

Law 705 – Elder Law (Spring 2022)

Instructor Information

Instructor: Jessica Feinberg
Email: jessica.feinberg@maine.edu
Office: 242
Phone: 207.780.4311
Office Hours: Tuesday from 3:00pm-4:00pm, Thursday from 3:00pm-5:00pm, or by appointment. Office hours meetings may occur in-person or via Zoom.

Course Information

Meetings: 10:00am-12:00pm on Friday
Location: Third Floor Annex (or Zoom when classes are held remotely)
Credit Hours: 2

Textbook/Course Materials

Required Textbook: Lawrence A. Frolik and Allison M. Barnes, Elder Law: Cases and Materials (6th Edition, 2015).

Course Management System

Assignments and announcements will be posted on Brightspace throughout the semester.

Course Description

The course will highlight the social and legal issues associated with an aging society, the distinct legal problems faced by elderly individuals, and government programs established for the benefit of elderly individuals. Examples of topics that will be discussed include: ethical issues and counseling elderly clients, age discrimination, guardianship and protective services, planning for healthcare and financial decisions, property management, elder abuse, long-term care payment and quality, housing issues, and relevant government programs such as Medicare, Medicaid, and Social Security. The course also will examine the role that characteristics such as race, ethnicity, socioeconomic status, gender, and sexual orientation play in various areas of elder law. In addition, each student will be responsible for preparing a scholarly paper addressing an area of elder law in which reform is arguably necessary and setting forth a proposal for reform.

Course Goals & Learning Objectives

By the end of the semester, each student should: (1) obtain a well-developed understanding of a number of core substantive elder law topics; (2) develop the knowledge and skills necessary to perform legal analysis concerning elder law, and to effectively communicate such analysis in written and oral communication; (3) develop the skills necessary to effectively utilize a variety of resources to conduct in-depth legal research into a current elder law issue; (4) hone the skills necessary to draft a persuasive and clearly articulated research paper that evaluates a specific area of elder law that is arguably in need of legal reform and, after analyzing and evaluating various

potential solutions to the problem(s) identified, sets forth a proposal for legal reform; (5) develop the ability to meaningfully reflect on written work and effectively incorporate feedback into that written work; (6) develop skills relating to communicating effectively and respectfully with others in seeking greater mutual understanding regarding complex issues affecting the elderly community; and (7) develop an understanding of the political, ethical, economic, cultural and social forces that affect the development and implementation of elder law policies governing a variety of issues.

Grading/Evaluation

Grading will be based primarily on classroom participation and a writing assignment involving a substantial paper on a topic to be chosen by the student. These components will be weighted as follows:

Classroom Participation: 35%

Writing Assignment: 65%

Late Penalties: Preliminary paper components (topic identification, outline, and first draft) submitted after the due date/time will result in a two-point deduction to the student's writing assignment grade for each hour or part thereof that the component is late. Final papers submitted after the due date/time will result in a five-point deduction to the student's writing assignment grade for each hour or part thereof that the final paper is late.

Additional information regarding the writing assignment will be distributed in class.

Course Expectations & Requirements

Class preparation is extremely important. The American Bar Association standards require that students spend a very significant amount of time in out-of-class academic activities, per credit that is awarded. Maine Law has adopted a policy, consistent with the ABA's policy, that students are required to complete approximately 30 hours 20 minutes of out-of-class work per credit per semester. Therefore, you should spend approximately 2 hours 20 minutes on academic work out of class per credit per week.

The weekly reading assignment will average around 30-35 pages. For some class sessions, the readings will be shorter, and for other class sessions, the readings will be slightly longer. In deciding whether to take this course, please consider whether the weekly reading assignments will be comfortable for you in light of your schedule this semester.

Appropriate preparation and participation is required and is vital to success in the course. All assigned cases and commentary should be briefed, and all assigned questions should be completed. Students should be fully prepared to answer questions about the assigned readings during class. Additionally, students should show respect for their classmates and the professor by, among other things, seeking recognition before speaking, not interrupting others, and arriving to class on time. Failure to follow these guidelines may result in a negative adjustment to the student's final grade. However, each student may attend one class session while unprepared without suffering any penalty if they give the professor a note at the beginning of class indicating that they are not

prepared to answer questions on that day. If a student does not use the unprepared note but is unprepared when called on, it will result in a negative adjustment to the student's final grade.

COURSE POLICIES

Academic Integrity Policy

Each student should know the standards of conduct and expectations of academic integrity. Violations of academic integrity include any actions that attempt to promote or enhance the academic standing of any student by dishonest means. Cheating on an examination, plagiarism, making statements known to be false or misleading, falsifying the results of one's research, improperly using library materials or computer files, or altering or forging academic records are examples of violations of this policy. Acts that violate academic integrity disrupt the educational process and are not acceptable.

