



# MEDICAL LAW

TEXT, CASES,  
AND MATERIALS

EMILY JACKSON  
OXFORD



online  
resource  
centre

# MEDICAL LAW

TEXT, CASES,  
AND MATERIALS

EMILY JACKSON

OXFORD  
UNIVERSITY PRESS

OXFORD  
UNIVERSITY PRESS

Great Clarendon Street, Oxford OX2 6DP

Oxford University Press is a department of the University of Oxford.  
It furthers the University's objective of excellence in research, scholarship,  
and education by publishing worldwide in

Oxford New York

Auckland Cape Town Dar es Salaam Hong Kong Karachi  
Kuala Lumpur Madrid Melbourne Mexico City Nairobi  
New Delhi Shanghai Taipei Toronto

With offices in

Argentina Austria Brazil Chile Czech Republic France Greece  
Guatemala Hungary Italy Japan Poland Portugal Singapore  
South Korea Switzerland Thailand Turkey Ukraine Vietnam

Oxford is a registered trade mark of Oxford University Press  
in the UK and in certain other countries

Published in the United States  
by Oxford University Press Inc., New York

© Emily Jackson, 2006

The moral rights of the author have been asserted  
Database right Oxford University Press (maker)

Crown copyright material is reproduced under Class Licence  
Number C01P0000148 with the permission of HMSO  
and the Queen's Printer for Scotland

First published 2006

All rights reserved. No part of this publication may be reproduced,  
stored in a retrieval system, or transmitted, in any form or by any means,  
without the prior permission in writing of Oxford University Press,  
or as expressly permitted by law, or under terms agreed with the appropriate  
reprographics rights organizations. Enquiries concerning reproduction  
outside the scope of the above should be sent to the Rights Department,  
Oxford University Press, at the address above

You must not circulate this book in any other binding or cover  
and you must impose this same condition on any acquirer

British Library Cataloguing in Publication Data  
Data available

Library of Congress Cataloging in Publication Data  
Data available

Typeset by RefineCatch Limited, Bungay, Suffolk  
Printed in Great Britain by  
Antony Rowe Ltd, Chippenham, Wiltshire

ISBN 0-19-926127-X 978-0-19-926127-7

1 3 5 7 9 10 8 6 4 2

To Emma and Sophie Jackson

## PREFACE

My intention in writing this book has been to provide students of medical or health care law and ethics with both a textbook and a source of relevant materials. The text should be sufficiently accessible to be useful to undergraduate students with no prior knowledge of either law or medicine, but also in-depth enough to be interesting to postgraduate students already familiar with the field. Obviously, for reasons of space, it is impossible for one book to exactly match every possible medical law curriculum, and there will inevitably be areas that some readers may wish I had covered in more depth. With such issues—for example the retained organs scandal—I have flagged up other relevant sources where more detailed analysis may be found.

Many of the subjects covered in this book are contentious and newsworthy. This makes them exciting both to teach and to study, but also means that there are likely to be many interesting new developments during the life of this book. Wherever possible, I have tried to flag-up likely future directions.

People often have strongly held views on medical law and ethics, and in this book I have included extracts which embody a number of diverse perspectives. My aim has been to explain and describe current medical law, and provide balanced analysis of the issues, not to offer my personal views. There are places where my opinions may become evident, but this should not prevent readers from forming their own judgements.

While writing this book I have acquired many debts of gratitude. To begin with, I would like to thank Jane Kavanagh at OUP, who first suggested that I should consider writing a medical law textbook, and Sarah Hyland, who has been a helpful and supportive editor.

I have learned a great deal from the students who have studied medical law with me, both at LSE and Queen Mary, and I would like to thank three in particular, who worked as my research assistants at various points during the writing of this book. Aimee Daruwala and Nicola McGuigan sifted through and photocopied a growing mountain of material, and Stuart Andrews heroically read the whole draft manuscript prior to publication. His comments and suggestions were invaluable.

My colleagues at LSE, Queen Mary, the HFEA, and elsewhere, have been encouraging and inspiring, and I would particularly like to thank Marie Fox, Ellie Lee, John Harris, Simon Jenkins, Suzi Leather, Sheila McLean, Mavis Maclean, Katherine O'Donovan, Mike Redmayne, Helen Reece, Nik Rose, Sally Sheldon, and Juliet Tizzard.

I could not have written this book without the support of my closest friends, whose confidence in my ability to complete this project kept me going when it seemed like an overwhelmingly daunting task, and whose unfailingly excellent company helped to take my mind off the whole thing at critical moments. I am especially grateful to Jonathan Brenton, Hugh Collins, Alison Cox, Nicola Lacey, Rebecca Mead, Ciarán O'Meara, Duncan Paterson, Henry Phillips, Robert Phillips, Paul Raffield, Monica Thurnauer, and Matthew Wait.

Finally, I would like to thank my father, Douglas Jackson, and my sister-in-law, Sue Jackson, for being incredibly supportive over the past three years. When I started writing this book, I benefited enormously from conversations with my late brother, Rupert Jackson, about the reality of life as a consultant in an overstretched NHS accident and emergency department and intensive care unit. This book is dedicated to his daughters, Emma and Sophie, with all my love.

Emily Jackson  
October 2005

## ACKNOWLEDGEMENTS

Grateful acknowledgement is made to all the authors and publishers of copyright material which appears in this book, and in particular to the following for permission to reprint material from the sources indicated:

Albany Law Review for extracts from Eileen L McDonagh, 'My Body, My Consent: Securing the Constitutional Right to Abortion Funding', (1999) 62 *Albany Law Review* 1057.

American Psychological Association for extracts from Dan W Brock, 'Misconceived Sources of Opposition to Physician-Assisted Suicide', (2000) 6 *Psychology, Public Policy, and Law*; and Margot White and Daniel Callahan, 'Oregon's First Year: The Medicalization of Control', (2000) 6 *Psychology, Public Policy, and Law*.

American Society of Law, Medicine and Ethics for extracts from Frances Miller, 'Denial of Health Care and Informed Consent in English and American Law Extracts', (1992) 18 *American Journal of Law and Medicine*.

