***Mental Health Law***

Course Policies & Tentative Syllabus: Spring 2020

Law # 6930, Class # 25042

Professor Lea Johnston Mental Health Law

Office: 305 Holland Hall Room 284

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Coverage & Course Objectives

This course explores the law’s treatment of individuals with mental disorders. The course will cover governmental efforts to deprive those with mental disorders of liberty and property through the criminal and civil systems, as well as certain entitlements and protection against discrimination.

Student Learning Outcomes**:** After completing this course, students should be able to:

* Elucidate the difference between mental disorder and “mental disability” for legal purposes.
* Articulate when and how mental health professionals may participate in the legal process, how to utilize these experts, and how effectively to respond to them.
* Demonstrate insight into how effectively to identify, counsel, and advocate for individuals with serious mental illness.
* Apply statutes concerning insanity, diminished capacity, and capital sentencing in state courts.
* Apply state statutes and procedural rules concerning civil commitment and guardianship in state court.
* Apply case law concerning competency and the right to refuse and consent to psychiatric treatment in state and federal courts.
* Apply relevant portions of the Individuals with Disabilities Education Act (IDEA) and the Americans with Disabilities Act (ADA) in state and federal courts.
* Identify and establish, from a given fact pattern, possible violations of procedural rules, statutes, and due process principles concerning the legal regulation of individuals with mental disabilities.
* Identify and defend the values underlying competence, incompetence, autonomy, paternalism, the best interests test, and substituted judgment.
* Explain a defense attorney’s ethical and legal obligations to his or her client with mental disorder in criminal and civil commitment proceedings.

Assessment of Student Learning: I will assess your attainment of competency in these learning outcomes through an in-class examination at the end of the semester as well as in-class exercises.

Required Text

The textbook will be Christopher Slobogin, et al., Law and the Mental Health System: Civil and Criminal Aspects (6th ed. 2014). I will also regularly post additional material on the course website from time to time.

TWEN

You must register for the class on TWEN by the end of the drop/add period for the semester.

Workload and Assignments: ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Mental Health Law has 3 “classroom hours” of in-class instruction each week, requiring at least 6 hours of preparation outside of class. This requirement will be met through your completing the assigned reading, which typically consists of 20-40 pages per class.

Assignments

Assignments will consist of assigned reading from the case book, supplementary materials on Florida law (largely to be downloaded by students from Westlaw or Lexis), and other supplementary materials posted on the “course materials” page of the TWEN site. A tentative syllabus appears at the end of this document. Actual assignments will be posted on TWEN by Friday at noon (in the “Actual Syllabus” document) and will cover the following two weeks.

We will not cover all assigned material in class, but we will discuss those points that I consider to be most important. The exam will cover all assigned material.

Class Preparation and Participation

Preparation for class is mandatory. Before each class you must complete the assigned reading and be prepared to discuss the material and provide thoughtful answers to questions that I pose during class. I expect you to participate meaningfully, professionally, and effectively in class. **Class participation will constitute 10% of the final grade**. Mere attendance in class, without acceptable participation, is insufficient to satisfy the participation requirement. Failure to attend class will negatively impact the participation grade.

The class participation component of your grade will consider your preparation and participation in class discussions. My assessment of the strength of your participation in the course includes such factors as the quality of classroom comments, the amount of interest demonstrated in the subject, degree of preparation for class and willingness to respond to questions, demonstration of active engagement of the material via application to contemporaneous events, class attendance, and observance of course policies.

While I expect regular participation from everyone, each student is required to be a “class leader” once a week. These students will be expected to actively engage with the assigned materials and help lead class discussions. I will divide the room into three groups of students and assign “class leader” days. If we do not finish a case on a given day, the student leaders for the next day should be prepared to discuss that case.

Please note that while I encourage the free exchange of ideas and opinions in class, expressions of disagreement must be made in a professional manner that is respectful of your classmates. Conducting yourselves in a professional manner also means not engaging in any behavior during class that may distract me or your classmates. This includes, but is not limited to, playing computer games, surfing the web, sending e-mails, and any other use of your computers during class that does not involve note taking. Your failure to comply with this policy may negatively affect your participation grade as described above, or subject you to removal from the classroom and/or loss of your privilege to use a laptop in the classroom.

Attendance Policy: Attendance is required. On the first day of class, I will circulate a seating chart. Your seat that day will be your seat for the semester. At the beginning of each class meeting, students must sign an attendance roster. Missing more than six (6) classes is grounds for dismissal from the course.[[1]](#footnote-1) **Please make sure you are present and prepared on your “class leader” days** (see “classroom preparation and conduct” above).

