

GENETICS & THE LAW: LAW 6396
Fall 2013
Syllabus and Course Policies

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I. Introduction

Welcome to Genetics & the Law! This semester, we will discuss a number of areas in which genetic technology raises or implicates legal issues. Specifically, the course will cover how genetic science relates to:

- (1) Patent Law
- (2) Public Health Law
- (3) Family Law
- (4) Criminal Law
- (5) Immigration Law
- (6) Privacy Law
- (7) Antidiscrimination Law

I'm very excited to be your professor this term. As I want the class to be as engaging and as useful as possible, I encourage questions and welcome feedback. Please feel free to contact me with questions regarding the readings, your assignments, or just the course in general. I look forward to spending the semester with you!

II. Logistics

Required Text

LORI B. ANDREWS et al., GENETICS: ETHICS, LAW AND POLICY (3d ed. 2010) (abbreviated "CB" in reading assignments).¹

Class Hours

We will meet Tuesdays and Thursdays, from 10:30 AM-11:50 AM, in Room BLB 209.

Office Hours

I will hold office hours in my office on Mondays from 10:00 AM-11:30 AM and by appointment. You may also email me your questions.

¹ All additional reading assignments will be posted on Blackboard.

Course Policies

Accommodation:

If you have a disability and require an accommodation, I encourage you to contact the Center for Students with Disabilities and to forward the Center all required documentation if you've not done so already. I encourage you to speak to me as well. All students should let me know what I can do to maximize your learning potential, participation, and general access during this course. I want to make the course material accessible, and I want you to succeed as a student. If any aspects of the course or the assignments pose accessibility problems, we can discuss alternatives.

Attendance:

You are expected to attend all class sessions. Please see "Attendance and Preparedness" under the "Course Requirements" section. I will circulate a sign-in sheet every class. It is your responsibility to sign in. Falsifying attendance violates the Law Center's Honor Code and is, therefore, grounds for disciplinary action.

Seating Assignments:

After the first week of class, I will create a seating chart. You must sit in your assigned seat the remainder of the semester.

Course Website:

Please check Blackboard regularly for any updates related to our class. You can log on through the UH website (<https://accessuh.uh.edu/login.php>).

III. Course Requirements

This course has four key requirements: (1) preparing for and attending class sessions; (2) participating in ***at least four*** discussion panels; (3) ***three*** brief response papers (graded for completion); and (4) a take-home exam. Failing to complete any of these four requirements will make you ineligible for an A in the course and could otherwise result in a further reduction in your grade.

- (1) **Attendance and Preparedness.** You are expected to arrive on time and be prepared for all of our class sessions. Pursuant to the Law Center's policy, you must attend at least 80% of all class meetings; however, you should strive to attend 100%. In other words, you can miss no more than five classes. Missing more than five classes will result in your being dropped from the course.
- (2) **Class Participation.** To facilitate our class discussion, we will use discussion panels in lieu of an on-call system.² You must sign up for ***at least four*** discussion panels. I

² By allowing you to choose when you are on-call, you can select topics that are of particular interest to you, as well as the timing that best suits your needs. For example, those of you who do not like speaking in class might choose to schedule your discussion panels for earlier in the semester to get them out of the way. Please choose your panels carefully because once the panels are set, they cannot be changed.

will circulate the panel sign-up in class on **Thursday, August 29**. (If you are unable to attend class that day or if you enroll in the course after the first week, the sign-up will be available with my assistant Elaine in the Health Law & Policy Institute until **Friday, September 6**.) If you do not sign up for the required number of panels, I will randomly assign you to under-enrolled panels. On the days of your panels, you should have prepared extensively for class and should expect to be called on. I will email the class a list of the panel members and a series of four to six discussion questions the day before our class meeting. Members of the discussion panel will be my “go-to” people for that day; however, I reserve the right to call on any member of the class. Students with outstanding participation will be eligible for an upward adjustment of a partial letter grade (e.g., from a B to a B+, or from a B+ to an A-).

- (3) **Brief Responses.** You will write three brief responses of *one to two pages*, due at five-week intervals throughout the semester. (Please consult the syllabus for specific dates.) Each response should relate to one of the topics discussed in the preceding five weeks of class. While you should indicate when you reference the ideas of others by including author names and source titles, you do not need to footnote or bluebook these papers. Please bring a hard copy of your response with you to class the day it is due. Failure to turn in one of the three brief responses will result in a reduction of a partial letter grade (e.g., from a B to a B-, or from an A- to a B+).³ I will not accept late work, so if you have to miss class, please make other arrangements for turning in your response to ensure you receive credit. The brief responses should build off of the reading and/or class discussion. A good response will raise a new insight or point out a complication in the law that warrants further inquiry. As with class participation, students who write outstanding brief responses will be eligible for an upward adjustment of a partial letter grade (e.g., from a B to a B+, or from a B+ to an A-).
- (4) **Take-Home Exam.** Finally, you will complete a take-home exam, distributed on our last day of class and due to the Law Library by **5:00 PM Tuesday, December 10**. The exam will consist of a brief section of multiple choice and/or true-false-explain questions (or a combination of the two) and three brief essays. (Given the diversity of the subject matter we cover, I will give you five prompts from which to choose.) Please use your exam number and not your name. During the exam you may consult three things: (1) your casebook, (2) any additional course reading, and (3) your outline and notes. Please do not do outside research. Collaboration is strictly forbidden and will result in disciplinary action. More details regarding the exam format and content will be discussed as the exam date approaches.

