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*Third
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ASPEN CASEBOOK SERIES

|| *Bioethics and the Law* ||

Third Edition

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In honor of my mother, in memory of my father,
and in joyful gratitude for Aaron and our beloved
family, Ahuva, Shoshana, and Nava

Janet L. Dolgin

To my parents, in appreciation of their
steadfast support, and to Paul, Max,
Summer, and Charlie, for their exuberance

Lois L. Shepherd

|| *Preface* ||

Many topics of concern to bioethicists have occasioned passionate debate and have resulted in widely divergent responses from both professional bioethicists and from the wider society. Bioethics brings scholars and practitioners into the center of a number of pervasive, often emotional, social and moral debates, debates about such issues as abortion, stem-cell research, and assisted suicide. Many such debates involve questions about the meaning of personhood and the ways in which persons should be respected or cared for as they seek health for themselves and others and as they make decisions about reproduction and death. At the same time, debates about access to health care, the just distribution of care, and the appropriate aims and limits of public health initiatives have intensified in the United States. Such debates implicate people's deepest concerns about how to live and about how to understand and relate to other people within intimate settings, within larger communities, and within a national or global context.

In light of this, it should not be surprising that the study and practice of bioethics often require an interdisciplinary approach. For lawyers working in the field, bioethical questions are often located in a space between law and some other profession or discipline (e.g., medicine, nursing, public health, philosophy, economics, psychology). This book provides students with articles and references that will assist them in exploring the interdisciplinary context of bioethical debate. At the same time, the book, constructed primarily to teach bioethics to law students, frames each issue in light of judicial, legislative, and regulatory rules that may, as a practical matter, channel or limit options available to those attempting to resolve bioethical conundrums.

We have not shied away from the excitement, at times even volatility, that divergent viewpoints bring to the field. At the same time, we have aimed to provide a "balanced" presentation of bioethics. We have worked to achieve that balance by including a variety of controversial perspectives. We have not, in short, included many "neutral" readings in this book. Rather we have included provocative readings and have aimed to achieve balance by challenging each reading with another, contrasting perspective, or with a series of questions placed after the reading. We hope this approach will stimulate classroom discussion and help students shape their own responses to the dilemmas that

bioethicists ponder and to the disputes that lawyers involved with bioethical questions may be asked to help resolve.

We organized materials in the first and second editions of this book around the development of the human “lifespan.” This edition resembles earlier editions in presenting bioethical issues as they develop from birth, through childhood, adulthood, and old age, through dying and death. But in this edition, we have encompassed the lifespan approach within a larger frame that distinguishes between issues that primarily implicate individual concerns and issues that primarily implicate communal concerns. We believe that this frame provides for the presentation of lifespan issues and also brings pressing new questions about public health, population health, and social justice into focus.

As in the first and second editions of the book, Part I of the third edition presents concepts basic to bioethical inquiry. This Part includes updated versions of the three chapters in the first part of earlier editions. It also includes a new chapter (“Privacy, Essentialism, and Enhancements”) that considers questions posed by developments related to genetics, genomics, and neuroimaging, as well as questions about a variety of enhancements. This chapter consolidates material that was scattered throughout earlier editions, and it presents issues that have developed since the second edition appeared.

Part II (Bioethics and the Individual) focuses on bioethical conundrums that primarily affect individuals. These include questions about abortion, reproduction, dying, death, medical decision making, and discrimination in the provision of health care. The chapters on medical decision making and discrimination are new to this edition. Each of these chapters includes materials that were distributed in several chapters of the book’s earlier editions, as well as some new material. Many of the materials in Part II of this edition implicate relationships as well as personhood, but issues that affect the community more than individuals (and their relationships with specific others) are addressed in Part III.

Part III (Bioethics and the Community) includes materials about bioethical issues that directly affect communities larger than families and friendship groups. This Part includes two updated versions of chapters in the second edition (“Human Subject Research” and “Public Health”) and two new chapters, focusing respectively on the business parameters of health care and on social justice in the delivery and coverage of health care. Some of the topics in this Part (e.g., human subject research) are generally covered in bioethics courses. Others, however, are not (e.g., financial conflicts of interest and social justice in the delivery of health care).

In sum, the bipartite division of topics into those that primarily affect individuals (along with the people closest to them) and those that primarily affect communities provides a useful framework that should encourage readers to consider the complicated interconnections within bioethical inquiry among social assumptions, individual options, and society’s choices about how to distribute resources affecting health within populations and what may be properly asked of individuals and communities. Finally, we believe that the result of the decision to include provocative viewpoints is a collection of fascinating, often colorful readings that together permit an in-depth, piercing, and critical look at the assumptions, traditions, and alternative approaches that constitute bioethical inquiry. Reading this book and studying the topics it presents are likely to be challenging. But the process will, we hope, never be boring.

We are grateful for the help of many in the creation and production of this book. We thank Peter Skagestad of Wolters Kluwer for his help and guidance in completing this third edition and Kenny Chumbley for his assistance with the third edition's production process, as well as our previous editors at Aspen, Richard Mixter, Eric Holt, Troy Froebe, Fran Anderson, and Taylor Kearns. We also thank the several anonymous reviewers of all three editions who offered many helpful and insightful comments to guide our process. Particularly significant research assistance was provided by Katherine Dieterich, Maggie Emma, James Koffler, Alex Lo, Roshni Persaud, Amie Rice, Rick Savage, Reema Sultan, Jessica Smith, and Henry Sire. We are grateful to Toni Aiello, Reference Librarian at the Maurice A. Dean School of Law at Hofstra University, for her generous and intelligent assistance, and Margaret Foster Riley of the University of Virginia School of Law for her review of and helpful comments on the chapter on the business of health care. We are also appreciative of the secretarial and administrative assistance of Frances Avnet (Hofstra law), Carrie Gumm (University of Virginia Center for Biomedical Ethics and Humanities), Megan Hensley (Florida State University College of Law), and Craig Hartman (Florida State University College of Law). We both also thank our respective schools for their continuing support of our scholarly and teaching endeavors.

Janet L. Dolgin
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