

P3. Medical Law, Ethics, and Liability

23rd ASLI Conference 2026		
Panel Category	:	Medical Law
Panel Title	:	Medical Law, Ethics, and Liability
Panel Abstract	:	
<p>This panel aims to consider various aspects of medical law, ethics, and liability. It consists of four speakers from Singapore, Malaysia, and Indonesia. Kumaralingam Amirthalingam sets out a theoretical framework to deal with medical torts as a separate family of torts, drawing on Mark Hall’s six essential features of medical law (MA Hall, “Essentialist View of Health Care Law” (2006) 1 Wake Forest Law Review 347). Identifying a family of torts helps develop a coherent legal and ethical framework that harmonises the various torts while explaining and justifying exceptions to conventional application of doctrine necessitated by the specific characteristics of that family of torts (for example, the approach to the standard of care, causation in the duty to inform cases, and autonomy as damage). Sinead Prince the ethical and legal issues surrounding posthumous conception, which raises many questions about the limits of reproductive choice, children’s wellbeing, familial norms, and the concept and normative significance of consent. Posthumous conception is explicitly regulated in some jurisdictions, left to individuals and medical teams to work through the various relevant laws and regulations on assisted reproductive technology, and treated as unlawful in others. The paper is comparative, including Australia, Singapore, India, Malaysia, UK, and France. It will highlight gaps in regulatory guidance and assess normative themes across regulatory and ethical literature on the permissibility and implementation of posthumous conception in practice. Kuek Chee Ying examines the legal position of consent for medical treatment involving a married minor in Malaysia, where child marriage is permitted but marriage does not confer majority and legal capacity. The law does not expressly provide whether the parent’s guardianship over a married minor ceases automatically upon the minor’s marriage. Conflicts can arise with consent being the purview of the parent, spouse, of the minor under different circumstances. The issue becomes more complex if two Muslim minors marry with the Syaria Judge’s permission. The paper points to tensions between law and practical as well as cultural expectations. It argues that the legal inconsistencies can be addressed by harmonising the relevant laws or by reform of the legal framework governing consent for medical treatment in Malaysia. Agathon Henryanto examines legal and ethical issues surrounding organ donors in Indonesia, the lack of which has resulted in many preventable deaths each year. The paper examines the new Health Law (UU 17/2023) that explicitly permits post-mortem organ donation, marking a landmark shift in Indonesian health law, focusing on two central questions: first, how post-mortem organ donation aligns with Indonesia’s moral foundations as reflected in Pancasila; and second, how the soft opt-out consent model offers the most effective mechanism to operationalize consent within this context. Drawing comparative insights from Spain, Belgium, and the Netherlands, where presumed consent systems have dramatically increased donation rates while maintaining public trust, the paper proposes adapting this model to Indonesia’s social and legal landscape, which can also serve as an ethical model for other Asian nations balancing moral and religious values with bioethical advancement.</p>		

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Name of Convenor	:	Kumaralingam Amirthalingam
Designation / Academic Post	:	Full-Time Professor
Institution / Organisation	:	National University of Singapore, Faculty of Law

Title of Paper

Medical Torts as a Distinct Family of Torts

This paper aims to develop medical torts as a distinct family of torts. There is an established tradition of studying medical law or health law as a distinct field, with the “birth of medical law” in the 1980s (RA Hope, “Review: The Birth of Medical Law” (1991) 11 Oxford Journal of Legal Studies 247). It distinguishes between medical law and health law, focusing on clinical practice and the doctor-patient relationship.

Drawing on Mark Hall’s six essential features of medical law (MA Hall, “Essentialist View of Health Care Law” (2006) 1 Wake Forest Law Review 347), this paper identifies seven essential features of medical torts: the virtue of patient autonomy, the vulnerability of the patient; the professionalism of medical practitioners; the web of relationships that exists among the key stakeholders; the existential stakes of medical care; the inherent complexity of medical practice; and the need for equitable access to medical care. Identifying a family of torts helps explain and justify exceptions to conventional application of doctrine necessitated by the specific characteristics of that family of torts (for example, the approach to the standard of care, causation in the duty to inform cases, and autonomy as damage).

In addition to explaining how the elements of the same tort may apply differently depending on the family in which the tort applies, families of torts also contribute to drawing connections between different torts. For example, when it comes to the duty to inform and consent, the rules on negligence and trespass converge. Instead of artificially separating the two, courts could develop a special rule that harmonises the two torts, recognising that both torts are addressing a common value, namely patient autonomy. This context-sensitive theoretical framework can help developing nations in Asia integrate and reframe their liability rules for medical negligence.

