

MITCHELL HAMLINE SCHOOL OF LAW

Bioethics

Spring 2016

Professor Thaddeus Mason Pope

Time: Select Sunday mornings from 8:15 a.m. to 11:30 a.m.

Place: MHSL 319

Registration: Course 3039 • 3 credits

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Table of Contents

- I. Course Description
- II. Course Objectives
- III. Required Materials
- IV. Recommended Materials
- V. In Person Class Meeting Schedule
- VI. What to Do First
- VII. Writing Schedule & Deadlines
- VIII. Paper Requirements
- IX. Assessment Standards
- X. Components of Course Grade
- XI. Calendar

I. Course Description

This course meets the “Upper Level Advanced Research and Writing” requirement for the J.D. program. Accordingly, this is a “skills” course that focuses on developing your legal research and writing proficiency through your own self-selected project.

This course does not have any specific doctrinal or content objectives. Yes, you will meaningfully engage and grapple with substantive bioethics issues. But I will not define these issues. They will be particular and unique to each student. You will substantively engage with bioethics issues primarily during the process of using and responding to primary and secondary authorities in your own paper.

While major papers may seem like yet one more law school hoop to jump through, they in fact serve a valuable purpose in helping you gain experience in synthesizing original ideas and arguments into a compelling written document, a valuable skill in any field of endeavor. Most of you will do far more writing than speaking in summer jobs and as new lawyers, so you have to learn to write, as well as read and speak, about the law you are learning. Bryan Garner is right: “Legal employers prize writing ability more highly than almost any other skill.”¹ Accordingly, “your own paper” is the primary focus, target, and outcome of this course.

II. Course Objectives

- A. Develop your legal research skills, especially with respect to secondary sources like journals, books, and grey literature.
- B. Develop your interdisciplinary research skills, especially with respect to medical and health literature.
- C. Enhance and hone your legal writing skills.
- D. Respond to professor’s feedback to revise your writing in terms of language usage, document organization, content, format, and citation conventions.
- E. Master a specific, narrow topic, demonstrating original analysis and synthesis of material that has not been previously synthesized and analyzed.
- F. Develop your ability to recognize, analyze, and critically evaluate legal bioethics issues.
- G. Prompt your self reflection and provide experience in communicating and listening to alternative moral viewpoints.

III. Required Materials

- A. EUGENE VOLOKH, ACADEMIC LEGAL WRITING (4th ed. Foundation 2010) (ISBN 13: 978-1599417509).
- B. THE BLUE BOOK – A UNIFORM SYSTEM OF CITATION (Harvard Law Review, 20th ed. 2015).

¹ BRYAN A. GARNER, LEGAL WRITING IN PLAIN ENGLISH 1-2 (2d ed. 2013).

- C. Selected materials, particularly those relevant to your research project. You are required to identify, acquire, read, and use the best sources relevant to your thesis.

IV. **Recommended Materials**

A. Recommended Books for Seminar Papers

1. ELIZABETH FAJANS & MARY R. FALK, *SCHOLARLY WRITING FOR LAW STUDENTS: SEMINAR PAPERS, LAW REVIEW NOTES, AND LAW REVIEW COMPETITION PAPERS* (4th ed. West 2011) (ISBN 978-0314207203).
2. MARY B. RAY & JILL J. RAMSFIELD, *LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN* (5th ed. West 2010).
3. A good style guide, like Garner's *Modern American Usage*.

B. Recommended Articles for Seminar Papers

1. Richard Delgado, *How to Write a Law Review Article*, 20 U.S.F. L. REV. 445-54 (1986).
2. Patrick Eoghan Murray, *Write on! A Guide to Getting on Law Review*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2424365
3. David G. Post, *Writing Guidelines: General Principles & Rules*, <http://www.temple.edu/lawschool/dpost/guidelines.pdf>.
4. Joseph Kimble, *Tips for Better Writing in Law Reviews (and Other Journals)*, 30 THOMAS M. COOLEY L. REV. 197-201 (2013).

C. Recommended Materials on Legal Writing in General

1. ANTONIN SCALIA AND BRYAN GARNER, *MAKING YOUR CASE: THE ART OF PERSUADING JUDGES* (Thomson West 2008).
2. WILLIAM K. ZINSSER, *ON WRITING WELL* (25th Anniversary Edition Harper Collins 2001).

