



UNIVERSITY OF CALIFORNIA
HASTINGS COLLEGE OF THE LAW
OFFICE OF THE GENERAL COUNSEL

Leo P. Martinez
Interim General Counsel

February 8, 2019

VIA EMAIL
Ricardo Beas
ricardobeasv@hotmail.com

Re: Public Records Act Request

Dear Mr. Beas:

On January 17, 2019 and January 19, 2019, this office received your emails requesting documents pursuant to the California Public Records Act. You requested copies of the following records from the University of California Hastings College of the Law ("UC Hastings"):

- 1. Any and all documentation from Jan 1, 2018 to present related to Dorit Reiss' employment and activities at U.S. Hastings, including but not limited to class schedules, course curriculum, work hours, wages and or salary payments, and employment contract(s).**
- 2. In the alternative to 1 above, please provide me in a simple email response the following information related to Reiss:**
 - (a) Here present gross annual wages or salary, to include total of benefits package, including bonuses.**
 - (i) Please provide total bonus pay to Reiss for 2015, 2016, 2017 and 2018.**
 - (b) Present semester daily Work hours, start and stop times, from Monday through Friday. This can be an average of daily and weekly work hours. Let me know if you need more clarification for this request.**
 - (c) A listing of all classes that have been given by Reiss from January 2015 to present. Please advise in what month and year such classes begun. Also,**

please include what days of the week and time such classes were given on and the duration of each class. For each class please provide the syllabus.

- (d) Please advise what was the year that Reiss started working for U.C. Hastings.**
- (e) Please advise what was Reiss' initial wages and or salary when she began working for U.C. Hastings.**
- (f) Please provide Reiss' job application when she first started with U.C. Hastings, to include her resume and related submissions for employment, such as letters of recommendation.**

3. A copy of U.C. Hastings' policy pertaining to the use of Facebook and other social media sites for personal business during working hours.

4. A copy of U.C. Hastings' policy pertaining to using the school email system and the school internet connection to perform personal business activities.

5. Any and all employment records related to the hiring of Reiss as a law professor at Hastings that would justify having Reiss give law-related classes at the school when Reiss does not have a degree in law. To include internal employment interview notes.

6. Any employment document(s) showing a listing of present duties and responsibilities of Reiss as regards her employment at Hastings.

7. Any employment or other document from U.C. Hastings personnel that authorizes Reiss to be actively involved in a campaign to discredit any person and or organization that questions the safety of vaccines, as well as authorizing her to be posting pro-vaccine messages in any of the groups or organizations in social media she is involved with, or by email to others.

A review of your request leads to the following response:

- Total estimated compensation for 2019 = \$226,092.02 which includes: base salary of \$166,580; estimated annual cost of UC-provided benefits package totaling \$56,637; and stipend payment of \$479.17 for 6 months totaling \$2,875.02.
- Bonus pay
 - 2015: \$0.00
 - 2016: \$0.00
 - 2017: \$10,000
 - 2018: \$7,875.02 (\$479.17 monthly x 6 months totaling \$2,875.02; and \$5,000 onetime payment)
- Professor Reiss started working at UC Hastings in 2007.

- Her compensation in 2007 was \$143,084 (\$10,257 monthly x 12 months = \$123,084 base salary + \$20,000 additional compensation for research)
- A list of all the courses Professor Reiss has taught from Spring 2015 to the present term is available through OneDrive.
- A copy of current UC Hastings Code of Faculty Rights and Responsibilities is available through OneDrive.
- A copy of current UC Hastings Policy on Social Media is available through OneDrive.
- A copy of current UC Hastings Computer Resources Acceptable Use Policy is available through OneDrive.

Access to the disclosable electronic documents have been shared through a OneDrive link transmitted with this letter. These provided records complete your request.

Please also note that UC Hastings is not required to create documents in response to your request. The Public Records Act provides for the inspection and copying of public records maintained by state and local agencies. It was enacted to give the public access to information in possession of public agencies in order that government might be accountable for its actions. (*Gilbert v. City of San Jose* (App. 6 Dist. 2003), 7 Cal.Rptr.3d 692.) However, it is a principle of public records law that agencies are not required to create records or reports in response to a request, but rather make available records in the agency's possession that are subject to disclosure.

I am responsible for the determination concerning your records request in my capacity as Interim General Counsel for UC Hastings College of the Law, in consultation with authorized representatives of the College. If you have additional questions, or if the information provided here is not responsive to your request, please contact me at martinezleo@uchastings.edu so that we can better assist you.

Very truly yours,



Leo P. Martinez
Interim General Counsel
Enclosures
LPM:ks

CURRICULUM VITAE

PERSONAL INFORMATION

Dorit Rubinstein Reiss

200 McAllister st.

San Francisco, CA 94102

415-5654844

reissd@uchastings.edu

Website: <http://sites.uchastings.edu/lawandvaccines/>

EMPLOYMENT

University of California, Hastings College of the Law:

2018 – Present, **James Edgar Hervey Professor of Law.**

2011-2018, **Professor of Law.**

2007-2011 **Associate Professor of Law.**

Jurisprudence and Social Policy Department, University of California, Berkeley

2000-2006 **Graduate Student Instructor.**

EDUCATION

Ph.D. **University of California, Berkeley**, Jurisprudence and Social Policy Program,
May 2007

***Dissertation topic: Regulatory Accountability: Telecommunications and Electricity
Agencies in the UK, France and Sweden.***

Committee: Martin Shapiro (chair), Malcolm Feeley, Robert Kagan, Jonah Levy.

Examination Fields: Public Law, Courts and Bureaucracy.

LLB Hebrew University of Jerusalem, Israel, Combined Degree in Law and Political
Science (equivalent to American JD&BA), Magna Cum Laude, 1999.

PUBLICATIONS

(2018) Litigating Alternative Facts: School Vaccine Mandates in the Courts, 21 U. Penn
J. Con. L. 207.

(Forthcoming) (With Rachel Heap) Using and Misusing Legal Decisions: Why
Antivaccine Claims About NVICP Cases Are Wrong Minnesota Journal of Law, Science
& Technology, Vol. 20.

(2018) (With Lois Weithorn) *Legal Approaches to Promoting Parental Compliance with
Childhood Immunization Recommendations* Human Vaccines and Immunotherapies.
<https://www.tandfonline.com/doi/full/10.1080/21645515.2018.1423929>

(2018) (With Y. Tony Yang) *French Mandatory Vaccine Policy* 36 VACCINE 1323.

(2018) *Regulating in the Era of Fake News: Anti-Vaccine Activists Respond to the CDC Quarantine Rule*, 79 Pitt. L. Rev. 675

<https://lawreview.law.pitt.edu/ojs/index.php/lawreview/article/view/572>

(2018) *When Children Pay the Price of Freedom of Religion*, in RELIGIOUS FREEDOM IN AMERICA: A REFERENCE BOOK (Michael C. LeMay, ed.).

(2018) (with Joanthan Howard) *The Anti-Vaccine Movement: A Litany of Fallacy and Errors* in PSEUDOSCIENCE (Kaufman and Kaufman eds).

(2017) (With Y. Tony Yang) *CDC's New Rule to Track and Quarantine Travelers*, 24 J. of Travel Medicine, <https://www.ncbi.nlm.nih.gov/m/pubmed/29088485/>

(2017) *Rights of the Unvaccinated Child in Studies in Law, Politics, and Society*, Volume 73, 75-110 (Volume is about Health Law).

(2017) *Decoupling Vaccines Laws*, 58 B.C.L. Rev. E. Supp. 9 at: <http://lawdigitalcommons.bc.edu/bclr/vol58/iss6/2>

(2016) (With Russell Mills and Chris Koliba) "Ensuring Compliance from 35,000 feet: Accountability and Trade-Offs in Aviation Safety Regulatory Networks" in *Administration and Society*.

(2016) (with Russell Mills): *The Role of Trust in the Regulation of Complex and High-Risk Industries: The Case of the U.S. Federal Aviation Administration's Voluntary Disclosure Programs* in: *Trust in Regulatory Regimes*, editors Frederique Six and Koen Verhost.

(2016) (with Rene Najera) *First Do No Harm: Protecting Patients Through Immunizing Health Care Workers* 26 *The Health Matrix* 363.

(2015) *Vaccines, School Mandates, and California's Right to Education*, 63 *UCLA L. Rev. Discourse* 98

(2015) (with Lois Weithorn) *Responding to the Childhood Vaccination Crisis: Legal Frameworks and Tools in the Context of Parental Vaccine Refusal* 63 *Buffalo Law Review* 881.

(2015) (With Amanda Naprawa) *Medical Advice and Vaccinating: What Liability* 26 *U. Fla. J.L. & Pub. Pol'y* 265 (

- (2015) Herd Immunity and Immunization Policy: The Importance of Accuracy 94 Oregon Law Review 1.
- (2015) (With Charlotte Moser and Robert Schwartz) Funding the Costs of Disease Outbreaks Caused by Non Vaccination, *Journal of Law, Medicine & Ethics*.
- (2014) *Relying on Government in Comparison: What can the United States Learn from Abroad in Relation to Administrative Estoppel?* 38 Hastings Int'l & Comp. L. Rev. 75
- (2014) Thou Shalt Not Take the Name of the Lord thy God in Vain: Use and Abuse of Religious Exemptions from School Immunization Requirements, 65 (6) Hastings Law Journal 1551-1602
- (Forthcoming) The Eye of the Beholder: Participation and Impact in Telecommunications (De)Regulation 5 *William & Mary Policy Review*.
- (2014) Compensating the Victims of Failure to Vaccinate: What are the Options? 23 Cornell J. L. & Pub. Pol'y, 595.
- (2013) Mills, Russell W. and Dorit Reiss. "Secondary Learning and the Unintended Benefits of Collaborative Mechanisms: The Federal Aviation Administration's Voluntary Disclosure Programs" *Regulation and Governance*. DOI: 10.1111/rego.12046
- (2012) The Benefits of Capture 47 Wake Forest L. Rev. 569.
- (2011) Account Me In: Agencies in Quest of Accountability. JOURNAL OF LAW AND POLICY (forthcoming).
- (2011) No Innocents Here: [Using Litigation to Fight against the Costs of Universal Service in France. 1 Creighton Journal of Comparative and International Law](http://www.creighton.edu/index.php?id=56345) <http://www.creighton.edu/index.php?id=56345>.
- (2010) Administrative Agencies as Creators of Administrative Law Norms: Evidence from the U.K., France and Sweden. In: Comparative Administrative Law 373 (Susan Rose-Ackerman and Peter Lindseth eds, Elgar, 2010). Republished: 2nd edition, 2014.
- (2009) "Participation in Governance from a Comparative Perspective: Citizen Involvement in Telecommunications and Electricity in the UK, France and Sweden". 2009 Journal of Dispute Resolution 381 (2009).
- (2009) "Tailored Participation: Modernizing the APA Rulemaking Procedures", 12 NYU Journal of Legislation and Public Policy 321 (2009)
- (2009) *Agency Accountability Strategies after Liberalization: Universal Service in the United Kingdom, France and Sweden*. Law and Policy. 31: 111-141.

CONFERENCE PRESENTATIONS:

(2018) Legislation Related to Vaccines in the United States. Panel Presentation, **World Vaccine Congress**, Washington DC, April 4, 2018.

(2018) Influenza Mandates Go to Court, **California Immunization Coalition Summit**, Sacramento, CA, April 17.

(2018) Webinar with Prof. David Levine, The Role of an Expert Witness in Vaccine Trials, **Immunization Action Coalition**, March 20, 2018.

(2017) Anti-Vaccine Movements, Panel Presentation, Nevada Health Summit, Las Vegas, NV, November 2017.

(2017) Anti-Vaccine Arguments, (Presentation) Cancer Summit, San Francisco, CA September 2017.

(2017) Regulating in an era of Fake News, Panel presentation, Annual Meeting Law and Society Association, Mexico City, Mexico, June 2017.

(2017) Regulating in an era of Fake News, Panel presentation, Health Law Professors Conference, Atlanta, GA, June 2017.

(2017) Legal Framework for Immunization Laws, Florida Immunization Summit, February 2017, St. Petersburg, Florida.

(2016) Presentation on the Legal Framework in *Confronting Vaccine Resistance: Strategies for Success*, Special Panel at NYU Langhorne Medical Center, New York City, NY, November 21, 2016.

(2016) Fighting an Anti-vaccine Movement in Australia, Panel presentation, Annual Meeting Law and Society Association, New Orleans, June 2016.

(2016) Framework for Vaccine Laws, Immunization Coalitions Summit, Panel Presentation, Indiana, May 2016.

(2016) The Legal Framework surrounding SB277, Panel Presentation, CIC, Sacramento, April 2016.

(2015) Tort Liability for non-Vaccination, Panel Presentation, American Association of Law Schools Annual Conference, Washington DC, January 2015.

(2014) Recommending Vaccines & Recouping Costs of Non-Vaccination, Panel Presentation, *Intersection of Law, Policy and Prevention*, Public Health Law Conference, Atlanta, October 2014.

(2014) “Vaccines and the Anti-Vaccine Movement”, at the **ASMLE Conference**, San

Francisco, CA, June 2014.

(2014) “Recouping the Costs of Outbreaks Caused by Non-Vaccination”, Panel presentation, Annual Meeting Law and Society Association, Minneapolis, MN, May 2014.

