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ABOUT US

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IMPERTIA CULPAE ADNUMERATUR: TRAVERSING THE LAW ON PROFESSIONAL NEGLIGENCE

Authored By-Anupam Singh Sengar[1] & Manik Tindwani[2]

Abstract

In the twenty-first century, the world has become more intricate than ever. Nowadays personal and professional relations are not of smaller amplitude but are tangled up in much larger ones. Mostly every kind of human interaction has taken the form of service. Today most of the facilities provided have taken a commercial form. Their magnitude, risk involved, promises undertaken are all on a large scale. Every minute service relates back to much serious concern. Notwithstanding the nature of a service, the service provided is to be scrutinized and modeled in such a way that it is safe and sound. This in turn increases the liability of the service provider towards his or her clients. Thus indirectly points towards a common ground that their always exists a duty of a professional towards their clients. The very maxim impertia culpae adnumeratur signifies the same goal. The goal extends to the ideology that when one person signifies to be a professional in providing any service, he should be sincere enough and his conduct should justify his professionalism and he should be made liable to the extent of non-rendering of his professional care and professional services. The civil law of torts governs most of the civil interactions and any such duties. The tort has termed such duty of protection to be "duty of care" and its breach as negligence. But this notion of ethical care towards a service undertaker was much earlier felt for and discussed about in historical civilization as of the Roman Empire. This paper tends to discuss on the rise of this maxim, its scope and the ideology behind it and how gradually it was shaped in the law of torts.

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Introduction

The word negligence is an everyday used term. Its origin can be traced back to the Latin word "*negligentia*" which means "*failing to pick up*". Generally, it stands for any act of carelessness more particularly in legal sense it stands for any act or omission without reasonable standard of care to be exercised by a person in a situation. In *Blyth v. Birmingham Water Works Co*[3] Alderson defined negligence as,

> "*the omission to do something which a reasonable man would do, or doing something which a prudent or reasonable man would not do*".[4]

In *Lochgelly Iron & Coal Co. v. Mc Mullan*[5], Lord Wright said,

> "*negligence means more than headless or careless conduct, whether in commission or omission; it properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing*".[6]

Only in the 18th century did negligence become a separate cause of action in English law. But the concept of negligence can also be traced back to the city of Greece under the great Roman Empire. They coined the term *culpae* which directly and indirectly relates to the term negligence in the modern tort law. The concept of *impertia culpae adnumeratur* also relates to negligence. Reinhard Zimmermann's book the Law of Obligations, Roman Foundations of the Civilian Tradition[7] defines this maxim as one of the most important aspect of labor law during the Roman Empire. Today in law of tort the most prominent elements for the commission of act of negligence are the duty of care of the person performing an act, the duty must be towards plaintiff, breech of the said duty, damage resulting from such breech. The maxim *imperitia culpae adnumeratur* deals with one of the most essential elements of negligence that is the duty of care towards the plaintiff. It defines that every professional while rendering his or her services should be very careful and should take every possible action that they can take while delivering their

[3] Blyth v. Birmingham Water Works Co., (1856) LR 11 Exch. 781;
[4] *Id*.
[5] Lochgelly Iron & Coal Co. v. Mc Mullan , 1934 AC 1;
[6] *Id*.
[7] Reinhard Zimmermann, The Law of Obligations: Roman Foundations of the Civilian Tradition (Oxford University Press, 1996).

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services. They are expected to provide such reasonable services as a person with par to their skills would have provided and any fault in such services is considered to be clear cut negligence. Thomas Glyn Watkin's book "The Legal History of Whales" states that the maxim "*imperitia culpae adnumeratur*" means that skills increase blameworthiness, i.e., higher standard of services are required of professionals[8].

Imperitia Culpae Adnumeratur

Imperitia culpae annumeratur is a maxim of Roman Law, developed by the roman jurists during the early second century when bonded as well as professional labor was one of the prominent part of the Roman Empire. Roman jurisprudence was strict towards the individuals providing professional services, it followed the principal that a person should be accountable for the level of service he or she is offering thus to attract the liability of professionals who were regularly acquitted even for their negligence, they created this maxim.

