The Troubled Pregnancy

Mason looks at the legal response to those aspects of the troubled pregnancy which require or involve medico-legal intervention. The unwished-for pregnancy is considered particularly in the light of the Abortion Act 1967, s.1(1)(d) and the related action for so-called wrongful birth due to faulty antenatal care. The unexpected or uncovenanted birth of a healthy child resulting from failed sterilisation is approached through an analysis of the seminal case of McFarlane and associated cases involving disability in either the neonate or the mother. The disabled neonate’s right to sue for its diminished life is discussed and the legal approach to the management of severe congenital disease is analysed - thus following Baroness Hale in believing that care of the newborn is an integral part of pregnancy. Aspects are considered from historical and comparative perspectives, including coverage of experience in the USA, the Commonwealth and Europe.
This series of books was founded by Cambridge University Press with Alexander McCall Smith as its first editor in 2003. It focuses on the law's complex and troubled relationship with medicine across both the developed and the developing world. In the past twenty years, we have seen in many countries increasing resort to the courts by dissatisfied patients and a growing use of the courts to attempt to resolve intractable ethical dilemmas. At the same time, legislatures across the world have struggled to address the questions posed by both the successes and the failures of modern medicine, while international organisations such as the WHO and UNESCO now regularly address issues of medical law.

It follows that we would expect ethical and policy questions to be integral to the analysis of the legal issues discussed in this series. The series responds to the high profile of medical law in universities, in legal and medical practice, as well as in public and political affairs. We seek to reflect the evidence that many major health-related policy debates in the UK, Europe and the international community over the past two decades have involved a strong medical law dimension. Organ retention, embryonic stem cell research, physician assisted suicide and the allocation of resources to fund health care are but a few examples among many. The emphasis of this series is thus on matters of public concern and/or practical significance. We look for books that could make a difference to the development of medical law and enhance the role of medico-legal debate in policy circles. That is not to say that we lack interest in the important theoretical dimensions of the subject, but we aim to ensure that theoretical debate is grounded in the realities of how the law does and should interact with medicine and health care.

Cambridge Law, Medicine and Ethics

General Editors
Professor Margaret Brazier, University of Manchester
Professor Graeme Laurie, University of Edinburgh

Editorial Advisory Board
Professor Richard Ashcroft, Queen Mary, University of London
Professor Martin Bobrow, University of Cambridge
Dr Alexander Morgan Capron, Director, Ethics and Health, World Health Organization, Geneva
Professor Jim Childress, University of Virginia
Professor Ruth Chadwick, Cardiff Law School
Dame Ruth Deech, University of Oxford
Professor John Keown, Georgetown University, Washington, D.C.
Dr. Kathy Liddell, University of Cambridge
Professor Alexander McCall Smith, University of Edinburgh
Professor Dr. Mónica Navarro-Michel, University of Barcelona

© Cambridge University Press
www.cambridge.org
The Troubled Pregnancy

Legal Wrongs and Rights in Reproduction

J. K. Mason
MD (Camab.), LLD(Edin.), FRC Path, FRSE
Professor (Emeritus) of Forensic Medicine and Honorary Fellow,
School of Law in the University of Edinburgh
This book is dedicated to the ‘gang’
Graeme, Sharon and Geoff
with great affection.
## Contents

