GENERAL INFORMATION AND COURSE SYLLABUS - PART I

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Summary of Course

This seminar course will address the controversial legal issues engendered by our increasing control over the beginning and end of life. The course will begin with an overview of the constitutional underpinnings that support fundamental rights, privacy and liberty. The first half of the course will focus on the law, regulation and policy implications of contraception, abortion, and the new reproductive technologies, including surrogate parenthood, sperm and egg donation, and in-vitro fertilization and other methods of conquering infertility. The second half of the course will consider patient autonomy issues at the end of life, including refusal and withdrawal of life support from both competent and incompetent patients, surrogate decision making, advance directives, and patient choice to hasten death with medical assistance beyond removal of life support (e.g., physician aid in dying). Classroom sessions will be used primarily for discussion of the assigned reading materials, which will include cases and articles from the medical and legal literature. Students will choose a paper topic related to the subject matter of the seminar and may use this paper to meet the substantial analytic writing requirement.

Required Texts

The Course Materials include several recent cases, articles, excerpts from books and other texts, and legislative/regulatory materials. The Course Materials will be available in two sets. Part One includes materials for the Winter Quarter (taught by Professor Kuszler) and Part Two
covers the Spring Quarter (taught by Professor Tucker). As this class is a seminar, the pace at which we cover the class readings will depend on the level of student participation--the dates provided in the syllabus are guidelines, and specific reading assignments will be identified at the end of each previous class.

**Class Participation**

The course will meet once a week for a two-hour discussion session. In a seminar course of this type, active participation by all of the parties is essential. While the professors will moderate and focus the seminar as necessary, it is anticipated that the subject material will generate spontaneous and vigorous discussion. *It will be imperative that you are prepared for the class, having read the materials and thought about the issues. Study questions are identified below to help focus your readings.*

**Course Grade**

Your course grade will be based upon (1) class participation (10%); and (2) a research paper focusing and elaborating upon a legal issue in the area of reproductive or end of life concerns (90%). Although the topic may be one of your choice, it must be approved by either Professor Kuszler or Tucker. You must submit a prospectus describing your research topic **on or before Wednesday, February 14, 2001.** You must also submit a first draft of your paper. The due date for the first draft will be negotiated with the professor who is supervising your paper. (A first draft should be as close to final as possible. An outline or a summary of your research is not acceptable for a first draft.) A discussion session with one of the professors about your draft submission is **required.** The final version of your research paper is due by 4:30 p.m., **Thursday, June 7, 2001.** This paper may satisfy your analytic writing requirement. The paper should be approximately 30 pages in length (double-spaced, 1 inch margins, 12 point type).

**Course Syllabus**

January 3

1. **Introduction** - *Professor Kuszler*

   A. General Overview of Course and its Requirements - *Professor Kuszler*
   B. Introduction to Part One of Course
   C. A short social history of reproduction

**Reading Materials:**

Video (to be shown in class):

- Roots of Roe

**PART ONE: BEGINNING OF LIFE**

January 10

II. **Social and Legal Foundations of Reproductive Autonomy - Professor Kuszler**

1. Brief Review of Constitutional Law
2. Is there a Right to Reproduce?
3. Personhood in the Eyes of the Law

**Reading Materials:**
- Roe v. Wade, 410 U.S. 113 (1973)

**Study Questions:**
Is there a right to reproduce? What is a person under the law? What does undue burden (Casey) mean? Examples? Describe the history (issues, key legal concepts) of cases leading up to Casey.

January 17

**Research in Health Law - Nancy McMurrer, Reference Librarian**

Attendance is required for this review of the methods and means of accomplishing multi-disciplinary research. The class will summarize the potential sources for research, focusing on on-line sources in law, medicine, bioethics and social sciences. Depending on class size, class will include hands-on computer learning. **Please bring your Lexis/Nexis and Westlaw passwords to class.**

**Reading Materials:** HANDOUTS IN CLASS

January 24

II. **Social and Legal Foundations of Reproductive Autonomy (continued) - Professor Kuszler**
4. State Interests in Reproduction and Preventing Conception
5. State Law and Regulation Concerning Abortion, including partial birth or late term abortion and emergency contraception
6. The Impact of New Technologies: Viability, RU 486

Reading Materials:
- Wash. Rev. Code Chapter 9.02, Abortion
- Ellen Goodman, Partial Birth Abortion Isn’t Medical Terminology
- David G. Savage, Justices End Term Angrily in Abortion Rulings on Procedure, Protest, ABA J., Aug., 2000
- Elena Protyansky Beyzarov, FDA Finally Approves RU-486: Some New Issues Emerging, Drug Topics, 2000 WL 9185646

Study Questions:
What are the state’s interests in reproduction and preventing conception? What has been the focus of abortion activity in the federal and state legislatures in the last year? What is the relevance of viability in legal and policy initiatives and can viability change over time? How have RU 486 and emergency contraception changed the abortion debate?

