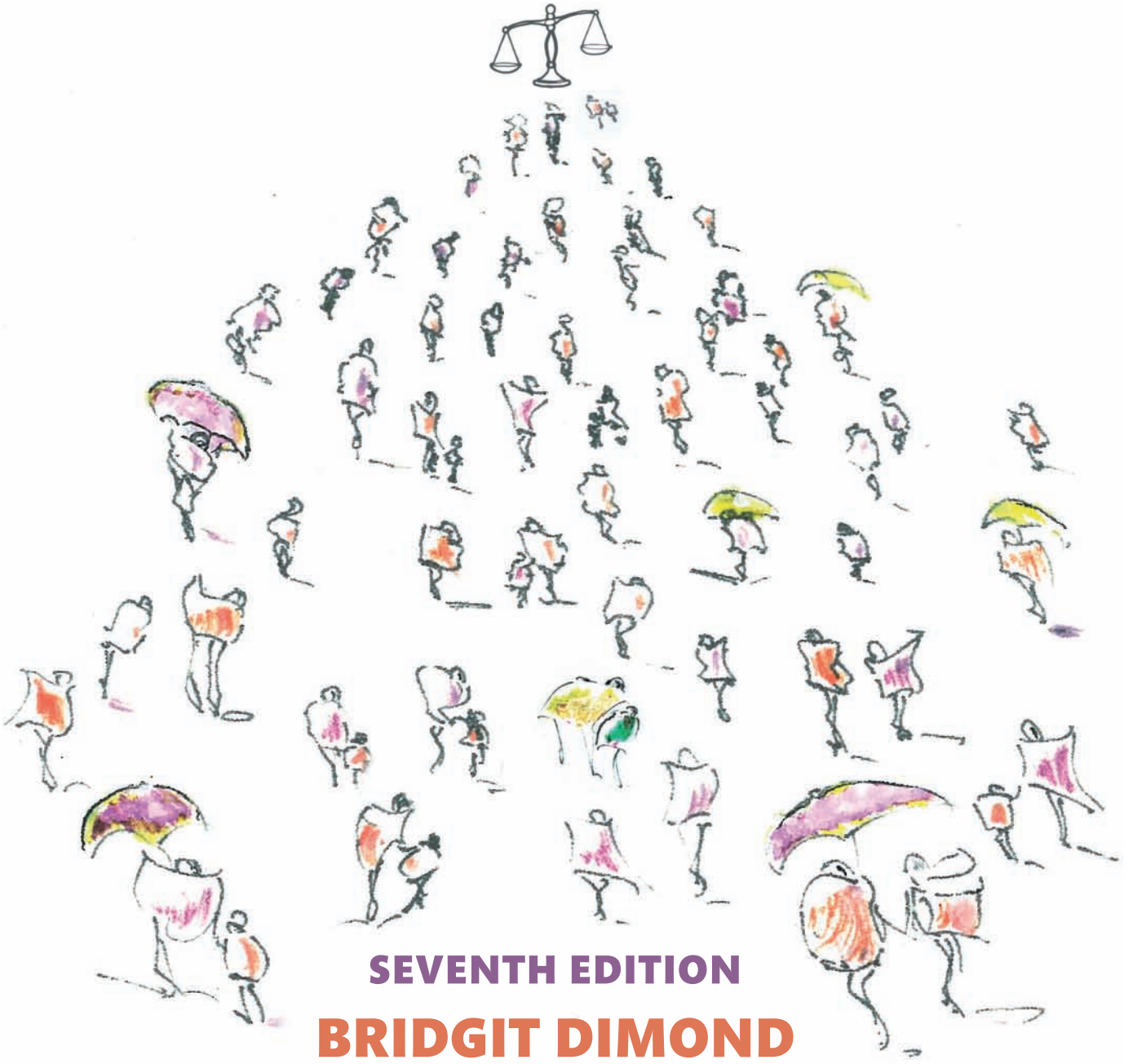
'An excellent and enduring text.' Gilly Hewetson, Lecturer, UEA



SEVENTH EDITION

BRIDGIT DIMOND

LEGAL ASPECTS OF NURSING

ALWAYS LEARNING

PEARSON

Legal Aspects of Nursing

Legal Aspects of Nursing

Seventh Edition

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PEARSON EDUCATION LIMITED
Edinburgh Gate
Harlow CM20 2JE
United Kingdom
Tel: +44 (0)1279 623623
Web: www.pearson.com/uk

First published 1990 (print)
Seventh edition published 2015 (print and electronic)

ISBN 978-1-292-00182-1 (print)
978-1-292-00185-2 (PDF)
978-1-292-00184-5 (eText)

British Library Cataloguing-in-Publication Data
A catalogue record for the print edition is available from the British Library

Library of Congress Cataloging-in-Publication Data
Dimond, Bridgit, author.
Legal aspects of nursing / Bridgit Dimond MA LLB DSA AHSM, Barrister-at-Law, Emeritus Professor University of Glamorgan. -- Seventh Edition.
pages cm
ISBN 978-1-292-00182-1
1. Nursing--Law and legislation--England. I. Title.
KD2968.N8D56 2015
344.4104'14--dc23

2015001757

10 9 8 7 6 5 4 3 2 1
19 18 17 16 15

Cover image © Norman Walsh

Print edition typeset in 9/11.5pt Sabon MT Pro by 35
Print edition printed by Ashford Colour Press Ltd, Gosport

NOTE THAT ANY PAGE CROSS REFERENCES REFER TO THE PRINT EDITION

Contents

Guided tour

This chapter discusses

- Initial stages of arrest and prosecution
- Magistrates' courts
- Plea and Case Management Hearing
- Crown Court proceedings
- Elements of a crime
- Cases of Dr Nigel Cox, Dr Adomako, Dr Shipman, Beverley Allitt and Kevin Cobb
- Administration of drug by epidural instead of intravenous injection
- Offence of ill-treatment or wilful neglect
- Defences
- Criminal injuries compensation

How can I get the most from my study?

