

Bioethics Program
Dept. of Philosophy
Cleveland, Ohio 44115

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SYLLABUS
L 602
PHL 443/543

BIOETHICS & THE LAW

Course Description:

Students will learn rudimentary legal research skills, the structure of the American Legal System and constitutional foundations of health care law as applied to some classical and contemporary legal issues. These issues may include death and dying, transplantation, genetic and reproductive law, human subjects research, and employee testing for drug use.

Dates, Times, Places: This course will meet at The Cleveland Clinic Foundation Laboratory Medicine Building: L-2 (level 2) room 290 #6.

The course normally will meet June 22 through July 27th on Mondays, Tuesdays, Wednesdays & Thursdays from 4:30-6:15. However, the following dates are research practica: Monday, July 6, Monday July 20th.

REQUIRED TEXTS:

Elias, Legal Research 2nd edition. Nolo Press
King, Medical Malpractice, 2nd edition. St. Paul: West
Hall & Ellman, Health Care Law & Ethics. St. Paul: West
Barron & Dienes, Constitutional Law, 3rd ed. St. Paul: West

- HANDOUTS:
1. Cleveland Marshall Law Library Floor Plan & Schedule
 2. Waithe, "How to Write a Bioethics Memorandum of Law."
 3. Wrongful Birth Case (At KINKO's University Circle).

RECOMMENDED BUT NOT REQUIRED:

Redish, Federal Jurisdiction, 2nd ed. St. Paul: West
Gelhorn & Levin, Administrative Law & Process St. Paul: West
Malone, Torts: Injuries to Family, Social & Trade Relations. St. Paul: West
Black's Law Dictionary
Stedman's Medical Dictionary

PART ONE: LEGAL/PHILOSOPHICAL CONCEPTS AND THEORIES

In this part of the course we will move back and forth between BARRON & DIENES Constitutional Law 3rd ed., Hall & Ellman, Health Care Law and Ethics and King, The Law of Medical Malpractice. In lecture I will: (a) outline the basic structure of the American legal system and its historical origins, (b) describe the relationship of law to ethics, (c) describe the development of legislation and the role of the judicial system in creating and defining legal duties of health care practitioners and agencies.

MON 6/22: Intro to the course, overview, grading policies. Intro to Legal Research and Legal/Philosophic Concepts and Theories

TUES 6/23 INDIVIDUAL RIGHTS & LIBERTIES, CORRESPONDING DUTIES: The general scope of Constitutional Rights and their Corresponding Duties. Rights to Privacy, Care & Protection, Refusal of Treatment. Abortion, Homosexuality. Limits on exercise of rights. Read: BARRON & DIENES 145-147 (V. A, B.), 158 -168, 283-285. HALL & ELLMAN: 71-101.

WED: 6/24 INDIVIDUAL RIGHTS & LIBERTIES. The relationship between autonomy and competency; HALL & ELLMAN 256-259; the connection between competency, decision making and consent to medical care; legal doctrines of implied consent, substituted judgment: KING 130-153. PLEASE BRING IN A TOPIC/ISSUE THAT YOU WOULD LIKE TO WORK ON YOUR SECOND BIOETHICS MEMORANDUM OF LAW FOR. THE ISSUE SHOULD BE ONE THAT HAS BEEN IN THE GENERAL MEDIA OR PROFESSIONAL LITERATURE. YOU CAN BRING IN NEWSPAPER CLIPPINGS, ETC.

THURS 6/25 INDIVIDUAL RIGHTS & LIBERTIES. Incompetence, paternalism and decision making. Read: HALL & ELLMAN 259-283.

MON 6/29 INDIVIDUAL RIGHTS & LIBERTIES. The role of medical beneficence; withholding or withdrawing medical services. Active and passive euthanasia, DNR, DNF, DNH orders. Read: HALL & ELLMAN 236 - 256, 330-340.

TUES 6/30 INDIVIDUAL RIGHTS & LIBERTIES: The relationship between consent, disclosure, withholding information and battery, negligence and torts. Read: KING 154-178.

