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Graduate Certificate in Clinical Negligence Law

## The Legal Process in Clinical Negligence Cases

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Clinical Negligence Law is a complex area of legal practice that deals with cases where healthcare professionals fail to provide an appropriate standard of care, resulting in harm to the patient. Understanding the legal process in clinical negligence cases is crucial for lawyers specializing in this field. This explanation will cover key terms and vocabulary essential for navigating the legal landscape of clinical negligence law.

**\*\*Standard of Care\*\***: The standard of care refers to the level of care that a healthcare professional is expected to provide to a patient. In clinical negligence cases, the standard of care is determined by comparing the healthcare professional's actions to what a reasonable person with similar training and experience would have done in the same situation.

**\*\*Breach of Duty\*\***: A breach of duty occurs when a healthcare professional fails to meet the required standard of care. This breach is a fundamental element of a clinical negligence claim, as it establishes that the healthcare provider did not fulfill their obligations to the patient.

**\*\*Causation\*\***: Causation is the link between the healthcare professional's breach of duty and the harm suffered by the patient. In clinical negligence cases, the claimant must demonstrate that the breach of duty directly caused the harm. This can be a challenging aspect of proving a clinical negligence claim, as there may be other factors contributing to the harm.

**\*\*Damages\*\***: Damages refer to the compensation awarded to the claimant in a clinical negligence case. Damages can be awarded for various types of losses, including medical expenses, loss of earnings, pain and suffering, and future care needs. The aim of damages is to restore the claimant to the position they would have been in if the negligence had not occurred.

**\*\*Negligence\*\***: Negligence is the failure to exercise the degree of care expected of a reasonable person in a similar situation. In clinical negligence cases, negligence refers to the healthcare professional's failure to provide an appropriate standard of care, resulting in harm to the patient.

**\*\*Expert Evidence\*\***: Expert evidence plays a crucial role in clinical negligence cases. Experts in relevant fields, such as medicine or nursing, provide opinions on the standard of care, breach of duty, causation, and the extent of the harm suffered by the patient. Expert evidence helps the court understand complex medical issues and determine liability in clinical negligence cases.

**\*\*Informed Consent\*\***: Informed consent is the patient's right to make decisions about their medical treatment based on full and accurate information provided by the healthcare professional. In clinical negligence cases, a lack of informed consent can lead to a claim if the patient suffers harm as a result of not

being adequately informed about the risks and benefits of a particular treatment.

**\*\*Contributory Negligence\*\***: Contributory negligence occurs when the claimant's actions contribute to the harm they have suffered. In clinical negligence cases, if the claimant is found to have been partially responsible for their injuries, the amount of damages awarded may be reduced to reflect their contribution to the harm.

**\*\*Limitation Period\*\***: The limitation period is the time within which a claimant must bring a clinical negligence claim to court. In the UK, the limitation period for clinical negligence cases is usually three years from the date of the negligent act or from when the claimant became aware of the harm caused by the negligence. Failing to bring a claim within the limitation period can result in the claim being time-barred.

**\*\*Pre-Action Protocol\*\***: The pre-action protocol is a set of guidelines that parties involved in a clinical negligence claim must follow before court proceedings are initiated. The protocol aims to encourage early communication, exchange of information, and settlement of claims without the need for litigation. Following the pre-action protocol is essential for ensuring that the claim progresses smoothly through the legal process.

**\*\*Case Management\*\***: Case management involves the court overseeing the progression of a clinical negligence case to ensure that it proceeds efficiently and fairly. Case management may involve setting deadlines for the exchange of evidence, scheduling hearings, and managing any disputes between the parties. Effective case management is essential for the timely resolution of clinical negligence claims.

**\*\*Mediation\*\***: Mediation is a form of alternative dispute resolution where an impartial third party helps the parties involved in a clinical negligence case reach a settlement. Mediation can be a cost-effective and time-efficient way to resolve disputes without the need for court proceedings. Participating in mediation is voluntary, but it can be a valuable tool for resolving clinical negligence claims amicably.

**\*\*Costs\*\***: Costs refer to the legal expenses incurred by the parties involved in a clinical negligence case. In the UK, the general rule is that the losing party pays the winning party's costs. However, the court has discretion to vary the costs order based on factors such as the conduct of the parties, the complexity of the case, and any settlement offers made during the legal process.

**\*\*Conditional Fee Agreements (CFAs)\*\***: Conditional Fee Agreements, also known as "no win, no fee" agreements, are arrangements between the claimant and their solicitor where the solicitor agrees to represent the claimant without charging a fee unless the case is successful. If the case is successful, the solicitor's fees are usually paid by the losing party. CFAs can make legal representation more accessible to claimants in clinical negligence cases.

