

A. Setting the Scene	7
1. Professional Practice in Nursing	7
1.1 What is a profession characterised by?	7
2. Law and Ethics in Nursing Practice	7
2.1 Health Practitioner Regulation National Law Act 2009	7
3. Nursing Regulatory Bodies	7
3.1 NMBA Roles and Functions	7
4. Registration	8
5. Disciplining Nurses	8
5.1 Registering authority may:	8
5.2 What determines seriousness	8
6. NMBA Professional Standards for Registered Nurses	8
6.1. Standards for Practice	8
6.2 Codes of Professional Conduct	9
6.3 Codes of Ethics	9
6.4 Professional Boundaries for Nurses	9
7. Professional Organisations	10
7.1 Examples of professional organisations:	10
7.2 ACN (Australian College of Nursing)	10
B. Introduction to Australian Legal System	11
8. Origins of Australian Law	11
9. Constitutions	11
10. Australian Parliaments	11
10.1. What do parliaments do?	11
10.2 Difference between Acts and Regulations	11
11. Commonwealth Vs State Parliament (1)	12
12. The Executive (2)	12
12.1 Function of the Executive	12
13. The Judiciary (3)	12
14. Sources of Law	13
15. Parliaments & Health Care	13
16. Common Law	13
16.1 Common Law and Legislation	14
17. Parties and Procedures	14
17.1 Adversarial vs. Inquisitorial court systems	14
17.2 Criminal v.s. Civil	14

18. Court Hierarchy	14
C. Law of Consent	15
19. Methods of conveying consent	15
20. Requirements for valid consent	15
21. Exceptions to general rule of consent	15
22. Incompetent Patients	16
22.1. A Person responsible	16
22.2. Special procedures require VCAT authorisation: (Person responsible cannot consent)	16
D. Guardianship & The Public Advocate	16
23. The Office of the Public Advocate	16
23.1. Functions of the Office of the Public Advocate	16
24. The Guardianship and Administration Board	17
25. VCAT	17
26. Guardianship	17
26.1. A guardian is:	17
26.2. Appointing a guardian	17
27. Guardians and Administrators	18
27.1 Administration	18
26.4. A person who is appointed guardian is someone:	18
28. Guardian appointed by VCAT	18
29. Roles and responsibilities of the Guardian	19
30. Substitute Decision Makers	19
30.1 Enduring Powers of Attorney	19
30.2 Difference between Guardian appointed by VCAT and enduring power of attorney	20
E. Trespass to the person - intentional torts	20
31. Assault	20
31.1 Criminal VS civil assault	20
32. Battery	20
33. Defences to Assault and Battery	20
34. False Imprisonment	21
34.1 Physical restraint and the medical profession	21
34.2 Should restraint be used?	21
34.3 When can a person be restrained?	21
F. Refusal of treatment and DNR orders	22
35. A person's medical treatment rights	22
36. Legislative Frameworks	22

37. MTA 1988 – Refusal of treatment (VIC)	22
38.1 Who can refuse treatment	22
38.2. On what grounds can they refuse	23
38.3 Features of the MTA	23
38. Powers of Attorney	23
38.1. Appointing an agent	24
38.1.1. Responsibility of the agent	24
38.1.2 What kind of decisions an agent can make	24
38.2. Medical enduring power of attorney	25
38.3 When an enduring power of attorney ends	25
39. Do Not Resuscitate (DNR) orders	25
39.1. A valid DNR order should	25
39.2. To treat or not to treat	25
39.3. HCP’s responsibility	26
40. Advanced care planning and directive	26
40.1. Acts that support advanced care planning	27
G. Negligence	27
41. Negligence in Healthcare	28
41.1. Changes to Wrongs Act 1958 (Vic) after its amendment:	28
42. Medical negligence in Vic	28
43. Types of adverse events	28
44. 4 Elements for successful negligence claim:	29
45. Rescuers of good samaritans	30
46. Apologies	30
47. Open disclosure	30
48. Vicarious Responsibility	30
H. Bioethics	31
49. What is ethics?	31
49.1 Ethics is not...	31
49.2 Foundations of ethics	32
50. Ethical Theory	32
50.1 Ethical Principlism	32
50.1.1 Ethical Principles	32
50.1.1.1 Theories of distributive Justice	33
51. Nursing Ethics	34
52. Moral Justification	34
52.1. Ethical development	34
I. Privacy and Confidentiality	34

53. General principle of confidentiality	34
54. Privacy Legislation	34
55. Health Records Act 2001 (VIC)	35
56. Openness - access and correction	35
57. Actions taken if breach of confidentiality/privacy	36
58. When may information be disclosed?	36
59. Accessing medical records	36
59.1. Options for accessing medical records	37
60. Good practice with documentation	37
60.1 Purpose of documentation	37
60.2. Why keep good records?	37
60.3. 9 c's of documentation:	38
60.4. Poor documentation	38
61. Ethical View of the Right to Confidentiality	39
61.1. Patient rights	39
61.2. The right to confidentiality	39
61.3. Trust involves	39
J. Professional Regulation	39
62. The Health Practitioner Regulation National Law Act (Vic) 2009	40
62.1. Health Practitioner Regulation National Law Act Purpose	40
62.2. Features of the National Scheme	40
62.3. Statutory National Boards under the new legislation	40
63. AHPRA - current regulatory authority	41
63.1. Nursing Authority	41
64. 3 Elements of Professional Regulation	41
65. Breaches of Health Performance and Conduct	43
66. Mandatory Notification by HCP	44
66.1. Notifiable conduct	44
66.2. Disciplinary Process	44
66.3. Consequences of failure to notify	45
66.4. Handling a complaint	45
K. Patient Rights, Human Rights and Cultural Issues	46
67. Culture and patients as cultural beings	46
67.1. Link between culture and ethics	46
67.2. Code of professional conduct	47
69. Mental Health	48
69.1. Mental Health and Human Rights	48
70. Recognition, Universalism, Relativism	49

