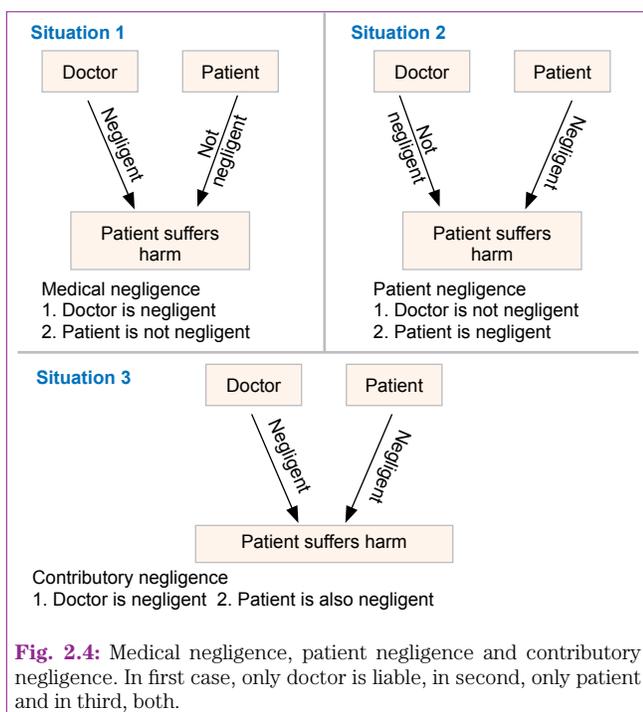


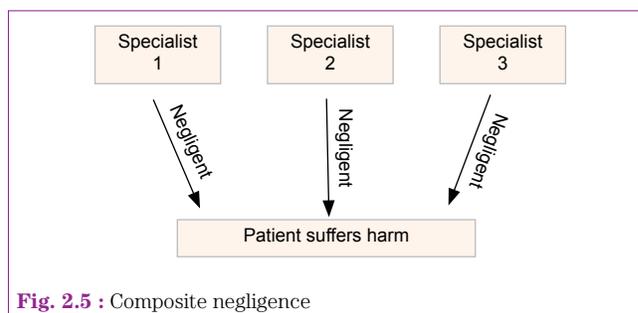
instructs him to report numbness → Patient develops numbness in his toes → does not inform doctor [patient negligent] → suffers permanent injury → Doctor entitled to the defense of contributory negligence. (ii) Doctor prescribes drug → fails to inform the patient of its side effects [doctor negligent] → patient starts getting side effects → fails to inform the doctor [patient negligent] → suffers injury → contributory negligence (2) **Burden of proof** – lies with the doctor (3) **Doctrine of comparative [or proportionate] negligence** - **Quantum of injury** caused by patient's and doctor's negligence is decided by the court and the compensation awarded accordingly. If, say, patient's negligence is responsible for 80% of his injury, and doctor's negligence for 20%, patient would be entitled only to 20% of the compensation. (4) Contributory negligence is a good defense in civil cases, but cannot be taken as a defense in criminal cases. (5) The doctrine of contributory negligence is subject to following exceptions (i) **Last clear chance doctrine** - Both doctor and patient are negligent. But if it is shown that the defendant (doctor) had a "Last Clear Chance" to avert the damage caused to the patient, and he did not avail of this chance, he loses his defense of contributory negligence. **Example:** Doctor prescribes drug to patient → fails to inform of side-effects [doctor negligent] → Patient develops rashes, but fails to inform doctor [patient also negligent, so concept of contributory negligence comes into play] → Patient visits doctor on the next date → doctor sees rashes → fails to take remedial action → Patient suffers injury → sues doctor → Doctor takes plea of contributory negligence. **Analysis** - Patient can allege that the doctor had the "last clear chance" to avoid injury, because on the patient's next visit, the doctor did see his rashes and yet did not do anything. (ii) The **Avoidable Consequences Rule** - Both parties are negligent, but patient could have avoided his own injuries by being more careful [It is in fact a variation of the Last clear chance doctrine" in as much



as he himself had the "last chance" to avoid injuries]. He could have avoided the consequences of doctor's negligence, but he did not carefully act upon it. So he himself is responsible for his injuries and doctor need not pay. **Example:** Doctor does not apply bandage and antibiotics to a gaping lacerated wound (doctor negligent) → He however advises the patient not to allow the wound to get contaminated, and visit him next week to get his wound examined again → patient comes home and thinks that applying cow dung would heal his wound faster → applies cow dung on his wounds → develops pus, but he does not contact the doctor. Nor does he visit the doctor next week, as was advised by the doctor (patient negligent) → Patient suffers injury. **Analysis** - Here both doctor and patient are negligent and normally the compensation should have been shared between the doctor and the patient. But since the patient aggravated his own injury by doing something which was avoidable, the doctor would be covered under the "avoidable consequences rule" and he does not have to pay anything. (iii) **Good Samaritan doctrine** - One who assists another who is in serious danger cannot be charged with contributory negligence, unless the assistance is rash or reckless.

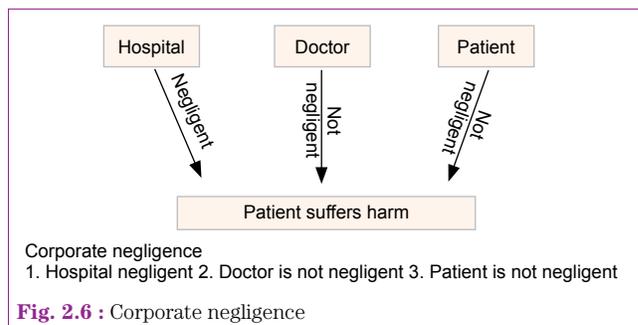
4. Composite negligence

Composite negligence is said to occur, when a patient suffers injury as a result of the combined negligence of two or more doctors [Fig 2.5]. **Salient features:** (1) Damages are not distributed; only the total sum is awarded. It's the sufferer who, if he wishes, can even claim all the damages from a single person. (2) If a specialist feels he has been asked to pay more than justified, he can claim contribution from other specialists.



5. Corporate negligence

Corporate negligence is the negligence of a corporation [hospital]. The individual doctor may or may not necessarily be liable in this case [Fig 2.6]. **Examples:** (1) hospital uses defective or poorly maintained equipment or drugs (2) selects or retains incompetent employees (3) doesn't keep oxygen cylinders in ICU (4) does not maintain sterile OT.



C. Instances of Medical Negligence

It is virtually impossible to give an exhaustive list of instances of medical negligence. Some more common ones are given below.