

The law is an ass – but rarely, and that won't bother us

Professor Sir John Scott's experience illustrates how complex medicolegal events can at times lead to disillusionment.

At medical school we were indoctrinated to a relatively minor degree in matters medicolegal. We were taught to believe that the law is precise for sound reasons and, despite the popular adage, rarely behaves as an ass. We were given hints that the legal situation could be complex and subject to attack by clever and manipulative lawyers, but if we kept to simple rules all would be well. Loss of innocence or disillusionment may well follow, as shown by this event.

An increasingly complex case

As part of the medical assessment team, I examined a 30-year-old woman who had been rushed to hospital; it was thought she might have had some form of cerebrovascular accident. Her husband accompanied her in the ambulance; he said that she had dropped unconscious on to the kitchen floor in front of him. The ambulance crew had found the woman pulseless and not breathing. They started her heart without difficulty but could not intubate her easily and therefore established a form of respiration via a mask. They got her 'alive' to hospital and then via the emergency department to the intensive care unit.

The husband had not mentioned pregnancy, but it was rapidly clear that she was about 29 weeks' pregnant. When questioned, he was extremely vague about possible dates. In those days a 25-week-old fetus would not be termed viable, but a 34-week-old fetus would be resuscitable and the life of that fetus was protected by law. The accuracy of a clinical judgment about duration of pregnancy at that time was plus or minus five weeks. An urgent ultrasound confirmed that the fetus was about 29 to 30 weeks' gestation.

Equally importantly, a CAT scan showed that the woman had a huge intracerebral haemorrhage related to a mass lesion in

the left frontal lobe with some extension into the white matter on the right side. The brain stem was compressed against the skull. There were no spontaneous respiratory movements, but the heart beat was relatively strong. She was pronounced brain dead on clinical and electrophysiological evidence. What should we do?

The legal situation was quite clear. The husband seemed extremely vague and his views to be of doubtful worth. The decision was taken to deliver the baby by Caesarean section, and a healthy boy was extracted. The husband stayed around but didn't seem particularly concerned about his son's birth.

At this stage however, the full radiological report became available, and the senior radiologist had spotted a fracture in the left temporo-occipital region and deduced that there were signs of contra-coup damage. This news coincided with the apparent completion of the case notes and preparation of the provisional death certificate.

Then things became more complicated. The history became available. The woman turned out to be a prostitute and the husband her pimp. By the time that news had arrived, the husband had vanished and was never found.

The police were involved at this stage and a senior sergeant raised the next set of difficulties. He told us, and a lawyer confirmed, that a baby could not be born after his or her mother was dead in terms of registration of a live birth. Moreover, it became clear that the sequence recorded in the case notes had to be altered so that everything was neat and tidy. To cope with the exigencies of the law, the case notes were rewritten, and everybody at that stage was happy. Moreover, had this not been done, the head of the intensive care unit could have been threatened with legal proceedings. This seemed yet another strange interpretation, again based on the fact that the original case notes had confirmed the mother as brain dead. It was the word 'dead' that seemed to raise the difficulties at this time.

Bemusement at the legalistic jungle

By this stage the case had been referred to the coroner, who was interested in the fact that the mother's body had been covered in bruises. The coroner's problem was that the vital witness to events – the mother – was no longer alive. In addition, the police had lost track of the husband. Thus the coroner was hindered in issuing a death certificate for the mother and a birth certificate for the infant. Six months after this event, neither the death certificate nor the birth certificate had been signed.

The doctors concerned did hold a case conference and remained bemused by the whole legalistic jungle. It seemed that the law at times was not only an ass but incapable of sorting out the problems it had created. The beliefs instilled in us in our innocent student days were no longer tenable, and yet another aspect of our innocence had been lost. **MT**

Professor Sir John Scott, KBE, MD, BMedSc, FRCP, FRACP, FRSNZ, is a member of the Advisory Panel to the Medical Protection Society, New Zealand.