4 Professional Negligence and the Law

Raghvendra Singh Shekhawat and Tanuj Kanchan

Q1. Give a descriptive account of professional negligence (FM4.18)

In general, negligence means failure to take proper care of something. In a more descriptive sense, "omission to do something which a reasonable person would do (an act of omission) or doing something which a reasonable person would not do (an act of commission) is negligence."

In a professional sense, however, negligence has got a broader and unique meaning. In the profession of medicine, professional negligence (malpractice/malpraxis) is defined as "*lack of reasonable care and skill or willful neglect on the part of medical practitioner in the treatment of the patient whereby health or life of the patient is endangered.*"

"Reasonable care" refers to "medical standard of care." It is a kind and level of care which an ordinary, prudent health care professional, with similar training and experience, would provide under similar circumstances in the same community.

Bolam test

It originates from the English law of Torts (*Bolam v Friern Hospital Management Committee*; 1957), and is used to assess medical negligence. Bolam holds that the law imposes a duty of care between a doctor and his/her patient, but the standard of that care is a matter of medical judgment. It says that a doctor will not be negligent if he or she acts in accordance with a responsible body of medical opinion.

Tort

In medical practice, a tort is a "civil wrong" which causes an injury for which the patient (plaintiff) may seek damages, typically in the form of monetary compensation from the erring medical practitioner (tortfeasor).

Note: *It needs a mention here that "damage" and "damages" have different meanings. Damage is the physical or psychological suffering of the patient. Damages are the compensation assessed by the court for the condition suffered by an individual.*

Components of medical negligence

The four essential legal elements to prove a civil suit of negligence, often referred to as 4Ds, are mentioned in **Table 4.1**.

Composite negligence

It is the negligent act of more than one wrongdoer. When the harm suffered by the patient is due to the involvement of more than one or multiple medical professionals, it is called as composite negligence in the theory of tort laws.

Q2. Differentiate between professional negligence and infamous conduct (FM4.18)

Table 4.2 depicts differences between professional negligence and infamous conduct.

Table 4.1 Essential elements of negligence (4Ds)

Duty	A doctor owes a duty to care toward the patient once the doctor–patient relationship is established
Dereliction of duty	There is a proven breach of duty on part of a doctor treating the patient, i.e., the doctor has failed to perform his/her duties in an expected way
Damage	Damage (harm to the patient) is caused as a result of a breach in duty
Direct causation	The damage should be a direct result of a breach in the duty, i.e., the breach of duty was the *proximate cause* of resulting damage to the patient, also referred to as "cause and effect" relationship

Table 4.2 Professional negligence versus infamous conduct

Features	Professional negligence	Infamous conduct
Description	Absence of reasonable care and skill or willful negligence on part of the medical practitioner	Violation of various clauses of *Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002*
Duty of care	Must exist	Not necessary
Damage to patient	Must be caused	Not necessary
Trial by	Civil courts, criminal courts, consumer redressal forums	State Medical Council (SMC), Indian Medical Council (IMC)
Punishment	Monetary compensation or imprisonment/fine	Warning/erasure of name from the state medical register
Doctor can appeal to	Higher Courts	IMC for decision passed by SMC

Q3. Describe the various types of medical negligence (FM4.18)

Civil negligence

It is lack of reasonable care and skill resulting in a damage for which only monetary compensation is sought. The aggrieved party (patients or their relatives) sues a medical practitioner in a civil court or a consumer forum seeking compensation for the harm caused due to his/her alleged act of negligence. Civil courts can only order monetary punishments and are not entitled to punitive sentences such as fine and/or imprisonment etc. If the suit of civil negligence is proven, the doctor has to give compensation to the aggrieved party as decided by the court.

Criminal negligence

It is gross negligence with utter disregard to welfare and safety of human life. It amounts to crime deserving punishment. It usually refers to negligence resulting in severe bodily harm or death of the patient. In such cases, the aggrieved party lodges complain with the police to initiate inquiry against the doctor's act of negligence. These cases are taken up in the criminal courts. The medical practitioner, if found guilty, will be liable to punitive actions. The punishment is given as per the criminal law under appropriate sections of IPC like Sections 336, 337, 338, and 304A of IPC.

Differences between civil and criminal negligence

Civil negligence and criminal negligence are of different nature; the various differences are mentioned in **Table 4.3**.

