

# Health Law: Quality & Liability

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Informed Consent -  
Compared to Battery



# Battery



No consent

at all



# 4 variations



(1) No consent  
to **any** procedure



# Nazi experiments



# Richard Dreyfus



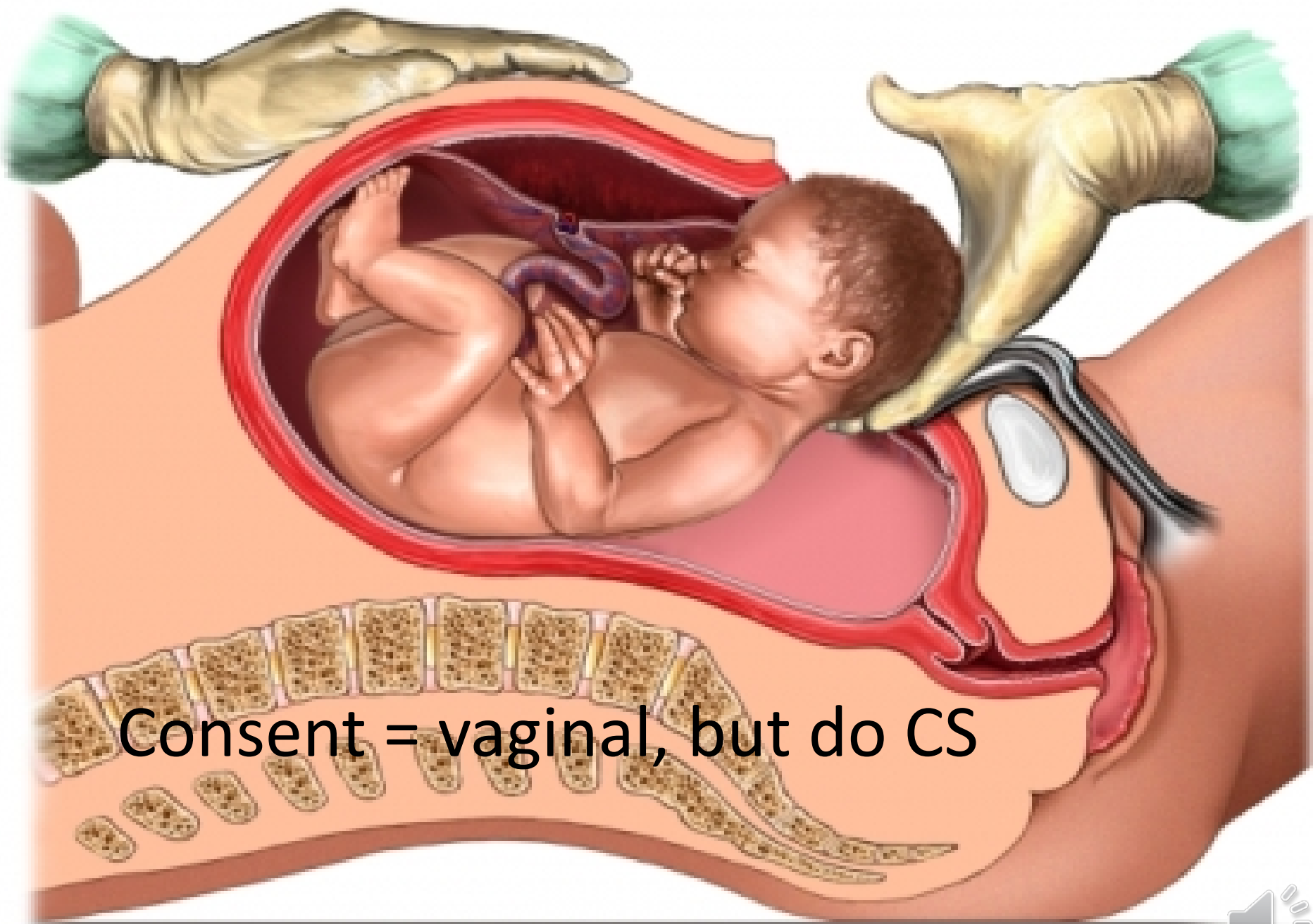
RTD cases 1970s



(2) Consent  
only to  
**different**  
procedure








Consent = vaginal, but do CS



**Seaton**  
**v.**  
**Patterson**  
**(Ky. App. 2012)**





Consent circumcision  
but did penectomy



**Hey, wait a sec.  
I'm pretty sure  
I had a penis when  
I checked in here.**



(3) Same  
procedure,  
**different body  
part**





Patient  
consented  
to left ear



Physician  
operated  
on right ear

Mohr v. Williams (Minn. 1905) 

(4) Same  
procedure,  
same part,  
**different doc**



John  
CULLERHEAD

# LOVE & OTHER DRUGS

Anna  
HATHAWAY

Impersonate a doctor

NOV. 31






# Comparing battery & informed consent



Battery is far  
**simpler**



	Informed Consent	Battery
Injury	X	
Duty	X	
Exceptions	X	
Conduct causation	X	
Experts re risks (or duty –IN,DE)	X	
Punitive damages		X 

PTF **need not be**  
**injured** (can even  
be benefitted)

(harm is to  
**dignity**, not body)



# Battery

PTF: “I did **not**  
consent to  
what doc did”



# Informed consent

PTF: “I **did** consent  
...”



“BUT I would not  
have consented, **if**  
disclosure had been  
appropriate [non-  
negligent]”



# Comparing malpractice & informed consent





Physician may  
have **selected**  
the right  
procedure



Physician may  
have **performed**  
the procedure  
perfectly



Might still have  
breached duty of  
informed consent



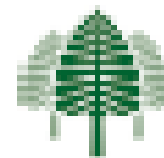
Problem is  
physician did not  
make appropriate  
**disclosures**



# PATIENTS' PREFERENCES MATTER

Stop the silent misdiagnosis

Even without clinical diagnosis, can be preference misdiagnosis



# Terminology



“medical  
malpractice”



Breach of **any**  
duty owed as  
physician





Abandonment

Informed consent

Confidentiality

Deviation SOC



“Malpractice”

**usually** means

deviate from

standard care

