

AIDS - LEGAL ISSUES

DePaul University College of Law
Health Law Institute
Course No. 711 43 701

Summer Semester 1992
Loop Campus, Room 905
5:50 to 8:30 p.m.

Professors Mark E. Wojcik and Dr. Scott H. Isaacman

Course Description and Goals:

This course examines legal reactions to the Acquired Immune Deficiency Syndrome (AIDS). Specific areas of inquiry include criminal law, domestic relations, education law, employment discrimination, estate planning, human rights laws and ordinances, immigration and international travel, insurance law, international human rights laws, military law, public and private health care law, sports law, tort law, and problems of health care institutions. The course seeks to discover elements of the jurisprudence of AIDS; distinguish appropriate and improper influences upon the development of statutes, regulations, and judicial decisions; and apply statutes, regulations, ordinances and jurisprudential principles from other areas of law to new and emerging legal issues in the arena of AIDS.

Required Books:

1. Michael L. Closten et al., AIDS: Cases and Materials (1989)
2. Robert M. Jarvis et al., AIDS Law in a Nutshell (1991)
3. Yale AIDS Law Project, AIDS and the Law: A Guide for the Public (H.L. Dalton, ed. 1987)

Optional Books:

1. Michael L. Closten et al., AIDS: Cases and Materials (Supplement 1990)
2. Thomas P. McCormack, The AIDS Benefits Handbook (1990)
3. Scott H. Isaacman, Governmental Inspection of the Baby Factory (1991)

CLASS READINGS

1. Thursday, May 28

Topics: **Introduction to the Course**
Introduction to HIV

Reading Assignment:
Nutshell pp. 1-26
Dalton pp. 15-43

2. Tuesday, June 2

Topic: **Medical Background**

Reading Assignment:
Casebook pp. 47-54
58-73 (Ten theories of the source of AIDS)
111-34

Supplementary Reading:

Casebook pp. 1-45
73-98
Supplement pp. 1-22

3. Thursday, June 4

Topics: **Constitutional Considerations**
Health & Welfare Powers
Federal and State Constitutional Rights to Privacy
Statutory Privacy: Illinois AIDS Confidentiality Act
Legal Problems of HIV and Tuberculosis

Reading Assignment:

Casebook pp. 813-27
People v. C.S., 222 Ill. App. 3d 348, 583 N.E.2d 726, 164
Ill. Dec. 810 (1991).
Casebook pp. 839-41
849-60
864-69
Nutshell pp. 254-92
Dalton pp. 47-65
81-89

Supplementary Reading:

County of Cook v. City of Chicago, No. 1-90-2526 (Ill. App.
1st Dist. May 14, 1992)

4. Tuesday, June 9

Topic: **AIDS in the Schools**

- A. Education for All Handicapped Children Act
- B. Applicability of Other Discrimination Laws
- C. Illinois Educational Intimidation Statute
- D. Schoolchildren's Access to Medication
- E. Privacy Principles for Principals
- F. Sex Education and Condom Distribution
- G. State Constitutional Rights Regarding Access to Education
- H. Controlling the New Risk of Tuberculosis in Public Schools

Guest Lecturer: Clint Lee Hurst, Esq.
Legal Director, AIDS Legal Council of Chicago

Reading Assignment:

Nutshell pp. 78-97
Casebook pp. 341-42
 354-59
 373-83
Dalton pp. 66-80

Supplementary Reading:

Supplement p. 89
U.S. Dep't of Education, "AIDS and the Education of Our
Children: A Guide for Parents and Teachers" (1988)

5. Thursday, June 11

Topic: **Discrimination in Business and Employment**

- A. Rehabilitation Act of 1973
- B. Americans With Disabilities Act
- C. Illinois Human Rights Act
- D. Chicago Human Rights Ordinance
- E. Cook County Commission on Human Rights
- F. Workplace Health and Safety Laws: OSHA
- G. Other Employment Laws: ERISA
- H. Collective Bargaining and AIDS
- I. Employer Policies and AIDS

