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May 2005

EDITORIAL – *Ian Freckelton*

Expert evidence law reform 393

LEGAL ISSUES – *Danuta Mendelson*

Jurisprudential legerdemain: Damages for gratuitous services and attendant care 402

MEDICAL ISSUES – *David Ranson*

Tissue engineering: An adjunct to or replacement for tissue and organ transplantation 413

NURSING ISSUES – *Kim Forrester*

Supervised clinical placement and legal accountability 416

MEDICAL LAW REPORTER – *Rachel Young*

Negligent treatment (*Munday v Australian Capital Territory Health and Community Care Service*) 422

Negligence (*Erickson v Maguire*) 424

ARTICLES

Blood rights: The body and information privacy – *Bruce Alston*

Genetic and other medical technology makes blood, human tissue and other bodily samples an immediate and accessible source of comprehensive personal and health information about individuals. Yet, unlike medical records, bodily samples are not subject to effective privacy protection or other regulation to ensure that individuals have rights to control the collection, use and transfer of such samples. This article examines the existing coverage of privacy legislation, arguments in favour of baseline protection for bodily samples as sources of information and possible approaches to new regulation protecting individual privacy rights in bodily samples. 426

Charting a course through difficult legislative waters: Tribunal decisions on life-sustaining measures – *Lindy Willmott and Ben White*

Since the enactment of the *Powers of Attorney Act 1998* (Qld) and the *Guardianship and Administration Act 2000* (Qld), a decision can be made to withhold or withdraw life-sustaining medical treatment from an adult who lacks capacity to make such decisions for herself or himself. The Guardianship and Administration Tribunal of Queensland has been asked to consider the law in relation to these decisions on a number of occasions since the legislation was passed. This article explores the relevant provisions of these statutes and some of the difficulties that arise from how they are currently drafted. It also examines how the Guardianship and Administration Tribunal has dealt with applications to withhold or withdraw life-sustaining measures, and suggests a course that might avoid some of the difficulties that are inherent in Queensland's legislative regime. 441

Court-ordered obstetrical intervention and the rights of a pregnant woman – *Dilan Thampapillai*

Cases of court-ordered obstetrical interventions are not common but have caused great controversy in the United States, Canada and Britain. At stake for the pregnant woman is her right to have autonomy over her body and control over the medical treatment that she receives. However, with growing medical knowledge of the fetal condition, there is a case to suggest that the fetus should have some rights where the decision of the pregnant woman to refuse treatment would cause severe harm to the fetus. The article argues that though the case against intervention is strong, court-ordered obstetrical interventions should still be possible in extreme cases. 455

Criminal and civil community-based “detention”: Some parallels – *Chris Corns*

Over the last 20 years, governments in Australia and elsewhere have increasingly embraced the notion of community-based treatment of the mentally ill in preference to detention in a mental health facility. At the same time, governments have also embraced the notion of community-based treatment and punishment of criminal offenders in preference to detention in a custodial facility. This article examines the use of Community Treatment Orders (CTOs) within the Victorian mental health regime, and the use of Intensive Correction Orders (ICOs) within the Victorian criminal justice regime. It is argued that a number of striking similarities can be found in the respective legislative schemes and policy considerations. 462

Fiduciary disclosure of medical mistakes: The duty to promptly notify patients of adverse health care events – *TA Faunce and SN Bolsin*

Fiduciary obligations are imposed by the common law to ensure that a person occupying a societal role with a high potential for the manipulation of vulnerable persons exercises utmost good faith. Australian law has recognised that the doctor-patient relationship, while not wholly fiduciary, has fiduciary aspects. One important consequence of attaching fiduciary duties to the doctor-patient relationship is that the onus of proof falls not upon the vulnerable party (the patient), but upon the doctor (to disprove the allegation). Another is that consent cannot be pleaded as an absolute defence. In this article the authors advocate that the law should now accept that the fiduciary obligations of the doctor-patient relationship extend to creating a legal duty that any adverse health care event be promptly reported to the patient involved. The reasons for creating such a presumption, as well as its elements and exceptions, are explained. 478

Research on human embryos and cloning: Difficulties of legislating in a changing environment and model approaches to regulation – *Sonia Magri*

It is difficult to regulate rapidly changing fields of science. New technologies are not anticipated and legislation becomes inadequate. Legislative definitions are also problematic. This article begins with consideration of such difficulties in the context of research on human embryos and cloning. It considers problems with past legislative definitions in Australia, the new regulatory regime, and whether that regime now sets clear boundaries. It is found that problems still exist – some terms are not adequately defined and boundaries for research prove unclear. Three regulatory approaches are therefore discussed. Legislation based on strict definitions is compared to a legislative model that leaves terms undefined. The third model, which combines framework legislation with the oversight of a regulatory authority, is seen as most suitable. However, problems with this model are recognised and suggestions made regarding how to ensure the “framework” remains workable and effective. 483

Euthanasia and assisted suicide: A liberal approach versus the traditional moral view – *Rachael Patterson and Katrina George*

Within the context of the debate over the recent suspended sentence given to John Stuart Godfrey by Underwood J in the Supreme Court of Tasmania for assisting his elderly mother with her suicide, this article examines some of the more popular arguments for and against the moral acceptability of euthanasia and assisted suicide. It considers the arguments put forward on the “difference principle” by Rachels and Nesbitt before critically examining the liberal approach to the euthanasia issue as proposed by Kuhse. It is argued that whilst Kuhse is correct to reject the difference principle, she does so for the wrong reasons. The penultimate section of the article provides an overview of the traditional moral view against killing. The final part assesses whether the arguments put forward by proponents of the liberal approach are capable of overcoming this view. 494

Missed breast cancer: The legal factors – *Michael Weir*

Any reading of the relevant legal authorities confirms the special difficulties involved in the diagnosis of breast cancer. In many cases a delayed diagnosis is made at a time when a patient’s position has become terminal. It is easy for lawyers and expert witnesses to determine in hindsight what should have been done at some point in the past. This article describes how the courts have dealt with this issue and comments on appropriate procedures and approaches to both protect the interests of the patient and confine liability for the medical practitioner. . 511

BOOK REVIEW

Laws of Men and Laws of Nature: The History of Scientific Expert Testimony in England and America, by T Golan 519

VOLUME 12 – 2004-2005

Table of Authors	525
Table of Editorials, Legal Issues, Medical Issues and Nursing Issues	528
Table of Medical Law Reporter and Books Reviewed	529
Table of Cases	530
Table of Statutes	534
Index	539

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Editorial inquiries:

Tel: (02) 8587 7000

HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



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