

GENETICS & THE LAW
Spring 2020
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 intersects with the law. Specifically, the course will cover how genetic science relates to:

- (1) Property/Intellectual Property Law
- (2) Public Health Law
- (3) Privacy Law
- (4) Criminal Law
- (5) Family Law
- (6) Immigration 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

Course Reading

All course reading appears on Blackboard. I will also post supplemental materials and reviews. You can log on through the Access UH website (<https://accessuh.uh.edu/login.php>).

Class Hours

We will meet Tuesdays and Thursdays, from 10:30-11:50 AM, in 3 BLB.

Office Hours

I will hold office hours in my office on Thursday from 12:00 PM to 1:00 PM and by appointment. You may also email me your questions.

Course Policies

Accommodation and Psychological Services:

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.

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html.

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.

Chosen Names and Preferred Pronouns:

I want to address each of you in a manner that corresponds to your identity. Although mistakes happen, chosen names and preferred pronouns—including non-binary ones such as they/them/their—must be respected in my classroom. Please feel free to reach out to me at any time if you want to make me aware of your chosen name or preferred pronoun or if you have concerns about how I or your classmates address you.

Sexual Misconduct:

The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. As such, Law Center employees and faculty members are not a confidential resource.

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.

Learning Outcomes:

Over the course of the semester, students will: (1) familiarize themselves with the various areas of substantive law that intersect with genetic science; (2) engage in legal analysis and reasoning across those areas; (3) think critically about how new advances in genetic science will affect the law and identify the potential challenges those advances may create; (4) engage in creative problem-solving regarding how the law should best respond to those challenges.

III. Assessment Methods

This course has four key requirements: (1) preparing for and attending class sessions; (2) participating in **at least three** discussion panels; (3) **three** brief response papers (graded for completion); and (4) a take-home exam. Although your grade is based primarily on the 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 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.¹ You must sign up for at least three discussion panels. You will sign up for your panels using an on-line tool called “Sign Up Genius.” Before our first class, you should receive an email invitation to sign up. The web address is: <https://www.signupgenius.com/go/10c0945a4a82ea5f58-discussion8>. Please let me know if you don’t have access. If you do not sign up for the required number of panels by **Friday, January 24**, 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 roughly four-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 four weeks of class. While you should indicate when you reference the ideas

¹ 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, or if you know you will need to travel you can ensure you will not be called on those days. Please choose your panels carefully because once the panels are set, they cannot be changed.

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.² 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 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.

- (4) **Take-Home Exam.** Finally, you will complete a take-home exam using Electronic Bluebook. The exam will consist of true-false-explain questions and two brief essays. (Given the diversity of the subject matter we cover, I will give you five essay prompts from which to choose.) 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.

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 by email.

I. Historical & Scientific Background of Genetics & Genomics

Week One—Introduction to Course Concepts

January 14

Syllabus

Chapter 1, pp. 1-3, 8-16

C.S. LEWIS, *THE ABOLITION OF MAN* (1947) and accompanying notes

BARBARA KATZ ROTHMAN, *GENETIC MAPS AND HUMAN IMAGINATIONS: THE LIMITS OF SCIENCE IN UNDERSTANDING WHO WE ARE* (1998) and accompanying notes
Dialogue Between Parent and Daughter, Excerpt from BRUCE ACKERMAN, *SOCIAL JUSTICE IN THE LIBERAL STATE* (1980)

January 16

Chapter 2, pp. 29-35,

Chapter 1, pp. 3-8

Chapter 4, pp. 1-5

Guest Lecture: Stacey Pereira, Assistant Professor of Biomedical Ethics at Baylor College of Medicine

² 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.