(2014) “Vaccines, Rights and Exemptions” Immunization Coordinators Meeting, San Rafael, CA.

(2014) “Vaccines and Social Media”, Presentation at Immunization Summit, California’s Immunization Coalition, Sacramento, CA.

(2013) “Israel” in panel: Rulemaking in Comparative Perspective, Administrative Law Conference, Administrative Law Section of the American Bar Association, Washington D. C., November 2013.

(2013) “Secondary Learning and the Unintended Benefits of Collaborative Mechanisms: The Federal Aviation Administration’s Voluntary Disclosure Program,” Paper presented at the Annual Meeting of the **Law and Society Association**, Boston, MA.

(2012) “Relying on Government in Comparison”, presented at the **American Society for Comparative Law YIP WIP (Yale-Illinois-Princeton Works-in-Progress) workshop**, Princeton, NJ.

(2012) “Participation and Impact in telecommunications (De)Regulation” presented in: “The Asymmetry of Administrative Law: The Lack of Public Participation and the Public Interest,” **symposium organized by the Wake Forest Law Review**, Wake Forest, NC.

(2012) The Eye of the Beholder: Participation and Impact in telecommunications (De)Regulation, paper presented at the **Annual Meeting of the Law and Society Association**, Honolulu, HI, June 2012.

(2011) “The Benefits of Capture”, Paper presented at the Northeast Conference of Public Administration, New York, NY.

(2011) “The Benefits of Capture”, Paper presented at the Annual Meeting of the **American Political Science Association**, Seattle, WA.

(2011) “The Benefits of Capture”, Paper presented at the Annual Meeting of the **Law and Society Association**, San Francisco, CA.

(2011) Panel Chair, *Regulation by Transparency: Is Sunlight the Best Disinfectant?* **Law and Society Association Annual Meeting**, San Francisco, CA.

(2011) “The Benefits of Capture”, Paper presented at the Annual Meeting of the **Law and Society Association**, San Francisco, CA.

(2009) “Account Me In: Agencies in Quest of Accountability”, Paper presented at the International Meeting of the **Israeli Law and Society Association**, Tel Aviv, Israel. Also presented at: Annual Meeting of the Western Political Science Association, San Francisco, CA (April 2010) and Annual Meeting of the American Society of Public Administration, San Jose, CA (April 2010).

(2009) “Account Me In: Agencies in Quest of Accountability”, Paper presented at the Annual Meeting of the **Law and Society Association**, Denver, CO.

(2009) “None so Blind: Unexpected Problems with Liberalization of the Electricity Sector”, Paper presented at the Annual Meeting of the **Law and Society Association**, Denver, CO.

(2008) “Electrifying Economics: Agency Assumptions and Learning in Electricity”, Paper presented at the Annual Meeting of the **Israeli Law and Society Association**, Jerusalem, Israel.

(2008) “Tailored Participation: Modernizing the APA Rulemaking Procedures” Paper presented at the Annual Meeting of the **American Political Science Association**, Boston, MA.

(2008) “No Innocents Here: Using Litigation to Fight against the Costs of Universal Service in France” Paper presented at the **Law and Society Association Annual Meeting**, Montreal, Canada.

(2008) “Participation and Administrative Law: Getting the Benefits on the Cheap” Paper presented at the **Law and Society Association Annual Meeting**, Montreal, Canada.

(2007) “Accountability Strategies after Liberalization: Dealing with Complex Accountability Environment” Paper presented at the Annual Meeting of the **American Political Science Association**, Chicago, IL.

(2007) **Dissertation: Regulatory Accountability: Telecommunications and Electricity Agencies in the UK, France and Sweden.**

Committee: Martin Shapiro (chair), Malcolm Feeley, Robert Kagan, Jonah Levy.

(2006) “Releasing the Hostages: Accountability for Creating Competition in Electricity and Telecommunications” Presented at the **Law and Society Association Annual Meeting**, Baltimore, MD.

(2005) “Answer to All, Answer to None? Accountability in Pricing Public Services after Liberalization”, Presented at the **ECPR General Conference**, September 2005, Budapest.

(2005) “Talking Economics: Mobile Termination in three Countries.” Presented at the **Law and Society Association Annual Meeting**, Las Vegas, NV.

(2005) “Accountability in Liberalized Markets: Telecommunications and Electricity in Europe Presented at the **MWPSA Annual Conference, Chicago, IL.**

(2005) “Accountability in Network Services Post Liberalization of the European Market” Presented at the **Western Political Science Association Annual Conference**, Oakland, CA.

(2004) “Accountability in the Disaggregated State”, Presented at the **Law and Society Association Annual Meeting**, Chicago, IL.

(2003) “New Public Management and Judicial Review of Administrative Agencies” Presented at the **Law and Society Association Annual Meeting**, Pittsburgh, PA.

TEACHING INTERESTS

Administrative law, comparative law, comparative regulation, torts, accountability, law and politics.

RESEARCH INTERESTS

Vaccine policy and law, comparative regulation, accountability, vaccine policy, utility regulation, public law, administrative law, comparative law, law and politics.

PROFESSIONAL MEMBERSHIP AND SERVICE

2013-Present, Parents Advisory Board, Voices for Vaccines.

2013-Present, Board of Directors, San Francisco Immunization Coalition.

2012-2015 Vice Chair, Sub Committee on International and Comparative Law, Administrative Law Section, American Bar Association.

2011-present Membership, **American Bar Association**

2001-Present Membership, **Law and Society Association**

MILITARY SERVICE

Duration: 2/1992-8/1994

Israeli Defense Force. Rank at discharge: Lieutenant. Honorably discharged.

Positions:

4/1992-12/1992 - Hebrew teacher to new immigrants from Ethiopia (not soldiers).

1/1993-4/1993 – Officers' course.

4/1993-8/1994 – Reserve forces mobilizing officer.

LANGUAGES

Hebrew: Native speaker.

English: Fluent.

French: Fluent

German: basic skills.

UNIVERSITY OF CALIFORNIA, HASTINGS COLLEGE OF THE LAW
**PUBLIC HEALTH REGULATION AND ADVOCACY: VACCINES - COMBINATION GPA
COURSE AND PROJECT**
SPRING 2018

PROFESSOR DORIT R. REISS

Units: 2-3. Two of the class units will cover the lecture course. Students may take an additional non-GPA, in-class unit to work on a project, as described below, during or after the course.

The lecture course is a pre or co-requisite for the project.

Class Hours: Friday 9:40-11:50, room B1; Project meetings: coordinated with instructor.

Contact information:

Office: room 324, 200 McAllister

Phone: (415) 565-4844

Email: reissd@uchastings.edu

Office Hours: Thursday 1:10-3:10 and by appointment.

Course Website via Canvas

Required Course Materials:

Materials on website or in course reader: linked materials are on the website. All others are in the reader.

Note: Each Course Module on our Canvas website has a list of additional recommended sources for anyone who wants to delve deeper into the topic.

Course Objectives:

At the end of this course, you should be able to:

- Understand basic scientific facts about the vaccines we use and why we use them.
- Explain the balance of rights and interests related to vaccination laws.
- Describe the constitutional underpinnings of public health law and how they relate to vaccines.
- Understand the challenges the anti-vaccine movement presents to the community and the legal system.
- Analyze the role of social movements in influencing the legal framework related to vaccines.
- Explain how vaccine safety is regulated.
- Analyze the legal tools available to the community to protect itself and its vulnerable members against non-vaccination.

Required Assignment: Blog Post Draft

Each student will write a draft blog post summarizing and discussing a court case from the past three years - or an open case – on vaccines issues. This assignment will be graded on a pass/fail basis. The instructor will provide a list of cases. A student interested in publishing the post on a blog can work with the professor to do so – I can provide a platform.

The assignment must be completed by the last day of the semester, April 18. Not handing it in means automatic reduction of your grade by a notch (from A to A- and so forth). In addition, I reserve the right to add up to 3 points to the final exam grade for those who do an exceptional job (i.e., if your final exam grade was 78 and you did a wonderful job on your assignment your final grade will be bumped up by up to 3 points, or either 79, 80, or 81).

Grade:

For the GPA Course:

The final grade for this course will be determined by an open-book, in class exam. I reserve the right to increase a grade by up to two notches (a notch is, for example, a move from B to B+) for excellent participation or reduce it by up to two notches for excessive absences or lack of preparation.

For the Project:

The grade for the project will be assigned separately and will not count as part of your GPA.

One Unit Research Project:

Modeled after the projects handled by the Current Problems on State and Local Government seminar, students choosing this option will work individually or as part of a team on a real world problem (as opposed to a problem designed for the classroom) suggested by a state or local agency or an NGO working in the field. Your work product will be shaped by the problem and the audience's needs – it could be a traditional memorandum, an action plan, web-based materials or a piece of the professor, and the expectation is that your work product will be suitable for public distribution (unless, of course, your work product is based upon or reflects an awareness of confidential materials). One hour a week will be devoted to in-class, collaborative work on the project.

Since the project is one unit, it does not qualify for the writing requirement (which requires two units).

Interim Deadlines and Products:

Project selection:

Ideally, we will select the project you are working on by the end of the second week.

Progress reports: You are required to submit email me a short progress report once a month, by the 15th of the Month, starting February.

Final Submission: Final projects are due on **May 15** (earlier is, of course, fine) and should be submitted by email.

Format: The length and format of the project will depend on its content. You may cite using *The Bluebook – A Uniform System of Citation* or the author-date format used by peer reviews, or another acceptable academic format, as long as your citations are easily traceable.

Law and Vaccines, Topics

1) Introduction: Vaccines, benefits and risks: January 12

This unit discusses what vaccines are, why we vaccinate, which vaccines are currently on the recommended immunization schedule and the risks and benefits of vaccines. This section will provide the necessary background for the rest of the topics.

Assignments:

Benefits from Immunization During the Vaccines for Children Program Era — United States, 1994–2013, CENTERS FOR DISEASE CONTROL AND PREVENTION, available at: <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6316a4.htm>

Table: Comparison vaccines risks/disease risks.

http://www.ncirs.edu.au/assets/provider_resources/handbook-tables/Inside-back-cover_Comparison-effects-of-disease-and-side-effects-of-vaccines.pdf

Table: Vaccine Schedule:

<http://www.cdc.gov/vaccines/schedules/downloads/child/0-18yrs-child-combined-schedule.pdf>

Margaret A. Maglione, et al., *Safety of Vaccines Used for Routine Immunization of US Children: A Systematic Review*, 134 PEDIATRICS 1(2014).

<http://pediatrics.aappublications.org/content/pediatrics/early/2014/06/26/peds.2014-1079.full.pdf>

2) Public Health: Where Does the Power to Regulate Come From? January 19

This unit covers:

- The initial case of *Jacobson v. Massachusetts* and the subsequent discussions in the literature about its validity.
- The concept of police power and its limits
- The limitations of what states can and cannot do to protect its citizens against non-vaccination. For most of the diseases we vaccinate against, the decision not to vaccinate has implications beyond the person making the decision. A non-vaccinated individual is much more likely to contract a preventable disease and transmit that disease to another susceptible individual. Not vaccinating also undermines herd immunity, increasing the risk of outbreaks that put members of the community at risk. How and to what degree can the community act to protect itself? What are the limits posed by individual rights, including personal autonomy and freedom of religion?

Jacobson v. Massachusetts, 197 U.S. 11 (1905)

<https://supreme.justia.com/cases/federal/us/197/11/case.html>

Dorit Rubinstein Reiss & Lois A. Weithorn, *Responding to the Childhood Vaccination Crisis: Legal Frameworks and Tools in the Context of Parental Vaccine Refusal*, 63 BUFFALO LAW REVIEW 881 894-928 (2016).

http://www.buffalolawreview.org/past_issues/63_4/Reiss.pdf

Federal Level Regulation: Vaccines and the Administrative State

3) Getting on the Schedule and Funding Vaccines: Federal and States

Processes:

January 26

This unit examines the process vaccines go through to be put on the schedule at the federal and state level, with examples. It will include an introduction to the Federal Advisory Committee Act, a discussion of the role of the Advisory Committee on Immunization Practices, and the consultation with professional organizations at the federal level. It will also address how the federally recommended schedule translates into state-level school immunization requirements.

ACIP's charter: <http://www.cdc.gov/vaccines/acip/committee/charter.html>

On ACIP:

<http://annals.org/aim/article/744177/immunization-policy-development-united-states-role-advisory-committee-immunization-practices>

<http://www.cdc.gov/vaccines/acip/committee/downloads/article-2010-role-procedures-ACIP.pdf>

<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6342a5.htm>

Amanda Cohn et al., Immunization in the United States, in: Plotkin's Vaccines 1425-1428 (Stanley A. Plotkin, Walter Orenstein, Paul A. Offit and Kathryn M. Edwards eds., 7th edition, 2017).

4) FDA Approval Process: the Vaccine Example February 2

This unit discusses the role of the FDA in overseeing vaccines before and after they reach the market, including the regulation of vaccine testing, vaccine licensing, and vaccine labeling.

Richard M. Cooper: Food and Drug Law and Regulation, chapter 14, human biologics (3rd edition, 2015), 470-492, 501-511.

