

# Tortious Liability for Medical Negligence in Nigeria and Mexico: A Critical Appraisal of Judicial Decisions

## *Responsabilidad civil extracontractual por negligencia médica en Nigeria y México: una valoración crítica de las decisiones judiciales*

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**Abstract:** This paper comparatively examines tortious liability for medical negligence in Nigeria and Mexico, as they are jurisdictional countries with contrasting legal traditions. Nigeria is a common law jurisdiction that relies heavily on judicial precedent and employs the Bolam test, Bolitho tests, and domestic cases such as *Okonkwo v Medical and Dental Practitioners Disciplinary Tribunal* (2001), while Mexico, on the other hand, is a civil law jurisdiction that strictly relies on codified statutes, including General Health Law (*Ley General de Salud*) and the Federal Civil Code. The paper identifies gaps in judicial consistency, evidentiary standards, and access to legal remedies in both countries, as they represent both the common and civil law jurisdictions. It critically appraises judicial reasoning and statutory interpretation in a bid to propose reforms. This is carried out through the corrective justice theory, the economic analysis of law theory, and the patient-centred human rights theory. Employing a doctrinal method of legal research and comparative analysis, the paper offers recommendations, including establishing specialized medical negligence tribunals for strengthening medical negligence adjudication in both jurisdictions.

**Keywords:** tortious liability; medical negligence; judicial decisions; common law (Nigeria); civil law (Mexico).

**Resumen:** Este trabajo comparativo examina la responsabilidad extracontractual por negligencia médica en Nigeria y México, debido a que son países jurisdiccionales con tradiciones jurídicas contrastantes. Nigeria tiene una jurisdicción propia del derecho común, que depende en gran medida en precedentes judiciales, y emplea la prueba Bolam, las pruebas Bolitho y casos nacionales como *Okonkwo v Medical and Dental Practitioners Disciplinary Tribunal* (2001), mientras que México, por otro lado, es una jurisdicción propia del derecho civil que estrictamente emplea un estatuto de Códigos, incluyendo la *Ley General de Salud* y el Código Civil Federal. El presente trabajo identifica lagunas en la consistencia judicial, estándares de evidencia, y

acceso a remedios legales en ambos países, dado que ambos presentan jurisdicciones propias del derecho común y del derecho civil. Evalúa críticamente el razonamiento judicial y la interpretación de las leyes en un intento de proponer reformas. Esto se lleva a cabo por medio de la teoría de justicia correctiva, el análisis económico de la teoría legal, y la teoría de los derechos humanos centrada en los pacientes. Empleando un método doctrinal de investigación legal y análisis comparativo, el presente trabajo ofrece recomendaciones, incluyendo el establecimiento de Tribunales especializados en negligencia médica para fortalecer la adjudicación de casos de negligencia médica en ambas jurisdicciones.

**Palabras clave:** responsabilidad civil; negligencia médica; decisiones jurídicas; common law (Nigeria); derecho civil (Mexico).

## I. Introduction

Medical negligence is an integral aspect of torts. It gives rise to liability, especially civil liability (tortious liability). It represents a critical link between healthcare delivery and legal accountability, raising profound implications for patient rights, professional liability, and hence judicial intervention. The principle that governs tortious liability for medical negligence is adequately established across the globe, serving as a mechanism through which individuals who suffer injury due to substandard medical care, weak treatment, poor facilities, etc., can seek redress (Enemuo, 2021-2012). Thus, the proof of medical negligence is grounded in the fundamental principles of standard duty of care, breach of duty, causation, and damage. However, the manner in which courts adjudicate on medical negligence actions varies significantly from one jurisdiction to another, subject to the legal system in operation.

Legal systems are commonly classified into two broad traditions, that is, common law and civil law (Rom et al., 2021). For the common law jurisdictions, where the Nigerian legal system belongs, the adjudication on medical negligence is often influenced and guided by judicial precedents. This is because courts rely on past decisions to determine liability and what forms the applicable standard of care (Hurwitz, 2004; Silver, 1992). To support this legal tradition, the Bolam test, originating from the case of Bolam v Friern Hospital Management Committee (1957), remains a basis in Nigerian medical negligence jurisprudence, as it requires that a healthcare provider operate only in conformity with a responsible

body of medical opinion within the profession. Similarly, flexibility is in practice under the common law tradition. It allows courts to adopt negligence principles in response to emerging healthcare challenges. This flexibility practice is observed in *Okonkwo v Medical and Dental Practitioners Disciplinary Tribunal* (2001), where the Supreme Court of Nigeria emphasized the necessity of expert medical testimony in medical negligence claims for a just decision.

Conversely, civil law jurisdictions, to which the Mexican legal system belongs, adopt a codified approach to medical negligence. By implication, its liability is meticulously governed by statutory provisions, rather than reliance on judicial interpretations and precedent. On this note, the Mexican Federal Civil Code and the General Health Law (*Ley General de Salud*) are the core legal frameworks that outline the duty of care expected from medical professionals within the jurisdiction. Thus, the courts focus on the application of codified norms and approaches rather than the judicial precedent, which is the core in the common law jurisdictions like Nigeria (González, 2020). In the same vein, contrary to the court system under the common law, where judges have significant discretion in interpreting legal principles, the civil law system advocates strict adherence to statutory provisions as enshrined in the extant codified laws. More often than not, this limits judicial flexibility in negligence cases (Ramírez, 2021). Despite this structured approach to civil law that aims to ensure consistency, it may, however, restrict the courts' ability to develop nuanced legal standards responsive to complex medical disputes.

