

*Human Rights as a
Unifying Concept in
Healthcare*

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Healthcare law = academic version of cuckoo? Borrowing from other legal subjects:

A doctor's legal standard of care in treating a patient	Law of Torts, specifically negligence
The withdrawal of life-sustaining treatment	Criminal law
The provision of medical treatment to an underage child	Family law

Increase in healthcare issues:

- Keeping the terminally ill alive for longer
- New uses for the human body, e.g. IVF; medical research

Piecemeal developments in healthcare law have lacked coherence

Role of ethical principles?

Why is Human Rights Law an appropriate model?

- Imbalance of power between doctor and patient
- Power to invade patient's bodily integrity
- Vulnerable position of patient

→ Human rights suitable for unequal relationship

Objections

- Threat to medical discretion
- General scepticism about human rights

How can human rights law be applied in the healthcare context?

- Which rights have potential application?
 - Right to Life?
 - Positive obligation to preserve life
 - Right to life at end of life

- Prohibition of Inhuman or Degrading Treatment?

- Treating without consent
- Prohibition on assisted dying

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- Right to Respect for Private Life?
 - General right to self-determination
 - Treating without consent
 - Doctor-patient confidentiality
 - BUT not absolute right – balance with other societal interests

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- Right to Freedom of Thought, Conscience and Religion?
 - Jehovah's Witness refusing blood transfusion?
 - Right to Found a Family?
 - Right to reproduce by means of IVF?

Sources of Human Rights Law

- Human Rights Act 1998
- International Human Rights Treaties
- Case law?

Consequences

- 1) the application of human rights law to medico-legal problems transforms how judgments are reached, as a different framework will be followed. This includes potentially transforming the outcome of cases.
- 2) the application of human rights law sends an important message to both the medical profession and to patients: that the self-determination and human dignity of the patient will be prioritised by the law

Application of human rights law to Incompetent Patients

- right not to be subjected to degrading treatment (simply because one is not aware of, or bothered by it)
- right to life (when one cannot act to preserve one's own life by eating or breathing for example).

Re T (minor)

“It is not an occasion – even in an age preoccupied with ‘rights’ – to talk of the rights of a child, or the rights of a parent, or the rights of the court . . .” (Waite LJ)

See also *Re Y* – Do the most worrying cases in healthcare law arise because of a deliberate lack of focus upon the rights of the vulnerable and powerless incompetent patient?

Airedale NHS Trust v Bland

- Lord Mustill spoke of the patient as having “no interests of any kind” including in being kept alive; while Lord Keith said “it must be a matter of complete indifference [to him] whether he lives or dies.”
- Can a living human being really have NO interests?

Human Rights Approach in Practice

- *Pretty*

- Human rights framework for argument and judgments – rights to life, dignity and privacy in play.

- *Evans*

- Human rights framework for argument and judgments – conflicting rights to respect for private and family life.

Glass v UK

- No remedy under domestic law
- Violation of Article 8 ECHR: “the decision to impose treatment on the [patient] in defiance of [his mother’s] objections gave rise to an interference with [his] right to respect for his private life, and in particular his right to physical integrity.”

Conclusion

Human rights law
as unifying concept in healthcare

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