



**EAST WEST UNIVERSITY**

**Dissertation on**  
**Negligence in pharmaceuticals industries in the instance of Rid**  
**Pharmaceutical in Bangladesh: Analysis and lessons from UK**

**Submitted to:**

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Application for Approval of Research Proposal

**Department of Law Supervised Dissertation (Law 406) Semester: Summer 2022**

**Application for Approval of Research Proposal**

To  
Research Supervisor  
Department of Law, East  
West University.

**Subject: Proposal for Approval of Research Title**

Dear Sir,

I, Warda Wazed bearing ID: 2018-3-66-043 is a student of LL.B. (Hons.) program of the Department of Law. According to the program, I would like to undertake the course LAW406 (Supervised Dissertation) under your supervision.

The *Title of Research* is mentioned below:

**Negligence in pharmaceuticals industries in the instance of Rid Pharmaceutical in Bangladesh: Analysis and lessons from UK**

Therefore, I pray and hope that you would be kind enough to approve the mentioned research topic.

Thanking you.

Ali Mashraf

Signature of the student  
Date:

Approved by the Supervisor



**EAST WEST UNIVERSITY**

**Consent Form**

The dissertation titled: **Negligence in pharmaceuticals industries in the instance of Rid Pharmaceutical in Bangladesh: Analysis and lessons from UK** prepared by **Warda Wazed, ID 2018-3-66-043** submitted to **Ali Mashraf, Lecturer, Department of Law, East West University** for the fulfillment of the requirements of Course LAW406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

*Ali Mashraf*

.....

Signature of the Supervisor

Date: 20/05/2023

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## **DECLARATION**

I, Warda Wazed, declare that the thesis has been done by me and that all the works, citations, review of the literature etc. are genuine and bear no resemblance to other works or secondary research.

I, therefore, confirm that the thesis has been composed and authored solely by myself as a part of the fulfilment of the LL.B. (Hons.) degree at East West University.

## **ABSTRACT**

Pharmaceutical negligence also can refer to errors made for the duration of the manufacture or packaging of medicine. It can also additionally have the wrong label or issue to garage in situations inflicting the deterioration of the product. Not all pharmaceutical mistakes are an instantaneous result of pharmaceutical negligence. Negligence of pharmaceuticals in Bangladesh It's accessible. On the other hand, in UK, It's quite rare. Common law applicable in 2 states but the remedy of negligence in Bangladesh It's not worthy to remove or consume this problem. If remedy of this situation getting hard like any other state like UK, then this problem will end.

## Table of Contents

<b>Chapter 1</b>	<b>Page No</b>
1.1 Background of the study.....	09
1.2 Statement of problem .....	09
1.3 Research Questions.....	09
1.4 Scope of Research .....	09
1.5 Limitations of Research .....	10
1.6 Contribution of the study .....	10
1.7 Methodology of the Research .....	10
1.8 Brief structure of the study .....	10 1.9
Literature Review .....	11
<b>Chapter 2: Introduction and Explanation</b>	
2.1 What is negligence.....	13
2.2 Elements of Liabile for Negligence.....	13
2.3 Gold & Gold Case .....	14
2.4 Donoghue vs Stevenson Case .....	15
2.5 Principle of negligence .....	15
2.6 Rid Pharmaceutical incidents .....	16
<b>Chapter 3: Foreign laws (UK) applicable on negligence of pharmaceuticals</b>	
3.1 Definition and Examples .....	17
3.2 Trading Act, 1973 .....	18
3.3 Related Cases .....	19

**Chapter 4: Bangladesh laws and It's remedy about pharmaceutical negligence.**

4.1 Introduction .....	21
4.2 Consumer Rights and Protection Act .....	21
4.3 Fundamental Rights .....	21
4.4 Consumer Rights .....	22
4.5 The Responsibilities of the Consumer .....	22
4.6 Complaint a file.....	23

## **Chapter 5: Comparison between Bangladesh with UK laws and It's remedy.**

5.1 Introduction .....	25
5.2 Compensation negligence under tort law .....	25
5.3 How UK law proceed. ....	26
5.4 Payments for Incorrect Prescription in the UK.....	27
5.5 comparison between UK and Bangladesh.....	28

## **Chapter 6: Conclusion**

6.1 Findings .....	29
6.2 Recommendation .....	29
6.3 Conclusion .....	30

## **Bibliography – (31-32)**



## Chapter 1

**1.1 Background of the study:** Taking the incorrect medication, or taking the appropriate medication withinside the incorrect dose, could have extreme repercussions for a patient's health. Pharmacists and medical doctors are generally extraordinarily cautious approximately what they prescribe and dispense, however mistakes can happen. This is one of the major problems of Bangladesh. Because everyone's depends on medicine by any how so one negligence can make an accident or any other big issues of people's health. As example; Bangladesh's one of the famous pharmaceutical Square. It's one of the biggest pharmaceutical of the country. But negligence happens also there. As example absence medicine in blister, date expire chemical and medicine sells, measurements remissness of medicines.

**1.2 Statement of problem:** Pharmaceuticals negligence in Bangladesh quite common. Here remedy is not adequate. If victim got their compensation, it's not sufficient and recovery is not enough. Law is also too crank for this situation. Bangladesh's remedy of negligence is not acquitted at all because here's law negligent. Fine is limited and quite affordable and punishment can be avoided. Corruption is very common in Bangladesh. Everyone acts like it's nothing. The law is also not as strict regarding negligence. The government has not passed any law regarding negligence. Because of careless everyone's doesn't care anymore of it.

