

## COURSE SYLLABUS

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### HEALTH CARE LAW TOPICS: REPRODUCTIVE RIGHTS & GENETIC TECHNOLOGIES

Professor Loren Jacobson

UNT Dallas College of Law

Spring 2021 – 8 Week 1 Session (Jan. 19 – Mar. 8)

ONLINE

Tuesdays 2:45 – 4:45 PM

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#### HOW TO CONTACT ME

Office location: 413

Office Hours: Wednesdays, 4 – 7 PM\*

All office hours this semester will be virtual, via Zoom. I am not going to sit on Zoom for three hours. Instead, my office hours are a time when you can be guaranteed that I will be available to meet. If you would like to visit with me during office hours, send me an email beforehand, and I'll set up a Zoom meeting with you. I am also available to meet outside of office hours. Thus, if my office hours are inconvenient for you, please email me, and I'd be happy to set up a Zoom meeting at a mutually convenient time.

*\*These hours are subject to change upon reasonable notice*

Telephone: 214-571-2412

Email: Loren.Jacobson@untDallas.edu

Please **do not** rely on communications via Canvas. Email is a reliable way to contact me. Please also refer to the section below entitled "COMMUNICATIONS."

#### COURSE PREREQUISITES

This course is LAW 7116 – 001 (1820). There are no prerequisites for this course.

## **CREDIT HOURS**

This course provides one credit hour and one writing segment.

## **CLASS WEBSITE AND OTHER SOFTWARE AND TECHNOLOGY**

Core course information and assignments will be posted on Canvas. To access the UNT Dallas COL Canvas website, go to: <https://untdallaslaw.instructure.com>. You will need your EIUD and password.

## **COURSE POLICIES**

In addition to the policies set forth in this Syllabus, the policies applicable to you and your performance and participation in this course are set forth in the separate document entitled “Course Policies,” which is incorporated within this document by reference. This separate “Course Policies” document is posted on Canvas with this Syllabus.

## **COURSE DESCRIPTION AND GOALS**

This course is a seminar in Reproductive Rights and Genetic Technology. We will cover the basic constitutional basis for reproductive rights, will discuss fetal rights, the competing rights of mother and child, the law and ethics surrounding reproductive technology. Students will learn the substantive law, but will also analyze and discuss thorny legal, ethical, and moral issues related to reproductive rights and genetic technology. By the end of the course, you should be able to (1) understand the constitutional basis for reproductive rights; (2) have a basic understanding of state and federal law related to reproductive rights and assisted reproductive technology; (3) articulate the various and competing ethical considerations involved in decisions about reproductive rights, reproductive technology, and genetic innovations; and (4) analyze, critique, and solve problems that arise in these areas.

## **REQUIRED CASEBOOK**

Hall, et al., *Health Care Law and Ethics* (9th ed. 2018).

This is the casebook we will use in class, but some assignments will also include Texas and federal cases and statutes or other relevant materials. All materials not in the casebook will be made available on Canvas.

## ATTENDANCE

Under College of Law policy and consistent with Standard 304(d) of the ABA Standards, the College of Law requires regular and punctual class attendance. I will take class attendance using the Zoom records for each class.

**In order to be considered “present” for class and therefore be considered to be attending a class, you must attend synchronous lectures in real time, rather than viewing recordings of these synchronous lectures. Recordings of synchronous lectures are provided in case you miss a lecture or wish to review a particular concept, but viewing a recording does not count towards attendance without special permission. See the section below entitled “RECORDINGS” for more information on recording of synchronous Zoom lectures. Also, pursuant to COL policy, if you are attending the synchronous portion of class virtually (whether because you have elected to do so for the entire semester, or because we are forced to do so due to a quarantine), in order to be considered present for class, you must attend synchronous Zoom lectures with your video on (i.e. you must be “live”—no blank screens or “glamour shots”). If you do not have access to a webcam or you are unable to participate via video for another reason, please contact me. Otherwise, I will NOT count you as present if I see a blank screen or glamour shot. If you are attending a synchronous lecture via Zoom, please also ensure that your full name (first name and last name) appears on Zoom, rather than your email address, student ID, a nickname or some other moniker. Finally, students are encouraged to attend synchronous lectures via computers rather than phones or tablets. If you do not have regular access to a computer for class, please notify me. Please see “Zoom/online etiquette” below for further information on my requirements for attendance via Zoom.**

Under College of Law policy, at a minimum, students must attend 80% of class sessions, excluding absences that are excused. We will have 7 classes. This means you can miss no more than one class. If you are diagnosed with COVID-19 and cannot participate in class for an extended period, please let me know. If this situation unfortunately arises for you, I will work with you, Dean Robinowich, and Dean Alexander.

