

CASTELL v DE GREEF 1994 (4) SA 408 (C) A

SUMMARY

- In deciding whether a medical practitioner has incurred liability for negligence as a result of his failure to warn his patient of the material risks and complications which might arise from a surgical operation or other medical treatment.
- It is for the patient to decide whether he or she wishes to undergo an operation, and it is in principle wholly irrelevant that the patient's attitude is grossly unreasonable in the eyes of the medical profession: the patient's right to bodily integrity and autonomous moral agency entitles him or her to refuse medical treatment.
- It would be equally irrelevant that the medical profession was of the unanimous opinion that it was in given circumstances in which the surgeon's duty to refrain from bringing the risk to his patient's attention.
- Thus, in the South African context, the doctor's duty to disclose a material risk must be seen in the contractual setting of an unimpeachable consent to the operation.
- For consent to operate as a defence the following requirements must, *inter alia*, be satisfied:
 - (a) the consenting party must have had knowledge and been aware of the nature and extent of the harm or risk;
 - (b) the consenting party must have appreciated and understood the nature and extent of the harm or risk;
 - (c) the consenting party must have consented to the harm or assumed risk;

(d) the consent must be comprehensive, that is extend to the entire transaction, inclusive of its consequences.

- Accordingly, in our law, for a patient's consent to constitute a justification that excludes the wrongfulness of medical treatment and its consequences, the doctor is obliged to warn a patient so consenting of a material risk inherent in the proposed treatment; a risk being material if, in the circumstances of the particular case: (a) a reasonable person in the patient's position, if warned of the risk, would be likely to attach significance to it; or (b) the medical practitioner is or should reasonably be aware that the particular patient, if warned of the risk, would be likely to attach significance to it.
- This obligation is, however, subject to the so-called 'therapeutic privilege' (which permits medical practitioners to withhold disclosures which in their opinion would be detrimental to the patient in question), whatever the ambit of this 'privilege' may today still be in the light of the inroads that it might make on patient autonomy.
- The decision in *Castell v De Greef* 1993 (3) SA 501 (C) reversed in part on appeal.