



Osgoode Professional Development Programme

Comparative Health Law (LAWH 6865)

Osgoode Hall Law School

Professor Ireh Iyioha, Ph.D.

York University

Summer 2024

Course Number and Title:

Comparative Health Law – LAWH 6865

Term:

Summer 2024

Prerequisite / Co-requisite:

NA

Course Instructor

Dr. Irehobhude O. Iyioha ('Ireh Iyioha')

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University of Alberta

Time and Location

Thursday June 4 (7pm-10pm EDT)

Friday June 5 (10am-6pm EDT)

Saturday June 6 (10am-6pm EDT)

Location

Online via Zoom:

PLEASE PROVIDE LINK

Summer 2024

Osgoode Professional Development
Osgoode Hall Law School, York University

Course Description

How does the behaviour of powerful nations, such as USA and China, impact the functioning of both the World Health Organization and public health care in Canada? In what ways do concepts of “rights” and “obligations” differ as between Western nations and China where the concept of *citizen rights*, rather than *human rights*, holds sway? What connections are there between the idea of “love” as a political discourse and a cornerstone of citizens’ obligation to law in China and China’s management of the COVID-19 pandemic? What impact, if any, does such an approach to pandemic management have on the rest of the world? How effective are international agreements, such as the International Health Regulations, 2005 (IHRs), in fostering global solidarity and cooperation in public health emergencies and in engendering the sharing of health data across nations? Is a global pandemic treaty—which is likely to replace the IHRs—necessary to curb the next public health emergency?

These fascinating questions are some of the issues that students will engage with in LawH 6865. The course will introduce students to the legal and ethical rules governing health law in selected jurisdictions around the world. Students will gain critical insights into the nature, merits, and limits of comparative legal studies and be able to critique the rules and debates around contentious issues in health law internationally, including artificial intelligence, new frontier technologies, abortion, medical negligence, pandemics, cannabis decriminalization and regulation, and health rights in a time of war. The course will provide students with the tools to understand the factors—social, cultural, economic, political and historical—that influence how different societies address similar challenges in their healthcare systems. The course will guide understanding of how law’s interaction with these factors creates different legal outcomes and the ways in which a comparative perspective sheds light on this interface. Attention will be paid to the role of law and its limits in the healthcare of racialized and marginalized populations. This will involve an introduction to rich and important theoretical perspectives applicable within the field of comparative health law. Selected readings include caselaw, academic articles, textbook chapters, and statutes drawn from Canada and foreign jurisdictions.

Course Objectives

This course is designed to ensure that you are able to:

1. Understand and articulate the legal rules and basic principles, including common law and statutory principles, governing healthcare practice in Canada and comparative jurisdictions around the world.
2. Articulate the application—or limitations to the applicability—of these legal rules and principles to innovations in the field, such as advancements in the use of new frontier technologies in medical research and practice.
3. Understand the methods of comparative legal analysis to be able to discuss and critique the rules, policies and debates around contentious issues in health law and policy, including public health law, artificial intelligence, medical negligence law, and Cannabis law and policy, among others.
4. Acquire the skills to conduct a comparative health law analysis and assess the benefits and limits of the comparative approach to health law and policy, as well as within other areas of legal studies.
5. Understand and articulate the cultural and moral influences that underlie the development of health law and policy, especially in the context of women’s healthcare in Canada and selected jurisdictions internationally.

6. Critically assess the limits of law in healthcare access and delivery specifically, and more broadly within most legal fields where legal interpretation and adjudication embody the dichotomies between liberal and conservative schools of thought.
7. Understand and articulate relevant critical theories that provide important insights into the limits of law within the field of health law and policy generally and, specifically, comparative health law and policy.

Teaching Methodology

Students are expected to complete the assigned readings for each topic as classes will be conducted through interactive debates, group discussions, guest lectures and/or guest panels—all requiring preparation for an in-depth understanding of the issues. As part of the overall design of the class and with the goal of reducing tedium, we will break up the routine between introductory lectures, guest lectures and class discussions through assigned videos, some of which will be viewed in class. Success in this course will weigh heavily on class attendance and preparation through the completion of readings and other assigned materials for the course.

Materials and Resources

Mandatory Texts

There are no mandatory texts for this course. The materials we will study include articles, book chapters, and reports. Links are provided in the syllabus below. Where available, links to mandatory articles and supplementary judicial decisions and readings are included in this syllabus. Others can be accessed electronically on the Osgoode Hall Learning Management System.

Please note that the reading list may be supplemented or condensed and the class schedule may be altered during the course as may be necessary to ensure progress through the materials and to meet the course objectives.

Recommended Texts

- i. J. Erdman et al., *Canadian Health Law and Policy*, 5th ed (LexisNexis, 2017).
- ii. Irehobhude O. Iyioha, ed., *Women's Health and the Limits of Law: Domestic and International Perspectives* (Abingdon, UK: Routledge, 2020).

Supplementary Materials

Where available, PowerPoint slides and other relevant supplementary course materials will be available on the Osgoode Hall Learning Management System.

Evaluation and Due Dates

a. Option A: Exam

Students will be evaluated based on a take-home examination (100%). The exam likely will provide you with an opportunity to consider the utility of a comparative analysis and/or to employ a comparative analysis, keeping in mind the strategies, risks and benefits of comparative analyses discussed in the course.

Your exam will be assessed considering a range of factors, including one or more of the following:

1. The quality of writing, including: Presentation and style, including clarity of expression, grammar, spelling and format;
2. The organization of your response, including the coherence and structure of your argument and/or response to the questions set;
3. Your ability to demonstrate knowledge of the law and of the policy debates relevant to the issues raised by the questions set;
4. Your ability to demonstrate knowledge about the full range of techniques, benefits and risks associated with various comparative approaches along with an appreciation for the specific techniques, risks and benefits for comparative approaches raised by the questions set;
5. The persuasiveness of your analysis, including the appropriateness of your use of cases, legislation, or other authority (including health or policy-related research) and your use of judgment, including your capacity for critical analysis and reasoned argument in support of your response, while taking into account other views;
6. Appropriate referencing, including ensuring that the work of others is appropriately acknowledged through, for example, the use of footnotes to indicate sources of ideas and appropriate annotations indicating direct quotations and paraphrasing. References to sources found in the course materials may be abbreviated by providing a short form author, title and/or case name along with a page reference to the course materials; and
7. Time management in, e.g., balancing your response to questions (where relevant).

