

MEDICAL MALPRACTICE LAW
Law 597 (and Optional Clinical Rotation)
Fall Semester 2017
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Southern Illinois University School of Law

Regular Class Sessions:
4:30 P.M.-7:00 P.M.
Wednesdays
Lesar Law Building Room 204

Course Materials

- ***Casebook and Reading Assignments—REQUIRED***
*Law and Health Care Quality, Patient Safety, and Medical Liability, 7th Edition, Furrow, et al. (2013). This is a soft-cover book with a green binding. (A photo of the book is also posted on TWEN, as there has been confusion on the book in the past.) (There is a larger edition of the book that is bound in a grey hard cover. That hard-cover edition is more expensive, heavier, larger, and has DIFFERENT page numbers than the green, soft-cover edition. You can, of course, opt for either version. However, you need to make certain that you read the CORRECT materials for the class if you opt for the hard-cover version.) Reading assignments will be posted on the TWEN page based on the green, soft-cover version. In addition, while this should not have to be stated, **the textbook is MANDATORY.***

- ***Syllabus—REQUIRED***
*Students are expected to **read this course syllabus PRIOR to the first class meeting** and to **refer to it regularly** when questions covered herein arise during the semester.*

- ***Additional Materials—REQUIRED***
*Additional materials for which students will be responsible will be posted on the course TWEN site from time to time. **Students are EXPECTED to check the TWEN site and their email daily.***

Course Objectives

Students who successfully complete this course will:

- Understand the fundamentals of medical malpractice law;
- Appreciate the policy issues underlying medical malpractice law;
- Be able to identify and analyze medical malpractice law problems using the CIRAC (Conclusion, Issue, Rule, Analysis, Conclusion) method; and
- Have additional experience in preparing for bar-exam-style essay exams.

Grading

- ***Final Examination—FRIDAY, DECEMBER 8, 2017; 1:15 P.M.; SIU SCHOOL OF LAW, CARBONDALE, ILLINOIS***
The grade for this three (3)-credit class will be based on a closed-book, anonymously graded, comprehensive, bar-exam-style final examination that focuses on essay questions. The exam is to be individually completed and will be administered at the Law School at the time and date assigned by the Law School Registrar during the fall semester finals period.

- ***MANDATORY Writing Across the Curriculum Assignment/Midterm—WEDNESDAY, OCTOBER 11, In Class***
To meet the SIU School of Law “Writing Across the Curriculum” (WAC) requirement and the new rule regarding bar-exam preparation and assessment, a **MANDATORY**, in-class, closed-book, bar-exam-style midterm exam focused on essay exams will be administered. This exam will be reviewed on a pass-fail basis, with feedback provided on both the individual and class-wide levels. This midterm provides an excellent simulation in preparation for the final, so students are urged to prepare diligently and take the midterm very seriously, even though it is a pass-fail assignment.

- ***“Bonus” Point Alert***
To incentivize students to be well prepared for class and to actively engage in dynamic, effective, in-class discussion, bonus points may be awarded, *at the instructor’s discretion*, for excellent student performance in class participation. As each law student should know by his or her second and third years of law school, all points earned in a course matter in terms of the final grade. Up to 20 “bonus” points may be added to a student’s raw final score based on excellent, relevant, analytical, thoughtful, prompt, succinct, voluntary, and regular in-class participation. Such high-quality participation includes (but is not limited to): regularly volunteering in class to *clearly, succinctly, and correctly* discuss/brief cases in a manner that demonstrates the student has *carefully* read and *understands* the assigned materials; *thoughtfully, analytically, and correctly* answering questions posed in class about policy issues and other matters raised by the subject matter being studied; and *correctly, completely, and voluntarily* answering problems found in the notes and problems sections of the readings, when such problems are discussed in class. Such participation does NOT include sharing personal stories or anecdotes. Determinations and decisions to award such points are made solely at the instructor’s discretion and are determined by the instructor at the end of the semester during the grading period.

Class Preparation Expectations

The readings for each class period vary in length and are posted on TWEN for each week at the end of the prior week. If you have questions about what to read for the next class, please refer to the reading assignment posting for the week in question on TWEN. The material covered in class will require careful, detailed reading, and it is strongly recommended that you exert the time and effort that it takes to actually brief the cases and other materials covered to ensure that you understand them and are prepared to discuss them in class in an in-depth manner that demonstrates mastery. (See the class participation section under the “Grading” heading, *supra.*)

You are expected to carefully read all assigned readings and to complete all other assignments. In so doing, you are also expected to put in the necessary time and effort to achieve facility with the materials and to produce reflective, professional-level work products and understanding.

