

# HIV (POS) TO HIV (NEG): THE LAW

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3 categories

- Adults
- Children (younger than 12)
- Research participants

# The Constitution

- Section 10: the right to dignity
- Section 11: the right to life
- Section 12(1) Everyone has the right to freedom and security of the person..

12(2) Everyone has the right to bodily and psychological integrity, which includes:

(a) .....

(b) security in and control over their body;  
and

(c) not to be subjected to medical or scientific experiments without their informed consent.

# The Constitution (Children)

- Section 28(2)

“A child’s best interests are of paramount importance in every matter concerning the child”

# The National Health Act 61 of 2003

- Sections 6, 7, 8, and 9 – deal with CONSENT
- Section 11 and Chapter 9 - research
- Chapter 8 – Organ Transplants
- [The National Organ Transplant Act (NOTA), a federal law, was passed in 1984 in the United States of America. In 1988 it was amended to ban transplants from HIV-infected donors. In 2013 the Senate passed the HIV Organ Policy Equality Act, or HOPE Act, which changed it all. It is now allowed to transplant solid organs from HIV-positive donors into HIV-positive recipients.] Not yet HIV+ to HIV-

# Regulations

- “Regulations regarding the general control of human bodies, tissue, blood, blood products and gametes”

GG of 2 March 2012 No. R. 180

(General concerning organ transplantations)

\* Not legally forbidden – **IF INFORMED CONSENT WAS GIVEN**

# Informed consent : Adults

- Latin maxim: *Volente non fit iniuria* – he who consents cannot be injured
- Consent may be given expressly or tacitly (conduct)
- Mere submission does not necessarily amounts to consent
- Consent must be given before the act happens
- The person being affected must consent himself (capable)
- Consent must be given freely and voluntarily
- The consenting person must have full knowledge of the extent of the possible prejudice
- The consenting party must realise or appreciate fully what the nature and extent of the harm will be.

# Informed consent (cont)

- Consent must not be *contra bones mores* or illegal
- The consent must be comprehensive, that is extend to the entire transaction, inclusive of its consequences.
- (*Castell v De Greef* 1994 (4) SA 408 (C )

# Informed consent: CHILDREN

- Children's Act 38 of 2005
- Section 129(3)

“A child may consent to the performance of a surgical operation on him or her or his or her child if –

- (a) The child is over the age of 12 years; and
- (b) The child is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the surgical operation; and
- (c) The child is duly assisted by his or her parent or guardian”

**Under: 12 parent, guardian or care-giver**

# Research (Chapter 9)

- Chapter 9 of the NHA – Ethics Committees. All clinical trials must also be registered with the South African National Research Registry (NHA s 72)
- S 71(1) of the NHA:

“.. Research or experimentation on a living person may only be conducted in the prescribed manner; and with written consent of the person after he or she has been informed of the object of the research or experimentation and any possible positive or negative consequences to his or her health.”
- Department of Health 2015 “Ethics in Health Research: Principles, Processes and Structures”
- MRC Guidelines

THANK-YOU!!!!

