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MASSACHUSETTS SCHOOL OF LAW at ANDOVER

LAW OF HEALTH CARE

FALL 2021

Professor Thomas H. Martin

Course meets Tuesdays and Thursdays

11:00 A.M.-12:20 P.M. and 7:30 P.M. – 8:45 P.M.

Three Credits

Casebook: M. A. Hall et al, Health Care Law and Ethics, 9th ed. (Wolters Kluwer, 2019).

A NOTE ON THE CASEBOOK

This casebook is a splendid resource for the study of Health Law. However, at almost 1400 pages it is way too big for a one-semester, three-credit course. Also, it more resembles a one-volume encyclopedia on Health Law than it resembles a traditional law school casebook. For example, within the first one hundred pages there are no cases at all. Please read these hundred pages (chapter 1 of the book) on your own.

For classroom discussion purposes we will read all of the cases in chapters 2 and 3. Thereafter we will read cases only selectively in order to keep reading assignments within manageable limits.

SYLLABUS

| <u>Week</u> | <u>Topics</u> | <u>Casebook chapters</u> |
|-------------|---|--------------------------|
| 1-4 | Formation and termination of the treatment relationship; incidents of that relationship; confidentiality; consent, informed consent | 2, 3 |
| 5 | Human experimentation and research | 3 |
| 6-7 | Medical malpractice overview | 4 |
| 8 | Refusal of life-sustaining medical treatment, a/k/a the “right to die” | 5 |

| <u>Week</u> | <u>Topics</u> | <u>Casebook chapters</u> |
|-------------|----------------------------------|--------------------------|
| 9 | Reproductive rights | 7 |
| 10-11 | Public Health Law | 8 |
| 12-13 | Covid-19 | * |
| 14 | Health care financing and reform | 9 |
| 15 | Review or makeup week | N/A |

There will be three mini-tests, each counting for ten per cent of the final grade. The final examination will count for seventy per cent of the final grade.

Prior experience in the health care field is not a prerequisite for this course. The only prerequisites are Torts and Contracts.

*reading material will be distributed.

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A NOTE ON THE COVID-19

You do not need to be told that this course on Law of Health Care is being offered amidst the gravest public health emergency in a hundred years. We will take due note of Covid-19. It is too early for any systematic body of pandemic law to emerge. However, it is certain that in this country there will be a massive reassessment of where the balance should be struck between individual liberty and collective health security.

In this course we will study already-identified problems of Covid-19 such as law and lockdowns, mandatory masking, rationing of health care resources, tort liability shields, and quarantine of asymptomatic individuals who test positive for the virus. We will also look ahead to problems that are sure to demand solutions in the future, e.g. will vaccination be mandatory for some or all people?

There is an excellent book about the 1918-1920 influenza pandemic, John M. Barry, [The Great Influenza](#), Penguin Books 2004, edition with a new afterword 2018 (paperback). Americans' experience in 1918-1920 is strikingly similar to our experience in 2019-2021. This book is recommended not only to students in Law of Health Care but also to anyone who wants to learn more about the legal, political, and health science dimensions of pandemic.