### 1.3 Research question

1. Whether Rid Pharmaceuticals showed proper duty of care? If there is absence of duty of care whether there is any breach or not?
2. Whether existing remedy can recoup the losses suffered by victims of Bangladesh?
3. Whether the causation is relevant to the Bangladesh and how lesson can be taken from UK?

**1.4 Scope of research:** This study has focused on the laws protecting negligence of pharmaceuticals and their efficiencies in Bangladesh industries. This research has reviewed existing laws, case laws, mechanisms and protection given to the pharmaceutical's negligence in Bangladesh. In the process the study has gone through relevant data of both National and international government authorities. Information collected by pharmaceuticals industries, as example Square Pharmaceuticals Limited history, working in this sector has been taken into consideration. While doing the research no survey has been conducted to gather the exact number of views of people.

**1.5 Limitations of Research:** Time constraint was one of the major obstacles in conducting a critical assessment of the laws relating to negligence in pharmaceuticals. As a result, no survey, field visit and Focus Group Discussion were conducted in pursuance of this research work. I could not conduct interviews of the relevant for the situation at the same time had to depend on subscription – free journal articles. Furthermore, there is a lack of case laws in Bangladesh and the available resources on this topic are not sufficient in conduct to holistic research.

**1.6 Contribution of the study:** This research made for to find loophole of this problem. It will be eye-opening research. And this research will help to change the law behalf of negligence in pharmaceuticals industries.

**1.7 Methodology of the Research:** This qualitative research as independent on the critical analysis of the available theoretical for descriptive resources including different theories and scholarly opinions. I conducted my study on what exit and tried to find new solution as well. To conduct this research, I mainly use primary sources such as a national law, case laws, obligatory or non - obligatory international instruments, as well as secondary data. The methodology depends on the scrutinisation of the different online journals, vlog, newspaper articles and journal articles.

**1.8 Brief structure of the study:** For this research the first chapter will be the introductory one, and then second chapter will discuss about the laws existing in Bangladesh relating to pharmaceuticals negligence, after that third chapter will be discussed on international loss applicable on negligence of pharmaceuticals, then fourth chapter will be focused on comparison with UK loss and It's remedy, and then last chapter will deal with finding recommendation and conclusion.

**1.9 Literature review:** Do unique pharmaceutical product legal responsibility regimes in one-of-a-kind nations result in propensity to patent? We make the most the version in pharmaceutical legal responsibility and litigation guidelines throughout corporations withinside the pharmaceutical enterprise and nations to explain the firm-degree propensity to patent. Drawing on a huge dataset from European Patent Office (EPO) overlaying over 9,950 pharmaceutical patents from sixty-three international locations over the duration 1991–2015, we compute the conditional chances of man or woman pharmaceutical companies to accumulate a legitimate-primarily based totally patent at the validation results and have a look at whether distinct legal responsibility regimes inspire or deter firm-degree propensity to patent. Our empirical approach addresses firmdegree idiosyncrasies, country-degree unobserved outcomes, and not unusual place generation shocks that probably invoke disregarded variable bias withinside the results of legal responsibility regimes at the propensity to patent. Our research famous that legal responsibility regimes mixed with harm caps, vast statutory excuses, and reversed burden of evidence have a sturdy fine impact at the firm-degree patent inventory and a poor impact upon EPO patent validation rate. The proof indicates that now no longer all legal responsibility guidelines and associated litigation methods are created equal. Firms are systematically much more likely to hold (firm-stage patent inventory) legitimate patents on the EPO while the legal responsibility and litigation policies are not complicated and while the harm cap, extensive statutory excuses, and reversed burden of evidence are introduced.<sup>1</sup>

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<sup>1</sup> *Mitja Kovac, School of Economics and Business, University of Ljubljana, Kardeljeva ploščad 17, 1000 Ljubljana, Slovenia, Pharmaceutical Product Liability, Litigation Regimes, and the Propensity to Patent: An Empirical Firm-Level Investigation, Published 19<sup>th</sup> April 2021*

Adverse drug activity's purpose big accidents to consumers. Between 1/2 of and three-quarters of those accidents are uncompensated beneath tort regulation due to the fact they're now no longer because of negligence or fraud. This article argues that essential equity and sound economics choose keeping producers of pharmaceutical merchandise financially liable for pharmaceutical accidents until there may be clean fault via way of means of every other party. It opinions the enjoy of vaccine and pharmaceutical damage repayment applications internationally. It proposes the advent of an administrative repayment device for America that might compensate pharmaceutical accidents.<sup>2</sup>

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<sup>2</sup> *Marc A. Rodwin*, *Compensating Pharmaceutical Injuries in the Absence of Fault*, published at 2014.

## Chapter 2: Introduction and Explanation

**2.1 What is negligence:** Negligence is defined as the failure to act with the degree of care that a prudent individual would have exercised in the same circumstances. The conduct typically consists of actions, but it can also include omissions when there are responsibilities to act (e.g., a duty to assist victims of one's previous conduct). If a reasonable person could have foreseen the reasonable possibility of harm and could have taken reasonable steps to prevent it, but the individual in question failed to do so, negligence is established.<sup>3</sup>

For example, a driver who has a coincidence at the same time as rushing on a bus is probably discovered answerable for regular negligence, however a driver of a bus who hits a toddler even as rushing thru a faculty region is performing with a reckless brush aside that would shape the idea for a locating of gross negligence.