Q4. Relevant sections of IPC in cases of criminal negligence

Various sections of IPC related to cases of criminal negligence are mentioned in **Table 4.4**.

Q5. Write a short note on vicarious liability (FM4.18)

Vicarious liability or vicarious responsibility refers to situations when liability is imposed on one party because of the actions committed by someone else. This rule, also known as the **master–servant rule**, which implies that in certain situations the master (employer) is responsible for the acts done by his/her employee (servant) during the course of the employment.

It is also known by the Latin term "*respondeat superior*," which means "let the master answer."

The other terms for vicarious liability are "imputed negligence" and "captain of the ship doctrine."

Rationale: The concept of vicarious liability is based on the "theory of deep pockets." As a common understanding, the master has "deeper pockets" which means that the risk of an activity should be borne by a person who is in a relatively good position to handle it. In cases of medical negligence, the hospitals have more financial resources than the doctor, and hence, the hospital should bear the load of compensation.

Prerequisites to establish vicarious liability

- There should be an established employer–employee relationship.

Table 4.3 Civil versus criminal negligence

Features	Civil negligence	Criminal negligence
Description	Lack of reasonable care and skill	Utter disregard to the safety of life
Damage caused	Generally minor harm to the patient	Gross harm or death of the patient
Procedure followed by complainant	Civil court or consumer forum is approached through a lawyer	Complaint is filed with the police; the case is tried in a criminal court
Parties in the case	Patient versus doctor	State versus doctor*
Lawyer	Patient hires a lawyer privately to fight the case	Public prosecutor fights the case on behalf of the government
Penalty	Monetary compensation	Fine and/or imprisonment
Consideration of proof	Based on "*balance of probabilities*," i.e., based on higher probability	Negligence is to be proved "*beyond a reasonable doubt*"
Informed consent	Can be a good defense for doctor	Not a good defense for doctor
Contributory negligence	Can be cited as a defense by doctor	Not a good defense for doctor

Note: * All crimes (such as criminal negligence) are perceived as offenses against the State (nation) or community as a whole. Hence, the State (public prosecutor) takes up the case on behalf of the aggrieved party (complainant/patient) against the alleged wrongdoer (doctor). The aggrieved party in addition may hire a private lawyer to represent them. On the contrary, the State is not a party in cases of civil negligence, and the cases are between two parties.

Table 4.4 Sections of IPC in cases of criminal negligence

IPC	Description	Punishment
304 A	Causing death by a rash or negligent act	Simple or rigorous imprisonment for up to 2 years, or with fine
336	Endangering life or personal safety of others (damage to the patient is not caused)	Simple or rigorous imprisonment for up to 3 months or with fine
337	Causing hurt by an act endangering life or personal safety of others	Imprisonment for a term which may extend to 6 months, or with fine
338	Causing grievous hurt by an act endangering life or personal safety of others	Imprisonment for a term which may extend to 2 years, or with fine

Note: Section 304 A of IPC is invoked when the negligent act caused death of the person. Sections 336, 337, and 338 of IPC are invoked when the negligence act did not cause death of the patient.

- The negligent act of the employee should occur within the scope of his/her employment.
- The employer has the right to control the employee in carrying out the task at issue.

Doctrine of vicarious liability is applicable in cases of civil negligence. As a general rule, there is no vicarious liability in criminal law.

Circumstances of vicarious liability

- For the negligent act of an intern or resident doctor, the vicarious liability lies on the management of the hospital, the former being under training. Similarly, a physician is responsible for the acts of his/her trainees as they are working under his/her direct control.
- The hospital management may not be vicariously liable for the acts of senior and well-qualified staff. In such situations, it should be clearly shown that a proper and stringent selection process recruited the trained staff. Similarly, a surgeon need not be responsible for acts of qualified nursing staff if the nursing staff had direct control over the situation.
- Usually, the court directs the State or the hospital to pay compensation to the patient. At times, the court may direct the hospital and the doctor to share the amount of compensation.

- *Borrowed servant rule* or *lent servant doctrine* is a doctrine which states that an employer may be held liable for the actions of an employee who has been borrowed temporarily from their regular employer. The regular employer will not be held responsible as they have already transferred the control of their employee to the temporary employer.

