019)

Ans: Refer to long question no. 7.

8. Perjury (Rajiv Gandhi University, Bengaluru 2020, 2015) (KHMS, Tamil Nadu 2018) (Andhra Pradesh 2015)

Ans:

Definition	As per Sec. 191 IPC, it is defined as wilfully giving false evidence under oath.
Punishment for perjury	As per Sec. 193 IPC, imprisonment up to 7 years and fine.
Reasons behind perjury	<ul style="list-style-type: none"> a. Witness may have taken bribe b. He may be under threat c. He may have personal bias towards one party

9. Doctrine of Calculated Risk. (Adesh, Bathinda supple 2019)

Ans:

Definition: Every procedure has an inherent risk, which unavoidable in spite of providing a reasonable care.

- It means doctor is not liable if he has provided reasonable care and taken calculated risk to save the life of a patient but during the process, the patient suffered damage.
- An exception to Doctrine of Res ipsa loquitur
- And acts as a good defence to any doctor.
- For example—a patient undergoing CABG dies during the surgery, will not amount to negligence rather it becomes a case of professional accident as there is a calculated risk of danger.

10. Res ipsa loquitur (Rajiv Gandhi University, Bengaluru 2020, 2015) (AIIMS, Patna 2019, 2017, 2015) (Pondicherry 2019, 2017) (North Eastern Hill University, Shillong 2018) (Adesh, Bathinda Supple 2017) (Rajasthan University 2016) (Uttarakhand University Supple 2017, 2016) (BFUHS, Punjab 2015) (VNS, Gujarat 2018, supple 2019) (Sai Tirupati University, Rajasthan 2018)

Ans:

1. Doctrine of Res ipsa loquitur means “thing/facts speaks for itself”.
2. Normally, in case of professional negligence of doctor, burden of proof lies with the patient.
3. But in some cases where rule of “Res ipsa loquitur” applies, the negligence is so gross and obvious that patient does not need to prove any negligence.
4. For application of this rule, three conditions must be fulfilled:
 - i. In the absence of negligence, the injury would not have occurred.
 - ii. The doctor had a full control over the treatment/instrument resulting in injury the patient
 - iii. Patient is not guilty of contributory negligence.
5. **Examples**
 - a. Operating on a wrong patient or wrong part of the body. For example, instead of operating on right leg, doctor operates on the left leg.
 - b. Leaving surgical instruments in abdomen after surgery.
 - c. Blood transfusions mismatch hazard.

11. Consumer court/Consumer Protection Act (AIIMS, Patna 2019, 2017) (SGRD, Amritsar 2019) (VNS, Gujarat supple 2018)

Ans:

1. In 1986, Consumer Protection Act was introduced to protect the interest of the consumer and for the settlement of consumer disputes.
2. In 1992, medical services were also covered under Consumer Protection Act.
3. The Consumer Protection Act, 2019 replaced the more than three decades old Consumer Protection Act, 1986.
4. **E-filing of complaints:** The consumer can file complaints with the jurisdictional consumer forum located at the place of residence/work of the consumer. It also enables the consumer to file complaints electronically and for hearing and/or examining parties through video-conferencing.
5. **Mediation:** There is a provision for settlement of disputes by way of mediation at the stage of complaint or at any later stage, if acceptable to both parties. In the event of failure to settle the dispute, the respective commissions shall continue to adjudicate the dispute.
6. **Products liability:** Consumers have the right to seek compensation for any harm caused.
7. **Advantages of consumer court**
 - a. They provide speedy and simple solutions to the consumer disputes (A/k/a fast-track courts)
 - b. Do not require any lawyer
 - c. No court fee is taken
8. **Limitation period:** The complaint has to be lodged within **2 years** from the date of cause of action.

Consumer Disputes Redressal Agencies

	District Commission	State Commission	National Commission
Level	At District level	At State level	At National level
Headed by	District Judge	Judge of High Court	Judge of Supreme Court
Jurisdiction	Up to ₹ 1 crore	₹ 1 crore to 10 crores	More than ₹ 10 crores

Medical Services

In 1995, it was decided to cover Medical Services under Consumer Protection Act, and hospitals were divided into 3 categories:

Category 1: Government hospitals, dispensaries, non-government hospitals or nursing home where services are provided for free (i.e., no charge is taken from the patient). Do not fall under Consumer Protection Act

Category 2: Hospitals or nursing homes where some patients (who are not able to pay for treatment) are given services for free while others those who can afford are given services on payment basis. Fall under Consumer Protection Act

Category 3: Medical services provided on Payment Basis. Fall under Consumer Protection Act

12. Privileged communication. (BFUHS, Punjab supple 2019, supple 2016) (Uttarakhand University Supple 2018) (Delhi University 2015) (VNS, Gujarat 2018)

Ans:

Refer to long question no. 13.