### 2.2 Elements of Liable for Negligence:

Four elements are liable for negligence:

- Existence of a legal duty
- Breach of the duty
- Sufferance of an injury
- Proof of breached causes of the injury

Typically, the damages encompass property damage, medical expenses, and damages resulting from the negligence remedy in tort law. Occasionally, the plaintiff may also experience continuous and ongoing pain and suffering as a result of his or her injuries. The judge or jury may also award a reasonable amount for the pain and suffering caused by the injury.

In the United States, pharmacists complete approximately four billion prescriptions annually.

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<sup>3</sup> Legal Information Institute, 'Negligence - Wex - US Law' (Negligence, 2018) <<https://www.law.cornell.edu/wex/negligence#:~:text=Definition,victims%20of%20one's%20previous%20conduct>> accessed 2 April 2023

Consequently, approximately 1.3 million patients experience a variety of adverse reactions due to improper prescription care, mislabelling, and other causes. These acts of malpractice result in at least one fatality per day as a result of pharmaceutical negligence.<sup>4</sup>

It is reprehensible when someone reports an injury or death due to pharmaceutical negligence, such as a prescription misfill (when a pharmacist dispenses the wrong drug), dispensing the incorrect dosage of the correct drug, or providing incorrect usage instructions on the prescription container. Because ensuring drug protection can be a time-consuming procedure, pills are frequently prescribed without an understanding of how they may affect the health of the patient. This results in allergic reactions, drug interaction reactions, adverse side effects, and more, all of which can cause the patient agony and suffering.

Another factor that contributes to pharmaceutical negligence is pharmacist error. When translating a doctor's prescription from paper (or a laptop system) to fulfilment, pharmacists can err in identifying and designating the correct dosage instructions and/or quantities. Frequently, this could be the result of an error in label printing or dose selection, which could lead to drug overdose, organ harm, or even death.

Although the reasons for the behaviours that lead to pharmaceutical negligence cases may be numerous, the most common include distractions while working, tying pharmacist/physician pay to the quantity of a specific drug distributed, inadequate pharmacy regulations, and failure to comply with product recalls.

**2.3 Gold & Gold case:** A group of individuals blinded by a tainted pharmaceutical product was represented by a number of law firms, including Gold & Gold..<sup>5</sup>

The case involved the compound pharmacy's carelessness in organizing the product in an unsterile environment, which led to contamination. The case was settled for \$15 million to adequately compensate the victims. The compound pharmacy ultimately ceased operations at some point in time. Gold & Gold represented the two surviving sons of a woman who was slain by an oversized morphine prescription pill.

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<sup>4</sup> Gold & gold, 'What is Pharmaceutical Negligence?' (Pharmaceutical Negligence Cases – What You Need to Know, 2021) <<https://www.goldlawpa.com/news/pharmaceutical-negligence-cases-what-you-need-to-know/>> accessed 2 April 2023

<sup>5</sup> Gold & gold, 'Pharmaceutical Negligence' (Pharmaceutical Negligence - Gold & Gold, 2021) <<https://www.goldlawpa.com/practice-areas/pharmaceutical-negligence/>> accessed 4 April 2023

The morphine tablet, also known as a "fats" tablet, contained a higher dosage of morphine that was incorrectly listed. The mother was prescribed morphine for the treatment of her chronic pain condition.

After multiple days of taking the "fats tablet" morphine, the additional morphine caused her to stop breathing, and she died in her slumber. Unfortunately, the morphine tablets were discarded following her death, as police investigations no longer suspected foul play. To demonstrate that the pills were "fat" and contained a dangerous amount of morphine, our law firm hired a top-tier toxicologist. The manufacturer of the prescription substance and the pharmacy reached an agreement on an exclusive price. Since then, one of the surviving sons has utilized a portion of the agreement to pay for and attend traditional education.

**2.4 Donoghue vs Stevenson Case:** DONOGHUE v. STEVENSON is a well-known negligence case that also involves manufacturing-related negligence. In addition, there is evidence of a breach of duty of care. It's all about a bottle of ginger ale that contained a decomposing mollusk. Mrs. Donoghue suffered personal injury because of this and the successful production, which occurred within the established order of the current regulation of negligence and the neighbour test. <sup>6</sup>

**2.5 Principle of negligence:** Principle of negligence is they essentially kingdom that legal responsibility in a few instances ought to rise even withinside the absence of intentions or negligence. The rule of strict legal responsibility will get up even though it took all important precautions to save you the damage.

The most common types of negligence that can be proven are:

1. Gross negligence – in this case the negligence was so careless, and it showed a complete lack of concern for the safety of others.
2. Comparative negligence – this is the kind of negligence wherever both are equally liable for injuries.

Akin to gross negligence, pharmaceuticals negligence is a form of gross negligence in which only manufacturers are liable for injuries. A manufacturer's carelessness endangers the safety and lives of others. The incorrect medication can kill a patient. It is one of Bangladesh's most glaring problems, but there is no applicable law. The law must be stringent in this regard.

