PROFESSIONAL SECRECY AND THE LAW

By Lee Yong Kiat, M.D., M.R.C.P., M.R.C.P.E., LL.B.
(Medical Unit III, General Hospital, Singapore)

"Ethics" means moral principles or code, and "moral" means "concerned with right and wrong conduct or duty", hence medical ethics can be taken to mean a "code concerned with the right and wrong conduct of medical men."

One very important aspect of medical ethics is professional secrecy. The question of the extent and limits of professional secrecy and the inviolability of medical confidences between doctor and patient is one which is frequently raised. Hippocrates (460-370 B.C.) was perhaps the first to define the ethical duty of the medical man. His Oath was a self-imposed criterion of professional conduct, part of which states:

> "Whatsoever in the course of practice I see or hear (or even outside my practice in social intercourse) that ought never be published abroad, I will not divulge but consider such things to be holy secrets." (Jones, 1924)

This sentiment has for centuries been the ruling principle of all medical practitioners of every age and country. It is a deep-rooted tradition which has been maintained to the present day. Similar sentiments are expressed in the Geneva Declaration and the International Code of Ethics. (S.M.A. Ethical Code, 1963).

In 1952, the British Medical Association resolved,

> "that it is a practitioner's obligation to observe the rule of professional secrecy by refraining from disclosing voluntarily without the consent of the patient (save with statutory sanction) to any third party information which he has learnt in his professional relationship with the patient." (Davidson, 1957).

The Ethical Code of the Singapore Medical Association (1963) has this paragraph:

> "The basis of the relationship between a doctor and his patient is that of absolute confidence and mutual respect. A patient expects his doctor not only to exercise professional skill but also to observe secrecy with respect to the information he acquires as a result of his examination and treatment of the patient. There must be an obligation on the doctor to preserve his patient's secrets, never revealing them without his consent (preferably in writing) and never discussing them with outsiders the illness of his patient, except when it is in the interest of the patient."

There are others who claim that civic duty is above and beyond the professional duty.

It is the purpose of this paper to discuss the relationship between professional secrecy and the law.

The disciplinary control of the medical profession is entrusted to the Medical Council. One of its functions is to hold inquiries into charges that practitioners have been convicted of crime or have been guilty of infamous conduct in a professional respect.

Lord Justice Lopes in Allinson v. the G.M.C. (1894) 1 Q.B.D. 763 defined "infamous conduct in a professional respect" thus,

> "If a medical man in the pursuit of his profession has done something with regard to it which will be reasonably regarded as disgraceful or dishonourable by his professional brethern of good repute and competency, then it is open to the General Medical Council, if that be shown, to say that he has been guilty of infamous conduct in a professional respect."

"Infamous conduct means serious misconduct judged according to the rules, written and unwritten, which govern the medical profession." R. v. G.M.C. (1930) 1 K.B. 569.

One of the principal forms of infamous professional conduct is breach of professional secrecy.

Breach of professional secrecy can occur:

a) voluntarily, *i.e.* when a doctor of his own accord divulges information obtained in confidence from a patient.
b) under compulsion.

What remedies are available to the patient if his doctor improperly divulges professional secrets? What penalties will a doctor be subject to if he refuses to divulge when compelled to do so?

VOLUNTARY DISCLOSURE

One remedy would be a complaint to the Medical Council, but the procedure of the Council is cumbersome and the doctor may get off with only a warning.

One must then turn to the law of the land. (As a result of settlement, cession or conquest English Law provides the basis of the legal systems in many parts of the Commonwealth and the United States of America. The legal system of Singapore is based on the English pattern). Has the patient a legal remedy? There is no local decision on this point. But there is a Scottish case decided in 1851. Although there are also no English decisions, certain cases will be cited to demonstrate certain principles which indicate that there is a remedy.

The proposition is that a secret acquired by the doctor is the secret of the patient and not that of the doctor. The patient has a prima facie right in law to require that the secret shall not be divulged to any third party, and to seek redress if it is so divulged, unless the doctor can show that there is some paramount reason which overrides the patient's prima facie right.

The following cases show that this duty imposed on doctors rests not only on contract but also on property, confidence, trust and good faith, and that the patient's right to secrecy is enforceable by law in an action for damages and an injunction.

In construing a contract, a term or condition not expressely stated may, under certain circumstances, be implied by the Court.

There are certain implied terms in any contract of personal services, (Chitty, 1955) one of which is not to disclose secrets, *i.e.* an employee is under an implied obligation not to disclose or make public any professional or trade secrets or confidential information which he has learnt by reason of his employment. A doctor is bound to keep his patient's secrets as far as he lawfully can.

> In *A.B. v. C.D.* (1851) 14 Dunlop 177, it was held that secrecy is an essential condition of the contract between a medical man and his employers, and that breach of secrecy affords a relevant ground for an action of damages.
>
> AB was an elder of the Established Church. His wife gave birth within six months of their marriage. When he wanted the child baptised, the Minister brought the matter before the kirk-session. It was decided that AB should appear before the next session with "respectable medical testimony for the satisfaction of the session." AB had two doctors examine his child. They formed the opinion that the child had been conceived before marriage.. CD wrote two certificates to the effect. He gave one to AB, who thereupon resigned as an elder of the Church. Another copy was given to the Minister who brought the matter before the session. The session refused to accept AB's resignation but dismissed him as an elder and declared that he was not longer a member of the session.
>
> AB sued CD stating that he had suffered in his status, character and feelings.
>
> CD pleaded that ". . . There might be an honourable understanding among the medical profession that secrecy formed a condition of the contract between the physician and his patient, but that understanding was not one which could be enforced by the law. It is only where secrecy is of the essence of the contract that an action of damages will lie; and secrecy was not of the essence of this contract, for a medical man could not plead professional privilege as a ground of refusal to give evidence."
>
> AB pleaded, "There was a manifest difference between the case of a medical man called upon to give evidence in a court of justice, and one who voluntarily promulgated a fact confided to him in his professional character."
>
> In giving judgement in the Court of Sessions, the highest civil court in Scotland, the judges said:
>
> Lord Fullerton: After stating that professional privlege is limited to a lawyer and his client, ". . . But it does not follow from the absence of privilege in other professions that there is no binding obligation to secrecy, which, if violated, may be the ground of action.
>
> The question here is, not whether the communications to a medical adviser are privileged—that cannot be maintained; but whether the relation between such an adviser and the person who consults him is or is not one which may imply an obligation to secrecy, forming a proper ground of action if it be violated. It appears to me that it is, and that the present case, as stated on the record, is one to which the principle may apply. The obligation may not be absolute. It may, and must yield to the demands of

justice, if disclosure is demanded in a competent court ... But that a medical man, consulted in a matter of delicacy, of which the disclosure may be most injurious to the feelings, and possibly, the pecuniary interests of the party consulting, can gratuitously and unnecessarily make it the subject of public communication, without incurring any imputation beyond what is called a breach of honour, and without the liability to a claim of redress in a court of law, is a proposition to which, when thus broadly laid down, I think the Court will hardly give their countenance."

