MENTAL CAPACITY IN RELATIONSHIP

Recent legal developments challenge how valid the concept of mental capacity is in determining whether individuals with impairments can make decisions about their care and treatment. Kong defends a concept of mental capacity but argues that such assessments must consider how relationships and dialogue can enable or disable the decision-making abilities of these individuals. This is thoroughly investigated using an interdisciplinary approach that combines philosophy and legal analysis of the law in England and Wales, the European Convention of Human Rights, and the UN Convention on the Rights of Persons with Disabilities.

By exploring key concepts underlying mental capacity, the investigation concludes that both primary relationships, and capacity assessments themselves must display key competencies to ensure that autonomy skills are promoted and encouraged. This ultimately provides scope for justifiable interventions into disabling relationships and articulates the dialogical practices that help better situate, interpret, and understand the choices and actions of individuals with impairments.

Camillia Kong is a lecturer in philosophy at the University of Kent and research associate at the Ethox Centre, University of Oxford. Her research interests include philosophical issues surrounding mental disorder, mental capacity, and the ethics of psychiatry. She was awarded funding for research into this book from the British Academy.
This series of books was founded by Cambridge University Press with Alexander McCall Smith as its first editor in 2003. It focuses on the law’s complex and troubled relationship with medicine across both the developed and the developing world. Since the early 1990s, we have seen in many countries increasing resort to the courts by dissatisfied patients and a growing use of the courts to attempt to resolve intractable ethical dilemmas. At the same time, legislatures across the world have struggled to address the questions posed by both the successes and the failures of modern medicine, while international organisations such as the WHO and UNESCO now regularly address issues of medical law.

It follows that we would expect ethical and policy questions to be integral to the analysis of the legal issues discussed in this series. The series responds to the high profile of medical law in universities, in legal and medical practice, as well as in public and political affairs. We seek to reflect the evidence that many major health-related policy debates in the UK, Europe and the international community involve a strong medical law dimension. With that in mind, we seek to address how legal analysis might have a trans-jurisdictional and international relevance. Organ retention, embryonic stem cell research, physician assisted suicide and the allocation of resources to fund health care are but a few examples among many. The emphasis of this series is thus on matters of public concern and/or practical significance. We look for books that could make a difference to the development of medical law and enhance the role of medico-legal debate in policy circles. That is not to say that we lack interest in the important theoretical dimensions of the subject, but we aim to ensure that theoretical debate is grounded in the realities of how the law does and should interact with medicine and health care.

Series Editors

Professor Graeme Laurie, University of Edinburgh
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MENTAL CAPACITY IN RELATIONSHIP

Decision-Making, Dialogue, and Autonomy

CAMILLIA KONG

University of Kent
For
Sophie and Nelson
and
Ava – always beloved

We are not signs,
we do not live in spite of
or because of our facts,
we live with them, around them, among,
like we live around rivers, my cane,
your warts, like we live among animals,
your heart, my brace, like we live
with each other.
– Jim Ferris, “Facts of Life”
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LIST OF STATUTES

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