

# Hospital and Doctor held Liable for Medical Negligence



'Hospitals, having undertaken one of mankind's most important and delicate endeavors, must assume the grave responsibility of pursuing it with appropriate care. The care and service dispensed through this high trust, however technical, complex and esoteric its character may be, must meet standards of responsibility commensurate with the undertaking to preserve and protect the health, and indeed, the very lives of those placed in the hospital's keeping.'

In a recent case, the Supreme Court found both the hospital and a medical consultant liable for leaving behind two pieces of gauze inside a patient's body, for failing to inform the patient of such occurrence, and for failing to apply the proper corrective measures.

Dr. Miguel Ampil, assisted by the staff of the Medical City Hospital, performed an anterior resection surgery on Natividad Agana. When the operation was almost finished, the nurses alerted Dr. Ampil about the missing gauze. Failing to find the gauze after a thorough search, Dr. Ampil still ordered the closing of the incision on the patient.

The Court opined that Dr. Ampil had the duty to remove all foreign objects from Agana's body and the duty to inform the patient of such incident. Dr. Ampil breached both duties. Such breach caused injury to Agana. And what further aggravated such injury was his deliberate concealment of the missing gauze from the knowledge of Agana and her family.

The Supreme Court enriched jurisprudence by introducing the principles of corporate negligence, vicarious liability, and ostensible authority in finding Professional Services, Inc. (PSI), owner of the

Medical City Hospital, solidarily liable with Dr. Ampil.

Applying the principle of corporate negligence, the Court ruled that PSI is directly liable for failing to comply with its duty to make a reasonable effort to monitor and oversee the treatment prescribed and administered by the physicians practicing in its premises. PSI also did not conduct an investigation of the matter reported by the count nurse despite actual or constructive knowledge of the procedures carried out and of the missing gauze. As such, not only did PSI breach its duty to oversee or supervise all persons who practice medicine within its walls, it also failed to take an active step in fixing the negligence committed.

Citing *Ramos v. Court of Appeals* (321 SCRA 584), the Court applied the rule on vicarious liability or respondeat superior whereby an employer-employee relationship is said to exist between hospitals and their attending and visiting physicians for the purpose of apportioning responsibility in medical negligence cases. The Court observed that "private hospitals hire, fire and exercise real control over their attending and visiting 'consultant staff'.

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## SC sustains McDonald's Trademark Rights

In 1991, MacJoy Fastfood Corporation (MacJoy) filed an application for the registration of the trademark "MACJOY & DEVICE" for fried chicken, chicken barbeque, burgers, fries, spaghetti, palabok, tacos, sandwiches, halo-halo, and steaks under classes 29 and 30 of the International Classification of Goods with the Intellectual Property Office (IPO). McDonalds Corporation (McDonalds) opposed the registration, claiming that the trademark "MACJOY & DEVICE" resembled its corporate logo, otherwise known as the Golden Arches or "M" design, and its marks "McDonalds," "McChicken,"



"MacFries," "BigMac," "McDo," "McSpaghetti," "McSnack," and "Mc," such that when used on identical or related goods, the trademark applied for would confuse or deceive purchasers into believing that the goods originate from the same source or origin. McDonalds also alleged that MacJoy's use of the "MACJOY & DEVICE" mark would falsely tend to suggest a connection or affiliation with its restaurant services and food products.

The Supreme Court applied the dominancy test in concluding that there was a confusing similarity between the two trademarks. Confusing similarity is a ground for disallowing the registration of a trademark as provided in Section 4 of Republic Act (RA) No. 166 or the Old Trademark Law. The Court held that the marks are so confusingly similar with each other such that an ordinary purchaser can conclude

an association or relation between the marks. Both marks employ the corporate "M" design logo and the prefixes "Mc" and/or "Mac" as dominant features. The first letter "M" in both marks puts emphasis on the prefixes "Mc" and/or "Mac" by the similar way in which they are depicted i.e. in an arch-like, capitalized, and stylized manner. It is the prefix "Mc," an abbreviation of "Mac," which visually and aurally catches the attention of the consuming public. Thus, the word "MACJOY" attracts attention in the same way as "McDonalds," "MacFries," "McSpaghetti," "McDo," "Big Mac" and the rest of the MCDONALDS marks which all use the prefixes Mc and/or Mac. Notably, both marks are used in the sale of fastfood products and belong to the same Classification of Goods which would further aggravate confusion over the two marks.

