



**UNIVERSITY OF NOTTINGHAM
SCHOOL OF LAW**

LEGAL ISSUES IN HEALTH CARE A

SEMESTER ONE, 2010-11

**SEMINAR SHEET PACKAGE
PART II: Seminars IV-IX**

SEMINAR 4 – A RIGHT TO TREATMENT OR A RIGHT TO REFUSE TO TREAT?

Unlike the classic rights to “negative” liberty, as first embodied in the US Constitution and the French Declaration of the Rights of Man, which restrain the State from the arbitrary and oppressive use of its powers, a right to health care would allow the individual plaintiff by means of litigation to oblige the State to allocate resources to a specific extent and for a specific purpose. Yet the availability of such a remedy would clearly overturn the collective decision-making process as performed by the legislative arm of government. It is for this reason that courts in many jurisdictions have been firm in rejecting claims or an affirmative right to health care services, as beyond the scope of the adjudicative function (D. Giesen (1995) ‘A Right to Healthcare? A Comparative Perspective’ in A.Grubb and M. Mehlman (eds) *Justice and Healthcare: Comparative Perspectives*, Chichester: Wiley and Sons, p.289.)

Typically individuals do not have rights to common goods...their value depends on the cumulative contribution of many, sometimes most, members of the community. However great their value to a single individual, it does not justify the imposition of a duty on the many’ (J. Raz (2001) *Value, Respect and Attachment*, Cambridge: CUP)

In this seminar we shall explore the extent to which there is a right to healthcare. Although the NHA 2006 places a duty on the Secretary of State for Health to provide an NHS, there is no such explicit right found in the domestic law of the UK. International documents do seem to provide for something which looks like a right to healthcare in various, limited, contexts, but on closer inspection these rights turn out to have no mechanism for enforcement by individuals.

In lieu of an explicit right, patients seeking to force the provision of treatment in their particular case have used the mechanism of judicial review, which has been given extra bite in recent years because of the passage of the Human Rights Act 1998. There is in addition the possibility of an action directly under the 1998 Act or, if the patient is a child, in childlaw.

Reading [for this seminar, required reading is in boldface]

1. The Right to Treatment in International and European Law

Article 25, Universal Declaration of Human Rights*

Article 12, International Covenant on Economic, Social and Cultural Rights*

Article 24, Convention on the Rights of the Child*

Article 12, Convention on the Elimination of all Forms of Discrimination Against Women*

Article 168, EC Treaty*

Articles 11 and 13 European Social Charter*

Art 3, Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, 1997*
Article 35, Charter of the Fundamental Rights of the European Union*

B Toebes (1999) 'Towards an Improved Understanding of the International Right to Health' 21 *Human Rights Quarterly* 87.

2. The Right to Treatment in English Law

Sections 1-4, 27, 229, 230, Sched 5 para 2, National Health Service Act 2006

R v North West Lancashire Health Authority, ex parte A, D & G* [1999] Lloyds Med Rep 399

R (Ross) v West Sussex PCT* [2008] EWHC 2252 (Admin); [LAWTEL document no AC0118480]

AC v West Berkshire Primary Care Trust* [2010] EWHC 1162 (Admin); [2010] Med. L.R. 281

R v Secretary of State for Social Services, ex parte Hincks (1980) 1 BMLR 93
R v Central Birmingham Health Authority, ex parte Walker (1987) 3 BMLR 32
R v Ethical Committee of St Mary's Hospital, ex parte Harriot [1988] 1 FLR 512
R v Salford Primary Care Trust, ex parte Murphy [2008] EWHC 1908 (Admin)

ECHR Arts 2, 3, 8
Human Rights Act 1998, ss. 3 and 6

3. A Right to Treatment, or a Right not to Treat? Adult Patients

Airedale NHS Trust v Bland* [1993] A.C. 789; [1993] 2 W.L.R. 316; [1993] 1 All E.R. 821; [1993] 1 F.L.R. 1026

Re R (Adult: Medical Treatment) [1996] 7 Med. L.R. 401* (see also Med. L. Rev. 1997, 5(1), 104-108*; Nott. L.J. 1996, 5(1), 80-86)
NHS Trust A v M NHS Trust B v H [2001] Fam. 348, [2001] 2 W.L.R. 942, [2001] 1 All E.R. 801, [2001] 2 F.L.R. 367*
Pretty v United Kingdom (2346/02) [2002] 2 F.L.R. 45 [2002] 2 F.C.R. 97 (2002) 35 E.H.R.R. 1 12 B.H.R.C. 149 (2002) 66 B.M.L.R. 147 [2002] Fam. Law 588*
W Healthcare NHS Trust v H [2004] EWCA Civ 1324 [2005] 1 W.L.R. 834, 2004 WL 2458658*