Blackwell Publishers for extracts from Helen Draper & Tom Sorrell, 'Patients' Responsibilities', (2002) 16 *Bioethics*; Helga Kuhse 'Clinical ethics and nursing: "yes" to caring, but "no" to a female ethics of care', (1995) 9 *Bioethics*; Darren Shickle, 'Public Preferences for Health Care: Prioritisation in the United Kingdom', (1997) 11 *Bioethics*; Paul McNeill, 'Paying People to Participate in Research: Why Not?', (1997) 11 *Bioethics*; Florencia Luna, 'Vulnerable Populations and Morally Tainted Experiments', (1997) 11 *Bioethics*; Paquita de Zulueta, 'Randomised Placebo-Controlled Trials and HIV-Infected Pregnant Women in Developing Countries: Ethical Imperialism or Unethical Exploitation', (2001) 15 *Bioethics*; Massimo Reichlin, 'The Argument from Potential: A Reappraisal', (1997) 11 *Bioethics*; Julian Savulescu, 'The Embryonic Stem Cell Lottery and the Cannibalization of Human Beings', (2002) 16 *Bioethics*; David Resnik, 'Regulating the Market in Human Eggs', (2001) 15 *Bioethics*; Robert Lee & Derek Morgan, 'Sterilisation and Mental Handicap: Sapping the Strength of the State', (1998) 14 *Journal of Law and Society*; Peter Conrad and Deborah Potter, 'Human growth hormone and the temptations of biomedical enhancement', (2004) 26 *Sociology of Health and Illness*; Judith Jarvis Thomson, 'A Defence of Abortion', (1971) 1 *Philosophy and Public Affairs*; Henry S Richardson, 'Specifying norms as a way to resolve concrete ethical problems', (1990) 19 *Philosophy and Public Affairs*; Loren E Lomasky, 'Medical Progress and National Health Care', (1980) 10 *Philosophy and Public Affairs*; Norman Daniels, 'Health-Care Needs and Distributive Justice', (1981) 10 *Philosophy and Public Affairs*; Christopher Tollefsen, 'Embryos, Individuals, and Persons: An Argument Against Embryo Creation and Research', (2001) 18 *Journal of Applied Philosophy*; Susan M Wolf, Jeffrey P Kahn, John E Wagner, 'Using Preimplantation Genetic Diagnosis to Create a Stem Cell Donor: Issues, Guidelines and Limits', (2003) 31 *Journal of Law, Medicine and Ethics*; Roger Brownsword, 'Stem Cells, Superman, and the Report of the Select committee', (2002) 65 *Modern Law*



*Review*; John Griffiths, 'Assisted Suicide in the Netherlands: The Chabot Case', (1995) 58 *Modern Law Review*; Paula Case, 'Secondary Iatrogenic Harm: Claims for Psychiatric Damage Following a Death Caused by Medical Error', (2004) 67 *Modern Law Review*; Nigel Lowe & Satvinder Juss, 'Medical Treatment—Pragmatism and the Search for Principle', (1993) 56 *Modern Law Review*; Dermot Feenan, 'Common Law Access to Medical Records', (1996) 59 *Modern Law Review*; Geneva Richardson, 'Autonomy, Guardianship and Mental Disorder: One Problem, Two Solutions', (2002) 65 *Modern Law Review*; Harvey Teff, 'Regulation under the Medicines Act 1968: A continuing prescription for health', (1984) 47 *Modern Law Review*; Christopher Hodges, 'Development Risks: Unanswered Questions', (1998) 61 *Modern Law Review*; Laura Hoyano, 'Misconceptions about Wrongful Conception', (2002) 65 *Modern Law Review*; Margaret Brazier, 'Patient autonomy and consent to treatment: the role of the law?', (1987) 7 *Legal Studies*; and Katherine O'Donovan and Roy Gilbar, 'The Loved Ones: Families, Intimates and Patient Autonomy', (2003) 23 *Legal Studies*.

Extracts from the *British Medical Journal* and the *Journal of Medical Ethics* are reproduced with the permission of the BMJ Publishing Group.

Cambridge University Press for extracts from Edmund D Pellegrino, 'Intersections of Western biomedical ethics and world culture: problematic and possibility', (1992) 3 *Cambridge Quarterly of Healthcare Ethics*; Bernard Williams, *Making Sense of Humanity and Other Philosophical Papers* (1995); Stephen Munzer, *A Theory of Property* (1990); John Harris, 'The Age-Indifference Principle and Equality', (2005) 14 *Cambridge Quarterly of Healthcare Ethics*; Martin Smith & Heidi Foster, 'Morally Managing Medical Mistakes', (2000) 9 *Cambridge Quarterly of Healthcare Ethics*; Allen E Buchanan & Dan W Brock, *Deciding for Others: The Ethics of Surrogate Decision Making* (1989); Onora O'Neill, *Autonomy and Trust in Bioethics* (2002); Peter Singer & Karen Dawson, 'IVF technology and the argument from potential'; and Helga Kuhse and Peter Singer, 'Individuals, humans and persons: The issue of moral status', in P Singer et al. (eds), *Embryo Experimentation* (1990); John Harris, 'Stem Cells, Sex, and Procreation', (2003) 12 *Cambridge Quarterly of Healthcare*; and John Keown, *Euthanasia, Ethics and Public Policy: An Argument against Legalisation* (2002). Reproduced by permission of Cambridge University Press.

Cavendish Publishing for extracts from Biggs, H, 'I Don't Want to be a Burden! A Feminist Reflects on Women's Experiences of Death and Dying', pp. 279–95 and Fox, M, 'Research Bodies: Feminist Perspectives on Clinical Research', pp. 115–34 in Sheldon, S and Thomson, M (eds), *Feminist Perspectives on Health Care Law* (1998) London: Cavendish Publishing.

Connecticut Law Review for extracts from Jessica Berg, 'Grave Secrets: Legal and Ethical Analysis of Postmortem Confidentiality', (2001) 34 *Connecticut Law Review*.

Crown copyright material is reproduced under Class Licence Number C01P0000148 with the permission of OPSI and the Queen's Printer for Scotland.

Extracts from *Wisconsin Law Review* are reproduced with the permission of the Daily Reporter Publishing Company.



Extracts from *Journal of Health Politics, Policy and Law* are reproduced with the permission of Duke University Press.

