

The Mental Health Act and The Mental Capacity Act (E and W)

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Mental Capacity Act 2005



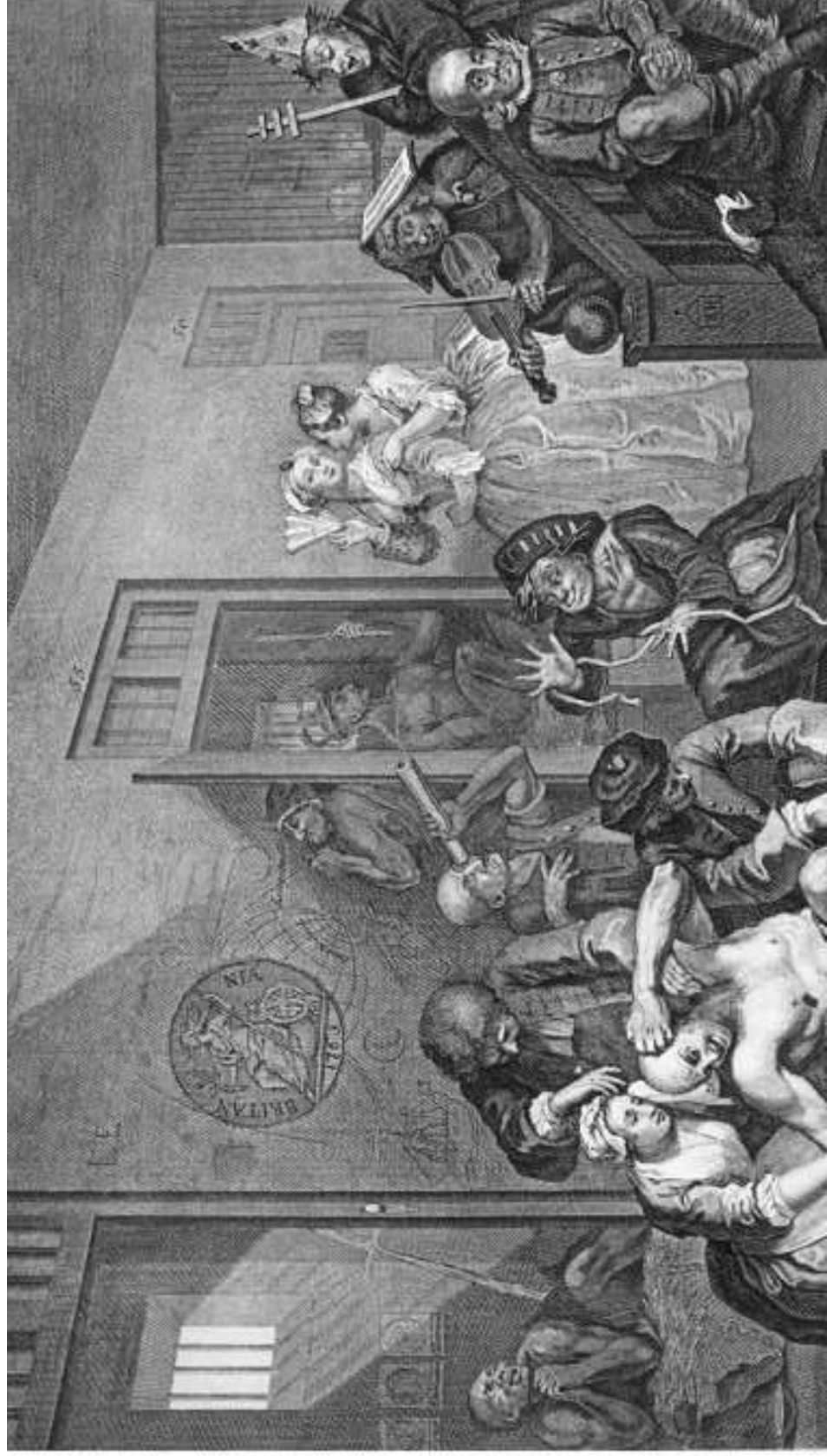
Mental Health Act 1983

Article 5 DoLS Health
Report
Forensic Psychiatrist
Mental Health Tribunal
Court Discharge
Responsible Clinician
Detained
Community
Treatment
CAPACITY
Admission
Judgment
Human Rights
Hospital
Mental Health
Commission
Standards
Aftercare
Protection