In Latin language *imperitia* means inexperience, ignorance or lack of skill. This term was devised to capture the liability of those professionals who destroys or damage the property of their client while rendering services. This term was used in a broad range of situations making the professionals accountable for their conduct. The jurists analyzed this crucial term for use in legal conflicts involving a wide spectrum of people engaged in the empire's labour. For instance, you may ask a jeweller to set a diamond for you, during the process, it breaks; or surgery performed by a doctor who was hired does the patient more damage; or you hand up a cup for carving to an artist and the cup breaks. All these examples elucidate similar circumstances. Furthermore, *culpae* means guilt or fault and more deeply in roman and civil law it relates to actionable negligence or fault especially, failing to exercise the care and standard of precaution required under the parties' special relationship with each other. Furthermore, Paul says that '*Culpa is not to foresee what a reasonable man would have foreseen*'. Thus, the maxim clearly demonstrates the principle that every lack or skill or ignorance by a professional is to be considered negligence in the eyes of law. The maxim has been defined as ignorance, or want of skill, is considered a negligence, for which one who professes skill is responsible.

[8] T. G. Watkin, The Legal History of Wales (University of Wales Press, 2012).

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The Romans made a distinction between "*dolus*", which referred to intention, and "*culpa*", which referred to both negligence and incompetence. Although *culpa* and *casus* are often classified as unintended conduct, *dolus* comes within the category of purposeful action. The idea of culpa included the classification of both careless and inept misconduct. According to the *imperitia culpae adnumeratur* maxim, ignorance or incompetence, for instance on the part of a medical practitioner, amounted to negligence[9]. Carstens and Pearmain accept that in Roman law the onus of proof rested with the plaintiff to prove that the loss he or she suffered was due to the conduct of the defendant, but that the maxim *imperitia culpae adnumeratur* was used to alleviate the plaintiff's evidentiary burden. Carstens adds that since it is not stated in the extant source material, proving medical negligence in Roman law was difficult. However, he argues that it may be agreed that in situations of medical negligence, the burden of evidence was with the plaintiff, who had to show that the physician's purported conduct resulted in personal damage.

These domains of law overlap significantly, and Roman jurists battled with the nuances of how to apply these concepts. This regulation was implemented when a doctor conducted an operation in an incompetent way and when a doctor gave a patient the incorrect medicine. Inexperience is numbered as a fault, "*inexperience is counted as a fault, as if a physician would kill your servant because he had badly cut him or given him a medicine wrongly*"[10]. Proculus says that if the doctor cuts a servant expertly, Aquilia's action will be either out of place or outlawly: It is the same law if he used the drug wrongly[11].

When the carelessness or ignorance of a doctor was evaluated, the *imperitia culpae adnumeratur* norm of Roman law also found application in Roman-Dutch law. De Groot commented as follows:

> *"That death is through negligence, including omission or ignorance of a physician, midwife, omission or ignorance of a waghanaer or skipper, or of his own weakness in the management of a ship or mates"*[12].

Carstens adds that in the context of legal culpability, the Dutch terms of *onwetenheid, onverstand,*

[9] 4 Swanepoel 2009 PELJ 147.
[10] Digest: Ad Legem Aquiliam 50 17 32 , Inst Just 4 3 7:
[11] Digest: Ad Legem Aquiliam 50 17 32. D 9 2 7 8 (Gaius 7 to the Provincial Edict)
[12] 1583-1645. Grotius Inleidinge tot die Hollandsche Rechts-Geleerdheid 3 33 5. Carstens also discusses the application of this rule. See Carstens and Pearmain (n 6) 616.