Brief Biography of Author

Kumaralingam Amirthalingam is a Professor at the National University of Singapore Law School who obtained his LLB and PhD from the Australian National University. He researches in the areas of Criminal Law (specializing in public prosecutions) and Tort Law (specializing in medical negligence and economic loss). He teaches Criminal Law, Tort Law, and Business Torts. Kumar is on the International Advisory Board of Medical Law International and the Editorial Advisory Board of Medical Law Review. He is a member of the Singapore Medical Council’s Complaints Panel and has served as an Appointed Expert to the Ministry of Health, Government of Singapore. He is presently a member of the Ministry of Health’s Expert Group to Improve Access of Minors to Mental Health Services. Kumar was a member of the Penal Code Reform Committee that introduced major amendments in 2020 and was expert consultant to the Ministry of Law, advising it on the establishment of the Public Defender’s Office, launched in 2022. He has given expert opinions to law firms and Government agencies and appeared as an expert witness in an economic loss claim heard in Bergen, Norway. His monograph entitled Medical Negligence and the Duty to Advise – Beyond Autonomy, is forthcoming with Hart Publishing. He has recently obtained a research grant to work on his next major project, Responsibility for Medical Torts.

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Name of Panelist	:	Chee Ying Kuek
Designation / Academic Post	:	Ph.D.
Institution / Organisation	:	University of Malaya, Faculty of Law
Title of Paper		
Rethinking The Legal Framework Governing Consent to Medical Treatment by Married Minors in Malaysia		
Abstract		
<p>The duty to obtain consent before any medical treatment is performed on a patient is firmly embedded in medical ethics and law. Without consent by a competent patient, or a legally authorised decision-maker of a patient who lacks mental capacity, any medical treatment given would render a medical practitioner liable for battery and even disciplinary action. In countries that apply age-based framework to determine a patient's capacity to consent for treatment, parental or guardian's consent is normally required if a person is below the age threshold. Conversely, for countries that adopt capacity-based framework, functional test on the ability to understand, retain and weigh information, and communicate decision is used to assess one's capacity.</p> <p>Adopting a doctrinal legal research method, this study aims to examine the legal position of consent for medical treatment involving a married minor in Malaysia, a country which adopts age-based framework and permits child marriage. The findings reveal that marriage does not confer majority and legal capacity in Malaysia. The law does not expressly provide on whether the parent's guardianship over a married minor ceases automatically upon the minor's marriage. Inconsistency arises between the Malaysian statute and the guideline on who should be the decision-maker for a married minor, as it varies from the parent to the spouse, and even the married minor, depending on the type of healthcare facility. The issue becomes increasingly complex if two Muslim minors marry with the Syarie Judge's permission. This study concludes that the problem arises partly due to the tension between the law and the practical as well as cultural expectation resulted from marriage. Nevertheless, the legal inconsistency can be addressed by harmonising the laws and the guideline; or by a reform in the legal framework governing consent for medical treatment in Malaysia.</p>		
Brief Biography of Author		
<p>Dr Kuek Chee Ying is a Senior Lecturer at the Faculty of Law, Universiti Malaya. She holds academic qualifications from Universiti Malaya (LL.B (Hons), LL.M and PhD). Before joining the academia, she practised as an advocate and solicitor of the High Court of Malaya for ten years. Her research interests are in Medical Law and Ethics, Family Law, and Probate and Administration of Estates. Her research explores the ethical and legal issues relating to health-related smart wearables, conception of saviour siblings, prenatal diagnosis, surrogacy, abortion, human-animal chimera for organ transplantation and the use of artificial intelligence in healthcare. She is a member in the Ethics Committee of the Malaysian Medical Council. She is also the life member of Inns of Court Malaysia and Association of Professional Curriculum and Educational Instruction (APROCEI).</p>		

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Name of Panelist	:	Sinead Prince
Designation / Academic Post	:	Full-Time Researcher
Institution / Organisation	:	National University of Singapore, Faculty of Law

Title of Paper

International Regulatory Mapping of Posthumous Conception Law and Guidelines

Abstract

Posthumous conception is an ethically and legally contentious issue: whether we should be able to use someone's gametes after they have died raises many questions about the limits of reproductive choice, children's wellbeing, familial norms, and the concept and normative significance of consent.

Posthumous conception is explicitly regulated in some jurisdictions, in others left to individuals and medical teams to work through the various relevant laws and regulations on assisted reproductive technology uses, and outright unlawful in others.