Note: *Doctrine of negligent choice: If a physician refers a patient to an inefficient and incompetent doctor, he/she is liable for any harm caused to the patient.*

Corporate negligence: *It is a legal concept that holds health care agencies, such as hospitals and nursing homes, responsible for the care of the patients. If the hospital is unsuccessful in maintaining a safe environment, hiring qualified and accurately trained workers, or supervising care and fulfilling security policies, it can be held legally responsible for any damage to patients.*

Q6. Write short note on Res ipsa loquitur (FM4.18)

Res ipsa loquitur (Latin: the thing speaks for itself): As a general rule, in civil and criminal litigations, the plaintiff (complainant) must bear the burden of proof (i.e., provide evidence for the charges or allegations made by him/her). It implies that, in cases of medical negligence, the complainant (patient/relatives) has to prove/substantiate his/her allegations regarding the negligence of the physician.

However, when the element of negligence is very obvious, the burden of proof no longer lies on the patient, but shifts on the doctor to prove/provide evidence that he/she was not negligent. This legal principle is called the "doctrine of *Res ipsa loquitur*."

Elements of Res Ipsa Loquitur

- The harm to the patient would not have typically occurred without the doctor's negligence.
- The doctor had exclusive control over the situation at the time of the likely negligent act.
- The patient did not contribute to the harm by his/her own negligence.

Rationale: The act of negligence is so apparent that even an ordinary person with common knowledge can appreciate it, and an expert testimony is not required to prove the negligence. This is often called the "**doctrine of common knowledge**." It is an exception to expert testimony and is used in cases where doctrine of *Res ipsa loquitur* is applied.

Examples of Res ipsa loquitur

- Surgery on an unintended body part (amputation of the wrong limb, surgery performed on right cerebral hemisphere instead of the indicated left side).
- Surgery on an unintended patient (hysterectomy performed on a patient mistaking her for another who had come for cholecystectomy).
- Swabs or surgical instrument(s) are inadvertently left in the body during surgery.
- Mismatched blood transfusion causing anaphylaxis.

Exception: *Calculated risk doctrine* (described in defenses of doctor in a case of negligence)

Q7. Mention the various defenses of a doctor in an alleged case of medical negligence (FM4.18)

A medical practitioner can plead the following defenses in allegations of medical negligence:

- No legal duty owed to the patient (doctor–patient relationship is not established),
- Duty discharged as per the approved standards of medical practice (no negligence),
- Emergencies/life-saving act (actions in good faith; Section 92 of IPC provides immunity to the doctor),
- Harm caused to the patient is attributed entirely to the negligence of the patient,
- Error of judgment (inadvertent error even after due standards of care were followed),
- Medical misadventure (unintended outcome of an intended action),
- Medical maloccurrence (bad outcome irrespective of the quality of care provided),
- Calculated risk doctrine (inherent risks involved in accepted methods of treatment),
- Contributory negligence (the patient has also contributed to the harm sustained by him/her).
- *Novus actus interveniens* (chain of causation is broken by a new act),
- *Res judicata* (a matter already decided cannot be taken up again in the same court),
- *Volenti non fit injuria* (person consented to put himself/herself in a harmful position),
- Law of limitation (case can be filed in a court within the prescribed time limit),
- Product liability (shifting onus on manufacturer/supplier of the faulty product).

Note: *Error of judgment mostly refers to a failure in the diagnostic process leading to a missed diagnosis, a wrong diagnosis (misdiagnosis), or a delayed diagnosis.*

Q8. Write a note on calculated risk doctrine (FM4.18)

During a lawsuit of negligence, the doctor can show that the accepted method of treatment which he/she employed involves an inherent and material risks to the patient (when the complications of the procedure/intervention are calculated), referred to as **calculated risk doctrine**. The inherent or a known risk is the likelihood that something terrible or unexpected can result from a procedure, intervention, or treatment. To seek this defense, the doctor should prove that the patient had taken an informed decision (informed consent) to undergo the said intervention, and that the method employed was a medically accepted procedure. In such cases, the court may refuse the application of the doctrine of *Res ipsa loquitur* (exception to *Res ipsa loquitur*).