Lord Ivory: "... It would be a most serious thing to admit the argument ... that there is no confidentiality between the medical man and his employer. Suppose this lady had not been married, and the defender had been called in to attend her accouchement, could he have published that with impunity? If it could even have been doubted that such a confidential relation subsists between a medical man and his employer, I think it high time that such a doubt now be set at rest for ever."

Tournier v. National Provincial Bank (1924) 1 K.B. 641.

In this case, the bank divulged information to the employer of one of its customers. As a result of this, the employer refused to renew employment. The customer sued the bank for slander and breach of its duty of secrecy. The Court of Appeal held that there was an implied term in the contract that the bank should keep its clients' affairs secret. Although this case refers to a bank and its client, there are some references to doctors in the speeches of the Judges. Scrutton, L.J. (at page 480) said, "This duty (of secrecy) equally applies in certain other confidential relations such as ... a doctor and patient. The circumstances in which disclosure is allowed are sometimes difficult to state, especially in the case of the medical man". At page 474, Bankes, L.J. said, "The privilege of non-disclosure to which a client or a customer is entitled may vary according to the exact nature of the relationship ... It need not be the same in the case of the counsel, the solicitor, the doctor and the banker, though the underlying principle may be the same."

Pollard v. Photographic Co. (1888) 40 Ch. 345, 349

A photographer took photographs of a lady and her family. Later she found that her photograph was exhibited as a Christmas Card in the shop. The photographer was restrained from exhibiting the lady's photograph and selling copies on the ground of breach of contract and breach of confidence.

North, J. said, "Where a person obtains information in the course of a confidential employment, the law does not permit him to make any improper use of the information so obtained; and an injunction is granted, if necessary, to restrain such use; as, for instance, to restrain a clerk from disclosing his master's account, or an attorney from making known his client's affairs, learned in the course of such employment."

Prince Albert v. Strange (1849) 1 Mac. & G. 25; 41 E.R. 1171

In this case the Court restrained the publishing of a catalogue of etchings which Queen Victoria and Prince Albert had made of their family. The decision rested on the ground of protection of property, which in this context, are those facts relating to one's private life which one chooses to keep private. The Lord Chancellor also said, "... but this case by no means depends solely on the question of property; for a breach of trust, confidence or contract would itself enable the plaintiff to the injunction." He also cited an unreported case, Wyatt v. Wilson (1820) in which Lord Eldon had said, "if any of the late King's (George III) physicians had kept a diary of what he had heard and saw, the court would not, in the King's lifetime, have permitted him to print and publish it."

In the recent case of *Argyll v. Argyll* (1965) 1 All E.R. 611. Ungoed-Thomas, J. referred to that dictum of Lord Eldon and said (page 617), "The diary there was the physician's, and the only thing which could be described as the property of the King was the information it contained, and to which the physician was given access." He further said on page 619 that "a breach of confidence or trust or faith can arise independently of any right of property or contract."

There have been successful actions against solicitors for breach of the duty of secrecy. Recently in England, a firm of accountants was

successfully sued for divulging its client's Income Tax position. (Fogg. v. Gaulter and Blane, 1960, 110 L.J. 718)

If this duty is cast on a bank, solicitors and accountants, it will obviously be cast on doctors. Apart from breach of professional honour, there will be a legal remedy.

A doctor who divulges information to a patient's employer may be liable, in addition, to being sued for "inducement to commit breach of contract or procuring breach of contract."

> "A stranger to a contract, though not liable to be sued on the contract itself, may incur a liability in tort, if without lawful justification, he induces one of the parties to break the contract and thereby causes damage to the other party; and, in the absence of such justification, he will not be excused, even if he acts without malice or from a desire to benefit the party so induced. Further, if a stranger so acts in concert with other persons he may also be liable in the tort of conspiracy." (Halsbury, Vol. 8, page 68).

This rule is an illustration of a wider principle that "a violation of legal right committed knowingly is a cause of action . . . It is a violation of legal right to interfere with contractual relations recognised by law, if there be not sufficient justification for the interference." Quinn v. Leathem (1901) A.C. 495, at 510, per Lord Macnaghten.

The elements necessary in this tort have been reviewed in D.C. Thomson & Co. Ltd., v. Deakin (1952) Ch. 646 (C.A.).

It is difficult to distinguish between "advice" and "inducement". The matter has to be resolved in each particular case. However, Simonds, J. had said in Camden Nominees v. Forcey (1940) Ch. 352 at 366, that "advice which is intended to have persuasive effects is not distinguishable from inducement."

Advice honestly given by one who is under a moral duty to do so is a justification, "where the claims of relationship or guardianship demand an interference amounting to protection" (Lord James in South Wales Miners' Federation v. Glamorgan Coal Co. (1905) A.C. 239, 249), as where a father persuades his daughter to break off her engagement with a scoundrel, or where a doctor advises his patient on health grounds to discontinue work. A doctor who advises an employer to terminate his employee's services is in a different position entirely. "No one can legally excuse himself to a man, of whose contract he has procured the breach, on the ground that he acted on a wrong misunderstanding of his own rights, or without malice, or bona fide, or in the interests of himself, nor even that he acted as an altruist, seeking only the good of another and careless of his own advantage." Read v. Friendly Society of Operative Stonemasons (1902) 2 K.B. 88, 96-7, per Darling, J.

But what consititues justification has to be decided on the merits of each individual case. It is a question of law. In doing so, "regard might be had to the nature of the contract broken; the position of the parties to the contract; the grounds for the breach; the means employed to procure the breach; the relation of the person procuring the breach to the person who breaks the contract; and . . . to the object of the person in procuring the breach", Glamorgan Coal Co. v. South Wales Miners' Federation (1903) 2 K.B. 545, 574 per Romer, L.J.

"Defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally; or which tends to make them shun or avoid that person." (Winfield, 1954) It is libel if the statement is in a permanent form and slander if it consists of significant words or gestures.

Thus depending on what he divulges a doctor is liable to be sued for defamation. The defences to defamation are (a) justification or truth; (b) fair comment (on a matter of public interest), and (c) privilege.

In Kitson v. Playfair (B.M.J. 1896), Dr. Playfair had to pay £12,000 in damages for slander. Mrs. Kitson was his sister-in-law, the wife of Dr. Playfair's wife's brother. Dr. Playfair examined Mrs. Kitson and diagnosed her as a case of incomplete abortion. He did not think that his brother-in-law could have been responsible for the pregnancy and he told his wife and her family.

His lawyers did not plead justification as a defence as this plea is dangerous in that if it failed, the damages would be heavier. They pleaded qualified privilege, *i.e.* Dr. Playfair under the circumstances had a moral duty to inform his wife's family. As the jury found express malice on the part of the defendant, there was no ruling on the existence of the qualified privilege claimed.

When then can a doctor voluntarily divulge professional secrets? Will he be liable if he fails to divulge when in fact he should have?

The following circumstances would be justified:

a) Where the communication is made bona fide in the interests of the patient. This communication can be made to other doctors, nurses, relatives and others in order to obtain a better history, advice or treatment, provided the information is revealed with this intention and no more is revealed than is reasonably necessary for the purpose. Ethically this is justified. Should legal justification be necessary, the following case would support the contention. In Hardy v. Veasey (1868) L.R. 3 Ex. 107, the manager of a bank in an attempt to obtain credit for a client, revealed the client's financial circumstances. It was held that the bank was not liable for breach of secrecy as its manager had acted honestly in the client's interest.

In fact, should a doctor fail to communicate when necessary *e.g.* to obtain a second opinion, he may be liable for negligence. His determination to respect the ethics of the profession would be of no avail as a defence. It is not possible to have a situation which the law considers unjustifiable, but which would be protected by proof that it was justified by medical ethics.

b) Fellows of the Royal College of Physicians of London are forbidden by the College Bye-laws to sue a patient for fees. Other doctors are not denied this legal right. Should a doctor decide to sue a patient or a firm for treatment of its employees, he would have to justify the fees by revealing the services he has rendered. Here the communications would be in the interest of the doctor. Such thoughts may not enter the minds of doctors, who ethically are supposed to put their patients' interests above their own. This is a problem for the Medical Council to solve. A doctor may have to break ethical rules to obtain his legal rights.

c) Where communications are made in pursuance of some social or moral duty. This matter is vague and controversial. Where there is conflict between the obligation of professional secrecy and some other equally laudable obligation, the doctor may have "lawful excuse" for preferring the other obligation. Medical ethics may also allow it. The second part of the B.M.A. Resolution (added in 1959) reads as follows:-

"The complications of modern life sometimes create difficulties for the doctor in the application of the principle, and on certain occasions it may be necessary to acquiesce in some modification. Always, however, the overriding consideration must be the adoption of a line of conduct that will benefit the patient, or protect his interests." (B.M.A. Handbook 1965)

Public necessity or health or security demand some relaxation in the ordinarily strict rules of professional secrecy. Would one be failing in one's duty as a responsible citizen (as all doctors should be) if an epileptic driver, a restaurant cook which is a typhoid carrier, or a tuberculous teacher were permitted to carry on their jobs? Disclosure by the doctor in such circumstances may discourage patients from seeking medical treatment and lead to concealment of illnesses, which if detected may cost them their jobs. Although it has always been said that compulsory notification would tend to drive a disease underground, and that doctors would refuse to collaborate in anything which forced them to act unethically towards their patients, a doctor has a statutory duty to notify certain infectious diseases in the interest of public safety. Similarly it can be argued that if he fails to persuade his patient to stop being a danger to others, he should inform the right authority should the public run the risk of being injured. A doctor must on his own responsibility weigh his ethical duty to his patients against the duty to prevent harm befalling others. It is also in the interest of his patient that he (the patient) should not cause the deaths of innocent people.

In a recent case, (The London Times, Dec. 15, 1961, page 8) one Lewenden, aged 39, was tried before Mr. Justice Sachs at the Stafford Assizes, for having killed two people by dangerous driving. His defence was automatism due to petit mal. His doctor had not mentioned the word "epilepsy" to the patient although he had been given barbiturates for years.

The doctor was questioned by the judge:

J. — Normally would it be the practice if a doctor knows a man has got epilepsy to warn him not to drive a car?

D. — Yes.

J. — It would be quite wicked, would it not, to let a man go on driving a car without giving him warning?

D. — It would be quite wrong.

J. — It would be more than wrong. It would be wicked so far as the public is concerned, would it not?

D. — Yes.

J. — Do you know of any code in the medical profession by which when a man has a series of attacks such as set out here that one should conceal the fact that he is an epileptic?

D. — No.

J. — So may I take it would be the normal practice to warn the man he is an epileptic?

D. — Yes.

Here, the doctor did not warn the patient, because he did not know that his patient drove cars. Society's views as expressed by the Judge are quite definite. They would certainly have been more caustic if the patient had been in charge of a public transport, and the doctor had not taken positive measures concerning his suitability to drive.

This principle would extend to the situation when professional secrecy conflicts with a doctor's duty to his family. It would be unrealistic to expect a doctor to divest himself of his obligations to his wife and children. A doctor who discovers that one of his syphilitic patients is paying court to his daughter cannot put the interests of his patient first.

In Kitson v. Playfair, there is a dictum of Hawkins, J. that there could be circumstances in which a doctor would be justified in revealing professional secrets to his wife and children if it were necessary for their protection.

Legally, it is up to the judge to decide what in a given circumstance can be held to be privileged. Ethically, in cases of doubt, there should not be blind adherence to "ethics". Ethics like law changes with the times. Since medical ethics are constituted and defined by common agreement and tradition of the profession, it is up to the authorities within the profession itself to remould ethics to meet new social needs, just as the judges interpret the laws to meet new situations as they arise. There is a constant inter-action between rules and the factual situations which they govern. Too rigid observance of the rules may stultify progress. Only a totally static society or profession could tolerate a completely rigid system of rules or law. Even the Hippocratic Oath can be liberally interpreted. Since it speaks of matters which "ought never be published abroad", presumably there must be situations where matters ought to be published abroad, and should not be kept as "holy secrets".