Elsevier for extracts from I Kennedy, RA Sells, AS Daar, RD Guttman, R Hoffenberg, M Lock, J Radcliffe-Richards, N Tilney and for the International Forum for Transplant Ethics, 'The case for "presumed consent" in organ donation', reprinted from *The Lancet*, vol. 351, pp. 147–52, © 1998; J Radcliffe-Richards, AS Daar, RD Guttman, R Hoffenberg, I Kennedy, M Lock, RA Sells, N Tilney, 'The case for allowing kidney sales. International Forum for Transplant Ethics', reprinted from *The Lancet*, vol. 351, pp. 1950–2, © 1998; and Peter Singer, 'Xenotransplantation and Speciesism', reprinted from *Transplantation Proceedings*, vol. 24, pp. 728–32, © 1992; Charles Foster, 'It should be, therefore it is', reprinted from *New Law Journal*, vol. 154, © 2004; with permission from Elsevier.

The General Medical Council for extracts from *Confidentiality: Protecting and Providing Information* (GMC, 2004) <http://www.gmc-uk.org/guidance/library/confidentiality.asp>; *Serious Communicable Diseases Guidance to Doctors*, (London, GMC, 1997) [http://www.gmc-uk.org/guidance/library/serious\\_communicable\\_diseases.asp](http://www.gmc-uk.org/guidance/library/serious_communicable_diseases.asp); *Research: The Role and Responsibilities of Doctors*, (GMC, 2002) available at <http://www.gmc-uk.org/>; and *Withholding and Withdrawing Life-prolonging Treatments: Good Practice in Decision-making*, (London GMC, August 2002).

Georgetown University Press for extracts from Bonnie Steinbock, 'The Concept of Coercion and Long-Term Contraceptives', in Moskowitz, Ellen and Jennings, Bruce, *Coerced Contraception? Moral and Policy Challenges of Long-Acting Birth Control* (Washington D.C.: Georgetown UP, 1996).

Hart Publishing for Eric Matthews, 'Mental and Physical Illness—An Unsustainable Separation?', in N Eastman and J Peay (eds) *Law Without Enforcement: Integrating Mental Health and Justice* (1999); and Rhona Schulz, 'Surrogacy in Israel: An Analysis of the Law in Practice' in R Cook, SD Sclater with F Kaganas (eds), *Surrogate Motherhood: International Perspectives* (2003).

The Harvard Law Review Association for extracts from Frederick Schauer, 'Slippery Slopes', (1985) 99 *Harvard Law Review*, © 1985 by the Harvard Law Review Association; Margaret Jane Radin, 'Market-Inalienability', (1987) 100 *Harvard Law Review* © 1987 by the Harvard Law Review Association.

Extracts from the *Hastings Law Journal* are reproduced with the permission of Hastings School of Law.

Human Fertilisation and Embryology Authority for extracts from *Sex Selection: options for regulation*, © Human Fertilisation and Embryology Authority 2003.

Indiana University Press for extracts from AL Caplan, *Am I my Brother's Keeper? The Ethical Frontiers of Biomedicine* (1997); and Christine Overall, 'Frozen Embryos and "Fathers' Rights": Parenthood and Decision-Making in the Cryopreservation of Embryos', in Callahan, Joan (ed.) *Reproduction, Ethics and the Law: Feminist Responses* (Bloomington and Indianapolis: Indiana UP, 1995).

Extracts from *The Law Reports*, *The Weekly Law Reports*, *English Reports* and *Family Law Reports* are reproduced with the permission of the Incorporated Council of Law Reporting for England and Wales.

Extracts from John Marshall, 'Experiment on Human Embryos: Sentience as the cut-off point?', in GR Dunstan and MJ Seller (eds), *The Status of the Human Embryo: Perspectives from Moral Tradition* (1998); and Bill New & Julian Le Grand, *Rationing in the NHS: Principles and Pragmatism* (1996) are reproduced with the permission of the King's Fund, [www.kingsfund.org.uk](http://www.kingsfund.org.uk).

Extracts from the *All England Reports* and *The Times Law Reports* are reproduced with the permission of LexisNexis.

The *London Review of Books* and Lord Chief Justice Stephen Sedley for extracts from Stephen Sedley, 'Short Cuts', (2005) 27 *London Review of Books*.

Extracts from *Nature Reviews Genetics* are reproduced with the permission of Macmillan Publishers.

Extracts from the *New England Journal of Medicine* are reproduced with the permission of Massachusetts Medical Society.

McGraw-Hill Publishers for extracts from Amy Gutmann, 'For and Against Equal Access to Health Care', *Milbank Memorial Fund Quarterly/Health and Society* (1981) 59, and in *Classic Works in Medical Ethics*, Gregory Pence (ed.) (Boston: McGraw-Hill, 1998).

Medical Research Council for extracts from *Personal Information in Medical Research*, © 2000 Medical Research Council.

Nuffield Trust for extracts from Richard Sykes, *New Medicines, The Practice of Medicine, and Public Policy* (London, Nuffield Trust, 2000).

Extracts from *The Journal of Mental Health Law* are reproduced with the permission of Northumbria Law Press (Law School, Northumbria University).

Oxford University Press for extracts from John A Robertson, 'Extending preimplantation genetic diagnosis: the ethical debate: Ethical issues in new uses of preimplantation genetic diagnosis', (2003) 18 *Human Reproduction*, © European Society of Human Reproduction and Embryology, reproduced by permission of Oxford University Press/*Human Reproduction*; Hilary Putnam, 'Cloning People'; John Harris, 'Clones, Genes and Human Rights'; Ian Wilmut, 'Dolly: The Age of Biological Control'; and Jonathan Glover, 'Eugenics and Human Rights', in J Burley (ed.), *The Genetic Revolution and Human Rights* (OUP, 1999); Michael Jones, 'Breach of Duty'; and Andrew Grubb, 'Consent to Treatment: The Competent Patient', in A Grubb with J Laing (eds), *Principles of Medical Law* 2nd edition (OUP, 2004); Ian Kennedy, *Treat Me Right*, (OUP, 1988); and Ian Kennedy, 'The Fiduciary Relationship and its Application to Doctors' in P Birks (ed.), *Wrongs and Remedies in the Twenty-first Century* (Oxford: Clarendon Press, 1986). Reproduced by permission of Oxford University Press.

Extracts from *Medical Law Review*, *Current Legal Problems*, *Journal of Law, Policy and the Family*, *International and Comparative Law Quarterly*, *Human Reproduction* and the *Oxford Journal of Legal Studies* are reproduced with the permission of Oxford University Press and the authors.