Marion F. Gruber, Valerie B. Marshall, Regulation and Testing of Vaccines, in Plotkin's Vaccines 1554-1563 (Stanley A. Plotkin, Walter Orenstein, Paul A. Offit and Kathryn M. Edwards eds., 7th edition, 2017).

5) Research Ethics in the Vaccines Context: February 9

This unit examines the ethics governing scientists in doing research, and how they apply to vaccines.

Guest lecture. Reading: TBA.

6) Adjudicatory Solutions, Federal Level: Handling vaccine injuries. February 16 – class from 10:40

This unit examines the way the United States handles vaccine injuries, introducing students to the National Vaccine Injury Compensation Program, its creation, its features in comparison to regular courts, its strengths and limitations. It also provides a brief introductory overview of vaccine compensation systems in other countries.

Anna Kirkland: Vaccine Court: The Law and Politics of Injury (excerpts).

<http://www.hrsa.gov/vaccinecompensation/data/statisticsreport.pdf>

Federal/State Interaction:

7) School Immunization Requirements, February 23

All states in the United States have some form of school immunization requirements, though the details vary dramatically. States often consider which parts of the federal recommendations for the childhood schedule to adopt, and the results are enacted as laws or regulations. All states offer at least a medical exemption, and most offer non-medical exemptions, though again, the details vary. This unit will introduce students to school immunization requirements, touching on their genesis, differences between states and on the extensive jurisprudence on the topic.

Y. Tony Yang & Ross D. Silverman, *Legislative Prescriptions for Controlling Nonmedical Vaccine Exemptions*, 313 JAMA 247 (2015).

Michelle M. Mello, et al., *Shifting Vaccination Politics — The End of Personal-Belief Exemptions in California*, 373 NEW ENGLAND JOURNAL OF MEDICINE 785(2015): http://www.nejm.org/doi/full/10.1056/NEJMp1508701?query=featured_home.
Whitlow v. State of California (2016), Rejection of Motion for Preliminary Judgment.

8) Mandates in the Workplace March 2

Over twenty states in the United States have passed laws or regulations addressing vaccination of healthcare workers against influenza, and more hospitals adopted such mandates voluntarily. This unit will examine the issues surrounding such mandates, including constitutional issues and labor law issues, mostly at the federal level but somewhat at the state level.

Rene F. Najera & Dorit R. Reiss, *First Do No Harm: Protecting Patients Through Immunizing Health Care Workers*, 26 HEALTH MATRIX: THE JOURNAL OF LAW-MEDICINE 363(2016) *Available via Hein Online*.

Lisa H. Randall, et al., *Legal considerations surrounding mandatory influenza vaccination for healthcare workers in the United States*, 31 VACCINE 1771 (2013).

March 5-9: Spring Break, no class

Mobilization, Social Movements and Legal Tools

9) The Anti-Vaccine Movement: Parents and Organizations March 16

This unit applies the insights from the literature about cause lawyering and the use advocates make of the law to the anti-vaccine movement. The focus of this class will be on anti-vaccine legislation and efforts to shape litigation related to vaccine injuries, and the mobilization strategies used. It will also examine potential uses of law to limit the harm anti-vaccine movements cause.

Jennifer A. Reich, *Calling the Shots: Why Parents Reject Vaccines* 67-96 (2016).

10) The Anti-Vaccine Movement: Anti-vaccine organizations March 23

This unit examines the efforts of anti-vaccine movement to use legal tools to silence critics.

Anna Kata, *Anti-vaccine activists, Web 2.0, and the postmodern paradigm* “An overview of tactics and tropes used online by the anti-vaccination movement”, 30 VACCINE 3778 (2012).

Arthur v. Offit, Unpublished, 2010 WL 883745.

Jefferey S. Gerber and Paul A. Offit, *Vaccines and Autism: A Tale of Shifting Hypotheses*, 48 CLINICAL INFECTIOUS DISEASES 458 (2009), available at: <http://cid.oxfordjournals.org/content/48/4/456.full.pdf+html>

March 30 is Cesar Chavez holiday, no class

11) Anti-vaccine organizations in Comparison April 6

This section tells the story of several anti-vaccine efforts from other countries, and the role law played in them. For example, the Australian “Stop the Australian Vaccine Network” group made use of several legal tools in their struggles.

No Reading.

Reform and Strategies Going Forward

12) Using Financial Consequences to Control Behavior: Imposing Costs April 13

The decision not to vaccinate can lead to outbreaks or can lead to an unvaccinated individual directly infecting others. This unit examines whether and how the law can impose those financial costs on those that generate them, examining both fault and no-fault options.

Charlotte A. Moser, et al., *Funding the Costs of Disease Outbreaks Caused by Non Vaccination*, Fall 2015 JOURNAL OF LAW, MEDICINE & ETHICS 633 (2015).

13) The Law and the Vulnerable: Protecting the unvaccinated child April 18 (A Wednesday treated as a Friday)

Parents have rights, and parental rights are important in our system. But children are not property, and they too have a right to health. Since the risks of vaccinating are substantially smaller than the risks of not vaccinating, it's at least arguable that not vaccinating violates a child's right to health. This unit discusses which tools the law offers to protect children against being left unvaccinated, and how we can improve that protection. It also discusses access issues.

PAUL A. OFFIT, BAD FAITH: WHEN RELIGIOUS BELIEF UNDERMINES MODERN

MEDICINE (Basic Books. 2015) (excerpts).

Reiss, Dorit The Rights of the Unvaccinated Child, 73 studies in Law, Politics and Society, 73 (2017).

UNIVERSITY OF CALIFORNIA, HASTINGS COLLEGE OF THE LAW
STATUTORY LAW AND THE ADMINISTRATIVE STATE - PUBLIC HEALTH LAW
SPRING 2019
PROFESSOR DORIT R. REISS

Course Description:

Public Health Law is a complex network of statutes, regulations, policies and court decisions that govern the state's powers to identify, prevent, and ameliorate risks to the health of its population. This course examines that network, while also providing students with a set of tools to manage it, covering the principles of statutory interpretation, agency action, and judicial review of statutes and administrative actions. It considers government's responsibilities to promote and safeguard the health of the public, government's obligations to respect the rights and interests of individuals, and the inevitable tensions that arise when these goals are in conflict. The course explores the rationale for a population-based approach to health, the sources and themes of public health law and policy, the mechanisms the state uses to promote its public health goals, and the restraints on those means. Topics covered may include: control of infectious diseases (e.g., immunization policies, responses to epidemics); regulation of tobacco; strategies to reduce obesity and related chronic diseases; and the role of legislatures, agencies and courts in setting and implementing policies in these areas.

Class Hours: [redacted].

Contact information:

Office: room 324, 200 McAllister

Phone: (415) 565-4844

Email: reissd@uchastings.edu

Office Hours: [redacted].

Course Website via Canvas

Required Course Materials:

The course's textbook is Lawrence O. Gostin and Lindsay F. Wiley, Public Health Law: Power, Duty, Restraint (3rd edition, 2015).

Pages with no designation in the reading assignments refer to this text.

PUBLIC HEALTH LAW AND ETHICS: A READER (Lawrence O. Gostin ed., 3d edition forthcoming) , ISBN: 978-0-520-94605-7, <http://library.uh.edu/record=b7841801~S11>.
"Reader, pages XX-XX" refers to this text.

Course Objectives:

1) Knowledge: At the end of this course, you should be able to

- Identify the problems public health law aims to address.
- Understand the statutory and constitutional framework governing the state's use of its public health powers.
- Understand principles of statutory interpretation, including textualism, canons of construction, and the use of legislative history.
- Describe the legislative process by which statutes are created at the state and federal level.
- Describe the process by which administrative agencies administer statutes, including rules and rulemaking, adjudication, and other less formal agency action.
- Describe and apply the existing doctrines for judicial review of administrative action.
- Describe the statutes and policies governing federal and state efforts to control infectious and non-communicable diseases.
- Understand the framework governing the state's use of quarantine, isolation, and similar powers, and the constitutional limits on their use.

2) Skills: At the end of this course, you should also be able to:

- ✓ Read and apply complex statutory provisions and administrative regulations to a particular set of facts.
- ✓ Apply tools of statutory interpretation, including textual analysis, canons of construction, and legislative history, to make persuasive statutory interpretations.

Grading:

80% of the final grade for this course will be determined by an anonymous, closed-book, in class exam.

10% will be awarded upon the submission of Assignment 1, draft legislative provision.

10% will be awarded upon the submission of Assignment 2, draft regulatory product.

I reserve the right to increase a grade by up to two notches (a notch is, for example, a move from B to B+) for excellent participation or reduce it by up to two notches for excessive absences or lack of preparation.

The midterm assignments – without supporting materials - are included later in the syllabus.

Make up Class:

There will be no class on [redacted]. A make-up class is, instead, scheduled for [redacted].

Reading Assignments:

All the readings are from the textbook unless noted differently. You are responsible for the parts of the readings not discussed in class, unless expressly told otherwise. Readings may be changed during the course, according to the class needs and progress. You will be given notice of such changes in class and on the website.

The course is designed to have two parts, each of which combines the subject matter of public health with the tools of statutory interpretation and familiarity with the administrative state, but with different emphasis. The first part provides an introduction to statutory interpretation and the administrative state, drawing as much as possible on public health materials, but reaching beyond them where needed. The second part covers selected topics in public health law, while deepening and applying the understanding of statutory interpretation and the administrative state provided in the first part. The goal of this double structure is in part to allow for a coherent, structured discussion of the subject matter topics, and in part to make sure the students have the tools for a more in-depth understanding of how statutes and administrative tools work before they need to apply them as a whole to specific subject-matter areas.

Part I: Framework and Tools:

Assignment 1: Introduction – pp. 4-12.

Assignment 2: The Constitutional Framework: An Overview pp. 73-87

Assignment 3: State and Federal Powers, pp. 87-106.

Assignment 4: Rights in the context of public health: *Jacobson v. Massachusetts*, 115-131, and **Reader**, pp. 144-151.

Assignment 5: Modern limits on government power in public health, 131-144.

Assignment 6: Modern Limits cont. **Sebelius, Reader, 123-133.** *Abigail Alliance for Better Access to Developmental Drugs v. von Eschenbach*, 495 F.3d 695 (D.C. Cir. 2007), cert denied 552 U.S. 1159 (2008) *on canvas*.

Assignment 7: First Amendment and levels of review, 144-152

Assignment 8: The Statutory Process: **Federal:** <https://www.congress.gov/bill/115th-congress/house-bill/6> Read: Summary, Actions, Committees. Skim text.

Read: <https://www.ama-assn.org/delivering-care/opioids/10-ways-new-opioids-law-could-help-address-epidemic>

Assignment 9: The Statutory Process: **State:** SB277. **Reader pp. 424-426 from “California, West Virginia and Mississippi”**

https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201520160SB277

Assignment 10: Canons of Statutory Interpretation, introduction: *Bruesewitz v. Wyeth*, 562 U.S. 223 (2011). **Reader 215-219**

Assignment 11: Administrative Agencies and their role. Pp. 153-168

Assignment 12: Overview of agency action, rulemaking and adjudication. pp. 168-177

Assignment 13: Judicial review of agency legislative authority. **Reader 207-215 on the Soda Ban case;**

<https://www.nycourts.gov/courts/appeals/Decisions/2018/Jun18/64opn18-Decision.pdf>

Assignment 14: Judicial review of agency interpretation and deference: **Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). On Website.**

Assignment 15: State and local government law and public health. Pp. 177-190.

Part II: Public Health Law in Action

Assignment 16: Infectious disease control and prevention: introduction. Pp.345-349.

Reader, Community Immunity, 410-412.

Assignment 17: School immunization mandates: pp. 350-361; **Reader 418-424.**

Assignment 18: School immunization mandates: California's SB277 in the courts: **Whitlow v. California**, on Website, and:

<http://www.courts.ca.gov/opinions/documents/B279936.PDF>

Assignment 19: Workplace mandates : **Robinson v. Children's Hospital Boston**, on website. **Opel et al, Vaccination without Litigation, NEJM**, on website.

Assignment 20: Ensuring a secure supply : pp. 361-364. Reread **Bruesewitz v. Wyeth, 562 U.S. 223 (2011)**, on website.

Assignment 21: Compulsory testing and screening, pp. 365-380, **Reader 427-433**

Assignment 22: Compulsory treatment: **Reader pp. 438-447**

Assignment 23: Non-medical prevention of diseases – 381-388.

Assignment 24: Emergency preparedness – state v. federal. Pp. 391-400

Assignment 25: Evacuation and sheltering: pp. 400-409

Assignment 26: Quarantine and isolation: 416-426.

Assignment 27: Quarantine and Isolation 2: **Reader 486-492**

Assignment 28: Federal quarantine regulations: 426-433.

Assignment 29: Federal quarantine regulation – **Reader 492-500, Regulation and Hickox.**

Assignment 30: Public health and terrorism **Reader pp. 451-466.**

Assignment 31: Noncommunicable diseases: Introduction to non-communicable diseases, pp. 435-444.

Assignment 32: Labeling and warnings: pp. 445-452. **Reader 504-508 Constraints on Government Speech.**

Assignment 33: Advertising and its issues, cont. 452-467 **Reader 508-519.**

Assignment 34: Advertising Continued, **Reader 519-525, California Soda Advertising, on Canvas website.**

Assignment 35: Regulating non-communicable diseases by modifying the environment: pp. 467-476.