If a doctor lay under a clear duty to make a communication notwithstanding that the fact was a professional secret, he would be exonerated. Otherwise a medical man's lips may be sealed in matters most vital to him, to those dearest to him or to the public.

COMPULSORY DISCLOSURE

a) *In a Court of Law when summoned by subponea to give evidence*

Communications (with few exceptions) passing between a client and his legal adviser together, in some cases, with communications passing between these persons and third parties may not be given in evidence without the consent of the client if they were made either with reference to litigation, or if they were made to enable the client to obtain, or the adviser to give, legal advice. This rule covers communications by the client's agents and the subordinates of the legal adviser. (Cross, 1958) A similar privilege is not accorded to the doctor-patient relationship by the common law.

Like a spouse and a lawyer, a doctor in the course of his practice receives communications of a confidential and intimate nature from his patients. Moreover, he acquires more information by his examination of the patient. An important element in correct diagnosis and successful treatment is the doctor's knowledge concerning his patient. The patient is encouraged to reveal all known relevant facts pertaining to his illness, his family, his job, in fact every facet of his life; lay bare his body for examination and allow investigations to be done. The trust reposed in the doctor is so great and the interests confided so sacred that medical ethics impose a duty of non-disclosure on the doctor. However this ethical duty is not reflected in the rules of evidence of the common law, and the patient has no privilege to keep his doctor from revealing confidential information.

In England and most common law jurisdictions throughout the world this rule is too well established to be changed except by legislation.

That a medical man is bound to disclose communication made to him professionally, was a first decided in the Duchess of Kingston's case in 1776. Four leading cases will be cited to show how firmly established this rule is, to the extent that a Court has compelled a doctor to disclose information even though it was obtained in pursuance of a system of treatment for which secrecy was enjoined by statutory regulations.

The Duchess of Kingston's case (1776) 20 State Trials, 355, 571.

The Duchess was being tried in the House of Lords for bigamy, and Mr. Hawkins, a surgeon, was being questioned, and he replied, "I do not know how far any thing that has come before me in a confidential trust in my profession should be disclosed consistent with my professional honour."

Lord Mansfield. "I suppose Mr. Hawkins means to demur to the question upon the ground, that it came to his knowledge some way from his being employed as a surgeon for one or both of the parties; and I take it for granted, if Mr. Hawkins understands that it is your Lordships' opinion, that he has no privilege on that account to excuse himself from giving the answer, that then, under the authority of your Lordships' judgement, he will submit to answer it . . . a surgeon has no privilege to avoid giving evidence in a court of justice, but is bound by the law of the land to do it; if all your Lordships acquiesce, Mr. Hawkins will understand, that it is your judgement and opinion, that a surgeon has no privilege, where it is a material question, in a civil or criminal cause . . . I take it for granted, that if Mr. Hawkins understands that, it is satisfaction to him, and a clear justification to all the world. If a surgeon was voluntarily to reveal these secrets, to be sure he would be guilty of a breach of honour, and of great indiscretion; but, to give that information in a court of justice, which by the law of the land he is bound to do, will never be imputed to him as any indiscretion whatever."

R. v. Gibbons (1823) 1 C. & P. 97; 171 E.R. 1117.

The prisoner was indicted for the murder of her bastard child. Mr. Cozens, a surgeon was called to prove certain confessions made by the prisoner to him. He objected to giving such evidence on the ground that, at the time of the statement, he was attending the prisoner professionally in the capacity of a surgeon.

Park, J. said, "That is no sufficient reason to prevent disclosure for the purpose of justice."

Wheeler v. Le Marchant (1881) 17 Ch. D. 675, 681.

Jessel. M.R. "In the first place, the principle protecting confidential communications is of a very limited character. It does not protect all confidential communications which a man must necessarily make in order to obtain advice, even when needed for the protection of his life, or of his honour, or of his fortune. There are many communications which, though absolutely necessary because without them the ordinary business of life cannot be carried on, still are not privileged. The communications made to a medical man whose advice is sought by a patient with respect to the probable origin of the disease as to which he is consulted, and which must necessarily be made in order to enable the medical man to advise or prescribe for the patient, are not protected."

Garner v. Garner (1920) 36 T.L.R. 196.

This was a divorce case. It was held that a medical man treating venereal disease may be compelled to give evidence to that effect, although the statutory regulations (applying to the treatment of V.D. in England at the time of the case) enjoin absolute secrecy on the medical man.

The doctor before taking the oath, handed a letter to the Judge stating that there were regulations which forbade him to divulge professional secrets.

Mr. Justice McCardie said that the doctor was one of those who were desirous of assisting that scheme of treating V.D. in every way and for the purpose he wished loyally to maintain the secrecy which rightly rested upon him. But the witness would appreciate that in a court of justice there were even higher considerations than those which prevailed with regard to the position of medical men. He wished to say that, apart from the obligations which might be imposed on medical men by the order of His Majesty's Judges, it was desirable that there should be the most loyal observance of the confidence which was reposed in them by patients. He was glad to say that the history of the medical profession was most honourable, and it was to be hoped that its members would always retain the confidence placed in them.

The doctor then took the oath, and testified that the husband had syphilis.

There have however been judicial criticism of this rule:-

Wilson v. Rastall (1792) 4 Term Rep. 753, 760; 100 E.R. 1287.

Buller, J. "There are cases to which it is much lamented that the law of privilege is not extended; those in which medical persons are

obliged to disclose the information which they acquire by attending in their professional character. This point was very much considered in the Duchess of Kingston's case where Sir C. Hawkins, who had attended the duchess as a medical person, made the objection himself, but was over-ruled and compelled to give evidence against the prisoner."

Greenhough v. Gaskell (1833) 1 Myl. & K. 98, 103; 39 E.R. 618, 620.

Lord Chancellor (Brougham): ". . . though certainly it may not be easy to discover why a like privilege has been refused to others, and especially to medical advisers."

