

Detailed Contents

Table of Cases	xix
Table of Statutes	xxxi
Table of Statutory Instruments	xxxvii
Table of European and International Materials	xxxix

1 Ethics and Medical Law	1
1 What is medical law?	1
2 The nature of illness	5
3 The scope of medicine	7
4 The sociological impact of being ill	11
5 Health statistics	11
6 General ethical principles: introduction	12
7 The notion of rights	20
8 Patients' obligations	22
9 Principlism	24
10 Hermeneutics	30
11 Casuistry	30
12 Feminist medical ethics	30
13 Care ethics	32
14 Virtue ethics	33
15 Communitarian ethics	34
16 Theology	35
17 Relativism	37
18 Pragmatism	38
QUESTIONS	38
FURTHER READING	39

2 The Structure of the NHS and the Rationing of Health Care Resources	41
1 What are the principles underpinning the NHS?	42
2 The structure of the NHS	44
3 Policy and central planning in the NHS	44
4 Quality control: regulation and inspection	46
5 Commissioning and planning services	46
6 Charging: community v health care	47
7 The provision of services	49
8 The 2011 Health and Social Care Bill	51

9	Structural issues	54
10	Rationing	59
11	Health inequalities	89
12	Regulation by professional or NHS bodies	90
13	Public health: infectious diseases	93
14	Public health: prevention	97
	QUESTIONS	99
	FURTHER READING	100
3	Medical Negligence	102
1	The law and medical malpractice: an overview	103
2	Criminal law	104
3	The law of negligence	105
4	The law of contract	129
5	Why do people sue?	129
6	Medical malpractice litigation in practice	130
7	Costs	130
8	Criticisms of the current legal position	132
9	Learning lessons	136
10	The NHS Redress Act 2006	136
11	No fault	138
12	Matters other than compensation	141
13	Medicines and law	142
14	Conclusion	146
	QUESTIONS	147
	FURTHER READING	147
4	Consent to Treatment	149
1	The consequences of treatment without consent	150
2	Who must provide the consent?	152
3	Who has the burden of proving consent?	154
4	What is consent?	155
5	Actions in negligence based on a failure to provide sufficient information	167
6	Professional guidelines	173
7	The non-consenting competent patient	174
8	The treatment of incompetent patients	175
9	Consent of children	191
10	Treatment which cannot be consented to	196
11	Ethics and autonomy	198
12	Ethics and best interests	207
13	Ethical issues surrounding advance directives	210
14	Autonomy and the medical professional–patient relationship	213

15	The ethics of child treatment	214
16	Conclusion	216
	QUESTIONS	216
	FURTHER READING	218
5	Confidentiality	221
1	The legal basis of confidentiality	223
2	Denying breach of confidentiality	234
3	Justifying breach of confidence	238
4	The Data Protection Act 1998	249
5	Problem issues	251
6	Legal remedies in confidentiality cases	259
7	Access to information	259
8	The ethical issues	263
9	Informational privacy	266
10	Conclusion	267
	QUESTIONS	268
	FURTHER READING	269
6	Contraception, Abortion, and Pregnancy	270
1	Contraception: its use and function	270
2	The availability of contraception	272
3	Teenage pregnancy rates	273
4	Abortion and contraception	275
5	Contraception and children	276
6	Contraception, sterilization, and those lacking capacity	278
7	Tort liability and contraception	285
8	Ethical issues concerning contraception	289
9	Introduction to abortion	291
10	Abortion: the law	292
11	Abortion: the reality	310
12	The legal status of the foetus	312
13	Abortion ethics	315
14	Particularly controversial abortions	337
15	Pregnancy and childbirth	340
16	Regulating pregnant women	342
17	Caesarean section cases	344
18	Conclusions	347
	QUESTIONS	347
	FURTHER READING	349
7	Reproduction	351
1	Infertility	352

2	The concept of reproductive autonomy	353
3	Criticisms of assisted reproduction	357
4	The different techniques	361
5	Regulation	362
6	Criticisms of the HFEA	369
7	Access to treatment	371
8	Parentage	377
9	Gamete donation: anonymity	380
10	Payment for gamete donation	383
11	Surrogacy	384
12	PGD (preimplantation genetic diagnosis)	389
13	Cloning	396
14	Therapeutic cloning and embryo research	401
15	Genetic enhancement and eugenics	405
	QUESTIONS	408
	FURTHER READING	409
8	Organ Donation and the Ownership of Body Parts	412
1	Human Tissue Act 2004	412
2	Comments on the Human Tissue Act 2004	425
3	Transplanting of organs	431
4	Liability for mishaps from organ transplant	445
5	The lack of organs	445
6	The wishes of relatives	449
7	Xenotransplantation	451
8	Selling organs	452
9	The living body as property	459
10	Intellectual property	467
11	Conclusion	467
	QUESTIONS	468
	FURTHER READING	469
9	Dying and Death	472
1	What is death?	474
2	The law and the end of life	479
3	Applying the law in difficult cases	498
4	Ethical issues: euthanasia	509
5	Inconsistency in the present law	535
6	Suicide	542
7	Incompetent patients	547
8	Refusal of treatment	552
9	Advance directives	553

10 Palliative care and hospices	553
11 Reform of the law	556
12 Conclusion	557
QUESTIONS	558
FURTHER READING	560
10 Mental Health Law	563
1 Statistics on mental health	564
2 Mental Health Act 1983	565
3 Informal treatment	577
4 Codes of Practice	578
5 The reforms to the law in the 2007 Act	579
6 Protection from abuse	582
7 Human rights	582
8 Problems in mental health practice	584
9 Critics of mental health	590
10 Dangerousness	592
11 Paternalism as the ground for detention?	594
12 Conclusion	595
QUESTIONS	596
FURTHER READING	596
11 Research	598
1 The legal regulation of research	599
2 Research which is outlawed on the grounds of public policy	602
3 Research involving children	606
4 Research involving incompetent adults	609
5 Research in the context of emergency treatments	614
6 Experimental treatment	614
7 Consent to research	616
8 Payment	621
9 Licensing of research	622
10 Selecting participants	628
11 Publication fraud	628
12 An obligation to participate?	630
13 Disclosure of results	632
QUESTIONS	632
FURTHER READING	633
Index	635