70.1. Universalism	49
70.2. Relativism	49
70.3. Recognition	49
71. Female Genital Mutilation (cultural example)	50
71.1. Primum non nocere (First do no harm)	50
71.2. Human rights issue	51
71.3. FGM and cosmetic surgery	51
71.4. Male circumcision (comparison)	51
71.5. Pluralism “world traveling approach”	51
72. Morality as a process, not adherence to principles	52
73. Rights-based ethical approach	52
74. Relational ethical approach	52
75. Cross cultural approach to ethics	52
76. Cultural-moral competency	52

80. Reporting of child abuse

- Voluntary:
 - VIC: S 64 of the 'Children, Youth and Families Act 2005'
 - Provides that any person who believes a child is in need of protection may notify Director-General of Community Services or the police.
 - Provides protection for those who report for actions in defamation, breach of privacy laws or professional disciplinary proceedings, provided they have reported in good faith.
- Involuntary:
 - It's an offence for nominated professional to fail to notify appropriate authorities when child abuse is suspected, or when you think the child is in need of protection.
 - Protection granted as in voluntary reporting (see above).

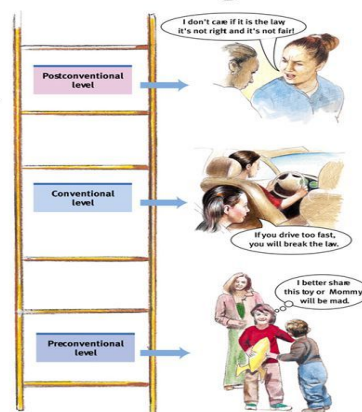
81. Conception of Moral Agency of Children

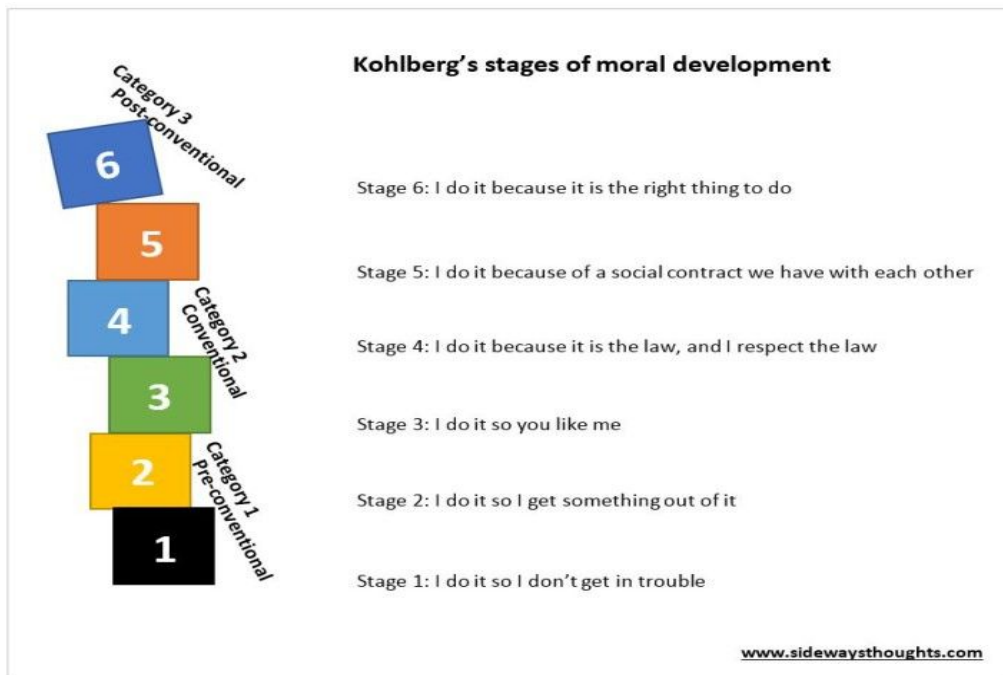
- A child's capacity should be assessed on case by case basis but is largely recognised around 14 years old. Younger children assessed based on demonstration of their capacities.
- Said that children who have partial skills to make decisions should be recognised as having some authority over their own health care.
- Most widely accepted view is that parents should be recognised as surrogate decision makers for their children, and that their cultural and religious freedom should be respected.
 - Minor life saving procedures such as blood transfusions, court will override, stating child's right to have their life preserved overrides family's religious freedom.

81.1. Kohlberg's Framework of Moral Development

Kohlberg's Moral Thinking

1. **Preconventional Morality:** Before age 9, children show morality to avoid punishment or gain reward.
2. **Conventional Morality:** By early adolescence, social rules and laws are upheld for their own sake.
3. **Postconventional Morality:** Affirms people's agreed-upon rights or follows personally perceived ethical principles.





- Criticism of this model: the study was done on boys and men and is thus a male approach to the issue.
- **Children's capacity for moral reasoning should be judged by the children's individual merits.**
- Perceived lack of moral maturity in children may actually just be children conforming to socially desired behavioural norms - e.g. not talking about the death.
- For children who cannot give consent, it is recommended that parents do so while giving weight to the expressed views of the child.
 - What children say should be regarded as morally meaningful, parents should seek to reconcile any issues causing the child moral distress.

81.2. Respectful Involvement of Children in Medical Decision Making Framework

- Participative Assessment:
 1. What child wants to know
 2. What child can understand
 3. Extend of child's decision making capacity
 4. What child needs to know to participate properly