Q9. Write a note on contributory negligence (FM4.18)

In contributory negligence; besides the doctor, the patient too is responsible for the harm he/she has sustained. The burden to establish negligence on the part of the patient lies on the doctor. If negligence on the part of the patient is proven, he/she is not entitled to any compensation in civil cases. However, contributory negligence is no good defense in criminal negligence.

Examples of contributory negligence:

- Plaster cast was applied too tightly on the limb by the doctor; the patient on feeling discomfort and numbness did not report to the doctor, but instead manipulates it himself/herself.
- The doctor did not apprise or warn the patient about the possible adverse effects/drug reactions to the prescribed treatment, and the patient on experiencing them did not report to the doctor for advice, and instead resorted to self-medication.

Contributory negligence should be differentiated from **comparative negligence** (proportionate negligence/nonabsolute contributory negligence), which aims to compensate the negligent patient at least for some part of injuries. The court ascertains the degree to which the patient was responsible for his/her harm and decides on the compensation that he/she can be entitled to.

Note: Often the examples cited for contributory negligence are that the patient provided a wrong history, did not follow the instructions, or did something which aggravated his/her condition. In all these examples, the patient alone is negligent (without any element of doctors' negligence); hence, these cannot be taken as contributory negligence.

Exceptions to contributory negligence

- **Last clear chance doctrine/humanitarian doctrine/discovered-peril doctrine:** In cases of contributory negligence, if the doctor has the last clear chance to prevent an injury, then the patient may still be entitled to recover damages. The doctrine is based on a humanitarian outlook and considers that the patient should not be subjected to harshness in cases of his/her relatively minor negligence, which the doctor had a chance to intervene and rectify.
- **The avoidable consequences rule:** In cases of contributory negligence when the patient could have avoided the harm sustained to him/her, the doctor need not compensate for the harm.

Note: "The thin skull rule" *or* "eggshell rule"—*In cases of medical negligence, the doctor cannot take a defense of some precondition (either frailty or fragility) that the patient was suffering from. Conclusively, it reflects the principle that injuring someone who is already injured is much more severe.*

Q10. Write a note on Novus actus interveniens (FM4.18)

Novus actus interveniens is a Latin term which means "new intervening act." In law, a wrongdoer (a negligent doctor) is responsible for causing any immediate or remote harm to the patient (cause and effect relationship). But there can be situations where a completely new unforeseeable act or happening breaks the *chain of causation,* further deteriorating the patient's condition. Since the new intervening events are not predictable, these are often addressed as '*Acts of God*'. In such a scenario, the doctor is not held liable, since the resulting injury no more remains the *proximate cause* of the doctor's negligent act.

Example: Closed reduction was done for fracture of leg bones. On removal of the cast, it was observed that the misalignment of the fractured bones had resulted in deformity. Treating doctor was contacted, who asked the patient to report to him/her in the hospital for the needful. While on the way, the patient stumbled on the stairs and sustained injuries. He sued the doctor calling the

injuries a direct consequence of negligence. Even though the doctor was negligent for the deformity caused, he/she may plead *novus actus interveniens* as a defense for the injuries sustained.

Note: "But for test" *refers to the question "but for the negligence of the doctor, would the patient have suffered the harm?" i.e., if the patient would have suffered the injuries in absence of the negligent act of the doctor. In the above example it can be contested that the patient would not have come to visit the doctor if there was no deformity, and consequently would not have fallen and sustained injuries; hence, the harm cannot be considered too remote and the doctor should be held liable.*

Q11. Write a note on medical misadventure (FM4.18)

A misadventure is an unintended outcome of an intended action. Medical misadventure is said to occur when a patient sustains unexpected, unforeseeable, and unintentional harm even when due care and acceptable medical practice was followed. It is classified as:

- Therapeutic misadventure: An adverse event occurs during the medical management, (e.g., complications of blood transfusion, hypersensitivity drug reactions, etc.).
- Diagnostic misadventure: The patient sustains unintended harm while undergoing a diagnostic test, (e.g., hypersensitivity reactions to dyes during radiological procedures.).
- Experimental misadventure: When the patient is a participant in an experimental study, and suffers an unexpected event.

Medical maloccurrence is sometimes synonymously used for medical misadventure, (e.g., breaking of needle during intramuscular (IM) injection due to sudden muscle spasm.).

