



# Analyzing Consent Cross-Culturally: Building a Framework to Accommodate Social Understanding

Katherine Velardo and Emma Quaid

Mentor: Marshall Thompson



## Introduction:

The ethics of consent has seen to be largely dependent on cultural scripts and expectations. Analysis of consent in different settings across different cultures has revealed a disconnect between theoretical understandings of consent and practical applications of consent. Understanding different theoretical models of consent and how consent exists in different cultural contexts can reveal the ethics of consent cross-culturally.

This gap in literature exists because of the broad nature of cross-cultural analysis. However, by analyzing consent practices and application in medical, familial, and relational spheres, informed consent and consent at large can be put within the context of its own culture. We aimed to form a basis of what consent means while understanding how it operates across those different settings. The basis of consent includes the responsibilities and obligations that come with it, as well as the importance of rights in consent.

## Methods:

### SOURCES:

This research project relied on the collection, summary and analysis of research articles surrounding the ethics of consent cross-culturally. Literature reviews were the primary form of gaining information for the project. (x amount) of journal articles were collected based on key word searches in databases accessible through FSU Library resources.

### AREAS OF STUDY:

Three categories of articles were investigated. Sexual consent, medical consent, and contractual consent (contract law) journal articles featuring different countries and cultures were selected.

### SUMMARY PROCEDURE:

Articles were highlighted and analyzed for key distinctions in the consent process, and for common factors impacting the understanding and enactment of consent. In the initial investigation, a larger visual concept map was created to display important concepts and aspects in each area of study.

We chose this method of analysis to bridge the gaps between forms of consent and their conflicts. To find a qualitative framework that could conceptualize and analyze consent cross-culturally, our method had to account for similarities and differences between fields of consent practice.

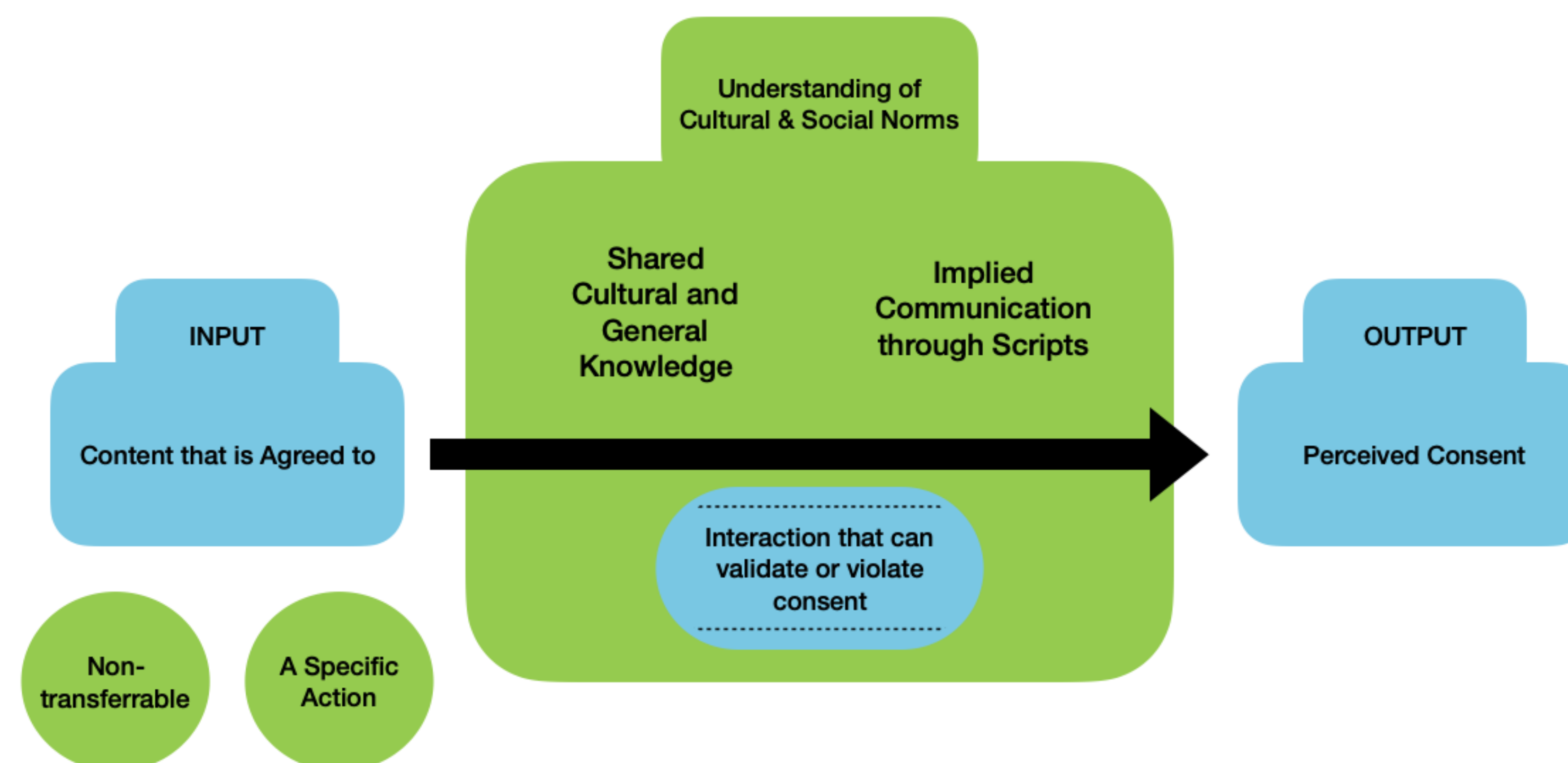
### ANALYSIS & FRAMEWORK DEVELOPMENT:

By summarizing and discussing key features and failures of consent processes cross-culturally, we took the identified key conflicts and discussed the underlying structure of what failed. This continual process led to the development of a framework primarily based in the work of Emily C. R. Tilton and Johnathon Jenkins Ichikawa with an expansion for cross-cultural legal and medical applications.

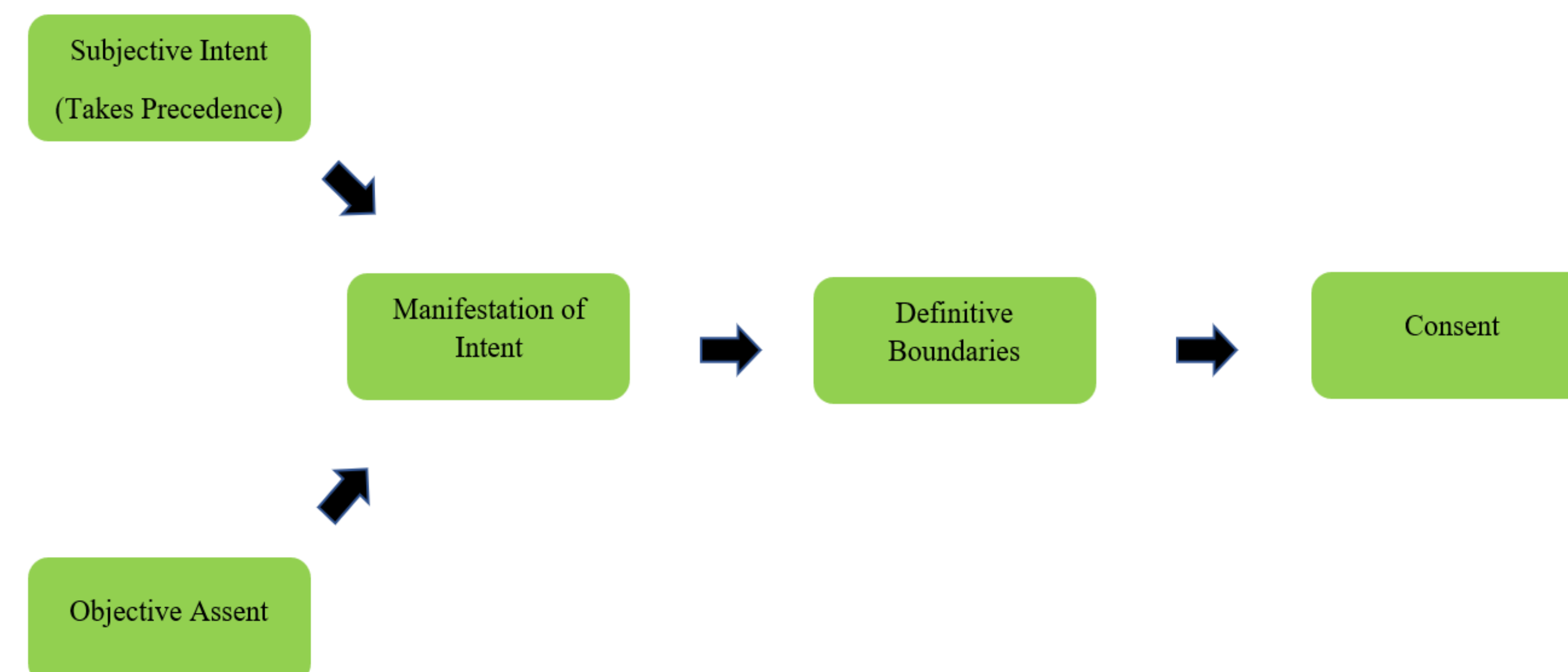
With a final framework determined, visual diagrams for both the framework curated and a pre-existing framework were created for presentation, comparison, and comprehension. Visual diagrams focused on the key factors of consent and their relation in the process of giving consent.