Given the foregoing structural dichotomy, there is no doubt that the comparative study of tortious liability for medical negligence in Nigeria (common law) and Mexico (civil law) establishes a compelling legal discourse. While the duo aims to protect patients and ensure professional accountability for negligence, their distinct adjudicatory mechanisms create divergent challenges and opportunities. It is trite that the Nigerian legal system relies so much on precedent, which provides adaptability but may, nevertheless, lead to inconsistent rulings. Similarly, the Mexican statutory framework ensures uniformity but may also lack the flexibility required for complex medical cases. In addition, the required evidence (together with its burden of proof) and available remedies

differ across both jurisdictions, as they influence access to justice for victims of medical negligence.

This paper is aimed at critically appraising the judicial approaches to medical negligence in Nigeria and Mexico. It assesses how courts interpret, apply, and enforce tortious liability within their respective jurisdictions, considering the extant legal frameworks. It will identify the strengths and weaknesses of both jurisdictions, hence drawing comparative lessons that can inform judicial practice, legal reform, and policy development. This way, the paper will contribute to the broader field of comparative tort law by offering insights into how both countries in their respective jurisdictions shape medical negligence jurisprudence and the extent to which they navigate professional autonomy, patient rights, and legal accountability.

## II. Methodology

This study adopts a doctrinal method of legal research and comparative analysis. The doctrinal method employed analyzing statutes, case law, and academic literature, judicial decisions from Nigeria and Mexico, legal commentaries, textbooks, and peer-reviewed journal articles. The comparative analysis entails legal analysis of judicial decisions, assessing their reasoning, consistency, and review statutory provisions in both jurisdictions.

## III. Justification of the Study

Medical negligence remains a global concern with pivotal implications for patient safety, human rights, and legal accountability in both developed and developing nations. Extensive research exists on tortious liability for medical negligence in advanced economies, there is a marked scarcity of comparative legal studies focusing on developing countries (like Nigeria and Mexico) with differing legal traditions (World Bank, 2023). This study is justified by addressing that gap through examining and contrasting Nigeria, a common law jurisdiction (a developing nation with low-

er-middle-income economy), and Mexico, a civil law jurisdiction (a developing nation with an upper-middle-income economy), with a specific focus on judicial decisions on tortious liability for medical negligence.

The choice of selecting Nigeria in this study is, however, justified on several grounds. As Africa's most populous nation and one of the largest economies, Nigeria presents a critical case for analyzing the evolution and effectiveness of medical liability laws in common law systems within developing nation contexts (Statista, 2025; Terwase et al., 2014). Secondly, the Nigerian legal system is inherited from English common law; hence, it heavily relies on judicial precedent. Nevertheless, medical negligence litigation in Nigeria is more often than not impeded by weak institutional frameworks and limited patient awareness, as well as inconsistent judicial standards and decisions (Ojo, 2021; Okeke, 2020). This way, an analysis of Nigeria's jurisprudence will reveal the strengths and limitations of the Nigerian precedent-based tort system in handling complex situations like medical injury claims resulting from medical negligence.

The choice of Mexico, on the other hand, is justified by the fact that Mexico operates under a civil law system built on comprehensive codified legislation (Law Gratis, 2025; LawShun, 2025). Such legislation includes the Federal Civil Code, the General Health Law, and administrative regulations issued by the Comisión Nacional de Arbitraje Médico (CONAMED). Mexican legal tradition and practice emphasizes statutory duties and responsibilities over precedent; hence, medical negligence claims in Mexico repeatedly follow an amalgam pathway of administrative and judicial review (González, 2020; López-Muñoz et al., 2018). Notwithstanding its structured legal architecture, Mexico faces its challenges, such as limited access to justice for low-income populations, the under-reporting of malpractice claims, and disparities in enforcement (Sánchez-González & Gómez-Dantés, 2019).

Thus, bringing the duo of jurisdictions vis-à-vis, the study offers a consequential lens through which the practical and doctrinal challenges of tort law in medical negligence litigation are explored across the two legal systems. It contributes to legal scholarship by proposing reforms rooted in comparative insights and so re-

sponsive to the socio-legal realities of both countries. In the whole sum, the justification for selecting Nigeria and Mexico lies in their shared status as developing economies, divergent legal systems, and the potential for cross-jurisdictional learning aimed at improving healthcare accountability.

## IV. Conceptual Clarification

### 1. *Negligence*

Negligence in tort law and legal parlance is referred to as the breach of an existing duty of care, and such breach has resulted in an injury to the person to whom the duty of care was owed (Oluokun, 2024). Akpata JSC in *Odinaka v. Moghalu* (1992) summed up negligence as “...the omission to do something which a reasonable man under similar circumstances would do or the doing of something which a reasonable and prudent man would not do.” Similarly, in *Ojo v Gharoro* (2006), negligence has been described as a fluid principle which has to be applied to the most diverse conditions and problems of human life. In the opinion of this paper, the word ‘negligence’ could simply mean failure or inability to meet with the acceptable standards or conduct of a reasonable person.