Evidence of a violation of the academic integrity policy will normally result in disciplinary action, including referral to the UMS Student Conduct Code process. A copy of the complete Academic Integrity Policy is available on the [University of Maine System website](#) or the [MyLaw Portal](#).

Attendance & Participation Policy

All students are expected to be present and prepared. The Law School Handbook states the following: "Regular class attendance is required by the Law School and also by ABA Rules. Professors take attendance in all classes and seminars. Students may not miss more than 20 percent of regularly scheduled classes for any course. The 20-percent rule is applied based on the number of class meetings and not the number of credit hours for a course. For example, if a course meets once per week, the allowed absences per term is 2."

Accordingly, students may not miss more than two class meetings for this course. In addition, for each class session that a student is absent, they must submit a response paper of at least two full pages by 5:00pm on the day following the missed class. The response paper should address the student's reaction to multiple aspects of the assigned readings for the missed class in such a way that demonstrates that the student has completed the assignment. Failure to submit a timely response paper for a missed class will result in a three-point deduction to the participation component of the student's final grade.

COVID-19-Related Attendance Policy: If you have any concern about your own health or that of your immediate family, please do not come into the Law School. A health-concern based absence will not count against your grade during the COVID-19 pandemic.

Attendance: Inclement Weather Policy

For information on campus closings, please call the storm line at 207-780-4800 or sign up for USM text alerts. If the University of Southern Maine closes the campus or cancels classes, this always applies to the Law School. In rare circumstances, the Law School closes before USM. In this situation, an email about closings will be sent to students through the email listserv.

If the Law Building is (1) closed for the day, (2) open late and our class is scheduled to start before the law school opening, or (3) closed early and our class is scheduled to end after the building closes, then classes may be held remotely. If this is the case, students will be notified and sent a ZOOM link. If you are unable to attend class due to the inclement weather, you should notify me. If class is canceled, I will let you know about scheduling a make-up.

Class Recording Policy

As a general rule, the recording of all classes is prohibited without permission. If you will be absent from class and wish to record a missed class session, you must first contact me for permission. If permission is granted, you must arrange for a classmate to facilitate the recording. (Suggested mobile apps for self-directed audio recording can be found in the MyLaw Portal.) All class recordings are for personal use only and may not be uploaded to the internet or otherwise shared, transmitted, or published without the prior consent of the professor. If permission is denied, then you must find an alternative method for making up the missed material.

If you are requesting the recording of classes pursuant to the Americans with Disabilities Act or in the case of exceptional circumstances, such as severe illness or hospitalization, you should contact the Dean of Students.

If you are requesting the recording of classes for reasons related to COVID-19 isolation, quarantine, or family care, please contact me before the class to request the recording. Recordings will be provided by me for absences in these cases. If you anticipate missing multiple sessions of a class for health, family care, quarantine, or other reasons, please contact the Dean of Students.

Laptop/Cell Phone/Technology Policy

Class discussion constitutes a significant component of this course; laptops, therefore, are not necessary and may not be used during class. The use of cell phones during class also is prohibited. Cell phones should be put away before class begins and should remain out of sight for the duration of the class period. Failure to comply with these requirements will result in a negative adjustment to the student's final grade.

MAINE LAW POLICIES AND RESOURCES

Disability Accommodations

The Law School is committed to providing students with disabilities equal access to all programs and services. If you think you have a disability and would like to request accommodations, please contact the Disability Services Center (DSC). Timely notification is essential. The Disability Services Center can be reached by calling 207-780-4706 or by email dsc-usm@maine.edu. If you have already received an accommodation letter from the Disability Services Center and would like to discuss your accommodations for this course, please contact Dean of Students Scheherazade Mason who serves as the liaison to the DSC. If you would like to discuss your accommodations with me, you can email me directly.

Wellness Resources for Maine Law Students

Maintaining your physical and mental health is essential to learning the law and succeeding in law school. Law school is a setting where mental health or substance use struggles can be exacerbated. If you ever find yourself struggling, do not hesitate to ask for help. Maine Law is committed to promoting wellness for all students. I encourage all of you to review the Health & Wellness Resources listed on the MyLaw Portal. The resources include confidential counseling through USM Counseling Services (207-780-4050) and the Maine Assistance Program for Lawyers and Law Students (207-266-5951). You can also contact the Maine Law Office of Student Affairs. Please let me know if you have any questions.

