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Disclaimer:
Please note the following points:
- The case studies are lay summaries of cases and do not represent the law as such and accordingly, they cannot be taken as legal advice in any form
- the current legal position will depend on the subsequent cases which interpret these decisions - they are the foundational cases upon which precedent builds but the current position would require reference to, at least, the textbook and, ideally, the up-to-date case law

CASE STUDY – INFORMING THE PATIENT

The facts in this case study are taken from the judgment in: Sidaway v Board of Governors of the Bethlem Royal Hospital [1985] AC 871. In that instance, the House of Lords decided that:

(1) that the question whether an omission to warn a patient of inherent risks of proposed treatment constituted a breach of a doctor's care towards his patient was to be determined by an application of the Bolam test;

(2) although the degree of disclosure required for a particular patient was an issue to be judged primarily on the basis of medical evidence, there might be circumstances where the proposed treatment involved a substantial risk of grave consequences in which a judge could conclude that, notwithstanding any practice to the contrary accepted as proper by a responsible body of medical opinion, a patient's right to decide whether to consent to the treatment was so obvious that no prudent medical man could fail to warn of the risk save in emergency or some other sound clinical reason for non-disclosure;

(3) But... that the plaintiff had failed to prove that the surgeon had been in breach of any duty of care owed to her in failing to warn her of the risk inherent in the treatment.

Comments not forming part of the judgment – but of interest:

Per Lord Scarman. English law must recognise a duty of a doctor to warn his patient of material risk inherent in the treatment he is proposing, in particular in cases involving surgery.

Per Lord Bridge of Harwich. When questioned specifically by a patient of apparently sound mind about risks involved in a particular treatment proposed, the doctor's duty must be to answer both truthfully and as fully as the questioner requires.