In Singapore, should there be any lingering doubts about the position of doctors and lawyers, the Evidence Ordinance eliminates them; for it states that a witness will not be excused even if his answer would incriminate him:

Singapore Evidence Ordinance (Cap. 4)

S.119. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

S.127. (Lawyer-client privilege)

S.133(1). (a witness will not be excused from answering on the ground that the answer will criminate, expose him to penalty or forfeiture of any kind, or establish that he owed a debt or is subject to a civil suit.)

S.133(2). "No answer which a witness shall be compelled by the Court to give shall subject him to any arrest or prosecution, or be proved against him in any criminal proceding, except a prosecution for giving false evidence by such answer."

Doctors have been reprimanded in court for wanting to keep their patients' secrets, and have been compelled to give evidence or be committed for contempt of court. However it is a mistake to suppose that the choice lies between a privilege of complete secrecy on the one hand, and on the other, disclosure without restriction. It is possible, and sometimes desirable, that the claimant to the privilege decline to produce documents or give evidence, until he is ordered to do so by the court. In R. v. St. Lawrence's Hospital, (1953) 2 All E.R. 766, 772, Lord Goddard, C.J., approved the refusal of medical officers to disclose their communications with the Visitors to the hospital under the Mental Deficiency Acts without the order of the Court. (Cross, 1958).

As things are, a doctor may be punished by one judge for refusing to give evidence, while another judge will uphold him in such refusal. In fact, there is one instance where the judge had insisted on professional secrecy and reprimanded a doctor for breaking medical confidences!

In Healy v. O'Donnell, (Lancet, 1936) a doctor was sued for recovery of a loan. Mr. Justice Charles sternly rebuked the doctor for answering a question put by counsel as to the nature of the illness of a deceased patient. His Lordship said, "I should have thought that this was a matter of the most sacred privacy; what do you mean by revealing what ought to be a matter of the most sacred confidence between you and your patient." Dr. O'Donnell said that he had told his lawyer that he did not want these matters revealed. On hearing this, the Judge shifted the blame to counsel and told him that he ought to be ashamed to have caused an infringement of medical secrecy.

On the whole, judges are sympathetic and it is not often that a doctor is ordered by the court to break the silence enjoined by his code of ethics. But the legal position is clear:

> "The relationship between a medical practitioner and his patient does not excuse the former, whatever medical etiquette may require, from the obligation, if called upon, to give evidence in a court of law. He is in the same position as any other person who is not especially privileged in this respect by the law. He may be called to give evidence in civil or criminal cases, and is liable to be punished for contempt of court if he neglects to attend. He may be asked to disclose on oath information which came to him through his professional relationship with a patient; and if the question is not inadmissible on other grounds, he may be committed for contempt of court if he refuses to answer." (Halsbury, Vol. 26, 3rd. Ed. page 11).

b) *When an obligation is imposed on him by Statute.*

The Quarantine and Prevention of Disease Ordinance, s. 3(5) requires "Any medical practitioner who treats or becomes cognizant of the existence of any infectious disease, the existence of which has not already been reported by a medical practitioner, shall give notice of the

same in writing to the Health Officer of the district with the least practical delay . . ." The main object of this section is to seek out the source of the infection and prevent its further spread. There are penalties not only for refusing to give information but also for neglecting to give information with the least practicable delay. Here there is a conflict between medical ethics and public safety but the interests of society outweigh those of the patient.

In England, in the years before the Infectious Disease Notification Act was passed in 1889, the question of professional secrecy in relation to notification was hotly debated, and the time-honoured reasons for maintaining secrecy were advanced. "The compulsory clauses (of the Act) are injurious, leading to concealment of disease, and great delay in calling medical aid . . . the bounden duty of the medical profession to do its utmost to avert the infliction of the clauses upon the country at large." (B.M.J. 1889)

The doctors of Bolton passed a resolution (B.M.J. 1887) that:

> "The medical practitioners in Bolton are of opinion that compulsory notification by the practitioners disturbs the confidential relations between patient and practitioner, that it induces the relatives of the sick, knowing what will follow upon notification, to hesitate to call in timely medical assistance, and to conceal the existence of infectious disease, and thus to do an injury to the patient in the first instance, and in the second, to contribute to the unsuspected extension of infection throughout the country. That the medical profession in Bolton, therefore, emphatically condemn compulsory notification by the medical practitioners as being contrary to the public advantage."

All opposition eventually died down when the advantages became obvious.

Registration of births and deaths is essential to provide statistics for epidemiological studies and for planning on a national scale. A doctor is required by the Registration of Births and Deaths Ordinance to make correct reports of stillbirths, births and deaths (with the cause). This information is of a very confidential nature, but there is a penalty for failure to furnish particulars, and provision in the Ordinance to allow extracts (not of stillbirths) to be made from the Registers.

c) "There is no legal compulsion upon him to provide information concerning . . ." This advice in the Singapore Medical Association Ethical Code is misleading, as the following discussion will show.

One of the principles of law is that "No one is above the Law." In any country, the law of the land supercedes the ethics or rules of any particular group in that country.

If a doctor decides to follow the ethics of his profession, *e.g.* where criminal abortion or suicide is concerned, what can the law do to him?

Under English Law, there is an offence known as Misprison of Felony which consists in concealing or procuring the concealment of a felony known to have been committed. The only ingredients of the offence are knowledge that a felony has been committed (*e.g.* criminal abortion); and concealment of such knowledge. Sykes v. D.P.P. (1961) 3 W.L.R. 371 (H.L.)

This offence known to English Law as misprison of felony does not exist in our law. This does not, however, mean that the public (which includes doctors) do not have a duty to give information of certain matters.

Section 21 of the Criminal Procedure Code (Cap. 132) reads as follows:-

> 1) "Every person aware—
>
> a) of the commission of or the intention of any other person to commit any seizable offence punishable under Chapters . . . of the Penal Code and . . . (a whole list of crimes);
>
> b) of any sudden or unnatural death or death by violence or of any death under suspicious circumstances or of the body of any person being found dead without its being known how such person came by death, (This covers the "coroner's cases". Death in institutions is dealt with under section 315).
>
> shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the officer in charge of the nearest police station or to a police officer . . .
>
> 2) . . . . . "

Section 21 of the Criminal Procedure Code is primarily intended to facilitate information as to the commission of an offence and thereby to facilitate steps being taken into the investigation of the same.