### 2. *Medical Negligence*

It is consequential to underscore that a wide variety of situations can lead to a medical negligence claim. These situations ranged, for instance, from a moment a doctor left a sponge in a patient’s body during an operation to failing to tell a patient that a prescribed drug might cause heart failure. Majorly, the categories of medical negligence are encapsulated into failure to diagnose or wrongful diagnosis of a patient to discover a patient’s illness, improper treatment of a patient by a doctor or appropriate treatment but administered incompetently by a doctor, and failure to warn a patient of known risks (Oluokun, 2024). Accordingly, an action in medical negligence must be able to prove the following elements:

- a) the existence of a duty of care;
- b) failure to exercise such duty of care by the medical practitioner;
- c) resultant injury to the patient as a result of the breach of duty; and
- d) causation, a causal link between the acts complained and damages suffered.

Furthermore, various acts or omissions can amount to grounds for medical negligence and causes of action to determine tortious liability. These, according Oloukun, (2024), include:

- a) Failure to attend promptly to a patient requiring urgent attention when the doctor was in a position to do so.
- b) Improper or incompetent assessment of a patient, or incorrect diagnosis, particularly when the clinical features were so glaring that no reasonable and competent doctor could have failed to notice them.
- c) Failure to advise, or proffering wrong advice, to a patient on the risk involved in a particular operation or course of treatment, especially if such an operation or course of treatment is likely to result in serious side effects or harms.
- d) Failure to obtain the consent of the patient (informed or otherwise) before proceeding with any surgical procedure or course of treatment, when such consent was necessary.
- e) Unjustifiable error in treatment, e.g., amputation of the wrong limb, inadvertent termination of a pregnancy, prescribing the wrong drug in error for a correctly diagnosed ailment, et cetera.
- f) Failure to refer or transfer a patient in good time when such a referral or transfer was necessary.
- g) Failure to do anything that ought reasonably to have been done under any circumstance for the good of the patient.
- h) Failure to see a patient as often as his medical condition warrants or to make proper notes of the practitioner's observations and prescribed treatment during such visits or to communicate with the patient or his relation as may be necessary with regard to any developments, progress or prognosis in the patient's condition.

- i) Failure to admit into hospital a patient whose condition requires hospitalization.
- j) Leaving a surgical instrument or swab in the body of a patient after an operation.
- k) Failure to crossmatch blood before transfusion.
- l) Using a patient for experimental purposes without his consent.
- m) Use of unsterilized tools.
- n) Where a swab is left in the operation site or the patient wakes up in the course of the surgical operation despite the general anaesthetic.
- o) Unjustifiable infringement on any of the rights of the patient in the course of treatment, e.g., undertaking a line of treatment that is against the religion of a patient and the will of the patient.

### 3. *Tortious Liability*

Liability is an accountability and responsibility to another, which is enforceable by civil remedies or criminal sanctions for injuries caused due to a breach of duty of care (Garner, 2004). In a nutshell, it is a situation whereby a person is liable for failure to meet with the existing duty of care. Liability generally includes tortious liability (civil), criminal liability, corporate liability, strict liability, vicarious liability, etc. The focus of this study is tortious liability, which is “the kind of legal responsibility that adheres to a person or legal entity as a result of an injury done to someone else or to some other entity” (Oller & Oller, 2010). Accordingly, this type of liability applies in the event of an injury. Hence, tortious liability is apparently civil in nature, as opposed to any other form of liability. It is therefore pertinent to underscore that the available form of liability for medical negligence in Mexico is strictly tortious liability (civil). However, criminal liability rarely surfaced except where intentional harm arises from the negligence. Whereas, in the Nigerian context, the liability is tortious but not exclusively, especially in serious cases involving death or gross negligence which may attract criminal prosecution, and professional regulatory bodies may enforce additional sanctions.

In a nutshell, tortious liability is fundamentally a civil liability, but the same act may also constitute a criminal liability, particularly in Nigeria when negligence leads to death. In that case, both the civil (tortious) and criminal liabilities can co-exist, depending on whether the victim sues privately or the State prosecutes for a public wrong.

## V. Theoretical Framework

Legal theories provide a foundational lens through which medical negligence and its adjudication can be understood. This study will be guided by three key theoretical frameworks:

- a) **Corrective Justice Theory:** The theory is championed by Aristotle and later refined by legal scholars, including Ernest Weinrib (2012). It posits that tort law is a mechanism for restoring and ensuring a balance between the wrongdoer and the victim. In medical negligence, this theory justifies compensatory damages, ensuring that patients whose medical duty of care is being breached receive adequate redress. This framework is particularly relevant in Nigeria, where courts rely on common law principles to assess damages, and in Mexico, where statutory provisions determine compensation. Thus, corrective justice is applied differently in the precedent-based jurisdictions (e.g., Nigeria) and codified system-based jurisdictions (including Mexico)
- b) **Economic Analysis of Law:** The theory was developed by Richard Posner (2007). It suggests that legal rules should be evaluated based on their efficiency in allocating resources and minimizing social costs. Going by this theory, medical negligence laws should aim to balance the interests of patients and healthcare providers by ensuring that liability rules do not deter medical professionals from taking reasonable risks nor allow negligent practitioners to escape accountability. For instance, in Nigeria, litigation costs and judicial delays create barriers to accessing justice, while in Mexico, bureaucratic inefficiencies hinder timely adjudication. This theory, therefore,

provides an essential framework for evaluating the effectiveness of each system in deterring medical malpractice or negligence while promoting optimal healthcare delivery.

