



Quiz

Duty of care in medical negligence: a consideration of Sparks v Hobson; Gray v Hobson [2018] NSWCA 29

1. What was the holding of the Supreme Court at first instance (*Hobson v Northern Sydney Local Health District & Ors* [2017] NSWSC 589)?
 - a. Harrison J found against Dr Sparks but not against Dr Gray, by holding that Dr Gray was entitled to rely on Dr Sparks as anaesthetist to keep the plaintiff alive
 - b. Harrison J found against both Dr Gray and Dr Sparks by holding that the procedure ought to have been terminated at an earlier point in time
 - c. Harrison J found against both Dr Gray and Dr Sparks by holding that the duty of reasonable care owed by the doctors was not alleviated by the urgency surrounding the second part of the procedure
 - d. Both B and C
2. What was the "key battleground" on appeal (*Sparks v Hobson; Gray v Hobson* [2018] NSWCA 29)?
 - a. Section 51 of the *Civil Liability Act 2002* (NSW)
 - b. Breach of the common law duty of care
 - c. Section 50 of the *Civil Liability Act 2002* (NSW)
 - d. Both A and C

3. What was the outcome in the High Court of *Hunter and New England Local Health District v McKenna*; *Hunter and New England Local Health District v Simon* (2014) 253 CLR 270; [2014] HCA 44 ?
- a. Discharging the scheduled patient was a breach of the duty of care owed by the relevant health service
 - b. There was no defence available under s 50 of the *Civil Liability Act 2002* (NSW)
 - c. The obligations of a psychiatrist under the *Mental Health Act 2007* (NSW) were inconsistent with the common law duty of care
 - d. None of the above
4. Which of the following statements is false regarding the individual decisions of the judges of the Court of Appeal in *Sparks v Hobson*; *Gray v Hobson* [2018] NSWCA 29?
- a. McFarlane JA rejected the s 50 claim brought by Dr Sparks on the basis that there was not an established practice, given the unique circumstances of Mr Hobson's surgery
 - b. Simpson JA declined to follow the *McKenna* decision on the basis that she preferred a broader interpretation of s 50 which did not require the establishment of a specific practice
 - c. Simpson JA felt compelled to follow *McKenna* because there had been no challenge to its correctness, but made clear that had she not felt compelled to do so, her preference was for a broader interpretation of s 50 which did not require the establishment of a specific practice
 - d. Basten JA held that *McKenna* in the Court of Appeal was no longer binding, and indicated his preference for a broader interpretation of s 50 not limited to a specific practice
5. Which of the following statements is true regarding s 51 of the *Civil Liability Act 2002* (NSW)?
- a. Section 51 applies only where the exercise of skill, or lack thereof, bears no causal connection to the outcome
 - b. Section 51 does little more than reiterate that liability in negligence is dependent on a causal connection between the negligence and the harm

- c. Both A and B
- d. None of the above

Answers:

1. D 2. D 3. C 4. B 5. C