**\*\*After the Event (ATE) Insurance\*\***: After the Event insurance is a type of insurance that claimants can take out to cover the costs of legal expenses if they lose a clinical negligence case. ATE insurance helps protect claimants from having to pay the other party's costs if the case is unsuccessful. ATE insurance can provide

peace of mind to claimants pursuing clinical negligence claims.

**\*\*Litigation Friend\*\***: A litigation friend is a person appointed to act on behalf of a claimant who lacks the capacity to conduct legal proceedings themselves. In clinical negligence cases involving children or adults who are unable to make decisions for themselves, a litigation friend is appointed to represent their interests throughout the legal process.

**\*\*Case Law\*\***: Case law refers to the body of legal decisions made by judges in previous cases. In clinical negligence cases, case law plays a crucial role in shaping legal principles and establishing precedents that guide the resolution of similar disputes. Lawyers specializing in clinical negligence law must be familiar with relevant case law to effectively represent their clients.

**\*\*Expert Witness\*\***: An expert witness is a professional with specialized knowledge and experience in a particular field who provides expert evidence in court. In clinical negligence cases, expert witnesses play a crucial role in explaining complex medical issues to the court, offering opinions on the standard of care, breach of duty, causation, and the extent of the harm suffered by the patient.

**\*\*Liability\*\***: Liability refers to legal responsibility for an act or omission that causes harm to another party. In clinical negligence cases, liability is the key issue that the court must determine. Establishing liability involves proving that the healthcare professional breached their duty of care, that this breach caused harm to the patient, and that the patient is entitled to compensation for their losses.

**\*\*Consent\*\***: Consent is the patient's agreement to undergo a particular medical treatment or procedure. In clinical negligence cases, issues of consent may arise if the patient alleges that they did not provide informed consent for the treatment that led to harm. Consent must be voluntary, informed, and given by a competent patient to be valid.

**\*\*Duty of Care\*\***: The duty of care is the legal obligation of a healthcare professional to provide a certain standard of care to their patients. In clinical negligence cases, establishing a duty of care is essential for proving that the healthcare professional owed a duty to the patient and breached this duty, leading to harm.

**\*\*Expert Report\*\***: An expert report is a written document prepared by an expert witness that sets out their opinions on the issues relevant to a clinical negligence case. Expert reports are used to provide evidence to the court, explain complex medical issues, and support the claimant's case. Expert reports are crucial for building a strong case in clinical negligence claims.

**\*\*Quantum\*\***: Quantum refers to the amount of compensation awarded to the claimant in a clinical negligence case. Calculating quantum involves assessing the financial losses suffered by the claimant, such as medical expenses, loss of earnings, and future care costs, as well as non-financial losses like pain and suffering. Quantum is determined based on the specific circumstances of each case.

**\*\*Judgment\*\***: Judgment is the final decision of the court in a clinical negligence case. The judgment sets out the court's findings on liability, causation, damages, and any other issues in dispute. The judgment is binding on the parties involved and determines the outcome of the case.

**\*\*Witness Statement\*\***: A witness statement is a written document prepared by a witness setting out their account of the events relevant to a clinical negligence case. Witness statements are used as evidence in court to support the parties' arguments and help the court understand the facts of the case. Witness statements play a crucial role in proving the claimant's case in clinical negligence claims.

**\*\*Duty to Warn\*\***: The duty to warn is the obligation of a healthcare professional to inform the patient about the risks and benefits of a particular treatment or procedure. In clinical negligence cases, a failure to warn the patient about potential risks can lead to a claim if the patient suffers harm as a result of not being adequately informed.

**\*\*Negligent Misstatement\*\***: Negligent misstatement occurs when a healthcare professional provides inaccurate or misleading information to the patient, resulting in harm. In clinical negligence cases, negligent misstatement can lead to a claim if the patient relies on the misinformation and suffers harm as a result.

**\*\*Fatal Accidents Act 1976\*\***: The Fatal Accidents Act 1976 is a UK statute that allows certain family members of a deceased person to claim compensation for their loss in cases of wrongful death caused by clinical negligence. The Act provides for damages for loss of dependency, bereavement, and funeral expenses to be awarded to qualifying family members.