GMC (2010) *Treatment and care towards the end of life: good practice in decision making* http://www.gmc-uk.org/guidance/ethical_guidance/6858.asp*

R (on the application of Burke) v. General Medical Council [2004] E.W.H.C. 1879*
R v General Medical Council, ex parte Burke* [2005] EWCA Civ 1003, [2006] Q.B. 273, [2005] 3 WLR 1132, [2005] 2 FLR 1223, [2005] HRLR 35, [2006] UKHRR 509, 2005 WL 1860209

David Gurnham (2006) 'Losing the wood for the trees: Burke and the Court of Appeal' 14(2) Med. L. Rev. 253-263*

Catherine Dupre (2006) 'Human dignity and the withdrawal of medical treatment: a missed opportunity?' 6 *E.H.R.L.R.* 678-694*

Hazel Biggs (2007) "Taking account of the views of the patient", but only if the clinician (and the court) agrees - R (Burke) v General Medical Council' 19(2) *CFLQ* 225-238.

J.K. Mason and G.T. Laurie (2005) 'Personal autonomy and the right to treatment: a note on R (on the application of Burke) v General Medical Council' 9(1) *Edin. L.R.* 2005 123-132.

Charles Foster (2005) 'Burke: A Tail of Unhappy Endings' 4 *J Personal Injury Law* 293-303*

Ash Samanta (2005) 'Death, dying and the doctor: a dilemma at the bedside' 7(3) *C.I.L.* 211-241

John Coggon (2006) 'Could the right to die with dignity represent a new right to die in English law?' 14(2) *Med. L. Rev.* 219-237*

R (Rogers) v Swindon NHS Primary Care Trust [2006] EWCA Civ 392*

R (Gordon) v Bromley NHS Primary Care Trust [2006] EWHC 2462*

Christopher Newdick (2007) 'Judicial review: low-priority treatment and exceptional case review' 15(2) *Medical Law Review* 236-244*

4. Child Patients

R v Cambridge HA ex parte B [1995] 1 WLR 898, 1 FLR 1055, 2 All ER 129 (you read this case for seminar one)*

National Health Service Trust v D [2000] 2 F.L.R. 677 (High Court)

Portsmouth NHS Trust v Wyatt [2005] EWCA Civ 1181; [2005] 1 W.L.R. 3995; [2006] 1 F.L.R. 554, 2005 WL 2493304*

Glass v United Kingdom 2004 WL 343842 (ECHR), (2004) 39 EHRR 15, [2004] 1 F.L.R. 1019 (you read this case for seminar two)*

Louise Jackson and Richard Huxtable (2005) 'The doctor-parent relationship: as fragile as Glass?' 27(3/4) *J. Soc. Wel. & Fam. L.* 369-381

Re L (A Child) [2004] EWHC 2713, [2005] 1 F.L.R. 491*

W Healthcare NHS Trust v KH [2004] EWCA Civ 1324, [2005] 1 W.L.R. 834*

An NHS Trust v MB [2006] EWHC 507, [2006] Fam. Law 445*

Re K (A Child) [2006] EWHC 1007, 2006 WL 1403061*

The NHS Trust v A (A Child) [2007] EWHC 1696, 2007 WL 2041788*

Questions

1. Given that there can be no duty without a corresponding right, nor right without corresponding duty, how can there be a duty to provide healthcare but no right to access it?
2. Was *Burke* correctly decided?
3. Is it lawful to allow a child to die for want of medical treatment? Should it be?
4. Has the Human Rights Act 1998 improved the abilities of patients to control whether they do, or do not, receive medical treatment?
5. How does the law considered in this seminar construct (a) medical professionals (b) patients?