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- Madhouses Act 1774
- Lunacy Act 1828
- County Asylums Act 1845
- Mental Deficiency Act 1913
- Mental Treatment Act 1930
- Mental Health Act 1953, 1983, 1989, 1995, 2007
- Mental Capacity Act 2005

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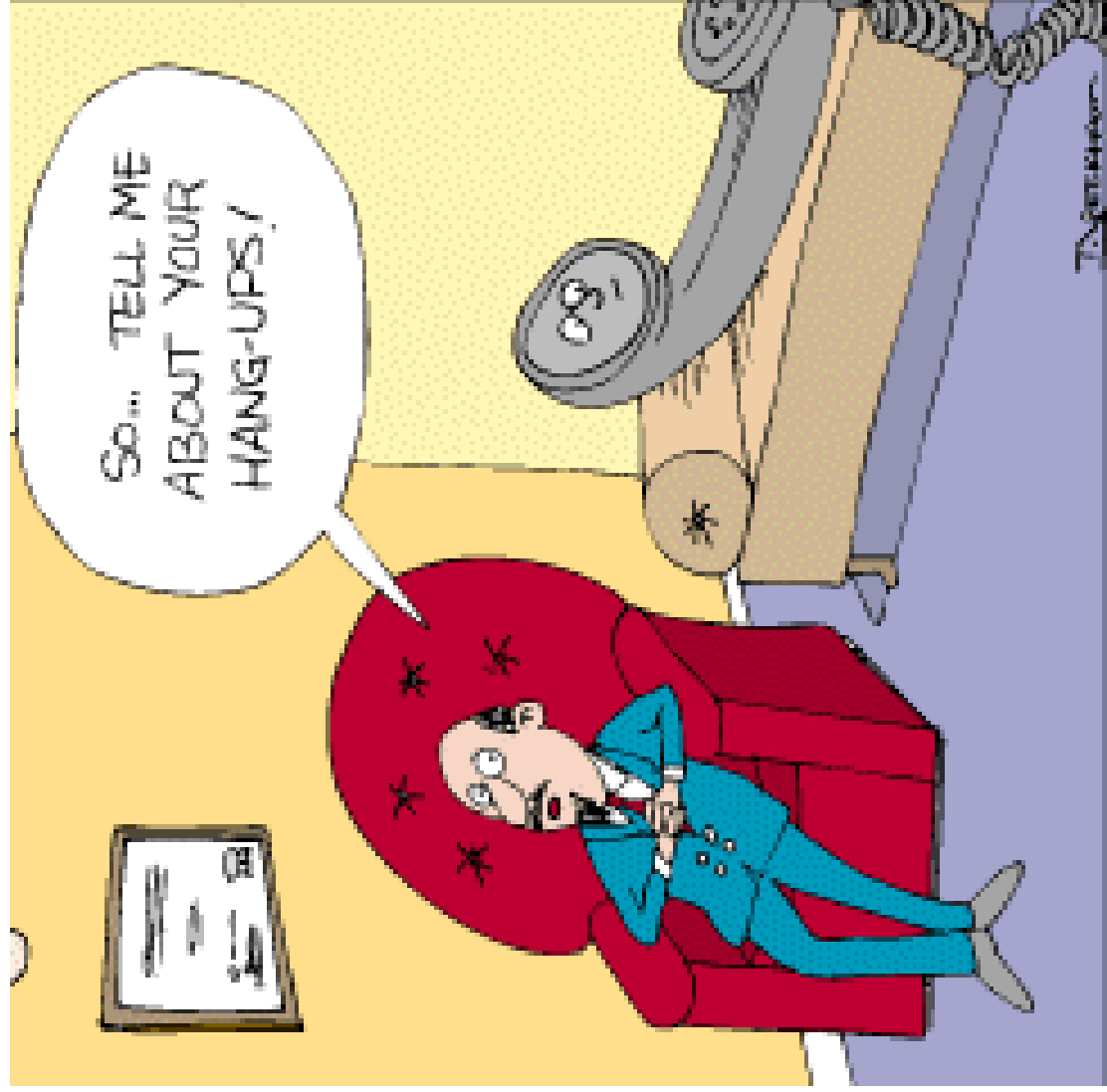
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Mental Health Act 1983