Bangladesh's pharmaceutical industry plays a crucial role in the country's overall economic system, relative to other domestic industries. Currently, this company meets 98% of Bangladesh's

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<sup>6</sup> Donoghue v Stevenson, 1932

pharmaceutical needs. Over one hundred sixty nations have been supplied with pharmaceuticals by the pharmaceutical company. Most people in Bangladesh visit the medical store and purchase medication for any business. They no longer comprehend which company's pharmaceutical product is superior. Here, we list the top ten pharmaceutical companies in Bangladesh so that you can gain knowledge about the best pharmaceutical companies.

**2.6 Rid Pharmaceutical incidents:** Rid pharmaceutical is one of the allude pharmaceuticals in Bangladesh. This pharmaceutical company discovers, develops, manufactures, and markets capsules and tablets to be administered to patients (or self-administered) to treat, vaccinate, or alleviate symptoms. Uses of Rough:

Pyrethrum-containing medications are used to treat head, body, and pubic lice infections. This treatment is absorbed by lice and kills them by affecting their nervous system. It no longer affects human beings in this manner.

Although the reasons for the behaviour that leads to pharmaceutical negligence cases can be numerous, the most common include distractions while working, tying pharmacist/physician compensation to the volume of a specific drug distributed, inadequate pharmacy regulations, and failure to comply with product recalls.

Moreover, our team has witnessed a few cases in which improper safety procedures and precautions were crucial factors in establishing negligence.



## Chapter 3: Foreign Laws (UK) applicable on negligence of pharmaceuticals

**3.1 Definition and Examples:** First, what is considered as loss in negligence mean reputational damage to a business, and any loss related to a faulty product. Negligent behaviour with the aid of using a defendant can most effectively be observed in instances wherein the defendant owed the plaintiff a responsibility of care, that's a query for the courtroom docket to decide within the instances of the case.

The results of pharmaceuticals negligence include devastating affects on people's physical, financial, emotional, and mental well-being. Many sufferers of clinical malpractice enjoy trauma from the occasion and are hesitant to believe docs after what befell to them. The pharmaceutical industries –

- strict legal responsibility at the producer of a dangerous drug, expressed to be retroactive and to cover ante-natal injuries. Because of reservations voiced approximately viable anomalies in piecemeal rules responding.

To be specific situation and in view of the following direction of the

negotiations, the Bill became withdrawn. It will, however, be suggested. that during numerous respects the thalidomide tragedy offers an un- typically, compelling demonstration of the ability blessings of apply- in a merchandise legal responsibility look at to the pharmaceutical industry.<sup>7</sup>

- At the identical time, “purchaser law” is rising as a place of

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<sup>7</sup> Harvey Teff, 'Products Liability in the Pharmaceutical Industry' (Products Liability in the Pharmaceutical Industry at Common Law, September 1974) <<https://lawjournal.mcgill.ca/article/products-liability-in-the-pharmaceuticalindustry-at-common-law/>> accessed 10 April 2023

have a look at in its personal right, progressively being free of that general identification with the world-of industrial contracts which has sustained. an unreal formal framework. The statutory popularity of the “consumer” within the Supply of Goods (Implied Terms) Act, 1973,<sup>7</sup> which makes exclusion clauses in “customer sales” void, and within the Fair.

**3.2 Trading Act, 1973:** Trading Act, 1973, is a good way to permit the Director-General of Fair<sup>8</sup>

- Section 6 deals with duty of care about negligence.
- Section 4(7) said that - In this section “purchase sale” manner a sale of goods (other than a sale

with the aid of using public sale or via way of means of aggressive tender) through a supplier within the direction of a business wherein the goods –

(a) are of a kind normally offered for personal use or consumption; and

(b) are offered to someone who does not purchase or maintain himself out as buying them within the direction of a business.

□ Section 137(2) states that – consumer method any man or woman who's either –

(a) A person to whom items are or are sought to be provided (via sale or otherwise) in the course of a commercial enterprise carried out via the person imparting or seeking to provide them, or

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<sup>8</sup> Harvey Teff, 'Products Liability in the Pharmaceutical Industry' (Products Liability in the Pharmaceutical Industry at Common Law, September 1974) <<https://lawjournal.mcgill.ca/article/products-liability-in-the-pharmaceuticalindustry-at-common-law/>> accessed 10 April 2023

(b) a person for whom offerings are or are sought to be furnished in the course of an enterprise carried out with the assistance of the character imparting or seeking to provide them, and who neither obtains nor seeks to obtain the offerings.

he provided products or services during his business operations. McGill LAW JOURNAL

Volume 20 state that,

Trading to take injunctive motion in opposition to producers who consistently produce shoddy goods, exemplify the primary levels of a program.

designed to convert this region of the law.<sup>9</sup>

**3.3 Related Cases:** This reputation of an imbalance in bargaining power, coupled with growing customer expectations, reinforces the safety provided through the Misrepresentation Act, 1967 and the Trade Descriptions Act, 1968, which went a few manners in the direction of diminishing the purchaser's vulnerability withinside the face of state-of-the-art advertising techniques. In addition to those legislative developments, the judicial introduction of legal responsibility for negligent mis-declaration in *Hedley Byrne v. Heller*,<sup>9</sup> with its implicit revival of non-contractual warranty, has provided an as but untapped supply for strengthening the placement of the consumer. Our reason is to look at the software of those traits to merchandise legal responsibility, with\* specific connection with prescription drugs.<sup>10</sup>

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<sup>9</sup> Harvey Teff, 'Products Liability in the Pharmaceutical Industry' (Products Liability in the Pharmaceutical Industry at Common Law, September 1974) <<https://lawjournal.mcgill.ca/article/products-liability-in-the-pharmaceuticalindustry-at-common-law/>> accessed 10 April 2023

<sup>10</sup> Harvey Teff, 'Products Liability in the Pharmaceutical Industry' (Products Liability in the Pharmaceutical Industry at Common Law, September 1974) <<https://lawjournal.mcgill.ca/article/products-liability-in-the-pharmaceuticalindustry-at-common-law/>> accessed 10 April 2023

A company of production can promote extra merchandise if they declare a drug may be used for greater functions than it's far accredited for. In a few cases, those makes use of aren't inherently unsafe – they're simply now no longer accepted via way of means of the FDA.