Preface  
Table of cases  
Table of statutes

<table>
<thead>
<tr>
<th>1</th>
<th>The nature of the troubled pregnancy</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>An overview of medical negligence</td>
<td>9</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2</th>
<th>Voluntary and involuntary termination of pregnancy</th>
<th>14</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Introduction</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>The fetal persona</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>Maternal status</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>The Abortion Act 1967</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>Prevention and reversal of implantation</td>
<td>35</td>
</tr>
<tr>
<td></td>
<td>Negligence and abortion</td>
<td>38</td>
</tr>
<tr>
<td></td>
<td>Involuntary termination of pregnancy</td>
<td>41</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td>49</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3</th>
<th>Antenatal care and the action for wrongful birth</th>
<th>53</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Introduction</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>Late termination of pregnancy</td>
<td>54</td>
</tr>
<tr>
<td></td>
<td>Antenatal care and fetal abnormality</td>
<td>59</td>
</tr>
<tr>
<td></td>
<td>The principles of antenatal care</td>
<td>66</td>
</tr>
<tr>
<td></td>
<td>The development of the wrongful birth action</td>
<td>79</td>
</tr>
<tr>
<td></td>
<td>Recompense for wrongful birth in the United Kingdom</td>
<td>84</td>
</tr>
<tr>
<td></td>
<td>Conclusions</td>
<td>97</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4</th>
<th>Unsuccessful sterilisation</th>
<th>100</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Introduction</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Negligent sterilisation</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Liability and wrongful pregnancy</td>
<td>105</td>
</tr>
<tr>
<td></td>
<td>The case of Mr and Mrs McFarlane</td>
<td>112</td>
</tr>
<tr>
<td></td>
<td>Wrongful pregnancy in Australia</td>
<td>125</td>
</tr>
<tr>
<td></td>
<td>Lessons from a legal 'test match'</td>
<td>138</td>
</tr>
<tr>
<td></td>
<td>McFarlane under fire</td>
<td>141</td>
</tr>
<tr>
<td></td>
<td>A connecting case</td>
<td>145</td>
</tr>
</tbody>
</table>

© Cambridge University Press  
www.cambridge.org
x Contents

5 Uncovenanted pregnancy and disability 150
   Introduction 150
   The disabled neonate 152
   The disabled mother 163
   The proximity test 183

6 Wrongful neonatal life 188
   Introduction 188
   The wrongful life action in history 189
   The perspective in the United Kingdom and the Commonwealth 204
   Wrongful life in Europe 232
   Conclusion 237

7 The management of the disabled neonate 241
   Introduction 241
   Principles of management of severe congenital disease 245
   The British cases 250
   Professional guidelines 290
   Neonatal euthanasia 293

8 Conclusion 297
   Patterns and anomalies 297
   Conflicts of values 299

Bibliography 303
Index 312
Preface

The origin of this book lies in a series of articles I wrote, mainly for the *Edinburgh Law Review*, following upon the ground-breaking House of Lords ruling in *McFarlane v. Tayside Health Board* in 2000. I admit to being amongst those who found that unanimous decision hard to accept and I followed its fallout with increasing interest. Cambridge University Press were kind enough to agree to a proposal that we consolidate the results into a coherent monograph and this has resulted in *The Troubled Pregnancy*. It will, however, be apparent that what started as a relatively simple fancy rapidly became a major academic exercise. The more I looked at the individual index cases, the more I became involved with the subject both on a historical and an international basis. The result was a major expansion of the anticipated text.

Inevitably, then, the book has taken some time to write – and this has not been helped by the acquisition of the occasional metal joint and of a serious bout of two-fingered repetitive strain injury. It has, therefore, been particularly prone to the well-known hazard that medical law is a moving target. At the same time, it has provided a welcome opportunity to reflect on what has gone before or, so to speak, to ‘learn on the job’ – to put it in perspective, I still think *McFarlane* was wrong but I doubt if it was as wrong as I thought it was five years ago! I must, therefore, ask the reader’s forgiveness if, at times, it looks as though I have changed my mind between Chapters 1 and 8 – indeed, I may well have done so. In the end, however, I hope I have painted a fair picture of an area of jurisprudence in which decisions must be made that cannot, by their very nature, please everyone.

I have had the enormous privilege of spending some twenty years in the Edinburgh School of Law where I have received unfailing kindness and help from my legal colleagues; I owe them, collectively, a debt of gratitude for giving me what turned out to be a third career. As to this particular project, I would like to thank Mrs Elspeth Reid, lately editor of the *Edinburgh Law Review*, for her encouragement of my research; Dr Parker Hood and Ms Joelle Godard for their help in the Australian
and European ambiences respectively; Dr Alexis Tattis for early assistance and Dr Sharon Cowan for valuable guidance in the feminist field. My truly profound thanks, however, go, firstly, to Mr Geoff Pradella, one of my recent postgraduate students, who undertook some prodigious research for me and also read and commented on several chapters; and, secondly – and as always – to Professor Graeme Laurie who encouraged me throughout, read and constructively criticised some chapters and, on more than one occasion, saved the manuscript from the flames! Finally, I must thank Cambridge University Press for their forbearance over the months and for giving me the long-sought opportunity to publish under the auspices of my alma mater. I hope the book does them justice.

