

USC Gould

School of Law

Mental Health Law – Law 403 – Spring 2022

This syllabus is a working draft [11 10 2021] and subject to change.

Units: 4

Term—Day—Time: Spring 2022, Tuesdays, 3:30pm-6:50pm

Location: TBD

Instructor: Gregory Pleasants, J.D., M.S.W. (he / him / él)

Grader: TBD

Office: in-person (location TBD)

Office Hours: weekly and as needed by student request

Contact Info: gpleasants@law.usc.edu / via Zoom appointment
(Grader contact information TBD)

Course Description

The course explores foundational legal and practice concepts through three intersecting systems: the mental health system, the criminal system, and the immigration system, with principal emphasis on the mental health system. Areas of focus include:

- Basic features of the mental health, criminal, and immigration systems, and the operation and impact of the connecting “pipeline” between them.
- Core mental health legal concepts through review of seminal legal cases, including mental competence, reasonable accommodations, the right to treatment and to refuse treatment, and the state’s power to order involuntary commitment.
- The protection (or not) of fundamental legal rights in coercive settings, including the involuntary commitment, jail and prison, and immigration detention settings.
- The roles of systemic racism, stigma against people with mental health conditions, and the overuse of policing and incarceration in compounding the inequities and mental health disparities of these systems.
- Established and emergent accommodations and safeguards to protect fundamental legal rights, including the emergent right to defense counsel for people with mental health conditions in immigration court.
- Select ethics issues, including the dueling roles of autonomy and paternalism, challenges to informed consent, the elusive allocation of authority between the lawyer and the client with impaired capacity, the role of zealotry in the legal defense of a person with a serious mental health condition, the ongoing harm of solitary confinement, and the benefits and pitfalls of an integrated law and social work approach.
- The core values of the Recovery Model (empathy, authenticity, and respect) and person-centered practice skills, including active listening, avoidance of common clinical pitfalls, and client work in a shared decision-making framework based on mutual trust.

- The lived experience of people impacted by mental health systems as described directly by such people. In this vein, this class is a space in which students are always welcomed but are never required to share their own mental health experiences and perspectives.

Learning Objectives

- Understand and apply knowledge of the basic features of the mental health, criminal, and immigration systems.
- Identify, analyze, apply, and critique core mental health legal and policy concepts in class discussion throughout the course.
- Identify and explain the connecting “pipeline” between the mental health, criminal, and immigration systems by the end of the course.
- Understand and explain basics of the role of race, class, immigration status, and other identities / positionalities in driving mental health disparities (particularly those rooted in carceral settings).
- Analyze, critique, postulate, and defend answers to ethics hypotheticals involving people with mental health conditions by the mid-point of the course.
- Describe, explain, and apply in hypothetical client scenarios core Recovery Model values and person-centered practice skills by the end of the course.

Prerequisite(s); co-requisite(s), or recommended preparation:

None.

Required Text – Important

Law and the Mental Health System: Civil and Criminal Aspects – Slobogin, Hafemeister, Mossman, Reisner (7th Ed.). Please be sure to purchase the 7th edition!

The text is available through USC Bookstore or via West Academic at <https://www.westacademic.com/Law-and-the-Mental-Health-System-Civil-and-Criminal-Aspects>

Note: the text is required – it is not optional. Please purchase the text before classes begin.

Readings from the text are required and will form the basis of a significant part of class discussion. Students will be tested on the reading (see Assignments, below). More fundamentally, review of a “case book”-style text is an essential preparatory skill for those who may wish to pursue legal education.

Please closely consider these requirements and expectations as you consider whether to take this course.

Note: apart from purchasing the required text new, students may also consider purchasing a used copy, renting a copy, consulting a library copy, or pursuing other means of text access. The Instructor encourages students to explore lower-cost options as possible, as long as the assigned readings are reasonably accessible.

Optional Materials

Additional readings to be distributed by Instructor (via Blackboard) throughout course.

Assignments

There are four graded assignments, as set forth below, and one optional Extra Credit assignment. Additional instructions on the assignments will be provided during the course. All assignments are held in-class (that is, during the regular class meeting period) EXCEPT for the Final Exam and Extra Credit (if any).

Note: the Mid-Term and Final Exam are “open book” – that is, the use and consultation of course materials (though not other sources such as the Internet) are highly encouraged. More guidelines will be given on this at the time of the exams. Please note the Final Exam is comprehensive – that is, it covers all course material.