This chapter discusses sections at the start of each chapter provide you with an instant point of reference that highlights what you can expect to learn within each chapter. You can use these as a checklist of key concepts during the course of your reading.

Will difficult concepts in law be presented in a manageable way?

Diagrams and **flowcharts** are used throughout to highlight complex legal processes.

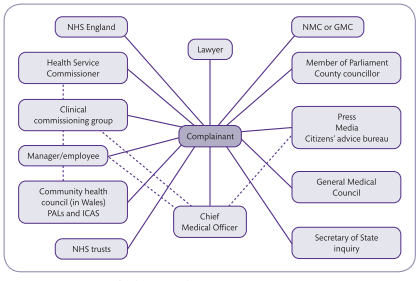

Figure 27.1 Various ways of making a complaint

Box 1.3 Some forms of civil action

1 Torts
- Negligence
- Trespass to property
  - to land
  - and to the person
- False imprisonment
- Wrongful interference
- Breach of a statutory duty
- Nuisance
- Defamation
- Malicious prosecution
- Deliberate interference with interests in trade or business

2 Breach of contract

Summary information boxes pick out key points, examples and list the essential information and legal principles of a given topic. These can be found at regular intervals throughout chapters.

How can I contextualise all the theory I'll be learning?

Use the **practical dilemmas** located throughout the text to test that you understand the topics you are reading in relation to possible real life situations.

Practical Dilemma 2.1 Theft

A discrepancy is found between the ward drug control records and the stock. An investigation is initiated and suspicion falls upon Staff Nurse Jarvis. The police are brought in and, after making their enquiries, they decide that Staff Nurse Jarvis should be charged with the offence of theft.

A situation such as this involves several kinds of investigation. The NHS trust will be concerned to determine whether there are grounds to discipline and possibly eventually dismiss the staff nurse. The fact that the police are brought in does not mean that the NHS trust can abandon its own investigation, but clearly its enquiries should not conflict with those of the police. The NHS trust must allow the staff nurse to give a full explanation of what has occurred and she should be allowed a representative. Disciplinary proceedings by the employer are discussed in chapter 10. There is also the possibility of a hearing before the Conduct and Competence Committee (CCC) of the Nursing and Midwifery Council (NMC) (see chapter 11), but this may well be postponed pending the outcome of the police investigations and criminal charges. Here we are concerned only with the criminal proceedings.

Case 4.5 *Lister* v. *Hesley Hall* (2001)

Sexual abuse by warden[17]

The board of governors were sued by the victims of abuse by the warden at Hesley Hall, a children's home, because of its vicarious liability for his actions. The Home denied liability on the grounds that the abuse was not committed in the course of his employment. The House of Lords held that it was vicariously liable for the acts of the warden in abusing the claimants: the Home had undertaken the care of the children and entrusted the performance of that duty to the warden and there was therefore sufficiently close connection between his employment and the acts committed by him.

The House of Lords stated that the approach which was best when determining whether a wrongful act was to be deemed to be done by the employee in the course of his employment was to concentrate on the relative closeness of the connection between the nature of the employment and the particular wrongdoing. The defendant undertook to care for the claimants through the services of a warden, so there was a very close connection between the torts of the warden and the defendant. The torts were also committed at a time and place when the warden was busy caring for the claimants. The warden was carrying out his duties though in an unauthorised and improper mode.

How will I know which are the most relevant cases and statutes to be aware of?

Key case boxes explicitly highlight the key facts and related legal principle of the essential cases you need to know.

Key statute boxes identify some of the most important statutory provisions and articles to learn for your studies.

Statute 8.1 Principles of the Data Protection Act 1998 Schedule 1

1 Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless:
  (a) at least one of the conditions in Schedule 2 is met, and
  (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
2 Personal data shall be obtained only for one or more specified and lawful purposes and shall not be further processed in any manner incompatible with that purpose or those purposes.
3 Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
4 Personal data shall be accurate and, where necessary, kept up to date.
5 Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose(s).
6 Personal data shall be processed in accordance with the rights of data subjects under this Act.
7 Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8 Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

Reflection questions

1 There can be liability for failure to communicate. Apply this principle to your particular post and consider how and to what extent communication with the patient could be improved.
2 Consider any work you undertake as a member of a team and assess the extent to which it is clear where the boundaries of individual responsibility lie.
3 There are times when it is essential that a nurse obeys the orders of a doctor without question and others when it is imperative that she check that the instructions are appropriate. What distinguishing features would decide whether an order falls in the first category or in the second?
4 What is the difference between direct and vicarious liability?
5 In what way do you think that the liability of the NHS trust for the safety of the volunteer differs from its liability for the safety of staff (see, in addition, chapter 12)?
6 An employee can be liable for the negligent actions of another person if the employee should not have delegated a task to him or, having correctly delegated it, has failed to provide the appropriate level of supervision. Apply this principle to the role of the nurse manager in relation to junior registered staff, learners, volunteers and untrained assistants.

