ORGAN DONATION

OWNERSHIP OF BODY PARTS

*During life – principle of bodily autonomy. On death – traditional rule: Doodeward v Spence “there is property in a corpse” per Lord Griffin
*Confirmed in R v Kelly (were parts of a dead body have been removed and subjected to preservation then the body part acquires the character of property)/ Dobson v North Tyneside HA/ AB v Leeds Hospitals NHS Trust (lawful to retain organs unless objection)/ Yearworth v North Bristol NHS Trust (sperm was property)

HUMAN TISSUE ACT 2004

*Passed after scandals in several hospitals were retaining organs from deceased children without authority from their parents. HTA sets out law re retaining tissues and organs. Issues licenses for storage and use of tissue.
*The HTA 2004 governs: • Whole body donation • Taking and storage of human organs and tissue • Transplantation • Anatomical examinations • Post mortems • Storage of human material for education and research. Covers issue of consent for living and dead humans. Approval for organ and bone marrow donations from living donors.
*S. 5 makes it a criminal offence to contravene the Act without permission
*the consultation about use of donor organ must be by impartial doctors not part of transplant department
*S. 33 bans payment for live organs or cadaver organs (although expenses are permissible)

TRANSPLANTING ORGANS AND CONSENT

*Live organ donation• Cadaver organ donation• Xenotransplantation (from animal to human transplantation - medical/ethical issues)• Genetically created organs• Artificial organs

Living Donors

*S. 1 – 3 HTA 2004 altruistic donation - can donate organs/tissue provided procedure does not cause death or serious injury to the donor e.g., a single kidney. A living person who has never met the possible recipient may be a donor. This is called ‘non directed altruistic donation’
*S.3 - Donor must consent
*Procedure must be permissible under the HTA 2004
*S. 33 HTA 2004 – it is a criminal offence to remove an organ from a living person to transplant into another, unless permitted by s. 3 HTA 2004
*Removal and use of organ and tissue lawful if there are arrangements made for the organ and tissue. Consent of the HTA have been given. The LA must provide all necessary medical info, provided with risks, assessed by psychiatrist to make sure person has capacity and making decision of their own freewill.
*Re child donating – must get approval from ct even if child is Gillick competent. If regenerative tissue it is less of an issue. Ct has to be satisfied it is in donor’s child best interests. Regenerative tissue – tissue that will naturally regenerate such as blood and bone marrow. Non-regenerative tissue – e.g., cornea, heart valves Organs – e.g., heart, lungs, kidneys, pancreas., small bowel are all capable of transplant
*Code of Practice Donation of Organs, Tissue and Cells for Transplantation (Code 2)
*Incompetent adult donors- covered by Mental Capacity Act 2005. S6 HTA 2004 consent to the use of storage of material for transplant can be deemed in certain circs. Consent: advanced directive (can only relate to refusal of treatment – grey area for donating organ); if in best interests (Re Y (Mental Patient: Bone Marrow Transplant)-child lacked capacity and transplant went ahead for bone marrow to sibling); power of attorney to give authority for person make decision for them (only for treatment – questionable? Again best interests).

Dead/cadaver Donors

*S 1 HTA 2004 permits the removal storage and use of live organs from the a deceased person provided there is “appropriate consent”.
*S 3 HTA 2004 defines appropriate consent
*HTA Code of Practice- approach should be made to deceased’s relatives to establish any known wishes of the deceased.
*If the deceased has made an advance decision to then that should be respected e.g. Registering with NHS Organ Donor Register. Nominated representative can make the decision.
*If no advance decision and no appointed representative then the person in the ‘closest qualifying relationship’ to the deceased immediately before death can make the decision.
*BMA - Opt-in (or Explicit Consent) systems of organ donation require citizens to register their permission for their organs to be removed after their death and be used for another person in need. A national database is created to register such donors. This represents the current law in the UK. In an opt-out (Presumed Consent) system, a person’s organs are automatically harvested, after death, for transplantation unless that person has registered that they do not want this to happen. This represents the legal position in countries like Spain.