### COMPETENT ADULTS

1. **Non-consenting adult patients**
   
   General Rule: A doctor cannot provide treatment without consent of competent patients. Non-consent can lead to Battery / Negligence claims or a Criminal Offence - Chatterton v Gerson.

   *Note the exceptions: implied consent to touching in ordinary course of life (Collins v Wilcock); forced treatment and public policy (Robb v Home Office); CF St George’s Healthcare NHS Trust v S; notifiable diseases - Public Health (Control of Disease) Act 1984, Public Health (Infectious Diseases), Regulations 1985; The Mentally Ill; Mental Health Act 1983 eg to prevent suicide - Savage v South Essex Partnership NHS Foundation Trust

2. **Refusal**

3. **Treatments that cannot be consented to**

   *No right to demand treatment
   *Proper medical treatment does not constitute an offence - R v Brown
   *Certain treatments e.g. Female Circumcision (FGMAG 2003)
   *Body Dysmorphic Disorder

4. **Children**

   *S8 Family Law Reform Act 1969 16 or 17yr olds can consent to treatment.

### INCOMPETENT PATIENTS

1. **Adults (lacking capacity)**

   *This is now governed by Mental Capacity Act (MCA) 2005. P’s are presumed to be able to consent (s1(2) MCA)
   *Under s. 27 MCA there are a list of activities that it is not possible to substitute consent by another on behalf of the patient eg marriage.
   *
   **Otherwise:**

   Advanced Decisions (living wills) s24 MCA:

   *must be made when person over 18; competent when decision made; only relevant if person lacks capacity to consent to treatment; only allows negative decisions ie to refuse treatment and its continuation; if decision involves the denial of life-saving treatment, it must be in writing, signed and witnessed.
   *
   *s25 – an advance decision can be invalid if: P with capacity has withdrawn the decision; P creates an LPA after the decision giving the LPA the power to make the decision; P has done anything else inconsistent with the directive in the advance decision - HE v A Hospital NHS Trust (P did something inconsistent with previous decision ie became a muslim)
   *
   *Note s26(1)
   *Protects medical practitioner if acts in good faith.

   Lasting Power of Attorney - S. 9 MCA 2005

   *Allows another person to make the decision on behalf of an incompetent person eg welfare and medical decisions.
   *P must be over 18 and have capacity
   *There are strict formalities given under schedule 1 MCA.

   **Deputies** – s16 MCA

   *If P lacks capacity to decide on a personal welfare issue, the court can make decisions or appoint a Deputy to do so.
   *Reference made to the patient’s best interests.
   *A Deputy has the power to give or refuse consent to medical treatment

   **The concept of best interests of P**

   *Application to Court
   *S. 4 MCA 2005 and COP 2009 require decision makers to take into account all relevant factors that it would be reasonable to consider when deciding what would be in P’s best interests.

   **Use of force**

   *Ministry of Justice COP 2009. Restraining is the use of or threat of force to secure an act which is P resists OR a restriction of P’s liberty of movement, whether or not P resists. Where P is deprived of liberty then the Deprivation of Liberty COP also applies
   *
   *Conditions: lack of capacity, authorisation must be sought, in P’s best interests, s6 MCA it is both necessary and proportionate.

2. **Children (lacking capacity)**

   *s.1 Family Law Reform Act 1969 - all persons under 18
   *A child aged 16-17: s.8 Family Law Reform Act 1969 – can consent to treatment (but not cosmetic, tissue donation or research in which Gillick is used)

   *Below 16 - A Gillick Competent Child - Gillick v W Norfolk AHA: Must have “sufficient understanding and intelligence to enable him or her to understand fully what is proposed” per Lord Scarman. Re T (Jehovah’s Witness) / Re E (Jehovah’s Witness) / Re S (Jehovah’s Witness)

   *If a child cannot consent a person with Parental Responsibility can consent for a child (DoH 2001:a)

   *Defence of Necessity - s.3(5) Children Act 1989

   *A Court Order, s. 8 Children Act 1989, Glass v UK, disagreement between Parties