The Court held that McDonalds had the rightful claim of ownership over said marks as it was able to register them two decades before MacJoy filed an application for registration of its trademark pursuant to Section 37 of RA No. 166 (McDonald's Corporation v. MacJoy FastFood Corporation, GR No. 166115, February 2, 2007).

## Common Carrier Liable for Cargo Loss

Will a carrier be liable for the loss of cargo resulting from the sinking of a ship even if it did not own the vessel?

A recent Supreme Court decision answered in the affirmative and ruled that a common carrier does not have to own the ship to be responsible for the loss. Cebu Salvage Corporation (CSC) was declared liable for the loss of the cargo aboard a ship owned by ALS



Timber Enterprises. The voyage charter was entered into by CSC with Maria Cristina Chemicals Industries, Inc. in 1984.

The Supreme Court held that to permit a common carrier to escape its responsibility for the goods it agreed to transport (by using the excuse of not owning the vessel) would radically derogate from the carrier's duty of extraordinary diligence. It would also open the door to collusion between the carrier and the supposed owner and to the possible shifting of liability from the carrier to one without any financial capability to answer for the resulting damages. CSC failed to exercise extraordinary diligence or to prove that the loss was due to some casualty or force majeure (Cebu Salvage Corporation v. Philippine Home Assurance Corporation, GR No. 150403, January 25, 2007).

**Negligence, from page 1** While 'consultants' such as Dr. Ampil are not technically employees, the control exercised, the hiring, and the right to terminate consultants all fulfill the important hallmarks of an employer-employee relationship, with the exception of the payment of wages."



The Court also used the doctrine of apparent or ostensible authority to further anchor its finding of liability. Where it can be shown that a hospital, by its actions, has held out a particular physician as its agent and/or employee and that a patient has accepted treatment from that physician in the reasonable belief that it is being rendered on behalf of the hospital, then the hospital will be liable for the physician's negligence. PSI's accreditation of Dr. Ampil and public advertisement of his qualifications created the impression that he was its agent, authorized to perform medical or surgical services for its patients. The patients accepted the services on the reasonable belief that such were being rendered by the hospital or its duly-accredited employees, agents, or servants. As such, PSI was held accountable for the acts or negligence of its ostensible agent, Dr. Ampil (Professional Services, Inc. v. Agana and Agana, GR No. 126297; Agana, et al. v. Fuentes, GR No. 126467; Ampil v. Agana and Agana; GR No. 127590).



## Filing an Amended Tax Return

You have just filed a tax return based on financial statements prepared by your Certified Public Accountant (CPA). Thereafter, you find out that a month's worth of sales receipts were not included in the report forwarded to the CPA. Or you discovered that some expenses were excluded in the amount indicated in the tax return.

If you find errors or omissions in your tax return, you can file an amended tax return to correct your previously filed tax return, provided that no notice of investigation (such as a Letter of Authority, Tax Verification Notice or Letter Notice) from the Bureau of Internal Revenue (BIR) has been sent to you. Under Section 6(A) of the Tax Code, a taxpayer has three years from the date of filing of the original tax return to modify, change or amend his return. This covers returns, statements, and declarations which are required to be filed with the BIR. As such, in case you filed your income tax return on April 16, 2007, you have until April 15, 2010 to submit an amended tax return. There are no special forms or reports required to correct your original tax return. In filing an amended tax return, you should use the same type of form which you used when you filed your original return. You should just check the amended return box (to the right of taxable year section) to indicate that the return is an amended return, and attach a copy of the original return. If the returns were filed electronically, amended returns can also be filed in the same manner.