January 31

III. The Maternal-Fetal Relationship & Controls on Reproductive Autonomy - Professor Kuszler
A. Compulsory Contraception: Norplant
2. Court-ordered Cesarean Sections
3. Reproduction and Employment
   1. Toxic Workplace
   2. Pregnancy Discrimination

Reading Materials:
- Board of Trustees, American Medical Association, Requirements or Incentives by Government for Use of Long Term Contraception, 26 JAMA 1818 (1992)
Study Questions:
Can the state force a woman to use contraception to avoid the birth of children? If so, what are the states’ interests? Do the rights of pregnant women differ from non-pregnant women? Does the Constitution support such claims? Does such a claim change based on the gestational age of the fetus? Does a non-pregnant women have a right to work in an environment that might harm a fetus? Should all women be considered potentially pregnant?

February 7

III. The Maternal-Fetal Relationship & Controls on Reproductive Autonomy (continued) - Professor Kuszler

D. Criminal Law and Behavior during Pregnancy

Video (to be shown in class):

60 Minutes (Cracking Down 5/31/98)

Reading Materials:

Johnson v. State, 602 So. 2d 1288 (Sup. Ct. Fla. 1992)


Memorandum to Interested Parties from Lynn Paltrow, The Center for Reproductive Law and Policy, and Susan K. Dunn, Esq. re: Facts concerning the Interagency Policy on Cocaine Abuse in Pregnancy Adopted by the Medical University of South Carolina (Oct. 18, 1995)


Excerpts from Statements by Public Health and Public Advocacy Groups
Study Questions: How would you develop a fair policy to prevent the birth of cocaine addicted babies? What information or research is needed to support such a policy? What options does a state legally have to address this issue? Who should decide what the appropriate policy should be?

February 14

III. The Maternal-Fetal Relationship & Controls on Reproductive Autonomy (continued) - Professor Kuszler

5. Reproduction, Women’s Health and Human Subjects Research

IV. Assisted Reproduction, and the Legal Definition of Parentage and its Implications - Professor Kuszler

1. Introduction to infertility and assisted reproduction

Reading Materials:


Video (to be shown in class):

- Infertility Northwest Focus, KCPQ-TV Seattle/Tacoma 2/18/96

Study Questions: Why may research participation benefit women’s health? What are the barriers to women’s participation? What reasons are given for excluding women from participation in research? Pregnant women? Potentially pregnant women? Can the reasons withstand constitutional scrutiny? What is infertility and how prevalent is it? What medical techniques are available to address infertility?

Reminder: paper topics due

February 21
IV. Assisted Reproduction, and the Legal Definition of Parentage and its Implications (continued) - Professor Kuszler

2. Were are the answers (e.g., property, contract, family, constitutional law) and what are the implications?
   1. Gamete Donation
   2. In vitro fertilization

Reading Materials

- Davis v. Davis, 842 S.W. 2d 588 (Supp. Ct. Tn. 1992)
- Uniform Status of Children of Assisted Conception Act
- Litowitz v. Litowitz, 2000 WL 1727411 (Wash App Div.2)

Study questions: Under the law, what is a mother, a father, a family? What law generally controls parentage in cases of assisted reproduction—property, contract, family? Is there consensus among the states?

February 28

IV. Assisted Reproduction, and the Legal Definition of Parentage and Its Implications (continued) - Professor Kuszler

B. Where are the answers (e.g., property, contract, family law) and what are the implications? (continued)

3. Surrogacy Arrangements

Reading Materials:


Study Questions: How many parents could a child have under a surrogacy
arrangement? What is commodification and what does it mean in the context of surrogacy? Who are the parties to a surrogacy contract and why? What are the key provisions in such a contract? How might such a contract fail? Should such agreements be void or voidable as a matter of public policy? Should the best interests of the child be a consideration in parentage determinations?