However, there are numerous different conditions in which this unapproved utilization makes the drug unsafe. This can take place while a drug is being prescribed at a better dose than encouraged or if it has now no longer been examined in medical trials.

Money performs a large function in why agencies will misrepresent drugs. In latest years, many pharmaceutical organizations were wondered and punished for negligent actions. We have supplied a listing of the 5 largest agreement pay-outs for pharmaceutical lawsuits.<sup>11</sup>

- Cardinal Health, McKesson, AmerisourceBergen, Johnson & Johnson (2022) Doctors prescribed opioids for debilitating conditions that no longer required them, resulting in a major addiction crisis. This agreement totalled \$26 billion, with \$23.9 billion invested in efforts to combat the perceived crisis.
- GlaxoSmithKline (2012) - GlaxoSmithKline, LLC pleaded guilty to selling pharmaceuticals illegally and neglecting to file protection information. This agreement was worth three billion dollars. The funds were allocated as follows: \$2 billion for civil liabilities, \$43,1 million for forfeiture, and \$956,8 million for criminal penalties.
- Pfizer (2009) - This settlement amounted to \$2.3 billion as a result of the fraudulent advertising of Bextra Valdecoxib Tablets, Geodon Capsules, Lyrica Pregabalin, and Zyvox. Pfizer was accused of paying commissions and submitting fraudulent claims to the government. The agreement funds were utilized as follows: \$1.3 billion in criminal penalties and \$1 billion in civil settlements for illegal drug promotion.
- Johnson & Johnson (2013) - Johnson & Johnson admitted to misbranding the antipsychotic medication Risperdal. Off-label advertising and kickbacks to medical physicians and pharmacists were the subject of allegations. The settlement reached \$2.2 billion, of which \$1.2 billion was allocated for civil settlements, \$419 million for criminal penalties, and \$66 million for forfeiture.
- Abbott (2012) - The FDA no longer permits the use of the prescription drug Depakote for certain indications. The \$1.5 billion settlement was utilized for \$800 million in civil settlements, \$500 million in criminal penalties, \$198.5 million in forfeiture, and \$1.5 million for the Virginia Medicaid Fraud Control Unit. In 2012, Abbott pled guilty to a theft misdemeanor for unlawful advertising.

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<sup>11</sup> '5 Largest Pharmaceutical Lawsuits' (Oal Law, 2020) <<https://www.oal-law.com/blog/5-largest-pharmaceuticallawsuits/>> accessed 10 April 2023

## Chapter 4

### **Bangladesh laws and It's remedy about pharmaceutical negligence.**

**4.1 Introduction:** The styles of equitable treatment maximum usually granted in tort claims are injunctions and equitable damages. Such injunctions are discretionary and may be received on an intervening time foundation in which appropriate. A courtroom docket can also additionally furnish damages in which an injunction might have been granted however it elected now no longer to.

**4.2 Consumer Rights and Protection Act:** Consumer Rights Protection Act of 2009 provides both civil and criminal remedies. A consumer may file a complaint with the Department of Consumer Rights Protection for any violation of the law. The Deputy Commissioners of the districts are vested with the same authority as the department.

The right to safety against unjust practices. Right to safety regarding hazardous objects. The right to information regarding quality, quantity, ingredients, and standards, etc. Right to gain access to products and services at market prices.

The right to "secure items and services" is protected within the 'right to life,' which is the most fundamental right guaranteed by Article 32 of the Constitution. Customer rights protection has become a highly discussed topic in the United States at present. Customers are increasingly concerned about what they purchase and consume. In the United States of America, there are a few laws prohibiting sports that violate the rights of customers, but they are no longer rigorously enforced.

**4.3 Fundamental Rights:** Fundamental rights are the basic human rights guaranteed by the Indian Constitution to all Indian citizens. They are implemented irrespective of factors such as race,

religion, gender, etc. Importantly, courts have the power to enforce basic rights, subject to certain conditions.<sup>12</sup>

**4.4 Consumer Rights: Right to Safety-** Before shopping for, a customer can insist at the excellent and assure of the items. They must preferably buy a licensed product like ISI or AGMARK.

Right to Choose- Consumer ought to have the proper to select from a number of items and in a aggressive price. Right to be knowledgeable- The customers need to be knowledgeable with all of the important information of the product, make her/him act wise, and extrude the shopping for decision.

Right to Consumer Education- Consumer must be aware about his/her rights and keep away from exploitation. Ignorance can price them more.

Right to be heard- This method the customer gets due interest to explicit their grievances at a appropriate forum.

Right to are searching for compensation- The defines that the client has the proper to searching for redress in opposition to unfair and inhumane practices or exploitation of the purchaser.<sup>13</sup>

#### **4.5 The Responsibilities of the Consumer:**

Responsibility to be aware – A patron must keep in mind of the protection and exceptional of services and products earlier than purchasing.