V. In Person Class Meeting Schedule

- A. The class will meet as a whole on only four dates: January 17, March 27, April 3, and April 10. The final three dates will be for class presentations.
- B. In addition to these “whole class” meetings, each student must have at least three (3) individual conferences with me. Some of these can be through Skype, FaceTime, or a similar tool. They can be during the unused scheduled class time (on Sunday mornings) or another time convenient for you.
- C. While only these four meetings are mandatory, I encourage you to meet with me and to email me throughout the semester as you research and write your paper. I want to “check in” with you about your topic development, research progress, pitfalls, and accomplishments. And I want to explore how your current academic writing fits into your future professional plans.
- D. Furthermore, as you can tell from Section VII, I will be providing individualized feedback to you (at least seven times) throughout the semester. This will through both written comments and MP3 audio comments.

VI. What to Do First – in January

- A. Identify your topic. You may write on any topic in the area of bioethics or health law.
- B. Identify your thesis. This is the specific claim or argument that you will support and defend within your topic.
- C. Calendar all the dates on this syllabus into your personal calendar.

VII. Writing Schedule & Deadlines

- A. **Rationale:** The single biggest danger in law school (or any graduate school) writing is procrastination. Students wait too long before starting to edit. Consequently, too many distinct stages of the project (research, writing, editing, polishing) get compressed into too short a time period. The quality of the product materially suffers. The following threshold dates are a paternalistic measure to keep you moving along. But they also permit me to provide substantial and meaningful formative assessment and feedback.

- B. **Timing:** While the following schedule sets forth the minimum essential requirements, you are welcome and even encouraged both to submit more and to submit faster than required by the deadlines below.
- C. **January 31:** Declare both your paper topic and your tentative paper claim.
1. There are no specific restrictions as to your topic, other than the obvious one that the paper must be in the general area of bioethics (or at least health law).
 2. In 250 to 500 words, describe the issue that you plan to address and what you want to say about it. Your topic and claim may evolve over the course of the semester. But state what it is now.
 3. This submission comprises 5% of your course grade.
 4. After carefully choosing and defining a topic, you should begin preliminary research on that topic. This preliminary research will soon reveal the major issues and sub-issues included in your topic.
 5. Create Google alerts, West-Clips, PubMed alerts, and similar auto-searches. This will keep you engaged with the project.
- D. **February 7:** By this date, I will provide written feedback on your paper topic and claim. If you have not already had your **first** individual conference, please schedule that now.
- E. **February 14:** Submit a preliminary bibliography of those sources that you have used and those that you plan to use.
1. Include at least twenty (20) citations.
 2. Your bibliography should separately list: (a) primary legal authorities, (b) secondary legal authorities, (c) non-legal authorities, and (d) any materials that you have difficulty obtaining. I understand that you may not yet have read or even obtained all these sources. I further understand that you will identify additional sources during the process of writing and editing.
 3. Annotate your bibliography. Write a sentence or two after your citation for each entry, indicating what the authority argues/demonstrate &/or why you plan to use it.
 4. This submission comprises 5% of your course grade.

5. **Caution:** While you are only submitting a bibliography at this stage, you should *already* be writing your paper. At this stage, do not worry about the quality of the words. Generating text matters most. Your writing may meander for a while before you discovered what it is that you want to say. But this is the method of great writers. Once you have a draft, you will see both gaps and possibilities. These writers also report that writing daily, even if for just 20 minutes, is far more effective than “binge” writing in spurts.
- F. **February 21:** By this date, I will provide written feedback on your preliminary bibliography.
- G. **February 28:** Submit both a written outline and the introduction section of your paper.
1. Your outline must include (a) a tentative title, (b) a thesis statement, and (c) major topic areas and subtopics (*i.e.* three levels deep).
 2. Your outline should follow a traditional format (in the style of this syllabus). It should clearly set out the major issues and sub-issues. Your outline should reveal the basic structure and flow of your topic and forthcoming paper. As such it is fundamentally important that it be done carefully and thoughtfully. Outlines should be about three pages long.
 3. Your outline should be written in complete sentences. Ideally, these will become your section and subsection headings.
 4. Your introduction section should provide an opening to the topic and thesis of your paper and provide a roadmap.
 5. The outline and introduction section comprises 5% of your course grade.
- H. **March 6:** By this date, I will provide detailed written feedback on your outline and introduction section. After you have reviewed this, please schedule your **second** individual conference.

