TOM WALKER

ULYSSES CONTRACTS IN MEDICINE

(Accepted 24 June 2011)

ABSTRACT. Ulysses contracts are a method by which one person binds himself by agreeing to be bound by others. In medicine such contracts have primarily been discussed as ways of treating people with episodic mental illnesses, where the features of the illness are such that they now judge that they will refuse treatment at the time it is needed. Enforcing Ulysses contracts in these circumstances would require medical professionals to override the express refusal of the patient at the time treatment is required, something that is generally problematic both ethically and legally. In this paper I will argue that despite appearances Ulysses contracts can make it the case that treating a patient in such circumstances is an instance of treating him with his consent, although safeguards are needed to ensure that this is the case. Given the potential benefits to patients I further argue that modified Ulysses contracts should be made legally enforceable.

Sometimes we are in situations in which we judge that at some future time it would be better if we were to act in a given way, even though we also judge that we are unlikely to act in that way. In these situations, it may be useful to pre-commit to act as we now judge best.¹ One of several devices to achieve this result is to enter into what is called a ‘Ulysses contract’. To ensure that he could not steer his ship to ruin in response to the Siren’s song, Ulysses had his crew stuff their ears with wax and tie him to the mast with orders not to

release him until the ship had passed beyond the danger.\textsuperscript{2} A Ulysses contract is distinguished from other modes of pre-commitment in that one binds oneself by agreeing to be bound by someone else.

On some occasions, a Ulysses contract may be the only effective pre-commitment strategy available. In medicine these contracts have generally been discussed in the context of episodic mental illness.\textsuperscript{3} A patient with bipolar disorder, for example, might recognize that he will refuse treatment during a relapse, but also judge that such treatment would be beneficial to him. Entering a Ulysses contract with his doctor would enable him to ensure that he receives the treatment he now judges to be best.

Ulysses contracts differ from other forms of advance directives in that at the time treatment is needed the patient will frequently be competent to refuse it.\textsuperscript{4} As such they would appear to ‘authorize another at Time 2 to disregard the patient’s present wishes and forcibly medicate him’.\textsuperscript{5} Because it is generally held to be illegal to force treatment on a patient against his will, attempting to enforce a Ulysses contract in the face of the patient’s competent refusal could lead to a legal dispute in which the patient sues his doctor in tort or contract for damages for ignoring his refusal.\textsuperscript{6} In the absence of specific provisions relating to Ulysses contracts in medicine it is unlikely that the courts would be willing to judge that such enforcement is justified.\textsuperscript{7}


\textsuperscript{6} Robertson, \textit{supra} note 1 at p. 1745.