Penguin Books for extracts from Jonathan Glover, *Causing Death and Saving Lives* (1977).

Random House, Inc. for extracts from Ronald Dworkin, *Life's Dominion: An Argument about Abortion and Euthanasia*.

Royal College of Psychiatrists for extracts from *Evidence submitted to the Joint Committee on the Draft Mental Health Bill* (RCP, 2004).

South Carolina Law Review for extracts from Jane Stapleton, 'Bugs in Anglo-American Products Liability', (2002) 53 *South Carolina Law Review*.

Extracts from *Feminist Legal Studies*, *Ethical Theory and Moral Practice*, *Medicine, Health Care and Philosophy* and the *European Journal of Health Law* are reproduced with the permission of Springer.

Extracts from *St Louis University Law Journal* are reproduced with the permission of St Louis University School of Law.

Extracts from *Stanford Law and Policy Review* and *Stanford Law Review* are reproduced with the permission of Stanford School of Law.

Extracts from *Journal of Medicine and Philosophy*, *Journal of Social Welfare and Family Law* and *American Journal of Bioethics* are reproduced with the permission of the Taylor & Francis Group.

Extracts from *Texas International Law Journal* and *Texas Law Review* are reproduced with the permission of University of Texas School of Law.

Thomson Publishing Services for extracts from Robin Oppenheim, 'The "Mosaic" of Tort Law: The Duty of Care Question', (2003) *Journal of Personal Injury Law*; '(on the application of Smeaton) v Secretary of State for Health', (2002) *Criminal Law Review* 664; Richard HS Tur, *Legislative Technique and Human Rights: The Sad Case of Assisted Suicide* (2003) Sweet & Maxwell; Charles Pugh and Marcus Pilgerstorfer, *The Development Risk Defence: Knowledge, Discoverability and Creative Leaps* (2004) Sweet and Maxwell.

Extracts from *Law Quarterly Review*, *Journal of Personal Injury Law*, *Criminal Law Review* and *Modern Law Review* are reproduced with the permission of Thomson Publishing Services.

University of California Press for extracts from Marlene Gerber Fried, 'Abortion in the United States—Legal but Inaccessible', in R Solinger (ed.), *Abortion Wars: A Half Century of Struggle 1950–2000* (Berkeley, University of California Press, 1998).

Extracts from Allen Buchanan, 'Ethical Responsibilities of Patients and Clinical Geneticists', (1998) 1 *Journal of Health Care, Law and Policy*. Reproduced with the permission of the University of Maryland School of Law.

University of Pennsylvania Press for extracts from Alexander Morgan Capron, 'Informed Consent in Catastrophic Disease Research and Treatment', (1974) 123 *University of Pennsylvania Law Review*.

Extracts from Lori Andrews, 'Beyond Doctrinal Boundaries: A Legal Framework for Surrogate Motherhood', (1995) 81 *Virginia Law Review*, reproduced with the permission of the Virginia Law Review Association.

Extracts from Lori B Andrews, 'A Conceptual Framework for Genetic Policy: Comparing the Medical, Public Health and Fundamental Rights Models', (2001) 79 *Washington University Journal of Law and Policy*; and Rebecca Dresser, 'Patient Advocates in Research: New Possibilities, New Problems', (2003) 11 *Washington University Journal of Law and Policy*; reproduced with the permission of Washington University School of Law.

Extracts from Katherine T Bartlett, 'Re-expressing Parenthood' (1998) 98 *Yale Law Journal*; and Marjorie Maguire Schulz, 'From Informed Consent to Patient Choice: A New Protected Interest', (1985) 95 *Yale Law Journal*; reproduced with the permission of the Yale Law Journal Company, Inc.

Extracts from Deborah Lupton, 'The Body, Medicine and Society' reproduced by permission of Oxford University Press Australia from *Second Opinion: An Introduction to Health Sociology*, 3<sup>rd</sup> edition 2005, Germov (ed.) Oxford University Press, [www.oup.com.au](http://www.oup.com.au).

Extracts from Mary Ann Warren, 'On the Moral and Legal Status of Abortion' (1973) 1 *The Monist* 43–61.

Extracts from Ruth Faden, Tom L Beauchamp, with Nancy M P King, *A History and Theory of Informed Consent* (OUP, 1986), reproduced by permission of Oxford University Press.

Extracts from Margaret Pabst Battin, *The Least Worst Death: Essays in Bioethics on the End of Life* (OUP, 1994), reproduced by permission of Oxford University Press.

Every effort has been made to clear the necessary permissions. If notified, the publisher will undertake to rectify any errors or omissions at the earliest opportunity.