SEMINAR 5 – CONFIDENTIALITY OF PATIENT DATA

Whatever in connection with my professional practice, or not in connection with it, I see or hear in the life of men, which ought not to be spoken of abroad, I will not divulge as reckoning that all should be kept secret **Hippocratic Oath**

I will respect the secrets which are confided in me even after the patient has died **Declaration of Geneva** (see also **Declaration of Lisbon** 1995)

It is the doctor's duty, except in the cases mentioned below, strictly to observe the rule of professional secrecy by refraining from disclosing voluntarily to any third party information about a patient which he has learnt directly or indirectly in his professional capacity as a registered medical practitioner. The death of the patient does not absolve the doctor from this obligation **GMC Guidelines on Confidentiality**

So far, we have discussed information provision prior to treatment as a species of medical negligence, in the context of the patient's right to knowledge and to bodily autonomy. Here, we look at the right that information NOT be shared - the right to confidentiality. You should refresh your memory on issues of the right to information provision in seminar 2, as well as preparing the following readings. The law on confidentiality is conceptually complex, comprising common law and equity, as well as statutes, in particular the Data Protection Act 1998, which was passed in order to comply with an EU Directive on data processing. In addition, the duty of confidentiality is increasingly being superceded by the right to privacy. Does this shift from a duty-based to a rights-based approach change anything fundamental about the way in which this area of law actually works?

Reading [for this seminar, required reading is in boldface]

General Medical Council (2009) *Confidentiality* http://www.gmc-uk.org/static/documents/content/Confidentiality_0510.pdf

X v Y and Others [1988] 2 All ER 648

H (A Healthcare Worker) v Associated Newspapers and N (A Health Authority) [2002] EWCA Civ 195*

Ashworth Hospital v Mirror Group Newspapers* [2001] 1 W.L.R. 515; [2001] 1 All E.R. 991; [2001] E.M.L.R. 11, (CA) [2002] E.M.L.R., 36 [2002] UKHL 29 (HL)

Robin Ackroyd v Mersey Care NHS Trust (no.1) [2003] EWCA 663, 2003 WL 21047343*

Robin Ackroyd v Mersey Care NHS Trust (no.2)* [2007] E.W.C.A. Civ 101

Ralph Sandland (2007) 'Freedom of the Press and the Confidentiality of Medical Records' 15(3) *Medical Law Review* 400-409*

***W v Egdell* [1989] 1 All ER 1089**

Campbell v MGN [2004] UKHL 22*

Data Protection Act 1998, ss.1,2,4, 13, schedules 1,2,3*

ECHR, Art.8*

EC Treaty, Art 16*

CHRB, Art.8*

Z v Finland (1997) ECHR, (1998) 25 European Human Rights Reports 371*

Aart Hendriks (1997) `Confidentiality, testimonial privilege and patients' right to secrecy under the ECHR, 4 European Journal of Health Law 1-7

Case comments may also be found in the European Law Review (1998), 23 Supp HRS, 160-161 and in the European Human Rights Law Review (1997), 439-443

A *HA v X* [2001] 2 FLR 673 (FD)

Woolgar v Chief Constable of Sussex Police (1999) Lloyds Rep Med 335.

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML>

For information on the implementation of the Data Protection Directive, see http://ec.europa.eu/justice/policies/privacy/index_en.htm

Council of Europe, Committee of Ministers, Recommendation No. R (97) 5 on the Protection of Medical Data (Feb. 13, 1997). Available, as are many EU documents that are not available on EU websites, at <http://www1.umn.edu/humanrts/index.html>

R v DH ex p Source Informatics [2000] 1 ALL ER 786, (CA).

Tarasoff v Regents of the University of California* 17 Cal 3d 425 (1976)
(Consider the impact of the decision of the majority of the House of Lords in *Chester v Afshar*, which we met in seminar two).

Data Protection Act 1998, s. 7*

Roberts v Nottinghamshire Healthcare NHS Trust* [2008] EWHC 1934 (QB)

The Data Protection (Subject Access Modifications) (Health) Order 2000*, SI 2000/413

Questions

1. What is the legal definition of 'confidentiality'? How easy is it to apply?
2. Would *Edgell* be decided differently today (i) in terms of outcome (ii) in the way in which the legal problem is constructed, analysed, and resolved?
3. Should *Tarasoff* be followed in the UK?
4. Is it more appropriate to analyze this law in this seminar in terms of duty of confidence or rights of privacy? Does it matter?