Grading Breakdown

Assignment	% of Grade
Mid-Term Exam	40
“Hearing Voices” Activity	5
Pop Quiz on Reading	5
Final Exam	50
Total	100

Grading Scale

Course final grades will be determined using the following scale:

A	95-100
A-	90-94
B+	87-89
B	83-86
B-	80-82
C+	77-79
C	73-76
C-	70-72
D+	67-69
D	63-66
D-	60-62
F	59 and below

Extra Credit

Any student may, by giving notice to the Instructor, elect to write a 5-7 page paper, APA-style and with appropriate citations, on a topic pre-approved by the Instructor, or perform a comparable extra credit assignment in the discretion and with the prior permission of the Instructor. The extra credit is worth up to 5 points (or up to 5% of the final grade), but mere performance of the assignment is not a guarantee of the full 5 points. All extra credit assignments must be completed **on or before 4/29/2022**. There are no exceptions.

Course Policies

Attendance

Attendance is required because it is essential for learning. I cannot do my job as an Instructor if you do not show up to the course. Attendance is taken each class period. Each student is permitted one, no-questions-asked, unexcused absence. Each additional absence must be excused. Whether an absence is excused is determined by the Instructor's discretion and applicable University policy. Excessive unexcused tardiness may also, in the discretion of the Instructor, constitute an unexcused absence. Each unexcused absence will result in a cumulative penalty to the final course grade, up to and including course failure / no credit. A student whose attendance is not regular and punctual may be withdrawn from enrollment at the discretion of the Dean of Students and the Instructor.

Participation

Participation is expected but does not form part of the course grade except as part of the "Hearing Voices" assignment, for which attendance and participation are required for the activity to work. (Students not participating in the Hearing Voices assigning risk receiving a "0" for that assignment). Even so, all students will be called on in class and expected to give responses that reflect having completed the in-class and reading assignments. Responding to oral questions and thinking on one's feet are key lawyering skills, and we will practice these skills in this course.

Preparation

Being prepared is an essential habit of effective legal practice. Students will be called on in class and expected to give responses that reflecting having completed the reading assignments.

Professionalism and Respect

Students are required to treat this class and one another with professionalism and respect. That never requires agreement on the merits for the topics we will discuss, but it does require listening, consideration of others' views, and thoughtful, respectful, and empathetic engagement. The Instructor will follow this standard and expects students to do so as well.

Use of Computers, Cellphones, and Like Devices

Use of such devices to take notes and to engage in coursework is encouraged. Use of such devices for other reasons during course hours is generally not permitted. If a student anticipates attending to an important communication during class, prior notice to the Instructor is appropriate.

Course Schedule: A Weekly Breakdown

The course calendar follows. Please note:

- "Text" refers to the Required Text, above. Readings may be reduced during the course depending on the pace of the course.
- Instructor may add supplementary readings in lieu of Text readings or as optional readings.
- Items in red are the overarching sections of the course; items in bold denote important topics.
- Depending on the pace of the course, some items in italics will be covered very briefly or omitted.

	Topics/Daily Activities	Readings
<p>Week 1 January 11 2022</p> <p>(Reminder: MLK Birthday Mon 1/17, no classes).</p>	<p>Course Introduction</p> <ul style="list-style-type: none"> • <i>Personal introductions</i> • <i>Review syllabus</i> • <i>Review of Student Support Services and Student Accommodations</i> • <i>Review slides, including “The Stakes”</i> • <i>Personal learning goals – breakout discussion and report back</i> • <i>Hypo review</i> 	<p>Ragins, M. <i>Road to Recovery</i>, pp. 1-8 (required; read closely).</p> <p>Optional – read as much as you’d like of the Road to Recovery; it’s excellent.</p>
<p>Week 2 January 18 2022</p>	<p>I. The Mental Health System</p> <p>Brief Introduction to the Mental Health System</p> <ul style="list-style-type: none"> • <i>Context: history, scale, shape, actors, selected data, and issues</i> • <i>Payment and parity</i> • <i>De-institutionalization</i> • <i>Trans-institutionalization: jails and prisons as new “hospitals”</i> • <i>Homelessness, substance abuse, and mental health</i> • <i>CA: Mental Health Services Act</i> • <i>Mental Health System > Criminal System Pipeline</i> <p>Introduction to Mental Health Conditions</p> <ul style="list-style-type: none"> • <i>Definition of mental health condition</i> • <i>Impairment, functioning, competence</i> • <i>Models: biomedical; social determinants of health / person in the environment</i> • <i>Labels, stigma, and race</i> • <i>Professions</i> • <i>DSM-V / review of selected mental health conditions</i> • <i>Recovery, Rogerian Triad, people-first language, trust</i> 	<p>7th edition Text, pp. 1-30</p> <p>7th edition Text, pp. 1150-1151</p>