# TABLE OF CASES

- A, Re [1992] 3 Med LR 303 ... 698
- A (Children) (Conjoined Twins: Surgical Separation), Re [2001] Fam 147; [2001] 2 WLR 480; [2000] 4 All ER 961, CA ... 229, 980–984, 985
- A (Mental Patient: Sterilisation), Re; *sub nom*; A (Medical Treatment: Male Sterilisation), Re [2000] 1 FLR 549; [2000] 1 FCR 193, CA ... 207, 208, 209, 211–212
- AC, Re [1990] 573 A 2d 1235 ... 188
- A v C [1985] FLR 445 ... 873
- A v National Blood Authority (No 1) [2001] 3 All ER 289; (2001) 60 BMLR 1; [2001] Lloyd's Rep Med 187 ... 557, 560, 563, 564, 566, 567, 568, 571, 572, 573
- A Health Authority v X (No 1) [2001] EWCA Civ 2014; [2002] 2 All ER 780, CA; affirming [2001] 2 FCR 634 ... 323, 324, 348
- Abouzaid v Mothercare (UK) Ltd *The Times*, 20 February, 2001, CA ... 564
- AD v East Kent Community NHS Trust [2002] EWCA Civ 1872; [2003] 125 2 FCR 704 ... 677
- Adoption Application: Surrogacy (AA 212/86), Re [1987] Fam 81; [1987] 3 WLR 31; [1987] 2 All ER 826 ... 888
- Airedale NHS Trust v Bland [1993] AC 789; [1993] 2 WLR 316; [1993] 1 All ER 821, HL ... 82, 184, 206, 215, 911, 922, 926, 929, 987–991, 992–995, 997, 998
- AK (Adult Patient) (Medical Treatment: Consent), Re [2001] 1 FLR 129; [2001] 2 FCR 35 ... 191, 937
- Alcock v Chief Constable of South Yorkshire [1992] 1 AC 310; [1991] 3 WLR 1057; [1991] 4 All ER 907, HL ... 113, 116, 646
- Alkmaar case, *Nederlandse Jurisprudentie* 1982 No 106 Supreme Court, The Netherlands ... 962
- Allen v Bloomsbury Health Authority [1993] 1 All ER 651; [1992] 3 Med LR 257 ... 663
- Amphill Peerage, The [1977] AC 547; [1976] 2 WLR 777; [1976] 2 All ER 411, HL ... 832
- Appleby v Sleep [1968] 1 WLR 948; [1968] 2 All ER 265 ... 550
- Appleton v Garrett (1997) 34 BMLR 23 ... 265
- Arthur JS Hall & Co v Simons [2002] 1 AC 615, HL ... 75
- Ashworth Hospital Authority v MGN Ltd [2002] 1 WLR 2033, HL ... 322
- Attorney General v Able [1983] 3 WLR 845; [1984] 1 All ER 277 ... 915
- Attorney General v De Keyser's Royal Hotel Ltd; *sub nom* De Keyser's Royal Hotel Ltd, Re [1920] AC 508, HL ... 245
- Attorney General v Guardian Newspapers Ltd (No 2) [1990] 1 AC 109; [1988] 3 WLR 776; [1988] 3 All ER 545, HL ... 320, 321, 339
- Attorney General v X [1992] 2 CMLR 277, Sup Ct (Irl) ... 632
- Attorney General's Reference (No 2 of 2003), Re [2004] EWCA Crim 785, CA ... 808
- Attorney General's Reference (No 3 of 1994), Re [1998] AC 245; [1997] 3 WLR 421; [1997] 3 All ER 936, HL ... 644
- Attorney General's Reference (No 6 of 1980), Re [1981] QB 715; [1981] 3 WLR 125; [1981] 2 All ER 1057 ... 181
- AW (Adoption Application), Re [1993] 1 FLR 62 ... 888
- B (A Minor) (Wardship: Medical Treatment), Re [1981] 1 WLR 1421, CA ... 974, 977
- B (A Minor) (Wardship: Sterilisation), Re [1988] AC 199; [1987] 2 WLR 1213; [1987] 2 All ER 206, HL ... 228, 229
- B (Adult: Refusal of Medical Treatment), Re [2002] EWHC 429; [2002] 2 All ER 449; [2002] 2 FCR 1 ... 199, 927, 928
- B (Wardship: Abortion), Re [1991] 2 FLR 426; [1991] FCR 889 ... 621, 622
- B v Barking, Havering and Brentwood Community NHS Trust [1999] 1 FLR 106 ... 440
- B v Croydon HA [1995] Fam 133; [1995] 2 WLR 294; [1995] 1 All ER 683, CA ... 422, 423, 424, 425
- Barnett v Chelsea and Kensington Hospital Management Committee [1969] 1 QB 428; [1968] 2 WLR 422; [1968] 1 All ER 1068 ... 109, 141
- Barr v Matthews (2000) 52 BMLR 217 ... 615
- Belsito v Clark 644 N E 2d 760 (Ohio Com Pl 1994) ... 879
- Benarr v Kettering HA (1988) 138 NLJ Rep 179 ... 663, 669

- Blyth v Bloomsbury Health Authority [1993] 4 Med LR 151, CA . . . 100
- Bogle v McDonald's [2002] EWHC 490 (Transcript on LEXIS) . . . 566
- Bolam v Friern Hospital Management Committee [1957] 1 WLR 582; [1957] 2 All ER 118 . . . 102, 122, 123, 125, 128, 130, 132, 206, 207, 208, 209, 210, 268, 273, 274, 276, 287, 289, 305, 459, 602
- Bolitho (Deceased) v City and Hackney HA [1998] AC 232; [1997] 4 All ER 771, HL . . . 125, 126, 130, 131, 276, 459
- Bone v Mental Health Review Tribunal [1985] 3 All ER 330 . . . 433
- Briody v St Helens and Knowsley Area Health Authority (Claim for Damages and Costs) [2001] EWCA Civ 1010; [2002] QB 856; [2002] 2 WLR 394, CA . . . 876
- Brooks v Home Office [1999] 2 FLR 33 . . . 134
- Bull v Devon Area Health Authority (1989) 22 BMLR 79; [1993] 4 Med LR 117, CA . . . 97, 110, 134
- Burton v Islington Health Authority; De Martell v Merton and Sutton Health Authority (No 1) [1993] QB 204; [1992] 3 WLR 637; [1992] 3 All ER 833, CA . . . 643
- C (A Child) (HIV Testing), Re [2000] Fam 48; [2000] 2 WLR 270 . . . 229
- C (A Minor) (Adoption Application), Re [1993] 1 FLR 87; [1992] 1 FCR 337 . . . 889
- C (A Minor) (Detention for Medical Treatment), Re [1997] 2 FLR 180; [1997] 3 FCR 49 . . . 233
- C (A Minor) (Medical Treatment), Re [1998] 1 FLR 384; [1998] 1 FCR 1; [1998] Lloyd's Rep Med 1 . . . 975
- C (A Minor) (Wardship: Medical Treatment) (No 2), Re [1990] Fam 39; [1989] 3 WLR 252; [1989] 2 All ER 791, CA . . . 333
- C (A Minor) (Wardship: Surrogacy), Re [1985] FLR 846 . . . 874, 875, 889
- C (Adult: Refusal of Medical Treatment), Re [1994] 1 WLR 290; [1994] 1 All ER 819 . . . 192, 196, 197, 198, 199, 200, 218, 236, 238, 253, 384, 424
- C (Application by Mr and Mrs X under s 30 of the Human Fertilisation and Embryology Act 1990), Re [202] EWHC 157 (Fam); [2002] 1 FLR 909 . . . 884
- C (Welfare of Child: Immunisation), Re [2003] EWCA Civ 1148; [2003] 2 FLR 1095, CA . . . 225, 227, 230
- C v C [1946] 1 All ER 562 . . . 337
- C v S (Foetus: Unmarried Father) [1988] QB 135; [1987] 2 WLR 1108; [1987] 1 All ER 1230, CA . . . 618, 644
- Campbell v MGN Ltd [2004] UKHL 22; [2004] 2 AC 457, HL . . . 325–326
- Caparo Industries plc v Dick
- Cattanach v Melchior [2003] HCA 38, HC (Aus) . . . 678
- Centre for Reproductive Medicine v U [2002] EWCA Civ 565; [2002] Lloyd's Rep Med 259, CA . . . 820
- CH (Contact: Parentage), Re [1996] 1 FLR 569; [1996] Fam Law 274 . . . 834
- Chabot case, Nederlandse Jurisprudentie 1994 No 65 Supreme Court, The Netherlands . . . 962, 965, 966
- Chappel v Hart (1998) 72 AJLR 1344; [1999] Lloyd's Rep Med 223, HC (Aus) . . . 294, 297, 299
- Chatterton v. Gerson [1981] QB 432; [1980] 3 WLR 1003; [1981] 1 All ER 257 . . . 196, 262, 263–264, 278, 492, 521
- Chester v Afshar [2004] UKHL 41; [2004] 3 WLR 927, HL; [2002] EWCA Civ 724; [2003] QB 356, CA . . . 277, 278, 294, 295–298, 299, 300, 302
- Clark v MacLennan [1983] 1 All ER 416 . . . 130
- Clunis v Camden and Islington HA [1998] QB 978; [1998] 2 WLR 902, CA . . . 101, 150
- Commission of the European Communities v United Kingdom (C300/95) [1997] All ER (EC) 481; [1997] ECR I-2649, ECJ . . . 557, 569
- Cornelius v De Taranto (2001) 68 BMLR 62 . . . 356
- Creutzfeldt-Jakob Disease Litigation (No 1), Re (2000) 54 BMLR 1 . . . 264, 265
- Creutzfeldt-Jakob Disease Litigation (No 5), Re; *sub nom* Group B Plaintiffs v Medical Research Council [2000] Lloyd's Rep Med 161 . . . 148
- Curlender v Bio-Science Laboratories 106 Cal App 3d 811 (1980) . . . 655, 656
- D (A Child), Re [2005] UKHL 33; [2005] 2 FCR 223, HL . . . 836
- D (A Minor) (Wardship: Sterilisation), Re [1976] 2 WLR 279; [1976] 1 All ER 326 . . . 226
- D (Adult: Medical Treatment), Re [1998] 1 FLR 411; [1998] 1 FCR 498 . . . 997
- D (Medical Treatment: Mentally Disabled Patient), Re [1998] 2 FLR 22; (1998) 41 BMLR 81; [1998] 2 FCR 178 . . . 214, 217, 214
- D v East Berkshire Community Health NHS Trust [2003] EWCA Civ 1151; [2004] 2 WLR 58, CA . . . 120
- Danns v Department of Health [1998] PIQR P226 . . . 112

