## **CONTENTS**

Pr	eface	v
Tai	ble of Cases	xv
Table of Statutes		xxxiii
Tai	ble of Statutory Instruments	xxxvii
Tai	ble of International Legislation	xxxix
	breviations	xlvii
110	of commons	XIOII
IN	TRODUCTION	xlv
P/	ART I: HEALTHCARE LAW IN	
	ENGLAND AND WALES	1
1	CONSENT TO MEDICAL TREATMENT	3
	INTRODUCTION	3
	THE ETHICAL FRAMEWORK	3
	INFORMED CONSENT IN ENGLISH LAW	4
	CONSENT TO MEDICAL TREATMENT UNDER ENGLISH	
	COMMON LAW	8
	CONCLUSIONS ON THE ENGLISH	
	NOTION OF CONSENT TO TREATMENT	43
	SELECTIVE BIBLIOGRAPHY	44
2	MEDICAL CONFIDENTIALITY AND HEALTHCARE LAW	47
	INTRODUCTION	47
	GUIDANCE IN PROFESSIONAL CODES	49
	JUSTIFICATIONS FOR CONFIDENTIALITY	51
	CONFIDENTIALITY FOR PEOPLE UNDER 16	53
	LEGAL BASES FOR CONFIDENTIALITY?	55
	ACCESS TO MEDICAL RECORDS	69
	CONFIDENTIALITY, HIV AND AIDS	70
	INTERNATIONAL PROTECTION OF PRIVACY RIGHTS? COMMENTS ON CONFIDENTIALITY IN ENGLISH	73
	LAW AND UK MEDICAL PRACTICE	73
	SELECTIVE BIBLIOGRAPHY	74
3	ABORTION	77
	INTRODUCTION	77
	ETHICAL AND PHILOSOPHICAL PRINCIPLES	78
	HISTORICAL BACKGROUND	81

# Comparative Healthcare Law

	ABORTION LAW IN THE UK	83
	THE ORIGINS OF LIFE AND EMBRYO RESEARCH	109
	CONCLUSIONS	112
	SELECTIVE BIBLIOGRAPHY	113
4	CHILDREN AND HEALTHCARE	117
	INTRODUCTION	117
	FUNCTIONS OF CONSENT	118
	CHILDREN'S RIGHTS	132
	ACTING IN THE 'BEST INTERESTS OF THE CHILD'	133
	INTERNATIONAL PERSPECTIVES	134
	THE MEDICAL TREATMENT OF HANDICAPPED BABIES	135
	THE EUROPEAN CONVENTION FOR THE PROTECTION OF	
	HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS	138
	PARENTAL WISHES, MEDICAL TREATMENT	
	AND DISABLED BABIES	138
	CONCLUSIONS	161
	SELECTIVE BIBLIOGRAPHY	161
5	ASSISTED REPRODUCTION AND SURROGACY	163
	INTRODUCTION	163
	LEGAL AND ETHICAL FRAMEWORK	164
	SURROGACY	168
	COMMENT ON SURROGACY	187
	POSTHUMOUS REPRODUCTION FROM SPERM	
	TAKEN FROM A DECEASED DONOR	187
	ACCESS TO IVF SERVICES – OPEN TO ALL OR ONLY TO THOSE	
	WITHIN CERTAIN AGE LIMITS?	191
	SELECTIVE BIBLIOGRAPHY	194
6	STERILISATION, FERTILITY CONTROL AND THE	
	MENTALLY INCAPACITATED PATIENT	197
	INTRODUCTION	197
	ETHICAL PRINCIPLES	197
	HISTORICAL BACKGROUND	198
	CONSENSUAL AND NON-CONSENSUAL STERILISATION	200
	STERILISATION IN THE 'BEST INTERESTS' –	
	A SCOTTISH COMPARISON	227
	CONCLUSIONS	230
	SELECTIVE BIBLIOGRAPHY	231

