



Compass Chambers

CLINICAL NEGLIGENCE UPDATE

KAY SPRINGHAM Q.C.

Compass Chambers

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"It's simple. My nurse blindfolds me, I spin around a few times, and then I try to reattach your tail."



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- Informed consent
- Practical issues
- Procedural issues



Informed consent

- What the law was...
- What the law now is – *Montgomery v Lanarkshire*
HB [2015] UKSC 15



Montgomery

“An adult person of sound mind is entitled to decide which, if any, of the available forms of treatment to undergo, and her consent must be obtained before treatment interfering with her bodily integrity is undertaken. The doctor is therefore under a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments.



Montgomery

The test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it.” (§ 87)



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Developments post-Montgomery

- Clark v GGHB [2017] CSIH 17
- Malone v GGHB [2017] CSOH 31
- Britten v Tayside HB [2016] SC DUN 75
- Inglis v Braid [2016] SC EDIN 63



Developments post-Montgomery

- *Thefaut v Johnston* [2017] EWHC 497 (QB)
- *Crossman v St George's Healthcare NHS Trust* [2016] EWHC 2878



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Some practical issues

- Expert evidence
 - MacLeod's Legal Reps v Highland HB [2016] CSIH 25
- (Potential) change in the discount rate

Some procedural issues

- Remit of clinical negligence cases
 - *AB v Ayrshire & Arran HB* [2016] CSOH 120
- Clinical negligence and jury trials



Sound familiar...?





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Contact

**Compass Chambers
Parliament House
Edinburgh
EH1 1RF**

DX 549302, Edinburgh 36

LP 3, Edinburgh 10

www.compasschambers.com

Kay Springham, Q.C.

kay.springham@compasschambers.com

Gavin Herd

Practice Manager

Phone: 0131 260 5648

Fax: 0131 225 3642

gavin.herd@compasschambers.com