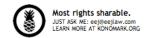
Informed Consent

Professor Eric E. Johnson Torts

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Informed Consent

- Is it battery?
- Is it negligence?

Requirements for action

- A risk should have been disclosed.
- It wasn't.
- The patient would have made a different decision if the risk had been disclosed.
- The patient was thereby injured.

Whose perspective?

- Physician rule
- Patient rule

Physician rule

 Plaintiff cannot recover absent proof that the customary practice of doctors in the relevant community is to inform of the risk that the defendant did not disclose.

Patient rule

- Physicians have a duty to disclose risks that are likely to affect the patient's decision. (Materiality)
 - Objective view
 - Subjective view

But-for causation

• If the physician had disclosed the risk, the patient would have made a different decision.

Therapeutic privilege

- Recognized in some states
- Emergencies
- Prior request by patient