Assignment 36: Course overview.

Assignment 37: Practice exam.

Ground Rules:

Attendance and Participation: Attendance is mandatory. I will not call roll, but repeated absences will affect your grade. You will be expected to participate. I will randomly assign numbers to each student and cold call on you according to that random order. If there is a

problem with a specific day – you are unprepared, or need to be absent, please notify me before that class period or, at the latest, at the beginning of the class. If you are not prepared when I call on you, or if you are absent without a good explanation, it will hurt your grade. I also ask many questions and expect people to ask questions as well, which I will answer as far as time permits; if a question is only loosely related to the class topic, or if it seems to require more discussion than is needed for the class or possible in the available time, I may ask the student to continue the discussion privately after class or during office hours, or suggest the issue be raised on the website's discussion forum. This class will rely heavily on problem solving and exercises, and I will expect you to participate in those activities.

Airtime: Since we have limited class hours, talking time in class is at a premium. There is always a shortage of time and many people. There are always some people who participate more than others. As far as I can identify them in such a big class I will prioritize the students who do not speak regularly and especially those who have not spoken before, or at least have not spoken before in the class in question, to provide as many students as possible with a chance to speak. However, if there are no other hands raised, I will call on the “frequent participants”, and if time permits, I will allow as many students as possible to participate. If you want participation to be more diverse, please participate more, rather than blaming the students who participate frequently.

I welcome students with more to say than class time allows to do so in one of the alternative ways available, through email, office hours, after class discussions, or the discussion forum on the website – I'm happy to hear from you.

Laptops: Please do not use your laptop for anything other than class work during class. It may distract your colleagues, could be detrimental to your own studies, and it's disrespectful. Using the course website during class is fine.

Cellphones: Please turn off your ringer.

Timeliness: Class starts at the time assigned and ends at the time assigned. I usually start class with administrative announcements about the course and the reading material, and I assume you know what was said. If you have the misfortune of being late, make sure to make up your notes on these issues from one of your class colleagues. It is your responsibility to know what I said at the beginning of class.

Facebook: I never “friend” students. I do accept friend requests any student submits (at least, I never had a reason to block a student or not accept his or her request so far). However, consider carefully whether you want me in your “friends” list. Remember it means I will read and possibly comment on your posts and be aware when you submitted them.

Twitter Handle: @doritmi

Graded Assignments and Due Dates:

1. Statutory Drafting Exercise: Due February 5, in Class.

The state of Hastings requires that children attending private and public schools be immunized against diphtheria, tetanus, pertussis, polio, hib, measles, rubella, mumps, hepatitis B and chicken pox before attending. Parents can, however, exempt their children from these requirements for medical reasons by providing a doctor's note or for personal beliefs, by submitting a form that says immunization is against their personal beliefs. The overall rate of immunization of kindergarten in Hastings is 89%, which is among the lowest in the nation. Worried about this, a legislator who is also a pediatrician is looking at ways to protect, specifically, medically vulnerable children. The elected legislators are mostly firm believers in parental rights and individual choice, and abolishing the personal belief exemption is not an issue. However, the legislator wants to make sure at least some schools in each district – private and/or public – are safe for medically fragile children, and have high immunization rates.

Draft a legislative proposal addressing how to achieve this goal. Consider, among other things, whether your proposal will address private or public schools or both, and the balance between parental rights, educational opportunities for children, and safety from disease.

Your final product should include:

- A. A preamble or opening that explains the need for the bill and its content – what the bill does. You can use California's SB277 preamble as a model:
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB277
(20 points).
- B. A description of two policy choices you made, and the rationale behind your choices (including a short discussion of alternatives rejected) and two language choices you made and the rationale behind them. *If you include more than two, I will only read the first two.* 15 points for each, 60 points total.
- C. The text of your proposed bill, on **separate page**. (20 points).

The assignment should be no more than 1000 words, not including the text of your bill. Please write the number of words at the top. Please don't forget to provide your name. I will need a paper copy.

See Separate Assignment Handout for Additional Materials.

Regulatory Drafting Exercise, Due March 12:

In 2016, New York City decided to require, by regulation, that all teachers and volunteers teaching in daycare be vaccinated against influenza. It published the attached draft regulation.

The city based its authority on §558 of its charter, which reads:

§ 558. Health code. (a) The health code which is in force in the city on the date on which this chapter takes effect and all existing provisions of law fixing penalties for violations of the code and all regulations of the board of health on file with the city clerk on the date when this chapter takes effect shall continue to be binding and in force except as amended or repealed from time to time. Such code shall have the force and effect of law.

(b) The board of health from time to time may add to and alter, amend or repeal any part of the health code, and may therein publish additional provisions for security of life and health in the city and confer additional powers on the department not inconsistent with the constitution, laws of this state or this charter, and may provide for the enforcement of the health code or any orders made by the commissioner or the board of health, by such fines, penalties, forfeitures and imprisonment as may be prescribed therein or otherwise by law.

(c) The board of health may embrace in the health code all matters and subjects to which the power and authority of the department extends. The board of health shall prescribe in the health code the persons who shall be required to keep a registry of birth, fetal deaths, and deaths occurring in the city and file certifications thereof with the department and the form and manner in which such registry shall be kept and certificates filed, and, it shall provide for the recording of births which have not been recorded in accordance with law, for the change or alteration of any birth, fetal death or death certificate upon proof satisfactory, to the

commissioner, for the examination and issuance of transcripts of such certificates and for fees to be charged therefor.

And on the decision in *Garcia v. New York Department of Health and Mental Hygiene*:
<https://www.nycourts.gov/courts/appeals/Decisions/2018/Jun18/64opn18-Dcision.pdf>

Prepare a comment to submit in response to the proposed rule. You are a lawyer representing one of the following (you may choose):

- A. The Health Choice Coalition of New York, opposed to limiting parental choice in health matters.
- B. A The local chapter of the American Academy of Pediatric, concerned about children getting sick with influenza.
- C. The local association of private daycares, concerned both about sick children and their effect on the daycare, and the administrative burden of enforcing this requirement on the daycare.

Address at least one of the following (you may address other issues as well):

- I. The City's authority to make the rule.
- II. The rule's substantive justification.

The assignment should be no longer than 1,000 words.

See separate assignment handout for more materials.

UNIVERSITY OF CALIFORNIA, HASTINGS COLLEGE OF THE LAW
THE GOVERNMENT LAWYER – GOVERNMENT LAW CONCENTRATION SEMINAR
FALL 2014-SPRING 2015
PROFESSOR DORIT R. REISS

General Description: *The Government Lawyer* is the concentration seminar for the Government Law Concentration. It is a full-year, 2 unit seminar. During the fall semester, the seminar meets for two hours each week during the first five weeks of the semester to consider a range of topics important to government law practice and provide guidance for the writing project, and for two hours during the last day of classes to discuss topics of research and provide guidance on research strategies. During the second semester, students work on individual papers or projects under the direct supervision of a faculty member teaching in the concentration, and present them during the final 6 or 7 weeks of the semester.

Class Hours: Tuesday 4:40-6:50PM (Room 314, 198 McAllister)

Contact Information:

Office: room 324, 200 McAllister

Phone: (415) 565-4844

Email: reissd@uchastings.edu

Office Hours: Monday 12-2, Wednesday 12-1pm.

Required Course Materials:

Each week's reading will be posted on our Blackboard website a week in advance. It is your responsibility to sign up to the class website and to check the reading.

Course Objectives:

At the end of this seminar, you should be able to:

- Describe the general framework of United States government at the federal, state and local levels.
- Know the roles lawyers fill in government structures and ethical issues related to that.
- Describe mechanisms adopted by governments to create transparency and collect input from citizens.
- Find information relating to a governance project, practical or analytical.
- Write a clear, coherent piece on a governance related topic.

Seminar schedule:

During the first 5 weeks of the seminar the class will cover a range of topics important for those who want to concentrate in Government Law. During the rest of the semester, you will choose and start working on your paper topics with your paper advisor. The class will meet on the last Tuesday of the semester, November 18, to work together on the paper topics. The seminar will reconvene during the last part of the spring semester for student presentations.

Grade:

Your final grade for this course will be determined as follows:

- 65% of your final grade will be based on a seminar paper;
- 15% of your final grade will be based on class participation.
- 20% of your final grade will be based on oral presentation. The details of the oral presentations will be given to you at the beginning of the second semester.

There will not be a final examination.

Seminar Paper:

In General:

This seminar requires you to write a paper based on independent legal research on a topic related to government law. The paper can be a *scholarly* work, meaning that it should be original, analytical, well-researched and well-written, or it can be *practice-oriented*, focused on solving a problem a government agency faces.

Topic and Topic Selection: Please start consulting with one of the seminar professors about your topic and your choice of faculty advisor as soon as you know the broad topic you want to study. You are required to submit a written topic proposal to us no later than 5pm on **October 7, 2014**. The topic proposal should provide a very short overview of the chosen topic and a tentative table of contents for your paper, as well as suggestions for one or two topics in the field. We will assign each student a paper advisor based on the topic and faculty availability. The topic proposal may not exceed one page. You should then meet and work with your advisor as agreed between you.

Research Plan: A plan suggesting how the student intends to go about finding information about the chosen topic, which bodies of literature will be addressed, which sources of data, and some thoughts on anticipated problems and ways to solve them is to be submitted by email by class time on Monday, **November 11, 2014**, to me and your advisor. The research plan should be no longer than two pages.

Paper Outline: An annotated outline – i.e. the paper structure and what you intend to do in each part – is due no later than **January 20, 2015**.

A substantially completed version: A substantially completed version of the paper is due on Monday, **March 17**. In determining final grades, no weight will be given to the content of substantially complete versions. However, failure to submit a substantially complete version may cause the student's paper not to fulfill the College's writing requirement and/or may cause the student's final grade to be decreased by one notch.

Final Submission: Final papers should be submitted to your seminar professor AND your paper advisor on **April 27** and should be **submitted by email**. This deadline is firm and cannot be extended by your advisor without express written permission from the seminar instructors. The papers should be in Microsoft Word, and all portions of the paper (e.g., text, appendices, and charts) should be included in a single document. Late papers will be penalized.

Format: Papers should be approximately 25-30 double-spaced pages (1 inch margins, text in 12 point font, footnotes in 10 point font & single-spaced). The format should be similar to a law review article, with footnotes provided at the bottom of the pages. You may cite using *The Bluebook – A Uniform System of Citation* or the author-date format used by peer reviews, or another acceptable academic format, as long as your citations are easily traceable.

Writing Requirement

To qualify for the writing requirement, the paper must meet the criteria set in UC Hastings' rules. The rules state:

703. Writing Requirement

“All students must write a substantial research paper that demonstrates professional and scholarly proficiency in research, analysis, and writing. ... All of the following requirements must be met in order to satisfy the writing requirement:

- a. The student must inform the instructor that the student wishes to have a paper fulfill the writing requirement.
- b. The student must submit a topic and receive approval of it from the instructor.
- c. The student must submit at least one preliminary draft to the instructor for comments and suggestions.
- d. The student must submit a final draft that is approximately 7000 words in length, or longer, exclusive of footnotes and endnotes.
- e. The student must receive a grade of C or better on the final draft of the paper
- f. The paper must be a substantial research paper that demonstrates professional and scholarly proficiency in research, analysis, and writing.
- g. The instructor must certify in writing that all of the above requirements have been met.”

Class Participation:

Class participation will be evaluated based on your contributions to the class discussion. This includes (but is not limited to) responding to the Discussion Questions, commenting in response to points/questions posed by your classmates and Professors, and asking questions that advance the discussion. In addition, meaningful participation presupposes regular attendance.

Syllabus: The Government Lawyer: Concentration Seminar

I. Introduction – August 19

A Career as a Government Lawyer and Theories of Government: Representatives of our externship program and the career office will attend to educate concentrators about how to find externship and employment opportunities at each level of government.

We will also have an introduction to some of the basic concepts in public administration and the major modern theories for thinking about government, and some of their insights.

Reading: **Meier and O'Toole** *Political Control v. Democratic Values: Reframing the Debate*. Available on Blackboard.

II. Roles and Responsibilities of the Government Lawyer - August 26

Who is the Government Lawyer?. An examination of the government lawyer's roles and responsibilities. Who is the government lawyer's client? Are the government lawyer's professional responsibilities – particularly with regard to revealing wrongdoing -- different from the lawyers who represent private organizations? What is the government lawyer's role in policing his or her client's ethical obligations? What are the government lawyer's own ethical obligations?

III. Evidence Based Government – September 2:

Large parts of what modern government does require high levels of expertise. In those areas government decisions are made based on expert reports and scientific data. In addition, under executive order 12866, major rules by the federal government require a cost-benefit analysis, and some states are moving in that direction. This lesson introduces the students to some of the realities of evidence-based government, including sources of scientific information and some of the concerns related to it and the strengths and pitfalls of cost-benefit analysis.

IV. Open Government: The basics – September 9

Governments operate under norms of transparency and participation that do not apply to private organizations, and government lawyers play a role in policing those norms. This section of the seminar will include an introduction to principles of transparency (public records and open meetings laws) and participation in governance. Special attention will be given to the nuts and bolts of conducting administrative hearings, including conflicts of interest and due process norms.

