Course Description

At the beginning of the twenty-first century, the uses of the human body, its organs, tissues, and cells are increasingly diversified. One can observe the worldwide presence of old uses and misuses of the human body, such as prostitution, organ trafficking, human trafficking but more and more also new forms of commodification, such as surrogacy and the sale of eggs. In biomedical research, in stem-cell research, and in assisted reproduction, the human body is asked to fulfill various scientific and commercial purposes ranging from essential life-saving treatments to aesthetic enhancement. Reflecting on these complex phenomena, this course will apply human-rights and gender-studies approaches to analyze academic texts and judicial cases on the commodification and commercialization of the human body in biobanks, tissue- and organ donation, biotechnological inventions, organ and egg trade, organ trafficking and tourism, and trafficking of women. These topics will provide a rich repertoire of social and legal questions for the lectures, seminars and film sessions during the winter semester.

COURSE ASSESSMENT

Students are required to participate in the discussion of the legal and theoretical issues implicated in the literature and in the legal cases. Reading assignments and the schedule of the course are listed in the detailed syllabus. Course requirements include attendance at lectures and seminars.

Evaluation: active participation in seminar discussion, based on the required readings and seminar presentations (20% of the final grade); and a written take home essay (with a length of appr. 15,000 characters) (80% of the final grade).
LEARNING OUTCOMES:

1. Encouraging students to analyze the gender component in legal cases about the human body
2. Developing analytical skills in the field of reproductive rights and commercialization of the human body
3. Strengthening the students' capacity to understand and analyze relevant legal cases on commodification, organ, and egg trade
4. Assessing the impact of new commercial challenges on gender, minorities, and future generations

Basic reading materials for the course:

Braun, Kathrin (2011) *Between Self-Determination and Social Technology*. Bielefed: Transcript Verlag


COURSE OUTLINE AND READINGS

*Week Zero – January 10, 2013*

**The Human Body and the Law: Introduction to Scope and Methods**

Human beings are legal subjects, and their bodies and body parts are potentially legal objects. The human body constitutes the physical embodiment of the self, inextricable from our very being. It is potentially a laborer, performing different functions essential to fulfill the goals of the person and cannot itself be property. But human bodies include and produce commodities, spare parts available for occasional donation for therapeutic, research and even commercial uses.

Required:


Recommended:

Week One – January 17, 2013
Gender and Reproduction in Law: Personal Rights, Property Rights

The emergence of various reproductive technologies (such as in vitro fertilization, gamete donation, sex selection, surrogacy, cloning, or pre-implantation genetic tests) is often perceived inconsistently by the general public as well as by policy-makers. Moreover, social recognition and acceptability also changes as our views on biological and social kinship evolve. In addition to the discussion of new reproductive rights and choices, policies on contraception, abortion and sterilization will also be analyzed through academic literature and prominent legal cases.

Required:

Cases: Tysiąc v. Poland (2007)
R.and R v. Poland (2011)

Week Two – January 24, 2013
Law and Motherhood

Nancy Chodorow has noted that being a mother means something more than the physical act of bearing a child; it also means socializing and nurturing that child. Because the ideal form of motherhood is unattainable for most women, women are set up to constantly attempt and consistently fail at modeling themselves according to this ideal. The ideal mother is also used to justify restrictions and legal interventions on women’s liberties and citizenship.

Required:
Recommended:
Cases: P. and S. v. Poland (application no. 57375/08)

Week Three – January 31, 2013
Organ Tourism, Organ Trade, Organ Trafficking

Due to the development of transplant surgery and medicine, human kidneys, hearts, lungs, livers, pancreases, intestines, corneas, skin, cardiovascular tissue, bones, veins, cartilage, have become all transplantable today, and stem cells, blood, platelets, sperm, eggs, and embryos are all transferable from one human body for use in another. These new technologies have created increased demand for human organs and tissues in such a magnitude that needs for organs are often fulfilled by illegal cross-border trade and even by organ trafficking. This phenomenon raises issues of international justice, enforcement and legal harmonization.


Film Session (Optional) Dirty Pretty Things (Stephen Frears)

Week Four – February 7, 2013
Sex Trafficking, Mail Order Bride Industry, Prostitution

The most widespread form of human trafficking involves involuntary sexual servitude, which includes forcing trafficking victims into prostitution.