In this connection it is also important to note Section 176 of the Penal Code which deals with the:

> "omission to give notice or information to a public servant by a person legally bound to give notice or information",

and

Section 201 of the Penal Code which deals with

> "causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender . . ."

Section 202 of the Penal Code which deals with

> "Intentional omission to give information of an offence by a person bound to inform", and

Section 203 of the Penal Code which deals with

> "giving false information respecting an offence committed."

A doctor in Singapore cannot claim as of right not to disclose information of the commission of or the intention of any other person to commit any of the offences listed in Section 21 of the Criminal Procedure Code. No such privilege exists in our law.

A doctor may also be compelled to disclose whatever information that has been communicated to him by his patient in confidence, where such information may assist the police in their investigations. This would be so even if by the disclosure of such confidential information the doctor or his patient are liable to a criminal prosecution. This is because there is no provision in our law preventing such disclosure. Indeed, Section 21 of the Criminal Procedure Code makes it obligatory on the part of the doctor to disclose information of the commission of or the intention of any person (including his patient) to commit any of the offences listed in that section. (Tan, 1965).

The doctor in Singapore, like his counterpart in England, if he breaks the law for the sake of his ethics, is liable to punishment under the Criminal Law.

Medical Officers in hospitals are not happy about having to submit medical reports on their patients who happen to be "Police Cases". Have the police any right to ask for such reports? The police have powers under the Criminal Procedure Code to investigate crimes. Section 120 (1) reads,

> "A police officer making a police investigation . . . may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined."

Unless doctors can refuse to treat patients who are classified as "Police cases", they should realise that police officers are being courteous when they ask for a written report, for they have authority under section 119 to compel witnesses to come to the police station to be examined there.

It is also worthwhile in this connection to note the following offences listed in the Penal Code:

Section 179.

> "Refusing to answer a public servant authorised to question."

Section 186.

> "Obstructing a public servant in the discharge of his public functions."

Section 187.

> "Omission to assist a public servant when bound by law to give assistance."

d) When a person is offered a post in the Singapore Government Service, he is informed that "the appointment will be in accordance with current circulars, Instruction Manual No. 2 and General Orders in force." If he accepts the appointment, it will be on the terms and conditions stated.

General order 174 reads as follows:

> "No mention shall be made in the Medical Certificate of the disease from which an officer is suffering, but the Head of his Department may call for a report from the Medical Officer in charge of Officials, and no rule of professional confidence can be held to exempt any Medical Officer from stating, in reply to such a request, the result of a medical examination of an officer. Any such report will be treated as confidential."

General Orders 274, 275 and 276 deal with the composition and convening of Medical Boards, and G.O. 277 reads:

> "The findings of a Medical Board shall be reported to the Head of Department concerned who shall either act upon the recommendations himself or take alternative action . . . as the circumstances warrant."

The Medical Officer in charge of Officials can ask for a medical report from the Medical Officer who has been attending the patient. Other employers may have similar agreements with their employees and their doctors. Doctors for the sake of ethics may have to refuse employment.

Doctors have often asked why the lawyer-client relationship is given special consideration but not the doctor-patient relationship. The reason for the legal privilege has been enunciated by one of the more famous English Judges, Jessel, M.R. in Anderson v. British Bank of Columbia (1876) 2 Ch. D. 644, 649;

> "The object and the meaning of the rule is this: that as by reason of the complexity and difficulty of our law, litigation can only be conducted by professional men, it is absolutely necessary that a man, in order to preserve his rights or to defend himself from an improper claim should have recourse to the assistance of professional lawyers, and it being so absolutely necessary, to use a vulgar phrase, that he should be able to make a clean breast of it to the gentlemen he consults with a view to the prosecution of his claim, or the substantiating of his defence against the claim of others; that he should be able to place unrestricted and unbound confidence in the professional agent and that the communications he so makes to him should be kept secret, unless with his consent (for it is his privilege, and not the privilege of the confidential agent) that he should be enabled properly to conduct his litigation. That is the meaning of the rule."

Doctors are required by the ethics of their profession to preserve the secrets of their patients. How far this ethical duty should be enforced by law is a question on which there is much difference of opinion both among lawyers and doctors.

If we start from the premise that any privilege (for not divulging information) constitutes a shackle on the discovery of truth, and an impediment to the due administration of justice, then the privileges and immunities which are at present recognised by the law, (*e.g.* marital privilege, State secrets) must have arisen from the fact that public policy had demanded them, despite some shackle or impediment which might result, as the public would be better served by recognising certain privileges. (A.G. v. Clough (1963) 1 Q.B. 773 per Lord Parker, C.J.)

Some doctors feel that there has been an unfair discrimination against their profession. Perhaps lawyers should also be compelled to divulge information when the judge thinks that disclosure is essential to the public interest.

In England, it has been the rule for 400 years that witnesses can be compelled to appear and testify. In 1562, by Act of Eliz. C.9 S. 12, provision was made for the service of process out of any court of record requiring the person served to appear and to testify concerning any matter or cause pending in the court, under penalty of ten pounds besides damages to be recovered by the aggrieved. This was based on the fundamental principle that proper administration of justice is of mutual benefit to all members of a community and that every competent citizen is under obligation to assist it as a matter of public duty. Prior to that time, a person if he could qualify as a witness, might testify or not as he chose.

Shortly after the policy of testimonial compulsion was established in England, the Courts were occasionally confronted by witnesses who refused to testify on grounds of public policy or personal honour. The Courts held that there should be no barrier to the discovery of truth no matter how harmful the relevant evidence might be to the witness or others. Ultimately the Courts became persuaded that the duty of testifying should be subject to mitigation in exceptional cases. Thus arose the common law privileges, one of which concerns the lawyer and his client. The lawyer-client privilege was acknowledged in 1577 in Berd v. Lovelace, Cary 62; 21 E.R. 33.

However, during the formative period of the English Law of Evidence, the confidences of the patient to his "phesicion" or "chirurgeon" were not accorded any privilege. More so today, after centuries of judicial decisions that the common law did not protect the principle of professional secrecy between doctors and their patients.

Doctors have occasionally demanded that the law be changed to accord the same privilege to the doctor-patient relationship. The relationship between a lawyer and his client is different from that between a doctor and his patient, and each should be judged on its own merits. The only way to change the law now is by legisation. The pros and cons for this are presented below.