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and *zwackheid* were equated to the idea of blame, which suggests a recurrence of the situation in Roman law. Van Leeuwen claims that it is debatable whether or not a doctor would be held accountable for providing a patient medication that either caused injury or resulted in his death due to the doctor's carelessness and ignorance.[13] A physician would have likely been penalized at the court's discretion due to the many changes made to the statute.

Voet made the following comment on the enforcement of harsh punishments on doctors in situations when people died as a result of medical malpractice:[14]

> *"While no one has the right to act when he knows or should know that his incompetence or infirmity may endanger another person, it follows that the following individuals will be held accountable under this rule: doctors, pharmacists, midwives, those who perform surgery without experience, those who mistakenly administer poisonous medication, and those who administer poison instead of medication."*

Furthermore, the Romans stipulated that in order to be held accountable, a person had to have engaged in either *dolus* (willful behaviour) or *culpa* (negligent behaviour). In an Aquilian action, culpa, according to Paul[15], is '*not to foresee what a reasonable man would have foreseen*'. In addition, lack of professional skill, lack of capacity, lack of knowledge and general incompetence relative to the standards that were expected of a person giving a service were incorporated in the rule *imperitia culpae adnumeratur*[16]. This approach accords with the stance in modern times that the ignorance or incompetence of a professional person who presents himself as having a certain level of expertise will be regarded as negligent conduct[17].

[13] Van Leeuwen and Isaakszoon Commentaries 494.
[14] Johannes Voet (1647-1713). Carstens and Pearmain (n 6) 617; Scott (n 96) 136 n 91. See further s 134 of the Constitutio Criminalis Carolina of 1532
[15] 25 Digesta 9 2 31, Lawson (n 17) 36–43. The author distinguishes whether culpa is subjective or objective in Roman law.
[16] The phrase is described in Digesta 50 17 32 and Justinian Inst Just 4 3 7; see also PA Carstens & DL Pearmain.
[17] Carstens & Pearmain (n 27) 613–614, where it is suggested that a lack of skill and competence in cases where a certain skill is expected would be wrongful, and a person is further expected to foresee that lack of skill and competence will harm a patient, and as such he will be negligent

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Essentials Of Imperitia Culpae Adnumeratur

A fortiori this maxim relates to three essential features which can be termed as the reason of negligence in service of any professional:-

1. Ignorance of Skill

The first and the most important reason is the ignorance or mistake in a skill, required to be followed by the professional such ignorance are considered to be negligent behavior and is equated to negligence. According to Carstens & Pearmain, it is implied that failing to exercise due care and diligence in circumstances where a certain level of expertise is required would be inappropriate, and if a person is further expected to anticipate that failing to do so may hurt a patient then he will be negligent. De Groot outlined the Roman-Dutch legal stance that the doctor is responsible for any guilt that results from simple ignorance, a lack of comprehension, or infirmity. A duty of care arises if the doctor agrees to treat the patient, according to Carstens and Pearmain's analysis of the *imperitia* rule.

2. Want of Skill

A medical practitioner is an expert in the area of medicine, and if he is shown to be incapable of doing his job, he will be held legally responsible for his obligation to the patient. A person would unquestionably be deemed negligent in his deed, for instance, if he flew an aircraft without any prior experience or instruction and without considering the implications.

3. Skill in Par with Professional Level

The standard of care expected of a professional man is to display the level of care and skill held by a man of average competence operating a specific calling; the standard may range from calling to calling based on the degree of knowledge and perfection obtained in that calling. The basic prerequisite, on the other hand, is the same for all professions, trades, and callings. Professional men are expected and obligated to exhibit the same level of care and expertise as the average practitioner in that profession demonstrates. As a result, a reasonable and fair quality of care and competence is necessary. The law regards the practitioner who possesses average ability and competence in the practice of his trade as the standard-setting entity. "*If a person puts himself up as possessing unique ability and expertise, and he is consulted by or on behalf of a patient, he bears a duty to the patient to take proper caution in performing the treatment*,"

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remarked Lord Hewart C.J. in *R. vs. Bateman*[18]. If he accepts responsibility for the therapy and the patient consents to his guidance and treatment, he bears a duty to the patient to administer the treatment with attention, care, knowledge, skill, and prudence.