- I. **March 13:** Submit a substantive rough draft of at least one major section of your paper (other than the introduction).
1. This will probably be one of the first sections providing factual or legal background. But it can be any major section of the paper.
 2. It should substantially (though need not strictly) conform to the requirements for the final paper (in Section VIII). Roughly, each section in a 5000-word paper should be around five pages long.
 3. The section rough draft comprises 5% of your course grade.
 4. Those presenting on March 20 submit an excerpt draft due for circulation to class for comments.
- J. **March 20:** Presentations & Critiques: 1 of 3
1. By this date, I will provide detailed written feedback on your section rough draft. This may be a good time to schedule your **third** individual conference.
 2. This is the second of four dates on which we will meet as a whole. One third of the class will present their papers. This will be in 15 to 20 minutes, ideally but not necessarily with graphic slides.
 - a. Lynn Ziebell
 - b. Ken Champion
 - c. Sarah Holm
 3. Your presentation counts for 5% of the course grade.
 4. Every student must prepare a written critique (suggested length: 250 words) of each draft to be discussed, except your own. In your comments, please be thoughtful, substantive, and constructive. Given the limited length, you will probably need to be selective. It is better to focus on one or two points in a helpful, detailed way, than it is to make a lot of points superficially.
 5. Your written critiques on this set of papers count for 5% of the course grade.

K. March 27

1. Those presenting on April 3, submit an excerpt draft of your paper for distribution to the class for comments.

L. April 3: Presentations & Critiques: 2 of 3

1. This is the third of four dates on which we will meet as a whole. One third of the class will present their papers. This will be in 15 to 20 minutes, ideally but not necessarily with graphic slides.
 - a. Kimberly Woodgate
 - b. Lisa Colburn
 - c. David Dahl
 - d. Kristin Kemmerling
2. Your presentation counts for 5% of the course grade.
3. Each student must prepare a written critique (suggested length: 250 words) of each draft to be discussed, except your own. In your comments, please be thoughtful, substantive, and constructive. Given the limited length, you will probably need to be selective. It is better to focus on one or two point in a helpful, detailed way, than it is to make a lot of points superficially.
4. Your written critiques on this set of papers count for 5% of the course grade.
5. Those presenting on April 10, submit an excerpt draft of your paper for distribution to the class for comment.

M. April 10: Presentations & Critiques: 3 of 3

1. This is the fourth of four dates on which we will meet as a whole. One third of the class will present their papers. This will be in 15 to 20 minutes, ideally but not necessarily with graphic slides.
 - a. Justin Albanese
 - b. Paul Buchel
 - c. Savannah Welch
2. Your presentation counts for 5% of the course grade.
3. Each student must prepare a written critique (suggested length: 250 words) of each draft to be discussed, except your own. In your

comments, please be thoughtful, substantive, and constructive. Given the limited length, you will probably need to be selective. It is better to focus on one or two points in a helpful, detailed way, than it is to make a lot of points superficially.

4. Your written critiques on this set of papers count for 5% of the course grade.

N. **April 17:** Submit a substantive rough draft (not a first draft) of your entire paper.

1. Like most other deliverables in this class, I encourage you to submit a complete draft before this deadline.
2. Obviously, the more complete and "finished" this substantive rough draft is, the less effort will be needed to mold it into the final draft. A good operating assumption is that the substantive rough draft is at least two-thirds of the way toward the finished product. Substantive rough drafts should be formatted per the requirements for the final paper (in Section VIII). Target lengths of the substantive rough drafts should be at least seventeen pages of text and fifty footnotes.
3. The substantive rough draft should reflect thorough, exhaustive research on your topic and be a complete (if still rough and unpolished) version of your paper. It should follow basically the structure established in your original or revised outline. But please note, that you are not bound by this preliminary outline and you may change the organization or issues as you see fit in order to do justice to your research topic.
4. Footnoting should be fairly complete, needing only some minor rechecking, reorganizing and redrafting. Your thought processes should be clear, and only your language and presentation should still need much work.
5. Without a substantial rough draft, I will be unable to provide the feedback necessary to ensure that your final paper will be adequate.
6. The substantive rough draft comprises 10% of your course grade.