13. Inquest. (West Bengal University supple 2019) (Rajasthan University 2018) (BFUHS, Punjab 2017)

Ans:

Refer to long question no. 12.

14. Section 53 CrPC (Pondicherry 2016) (JIPMER 2016)

Sec. 53 CrPC deals with examination of accused by medical practitioner at the request of police officer.

1. When a person is arrested on a charge of committing an offence and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of the offence, it shall be lawful for a doctor, to make an examination of the person arrested as is necessary in order to obtain evidence, even by using reasonable force if requested by a police officer not below the rank of sub-inspector.

This includes examination of blood, bloodstains, semen, swabs in cases of sexual offences, sputum and sweat, hair samples and fingernail clippings using modern and scientific techniques including DNA profiling.

2. Whenever a female accused is to be examined under this section, the examination shall be made only by, or under the supervision of, a female doctor. Such an examination by a male doctor must not be carried out even in the presence of a female nurse.

15. Vicarious liability/Doctrine of 'Respondent Superior'. (BFUHS, Punjab 2019, Supple 2019) (Rajiv Gandhi University, Bengaluru 2019) (Delhi University 2018) (West Bengal University 2017) (Himachal Pradesh 2017) (Jammu and Kashmir 2017) (Uttarakhand University 2016) (Sardar Patel University, Gujarat 2015) (KHMS, Tamil Nadu 2015) (VNS, Gujarat 2016)

Ans:

Definition: An employer will be held responsible for any negligent act done by his employees.

- The term means "let the master answer".
- It is also called "Captain of ship doctrine": Chief surgeon, will be answerable for his subordinate's negligence. Doctor (employer) will be held responsible for the mistake of the nursing staff (employee).
- Under this, the hospital is responsible for all the negligence of his employees who are acting under its supervision and control.

- For application of this principle, following conditions must be fulfilled:
 1. Employee-employer relationship.
 2. The employee's conduct should be within the scope of employment.
 3. The act should have occurred while on the job.

Examples:

- a. Hospital management is held responsible for the mistakes committed by the residents and interns in training but a physician will be held responsible for the acts of interns and residents carried out under his direct supervision and control.
- b. Hospital management is not held responsible for the mistakes committed by the senior medical staff.
- c. If a doctor after operating the patient, leaves a swab or instrument inside the patient's body, he will be held responsible. The anesthetist will not be held responsible.

16. Subpoena/ Summon. (Sardar Patel University, Gujarat 2020, 2019, 2018, supple 2019) (Adesh, Bathinda 2018) (Sher-i-Kashmir, Srinagar Supple 2018) (North Eastern Hill University, Shillong 2016) (AIIMS, Patna 2015) (VNS, Gujarat 2018, supple 2017)

Ans: Refer to long question no. 6.

17. Cross examination. (Adesh, Bathinda supple 2018) (Delhi University 2017) (Uttarakhand University 2016, supple 2017)

Ans: Refer to long question no. 5.

18. Novus actus interveniens. (Adesh, Bathinda Supple 2018)

Ans:

- Novus actus interveniens ('new intervening act') is an independent event which, after the accused's act has been concluded either caused or contributed to the consequence concerned.
- This new act breaks the causal chain between the accused's action and the liability that is implicated to him as a result thereof.
- As a novus actus is an 'independent' intervening act, it can be caused by anyone or anything other than the accused. This general category also includes the injured party himself, doctor or even an act of God.
- Novus actus is a defense for the accused who wish to prove that his liability is limited or non-existent and should be attributed on another party.
- **Example:** When a patient is hospitalized with head injury due to an assault, sustains fracture of femur in hospital due to fall on wet floors.

