CLINICAL NEGLIGENCE

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2 Temple Gardens
Purpose of talk:

1) Review position arrived at in clinical negligence cases
2) Relevance of clinical negligence to general insurance market
3) Breach of duty and causation in clinical negligence cases
4) Current major issues on quantum
5) Likely future developments
Topic 1: Current position in clinical negligence

- Development from low base level in 1960s and 1970s
- Likely explanations for low base level
  - Respect for doctors
  - Doctors closing ranks
  - Litigation culture in general
- expansion of litigation to current position
- likely explanation for current level of litigation
  - erosion of trust
  - more open medical culture
  - availability of state funding
  - absence of limitation periods in cases of disability
  - litigation culture generally
Increasing damages

- 1987 *Pritchard v. Cobden* – record £434,000
  (reduced on appeal)
- 1998 *Biesheuvel v. Birrell*  £9,281,000

- Major areas of increase:
  
  (a) multipliers
  
  - was maximum 16
  - now 10 year old female normal life expectancy 32

  (b) care claims

  *Hunt v. Severs* (93) total residential care claim £25,550 now commonly £100,000

  (c) general damages

  (d) inventive claims
Topic 2: Relevance of clinical negligence to general insurance market

- private insurance arrangements
- successive torts
  
  **Baker v. Willoughby** 1970 AC 467
- subsequent illness
  
  **Jobling v. Associated Dairies** 1982 AC 794
- mismanaged litigation
Topic 3: 
Breach of duty and causation in clinical negligence cases

- The Bolam test
- factual causation after Bolam
- difficult issues of causation
- partial causation
Topic 4: Current major issues on quantum

- Life expectancy

- Group living  
  - care
  - accommodation

- State funded care

- Loss of earnings and universal university education

- Investment costs and Page v. Plymouth 2004 EWHC 1154
Topic 5: Likely Future Developments

- Periodical payments

- Re-organisation of government-funded compensation