

Psychology and Civil Law - Spring 2004
PSGA 7020 / HEGL 369

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The role of psychologists and other mental health professionals in civil litigation is both diverse and important. This course covers a number of the areas in which psychologists consult on matters related to civil practice law forensic matters outside of the criminal arena. This course brings psychology graduate students and law students together in a broad overview of issues related to mental health law and civil practice. The semester will be divided relatively evenly between reviewing the case law and legal standards and issues related to clinical practice and the clinical issues that bear upon these legal issues. Specific legal issues discussed include the concept of torts and malpractice, causation, and standards of proof. We will focus on several of the areas of civil law in which psychologists play a significant role, including personal injury, sexual harassment, and disability law, as well as a number of issues that arise in elderly or medically ill individuals such as informed consent and decision-making competence, physician-assisted suicide, testamentary capacity, and psychological autopsies. Issues such as psychological testing, report preparation, and expert testimony are discussed in the context of these issues and the legal standards that apply.

Grading will be based on three factors (weighted equally):

Term paper (Due 5/4)
Mock Trial (2/24 and 3/30)
Class Participation

Textbook:

Melton, G., Petrilla, J., Poythress, N., & Slobogin, C. (1998) Psychological evaluations for the courts, 2nd Ed. New York: Guilford

Recommended:

Wulach, J. (1994) Law and mental health professionals: New York. Washington DC: APA

Rogers, R. (1998) Clinical assessment of malingering and deception, 2nd Ed. New York: Guilford

Tentative Course Schedule

<u>Week</u>	<u>Topic</u>	Melton Chs.
1/13	Course overview/introduction	
1/20	Introduction to Forensic Assessment	3
1/27	Tort Law and Personal Injury	12
2/3	Personal Injury and Sexual Harassment	
2/10	Forensic Evaluation in Personal Injury	
2/17	No Class (Monday Schedule)	
2/24	Mock Trial # 1	
3/2	Disability Law and the ADA	13
3/9	Disability Law cont.	
3/16	No Class (Spring Break)	
3/23	Forensic Evaluation of Psychiatric Disability	
3/30	Mock Trial # 2	
4/6	Informed Consent and Decision-making competence	11
4/13	Physician-Assisted Suicide	
4/20	Testamentary Capacity	
4/27	Psychological Autopsies	
5/4	Forensic Evaluation of Competence / Papers due	

Reading List

1. **Introduction to Forensic Assessment**

Goodman-Delahunty, J. (1997). Forensic psychological expertise in the wake of Daubert. *Law and Human Behavior*, 21, 121-40.

Sanders, J., Diamond, S..S., & Vidmar, N. (2002). Legal perceptions of science and expert knowledge. *Psychology, Public Policy and Law*, 8, 139-53.

2. **Tort Law and Personal Injury**

Case Law:

Dillon v. Legg, 441 P.2d 912 (1968)

Lawson v. Management Activities Inc., 69 Cal. App. 652 (1999)

Thing v. La Chusa, 48 Cal. 3d 644; 771 P.2d 814 (1989)

Prosser, Wade & Schwartz (1988). Torts (pp. 392-409).

Clinical:

Butcher, J. N. (1995). Personality patterns of personal injury litigants: The role of computer-based MMPI-2 evaluations. In Y. S. Ben-Porath, J. R. Graham, G. C. N. Hall, R. D. Hirschman & M. S. Zaragoza (Eds.) *Forensic Applications of the MMPI-2*. Thousand Oaks, CA: Sage Publications, pp. 179-201.

Dyer, F. J. (1998). Avoiding type II errors in assessing lead toxicity plaintiffs. *Behavioral Sciences and the Law*, 16, 131-45.

Lees-Haley, P. R. (1997). MMPI-2 base rates for 492 personal injury plaintiffs: Implications and challenges for forensic assessment. *Journal of Clinical Psychology*, 53, 745-55.

3. **Personal Injury and Sexual Harassment**

Case Law:

Meritor Savings Bank FSB v. Vinson, 477 U.S. 57, 106 S. Ct. 2399 (1986)

Matute v. Hyatt Corporation, 1999 U.S. Dist. Lexis 2873 (1999)

Clinical:

Goodman-Delahunty, J., & Foote, W. E. (1995). Compensation for pain suffering, and other discrimination claims. *Behavioral Sciences and the Law*, 13, 183_206.

Fitzgerald, L. F., Buchanan, N. T., Collinsworth, L. L., Magley, V. J., & Ramos, A. M. (1999). Junk Logic: The abuse defense in sexual harassment litigation. *Psychology, Public Policy, and Law*, 5, 730-759.