For more information on attendance, see the Course Policies document. For the impact on unexcused absences and partial absences on your grade, please see the GRADING section below.

## RECORDING OF LECTURES/CLASSES

Synchronous class sessions will be recorded and placed on Canvas. These recordings are made available for anyone who misses class or wishes to view a class to review a concept. Watching a recording of a synchronous class is not a substitute for attending synchronous classes, whether live or virtually, and will not be counted as attendance without express permission (and such permission will be given only under narrow and exigent circumstances). Recordings of Zoom classes necessarily include such information, including images and names. Students who participate in class via Zoom are consenting to have their video or image recorded. Students who participate in class are also consenting to have their voices recorded. Pursuant to FERPA regulations, these recordings will be posted only on the course Canvas page and thus can be viewed only by current students enrolled in the course. Sharing any live class recording with anyone other than a student currently enrolled in the course may constitute a FERPA violation and is strictly prohibited.

## PROFESSIONAL BEHAVIOR EXPECTATIONS

- **Be Punctual.** I will begin class on time. Please be punctual, as it is distracting to me and your fellow classmates when the class has to pause to let someone onto Zoom.
- **Be Prepared.** Students are expected to come to class fully prepared to discuss all readings, and to participate actively in class sessions.
- **Do Your Own Work.** Students should complete all assignments individually, unless I otherwise assign collaborative work. That means that unless I provide explicit permission, you may not receive assistance on work you produce in this class and I will assume that the work you turn in is your own. A violation of this rule will be considered an Honor Code violation.
- **Complete All Assignments on Time.** Students are expected to complete all assignments—whether graded or not—by their assigned due date. A key part of learning to be a lawyer is to meet deadlines. If you fail to meet a deadline as a practicing lawyer, your client and you may suffer serious consequences. Thus, late work will detrimentally affect your grade—the later the submission, the more it will detrimentally affect your grade. Specifically, the following chart provides the consequences for late-submitted graded assignments:

DELIVERY TIME	DEDUCTION OF RAW SCORE ON GRADED ASSIGNMENTS
Delivered more than 15 minutes late, but less than, or up to, one hour late	5%
Delivered more than one hour late but less than, or up to, 12 hours late	15%

Delivered more than 12 hours late but less than, or up to, 24 hours late	35%
Delivered more than 24 hours late, but less than, or up to 36 hours late	50%
Delivered more than 36 hours late	No credit

If you anticipate, due to an emergency or other exigent circumstances, that you will have trouble completing an assignment on time, please let me know *beforehand*—come see me, call me or email me. If you have a good reason for submitting something untimely, I will factor that into the final grade. Moreover, you may “petition” me to either give you extra time to do an assignment or accept an untimely submitted assignment by establishing “good cause.” To do so, you must establish—and the burden is on you—that the failure to timely submit an assignment should be excused and that it was not due to inadvertence or negligence. Factors I may take into account in determining whether you’ve met the good cause standard, among others, are (1) whether you notified me prior to the assignment deadline; (2) whether the circumstances surrounding the failure to meet the deadline would also qualify you for an excused absence from class; (3) whether and to what extent you attempted to submit the assignment in a timely manner via multiple or alternative methods; and (4) whether the failure to meet the deadline was the result of circumstances beyond your control. Note that if you have an excused absence, this is not alone an automatic excuse not to meet a deadline. Instead, you must be able to show “good cause” as set forth above, with appropriate documentation if necessary. If I permit additional time to complete the assignment, the amount of additional time will be the amount that I determine, in my discretion, to be the minimum. Finally, you must complete all required assignments to receive credit for the course.

- **Cell-phones.** Please *turn off your cell phones and put them away* during class. Do not check your phone during class. **Do not text your classmates or others during class.** Do not leave your cell phone on the desk or table in front of you or in your lap. It will tempt you to check it or to text. If you have an urgent family matter, health care matter, or other exigent matter that may require a text or call during class, you may take your phone out for that purpose—but be sure to mute your microphone. I reserve the right to dismiss any student from class who violates this policy and to count the student as having an unexcused absence for the day the student is dismissed.
- **Laptops, tablets, computers, and other devices.** As you are attending synchronous classes virtually via Zoom, I obviously cannot prevent you from using a computer to take notes, but I strongly suggest that you take notes by hand, as my experience and all of the studies I have consulted indicate that it really assists learning and retention.