Take Home Exam	
WEIGHT	<i>100%</i>
DATE DISTRIBUTED	July ..., 2024
DUE DATE	July ..., 2024 at 11:59PM (EST) submitted through eClass
ONE WEEK GRACE PERIOD	July ... by 11:59PM EST– Submitted via eClass If you require more time, please submit a request before the due date via the Student Academic Request Form
DESCRIPTION	<i>See Below</i>
EVALUATION CRITERIA	<i>See below</i>

b. Option B: Significant Research Paper (100% of Final Grade)

SIGNIFICANT RESEARCH PAPER (SRP)

Papers will provide students the opportunity to consider the utility of a comparative analysis and/or to employ a comparative analysis, keeping in mind the strategies, risks and benefits of comparative analyses discussed in this course.

WEIGHT

100%

DATE DISTRIBUTED

Students who elect to write a Significant Research Paper in this course must notify the instructor as soon as possible to secure permission and topic approval. A maximum of 3 SRPs will be approved by the instructor, and approval will be done on a first-come, first-served basis and based on the instructor's core subject-matter expertise.

DATE DUE

- Topic proposals must be submitted to the instructor for approval via the e-Class page of the course by **June 3, 2024 by 23:55 (Toronto Time)**.
- A detailed paper proposal, outlining the proposed topic,

thesis, main arguments, and bibliography, must be submitted for approval via the e-Class page of the course by **June 17, 2024 by 23:55 (Toronto Time)**.

- The final paper is due on **July 25, 2024 by 23:55 (Toronto Time)**. It must be submitted via the e-Class page of the course.

DESCRIPTION

An SRP must always be an original research paper of 8,000-9,000 words. Word counts include the body of the paper and footnotes, but exclude the cover page, bibliography, executive summary, or any other parts or documents. Students must include the word count on the cover page of their paper. Papers with word counts falling outside the specified range will receive a failing grade as they do not meet the requirements for the assignment. Your paper should be double spaced with 1” margins and in Times New Roman, size 12 font. **Also ensure that your paper complies with the Canadian Guide to Uniform legal Citation (McGill Guide).**

Please review the Research Requirement module on the MyOsgoodePD Student Portal for more information about the requirements of a Significant Research Paper.

EVALUATION CRITERIA

Assignment will be evaluated based on the following factors: 30% allocated to quality and thoroughness of the research, 50% to quality of the analysis and conclusions, and 20% to the writing style and correctness.

Once you have received a final grade on your SRP, please notify the program via the [Research Requirement Form](#).

Academic Policies

Assignment Submissions & Course Extensions

OsgoodePD is committed to promoting academic success and ensuring that students' academic records ultimately reflect their academic abilities and accomplishments.

Students are expected to submit assessments on or before the assigned due dates. However, we recognize that exceptional and unexpected events or illnesses might impair your ability to meet coursework submission deadlines.

These procedures are subject to any necessary modifications required for students who have a letter of accommodation from Student Accessibility Services.

The overarching principle for course extensions or exam deferrals is that they are based on exceptional and/or unexpected circumstances (for example, medical or mental health grounds, death in the family, unforeseen commitments, other extenuating circumstances beyond the student's control). Typically, workload reasons are not considered to be exceptional circumstances.

Grace Period for Major Assessments

A Major Assessment is defined as a single assessment that constitutes the majority of the basis for a course grade. Most courses with a single assessment worth at least 51% of the final grade automatically grant a two-week grace period after the deadline to submit that assessment. **It is your responsibility to review course outlines to determine if there is a grace period.** You do not have to specifically request this extension. Simply submit your work via Moodle as you normally would within two weeks of the assessment's deadline.

Although there is no academic penalty for making use of the grace period, receipt of your final grade may be delayed. If this is your final course in the program, you are encouraged to speak with your Graduate Program Assistant before making use of the grace period.

The two-week grace period does not apply to any assessment worth less than 51% of the final grade of a course, and does not apply to invigilated exams. It is your responsibility to carefully review the course outline for each course to determine whether a grace period applies to an assessment.

Requests for Extension Beyond the Grace Period or Assessment Deadline

In exceptional circumstances, an extension beyond the due date of an assessment, or the grace period of a Major Assessment (as defined above), may be required. You may request an extension using the [Student Academic Request Form](#). This request must be made before the due date of the assessment (or the end of the grace period, if applicable).

All extension requests must be made through the [Student Academic Request Form](#). To ensure consistency and fairness across specializations, extensions are granted at the discretion of the program manager and not by individual instructors. The program will review extension requests weekly up until the business day after the assessment deadline (or end of the grace period, if applicable).

Extensions beyond the assessment deadline (or end of the grace period, if applicable) will be granted on a case-by-case basis. Extension deadlines will be considered final deadlines -- if work is not submitted by the approved extension deadline, the non-submission policy below will apply.

Blank Grades / Non-Submissions

If you do not submit work for a course or appear for an exam and have not requested a course withdrawal or extension/deferral, we will assume that you are unable to complete the work for the course and a grade of "W" (to indicate late withdrawal) will be posted. If the outstanding work is worth 30% or less of the final grade for a course, you will be awarded no marks for that portion of the course work (i.e. a value of '0' will be recorded for that portion of your overall grade).

IMPORTANT COURSE INFORMATION FOR STUDENTS

All students are expected to familiarize themselves with the Program's policies which can be found on [MyOsgoodePD](#). Further information on policies affecting graduate students can be found in York University's Faculty of Graduate Studies' Faculty Regulations <http://gradstudies.yorku.ca/current-students/regulations/>).

