



Theory ladenness of observation and how it applies to the criminal justice system

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Introduction

“Theory Ladenness of Observation” applies to our criminal justice system in the way we charge professionals and the average citizen differently with criminal negligence. I define negligence and provide examples such as Gestalt Psychology and recent specific case law to help explain why professionals are charged with malpractice instead of regular negligence. The goal is to help others have a better understanding of our legal system through the explanation of theories that relate to philosophy and science.

Elements of Negligence

1. Everyone has a duty to act in such a way to not harm others
2. A breach of duty to due care
3. Negligence is the cause of injuries or damages or the proximate cause of injuries and damages.
4. There is damage, whether it be physical or emotional (Hames, 2015).



Case Law

Holterman v. Chavez (2016)

Facts of the Case:

- Plaintiff’s son was born with a leaky esophagus, known as a non life threatening prognosis, that needed to be operated on.
- The child underwent 24 procedures, some classified as experimental, all performed by Dr. Holterman.
- The child developed brain damage from these procedures that requires life-long care (Lovenburg, 2016).

Elements of Negligence Met:

- The first element violated by Dr. Holterman was failing to act in a way to avoid harming others.
- The second element of negligence was met by his experimental procedures with no scientific backing that were the cause of the irreparable harm to the infant.
- The third element is the actual damage done. The physical damage to the infant as well as emotional damage to the family are both present.

Wrongful Death of Joan Rivers (2016)

Facts of the Case:

- Joan Rivers complaining of throat pain was scheduled for laryngoscopy and endoscopy, both non-life threatening procedures, at Yorkville Endoscopy.
- While undergoing these operations Joan Rivers went into cardiac arrest.
- She was eventually stabilized, but the damage to her body was already done and she died a few days later.
- The family sued because according to the procedure notes the doctors did not follow protocol (Santora, 2016).

Elements of Negligence Met:

- The first element of negligence met by the doctors was failing to act in such a way to avoid harming others.
- The second element met by the doctors was the violations of protocol and patient confidentiality when they took a ‘selfie’ with Joan on the operating table unconscious and ignoring serious medical conditions such as swollen vocal cords that caused the damage.
- The third element is the physical damage to Joan Rivers and the emotional damage to the family

Theories

Theory Ladenness of Observation

- Introduced by philosopher Norwood Russell Hanson.
- Hanson describes “seeing” as an experience in which a person’s background knowledge and beliefs literally affect what the observer sees.
- He uses the example of Kepler and Brahe watching the sunrise. Kepler believes the earth revolves around the sun and Brahe believes the sun revolves the earth, they are visually aware of the same sun rise, but both are “seeing” something different due to their different theories interconnected with the rising sun. Their separate observations are theory-laden (Hanson, 1958).

Argument Against Hanson:

- Critics say that seeing is just the physical experience of receiving sensory data, and theory only comes into play in the way we interpret what we see.

Hanson’s Rebuttal:

- Hanson appeals to Gestalt psychology to support his theory.
- Some people can look at a picture and see one object while another person may see something different. Also while looking at it the picture can suddenly switch, this is referred to as the ‘Gestalt shift’.
- What is important about Gestalt switches, according to Hanson (1958), is that they occur instantaneously and, therefore, independently of an interpretation. This shows, once again, that people can see different things even when looking at the same image, and these differences cannot be understood as differences in interpretation.



Conclusions

Malpractice

- Society holds professionals to a higher standard; they have to exercise care to meet the standards of their professional community
- Doctors are professionals that know when they are medically acting careless and breaching their duty of due care.
- Malpractice is the negligence of a professional (Hames, 2015).

Theory Application to Case Law

- Would we hold someone with no medical education to the same standard as an individual with years of experience?
- Hanson argues that ‘seeing’ is theory-laden (1958). A person with no medical knowledge may be able to identify an artery, while a doctor can “see” the artery and recall years of medical school interconnected with past procedures.
- As patients, we have the right to expect adequate care from our doctors, and they should be held accountable for the quality of care they provide.

Selected References

- Hames, Joanne Banker. *Introduction to Law*. Boston: Pearson, 2015.
- Santora, Marc. "Settlement reached in Joan River malpractice case." 12 May 2016. *nytimes.com*. 30 Oct. 2016.
- Hanson, Norwood Russell. *Patterns of discovery; an inquiry into the conceptual foundations of science*. Cambridge University, 1958.
- Lovenburg, Doug. "\$30 million malpractice settlement against Chicago doctor." 2 March 2016. *lovenburglaw.com*. 30 October 2016.