SEMINAR 6 – HEALTH AND SURVEILLANCE: PUBLIC HEALTH

Data collected from patients is input into electronic data systems to which scores of professionals have access, and which is accessed for many reasons to do with planning and running services. The GMC guidance (2009) *Confidentiality* explains that information about patients will be disclosed for various purposes, including clinical audit (para 30), to insurers, employers and government agencies (for example the Benefits Agency or the Department of Work and Pensions)(para 34), and for the purposes of research, epidemiology, public health surveillance, health service planning, and education and training (para 40). In this seminar we explore the series of legal permissions and limitations around the use of patient data in public health provision. There is no clear boundary between medical and other forms of or uses for knowledge. Medical knowledge overlaps with moral or philosophical knowledge, with economic knowledge, with political knowledge and obviously legal knowledge. The boundaries between the medical and the rest are potentially changing. Access to personal knowledge is a prerequisite of good governance, and carries the risk of bad governance, of personal knowledge being used against the interests of the person concerned or otherwise inappropriately.

We also look at the law which applies to persons who are thought to constitute a public health risk. An issue of particular controversy is the way that the law attempts to manage the risk to public health which the HIV virus is said to constitute.

These are the issues we shall explore in this session.

Reading [in this seminar, required reading is in boldface]

1. The use of patient data in public health and epidemiology

Department of Health (1997) The Caldicott Report (Report of the 'Caldicott Committee', Report on the Review of Patient-Identifiable Information'), Foreword and Chs 1,2,3*

R (Source Informatics) v Department of Health [2001] QB 424.

Department of Health (1998) HSC 1998/089 *Implementing the Caldicott Report**

Department of Health (2000) HSC 2000/009 - *The Data Protection Act 1998: protection and use of patient information**

Statutory Instrument 2002 No.1438, *The Health Service (Control of Patient Information) Regulations 2002**

Department of Health (2001) *Consultation Paper on Caldicott Guardians and NHS Strategic Tracing Service**

General Medical Council (2009) *Confidentiality* http://www.gmc-uk.org/static/documents/content/Confidentiality_0510.pdf

2. The use of legal coercion in the interests of public health

Part 2A Public Health (Control of Diseases) Act 1984

s. 47 National Assistance Act 1948

National Assistance Act 1951

AIDS (Control) Act 1987

R v Dica* [2004] EWCA Crim 1103 (1st appeal)

R v Dica* [2005] EWCA Crim 2304 (2nd appeal)

(Mr Dica was, later, refused leave to appeal by the House of Lords, on 15th December 2005)

R v Konzani (Feston)* [2005] EWCA Crim 706, [2005] 2 Cr. App. R. 14

Enhorn v Sweden Case 56529/00* [2005] ECHR 34

R v B [2006] EWCA Crim 2945; [2007] 1 W.L.R. 1567*

Vanessa E Munro (2007) 'On responsible relationships and irresponsible sex - criminalising the reckless transmission of HIV: *R v Dica* and *R v Konzani*' 19(1) *CFLQ* 112-125.

Samantha Ryan (2006) Reckless transmission of HIV: knowledge and culpability' *Criminal Law Review* 981-992*

R. Martin (2006) 'The Exercise of Public Health Powers in Cases of Infectious Disease: Human Rights Implications' 14(1) *Medical Law Review* 132-143
(available on line at <http://medlaw.oxfordjournals.org/cgi/reprint/14/1/132>)

A. Harris and R. Martin (2004) 'The Exercise of Public Health Powers in an Era of Human Rights: The Particular Problem of Tuberculosis' 118 *Public Health* 312

R. Coker (2000) 'Tuberculosis, Non-compliance and Detention for the Public Health' 26 *Journal of Medical Ethics* 157

Chief Medical Officer (2002) Getting Ahead of the Curve: A Strategy for Combating Infectious Diseases (CMO and Department of Health, online at <http://www.dh.gov.uk/>)

Department of Health (2007) Review of Parts II, V and VI of the Public Health (Control of Disease) Act 1984: A Consultation

Department of Health (2007) Review of Parts II, V and VI of the Public Health (Control of Disease) Act 1984: Report on Consultation 5-19
http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH_080384

Questions

1. Do you approve of the regime introduced by The Health Service (Control of Patient Information) Regulations 2002? What are your views of the Caldicott Report?
2. What is the legal status of the Caldicott Report? Does it matter?
3. Do you approve of the new law on the control of (some) threats to public health found in Part 2A Public Health (Control of Diseases) Act 1984? Do you think the new law is clearly compliant with Convention rights?
4. Can the regime found in the National Assistance Acts of 1947 and 1951 survive scrutiny from a human rights perspective?
5. Were *Dica* and *Konzani* correctly decided?
6. "The Aids (Control) Act 1987 should be abolished". Discuss.