Foote, W. E. Goodman-Delahunty, J. (1999). Same-sex harassment: implications of the Oncale decision for forensic evaluation of plaintiffs. *Behavioral Sciences and the Law*, 17, 123_39.

4. **Disability Law**

Case Law:

Forisi v. Bowen, 794 F.2d 931 (4th Cir., 1986)

School Board of Nassau County, FLA v. Arline, 107 S.Ct. 1123 (1987)

Easter v. Bown 867 F.2d 1128 (8th Cir., 1989)

Americans With Disabilities Act (excerpts)

Clinical:

Lasky, H. (1991). Psychiatric disability evaluation of the injured worker: legal overview. *Psychiatric Annals*, 21, 16-21.

MacDonald-Wilson, K. L., Rogers, E. S., Massaro, J. M., Lyass, A., & Crean, T. (2002). An investigation of reasonable workplace accommodations for people with psychiatric disabilities: quantitative findings from a multi-state study. *Community Mental Health Journal*, 38, 35-50.

Pryor, E. S. (1987). Mental disabilities and the disability fabric. In R. J. Bonnie and J. Monahan (Eds.). *Mental Disorder, Work Disability, and the law*. (pp. 153-198). Chicago: University of Chicago Press.

5. Informed Consent, competence and advance directives

Case Law:

Natanson v. Kline, 186 Kan. 393, 350 P.2d 1093 (1960)

Canterbury v. Spence, 150 U.S. App. D.C. 263, 464 F.2d 772 (1972)

Kamozitz v. Michigan Department of Mental Health, 1 Mental and Disability Law Reporter, 147

Clinical:

Appelbaum, P. S. and Grisso, T. (1988). Assessing patients' capacities to consent to treatment. *New England Journal of Medicine*, 319, 1635-1638.

Janofsky, J. S., McCarthy, R. J., & Folstein, M. F. (1992). The Hopkins Competency Assessment Test: a brief method for evaluating patients' capacity to give informed consent. *Hospital and Community Psychiatry*, 43, 132-136.

Petrila, J. (2003). The emerging debate over the shape of informed consent: can the doctrine bear the weight? *Behavioral Sciences and the Law*, 21, 121-133.

6. Physician-Assisted Suicide

Case Law:

Cruzan v. Director, Missouri Department of Health, 110 S. Ct. 2841 (1990)

Washington v. Glucksberg, 117 S. Ct. 2258 (1997)

Vacco v. Quill, 117 S. Ct. 2293 (1997)

Clinical:

Farrenkopf, T. & Bryan, J. (1999). Psychological consultation under Oregon's 1994 Death With Dignity Act. *Professional Psychology: Research and Practice*, 30, 245-249.

Rosenfeld, B. (2000). Assisted suicide, depression, and the right to die. *Psychology, Public Policy & Law*, 6, 467-88.

Werth Jr., J. L., Benjamin, A. H., & Farrenkopf, T. (2000). Requests for physician-assisted death: Guidelines for assessing mental capacity and impaired judgment. *Psychology, Public Policy and Law*, 6, 348-72.

7. Testamentary Capacity

Case Law:

Burns v. Marshall, 767 So. 2d 347 (Ala. 2000)

Horton v. Horton, 492 SE2d 872 (GA 1997)

Swilhart v. Dozier, 127 Ohio App. 3d 552 (Ohio, 1998)

Clinical:

Spar, J. E. & Garb, A. S. (1992). Assessing competency to make a will. *American Journal of Psychiatry*, 149, 169-174.

Spaulding, W. J. (1985). Testamentary competency: Reconciling doctrine with the role of the expert witness. *Law and Human Behavior*, 9, 113-139.

8. Psychological Autopsies

Case Law:

Jackson v. State of Florida, 553 So. 2d 719 (Fla., 1989)

State of South Dakota v. Guthrie 2001 SD 61, 627 N.W. 2d 401 (2001 SD)

Clinical:

Biffel, E. (1996). Psychological autopsies: Do they belong in the courtroom? *American Journal of Criminal Law*, 24, 123-146.

Ogloff, J. R. P. & Otto, R. K. (1993) Psychological autopsies: Clinical and legal perspectives. *Saint Louis University Law Journal*, 37, 607-646.

Poythress, N., Otto, R. K., Darkes, J., & Starr, L. (1993). APA's expert panel in the Congressional review of the USS Iowa incident. *American Psychologist*, 48, 8-15.

Young, T. J. (1992). Procedures and problems in conducting a psychological autopsy. *International Journal of Offender Therapy and Comparative Criminology*, 36, 43-52.