

Course Syllabus

# Reproductive Health Law in Transnational Perspective

Law 386 H1F

Rebecca Cook

Faculty of Law, University of Toronto

Fall, 2015



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**Course Syllabus**  
**Reproductive Health Law in Transnational Perspective**  
**Law 386 H1F**  
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**Fall 2015**

This course addresses significant transnational developments in the legal regulation of reproduction. The course builds primarily on this century's legal developments including judicial decisions, constitutional amendments, regulatory reforms and informal laws to ask why and how abortion law is changing. It explores possible responses by analyzing developments in abortion law through four themes: constitutional values and regulatory regimes, procedural justice and liberal access, framing and claiming rights, and narratives and social meaning. The course will illustrate various dimensions of the transnational enterprise including the transnational influence of religious teachings, social movements and technological innovations on the evolution of reproductive health law.

**Contact Information:**

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International Reproductive and Sexual Health Law Program  
Faculty of Law, University of Toronto  
<http://www.law.utoronto.ca/programs/reprohealth.html>

Blog: <http://reprohealthlaw.wordpress.com/>

First Term: 3 credits; 2 hours  
Schedule: Monday, 4:10 – 6:00pm, with two classes scheduled on Friday 4:10 – 6:00pm (see below)  
Location: Northrop Frye Hall NF 332, 73 Queen's Park, Victoria College  
Perspective Course

**Text:**

Rebecca Cook, Joanna Erdman and Bernard Dickens, *Abortion Law in Transnational Perspective: Cases and Controversies*, University of Pennsylvania Press, 2014, available in the Faculty of Law bookstore in the basement of Falconer Hall, 84 Queen's Park

Table of Cases online: [www.law.utoronto.ca/irshl/AbortionLaw](http://www.law.utoronto.ca/irshl/AbortionLaw)

**Structure:**

1. Sept 11 (Friday): Introduction
2. Sept 21: Part I: The Evolution of and Comparative Approaches to Abortion Law
3. Sept 28: Part I: Comparative Approaches

4. Oct 5: Part II: The Meanings of Constitutional Rights  
(Oct 12 – no class – Thanksgiving)
5. Oct 19: Part II: The Meanings of Constitutional Rights- Kate Greasley
6. Oct 23: Part II: The Meanings of Constitutional Rights
7. Oct 26 (Friday): Part III: Framing and Claiming Rights  
(Nov 2 – no class – reading week)
8. Nov 9: Part III: Framing and Claiming Rights-Bernard Dickens
9. Nov 16: Part IV: Procedural Turns and Informal Rules
10. Nov 23: Part IV: Procedural Turns and Informal Rules
11. Nov 30: Part IV: Procedural Turns and Informal Rules

Short papers due in Parts II, III and IV

**Evaluation:**

**80% written work in the form of three short papers** (about 2,100 words each, which is about 9 pages) analyzing the reading materials assigned for class. One paper must be written for each of the three seminar parts. Short papers are due by 6 pm Sunday the day before the class in which the materials are to be discussed, or in the case of the two Friday classes 6 pm Thursday the day before the class in which the materials are to be discussed via email to: [rebecca.cook@utoronto.ca](mailto:rebecca.cook@utoronto.ca).

For the class on Nov 9, please send your paper by 6 pm Sunday Nov 8 to: [bernard.dickens@utoronto.ca](mailto:bernard.dickens@utoronto.ca).

Please see Writing Guide for further information on evaluation of written work. The University of Toronto provides a number of writing resources: [www.utoronto.ca/writing](http://www.utoronto.ca/writing).

**20% class participation**, which will be measured by regular attendance with reflective input into class discussion, oral comments on a student paper. Three oral comments are required on a paper of a colleague of your choosing submitted to one of the classes in Part II, III, IV for which you are not submitting your comment.

**Email Policy:**

Email will not be used as an alternative to meeting with the course instructors before or after class or by appointment. Email inquiries will be responded to only in exceptional circumstances. Please ensure you consult the syllabus and other course materials before submitting any email inquiry. All email messages must include in the subject line the course identifier and a concise and clear statement of purpose [e.g. RSH Law Seminar: short paper]. Inquiries of interest to all students will be addressed in class.

## **Reproductive Health Law in Transnational Perspective: Course Overview**

1. Sept 11 (Friday): Cook, Erdman and Dickens, Introduction

### **Part I: The Evolution of and Comparative Approaches to Abortion Law Sept 14 & Sept 21**

2. Sept 21-The Evolution of Abortion Law

Criminal Law - Cook, Stigmatized Meanings of Criminal Abortion Law, read only 347-352

Medical Law - Sheldon, The Medical Framework and Early Medical Abortion in the U.K.: How Can a State Control Swallowing? 189-199 (note discussion of health and reproductive health frameworks 191-192)

Medication abortion, Mifegymiso-approved in Canada 29 July 2015, <http://www.hc-sc.gc.ca/dhp-mps/prodpharma/rds-sdr/drug-med/>

Constitutional Law – Siegel, The Constitutionalization of Abortion, 13-35

See also:

Nelson, E, “Regulating Reproduction” in Jocelyn Downie, Timothy Caulfield, and Colleen Flood, eds., *Canadian Health Law and Policy*, 4 ed. (Markham, Ont: Butterworths, 2011) 295-340

#### Public Health and Intersectional Perspectives:

Public health: Ngwena @ 169 first two paragraphs; Upreti @ 280 first full paragraph; Madrazo @ 340 first full paragraph

See also: David Grimes and Linda Brandon, *Every Third Women in America*, Lulu, 2014

Intersectional:

poverty- *Lakshmi Dhikta* (Nepal); *ADPF/54* (Brazil)

race- *Baby Oladapo v. Minister for Justice* (Ireland)

age- *P and S v. Poland* (ECHR)

See also: Kelly, Reckoning with Narratives of Innocent Suffering in Transnational Abortion Litigation, 303-313

health status- *Tysiac v. Poland* (ECHR)

pregnant status- Sentencia C-355/06 (Colombia)

sexuality- rape cases

disability- *LMR v. Argentina* (UNHRC)

3. Sept 28- Comparative Approaches

Review Siegel, The Constitutionalization of Abortion 28-35

Undurraga, Proportionality in the Constitutional Review of Abortion Law, 77-97

Rebouché, A Functionalist Approach to Comparative Abortion Law, 98-112

See also:

Ran Hirschl, *Comparative Matters-The Renaissance of Comparative Constitutional Law*, Oxford University Press, 2014

**Part II- The Meanings of Constitutional Rights** Oct 5, 19 & 23

4. Oct 5- The Right to Privacy, The Right to Security of the Person, The Right to Personal Integrity

Review Undurraga 89-95

Lamačková, Women's Rights in the Abortion Decision of the Slovak Constitutional Court 56-76

Cook, Stigmatized Meanings of Criminal Abortion Law 364-366

*A, B, and C v. Ireland*, [2010] E.C.H.R. 2032

See also:

Rubio-Marín, Abortion in Portugal: New Trends in European Constitutionalism 36-55

Erin Nelson, *Law, Policy and Reproductive Autonomy* (Hart, 2013), chapter 3 on reproductive autonomy

5. Oct 19- The Right to Life

First hour

Madrazo, Narratives of Prenatal Personhood in Abortion Law, 327-346

Lemaitre, Catholic Constitutionalism on Sex, Women, and the Beginning of Life, 246-249

*Baby Oladapo v. Minister for Justice*, [2002] I.E.S.C. 44 (Supreme Court of Ireland)

Second Hour

Kate Greasley, Stowell Junior Research Fellow in Law, University of Oxford will join us for this class commenting on her research on “Prenatal Personhood and Life’s Intrinsic Value: Reappraising Dworkin on Abortion”

[FYI-Oct 22- 12:30-2:00 Falconer 3, 84 Queen’s Park- Health Law Workshop- Kate Greasley, “Abortion and Feminism”]

See also:

Kelly, *Reckoning with Narratives of Innocent Suffering in Transnational Abortion Litigation*, 313-322

6. Oct 23 (Friday)- The Right to Nondiscrimination (sex, poverty, age, health status, pregnant status)

Upreti, Toward Transformative Equality in Nepal: The *Lakshmi Dhikta* Decision, 279- 291

Cook, Stigmatized Meanings of Criminal Abortion Law 366-368

Health Equity and Law Clinic, amicus brief in *L.C. v. Peru*, 9 June 2011

<https://opcedaw.files.wordpress.com/2012/01/lc-v-peru-heal-clinic-amicus-brief.pdf>, 15 pages

*L.C. v. Peru*, Communication No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009 (2011)

See also:

Charles Ngwena, A Commentary on *LC v Peru*: The CEDAW Committee's First Decision on Abortion, *Journal of African Law* 1-15 (2013)

Cook, R.J. & V. Undurraga, "Article 12 [Health]" in M. Freeman, C. Chinkin and B. Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press, 2012) 311-333.

### **Part III-Framing and Claiming Rights** Oct 26, Nov 9

7. Oct 26 -The Right to be Free from Inhuman and Degrading Treatment

Cook, Stigmatized Meanings of Criminal Abortion Law 352-364

*K.L. v. Peru*, Communication No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005)

See also:

Barroso, Bringing Abortion into the Brazilian Public Debate: Legal Strategies for Anencephalic Pregnancy, 258-278

R. Sifris, *Reproductive Freedom, Torture and International Human Rights*, Routledge: 2014

P. Abrams, The Bad Mother: Stigma, Abortion and Surrogacy, *J. of Law, Medicine and Ethics (JMLE)* 43(2): 179-191 (2015)

8. Nov 9: The Right to Conscience

NB: please send your paper by 6 pm Sunday Nov 8 to: [bernard.dickens@utoronto.ca](mailto:bernard.dickens@utoronto.ca).