March 7

22. Implications of Exercising a Right to Procreate in the Era of New Reproductive Technologies - Professor Kuszler

A. Access to New Reproductive Technologies (including commercialization, statutory prohibition, medicalization, marital status, age, public funding, infertility as disease or disability)

2. Byproducts of the New Reproductive Technologies and Issues of Consent and Disposal (including posthumous reproduction, misconduct and provider liability, professional responsibility and ethical guidelines, transmission of disease, sex selection)

3. What about Cloning?

Video (to be shown in class):

. Hecht Interview, Today Show, February 1997

Reading Materials:

. Harnicher V. Univ. of Utah, 962 P.2d 67 (Utah 1998)
. Stiver v. Parker, 975 F.2d 261 (6th Cir. 1992)
. Materials from the Sperm Bank of California
. Materials from the Center for Surrogate Parenting
. Materials from *Reproductive Associates
. Sex Selection / Docs find Way to Choose Gender Before Artificial Insemination Newsday, (December 14, 1995)
. Ian Wilmut, Cloning for Medicine, Scientific American, Dec. 98, at 58.
Study Questions: Should the practice of assisted reproduction be regulated at the state/federal level or should the practice be left to guidance by professional organizations? Why or why not? Should this technology be available to any one who wants it, including individuals who are not infertile?
PART TWO: END OF LIFE

March 30, April 6

I. Whose Body and Life is it Anyway? - Professor Tucker

1. Introduction to principles pertinent to patient decision making regarding the end of life.
2. Principles of bodily autonomy, informed consent, liberty and privacy interests.
4. Surrogate decision-making

Reading Materials:
- Union Pacific v. Botsford, 141 U.S. 250 (1891)
- R. Dworkin, Life’s Dominion, Ch. 7 & 8
- In re Grant, 109 Wash. 2d 545, 747 P.2d 445 (1987)
- Bouvia v. Superior Court, 225 Cal Rptr. 297 (1986)
- Washington Surrogacy Statute RCW 7.70.065
- Washington Natural Death Act RCW 70-122

April 13, 20, 27

II. Beyond Resisting Invasion: Inviting Medical Behavior That Brings About Death - Professor Tucker

1. Withdrawal of Treatment

Reading Materials:
- Cruzan v. Mo. Dept. of Health, supra
- In re Grant, supra
- Bouvia v. Superior Court, supra

Study Questions: What does the medical provider actually do? What supports this action in legal precedent? What risks are posed? What safeguards are/should be observed? Should the safeguards be the same as those utilized in other medical action that brings about death? Differ?

2. Terminal Sedation
Reading Materials:


Study Questions: What does the medical provider actually do? What supports this action in legal precedent? What risks are posed? What safeguards are/should be observed? Should the safeguards be the same as those utilized in other medical action that brings about death? Differ?

Reminder: First draft of paper due

A. Lethal Dose

Reading Materials:

Washington Assisted Suicide Statute, RCW 9A.36.060

Compassion in Dying v. Washington, 79 F. 3d 790 (CA9 1996) (en banc) and 117 S. Ct. 2258(1997)

Quill v. Vacco, 80 F. 3d 716 (CA2 1996) and 117 S. Ct. 2293(1997)


J. Robertson, Respect for Life in Bioethical Dilemmas-The Case of Physician Assisted Suicide, 45 Cleveland State L. Rev. 329-343 (1997).


Study Questions: What does the medical provider actually do? What supports this action in legal precedent? What risks are posed? What safeguards are/should be observed? Should the safeguards be the same as those utilized in other medical action that brings about death? Differ?

May 4, 11

III. Exploration of Diverse Perspectives Regarding Physician Assisted Dying: Amicus Participation in Glucksberg and Quill - Professor Tucker
May 18, 25, June 1

IV. In The Wake of Glucksberg and Quill - Professor Tucker

1. State Court Recognition of a Constitutional Right

Reading Materials:
- Robert Williams, In the Glare of the Supreme Court, 72 Notre Dame L. Rev. 1015 (1997)
- Krischer v. McIver, 697 So. 2d 97 (1997)
- Sampson v. State (in progress)

2. State Legislative Reform. Threats to Legislative Reform

Reading Materials:
- Oregon Measure 16
- Quill, Care of the Hopelessly Ill, Proposed Clinical Criteria for Physician Assisted Suicide, 327 New Eng. J. Med. 1380
- Lee v. Oregon (CA 9, Feb. 1997)
- The Lethal Drug Abuse Prevention Act (LDAPA), Senate Bill 2151, House Bill 4006 (1998 session)
- Media coverage of LDAPA (handouts)

3. Leveraging Quill and Glucksberg: A constitutional right to palliative care

Reading Materials:

**BOOKS ON RESERVE AT GALLAGHER:**