<p>Week 3 January 25 2022</p>	<p>Competence in the Mental Health System</p> <ul style="list-style-type: none"> • <i>Introduction to “competence:” conceptual predicates; incompetent to do what?</i> • <i>Race, gender, and labeling as “incompetent”</i> • <i>Competence for other tasks (briefly)</i> 	<p>7th edition Text, pp. 1045-1061 (read closely)</p>
<p>Week 4 February 1 2022</p>	<p>Competence in the Mental Health System</p> <ul style="list-style-type: none"> • <i>Informed consent</i> • <i>Right to Refuse and Consent to Psychiatric Treatment</i> 	<p><i>Informed Consent</i> 7th edition Text, pp. 307-315 (stopping at Section II)</p> <p><i>Right / competence to refuse treatment:</i> 7th edition Text, pp. 1089 (starting with “The Right to Refuse...” – 1120 (includes <i>Washington v. Harper</i>, 494 U.S. 210) (1990)) (read closely)</p>
<p>Week 5 February 8 2022</p> <p>(Reminder: President’s Day Mon 2/21, no classes).</p>	<p>Conditions of Confinement in the Mental Health System</p> <ul style="list-style-type: none"> • <i>Involuntary commitment - police power basis</i> • <i>Dangerousness</i> • <i>CA: Lanterman-Petris-Short Act and patients’ rights (short introduction)</i> • <i>Harm of “no treatment”</i> 	<p>7th edition Text, pp. 811-857 (read closely)</p> <p>7th edition Text, 930-940 (<i>Addington v. Texas</i>, 441 U.S. 418 (1979), and commentary)</p>
<p>Week 6 February 15 2022</p>	<p>Conditions of Confinement in the Mental Health System</p> <ul style="list-style-type: none"> • <i>Involuntary Commitment – parens patriae basis</i> • <i>Harm of “no treatment”</i> 	<p>7th edition Text, pp. 861-896 (read closely)</p> <p>7th edition Text, 1159 (starting at 3.) – 1168 <i>Jackson v. Indiana</i>, 406 U.S. 715 (1972) (read closely)</p>

<p>Week 7 February 22 2022</p>	<p>Right to Treatment in Commitment Setting</p> <ul style="list-style-type: none"> • <i>O’Conner v. Donaldson, Youngberg v. Romeo</i> <p>Least Restrictive Alternative Doctrine</p>	<p><i>Right to Treatment in Commitment Setting</i> 7th edition Text, pp. 1241 – 1276 (very top, stopping at III) -Skim 1242, <i>Nocera</i> – 1254, <i>Fisher</i> et. al. -Read 1254-1276, <i>Donaldson</i> and <i>Youngberg</i>, closely</p> <p><i>LRA</i> 7th edition Text, pp. 896-912 (skim)</p>
<p>Week 8 March 1 2022</p>	<p>Americans with Disabilities Act, Rehabilitation Act of 1973</p> <ul style="list-style-type: none"> • <i>Discrimination – cognizable</i> • <i>Reasonable accommodations and safeguards</i> • <i>Undue burden / hardship</i> 	<p><i>ADA and Rehab Act</i> 7th edition Text, pp. 1407-1422 (read closely); Instructor to provide additional materials as well via Blackboard.</p>
<p>Week 9 March 8 2022</p>	<p>Mid-Term Exam</p> <p>Mid-Term will be held / administered during this class period.</p>	<p>Study for Mid-Term.</p>
<p>Week 10 March 15 2022</p>	<p>Spring Recess March 13-20 – NO CLASS</p>	<p>Rest and Enjoy Your Time</p>