This talk will provide an overview of the variety of means by which posthumous conception is regulated across several representative jurisdictions, including Australia, Singapore, India, Malaysia, the UK, and France. This will include the criteria for which posthumous conception may arise, including who may use the deceased's gametes, the nature of consent from the deceased (if required), whether court approval is required, and the guiding ethical principles of regulatory bodies on posthumous conception (if any) or assisted reproductive technology that may be relevant to posthumous conception. This talk will highlight gaps in regulatory guidance, as well as highlight normative themes across regulatory and ethical literature on the permissibility and implementation of posthumous conception in practice.

Brief Biography of Author

Sinead Prince is a Postdoctoral Research Fellow at the Centre for Biomedical Ethics at the National University of Singapore. She has degrees in law and biomedical science and received the Australian Centre for Health Law Research Postgraduate Research Scholarship to undertake her PhD on the ethics of genetic enhancement at the Queensland University of Technology in Brisbane, Australia. Having trained in health law and bioethics, her current research focuses on AI ethics, including in the context of precision medicine and genomic technologies, as well as reproductive ethics, particularly on issues arising from gene editing and assisted reproductive technologies, and enhancement ethics. Across these areas of bioethics, Sinead focuses predominantly on issues relating to autonomy and feminism. Sinead also co-hosts an ethics podcast at NUS, titled 'CBmE & U', that discusses a variety of ethical and bioethical issues with guests from Singapore and abroad.

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Name of Convenor	:	Agathon Henryanto
Name of Panellist	:	Hanifah Oswari
Title of Paper		
Faith, Consent, and Reform: Advancing Post-Mortem Organ Donation Through a Soft Opt-Out Model in Indonesia		
Abstract		
<p>Indonesia faces a chronic shortage of organ donors, leading to countless preventable deaths each year. The new Health Law (UU 17/2023) explicitly permits post-mortem organ donation, marking a landmark shift in Indonesian health law. However, its implementation remains obstructed by outdated ministerial regulations and medical professional codes that still require explicit, pre-death consent before a doctor, an approach that effectively renders post-mortem donation impossible. These inconsistencies arise largely from ongoing moral, religious, and cultural concerns that view post mortem organ donation as a violation towards secrecy and integrity of body after death.</p> <p>This paper addresses two central questions: first, how post-mortem organ donation aligns with Indonesia's moral foundations as reflected in Pancasila; and second, how the soft opt-out consent model offers the most effective mechanism to operationalize consent within this context. It argues that post-mortem donation is not inherently inconsistent with Indonesia's moral ideology, mainly due to the fact that all legally recognized faiths emphasize the sanctity of saving life as a moral good. Therefore, adopting a soft opt-out system, where consent is presumed but revocable, can operate in harmony with individual autonomy and Indonesia's moral ideology, while having been empirically proven to increase the number of lives saved through transplantation.</p> <p>Drawing comparative insights from Spain, Belgium, and the Netherlands, where presumed consent systems have dramatically increased donation rates while maintaining public trust, the paper proposes adapting this model to Indonesia's social and legal landscape. Supported by a transparent administrative registry and ethical oversight, the system can ensure accountability, fairness, and accessibility. Grounded in a normative-comparative legal methodology, this study demonstrates that a carefully designed soft opt-out framework would not only harmonize Indonesia's legal reform with its moral and religious identity but also serve as an ethical model for other Asian nations balancing moral and religious values with bioethical advancement.</p>		
Brief Biography of Convenor and Panellist		
Panel Convenor: Mr Agathon Henryanto, Atma Jaya Catholic University of Indonesia (Jakarta)		
<p>Agathon Henryanto, S.H., LL.M. is a Lecturer at Faculty of Law, Atma Jaya Catholic University Indonesia (effective from January 2026) and a Partner at Sjahja & Partner. As a lecturer, he has a strong academic focus on the intersection between health & medical law and medical ethics. As a legal practitioner, he is specializing in healthcare regulatory, hospital and clinic management law, company law, and business law. Agathon earned his Master of Laws from the University of Melbourne as an Australia Awards Scholar, where he received a First Class Honours in Medical Ethics subject taught by Professor Julian Savulescu. He holds a Bachelor of Laws from Universitas Gadjah Mada with Cumlaude (GPA 3.94/4.00) and is currently pursuing a Master of Arts in Theological Studies at Westminster Theological Seminary. Before joining Atma Jaya, he served as an Assistant Lecturer and Researcher at Universitas Gadjah Mada and visiting lecturer at STIH Jentera, teaching courses in Administrative Law, Health Law & Ethics, Civil Law, and Business Law. His academic interests focus on the intersection between law and ethical dilemmas in healthcare and medical practice, including issues of medical practice liability, organ transplantation, and human enhancement. Driven by a multidisciplinary research approach, he has published in both national and international journals, including Mimbar Hukum and The State of Legal Innovation in Asia-Pacific. His works reflect an ongoing</p>		

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commitment to developing a legal-ethical framework that promotes patient welfare, professional integrity, and ethical biomedical innovation.