If you are facing illness, injury, the birth of a child, death in the family, or other extraordinary circumstances that may impact your participation in this course, you should contact me in advance of missing classes or any assignment deadlines. Stressful situations like these may lead to diminished academic performance or may reduce your ability to participate in daily classroom activities. Law School services are available to assist students with handling these stressful events. In an emergency situation and in cases of unforeseen circumstances, you should contact the Dean of Students Scheherazade Mason as soon as possible. *For examination conflicts or emergency situations during the examination period, please see the Registrar.*

Statement on Religious Observance for Maine Law Students

Maine Law respects the religious beliefs of all members of the community, affirms their rights to observe significant religious holy days, and will make reasonable accommodations, upon request, for such observances. If your religious observance is in conflict with the academic experience, you should inform me of the class or other functions that will be affected. It is your responsibility to make the necessary arrangements and follow our agreed upon accommodation.

Title IX Statement

The University of Maine School of Law is committed to making our campuses safer places for students. Because of this commitment, and our federal obligations, faculty and other employees are considered mandated reporters when it comes to experiences of interpersonal violence (sexual assault, sexual harassment, dating or domestic violence, and stalking). Disclosures of interpersonal violence must be passed along to members of the University of Maine System's Title IX team who can help provide support and academic remedies for students who have been impacted. More information can be found online at <https://mainelaw.maine.edu/student-life/title-ix/>. You may contact USM's Deputy Title IX Coordinator, Sarah E. Holmes at usm.TitleIX@maine.edu or 207-780-5767 or the UMS Title IX Coordinator, Liz Lavoie at titleix@maine.edu or 207-581-5866. You can also reach out to Maine Law's Office of Student Affairs for support and referrals.

If students want to speak with someone confidentially, the following resources are available on and off campus: University Counseling Services (207-780-4050); 24 Hour Sexual Assault Hotline (1-800-871-7741); 24 Hour Domestic Violence Hotline (1-866-834-4357).

COURSE SCHEDULE

Assignments will be posted on Brightspace throughout the semester. Students should rely on the Brightspace homepage for this course, as opposed to this document, for the most up-to-date information regarding class assignments.

Cases and commentary that appear on the assigned pages should always be read and briefed prior to class. Questions and problems only need to be completed if explicitly noted in the assignment.

Please note that the schedule, policies, procedures, and assignments in this course are subject to change in the event of extenuating circumstances, by mutual agreement, and/or to ensure better student learning.

Assignments for the First Two Weeks (remaining assignments will be posted on Brightspace)

Week 1 (January 21): Introduction & Ethical Issues

- Please read closely the syllabus for this course
- Please begin to brainstorm ideas for your paper topic and bring to class a document containing a list of at least two potential paper topics and a short three- or four-sentence description of each topic
- Pgs. 11-19 (complete questions 1-4 on pg. 19)
- Pgs. 22-29
- Pgs. 34-35
- The Elder Law Ethics Brochure (link provided on Brightspace)
- Pgs. 48 (start at Section D)-51
- Pgs. 66-67 (read to bottom of pg. 67)
- Pgs. 70-72 (complete question 2 on pgs. 71-72)

Week 2 (January 28): Age Discrimination

- Pgs. 73-75
- Pg. 81 (read only the brief excerpt of the *Clackamas* case)
- Pgs. 89-93
- Pgs. 101-103
- *Babb v. Wilkie* case (link provided on Brightspace)
- Pgs. 95-100 (*Reeves* case)
- <https://www.abajournal.com/web/article/flood-of-age-discrimination-suits-expected-with-pandemic-economic-downturn> (article addressing the expected increase in age discrimination cases resulting from the pandemic)
- Pgs. 120-122 (complete questions 1 and 2 on pg. 123)
- Pgs. 126-129

Course Coverage

The remaining topics covered in the course will proceed as follows: Income Maintenance, Health Care, Paying for Long-Term Care, Nursing Homes, Housing, Guardianship, Property Management, Health Care Decision Making, and Elder Abuse, Neglect, and Crime.

Important Dates

Any time before 5pm on Friday, January 28: Meet with the professor for a brief conference to discuss your paper topic (the meeting can occur during office hours or you may schedule an appointment outside of office hours).

Monday, Jan. 31: Paper Topic due via email by 5:00pm. For full credit, all that is required is a few sentences describing the paper topic. The paper topic conference must occur before the paper topic description is submitted to the professor.

Monday, February 14: Outline due via email by 5:00pm. For full credit, the outline should identify the different sections of the paper, briefly describe each section, and identify a number of sources that will be used for each section of the paper. The outline should be at least two full pages in length. Meeting with the professor to receive feedback on your outline after it is submitted is optional.

Monday, March 21: First draft due via email by 5:00pm. For full credit, the first draft should display a good faith effort and should be at least nine pages in length. Citations must be included throughout the first draft, but do not need to be in bluebook form at this point.

Week of March 21-25: Each student will attend a conference with the professor to discuss their first draft during this week or the following week. There will be no class on Friday, March 25.

Monday, April 25: Final paper due via email by 5:00pm.