How can I check I've understood what I've read?

Reflection questions at the end of each chapter can be used to test that you have followed and understood the key issues raised within the chapter.

How can I develop my understanding from the chapter?

Further exercises at the end of each chapter provide practical tasks that will help you apply what you have learnt and extend your knowledge.

Further exercises

1 Why do you consider that causation is an important element in an action for negligence? Would it be fairer to the claimant if causation did not need to be proved?
2 New Zealand and Finland have a system of no-fault liability for personal injury claims. What are the advantages and disadvantages of introducing such a scheme into the UK?

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[6] Kat Lay, Mother died after doctors took out ovary instead of appendix, *The Times*, 11 June 2013
[7] *Donoghue* v. *Stevenson* [1932] AC 562
[8] *Kent* v. *Griffiths and Others*, The Times Law Report, 23 December 1998; The Times Law Report, 10 February 2000; [2000] 2 All ER 474
[9] Frances Gibb, Victim wins £5m after ambulance delay, *The Times*, 18 June 2014
[10] *Phelps* v. *Hillingdon London Borough Council* [1998] 1 All ER 421

Table of cases

Table of statutes

Abbreviations

The health services are awash with abbreviations and jargon. It would, however, be immeasurably tedious and unrealistic to ignore these and always use the full words. Some of the most commonly used abbreviations are therefore set out here. Where there is any possibility of confusion, words are spelt out in full.

ABI Association of British Insurers
ABPI Association of the British Pharmaceutical Industry
ACAS Advisory, Conciliation and Arbitration Service
ACGT Advisory Committee on Genetic Testing
ADR Adverse Drug Reaction
A&E accident and emergency department
AGMR Advisory Group on Medical Research
AID artificial insemination by donor
AIDS acquired immune deficiency syndrome
AIH artificial insemination by husband
AIP artificial insemination by partner
ALB arm's-length bodies
AMHP approved mental health professional
ARC AIDS-related complex
ASW approved social worker
AVMA Action for the Victims of Medical Accidents
BARNA British Anaesthetic and Recovery Nurses Association
BCA British Chiropractic Association
BID brought in dead
BMA British Medical Association
BMJ *British Medical Journal*
BNF *British National Formulary*
BP blood pressure
BPAS British Pregnancy Advisory Service
CAA Comprehensive Area Assessment
CAB Citizens' Advice Bureau
CAM complementary and alternative medicines
CCC Conduct and Competence Committee
CCETSW Central Council for Education and Training in Social Work
CCIAG Critical Care Information Advisory Group
CDRP crime and disorder reduction partnerships
CE Conformité Européenne (marking following EC directive 93/68/EEC)
CESDI Confidential Enquiry into Stillbirths and Deaths in Infancy
CESU Clinical Effectiveness Support Unit
CFA conditional fee agreement
CGWTs Care Group Workforce Teams
CHAI Commission for Healthcare Audit and Inspection (known as the Healthcare Commission)
CHC community health council
CHI Commission for Health Improvement (now CHAI)
CHRE Council for Healthcare Regulatory Excellence (formerly CRHCP) (now the PSA)
CICA Criminal Injuries Compensation Authority
CMI Chartered Management Institute
CMO Chief Medical Officer
CNHC Complementary and Natural Healthcare Council
CNR cell nuclear replacement
CNST Clinical Negligence Scheme for Trusts
COREC Central Office for Research Ethics Committees (replaced in 2007 by NRES)
COSHH Control of Substances Hazardous to Health (Regulations)
CPD continuing professional development
CPN community psychiatric nurse
CPPIH Commission for Patient and Public Involvement in Health
CPR cardiopulmonary resuscitation
CPS Crown Prosecution Service
CQC Care Quality Commission
CRHCP Council for the Regulation of Health Care Professionals (now *see* CHRE)
CSAG Clinical Standards Advisory Group
CSCI Commission for Social Care Inspection
CSIP Care Services Improvement Partnership
CSSD central sterile supply department
CTO Compulsory Treatment Order
D and C dilatation and curettage
DBERR Department for Business, Enterprise and Regulatory Reform
DBS Disclosure and Barring Service (replacing the Independent Safeguarding Service)
DCA Department for Constitutional Affairs
DCSF Department for Children, Schools and Families (formerly DfES)
DH Department of Health
DHA district health authority