A number of countries have passed laws to give protection to the doctor-patient relationship. Although France, Germany and some other European countries have statutes to this effect, the discussion will be confined to countries with a common law jurisdiction like Singapore.

In England, in 1937, an attempt was made to introduce a bill in Parliament—the Medical Practitioners' Communication (Privilege) Bill—but it was denied a second reading. (B.M.J. 1937). The text was:

1. Any information obtained by a duly registered medical practitioner in the course of treatment of any patient shall be regarded as confidential and shall be privileged from disclosure in a court of law;

   Provided that the information obtained shall have been obtained for the purpose of a cure, or assisting in a cure, of a patient so treated; and provided also that this privilege (a) shall not extend to any communication made with the object of committing or aiding in committing, any fraud or crime; and (b) shall not extend to any disclosure in any court in any case founded on a criminal charge or charge of fraud against such patient.
2. For the purpose of this Act "duly registered medical practitioner" shall mean a person whose name is on the Medical Register.

About two-thirds of the states in the United States of America and the state of Victoria in Australia have doctor-patient privilege laws. Some of these will be mentioned in the subsequent discussion.

The Victorian Statute is the Evidence Act 1958, section 28 of which reads as follows:

> "No clergyman . . .
>
> No physician or surgeon shall without the consent of his patient divulge in any civil suit action or proceeding (unless the sanity or testamentary capacity of the patient is the matter in dispute) any information which he has acquired in attending the patient and which was necessary to enable him to prescribe or act for the patient."

The prohibition extends to everything which comes to the knowledge of the physician or surgeon with regard to the health or physical condition of the patient, as well as anything said by the patient to him, while the relationship of patient and medical adviser continues, provided that it was necessary for the purpose stated. The operation of the section is not limited to the lifetime of the patient. National Mutual Life Association of Australasia Ltd., v. Godrich (1910) 10 C.L.R. 1; 16 A.L.R. 110.

In the United States of America, New York State was the first to enact a physician-patient privilege statute in 1828:

> "No person authorised to practise physic or surgery shall be allowed to disclose any information which he may have acquired in attending any patient, in a professional character, and, which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon."

Many other States have followed suit, and the trend is towards acceptance of the basic principle with legislative and judicial limitation of its scope.

Three reasons have been advanced in support of this privilege;

First, the privilege will inspire confidence and trust in the patient and thus encourage him to give a truthful and complete history, to allow himself to be examined and investigated and to follow his doctor's instructions implicity. This he will only do if he knows that his intimate details will not be broadcast to the general public to his humiliation, embarrassment and disgrace.

Secondly, if a doctor were to divulge his patient's secrets, the community would interpret this as an act against his own patient's interest. Public distrust of doctors would damage the doctor-patient relationship to such an extent that the general health of the community would suffer. Thus in the interest of public health, public policy demands that medical confidences be protected against disclosure.

Thirdly, without the privilege, a member of a noble profession would be forced for his professional honour to commit perjury or be charged for contempt of court when he is faced with the conflict between his ethics and his legal duty.

There has been mounting criticism of this privilege in the United States where there has been most experience with the doctor-patient privilege statutes.

> "More than a century of experience with the statutes has demonstrated that the privilege in the main operated not as the shield of privacy but as the protector of fraud." (McCormick, 1954).

The main purpose of a judicial inquiry is to ascertain where the truth lies upon the issue of fact involved. The outcome of the case is arrived at by applying the relevant rules of law to the facts presented at the trial. There are very few cases in which the law does not insist on the disclosure of all information by witnesses in order that justice may be best served. No thoughtful person will deny that the exclusion of relevant and important evidence which may be the best evidence, is a serious obstacle to the administration of justice. The prime aim of the

law is to secure justice between man and man, and between man and State. It would indeed be a misfortune if a case were lost if it could have been won if all the relevant facts were known; more so, when the facts were available but could not be presented to the court. The harm done is not confined to the losing party, but extends to the entire system of law and society in general, for such miscarriages of justice foster a contempt for the courts and the legal processes. "Secrecy in court is prima facie calamitous and is permissible only when we are very sure that frankness will do more harm than good. With doctor's secrets as with any other kind of secrets, the proper test is the welfare of the community. Court room secrecy in the particular case must produce a public good which more than offsets the risks resulting from the concealment of truth and from the lies which can be made with less fear of detection." (Chafee, 1942).

The theory that a patient will hesitate to consult a doctor unless he has complete assurance that his secrets cannot later be revealed in court, has not been substantiated. The basic fallacy is to assume that the prospective patient knows all about the privilege. The majority of patients do not know of the privilege, and therefore it cannot affect their decisions to consult their doctors. Moreover, the few who know that their secrets can be revealed in court, give little thought to it, for most patients do not visit their doctors with litigation in mind. It must be very seldom that a person is deterred from seeking medical aid merely because of the possibility that medical confidences may be divulged in Court. Most patients themselves are not reluctant to discuss their illnesses and if given a chance will relate all the details to friends and relatives. Compared with the many ills of mankind, there are very few that bring shame and disgrace, and the chances of one of them being made public in court is very small. Should all medical evidence be excluded because of the stigmata of a few conditions or diseases, some of which may have been brought on by the patient's own indiscretions? Are the feelings of these few patients more important than the harm done to the cause of justice and to society? If one wishes to justify the privilege on the reluctance of doctors to testify contrary to the wishes of their patients, then almost any profession (*e.g.* bankers, accountants, osteopaths, herbalists, etc.) could claim a like privilege with equal justification. There would be no more confidence in the courts if many special groups could obstruct the search for truth by a privilege to remain or to be kept silent.

It is also claimed that without the privilege the deterioration in the doctor-patient relationship would be such that the general health of the community would suffer; and that this injury is greater than the injury to the cause of justice. There is no evidence that the privilege tends to improve public health or the standard of medical care, although there is evidence that it undermines the very foundation of justice. There is no evidence to show that patients in England, the Commonwealth and the American states that do not have the privilege statutes, consult their doctors less often or that the standard of general health is lower than that in the states with the privilege laws.

When patients claim the privilege, the majority state that they are doing so to protect the right to privacy or to protect themselves from embarrassment or humiliation. In truth, the motive is to use a procedural device to win a case by excluding relevant evidence, because 90% of the claims are for cases involving personal injury (nature or extent), insurance (cause of death), and testamentary capacity in will contests, where the question of humiliation does not arise.