Comparision With Duty Of Care

When the safe execution of an act depends on the professional knowledge and competence of the actor, it is well established in English law that he must possess such knowledge and skill. He must have a reasonable level of competence and ability that a member of his profession, trade, or vocation would be expected to demonstrate under the circumstances of the case. The ideology comes from a long and illustrious lineage. Its origins may be traced back to the Roman era, when it was initially created. It made its way into the Digest and the Institutes with the systematization of Roman law, in the form of a maxim-Imperitia culpae adnumeratur[19]. As a result, inexperience was associated with carelessness. Despite the fact that the Digest names medical practitioners, midwives, artificers, assessors, building inspectors, and drivers as professionals who must behave with professional competence, it states in broad terms that lack of skill by someone who claims to have professional ability is negligence. In these circumstances, Roman law defined negligence as any breach of duty. The Roman theory of degrees of carelessness, however, has not been adopted by English law. The English law has introduced a new notion relating to the previous one that is the notion of "duty of care[20]" and its failure constitutes negligence. It is true that in English law there appear no degrees of carelessness, but the actor must adhere to a suitable, higher or lower level of care depending on the facts of the case. it is factual that English law takes a different method but does not change the essential premise that inexperience or a lack of expertise constitutes carelessness. In fact, originally the doctrine was never rejected and the doctrine's validity has never been questioned, and it is well-established in the law. In English law, also anybody who engages in the performance of an act that should only be safely performed by an experienced or talented man must have that expertise or competence. This idea applies to all transactions and activities that can be imagined. It is expanded upon in the case of professional men who practice occupations that were practiced in the Roman era, with the required addition of all other professions, trades, and callings that are practiced now.

[18] R .v. Bateman (1925), 41 T.L.R. 557, at p . 559
[19] Dig. 50, 17, 132
[20] http://www.e-lawresources.co.uk/Duty-of-care.php

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As a result, the law paid special attention to the level of care demonstrated by medical practitioners, dentists, nurses, barbers and hairdressers, attorneys, accountants, valuers, bankers, and others in the course of their trade. The objective standard of care is that of a hypothetical reasonable man." And whether the actor exercised or did not exert the level of care that a reasonable man would have done in the given circumstances is a matter of fact in every case." The allusion relates to artisans' responsibility to properly exercise their trades "It encapsulates the law as it existed at the time. Given the public's high regard for medical practitioners' care and attention to patients, it's no surprise that the level of competence expected of medical professionals is well established. Tindal C.J. stated in Lanphler v. Phipos[21]: "Everyone who enters a learned profession promises to apply a fair amount of attention and competence to their work. If he is an attorney, he does not guarantee that you will win your case; a surgeon does not guarantee that he will cure you; and a surgeon does not guarantee that he will employ the most advanced technology available. There may be people with more schooling and advantages than he does, but he promises to deliver a level of expertise that is fair, reasonable, and competent." Everettv Griffzths[22] "Scrutton L.J. concluded that a medical practitioner assumes that he possesses the average ability and knowledge required to execute his obligation to individuals who come to him in that capacity. The responsibility imposed on medical men in English law is to provide a fair and reasonable level of care and competence to the practise of their profession. The quality of care expected of American doctors and nurses is the same. Erie C.J . said in Rich v. Pierpont[23] "A medical man is not liable simply because another practitioner may have demonstrated better skill and knowledge; rather, he is required to possess that degree of talent which cannot be defined, but which, in the jury's judgement, is a competent degree of ability and knowledge." It is insufficient to hold the defendant accountable because some medical men with considerably more experience or ability may have used a higher level of competence, or even if he himself might have used a higher level of care. The question is whether there was a lack of competent care and ability to the point where the undesirable outcome resulted. In Sinz v. Owens[24],33 Edmonds J. of the California Supreme Court found that the standard of care needed of a physician was not the best skill known

[21] (1838), 8 Car . & P. 475, at p . 479
[22] *Id*.
[23] Rich vs . Pierpont (1862), 3 F . & F. 35, at p . 40
[24] Sinz v. Owens , 33 Cal.2d 749,[Sac. No. 5982. In Bank. Apr. 20, 1949].

