

WIDENER UNIVERSITY SCHOOL OF LAW
Right to Die and End-of-Life Decisions (724x)

Spring 2011

Professor Thaddeus Pope

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Time & Place: Tuesdays 2:30 – 4:20 p.m. • P102
But most of these will be discharged in favor of individual
one-on-one supervised research and writing sessions

Final Paper Due: Email by 11:59 p.m. on May 20, 2011

I. Course Description

The problems tackled in this course are interesting and current. The course will provide you with the opportunity to observe the legal system's response to novel and important issues of great public interest. And you not only will learn some substantive law but also will gain a greater appreciation for the operation of legal process, as you see how the system attempts to come to grips with novel and complex issues.

The primary requirement of this seminar is that you research and write a scholarly legal paper on the approved end-of-life health law topic of your choice. To a very significant extent the specific substantive issues to be discussed will be defined by the paper topics that you select. *I encourage you to begin thinking right away about your paper topic.*

II. Course Objectives

- A. Develop both your legal and interdisciplinary research skills.
- B. Enhance and hone your legal writing skills.
- C. Master a specific, narrow topic, demonstrating original analysis and synthesis of material previously not synthesized.
- D. Develop your ability to recognize, analyze, and critically evaluate bioethical issues.
- E. Prompt your self reflection and provide experience in communicating and listening to moral viewpoints.

III. Required Materials

- A. EUGENE VOLOKH, *ACADEMIC LEGAL WRITING* (4th ed. Foundation 2010) (ISBN 13: 978-1599417509).
- B. Select materials posted to TWEN.

IV. Recommended Materials

- A. ELIZABETH FAJANS & MARY R. FALK, *SCHOLARLY WRITING FOR LAW STUDENTS: SEMINAR PAPERS, LAW REVIEW NOTES, AND LAW REVIEW COMPETITION PAPERS* (3d ed. West 2005) (ISBN 978-0314146311).
- B. MARY B. RAY & JILL J. RAMSFIELD, *LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN* (3d ed. West 2000).
- C. Richard Delgado, *How to Write a Law Review Article*, 20 U.S.F. L. REV. 445-54 (1986).
- D. A good style guide, like GARNER'S MODERN AMERICAN USAGE

V. Class Schedule

- A. The class will meet on (*only some*) Tuesdays from 2:30 to 4:20 p.m. in P-102.
- B. In addition to the writing requirement, which is the centerpiece of the course, each student must complete one applied project. The project with which I would prefer students engage is a micro-clinic on advance care planning for National Healthcare Decisions Day at Christiana Care Health System (April 15, 2011).
- C. Each student must have at least *three* individual conferences with me. The first must be before February 7. The second must be after March 4, when I provide written feedback on your outline. The third must be after April 18, when I provide written feedback on your rough draft. (While these three meetings are mandatory, I encourage you to meet with me and to email me throughout the semester as you research and write your paper.)

VI. Seminar Paper -- Deadlines

- A. **January 11 to February 7:** Schedule your first individual conference for anytime between January 11 and February 7.
- B. **January 24:** Declare your paper topic and tentative paper claim. The topic declaration comprises 5% of your course grade. There are no specific restrictions

as to topic, other than the obvious one that the paper must be in the general area of end-of-life healthcare law.

C. **February 7:** Submit a preliminary bibliography of those sources that you used and those that you plan to use. Your bibliography should separately list: (i) primary legal authorities, (ii) secondary legal authorities, and (iii) non-legal authorities. The bibliography comprises 5% of your course grade.

D. **February 21:** Submit a written outline that includes:

1. Tentative title
2. Thesis statement
3. All the major topic areas and subtopics (*i.e.* three levels deep)

After carefully choosing and defining a topic (by Jan. 24), you should begin preliminary research on that topic. This preliminary research will soon reveal the major issues and sub-issues included in your topic.

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 double-spaced and about three pages long. The outline comprises 5% of your course grade.

E. **February 28:** By this date, I will provide detailed written feedback on your outline. After you have reviewed this, please schedule your second individual conference.

F. **March 21:** Submit a substantive rough draft of at least one major section of your paper. This will probably be one of the first sections providing factual or legal background. But it can be any major section of the paper. The section rough draft comprises 5% of your course grade.

G. **March 28:** By this date, I will provide detailed written feedback on your section rough draft.

H. **April 11:** Submit a substantive rough draft (not a first draft) of the entire paper. The rough draft comprises 10% of your course grade. More significantly, without a substantial rough draft, I will be unable to provide the feedback necessary to ensure that your final paper will be adequate.

The 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.

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. Obviously, the more complete and "finished" this first draft is, the less effort will be needed to mold it into the final draft. A good operating assumption is that the first draft is at least two-thirds of the way toward the finished product. First drafts should be formatted per the requirements for the final paper. Target lengths of the first drafts should be at least seventeen pages of text and fifty footnotes.

- I. **April 15:** This is the estimated date for the National Healthcare Decisions Day project at Christiana Care Health System. Each student must complete one applied project. This is the preferred vehicle for satisfying this requirement.
- J. **April 18:** 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.
- K. **May 20:** Submit a complete and polished paper in Word or PDF to tmpope@widener.edu, 11:59 p.m. Make the document filename your first and last name (*e.g.* ThaddeusPope). The final paper comprises 60% of your course grade.

