

TOPIC 3: MEDICAL TREATMENT: CONSENT & REFUSAL (Adults)

- Consent can take many forms:
 - o Express (written/oral) – signing is most common.
 - o Implied – state of mind of the patient, e.g. offered their arm for the injection, or accepting a referral.
- Reasons for consent:
 - o Ethical – right to bodily integrity/control your own life
 - o Autonomy and self-determination – liberal theory
 - o Medical benefits – letting the doctor know of side effects
 - o Patient cooperation, trust and compliance
- If consent is not obtained, the actions could constitute:
 - o Torts – battery, assault, false imprisonment
 - o Criminal offences – assault
 - o Disciplinary misconduct

Elements of Consent

For there to be valid consent, the patient's consent must be:

- 1. Voluntary
- 2. Specific
- 3. Understanding of the nature of the act in question
- 4. Made competently

1. Voluntary

- Getting prescribed drugs in return for consent → not true consent (*Norberg v Wynrib*)
- To vitiate consent → a fraud has to **induce a mistaken belief** as to the **identity of the person** doing the act, **or the nature and quality of the act** (*Appelton v Garrett*)

Norberg v Wynrib (1992) (Canadian case)

- **Facts:** Drug addicted patient was awarded compensation for battery against a doctor who had sex with her, which she consented to because of her addiction (he would prescribe her drugs in return for sex)
- **Held:** Not true consent – aggravated damages awarded and punitive damages

Appelton v Garrett (1997)

- **Facts:**
 - o Dentist liable in trespass for undertaking excessive and unnecessary dental procedures. 8 plaintiffs sought to establish trespass for over-servicing them (root canals and crowns on teeth that were perfectly healthy)
 - o Dentist deliberately withheld information, knowing they would not have consented.
- **Held:**
 - o Dyson: not just mere negligence. To vitiate consent, a fraud has to induce a mistaken belief as to the identity of the person doing the act, or the nature and quality of the act.
 - o Insertion of instruments and surgery on teeth = assault and battery
 - o 8 P's awarded aggravated damages.

2. Specific

- The consent must be specific about the procedure consenting to.
- Consent to one thing does not grant a right to undertake any other procedure.
- Cannot be other things that happen to be convenient for the doctor to perform