Accommodations for Students with Disabilities:Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to Dean Rachel Inman when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

The Honor Pledge:UF students are bound by The Honor Pledge, which states: “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honesty and integrity. On all work submitted for credit by students at the university, the following pledge is either required or implied: ‘On my honor, I have neither given nor received unauthorized aid in doing this assignment.’”

The Honor Code (https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel (i.e., Dean Rachel Inman). If you have any questions or concerns, please ask me or Dean Inman.

Final Exam:The final examination will be an in-class, limited-space examination. It may include multiple choice, short answer, and essay questions. You will not have access to the Internet or your hard drive. **You may only bring these documents/papers into the exam room: (a) rules and statutes, (b) scratch paper, and (c) one page of notes/outline.** The exam will be graded anonymously by exam number. To aid in your studying, I have posted copies of several past exams on TWEN. The law school policy on delay in taking exams can be found at https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form.

Grading Policy:

The final grade will be based on the final exam (90%) and course participation (10%).

I adhere to the College’s posted grading policy (https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/academic-policies).  Grades carry the following point equivalents:

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| --- | --- |
| **Letter Grade** | **Point Equivalent** |
| A (Excellent) | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.0 |
| D- | 0.67 |
| E (Failure) | 0.0 |
|   |   |

Office Hours: My office hours are on Wednesday, from 3-4 p.m. You may also speak to me by appointment. My office is in Holland 305.

Online Course Evaluation:Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at https://gatorevals.aa.ufl.edu/students/. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via https://ufl.bluera.com/ufl/. Summaries of course evaluation results are available to students at https://gatorevals.aa.ufl.edu/public-results/.

# **Tentative Syllabus**

Below are tentative reading assignments for the course. Please note that the assigned readings are subject to change. I will post actual assignments on TWEN each Friday that cover the next two weeks. (See “Actual Syllabus.”) All page numbers are from Slobogin et al., Law and the Mental Health System (6th ed. 2014).

**INTRODUCTION**

Day 1: Mental Disorder 4 – top of 14 (skip “psychodynamic model” at 11-12), 15 (start at note 3) – 18 (to end of n.6), 20-27; Unzicker, “To Be a Mental Patient” (on TWEN); Aviv, “God Knows Where I Am” (on TWEN)

Day 2: Treatment 28 – top of 47 (skip nn. 4-5 at 39-40 and n.3 on p.45); Kanopy videos: DSM 5 Guided Collection, Vol. 3 (Schizophrenia and Other Psychotic Disorders); DSM 5 Guided Collection, Vol. 4 (Bipolar and Related Disorders & Depressive Disorders)

*Tentative Guest: Brian Cooke, Associate Professor in Department of Psychiatry*

**EXPERTISE**

Day 3: Normality skim 493 – top of 495; read 495- 515 (to end of n.1), top of 517-22; Rosenhan, “Being Sane in Insane Places” (on TWEN)

Day 4: Responsibility 522- top of 531; Fla. Stat. §90.702; Perez v. Bell South Telecommunications, Inc., 138 So.3d 492 (2014); Andrews v. State, 181 So. 3d 526 (Fla. 5th DCA 2015)

FYI: In re: Amendments to the Florida Evidence Code, No. SC19-107 (Fla. May 23, 2019) (on TWEN)

Day 5: Propensity 542 – top of 565

Days 6-7: Expertise: Constitutional Issues 580 – 607 (prepare problem 5 on pp. 606-07; be ready to discuss parts A, E, G, & H)

Day 8: Expertise: Evidentiary Issues 607-24; Fla. Stat. §90.703-704; Fed. R. Evid. 703, 704

**CRIMINAL LAW**

Day 9: Video: The New Asylums https://www.pbs.org/video/frontline-new-asylums/

Days 10-11: Insanity Defense: Cognitive 625-48 (to end of n.1), 652 – top of 655; Fla. Stat §775. 027; Fla. Std. Jury Instr. (Crim) 3.6(a), 3.6(c) (on TWEN)

Day 12: Insanity Defense: Volitional 656-73

Day 13: Mens Rea Testimony 673-92 (to end of n.2); Chestnut v. State, 538 So.2d 820 (Fla. 1989); Bunney v. State, 603 So.2d 1270 (Fla. 1992) (only maj. op.); Fla. Stat. § 775. 051

Day 14: Other Defenses 701-03, n.3 (pp. 712-14)