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to medical science, but rather the degree of skill, knowledge, and care commonly possessed. Bingham L.J. in Eckersley v. Binnie[25], summarised the Bolam test in the following words:

As a result of these broad assertions, a professional should be able to command the corpus of information that is part of the professional equipment of the average member of his profession. In terms of understanding of new breakthroughs, discoveries, and developments in his area, he should not trail behind other ordinary assiduous and intellectual members of his profession. He should be conscious of his knowledge gaps and skill limits in the same way that an ordinary competent practitioner would be. He should be aware of the hazards and risks in every professional work he does to the same degree that other qualified members of the profession are. He must provide no less competence, skill, or care to whatever professional activity he does than other typically competent members of his trade, but he does not need to bring any more. The fair average serves as the benchmark. The law does not demand that a professional man be a paragon who possesses both polymath and prophetic traits.

Medical Negligence And Imperitia Culpae Adnumeratur

In a doctor-patient relationship, the doctor owes the patient a legal obligation, and any refusal to act in conformity with accepted medical standards - as stipulated by the legal duty - is unjust. A medical practitioner is a specialist in the field of medicine, and if he lacks competency, he will be held accountable for breaching his legal duty to the patient. The maxim imperitia culpae adnumeratur was also used in Roman-Dutch law when the courts were considering the carelessness of, say, a medical practitioner[26]. Today, the maxim means, among other things, that a medical practitioner is negligent if he or she makes a false representation to a patient by attesting to his or her abilities and knowledge, and thus competence, to conduct a specific medical procedure while knowing that this is not the case[27]. Dutch settlers introduced Roman-Dutch law to South Africa in the seventeenth century, citing Roman law in Dutch legal writings[28]. When patrimonial damage resulted from an injuria, the plaintiff had two options under Roman and

[25] Eckersley v BinnieDate [1988], 18 Con LR 44, CA
[26] Swanepoel 2009 PELJ 147–148; Carstens and Pearmain 616–617
[27] Otto 2004 SA J of Radiology 20
[28] Grotius, Johannes Voet, Simon Groenewegen and Johannes van der Linden. De Groot defined the position in Roman-Dutch law that mere ignorance, lack of understanding and weakness are equal to guilt, for which the physician is liable. Also see Carstens & Pearmain (n 25) 616 on the role of the imperitia rule; a duty of care exists if the physician agrees to treat the patient.

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Roman-Dutch law: either bring an action based on the actio iniuriarum to recover damages for the insult received, or bring an action based on the Aquilian action to recover damages for the loss of patrimonial property. The complainant must demonstrate that the alleged conduct resulted in him suffering damnum, or patrimonial loss.[29] This should not be confused with a painful or uncomfortable activity. De Groot established the view that simple stupidity, incomprehension, and infirmity are akin to guilt, for which the doctor is accountable, in Roman-Dutch law. A duty of care occurs if the doctor consents to treat the patient, which is another aspect of the imperitia rule.