- O. **April 24:** By this date, I will provide detailed written feedback on your rough draft. After you have reviewed my memo, please schedule your **third** individual conference to discuss your draft.

- P. **May 24:** Submit your complete and polished paper.
 - 1. Submit your paper in PDF to thaddeus.pope@mitchellhamline.edu. Make the document filename your first and last name (*e.g.* Thaddeus Pope).
 - 2. The final paper comprises 50% of your course grade.

VIII. **Final Paper Requirements**

- A. **Miranda Warning:** For many students the seminar paper will be the most important, most scholarly research effort of their law school experience. In essence, it is the Doctor of Jurisprudence requirement that most closely parallels the thesis and dissertation requirements of non-law graduate degrees.

- B. **General Standard:** The final draft should be a finely polished document, professional in appearance and reflecting logical overall structure, meticulous and generous footnoting, and advanced command of the English language. Good examples of such efforts are the student notes and comments published regularly in our law review and others.

- C. **Length:**
 - 1. Your final paper must be at least approximately 5000 words (or 20 pages) in length, including footnotes.
 - 2. Your final paper must contain at least 75 footnotes, including both citation and “speaking” footnotes.

- D. **Format:**
 - 1. Both the substantive rough draft and the final paper must be double-spaced with one-inch margins all around.
 - 2. The main text must be in 12-point Times font. The footnotes must be in 9-point Times font and in Bluebook form.
 - 3. On the first page, center the title and your name under the title.
 - 4. Include a table of contents showing page numbers for all headings and subheadings.

- E. **Structure:** The standard law review article structure looks *roughly* like the following. Your section headings and macro architecture will differ.

Brief Intro

- What is the issue?
- Why is it important?
- What is the author's position or proposition?
- Section by section roadmap

Legal Background

- Factual History
- Legal History

Discuss Open Issue

- Remind the reader where we are today
- What are its ramifications for today and for the future?
- How much does the factual and legal history influence today's thinking?

Make proposal or take a position

- Develop all the favorable arguments
- Explain each argument by
 - Giving its advantages
 - Giving its disadvantages
 - Show why advantages outweigh disadvantages
 - Conclusion of favorable arguments
- Develop all the arguments against the proposal or position
(Follow same procedure as "favorable arguments")

Examine how your proposal or position supports:

- Public Policy
- Current Statutes
- Other scholar's theory
- Current political thought

Conclusion

- Repeat Intro
- Stress proposal or position

IX. Assessment Standards

- A. I will evaluate your submissions other than the final paper according to the matrix below.
- B. I will evaluate the papers using three primary criteria:
1. **The quality of research:** How complete is your examination of the relevant ethical/medical/legal sources? To what extent have you adequately uncovered and documented the information necessary to sustain your thesis?
 2. **The quality of analysis:** To what extent have you have provided a well-structured argument in support of your thesis? How adequate is the evidence offered for each premise of this argument?
 3. **The quality of presentation:** To what extent does your paper’s organizational structure effectively communicate its thesis? To what extent does your paper conform to the rules of grammar and style? To what extent has your paper been proofread? I grade grammar and style, not just “content,” because even the most brilliant content gets obscured by sloppy writing.
 4. **Scoring:** Immediately below, I include a complete matrix with point allocations for different aspects of the paper. The entire course is worth 100 points. The final paper is worth 50 points.
- C. **Honor Code:** The student Code of Conduct and Honor Code, particularly the provisions on academic honesty, are incorporated into this syllabus.
- D. **Publication:** Students should be able to place the better papers for publication in general or specialized law reviews. In addition, there are paper competitions for law students writing in bioethics. Submission is not a requirement of the course. But it is strongly encouraged. I am happy to help facilitate this process.

