Some of the debates at the forefront of contemporary issues in ethics and health law can be resolved by clarifying the fundamental concepts that are presupposed by participants in those debates. For example, some proponents of the legalisation of euthanasia claim that withholding and withdrawing medical treatment, which is already lawful, is no different from providing a lethal injection, and is thus a form of euthanasia. Whether or not this claim is true depends on how euthanasia is defined, which is a conceptual, and not merely a moral, issue. Similarly, debates concerning whether deceased organ donors are known to be dead at the time of organ procurement also depend on how death is defined. The question “is a brain dead person really dead?” is not a factual question, but is a conceptual question about whether we should classify brain dead people as dead or as alive. This question might be raised because events which used to happen more or less at the same time prior to the use of modern technology – the irreversible cessation of spontaneous heartbeat, spontaneous breathing, and consciousness – now can occur at different times with life-saving technology. We might therefore reasonably ask: do we need all of these criteria to be satisfied for someone to be said to have died or is it sufficient that only some of them have occurred? Similarly, if we could develop the technology to revive cryopreserved people in the future so that their heart started to beat again, would we have brought such people back from death, or would we have instead discovered that cryopreserved people were not actually dead (or known to be dead) when we organised their cryopreservation? This question has relevance to debates about current death declaration practice in donation after the circulatory determination of death.

The unit seeks to develop an understanding of the major conceptual issues underpinning contemporary debates and proposals for law reform in the core health law areas of withholding and withdrawing medical treatment and euthanasia, organ donation and the definition of death, embryonic stem cell research, and genetic engineering. Through selected materials, readings and skills based learning activities, students will be equipped with the tools necessary to navigate their way through the main arguments in each of the debates. The unit will cover the following modules:

**Module 1 - Euthanasia and withholding and withdrawing life-sustaining measures from a terminally ill patient**

Conceptual issues examined include:
- In what sense do omissions have causal consequences?
- Withdrawing, unlike withholding, normally involves positive steps to remove the treatment being given, such as switching off a ventilator. Is this an act or omission? Does withdrawal cause death? Is it killing?
- Is death intended or merely foreseen when pain relief is given in the knowledge that the relief may shorten a patient’s life? What about in the case of withholding or withdrawing life-sustaining measures?

**Module 2 - Embryonic stem cell research**

Conceptual issues examined include:
- Is the zygote an individual human being?
- If so, is the zygote a person?
- What is the difference, if any, between a human being and a person?
- What moral relevance, if any, does the difference between a human being and a person have?
- How do these issues impinge on contemporary debates about whether, and, if so, how, embryonic stem cell research should be made lawful?
Module 3 – Organ donation
Conceptual issues examined include:

- Whether brain death can be defined in terms of death. Brain-dead patients are a very good source of organs because brain-dead patients are kept on life-support, which avoids the organs from atrophying. Critics have claimed that these patients are, however, alive and that procuring vital organs from these patients kills them. This view threatens the integrity of the practice of deceased organ donation. Is it true that brain-dead people are alive, or are they dead?

- Whether patients declared deceased on the basis of the cardio-pulmonary criterion for declaring death are really dead at the time that their death is declared. Again, critics have claimed that these patients are not known to be dead at the time that death is declared and vital organs are procured, and, once again, these claims threaten the integrity of the practice of deceased organ donation. Is it true that these patients are not known to be dead? Is irreversibility of circulatory-respiratory function an essential requirement for being dead? Would that mean that it is logically impossible to bring anyone back from death? What if a cryopreserved person could be revived with technology developed in 2075? Would this person have been dead and brought back to life, or was this person never really dead?

Module 4 - Genetic engineering and human enhancement. Conceptual issues examined include:
- The notion of the sanctity of human life and the place of this concept in current debates about the extent to which modification of human nature should be permitted (Are the concepts of sanctity of human life or intrinsic value exclusively religious concepts or can they be given a secular meaning, for example?)
- Gene editing and CRISPR and the distinction between therapy and enhancement
- Are there important conceptual differences between using instruments such as spectacles to enhance our vision and using genetic engineering techniques to improve vision?
- Is there a difference between using enhancement technologies such as vaccinations to boost our immune systems and using genetic modifications to make us resistant to diseases? If not, is there a difference between these and using genetic modification techniques to select for traits like intelligence or athletic prowess in our children?
- Embryo selection and Derek Parfit’s non-identity problem.

The unit:

- Has been accredited by College of Intensive Care Medicine and Australasian College of Emergency Medicine for CPD points
- runs in an online format which provides practitioners and other professionals with flexible learning options
- covers topical and controversial areas of medical law and deals with emerging issues and current proposals for law reform
- appeals to professionals from a wide range of backgrounds particularly those with an interest in ethics, medicine and philosophy and the most current issues in medical law and practice
- does not presuppose any prior legal training and can be taken either as:
  o a standalone unit out of interest; or
  o 1 of 4 units for QUT’s Graduate Certificate in Applied Law (Health); or
  o 1 unit for which credit may be given for other graduate certificate programs or masters programs either at QUT or elsewhere, so as effectively to form part of those other programs.

Introductory reading

Airedale National Health Trust v Bland [1993] A C 789


John Harris, Enhancing Evolution (Princeton University Press, 2007)


John Keown, Euthanasia, Ethics and Public Policy (Cambridge, 2002)


George Lee and Christopher Tollefsen, Embryo (Doubleday, 2008)


Andrew McGee and Dale Gardiner, ‘Permanence can be Defended’ (2017) 31(3) Bioethics 220-230.


http://medlaw.oxfordjournals.org/content/early/2014/01/15/medlaw.fwt034.full.pdf+html


Franklin Miller and Robert Truog, Death, Dying, and Organ Transplantation (OUP 2012)


Derek Parfit, ‘We Are Not Human Beings’ (2012) 87 Philosophy 5.

Derek Parfit, Reasons and Persons (OUP 1986), Parts III and IV.


Michael Sandel, The Case against Perfection: Ethics in the Age of Genetic Engineering (Cambridge 2007)

Peter Singer, Practical Ethics (Cambridge 1993, 2nd ed.), chapters 4-7

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