Q12. Write a note on Res judicata (FM4.18)

It is a Latin term which means "a matter already judged/decided." Thus, a case of negligence once decided by a court with acquittal/conviction of the doctor cannot be taken up in the same/similar court again. Likewise, Section 300 of Cr PC in Indian law states that "Person once convicted or acquitted not to be tried for the same offence." However, if the complainant is not in agreement with the acquittal/quantum of punishment to the doctor, he/she can appeal against it in a higher court.

Q13. Write a note on Volenti non fit injuria (FM4.18)

It is a Latin term which means "to a willing person, injury is not done." *Volenti non fit injuria* is a common law which means that when a person knowingly and voluntarily consents to put himself/herself in a harmful position, even after being aware of inherent risks, he/she cannot claim against the damages occurred to him/her against the party to whom he/she consented. For seeking this defense, the doctor should have followed the due protocol of seeking informed consent, and should have informed the patient about the risks involved in the procedure and helped him/her to comprehend the same. At the same time, such consent should not fall under *contra bonos mores* (against good morals). *Volenti non fit injuria* is often used as a defense in sports, but is considered an inefficient defense in cases of criminal negligence of the doctor.

Q14. Write a note on the law of limitation (FM4.18)

It is also referred to as "*Res indicata*." As per the law of limitation, an aggrieved party (patient) can approach the court to initiate a lawsuit against the accused (doctor), only within the prescribed time limit. If the patient approaches the court after the prescribed time limit for filing the case is over, the doctor can cite law of limitation as defense, and ask the court not to take up such a case. No such time limit has been defined for criminal and civil courts in India. As per the Consumer Protection Act, 1986, a consumer has to file a complaint within 2 years from the date on which the cause of action has arisen. However, a complaint can still be entertained after the passage of 2 years if the forum/commission believes that the patient had sufficient reasons for the delay.

Q15. Write a note on product liability (FM4.24)

The practice of medicine employs the use of drugs, equipment, machines etc. The manufacturer/retailer/supplier/dealer is responsible for the harm caused to the patient due to faulty products. Thus, the onus of negligence goes on to the manufacturer/supplier of such a product. This area of law is known as *product liability* and is derived from the torts law.

Types of product liability based on the type of defect responsible for the harm to the patient is described in **Table 4.5**.

The product liability in India is governed by the tort laws, The Sales of Goods Act, 1930, The Consumer Protection Act, 1986, and various provisions of IPC, as applicable.

Facts to be proved by the complainant/ plaintiff to establish a claim

- The manufacturer had a duty to the plaintiff.
- There was a violation in the abovementioned duty (the sold product was defective).
- The product did not conform to the implied warranty.
- The defect of the product was the proximate cause of the injury.
- The patient suffered actual damages due to a breach in duty.

A doctor is liable for the harm caused due to the misuse of the instrument, faults arising due to nonmaintenance of the instrument, not addressing its wear and tear, or when he/she does not follow the instructions or warnings given by the manufacturer.

Q16. What is medical indemnity insurance? (FM4.24)

Indemnity means a provision to safeguard against potential damage or loss. With indemnity, the insurer indemnifies the holder of the policy who pays regular premium toward the same. Thus, the insurer assures a financial coverage for its client in case of any loss. Medical professionals frequently opt for medical indemnity insurances as a safeguard from the impending financial burden (damages) in a case of medical negligence. The premium depends on multiple factors such as the specialty of the doctor and the risk group, the limits of indemnity selected, and the ratio of limits etc.

Based on the parties insured, the medical indemnity insurance policies can be of two types:

- **Personal or individual policy:** It covers the insured doctor and his/her assisting team.
- **Errors and omissions policy:** It covers an institution/hospital along with its staff
- Based on the nature of policy, the medical indemnity insurance policies can be of two types:
  - **Claims-made policy:** It covers only the incidents that occurred and were reported while the physician was insured with the insurance company–
  - **Occurrence policies:** Provide lifetime coverage for incidents that occurred while the plan was in effect, regardless of when the claim is filed.

Presently, most of the insurance companies in India provide an insurance cover to the insured doctor for claims relating to the bodily injury or death of the patient caused by error, omission, or negligence. These policies usually do not cover the losses due to criminal negligence, defamations, blood banks, plastic surgeries, and weight reduction procedures.

