On admission to the examination room, you should acquaint yourself with the instructions below. You must listen carefully to all instructions given by the invigilators. You may read the question paper, but must not write anything until the invigilator informs you that you may start the examination.

You will be given five minutes at the end of the examination to complete the front of any answer books used.

May/June 2016  LW3MED 2015/16 A 001

Case List
Dictionaries and Any Statutory Materials (unannotated) Permitted

UNIVERSITY OF READING

MEDICAL LAW (LW3MED)

Three hours

Answer FOUR questions.
1. **EITHER:**

(a) To what extent, if at all, have the remedies available in judicial review provided patients with adequate redress in claims for access to health care resources under the National Health Service Acts? Do you recommend any change to this area of law?

**OR:**

(b) Arthur and Beatrice were married in 1954. They are both 80 years of age. Although they are frail, they live together without assistance. Beatrice suffers from moderate Alzheimer’s disease and Arthur helps her getting dressed and having a bath. However, Arthur has recently been diagnosed with Parkinson’s disease. This means that he is losing strength in his muscles and having more difficulty looking after his wife. Arthur’s doctor has advised him that, unless he remains independent, they will both have to move to a residential home, which neither wish to do. They are also worried that residential accommodation may not be available to accommodate them as a couple and they may have to live apart. A treatment is available for Arthur’s condition called *Mobilat* which will probably restore some of his muscle tone and enable him to continue caring for Beatrice. However, it is expensive and would cost £20,000 per year. Arthur’s local health authority, Bathshire Clinical Commissioning Group (CCG), say it is too expensive to afford within the NHS and Arthur cannot afford to pay for it himself.

Advise Arthur of the principles of judicial review on which he may challenge Bathshire CCG’s refusal to fund *Mobilat* and whether he has exceptional circumstances which merit access to the treatment.

2. Adnan suffers from multiple sclerosis (MS). Beta interferon is a treatment for MS which may alleviate some of the symptoms and enable sufferers to continue in employment. The Secretary of State for Health has written to Clinical Commissioning Groups (CCGs) asking them to fund beta interferon. His letter says:
Although we are entering difficult financial times, I request that you purchase beta interferon for MS sufferers. I know there are various other demands on your resources, but I urge you to make it available if you can.

However, his local health authority, Bathshire CCG, have refused to consider beta interferon for funding, or to prioritise it against other treatments because they say it is too expensive. It costs about £35,000 per year and this, they say, is money that could be better spent on the orthopaedic needs of other patients with MS. The CCG accepts that Adnan has suffered debilitating symptoms of MS for the past six months and been forced to leave his job, both of which would probably have been avoided had treatment been available.

Advise Adnan of the prospects of success in an action in negligence to recover damages from Bathshire CCG.

3. Ellen was a patient in the Royal Bathshire NHS Hospital. She was 78 and had been admitted for an artificial hip. Together with dozens of other patients, during her stay in hospital, she contracted MRSA, a contagious and debilitating bacterium which is resistant to treatment. She was one of a number of elderly patients to die from her infection. A number of factors were responsible for the outbreak of MRSA. One was a failure in simple standards of cleanliness. Wards were not kept clean and insufficient nurses were available to look after patients properly. Patients needing help with “toileting” were sometimes told to soil their beds until further assistance was available. Part of the reason for this was a managerial culture in the hospital which tended to put concern for cost above patient care. As a result, to save costs, nursing positions were left vacant, some wards were closed and patients moved into over-crowded wards elsewhere with too many beds. However, a contributor to this attitude toward costs was the Department of Health, which had agreed financial targets with
hospitals throughout the NHS, although it had no direct role managing the Royal Bathshire Hospital itself.

Advise Ellen’s estate as to the merits of an action in negligence against both the Royal Bathshire NHS Hospital and the Department of Health.

4. “In the vast majority of cases the fact that distinguished experts in the field are of a particular opinion will demonstrate the reasonableness of that opinion...But, if, in a rare case, it can be demonstrated that the professional opinion is not capable of withstanding logical analysis, the judge is entitled to hold that the body of opinion is not reasonable or responsible” (Lord Browne-Wilkinson in Bolitho v City of Hackney HA [1997] 4 All ER 771,779).