<p>Week 11 March 22 2022</p>	<p>II. The Criminal System</p> <p>Brief Introduction to the Criminal System</p> <ul style="list-style-type: none"> • <i>Context: history, scale, shape, actors, selected data, and issues</i> • <i>Pre-trial detention and bond; pleas (overwhelming prevalence); sentencing and incarceration</i> • <i>Prevalence of mental health conditions in jails and prisons; right to treatment?</i> • <i>Impact of mental health and race</i> • <i>Mental Health System > Criminal System Pipeline</i> <p>Ethics: Allocation of Authority</p> <ul style="list-style-type: none"> • <i>Allocation of authority in the lawyer-client relationship</i> • <i>Relevant Model Rules; Restatement (3rd) rules</i> • <i>Protective action and scope</i> • <i>Substitution of judgment, expressed interest, hybrid</i> 	<p>John D. King, <i>Candor, Zeal, and the Substitution of Judgment: Ethics and the Mentally Ill Criminal Defendant</i>, 58 Am. U. L. Rev. 207 (2008) (read closely).</p>
<p>Week 12 March 29 2022</p>	<p>Competence in the Criminal System</p> <ul style="list-style-type: none"> • <i>Review - competence to do what?</i> • <i>Competence to stand criminal trial (Dusky, Edwards)</i> 	<p>7th edition Text, 1134 (starting at V) - 1149</p> <p>7th edition Text, 1188-1206 (until note 4)</p> <p><i>Dusky v. United States</i>, 362 U.S. 402 (1960)</p> <p><i>Indiana v. Edwards</i>, 554 U.S. 164 (2008)</p>

<p>Week 13 April 5 2022</p>	<p>Conditions of Confinement in the Criminal System</p> <ul style="list-style-type: none"> • <i>Solitary confinement / segregation</i> • <i>Pre-trial detention and bond</i> • <i>Kalief Browder</i> <p>Hearing Voices Assignment (in class)</p>	<p><i>Davis v. Ayala</i>, 576 U.S. ____ (2015) (Kennedy concurrence only)</p> <p>American Psychological Association, <i>Alone, in 'the hole'</i>, May 2012</p> <p>Psychology Today, <i>The Effects of Solitary Confinement on the Brain</i>, February 2019</p> <p>Vera Institute of Justice, <i>Solitary Confinement: Common Misperceptions and Emerging Safe Alternatives</i>, May 2015 (p.3; pp. 17-18 (Misconception #5))</p> <p>The New Yorker, <i>Before the Law</i>, September 2014</p> <p>The New York Times, <i>Kalief Browder, Held at Rikers Island for 3 Years Without Trial, Commits Suicide</i>, June 2015</p>
<p>Week 14 April 12 2022</p>	<p>III. The Immigration Court and Detention System</p> <p>Brief Introduction to the Immigration Court and Detention System</p> <ul style="list-style-type: none"> • <i>Context: history, scale, shape, actors, selected data, and issues</i> • <i>Immigration detention; immigration court; bond</i> • <i>Immigration Judge: racial and mental health bias; lack of judicial independence</i> • <i>Right to counsel? Representation rates and the effect of no representation on due process and outcomes</i> • <i>Criminal System > Immigration Enforcement System Pipeline</i> 	<p>Review instructor-provided slides on a) immigration court and detention basics and b) criminalization of drug use.</p> <p>Alina Das, <i>Inclusive Immigrant Justice: Racial Animus and the Origins of Crime-Based Deportation</i> (2018)</p> <p><i>(Note: read the Prof. Das article closely – this is a synthesis piece that draws together many of the critical themes of the course. The article is complex and will require re-reading. Students should be prepared to discuss this article and its thesis in detail.)</i></p>

<p>Week 15 April 19 2022</p>	<p>Americans with Disabilities Act, Rehabilitation Act of 1973 – Revisited</p> <ul style="list-style-type: none"> • <i>Franco-Gonzalez v. Holder (and background)</i> <p>Competence in the Immigration Enforcement System</p> <ul style="list-style-type: none"> • <i>Competence to represent self in immigration proceedings – Matter of M-A-M; Franco Pro Se Competence Standard</i> <p>Conditions of Confinement in the Immigration Enforcement System</p> <ul style="list-style-type: none"> • <i>What is the applicability – if any – to the law and concepts we have reviewed to immigration detention? Is there any?</i> • <i>Least restrictive alternative?</i> • <i>Right to safety, freedom from restraints and segregation, and treatment in immigration detention?</i> • <i>Right to treatment in the community?</i> • <i>Deliberate indifference to unsafe conditions?</i> • <i>Solitary confinement / segregation / self-harm?</i> 	<p><i>Franco Gonzalez v. Holder</i> (third amended complaint) (read closely)</p> <p>Matter of M-A-M (read closely)</p> <p>OIG Adelanto Report (2018) (skim)</p> <p>July 24 2009 Holder Letter (skim)</p> <p>Ochoa, Pleasants, et al, <i>Disparities in Justice and Care</i> (2010) (skim)</p>
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<p>Week 16 April 26 2022</p> <p>(Reminder: UG classes end 4/29/22).</p> <p>(Reminder: UG study days from April 30 – May 3 2022).</p> <p>(Reminder: final exam period from May 4 – May 11 2022).</p> <p>Tentative date for Law 403 Final Exam (assigned by the University):</p> <p>May 10th 2:00PM to 4:00PM.</p>	<p>Right to Treatment in the Community – Discharge Planning Upon Release from Immigration Detention</p> <ul style="list-style-type: none"> • <i>Right to discharge planning (Charles vs. Orange County)</i> <p>Course Evaluations</p> <p>Discussion / review for final exam. We will spend at least 1/3 of class discussing the final exam, which will be the same format as the Mid-Term exam.</p>	<p><i>Discharge Planning Charles v. County of Orange</i> (to be distributed on Blackboard by Instructor)</p>
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Statement on Academic Conduct and Support Systems