A taxpayer who subsequently amends his/her tax return must pay interest if the amendment has the effect of assessing additional taxes. Currently, interest is charged at the rate of 20% per annum on any additional tax due on the amended return which shall run from the due date of return until the date of payment. Another consequence of filing an amended tax return is that the three-year prescriptive period for assessment will be counted from the date of filing of the amended tax return. It is in the best interest of the taxpayer to immediately file an amended tax return once he discovers any mistake, error or omission in the original tax return.

## LOCAL ABSENTEE VOTING

For government officials and employees, casting of votes is not only confined to a polling place where he or she is registered but also to where he or she is temporarily assigned.

Absentee voting, as provided for under Executive Order No. 157, Republic Act No. 7166, and Commission on Elections Resolution No. 7977, refers to a system of voting whereby government officials and employees, including members of the Armed Forces of the Philippines (AFP), and the Philippine National Police (PNP), who are duly registered voters, are allowed to vote for the positions of President, Vice-President, Senators, and Party-List Representatives in places where they are not registered voters but where they are temporarily assigned to perform election duties on election day. Government officials and employees posted abroad to perform election duties on election day may also avail of local absentee voting, provided, that

## Primer on the Biofuels Act of 2006 (Republic Act No. 9367)

1. The law mandates the gradual phase out of the use of harmful gasoline additives, including Methyl Tertiary Butyl Ether (MTBEs). MTBEs are used as fuel additive or oxygenate additive for gasoline.
2. **Mandatory use of Biofuels**  
The law requires a five percent blend of bio-ethanol, an alcohol produced from fermented sugar, feedstock and other biomass within two years, and a ten percent blend within four years in the annual total volume of gasoline fuel sold and distributed.  
The law also directs the use of a one percent blend of bio-diesel or mono-alkyl esters derived from vegetable oils animal fats or other biomass-derived oils within three months, which will be increased to a two percent blend in two years.
3. **Incentive Scheme.** The new law gives an incentive of zero-rated specific tax on the bio-fuel component of blended gasoline or diesel, in addition to the value-added tax exemption for the sale of raw materials in the production of bio-fuels, the extension of financial assistance from government financial institutions, and exemption from wastewater charges under the Clean Air Act of 1999 (R.A. No. 8749).
4. **Creation of the National BioFuel Board (NBB)**  
The NBB is given the task to monitor the implementation of the National Biofuel Program, and the supply and utilization of biofuels and biofuel blends. It will also review and recommend the adjustment in the minimum mandated biofuel blends to the Department of Energy.
5. **Prohibited Acts under the Biofuels Act**
  - a. Diversion of biofuels for unauthorized purposes;
  - b. Sale of biofuel-blended gasoline or diesel that fails to comply with the minimum biofuel-blend by volume;
  - c. Distribution, sale and use of automotive fuel containing harmful additives;
  - d. Noncompliance with the implementing rules and guidelines of the Biofuels Act; and
  - e. False labeling of gasoline, diesel, biofuels, and biofuel-blended gasoline and diesel.



they are registered voters under Republic Act No. 8189, otherwise known as "The Voter's Registration Act of 1996" and that they are not registered overseas absentee voters under Republic Act No. 9189, otherwise known as "The Overseas Absentee Voting Act of 2003".

Sworn request for application forms for local absentee voting and a subscribed list containing names of voters who intend to vote in absentia are submitted by the head of office/supervisor/commander to the Committee on Local Absentee Voting (Committee). Once the application forms have been verified and approved, the head of office/supervisor/commander receives the local absentee ballots, envelopes and paper seals for distribution to the qualified local absentee voters. The accomplished ballots are transmitted back to the Committee for processing and tallying.