V. Financing and Budgeting – September 16

On October 21 I will be hosting a dinner for the seminar students and some faculty in my home in Fremont, CA.

VI. Topic Presentation and Group Work on Student Papers - November 18

VII. Student Presentations in Second Semester: (this may be modified based on the actual number of seminar participants)

March 17

March 24

March 31

April 7

April 14

There will be no class on:

September 23

September 30

October 7

October 14

October 21

October 28

November 4

November 18 (Statutory Monday)

Any spring date except the ones above.

UNIVERSITY OF CALIFORNIA, HASTINGS COLLEGE OF THE LAW
COURTS AS A POLITICAL ACTOR - SEMINAR
FALL 2017
PROFESSOR DORIT R. REISS

Class Hours: Friday 9:40-11:50 (198 McAllister, Room B2)

Professor Reiss's contact information:

Office: room 324, 200 McAllister

Phone: (415) 565-4844

Email: reissd@uchastings.edu

Office Hours: Thursday, 11:00-1:00, Friday 2:30-3:30 and by appointment.

Course Webpage via Canvas

Required Course Materials:

Most materials are available through the library databases, except:

G. Rosenberg (1991), *The Hollow Hope: Can Court Bring about Social Change*. You can get first or second edition.

Course Objectives:

At the end of this seminar, you should be able to:

- Understand and critically discuss several strands of empirical studies of courts and politics, including:
 - The attitudinal literature claiming judges make decisions based on politics.
 - The relationship between courts and other branches.
 - The impact of judicial decisions.
- Comparative issues in courts and politics.
- Understand the basic tenets of empirical research and be able to critically read and empirical paper (quantitative or qualitative).
- Write an original analytical paper on a topic involving courts as a political actor.

Grade:

Your final grade for this course will be determined as follows:

65% of your final grade will be based on a seminar paper;

10% of your final grade will be based on your oral presentation of your paper; and

25% of your final grade will be based on class participation.

Details regarding the seminar paper, oral presentation and class participation are provided below. There will not be a final examination.

Seminar Paper:

In General:

This seminar requires you to write a scholarly paper based on independent legal research. The paper must be a scholarly work, meaning that it should be original, analytical, well-researched and well-written. Within this framework, your paper can be one of two types of papers:

A Purely Analytical Research Paper: This paper would draw on existing literature and put forward a thesis, i.e., advance a proposition for consideration and support that proposition with original and thoughtful arguments. This paper format is the familiar format used in most law review articles. The thesis must be original, and the paper must be carefully researched and thought out, considering existing literature and providing strong support for the thesis.

Empirical Research Proposal: This paper would also suggest a thesis, framed as a research question, and then present a literature review and a methodological plan for answering the question. The paper will also include a qualitative or quantitative preliminary research that will apply the methodology suggested in a small scale and analyze the findings of this preliminary research.

Examples of the outline of Such a Research Proposal:

Example 1: Quantitative Study:

Broad Topic: Judges and the Media

Research Question: How does media coverage of a judge affect their voting?

Relevant Literature: attitudinal model literature & criticisms of that model.

Case Study: News coverage of 9th circuit judges and 2nd circuit judges from 2000-2004.

Methodology: look at the number of articles in the major state news papers naming the judges, exclude short mentions (weddings and the like). Look at the voting of the judges on issues, rank them as liberal or conservative. See if judges who get more coverage are more or less extreme.

Hypothesis: judges who are more in the spot light will want to appear more impartial to preserve legitimacy, and therefore will be closer to the center in their voting.

Concerns:

- I. Is polarization the best measure for evaluating impact of the media?
- II. Would it be better to measure change over time of the judges' view?
- III. Can you really divide most legal topics on party line?
- IV. Generalizability: can you deduce about the rest of the country's federal judges, or state judges, from two courts? Especially when one – the 9th circuit – is known as a liberal court?

Preliminary Study: looked at ninth circuit judges and their coverage in the San Francisco Chronicle, correlated that with their polarization. Supports hypothesis.

Example 2: Qualitative Study:

Broad Topic: Effectiveness of Judicial Decisions

Research Question: Are controversial judicial decisions implemented?

Relevant Literature: Impact literature, for and against the effectiveness of courts.

Case Study: Creationism in state public schools.

Methodology: Choose two of the federal court decisions overturning school boards' efforts to give a place to creationism in the curriculum or to challenge evolution. Analyze what the court ordered; check if it was obeyed, how quickly, whether the board tried new methods to get results.

Possible sources (recommended – combine):

1. Local newspapers.

2. Personal/Telephone interviews with: Lawyers on both sides; Parents (problem: getting hold of them/getting them to talk freely); School board members.
3. Survey sent to school board members/lawyers.

Concerns:

- I. How typical/unique an example is this? How much can you generalize from a small qualitative study?
- II. Dealing with lies.
- III. Finding materials.

Preliminary Study: Choose one case and use a small sample of one of the sources above – e.g. interview five people and collect stories from one local news paper. Draw preliminary conclusions about research designs and topic.

Interim Assignments:

All interim paper assignments should be turned in electronically via Canvas.

Topic & Topic Selection: The topic for the seminar paper may be on any courts and politics subject chosen by you and approved by me. Please start consulting with me as soon as you know the broad topic you want to study. You are required to submit a written topic proposal to me no later than the end of class on **September 15 (via Canvas)**. The topic proposal should provide a very short overview of the chosen topic and a tentative table of contents for your paper. The topic proposal may not exceed one page. I will be meeting with each of you to discuss your topic in individual meetings set for September 19 and September 20. Sign up sheets will be available on my office door after our lesson on the 15.

Paper Outline: An annotated outline – i.e. the paper structure and what you intend to do in each part – is due no later than **5 pm, October 13** (Via Canvas). It should be one to three pages long.

Substantially Completed Version: A substantially completed version of the paper is due on Monday, November 17 (Via Canvas).. I will provide feedback on the draft within ten days, which should give you a chance to correct and improve the paper by the due date.

Final Submission: Final papers are due on Monday, December 24 by 5pm (earlier is, of course, fine) and should be submitted by email. **This is a firm deadline.** The papers should be in Microsoft Word, and all portions of the paper (e.g., text, appendices, and charts) should be included in a single document. Later papers will be penalized.

Please note: none of these preliminary assignments will be considered in the final grading, but missing one of the deadlines without prior permission may cause the student's paper not to fulfill the College's writing requirement and/or may cause the student's final grade to be decreased by one notch, more if the delay is substantial. Prior permission will only be given because of prior completion of the required work (for example, if I read one or more drafts before November 17, I may permit you not to hand that in) or for unexpected, extraordinary problems.

Format: Papers should be approximately 25-30 double-spaced pages (1 inch margins, text in 12 point font, footnotes in 10 point font & single-spaced). The format should be similar to a law

review article, with footnotes provided at the bottom of the pages. You may cite using The Bluebook – A Uniform System of Citation or the author-date format used by peer reviews, or another acceptable academic format, as long as your citations are easily traceable.

Writing Requirement

To qualify for the writing requirement, the paper must meet the criteria set in UC Hastings' rules. The rules state:

703. Writing Requirement

"All students must write a substantial research paper that demonstrates professional and scholarly proficiency in research, analysis, and writing. ... All of the following requirements must be met in order to satisfy the writing requirement:

- a. The student must inform the instructor that the student wishes to have a paper fulfill the writing requirement.
- b. The student must submit a topic and receive approval of it from the instructor.
- c. The student must submit at least one preliminary draft to the instructor for comments and suggestions.
- d. The student must submit a final draft that is approximately 7000 words in length, or longer, exclusive of footnotes and endnotes.
- e. The student must receive a grade of C or better on the final draft of the paper
- f. The paper must be a substantial research paper that demonstrates professional and scholarly proficiency in research, analysis, and writing.
- g. The instructor must certify in writing that all of the above requirements have been met."

Oral Presentation:

The last four weeks of the seminar will be dedicated to presentations and paper writing. No readings are assigned for that period, to allow you to use the time for working on your paper. You will be required to make a 10-20 minute presentation on your selected topic (the length of the presentations will be determined by the number of participants in the seminar), followed by an in-class discussion. The presentation should include any necessary background for the topic, an explanation of the anticipated conclusion or recommendation, and a discussion of the analysis. Your paper does not need to be complete at the time of your presentation.

You must distribute an abstract for your paper (and any other materials that you think would be helpful) to each seminar participant's SIC folder and to my mailbox **no later than 5:00 p.m. on the Friday preceding your presentation**. Alternatively, you may e-mail your abstract and any materials to your classmates and to me by the deadline.

Class Participation:

Class participation will be evaluated based on your contributions to the class discussion. This includes (but is not limited to) responding to the Discussion Questions, commenting in response to points/questions posed by your classmates and by me, and asking questions that

advance the discussion. In addition, meaningful participation presupposes regular attendance.

Syllabus: Courts as a Political Actor

Note: All the Readings can be found on Hein Online unless otherwise noted.

Introduction – August 25

Lon, Fuller (1949) “The Case of the Speluncean Explorers”, 62 Harv. L. Rev. 616.

Judicial Decision Making and Politics - September 1

H. Gilman (2001) “What’s Law Got to do With It? Judicial Behavioralists Test the ‘Legal Model’ of Judicial Decision Making,” 26 Law and Social Inquiry pp. 465-496.

Cross, F. B., & Nelson, B. J. (2001). Strategic institutional effects on supreme court decisionmaking. Northwestern University Law Review, 95(4), 1437-1450.

Bailey, Michael A. and Forrest Maltzman (2008) “Does Legal Doctrine Matter? Unpacking Law and Policy Preferences on the U.S. Supreme Court” 102 APSR 369-384 **Available via the Proquest Central Database, through our library.**

Courts and the Legislature: Judicial Review – September 8

Matthew R. Christiansen and William N. Eskridge, Congressional Overrides of Supreme Court Statutory Interpretation Decisions, 1967–2011, 92 Texas L. Rev. 1317, 1317-1325, 1414-1449 (2015) **available at: <http://www.texaslrev.com/wp-content/uploads/2015/08/EskridgeChristiansen-92-6.pdf>**

P. Frymer, “Acting When Elected Officials Won’t: Federal Courts and Civil Rights Enforcement in U.S. Labor Unions, 1935-1985,” American Political Science Review 97, 3: 483-499 (2003).

Available via the Proquest Central Database, through our library.

Courts and Bureaucracy – September 15

Spicer, M. W., & Terry, L. D. (1996). Administrative interpretation of statutes: A constitutional view on the "new world order" of public administration. Public Administration Review, 56(1), 38. **Available via the Proquest Central Database, through our library.**

Malcolm M. Feeley & Van Swearingen, “The Prison Conditions Cases and the Bureaucratization of American Corrections: Influences, Impacts, and Implications”, 24 Pace L. Rev. 433 (2004); pp. 433-441, 447, 455-456, 466-475.

Courts and Interest Groups – September 22

Anne Southworth Conservative Lawyers and the Contest over the Meaning of Public Interest Law 52 UCLA L. Rev. 1223 (2004-2005)

Bell, Derrick A. jr. (1976-1977) “Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation”, 85 Yale L. Journal, pp. 470-517, excerpts.

This class will open with a presentation by our reference librarian, Vince Moyer, about using the library’s resources for research.

Comparing Institutions – September 29

Schmid, A. (1995). Imperfect alternatives: Choosing institutions in law, economics, and public policy. *Journal of Economic Issues*, 29(3), 971 **Available via the Proquest Central Database, through our library.**

Jeb Barnes, "In Defense of Asbestos Tort Litigation: Judicial Policy-Making in a World of Uncertainty, Second Bests and Shared Policy-Making Responsibility," 34 *Law and Social Inquiry* 5, 2009.

Impact studies: What can the Courts do? - October 6

G. Rosenberg (1991), *The Hollow Hope: Can Court Bring about Social Change* Introduction, Chapters: 1-3, 14.

Impact Studies II – After Rosenberg: October 13

M. McCann, "Reform Litigation on Trial," 17 *Law & Social Inquiry* 715-43 (1993) (excerpts)
D.Reed, "Twenty-Five Years after Rodriguez: School Finance Litigation and the Impact of the New Judicial Federalism," 32 *Law & Society Rev.* 175-220 (1998)

Courts and the American Way – October 20

David Johnson, *The Organization of Prosecution and the Possibility of Order*, 32 *Law & Soc'y Rev.* 247 (1998).

Kritzer, H. M. (2004). American adversarialism. *Law & Society Review*, 38(2), 349-383.

Optional, only if interested: Epp, C. R. (2003). The judge over your shoulder: Is adversarial legalism exceptionally american? *Law & Social Inquiry*, 28(3), 743-770

Student Presentations:

October 27

November 3

I have to cancer class on November 17. To make up, I am scheduling two more hours on November 21* - we may not need them, but be prepared to have class on November 21, a statutory Friday, 12-2, room 620A. If we need the time, I will provide lunch.

* November 10 is Veterans Day, and there will be no class. Tuesday, November 21 is a statutory Friday.

**CODE OF FACULTY RIGHTS AND RESPONSIBILITIES
AND PROCEDURES FOR DISCIPLINE AND GRIEVANCES**

**(As enacted by the Faculty on May 4, 1992, amended by the Faculty on
April 13, 2018)**

PREAMBLE

Hastings College of the Law seeks to provide and sustain an environment conducive to sharing, extending, and critically examining knowledge and values, and to furthering the search for wisdom. Effective performance of these functions requires that faculty members be free to research and teach in accord with appropriate standards of scholarly inquiry.