- c) **The Patient-Centred Approach and Human Rights Theory:** This theory emphasizes that medical malpractice or negligence law should prioritize patient rights, autonomy, and access to justice. The right to health, as recognized in international human rights instruments (e.g., Article 12 of the International Covenant on Economic, Social and Cultural Rights), underscores the duty of governments to ensure an effective legal framework for addressing medical negligence (Tobin, 2019). For illustration, in Nigeria, weak regulatory oversight allows medical negligence cases to go unpunished, and in Mexico, rigid statutory constraints limit judicial discretion. Thus, going by this theory, the legal frameworks in both jurisdictions inadequately protect patients from harm, thereby affecting their right to legal redress.

## **VI. Legal and Institutional Frameworks Regulating Tortious Liability for Medical Negligence in Nigeria and Mexico**

The statutory and institutional frameworks that govern medical negligence as a tort in both Nigeria and Mexico are a worthwhile point of discourse. While Mexico has a civil law system and inquisitorial model that combines judicial, administrative, and arbitral remedies, Nigeria follows a common law and adversarial model. Below is a comparative, itemized discussion on the laws and institutions regulating medical negligence in both jurisdictions. Thus:

### **1. *Legal and Institutional Frameworks (Nigeria)***

The legal regime regulating tortious liability for medical negligence in Nigeria operates through a combined effect of common law principles, statutory enactments, and professional regulatory codes. The combined effect collectively set up the standards of care owed by medical practitioners, the remedies available to aggrieved

patients in the case of breach, and the disciplinary consequences of professional misconduct.

### *A. Legal Framework in Nigeria*

Legal framework regulating tortious liability for medical negligence in Nigeria include:

#### *a. The Constitution of the Federal Republic of Nigeria, 1999 (as amended)*

The Nigerian constitution, by virtue of Section 34, Chapter IV, guarantees the right to dignity of the human person. Accordingly, every individual in Nigeria is entitled to respect for their dignity, and it prohibits torture, slavery, and forced labour. This section is extended, by implication, to ensuring that no one can be subjected to inhuman or degrading treatment.

#### *b. Common Law of Tort (Inherited from English Law)*

Nigeria's common law tradition is sourced from the received English law as enshrined under Section 32 of the Interpretation Act, Cap I23 LFN 2004. Section 32 of the Act is simply a mechanism to integrate aspects of English law (including the doctrines of equity and statute of general application) into the Nigerian legal system. It provides a foundational avenue for legal principles to flow, particularly where Nigerian law is silent or unclear. In a nutshell, it is a legacy of Nigeria's colonial past which assists in resolving legal issues like medical negligence. The foundational precedent on the duty of care in Nigeria remains *Donoghue v Stevenson* (1932), where Lord Atkin's "neighbour principle" established that professionals owe a duty to avoid acts or omissions that are foreseeably harmful to those in proximity. In the light of adopting the principle, Nigerian courts have succeeded in medical negligence litigation, such as in *Ojo v Gharoro* (2006), where the Supreme Court affirmed that medical doctors owe patients a duty to exercise reasonable care and skill during treatment.

### c. Criminal Code Act, Cap C38 LFN 2004

Certain acts of medical negligence may attract criminal responsibility despite the undisputed fact that tort law primarily governs civil liability. Sections 303–308 of the Criminal Code impose liability for unlawful acts or omissions resulting in death, killing of a person capable of being killed, or grievous harm. Such liability also includes a situation where a medical professional fails to use reasonable skill in their duty. In *R v Bateman* (1925), applied in Nigerian jurisprudence, it was established in that case that criminal negligence arises only when the breach is so gross as to warrant criminal sanction.

### d. Medical and Dental Practitioners Act, Cap M8 LFN 2004

This Act establishes the Medical and Dental Council of Nigeria (MDCN). By the Act, the Medical and Dental Council of Nigeria is vested with the mandate to regulate the practice of medicine and dentistry and to investigate and sanction malpractice and professional misconduct. For emphasis, Section 16 of the Act provides that medical practitioners may face suspension or removal from the register if found guilty of professional misconduct or negligence.

### e. Code of Medical Ethics in Nigeria (2008)

This code operationalizes the ethical and professional duties required of medical practitioners. It specifies the required standard of care for medical professionals, obligations of informed consent of patients, and prohibitions against unprofessional conduct. Thus, breach of these provisions, particularly in diagnosis, surgical practice, or patient communication, forms the core of disciplinary action and so informs the carrying on with civil proceedings (Okonkwo, 2014).