**\*\*Breaches of Statutory Duty\*\***: Breaches of statutory duty occur when a healthcare professional fails to comply with specific legal requirements set out in legislation. In clinical negligence cases, breaches of statutory duty can form the basis of a claim if the patient suffers harm as a result of the healthcare professional's failure to meet these legal obligations.

**\*\*Loss of Chance\*\***: Loss of chance is a legal principle that recognizes the loss of an opportunity as a compensable harm in clinical negligence cases. If a patient can demonstrate that they lost the chance of a better outcome due to the healthcare professional's negligence, they may be entitled to compensation for the lost opportunity.

**\*\*Secondary Victims\*\***: Secondary victims are individuals who suffer psychiatric harm as a result of witnessing a traumatic event, such as clinical negligence, happening to a loved one. In clinical negligence cases, secondary victims may be eligible to claim compensation for the psychiatric harm they have suffered as a result of witnessing the harm caused to their loved one.

**\*\*Bolam Test\*\***: The Bolam test is a legal standard used to assess the standard of care in clinical negligence cases. The test states that a healthcare professional is not negligent if their actions are supported by a responsible body of medical opinion, even if other healthcare professionals would have acted differently. The Bolam test is an important principle in determining the standard of care in clinical negligence cases.

**\*\*Bolitho Test\*\***: The Bolitho test is a refinement of the Bolam test that requires the court to consider whether the healthcare professional's actions are reasonable and logical in addition to being supported by a responsible body of medical opinion. The Bolitho test allows the court to assess the reasonableness of the healthcare professional's actions and determine if they meet the required standard of care in clinical negligence cases.

**\*\*Reasonable Foreseeability\*\***: Reasonable foreseeability is the legal principle that harm caused by a healthcare professional's breach of duty must have been reasonably foreseeable at the time of the negligence. In clinical negligence cases, establishing reasonable foreseeability is essential for proving causation and demonstrating that the harm suffered by the patient was a direct result of the healthcare professional's actions.

**\*\*Res Ipsa Loquitur\*\***: Res Ipsa Loquitur is a legal doctrine that allows the court to infer negligence on the part of the healthcare professional based on the circumstances of the case. In clinical negligence cases, Res Ipsa Loquitur may apply if the harm suffered by the patient is so obviously the result of negligence that it speaks for itself, and the healthcare professional is unable to provide a satisfactory explanation.

**\*\*Primary Care Trust (PCT)\*\***: A Primary Care Trust is an organization responsible for ensuring that healthcare services are provided to the local population. In clinical negligence cases involving NHS services, the PCT may be named as a defendant if the claim relates to the provision of healthcare services under their jurisdiction. PCTs have a duty to provide high-quality care and may be held liable for clinical negligence.

**\*\*NHS Litigation Authority (NHSLA)\*\***: The NHS Litigation Authority is an organization that handles clinical negligence claims against the National Health Service (NHS) in the UK. The NHSLA manages claims on behalf of NHS trusts and provides legal support and advice to healthcare professionals involved in clinical negligence cases. The NHSLA plays a key role in the resolution of clinical negligence claims involving the NHS.

**\*\*Duty of Candour\*\***: The duty of candour is the obligation of healthcare professionals and organizations to be open and honest with patients and their families when things go wrong in their care. In clinical negligence cases, the duty of candour requires healthcare providers to acknowledge mistakes, provide an explanation, and offer an apology to the patient. Failing to meet the duty of candour may lead to a claim for clinical negligence.

**\*\*Expert Joint Statements\*\***: Expert joint statements are documents prepared by experts on both sides of a clinical negligence case that set out areas of agreement and disagreement regarding the issues in dispute. Expert joint statements help clarify the key points of contention between the parties, streamline the legal process, and assist the court in understanding the expert evidence presented by both sides.

**\*\*Compensation\*\***: Compensation is the financial award given to the claimant in a clinical negligence case to compensate for the losses they have suffered as a result of the healthcare professional's negligence. Compensation aims to restore the claimant to the position they would have been in if the negligence had

not occurred and covers both financial and non-financial losses.

**\*\*Negligence Per Se\*\***: Negligence per se is a legal doctrine that establishes negligence based on a violation of a statutory duty or regulation. In clinical negligence cases, negligence per se may apply if the healthcare professional has breached a specific legal requirement, leading to harm to the patient. Negligence per se simplifies the process of proving negligence by establishing a breach of duty through the violation of a statute or regulation.

**\*\*Loss of Chance Doctrine\*\***: The loss of chance doctrine is a legal principle that allows claimants to recover compensation for the lost opportunity of a better outcome due to the healthcare professional's negligence. In clinical negligence cases, the loss of chance doctrine recognizes that patients should be compensated for the harm caused by the loss of a potential benefit, even if the outcome was uncertain.

