Reproductive and Sexual Health Law Supplement

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These materials have been prepared exclusively for the use of students of the Faculty of Law, University of Toronto
This course addresses national and international legal protection and promotion of reproductive and sexual health. It examines the comprehensive nature of reproductive health, including fertility control and promotion, treatment of sexually transmitted diseases, such as HIV/AIDS, and sexual violence. The course provides introductory overviews of the background law. The course surveys different disciplinary dimensions, such as biomedical, epidemiological and social science perspectives that can be used in the development and application of reproductive and sexual laws. It analyzes the effectiveness of the law in protecting groups at high risk of reproductive health disadvantages, such as adolescents.

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


Texts:


Updates available at: http://www.law.utoronto.ca/faculty/cook/ReproductiveHealth.html

2009 Supplement

Structure:

Part 1: Context and Perspectives (September 15, 22, 24)
Part 2: The Regulation of Reproductive and Sexual Health Care (September 29, October 6, 13)
Part 3: Equality and Non-Discrimination (October 20, 27)
Part 4: Access to Information (November 10)
Part 5: Dignity, Bodily Integrity and Liberty (November 17, 24, December 1)
Evaluation:

80% Written Work: four short papers or SUYRP
20% Class Participation: regular attendance, reflective input into class discussion, on-call days

80% written work in the form of four short papers (1,563-1,875 words each, which is about 6-7 pages at about 250 words a page) analyzing the reading materials assigned for class and handed in by *12pm on the Monday* prior to the class in which the materials are to be discussed. Short papers should be placed under the office door of the professor responsible for the class. Permission for electronic submission will be given only in exceptional circumstances.

A limited number of students may arrange with Professor Cook to complete a Supervised Upper Year Research Paper ("SUYP") in the course. If a student completes the SUYRP, that paper will constitute 80% of the grade and will replace the four short papers. Please see Academic Handbook: Supervised Upper Year Research Paper ("SUYP") for further requirements.

The schedule for the SUYRP is as follows:

- October 20: Outline and bibliography due
- October 27: Outline and bibliography returned with comments
- November 17: First draft due
- November 24: First draft returned with comments
- December 20, 10:00am: Deadline for written work, final paper due at records office

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.

All students will be evaluated on 20% class participation, which will be measured by regular attendance with reflective input into class discussion, including on-call days when students will discuss their short papers, or if completing the SUYRP, will introduce one of the reading materials assigned for the class. SUYRP students must sign up for on-call days the week prior to the class in which the materials are to be discussed.

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 and Sexual Health Law: Course Overview

First Term: 3 credits; 2 hours
Schedule: Wednesday, 4:10 – 6:00pm
SUYRP/ Perspective Course

Part 1: Context and Perspectives

1. September 15: Introduction and Course Overview (Cook/Erdman)
2. September 22: The Empirical in RSH Law and Policy (Cook)
3. September 24: Perspectives in RSH Law (Cook) **RESCHEDULED CLASS**

Part 2: The Regulation of Reproductive and Sexual Health Care

4. September 29: Criminal Regulation (Cook)
5. October 6: Service Delivery Regulation (Erdman)
6. October 13: Regulation of Service Accessibility (Erdman)

Part 3: Equality and Non-Discrimination

7. October 20: Stereotyping as Discrimination: Sex/Gender (Cook)
8. October 27: Stigmatization as Discrimination: Health Status (Erdman)

Part 4: Access to Information


Part 5: Dignity, Bodily Integrity and Liberty

10. November 17: Bodily Integrity: Sterilization (Cook)
11. November 24: Torture and Other Inhuman and Degrading Treatment: Forced Pregnancy and Intimate Body Searches (Erdman)
12. December 1: Sexual Violence, Vulnerability and Empowerment (Erdman)
PART 1: CONTEXT AND PERSPECTIVES

1. September 15: Introduction and Course Overview (Cook/Erdman)

The texts for the course are:


*Updates: http://www.law.utoronto.ca/faculty/cook/ReproductiveHealth.html*

2009 Supplement

Writing Guide

2. September 22: The Empirical in RSH Law and Policy (Cook)


3. September 24: Perspectives in RSH Law (Cook)

A. Critical Perspectives on Sexuality, Gender and Race

Green Book: 14-18 (review).


B. Human Rights and Public Health Perspectives


PART 2: THE REGULATION OF REPRODUCTIVE & SEXUAL HEALTH CARE

4. September 29: Criminal Regulation (Cook)

A. General Principles

Green Book: 144-47, 236-238.

B. The Unborn Child and the Criminal Law


Bill C-484, An Act to amend the Criminal Code (injuring or causing the death of an unborn child while committing an offence), 2d Sess., 39th Parl., 2007 (1st reading, 21 November 2007).


See also: Child Protection Measures


C. HIV/AIDS Transmission


5. October 6: Service Delivery Regulation (Erdman)

**A. General Principles**

Green Book: 49-51, 128-135.

**B. Duty of Care: Condoms in Prisons**


*R. v. Secretary of State for the Home Department ex parte Glen Fielding* [1999] EWHC Admin 641 (High Court of Justice, Queen’s Bench).

**C. Service Provider Regulation: Emergency Contraception & Abortion**


6. October 13: Regulation of Service Accessibility (Erdman)

**A. General Principles**

Green Book: 187-194


A. Access to Legal Abortion


Family Planning Association of Northern Ireland v Minister For Health Social Services and Public Safety, [2004] NICA 39 (Court of Appeal).


B. Access to Essential Medicines and Maternal Health


PART 3: EQUALITY AND NON-DISCRIMINATION

7. October 20: Stereotyping as Discrimination: Sex/Gender (Cook)

A. General Principles

Green Book: 196-209; 469-477 (CEDAW Gen Rec. 24).