³ The brief responses are graded for completion, not for substance. However, if you turn in a brief response on time that fails to qualify for the completion credit, I will give you the opportunity to revise it.

IV. Course Reading

These reading assignments are subject to change based on the pace of our discussion. I will announce any changes in class and on Blackboard.

I. Historical & Scientific Background of Genetics

Week One—Introduction to Course Concepts

August 27

Syllabus
Introduction, CB pp. 1-14
Dialogue Between Parent and Daughter, Excerpt from BRUCE ACKERMAN,
SOCIAL JUSTICE IN THE LIBERAL STATE (1980)
Sandra Soo-Jinn Lee, *American DNA: The Politics of Potentiality in a Genomic Age*, 54 CURRENT ANTHROPOLOGY (forthcoming Supp. 2013)
Gina Kolata, *Autism's Unexpected Link to Cancer Gene*, N.Y. TIMES, Aug. 11, 2013
Guest Lecture: Glenn Sanford, Associate Professor of Philosophy in the Department of Psychology and Philosophy, Sam Houston State University

August 29

Scientific Background, CB pp. 15-40
What is DNA? What is a Gene? (in class)
Guest Lecture: Amy McGuire, Professor of Biomedical Ethics and Director of the Center for Medical Ethics and Health Policy at Baylor College of Medicine

II. Genetics & Patent Law

Week Two—Should Genetic Information be Patentable?

September 3

Introduction to Gene Patents, CB pp. 194-205
Concerns, CB pp. 250-60

September 5

Ass'n for Molecular Pathology v. Myriad Genetics, 569 U.S. ____ (2013) (excerpt)
Ass'n for Molecular Pathology v. PTO, 689 F.3d 1303 (Fed. Cir. 2012) (excerpt)
Tony Dutra, *Supreme Court Compromises on Patenting Gene Materials in Unanimous Myriad Ruling*, 12 MED. RES. L. & POL'Y REP. 393 (2013)
Guest Lecture: Christopher Quan, Patent Attorney and IP Counsel for Biotechnology and Medical Device Companies

Week Three—Effect of Gene Patents

September 10

Effect on Patients, CB pp. 283-304

September 12

Effect on Research, CB pp. 243-50

Rebecca S. Eisenberg, *Patents and the Progress of Science: Exclusive Rights and Experimental Use*, 56 UNIV. CHI. L. REV. 1017, 1017-21, 1066-86 (1989)

III. Genetics & Public Health Law

Week Four—Introduction to Public Health Genetics

September 17

Public Health Genetics, CB pp. 565-69

Rohit P. Ojha & Raymond Thertullen, *Health Care Policy as a Result of the Genetic Revolution: Implications for Public Health*, 95 AM. J. PUB. HEALTH 385 (2005)

Jane L. Halliday et al., *Genetics and Public Health—Evolution or Revolution?*, 58 J. EPIDEMIOLOGY & COMM. HEALTH 894 (2004)

September 19

History of Eugenics, CB pp. 47-67, 74-80

War on the Weak (in class)

Week Five—Issues in Public Health Genetics

September 24

Newborn Screening, CB pp. 381-408

Newborn Screening Saves Lives Act

September 26

Environmental & Occupational Regulation, CB pp. 910-24

Guest Lecture: Tracy Hester, Professor of Practice, University of Houston Law Center

****FIRST BRIEF RESPONSE DUE THURSDAY, SEPTEMBER 26, IN CLASS****

IV. Genetics & Family Law

Week Six—Genetics & Parenthood

October 1

Determining Paternity, CB pp. 600-18

Unanticipated Misattributed Paternity, CB pp. 438-44

Child Support Changes Kick in September 1 (in class)

TX Fam. Code § 161.005

October 3

Adoption, CB pp. 651-69; 674-75 ns. 1-3

Week Seven—Genetics & Assisted Reproduction

October 8

Reproductive Technology, CB pp. 349-62
Sperm Donor Profile
Pacific Reproductive Services Catalog
California Cryobank Catalog
Jacqueline Mroz, *One Sperm Donor, 150 Offspring*, N.Y. TIMES, Sept. 5, 2011
Sperm Donor: 74 Kids & More (in class)

