

# OSGOODE HALL LAW SCHOOL OF YORK UNIVERSITY

## DISABILITY AND THE LAW LW 2905.03

### COURSE OUTLINE

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#### **I. COURSE DESCRIPTION AND OBJECTIVES**

This course examines disability as a legal category with implications for the rights of persons with disabilities. Students will be introduced to alternative conceptions and theories of disability and impairment and examine how law both constructs and regulates the lives of individuals with disabilities. Throughout the course we will analyze statutory provisions and jurisprudence in different areas to understand how disability is defined and regulated by law. This course examines and evaluates how law can best achieve the goals of social justice and equality for individuals with disabilities.

The topic areas of this course include:

- Historical approaches to the law of disability in Canada
- The development of conceptions and theories of disability and impairment including: the medical model; the social construction model; the human rights model; feminist and postmodern approaches to disability
- An examination of disability and impairment in relation to concepts of power, normalcy, health, illness, disease, ageing, dependence, embodiment, competence, human dignity and personhood
- Legal construction and regulation of disability in a number of contexts including: health, mental health, sexuality, family, employment, economic and social welfare, reproduction
- Comparison and evaluation of various legal models (ie. Anti-discrimination, social and economic entitlements) for addressing issues of social justice for people with disabilities
- Comparison and evaluation of international and comparative legal instruments for

addressing discrimination against people with disabilities (ie. Human Rights law and Charter of Rights and Freedoms; Americans with Disabilities Act; Disability Discrimination Act in the UK.

- Examination of developments in International law and policy related to disability to determine their impact at both the international and national level.

The objectives of this course are:

1. To explore the role of law and the limits to the role of law in achieving the goals of social justice and equality for individuals with disabilities
2. To provide an overview of existing law relating to the regulation of disability in Canada
3. To develop critical responses to existing law regarding the regulation of disability in Canada.
4. To provide an overview of alternative conceptions and theories of disability and impairment and to evaluate these in the context of the legal regulation of disability.

## **II. METHOD OF TEACHING**

This course will be organized and taught using a combination of lecture and seminar methods. Learning is expected to arise from reading, discussion, research and class participation. Students are expected to read the assigned materials before class and to participate in analytical class discussions and presentations.

The materials in this course are voluminous. Please don't be intimidated! You will not be responsible for a close reading of the materials every week. Rather, we will use a combination of in-class presentations, chief facilitators, and short written comments as a way of reducing the volume of material for which individual students are responsible, while at the same time exposing students to the depth and range of materials relating to each topic. Each class will begin with introductory remarks by the instructor pertaining to the weekly topic. Following this, one, or possibly two, students will be required to do a short presentation and/or to facilitate the class based on the course readings assigned for

that week. Following the student presentation(s) a general seminar discussion will take place. Discussion questions may be distributed to students in advance and additional questions will be raised by student presenters.

### III.

## LEARNING RESOURCES

### 1. Required Course Material.

Roxanne Mykitiuk and Joan Gilmour, *Disability and the Law*- (Winter 2004) available at M.D.C.

These materials contain the readings for each class and form the basis of class presentations and discussions.

Discussion questions and problems handed out in class.

### 2. Optional Sources

Students are encouraged to monitor the media and other sources of popular culture for recent developments in the area of disability and the law and to bring these to the attention of the class.

### 3. Classes

Classes will meet on Tuesdays from 10:40 - 11:30 and Thursdays from 10:40 - 12:30.

### 4. Office Hours

Generally, I will be available to meet with students at the following times. If these hours are not good for you please let me know and we can schedule an appointment for a time and place that is mutually convenient.

Tuesdays and Thursdays - 2:30 - 5:00

## 5. E-mail Policy

I have a strong preference for communicating with students in person, especially when I am answering questions about course materials and explaining the substantive content of the course. Therefore, I will not answer questions of this kind by email. You may however, contact me by email for administrative matters: arranging appointments, informing me of absences etc.

## IV. METHOD OF EVALUATION

### a. Student Presentation/Facilitation - (20% of final grade)

Each student is required to do a class presentation relating to a selected area in the course outline and to assist in facilitating class discussion. Topics will be assigned during the first week of class. Depending on the enrollment in the class, it may be necessary to have more than one student presentation per class.

#### **Tips for student presentations:**

Individual presentations should be no longer than 30minutes. The presentation should not attempt to summarise all the issues raised by a particular article or articles but rather should be a thoughtful presentation of **some** of the key issues as well as a critical analysis of the way in which those issues are presented or argued. A good presentation will make connections and draw out differences between the articles under discussion and across the topic. **Students may use this forum as an opportunity to canvass ideas they want to develop further in a research essay.**

Try to refrain from simply reading a prepared text.