DHSS Department of Health and Social Security (divided in 1989 into DH, Department of Health, and DSS, Department of Social Security)
DMD Drug Misuse Database
DNAR do not attempt resuscitation
DNR do not resuscitate
DoLS Deprivation of Liberty Safeguards
DPA Data Protection Act 1998
DPP Director of Public Prosecutions
DSS Department of Social Security
EC European Community
ECC Ethics and Confidentiality Committee
ECHR European Court of Human Rights
ECJ European Court of Justice
ECL emergency care leads
ECP emergency care practitioner
ECT electroconvulsive therapy
EEA European Economic Area
EHR electronic health record
EHRC Equality and Human Rights Commission
EL executive letter (guidance from DH)
ELS Existing Liabilities Scheme
ENDPB executive non-departmental public body
EPR electronic patient record
ERG external reference group
eSET elective single embryo transfer
ET embryo transfer
EWC expected week of confinement
GDC General Dental Council
GIFT gamete intrafallopian transfer
GMC General Medical Council
GMS general medical services
GP general practitioner
GSL general sales list
GTAC Gene Therapy Advisory Committee
GUM genito-urinary medicine
GWC General Whitley Council
HAI hospital-acquired infection
HASC(CHS)A Health and Social Care (Community Health and Standards) Act 2003
HASWA Health and Safety at Work Act
HCPC Health and Care Professions Council (replacing HPC)
HCSS healthcare support staff
HEI higher education institution
HFEA Human Fertilisation and Embryology Authority
HGAC Human Genetics Advisory Commission
HGC Human Genetics Commission
HIV human immunodeficiency virus
HPA Health Protection Agency
HPC Health Professions Council (renamed HCPC)
HRA Health Research Authority (established 2011)
HSC Health and Safety Commission
HSC Health Service Commissioner
HSC health service circular
HSCIC Health and Social Care Information Centre
HSE Health and Safety Executive
HTA Human Tissue Authority
IAG Independent Advisory Group
IBB Independent Barring Board
ICAS Independent Complaints Advocacy Services
ICO Information Commissioner's Office
ICRS integrated care records service
IC(T)U intensive care (treatment) unit
IDMG inter-departmental ministerial group
IM and T information management and technology
IMCA independent mental capacity advocate
IMHA independent mental health advocate
ISA Independent Safeguarding Authority (replaced by DBS)
IUD intrauterine device
IV intravenous(ly)
IVF *in vitro* fertilisation
LA local authority
LBC liquid-based cytology
LCP Liverpool Care Pathway
LHB local health board (equivalent of PCT in Wales)
LINKS Local Involvement Networks
LOLER Lifting Operations and Lifting Equipment Regulations
LPA lasting power of attorney
LREC local research ethics committee
LSA Local Supervising Authority
LSC Legal Services Commission
LSP local service provider
MA maternity allowance
MCA Mental Capacity Act
MCA Medicines Control Agency (*see* MHRA)
MDA Medical Devices Agency (*see* MHRA)
MDU Medical Defence Union
MGN Mirror Group Newspapers
MHAC Mental Health Act Commission
MHRA Medicines and Healthcare products Regulatory Agency (since 1 April 2003)
MPP maternity period pay
MREC multi-centre research ethics committee
MRSA methicillin-resistant *Staphylococcus aureus*
MSW maternity support worker
NAI non-accidental injury
NAO National Audit Office
NASP national application service provider
NCAA National Clinical Assessment Authority
NCAS National Clinical Assessment Service

NCSC National Care Standards Commission
NFI National Fraud Initiative
NFR not for resuscitation
NHS National Health Service
NHSBT NHS Blood and Transplant
NHSTDA NHS Trust Development Authority
NHSFT NHS Foundation Trust
NHSLA National Health Service Litigation Authority
NHSU National Health Service University
NICE National Institute for Health and Care Excellence
NIGB National Information and Governance Board for Health and Social Care
NIHR National Institute for Health Research
NMC Nursing and Midwifery Council
NMQP non-medically qualified practitioners
NMW national minimum wage
NPEU National Perinatal Epidemiology Unit
NPfIT National Programme for Information Technology
NPRB National Pay Review Body
NPSA National Patient Safety Agency
NQB National Quality Board
NRES National Research Ethics Service (replaced COREC in 2007)
NRLS National Reporting and Learning System
NRT nicotine replacement therapy
NSDU National Safeguarding Delivery Unit
NSF National Service Framework
ODP operating department practitioner
OFV opportunities for volunteering scheme
OOS occupational overuse syndrome
OPD Outpatients department
OPSI Office of Public Sector Information
OTC over the counter
PALS Patient Advice and Liaison Service
PBC prudential borrowing code
PCC Professional Conduct Committee
PCG primary care group
PCMH Plea and Case Management Hearing
PCT primary care trust
PDR personal development review
PEP post-exposure prophylaxis
PGD pre-implantation genetic diagnosis
PGD patient group directions
PIAG Patient Information Advisory Group
PMS primary medical services
POM prescription-only medicine
POVA protection of vulnerable adults
PPE personal protective equipment
PPIFs patient and public involvement forums
PREP post-registration education and practice
PRN *pro re nata* (as required, whenever necessary)
PRSB Professional Records Standards Body
PSA Professional Standards Authority for Health and Social Care (replacing CHRE)
PUWER Provision and Use of Work Equipment Regulations
PVS persistent vegetative state
QA quality assurance
QC Queen's Counsel
QOF quality outcome framework
QSG Quality Surveillance Group
QW qualifying week
RATE Regulatory Authority for Tissue and Embryos
RCM Royal College of Midwifery
RCN Royal College of Nursing
RCP Royal College of Psychiatrists
RCPCH Royal College of Paediatrics and Child Health
RCS Royal College of Surgeons
REC research ethics committee
RIDDOR Reporting of Injuries, Diseases and Dangerous Occurrences Regulations
RMN registered mental nurse
RMO responsible medical officer
RSI repetitive strain injury
SAP single assessment process
SCIE Social Care Institute for Excellence
SCPHN specialist community public health nurse
SCR summary care record
SEN state enrolled nurse
SHA strategic health authority
SLA service level agreement
SMP statutory maternity pay
SOP standard operating procedures
SPP statutory paternity pay
SRSC Safety Representative and Safety Committee
SSI Social Services Inspectorate
SSP statutory sick pay
TB tuberculosis
T+P temperature and pulse
TUR & ER 93 Trade Union Reform and Employee Rights Act 1993
UKCC United Kingdom Central Council for Nursing, Midwifery and Health Visiting
UKCRC United Kingdom Clinical Research Collaboration
UKECA United Kingdom Ethics Committee Authority
ULTRA Unrelated Live Transplant Regulatory Authority
VBS Vetting and Barring Scheme
VD venereal disease
WDC workforce development confederation
WTD Working Time Directives