Edinburgh

JKM
August 2006
Table of cases

Australia
CES v. Superclinics (Australia) Pty Ltd 38 NSWLR 47, 83, 84, 116, 123, 127, 140–1, 142
De Sales v. Ingrilli (2002) 193 ALR 130, 134
Graham Barclay Oysters Pty Ltd v. Ryan (2002) 194 ALR 337, 135
Jaensch v. Coffey (1984) 155 CLR 549, 130
McMahon v. South Eastern Sydney Area Health Service [2004] NSWSC 442, 83
Nominal Defendant v. Gardikiotis (1996) 186 CLR 49, 133
Perre v. Apand or Amand Pty Ltd (1999) 198 CLR 180, 127, 135
R v. King [2003] NSWCCA 399, 44
Veivers v. Connolly [1995] 2 Qd R 326, 82

Canada
Doiron v. Orr (1978) 86 DLR (3d) 719, 102, 106, 107
Fredette v. Wiebe (1986) 29 DLR (4th) 534, 229
McDonald-Wright v. O’Herlihy [2005] OJ No.1636, 216, 219, 225
Mickle v. Salvation Army Grace Hospital (1998) 166 DLR 743, 82, 227
Reible v. Hughes [1980] 2 SCR 880, (1980) 114 DLR (3rd) 1, 69, 72, 74, 75, 82, 84
Roe v. Dabbs 2004 BCSC 957, 39, 107
Superintendent of Family and Child Services and Dawson (1983) 145 DLR (3d) 610, 248, 259, 279

European courts
Andersson and Kullman v. Sweden App. No 11776/85, 46 DR 251, 145
Bosso v. Italy no. 50490/99, ECHR 2002-VII, 48
D v. UK (1997) 24 EHRR 423, 272
H v. Norway (Application no. 17004/90, Commission Decision of 19 May 1992), 48
Table of cases xv


X v. Austria (Application no. 7045/75, Commission Decision of 10 December 1976), 48

X v. United Kingdom (Application no. 8416/79, Commission Decision of 13 May 1980); (1981) 3 EHRR 244, 48

France


Hong Kong

Ho and another v. Chan and others (1991) (Unreported, High Court of Hong Kong, HCA003490A/1986), 125

Israel

Zeitzoff v. Katz [1986] 40(2) PD 85, 220

Netherlands

X v. Y (Molenaar) The Hague, Court of Appeals, 26 March 2003, 234–5, 236–7, 238, 240

New Zealand


Re an Unborn Child [2003] 1 NZLR 115, 40

Harrild v. Director of Proceedings [2003] 3 NZLR 289, 41, 43

Re Z (1982) 3 NZAR 161, 116, 118

South Africa


United Kingdom


Table of cases

Anderson v. Forth Valley Health Board 1998 SLT 588, 605, 84, 86–8, 89, 94, 95
An NHS Trust v. MB (a child represented by CAFCASS as guardian ad litem) [2006] 2 FLR 319, 328, 263, 276, 277, 278, 279, 284–9
Bagley v. North Herts Health Authority [1986] NLJ Rep 1014, 41
Barr v. Matthews (2000) 52 BMLR 217, 29
Benarr v. Kettering Health Authority [1988] NLJR 179, 111, 120, 130
Blyth v. Bloomsbury Health Authority [1993] 4 Med LR 151, CA, 69
Bolam v. Friern Hospital Management Committee [1957] 1 WLR 582, (1957) 1 BMLR 1, 9, 10–12, 13, 39, 68, 70, 71, 79, 101, 103, 104, 249
Burton v. Islington Health Authority [1993] QB 204, 43, 189, 207, 218
C v. Health Authority [1999] CLY 4002, 76
Chisell v. Poole Hospital NHS Trust [1998] Lloyds Rep Med 357, 39
Crouchman v. Burke (1998) 40 BMLR 163, 39, 104
County Ltd v. Girozentrale Securities [1996] 3 All ER 834, 142
D v. An NHS Trust (Medical treatment: consent: termination) [2004] 1 FLR 1110, 27
Das v. Ganju (1998) 42 BMLR 28, 111
Table of cases xvii