Foundational Principles of South African Medical Law[30], According to these authors, ignorance or incompetence is considered negligence, i.e. the lack of professional expertise and experience that the medical profession requires and regulates. Wrongfulness is merely one of the elements required to establish delictual liability in South Africa. Another component is culpa, which in a larger sense denotes fault, but in a more specific sense denotes negligence (culpa). A medical professional will be judged not only on the component of culpa, but also on the yardstick of imperitia culpae adnumeratur, which translates to "lack of skill." It indicates that a reasonable medical practitioner should be aware that a patient may be damaged if they are treated by a medical professional who is inexperienced and untrained. When one has demonstrated that the defendant's conduct (to foresee harm and guard against it) was unreasonable, the element of negligence (culpa) as part of delict is established. If it fell short of the standard of conduct of a hypothetical reasonable doctor in the same situation, it would be unreasonable. Acceptable worldwide medical principles that have been published and peer-reviewed serve as the standard for this hypothetical reasonable doctor. A medical practitioner is an expert in the field of medicine, and if he lacks competency, he will be found in breach of his legal responsibility to the patient and will be held accountable. In S v Mkwetshane[31]The accused was a community service intern at a hospital. The deceased, who was effectively the defendant in this case, was an asthmatic patient. A nurse at the hospital noted that the defendant was having trouble breathing one morning, and the accused, who was the only doctor present at the time, was summoned to help. The defendant was in a dreadful state and foaming at the lips when the accused arrived at her bedside. The accused gave the defendant 20cc of amiophylline to help him breathe,

[29]In Hoffa v S.A. Mutual Fire and General Insurance Co. Ltd. 1965 (2) SA 944 (C) 951–952, Van Winsen J
[30] Foundational Principles of South African Medical Law, 2007) 613.
[31] S v. Mkwetshane ,1956 2 SA 493 (N).

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but the defendant's respiration did not improve. He then decided to give the defendant 20cc of the medication paraldehyde since he thought he was witnessing an epileptic episode. Furthermore, the accused administered another dose of the original medicine to the defendant. The defendant's condition improved, and the accused abandoned her, but she died later. The cause of death was determined to be a deadly overdose of the first substance administered by the accused. The defendant was found guilty of culpable homicide and drug administration incompetence. The case was appealed, with the defence arguing that, despite his lack of expertise, the accused was responding to an emergency situation and making the best decisions he could under the circumstances. The defence was rejected by the court because the accused might have sought aid from a nurse or someone else if he had known he lacked the essential knowledge and expertise, but failed to do so. The appeal was therefore dismissed. In McDonald v Wroe[32]The plaintiff's wisdom teeth were causing her trouble. She went to the defendant's dentist, who advised her to have three of her teeth extracted. The procedure was carried out under a general anaesthesia. The plaintiff suffered numbness and a sense of needles pricking her face after waking up from surgery, and it was later revealed that this was due to nerve damage caused by the surgery. The harm was permanent, according to the expert witnesses who testified in the case. The plaintiff filed a lawsuit against the defendant, alleging that he failed to send her to a specialist despite knowing he lacked the necessary expertise and skill to do the treatment. The court found the defendant doctor negligent under the imperitia culpae adnumeratur maxim.

Imperitia culpae adnumeratur – incompetence is counted as a flaw! If a practitioner conducts a procedure knowing that he lacks the essential ability, knowledge, or experience, he is always negligent. In Dale v Hamilton[33]The plaintiff suffered terrible burns when a physician used an X-ray device to detect a problem. The Coolidge tube had been put too close to the patient, resulting in the burns. The defect would have been detected by a qualified radiologist. The radiologist was required to determine the appliance's operational safety and was not entitled to depend on the expert's installation, according to the court. The locality rule was set in Van Wyk v Lewis, viz. that the same degree of care and skill practiced in a large city hospital could not be expected from a practitioner working in a rural area. Van der Merwe and Olivier and Strauss state that in view of modern developments no justification exists for retention of the locality rule. Neethling et al.

[32] McDonald v. Wroe [2006] 3 All SA 565 (C).
[33]Dale v Hamilton 1924 WLD 184.

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submit that the nature of the community where the practitioner works should be considered as should opportunities to keep abreast with new developments. An error of clinical judgment: the law does not require the doctor to be infallible in his conduct, and an error of clinical judgment will not constitute negligence where the proper standard of care has been followed.