### f. Federal Competition and Consumer Protection Act (FCCPA) 2018

Section 120 of the FCCPA empowers patients (as a consumer) to seek remedies for substandard medical services under consumer

protection law. In *Nigerian Bottling Co. v. Ngonadi* (1985) 1 NWLR (Pt. 4) 739, although not a medical negligence case, the Court affirmed that service providers, including medical institutions, owe a duty to deliver services of merchantable quality. This principle also applicable to healthcare delivery.

## **B. Institutional Frameworks in Nigeria**

The enforcement of tortious liability for medical negligence in Nigeria relies on a network of regulatory, judicial, and quasi-judicial bodies. These include:

### **a. Medical and Dental Council of Nigeria (MDCN)**

The Medical and Dental Council of Nigeria (established by the MDCN Act, 2004) is the core statutory agency and enforcement body for the medical profession in Nigeria. It licenses practitioners, sets professional standards, and conducts disciplinary proceedings through its Disciplinary Tribunal. By virtue of Section 16 of the Medical and Dental Practitioners Act, the Tribunal may issue sanctions for medical malpractice and negligence. It is important to note that these sanctions can range from admonition or suspension to the erasure of the practitioner's name from the register, as the case may be.

### **b. Nigerian Courts (High Courts and Appellate Courts)**

Courts, particularly the High Courts, have unlimited jurisdiction over cases of tortious liability for medical negligence. These courts adjudicate on liability by assessing damages caused and interpreting common law and statutory provisions applicable to medical negligence in Nigeria. Appellate courts, including the Supreme Court, play a pivotal and central role in refining legal principles through binding precedents, as seen in *Ojo v Gharoro* (supra) and *Esabunor v Faweya* (2019), which resolved with patient rights and consent in medical treatment.

### c. National Human Rights Commission (NHRC)

The firsthand mandate of the NHRC is concerned with human rights violations, yet the NHRC may intervene in cases involving gross violations of patient rights, particularly those that border on negligence in the public health sector and amount to inhuman or degrading treatment under Section 34 of the 1999 Constitution and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (1983).

## 2. *Legal and Institutional Frameworks (Mexico)*

The regime of tortious liability for medical negligence in Mexico is all-encompassing of both the legal and institutional frameworks. The effect of which elucidates the in-depth need for a comprehensive understanding of such liability, which also informs whether a reform is required for an alignment with social justice as well as guaranteeing consistency and fairness in the trial of the tortious liability for medical negligence.

### A. *Legal Frameworks in Mexico*

Mexico's legal framework governing tortious liability for medical negligence is apparently anchored in its civil law tradition, which is being influenced by continental European legal systems and shaped by the Mexican Constitution, statutory provisions, and administrative regulations. Hence, tortious liability arises from the breach of a duty of care required of healthcare professionals, whether in public or private practice, and such breach is adjudicated through both the courts and administrative panels. The legal frameworks started as follows:

#### a. *Mexican Constitution (Constitución Política de los Estados Unidos Mexicanos)*

Articles 1 and 4 of the Mexican Constitution contain provisions that cover constitutional guarantees relevant to medical negligence. Article 1 prohibits discrimination against human persons and en-

sure protection of human rights. The provision includes the right to health. In the same vein, Article 4 apparently guarantees access to healthcare services in Mexico and access to legal recourse for its violations. For emphasis, the Supreme Court in *Amparo en Revisión 547/2014* recognized medical malpractice as a potential violation of the constitutional right to health, opening the access door for civil actions alongside constitutional remedies.

#### **b. Federal Civil Code of Mexico (Código Civil Federal)**

The Federal Civil Code was established in 1928 and came into effect on October 1, 1932. It covers a wide range of private law, including the law of torts. The cornerstone of tortious liability in Mexico is Article 1910 of the Federal Civil Code, which asserts that “He who, by act or omission, causes harm to another through fault or negligence, is obliged to repair the damage” (Código Civil Federal, 2024). By implication, Article 1910 of the Federal Civil Code establishes that anyone acting unlawfully or against good practices and thereby causing damage to another shall be obliged to repair the damage. The fundamental idea of the Article is to enhance the core premise of civil responsibility. Accordingly, civil liability arises whenever the following elements are met: (1) commission of an unlawful act; (2) direct and immediate damage; and (3) a causal relationship between the unlawful act and the damage caused. For emphasis, this general tort principle encompasses medical negligence and requires proof of four elements: (a) wrongful act or omission, (b) fault or negligence, (c) harm, and (d) causal link. In *Jurisprudencia 2a./J. 167/2010*, the Supreme Court of Mexico clarified and declared that healthcare providers across Mexico are bound to act diligently as expected of professionals of their speciality, and failure to do so results in liability.

#### **c. Federal Law on State Liability (Ley Federal de Responsabilidad Patrimonial del Estado)**

This is another statutory instrument that governs compensation claims against the public healthcare sector for damages caused by their personnel in the exercising of public functions. Arti-

cles 2 and 3 under Act provide that liability arises when a public health institution's act or omission results in a breach of duty of care, thereby unlawfully causing harm to individuals, even without intent. The relevance of these particular provisions was illustrated in negligence cases involving Instituto Mexicano del Seguro Social (IMSS) and Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (ISSSTE) (Cruz, 2025). In ADR 3542/2013 (ISSSTE), a claim for uterine perforation during hysteroscopy was in contention. Thus, the court treated the harm as resulting from irregular administrative activity under the patrimonial responsibility regime. Furthermore, in Regional Hospital No. 46 (IMSS, Zapopan), the court declared patrimonial liability for negligent medical care that affected a minor's biopsychosocial development; hence, the LFRPE was applied to obtain compensation.