	0	2	5
Topic & Claim	Late, missing, or substantially not in compliance with Section VIII standards	Moderately in compliance with Section VIII standards	Substantially in compliance with Section VIII standards
Bibliography			
Outline & Intro			
Section draft			
Presentation			
Each set of critiques			

	0	5	10
Substantive rough draft	Late, missing, or substantially not in compliance with Section VIII standards	Moderately in compliance with Section VIII standards	Substantially in compliance with Section VIII standards

Research	
Writer uses key sources.	15 points
Writer cites directly to original sources.	
Writer uses the most recent and up-to-date sources.	
Writer appropriately uses non-legal sources.	
Writer supports every proposition of fact.	
Writer supports every proposition of law.	
Analysis	
Writer has an original, novel, and important thesis.	20 points
Writer explains how the thesis is original, novel, and important.	
Writer provides clear and succinct background sections that identify the problem.	
Writer devotes at least 20% of the paper to adding something new.	
Writer moves beyond just describing the law to normative criticism, analysis, or synthesis.	
Writer offers cogent argumentation for asserted positions and claims.	
Writer is fair and balanced in her treatment of opposing positions.	
Writer makes arguments with logic and persuasiveness.	
Writer's descriptive and normative points are made with sophistication appropriate for a lawyer.	
Presentation	
Writer offers an attention grabbing introduction.	15 points
Writer offers an introductory roadmap.	
The paper is of an appropriate length.	
Writer uses an appropriate number of footnotes.	
Writer uses not only citation footnotes but also speaking footnotes.	
Writer complies with the Bluebook.	
Writer uses an appropriate number of headings at different levels.	
Writer uses descriptive headings in full sentences.	
Writer avoids spelling, grammar, and punctuation errors.	
Writer avoids long paragraphs (>10 lines).	
Writer avoids long sentences (>25 words).	
Writer avoids orphan headings.	
Writer avoids the passive voice.	
Writer provides a clear reference for pronouns.	
Writer uses block quotes only sparingly.	

Writer does not rely on block quotes but restates the core takeaway in the main text.	
Writer eliminates excess words.	
Writer provides reader friendly transitions.	
Writer did one or more rounds of proofreading.	

X. Components of Course Grade

Topic / Claim Declaration	5%	5 points
Bibliography	5%	5 points
Outline / Introduction	5%	5 points
Section draft	5%	5 points
Oral presentation	5%	5 points
Written critique set 1	5%	5 points
Written critique set 2	5%	5 points
Written critique set 3	5%	5 points
Substantive rough draft	10%	10 points
Final paper	50%	50 points

TOTAL	100%	100 points

JANUARY 2016

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
17. Opening Class 8:15 –11:30	18.	19.	20.	21.	22.	23.
24.	25.	26.	27.	28.	29.	30.

FEBRUARY 2016

31. Submit your paper topic & claim	1.	2.	3.	4.	5.	6.
7. Pope sends feedback on topic & claim	8.	9.	10.	11.	12. You should have had your first conference by around now	13.
14. Submit your bibliography	15.	16.	17.	18.	19. You should have started writing your paper	20.
21. Pope sends feedback on bibliography	22.	23.	24.	25.	26. Take a break from writing to do research; go back and forth between these two tasks	27.

MARCH 2016

28. Submit your outline & introduction	29.	1.	2.	3.	4. Write a little each day or at least every other day – do not “save it up”	5.
6. Pope sends feedback on outline & introduction	7.	8.	9.	10.	11.	12.
13. Submit a rough draft of one section	14. Submit handout if presenting 3/20	15.	16.	17.	18. You should have had your second conference by around now	19.

20. Pope sends feedback on section 8:15 – 11:30 Presentations & critiques 1 of 3	21.	22.	23.	24.	25.	26.
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APRIL 2016

27.	28. Submit handout if presenting 4/3	29.	30.	31.	1.	2.
3. 8:15 – 11:30 Presentations & critiques 2 of 3	4. Submit handout if presenting 4/10	5.	6.	7.	8.	9.
10. 8:15 – 11:30 Presentations & critiques 3 of 3	11.	12.	13.	14.	15.	16.
17. Submit your complete rough draft	18.	19.	20.	21.	22.	23.
24. Pope sends feedback on rough drafts	25.	26.	27.	28.	29.	30.

MAY 2016

1.	2.	3.	4.	5.	6. You should have had your third conference by around now	7.
8.	9.	10.	11.	12.	13.	14.
15.	16.	17.	18.	19.	20.	21.
22.	23.	24. Submit your final paper	25.	26.	27.	28.