Responsibility to suppose independently– Consumer must be nicely worried approximately what they need and want and consequently make impartial choices.

Responsibility to talk out- Buyer must be fearless to talk out their grievances and inform investors what they precisely need.

Responsibility to complain- It is the client's duty to explicit and record a grievance approximately their dissatisfaction with items or offerings in an honest and honest manner.

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<sup>12</sup> 'Fundamental Rights - Articles 12-35 (Part III of Indian Constitution)' (Fundamental Rights,) <<https://byjus.com/free-ias-prep/fundamental-rights/#:~:text=Fundamental%20rights%20are%20the%20basic,courts%2C%20subject%20to%20certain%20conditions.>> accessed 15 April 2023

<sup>13</sup> 'Consumer Protection Act - Rights and Responsibilities' (What Is the Consumer Protection Act) <<https://byjus.com/commerce/what-is-the-consumer-protection-act/>> accessed 20 April 2023

Responsibility to be an Ethical Consumer- They must be honest and now no longer have interaction themselves with any misleading practice.<sup>14</sup>

#### 4.6 How to File a Complaint?

- • The complaint must be filed within a few years of purchasing the product or service; In the criticism, the client must outline the problem's specifics. This may be a trade or replacement for the product, as compensation for mental or physical torment. However, the claim must be reasonable.
- All relevant receipts and expenditures must be kept and attached to the criticism letter.

□

- • A written complaint must then be sent to the client forum via email, registered mail, fax, or personal delivery. Receiving acknowledgement is crucial and should no longer be neglected.
- • Criticism may be expressed in any preferred language.
- • Legal representation is no longer required.
- • All transmitted and received files must be archived.<sup>15</sup>

Under section 66,67,68 of consumers rights protection Act 2009 gives remedy behalf of negligence cases but those are deals with civil cases.

In accordance with section 76(1), any person who is generally or likely to be a consumer may file a written complaint against any anti-consumer right practice under the 2009 Act with the Director General or any person authorized by the Director General.

(1) The High Court Division may, on the application of any aggrieved person, issue such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be necessary for the enforcement of any of the fundamental rights granted by Part III of this Constitution.

(2) If the High Court Division is satisfied that no other equally effective legal remedy is available, it may:

(a) issue the following order upon the petition of any aggrieved party:

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<sup>14</sup> 'Consumer Protection Act - Rights and Responsibilities' (What Is the Consumer Protection Act) <<https://byjus.com/commerce/what-is-the-consumer-protection-act/>> accessed 20 April 2023

<sup>15</sup> 'Consumer Protection Act - Rights and Responsibilities' (What Is the Consumer Protection Act) <<https://byjus.com/commerce/what-is-the-consumer-protection-act/>> accessed 20 April 2023

(i) directing a person performing functions related to the Republic or a local authority to refrain from doing what is prohibited by law or to perform what is required by law; or (ii) declaring that any act done or proceeding taken by a person performing functions related to the Republic or a local authority was done or taken without lawful authority and is void; or (b) upon the request of any person, issue an order (i) directing a person performing functions related to the Republic or a local authority to

(3) Notwithstanding anything to the contrary in the preceding clauses, the High Court Division shall not have the authority under this article to issue any interim or other order with respect to any law to which article 47 applies.

(4) Where, on an application made pursuant to paragraph (1) or paragraph (a) of paragraph (2), an interim order is sought and is likely to have the following effect:

(b) being otherwise prejudicial to the public interest, the High Court Division shall not make an interim order unless the Attorney-General has been given reasonable notice of the application and he (or an advocate authorised by him in that behalf) has been given an opportunity to be heard, and the High Court Division is satisfied that the interim order would not jeopardize or obstruct the implementation of any development programme or any development work.

(5) Unless the context otherwise requires, "person" in this article includes a statutory public authority and any court or tribunal, excluding a court or tribunal established pursuant to a law relating to the defense services of Bangladesh or any disciplined force or a tribunal to which article 117 applies.<sup>16</sup>

Chapter 6 of the consumer right act protection Act 2009 have 3 sections which are section 66,67,68 also applicable for remedy on behalf of this. That sections describe about remedies under civil court <sup>17</sup>

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<sup>16</sup> . Constitution of Bangladeshi

<sup>17</sup> The consumer right protection act 2009



## **Chapter 5: Comparison between Bangladesh with UK laws and It's Remedy**

**5.1 Introduction:** Both pharmaceutical negligence and scientific negligence are the same. Negligence occurs when a scientific or healthcare professional breaches their duty of care. It is referred to as clinical malpractice in the United States. Medical negligence regulation UK If you have suffered at the hands of a clinical expert, you are entitled to restitution. The claimant desires to demonstrate that the defendant, who owed a duty of care, did not exercise reasonable care in the balance of probabilities. The claimant wishes to demonstrate that the defendant is responsible for his or her suffering.

The Tort of Negligence is a criminal wrong committed by a person against another who fails to take reasonable precautions to avoid what a reasonable person would consider a foreseeable risk.

### **5.2 Compensation negligence under tort law:**

The claimant's injury must be of the "reasonably foreseeable" variety. If a reasonable person could have foreseen the type of loss, injury, or damage.

The victim bears the burden of proving that the defendant owed them a "duty of care," that this duty was breached, and that they suffered foreseeable suffering or economic loss as a result of the defendant's alleged negligence. Negligence liabilities in UK is civil matters not criminal.