#### *d. General Health Law (Ley General de Salud)*

The General Health Law of Mexico regulates healthcare provision, licensing of medical professionals, hospital accreditation, sanitary controls, etc. Title Four under the law establishes institutional obligations for maintaining quality standards as well as professional competence within the healthcare sector. In addition, Article 51 deals with a need for consent in medical procedures, and Article 83 sets the record straight over the legal framework for professional licensing and disciplinary oversight.

#### *B. Institutional Frameworks in Mexico*

The resolution of medical negligence disputes, adjudication over medical negligence, and enforcement of the tortious liability ensued for such medical negligence in Mexico involve a combined role of alternative dispute resolution bodies, judicial institutions, and human rights agencies.

### **a. National Medical Arbitration Commission [Comisión Nacional de Arbitraje Médico (CONAMED)]**

The National Medical Arbitration Commission [Comisión Nacional de Arbitraje Médico, (CONAMED)] is a decentralized body under the Ministry of Health created in 1996 to provide mediation, conciliation, and arbitration services (serving like an ADR body of the Ministry) for medical disputes. Its mandate includes resolving conflicts without resorting to a lengthy period of litigation, focusing on improving patient-provider relationships, and promoting ethical and sound medical practice (CONAMED, 2023). It is crucial to underscore that participation is voluntary, while CONAMED's findings carry persuasive authority in the case of court proceedings.

### **b. Mexican Judiciary (State and Federal Courts)**

Where administrative or arbitration remedies from CONAMED fail, patients may seek redress in the courts of the Mexican states or file suit before federal courts, depending on jurisdictional competence of the court. It is pertinent to note that the judiciary has progressively expanded protections for patients, recognizing claims for moral damages (*daño moral*) in cases of medical negligence, as in *Tesis: 1a./J. 17/2016 (10a.)*. The Supreme Court of Mexico (*Suprema Corte de Justicia de la Nación*) develops binding jurisprudence that lower courts must follow, including ensuring uniform interpretation of medical liability principles.

### **c. Mexico's National Human Rights Commission [Comisión Nacional de los Derechos Humanos (CNDH)]—National and State**

The “CNDH” refers to the *Comisión Nacional de los Derechos Humanos*, which is Mexico's National Human Rights Commission. It is an independent body tasked with promoting and protecting human rights across the national and state levels in Mexico. The National Human Rights Commission (CNDH) and state-level commissions monitor and investigate various violations of patient rights in public health institutions in Mexico. While the CNDH

lacks coercive power, they can issue non-binding recommendations which can only influence public policy and judicial interpretation, particularly where negligence infringes constitutional rights (such as the right to health and dignity of human persons).

## VII. Critical Appraisal of Judicial Decision in Nigeria and Mexico

The dynamic nature of both Nigeria's common law reliance on case law (judicial precedent) and its Mexican counterpart's civil law codified model determine the direction of judicial decisions on medical negligence. Despite the dynamic states, both jurisdictions demonstrate strengths and weaknesses in protecting patient rights.

The jurisprudence of medical negligence in Nigeria is heavily evolved through the courts' reliance on common law principles of tort, as laid down from English law, and thus applied to peculiar cases under the Nigerian healthcare system (Odunsi, 2023). Appraisals of judicial decisions in Nigeria are numerous. However, this paper aimed at examining a very few cases to demonstrate the strengths and weaknesses in the adjudication system in Nigeria, considering its form of legal tradition that relies on judicial precedent. A starting point is in the case of *Igbokwe v UCH Board of Management* (1963), where Irwin J. held that "...hospital authority is responsible for the acts or omission of the whole of its staff, whether they were physicians, doctors, nurses or other employees." This case recognized the principle of vicarious liability. The principle which informed the need for employers, particularly the healthcare professionals to squarely observe the healthcare guidelines in Nigeria and thereby guarantee right to life. On the second part is the court's decision in *Okonkwo v. Medical and Dental Practitioners Disciplinary Tribunal* (2001). In that case, the Supreme Court underscored the centrality of patient autonomy and informed consent in medical practice to be germane to determining liability in medical negligence. The case established that no doctor could be held liable for respecting a patient's decision to refuse treatment, even at the point of death. This decision illustrates how Ni-

gerian courts balance medical expertise with fundamental rights under the Constitution.

In another significant decision, the Supreme Court in *Ojo v Gharoro* (2006) clarified that medical practitioners owe patients a duty to exercise reasonable skill (not perfection) and that liability arises where the standard falls below the standard of care benchmark expected of a competent professional. In addition, in *Esangbedo v State* (1989), the court emphasized criminal liability for gross negligence resulting in death. This decision links tortious liability with criminal liability under Nigerian law. In *Adeniji v State* (2001), the court held that reckless disregard for observing professional standards leading to patient harm, including death, could be a ground for liability both in tort and crime. Finally, in *Niger Insurance Co. Ltd v Abed Brothers Ltd* (1976), although not a strictly medical case, the court's declaration on duty of care provided persuasive guidance which was subsequently applied to medical negligence actions. Meaning that for tortious liability to be sustained, certain guidelines must be strictly met.