*Convention on the Elimination of All Forms of Discrimination against Women*, arts. 2(f), 5(a) and 12.

B. Gender Stereotyping and Abortion

*Gonzales v. Carhart*, 550 U.S. __ (2007); 127 S.Ct. 1610. Excerpt: Syllabus; per Kennedy (majority) at 1634-1635; per Ginsburg (dissenting) at 1647-1649 (United States, Supreme Court)


C. Gender Stereotyping and Conscientious Objection

Green Book: 139-142.


8. October 27: Stigmatization as Discrimination: Health Status (Erdman)

A. General Principles


B. Infertility

Green Book: 16-17, 30, 305-314.


See also: Evans v. Amicus Healthcare Ltd. [2004] E.W.C.A Civ. 727

C. HIV/AIDS

“India: Supreme Court denies right to marry for people living with HIV, then resiles from this conclusion” Courting Rights: Case Studies in Litigating the Human Rights of People Living with HIV. (Geneva: Canadian HIV/AIDS Legal Network and UNAIDS, 2006), 21-26.


PART 4: ACCESS TO INFORMATION


A. General Principles

Green Book: 109-113, 209-211

B. The Right to Seek, Receive and Impart Information

Open Door Counselling and Dublin Well Woman v. Ireland (1992), 15 EHRR 244 (European Court H.R.)


C. Information as Harm Reduction


PART 5: DIGNITY, BODILY INTEGRITY AND LIBERTY

10. November 17: Bodily Integrity: Sterilization (Cook)

A. General Principles

Green Book: 109-115. GB

B. Sterilization: Consent & Coercion

Green Book: 128-134 (Review), 238-240, 315-322. GB


C. Sterilization: Parens Patriae & Best Interests

Green Book: 118-119. GB


11. November 24: Torture and Other Inhuman and Degrading Treatment: Forced Pregnancy and Intimate Body Searches (Erdman)

A. General Principles

Green Book: 170-175.

B. Forced Pregnancy

Green Book: 352 (Last Paragraph)


C. Intimate Body Searches

Green Book: 298-304.


12. December 1: Sexual Violence, Vulnerability and Empowerment (Erdman)

A. Sexual Violence and Post-Exposure Prophylaxis (PEP)


B. Empowerment in the Female Condom

A. Kaler, “'It's some kind of women's empowerment': the ambiguity of the female condom as a marker of female empowerment” (2001) 52 *Social Science and Medicine* 783-796.
WRITING GUIDE: REPRODUCTIVE AND SEXUAL HEALTH LAW

Requirements:

- **Four Short Papers** analyzing reading materials from any **Four Seminar Parts**
  
  - Length: 1,563-1,875 words each, which is about 6-7 pages at about 250 words a page
  
  - Submission:
    - By **12pm on Monday** prior to the class in which the materials are to be discussed.
    - Under office door of professor responsible for the class.
    - Rebecca Cook: Falconer Rm 210; Joanna Erdman: Library Rm 3027.
    - Permission for electronic submission given only in exceptional circumstances.

- Short papers will be used in class to guide discussion of the materials. Students will be on-call and required to discuss their short papers.

- Graded short papers will be returned after class with comments.

**Objective: Active Reflection and Critical Engagement**

Short papers should actively reflect on and critically engage with an assigned reading (or any part of the reading). This may include a section from the Green Book, a case or an article. Do not summarize or describe the reading. Analyze the reading. Additional research is not required.

Short papers may:

- Question and reflect on the meaning and uses of language or concepts

- Examine how the reading reinforces or challenges hierarchies, constructions and relations in law and legal practice; how the reading positions reproductive and sexual health processes or functions, behavior or services in legal regulation

- Investigate the assumptions, values and interests (related to, for example, gender, race and ethnicity, or sexual orientation) underlying a position or argument

- Articulate conflicts, contradictions or uncertainties in the reading

- Compare and contrast interpretations or analytical methods with those in other readings

- Problematize the assumptions or analytic framework of the reading

- Apply the reading to a different context (e.g. geographical, social, political, clinical or health system) or critique the reading from a different perspective or within an alternative discourse (e.g. critical, feminist, development, economic, human rights, public health)
Assessment Criteria:

Short papers will be assessed on: analysis, structure, and style.

- **Analysis**: Clearly state at the outset, your thesis or argument. What is of utmost interest is not your conclusion, but your reasons for drawing your conclusion. You must back up all assertions with reasons.

  While it may be helpful to introduce the reading in your paper, your paper must go beyond description. You MUST analyze the reading and draw conclusions from your analysis.

  Be certain to canvas alternative positions and arguments in the course of your paper and to rebut these to the extent that they are inconsistent with your arguments.

  Use examples to illustrate your arguments. These may be cases, events, or hypothetical examples, where appropriate.

  Some degree of originality is important. You are expected to develop your own thoughts and analysis, and not describe the thoughts and analysis of others.

- **Structure**: Structure is essential to a clear and well-argued paper. You should include an introduction and a conclusion. You should outline your structure in your introduction.

  Arguments should be clear and logical and ideas should be linked coherently. Subheadings are useful in delineating structure and moving from one idea or argument to the next.

  Each paragraph should have something relevant to say about your thesis or argument. If it does not, ask yourself or try to explain why you have included that paragraph.

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

Citations and Referencing:

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”) or the Bora Laskin Law Library website.

All use of others’ language MUST be indicated in quotation marks and referenced. Use of others’ ideas should be fully referenced. Failure duly to acknowledge the work of others constitutes plagiarism and is a serious academic offence.

*Additional writing resources are available: www.utoronto.ca/writing.*