Q17. Write a short note on defensive medicine (FM4.18)

Defensive medicine refers to the medical practice of advising needless diagnostic tests or treatment as a safeguard against any possible future litigations. With an increasing number of lawsuits against doctors, the practice of defensive medicine has increased manifold. It is also known as *defensive medical decision-making*. It amounts to breach in his/her ethical duties toward the patient (principle of patient's beneficence). Defensive medicine can be of two types (**Table 4.6**).

Some of the examples of defensive medicine are:

- Advising investigations like computed tomography (CT) scan, magnetic resonance

Table 4.5 Types of product liability

Manufacturing defect	Design defect	Marketing defect
• Occur in the manufacturing process • Usually due to use of low-quality materials	• Product design is hazardous or inadequate • It does not matter how carefully the product was manufactured	• Failure-to-warn defects • Failure to provide instructions for use or warnings while using the product

Table 4.6 Types of defensive medicine

Positive defensive medicine	Negative defensive medicine
• Also referred to as "assurance behavior" • Involves needless diagnostic tests/procedures • Needless treatment/overtreatment or hospitalization	• Also referred to as "avoidance behavior" • Avoiding risky procedures/surgeries • Excluding patients from treatment and hospitalization

imaging (MRI), or biopsies for apparently minor ailments.
- Unnecessary use of antibiotics.
- Advising caesarian section to avoid the risks of vaginal deliveries.

Consequences

- Increased cost of health care.
- Increased instances of antibiotic resistance, surgery-related complications etc.
- Overdependence of doctors for diagnostics and impaired clinical ability in the long run.

Q18. Discuss the Consumer Protection Act, 1986 (CPA) in respect to the practice of medicine and patient care in India (FM4.8)

Purpose of the CPA: "To provide better protection of the interests of consumers and to make provision for the establishment of consumer councils and other authorities for the settlement of consumer's disputes and matters connected."

Important definitions and provisions

- "Complaint" means any allegation given in writing by the complainant.
- "Consumer" is a person who hires or avails of any services for a consideration.
- "Deficiency" means any fault, imperfection, shortcoming, or inadequacy in the quality, nature, and manner of performance which are required to be maintained by a person in pursuance of a contract or otherwise in relation to any service.
- "Service" means service of any description, which is made available to potential users. It does not include services made free of charge or services falling under personal contract.

The three-tier system of consumer disputes redressal

The Act provides provisions for a three tier quasi-judicial regulatory bodies (a non-judicial body which can interpret law) for consumer disputes redressal at the District, State and National levels.

Powers of the consumer redressal commissions

- Summoning and enforcing of the attendance of any defendant or witness and examining the witness under oath.
- Discovery and production of any document or other material object producible as evidence.
- Reception of evidence on affidavits.

Procedure in general

There is a nominal fee for filing a complaint before the district consumer redressal forum. The complaint can be given in simple writing on a plain paper. It is not necessary for the complainant to hire a lawyer.

Appeal

If the complainant is not satisfied with the decision of the district forum, he/she may appeal to the State Commission, and likewise to the National Commission. If the complainant is not satisfied with the conclusion of the National Commission, he/she may appeal to the Supreme Court of India. The time limit for filing all such appeals is 30 days from the date of decision.

Calculation of compensation

The principle followed in such cases is that of "*restitutio in integrum*" which means "restoration to the original condition." Although damage caused to the patient due to doctor's negligence can never be recovered entirely, attempts should be made to pay for the financial losses, future expenses for clinical

care, and pain and suffering dealt by the patient. In India, fixation of the amount of compensation varies from case to case, and each case is decided on its merit. At times, the courts use the "multiplier method" which only considers the loss of income of the victim. However, in cases of medical negligence, other dimensions like the present and future medical costs, pain and suffering, cost of litigation, inflation and interest, loss of consortium (companionship), etc., should be assessed for calculating the compensation.

Landmark case: *Indian Medical Association versus V.P. Shantha & Ors* on November 13, 1995.

Till 1995, it was unclear if the services of the medical profession came under the ambit of Consumer Protection Act or not. In the case of *Indian Medical Association versus V.P. Shantha & Ors*, the Supreme Court decided that services given by the doctors fall under **Section (2)(o) of the Consumer Protection Act**. The court differentiated "*contract of service*" from "*contract for service.*" In a contract of service, there is a continuous employer–employee relationship in which the employee gets wages/salary, while a contract for service applies in the case of an independent subcontract. Thus, the doctor–patient relationship is a **contract for service**.