Video and Audio Lecture Capture

OsgoodePD policy regarding access to video recordings of courses is available on [MyOsgoodePD](#).
[MyOsgoodePD](#).

Academic Honesty and Integrity

All students are required to maintain high standards of academic integrity and are subject to York University's Senate Policy on Academic Honesty and the Faculty of Graduate Studies' Procedural Guidelines on Academic Honesty:

1. <http://www.yorku.ca/univsec/policies/document.php?document=69>
2. <http://gradstudies.yorku.ca/current-students/regulations/academic-honesty/>
3. <http://gradstudies.yorku.ca/files/2014/06/academic-honesty-guidelines.pdf>

York University has developed resources on academic honesty, which all students are expected to review: <http://www.yorku.ca/academicintegrity>

As an investigative aid and for random checks, OPD utilizes the text matching tool "Turnitin" and follows the guidelines of York University found at: <http://www.yorku.ca/academicintegrity/textmatching-guidelines.html>

Accessibility

York provides services for students with disabilities (including physical, medical, learning and psychiatric disabilities) needing accommodation related to teaching and evaluation methods/materials. Additional information is available at <http://accessibility.students.yorku.ca/>.

Ethics Review Process

All Osgoode students are required to abide by the *Osgoode Hall Law School Procedures for Ethics Review of Student Research Involving Human Participants* as well as York University's policy (<http://gradstudies.yorku.ca/current-students/thesis-dissertation/research-ethics/>). "Research" includes questionnaires, interviews and surveys. For more information, please see the full details of the Procedures.

Religious Observance Accommodation

York University is committed to respecting the religious beliefs and practices of all members of the community, and making accommodations for observances of special significance to adherents. Should any of the dates specified in this Course Outline pose a conflict for you, please advise your Instructor as early as possible.

Attendance Policy

Student participation in class discussions and group work is a critical part of the Professional LLM program. You are expected to attend all classes and note your attendance using the sign-in sheet (note that if you're attending via video conference you'll automatically be signed in for each class).

We understand that you may occasionally need to miss class for legitimate reasons (medical emergencies, illness, religious observation; choosing two courses with conflicting schedules does not constitute an unavoidable absence). You are responsible for catching up on any missed material. However, if you will be absent for more than 25% of the course, we recommend that you consider withdrawing because you will be at a disadvantage in mastering the course material.

Students who miss 50% or more of a course will be withdrawn from the course (grade of "W" posted) for inadequate attendance and will not be permitted to sit the final exam / submit the final paper. Under no circumstances will a student who misses 50% or more of a course be permitted to complete the course.

Note that altering sign-in sheets or signing in for anyone other than yourself is considered to be a breach of the [Senate Policy on Academic Honesty](#) and is subject to penalty under this policy.

Grading

The only letter grades that are permitted by the Faculty of Graduate Studies are the following: A+, A, A-, B+, B, C and F.

LIST OF TOPICS AND GUEST SPEAKERS

Part I: Introduction

1. Introduction and General Overview

Part II: Health Systems Governance

2. Global Health, Human Rights and International Health Law and Policy
3. Health Systems Governance and the Financing of Healthcare

Part III: Regulating Healthcare Services

4. Regulation of Medical Service Providers [[Dr. Roy Beran, MBBS, MD, FRACP, President, World Association for Medical Law – Australia](#)]
5. Medical Negligence
6. Informed Decision-Making

Part IV: Regulating Reproduction

7. Law and Reproduction

Part V: Artificial Intelligence and New Frontier Technologies

8. Regulating Artificial Intelligence: Domestic and International Contexts [[Professor Jake Effoduh, Lincoln Alexander School of Law](#)]

Part VI: Healthcare Rights, Equity and Population Health

9. Human Rights and Social and Legal Determinants of Health: Human Rights, Discrimination and Healthcare Law: Critical Intersections [[Hon. Patricia DeGuire, Chief Commissioner, Ontario Human Rights Commission](#)].
10. Disasters and Public Health Emergencies
 - a. Disasters and Public Health Emergencies: Canadian and Comparative Perspectives [[Professor Uche Ugwaba, Lincoln Alexander School of Law and Man Teng Iong, Senior Instructor and Programme Coordinator, Faculty of Law, University of Macao, China](#)].
 - b. Proposed International Agreement Post-COVID (Pandemic Treaty)
 - c. Public Health, Cannabis and the War on Drugs [[Paul Pedersen, Co-Founder, Bluenose Labs and Co-Founder and former CEO, NextLeaf – Canada](#)].
11. War, Population Health and International Humanitarian Law
 - a. The Right to Health in Times of War [[Professor Radmyla Hrevtsova, Governor for Ukraine, World Association for Medical Law](#)].
 - b. Medical Neutrality

Part VII: Learning from Theories: The Importance of Critical Theories in Healthcare Law Practice

12. Comparative Health Law through Critical Legal Perspectives

Preparing for Exam & Papers: Discussions, questions, and answers

Detailed syllabus—with *Student Learning Outcomes (SLOs)*—follows below

COMPARATIVE HEALTH LAW SEMINAR

SYLLABUS – SUMMER 2024

PART I: Introduction

1. Introduction and General Overview [Thursday July 4 (7-7:30pm EST) | (4-4:30pm PST)]

♣ Student Learning Outcomes

- Understand Course Objectives, Course Expectations, and Evaluation

Outline, Cases and Materials: No readings for this aspect of the class

- Introduction
- Course Objectives, Course Expectations, and Evaluation
- About this Course: Content and Scope

Part II: Health System Governance

2. Global Health, Human Rights and International Health Law and Policy [Thursday July 4 (7:30-8:30pm EST) | (4:30-5:30pm PST)]

♣ Student Learning Outcomes

- Articulate the relationship between global health law, human rights and international health law and policy.
- Explain the nature of comparative legal analysis, especially within the healthcare context.