### Contents

7	MEDICAL NEGLIGENCE AND PROFESSIONAL	
	ACCOUNTABILITY	233
	INTRODUCTION	233
	HISTORICAL PERSPECTIVES	233
	NEGLIGENCE IN ENGLISH LAW	233
	GENERAL PRINCIPLES	234
	MEDICAL LITIGATION IN THE UK	266
	CONCLUDING COMMENTS ON MEDICAL	
	NEGLIGENCE IN ENGLISH LAW	267
	SELECTIVE BIBLIOGRAPHY	268
8	DONATION AND TRANSPLANTATION OF	
	HUMAN ORGANS	271
	INTRODUCTION	271
	BACKGROUND TO ORGAN TRANSPLANTATION	272
	LEGAL PERSPECTIVES	272
	KEY ETHICAL ISSUES	273
	SALE OF HUMAN ORGANS	273
	REMOVAL OF ORGANS, UNLAWFUL ACTS AND CONSENT	275
	LIVE DONOR TRANSPLANTATION	277
	CHILDREN AS ORGAN DONORS	280
	LIVE DONOR TRANSPLANTS – THE HUMAN ORGANS	
	TRANSPLANT ACT 1989	281
	TRANSPLANTS BETWEEN UNRELATED PERSONS	282
	FETAL TRANSPLANTATION	283
	INCOMPETENT ADULTS AS DONORS	283
	EFFECTIVE VENTILATION OF PATIENTS CLOSE TO DEATH	284
	CADAVERIC TRANSPLANTATION	284
	RECENT DEVELOPMENTS	287
	REFORMING THE LAW	289
	SELECTIVE BIBLIOGRAPHY	289
9	THE END OF LIFE - EUTHANASIA AND PHYSICIAN-	
	ASSISTED SUICIDE	291
	INTRODUCTION	291
	HISTORICAL LEGAL BACKGROUND TO ASSISTED SUICIDE	291
	DEFINITIONS OF EUTHANASIA	292
	A RIGHT TO LIFE?	294
	A RIGHT TO DIE?	294
	THE ANENCEPHALIC BABY AND BRAIN DEATH	298
	THE ETHICAL DIMENSION	298
	CRIMINAL LIABILITY	299

## Comparative Healthcare Law

	AUTHORISATION OF NON-TREATMENT ADVANCE DIRECTIVES RECENT DEVELOPMENTS	303 315 317
	CONCLUSIONS	
	SELECTIVE BIBLIOGRAPHY	318 318
	SELECTIVE DIDLIOGRATITI	310
PA	ART II: COMPARATIVE PERSPECTIVES	321
10	CONSENT TO MEDICAL TREATMENT: EVOLUTION AND DEVELOPMENT OF THE	
	LAW IN NON-UK JURISDICTIONS	323
	•	
	INTRODUCTION	323
	AMERICAN LAW A BRITISH COMPARATIVE EXCURSUS	324
	CANADA	332
	AUSTRALIA	333
	AN AUSTRALIAN-AMERICAN COMPARISON	337 348
	NEW ZEALAND	348
	CIVIL LAW COUNTRIES	348
	NON-EUROPEAN PERSPECTIVES	352
	COMPARATIVE OBSERVATIONS	355
	SELECTIVE BIBLIOGRAPHY	356
11	MEDICAL CONFIDENTIALITY AND PROFESSIONAL	
11	PRIVILEGE	359
	INTRODUCTION	359
	COMMON LAW JURISDICTIONS	359
	A SCOTTISH LAW EXCURSUS	383
	THE EUROPEAN CONVENTION ON HUMAN RIGHTS	303
	AND HEALTHCARE LAW	384
	SELECTIVE BIBLIOGRAPHY	390
45	THE REPLICATION OF THE ATTREET OF THE ADDRESS OF THE ATTREET OF TH	
12	THE MEDICAL TREATMENT OF DISABLED NEWBORNS:	
	A COMPARATIVE PERSPECTIVE	391
	INTRODUCTION	391
	THE ETHICAL FRAMEWORK	391
	MEDICAL PRACTICE IN COMMON LAW AND	
	CIVIL LAW COUNTRIES	392
	THE ALLOCATION OF SCARCE RESOURCES	409
	CONCLUDING OBSERVATIONS	410
	SELECTIVE BIBLIOGRAPHY	410

### Contents

13	ABORTION: A GLOBAL OVERVIEW AND	
N.	COMPARATIVE STUDY	413
	INTRODUCTION	413
	GLOBAL SURVEY	413
	COUNTRIES WHICH BAN ABORTION IN	
	ALL CIRCUMSTANCES	416
	COMPARATIVE OBSERVATIONS ON THE AMERICAN	
	LAWS ON ABORTION	429
	ROE ERA REFORMS	449
	COUNTRIES WITH RECENT ABORTION LAW REFORMS	451
	EASTERN LEGAL PERSPECTIVES	452
	CONCLUDING COMPARATIVE OBSERVATIONS	453
	SELECTIVE BIBLIOGRAPHY	454
14	SURROGACY AND REPRODUCTIVE TECHNOLOGY	457
	INTRODUCTION	457
	SURROGACY	457
	REPRODUCTIVE TECHNOLOGIES:	
	TERMS AND PROCEDURES	459
	SURROGATE MOTHERHOOD	459
	GESTATIONAL SURROGACY: WHO IS THE	
	'NATURAL' AND LEGAL MOTHER?	467
	COMPARATIVE OBSERVATIONS	467
	POSTHUMOUS TAKING AND USE OF SPERM	474
	CIVIL LAW COUNTRIES	476
	FUTURE DEVELOPMENTS IN THE REPRODUCTION	
	REVOLUTION	486
	CONCLUDING COMMENTS ON SURROGACY AND	
	THE REPRODUCTION REVOLUTION	487
	SELECTIVE BIBLIOGRAPHY	488
15	STERILISATION OF PERSONS WITH A MENTAL	
	DISABILITY: A COMPARATIVE ANALYSIS	491
	INTRODUCTION	491
	HISTORICAL BACKGROUND	491
	A CONTEMPORARY OVERVIEW	493
	COMPARATIVE OBSERVATIONS ON STERILISATION	522
	SELECTIVE BIBLIOGRAPHY	522