19. Powers of judicial magistrates. (AIIMS, Patna 2018) (Sai Tirupati University, Rajasthan 2018)

Ans:

Magistrate	Imprisonment (up to)	Fine
1. Chief Judicial Magistrate	7 years	Unlimited
2. Judicial 1st Class Magistrate	3 years	₹ 10,000/-
3. Judicial 2nd Class Magistrate	1 year	₹ 5000/-

20. Various courts and their powers (Sardar Patel University, Gujarat June 2016) (Pondicherry 2016) (VNS, Gujarat supple 2018) (JIPMER 2016)

Ans:

Criminal courts	Punishment	Fine
1. Supreme Court (Highest court in country)	Can pass any sentence including death sentence	Unlimited
2. High Court <ul style="list-style-type: none"> • Highest Court in State • Death sentence given by sessions court is confirmed by High Court. 	Can pass any sentence including death sentence	Unlimited
3. Sessions Court <ul style="list-style-type: none"> • Highest Court in district 	Can pass any sentence including death sentence (but forwarded to High Court for confirmation.)	Unlimited
4. Magistrate Court <ul style="list-style-type: none"> Chief Judicial Magistrate Judicial 1st Class Magistrate Judicial 2nd Class Magistrate 	Up to 7 years of imprisonment Up to 3 years of imprisonment 1 year of imprisonment	Unlimited ₹ 10,000/- ₹ 5000/-

21. Schedule of MCI. (AIIMS, Patna 2018, 2016)

Ans:

1st Schedule	All the recognised medical qualifications granted by medical universities in India
2nd Schedule	It comprises all the medical qualification granted by medical universities that are located outside India
Part: 1 of 3rd Schedule	Comprises qualification granted by medical institutions not included in first schedule
Part: 2 of 3rd Schedule	Comprises medical qualification granted medical institutions outside India but not included in second schedule

22. Dying declaration. (North Eastern Hill University, Shillong supple 2020) (BFUHS, Punjab 2019, 2017, 2015) (SGRD, Amritsar 2019) (West Bengal University 2019) (Sardar Patel University, Gujarat 2015) (Uttarakhand University 2016, 2015)

Ans: Refer to long question no. 4.

23. Dying deposition. (BFUHS, Punjab Supple 2018) (AIIMS, Patna 2016)

Ans: Refer to long question no. 7.

24. Penal erasure. (BFUHS, Punjab Supple 2018) (Rajiv Gandhi University, Bengaluru 2015) (VNS, Gujarat 2019, supple 2019)

Ans:

Definition of Penal Erasure

It is the removal of the name of a doctor from the State Medical Register as a penalty. Penal erasure can be temporary or permanent.

Temporary Erasure of name	Permanent Erasure of name (also called professional death sentence)
The doctor is not allowed to practise his medical profession for a specific period of time (like weeks/months/years) in which his name remains removed from the register	<ul style="list-style-type: none"> It is the permanent removal of name of the doctor from the State Medical Register After removal of the name permanently, the doctor is not allowed to practise his medical profession for his whole life

But if the doctor is not satisfied with the decision of State Medical Council, he can appeal to Central Health Ministry (within 30 days of the decision) which forwards to NMC, and the decision is given.

25. Professional misconduct/Infamous conduct. (West Bengal University 2018, supple 2019) (North Eastern Hill University, Shillong 2016, 2015, Supple 2018) (Sardar Patel University, Gujarat 2017, 2015, supple 2015) (KHMS, Tamil Nadu 2015) (GMC, Chandigarh 2015) (GMC, Chamba 2019)

Ans: Refer to long question no. 3.

26. Leading questions (North Eastern Hill University, Shillong 2018)

Ans:

Definition of Leading Question

Any question suggesting the answer, which the person putting it wishes or expects to receive.

Answer for leading questions is either Yes/No.

Examples:

- Was the injury caused by knife?
- Was kerosene used to burn her?

- Leading questions are not allowed in Examination-in-Chief and Re-Examination.

2. But leading questions may be asked in Examination-in-Chief under two conditions.
 - When the witness is declared hostile by the court
 - When court give permission to ask leading questions
3. Leading questions are allowed in cross-examination.

27. Conduct money (Rajiv Gandhi University, Bengaluru 2015) (GMC, Chamba 2019)

Ans:

Definition of Conduct Money

It is the fee paid to a witness in **civil cases** at the time of serving the summons to meet the expenses for attending the court.

- If the conduct money is not sufficient or not paid, then it can be brought into the notice of court before giving evidence and court will decide the amount.
- In **criminal cases**—no conduct money is paid at the time of serving the summon. The witness must attend the court in interest of State or justice. However, Government usually pays TA and DA allowances.

28. Professional death sentence. (Rajiv Gandhi University, Bengaluru 2018) (Rajasthan University 2018)

Ans:

Definition of Professional Death Sentence

It is defined as the permanent removal of name of the doctor from the State Medical Register (penal erasure).