Outline, Cases and Materials

- Introduction to Comparative Health Law:
 - Global Health, Human Rights and International Health Law and Policy:
 - Office of the UN High Commissioner for Human Rights, “[The Right to Health in International Human Rights Law](#),” Fact Sheet No. 31 (June 2008), **Read only Pages 9-11**.
 - WHO, Fact Sheet, “[Health and Human Rights](#)” (August 2007).
 - [Canada, Canada’s Human Rights Commitments](#)
 - Lawrence O. Gostin & Devi Sridhar, “[Global Health and the Law](#),” 370 (18) N. Eng. J. Med. 1732 (2014).

Supplementary Reading

- Lawrence O. Gostin and Eric A. Friedman, “Global Health: A Pivotal Moment of Opportunity and Peril” (2017) 36(1) Health Affairs 159:
<https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2016.1492>

B. The Nature of Comparative Analysis:

- i. Ted Marmor, Richard Freeman and Kieke Okma, “Comparative Perspectives and Policy Learning in the World of Health Care, (2005) 7 J. of Comparative Pol’y Analysis 331 (Available on Brightspace).
- ii. Ted Marmor, Richard Freeman and Kieke Okma, “[Comparative Studies and Healthcare Policy: Learning and Mislearning across Borders](#)” Clin Med (Lond). 2013 Oct; 13(5): 487–491.

3. Health Systems Governance and Financing: Canada and the USA [Thursday July 4 (8:30-9pm EST) | (5:30-6pm PST)]

♣ **Student Learning Outcomes**

- Explain the nature of governance and financing of the Canadian health system.
- Articulate the structure of the American health system and the role of law in shaping the system.
- Compare and contrast key features of the American and Canadian healthcare systems.

Outline, Cases and Materials

- A. The Role of Law in Shaping Healthcare in the United States:
 - i. Kathleen S. Swendiman, “Health Care: Constitutional Rights and Legislative Powers”: <https://fas.org/sgp/crs/misc/R40846.pdf>.
- B. *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012) – Summary Discussion.
- C. *California et al. v. Texas et al.*, 593 US (2021) – Summary Discussion
- D. CNBC, “How Canada’s Universal Health-Care System Works”: <https://www.youtube.com/watch?v=heK471H-s1s>
- E. ABC, “Side-by-side: How do the U.S. and Canadian healthcare systems compare”: <https://www.youtube.com/watch?v=WILekFZYGEA>
- F. The Story of the Affordable Care Act: From an Unmet Promise to the Law of the Land: <https://www.youtube.com/watch?v=P9LTAageny0>

Supplementary Reading:	
a. Health Governance and Financing in Canada:	
i.	Gregory P. Marchildon, “Canada: Health System Review 2020” in <i>Health Systems in Transition</i> (WHO Report, 2020) at 60-79. https://apps.who.int/iris/bitstream/handle/10665/336311/HiT-22-3-2020-eng.pdf?sequence=1&isAllowed=y .
ii.	Joanna Erdman, et al., <i>Canadian Health Law and Policy</i> (LexisNexis, 2017), pp. 56-66 and 71-90.
b. The Affordable Care Act:	
i.	Davalon, “ Understanding the Affordable Care Act: A Comprehensive Guide ” (August 16, 2023).

ii. Angelo Ercia, “ The Impact of the Affordable Care Act on Patient Coverage and Access to Care: Perspectives from FQHC Administrators in Arizona, California and Texas ” (2021) 21:920 BMC Health Services.
iii. Bruce Porter, “A Right to Health in Canada? Only if you can pay for it” (2005) 6:4 ESR Review 8: https://www.socialrights.ca/Publications/porter_a_right_to_healthcare_only_if_you_can_pay.pdf
iv. Martha Jackman, “The Application of the Canadian Charter in the Healthcare Context” 9 <i>Health Law Review</i> 22-26: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2578206
v. Mark A. Hall, “The Role of Courts in Shaping Health Equity” <i>J Health Polit Policy Law</i> (2017) 42 (5): 749–770 https://read.dukeupress.edu/jhpl/article/42/5/749/131411/The-Role-of-Courts-in-Shaping-Health-Equity
vi. <i>Chaoulli v. Quebec (Attorney General)</i> : Summary Discussion.
vii. <i>Cambie Surgeries Corporation v. British Columbia</i> [2020 BCSC 1310].

Part III: Regulating Healthcare Services, AI and New Frontier Technologies

4. Regulating Medical Service Providers in Comparative Contexts [Dr. Roy Beran, President, World Association for Medical Law] – Thursday July 4 (9-10pm EST) | (6-7pm PST)

♣ Student Learning Outcomes

- Explain the meaning and goals of regulation.
- Explain the promises and problems of professional self-regulation.
- Explain the structure of regulation in the USA, UK, Australia and Canada.

Outline, Cases and Materials

- A. Cyril Chantler & Rebecca Ashton, “The Purpose and Limits to Professional Self-Regulation” (2009) 302:18 *JAMA* 2032.
- B. Robert I. Field, “Regulation of Healthcare in the United States: Complexity, Confrontation and Compromise” (Available on Brightspace).
- C. Lewis Pickett, “[Professional Regulation in Health and Social Care](#)”
- D. Fiona McDonald & Stephen Duckett, “[Regulation, Private Health Insurance, and the Australian Health System](#)”.