October 10

Paternity & Assisted Reproduction, CB pp. 624-48

V. Genetics & Criminal Law

Week Eight—Introduction to Forensic Genetics & DNA Profile Warrants

October 15

Introduction to DNA Forensic Science, CB pp. 677-92
Jamie Stockwell, *Defense, Prosecution Play to New ‘CSI’ Savvy Juries Expecting TV-Style Forensics*, WASH. POST, May 22, 2005, at A01
Melissa Dribben, *Trial by ‘CSI’*, PHIL. INQUIRER, Feb. 19, 2006, at M01
Donald E. Shelton, *The ‘CSI Effect’: Does It Really Exist?*, NAT’L INST. JUSTICE No. 259 (2008)

October 17

DNA Profile Warrants, CB pp. 692-96
John Doe Arrest Warrant
John Doe Complaint
Amended Complaint
Ann Zimmerman, *Links to Sex Crimes to Follow Texas Suspects*, WALL ST. J., Aug. 31, 2009, at A3

Week Nine—DNA Dragnets & DNA Banks

October 22

DNA Dragnets, CB p. 696
David M. Halbfinger, *Police Dragnets for DNA Tests Draw Criticism*, N.Y. TIMES, Jan. 4, 2003
Natalie Quan, *Black and White or Red All Over? The Impropriety of Using Crime Scene Data to Construct Racial Profiles of Suspects*, 84 S. CAL. L. REV. 1403, 1403-13, 1428-44 (2010-2011)

October 24

DNA Bank Policy Issues, CB pp. 731-40
Maryland v. King, 569 U.S. ____ (2013) (majority and dissenting opinions)

Week Ten—Avoiding and Addressing Error in Criminal Forensic Genetics

October 29

Guest Lecture: Dr. Roger Kahn, Forensic Genetics Laboratory Director, Harris County Institute of Forensic Sciences

October 31

Post-Conviction DNA Testing, CB pp. 706-16

Elisabeth Salemme, *Innocence Project Marks 15th Year*, TIME, June 5, 2007

Kevin Johnson, *DNA Tests Fuel Urgency to Free the Innocent*, USA TODAY, Feb. 19, 2008, at 1A

60 Minutes: Freed from Wrongful Conviction (in class)

Guest Lecture: David Dow, University Distinguished Professor, University of Houston Law Center, Founder, Texas Innocence Network

****SECOND BRIEF RESPONSE DUE THURSDAY, OCTOBER 31, IN CLASS****

VI. Immigration Law

Week Eleven—Race, Ethnicity, & Immigration

November 5

Genes, Race, & Ethnicity, CB pp. 40-46

Mildred K. Cho & Pamela Sankar, *Forensic Genetics and Ethical, Legal, and Social Implications Beyond the Clinic*, 36 NATURE 8 (Supp. 2004)

Human Diversity Project, CB pp. 139-56

November 7

Immigration, CB pp. 650-51

Genetics Without Borders, 461 NATURE 697 (2009)

John Travis, *Scientists Decry Isotope, DNA Testing of 'Nationality,'* 36 SCI. 30 (2009)

Jessica L. Roberts & Bahrad Sokhansanj, *Judging Race* (in progress)

VII. Privacy Law

Week Twelve—Protecting Privacy & Authorizing Disclosure

November 12

Genetic Privacy & Confidentiality, CB pp. 786-809

Privacy Survey Data (1998)

Public Opinion (2007)

November 14

Genetic Stalking, CB pp. 827-31

****reading continued on following page****

Martin Smith, *Honey Trap Plot to Hire Beauty to Snatch a Lock of Hair from Harry*, MAIL ON SUNDAY, Dec. 15, 2002, at 3

W. Peter Guarnieri, *Prince Harry & The Honey Trap: An Argument for Criminalizing the Nonconsensual Use of Genetic Information*, 48 AM. CRIM. L. REV. 1789, 1789-90, 1798-1818 (2011)

Week Thirteen—Genetic Variation & the Potential for Discrimination

November 19

Genetic Difference, CB pp. 825-27

James C. Wilson, *Disability and the Human Genome*, in THE DISABILITY STUDIES READER 52-62 (3d ed. 2010)

Jessica L. Roberts, *The Genetic Information Nondiscrimination Act as an Antidiscrimination Statute*, 86 NOTRE DAME L. REV. 597, 623-34 (2011)

November 21

Discrimination Handouts

Insurance, CB pp. 832-48

Employment, CB pp. 895-909

Jessica L. Roberts, *Privacy as a Tool for Antidiscrimination* (in progress)

VIII. Review of Course Concepts

Week Fourteen—Exam Review

November 26

Exam Review

Sample Exam

November 28

NO CLASS (THANKSGIVING HOLIDAY)

Week Fifteen—*Gattaca* as a Review of Course Themes & Take-Home Exam Distribution

December 3

NO CLASS (RESERVED FOR MAKE-UP)

December 5

Gattaca (1997) (in class)

Take-Home Exam Distributed

****THIRD BRIEF RESPONSE DUE THURSDAY, DECEMBER 5, IN CLASS****

****TAKE-HOME EXAM DUE TO LIBRARY TUESDAY, DECEMBER 10 AT 5:00 PM****