II. Genetics & Property Law

Week Two—Patenting Genetic Data

January 21

Part IV Introduction, pp. 1-3
Chapter 16, pp. 1-17

January 23

Chapter 16, pp. 18-20
Duke v. Madey
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)

Week Three—Owning Genetic Data

January 28

Chapter 17, pp. 1-24

January 30

Kristen V. Brown, *How a Legal Brawl Between Two Rich Guys Could Change How We Think about DNA*, GIZMODO, June 13, 2018
Peerenboom v. Perlmutter (conversion)
Jessica L. Roberts, *Progressive Genetic Ownership*, 93 NOTRE DAME L. REV. 1105, 1121-1133 (2018)
Jorge L. Contreras, *The False Promise of Health Data Ownership*, 94 N.Y.U. L. REV. 624, 633-41 (2019)
Jessica L. Roberts, *In Favor of an Action for Genetic Conversion*, in CONSUMER GENETIC TECHNOLOGIES: ETHICAL AND LEGAL CONSIDERATIONS (I. Glenn Cohen, Nita Farahany, Henry T. Greely, and Carmel Shachar, eds.) (Cambridge University Press forthcoming 2020).

III. Genetics & Public Health Law

Week Four—Public Health Genetics

February 4

ALISON STEWART ET AL., GENETICS, HEALTH CARE, AND PUBLIC POLICY: AN INTRODUCTION TO PUBLIC HEALTH GENETICS 1-9 (2007)
Chapter 10, pp.1-12

February 6

Chapter 10, pp. 13-28

****FIRST BRIEF RESPONSE DUE THURSDAY FEBRUARY 6, IN CLASS****

IV. Genetics & Privacy Law

Week Five—Genetic Privacy

February 11

Part IV, pp. 1-3

Chapter 25, pp. 14-18

Chapter 32, pp. 11-16

Cole v. Gene by Gene, Ltd.

Jessica L. Roberts, *Protecting Privacy to Prevent Discrimination*, 56 WM. & MARY L. REV. 2097, 2113-15 (2015)

February 13

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

Sonia M. Suter, *From Sweaty Towels to Genetic Stats: Stalking Athletes for Their Genetic Information*, 6 RECENT PATENTS ON DNA & GENE SEQUENCING 189 (2012)

Elizabeth E. Joh, *DNA Theft: Recognizing the Crime of Nonconsensual Genetic Collection and Testing*, 91 BOSTON UNIV. L. REV. 665, 682-700 (2011)

Peerenboom v. Perlmutter (invasion of privacy)

V. Genetics & Criminal Law

Week Six—Introduction to DNA Forensics

February 18

Chapter 18, pp. 1-26

February 20

Chapter 19, pp. 1-16

Week Seven—DNA Databases

February 25

Guest Lecture: Roger Kahn, Crime Laboratory Director, Harris County Institute of Forensic Sciences

February 27

Chapter 20, pp. 1-20

Aaron Morrison, *Hundreds of Victim and Witness DNA Profiles Removed from New York City Database*, THE APPEAL, Nov. 26, 2019.

February 28 (Friday Make-Up)

Natalie Ram et al, *Genealogy Databases and the Future of Criminal Investigation*, 360 SCI. 1078 (2018)

James W. Hazel et al, *Is It Time for a Universal Genetic Forensic Database?*, 362 SCI. 898 (2018)

(reading continued on next page)

Jocelyn Kaiser, *A Judge Said Police Can Search the DNA of 1 Million Americans Without Their Consent. What's Next?*, SCI. BLOG, Nov. 7, 2019

Nila Bala, *We're Entering a New Phase in Law Enforcement's Use of Consumer Genetic Data*, SLATE, Dec. 19, 2019

Guest Lecture: Natalie Ram (via Zoom), Associate Professor of Law, University of Maryland Francis King Carey School of Law

Week Eight—Crimmigration & Exoneration

March 3

Border Searches, U.S. LAW JUSTIA.COM

Dep't Homeland Sec., Privacy Impact Assessment for the CBP and ICE DNA Collection, January 3, 2020

Guest Lecture: Daniel Morales, Associate Professor of Law & George A. Butler Research Professor, University of Houston Law Center

March 5

Chapter 21, pp. 1-5

District Attorney's Office for the Third Judicial District v. Osborne

****SECOND BRIEF RESPONSE DUE THURSDAY MARCH 5, IN CLASS****

Week Nine—Spring Break

March 10

NO CLASS

March 12

NO CLASS

Week Ten—Classes Cancelled

March 17

NO CLASS

March 19

NO CLASS

VI. Genetics & Family Law

Week Eleven—Genetic Parenthood and Incidental Findings

March 24

HANDBOOK OF TEXAS FAMILY LAW §§14:1-14:4, 14:7 (2019 ed.)