DEFINITIONS

- Mental Disorder
- Approved Mental Health Practitioner
- Section 12 Approved Doctor
- Approved Clinician
- Nearest Relative



Tim Peckham

MENTAL DISORDER

- Any disorder or disability of the mind
- LD – arrested or incomplete development of mind PLUS abnormally aggressive or seriously irresponsible conduct
- Section 3:
 - define the mental disorder
 - In the interest of patients health safety or protection of others
 - Treatment available
- Alcohol and drugs

MHA

- Section 4
- Section 2
- Section 3
- Section 5(4) and 5(2)

Forensic sections

35,36,37(41),38,47(49),48



Sections 135 and 136



MHA

- For treatment of psychiatric illness not physical illness unless
- Physical illness- causing the mental illness
- Physical illness- a direct consequence of the mental illness e.g. anorexia nervosa
- Any age

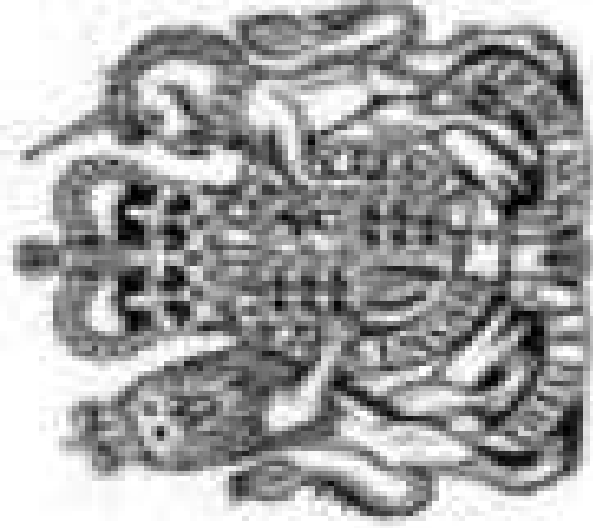
Community Treatment Order

- Section 3 discharge
- Recall to hospital if not complying with treatment
- Cannot enforce treatment in community
- Period 72 hours then:
 - CTO
 - DC
 - Section 3

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Guardianship

- Person required to reside at specific address
- Required to attend specific clinic
- Not able to force treatment when they get there



Mental Capacity Act 2005

Mental Capacity Act- 5 principles

- You are assumed to have capacity
- Your best interests come first
- You can have help to make a decision
- You can make an unwise decision if you have capacity
- If a decision is made for you it has to be the least restrictive option

How do you test capacity?

- Understand
- Retain
- Weigh up
- Communicate

MCA cont.

- 16year +
- Court of Protection
- Lasting Power of Attorney
- Advanced Decision
- IMCA (Independent Mental Capacity Advocate)

MHA rather than MCA

- The person is under 18 year
- It is necessary to deprive them of their liberty
- The person has an advance decision
- The person may need to be restrained
- The person may regain and lose capacity to consent to treatment therefore treatment is not possible
- The person lacks capacity to decide on some elements of the treatment but has capacity to refuse a vital part of it
- There is a reason the person may suffer harm as a result
- There is need for right to appeal
- There is need for aftercare (117)

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DOL definition

- Cheshire West
- Person under continuous supervision
- Is not free to leave
- Lacks capacity to agree

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Deprivation of Liberty Safeguards

- Hospitals and care homes
- Over 18 years
- Mental disorder or disability of the mind
- Lack capacity to give informed consent
- DOL considered after independent assessment that the deprivation is necessary and in their best interests to protect them from harm



**KEEP
CALM
AND
ASK
QUESTIONS**