By contrast, Mexico's civil law system considers medical negligence within codified statutes, and judicial interpretation primarily strengthens or clarifies statutory obligations. On the appraisal of judicial decisions in Mexico, a landmark case is *Amparo en Revisión 237/2014* (Suprema Corte de Justicia de la Nación), where the Supreme Court of Mexico reaffirmed that the constitutional provision on the right to health (Article 4) is sacrosanct. And the Supreme Court held that hospitals must ensure compliance with required professional standards to prevent institutional liability. In this same vein, in *Contradicción de Tesis 293/2011*, the Court resolved divergent appellate rulings by recognizing the duty of informed consent as a condition sine qua non for a lawful medical intervention.

In another case, *Amparo Directo 6/2015*, the Mexican Supreme Court interpreted and expanded the scope of moral damages to include psychological suffering resulting from reckless and negligent medical treatment. This declaration thus aligns national jurisprudence of medical negligence with the international human rights standards. Similarly, the decision in *Tesis Aislada I.30.C.107 C* (2012) further clarified the evidentiary bur-

den on healthcare institutions, that is, placing the responsibility on them to deny negligence once a patient demonstrates prima facie harm. Finally, Jurisprudencia 21/2000, issued by the Supreme Court, established binding precedent on hospitals' vicarious liability for the acts of their employed physicians, which in turn strengthened patients' access to a more equitable remedy.

From the foregoing, Nigerian courts rely vividly on judicial precedent, gradually adapting common law doctrines to local realities, while Mexican courts, rooted in civil law, emphasize the constitutional right to health and statutory interpretation to resolve medical negligence disputes. Nigerian jurisprudence places significant attention on professional autonomy and patient consent, whereas Mexican courts highlight institutional liability and access to remedies as fundamental to safeguarding patient rights. However, both jurisdictions reveal evolving judicial strategies to prioritise informed consent of patients for determining tortious liability for medical negligence.

## VIII. Comparative Insight

The deviation between Nigeria and Mexico over regulation of tortious liability for medical negligence is symbolic of their contrasting legal traditions (common law and civil law, respectively). Although both jurisdictions acknowledge the right of patients to redress as a result of harm caused by negligent medical care, their structural and procedural approaches reflect fundamental statutory, philosophical and institutional divergences.

In Nigeria, the adjudication of medical negligence claims is apparently rooted in litigation anchored on common law tort principles, especially the foundational duty of care articulated in *Donoghue v. Stevenson* (1932) and *Bolam* case (supra). Hence, the role of the courts is at the median, and litigation remains the core avenue through which aggrieved patients seek redress. In addition, regulatory bodies like the Medical and Dental Council of Nigeria (MDCN) are tasked with the responsibility of professional discipline, with a primary focus on ensuring ethical compliance rather than compensatory remedies (Adejumo & Adejumo, 2020).

On this note, the system faces systemic challenges, including protracted trial timelines, high evidentiary thresholds, including standard of proof (e.g., proving of criminal medical negligence beyond reasonable doubt as provided under section 36(5) of the Nigerian Constitution), and inadequate enforcement of civil remedies in Nigeria (Odunsi, 2023).

Conversely, in the Mexican legal tradition, the framework reflects a civil law tradition that places significant and unequivocal emphasis on administrative and arbitral remedies as alternatives to litigation. The Comisión Nacional de Arbitraje Médico (CONAMED) plays a pivotal role in Mexico by offering mediation, conciliation, and arbitration services to resolve disputes emanating from medical negligence effectively, efficiently, and with less adversarial tension (Tena-Tamayo & Sotelo, 2003). It is also pertinent to note that approximately two-thirds (2/3) of medical disputes in Mexico are settled *ex curia* (outside the court), considering higher rates of patient satisfaction and thereby reduced litigation costs (CONAMED, 2022). In addition, Mexico's Federal Law on State Liability and proactive judicial jurisprudence have fostered a more progressive and comprehensive compensation regime. The regime includes recognition of moral and punitive damages, which provides broader and more detailed forms of redress, as opposed to Nigeria (Baker McKenzie, 2023).

In all, Nigeria's framework emphasizes judicial resolution and professional accountability. This is apparently to the detriment of victims who face structural barriers in accessing justice. Conversely, Mexico's hybrid model (which blends administrative regulation, arbitral resolution, and judicial oversight) illustrates a more integrative and patient-centred approach to tortious liability for medical negligence. The Mexican experience thus highlights the value of accessible alternative mechanisms other than court, and it is often supported by strong institutional backing and evolving legal standards. This paper opines that Nigeria could adopt the hybrid model to enhance justice delivery in medical negligence claims.