- **Eating.** Generally, eating during class is discouraged, especially since our synchronous class periods are very short. If you do decide you need to eat during class, please limit it to a small snack. If your eating is disruptive, I reserve the right to dismiss you from the class and to count your dismissal as an unexcused absence.
- **Leaving the room or turning off your video during class.** Very rarely, it may be necessary for you to briefly leave the room where you are attending a synchronous class and return or to briefly turn off your video (I get it—kids and dogs can be a problem), but I highly discourage it. Please use the restroom and get your coffee/water/beverage of choice prior to class. I will also provide a short break half-way through our class period, since the class is two hours long. Please also use this opportunity to use the restroom, refill your beverage, stretch, etc. If you have to leave the room/turn off your video because it is absolutely necessary, make it quick. If a student routinely abuses this policy, I reserve the right to dismiss the student from one or more classes and to count the dismissal(s) as an unexcused absence.
- **Attire.** I expect you to be appropriately dressed when you attend online synchronous lectures just as you would an in-person class. That means, for example, no pajamas, bathing suits, or bath robes. Please follow the attire guidelines of the UNT Dallas COL.
- **Zoom Etiquette and Requirements. Zoom/online etiquette.** You must attend class with your video on (i.e. you must be “live”—no blank screens or “glamour shots”). If you do not have access to a webcam or you are unable to participate via video for another reason, please contact me. Please also ensure that your full name (first name and last name) appears on Zoom, rather than your email address, student ID, a nickname or some other moniker. Students are encouraged to attend synchronous lectures via computers rather than phones or tablets. Unless you are speaking, please ensure you are muted and all notifications on your device are turned off. Please note that the chat feature will be disabled in Zoom. If you have a question or comment, please use the “raise your hand” feature and I will call on you.

**You are required to attend all classes on Zoom from a workspace conducive to learning.**

A workspace conducive to learning is a workspace that is similar to the classroom environment. It is a workspace where (1) there are no expected distractions; (2) you can concentrate; (3) you can take notes; and (4) you could answer questions if you were called on and ask questions if you were inclined to do so. Because a synchronous class should mimic the classroom environment to the greatest extent possible, a workspace conducive to learning also means you are in a place that will not cause your classmates or me to be distracted. This means, as an example, that walking outside or around your home while attending a lecture is not being in a workspace conducive to learning. Being in a car, in your bed, or in a float in the pool is also not a workspace conducive to learning. Attending

class from a public space, such as a restaurant, coffee shop, or cafe is also not a workspace conducive to learning.

The benefit of being able to take class virtually means that you can attend even under circumstances where if we were in person, you would not be able to attend. But if those circumstances do not conform with my requirements of being in a “workspace conducive to learning,” that means you cannot get credit for attendance. So, for example, if you, for some reason, must be traveling by car during the lecture, you may attend with a black screen with my permission, if you still want to watch or listen in. But you cannot get attendance credit for it. I don’t think this is unfair, given that if you were taking my course under normal circumstances and had to be in a place outside of the classroom, you would miss class and not get attendance credit. Under our current circumstances, you can get the benefit of still being able to watch or listen in, but you cannot get attendance credit unless you are in a workspace conducive to learning.

To make clear, then, if you attend a synchronous class from a place that is not a workspace conducive to learning, you will not get attendance credit for that day. Moreover, students are expected to devote their entire attention to class. Thus, cooking dinner, cleaning the house, gaming, or engaging in other activities during class time is not appropriate.

### **COMMUNICATIONS**

Email is a very useful tool, but the best form of communication is in person. If you have a question or an issue that you need resolved, please make an appointment to visit with me via Zoom. I hold regular office hours, but am also happy to make appointments.

Though this should be very rare, if you have not received an answer from me via email in 24 hours, please email me again. I do not regularly check other programs that may have an email or message interface. For example, I do not regularly check Canvas for messages, so please email me directly.