Deriche v. Ealing Hospital NHS Trust [2003] EWHC 3104, 76
Egerton v. Bronsonow (1853) 4 HL Cas 1, 129
Eyre v. Meaday [1986] 1 All ER 488, 102, 104
Farrell v. Merton, Sutton and Wandsworth Health Authority (2001) 57 BMLR 158, 92
Fish v. Wilcox and Gosport Health Authority (1992, unreported), on appeal (1993) 13 BMLR 134, 91, 95
Fitzleet Estates Ltd v. Cherry [1997] 3 All ER 996, [1977] 1WLR 1345, 168
Gaynor v. Warrington Health Authority (2000, unreported), CA, 9 March, 98
Gillick v. West Norfolk and Wisbech Area Health Authority [1986] AC 112, [1985] 3 All ER 402, 33–4
Godfrey v. Gloucestershire Royal Infirmary NHS Trust [2003] EWHC 549, 93–4, 111
Greenfield v. Irwin (a firm) [2001] 1 FLR 899, 86, 143–5, 146, 187
sub nom Greenfield v. Flather, 94, 143
Gregg v. Scott [2005] 2 AC 176, 135
Hunter v. Hanley 1955 SC 200, 1955 SLT 213, 9, 10, 39
Jones v. Berkshire Health Authority (1986, unreported), 111
Kapfunde v. Abbey National plc and Daniel (1998) 46 BMLR 176, 185
Kuwait Airways v. Iraq Airways Co [2002] 2 AC 883, 238
Lindsay v. Glasgow Health Board (1990) The Scotsman, 14 March, 111
Lybert v. Warrington Health Authority [1996] 7 Med LR 71, CA, 70
Marriott v. West Midlands Regional Health Authority [1999] Lloyd’s Rep Med 23, 11
Maynard v. West Midlands Regional Health Authority [1985] 1 All ER 635, [1984] 1 WLR 634, 10, 39, 101
McLelland v. Greater Glasgow Health Board 1999 SC 305, on appeal 2001 SLT 446, 84, 88–90, 95
Millar (P’s Curator Bonis) v. Criminal Injuries Compensation Board 1997 SLT 1180, (1996) 44 BMLR 70, 87
Table of cases

Paton v. British Pregnancy Advisory Service Trustees [1979] QB 276, 18, 40
Pfizer Corporation v. Ministry of Health [1965] AC 512, 103, 234
Pollock v. Lanarkshire Health Board (1987) Times, 6 January, 111
Poynter v. Hillingdon Health Authority (1997) 37 BMLR 192, 197
Practice Note (Official Solicitor: Declaratory Proceedings: Medical and Welfare Provisions for Adults who Lack Capacity) [2001] 2 FLR 158, 100
R (on the application of Axon) v. Secretary of State for Health (2006) 88 BMLR 96, 33–4
R (on the application of Quintavalle) v. Secretary of State for Health [2003] 2 AC 687, [2003] 2 All ER 113, 61
R (on the application of Rogers) v. Swindon NHS Primary Care Trust [2006] EWCA Civ 392, 264
R v. Bourne [1939] 1 KB 687, [1938] 3 All ER 615, 28, 117
R v. Cambridge Health Authority, ex p B [1995] 2 All ER 129, CA, 250
R v. Dixon, Nottingham Crown Court, 21 December 1995, 29
R v. Instan [1893] 1 QB 450, 215
Table of cases

