**ST MARY’S UNIVERSITY**

**TWICKENHAM, LONDON**

MA/MSc Degree Examination students registered for

**Masters** Level

Title: **Bioethics and Medical Law**

Code: **BML7017**

Semester: **Two**

Date: **May 18th 2019**

Time: **10:00 AM – 12:30 PM**

TIME ALLOWED: **TWO AND A HALF** HOURS

Answer **TWO**questions:

1. **EITHER:**
2. There is a perception that the courts have shown ‘excessive concern’ with protecting the reputation of the medical profession, and it has been argued that the ‘Bolam’ test imposes a virtually unattainable burden on claimants in order to prove their case in medical negligence actions.  Do you agree? Why or why not? Include in your answer an analysis of the applicable case law.

**OR:**

1. The ‘Bolam’ test has been interpreted in subsequent decisions in such a way to make compliance with an accepted practice a complete defence to medical negligence actions. Critically analyse whether such an interpretation is still valid after the case of *Bolitho v City & Hackney HA* (1993) BMLR 11.
2. The Supreme Court’s decision in *Montgomery v Lanarkshire Health Board*[2015] UKSC 11 marked a distinct shift in the law governing actions in negligence based on a doctor’s failure to provide sufficient information. Critically analyse the influence of the Montgomery case on the extent of disclosure of information required prior to obtaining a patient's consent for treatment. Include in your answer an analysis of the earlier case law in this area.
3. Evaluate the current state of the law on minors and consent to treatment.  Include in your answer a detailed analysis of *Gillick v West Norfolk & Wisbech AHA* [1985] 3 All ER (HL) and *Re*W [1992] 4 All ER 627.
4. To what extent does English medical law respect, and to what extent does it fail to respect, patient autonomy? Analyse with reference to *Re MB*[1997] Med LR 217, *St Georges Healthcare Trust v S*[1998] 3 All ER 673, and *Re B* [2002] 2 All ER 449.
5. **EITHER:**
6. A fundamental principle in medical law is that competent patients have the right to make their own decisions regarding their medical treatment - including so-called ‘bizarre’ or ‘unwise’ decisions. With reference to the *Mental Capacity Act 2005* and the relevant pre-Act case law, evaluate how seriously the law takes this right.

**OR:**

1. How far do the criteria for capacity and the *Mental Capacity Act 2005*still allow paternalistically inclined doctors (and judges) to 'reason backwards' and find patients who refuse clearly beneficial treatment incapable? Discuss with reference to the legislation and the relevant pre-Act case law.

6**.** In *Smeaton v Secretary of State for Health*[2002] 2 FLR 146, Mr Justice Munby held that to prevent the implantation of an embryo in the uterus by administering the ‘morning after’ pill is not to procure a ‘miscarriage’ contrary to section 58 of the *Offences Against the Person Act 1861.* Critically analyse the decision, including a discussion of your reasons for supporting, or disagreeing with, Munby J.

**END OF EXAMINATION**