Foreword to first edition

The author, Bridgit Dimond, is well known to nurses working in Wales. She has assisted many of us in developing an increased awareness of the need for expert legal advice and knowledge of the law to inform our practice in the interests of our patients, our colleagues and ourselves.

The text of the book illustrates very graphically that she has skilfully drawn her material from frequent contact with nurses, midwives and health visitors working in a variety of settings. The *topics* are relevant to the work of the practitioner, the educator and the manager and presented in a form that encourages the reader to delve further into the subject. Although this book is seen by the author primarily as a work of reference, the very fact that many of the issues identified are at the centre of the profound changes taking place in the pattern and organisation of services, and within the nursing profession itself, ensures that it will have wider interest and will assist nurses considerably with understanding their responsibilities in a period of significant development.

Bridgit Dimond has, through this publication, yet again provided valuable assistance for improving the practice of nursing – by encouraging nurses to acquire a deeper understanding of the relevant legal aspects of the work of nursing.

Miss M. Bull
Chief Nursing Officer
Welsh Office

Foreword to seventh edition

In an era where there is a higher scrutiny on nursing practice than ever, Bridgit Dimond's text is essential reading for nurses and those involved in the management of nurses.

Bridgit Dimond is to be congratulated on the seventh edition of her book which will do so much to help nurses understand their responsibilities in relation to the law and to remind nurses of both their ethical and moral responsibilities in relation to their own personal conduct and for the care for their patients and service users.

I trust that all nurse educators will ensure that as part of the teaching and training of nurses, consideration is given to this text and attention is drawn to the serious implications of caring for people who are often at their most vulnerable.

With the increasing complexity of nursing including the carrying out of tasks that hitherto were the province of our medical colleagues, such as prescribing, this text will help individuals understand the requirements of the law, how to safeguard themselves and, just as importantly, how to ensure there are safe standards of patient care.

The Mid Staffordshire inquiry and the public's greater awareness of their rights and responsibilities should not be something nurses should be fearful of. However, they should be cognisant that their practice can be challenged and scrutinised to a level never previously experienced.

This valuable text should be readily available to all nursing students and qualified nurses and in the libraries of all nursing schools and other institutions, such as the Royal College of Nursing. I hope that people in authority will highlight its existence and the real need for nurses to read it.

Dr Peter Carter OBE
Chief Executive
Royal College of Nursing

Preface to first edition

I make no apologies for producing a book on law for nurses. It is apparent to me that nurses are increasingly aware of the need for up-to-date legal knowledge, that they realise that they practise their profession within the constraints and limitations of the law and very occasionally with the powers of the law and that they are increasingly held responsible. The approach adopted here is, however, a practical one. I attempt to start with the problems and move outwards to the legal significance of the events described. The result is very different from the traditional textbook approach. My aim is not to teach the nurse the academic niceties of contract law or of the law of negligence but, rather, to take some everyday situations in which the nurse finds herself and examine the legal consequences of the situations so that she comes to an understanding of the legal principles that arise. In this way her legal understanding will develop and she will then be able to apply those principles to similar situations.

I am aware of the dangers of this approach. Any situation is, of course, very complex; there are considerable dangers of oversimplification. However, I am not of the persuasion that because a little knowledge is a dangerous thing law must be kept for the lawyers. It is essential that nurses understand the legal implications of their work so that they can protect both themselves and their patients. With a basic understanding of the law they should know when they need to seek expert legal advice and also know what elementary precautions they should be taking to protect themselves. Where possible, actual wording of Acts of Parliament has been placed in figures, so that it would not break the flow of the text, and so that the nurse can see the actual wording. It is anticipated that the book would be used as a source book to dip into rather than be read from cover to cover. The appendices thus include much reference information and the index has been designed with this purpose in mind. I have not flinched from including some of the technical legal terms and have given the case references so that the nurse who wishes to pursue the subject in more detail can follow the cases.

Many of the problems discussed here are ones cited to me by hundreds of nurses in seminars I have conducted throughout the country and this explains the apparent concentration on issues relating to negligence litigation. This is a field that nurses are considerably anxious about and constantly ask questions on problems relating to the extended role, responsibility for others and aspects relating to resourcing.