Critically evaluate this statement.

5. “The social and legal developments which we have mentioned point away from a model of the relationship between the doctor and the patient based upon medical paternalism… What they point towards is an approach to the law which, instead of treating patients as placing themselves in the hands of their doctors, treats them so far as possible as adults who are capable of understanding that medical treatment is uncertain of success and may involve risks, accepting responsibility for the taking of risks affecting their own lives, and living with the consequences of their choices.” (Montgomery v Lanarkshire Health Board [2015] UKSC 11, [81]).

In the light of this statement, critically evaluate the law governing individual autonomy in respect of medical treatment.
6. Patrick was a boy of 17. Two months ago he met and fell in love with Milly, who was also 17 and who was a devout Jehovah’s Witness. Milly quickly persuaded Patrick to join her church and, within two weeks of meeting her, he became a Jehovah’s Witness. He signed a card for his wallet saying that “under no circumstances” did he consent to receiving transfused blood. This morning, Patrick and Milly were involved in a serious car accident. Milly broke her collar bone, but Patrick suffered severe internal injuries. He has not regained consciousness since the accident and urgently requires a blood transfusion to save his life. The hospital doctors have seen the Jehovah’s Witness card in his wallet and Milly vehemently insists that it means that Patrick would prefer to die than consent to a blood transfusion. But Patrick’s parents insist that he should be treated like any other victim of a road traffic accident and that he only signed the card because Milly was his first serious girlfriend. Indeed, he never spoke much about being a Jehovah’s Witness at home.

Advise the hospital which seeks your urgent advice whether it should administer a blood transfusion to Patrick.

7. Wendy is 24 years old, but has the mental age of a seven year old. She has little prospect of further mental development. She suffers from heavy menstrual periods and needs help to cope with these each month. Wendy is mainly cared for by her mother, Anne. Anne is retired and in poor health. She is worried that when she becomes unable to look after her, Wendy will have to go into full-time local authority care. Wendy has stayed in a residential home as a day patient to introduce her to outside care, but she seems to attract the attentions of certain male patients and is easily led. Anne is concerned that there is a danger of her becoming pregnant. Wendy could not understand the meaning of pregnancy, nor could she cope with labour and child birth. However, as Anne’s health fails and the time approaches when Wendy may have to spend more time in the residential unit, Anne worries that Wendy will latch onto anyone who gives her attention and says she should
have a hysterectomy now to avoid both her periods and the risk of becoming pregnant. She asks her doctor, Dr Partridge, whether he would be willing to proceed with the operation.

Advise Dr Partridge as to the legal principles governing Anne’s request.

8. “The law of causation has become so chaotic and unpredictable that it inevitably favours tortfeasors who ought to be held responsible for the damage they have caused, yet can exploit legal uncertainties to defeat the claims against them.”

Critically discuss the relevance of this statement to medical treatment.

9. **EITHER:**

(a) Patsy is 55 years old and has been in a coma for over two years. She remains in a high dependency unit in a nursing home, being artificially fed and hydrated. She is not fully conscious and the medical prognosis of any change in her condition is bleak. She is unable to communicate or make decisions. Her family believe that she is merely existing and request the medical team to make her comfortable, but to withdraw the artificial feeding tube which is keeping her “alive”. They clearly recall past conversations between family members about the Tony Bland case in which Patsy said she would never wish to kept alive in such a condition. Indeed, she said it would be an affront to her dignity. The medical team believe that Patsy has a low level of consciousness, although the extent of her consciousness is debated.

Advise Patsy’s family as to the principles of law to be applied to her situation, indicating the factors which the court would be likely to take into consideration in deciding whether treatment should be withdrawn.
OR:

(b) You are invited by the House of Commons Health Committee to write a report summarising the law governing euthanasia. Write a report on the, so called, “right to die,” and whether there are any circumstances in which, in your view, doctors should be permitted to assist patients to end their lives.

(End of Question Paper)