## Results:

### Our Framework:



### Competing Framework:



## Case Study 1: Sexual

Caroline accompanies Shondra to her daughter's art show. She thinks the art is pretty stupid, but she wants Shondra to like her, so she lies and tells Shondra that she enjoyed looking at her daughter's art. Shondra is pleased to hear this, and the date goes well. They end up having sex that night.

### Consent Theory Framework:

- Unable to prove subjective intent (Caroline's intent behind art compliments)
  - Default to objective assent
- Looking for manifestation of intent from objective point of view
  - Objectively both took part and initiated

### Our Framework:

- Content of consent perceived differently by Caroline
- White lies and superficial compliments are generally normalized in US culture and society
- If daughter's artwork was a true key factor to consensual sex, that should've been disclosed
  - Shondra could not expect Caroline to know this would be a dealbreaker for her

## Case Study 2: Medical

Individual Y from an isolated aboriginal community has to go to a large hospital for chemotherapy. Resources and medical training aren't available nearby and Y is generally unfamiliar with medicine outside of their isolated community. To obtain consent, the hospital would ask Y if they wanted to undergo chemotherapy, but Y would refrain from consenting until the Jungai of their community, as well as their family, had reviewed and agreed as well. Additionally, once Y was admitted and given chemotherapy treatment, Y stated in response to the negative health effects that they would not have consented to chemotherapy if they had known it would not make them feel better.

### Consent Theory Framework:

- Consensual because they directly agreed to chemotherapy, including all parties involved
  - Both subjective intent and objective assent was consensual
    - Manifesting intent was consensual
    - Followed clear boundaries in process

### Our Framework:

- Non-consensual because of cultural gap of understanding and common knowledge
- Aboriginal social base is community led and primarily removed from Western medicine
- Language and cultural barrier prevented community from fully understanding what chemotherapy entailed
  - Lacked true understanding and therefore the content of what they agreed was invalidated

## Case Study 3: Contractual

1987 case in which surrogate wanted parental rights to child after giving birth but had previously signed contract to give up those rights. The contract states that two payments would be made at the start of the pregnancy and after the rights are signed away. After reading and signing the contract the surrogate had the option to back out of the agreement up until the point of conception.

### Our Framework:

- Surrogate had previous knowledge of what she would be agreeing to
  - Communicated consent by signing contract

### Consent Theory Framework:

- One payment was made after she signed away her rights
- Looking at the objective point of view the surrogate could not have manifested her intent to give up her rights because she was coerced into doing so by receiving payment

## The Framework:

After analyzing different cultural understandings of consent and drawing connections between the three spheres of consent we focused on, we found that consent operates within a frame of cultural and social norm understanding. This means that while individuals consent to specific actions within the content of their own consent, that initial agreement also goes through commonly understood social interactions and scripts and can be interpreted different because of these processes. This framework explains the cultural gaps in understanding when looking at medical or contractual agreements that occur cross-culturally. It also addresses why the consent from the individual can differ from what that consent means and is interpreted in a broader lens of cultural understanding.

Looking at resources from a wide range of cultures and contexts allowed us to see the differences in how they view the meaning of consent, upholding consent, and the value of consent. After these readings, we discussed different situations in which consent was questionable, and took the different philosophical interpretations from the authors to form our own framework to determine consent. We wanted a framework that could combine the ideas of consent in the sexual, medical, and contractual context so that it would be applicable to all.

## Discussion:

### Sexual Consent:

- Direct vs Indirect consent
- Passive vs. Active consent
- Reliance on social scripts and standards
- Intercultural communication
- Sub-Saharan African gift giving
- Western ideals of clear verbal consent
  - Overarching factors
  - Control and access to resources
    - Authority
    - Age
  - Coercive Strategies

### Medical Consent:

- Literacy and Language Barriers
- Individualism vs. Collectivism
- Retaining autonomy in cultural frame
- Community member involvement
  - Familial proxies
  - Doctor-Patient relationships
  - Distrust in written consent
  - Questioning as Insubordination
    - Truth telling
  - Financial Hospital Constraints

### Contractual Consent:

- Validity of contract
  - Free choice
- Counsel/ advisement
- Bargaining Power
  - Fraud
- Clear structure
- Determining rights and obligations
- Deciding what is enforceable
  - Payment and Promising
- Performance and breach of contract
  - Legal vs. Ethical

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