SEMINAR 7 – Pharmaceuticals, Regulation and Research I

Previous seminars have looked at health care law primarily from the perspective of the doctor-patient relationship. In this seminar, we change the focus to look at the broader culture of healthcare provision. Healthcare is now big business, and, arguably, the big legal and ethical issues no longer concern what goes on between the people in the doctor's surgery. Instead, we increasingly look to technological solutions to healthcare problems. Drug companies – private markets governed by competition law – are increasingly pivotal to healthcare provision, raising new questions about how those companies interact with the state, with doctors, and with patients.

We consider access to pharmaceutical drugs in the United Kingdom in two ways. In this seminar, we consider the law concerning the regulating the approval of pharmaceutical medications: can the drug be used in this country? This largely concerns the medicines regulation processes, governed jointly by the Medicines Act 1968 and European law (primarily through directive (EC) 2001/83). In addition, however, we will consider the use of 'off-label' prescriptions – a mechanism that allows doctors to prescribe medications for a patient when the medication has been approved for a different purpose or a different set of patients. In seminar 8, we consider the burgeoning law as to whether a drug is approved by NICE, the National Institute for Clinical Excellence, and thus whether it is expected to be funded through the NHS.

Throughout, we will explore the tensions between public interest regulation and commercial interests, between protecting the public and providing important treatments, and between ensuring a fair distribution of health benefits with the right of individuals to health care. The seminars should be viewed as a package: much of the material in seminar 8 will also relate to seminar 7 (eg., the material concerning research ethics).

Safety and Approval of Medicines

Required Reading

Peter Conrad, 'The Shifting Engines of Medicalization', (2005), 46 *Journal of Health and Social Behavior* 3.*

Emily Jackson. *Medical Law: Text, Cases and Materials*. (2nd ed., Oxford University Press, 2009), 525-50.

John Abraham. 'Making regulation responsive to commercial interests: streamlining drug industry watchdogs'. 325 *British Medical Journal* (16 Nov 02) 1164.*

John Abraham and Courtney Davis. 'Drug Evaluation and the Permissive Principle: Continuities and Contradictions between Standards and Practices in Antidepressant Regulation'. 39 *Social Studies of Science* (2009) 569.

L McGoey and E Jackson. 'Seroxat and the suppression of clinical trial data: regulatory failure and the uses of legal ambiguity.' 35 *Journal of Medical Ethics* (2009) 107.*

Christopher Herring, Aine McManus, Andrew Weeks. 'Off-label prescribing during pregnancy in the UK: an analysis of 18 000 prescriptions in Liverpool Women's Hospital'. 18 *International Journal of Pharmacy Practice* (2010) 226-9.*

Additional Reading

Medicines Act, 1968.

Directive on the Community Code relating to medicinal products for human use. Dir 2001/83/EC.

John Osborn. 'Can I Tell You the Truth? A Comparative Perspective on Regulating Off-Label Scientific and Medical Information'. 10 *Yale Journal of Health Policy Law and Ethics* (2010) 301.*

Medicines and Healthcare Regulatory Agency. 'MHRA Investigation into GlaxoSmithKline and Seroxat' (MHRA, published 6 March 2008).*

John Abraham and Courtney Davis. 'Deficits, Expectations and Paradigms in British and American Drug Safety Assessments: Prising Open the Black Box of Regulatory Science.' 32 *Science Technology Human Values* (2007) 399.*

John Abraham. 'Sociology of pharmaceuticals development and regulation: a realist empirical research programme'. 30:6 *Sociology of Health and Illness* (2008) 869.

Questions

1. Are you convinced by Conrad's view that the determinants of medical law and policy are changing?
2. Does the current system for registration of pharmaceuticals strike an appropriate balance between the safety of the public and ensuring the availability of necessary and desirable medical treatments?
3. Does the current scheme for the registration of pharmaceuticals ensure sufficient and appropriate control over pharmaceutical companies?

SEMINAR 8 – Pharmaceuticals, Regulation and Research II: Ain't that NICE.

Some of these issues have been in the background for much of the module. You should refresh your memory regarding ***R v Cambridge HA ex parte B [1995] 1 WLR 898, 1 FLR 1055, 2 All ER 129**** and related readings from seminar 1, ***R (Ross) v West Sussex PCT*** from seminar 4, and ***R (Source Informatics) v DOH*** from seminar 6, for example.