- De Freitas v O'Brien [1995] 6 Med LR 108, CA ... 124, 125
- Donoghue v Stevenson [1932] AC 562; 1932 SC (HL) 31, HL ... 551
- Douglas v Hello! Ltd [2001] 2 All ER 289, CA ... 324
- Down Lisburn and Social Services Board v CH & LAH (unreported, 18 October 1995) ... 631
- E (A Minor) (Wardship: Medical Treatment), Re [1993] 1 FLR 386; [1994] 5 Med LR 73 ... 232, 236, 237, 238, 243, 244
- Emeh v Kensington and Chelsea and Westminster AHA [1985] 2 WLR 233; [1984] 3 All ER 1044, CA ... 663
- Evans v Amicus Healthcare [2004] EWCA Civ 727; [2004] All ER (D) 309, CA ... 823
- Eyre v Measday [1986] 1 All ER 488, CA ... 106, 107, 659
- F (A Minor) (Blood Tests: Paternity Rights), Re [1993] 3 All ER 596, CA ... 227
- F (Mental Patient: Sterilisation), Re [1990] 2 AC 1; [1989] 2 WLR 1025; [1989] 2 All ER 545, HL; affirming *The Times*, 8 December 1988; (1989) 86(10) LSG 42, CA ... 203, 204, 206, 207, 209, 214, 216, 738
- F (In Utero), Re [1988] Fam 122; [1988] 2 WLR 1288; [1988] 2 All ER 193, CA ... 643
- F v West Berkshire HA [1990] 2 AC 1; [1989] 2 WLR 1025; [1989] 2 All ER 545, HL; affirming *The Times*, 8 December 1988; CA ... 195
- Fairchild v Glenhaven Funeral Services Ltd (t/a GH Dovenor & Son) [2002] UKHL 22; [2003] 1 AC 32 ... 144, 145, 576, 577
- Family Planning Association of Northern Ireland, Re [2003] NIQB 48 ... 631
- Farrell v Avon HA [2001] Lloyd's Rep Med 458 ... 117
- Forbes v Wandsworth Health Authority [1997] QB 402; [1996] 3 WLR 1108; [1996] 4 All ER 881, CA ... 151, 152, 153
- Foster v Biosil (2001) 59 BMLR 178 ... 564
- Freeman v Home Office [1984] QB 524; [1984] 1 All ER 1036, CA ... 251, 492
- Frenchay Healthcare NHS Trust v S [1994] 1 WLR 601; [1994] 2 All ER 403, CA ... 995
- Froggatt v Chesterfield and North Derbyshire Royal Hospital NHS Trust [2002] All ER (D) 218 115, 117
- Gillick v West Norfolk and Wisbech AHA [1985] 2 WLR 413; [1985] 1 All ER 533, CA; [1984] QB 581; [1983] 3 WLR 859; [1984] 1 All ER 365, QBD ... 192, 225, 232, 233–236, 237, 238, 239, 242, 244, 245, 247, 332, 501
- Glass v United Kingdom (61827/00) [2004] 1 FLR 1019, ECHR ... 979
- Gold v Haringey HA [1988] QB 481; [1987] 3 WLR 649; [1987] 2 All ER 888, CA ... 274, 275
- Goodwill v British Pregnancy Advisory Service [1996] 2 All ER 161; [1996] 1 WLR 1397, CA ... 113, 661
- Gowten v Wolverhampton HA [1994] 5 Med LR 432 ... 294
- Greenfield v Irwin (A Firm) [2001] 1 WLR 1279; [2001] 1 FLR 899, CA ... 671
- Gregg v Scott [2005] UKHL 2 (Transcript on Lexis) ... 145–147, 577
- Groom v Selby [2001] EWCA Civ 1522; [2002] Lloyd's Rep Med 1; (2002) 64 BMLR 47, CA ... 676
- H (A Healthcare Worker) v Associated Newspapers Ltd [2002] EWCA Civ 195; (1992) 65 BMLR 132, CA ... 345
- H (A Minor) (Blood Tests: Parental Rights), Re [1996] 4 All ER 28, CA ... 227
- H (Adult: Incompetent), Re [1998] 2 FLR 36; [1998] 3 FCR 174 ... 998
- Hardman v Amin [2000] Lloyd's Rep Med 498; (2001) 59 BMLR 58 ... 688
- Hart v Brown (1972) 289 A 2d 386 (Conn Sup Ct) ... 738
- HE v A Hospital NHS Trust [200] EWHC 1017 (Fam); [2003] 2 FLR 408 ... 189, 936
- Herczegfalvy v Austria (A/242B) (1993) 15 EHRR 437, ECHR ... 216, 426, 427, 428
- HG (Specific Issue: Sterilisation), Re [1993] 1 FLR 587; [1993] 1 FCR 553 ... 209
- Hills v Potter [1984] 1 WLR 641 124, 269
- HIV Haemophiliac Litigation, Re (1998) 41 BMLR 171; (1990) 140 NLJ 1349, CA ... 101, 554
- HL v United Kingdom; *sub nom* L v United Kingdom (Application No 45508/99) 5 October 2004 (Bournemouth case) ... 400, 401, 432
- Hotson v East Berkshire AHA [1987] AC 750; [1987] 3 WLR 232; [1987] 2 All ER 909, HL ... 143, 144, 146, 576
- Hucks v Cole (1968) [1993] 4 Med LR 393, CA ... 124, 125, 126
- Hunt v Severs [1994] 2 WLR 602; [1994] 2 All ER 385, HL ... 677
- Hunter v Mann [1974] QB 767; [1974] 2 WLR 742; [1974] 2 All ER 414 ... 321, 346