Supplementary Readings

- a. Michael J. Trebilcock, “Regulating the Market for Health Services” (2008) 45:5 *Alta. L. Rev.* 215.

b. Margot Priest, “The Privatization of Regulation: Five Models of Self-Regulation” (1997-1998) 29:2 Ottawa L. Rev. 233: https://rdo-olr.org/wp-content/uploads/2018/01/olr_29.2_Priest.pdf

c. Margot Priest, “The Privatization of Regulation: Five Models of Self-Regulation” (1997-1998) 29:2 Ottawa L. Rev. 233: https://rdo-olr.org/wp-content/uploads/2018/01/olr_29.2_Priest.pdf

5. Regulating Artificial Intelligence: Domestic and International Contexts [Professor Jake Effoduh, Assistant Professor, Lincoln Alexander School of Law, TMU, Canada] – Friday July 5 (10-11am EST | (7-8am PST) – Asynchronous/independent learning

• Student Learning Outcomes

- Explain Artificial Intelligence and Big Data.
- Identify the legal, ethical, regulatory, and human rights issues associated with the use of AI in healthcare research and practice internationally.
- Articulate the ways in which the use of AI in healthcare decision-making can exacerbate vulnerabilities and marginalization.

Outline, Cases and Materials

A. Video on Artificial Intelligence by Professor Jake Effoduh:

- What is Artificial Intelligence and Big Data?
- Regulating Artificial Intelligence: Domestic and International Contexts
- Artificial Intelligence and Human Rights Challenges

B. Jude D. Kong, K. Fevrier, J.O. Effoduh, & N.L. Bragazzi, “Artificial Intelligence, Law, and Vulnerabilities” in *AI and Society* (Chapman and Hall/CRC, 2023) at 179-196 (Available on Brightspace).

C. David Leslie et al., “[Does ‘AI’ Stand for Augmenting Inequality in the Era of COVID-19 Healthcare?](#)” (2021) 372:304 *BMJ* 1-5.

D. Kate Crawford and Ryan Calo, “[There is a Blind Spot in AI Research](#)” (October 20, 2016) 538 *Nature* 311 at 311.

11-12pm EST – Break

6. Medical Negligence [Friday July 5 (12-1pm EST) | (9-10am PST)]

• Student Learning Outcomes

- Articulate the elements of an action in medical negligence.
- Identify the grounds for institutional liability in medical negligence law in Canada, US, and the UK.

Outline, Cases and Materials

A. Overview of the law of medical negligence in Canada: Lorian Hardcastle “Medical Negligence” (Chapter 12) in Joanna Erdman et al., *Canadian Health Law and Policy* (Lexis Nexis, 2017).

- B. B. Sonny Bal, “[An Introduction to Medical Malpractice in the United States](#)” (2009) 467 Clin Orthop Relat Res 339–347.
- C. Richard Goldberg, “[Medical Malpractice and Compensation in the UK](#)” (2012) 87 Medical Malpractice and Compensation in the UK Chi.-Kent L. Rev. 131.

Supplementary Reading:
a. Joanna Erdman, et al, eds, <i>Canadian Health Law and Policy</i> (LexisNexis, 2017) pp. 305-322.
b. Robert B. Leflar, “ The Law of Medical Misadventure in Japan ” (2012) 87 Chi.-Kent L. Rev. 79.
c. Zhu Wang & Ken Oliphant, “ Yangge Dance: The Rhythm of Liability for Medical Malpractice in the People’s Republic of China ” (2012) 87 Chi.-Kent L. Rev. 21.
d. Michael J. Saks and Stephan Landsman, “The Paradoxes of Defensive Medicine” (2020) 30 Health Matrix 25: https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1646&context=healthmatrix

7. Informed Decision-Making [Friday July 5 (1-2pm EST) | (10-11am EST)]

• Student Learning Outcomes

- Define the principle of Informed Consent and its elements.
- Explain the nature and scope of the duty to disclose.
- Articulate the standard disclosure set out in *Reibl v. Hughes* and *Hopp v. Lepp*
- Explain the challenges with establishing causation in the context of breach of the informed consent principle.

Outline, Cases and Materials

- A. *Reibl v. Hughes* [1980] SCJ No 105 (QL).
- B. Lydia A Bazzano and Paula Rhode Brantley, “[A Modern History of Informed Consent and the Role of Key Information](#)” (2021) 21(1) Ochsner J. 81–85.
- C. John G. Culhane, King-Jean Wu, Oluyomi Faparusi, Eric J. Juray, “[Toward a Mature Doctrine of Informed Consent: Lessons from a Comparative Law Analysis](#)” (2012) 1 Brit. J. Am. Legal Stud. 551.

Supplementary Reading
a. Constance MacIntosh, “Relational Theory and Indigenous Health: Insights for Law Reform and Policy” in J.G Downie and J.J Llewellyn, <i>Being Relational: Reflections on Relational Theory and Health Law and Policy</i> (Vancouver: UBC Press, 2012).
b. John G. Culhane, King-Jean Wu, Oluyomi Faparusi, Eric J. Juray, “Toward a Mature Doctrine of Informed Consent: Lessons from a Comparative Law Analysis” (2012) 1 Brit. J. Am. Legal Stud. 551: https://bcuassets.blob.core.windows.net/docs/BJALS-Issue-2.pdf
c. J. Christman, “ Relational autonomy, liberal individualism, and the social constitution of selves ” (2004) 117(1/2) Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition 143-164.

Part IV: Healthcare Rights

8. Human Rights and Social and Legal Determinants of Health: Patricia DeGuire, Chief Commissioner, Ontario Human Rights Commission [Friday July 5 (2-3pm EST) | (11am-12pm PST)]

• Student Learning Outcomes

- Articulate the social determinants of health.
- Explain the role of law as a negative health determinant and as a negative influence on other health determinants, and the role of law as a positive determinant of health.
- Explain the intersections of discrimination and racism and individual health and healthcare rights.
- Articulate how human rights law and anti-racist practices can advance healthcare rights.
- Articulate the limits of human rights law in the context of healthcare rights.