A note of caution: there are many situations that arise where there are no clear legal guidelines; the dilemmas arising are of an ethical rather than a legal dimension. The law is both narrower and wider than the field of ethics. There are some problems where ethical issues arise and where the law as yet provides no specific guidelines other than the basic legal principles: for example many issues arising from the developments in reproductive technology have still not been covered by legislation although, following the Warnock Report, this situation is about to be changed. In other respects, the law is wider than ethical issues: for example the need to register a birth, marriage or death raises no ethical issues other than that of obeying the law. Some of these ethical issues will be covered although, clearly, it is only where there is a breach of the law that specific guidance can be given. This is not to say that ethical issues are not important. It is simply that there is no space for their discussion here. However, reference is made in the extended reading list to books that deal solely with these issues.

Some of the discussion relates to nursing procedure and practice that does not have legal status. However, it is considered essential to include this in a work of this kind.

A word about terminology. I have used the term ‘nurse’ to cover all categories of nursing staff from auxiliary to nursing officer. When it is significant that the nurse has a particular rank, then I have used the appropriate grade. I have also tended to refer to the nurse as she; this is not meant to be sexist: it

simply covers the vast majority of nursing staff and is less clumsy than any contrived alternative such as 'he/she'. To illustrate practical situations two different terms have been applied: **situation** to describe an imaginary series of events that could well occur but, in fact, the names are fictitious and not intended to refer to any actual persons living or dead; **case** to cover actual cases that were heard before the courts. Not all of these refer to nursing staff; indeed the actual number of cases in which nurses have personally been defendant or accused are comparatively rare. Many of the cases involve medical staff or are not directly concerned with the health professions. However, principles that do arise are significant for nursing practice and on that account have been included. Because law even more than healthcare is a jargon-dominated profession, a glossary has been included to explain those legal terms that could cause difficulties.

The aim is to provide some practical guidance to nursing staff on the many problems that they might encounter. Part I of the book deals with those general problems facing all nursing staff, covering principles of professional negligence and the rights of the patient and also those areas where the nurse herself is a victim of an accident or assault, etc. Part II deals with those specialist areas that are more likely to be encountered by nurses working in different fields but they may also be of general interest. Finally, certain areas that seem to require attention in their own right such as property matters, handling complaints, drugs and AIDS are considered separately, in Part III. Appendices provide additional useful information to which the nurse may wish to refer. I have endeavoured to state the law for England and Wales at 31 August 1989.

I am grateful for the support and encouragement of so many in the preparation of this book. I am considerably indebted to Tessa Shellens and Dr Sue Revel who painstakingly read through the draft and offered much advice and guidance and to Mrs Brenda Hall, my indexer, for her patience, tenacity and thoroughness. I also thank Ann Cross for her detective work. In addition, I am grateful to the following who read individual sections: Dawn O'Brien, Val Taylor, Margaret Winter, Anne Ryall-Davies, Sylvia Parker, Sue Bowers, Yvonne Peters, Gillian Davies, Helen Gray, Keith Weeks, Heather Anderson, Duncan Bloy, Helen Power, Jean Jones and Jean Whyte. The responsibility for the accuracy and contents of the book, however, remains mine. I also acknowledge the support and encouragement of my publishers, particularly Cathy Peck and Mike Cash.

Finally, I am conscious of the great debt I owe to my family whose delight in my work is encouragement in itself. I thank you all.

Preface to seventh edition

It is now over 25 years since the first edition of this book was published and once again the changes in law since the last edition in 2011 are significant and numerous. There have been momentous decisions of the Supreme Court and major new Acts of Parliament, including the Health and Social Care Act 2012 which has led to arguably the most controversial and disruptive reorganisation of health services in England since it was established in 1948. New legislation includes the Care Act 2014 which has been described as the most significant reform of care and support in more than 60 years. Public health is now under the aegis of local authorities and new watchdog organisations are enabling local people to have a say in the configuration of their health and social services. The aim of the book remains the same: to take some everyday situations in which the nurse finds herself and examine the legal consequences of these situations so that she comes to an understanding of the legal principles that arise. A knowledge of the legal context within which she practices enables the nurse to maintain her standards and exercise her professional role safely and confidently.

Acknowledgements

To Clare and Beck

I wish to convey my thanks to the Stationery Office for being able to print sections of the statutes and the statutory instruments, to the various law reports for the quotations from the cases and to the Department of Health for citing many documents. In the preparation of this seventh edition, I am grateful once again to so many people – not least the hundreds of nurses who have raised legal concerns at the seminars and conferences I have spoken at – that it is invidious to mention just a few by name. I would, however, like to convey my very grateful thanks to HH Judge Jacqueline Davies and HH Judge Jonathan Bennett, Dr Basil Cardoza, Robert Jenkins and Sian Jones. My thanks are also due to Bette, who prepared the index and tables and provided constant encouragement and support, as did my daughters Clare and Beck to whom this book is dedicated.