The Faculty's privileges and rights, including tenure, rest on the mutually supportive relationships among the Faculty's special professional competence, its academic freedom, and the central functions of the College. These relationships are also the source of the professional responsibilities of faculty members.

This Code is intended to foster the protection of academic freedom, the preservation of the highest standards of teaching and scholarship, and the advancement of the mission of the College as an institution of higher learning.

Part I of this Code contains a statement of both the rights and responsibilities of the Faculty. Part II of this Code deals with the enforcement processes to be utilized in resolving allegations of unacceptable faculty behavior or abridgement of faculty rights. Those processes must meet basic standards of fairness and must reflect significant faculty involvement. General guidelines for these enforcement procedures and sanctions are elaborated, and procedural arrangements are set forth which shall be employed to satisfy those guidelines.

The authority to discipline faculty members in appropriate cases derives from the shared recognition by the Faculty and the Administration that the purpose of discipline is to preserve conditions necessary to the College fulfilling its mission as an institution of higher learning. College discipline should be reserved for faculty misconduct that is either serious in itself or is made serious through its repetition or its consequences.

Faculty members who are appointed by the Board of Directors to serve as Deans of the College or in other administrative positions are subject to disciplinary proceedings

under this Code only for conduct in their capacity as faculty members and not for conduct in their administrative capacity.

PART I

PROFESSIONAL RIGHTS AND RESPONSIBILITIES

Article 1 of this Part sets forth the professional rights of the Faculty and the concomitant responsibility of the College to maintain conditions supportive of the Faculty's pursuit of the College's central function as a learning institution.

Article 2 of this Part elaborates standards of professional conduct, derived from general professional consensus about the existence of certain precepts as basic to acceptable faculty behavior. Conduct which departs from these precepts is viewed by the faculty as unacceptable because it is inconsistent with the mission of the College. The articulation of unacceptable faculty conduct is appropriate both to verify that a consensus about minimally acceptable standards in fact does exist and to give fair notice to all that departures from these minimal standards may give rise to disciplinary proceedings.

ARTICLE 1

PROFESSIONAL RIGHTS OF FACULTY

In support of the College's central function as an institution of higher learning, a major responsibility of the College is to protect and encourage the Faculty in its teaching, scholarly research, and public service, and to preserve conditions which facilitate these pursuits. Such conditions, as they relate to the Faculty, include, for example:

1. free inquiry and exchange of ideas;
2. the right to present controversial material relevant to a course of instruction;
3. enjoyment of constitutionally protected freedom of expression;
4. collective participation in the governance of the College, including:
 - (a) approval of course descriptions and manner of instruction,
 - (b) establishment of requirements for matriculation and for degrees,
 - (c) appointment and promotion of faculty,
 - (d) appointment and reappointment of Deans,

- (e) the formulation and application of rules and procedures for discipline of the faculty and students,
 - (f) establishment of norms for teaching responsibilities and for evaluation of both faculty and student achievement, and
 - (g) determination of the organization of the faculty;
5. the right to be judged by one's colleagues, in matters of promotion, tenure, and discipline, solely on the basis of the faculty member's professional qualifications and professional conduct and in accordance with fair procedures.

ARTICLE 2

I. PROFESSIONAL RESPONSIBILITIES

Faculty responsibilities and unacceptable conduct are organized in this Code around the individual faculty member's relation to teaching and students, to scholarship, to the College, to colleagues, and to the community. The following is an aspirational statement of each faculty member's professional responsibilities and is intended to serve as a general basis for the more specific articulation of faculty rules of conduct set forth below:

Faculty members should participate in and encourage the pursuit of knowledge, by teaching and research, in an intellectually honest fashion. Faculty members should demonstrate proper respect for students and colleagues and assure that their evaluations of others are based on merit. Faculty members should accept their share of responsibility for the governance of the College and public service.

During the course of disciplinary proceedings a faculty member may offer as a defense that the conduct in question is justified by rights and responsibilities of the faculty recognized either by this Code or by other statements of professional rights and responsibilities issued by the American Association of University Professors or national accrediting organizations for law schools.

II. UNACCEPTABLE CONDUCT

A. Teaching and Students

1. Failure to meet the responsibilities of instruction, including:
- (a) arbitrary denial of access to instruction;

- (b) significant failure, without legitimate reason, to meet class, or to keep office hours;
 - (c) evaluation of student work by criteria not directly reflective of course performance;
 - (d) failure to report dishonest academic conduct on the part of students;
 - (e) failure to respect the duty of confidentiality in evaluating the work of students and in reporting student grades;
 - (f) failure to acknowledge significant academic or scholarly assistance received from students;
 - (g) undue and unexcused delay in evaluating student work; and
 - (h) incompetent teaching as defined in Section II(F), below.
2. Discrimination against a student or group of students on political grounds, or for reasons of race, religion, sex, sexual orientation, ethnic origin, national origin, ancestry, citizenship, age, marital status, disability,¹ or status as a veteran.
 3. Accepting professional responsibility within College programs as teacher, supervisor, or employer for any student with whom the faculty member has a close familial or analogous relationship.

B. Scholarship

1. Violation of canons of intellectual honesty, such as intentional misappropriation of the writings, research, and findings of others; and
2. Incompetence with regards to scholarship as defined in Section II(F), below.

C. The College

1. Intentional disruption of classes, functions, or activities sponsored or authorized by the College.
2. Intentional damage to or destruction of property belonging to the College or located on its premises.
3. Incitement of others to disobey College rules when such incitement is likely to produce imminent action in violation of College rules under

¹ As defined by federal regulations issued pursuant to 29 USC Section 794.

circumstances that constitute a clear and present danger that violence against persons or property will occur.

4. Unauthorized use of College resources or facilities on a significant scale for personal, commercial, political, or religious purposes.
5. Allowing any outside professional activity to interfere with the performance of College duties. For this purpose, the term "outside professional activity" shall include (but not be limited to) teaching at another institution, consulting and the practice of law, but shall not include the preparation of books or articles for publication or comparable activity of an academic nature that enriches the faculty member's capacity as a scholar and teacher.
6. Sexual harassment of another member of the College community² as defined in the College's Policy on Sexual Harassment.

D. Colleagues

1. Making evaluations of the professional competence of faculty members by criteria not reflective of professional performance. In making evaluations of colleagues a faculty member may not discriminate for or against others on political grounds, or for reasons of race, religion, sex, sexual orientation, ethnic origin, national origin, ancestry, citizenship, age, marital status, disability,³ or status as a veteran.
2. Breach of College rules governing confidentiality in personnel matters.

E. The Community

Intentional misrepresentation of personal views as a statement of position of the College or any of its agencies. (An institutional affiliation appended to a faculty member's name in a public statement or appearance is permissible, if used solely for purposes of identification.)

² As used in this Code, the term "member of the College community" shall mean any student, faculty member, or academic or administrative staff member.

³ As defined by federal regulations issued pursuant to 29 U.S.C. Section 794.

F. Determining Incompetence; Standards

1. Determination

A faculty member may be disciplined for demonstrated incompetence in the performance of his or her duties. Reviewers – including the Academic Dean, Faculty Executive Committee, Hearing Committee, and full faculty, as indicated in Part II, below – should look at the faculty member’s job as a coherent whole and examine comprehensively the individual’s contributions in all areas of faculty responsibility, including evaluation of clinical competence for faculty with clinical responsibilities. After this comprehensive evaluation, reviewers may consider whether, in the particular circumstances of the individual case, incompetence in a single area is sufficient grounds for discipline.

2. Standards

a. Research or Creative Activity

A tenured faculty member will be deemed to have performed incompetently in research or creative activity: (1) if, for three years, he or she has not engaged in bona fide research or creative activity (and is not serving in an administrative role that precludes such activity), and (2) if he or she gives no satisfactory evidence that he or she will engage in research or creative activity in the foreseeable future. The absence of frequent publication or the lack of recent funding does not per se mean the research is incompetent. Because norms of productivity and standards of active scholarship vary, the norms appropriate to the faculty member’s current research area should be used. In evaluating research and creative work, reviewers should use the guidelines for the award of tenure as set forth in our Faculty Rules.

b. Teaching

The content of a course and pedagogy are not entirely independent of each other. However, for the purposes of this policy, there are two distinct standards for evaluating teaching. Teaching performance can be judged incompetent either because the substance of what is taught is unacceptably deficient or because the processes and methods of instruction are inadequate. A tenured faculty member’s teaching shall be deemed incompetent if it meets either of the following standards:

i. Intellectual Content

The intellectual content of the faculty member’s teaching as judged from such sources as evaluations by current and former students, colleagues’ assessments, and teaching portfolios, is so far below the professional standards of university-level instruction in the discipline that it is a disservice to students to permit the faculty member to continue to teach; or

ii. Pedagogical Skills

The pedagogical skills of the faculty member, judged from sources such as evaluations by current and former students, assessments by faculty colleagues, and teaching

portfolios, are so far below the professional standards of university-level instruction that it is a disservice to students to permit the faculty member to continue to teach. The intellectual content of the faculty member's teaching shall be excluded from consideration when applying this criterion.

Assessment of pedagogical skills will entail evaluation of such factors as clarity of presentation, diligence as a teacher, availability to students, and willingness and capacity to communicate effectively with students and to support their efforts to learn. These factors should be assessed through such means as student and faculty evaluations. Students who enrolled but dropped out of a faculty member's class may also be contacted; if the decision is made to contact such students, then an effort must be made to contact all such students within certain specified years.

In evaluating teaching, reviewers shall use the guidelines for the award of tenure or, for LTCF, the award or renewal of LTCF status, as set forth in our Faculty Rules.

c. College Service, Public Service, and Professional Service

Teaching and research are the main responsibilities of members of the professorial series, but reviewers shall also examine the quality and quantity of the individual's contributions in the areas of University service, public service, and professional service as part of the assessment of an individual's overall performance. As a guide in evaluation, reviewers shall use the guidelines for the award of tenure [or, for LTCF, the award or renewal of LTCF status] as set forth in our Faculty Rules.

PART II

PROCEDURES RELATING TO THE ADMINISTRATION OF DISCIPLINE AND TO FACULTY GRIEVANCES

ARTICLE 1 - DISCIPLINE PROCEDURES

I. GENERAL PROVISIONS FOR THE ADMINISTRATION OF DISCIPLINE

The types of discipline provided herein may be imposed on a faculty member only in accordance with the procedures set forth in this Article. Without invoking the procedures in this part, the Dean or Academic Dean may issue a reprimand, orally or by a writing that is not placed in the personnel file of the faculty member, as an informal warning about improper conduct.

With respect to the imposition of disciplinary sanctions, this Code deals only with professional conduct or misconduct. Faculty members, however, in common with all



UNIVERSITY OF CALIFORNIA, HASTINGS COLLEGE OF THE LAW POLICY ON SOCIAL MEDIA

Social media web sites or on-line communities, such as Twitter, Facebook, and Flickr are being used increasingly by students to communicate with each other, and by UC Hastings to post events and content to reach students.

As part of UC Hastings commitment to building a community in which all persons can work together in an atmosphere free of all forms of harassment, exploitation, or intimidation when using UC Hastings technology resources to access on-line social media, UC Hastings community members (academic and staff employees, students and community members) are expected to act with honesty, integrity, and respect for the rights, privileges, privacy, sensibilities, and property of others. By doing so, individuals will be abiding by applicable laws, including copyright law, and UC Hastings policy.

The following information was developed to provide you with some guidance as to what type of behavior is appropriate relative to online social media. These guidelines are not all inclusive.

Employee Best Practices

The web is not anonymous. Everything written or posted on behalf of UC Hastings can be traced back to the institution and to a specific individual. Before launching a social media site:

- Notify your supervisor or division/department chair
- Vow to keep UC Hastings contact information accurate and current
- Understand that passwords and administrator access to the site must be carefully managed
- Establish criteria for replying to comments, including timeliness and appropriateness
- Avoid duplicating efforts. Be aware of current initiatives under way in UC Hastings and its member locations
- Provide a link back to the department or institution's web site
- The social media site should look like the institution's web site with appropriate branding and sanctioned graphics
- Use an official UC Hastings.edu email address for communication
- Any identifiable individuals in posted photos must sign an approved UC Hastings release form. Release forms are the responsibility of the posting department or individual and should be kept on file

Both in professional and institutional roles, employees need to follow the same behavioral standards online as they would in real life. The same laws, professional expectations, and guidelines for interacting with students, parents, alumni, donors, media, and other UC Hastings constituents apply online as in the real world. If you have any questions about whether it is appropriate to write about certain kinds of material in your role as a UC Hastings employee, ask your supervisor before you post.

Student Best Practices

Educating and protecting UC Hastings students is a primary concern, so please keep in mind the following guidelines as you participate on social media web sites:

- Before participating in any online community, understand that anything posted online is available to anyone in the world.
- **Do not** post your home address, local address, phone number(s), birth date or other personal information (e.g., class schedule, social plans).
- **Do not** post any information that would violate student codes of conduct and/or state or federal laws.
- **Do not** post any information, photos or other items online that could embarrass you, your family, or your school. This includes, but is not limited to information, photos, quotes and other items that may be tagged to you from another user.
- **Do not** add a "friend" unless it is actually someone you know.