Required Reading

Eisai Limited v The National Institute for Health and Clinical Excellence (NICE) [2008] EWCA Civ 438*

R (Bristol-Myers Squibb) v NICE [2009] EWHC 2722 (Admin).

Emily Jackson. 'Top-up Payments for Expensive Cancer Drugs: Rationing, Fairness and the NHS.' 73(3) *Modern Law Review* (2010) 399.

Adriane Fugh-Berman, 'The Haunting of Medical Journals: How Ghostwriting Sold "HRT"', 7:9 *PLoS Medicine* (2010), e1000335.* [available at <http://www.plosmedicine.org>]

Sharief v GMC [2009] EWHC 847 (Admin). [Please read this case to get a broad sense of the facts. Why did the doctor behave as he did?]

A Schafer, 'Biomedical conflicts of interest: a defence of the sequestration thesis—learning from the cases of Nancy Olivieri and David Healy', (2004) 30 *Journal of Medical Ethics* 8.*

A M Viens and J Savulescu, 'Introduction to The Olivieri symposium', (2004) 30 *Journal of Medical Ethics* 1.*

Additional Reading

R (Servier Laboratories) v NICE [2009] EWHC 281.

John Braithwaite, *Corporate Crime in the Pharmaceutical Industry*, (London: Routledge, 1984).

Peter Conrad and Valerie Leiter, 'Medicalization, Markets and Consumers', (2004), 45 *Journal of Health and Social Behavior* 158.

Department of Health, 'Best Research for Best Health: A New National Research Strategy' (DOH, 2006). Gateway reference 6050.

Bob Grant. 'Merck published fake journal'. *The Scientist* (30 April 09). Available at <http://www.the-scientist.com/blog/display/55671/#comments>.

Wood, E at al (2007) 'Rates of inappropriate antiretroviral prescription among injection drug users' 4(2) Harm Reduction Journal
<http://www.harmreductionjournal.com/content/pdf/1477-7517-4-2.pdf>

Questions and Topics

1. Is NICE a protection for patients, or a commercial opportunity?
2. Is/should it be the role of international commercial law to govern health care?
3. What is the appropriate relationship between the treatment and research functions of doctors?
4. We tend to think of issues about 'governmentality' as flowing from state actions. Is this necessarily appropriate? Do private interests in pharmaceuticals and research fit into a governmentality model?

SEMINAR 9 – PATIENTS’ RIGHTS IN THE INTERNAL MARKET

In this seminar we consider the ever-expanding caselaw of the ECJ concerning the rights of patients to cross borders within the EU to receive medical treatment. This is a vitally important topic for Member States who, having attempted to keep health policy (and its cost) at the national level, with little competency for the EU, find that the ECJ is pushing ahead, regardless of the complaints of national governments, in the direction of a European Union for Health. As a result, although there is no right to healthcare, there is something approaching a right for citizens of EU countries to access healthcare outside their home country on the same terms as it is available at home.

Readings

1. The Context: EU Health Policy

EC Treaty Art 168

EC Treaty, Arts 28, 30, 34, 35, 36, 45, 52, 56, 57

Regulation 1408/71, as amended by Council Regulation (EC) No 118/97, Arts 22, 36 (find it on <http://europa.eu.int>)

T. Hervey and J. McHale (2004) Health Law and the European Union Cambridge University Press, Chapter 3

Mason & Laurie, Chapter 3

Anne Pieter Van Der Mei and Lisa Waddington, (1998) 'Public health and the Treaty of Amsterdam' 5 European Journal of Health Law 129-154

Johannes Dommers, (1997) 'An Introduction to European Health Law' 4 European Journal of Health Law 19-41

2. The Jurisprudence of the ECJ

Decker v Caisse de Maladie des Employes Prives (C120/95), Kohll v Union des Caisses de Maladie (C158/96), (ECJ) European Court of Justice, 28 April 1998 (C120/95) [1998] E.C.R. I-1831, [1998] 2 C.M.L.R. 879*

Pedro Cabral (1999) 'Cross-border medical care in the European Union - bringing down a first wall' 24(4) European Law Review, 387-395*

A.P. Van der Mei, (1998) 'Cross-border access to medical care within the European Union – some reflections on the judgments in Decker and Kohll', 5(3) Maastricht Journal of European and Comparative Law, 277-297