Reading Assignment:

Nutshell pp. 45-77
Casebook pp. 271-84
 289-92
 309-12
 320-21
 328-37
Dalton pp. 109-41

Supplemental Reading:

Supplement pp. 65-87

6. Tuesday, June 16

Topic: Family Law

- A. The Rise and Fall of Compulsory Pre-Marital HIV Testing
- B. Childbearing and Childrearing (Perinatal Transmission)
- C. HIV as a Factor in Child Custody and Visitation

Guest Speaker: Carol R. Heise

Reading Assignment:

Nutshell pp. 98-121
Casebook pp. 441-58

Supplementary Reading:

Supplement pp. 91-104

Michael L. Closen & Carol R. Heise, "HIV-AIDS and the Non-Traditional Family: The Argument for State and Federal Judicial Recognition of Danish Same-Sex Marriages," 16 Nova L. Rev. 809 (1992)

Scott H. Isaacman, "Neonatal HIV Testing: Governmental Inspection of the Baby Factory," 24 John Marshall L. Rev. 571 (1991).

James Monroe Smith, "Legal Issues Confronting Families Affected by HIV," 24 John Marshall L. Rev. 543 (1991).

(And skim this article for an introduction to other publications for further research in this area)

John R. Austin & Rebecca S. Trammell, "American Family Law in the Age of AIDS: An Annotated Bibliography," 24 John Marshall L. Rev. 625 (1991).

7. Thursday, June 18

Topics: Introduction to Health Care Law
Patient Dumping -- Burditt Case
HIV-Infected Health Care Professionals

Reading Assignment:

Nutshell pp. 154-82
Dalton pp. 175-84
210-17
Casebook pp. 587-656

Supplementary Reading:

Supplement pp. 117-42

Ill. Reg. 5921 (Apr. 10, 1992)

Glanz v. Vernick, 756 F. Supp. 632 (1991).

Horwitz v. New York City Comm'n on Human Rights, 553
N.Y.S.2d 323 (1990).

Elstein v. State Div. Human Rights, 555 N.Y.S.2d 516
(1990).

Sattler v. City of New York Comm'n on Human Rights, 554
N.Y.S.2d 763 (1990), aff'd, 580 N.Y.S.2d 35 (1992).

Scott H. Isaacman, "The Other Side of the Coin: HIV-
Infected Health Care Workers," 9 St. Louis U. Pub. L.
Rev. 439 (1990).

Scott H. Isaacman, "Dumping HIV-Infected Patients From
Private Practice," 83 J. Am. Med. Ass'n 961 (1991).

Michael L. Closen, "A Call for Mandatory Testing and
Restriction of Certain Health Care Professionals," 9
St. Louis U. Pub. L. Rev. 421 (1990).

Larry Gostin, "The HIV-Infected Health Care
Professional: Public Policy, Discrimination, and
Patient Safety," 18 Law, Med. & Health Care 303 (1990).

Mark Barnes et al., "The HIV-Infected Health Care
Professional: Employment Policies and Public Health,"
18 Law, Med. & Health Care 311 (1990).

8. Tuesday, June 23

Topics: **Immigration**
 International Travel
 International Human Rights Law

Reading Assignment:

Nutshell pp. 293-318
New Casebook Supplement for Chapters 14 and 15
 (to be distributed)
Casebook pp. 871-90
 899-900
 922-28
 942-51

Supplementary Reading:

Supplement pp. 189-207

Michael L. Clozen & Mark E. Wojcik, "International Health Law, International Travel Restrictions, and the Human Rights of Persons with AIDS and HIV," 1 Touro J. Transnat'l L. 285 (1990).

WHO Videotape: "A World United Against AIDS"

9. Thursday, June 25

Topics: **Criminal Law and Administration of Prisons**

Reading Assignment:

Nutshell pp. 183-211
Dalton pp. 235-50
Casebook pp. 679-709, 721-39

Guest Speaker: Professor Michael L. Clozen
 The John Marshall Law School

Supplementary Reading:

Supplement pp. 143-53

In re Application of Multimedia KSDK, Inc., 581 N.E.2d 911 (Ill. App. 1991).