**\*\*Res Ipsa Loquitur Rebuttal\*\***: Res Ipsa Loquitur rebuttal is the process by which the healthcare professional responds to the inference of negligence raised by the doctrine of Res Ipsa Loquitur. In clinical negligence cases, the healthcare professional must provide a satisfactory explanation for the harm suffered by the patient to rebut the presumption of negligence. Res Ipsa Loquitur rebuttal is essential for defending against claims based on the doctrine.

**\*\*Defendant\*\***: The defendant is the party being sued in a clinical negligence case. The defendant is usually the healthcare professional or healthcare organization alleged to have been negligent in providing care to the patient. The defendant has the right to defend against the claim, present evidence, and challenge the claimant's case in court.

**\*\*Claimant\*\***: The claimant is the party bringing a clinical negligence claim against the defendant. The claimant is usually the patient who has suffered harm as a result of the healthcare professional's negligence. The claimant must prove that the healthcare professional breached their duty of care, causing harm, and is entitled to compensation for their losses.

**\*\*Compromise Agreement\*\***: A compromise agreement is a legally binding contract between the parties in a clinical negligence case that sets out the terms of a settlement. Compromise agreements allow the parties to resolve the claim without going to court and agree on the amount of compensation to be paid to the claimant. Compromise agreements can save time and costs associated with litigation.

**\*\*Secondary Liability\*\***: Secondary liability refers to the legal responsibility of a party other than the primary wrongdoer for the harm caused in a clinical negligence case. In some situations, secondary liability may arise if a third party, such as a healthcare organization or employer, is found to have contributed to the negligence that led to the patient's harm.

**\*\*Case Conference\*\***: A case conference is a meeting between the parties involved in a clinical negligence case, their legal representatives, and the court to discuss the progress of the case, exchange information, and resolve any issues before trial. Case conferences help streamline the legal process, identify areas of

agreement or disagreement, and ensure that the case proceeds efficiently.

**\*\*Due Diligence\*\***: Due diligence refers to the care and attention that healthcare professionals are expected to exercise in providing medical treatment to patients. In clinical negligence cases, demonstrating due diligence can help healthcare professionals defend against claims of negligence by showing that they took all necessary precautions and followed established protocols in delivering care to the patient.

**\*\*Judicial Review\*\***: Judicial review is a legal process by which the decisions and actions of public authorities, including healthcare organizations, can be challenged in court. In clinical negligence cases, judicial review may be sought to challenge the lawfulness of decisions made by healthcare bodies, such as the NHS, in relation to the provision of care or handling of clinical negligence claims.

**\*\*Disclosure\*\***: Disclosure is the process of exchanging relevant documents and information between the parties in a clinical negligence case. Each party is required to disclose all documents that are relevant to the issues in dispute, including medical records, expert reports, and witness statements. Disclosure is essential for ensuring transparency and fairness in the legal process.

**\*\*Negligence Action\*\***: A negligence action is a legal claim brought by a patient against a healthcare professional alleging that the professional breached their duty of care, causing harm. Negligence actions are a common type of claim in clinical negligence cases and require the claimant to prove that the healthcare professional's actions fell below the required standard of care.

**\*\*Patient Safety\*\***: Patient safety refers to the measures and practices implemented by healthcare organizations to ensure the well-being and protection of patients receiving medical treatment. In clinical negligence cases, patient safety is a key consideration, and healthcare providers have a duty to prioritize the safety and welfare of their patients to prevent harm and reduce the risk of clinical negligence.

**\*\*Tort Law\*\***: Tort law is a branch of civil law that deals with wrongful acts or omissions that result in harm to another party. In clinical negligence cases, tort law provides the legal framework for pursuing claims against healthcare professionals for breaching their duty of care and causing harm to patients. Tort law allows claimants to seek compensation for the losses they have suffered due to negligence.

**\*\*Court of Appeal\*\***: The Court of Appeal is a higher court in the UK legal system that hears appeals from lower courts, including cases involving clinical negligence. The Court of Appeal reviews decisions made by lower courts to ensure they were made correctly and in accordance with the law. Parties dissatisfied with the outcome of a clinical negligence case at trial may seek to appeal to the Court of Appeal.

**\*\*Expert Conference\*\***: An expert conference is a meeting between the expert witnesses on both sides of a clinical negligence case to discuss the issues in dispute, exchange information, and clarify their opinions.  
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