The American Bar Association (ABA) standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one (1) credit hour. According to ABA Standard 310(b)(1), “a ‘credit hour’ is an amount of work that reasonably approximates: ... not less than one [(1)] hour of classroom or direct faculty instruction and two [(2)] hours of out-of-class student work per week for fifteen [(15)] weeks.” This is a three (3)-credit-hour course, meaning that we will spend 150 minutes of in-class time together each week. The assignments and other out-of-class preparations, including, but not limited to, reading assigned materials, briefing cases, studying for the WAC/midterm, outlining, reviewing materials, etc., should take you approximately six (6) hours each week. In total, you should budget your time accordingly, as you will need to spend no less than nine (9) hours per week on this course, including both in-classroom and out-of-classroom time. This does NOT include the clinical rotation for those students who take that added course credit hour. (See separate materials in this syllabus and on TWEN regarding the clinical rotation.) Some weeks the amount of time required will *exceed this minimum*. If you cannot allocate the required time each week throughout the semester, this is *not* the course for you.

➤ **Daily Reading Assignments**

Daily reading assignments in the casebook and other required readings will be posted in advance on the TWEN course page, and any adjustments will be made, if necessary, via TWEN after each class for the following class. Typically, reading assignments will be posted by Saturday morning for the following week.

OPTIONAL Clinical Rotation

There is an optional, one-credit, pass-fail clinical rotation available to students in this course, depending on the number of available spots (determined by the number of participating Southern Illinois Healthcare (SIH) Family Practice Residents). The rotation, which provides a very unique opportunity to observe specified medical professionals, requires a minimum of **38 hours** of student time be spent shadowing an assigned SIH Family Practice Resident in *a variety of health care settings*, including clinic, inpatient, emergency room, operating room, and OB, during the course of the semester. Slots for this rotation are registered for during the first class session, so interested law students must be able to commit to this rotation as of the first day of class.

In addition to the hours of shadowing, the rotation will require a number of administrative tasks that are entirely the responsibility of the enrolled student, including, but not limited to:

- Meeting with the instructor and residents directly after each class session.
- Reviewing the SIH Human Resources (HR) website, completing forms, and meeting with HR representatives as needed to determine all SIH requirements for permission to be on premises in the clinical settings, successfully complying with all such requirements, and gaining proper SIH credentials to shadow within the facility in a timely manner **NOTE:** These requirements include, but are not limited to: obtaining a *two-step* TB test (at the

student's expense), getting a flu shot (at the student's expense), providing proof of both of the flu shot and two-step TB test (and TB test results), signing up for and complying with hospital-based scrubs requirements, obtaining an SIH badge via SIH HR, completing any and all SIH-required paperwork, complying with SIH policies, and the like. *For more details, see: <https://public.sih.net/studentapps.nsf/>.*

- Proactively coordinating with the assigned SIH Family Practice Resident(s) to shadow throughout the semester (Do NOT wait until the last half or quarter of the semester!).
- Tracking shadowing hours.
- Writing reflective journal entries for each visit in a timely manner.
- Completing and submitting the required reflection journal by the deadline.

The clinical rotation journals are due the last day of class and must be submitted by 3:30 p.m. on that day in both electronic copy and hard copy to Carol Manis (cmanis@law.siu.edu). The grading sheet that will be used in assessing the journals is available on the TWEN site for the course. **The journal must include:**

- **a succinct summary of each observation visit,**
- **various types of clinical settings observed,**
- **the time spent on at that visit, identify the setting(s) observed during that visit,**
- **concise highlights of what was observed during the visit, and**
- **an accurate tie-in to relevant legal concepts learned in class.**

In addition, a total of all hours spent actively observing in a clinical setting must be included at the end of the journal, as well as an overall assessment of the experience and reflection on the law as related to the observation of the practice of medicine.

In all, the journals should be no shorter than 7 pages and no longer than 10 pages. They should include 1-inch margins all around, be in 12-point font, have 1.5-line spacing, include page numbers at the bottom of the page, and have the student's name. (Cover pages do not count toward or against the page limits.)

Furthermore, the journal must be a professional-quality work product. Therefore, it must be professionally presented (i.e., typed, include proper formatting (e.g., headings, etc.), use proper grammar and spelling, employ a formal writing style, include citations in proper legal format (if materials are cited), and the like.