Deborah S. Change, "Out of the Dark Ages and Into the Nineties: Prisons Respond to Inmates With AIDS," 23 Conn. L. Rev. 1001 (1991).

Videotape: Nightline, "The Philadelphia AIDS Case"

10. Tuesday, June 30

Topic: **Tort Liability**

Reading Assignment:

Nutshell pp. 212-50

Dalton pp. 153-72

Casebook pp. 792-800

Supplemental Reading:

Supplement pp. 155-84

Smith v. Cutter Biological Inc., 823 P.2d 717 (Hawaii 1991).

11. Thursday, July 2

Topics: **Life Insurance**

Health Insurance

ERISA v. ADA (or, Life after McGann v. H & H)

Medicaid

Other Benefits Programs

Guest Speaker: Brad Vauter, Esq.

Executive Director

AIDS Legal Council of Chicago

(Note: Mr. Vauter is also a contributing author of an amicus brief in the McGann case pending before the U.S. Supreme Court)

Reading Assignment:

Nutshell pp. 129-49

Dalton pp. 185-200

Supplementary Reading:

Supplement pp. 111-16

McGann v. H & H Music Co., F.2d (5th Cir. 1991) (and Supreme Court opinion if rendered by this class date).

Thomas P. McCormack, "The AIDS Benefits Handbook" pp. 1-98 (1990).

"AIDS Drug Reimbursements," Ill. Reg. 4052 (Mar. 13, 1992).

Barbara Lynn Pedersen, Comment, "HIV/AIDS and the Pre-Existing Health Condition Standard: Teaching an Old Dog New Tricks," 24 John Marshall L. Rev. 653 (1991).

12. Tuesday, July 7

Topic: Introduction to Estate Planning

- A. Wills, Testamentary Capacity, and HIV Dementia
- B. Living Wills
(to stipulate the kind of life-prolonging medical care you do or do not want if you become terminally ill and are unable to make your own decisions)
- C. Federal Patient Self-Determination Act'
(to help patients understand that they have the option to refuse medical treatment)
- D. Power of Attorney for Health Care
(allows you to name another person to make medical decisions if you are unable to make them yourself; allows certain persons guaranteed access to visit loved ones in hospitals; if durable, directs who has the legal power to make funeral arrangements)
- E. Power of Attorney for Property
(allows you to name another person to exercise rights relating to your property if you are unable to exercise them yourself)
- F. 1991 Health Care Surrogate Act
(establishes a prioritized list of surrogates who may make decisions about life-sustaining treatment when a patient with a qualifying condition is unable to do so)
- G. Joint Tenancy
- H. Living Trusts

Guest Lecturer: Jeffrey E. Sachse, Esq.
1538 W. Wrightwood Ave.
Chicago, IL 60614
312/248-4809

Reading Assignments:

Casebook pp. 467-70
470-77
509-24
Nutshell pp. 121-26

Supplementary Reading:

Illinois State Bar Ass'n, "Your Health Care: Who Decides?"
Illinois State Bar Ass'n, "Estate Planning & Living Wills"

13. Thursday, July 9

Topics: **Further Estate Planning Issues**
Funeral Home Law

- A. Review of Introduction to Estate Planning
- B. Additional Strategies for Will Contests
 - Is there an advantage to signing a series of wills?
 - Should you videotape the will signing ceremony?
 - How do you gauge the effect of medical drugs on testamentary capacity?
- C. Alternative Strategies for Will Contests: Designated Heirs
- D. Trusts and Death-Related Insurance Benefits
- E. Guardianship
- F. Funeral homes under federal, state, and local anti-discrimination laws
- G. Legal Aspects of arranging funerals via a durable power of attorney for health care
- H. Confidentiality and the Death Certificate
- I. Obituaries and the Right to Privacy
- J. Rental caskets and the duties to disclose

Guest Lecturer: Emily P. Berendt, Esq.
P.O. Box 6312
Evanston, IL 60204

Reading Assignments:

Casebook pp. 483-500
525-30
675-77
Nutshell pp. 126-28
180-82
276-77

Supplementary Reading:

Funeral Services by Gregory v. Bluefield Community Hospital,
413 S.E.2d 79 (W. Va. 1991).