Academic Conduct:

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in SCampus in Part B, Section 11, “Behavior Violating University Standards” policy.usc.edu/scampus-part-b. Other forms of academic dishonesty are equally unacceptable. See additional information in SCampus and university policies on [Research and Scholarship Misconduct](#).

Students and Disability Accommodations:

USC welcomes students with disabilities into all of the University’s educational programs. The Office of Student Accessibility Services (OSAS) is responsible for the determination of appropriate accommodations for students who encounter disability-related barriers. Once a student has completed the OSAS process (registration, initial appointment, and submitted documentation) and accommodations are determined to be reasonable and appropriate, a Letter of Accommodation (LOA) will be available to generate for each course. The LOA must be given to each course instructor by the student and followed up with a discussion. This should be done as early in the semester as possible as accommodations are not retroactive. More information can be found at osas.usc.edu. You may contact OSAS at (213) 740-0776 or via email at osasfrontdesk@usc.edu.

Support Systems:

Counseling and Mental Health - (213) 740-9355 – 24/7 on call

studenthealth.usc.edu/counseling

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention.

National Suicide Prevention Lifeline - 1 (800) 273-8255 – 24/7 on call

suicidepreventionlifeline.org

Free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week.

Relationship and Sexual Violence Prevention Services (RSVP) - (213) 740-9355(WELL), press "0" after hours – 24/7 on call

studenthealth.usc.edu/sexual-assault

Free and confidential therapy services, workshops, and training for situations related to gender-based harm.

Office for Equity, Equal Opportunity, and Title IX (EEO-TIX) - (213) 740-5086

eotix.usc.edu

Information about how to get help or help someone affected by harassment or discrimination, rights of protected classes, reporting options, and additional resources for students, faculty, staff, visitors, and applicants.

Reporting Incidents of Bias or Harassment - (213) 740-5086 or (213) 821-8298

usc-advocate.symplicity.com/care_report

Avenue to report incidents of bias, hate crimes, and microaggressions to the Office for Equity, Equal Opportunity, and Title for appropriate investigation, supportive measures, and response.

The Office of Student Accessibility Services (OSAS) - (213) 740-0776

osas.usc.edu

OSAS ensures equal access for students with disabilities through providing academic accommodations and auxiliary aids in accordance with federal laws and university policy.

USC Campus Support and Intervention - (213) 821-4710

campussupport.usc.edu

Assists students and families in resolving complex personal, financial, and academic issues adversely affecting their success as a student.

Diversity, Equity and Inclusion - (213) 740-2101

diversity.usc.edu

Information on events, programs and training, the Provost's Diversity and Inclusion Council, Diversity Liaisons for each academic school, chronology, participation, and various resources for students.

USC Emergency - UPC: (213) 740-4321, HSC: (323) 442-1000 – 24/7 on call

dps.usc.edu, emergency.usc.edu

Emergency assistance and avenue to report a crime. Latest updates regarding safety, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible.

USC Department of Public Safety - UPC: (213) 740-6000, HSC: (323) 442-120 – 24/7 on call

dps.usc.edu

Non-emergency assistance or information.

Office of the Ombuds - (213) 821-9556 (UPC) / (323-442-0382 (HSC)

ombuds.usc.edu

A safe and confidential place to share your USC-related issues with a University Ombuds who will work with you to explore options or paths to manage your concern.

Occupational Therapy Faculty Practice - (323) 442-3340 or otfp@med.usc.edu

chan.usc.edu/otfp

Confidential Lifestyle Redesign services for USC students to support health promoting habits and routines that enhance quality of life and academic performance.

// end of syllabus

Syllabus Law 403 Spring 2022 last updated 11.10.2021 GLP