Outline, Cases and Materials

- A. Human Rights, Discrimination and Healthcare Law: Critical Intersections
- B. Lawrence O Gostin et al., “[The Legal Determinants of Health: Harnessing the Power of Law for Global Health and Sustainable Development](#)” (2019) 393:10183 *The Lancet Commissions*.
- C. Wendy E Parmet, “[Immigration Law as a Social Determinant of Health](#)” (2020) 92:4 *Temp L Rev* 931.
- D. Harvard Medical School, *Health Blog*, “[Racism and Discrimination in Health Care: Providers and Patients](#)”.
- E. Joshua G. Rivenbark & Mathieu Ichou, “[Discrimination in Healthcare as a Barrier to Care: Experiences of Socially Disadvantaged Populations in France from a Nationally Representative Survey](#)” (2020) 20:31 *BMC Public Health*.

Part V: Regulating Reproduction

9. Law and Reproduction [Friday July 5 (3-4pm EST) | (12pm-1pm PST)]

• Student Learning Outcomes

- Articulate the decision in *Dobson (Litigation Guardian of) v. Dobson* with regard to prospective tort liability for pregnant women in Canada.
- Identify the barriers to accessing reproductive healthcare in Canada.
- Explain the ways in which the State regulates women’s bodies and reproductive choices in various jurisdictional contexts.

Outline, Cases and Materials

- A. Law and Reproduction in Canada: General Principles
- B. Women’s Reproduction and the Politics of Abortion Rights in Comparative Context:

- i. Christabelle Sethna et al., “[Choice, Interrupted: Travel and Inequality of Access to Abortion Services Since the 1960s](#)” (2013) 71 *Labour/Le Travail* 29.
- ii. US TRAP Laws: *Whole Woman’s Health v. Hellerstedt*, 579 U.S. 136 S. Ct. 2292 (2016):
 - [Case Summary](#)
 - [Full Case](#)
- iii. *Dobbs v. Jackson’s Women’s Health Organization*, 597 U.S. 215 (2022):
 - a. [Case Summary](#)
 - b. [Full Case](#)
- iv. Wei Wei Cao, “[Glorious Mothers” and “Rational Women”](#): [A Comparative Analysis of the Chinese and English Regulatory Models of Abortion](#)” (Dec. 2019) 67:4 *The American Journal of Comparative Law* 745–774.
- v. Amparita Sta Maria, “Tilted Interpretations: Reproductive Health Law and Practice in the Philippines,” in Irehobhude O. Iyioha, *Women’s Health and the Limits of Law: Domestic and International Perspectives* (UK: Routledge, 2020) (Available on Brightspace).

Supplementary Reading and Videos	
a.	Wei Wei Cao, “The Law of Abortion in China: Disempowering Women under the Liberal Regulatory Model” in Irehobhude O. Iyioha, <i>Women’s Health and the Limits of Law: Domestic and International Perspectives</i> (UK: Routledge, 2020) (Available on Brightspace).
b.	Reproductive Health Law Debate in the Philippines
c.	Debate over the Philippines Health Bill:
i.	Parliamentary Debate
ii.	Speech by Senator Miriam D. Santiago on the Philippine Senate floor
iii.	Philippine Court upholds Birth Control Law
C.	Katrina Ackerman, “In Defence of Reason: Religion, Science, and the Prince Edward Island Anti-Abortion Movement, 1969-1988” (2014) 31:2 <i>CBMH</i> 117-138: http://www.utpjournals.press/doi/pdf/10.3138/cbmh.31.2.117
D.	A. Shah, S. Akintola, and I. Iyioha, “On the Margins of Law: Examining the Limits of Legislative Initiatives on Maternal Mortality in South Africa and Nigeria” in I. O. Iyioha, <i>Women’s Health and the Limits of Law: Domestic and International Perspectives</i> (UK: Routledge, 2020).

Part VI: Critical Theories in Healthcare Law and Practice

10. Critical Legal Perspectives [Friday July 5 (4-5pm EST) | (1-2pm PST)]

• Student Learning Outcomes

- Explain the merits and limitations of applying theoretical approaches in healthcare law and practice.
- Define and explain intersectionality, critical race theory, substantive legal effectiveness, and vulnerability theory.

- Outline how critical legal theories can be applied to evaluate legal doctrine in various areas of medical practice.

Outline, Cases and Materials

- i. *Introduction:*
 - a. “The Study and teaching of Canadian Health Law and policy” – Canadian Health Law and Policy Book, pages 1-8.
- ii. *Legal Positivism:*
 - a. Leslie Green, “Legal Positivism”: <https://plato.stanford.edu/entries/legal-positivism/>
- iii. *Intersectionality and the Framing of Legal Problems:*
 - i. Ted lecture by Kimberle Crenshaw:
<https://www.youtube.com/watch?v=akOe5-UsQ2o>
 - ii. What is Intersectionality? Women of the World Festival Lecture, 2016 by Kimberle Crenshaw: <https://www.youtube.com/watch?v=-DW4HLgYPIA>
- iv. *Feminist Legal Theory:*
 - i. Margot Stubbs, “Feminism and Legal Positivism” (1986) Australian Journal of Law and Society 65:
<http://www5.austlii.edu.au/au/journals/AUJILawSoc/1986/6.pdf>
- v. *Critical Race Theory:*
 - i. Kevin Brown & Darrell D. Jackson, “The History and Conceptual Elements of Critical Race Theory” in Handbook of critical race theory in education (Routledge, 2013) at 9-22:
http://www.elegantbrain.com/edu4/classes/readings/depository/race/critical_race_theory_def_hist.pdf
 - ii. Janel George, “A Lesson on Critical Race Theory” (2021) 46:2 Human Rights Magazine:
https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/a-lesson-on-critical-race-theory/
- vi. *Substantive Legal Effectiveness:*
 - i. Irehobhude O. Iyioha: “Within and Beyond the Hedge: Form, Substance and the Limits of Laws on Women’s Health” (Chapter 1, Introduction) in *Women’s Health and the Limits of Law* (Routledge).
 - ii. Irehobhude O. Iyioha: “Law, Normative Limits and Women’s Health: Towards a Jurisprudence of Substantive Effectiveness” (Chapter 2) in Irehobhude O. Iyioha, ed., *Women’s Health and the Limits of Law: Domestic and International Perspectives* (Abingdon, UK: Routledge, 2020).