Part I

General principles affecting all nurses

Chapter 1

Introduction:

four arenas of accountability, the legal system and human rights

This chapter discusses

- Accountability
- Criminal liability
- Professional liability
- Civil liability
- Accountability to employer
- Relationship between the four arenas of accountability
- Sources of law
- Differences between civil and criminal law
- Civil actions
- Judicial review
- Legal personnel and legal complaints
- Legal language
- Human Rights Act 1998
- Freedom of Information Act 2000
- Devolved law-making powers

Introduction

This book is about the accountability of the nurse, which means that it is concerned with how far the nurse can be held in law to account for her actions. No distinction is drawn in this context between responsibility and accountability. Responsibility is seen as being liable to be called to account, answerable for, accountable for. Space does not permit discussion of the moral or ethical dimensions. There may be circumstances in which a nurse could be held morally responsible but there is no legal liability. For example, if a nurse fails to volunteer her services at the scene of a road accident, the law at present recognises no legal duty to volunteer help and thus any legal **action** brought against the nurse would fail. The Nursing and Midwifery Council (NMC) may, however, consider that she was guilty of **professional misconduct** and refer to its Code of Professional Conduct.[1] This issue is considered in chapter 3.

Many would hold that there is a moral duty to use her skills to help a fellow human being. Obviously, the law and ethics overlap, but each is both wider and narrower than the other. The Further Reading section promotes further consideration of the moral dilemmas in healthcare. The topics to be covered in this chapter are shown above.

Accountability

In this book we are concerned with the legal aspects of the accountability of the nurse. Many problems arise, however. Can a nurse, who does not have control over the resources, be held liable for harm suffered by a patient? Can a nurse be held responsible if she is ignorant, through lack of training, of certain procedures, and as a result the patient is harmed? Issues such as these are of significant concern to the nurse.

In order to be responsible it is necessary to have knowledge and this includes legal knowledge. Ignorance of the law is no defence and the nurse should be aware of the limits that the law imposes on her and also of the power it gives her. The increase in litigation over past years and the possibility of the nurse being personally involved in court proceedings is also a major anxiety for nurses.

Four main arenas of accountability in law are identified and discussed in detail. It might be considered that the most important has been omitted, i.e. accountability to oneself. This, however, is the moral dimension. There are no legal means of enforcing this form of accountability, although many would recognise it as being at the heart of the best of professional competence and skill.

Figure 1.1 illustrates the many areas of law that concern the nurse, and most of these topics are considered in Part I. Some of the more specialist areas, e.g. the Abortion Act, are considered in Part II of the book, which deals with different specialties. In this introductory chapter, the four fields of accountability that the nurse faces will be considered.

When a patient suffers harm or there is loss of or damage to property, the nurse may be called to account in four different courts and tribunals. Not all actions will be heard in all four but we shall give as an example an incident to illustrate the different procedures that could involve all four. Figure 1.2 illustrates the four arenas of accountability: accountability in the civil and criminal courts, in disciplinary proceedings and before the committees of the NMC.

