Contents

Introduction	xi
Acknowledgments	XV
Chapter 1. The Right to Health and Its Implementation	3
A. The Right to Health in International Law	3
The Right to Health in National and International Jurisprudence	5
Notes	12
B. The Right to Health in Constitutional Law	13
Spanish Constitution, 1978	14
Swiss Constitution	14
Brazilian Constitution, 1998	14
Notes	15
Paschim Banga Khet Mazdoor Samity v. State of West Bengal	15
Notes	18
C. The Organization of National Health Care Systems	18
World Health Report 2000	19
Health Care Systems in the EU: A Comparative Study	21
Notes	29
D. Perspectives on Health Care Systems	29
Comparing Global Health Systems: Learning Opportunity or	
Global Mythology	30
Notes	33
Reforming the Health Care System: The Universal Dilemma	34
Notes	41
Dynamics of a Changing Health Sphere: The United States, Britain,	
and Canada	41
Notes	44
The Empire of Death: How Culture and Economics Affect Informed	
Consent in the U.S., the U.K., and Japan	45
Notes	48
E. The Role of Legal Institutions in the Allocation and Rationing of Health	
Care Resources	49
Health Care Rationing in the Courts: A Comparative Study	49
Notes	59
Judicial Supervision of Health Resource Allocation—The U.K.	
Experience	60
Notes	71
Rationing the Right to Health	71
Notes	75

R. v. Secretary of State for Health, ex parte Pfizer Ltd	76
Notes	84
F. Removing Barriers to the Exercise of the Right to Health: Access to	
Transplantable Organs	85
Act of 5 November 1997 on the Donation, Removal, and	
Transplantation of Organs	85
Notes	89
Legislation on Organ and Tissue Donation	91
Notes	94
Cadaveric Organ Donation and Consent: A Comparative Analysis of	
the United States, Japan, Singapore, and China	94
Notes	98
Chapter 2. The Rights of Patients in Relationship with Health Care	
Professionals and Institutions	101
A. Patients' Rights	101
Citizens' Choice and Patients' Rights	101
World Medical Association Declaration on the Rights of the Patient	104
A Declaration on the Promotion of Patients' Rights in Europe, 1994	106
Notes	111
Citizens' Choice and Patients' Rights	111
B. The Right to be Free from Medical Negligence	113
Cour de Cassation of France, Decision of 25 February 1997	113
Notes	114
Medical Malpractice and the Judicial Function in Comparative	
Perspective	115
Notes	117
Medical Malpractice in England and Wales—A Postcard from the Edge	118
Notes	121
Ärztliche Verantwortung im europäischen Rechtsvergleich	122
Notes	124
Schlichtungsstellen and Gutachterkommissionen: The German	
Approach to Extrajudicial Malpractice Claims Resolution	125
Notes	131
The Swedish No Fault Patient Insurance Scheme	131
Notes	135
Bridgeman v. ACC	135
Defining "Medical Misadventure": Lessons from New Zealand	142
Notes O The Distance Comment to Tourse	144
C. The Right to Consent to Treatment	145
Sidaway v Bethlem Royal Hospital Governors and others	145
Notes Degrana v Mhitalran	159 159
Rogers v Whitaker Notes	163
	164
Informed Consent and Patients' Rights in Japan Notes	172
International Medical Malpractice Law	173
Notes	180
Chappel v. Hart	180

Contents

Note	189
D. Rights to Control Over Patient Information	189
The Rights of Patients in Europe	189
Notes	191
Medical Confidentiality and Medical Privilege—a Comparison of	
French and German Law	192
Note	199
Recommendation No. R (97) 5 of the Committee of Ministers to	
Member States on the Protection of Medical Data	200
Protecting Medical and Genetic Data	205
Notes	208
McInerney v. MacDonald	210
Breen v Williams	215
Notes	226
E. The Right to Complain	226
	227
Regulating Medical Work: Formal and Informal Controls	232
Note	
Complaints after Wilson; Another Case of Too Little Too Late?	232
Doctor's unreasonable restraint of a young child	239
Failure by GP to make appropriate out of hours arrangements for the	~ ~ ~
care of his patients: removal of family from list	239
Notes	240
Chapter 3. The Patient's Right to Self-Determination and Competing	
Considerations	243
A. Abortion	243
The Stability of Compromise: Abortion Politics in Western Europe	244
Notes	249
R. v. Morgentaler	250
Notes	261
Constitutionalizing Abortion	261
Notes	265
Resolution No. 64/1991(XII.17) AB	265
Notes	2.72
	272
B. Assisted Reproduction The Process of Decadesing Assisted Depreductive Technologies, What	212
The Process of Regulating Assisted Reproductive Technologies: What	
we can Learn From our Neighbors — What Translates and What	272
Does Not	273
Regulating the New Reproductive Technologies: A Cross-Channel	
Comparison	276
Notes	287
R v Human Fertilisation and Embryology Authority, ex parte Blood	289
Notes	298
C. The Right to Die	298
Physician Involvement in a Patient's Death: A Continental European	
Perspective	300
Notes	313
In the Matter of A Ward of Court	315
Notes	326

D. Assisted Suicide and Euthanasia	326
Sue Rodriguez, Appellant v. The Attorney General of Canada and	
the Attorney General of British Columbia Respondents	327
Notes	337
Physician Involvement in a Patient's Death: A Continental European	
Perspective	338
Notes	346
Chabot	348
Notes	354
Tōkai University Hospital—Euthanasia Case.	354
Chapter 4. The Rights of the Individual and the Interests of Society	363
A. Public Health Law: Legal Approaches to HIV/AIDS	363
AIDS, Public Health and the Law: A Case of Structural Coupling?	364
Notes	371
HIV and AIDS in Africa: African Policies in Response	
to AIDS in Relation to Various National Legal	
Traditions	372
Notes	376
B. Research Involving Human Subjects	377
World Medical Association, Declaration of Helsinki	
Ethical Principles for Medical Research Involving Human Subjects	378
Notes	381
European Convention on Human Rights and Biomedicine,	
Oviedo, 1997	381
Notes	383
The Globalization of Health Law: The Case of Placebo-based Research	384
Notes	388
Editorial: HIV Research, Ethics, and the Developing World	388
Notes	391
Index	393

- 21,000