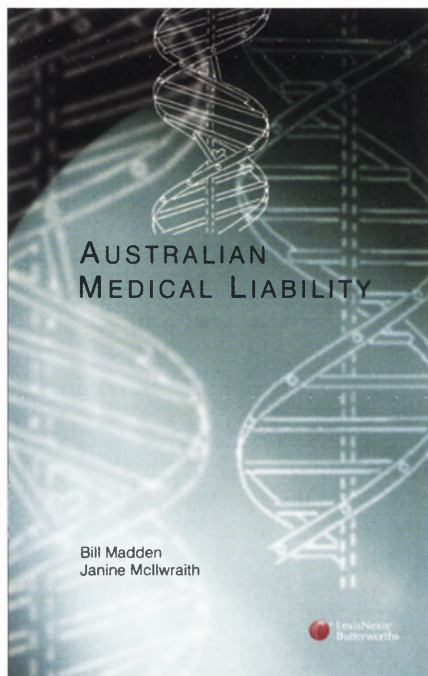


Australian Medical Liability

by Janine McIlwraith & Bill Madden

By David Hirsch



A doctor has a duty to keep up to date with developments in medicine. Receptionists can be sued for not making an appointment. Failure to properly refer a patient or to follow up on a referral can result in liability. A doctor/patient relationship can arise in unusual circumstances and duties of care can be owed to third parties. Hospitals can have non-delegable duties of care that 'outflank' vicarious liability. You know there are cases on these points. But what are they and how can you find them?

Is the standard of care of a rural doctor different to that of a city doctor? Is it a defence for a hospital to say that budget restraints prevented adequate staffing levels from being met? What happens when a psychiatric patient

is turned away or absconds from a hospital; is there a duty to warn the public that a psychiatric patient is 'on the loose'? Is there a duty to disclose errors to patients or to their families; if so, is an apology admissible as evidence of fault? These are all good questions that have good answers. Don't you wish you knew what they were?

This book is certain to assist any practitioner in the handling of a medical negligence claim.

An overarching theme is the impact of tort reform and other statutory interventions on medical liability. Each chapter comprehensively reviews how statutes have impacted on the common law, with tables that set out the particular statutory provisions. It looks dense and complicated but, mercifully, all you need to do is locate the provisions relevant in your state.

Structurally, the book is conventionally divided into sections headed Duty, Breach and Causation. Damages are discussed in a separate section entitled Special Categories, which covers principles of damages generally, and damages for wrongful birth claims in particular. It also includes a discussion of intentional torts, a division of material that is hard to understand. But the content is sound, which is what matters most.

Each of the major sections is divided into subsections, with short references to leading cases in each. For example, the section on Duty includes cases on the duty of care in providing treatment to the patient, duties to third parties and a discussion on vicarious and non-delegable duties. 'Breach' includes examples of cases on consent, errors of delayed diagnosis or misdiagnosis, surgical errors, birth trauma, emergency medicine and even dental

care. 'Causation' delves into complex areas like loss of chance, the effect of intervening acts, *res ipsa loquitur* and contributory negligence.

This book is not an academic text. There is no deep discussion of conflicting *ratio decidendi* within the High Court, or in foreign judgments, even though some foreign cases are cited. The treatment of theoretical issues is thin, and the selection of cases used as examples of various issues is limited. But the purpose of the book is to be a comprehensive handbook, and not an academic treatise.

Properly used, *Australian Medical Liability* will answer the kinds of practical questions posed at the beginning of this review. A careful practitioner will almost certainly be able to find a case on point for the problem at hand and, using these as a starting point, undertake more focused research using Austlii (or similar). This book will help to identify cases in sometimes arcane corners of medical law, like the duty to discuss treatment options, the material risks of a proposed procedure, contraception failure and liability for suicide.

The authors should be congratulated. Their book identifies many of the leading issues in medical liability in Australia that one would expect to encounter in practice. It provides many references to useful cases. And it presents all of this against the important background of statutory reform. I recommend it to all practitioners with a special interest in medical negligence litigation. ■

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