Bernard M. Dickens, The Right to Conscience, 210-238

*Greater Glasgow Health Board v. Doogan and Wood* [2014] UK SC 68

See also:

*Petition of Mary Teresa Doogan and Concepta Wood*, [2012] C.S.O.H. 32 (Outer House, Court of Session, Scotland)

*Petition of Mary Teresa Doogan and Concepta Wood*, [2013] C.S.I.H. 36, P876/11 (Extra Division, Inner House, Court of Session, Scotland)

Lemaitre, Catholic Constitutionalism on Sex, Women, and the Beginning of Life, 249- 251

Justice Wilson's concurrence in *Morgentaler et al v. R.*, 44 D.L.R. (4<sup>th</sup>) Part 3, May 19, 1988, 385-576, 482-500

*Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden*, European Committee of Social Rights (2015)

*IPPF EN v. Italy*, European Committee of Social Rights (2013)

#### **Part IV: Procedural Turns and Informal Rules** Nov 16, 23 and 30

9. Nov 16: Erdman, The Procedural Turn: Abortion at the European Court of Human Rights, 121-142

*Tysiac v. Poland*, 45 E.H.R.R. 42 (2007)

10. Nov 23: Ngwena, Reforming African Abortion Laws and Practice: The Place of Transparency, 166-186

*Mildred Mapingure v. Minister of Home Affairs et al*, Judgment No. 22/14, 25 March 2014, Civil Appeal No. SC 406/12, Supreme Court of Zimbabwe – online  
<http://www.zimlji.org/files/zm/judgment/14-S-022.doc>

11. Nov 30: Bergallo, The Struggle against Informal Rules on Abortion in Argentina, 143-165

*L.M.R. v. Argentina*, Communication No. 1608/2007, U.N. Doc. CCPR/C/101/D/168/2007 (2011)  
Review Rebouche 110-112, and Cook 356-360 on informal norms and background rules

## Essay Guide-8/IX/15

**Length:** Regular 3 comment papers should be 2,100 words each (about 9 pages). The page estimates exclude endnotes and footnotes.

**Topics:** Students must write a paper on a topic that is addressed in a substantial way in the course materials, and has to be approved by the course instructor.

**Assessment Criteria:** In writing your essay, you will be assessed on the basis of the following four areas: research, analysis, structure, and style. Of these, analysis is most important. An explanation follows of what is expected in each of these areas.

### Research

Research need not extend beyond the course materials. When an article or a case is excerpted, you might want to read the entire article or the case. Full and accurate referencing is required. You should not reference material that you have not read. If you refer to a source (A) that you discovered in another source (B), then you should reference source A, cited in source B. It is always preferable to go to the original source yourself where possible, since source B may be inaccurate in referring to source A.

All use of other people's language MUST be indicated in quotation marks and referenced. Use of others' ideas should also be fully referenced. Failure duly to acknowledge other people's work constitutes plagiarism and is a serious academic offence (see below).

For the accepted legal citation style at the University of Toronto Faculty of Law, see the *Canadian Guide to Uniform Legal Citation* (referred to as the "McGill Guide") (4th ed., 1998) (KF 245 C34 1998), or the Bora Laskin Law Library website. Website references are acceptable, but they must comply with the McGill Guide.

### Analysis

It is important to clearly state at the outset, your thesis or argument. There is often no right or wrong answer to the legal questions you will be addressing. What is of utmost concern, therefore, is not so much your ultimate conclusion, but your reasons for drawing your conclusion on your argument. You must back up all assertions with reasons.

While it will generally be important to include a section of your essay that is descriptive of the area about which you are writing, you must ensure that your essay goes beyond mere description. You MUST analyse the material and draw conclusions from your analysis.

You should take an even-handed approach; so, although you are expected ultimately to draw a conclusion, you also need to canvas alternative positions and arguments in the

course of your essay – and to rebut these to the extent that they are inconsistent with your own argument.

You should use examples to illustrate your arguments. These may be cases, treaties, international events, or hypothetical examples, where appropriate.

Some degree of originality is important. That is, you are expected to develop your own thoughts and analysis, and not just present the thoughts and analysis of others.

### Structure

Structure is very important in writing a clear and well-argued essay. You should include an introduction and a conclusion. You should outline your structure in your introduction. Sub-headings are useful in delineating structure and the move from one idea or argument to the next.

Arguments should be clear and logical and ideas should be linked coherently.

Each paragraph should have something relevant to say about the essay's argument. If it does not, you should ask yourself or try to explain to a colleague why you have included that paragraph.

### Style

Clear expression, good presentation, accurate grammar and spelling, and appropriate use of vocabulary are essential.

### Plagiarism

Normally, students will be required to submit their course essays to Turnitin.com for a review of textual similarity and detection of possible plagiarism. In doing so, students will allow their essays to be included as source documents in the Turnitin.com reference database, where they will be used solely for the purpose of detecting plagiarism. The terms that apply to the University's use of the Turnitin.com service are described on the Turnitin.com web site.

Turnitin.com is an electronic resource that assists in the detection and deterrence of plagiarism. Each submitted paper is checked for textual similarity using millions of resources stored in the Turnitin.com database. Once analyzed, originality reports are generated within 5-10 minutes for instructors, highlighting questionable areas. Using this information as well as any other relevant information, it is then up to the individual instructor to determine if these passages represent plagiarism.