Plagiarism, Independent Work Product, and Academic Misconduct

It goes without saying that plagiarism is a serious Honor Code violation, which will be enforced and which carries severe penalties. The *Southern Illinois University School of Law Honor Code* expressly defines plagiarism as: “*passing off another’s ideas, words, or work as one’s own, including written, oral, multimedia, or other work, either word for word or in substance, unless the student author credits the original author and identifies the original author’s work with quotation marks, footnotes, or other appropriate designation in such a way as to make clear the true author of the work.*” Honor Code violations can lead to serious penalties, including expulsion, and Honor Code concerns lead to Honor Code investigations, which must be reported to the Bar Examiners, even if the student is cleared of any misconduct.

Where the syllabus and assignments require that students complete deliverables independently, where the assignment is to be the student’s independent work product, or similar references, it means that collaboration of any sort is ***prohibited***. Students are **NOT** permitted to obtain assistance from any other person, including any other student. The ban includes written materials from other students or communicating about the assignment with other students. Students failing to comply with this requirement can be found to be in violation of the Honor Code, which can lead to serious penalties. Part and parcel of such concerns, when they arise, are Honor Code investigations, which must be reported to the Bar Examiners, even if cleared of misconduct.

Attendance

Class starts *promptly* at the designated time. Students must be on time, in their assigned seat, and ready to go. Students must be present for the entire class session to be counted as present.

As specified in the *Rules of the Southern Illinois University School of Law*, “[r]egular attendance to class meetings in all courses is expected and required of all students in accordance with the rule to be announced by the professor at the beginning of each course. Attendance will be taken in class and attendance records will be kept. Violation of this rule shall subject the student to penalties....”

It is *the student’s responsibility* to ensure that he or she signs the attendance sheet during class!

Students also need to note that the *School of Law Honor Code* states that it is academic misconduct to “sign[] another[student’s] name to an attendance sheet for a class [that other student] did not attend,” or to “sign his or her [own] name to an attendance sheet for a class he or she did not attend.” Such Honor Code violations carry severe penalties.

A maximum of three (3) absences (partial or total—for ANY reason (other than jury duty, military duty, the student’s hospitalization, a death in the student’s immediate family, or the birth of the student’s child—all of which must be proven by documentation deemed acceptable by the instructor)—will be permitted during the semester. Students with more than three (3) absences will NOT be permitted to take the final exam unless the Associate Dean for Academic Affairs instructs that the student be admitted to the exam. As this course meets once a week, each class meeting constitutes more than a single, hour-long course session. As a result, fewer class-session absences are permitted.

Furthermore, students can be called on at any point during the course of the semester and are expected to be prepared. Being “prepared” means being ready and able to intelligently and accurately discuss all facets of the assigned materials. ***Students found to be unprepared by the instructor can be marked absent for the day.***

Finally, in the event a student is late to class, he or she is expected to avoid disturbing the class in session by entering the classroom quietly (*i.e.*, ensuring the door does not slam, etc.), and take a seat along the aisle or in the back of the room (rather than proceeding to his or her assigned seat). Additionally, students who are *late to class* should **NOT** sign the attendance sheet.

Accessibility

Professor Mekel is available by email for both questions and to make an in-person appointment for directly ***after*** class sessions to discuss matters related to the class. You can email Professor Mekel via the course TWEN page or via mmekel@law.siu.edu.

Class Session Recordings

Classes and lectures are *not* and will *not* be recorded, and are *not* to be recorded by the student. Given this prohibition on recording, any student who “accesses, creates or disseminates audio or visual recording of a class session or assigned course-related activity[,] ... when the instructor has prohibited such recording[,]” “shall be guilty of an Honor Code violation.”

Phones/Electronic Communication Devices and In-class Use of Laptops/Tablets

Phones and similar electronic communication devices ***must*** be **SILENCED** during class. Laptops and tablets are allowed for note-taking purposes only. Students found to be using their computer, tablet, or other communications device for non-class-related activities during class will lose the privilege of using a computer or tablet during class for the remainder of the semester—including the use of a computer for taking the final.

Accommodations for Students with Disabilities

Disability Support Services (DSS) provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must go to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. See: <http://disabilityservices.siu.edu/>. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar’s Office to ensure the School of Law provides the proper classroom and examination accommodations.

Saluki Cares

The purpose of Saluki Cares is to develop, facilitate, and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students, and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: 618.453-5714, siucares@siu.edu, or <http://salukicare.siu.edu/index.html>. At the School of Law, Assistant Dean

Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618.453.3135.

Emergency Procedures

“Southern Illinois University-Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT's website at www.bert.siu.edu, Department of Safety's website www.dps.siu.edu (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.”

“Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. **It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency.** The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.”