R v. Secretary of State for Social Services and ors, ex p Hincks [1980] 1 BMLR 93, CA, 118
R v. Shivpuri [1986] 2 WLR 988, 168
R v. Smith (John) [1974] 1 All ER 376, 58 Cr App Rep 106, 29
R v. Tait [1990] 1 QB 290, 50
Re A (medical treatment: male sterilisation) [2000] 1 FLR 549, 246, 249, 279, 287
Re B (wardship: abortion) [1991] 2 FLR 426, 34
Re B (a minor) (wardship: medical treatment) [1981] 1 WLR 1421, [1990] 3 All ER 930 at 931, 188, 209, 228, 247, 252–4, 256, 257–9, 266, 268, 269, 276, 300
Re C (a baby) [1996] 2 FLR 432, (1996) 32 BMLR 44, 270–1, 281, 284
Re C (a minor) (wardship: medical treatment), [1990] Fam 26, [1989] 2 All ER 1782 266, 267–8
Re F (mental patient: sterilisation) [1990] 2 AC 1, 248
Re K (a child) (Medical treatment: Declaration) [2006] EWHC 1007, [2006] 2 FLR 883, 296
Re L (medical treatment: benefit) [2005] 1 FLR 491, 250, 278, 281, 281–3
sub nom Re Winston-Jones (a child) (medical treatment: parent’s consent) [2004] All ER (D) 313, 281
Re P (a minor) [1982] 80 LGR 301, [1986] 1 FLR 272, 35, 101
Re R (adult: medical treatment) [1996] 31 BMLR 127, 277
<table>
<thead>
<tr>
<th>Case</th>
<th>Year</th>
<th>Volume</th>
<th>Page Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Re S (adult patient: sterilisation)</td>
<td>2001</td>
<td>Fam 15</td>
<td>55 BMLR 105, 249</td>
</tr>
<tr>
<td>Re SL (adult patient) (medical treatment)</td>
<td>2000</td>
<td>55 BMLR 105, 249</td>
<td></td>
</tr>
<tr>
<td>Re SG (adult mental patient: abortion)</td>
<td>1991</td>
<td>2 FLR 445, 27</td>
<td></td>
</tr>
<tr>
<td>Re T (a minor) (wardship: medical treatment)</td>
<td>1997</td>
<td>1 All ER 906, (1996) 35 BMLR 63, 264–6, 283</td>
<td></td>
</tr>
<tr>
<td>Re Wyatt (a child) (medical treatment: parents’ consent)</td>
<td>2004</td>
<td>84 BMLR 206, 245, 247, 252, 259, 273–81, 282</td>
<td></td>
</tr>
<tr>
<td>Re Wyatt (a child) (medical treatment: continuation of order)</td>
<td>2005</td>
<td>86 BMLR 277, 278, 279</td>
<td></td>
</tr>
<tr>
<td>Rees v. Darlington Memorial NHS Trust</td>
<td>2003</td>
<td>2 FLR 111, 281</td>
<td></td>
</tr>
<tr>
<td>Rees v. Dolington Memorial NHS Trust</td>
<td>2002</td>
<td>65 BMLR 115, CA, 247, 251, 263, 275, 277, 278, 279</td>
<td></td>
</tr>
<tr>
<td>Sidaway v. Board of Governors Bethlem Royal Hospital and the Maudsley Hospital</td>
<td>1984</td>
<td>QB 493, 87, 77, 118, 121, 124, 135, 140, 155, 158, 166–82, 186, 298, 302</td>
<td></td>
</tr>
<tr>
<td>Robinson v. Salford Health Authority</td>
<td>1992</td>
<td>3 Med LR 270, 153</td>
<td></td>
</tr>
<tr>
<td>S v. Distillers Co. (Biochemicals) Ltd</td>
<td>1969</td>
<td>3 All ER 1142, (1970) 1 WLR 114, 210</td>
<td></td>
</tr>
<tr>
<td>Scarra v. Powell</td>
<td>1979</td>
<td>123 SJ 1, 406, 39, 105</td>
<td></td>
</tr>
<tr>
<td>Sidaway v. Board of Governors Bethlem Royal Hospital and the Maudsley Hospital</td>
<td>1984</td>
<td>QB 493, 87, 77, 118, 121, 124, 135, 140, 155, 158, 166–82, 186, 298, 302</td>
<td></td>
</tr>
<tr>
<td>Stobie v. Central Birmingham Health Authority</td>
<td>1994</td>
<td>22 BMLR 135, 100</td>
<td></td>
</tr>
<tr>
<td>Surtees v. Kingston-upon-Thames Royal BC</td>
<td>1991</td>
<td>2 FLR 559, 159</td>
<td></td>
</tr>
<tr>
<td>Tameside and Glossop Acute Services Trust v. CH (a patient)</td>
<td>1996</td>
<td>1 FLR 762, (1996) 31 BMLR 93, 79</td>
<td></td>
</tr>
<tr>
<td>Thake v. Maurice</td>
<td>1986</td>
<td>1 QB 644, (1986) 1 All ER 497, 2, 94, 102, 103, 104, 105, 109, 110, 115</td>
<td></td>
</tr>
</tbody>
</table>

