

Article Summary

Revisiting Loss of Chance in Medical Negligence: Employing Public Policy Positively as Justification

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The loss of chance doctrine in medical negligence has triggered much controversy and debate across jurisdictions. Courts in various jurisdictions including England, Australia, the United States and Singapore have taken differing approaches toward the loss of chance doctrine. Despite the considerable debate surrounding the loss of chance doctrine, the state of law on this doctrine remains unsatisfactory and fails to allow victims of medical negligence a fair treatment in deserving loss of chance claims. There appears to be a tension in the case law between principle-based reasoning to reject a loss of chance claim and policy-based reasoning to support it. On the whole, while policy considerations have been used to recognise loss of chance in the United States and also been considered by judges in other jurisdictions such as England in rejecting the doctrine, they nonetheless represent an under-analysed aspect of loss of chance in medical negligence. This article attempts to fill in this gap by critically analysing the policy arguments relating to loss of chance. The author embraces the view that public policy may be employed positively to justify the recognition of loss of chance as an actionable damage. The article discusses a framework through which the application of policy might be analysed to justify the existence and scope of the right to loss of chance. The conclusion is that the decision to recognise loss of chance in medical negligence can rest on policy considerations given that it can be reconciled with interpersonal justice and that it provides congruence with existing rules in tort law and private law.