- vii. *Vulnerability Theory*
- i. Hazel Biggs and Caroline Jones, “Legally Vulnerable: What is Vulnerability and Who is Vulnerable?” (2014) 16 *Law and Global Health* 133-148: <https://academic.oup.com/book/34823/chapter-abstract/297718791?redirectedFrom=fulltext>
 - ii. M.A. Fineman, “The Vulnerable Subject: Anchoring Equality in the Human Condition” (2008) Vol. 20:1 *Yale Journal of Law and Feminism* 1-23.
 - iii. M.A. Fineman, “Vulnerability and Inevitable Inequality” (2017) Vol. 4, No. 3 *Oslo Law Review* 133–149.
 - iv. M.A. Fineman, “Populations, Pandemics, and Politics” (2021) *International Journal of Discrimination and the Law*, Vol. 21(3) 184–190.

<i>Supplementary Reading</i>
a. Tara Smith, “Neutrality isn’t Neutral: On the Value-Neutrality of the Rule of Law” (2011) <i>Wash U Jur Rev</i> 49: https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1018&context=law_jurisprudence
b. Robert Alexy, “On the Dual Nature of Law” (2010) 23:2 <i>Ratio Juris</i> . 167–82: https://idv.sinica.edu.tw/philaw/Alexy_Literature/Alexy,%20Robert%20(2010),%20The%20Dual%20Nature%20of%20Law..pdf
c. Neil Gotanda, “A Critique of “Our Constitution Is Color-Blind” <i>Stanford Law Review</i> , Nov., 1991, Vol. 44, No. 1 (Nov., 1991), pp. 1-68: https://www.jstor.org/stable/pdf/1228940.pdf?refreqid=excelsior%3A8a0fb5b7ef0f52d6266c5e1da01b9fe7&ab_segments=&origin=
d. Irehobhude O. Iyioha, “Substantive Effectiveness, Women’s Health and the Limits of International Human Rights Law” in Anna Kirkland and Marie-Andree Jacobs, eds, <i>Research Handbook on Socio-Legal Studies of Medicine and Health</i> (Edward Elgar, September 2020).
e. Emily Synder, “Indigenous Feminist Legal Theory: A Multi-Juridical Analysis of the Limits of Law for Indigenous Women Living with HIV in Canada” in I. O. Iyioha, <i>Women’s Health and the Limits of Law: Domestic and International</i> (Routledge).
f. Irehobhude O. Iyioha (with J. Lewis and Dexter Dias, QC): “On Feminism, Morality and Human Rights: Assessing the Effectiveness of United Kingdom’s FGM Act” (Chapter 3) in <i>Women’s Health and the Limits of Law</i> (Routledge).

Exam Prep: Discussions, recap of critical issues, and questions and answers.

Part VII: Population Health

11. Right to Health in War Times and International Humanitarian Law: Professor Radmyla Hrevtsova, Associate Professor, National Taras Shevchenko, Ukraine: [Saturday July 6 (11am-12pm EST) | (8-9am PST)]

- **Student Learning Outcomes**
 - Identify the factors that impede access to health in times of conflict.
 - Explain the intersecting grounds of discrimination in the provision of healthcare during armed conflicts.
 - Articulate principles of International Humanitarian Law on the right to health in armed conflict.
 - Define and explain the concept of ‘medical neutrality’ in a time of war.

Outline, Cases and Materials

- A. Healthcare in Times of Conflict: **Video (10am-11am EST | 7-8am PST) – Asynchronous / independent learning**
- B. The Right to Health in Times of War: The Ukrainian Experience: [Guest Lecture: Professor Radmyla Hrevtsova, Associate Professor, National Taras Shevchenko University of Kyiv and Governor for Ukraine at the World Association for Medical Law] **(11am-12pm EST)**.
 - i. D. List, “[Health Care in Conflict: War Still has Rules](#)” (2018) *The Lancet*.
 - ii. Ryunosuke Goto et al., “[War is a Public Health Emergency](#)” (2022) *The Lancet*.
 - iii. Joel Zivot, “[What are the Laws of War When a Hospital is a War Zone?](#)”
 - iv. Sheri Fink, “[The Deadly Choices at Memorial](#)” (Aug. 25, 2009) *The New York Times*.
 - v. Lidiya Teklemariam, “[What Does International Humanitarian Law Have to Offer to Public Health in Situations of Armed Conflict?](#)”
 - vi. Harvard Program on International Law and Armed Conflict, “[The Rise of International Legal Protections for Wartime Medical Care](#)”.
- C. Medical Neutrality
 - i. Physicians for Human Rights, “[Introduction to Medical Neutrality](#)”.
 - ii. Peter Hall, “[Medical Neutrality](#)” (1999) 92 *Journal of Royal Society of Medicine*.
 - iii. Michael L. Gross, “[From Medical Neutrality to Medical Immunity](#)” (Oct 2007) *AMA Journal of Ethics*.

12-1pm EST: Break

12. Public Health, Cannabis and the War on Drugs: Paul Pedersen, Co-Founder and former CEO, NextLeaf [Saturday July 6 (1-3pm EST) | (10am-12pm PST)]

- A. Cannabis: Regulation, Law and Policy
 - i. History of Legalization and Commercialization
 - ii. *Cannabis Act* (S.C. 2018, c. 16)