Basic Privacy Guidelines

The options for communicating and interacting online are continuously advancing and changing at a fast pace, it is within each individual member's best interest to be aware of issues related to privacy online.

1. Be familiar with privacy options on social networking sites, e-mail, blogs, etc. Set appropriate privacy guards for your personal comfort level.
2. Be aware that no privacy option protects you 100 percent from personal information being shared beyond desired boundaries. Information shared online, even with the highest privacy settings (including e-mails intended for a specific individual or individuals), cannot be protected.
3. Be aware that information posted online may be perceived differently depending on the viewer despite intended effect or outcome.

General Use

Below are some common sense approaches to general use of social media sites:

- Tell the truth.
- Write deliberately and accurately.
- Acknowledge and correct mistakes promptly.
- Disagree with other opinions respectfully.
- Disclose conflicts of interest.
- Keep private issues and topics private.

Incidents reported to UC Hastings officials that may violate UC Hastings policy will be investigated and violators may be subject to discipline.

Computer Resources Acceptable Use Policy

The following acceptable use policy covers use of E-mail and other Hastings computer resources. Use of such resources constitutes acceptance of this policy.

Hastings College of the Law provides computing resources, including E-mail, in support of the College's mission of teaching, research, and community service. Use of Hastings computing resources constitutes acceptance of this policy and agreement to comply with this policy. In addition, you should be aware that there is no guarantee of privacy or confidentiality with regard to E-mail/Internet communications.

Users of Hastings computing resources must respect the rights of other users, including the rights of copyright holders, abide by the security needs of the systems, and conform their behavior to all relevant laws, regulations, and contractual obligations of the College. In addition, all College regulations and policies apply, including the Student Code of Conduct, Academic Regulations, and the Staff Personnel Manual. Misuse of Hastings computing, networking, or information resources may result in disciplinary action. Additionally, misuse can be prosecuted under applicable state and federal statutes defining computer crime.

Confidential Information may be collected and/or maintained through the use of the College's electronic mail system, e-mail. Hastings employees should be cognizant that the Hastings e-mail system is for conducting business by or on behalf of the College although employees may send or receive personal messages via e-mail and the College reserves the right at all times to access employee e-mail messages. Employees should not access the e-mail of or use the e-mail credentials of another employee unless otherwise authorized by the Chancellor and Dean or the General Counsel.

Access to Hastings' computer systems and networks is provided through the use of individually assigned unique computer passwords. Passwords should be shared with other individuals only when the access provided by such passwords is limited to a specific electronic information resource, when such sharing is essential to the continuity of an authorized business practice associated with that information resource, and when the other User is authorized to at least the same level of access privilege. Passwords to Essential or Restricted databases

containing Confidential Information including student data, personnel data, and/or fiscal data, such as provided by Datatel Systems, shall not be shared. When there is a need for shared passwords, the appropriate department manager and the DIT shall be responsible for authorizing and setting up specific accounts for that purpose. Each individual is responsible for all computer activity performed under his/her assigned password.

Administrative Law, Spring 2018

Professor Dorit R. Reiss

Class Hours:

Tuesday 10:50-11:50, Thursday 9:40-11:50, Room TBD.

Professor Reiss's contact information:

Office: room 324 in 200 McAllister

Phone: (415) 565-4844

Email: reissd@uchastings.edu

Office Hours: Thursday 1:10-3:10 and by appointment.

Course Webpage via Canvas

Chat: doritmi on gmail. (doritmi@gmail.com; **don't use this for email**).

Required Course Materials:

Funk, Shapiro and Weaver Administrative Procedure and Practice. Fifth edition, 2014.

There is also a loose-leaf version available (hereinafter: the casebook).

Course Description: This course explores the laws controlling executive and independent administrative agencies. Topics include the place of administrative agencies in the constitutional structure, the laws governing administrative rulemaking and adjudication, judicial oversight of the administrative process, constitutional limitations on agency action, and public access to the administrative process.

Course learning outcomes:

By the end of this course you should be able to:

- Describe the features of federal administrative agencies, including types of agencies, types of personnel within them, and the general process of decision-making.
- Explain the constitutional limits on agencies' structure and processes.
- Contrast the process of decision-making by agencies and the constraints on it with the process and constraints of the legislative, judicial, and political executive branches.
- Understand and compare rulemaking and adjudication by administrative agencies.
- Describe the current doctrines of judicial review of administrative actions and the limits they create for agencies.
- Criticize the current judicial doctrines of administrative law.
- Apply the current doctrines of judicial review to complex legal problems.

Assignments: There will be three mandatory course assignments and one optional one:

1. A short pass/fail assignment describing the student's participation in rulemaking in an agency of his/her choice, **due February 13, by class time**. Information is included below.
2. Each student will judge **One Group Activity** during the semester, chosen at random. This, too, will be pass/fail.
3. An **optional** short problem in the format of an exam question, **due March 29 via the Canvas Assignment option**; the problem will look like the essay question on the exam, and its aim is to give those of you who desire feedback before the final exam such feedback. Those who hand the problem in will receive detailed feedback. There will be no penalty for not handing the assignment in. Due to other commitments, I will not accept late assignments.
4. The **final exam** will have three parts, an essay part, a policy question and 5 short questions; it will be an open book exam – you may bring whatever materials you want into the exam room. The essay will include two parts: A strategic part, in which you will be asked what you would do to solve a certain problem as an administrative law practitioner, and a judicial-review part, in which you will be asked to prepare a memo analyzing the claims that can be brought in court. Further information about the format will be provided later in the course.

Class cancelled: There will be no class on Tuesday, April 3, and Thursday, April 5. Instead, we will have class on Friday, April 1, during the dead hour (12-1pm), in room .

Grading: Assignment 1 is not graded but is mandatory. Not handing it in means automatic reduction of your grade by a whole grade point (from A to B and so forth). In addition, I reserve the right to add up to 3 points to the final exam grade for those who do an exceptional job on it (i.e., if your final exam grade was 78 and you did a wonderful job on your assignment your final grade will be bumped up by up to 3 points, or either 79, 80, or 81). Assignment 3 is not mandatory; its goal is to give those of you who want to practice an exam-style problem and receive individual feedback to get such feedback. Since it is optional, I will reject late assignments or assignments that do not comply with the technical specifications.

10% of your final grade will be based on your simulation.

90% of your final grade will be based on your final exam.

I also reserve the right to adjust grades up or down by a notch (B+ either up to A- or down to B) to reflect exceptional class participation or extraordinary lack of participation (an unusual high number of absences, repeatedly being unprepared).

Participating in Rulemaking Exercise:

Due Date: February 23 by class time.

Assignment:

The purpose of this assignment is to provide a specific context to think about the issues raised in our discussion of rulemaking.

Choose a government agency you are interested in and find an open rulemaking that interests you (your easiest choice is [regulations.gov](https://www.regulations.gov)). Submit comments to the rulemaking. Prepare a memo analyzing at least two issues you came across. The memo must open with a brief description of the agency chosen (title, year of creation, mission), the rulemaking in question (issue, purpose of the rule, what is the agency trying to achieve) and your contribution (the nature of your comment, and why you think the comment is important or useful). Attach a copy of your comment to the assignment – that will not count towards your page limit. The rest of your memo should analyze your experience. This analysis may draw on any of these guiding questions or other themes:

- 1) Addressing your participation: How did the process seem to you? Were you the only one commenting on the issue, and if not, were there few or many others? Who were those others – industry members? Members of the public? What would you like the agency's response to be?
- 2) Administrative law issues raised by the proceedings: Was the issue appropriate for rulemaking? How was the rulemaking initiated? Was the notice sufficiently early and clear? Was the agency providing adequate opportunity for comment?
- 3) Your assessment of the agency's procedures: did they achieve goals of good administration? Were they efficient, participatory, and transparent? How would you recommend the agency improve them?
- 4) Given what you have observed, does administrative law about rulemaking make sense?
- 5) Who benefits from the rulemaking requirements?

You should not aim to address all these issues – these are just examples of issues your assignment may address; your goal is to raise interesting insights from your experience in light of the course material.

Technical Specifications:

- a) The assignment should be no more than 1000 words; write your word count on the top. Attach your comment to the assignment; the comment does not count in the word limit. **ASSIGNMENTS THAT DO NOT CONFORM TO THESE REQUIREMENTS WILL BE RETURNED UNRECORDED AND COUNT AS NOT HANDED IN.**
- b) There is no need to cite. You may refer to the Administrative Procedures Act as the APA and use case names without any additional reference. Footnotes are not allowed.
- c) Late assignments will not be accepted. If you are worried, you may hand the assignment in earlier.
- d) Assignments should be posted via the Assignment link in Canvas. If you cannot manage that, the assignment can be handed in during class on the day they are due or left in my mailbox in room 371 in 200 McAllister, to be posted on Canvas as quickly as possible afterwards.

Topics and Assignments:

Your reading assignments for specific lessons will be provided for two weeks at a time to provide the students doing a simulation sufficient notice. Below are the reading assignments associated with each topic. You may expect the pace to change according to the progress of class discussions – we may want to spend more or less time on an issue – and according to possible guest lectures.

Assignments are in the casebook if not noted otherwise; APA refers to sections of the Administrative Procedures Act. The act can be found on pp. 775-804 of the casebook.

<u>Topic</u>	<u>Assignments</u>
1) Introduction: What is administrative law, APA framework	1-36
2) Introduction: Practice of Administrative Law & challenges of the government lawyer	36-49, think about problems 1-1 through 1-6
3) Rulemaking: Rulemaking Initiation	Pp. 51-62; Handout
4) Rulemaking: Rulemaking Initiation: Petitions & Agency Inaction	APA s. 553 (e), 706 (1), (2)(A); pp. 62-73; Problem 2-3
5) Rulemaking: Rulemaking procedures: Exceptions	APA s. 553 (a), (b) from the words "Except when notice or hearing"; pp. 73-90; simulation problem 2-4.
6) Rulemaking: Rulemaking procedures: Choice of procedure	90-96
7) Rulemaking: Rulemaking procedures: Notice	APA s. 553; pp. 96-111, notice; simulation – problem 2-5.
8) Rulemaking: Rulemaking procedures: Comment – Ex parte communications and Statement of Basis and purpose	pp. 111-128; think about problem 2-6
9) Rulemaking: Analytic Requirements	E.O. 12866 and E.O. 13563 (on website); pp. 128-145; think about problem 2-7
10) Rulemaking: Judicial Review: Statutory Interpretation	145-162; Think about problem 2-8
11) Rulemaking: Judicial Review: Substantive decisions, background	APA, s. 706 (2)(A); pp. 162-187 – covers two classes, this and the simulation.
12) Rulemaking: Judicial Review: Substantive decisions, application	Review pp. 162-187, simulation problem 2-9
13) Adjudication: Formal v. Informal	APA, s. 554; pp. 189-196
14) Adjudication: Formal Adjudication Procedures	APA, s. 556-557; pp. 196-206
15) Adjudication: Formal Adjudication Procedures: applying procedures	207-220; simulation problem 3-1.

16) Adjudication: Formal Adjudication Procedures: Ex Parte Communications	APA, s. 556-557; pp. 220-240; prepare problems 3-2, 3-3.
17) Adjudication: Informal Adjudications: Due process protections: Protected Interests	pp. 244-258; simulation problem 3-4
18) Adjudication: Informal Adjudications: Due process protections: Which procedures to use	pp. 258-278; simulation problem 3-5 & 3.6.
19) Adjudication: Judicial Review: Formal Adjudication	APA, s. 706 (2) (E); pp. 278-294, prepare problem 3-7
20) Adjudication: Judicial Review: Formal Adjudication – Mixed Questions	Pp. 294-304, think about problem 3-8.
21) Adjudication: Judicial Review: Informal Adjudication	APA, s. 706 (2)(A), pp. 304-311, simulation Expletives Problem, on website..
22) Choice of procedures: Adjudication	313-328.
23) Choice of procedures: Rulemaking	328-339; prepare problem 4-4
24) Choice of procedures: Nonlegislative Rules: Policy statements	339-352; prepare problem 4-6 (you'll need to read problem 4-5 on p. 336 to get the full facts).
25) Choice of procedures: Nonlegislative Rules: Policy statements	352-363, interpretive rules, simulation problem 4-7.
26) Choice of procedures: Nonlegislative Rules: Reliance	363-379 prepare problem 4-8.
27) Choice of procedures: Judicial Review – the Chevron/Mead mess	384-406: These materials will cover both this assignment and assignment 28
28) Choice of procedures: Judicial Review – the Chevron/Mead mess – application	Simulation Problem Medicare Quality, on Website
29) Agency Structure: Non delegation, legislative power	543-558; explain to an alien simulation
30) Agency Structure: Non delegation, judicial power	560-575; prepare problem 6-3, 6-4
31) Agency Structure: The Legislative Veto	576-585; The REINS Act, text on website.
32) Agency Structure: Appointment Power	585-593
33) Agency Structure: Appointment Power	593-607
34) Removal Power	607-625

35) Review Session	
36) Practice Exam	

Ground Rules:

Attendance and Participation: Attendance is mandatory. I will not call roll, but repeated absences will affect your grade. I will not cold call, but after add/drop period I will assign two or three students to the material of each lesson, and call on them. Until then I will use volunteers.