Panellist: Prof Hanifah Oswari, Universitas Indonesia, Faculty of Medicine

Prof. Dr. dr. Hanifah Oswari, Sp.A(K) is a distinguished pediatrician and hepatology consultant who has made pioneering contributions to pediatric liver transplantation in Indonesia. As a professor at the Faculty of Medicine, Universitas Indonesia, and senior consultant at Cipto Mangunkusumo National General Hospital (RSCM), he has dedicated his career to advancing pediatric hepatology and improving outcomes for children with severe liver diseases. He is widely recognized as the pioneer of pediatric liver transplantation in Indonesia, having successfully led the nation's first multidisciplinary pediatric liver transplant program. Under his leadership as Head of the Pediatric Transplantation Team, RSCM achieved numerous milestones, including the first successful living-donor liver transplant for a child in the country — a transformative achievement in Indonesia's medical history. Beyond his clinical accomplishments, he remains deeply committed to strengthening the national framework for transplantation. He continues to advocate for the development of clear policies, ethical guidelines, and regulatory systems that ensure every transplant procedure in Indonesia adheres to the highest standards of safety and integrity. His vision is to expand equitable access to liver transplantation so that more children in need can be saved, while upholding lawful and ethical medical conduct at every stage of care. Through his leadership and dedication, he continues to inspire the next generation of clinicians and researchers in pediatric gastroenterology and hepatology. His enduring commitment to innovation, ethics, and national collaboration has established a legacy of excellence and compassion for children and families facing liver failure in Indonesia and beyond.

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Name of Panelist	:	Man Teng long
Designation / Academic Post	:	Assistant Professor
Institution / Organisation	:	University of Macau, Faculty of Law
Title of Paper		
Liability without Borders: Medical AI and Loss of Chance in The Greater Bay Area		
Abstract		
<p>Medical artificial intelligence (AI) is very popular in the Guangdong-Hong Kong-Macao Greater Bay Area, also known as GBA. Hospitals use prediction systems for the diagnosis, triage, and treatment decisions of patients and often receive cross-border care. However, the systems can be operated as “black boxes”. They provide percentages of risk but sometimes doctors and courts still cannot explain how they get the results. This presents a case of legal difficulty. Malpractice law ordinarily relies on identifiable medical reasoning as well as proof of causation. Where a decision is based on an opaque prediction, the reasoning is not available for inspection. Responsibility also becomes obscure as there are different actors involved. An approved AI system in Mainland China may be used by a Hong Kong doctor and have an impact on a patient treated in Macao.</p> <p>The problem is therefore not only evidential uncertainty. The patient may lose the opportunity to choose treatment based on understandable medical information. The harm consists of loss of a meaningful decision opportunity and physical injury. The loss-of-chance doctrine is pertinent in this context as it concerns the issue of probability of harm and partial allocation of responsibility.</p> <p>This paper first examines the concepts of harm, causation, and informed consent in medical liability and explains how opaque predictions challenge them. It then analyses regulatory, common law and civil law approaches in the GBA to consider how responsibility should be apportioned when doctors are relying on non-interpretible risk predictions. The paper develops a regional model of liability based on unjustified reliance on opaque medical AI and a duty to notify patients when opacity impacts their own decision.</p>		
Keywords: medical artificial intelligence; loss of chance; medical liability; cross-border healthcare; Greater Bay Area		
Brief Biography of Author		
<p>Prof. Man Teng IONG is an Assistant Professor at the Faculty of Law, University of Macau. He holds a PhD in Private Law from the University of Minho (Portugal), an LL.M. from the University of Macau, and an LL.B. from the New University of Lisbon.</p> <p>Before entering academia, he worked as a legal advisor and notary at the Macau Health Bureau, where he was involved in healthcare-related legal matters. He later served as Senior Instructor and Programme Coordinator of the Master of Law in Macau Law and Practice at the University of Macau.</p>		