- Hutchinson v Epsom and St Helier NHS Trust [2002] EWHC 2363 ... 144
- Hyde v Tameside AHA *The Times*, 16 April, 1981, CA ... 148
- J (A Minor) (Child in Care) (Medical Treatment), Re [1992] 4 All ER 614, CA ... 86, 231
- J (A Minor) (Wardship: Medical Treatment), Re [1991] Fam 33; [1991] 2 WLR 140; [1990] 3 All ER 930, CA ... 652, 922, 974, 976–977
- J (Specific Issue Orders: Child's Religious Upbringing and Circumcision), Re [2000] 1 FLR 571; [2000] 1 FCR 307, CA ... 225
- Janaway v Salford Health Authority [1989] AC 537; [1988] 3 WLR 1350; [1988] 3 All ER 1079, HL ... 615
- JD v East Berkshire Community Health NHS Trust [2005] UKHL 23 (Transcript on Lexis) ... 120
- Jepson v Chief Constable of West Mercia Police Constabulary [2003] EWHC 3318 ... 610
- Johnson v Calvert 851 P 2d 776 (Cal 1993) ... 878
- Jones v Berkshire Health authority (unreported, 2 July 1986) ... 663
- JT (Adult: Refusal of Medical Treatment), Re [1998] 1 FLR 48; [1998] 2 FCR 662 ... 197
- K, W and H (Minors) (Medical Treatment), Re [1993] 1 FLR 854; [1993] Fam Law 280 ... 242, 632
- Kapadia v Lambeth LBC (2001) 57 BMLR 170, CA ... 339
- Kapfunde v Abbey National Plc [1999] ICR 1; (1999) 46 BMLR 176, CA ... 119
- KB (Adult) (Mental Patient: Medical Treatment), Re [1994] 2 FCR 1051 ... 421
- Keenan v United Kingdom (27229/95) (2001) 33 EHRR 38; 10 BHRC 319, ECHR ... 429
- Kelly v Kelly 1997 SLT 896; [1997] 2 FLR 828 ... 619
- Kirkham v Chief Constable of Greater Manchester [1990] 2 QB 283; [1990] 2 WLR 987; [1990] 3 All ER 246, CA ... 148
- Knight v Home Office [1990] 3 All ER 237 ... 133
- Kohl v Union des Caisses de Maladie (C158/96) [1998] ECR I-1931; [1998] 2 CMLR 928, ECJ ... 95
- Kolanis v United Kingdom (517/02) [2005] All ER (D) 227 ... 439
- L (Medical Treatment: Gillick Competence), Re [1998] 2 FLR 810; [1999] 2 FCR 524 ... 238, 242
- LC (Medical Treatment: Sterilisation), Re [1997] 2 FLR 258; [1997] Fam Law 604 ... 209
- Lee v Taunton and Somerset NHS Trust [2001] 1 FLR 419 ... 688
- Leeds Teaching Hospital NHS Trust v A [2003] EWHC 259; [2003] 1 FLR 1091 ... 837
- Loveday v Renton [1990] 1 Med LR 117 ... 573, 575, 578
- Lybert v Warrington HA [1996] 7 Med LR 71, CA ... 286
- MB (Caesarean Section), Re [1997] 2 FLR 426; [1997] 2 FCR 541; [1997] 1 FCR 274; (1997) 38 BMLR 175, CA ... 188, 197, 199, 201, 216, 238, 280, 292, 941
- McAllister v Lewisham and North Southward HA [1994] 5 Med LR 343 ... 275
- McCandless v General Medical Council [1996] 1 WLR 167, PC ... 155
- McFarlane v Tayside Health Board [2000] 2 AC 59; [1999] 3 WLR 1301; [1999] 4 All ER 961, HL ... 113, 662, 663–666, 667, 668, 670, 671, 674–678, 680, 681, 682, 683–686, 688–690
- McKay v Essex Area Health Authority [1982] QB 1166; [1982] 2 WLR 890; [1982] 2 All ER 771, CA ... 650–652, 653, 654, 655, 658, 690
- Marriage of Buzzanca, In re 72 Cal Rptr 2d 280 (Ct App 1998), review denied, No S069696, 1998 Cal LEXIS 3830 (10 June 1998) ... 880
- Marriott v West Midlands RHA [1999] Lloyd's Rep Med 23, CA ... 127, 128
- Maynard v West Midlands RHA [1985] 1 All ER 635, HL ... 123, 125
- Miller v Kennedy 522 P.2d 852, CA (Wash State) ... 308
- MS v Sweden (1999) 28 EHRR 313; (1999) 45 BMLR 133, ECHR ... 323
- Muller-Faure v Onderlinge Waarborgmaatschappij OZ Zorgverzekeringen; van Riet v Onderlinge Waarborgmaatschappij ZAO Zorgverzekeringen, judgment of 13 May 2003 ... 95
- MW (Adoption: Surrogacy), Re [1995] 2 FLR 789; [1996] 3 FCR 128 ... 886
- Nettleship v Weston [1971] 2 QB 691; [1971] 3 WLR 370; [1971] 3 All ER 581, CA ... 132
- Newell v Goldenberg [1995] 6 Med LR 371 ... 661
- NHS Trust A v H [2001] 2 FLR 501; [2002] 1 FCR 713 ... 998
- NHS Trust A v M; NHS Trust B v H [2001] Fam 348; [2001] 2 WLR 942; [2001] 1 All ER 801 ... 996