## Comparative Analytical Table

S/N	Variable	Nigeria	Mexico
1	Primary Basis	Common law precedents (e.g., Bolam, Bolitho)	Codified statutes and constitutional provisions
2	Statutory Instruments	Nigerian Constitution, Medical & Dental Practitioners Act; Criminal Code; Code of Ethics	Mexican Constitution, Federal Civil Code (Art. 1910); General Health Law; State Liability Law
3	Standard of Care	Professional practice (Bolam) with judicial scrutiny (Bolitho)	Diligence required of professionals; statutory interpretation
4	Institutional Bodies	MDCN (disciplinary), courts, NHRC	CONAMED (mediation/arbitration), courts, human rights commissions
5	Legal Remedies	Civil damages, disciplinary sanctions, criminal liability	Civil compensation (private/public), moral damages, and administrative resolutions
6	Key Advantage	Flexibility through case-by-case adjudication, analysis of fact in issue	Consistency, clarity via codification, and efficient (safe time and cost)
7	Key Challenge	Inconsistency, procedural complexity, heavy reliance on expert testimony	Rigid application, limited judicial discretion, access barriers
8	Vicarious liability	Yes –hospital can be liable	Yes –Employers can be liable for staff in employment context
9	Tortious liability	Not exclusively tortious. While the foundational route is civil/tortious, serious cases involving death or gross negligence may attract criminal Liability and sanctions	Liability is predominantly strictly tortious (civil) –no criminal liability unless there's intentional harm

It is consequential to pinpoint that this comparative analytical table reveals that Nigeria's paradigm is adaptable but hindered by structural inefficiencies and reliance much on expert-led opinion during healthcare adjudication, including medical negligence adjudication. The Mexico's codified approach thus ensures clarity and uniformity but can be perceived as rigid and less accessible, particularly for vulnerable individuals in disputes (healthcare). In addition, while Nigeria's approach focuses on civil damages, sanctions, and criminal liability, the Mexican approach focuses on civil compensation, moral damages, and administrative resolution. Thus, understanding these institutional and doctrinal divergences informs targeted reform proposals for both jurisdictions.

## IX. Recommendations

### 1. *Nigeria*

There should be enactment of a comprehensive Medical Malpractice Statute to:

i. **Codify Standards of Care:** Provide statutory definitions of duty of care, breach, causation, and damages in medical contexts, drawing from international best practices.

ii. **Streamline Evidentiary Procedures:** Include provisions for expert testimony guidelines, medical record disclosure requirements, and time-bound litigation processes to expedite trials.

iii. **Reduce Overreliance on Precedent:** Limit excessive dependence on case-by-case determinations by embedding objective, codified benchmarks for professional conduct.

### 2. *Mexico*

There should be enhancement of judicial flexibility in statutory interpretation to:

i. **Introduce Interpretive Guidelines:** Empower courts to apply purposive interpretation in cases involving emerging medical technologies or atypical patient circumstances.

ii. Incorporate Judicial Precedent Mechanisms: Although Mexico's jurisprudential system allows for binding precedent after repeated rulings, reforms should be put in place to accelerate the process for medical negligence cases, ensuring faster adaptation to evolving healthcare realities. This would not only guarantee an expedient process for medical negligence cases but would also go a long way to inform a more responsive judicial approach to contemporary medical disputes.

### 3. *Both Jurisdictions*

There should be a robust establishment of a specialized medical negligence tribunals or hybrid legal-medical panels in both Nigeria and Mexico to:

i. Enhance Technical Expertise: Integrate legal professionals with experienced medical practitioners in decision-making when medical negligence or other healthcare malpractice is in dispute.

ii. Reduce Case Backlogs: Divert medical negligence disputes from general civil courts so as to guarantee a faster resolution.

iii. Improve Public Confidence: Demonstrate commitment to impartiality which informs adjudication of patient claims.

## X. Conclusion

Tortious liability for medical negligence in Nigeria and Mexico is examined in this study through the doctrinal method of legal research, which is subjected to a comparative analysis. The comparative analysis of tortious liability for medical negligence in both jurisdictions underscores similarities and differences in their respective legal regimes, adjudicatory approaches, and systemic challenges. While Nigeria's legal tradition for medical negligence operates primarily under a common law legal system, which is vividly dependent on judicial precedent and fragmented statutory support, Mexico's legal regime in that regard operates under a civil law legal tradition that offers a clear codified structure but is sometimes inflexible in addressing novel medical disputes that are uncovered by the extant codified laws.

The Nigerian framework has a statute that addresses medical malpractice but creates uncertainty in the determination of duty of care, breach, and causation, often resulting in protracted litigation and inconsistent judicial outcomes. This is due to over-reliance on judicial precedent notwithstanding the extant laws. Conversely, Mexico's statutory regime and precision provide legal certainty but are embedded with risks for their rigidity when faced with complex, novel, or technologically advanced medical scenarios. For emphasis, procedural inefficiencies, evidentiary hurdles, and limited judicial-medical expertise hinder effective resolution of medical negligence claims in both jurisdictions.

In all, this paper concludes that codifying medical malpractice standards in Nigeria, enhancing judicial interpretive flexibility in Mexico, and establishing specialized medical negligence tribunals in both jurisdictions would not only serve as a three-way reform (devoid of systemic inefficiencies) but also harmonize adjudicatory standards, improving access to justice, promoting patient safety, and strengthening public trust in the healthcare and judicial systems. By embracing these reforms, both Nigeria and Mexico would be better positioned to address the evolving complexities of healthcare delivery in the 21st century, thereby reinforcing the central objective of tort law: the equitable redress of wrongs and the promotion of accountability.

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