### **GRADING**

I will be using a 40-point grading scale in this class. All number grades will be rounded pursuant to the normal rules of math. So, if you get a 96.7, that will be rounded up to a 97. If you get a 96.4, that will be rounded down to a 96. This is the 40-point grading scale:

Letter Grade	Number Grade
A+	97-100
A	93-96
A-	90-92
B+	87-89
B	83-86
B-	80-82
C+	77-79
C	73-76
C-	70-72
D	60-69
F	<60

There is no “curve” in this class, but I do sometimes add a multiplier to the final grades at the end of the semester. So that you understand, a “curve” means that the grades fall on a bell curve. In many law schools, there is a required curve. This can help some students, but it can also hurt students by lowering their grades, depending on where the curve is set and where each student falls. We are not required to use a curve. Instead, depending on certain circumstances, I may use a multiplier because it helps all students equally and also tends to better account for the difficulty of the course. With a multiplier, if the highest raw grade in the class is an A-, I will calculate a multiplier so that the highest final grade is an A. The multiplier is applied to everyone’s grades, meaning it pulls up all grades.

Your grade in this course will be based on the following:

Participation	50%
Paper	50%

### **PARTICIPATION**

Participation is measured by attendance and participation:

- (1) **Attendance.** Each student is given 100 points for attendance. Each student is allowed 1 unexcused absence that will not count against the participation grade. This is not to encourage you to miss class; it is an acknowledgment that life happens. After the first unexcused absence, every unexcused absence after that will result in a deduction of 10 points from this 100. Excused absences do not count against this part of your participation grade.
- (2) **Participation.** You will be accorded up to another 100 points for participation. Prior to the first day of class, I will circulate an “experts” Doodle poll. You must choose to be an expert for one of the seven classes. On the day of class that you choose, you will be expected to participate heavily (and I will call on you as necessary). This is a seminar style course,

however, so I will be encouraging everyone to participate in every class. Experts are there to help facilitate discussion and to answer and talk when there is a lull. Your participation score will be based mainly on your ability to serve as the “expert” the day you are signed up, but will also be based on your general participation throughout the course. Indeed, because this is a seminar-style course, it is important to have a lot of class participation. So, do your reading and come to class ready to participate.

- (3) **Ungraded assignments.** It is possible, although unlikely, that I will give a few short, ungraded assignments in this course. If an ungraded assignment is turned in on time, you will get participation credit for it (usually 10 points per assignment). If it is turned in late, or is not turned in at all, you will not get credit for it.

### **WRITING ASSIGNMENT**

Half of your grade will be based on a short writing assignment. The assignment requires you to find a recent incident, event, or issue related to one of the topics covered in the course. You must report on the incident, event, or issue, and then analyze it in light of the law and bioethical considerations we will discuss in class. Several of the reading assignments for class include one or more relevant news article. You may use one of those to give you an idea of what to write about, or you may find something else that interests you. You will turn in a topic proposal half-way through the course and a final paper at the end of the course. The final paper should be between 5- 8 pages, double spaced. While this writing assignment feels closer to one you may have done for undergraduate than to a brief or law school assignment, it **MUST** contain legal/ethical analysis in it in order to get credit. Rubrics for the topic and paper will be posted prior to the first day of class. Please consult the rubrics for more information about the assignment. The topic proposal is worth 20% of the total writing assignment grade, while the final paper is worth 80% of the final writing assignment grade. You will get writing segment credit for this assignment.

### **HONOR CODE**

By enrolling at the UNT Dallas College of Law, students accept and agree to abide by the College of Law Honor Code. The Honor Code requires that students behave with academic integrity. This requirement of academic integrity means that a student shall not cheat, plagiarize, or falsify in any academic matter. The full Honor Code is available in the COL Student Handbook and on the COL website.

## DISABILITY ACCOMMODATIONS

The UNT Dallas College of Law provides accommodations to qualified students with disabilities in accordance with state and federal laws. Any student requesting academic accommodations based on a disability is required to register with Disability Services each semester. Approved accommodations will be set forth in a letter of verification from Disability Services. Please be sure this letter is delivered to me as early in the semester as possible. To initiate the process of seeking accommodations, you should contact Assistant Dean of Student Affairs Kevin Robinowich, at [kevin.robinowich@untdallas.edu](mailto:kevin.robinowich@untdallas.edu). For further information about disability accommodations, please see the Course Policies document.

## COURSE SCHEDULE AND ASSIGNMENTS

This syllabus may be revised during the course of the semester. If I make changes in daily assignments, I will announce them in class and/or provide an update on Canvas.