- NHS Trust A v T (Adult Patient: Refusal of Medical Treatment) [2004] EWHC 1279 (Fam); [2005] 1 All ER 387 ... 199, 200
- Nocton v Lord Ashburton [1914] AC 932; [1914-15] All ER Rep 45, HL ... 306
- Norberg v Wynrib (1992) 138 NR 81 ... 307
- Norfolk and Norwich Healthcare NHS Trust v W [1996] 2 FLR 613; [1997] 1 FCR 269 ... 216
- North Glamorgan NHS Trust v Walters [2002] EWCA Civ 1792; [2003] PIQR 232, CA ... 115
- Northern Health and Social Services Board v A [1993] NIJB 1 ... 631
- Northern Health and Social Services Board v F and G [1993] NI 268 ... 631
- O'Keefe v Harvey-Kemble (1999) 45 BMLR 74, CA ... 294
- Open Door Counselling Ltd v Ireland (A/246) (1993) 15 EHRR 244; *The Times*, 5 November, 1992, ECHR ... 633
- Oregon v John Ashcoft Ninth Circuit Court of Appeals (2004) No 02-35587 ... 968
- Organon Laboratories Ltd v Department of Health and Social Security *The Times*, 6 February 1990 (Transcript on Lexis) ... 536
- Osman v United Kingdom (Case 87/1997/871/1083) [1999] 1 FLR 193; (2000) 29 EHRR 245, ECHR ... 92, 119
- Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co (The Wagon Mound) (No 1) [1961] AC 388; [1961] 2 WLR 126; [1961] 1 All ER 404; [1961] 1 Lloyd's Rep 1, PC ... 147
- P (A Minor) (Wardship: Sterilisation), Re [1989] 1 FLR 182; [1989] Fam Law 102 ... 209
- P (Minors) (Wardship: Surrogacy), Re [1987] 2 FLR 421; [1988] FCR 140 ... 887-888
- Page v Smith [1996] AC 155; [1995] 2 WLR 644; [1995] 2 All ER 736 ... 117, 147
- Palmer v Tees Health Authority [1999] Lloyd's Rep Med 351 ... 118
- Parkinson v St James and Seacroft University Hospital NHS Trust [2001] EWCA Civ 530; [2002] QB 266; [2001] 3 WLR 376, CA ... 666, 671-674, 675-677, 681, 682, 684, 686, 689, 690
- Paton v British Pregnancy Advisory Service Trustees [1979] QB 276; [1978] 3 WLR 687; [1978] 2 All ER 987 ... 603, 617, 618, 642
- Paton v United Kingdom (8416/78) (1981) 3 EHRR 408 ... 617, 620
- Pearce v United Bristol Healthcare NHS Trust (1999) 48 BMLR 118, CA ... 276, 277, 290
- Perruche Cass Ass Plen 17.11.00 JCP G2000, II-10438, 2309 ... 655
- Pfizer Corporation v Ministry of Health [1965] 2 WLR 387; [1965] 1 All ER 450, HL ... 550
- Phelps v Hillingdon LBC [2000] 4 All ER 504, HL ... 120, 121
- Phipps v Boardman [1967] 2 AC 46; [1966] 3 WLR 1009; [1966] 3 All ER 721, HL ... 320
- Planned Parenthood v Casey 112 Ct 2791 (1992) ... 634
- Postma case, Nederlandse Jurisprudentie 1973 No 183 District Court, Leeuwarden 21 February 1973 ... 961
- Poynter v Hillingdon Health Authority (1997) 37 BMLR 192 ... 289
- Practice Note (Official Solicitor: Declaratory Proceedings: Medical and Welfare Proceedings for Adults Who Lack Capacity) [2001] 2 FLR 158; [2001] 2 FCR 569 ... 211, 228
- Prendergast v Sam and Dee Ltd *The Times*, 14 March, 1989, CA (Transcript on LEXIS) ... 553
- Pretty v United Kingdom (2002) 35 EHRR 1, ECHR ... 919-920
- Price v United Kingdom (2001) 34 EHRR 1285 ... 93
- Q (A Minor) (Parental Order), Re [1996] 1 FLR 369; [1996] 2 FCR 345 ... 880
- Quintavalle (Comment on Reproductive Ethics) v Human Fertilisation and Embryology Authority. See R (on the application of Quintavalle) v Human Fertilisation and Embryology Authority
- R (A Child) (Contact: Human Fertilisation and Embryology Act 1990), Re [2003] EWCA Civ 182; [2003] Fam 129, CA ... 837, 838
- R (A Minor) (Wardship: Consent to Treatment), Re [1992] Fam 11; [1991] 3 WLR 592, CA ... 181, 232, 238, 239, 241, 242, 244, 245, 621
- R (Adult: Medical Treatment), Re [1996] 2 FLR 99; [1996] 3 FCR 473 ... 999
- R (on the application of Assisted Reproduction and Gynaecology Centre) v Human Fertilisation and Embryology Authority [2002] EWCA Civ 20; (2002) 99(12) LSG 33; *The Times*, 21 March, 2002; *Independent*, 6 February, 2002, CA ... 809
- R (on the application of B) v Mental Health Review Tribunal [2002] All Er (D) 304 ... 434
- R (on the application of Burke) v The General Medical Council [2005] EWCA Civ 1003 ... 1000