---

**Table of cases**

© Cambridge University Press  
www.cambridge.org
Table of cases

Thomson v. James (1997) 41 BMLR 144, CA, 197
W Healthcare NHS Trust v. KH [2005] 1 WLR 834, CA, 228, 248, 251, 276, 277
Worster v. City and Hackney Health Authority [1987] Times, 2 June, 103
Wyatt v. Curtis [2003] EWCA Civ 1779, 72, 247
Wyatt v. Portsmouth NHS Trust and Wyatt (by her guardian) [2005] EWHC 693, [2005] 2 FLR 480, 275

United States
Akon (City of) v. Akron Center for Reproductive Health 462 US 416 (1983), 20
Albala v. City of New York 420 NE 2d 786 (1981, N.Y.), 197
Amadio v. Levin 501 A 2d 1085 (Pa., 1985), 42, 230
Ashe v. Radiation Oncology Assocs. 9 SW 3d 119 (Tenn., 1999), 74
Atlanta Obstetrics and Gynecology Group v. Abelson 398 S.E. 2d 557 (Ga., 1990), 82
Azzolino v. Dingfelder 337 SE 2d 528 (NC, 1985), 82, 193
Baby K, Re 832 F Supp 1022 (FD Va., 1993), aff’d 16 F 3d 590 (4th Circuit, 1994), 2660
Bader v. Johnson 732 NE 2d 1212 (Ind., 2000), 7
Becker v. Schwartz 386 NE 2d 807 (NY, 1978), 80, 82, 192, 193, 217
Berk v. Rice 551 NE 2d 1 (Mass., 1990), 107
Berman v. Allan 404 A 2d 8 (NJ, 1979), 193, 194, 202, 203
Blake v. Cruz 698 P 2d 315 (Idaho, 1984), 193
Bruggeman v. Schimke 718 P 2d 635 (Kan. 1986), 193
BS, In re 74 P 3d 285 (Ariz., 2003), 33
Cantrell v. Spence 464 F 2d 772 (D.C., 1972), 69
Christensen v. Thorby 255 NW 620 (Minn., 1934), 106
Cote v. Forum Group, Inc 575 NE 2d 630 (Ind., 1991), 193
Table of cases xxiii

Custodio v. Bauer 251 Cal App 2d 303 (1962), 107
Dehn v. Edgecombe 865 A 2d 603 (Md., 2003), 104
Doner v. St Michael's Hospital 233 NW 2d 372 (Wis., 1975), 193
Ellis v. Sherman 515 A 2d 1327 (Pa., 1986), 193
Emerson v. Magendanz 689 A 2d 409 (RI, 1997), 156
Enright v. Eli Lilly & Co 570 NE 2d 198 (N.Y., 1991), 199
Estate of Amos v. Vanderbilt University 62 SW 3rd 133 (Tenn., 2001), 198
Fassoulas v. Ramey 450 So 2d 822 (Fla., 1984), 156
Flanagan v. Williams 623 NE 2D (Ohio, 1993), 193
Garrison v. Medical Center of Delaware, Inc. 581 A 2d 288 (Del., 1990), 193
Greco v. US 893 P 2d 345 (Nev., 1995), 7, 193
Grobbs v. Barbourville Family Health Center 120 SW 3d 682 (Ky., 2003), 81, 193
Harbeson v. Parke-Davis, Inc. 656 P 2d 483 (Wash. 1983), 201–2, 203, 239
Hester v. Dragvedi 733 NE 2d 1161 (Ohio, 2000), 193
Hickman v. Group Health Plan Inc. 369 NW 2d 10 (Minn., 1986), 81
Janes G v. Casserta 332 SE 2d 872 (W. Va., 1985), 193
Johnson v. University Hospitals of Cleveland 540 NE 2d 1370 (Ohio, 1989), 107
Kassama v. Magat 792 A 2d 1102 (Md., 2002), 189, 192, 193
Kush v. Lloyd 616 So 2d 415 (Fla., 1992), 193
Lazevnick v. General Hospital of Munro County, Inc. 499 F Supp 146 (Md., 1980), 199
Lininger v. Eisenbaum 764 P 2d 1202 (Colo., 1988), 8, 193
McKenney ex rel McKenny 771 A 2d 1153 (NJ., 2001), 81
Michelman v. Ehrlich 709 A 2d 281 (NJ, 1998), 202, 203
Molly v. Meier 679 NW 2d 711 (Minn., 2004), 81
Moscatoello v. University of Medicine and Dentistry of New Jersey 776 A 2d 847 (NJ, 2001), 203
Nelson v. Krusen 678 SW 2d 918 (Tex., 1984), 193
xxiv Table of cases