You may wish to consider distributing a handout which summarizes the article or case you are presenting and raises discussion questions and critiques of the article. These are often very useful for class members.

Feel free to experiment with creative forms of presentation. In the past students have produced videos, used role play, invited guests to assist them,

created games, held mock trials etc.

**b. Class Participation - (15% of final grade)**

This component of your final grade will be based upon your attendance and contribution to class discussions and activities. I hope that your contributions will demonstrate attentiveness to the main ideas of each session. Probing questions and comments are encouraged. I am more concerned about the quality of your contribution than the quantity.

In addition, students are required to submit written comments on the weekly readings for two separate weeks to the instructor. The brief comments (1-2 pages) must be submitted 24 hours before class. Comments can be submitted electronically. You can choose the weeks you like, provided you do not cover the same material in your class presentation/facilitation. Choices will be made during the first week of class. The comments are meant to be reflective, critical, provocative etc. provided they are, in some way, related to the materials.

**c. Term Paper - (65% of final grade)**

All students are expected to write a term paper on a topic of your choice, provided that it is related to the areas studied in this course. The aim of the research essay is to allow you to develop your own critical theoretical position by researching an area in-depth. Students are strongly encouraged to meet with the instructor after you have selected a specific paper topic. Students must submit a paper outline and bibliography to me for approval. **These dates will be confirmed in class.** Your outline must contain the thesis you wish to investigate and should be no longer than two pages (exclusive of bibliography). A final draft of the essay must be submitted to student services on the due date set by Osgoode Hall for term papers. Late papers will be penalized two marks per day (out of 65) including weekends.

The main body of the research paper is to be a minimum of 25 typed (double spaced) pages or 6,250 words and a maximum of 35 typed pages or 8,750 words. These limitations **do not** include footnotes, appendices, charts, lists of figures or table of contents. Papers must be in a medium sized clear typeface of 10 or 12 pitch (average size). **Restrictions will be rigorously enforced. Therefore, if students have any questions regarding length or format they should consult with the instructor.**

Students are expected to state and develop a thesis in their papers and those which are purely descriptive will be penalized. Papers which are poorly written and organized and loosely argued will receive an inferior grade. The specific criteria I will use in grading your papers will include the following:

- i. Comprehensiveness of research - This dimension involves the discovery, selection, and effective use of all relevant and up to date primary and secondary materials on the topic. Where appropriate, materials ought to include nonlegal sources.
- ii. Writing and organization - Superior grades will be awarded only for papers in which the subject matter has been logically and coherently presented and in which the writing is excellent. "Writing" includes style, diction, citation, punctuation, spelling and grammar.
- iii. Insight - Students are required to achieve an understanding of the complexities of the subject matter that goes beyond the mere recitation of the arguments or conclusions presented by leading authorities; to regurgitate the ratio of a case or to present uninterpreted statistics.
- iv. Originality - To achieve a high grade on this criterion, students must demonstrate an ability not only to identify the leading authorities and arguments, but also to deploy critical arguments in relation to the standard positions. This must then lead to the presentation and defence of an original position in relation to the topic. "Original" here does not mean one that is totally unprecedented in any of the literature. In this context it can mean looking at a traditional or emerging issue in a fresh way, often by applying a novel source or argument (ie. one that is not ordinarily associated with the legal literature in this area).

## **V. UNIVERSITY POLICIES**

### **Religious Observance:**

York University is committed to respecting the religious beliefs and practices of all members of the community, and making accommodations for observances of special significance to adherents. Should any of the dates relating to examinations or assignments for this course pose such a conflict for you, please let me know within the first three weeks of class. Please note that to arrange an alternative date or time for an examination scheduled in the formal examination periods, students

must complete an Examination Accommodation Form, which can be obtained from the Office of Student Services at Osgoode Hall Law School.

**Students with Disabilities:**

York University has a range of resources to assist students with physical, mental, psychiatric and learning disabilities in achieving their educational objectives.

Students with disabilities requiring accommodation in the classroom or in the examination or evaluation process are encouraged to identify themselves to the Osgoode Office of Student Services as soon as possible. All requests for accommodation will be kept confidential. Request for examination accommodation must be approved by the Assistant Dean (Student Services), Gina Alexandris.

Roxanne Mykitiuk  
Associate Professor of Law  
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