Class	Topic	Reading Assignment
Class No. 1 T, Jan. 19	Introduction, the Right to Procreate, and the Right to Avoid Procreation	Casebook pp. 699 – 722 <i>Eisenstadt v. Baird</i> (available on Canvas) <i>Maher v. Roe</i> (available on Canvas)  *Please review syllabus and course policies and turn in an acknowledgment on Canvas
Class No. 2 T, Jan. 26	Abortion	Casebook pp. 722 – 757  Blackmun’s concurrence in <i>PP v. Casey</i> (available on Canvas)  Sarah Zhang, “The Last Children of Down Syndrome,” <i>The Atlantic</i> (Dec. 2020) (available on Canvas)  <i>Little Rock Family Planning Servs. v. Rutledge</i> , --- F.3d ---, 2021 WL 29484 (8th Cir. Jan. 5, 2021) and <i>Planned Parenthood of Indiana &amp; Kentucky, Inc. v. Comm’nr of Indiana State Dep’t of Health</i> , 888 F.3d 300 (7th Cir. 2018)
Class No. 3 T, Feb. 2	Fetal Interests	Casebook pp. 758 – 777  Texas Civ. P. & Rem. Code §§ 71.001 & 71.002 (available on Canvas) Tex. Health & Safety Code §§ 166.049, 167.001 (available on Canvas) Texas Penal Code § 1.07(26) (available on Canvas) Texas Penal Code §§ 19.01, 19.04, 19.06 (available on Canvas)  <i>Muñoz</i> materials (available on Canvas)  Editorial Board, “A Woman’s Rights,” <i>N.Y. Times</i> , <a href="https://www.nytimes.com/interactive/2018/12/28/opinion/pregnancy-women-pro-life-abortion.html">https://www.nytimes.com/interactive/2018/12/28/opinion/pregnancy-women-pro-life-abortion.html</a> (Introduction, Parts 1, 2,6, 7, 8)

<b>Class</b>	<b>Topic</b>	<b>Reading Assignment</b>
Sunday, Feb. 7		<b>WRITING ASSIGNMENT TOPIC DUE AT 11:59 PM</b>
Class No. 4 T, Feb. 9	Pregnant Women & Drug Use	Casebook pp. 777 – 794  Editorial Board, “A Woman’s Rights,” <i>N.Y. Times</i> , <a href="https://www.nytimes.com/interactive/2018/12/28/opinion/pregnancy-women-pro-life-abortion.html">https://www.nytimes.com/interactive/2018/12/28/opinion/pregnancy-women-pro-life-abortion.html</a> (Parts 4, 5)
Class No. 5 T, Feb. 16	Assisted Reproductive Technology, Gamete Donation & In Vitro Fertilization	Casebook pp. 794 – 828  <i>D.D. v. Idant Labs.</i> , 374 Fed. App’x 319 (3d Cir. 2010) (available on Canvas) <i>Johnson v. Superior Court</i> , 101 Cal. App. 4th 869 (2002) (excerpt available on Canvas)  Dani Shapiro, “How a DNA Testing Kit Revealed a Family Secret Hidden for 54 Years,” <i>TIME</i> (Jan. 3, 2019) (available on Canvas)  Nellie Bowles, “The Sperm Kings Have a Problem: Too Much Demand,” <i>New York Times</i> (Jan. 8, 2021) (available on Canvas)
Class No. 6 T, Feb. 23	Frozen Embryos & Surrogacy	Casebook pp. 828 – 860  <i>Roman v. Roman</i> , 193 S.W.3d 40 (Tex. App.-Houston [1st Dist.] 2006, pet. denied) (available on Canvas)  Tex. Family Code §§ 160.754, 160.755, 160.756 (available on Canvas)
Class No. 7 T, Mar. 2	Human Stem Cell Research & Human Cloning; Intellectual Property & the Ownership of Genetic Discoveries	Casebook pp. 860 – 902; pp. 672 – 679  Brad Plumer, et al., “A simple guide to CRISPR, one of the biggest science stories of the decade,” <i>Vox</i> (Dec. 27, 2018), <a href="https://www.vox.com/2018/7/23/17594864/crispr-cas9-gene-editing">https://www.vox.com/2018/7/23/17594864/crispr-cas9-gene-editing</a>  Katherine J. Wu, “Crispr Gene Editing Can Cause Unwanted Changes in Human Embryos, Study Finds,” <i>New York Times</i> (Oct. 31, 2020) (available on Canvas)
Friday, Mar. 12		<b>WRITING ASSIGNMENT DUE AT 11:59 PM</b>