

## Review of Johnathan Herring, *Medical Law and Ethics* (7<sup>th</sup> ed, OUP, 2018)

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How do you solve a problem like a medical ethical problem? How do you solve a dilemma that divides theorists, practitioners, patients and the people in the street? When those dilemmas and ethical debates are tied up with healthcare, a vital provision that resonates with young and old, rich and poor, then what is required is access to an informative text that tackles these dilemmas, debates and topical medical issues, makes sense of them, introduces diverging opinions and includes the most recent developments. Such a text is to be found in Jonathan Herring's latest edition of *Medical Law and Ethics*.

This book is, of course, the newest edition of a series of texts that succeeds in explaining, analysing and describing the core legal principles that apply to medical law and ethics. It subsequently explores the ways in which these principles are applied in case law. This job is done in other textbooks and many of these abound. They set out the principles, they describe the cases, they delve into competing debates and they do all of this coherently, clinically and in an informed manner. What makes Herring's book different from all of these is not that the content is particularly more extensive or its articulation or analysis any more illuminating. Rather, the style of writing is incredibly engaging. The sentences are short, to the point, lack legalistic verbosity or flowery embellishments. The reader is sucked into Herring's debates by the sheer clarity of the writing, by the chronologically clear structure in terms of layout and development of the material. This approach is particularly relevant to undergraduate students who require a succinct book that includes clear exposition of quite complex moral and legal questions: this is delivered in spades.

A particular strength of the book lies in the discerning and inward-reaching questions that are beautifully positioned at the end of the chapters and that provide opportunities for students and readers to engage at a really critical and analytical level with the subjects discussed in each of the chapters. Enough information is given in the body of the text to provide a reassuring basis for many of these answers. But the author also encourages the reader to go further than the content of the text. Another stylistic convention that is adopted by Herring and that works effectively as a tool to engage even the most reluctant reader is Herring's manner of addressing the reader. This comforting use of the very personal Vocative Case copies *olde-world* writers, such as Thackeray, who cajoled his reader to join him in the fantasy world he created. This world to which we are invited by Herring is, however, no fantasy world—it is a real one where questions surrounding a number of medical issues are subject to debate and discourse and competing arguments.

Herring initially sets out the structure of the National Health Service and describes how scarce healthcare resources have to be rationed in accordance with differing interpretations and ethical perspectives of what constitutes medical need and requirement. No medical law book would be complete without a discussion of medical negligence and, here, Herring succeeds in painting a real picture of some of the harrowing cases that demonstrate the effects of poor healthcare provision on patients' lives, welfare and well-being. Herring also fully describes and analyses in useful detail the manner of recourse (i.e. the components of medical negligence) to action and its consequences. The complex issue of what consent to treatment is, when it is invoked and when consent is not in place is explored with precision, clarity, depth and with attention to the most recent developments in this area. Patient confidentiality is becoming a crucial concept in this era of data protection scandals and online misuse of personal information. Perhaps, this particular issue is not explored in as up-to-date a manner as other issues, insofar as a lot of movement in this area has happened post-publication of this book, particularly in relation to recent social media controversies. It would be interesting to see

how future editions of this book deal with the very complex data protection issues that may emerge as patients, themselves, increasingly reveal private and personal details about their own medical care on social media.

A very balanced approach to contraception, abortion and pregnancy is given by Herring, where he attempts to describe and analyse differing perspectives and viewpoints and to do so fairly and equitably. The various complex ethical issues that surround reproduction in an era where almost all forms of parenting are, at least theoretically, possible, is subjected to a rigorous scrutiny. As the issue of transplantation and organ donation gains traction and acceptance, Herring offers a very engaging and interesting review of the ethical issues governing the ownership of body parts. Mindful of the need to ensure that this seventh edition keeps fully abreast with the most pertinent and oft-times contentious legal happenings, dying and death, as the inevitabilities of life, are interrogated with a strict eye on recent case law governing end-of-life. The review of *Nicklinson*,<sup>1</sup> for example, demonstrates how consensus is being arrived at in terms of how the courts treat decisions around, and actions taken, in terms of assisted dying. The Cinderella area of health law, namely mental health law, is given front stage appearance, albeit in the last chapter. This area covers depression, dementia and conditional discharge, *inter alia*, and brings together a lot of the law that surrounds this quite challenging area. The description of relevant statute and the particular sections that relate to capacity are very well presented and would offer to any reader a valuable resource and snapshot of a complex legal minefield.

The book includes an acute examination of the recent *Montgomery*<sup>2</sup> Supreme Court case, which elucidates a key development in medical law in respect of informed consent and the development of a patient-orientated approach to consent. Importantly, the new edition refers to the Charlie Gard case, the Court of Appeal case of *Conway*,<sup>3</sup> as well as the new codes of practice issued by the Human Tissue Authority. These significant additions and their related in-depth evaluations give an immediacy of relevance to this text.

Readers who have a particular interest in law and religion will find this version to be of particular interest. Some of the issues covered by Herring include religious arguments in relation to abortion and reproduction, the concept of sanctity of life, the issue of ritual male circumcision, and the refusal of blood transfusions by Jehovah's Witnesses. These issues, and others, are dealt with sensitively and an appropriate balance is given to diverging perspectives. The book acts as a very useful starting point to those who want to gain knowledgeable insight into the intersection between medicine, religion and law.

Within all these chapters, a core strength is in evidence—the material is very accessible, the subject areas are broken down into manageable units of work, the case law is explained in a simple way, but the core findings and judgments are not diluted. The brevity of the description of this case law is, again, a significant strength. It can often happen in legal texts of this nature that the reader can be lost in the minutiae of the cases. Herring's mastery of succinct delivery ensures that this does not happen here. All of the content is, of course, very worthy and its breadth of discussion may be suggestive of a somewhat dry and learned tome. However, let us not forget the occasional snippets of humour that pepper the book with not little glee. For example, Herring draws our attention to non-diseases, which include such illuminating malaises as 'boredom', 'cellulite', 'jet lag'. At no stage does

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<sup>1</sup> *R (on the application of Nicklinson v Ministry of Justice; R (on the application of AM) v Ministry of Justice; R (on the application of Lamb) v Ministry of Justice* [2014] UKSC 38.

<sup>2</sup> *Montgomery v Lanarkshire Health Board* [2015] UKSC 11.

<sup>3</sup> *Noel Douglas Conway v Secretary of State for Justice* [2017] EWCA Civ 16.

Herring lose sight of his audience. It is as if his reader is pictured in front of him—a student anxious to devour all that must be learnt of medical law and ethics. Even the most earnest of students, however, cannot but fail, at times, to begin to actually enjoy reading this book!

However, some areas pertaining to medical ethics move rapidly and fairly superficially over concepts that have compelling and important and vital significance. A reader who wants to get a composite view of these ethical quandaries will also need supplementary reading in additional texts, and these sources are well referenced in the comprehensive footnotes supplied throughout the book. But this lacuna is not a fault within the book—it cannot do all and be all! What it does, and does well, is to whet the appetite, is to cause the reader to query and to question what happens in medical law and what could potentially happen or not happen and what consequences might result from those happenings or non-happenings. The fact that Herring induces in the reader the desire to pursue this cognitive quest is indicative of the power of this text to stimulate thought, debate, discussion, and argument. And that is a valid path!