In the UK, negligence is a criminal offense. Clearly, a breach of this duty of care has occurred. This breach either directly caused the individual's demise or significantly contributed to it. Therefore, the violation constitutes gross negligence and is a crime. The duty of care exists.

In the United Kingdom, pharmaceutical negligence is defined as misreading a prescription and dispensing the incorrect substance or dosage. advising a patient incorrectly on how or how often to take their medication. Inadequately documenting the medications administered to specific patients.

In the UK, it falls under professional malpractice. Now, the issue is, what is professional negligence? This negligent conduct ultimately results in monetary loss, physical harm, or injury to their client or consumer. Pharmaceutical negligence claims specialists, A patient's health can be severely compromised by taking the wrong medication or the correct medication in the wrong dose. Usually, pharmacists and physicians are extremely careful when prescribing and dispensing medications, but errors can occur. Each year, more than 200 million cases and hundreds of adverse drug reactions occur; consequently, pharmaceutical negligence claims are common.<sup>18</sup>

Errors in manufacturing and packaging the term "pharmaceutical negligence" can also refer to errors made during the production or packaging of medication. It may have an incorrect label or have been exposed to storage conditions that caused the product to deteriorate.

Not every pharmaceutical error is directly attributable to negligence. For instance, suppose a physician prescribes medication to a patient. However, the patient who fails to disclose they were also prescribed antibiotics by their dentist for a tooth infection will be held accountable.<sup>19</sup>

Damages included in a pharmaceutical negligence claim.

Team of specialized attorneys considers both the immediate and long-term needs of their clients. Essentially, your claim could result in a variety of compensation programs. Personal injury, for instance, may necessitate a significant quantity of time away from work.

This is a significant impediment to your earning potential and career prospects that you are entitled to reclaim. Consequently, you can file a claim to recover this lost income.

**5.3 How UK law proceed:** Are you concerned that pharmaceutical or medical negligence is affecting you or a family member? Then, get in touch with The Medical Negligence Specialists.

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<sup>18</sup> 'Experts in Pharmaceutical Negligence Claims' (The Medical Negligence Expert) <<https://the-medical-negligenceexperts.co.uk/claim-types/pharmaceutical-negligence-claims/>> accessed 20 April 2023

<sup>19</sup> 'Experts in Pharmaceutical Negligence Claims' (The Medical Negligence Expert) <<https://the-medical-negligenceexperts.co.uk/claim-types/pharmaceutical-negligence-claims/>> accessed 20 April 2023

We can provide you with a professional evaluation of the likelihood of success for your claim. If we determine that it does, we will describe the next steps.

How much can be claimed,

As each medical case is unique, so can the amount of compensation awarded. The final amount is determined by several variables, such as the degree of negligence, lost wages, and future losses.

Our knowledgeable team of specialists will provide you with an estimate of how much compensation you may be eligible to receive.

In certain instances, the consequences of a dispensing error can be catastrophic. The very young and the elderly may be more susceptible to damage in the event of an error. When chronic medication is prescribed,

long-term condition, disruptions can be extremely harmful. In some instances, the patient may feel that their condition is deteriorating, or their symptoms are worsening, unaware that a medication error has occurred.

Errors by pharmacies in hospitals, supermarkets, or on the high street can result in pharmacy dispensing claims. For a claim against a pharmacy or pharmacist to be successful, it must be demonstrated that they acted negligently. This indicates that the professional's treatment fell below an acceptable level. After establishing negligence, it must be demonstrated that the negligence caused the injury. This may require medical proof to substantiate your claim.<sup>20</sup>

For a claim against a pharmacy or pharmacist to be successful, it must be demonstrated that they acted negligently. This indicates that the professional's treatment fell below an acceptable level. After establishing negligence, it must be demonstrated that the negligence caused the injury. It may be necessary to provide medical evidence to support your claim.<sup>21</sup>

In all cases involving negligence, damages will be the primary remedy. The type of damage inflicted to the claimant must be "reasonably foreseeable." A loss is reasonably foreseeable if a reasonable person could have anticipated the type of injury, loss, or harm that occurred. There are 2 kinds of remedies applicable,

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<sup>20</sup> 'What can happen if a pharmacy gives the wrong medication?' (Making a claim against a Pharmacist or Pharmacy) <<https://www.kiteleys.co.uk/personal-legal/clinical-claims/claiming/making-claim-pharmacistpharmacy/>> accessed 25 April 2023

<sup>21</sup> 'What can happen if a pharmacy gives the wrong medication?' (Making a claim against a Pharmacist or Pharmacy) <<https://www.kiteleys.co.uk/personal-legal/clinical-claims/claiming/making-claim-pharmacistpharmacy/>> accessed 25 April 2023

1. Damages and,
2. Injunction

**5.4 Payments for Incorrect Prescription in the UK:** A medication error may have life-threatening consequences. The settlements for wrong prescription UK in a successful claim will depend on the severity of your injuries and their long-term impact on your life if you were injured because of a wrong prescription. This is referred to as general damages.

The compensation amounts listed in the following table are estimates of how much compensation you could receive for a medication error-related illness. Attorneys use these figures, which are derived from the April 2022 edition of the Judicial College Guidelines, to determine the value of claims.