- iii. *Murray-Hall v. Quebec (Attorney General)*, 2023 SCC 10:
<https://www.canlii.org/en/ca/scc/doc/2023/2023scc10/2023scc10.html>
 - iv. Cannabis Legalization in Canada: <https://www.alberta.ca/cannabis-legalization-in-canada#:~:text=Federal%20legislation,-The%20Government%20of&text=adults%20can%20possess%20up%20to,can%20increase%20the%20age%20limit>
 - v. Priyashni Goundar, et al., “A Comparative Analysis of Laws on Recreational Cannabis Edibles between Canada and the United States of America” (2021) 94 Int. J. Drug Policy:
<https://www.sciencedirect.com/science/article/abs/pii/S095539592100089X?via%3Dihub>
- B. Impact, Socio-Legal Issues and Future Challenges:
- i. Jessica L. Wiese, et al., “Overpoliced and Underrepresented: Perspectives on Cannabis Legalization From Members of Racialized Communities in Canada” (2023) 50 (1) Contemp. Drug Probl. 25–45:
https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9885015/pdf/10.1177_00914509221142156.pdf
 - ii. André douglas pond cummings and Stephen A. Ramirez, “The Racist Roots of the War on Drugs and the Myth of Equal Protection for People of Color” (2022) 44 U. Ark. Little Rock L. Rev. 453:
<https://lawrepository.ualr.edu/cgi/viewcontent.cgi?article=2106&context=lawreview>

<i>Supplementary Reading</i>
a. “The Drug War, Mass Incarceration and Race”: https://www.unodc.org/documents/ungass2016/Contributions/Civil/DrugPolicyAlliance/DPA_Fact_Sheet_Drug_War_Mass_Incarceration_and_Race_June2015.pdf
b. <i>R. v. Clay</i> , [2003] 3 S.C.R. 735, 2003 SCC 75

3-3:15pm – Break

13. Disasters and Public Health Emergencies: Uche Ugwaba and Man Teng long [Saturday July 6 (3:15-5pm EST | (12:15-2pm PST))

- **Student Learning Outcomes**
 - Define the nature and scope of public health law.
 - Articulate the nature and ambit of the legal framework governing public health law in select jurisdictional contexts.

- Explain the limits to individual liberty in the context of public health and population health.
- Explain the role and limits of the International Health Regulations.
- Identify necessary changes and/or contributions to a new international pandemic framework.
- Articulate the regulatory framework for Cannabis in Canada and the US.
- Explain the socio-legal issues arising from the regulation of Cannabis against the historical background of the war on drugs in Canada and the US.
- Articulate current and future challenges arising from the regulation, commercialization and use of Cannabis.

Outline, Cases and Materials

- A. Disasters and Public Health Emergencies: Canadian and Comparative Perspectives
- i. Guest Lecture: Professor Uche Ugwaba, Lincoln Alexander School of Law, Toronto Metropolitan University **(3:15-5pm EST)**.
 - ii. Ashlee Beazley, “Contagion, containment, consent: Infectious disease pandemics and the ethics, rights, and legality of state-enforced vaccination” (2020) *Journal of Law and the Biosciences*:
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7381984/>
 - iii. Pandemic in China: Public Health versus Patients’ Rights: Guest Lecture: Man Teng Iong, Senior Instructor and Programme Coordinator, Faculty of Law, University of Macao, China **(5-6pm EST)**.
 - iv. Emma Graham-Harrison and Lily Kuo in Shanghai, “[China's coronavirus lockdown strategy: brutal but effective](#)”.
 - v. Vicki Xafis, G Owen Schaefer, Markus K Labude, Yuija Zhu and Li Yan Hsu, “The Perfect Moral Storm: Diverse Ethical Considerations in the COVID-19 Pandemic” (2020) 12 *Asian Bioethics Review*:
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7255635/>
 - vi. Jason Brennan, A libertarian case for mandatory vaccination (2018) 44:1 *J Med Ethics* 37-43.
 - vii. Justin Bernstein, “The case against libertarian arguments for compulsory vaccination” (2017) 43:11 *J Med Ethics* 792-796.
- B. Proposed International Agreement Post-COVID (Pandemic Treaty):
- i. WHO: [World Health Assembly agrees to launch process to develop historic global accord on pandemic prevention, preparedness and response](#).
 - ii. Lawrence Gostin et al., “[An International Agreement on Pandemic Prevention and Preparedness](#)” (2021) 326:13 *JAMA* 1257-1258.
 - iii. Clare Wenham et al, “[The Futility of the Pandemic Treaty: Caught between Globalism and Statism](#)” (2022) 98:3 *International Affairs* 837–852.

<i>Supplementary Reading</i>
a. Lawrence O. Gostin, Mary C. DeBartolo, & Eric A. Friedman, “The International Health Regulations 10 Years on: The Governing Framework for Global Health Security” (2015) 386 <i>The Lancet</i> 2222:

	https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2544&context=facpub
b.	Bill Gates, “The Next Epidemic—Lessons from Ebola” (2015) 372 N. Eng. J. Med. 1381: https://www.nejm.org/doi/pdf/10.1056/NEJMp1502918?articleTools=true
c.	Amy Goudge, “Balancing Legality and Legitimacy in Canada’s COVID-19 Response” (2021) Nat’l J Const L 41:153: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3890443&dgcid=ejournal_html_email_public_health:law:policy:ejournal_abstractlink
d.	David M. Studdert and Mark A. Hall, “Disease Control, Civil Liberties, and Mass Testing — Calibrating Restrictions during the Covid-19 Pandemic” (2020) N Engl J Med. 102-104: https://www.nejm.org/doi/pdf/10.1056/NEJMp2007637?articleTools=true
e.	Barry C Smith, “Morality in the Time of a Pandemic” (2020) 90:3 <i>The Philosophers’ Magazine</i> : https://archive.philosophersmag.com/morality-in-the-time-of-a-pandemic/
f.	Andrew Langille, <i>How the Canada Emergency Response Benefit is Failing Low-Income Precarious Workers, and How it Can be Fixed</i> , online: https://lawofwork.ca/how-the-canada-emergency-response-benefit-is-failing-low-income-precarious-workers-and-how-it-can-be-fixed/
g.	Amy Swiffen, “The limits of Canada’s federal emergency law during the coronavirus pandemic” <i>The Conversation</i> (April 1 2020), online: https://theconversation.com/the-limits-of-canadas-federal-emergency-law-during-the-coronavirus-pandemic-134309

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