

A THUMB NAIL SKETCH OF THE OSLER CASE

1. Crystal Osler had just passed her 18th birthday and was in her final year at high school in Durban, when she was summoned by the guidance teacher and challenged as to whether she was pregnant. She admitted she was; she was very naïve and thought she was 10 weeks pregnant; in fact she was over 20 weeks. The teacher never enquired when her last period had occurred.
2. Crystal told the teacher she was too scared to tell her parents and she and her boy-friend had decided she would have to have an abortion.
3. With the collusion of the head mistress the teacher arranged an abortion for Saturday morning at a local private clinic at a special price. Crystal did not keep the appointment – she desperately wanted to confide in her mother but could not bring herself to do so – and she had grave misgivings about going through with the abortion. The teacher insisted she must and made another appointment. She gave Crystal her mobile number and insisted she phone as soon as she had visited the clinic.
4. The abortion at the clinic was illegal on at least three fronts. No scan was taken to ascertain the term of the pregnancy. It was recorded as 20 weeks based on a distortion of the date Crystal gave for her last period. Any abortion over 12 weeks requires by law a doctor; this was done entirely by a midwife. The mandatory counselling leading to informed consent was totally absent.
5. Crystal eventually took the Cytotec pills prescribed to her the following evening but very reluctantly.
6. On Monday morning she was in labour; she concealed it from her parents. At school she was put in the sick bay and then taken back to the clinic by the same teacher. They called the doctor who realised she was way over 20 weeks and sent her to hospital with a note saying ‘26-28 weeks’ and asking them to suppress the labour.
7. Crystal gave birth to a son shortly afterwards. He lived for 4 hours without attention. At post-mortem the government pathologist certified him as 28 weeks weighing just under 1 kg.

8. The clinic, doctor and midwife have no defence in law to an action for damages; the first two have already pleaded guilty to hundreds of similar offences of procuring illegal abortions beyond 12 weeks. The midwife turned 'State evidence.'

9. The school will hotly contest their liability; the teacher claims she did nothing at all to arrange the abortion. We have notes given to Crystal and telephone records to prove her a liar. Nevertheless in view of the constitutional right to an abortion in SA, the issue of the school's liability remains difficult but a matter of the greatest public importance.

10. The live issues in the case which will hit the headlines are:

- Is the school liable, or only the clinic?

- What is the appropriate measure of damages for Crystal?

It is primarily on this second issue that we need expert medical evidence. An increased risk of any medical disorder, physical or psychological, must be reflected in damages. We are claiming R.500,000 for Crystal which is a large claim in SA; it equates to only USD.75,000.

All the parties bringing the action are more concerned about the principles than the money. There is no doubt that if the 3 areas of abortion risk* hit the headlines, the abortion rate in SA will drop.

- * 1. ABC
- 2. Post abortion syndrome – psychological problems
- 3. Difficulties with future pregnancies and premature birth.

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