Nocca v. Burger 290 2d 825 (Va., 1982), 82
Ochs v. Borelli 445 A 2d 883 (Conn., 1982), 107, 109
Planned Parenthood of Southeastern Pennsylvania v. Casey 112 S Ct 2791 (1992), 33
Renslow v. Mennonite Hospital 367 NE 2d 1250 (Ill., 1977), 197, 198, 199
Roe v. Wade 410 US 113 (1973), 98 S Ct 705 (1973), 19, 21, 23, 192, 194, 203
Santana v. Zilog, Inc. (1996) 95 F 3d 780, 42
Scheider v. National Organization for Women, Inc. 537 US 393 (2003), 14
Schirmer v. Mt. Auburn Obstetrics and Gynecologic Associates, Inc. 802 NE 2d 723 (Ohio, 2003), 65, 81
Schloss v. The Miriam Hospital 1999 RI Super LEXIS 116, 202
Schroeder v. Perkel 87 NJ 53 (1981), 203
Sherlock v. Stillwater Clinic 260 NW 3d 169 (Minn., 1977), 94, 107, 111
Siemieniec v. Lutheran General Hospital 512 NE 2d 691 (Ill., 1987), 81, 193
Smith v. Cote 513A2d 341 (NH, 1986), 193
Speck v. Finegold 408 A 2d 496 (Pa., 1979), 201
Stenberg v. Carhart 530 US 914 (2000), 23
Strohmaier v. Associates in Obstetrics and Gynecology 332 NW 2d 432 (Mich., 1982), 193
Superintendent of Belchertown State School v. Saikewicz 370 NE 2d 417 (Mass., 1978), 248
Terrel v. Garcia 496 SW 2d 124 (Tex., 1973), 107
Vicarro v. Mihulsky 551 NE 2d 8 (Mass., 1990), 8
Walker by Pizano v. Mall 790 P 2d 735 (Ariz., 1990), 189, 193
Willis v. Wu 607 SE 2d 63 (S.C., 2004), 193
Wilson v. Kuenzi 751 SW 2d 741 (Mo., 1988), 81, 193
Wood v. University of Utah Med Ctr 67 P 3d 436 (Utah, 2002), 81
Yeager v. Bloomington Obstetrics and Gynecology Inc 585 NE 2d 696 (Ind., 1992), 199
Zepeda v. Zepeda 190 NE 2d 849 (Ill., 1963), 7, 190, 217
Zehr v. Haugen 871 P 2d 1006 (Ore., 1994), 107
### Table of statutes

**Australia**
- Child Support (Assessment) Act (Cth.)
  - ss.3, 4, 24, 131
- Civil Liabilities Act 1936 (SA)
  - s.67, 141
- Civil Liability Act 2002 (NSW)
  - s.71(1), 141
  - s.71(2), 141
- Civil Liability Act 2003 (Qld)
  - s.49A, 141

**New Zealand**
- Accident Compensation Act 1972, 118
- Health and Disability Commissioner Act 1994, 41
- Injury Prevention, Rehabilitation, and Compensation Act 2001, 41