Battered spouse syndrome**: read to end of Part II at p.640 in** Ibn-Tamas v. U.S., 407 A. 2d 626 (App. D.C. 1979); **skim** Hickson v. State, 630 So.2d 172 (Fla. 1993)

PTSD**:** State v. Mizell, 773 So.2d 618 (Fla. 1st DCA 2000)

Day 15: Abolition of Insanity Defense 715 – top 721; Kahler: respondent Kansas brief (on TWEN): Kahler: amicus brief by law professors (on TWEN); Kahler: Amy Howe, Argument analysis: SCOTUSblog (Oct. 7, 2019) (on TWEN)

Day 16: Mock Examination of Expert on SanityPsychiatric Evaluation (on TWEN)

*Tentative Guests: Prof. Wolking, Prof. Zedalis, Dr. Cooke*

Day 17: Capital Sentencing bottom of 735 – top of 767

Day 18: Sex Offender Sentencing 773-91 (to end of n.2), 794 – 801

FYI: Jimmy Ryce Act: Fl. St. §§ 394.912, 394.913, 394.915, 394.916, 394.917, 394.918

Day 19: Panel: Mental Health & the Criminal Justice System in Florida

*Tentative Guests: Judge William E. Davis from the Eighth Judicial Circuit, Bill Miller from Eighth Judicial Circuit Public Defender’s Office, Brian Cramer from Eighth Judicial Circuit State Attorney’s Office*

**COMMITMENT**

Day 20: Police Power Commitment: Theory 804-08, 812 – top of 831; Baker Act: Fla. Stat. §394.467(1), 394.455 (28)

Day 21: Police Power Commitment: Practice 831-49

Day 22: Police Power Commitment: Practice, cont’d 849-53; Lessard (831); Robinson v. CA, 370 U.S. 660 (1962) (only opinions of majority, Harlan & White)

 \*Mock oral argument on overt act requirement (see instructions on TWEN)

Day 23: Parens Patriae Commitment: Theory 854-72

Day 24: Parens Patriae Commitment: Practice 872-88; Fla. Stat. § 394.467(1) (Baker Act)

Day 25: Least Restrictive Alternatives 882-903; Morris v. State, 902 So. 2d 224 (Fla. Dist. Ct. App. 1st Dist. 2005), Fla. Stat. § 394.4655; article on FL outpatient commitment law (on TWEN)

Day 26: Commitment Procedures **skim** 904-12; **read** 912-13, 927 (§ 2) - 939 (to end of n.4); Fla. Stat. §§394.463, 394.467 (Baker Act)

FYI: Fla. Stat. § 790.401 (Risk Protection Orders)

Baker materials folder on TWEN

Day 27: Right to Counsel 940-51

Day 28: Release and Voluntary Admissions 959 – top of 978; Fla. Stat. § 394.467(6)(b), (7); § 394.4625

**COMPETENCY DETERMINATIONS**

Day 29: Competency Generally 1037-51 (to end of n.3)

Days 29-30: Guardianship 1053-70 (stop at Hayes), 1076-79; Fla. Stat. §§ 744.102(12), 744.3201, 744.334, 744.331, 744.2005, 744.3215, 744.464

Days 31: Right to Refuse Psychiatric Treatment 1081 – top of 1101 (to end of n.2), notes 6-7 (1104-09)

Day 32: Competency to Proceed 1126-45 (to end of n.1), note 3 (1146-48); Fla. R. Crim. P. 3.210-3.211

FYI: competency reports and order posted on TWEN

\*Student assignments for class discussion re: competency problems at pp.1134-41 (on TWEN)

Day 33: Competency to Proceed, cont’d 1151-77 (to end of n.3), note 6 (1179); Fla. Stat. § 916.13; Fla. R. Crim. P. 3.212-3.213; Tampa Bay Times, “Definition of Insanity” (on TWEN); Tampa Bay Times, Mentally Handicapped Are Held for Years Without Trial (on TWEN)

**ENTITLEMENTS AND PROTECTION AGAINST DISCRIMINATION**

Day 34: The Education Act1335-65

Day 35: The Education Act, cont’d 1365-83

Day 36: Anti-Discrimination in the Constitution 1401-16

Day 36: Americans with Disabilities Act 1416-47

Day 37: Right to Treatment 1252-62, 1264 (only Harvard Law Review quote), 1265-66 (only note 3), 1312-17 (to end of n.2), 1318 (Olmstead) – 1331

Day 38: Review 2015 Exam Question 1, 2014 Exam Questions 2 & 3

1. University recognized religious holidays are exempt. Please provide me with advance notification of such absences. [↑](#footnote-ref-1)