Laptops: Please do not use your laptop for anything other than class work. It is not only rude and detrimental to your own studies, but it may distract your colleagues. Depending on the number of students without laptops, we may be using the laptops for in class exercises at times.

Timeliness: Class starts at the time assigned and ends at the time assigned. I usually start class with administrative announcements about the course and the reading material. If you have the misfortune of being late, make sure to make up your notes on these issues from one of your class colleagues.

Syllabus – Torts, Spring 2019Class Hours:

[redacted].

Instructor:

Professor Dorit Rubinstein Reiss

Room 324 in 200 McAllister St.

Phone number: 415-565-4484

Email: reissd@uchastings.eduGchat: doritmi@gmail.com. Please use the Hastings email for emails. I am more likely to see it.

Office Hours: [redacted].

Class Website via Canvas; please check the website at least once a week for notices and new materials. Notice that the Announcements page includes the reading for the coming week's classes.

Text Book: John L. Diamond, TORTS: CASES AND MATERIALS (3rd edition, 2016).

If you choose to use an electronic copy, please note that you will not be able to use it during the exam.

Recommended book: Diamond and Levine, "Understanding Torts", sixth edition.

Course Objectives:**1) Knowledge: At the end of this course, you should be able to**

- Analyze a complex negligence case in a sophisticated manner.
- Identify and analyze a small number of intentional torts.
- Explain at a basic level:
 - Defenses to intentional torts
 - Damages
 - Product liability.

2) Skills: You should also be able to:

- ✓ Solve legal problems. To do that you will learn to:
 - Identify which legal rules, concepts and terms are relevant to a specific fact scenario.
 - Use authorities.
 - Identify ambiguities and ways to handle them.
 - Argue for a new rule or exception in appropriate cases.
- ✓ Understand some of the realities behind legal doctrine:
 - The relevant aspects of the legal process and the role of the jury.
 - Power relations and their impact on court decisions.
 - The effects of the legal process on the people involved.
- ✓ Communicate clearly orally and in writing.
- ✓ Persuasively argue the social benefits and costs of a course of action

Grading:

Grading will be based on the final exam. I will also be keeping close track of attendance and participation and reserve the right to modify your grade (up or down) by up to two notches according to your participation.

Not completing two of the midterm assignments, or failing to hand in one individual and one group assignment, will decrease your grade by one whole grade (from A to B or from B+ to C+, for example).

Midterm assignments:

Four (4) pass/fail midterm assignments are assigned in this class, and are available on the website. You are required to hand in at least two of them. One assignment must be submitted as a group assignment by two to six people; one must be submitted individually. The goal of the individual assignment is to improve your legal writing by giving you a chance to practice it and providing feedback early on. It also allows me to comment on your analytic writing when I serve as a reference for you. The goal of the group assignment is to improve your ability to work as part of a team, something you will very probably be doing regularly in your future career.

NOT COMPLETING AND PASSING TWO ASSIGNMENTS WILL REDUCE YOUR GRADE BY ONE WHOLE GRADE.

I strongly encourage you to discuss your assignments with your colleagues, including the individual one. I also encourage you, if time permits, to hand in all four.

Assignments and Due Dates:

1. University Mascot Problem. while you should point out tricky causation issues, do not worry about solving them.
Due: Wednesday, January 30, in class.

Optional debriefing session on [redacted]. Room TBD.

The next assignments are negligence assignments. Please **address all five elements of negligence**, but focus most of your discussion on the element of the relevant chapter (included in parentheses). Note that in an exam, missing an element of negligence would lead to automatic loss of points.

2. (Breach) The Glass Patio Door Problem.
Due: Wednesday, February 20
3. (Scope of liability) *Bar-exam style question*.
Due: Wednesday, March 13.

4. (Duty) Pumping Gas to Drunks Problem. **Due: Wednesday, April 10.**

Technical Details:

- ❖ Late Assignments will not be accepted. An assignment is late if it is not turned in by the **end of class on the due date**.
- ❖ Assignments should be put in the marked envelope in class the day they are due. Assignments may be handed in early to my office (it's okay to leave them under the door), or left in my mailbox ("Reiss") in McAllister 200, the faculty lounge (on the third floor). **I will not accept assignments by email.** For the way I grade, I need a paper copy.
- ❖ The assignment should be no more than 1000 words; write your word count on the top. It should be **double-spaced** and have reasonable margins (no less than 1 inch in each direction), to allow me to write comments; **footnotes are not allowed**. The goal of this limitation is to force you to write concisely and clearly, and to assure everyone has the same amount of space. **I WILL NOT READ ASSIGNMENTS THAT DO NOT MEET THESE REQUIREMENTS** and they will **not count as passed**. It is okay to have your name on a separate "title" page that includes your name or names and a title, and your name and assignment title need not count in the word count. You may cite cases by including the case name in parentheses – e.g.: (Garratt) or (Garratt v. Dailey).
- ❖ Assignments are not anonymous. Please write your name(s) clearly on the first page.
- ❖ Assignments will be returned by me to the record office and you can pick them up there. I will let you know when they are ready. Unless the assignment says "fail" in large letters, it passed.
There will be a debriefing of assignment one on [redacted].
- ❖ For all assignments, a suggested answer and the best assignment in the class will be posted on the class website, and you are welcome to discuss your specific assignment with me.
- ❖ I will not read drafts. Except for the first assignment, I am happy to talk to you about your assignment before the due date (And after you received it, of course).

Evaluation:

The goal of the assignments is to improve your learning experience in two ways:

- a. By providing you opportunities to apply the learned material and experiment with problem solving.
- b. By providing detailed feedback.

You will not receive a grade for the assignment, but will receive qualitative feedback in the form of comments and a feedback form, and an outline of the answer will be placed online. If possible, I also share one or two best assignments. Accordingly, I strongly recommend treating them as a learning experience, not a test. This is the place for you to make mistakes and have them corrected without any effect on your record. On the other hand, what you will get out of the assignments depend on the effort you put into them: the more seriously you take them, the more you will learn.

You will be evaluated on the following:

1. Understanding the facts, including which necessary facts are missing.
2. Knowledge of course material.

3. Understanding the question.

These are, in a sense, background: you need to understand the facts and know the materials to be able to do anything; and the most common way for students to do really badly is not to understand the question or ignore the instructions. Please pay careful attention to who your plaintiffs and defendants are and what the question asks. But to do well on these assignments, that is not enough.

To do well on these assignment or on a law school exam you have to do well on the following aspects too:

4. Identifying the issues. You will need to recognize the legal and factual issues in the problem, identify which of them are red herrings (ignore), which are clear (handle quickly and move on) and which are ambiguous (address in detail).
5. Application: this will be the largest component of your grade. You need to be able to correctly apply the law to the facts described, addressing policy arguments where appropriate, identifying the arguments on both side of each issue.
6. While you will usually not be directly graded on the clarity of your writing, the quality of your writing or on structure, those aspects affect the quality of your assignment, and will affect your professional success later. I will therefore be alerting you to any problems, so you can correct them early in your legal education.

I welcome anyone who wishes to discuss their assignments with me, and recommend doing so if you are concerned or feel that you do not understand what is required, with one exception: I'm going to instruct you to do the first assignment on your own. .

Workshops:

The class will include two short skill workshops.

- (1) An interviewing workshop, in class, [redacted].
- (2) A negotiations workshop, in class, [redacted].

Attendance in the workshops is mandatory, and there will be a short question about each on the final exam.

Missed Classes:

There will be no class on [redacted]. Instead, we will have one make up class on [redacted], and another on [redacted], rooms to be determined.

Final Exam:

The exam will be closed book. Details about the content and structure of the exam will be provided later in the course.

Ground Rules:

Attendance and Participation: Attendance is mandatory. I will not call roll, but repeated absences will affect your grade. You will be expected to participate. I will randomly assign

numbers to each student and cold call on you according to that random order. If there is a problem with a specific day – you are unprepared, or need to be absent, please notify me before that class period or, at the latest, at the beginning of the class. If you are not prepared when I call on you, or if you are absent without a good explanation, it will hurt your grade. I also ask many questions and expect people to ask questions as well, which I will answer as far as time permits; if a question is only loosely related to the class topic, or if it seems to require more discussion than is needed for the class or possible in the available time, I may ask the student to continue the discussion privately after class or during office hours, or suggest the issue be raised on the website's discussion forum.

This class will rely heavily on problem solving and exercises, and I will expect you to participate in those activities.

Airtime: Since we have limited class hours, talking time in class is at a premium. There is always a shortage of time and many people. There are always some people who participate more than others. As far as I can identify them in such a big class I will prioritize the students who do not speak regularly and especially those who have not spoken before, or at least have not spoken before in the class in question, to provide as many students as possible with a chance to speak. However, if there are no other hands raised, I will call on the “frequent participants”, and if time permits, I will allow as many students as possible to participate. If you want participation to be more diverse, please participate more, rather than blaming the students who participate frequently.

I welcome students with more to say than class time allows to do so in one of the alternative ways available, through email, office hours, after class discussions, or the discussion forum on the website – I'm happy to hear from you.

Laptops: Please do not use your laptop for anything other than class work during class. It may distract your colleagues, could be detrimental to your own studies, and it's disrespectful. Using the course website during class is fine.

Cellphones: Please turn off your ringer.

Timeliness: Class starts at the time assigned and ends at the time assigned. I usually start class with administrative announcements about the course and the reading material, and I assume you know what was said. If you have the misfortune of being late, make sure to make up your notes on these issues from one of your class colleagues. It is your responsibility to know what I said at the beginning of class.

Facebook: I never “friend” students. I do accept friend requests any student submits (at least, I never had a reason to block a student or not accept his or her request so far). However, consider carefully whether you want me in your “friends” list. Remember it means I will read and possibly comment on your posts and be aware when you submitted them.

Twitter Handle: @doritmi

Reading Assignments:

All the readings are from the case book unless noted differently. You are responsible for the parts of the readings not discussed in class, unless expressly told otherwise. Readings may be changed during the course, according to the class needs and progress. You will be given notice of such changes in class and on the website.

Assignment 1: Introduction: No reading.

Assignment 2: Intent, pp. 1-10.

Assignment 3: Battery, pp. 11-18.

Assignment 4: Assault and transferred intent, pp. 18-26.

Assignment 5: False Imprisonment and Malicious Prosecution, pp. 27-45.

Assignment 6: Intentional Infliction of Emotional Distress, pp. 45-50, 54-56 and Dog Shooting exercise on website.

Assignment 7: Intentional Infliction of Emotional Distress 2, pp. 56-73 (from Jones v. Clinton).

Assignment 8: Defenses to Intentional Torts, pp. 73-86.

Assignment 9: Intentional Interference with Contractual and Economic Relations, pp. 87-104

Assignment 10: Intentional Interference 2: pp. 112-119

Assignment 11: Intentional Misrepresentation pp. 131-150

Assignment 12: Overview of Negligence, pp. 151-156

Assignment 13: The Reasonable Person Standard and the Hand Formula, pp. 156-169

Assignment 14: Exceptions to the Reasonable Person Standard: pp. 176-193

Assignment 15: Medical Malpractice 1, PP. 193-204.

Assignment 16: Medical Malpractice 2, Informed Consent, pp. 204-213.

Assignment 17: Negligence Per Se, pp. 219-227

Assignment 18: Introduction to Causation, pp. 227-238.

Assignment 19: Loss of Chance, pp. 238-246

Assignment 20: Alternative Liability and Market Share, pp. 246-260.

Assignment 21: Toxic Torts pp. 260-267.

Assignment 22: Res Ipsa Loquitor, pp. 304-318.

Assignment 23: Introduction to Scope of Liability and Duty. PP. 268-269.

Assignment 24: Palsgraf & applying scope of liability PP. 271-283.

Assignment 25: Intervening Causes, pp. 291-300.

Assignment 26: Exceptions to the Foresight Rule. Pp. 300-304.

Assignment 27: Limits on Duty: No Duty to Act. PP. 319-334

Assignment 28: Limits on Duty: No Duty to Act, statute drafting, handout on website.

Assignment 29: Limits on Duty: Duty to Protect/control, pp. 335-351.

Assignment 30: Limits on Duty: Police Duty to Protect, pp. 352-362.

Assignment 31: Limits on Duty: Emotional Harm, pp. 363-378.

Assignment 32: Limits on Duty: Landowner duty, 422-443.

Assignment 33: Limits on Duty: Negligent Misrepresentation, pp. 446-459.

Assignment 34: Limits on Duty: Economic Loss, pp. 459-465.

Assignment 35: Defenses to Negligence, Contributory and Comparative Negligence, pp. 465-483.

Assignment 36: Defenses to Negligence, Assumption of Risk, implied assumption of risk, pp. 483-493.

Assignment 37: Defenses to Negligence, Assumption of Risk, express assumption of risk, pp. 493-501.

Assignment 38: Product Liability, pp. 580-594.

Assignment 39: Product Liability, pp. 597-615.

Assignment 41: Damages, pp. 677-688.

Assignment 42: Damages, Joint and Several, pp. 527-544.

Assignment 43: Vicarious Liability, pp. 707-714.

Assignment 44: Defamation: Read chapter 21 in Understanding Torts and Materials on Website:
Group exercise.

The last two lessons will be an overview of the course and solving a practice exam.