VII. **Seminar 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:** Your final paper must be at least approximately 5000 words (or 20 pages) in length, including footnotes. It must contain at least 75 footnotes, including both citation and "speaking" footnotes.
- D. **Format:** Both the first draft and the final paper must be double-spaced with one-inch margins all around. The main text must be in 12-point Times font. The footnotes must be in 9-point Times font and in Bluebook form. On the first page, center the title and your name under the title.

E. **Structure:** The standard law review article structure looks *roughly* like this:

Brief Intro

- What is the issue?
- Why is it important?
- What is the author's position or proposition?

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

F. **Standards:** 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?

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.

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. 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.

- G. **Grading:** The final paper will constitute 60% of your course grade.
- H. **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.

VIII. **Applied Project**

- A. In addition to completing your research paper as outlined above, each student must complete one applied project.
- B. April 15, 2011 is National Healthcare Decisions Day. A project teaming law students and medical students to advise consumers on advance care planning is planned to take place on the Christiana Care Health System campus in Newark, Delaware. This is the preferred vehicle for satisfying this requirement.
- C. Students are also invited to participate by attending a hospital ethics committee meeting, by participating in the MOLST task force, or other policy initiatives concerning end-of-life health law. Indeed, you are encouraged to focus your writing product on one of these projects.
- D. The applied project will constitute 10% of your course grade.

IX. **Grading Summary**

Components of the Course Grade:

1.	Topic Declaration	5%
2.	Bibliography	5%
3.	Outline	5%
4.	Section draft	5%

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|----|-------------------------|-----|
| 5. | Substantive rough draft | 10% |
| 6. | Applied Project | 10% |
| 7. | Final paper | 60% |

X. Office Hours

I look forward to talking to you outside class. (Indeed, this is required to a certain extent through the individual conferences.) There are several means of doing this:

- A. After class: I will remain in the classroom after each class for all trailing questions, until or unless we are kicked out by another class.
- B. Office: I can typically be found in my office after class. If this is not a convenient time, just let me know in class or by email and we can make an appointment with each other. You are welcome to drop in my office anytime, but it is best to confirm a particular time in advance.
- C. Email: Feel free to e-mail me at tmpope@widener.edu if you are unable to come by in person.
- D. Lunch: I have found that grabbing a quick lunch is a good way to get to know each other. If you and one or two other students want to share a bite, please let me know. In general, it would be best to suggest in advance a few proposed dates, so we can match our schedules.

XI. TWEN

The course TWEN site includes three types of materials (mostly in PDF):

- A. Getting started: choosing a topic and claim
- B. Researching bioethics and health law
- C. Writing a law school seminar paper

Suggested Reading

January	<ul style="list-style-type: none"> • VOLOKH 9-39 & 84-87 (choosing a topic and claim) • VOLOKH 73-75 & 87 (budgeting your time) • FAJANS & FALK 14-45, 207 • Pre-assembled lists of bioethics paper topics • Meeker, <i>Stalking the Golden Topic</i>, 1996 Utah L. Rev. 917. • Whisner, <i>Seeking Inspiration</i>, 100 L. LIB. J. 773 (2008).
January	<ul style="list-style-type: none"> • VOLOKH 89-101 (researching) • FAJANS & FALK 46-56 • Research pathfinders • Nevers, <i>Thorough Academic Legal Research Will Improve Your Papers</i>, STUDENT LAWYER (Oct. 2009). • Whisner, <i>How Do You Know When Research Is Good?</i> 98 L. LIB. J. 721 (2006). • RAY & RAMSFIELD 283, 323-31, 414-15
February	<ul style="list-style-type: none"> • VOLOKH 251-259 (academic ethics) • FAJANS & FALK 98-116 • Post, <i>Writing Guidelines</i> (Temple Law 2009). • Suzanne E. Rowe, <i>Unblock Writer's Block</i>, OR. ST. BAR BULL., Oct. 2006, at 37. • RAY & RAMSFIELD 414
February	<ul style="list-style-type: none"> • VOLOKH 39-69 & 82-84 (organizing your paper) • FAJANS & FALK 57-71 • Hamilton College Nesbit-Johnson Writing Center Handouts
March	<ul style="list-style-type: none"> • VOLOKH 75-77 (choosing a title) • FAJANS & FALK 135-138 • VOLOKH 134-181 (using empirical research)
March	<ul style="list-style-type: none"> • VOLOKH 102-106 (writing your paper) • FAJANS & FALK 71-73 • Marshall Kapp, <i>Writing Research Papers: Top Ten Tips</i>, LAW TEACHER, Fall 1999, at 10-11.
April	<ul style="list-style-type: none"> • VOLOKH 106-114 (editing your paper) • FAJANS & FALK 74-91 • STEPHEN V. ARMSTRONG & TIMOTHY P. TERRELL, ADVANCED WRITING AND EDITING FOR LAWYERS: BEYOND TIPS TO FUNDAMENTAL PRINCIPLES 53-54 (ALI-ABA 2004). • Hamilton College, Nesbit-Johnson Writing Center Handouts on Editing
May	<ul style="list-style-type: none"> • VOLOKH 114-134 (polishing your paper) • FAJANS & FALK 91-97 & 117-134 • Hamilton College, Nesbit-Johnson Writing Center Handouts on Grammar/Style