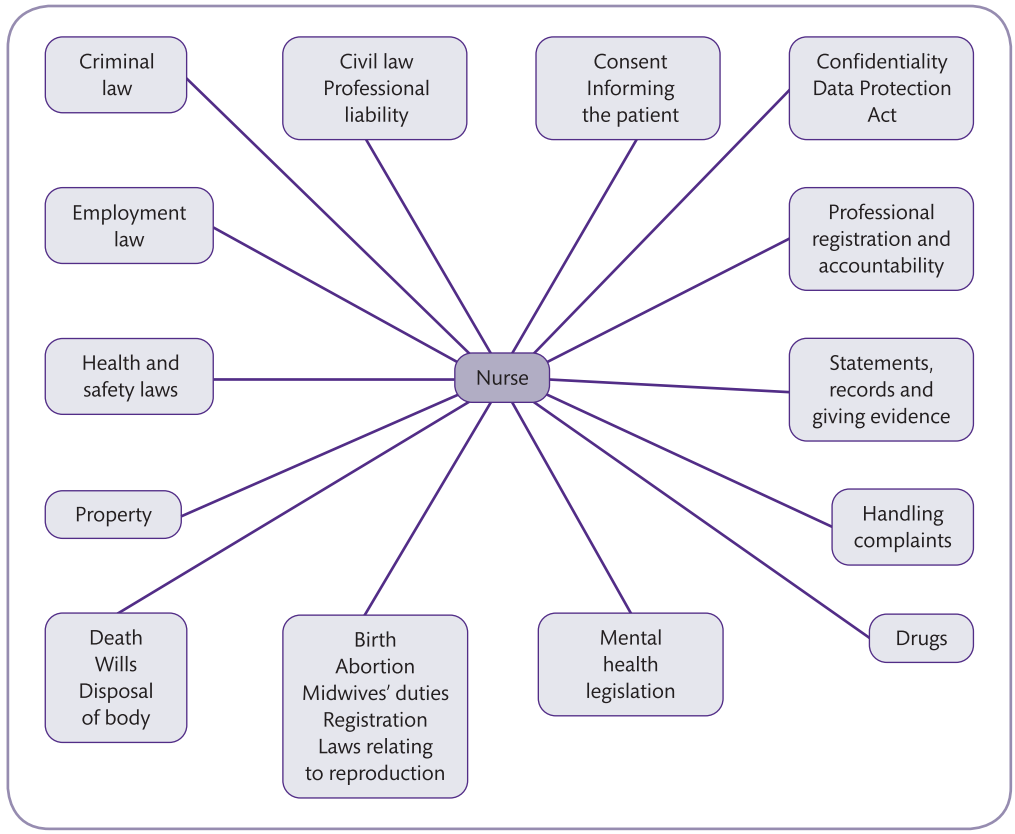

Figure 1.1 Areas that concern the nurse

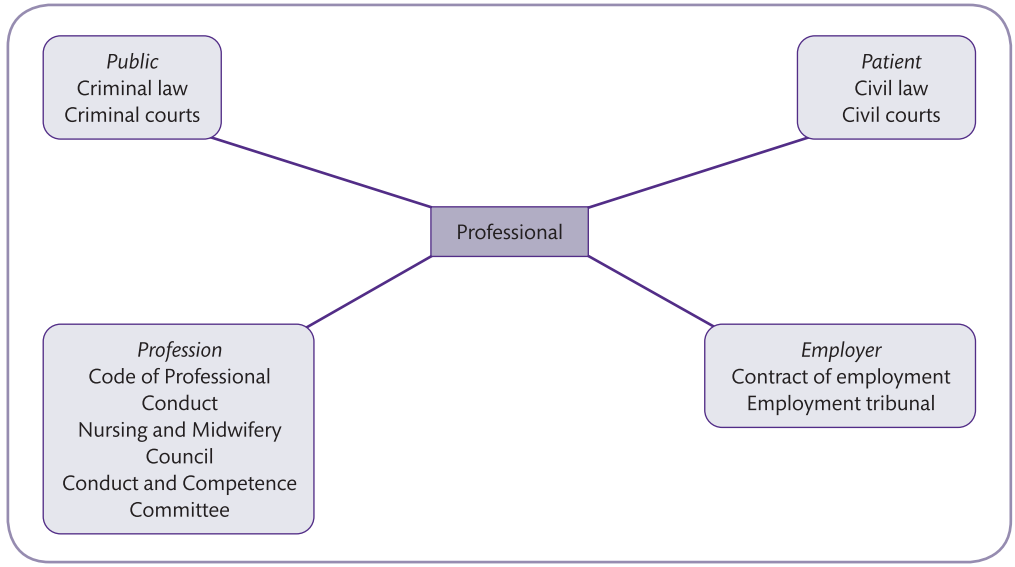

Figure 1.2 Arenas of accountability

Criminal liability

Practical Dilemma 1.1 The wrong drug

Staff Nurse Greaves was under considerable pressure on the children's ward. A spate of very seriously ill patients being admitted and a few staff absences from flu put great strains on the ward. A junior doctor wrote up a 4-year-old child with suspected meningitis for a high dose of antibiotics and told the staff nurse that he was prescribing a higher dose than was usual because of the severity of the child's condition. Normally, Staff Nurse Greaves would have checked the dose in the *British National Formulary* (*BNF*), but since they were so busy she took the doctor's word for it and gave the child the dose indicated on the sheet. Not long afterwards, the child showed signs of kidney failure and, despite efforts to save him, he died. Subsequently, the post-mortem investigations revealed that the child had been given a thousand-fold overdose of the antibiotic.

Death in circumstances such as those described in Practical Dilemma 1.1 would have to be reported to the **coroner**, who would immediately take control of the whole case, would probably order a post-mortem, which the relatives would have no right to refuse, and may hold an inquest to establish the cause of death. Details of the coroner's powers and the progress of an inquest and the changes following the Shipman Inquiry[2] are discussed in chapter 29. The staff nurse is likely to be asked to provide a statement and may well be called to give evidence at the inquest. The Chief Officer of Police or the Director of Public Prosecutions can request the coroner to adjourn the inquest on the grounds that a person may be charged with an offence committed in circumstances connected with the death of the deceased. The coroner also has the power to adjourn the hearing.

In a case like this, it is highly likely that, after investigation by the police, a decision might be taken to prosecute the nurse and the doctor for a criminal offence in connection with the child's death. Offences are classified as indictable or summary. An indictable offence is one that is heard before a judge and jury in the Crown Court, such as murder, manslaughter, rape and very serious offences. A **summary offence** is one heard by the magistrates in a magistrates' court, such as driving without due care and attention and some parking offences. Many offences can be tried in either a magistrates' court or the Crown Court and are known as 'triable either way'. (For further discussion on this see chapter 2.)

Figure 1.3 shows the system of our criminal courts. Even where a case is to be heard in the Crown Court because it concerns an offence that can be tried only on **indictment**, a short appearance by the defendant will still take place before the magistrates. A date will be set for the Plea and Case Management Hearing (PCMH) (see chapter 2).

In a situation like the one just described, it is quite likely that the inquest would be adjourned and that criminal proceedings would then take place against the staff. The prosecution has the burden of establishing to the satisfaction of the jury that the accused is guilty beyond reasonable doubt of the offence.

Once the jury has found the accused **guilty**, the judge has considerable discretion (except in the case of murder) over sentencing (see chapter 2) which ranges from an absolute discharge to imprisonment. There is a right of both the prosecution and the defendant to appeal against sentencing.

Criminal charges in relation to the care of the patient are rare, but when they do arise they attract considerable publicity. The **trial** of Dr Arthur in connection with the death of a severely handicapped Down's syndrome baby, the **committal proceedings** of Dr Hamilton on a charge under the Infant Life Preservation Act, the conviction of Dr Nigel Cox (for attempting to cause the death of a woman suffering from rheumatoid arthritis by prescribing and administering potassium chloride) and the case of Dr Shipman, who was convicted of the murder of 15 women, have raised serious issues in relation to the position of the doctor and the criminal law. (The nature of criminal proceedings is considered at