**United Kingdom**
  - s.1(1)(a), 25, 26, 27–30, 53, 54, 80, 85, 87, 95, 97, 190, 299, 300
  - ss.1(1)(b) and (c), 25, 26, 54, 207, 209
  - s.1(1)(d), 54, 56, 57–8, 122, 154, 161, 258, 299, 300
  - s. 4, 29
  - s. 5(1), 20, 55
  - s.5(2), 29
- Age of Legal Capacity (Scotland) Act 1991
  - s. 2(4), 33
- Children Act 1989, text 199, 98, 106, 157
  - s. 1, 34
  - ss.2 and 3, 245
  - s.17(11), 159
  - s.31, 256
<table>
<thead>
<tr>
<th>Section</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>s.100, 246, 262</td>
<td></td>
</tr>
<tr>
<td>s.100(3), 246, 264, 265</td>
<td></td>
</tr>
<tr>
<td>Children (Scotland) Act</td>
<td>s.1, 115</td>
</tr>
<tr>
<td>Children and Young Persons Act 1933</td>
<td>s.1, 256</td>
</tr>
<tr>
<td>Children and Young Persons (Scotland) Act 1937</td>
<td>S.12, 256</td>
</tr>
<tr>
<td>Concealment of Birth (Scotland) Act 1809</td>
<td>242</td>
</tr>
<tr>
<td>s.1(1), 198, 200, 212</td>
<td></td>
</tr>
<tr>
<td>s.1(2)(b), 212</td>
<td></td>
</tr>
<tr>
<td>s.1A, 213, 224</td>
<td></td>
</tr>
<tr>
<td>s.4(4), 40</td>
<td></td>
</tr>
<tr>
<td>s.4(5), 212</td>
<td></td>
</tr>
<tr>
<td>Consumer Protection Act 1987</td>
<td>s.3, 84, 142</td>
</tr>
<tr>
<td>Criminal Law (Consolidation) (Scotland) Act 1995</td>
<td>s. 5, 32</td>
</tr>
<tr>
<td>Family Law Reform Act 1969</td>
<td>s. 8, 32</td>
</tr>
<tr>
<td>Family Law (Scotland) Act 1985</td>
<td>s.1(1)(c), 115</td>
</tr>
<tr>
<td>Fatal Accidents Act 1976, 41</td>
<td></td>
</tr>
<tr>
<td>Human Fertilisation and Embryology Act 1990, 103</td>
<td>s.5, 290</td>
</tr>
<tr>
<td>s.37, 24</td>
<td></td>
</tr>
<tr>
<td>s. 37(1), 25, 53</td>
<td></td>
</tr>
<tr>
<td>s. 37(4), 20, 53, 55</td>
<td></td>
</tr>
<tr>
<td>s.44, 213</td>
<td></td>
</tr>
<tr>
<td>Human Rights Act 1998, 264, 271</td>
<td>Sch. 1, 47, 143, 249, 264, 272</td>
</tr>
<tr>
<td>Infanticide Act 1938, 242</td>
<td></td>
</tr>
<tr>
<td>Infant Life (Preservation) Act 1929, 20, 22, 28, 40</td>
<td>s.1, 53</td>
</tr>
<tr>
<td>s.1.1, 72</td>
<td></td>
</tr>
<tr>
<td>Limitation Act 1980, 93</td>
<td>s.2, 93</td>
</tr>
<tr>
<td>s.11, 111</td>
<td></td>
</tr>
<tr>
<td>s.33, 94, 111</td>
<td></td>
</tr>
</tbody>
</table>
## Table of statutes

Medical Act 1983, 290  
Medical Termination of Pregnancy Bill, 15  
Mental Capacity Act 2005  
ss. 26, 248  
Mental Health Act 1983, 186  
Offences Against the Person Act 1837, 50  
Offences Against the Person Act 1861, 29, 37, 50  
ss. 58, 29, 36  
ss. 58 & 59, 15  
Sexual Offences Act 2003  
s. 9, 32  
Termination of Pregnancy (Jersey) Law, 29

### United States

Partial-birth Abortion Ban Act 2003, 23  
Unborn Victims of Violence Act 2004, 42  
Women’s Health and Human Life Protection Act 2006 (South Dakota), 30, 37

### Human Rights Conventions

Convention on Human Rights and Biomedicine, 47  
article 2, 48  
European Convention of Human Rights, 34, 47–8, 51, 271  
Article 2, 46, 143, 272  
Article 8, 143,  