Vanbraekel and Others v Alliance nationale des mutualites chretiennes (ANMC), C-368/98 (2001)*

Geraets-Smits v Stichting Ziekenfonds and Peerbooms v Stichting CZ Groep Zorgverzekeringen*, C-157/99 (2001)* [2002] QB 409, [2002] WLR 154, [2001] ECR I-5473

Willy Palm (2001) 'Dekker and Kohll – the sequels' 13 News from AIM, 3-5*

Matthias Wismar (2001) 'ECJ in the driving seat on health policy But what's the destination?' 7(4) Eurohealth 5-6* (available online at www.lse.ac.uk/Depts/lse_health)

Jason Nickless (2001) 'Smits/Peerbooms: Clarification of Kohll and Dekker?' 7(4) Eurohealth 7-10*

Maximillian Fuchs (2002) 'Free Movement of Services and Social Security – Quo Vadis?' 8(4) European Law Journal 536-555*

Willy Palm (2000) 'Patient mobility inside the European Union? The sons and daughters of Dekker and Kohll' 8 News from AIM, 5-7* (published before the 2001 ECJ judgments but does discuss them and the then yet-to-be-heard cases of *Muller-Faure* and *Van Riet*)

Muller-Faure v Onderlinge Waarborgmaatschappij OZ Zorgverzekeringen UA and van Riet v Onderlinge Waarborgmaatschappij ZOA Zorgverzekeringen* (2003) C-385/99

Gareth Davies (2004) 'Health and Efficiency: Community Law and National Health Systems in the Light of Müller-Fauré' 67(1) *MLR* 94-117*

Willy Palm (2003) 'Court of Justice Strikes Again' 18 News from AIM, 9-12*

Idryma Koinonikon Asfaliseon (IKA) v Ioannidis* (2003) C-326/00

Patricia Inizan v Caisse primaire d'assurance maladie des Hauts-de-Seine (2003) C-56/01*

Stamatelaki v NPDD Organismos Asfaliseos Eleftheron Epangelmaton (OAE) (C-444/05) [2007] E.C.R. I-3185; [2007] 2 C.M.L.R. 44

Von Chamier-Glisczinski v Deutsche Angestellten-Krankenkasse (C-208/07) [2009] E.C.R. I-6095; [2009] 3 C.M.L.R. 43

Rindal v Norway (E-11/07), *Slinning v Norway* (E-1/08) [2009] 3 C.M.L.R. 32

3. The application of ECJ jurisprudence in and to the UK

R v Bedford Primary Care Trust and the Secretary of State for Health, ex parte Watts EWHC 2228 (Admin)*

Secretary of State for Health v R, ex parte Watts 2004 WL 62190, EWCA Civ 166 (CA)*

R v Bedford Primary Care Trust, Secretary of State for Health, ex parte Watts* (Case C-372/04) [\[2006\] 3 W.L.R. 213](#), [2006] All E.R. (EC) 835, [\[2006\] 3 C.M.L.R. 5](#) (ECJ)

Jean McHale (2007) 'Rights to Treatment in EU Law' 15(1) Med. L. Rev. 99-108*

4. The Future?

European Commission (2008) *Proposal for a Directive of the European Parliament and the Council on the application of patients' rights in cross-border healthcare* COM(2008) 414 final 2008/0142 (COD) available at http://ec.europa.eu/health/ph_overview/co_operation/healthcare/docs/COM_en.pdf (you will find further related documents at http://ec.europa.eu/health/ph_overview/co_operation/healthcare/proposal_directive_en.htm, see in particular the Communication from the Commission)

The terms of the Directive have now been agreed by the Council and the Directive is expected to have its second reading in the European Parliament in December 2010.

Faraz Kermani (2010) 'EU Cross-Border Health Care Directive Clears Another Hurdle' *EuroPharma Today*, 27th September 2010
<http://www.europharmatoday.com/2010/09/eu-cross-border-health-care-directive.html>

Anonymous (2010) The EU Directive on Cross Border Healthcare... where are we now? *Int'l Medical Travel Journal* (18 Sept 2010)
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Questions

1. What rights do patients have as a result of the jurisprudence of the ECJ to date?
2. Who has these rights? All EU citizens?
3. Are the recent decisions of the ECJ compatible with Art.168 EC?
4. What are the implications of the decisions of the ECJ for the national health systems of the Member States?