March 26

Marissa Palmor & Autumn Fiester, *Incidental Findings of Nonparentage: A Case for Universal Nondisclosure*, 134 PEDIATRICS 163 (2014)
(reading continued on next page)

KAREN H. ROTHENBERG & LYNN WEIN BUSH, THE DRAMA OF DNA 77-79 (2014)
Genetic Determination of Parentage as a Consequence of Genetic Testing for
Nonidentification Purposes, *in* ENCYCLOPEDIA OF ETHICAL, LEGAL, AND POLICY ISSUES
IN BIOTECHNOLOGY (2000)

Week Twelve— Incidental Findings (cont'd) and Reproductive Technologies

March 31

C.P. Schaaf et al., *Identification of Incestuous Parental Relationships by SNP-
Based DNA Microarrays*, 377 THE LANCET 555 (2011)

Guest Lecture: Daryl Scott, Associate Professor of Molecular and Human
Genetics at Baylor College of Medicine

April 2

Harnicher v. University of Utah Medical Center

Barry J. Maron et al., *Implications of Hypertrophic Cardiomyopathy Transmitted
by Sperm Donation*, 302 JAMA 1681 (2009)

Tamar Lewin, *In the Business of Sperm Banks It's Buyer Beware*, N.Y. TIMES,
July 23, 2016

Jacqueline Mroz, *Their Children Were Conceived with Donated Sperm, It was the
Wrong Sperm*, N.Y. TIMES, June 3, 2019

Sperm Donor Profile

Pacific Reproductive Services Catalog

California Cryobank Catalog

Sperm Donor: 74 Kids & More (in class)

Week Thirteen—Reproductive Technologies

April 7

HANDBOOK OF TEXAS FAMILY LAW §14:10 (2019 ed.)

People v. Sorenson

Jhordan C. v. Mary K.

In Re Marriage of Buzzanca

K.M. v. E.G.

VII. Genetics & Antidiscrimination Law

Week Thirteen—Eugenics

April 9

Chapter 2, pp. 1-23

Matthew Burns, *Hundreds of Eugenics Victims Lose Initial Compensation Bid*,
WRAL.COM, Aug. 8, 2014

Michael Schulson, *Researchers Link Genes to Income, Other Scientists Beg to
Differ*, UNDARK, Dec. 20, 2019

War on the Weak (in class)

Week Fourteen— Genetic Information Nondiscrimination Act

April 14

Chapter 30, pp. 1-5
James C. Wilson, *Disability and the Human Genome*, in THE DISABILITY STUDIES READER 52-62 (3d ed. 2010)

April 16

Chapter 26, pp. 7-10
Chapter 32, pp. 2-11
Bradley A. Areheart & Jessica L. Roberts, *GINA, Big Data, and the Future of Employee Privacy*, 128 YALE L.J. 710, 715-29 (2019)

VIII. Review of Course Concepts

Week Fifteen— Genetic Information Nondiscrimination Act (cont'd) and Exam Review

April 21

Bradley A. Areheart & Jessica L. Roberts, *GINA, Big Data, and the Future of Employee Privacy*, 128 YALE L.J. 710, 745-55 (2019)
Darby v. Childvine
Mpooyo v. FIS Management Services, LLC
Chapter 32, pp. 11-16
Jessica L. Roberts, *Protecting Privacy to Prevent Discrimination*, 56 WM. & MARY L. REV. 2097, 2113-15 (2015) (review)

****THIRD BRIEF RESPONSE DUE TUESDAY APRIL 21 10:30 AM BY EMAIL****

April 23

Exam Review
Sample Exam

Take-Home Exam

Due Monday, May 4 at 11:59 PM