Supplement pp. 105-09

Emily Berendt & Laura Lynn Michaels, "Your HIV Positive Client: Easing the Burden on the Family Through Estate Planning," 24 John Marshall L. Rev. 509 (1991).

National Funeral Directors Ass'n, "A Caring Response to an AIDS-Related Death"

Videotape excerpts: "AIDS and the Law: What Funeral Directors Need to Know" (Funeral Directors Service Association of Greater Chicago, May 2, 1992)

14. Tuesday, July 14

Topics: **AIDS in the Military**
Art, Sports, Entertainment and the Fashion Industry:
Keith Haring (Speculation and the AIDS Artist)
Magic Johnson v. Arthur Ashe (Choice v. "Outing")
Robert Reed (Morality and the Brady Brunch)
Perry Ellis (Business Effects of AIDS)
Consequences of the Politics of AIDS

Reading Assignment:
Nutshell pp. 27-41
Dalton pp. 221-34

Supplementary Reading:
Supplement pp. 23-63
Steffan v. Cheney, 780 F. Supp. 1 (D.D.C. 1991).

Videotape: ACT UP Demonstration at St. Patrick's Cathedral

15. Thursday, July 16

Topics: **Presentation and Analysis of Faculty Papers to be**
Presented at the International Conference on
Health Law and Ethics in Toronto, Canada

Reading Assignment:
Faculty papers that will be distributed prior to this class.

Faculty:

Mark E. Wojcik, J.D., LL.M.
Assistant Professor of Law
The John Marshall Law School
315 S. Plymouth Court
Chicago, IL 60604
312/427-2737 (John Marshall)
708/687-7070 (Oak Forest)

Scott H. Isaacman, M.S., D.O., J.D.
Staff Physician
Cook County Department of Health
Sexually Transmitted Disease Clinic
1701 S. First Street, First Floor
Maywood, Illinois
312/730-0705 (Beeper)

ADDITIONAL NOTES REGARDING THIS CLASS

Class Attendance: The university's policy on class attendance requires regular and punctual class attendance. Irregular classroom attendance may result in an involuntary withdrawal, which will affect a student's grade point average just like an F.

Grading: Students must elect within the first 3 weeks of the semester whether to have a take-home examination or write a short paper. (Papers will be due by July 23, 1992 in the Health Law Institute Office.) For both the take-home exam and papers, final grades may be raised or lowered up to one letter grade based on class participation.

Plagiarism in Papers and Take-Home Examinations: With a short summer semester, some students may find that there is simply not enough time to complete the research necessary for a paper and to do original writing. Students must avoid and resist any temptation to plagiarize.

The official University definition of plagiarism is that: "Plagiarism is a major form of academic dishonesty involving the presentation of the work of another as one's own." Plagiarism includes but is not limited to the following:

the direct copying of a written source, whether published or unpublished, in whole or in part, without proper acknowledgement that it is someone else's

copying of a written source in whole or in part with only minor changes in wording or syntax even with acknowledgment

the paraphrasing of another's work or ideas without proper acknowledgment

submitting as one's own work a report, examination, paper or other assignment which has been prepared by someone else; this includes research papers purchased from any other person or agency

submitted as one's own work the contents of a computer file prepared by another person

Videotapes: Some class sessions include short videotapes. If you miss a class session, you are nonetheless encouraged to view the videotape on your own time, by special arrangement with the teachers. Students wishing to view videotapes a second time are also encouraged to do so.