Required:

Recommended:

Film Session (Optional)

Bought and Sold: Russian Sex Trade
"Bought & Sold" is an investigative documentary based on a two year undercover investigation conducted by Global Survival Network (GSN) about the illegal trafficking in women from the Former Soviet Republics. Features interviews with traffickers, Russian mafia, trafficked women, and groups working to provide services to trafficked women. Caldwell, Gillian; Foster, Lilibet, United States, 1997, English, 42 min, documentary film

Cases: ECtHR Rantsev v. Cyprus and Russia (Application no. 25965/04)

Week Five – February 14, 2013
Organ and Egg Tourism

Transplant tourism is a frequently organized global process. There are several internet sites that advertise "transplant packages", which can include the organ, transplant, travel, hotel stay, and medical care. The countries in which the transplantations are performed facilitate the operations. Often the transplant is performed in a hospital environment with a qualified physician. It gives to the clients the impression that everything is legal.

Required:

Recommended:
Film Session: Google baby (2009 (Optional) directed by Zippi Brand Frank

Week Six – February 21, 2013
Egg Trade, Baby Sale

Human reproductive technologies and stem cell research require a massive supply of human eggs. Human egg donation raises issues of commodification and exploitation that the law attempts to minimize. Babies born as a result of surrogacy agreements and embryo donation are subjects of private agreements often beyond the scope of law, international adoption pose legal challenges as to enforceability, transparency, exploitation and privacy.

Required:
The prohibition of forms of surrogacy that do not entail financial gains is not self-evident. The worrying fact that, in addition to father and mother, a third person is also involved in reproduction, is no longer deemed a strong enough argument for prohibition. Considering the wide range of other reproductive technologies, we must conclude that these also involve third persons different from the raising parents, namely the gamete donors. Such procedures include assisted insemination with donor sperm, fertilisation in vitro with egg; embryo donation is authorised as well. Examining individual causes of infertility, we find the weird contradiction that the reproductive rights of a woman who has an egg but no uterus are recognised to a lesser extent than those of a woman who has a uterus but no egg or for whom it is more difficult to conceive a child.

**Required:**

**Recommended:**


**Cases:** *Johnson v. Calvert*, 5 Cal. Rptr. 2d 494
What are the differences in the legal and ethical status of \textit{in vitro} embryo and \textit{in vivo} fetus? What are the implications of such a distinction? What constitutes “industrial use” in case of research conducted on the human embryo. Should intellectual property law take into account the moral implications and consequences of biotechnology?

\textit{Required:}


\textit{Recommended:}


\textit{Cases:}

\begin{itemize}
  \item In Case C-34/10 Oliver Brüstle v Greenpeace e.V.
  \item Myriad Case
\end{itemize}

\textit{Week Nine – March 14, 2013}

\textbf{Enhancement}

It is more and more difficult to draw a justifiable line between the therapeutic enhancement and the commodification of the human body. Certain forms of enhancement inevitably raise the question of commercialization and fairness in sports, employment and in other fields of life.

\textit{Required:}


\textit{Recommended:}


\textit{Week Ten – March 21, 2013}
Genetic Screening

Many feminists and disability activists claim that genetic screening is a form of discrimination, while others regard these methods as new tools to protect women’s and newborns’ health and as providing an additional possibility for making an informed choice.

Required:

Recommended:

Week Eleven – March 28, 2013
Reproducing Cells and Tissues and the Case of Biobanks

The term ‘reproduction’ has gained a new meaning from the possibility of harvesting and producing cells for the purposes of therapy. Gender issues emerge even on the cellular level: for instance, in the use of a human egg, the way in which egg donors are recruited, how human eggs are used as raw materials, and the impacts of the market of regenerative medicine that sells hope for new therapies often already in the obstetrical ward.

Required:

Recommended:

Cases: Sherley v. Sebelius case

Week Twelve – Conclusions

Discussion and assessment, preparation for the final essay.
**FURTHER LITERATURE [OPTIONAL]**


**Cases:**

*Attorney General v. X.* (1992) Supreme Court of Ireland

*Canterbury v. Spence* (1972) 464 F. 2d 772

*Griswold v. Connecticut* (1965) 381 US 479


*Open Door Counselling and Dublin Well Women v. Ireland* (1992) 15 EHRR 244


*R. v. Morgentaler* (1988) 44 DLR 4th 385 (Supreme Court of Canada)

*Roe v. Wade* (1973) 410 US 113

*Royal College of Nursing of the United Kingdom v. Department of health and Social Security*

*X &Y v. The Netherlands* (1986) 8 EHRR 235