Salient outcome of this decision

- All independent medical practitioners and private hospitals who charge their patients are included in the ambit of the CPA.
- All the hospitals where charges are required to be paid by persons availing services but/ those who cannot afford to pay, are rendered services, free of charge are also included in the ambit of the CPA.
- Thus, all hospitals (government, private, or those run by a trust) and all the practitioners who do not charge any of their patients for availing any of their services are excluded from the ambit of the CPA. Here, registration money of insignificant amount is not considered as a charge. Whereas, all medical practitioners and hospitals, including those run by the state and central governments, who charge any patient for any procedure/investigation etc., are covered under the CPA.

Consumer Protection Act, 2019

The new CPA, 2019 has replaced the CPA, 1986. The distinctive features of the new Act are:

1. Broadens the scope by inclusion of E-commerce, Product liability, and Unfair Contracts in its ambit.
2. Introduction of Central Consumer Protection Authority (CCPA); a new regulatory body meant to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements, and to promote and enforce the rights of consumers as a class.
3. Expands the definition of misleading advertisement and introduces penalties for the same.
4. Convenience in filing of complaints as the consumer can now file complaints in the respective Consumer Dispute Redressal Commission at the place of their residence or work, instead of the place of purchase or seller's registered office address. The New Act allows E-filing of complaints as well as its hearing through video-conferencing.
5. Enhancement of the Pecuniary Jurisdiction of the Consumer Dispute Redressal Commissions as shown in **Table 4.7**.

Table 4.7 Three-tier system of consumer disputes redressal as per the Consumer Protection Act, 2019

Level	Pecuniary Jurisdiction
District Commission (District Consumer Dispute Redressal Commission)	Does not exceed one crore rupees
State Commission (State Consumer Dispute Redressal Commission)	More than one crore to 10 crore rupees
National Commission (National Consumer Dispute Redressal Commission)	More than ten crore rupees

Multiple Choice Questions

1. **"Tort" refers to**
   a. Civil wrong
   b. Criminal wrong
   c. Lack of reasonable care
   d. Lack of required skills

2. **One of the following is NOT an essential component in establishing medical negligence**
   a. Duty
   b. Dereliction of duty
   c. Direct causation
   d. Damages

3. **Harm suffered by a patient due to the involvement of more than one medical professionals is called**
   a. Complex negligence
   b. Complicated negligence
   c. Composite negligence
   d. Contributory negligence

4. **Prerequisites to establish vicarious liability include the following**
   a. There should be an established employer–employee relationship
   b. The negligent act of the employee should occur within the scope of his/her employment
   c. The employer has the right to control the employee in carrying out the task at issue
   d. All of the above

5. **Elements of Res Ipsa Loquitur include**
   a. Harm to the patient would not have occurred without the doctor's negligence
   b. The doctor had exclusive control over the situation at the time of the likely negligent act
   c. The patient did not contribute to the harm caused
   d. All of the above

6. **In contributory negligence the negligence is generally attributed to**
   a. The patient only
   b. The patient and treating doctor
   c. The patient, treating doctor, and nursing staff
   d. The patient, treating doctor, and hospital administration

7. **Law of limitation refers to**
   a. A case can be filed in a court within the prescribed time limit
   b. A matter already decided cannot be taken again in the same court
   c. Each court has a limit for the type and number of cases filed
   d. Negligence cannot be established in unwitnessed events

8. **Res judicata means**
   a. A case can be filed in a court within the prescribed time limit
   b. A matter already decided cannot be taken again in the same court
   c. Negligence cannot be established in unwitnessed events
   d. Obvious cases of negligence can be decided on fast track to give justice

9. **The section dealing with cases of death due to medical negligence is**
   a. Section 302 of IPC
   b. Section 304 of IPC
   c. Section 304 A of IPC
   d. Section 304 B of IPC

10. **Following is NOT an exception to contributory negligence**
    a. Avoidable consequences rule
    b. Discovered-peril doctrine
    c. Last clear chance doctrine
    d. Novus actus interveniens

Answers
1, a; **2**, d; **3**, c; **4**, d; **5**, d; **6**, b; **7**, a; **8**, b; **9**, c; **10**, d