The location rule was established in the case of *Van Wyk v. Lewis*[34], which said that a practitioner practicing in a rural region could not be expected to exercise the same level of care and expertise as those employed in a big metropolitan hospital. According to Van der Merwe, Olivier, and Strauss[35], there is no longer any reason for retaining the location rule in light of contemporary changes. Neethling et al. contend that the practitioner's work environment and opportunity to stay current on new advancements should both be taken into account. A mistake of clinical judgement will not establish negligence when the appropriate standard of care has been adhered to since the law does not require the doctor to be impenetrable in his behavior.[36]

In *Pringle v. Administrator of Transvaal*[37], it was established that a standard of care that blurs the line between surgical error and medical malpractice should not be used when applying a test for medical negligence. A practitioner would often have a strong defense against accusations of irresponsible behavior if he follows usual practice that is widely acknowledged and accepted by the profession.

According to Claassen and Verschoor1, innovation and experimentation bring about two competing interests: those of the patient, who should not be subjected to abuse, and those of the practitioner and society, whose interests are served by increased knowledge. According to Neethling et al. 4, the level of care necessary is not that of the "average" doctor, but rather that of the "reasonable" doctor. In legal proceedings, proving carelessness depends on the balance of probability. The burden of proof in civil lawsuits is on the plaintiff, who must show both carelessness and the harm caused by the negligence. The burden of evidence in criminal prosecutions is with the state, and proof must be established beyond a reasonable doubt. To help the court determine the reasonable man standard, expert testimony is often required.

[34] Van Wyk v Lewis 1924 AD 438
[35] Van der Merwe NJ, Olivier PJJ.Die Onregmatige Daad in die Suid Afrikaanse Reg. 5th ed. Pretoria: JP van der Walt, 1985.. Strauss SA. Doctor, Patient and the Law. 2nd ed. Pretoria: JL van Schaik, 1963.
[36] Neethling J, Potgieter JM, Visser PJ. Deliktereg. Durban: Butterworths, 1989
[37] Pringle v Administrator, Transvaal, 1990 (2) SA 379 (W)

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Conclusion

The maxim "*impertia culpae adnumeratur*" clearly brings into light the liability of the professionals while rendering services. This maxim has been long in existence. Roman jurists created this maxim to tackle the growing problems in professional services. It was recognized as one of the most important parts of the labor law in the Roman Empire because it binds the professionals for the services they were providing. The Roman Empire controlled a large force of workers in addition to that there were private professionals also. They were mostly acquitted for their mistakes because of non-recognition of their liability towards their customers. This led to the formation of imperitia culpae adnumeratur. Which means ignorance or lack of skill is to be counted as negligence. The major feature about this maxim is that it not only bounds the professional for a reasonable care towards the plaintiff but also it enforces that this care and application of skill by the professional is up to the level of what he has proclaimed it to be. Meaning the skills should be objectively assessed as per the professional level of the service provider. So higher the level of person, he has to ensure higher skills and more care towards his clients. This maxim travelled from the Roman Empire to the Dutch Empire and from there to even in whales (as its description can be found in the legal history of whales) and right now it is one of the commonly accepted doctrines for medical negligence in South African law. It can also be assessed that thia maxim somewhat had a role to play in the formation of concept of 'duty of care' in the common law of United Kingdoms. Both the concepts prime facie appears to be intermingled. Both ensure that professionals must take care of their clients and there should be no ignorance or lack of skill towards them. But the detailed study above has elaborated that the basic difference between both is that while the maxim imperitia culpae adnumeratur ensures that the level of care and skill is to be in par with the level of professionalism proclaimed by the service provider. The concept of duty of care enumerates that the car and skills used would be assessed on a reasonable standard. Meaning the standards should be reasonable and commonly accepted in the general practitioners of that profession. Thus, the standard of care does not fluctuate but assessed with the current norms in the society. India almost follows the similar law of torts as of United Kingdom thus the applicability of this maxim in India is also very narrow. Furthermore, in the recent years this maxim has strongly developed around the concept of medical negligence. There are numerous cases where applicability of this maxim is visible. South Africa in particular has included this maxim within their legal system.