The third theory is that doctors will commit perjury for the sake of their professional honour. Experience has shown that the opposite is more likely; that patients will commit perjury when they know that they can close their doctors' mouths in the very place where truth is badly needed.

In actual practice the judges have been confronted with considerable difficulties and new problems:

1. When can the privilege operate? When is the doctor-patient relationship established? Is it established only when there is a voluntary consultation, when treatment or advice is sought, offered or given? What about consultations for illegal purposes, *e.g.* criminal abortion? What is the limit and extent of the doctor-patient relationship? If a doctor treats an unconscious patient or a patient against his will, *e.g.* attempted suicide, is there privilege? If he examines for a prospective employer or insurance company?
2. What is the scope of the privilege? Does it include nurses, radiographers, laboratory technicians, and all other ancillary staff who

assist doctors? It is necessary for these people to be barred from testifying otherwise the privilege would be of no value. Moreover all records, *e.g.* hospital records, doctor's and nurses' notes, X-rays, etc. should also be privileged. The patient also should not be allowed to be compelled to give evidence about his illness.

3. Since the doctor-patient relationship is a confidential one, will there be privilege when a doctor sees a patient when a third person (not his nurse) is present, *e.g.* parents, spouse, close relative or some bystander in a street accident? If there is privilege should these third persons be barred from giving evidence too?
4. What is the subject matter of the privilege? It should include all communications, all information gained by examination, the conclusions and opinion of the doctor and his advice to his patient throughout the doctor-patient relationship. Are communications regarding commission of a crime privileged?
5. Can the privilege be claimed after the patient's death? Is it possible to claim in order to protect his memory and his loved ones from embarrassing disclosures?
6. Is the pathologist who performs an autopsy bound by the privilege? The object of the privilege is to encourage the patient to talk freely. The situation does not arise here! Does the doctor-patient relationship exist? There will be situations when the doctor who saw the patient alive is not allowed to give evidence whereas the pathologist can.
7. If the patient has many doctors, can he waive the privilege of one and not the others?
8. What constitutes waiver of the privilege? Would the patient's description of his own illness and injuries constitute waiver? Can he waive the privilege at one trial and claim it at the succeeding one? or vice-versa?

In an effort to curb the abuses, many legislatures in the United States have added qualifications to the basic privilege, and judges have also tended to limit its scope. The Illinois statute (1959) is quoted as one with many qualifications.

> "No physician or surgeon shall be permitted to disclose any information he may have acquired in attending any patient in a professional character, necessary to enable him professionally to serve such patient, except only
>
> 1) in trials for homicide when the disclosure relates directly to the fact or immediate circumstances of the homicide.
> 2) in all mental illness inquiries.
> 3) in actions, civil or criminal, against the physician for malpractice.
> 4) with the express consent of the patient, or in the case of his death or disability, of his personal representative or other person authorised to sue for personal injury or of the beneficiary of an insurance policy on his life, health or physical condition,
> 5) in all civil suits brought by or against the patient, his personal representative, or beneficiary under a policy of insurance, or the executor or administrator of his estate wherein the patient's physical or mental condition is an issue,
> 6) upon an issue as to the validity of a document as a will of the patient, or
> 7) in any criminal action where the charge is either murder by abortion, attempted abortion or abortion."

If all the qualifications from all the various American statutes were combined, the nett result would approximate the common law rule, which is that a doctor must divulge information obtained as result of the doctor-patient relationship when required to do so in court. (West Vir. L.R. 1955). A doctor's testimony may be the vital one, *e.g.* in cases of personal injury, will contest and insurance. Even if it could be shown otherwise, greater weight is attached to a doctor's testimony. Although the common law view appears to be a wise one, there can be occasions when the absence of privilege can also defeat the ends of justice, *e.g.* full disclosure by a patient's psychiatrist may be extremely damaging to the cause of the person concerned although not strictly relevant to the issue before the Court. (Joint Committee, 1965). A statute which recognises that privilege may hamper the proper administration of justice by concealing the whole truth, but at the same time realising that a patient must be able to place the utmost faith and confidence in his doctor, would be desirable. The North Carolina Statute (1953) is a good example.

> "No person, duly authorised to practise physic or surgery, shall be required to disclose any information which he may have

acquired in attending a patient in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician or to do any act for him as a surgeon: *Provided that the presiding judge of a superior court may compel such disclosure, if in his opinion the same is necessary to a proper administration of justice.*"

The Hippocratic Oath should not become an instrument of fraud. The Hippocratic Oath does not enjoin absolute secrecy on all occasions. It must be subject to justified departures or to conform with the law.

REFERENCES

1. British Medical Association Members' Handbook (1965): p. 59.
2. Brit. Med. J. (1887): 2. 743.
3. Brit. Med. J. (1889): 1. 107.
4. Brit. Med. J. (1896): 1. 815, 882.
5. Brit. Med. J. (1937): 1. 302.
6. Bye-laws of the Royal College of Physicians of London, (1957): London. Harrison & Sons, Ltd.
7. Chafee, Jr. Z. (1942): Yale Law Journal. 52. 607.
8. Chitty. (1955): Contracts, Vol. II, 516. London. Sweet & Maxwell Ltd.
9. Cross, R. (1958): Evidence. London. Butterworths & Co., Ltd.
10. Davidson, M. (1957): Medical Ethics. London. Lloyd-Lukes Ltd.
11. De Witt, C. (1959): Western Reserve Law Review. 10. 488.
12. Ethical Code of the Singapore Medical Association, (1963).
13. Halsbury, Laws of England, 3rd. Edition.
14. Joint Committee on Medical Evidence in Courts of Law, (1965): London, British Medical Association.
15. Jones, W.H.S. (1924): The Doctor's Oath, Cambridge University Press.
16. Lancet. (1936): 2. 212.
17. Laws of the Colony of Singapore, (1955) and Supplements.
18. McCormick, L.T. (1954): Evidence. St. Paul, Minn. U.S.A. West Publishing Co.
19. North Carolina Law Review, (1963): 41. 627.
20. Northwestern University Law Review, (1961): 56. 263.
21. Tan, B.T. (1965): Personal Communication.
22. West Virginia Law Review, (1955-56): 58. 76.
23. Winfield, (1954): Tort, 6th Ed. London. Sweet & Maxwell Ltd.