

GEORGE MASON UNIVERSITY SCHOOL OF LAW

Legal Aspects of Bioethics
Room 412

Fall Semester, 2003
Wed 6:00-7:50

Professor: John Hasnas

Office: Room 321

Phone #: 993-8980

E-mail: jhasnas@gmu.edu

Office Hours: Tuesday 2:00-3:30 and by appointment

Required text: JUDITH AREEN, ET. AL., LAW, SCIENCE, AND MEDICINE, (2d ed. 1996) published by Foundation Press, its 2000 Supplement, and a packet of supplementary readings

Course Description

Bioethics is the study of the ethical issues that touch upon the practice of medicine, broadly conceived. This course will explore these issues and the legal context in which they arise. For the first seven meetings, readings will be assigned that are designed to acquaint the students with some of the traditional issues in bioethics. The final seven meetings are reserved for the students' presentations of the results of their research.

Because of the small enrollment, this course can be run as a true seminar; one in which we learn through the exchange of ideas. Our class meetings will reflect this approach. The classes in the first half of the course will be based on the assigned readings. The first class will be an introductory class focusing on methodology led by the professor. Each of the following six classes will have two problem cases associated with it. Class will consist in an effort to resolve the associated problems on the basis of principles extracted from the readings. For these classes, it will be the students' job to read the assigned material, consider how it bears on the problem case, and attend class prepared to advance and support a resolution of the case. Once or twice during the this seven week period, each student will be called on to "present" a case, i.e., to open the discussion by proposing a solution and its supporting argument. Case presentations are limited to five minutes. Students will be allowed to sign up to present a case on a voluntary first come-first served basis until the day of class. If no one signs up voluntarily, the presenter will be assigned by the professor.

The classes in second half of the course will be devoted to student presentations of their research. During the first half of the semester, each student will schedule a date for his or her presentation. At the class meeting **preceding** this date, the students making presentations will distribute drafts of their seminar papers to the other students and the professor. These drafts will constitute the class's reading assignment for that week. Students and professor will attend the presentation prepared with critical questions and constructive comments about the draft. On the presentation date, the authors of the drafts will make a brief introductory statement (approximately 5 minutes) reviewing the theses and essential arguments of their papers. The papers will then be discussed by the class.

For each presentation, two members of the class will be "designated critics." During the

week preceding the presentation, they will each prepare a critical review of the draft that may not exceed 750 words in length. These reviews will be submitted to both the author and the professor on the day of the presentation. Following the author's introductory remarks, the designated critics will begin the discussion by identifying the author's basic argument and raising one question or objection each. After that, the floor will be thrown open for general discussion, the object of which will be to provide the author with the critical feedback he or she needs to produce the final draft of his or her paper.

Course requirements: This course has three required elements: the seminar paper, two critical reviews, and in-class performance.

1) The seminar paper - The seminar paper must be a normative research paper. A normative paper is one that presents an argument for a normative conclusion; a conclusion that attempts to establish that something **should** be the case. Thus, the seminar paper must identify, research, and attempt to resolve an important bioethical controversy. A satisfactory paper will present a significant body of research that supports a well-structured argument for your proposed resolution. You may think of the paper as a brief for your resolution of the bioethical controversy you elect to address.

There is no mandatory minimum or maximum length. You should submit a paper that fully researches and resolves the issue you are addressing. In my judgement, a reasonable length for such a paper would be between 5000 and 6000 words (approximately 20 to 25 pages).

a) Topics: Students may choose to write about any significant, controversial bioethical issue. You may use the casebook as a preliminary source of potential topics. The readings assigned for the first seven weeks have been selected so as not to preempt many contemporary bioethical controversies. If you wish to write about one of the issues addressed in these classes, you may do so, but your paper must go significantly beyond both the readings in the casebook and our discussion in class to be acceptable. ***It is strongly recommended that the students do preliminary research early in the semester and consult with the professor before choosing a topic.***

b) Substance and quality: A good seminar paper is one that *clearly* identifies, explains, and resolves a significant and controversial bioethical issue in a way that would be interesting *to a non-expert audience*.

Audience - You may think of yourself as preparing an article for publication in a general interest law review. Such an article must be accessible to legal practitioners and law professors and students who do not specialize in bioethics. Your goal should be to produce a paper that can be read and understood by, and would be persuasive to, a reasonably knowledgeable contemporary attorney or legal academic. Do not think of yourself as addressing either the professor of this course or an audience of professional bioethicists.

Clarity - Bioethics is rife with concepts and terminology from philosophy and medicine that are unfamiliar to the average attorney and legal academic. One of the major challenges you will confront in writing this paper will be to translate the specialized knowledge you obtain in doing your research into language that can be easily understood by a non-expert audience.

Level of formality - These papers must conform to the requirements of the Bluebook. Some students may wish to use this paper as a writing sample or as a draft of an article to be submitted for publication. I am happy to work with such students to help them achieve the appropriate tone. However, those of you who do not have these ends in view should feel free to temper the formality of your writing style. Your overriding goal is to produce an interesting paper that resolves a controversial bioethical issue. You should express yourself in the way most likely to achieve this goal.

c) Standards for evaluation: Writing these papers will require you to find, read, understand, and assimilate a great deal of unfamiliar, and possibly technical, material. The understanding you gain from your research must then be shaped into a coherent thesis that can be clearly communicated to those who do not possess your first-hand knowledge. Accordingly, the seminar paper will be evaluated on the basis of the following four criteria: 1) Quality of research - the completeness of your examination of the relevant ethical/medical/legal sources and the extent to which you have adequately uncovered and documented the information necessary to sustain your thesis; 2) Quality of analysis - the extent to which you have provided a well-structured argument in support of your thesis and the adequacy of the evidence offered for each premise of this argument; 3) Quality of presentation - the extent to which the paper's organizational structure and clarity of written expression effectively communicate the paper's thesis to its intended audience, and 4) Literary quality - the extent to which the paper conforms to the rules of English grammar and spelling and has been effectively proofread. The relative weight assigned to each of these criteria is as follows:

Quality of research	30%
Quality of analysis	40%
Quality of presentation	20%
Literary quality	10%

Other technical requirements: Both the first draft and the final paper must be double-spaced with one inch margins all around and must employ standard size font. **A word count must be included on the cover sheet of each.**

d) Deadlines: A written statement of the topic chosen is due in class on September 17. You must schedule a meeting with the professor at least three weeks prior to your presentation date. At this meeting, you will be required to provide a written sketch of the argument you intend to present in your paper that lists your main premises and shows how they establish your conclusion. At this meeting you must also be prepared to show how you intend to support each of your premises. First drafts are due **in class** one week before the date scheduled for your presentation. You must provide each of your fellow students and the professor with a copy of your draft in that class. Alternatively, you may post your paper on the Paper Drafts forum of the course TWEN site up until the beginning of the class preceding your presentation. If you elect to employ electronic publication, it is your responsibility to ensure that your paper is posted in proper form for downloading by the deadline. Final papers are due by noon on December 15.

Missing a deadline without advance consultation with the professor will result in a one

step reduction in the grade assigned to the paper. In exceptional cases, extensions may be granted when the student consults with the professor **in advance** of the deadline.

e) Significance of the grade: The grade assigned to the seminar paper will constitute 70% of the grade assigned for the course. The quality of the presentation draft will comprise 20% of the grade assigned to the paper. This draft should be a fully developed, complete paper. The quality of the final draft will comprise 80% of the grade assigned to the paper.

2) Critical reviews - Each student will be a “designated critic” twice during the second half of the semester. Each time he or she is a designated critic, the student must produce a critical review of one of the papers being presented that week.

A critical review is a paper of 750 words or less that identifies and evaluates the quality of the main argument of the seminar paper under consideration. It should identify the paper’s conclusion and essential premises, evaluate the validity of the argument and the truth and support offered for its controversial premises, and, space permitting, make other recommendations as to how the paper may be improved with regard to either substance or expression. The tone of these reviews should reflect that fact that their purpose is to aid your fellow students in producing a successful final draft.

Copies of the critical review must be submitted to both the author of the seminar paper and the professor immediately following the presentation. The critical review must be double-spaced with one inch margins all around and must employ standard size font. **The copy submitted to the professor must have a word count on the cover sheet.** The grade assigned to the critical reviews will constitute 15% of the grade assigned for the course.

3) In-class performance - In-class performance is comprised of 1) the quality of the student’s contribution to weekly discussions during the first seven classes, including the quality of his or her case presentations, 2) the quality of the student’s contribution to discussion of seminar papers on the dates he or she is not a designated critic, 3) the quality of the student’s in-class performance as a designated critic, 4) the quality of the student’s presentation, and 5) attendance.

Each student is expected to have read the assigned materials and thought about how they bear on the problem case adequately to make an informed contribution to class discussion. *Discussion will be almost exclusively voluntary.* It is up to the individual student to decide how much he or she will contribute to class discussion. It is the value of this contribution that will be evaluated, not its frequency. A valuable contribution is one that helps advance the class’s efforts to understand and resolve the problem case or, in the second part of the course, helps the student making the presentation improve his or her seminar paper.

If one is not attending class, one is not contributing to class discussion. Students may miss one class with no effect on this portion of their grade.

The grade assigned to the student’s in-class performance will constitute 15% of the grade assigned for the course.

Office Policy: My office hours this semester are Tuesdays from 2:00-3:30. However, with advance notice, you may schedule an appointment at any mutually agreeable time. As you work on your papers, you may wish to have extensive discussions with me outside of class. I strongly encourage you to do this. Past experience has suggested that writing the type of normative paper

required by this course is not a natural experience for law students. You are, of course, welcome to work entirely on your own. However, in my opinion, you would be wise to take advantage of my willingness to review drafts and provide feedback well before you begin work on your final draft.

Tentative Syllabus

- Week 1: Areen, pp. 49-59.
Packet, "Ethical Relativism" by W.T. Stace.
- Week 2: Areen, pp. 230-269.
Packet, "Informed Consent: Ethical and Legal Issues" by Jay Katz.
Areen, pp. 521-531, 273-281.
Packet, "Paternalism" by Gerald Dworkin
Areen, pp. 281-294, 299-302.
2000 Supplement, pp. 32-38.
- Week 3: Areen, pp. 1114-1118.
Packet, *Cruzan v. Harmon; Cruzan v. Director, Missouri Dept. of Health*.
2000 Supplement, pp. 234-284.
Areen, pp. 1142-1153.
Packet, "The Intentional Termination of Life" by Bonnie Steinbock.
- Week 4: Areen, pp. 1153-1214.
Packet, "Deciding for Others: Standards for Decision-Making" by Allen Buchanan and Dan W. Brock
- Week 5: Areen, pp. 1269-1297, 1257-1269.
Packet, "A Defense of Abortion" by Judith Jarvis Thomson and "On the Moral and Legal Status of Abortion" By Mary Anne Warren.
Areen, pp. 1353-1363.
Packet, *In re A.C.*
Areen, pp. 1363-1369.
2000 Supplement, pp. 339-345.
- Week 6: Areen, pp. 885-945.
Packet, "Increasing the Supply of Transplant Organs: The Virtues of a Futures Market" by Lloyd R. Cohen.
2000 Supplement, pp. 188-197.
- Week 7: Areen, pp. 987-1012, 1016-1019, 546-552, 1041-1086.
2000 Supplement, pp. 217-227.