- This punishment is given to a medical practitioner when he is found guilty of the serious professional misconduct, like
 1. Adultery
 2. Addiction to drugs
 3. Alcoholism
 4. Criminal abortion
 5. Female feticide
- After removal of the name permanently, the doctor is not allowed to practise his medical profession for his whole life.

29. Conduct of a doctor in witness box. (Rajasthan University 2018) (Pondicherry, 2017)

Ans: Refer to long question no. 9.

30. Informed consent (SGRD, Amritsar 2019) (Sardar Patel University, Gujarat Supple 2018) (Adesh, Bathinda supple 2018, 2016) (Rajasthan University 2018, 2016) (North Eastern Hill University, Shillong 2016)

Ans: Refer to long question no. 13.

31. Police inquest (KHMS, Tamil Nadu 2016)**Describe the procedure of police inquest.** (Rajiv Gandhi University 2015)**Ans:**

Refer to long question no. 12.

32. Magistrate's inquest/Section 176 CrPC (Uttarakhand University 2017) (KHMS, Tamil Nadu 2015) (Delhi University Supple 2016) (Himachal Pradesh 2017) (Rajiv Gandhi University, Bengaluru 2015)**Ans:** Refer to long question no. 12.**33. Expert witness** (Sai Tirupati University, Rajasthan 2019)**Ans:****Definition:** An expert witness is a person who is skilled in a particular field (law, science or art).**Legally Defined Under Sec. 45 IEA.**

- He can draw conclusions on facts observed by him or by others.
- He can express an opinion on observations made by others.
- He can volunteer information, and highly responsible for his/her comments.

DIFFERENTIATIONS**1. Examination-in-Chief and cross-examination** (BFUHS, Punjab Supple 2020)

	Examination-in-Chief	Cross-examination
Definition	The first statement which is recorded by the prosecution lawyer/the party who calls him	The statement which is recorded by the lawyer of the accused party
Leading questions	Not allowed	Allowed
Order of sequence	Oath is followed by Examination-in-Chief	Examination-in-Chief is followed by cross-examination
Objectives	To place before the court all the facts that bear on the case	To elicit facts favorable to his case; test the accuracy of the statements, and to discredit the witness

2. Dying Declaration and Dying Deposition (University of Health Sciences, Rohtak 2019, 2017, supple 2020) (GMC, Chandigarh 2015) (Rajasthan University 2017, 2016) (North Eastern Hill University, Shillong supple 2016) (VNS, Gujarat 2018)

	Dying declaration	Dying deposition
Oath	Not required	Must
Recorded	By anyone (magistrate/doctor/police officer)	Only by magistrate
Accused party	Not allowed	Allowed
Cross-examination	Not allowed	Allowed
Followed in India	Yes	No
If person survives	Loses its value, but has corroborative value	Value is retained
Legal value	Less	More
Type of evidence	Documentary	Oral
Role of doctor	Assess <i>compos mentis</i> and record the statement in absence of magistrate, but in presence of witnesses	Assess <i>compos mentis</i> only

3. Civil negligence and criminal negligence (University of Health Sciences, Rohtak 2019, 2017, supple 2020) (Adesh, Bathinda 2019, 2017) (BFUHS, Punjab 2019, supple 2019) (Delhi University 2017) (GMC, Chandigarh 2016) (North Eastern Hill University, Shillong Supple 2016)

	Civil negligence	Criminal negligence
Trial by	Civil court/consumer court	Criminal court
Negligence	Simple absence of care and skill	Gross negligence
Punishment	Monetary compensation	Imprisonment, fine or both
Evidence	Strong evidence is sufficient	Guilt should be proved beyond reasonable doubt
Complainant	Sufferer party	Public prosecutor on behalf of the State
Contributory negligence	Act as defense for doctor	Not a defense for doctor
Consent for act	—do—	—do—
Litigation	Between two parties	State vs doctor

4. Professional misconduct and professional negligence (Sher-i-Kashmir, Srinagar 2020, supple 2017) (West Bengal University 2017) (Sardar Patel University, Gujarat supple 2016) (Delhi University Supple 2016) (Uttarakhand University 2015)

	Professional misconduct	Professional negligence
Definition	Conduct which is considered disgraceful and dishonorable by professional colleagues of good repute	Lack of reasonable care and skills that resulted in damage /death of the patient
Offence	Violation of Code of Medical Ethics	Absence of care and skill
Duty of care	Need not be present	Should be present
Damage to person	—do—	—do—
Trial by	State Medical Council	Courts- civil/ criminal
Punishment	Warning or erasure of name	Fine, imprisonment or both
Appeal	To NMC or central government	Higher court