

Capacity



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Autonomy

- Every human being of adult years and sound mind has a right to determine what shall be done with his own body; a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages.

Schloendorff v Society of New York Hospital 211 NY 125 (1914)

Autonomy

- The right to decide one's own fate presupposes a capacity to do so. Every adult is presumed to have that capacity, but it is a presumption which can be rebutted.

In re T. [1993] Fam. 95

Ill conceived Decisions

- ‘If an adult with capacity makes a voluntary and appropriately informed decision to refuse treatment this must be respected ... This is the case even where this may result in the death of the patient and/or the death of an unborn child, whatever the stage of pregnancy.’

Department of Health. *Reference Guide to Consent for Examination or Treatment*. March 2001

Tests for capacity

- to understand the information relevant to the decision,
- to retain that information,
- to use or weigh that information as part of the process of making the decision, or
- to communicate his decision (whether by talking, using sign language or any other means).

Mental Capacity Act 2005

Emergency situation

- Medical treatment can be undertaken in an emergency even if, if through a lack of capacity, no consent had been competently given, provided the treatment was a necessity and did no more than was reasonably required in the best interests of the patient.

Re MB (Medical Treatment) [1997] 2 FLR 426

Ms B v An NHS Hospital Trust 2002

WL 347038

- In the light of my decision that the Claimant has mental capacity and has had such capacity since August 2001 I shall be prepared to grant the appropriate declarations after discussions with Counsel. I also find that the Claimant has been treated unlawfully by the Trust since August.

St George's Healthcare NHS Trust v S.
[1998] 3 All ER 673 (CA)

- It is unnecessary to re-emphasise our conclusions about S's autonomy. The Caesarean section performed on her (together with the accompanying medical procedures) amounted to trespass.

Capacity in children

- Family Law Reform Act 1969
- Children Act 1989
- Age of Legal Capacity (Scotland) Act 1991
- Mental Capacity Act 2005
- Gillick

Capacity in children

- Consent may be granted by one of the following:
 - The patient
 - A parent
 - The courts