PART TWO: LEGAL RESEARCH SKILLS:

Our readings in this part are drawn exclusively from Elias. You can expect to become familiar with legal research methods, resources and materials. In order to help you develop skills in conducting legal research relative to bioethics, I have arranged for research practica. You will have two practica. They will at the library of the Cleveland Marshall College of Law. A floor plan and hours of operation for the library will be distributed on the first day of class. I will be available to provide guidance and comfort for the first practicum, scheduled for WED 7/8. You will

learn where the basic law encyclopedias, texts, manuals and periodicals are located and how to use them. In order to maximize the value of the practicum, I expect you to arrive fully prepared by having completed the assigned readings in ELIAS, with any questions noted. The second practicum is scheduled for Monday, 7/20. You are encouraged to work in groups.

WED: 7/1: Read: elias 3-11, 21-35, 189-215.

THURS 7/2: Read: ELIAS 41-46, 57-60, 66-90.

MON: 7/6: Read ELIAS: 98-99, 101-108, 109-118, 131-163,

TUES: 7/7: Read: ELIAS 165-177, 218-228.

WED: 7/8: READ: HALL & ELLMAN Advanced Directives 283-301. RESEARCH DAY. LEGAL RESEARCH PRACTICUM AT CLEVELAND-MARSHALL COLLEGE OF LAW. Work must be completed and brought to class in the form of a 1-2 PAGE typed report on Mon, 7/13.

RESEARCH ASSIGNMENT: Provide a documented, well-argued BIOETHICS MEMORANDUM OF LAW on the following case:

Dr. Mary Ellen Waithe, a notorious bioethicist, lapsed into a coma over the July 4th holiday following a CVA. The CVA was undoubtedly a consequence of the stress induced by teaching a summer course for which she had over-prepared. Dr. Waithe is a reasonably intelligent individual who is married with one school-age child. Her driver's license reveals her to be a donor. As Ohio's law was recent and she was a rather disorganized professor, she had not quite executed an advanced directive. Her students had frequently heard her say that she would never want to be kept alive for any time after which it had been determined by two or more medical experts to be selected by her spouse that she would be unable to participate in the rich intellectual life of CSU's philosophy department. Physicians have determined that there is no hope for her recovery. She lapsed into a PVS over the weekend. The excellent condition of her body makes her a possible donor of many organs. Hospital Ethics Board Members have turned to you, her students for a recommendation. Would it be legal to remove Dr. Waithe from the feed tubes? From the respirator? Would it be morally defensible to do so? If so removed, should her organs be donated? Defend your position on legal as well as on ethical grounds.

TORTIOUS ACTS:

THURS 7/9 Battery, Assault, False Imprisonment, Unauthorized Disclosure Read: KING 179-192, HALL & ELLMAN 376-385.

MON: 7/13: TURN IN YOUR MEMORANDUM OF LAW.
Invasions of Privacy, Wrongful Death, Wrongful Birth. Read: KING 193-197, 219-227.

TUES 7/14: Wrongful Life in Ohio: Copy & read Johnson v. University Hospitals of Cleveland. 44 Ohio St. 3d 49; 540 NE2d 1370; 1989 Ohio Lexis 142.

WED 7/15: Vicarious Liability. KING 231-252. Strict Liability. KING 253-266, HALL & ELLMAN 385-389.

PART THREE: LAW AND THE REGULATION OF THE HEALTH CARE PROFESSIONS

In this part we will focus on the role that the law plays in regulating your professional life. We will examine what the law says about relationships among different professionals, among professionals and their employers, and between individual practitioners and their professional associations. Here, we will also address major legal-philosophical-economic issues related to price fixing, monopolies, reimbursement, rationing and other nasty stuff.

THURS: 7/16: I will return your research reports. READ: Relationships among Health Professionals: HALL & ELLMAN 148-185.

MON 7/20: RESEARCH PRACTICUM #2: CLASS DOES NOT MEET AS UNIT. LEGAL RESEARCH PRACTICUM ON YOUR OWN, Preferably in the Law Library. However, the classroom is reserved for your use should you wish to work there on your research practicum. Work must be completed and brought to class in the form of a typed report on Monday 7/27 FOR 5 MINUTE PRESENTATION TO AND DISCUSSION BY THE CLASS.

TUES: 7/21: Antitrust, Price fixing, Monopolies & Mergers: HALL & ELLMAN 186-221

WED 7/23: Health Care Reimbursement & Regulatory Reform: HALL & ELLMAN 3-42.

THURS 7/24: Health Care Rationing & Competition: HALL & ELLMAN 42-70.

MON 7/27 FINAL DAY OF CLASS: Be prepared to hand in and synopsise your final research project. Enclose a stamped, self-addressed envelope if you'd like to receive your written work and your grades back ASAP.