16	MEDICAL MALPRACTICE IN OTHER COMMON LAW	
	AND CIVIL LAW JURISDICTIONS	525
	INTRODUCTION	525
	MEDICAL MALPRACTICE – A PRELIMINARY	
	COMPARATIVE POINT	525
	CONTRACTUAL LIABILITY – THE GENERAL POSITION	526
	THE 'NON-CONTRACTUAL' COUNTRIES	531
	DEGREE OF CARE OWED	532
	SCOPE OF THE DUTY OF CARE	532
	CRITERION OF PROFESSIONAL NEGLIGENCE	533
	EFFECT OF LACK OF CONSENT ON PHYSICIAN'S LIABILITY	533
	A COMMON LAW APPROACH	544
	A CIVIL LAW APPROACH	545
	NO-FAULT COMPENSATION SCHEMES	
	FOR MEDICAL INJURIES	547
	SELECTIVE BIBLIOGRAPHY	549
17	ORGAN DONATION AND ORGAN TRANSPLANTATION:	
	COMPARATIVE PERSPECTIVES	551
	A GLOBAL PERSPECTIVE	551
	ETHICAL PRINCIPLES	552
	THE CONTRACTING OUT OR PRESUMED CONSENT POLICY	552
	WORLD HEALTH ORGANISATION:	
	PRINCIPLES ON HUMAN ORGAN TRANSPLANTATION	553
	CIVIL LAW COUNTRIES	555
	COMMON LAW COUNTRIES	571
	FAR EASTERN AND ASIAN PERSPECTIVES	589
	COMPARATIVE OBSERVATIONS ON	
	ORGAN TRANSPLANTATION	595
	SELECTIVE BIBLIOGRAPHY	596
18	EUTHANASIA, DEATH AND DYING: A COMPARATIVE	
	OVERVIEW	599
	INTRODUCTION	599
	CIVIL LAW COUNTRIES	599
	COMPARATIVE OBSERVATIONS	606
	FUTURE DECISION MAKING FOR DEATH AND DYING -	
	ADVANCE DIRECTIVES	620
	OBSERVATIONS ON REVOCATIONS	625
	CONCLUDING COMPARATIVE OBSERVATIONS	625
	SELECTIVE BIBLIOGRAPHY	626

## Contents

9	A COMPARATIVE OVERVIEW OF HEALTHCARE LAW	
	THEMES AND PRINCIPLES	629
	COMPARATIVE METHODOLOGY	630
	ABORTION	631
	CONSENT TO TREATMENT	632
	DISCLOSURE OF INFORMATION	633
	MEDICAL MALPRACTICE AND THE STANDARD OF CARE	634
	CONFIDENTIALITY	635
	DOCTOR'S LIABILITY TO PERSONS INFECTED	
	BY HIS PATIENT	636
	ASSISTED REPRODUCTION	636
	SURROGACY	637
	PATERNALISM – MEDICAL OR JUDICIAL?	638
	STERILISATION OF PERSONS WITH MENTAL DISABILITIES	639
	CHILDREN AND HEALTHCARE	640
	TREATMENT OF DISABLED NEWBORNS AND DISABLED	
	CHILDREN	641
	PHYSICIAN-ASSISTED SUICIDE, EUTHANASIA AND PVS	
	PATIENTS	642
	HUMAN ORGAN TRANSPLANTATION AND DONATION	645
	CLONING	647
	THE 'BEST INTERESTS' TEST – SLOGAN OR AD HOC	
	SOCIAL POLICY?	652
	TEENAGERS	653
	NON-CONSENSUAL STERILISATION OF INCAPACITATED	
	PATIENTS	653
	THE TONY BLAND CASE AND 'BEST INTERESTS'	653
	ALLOCATION OF SCARCE RESOURCES	654
	HUMAN RIGHTS AND MEDICAL TREATMENT	655
	MEDICAL ETHICS AND THE LAW IN THE 21ST CENTURY	657
	FEMINIST PERSPECTIVES?	660
	LAW AND ETHICS IN THE 21ST CENTURY	660
	SELECTIVE BIBLIOGRAPHY	662
nd	ex	665