**Additional Cases of Mistaken Prescription Settlements in the United Kingdom** If you have incurred financial losses because of your injuries and can provide proof, you may include them in your claim. This could include travel expenses, private medical costs, and loss of income.

Remedies or damages resulting from negligence, as well as other tort actions, are generally referred to as compensatory damages. Depending on issues of intent and negligence, and to make a point, punitive and nominal damages may also be awarded.

Some Cases are:

1. Bolam vs Friern Hospital management committee
2. Gold & Gold case
3. UNITED KINGDOM PLC & ANOR V LINKLATERS & PAINES (A FIRM)
4. JOHNSON & JOHNSON CASE.

**5.5 comparison between Uk and Bangladesh:** UK Government follows their laws and legislation strictly. UK Government also follow common law's structure. They respect and follows the laws properly, whichever rare in Bangladesh. They both follow common law the fact is UK respect and follow Their laws and rules on the other hand It's white impossible for Bangladesh. If rid pharmaceutical incident happens in UK that time their government will punished for strictly. So, It's clear that both are bindings for same rule but Uk follow the rule and Bangladesh not. Because of Bangladesh laws made remedy unliquidated there is no cases can recommend.

Tort of negligence in the UK - Negligence is a tort that can be litigated in civil court. Fundamentally, negligence is the failure to act with reasonable care, resulting in damage to another person. Harm can include physical injury, property damage, and monetary loss.

Tort of negligence in Bangladesh - In Bangladesh, the tortious cause of action of negligence derives from common law or case law, just as it does in the United Kingdom and India. Second, the claim under the negligence cause of action would have to be presented in the form of a money suit by the plaintiffs.

## Chapter 6: Conclusion

**6.1 Findings:** There are so many loopholes in this purpose of research but the most important one is irresponsibility and total lack of care for the laws. And findings of the research are, there are so many laws present in Bangladesh but that's not apply in proper way. There are so many laws presents for negligence but because of tort is not applicable in Bangladesh that's why in Bangladesh constitution and civil procedure have so many laws can apply but It's failed. This is the main loophole behalf of this research. Just because Bangladesh works on tort laws rarely so that Bangladesh laws considered this behalf of civil procedure and Whenever It's making harmful for human livelihood then that time penal code works for criminal purpose.

Tort law's primary purpose is to provide compensation for damages and deter others from perpetrating the same wrongs. Tort law is created at the state level by justices and legislatures. Tort law is said to have evolved from the adage "ubi jus ibi remedies," which states that every right requires a remedy.

These are missing in Bangladesh tort laws in negligence so that Bangladesh There is a lag in the development of the law.

**6.2 Recommendation:** Because of tort law is not applicable in Bangladesh that's why there are some laws in civil procedure and in constitution of Bangladesh. Bangladesh law also can work if there is any negligence happen, but the fact is It's not working at all. I want to recommend if these laws work properly that time it will be carry a good result for Bangladesh. Bangladesh is one of the oriented countries in this time but for some issues this country still in controversial stage. So, if those issues can sort by rules and laws Bangladesh will also get same position of respect as UK and other developed countries. Because of Bangladesh still not working or follow the tort law so that civil procedure, constitution of Bangladesh and penal code 1860 works for it. So, people should follow the rules and there are so many Acts behalf of this problem so people must be aware on it. And Law enforcement should inform the public about this issue and its solution.

To prevail in a common law negligence action, the plaintiff must demonstrate: The defendant owed the claimant a duty. The defendant violated the obligation owed to the plaintiff. The breach of duty by the defendant resulted in recoverable loss for the plaintiff.

UK follow the common laws as same as Bangladesh so Bangladesh laws should be more oriented and aware on it and obey the rules.

"Torts" can manifest in numerous forms. Most of such cases result from ignorance and lack of intent on the part of the offender. The case for instituting tort law in Bangladesh is strong, as it has the potential to significantly reduce the amount of damage and loss of life caused by negligence.

**6.3 Conclusion:** This is one of the most essential grounds for negligence. Pharmaceutical malpractice It is currently present in nature, but there is no way to stop it.

In a negligence claim, the plaintiff must establish duty, breach of duty, causation, and damages. In a medical malpractice claim, the physician must adhere to the standard of care.

In the United States, approximately four billion prescriptions are filled annually by pharmacists. Due to improper prescription care, mislabeling, and other factors, approximately 1,300,000 patients experience adverse effects. Due to these malpractices, at least one person per day dies because of pharmaceutical negligence.

Cases of pharmaceutical negligence can arise for several different reasons. (Patients may initially be prescribed a medication with documented adverse side effects.)

Due to the time-consuming nature of ensuring drug safety, drugs are frequently prescribed without knowledge of how they may damage the health of the patient. This causes allergic reactions, drug interaction reactions, adverse side effects, and more, all of which can cause anguish and suffering for the patient.

pharmacist error also contributes to pharmaceutical negligence. When translating a prescription from paper (or an electronic system) to fulfilment, pharmacists can make errors in identifying and designating the correct dosage instructions and/or quantities. Frequently, this includes errors in label printing or dose selection, which can result in drug overdose, internal organ damage, and even mortality.

It's one of the most important issues of our time, but citizens, manufacturers, and the government don't care. Therefore, Legislators, Government, and everyone must adhere to the rules, laws, and limitations of everyone's.

By my this research I want to bring forward the loopholes of this problem and showed also some serious problem which can arise and I am taking the step of this by research to work for it even more, I hope my research will be helpful for it.



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