Course Description

This course offers a survey of family law, including case law, statutory law, and the constitutional limitations on regulation of the family. An aim of the course is to introduce students to family law as a dynamic field of law concerning a basic social institution: the family. Family law is a foundational course relevant to many areas of law practice. Students will gain knowledge about how family law intersects with many other fields of law, such as contracts, constitutional law, conflicts of laws, criminal law, property, tax, torts, and trusts and estates, as well as how family law draws on the social sciences. Students will be introduced to the role of negotiation, mediation, and other forms of dispute resolution in the practice of family law. The course will focus on marriage, nonmarital families, divorce, pathways to becoming a parent, and the parent-child relationship. Topics include defining and regulating marriage (including the changing landscape concerning same-sex marriage); formal and informal marriage; cohabitation and alternatives to marriage; common law incidents of marriage and transformation of the common law; domestic violence; traditional and “no fault” divorce; property division; spousal support; child support; child custody; regulating parenthood; and issues of federal and state jurisdiction over and recognition of marriage.

Administrative Details

Class meetings: Mon. & Tues. 3:00-4:50, Room 345
Office: Room 308 Holland Hall
Email: kings@law.ufl.edu; telephone: (352) 273-0951
Admin. ass’t: Betty Donaldson donaldso@law.ufl.edu
Office hours: Wednesday 10-12, and by appointment

Required Course Material

The required texts are Abrams, Cahn, Ross, and Meyer, Contemporary Family Law (Thomson West, 3d ed. 2012) and the related Fall 2014 and Fall 2015 Updates. Both Updates are posted on my TWEN course website. For some chapters, I will also post supplemental readings (referred to on the syllabus as “Supp.”) on the TWEN course page. Occasionally, I may add supplemental materials, which I will also post on TWEN.

If, as the course proceeds, you find that you wish to consult a text other than
our casebook to aid your understanding of family law, I recommend JOHN DeWITT GREGORY, PETER SWISHER, AND ROBIN FRETWELL WILSON, UNDERSTANDING FAMILY LAW (LexisNexis 4th ed. 2013).

The Course Website

I make extensive use of the TWEN course website, so you should view it as an important course resource for announcements, the Fall 2014 and 2015 Updates and supplemental readings, as well as other course information. In addition, you will find optional readings and information about recent developments in family law relating to the subject matter examined in this course.

Course Requirements

Attendance and preparation: Based upon law school policy and ABA requirements, students are required to attend class. It is your responsibility to sign the attendance sheet during class. You may not sign in for anyone except yourself. If you are less than ten minutes late, you may sign the roster at the end of class (see note below regarding excessive tardiness). If you are more than 10 minutes late, you will be considered absent. Failure to sign the attendance sheet will be treated as an unexcused absence. I will allow four unexcused absences per semester on a no-questions-asked basis.

If it should be necessary for you to miss more than four classes, you must email me to explain the reason for each additional absence. If you know in advance that you will have to miss a class, please make appropriate arrangements with me in advance. You will have no more than seven days after the time of the unanticipated occurrence to bring the reasons for your absence to my attention, provided however, that I will not accept any excuses offered after our last session of the semester. Any unexcused absence that exceeds the allowance will lower your grade by one level. For example, one additional unexcused absence will lower a B to a B- or a C+ to a C.

I will deal with excessive absences and/or tardiness on a case-by-case basis; excessive absences (whether or not excused) or tardiness may result in your administrative removal from the course.

Class participation: Class preparation is expected. Students should expect to be randomly called on during class to answer questions about the assigned materials. I will also call on students who volunteer questions or comments. Sometimes we will do in-class small group exercises to facilitate discussion. Subject to instructor discretion and the mandatory grading curve, outstanding class participation will contribute favorably to your grade. Class participation is 10% of your grade.
Evaluation: Subject to the attendance and participation policies noted above, written evaluation will be based on a final examination, which will be restricted open-book and open-note (no commercial study aids are permitted).

State variation in family laws: There are many sources of “family law,” including state and federal statutes, state and federal common law, and constitutional law. At a few points during the semester, to deepen our appreciation of this variation among the states, I ask each student to choose one jurisdiction (other than Florida) and to find its laws on certain topics covered in class. You might choose, for example, the state where you grew up, went to college, or expect to practice law. The syllabus will list when to do these searches; I will remind you in class. You should submit your jurisdiction’s relevant provisions to me by email, keeping a copy for yourself. Please be prepared to discuss your chosen state’s approach.

Internet policy and related issues. The internet and your laptop are a great learning tools and invaluable assets to effective advocacy. They should be used during class time as you will use them in practice: responsibly and ethically, consistent with the high professional standards that will be expected of you by your clients and other lawyers. Keep in mind that all the students around you are affected by how you use your computer. When you are talking, you should lower your laptop screen to facilitate communication.

During class, your laptop is to be used ONLY to take notes, unless I direct you to the TWEN site. If we work on the TWEN site, you are not to do any other internet or other computer work during class time. Cell phones, PDAs and any other electronic equipment should be on vibrate and not used during class.

If you are found in violation of this policy, you may not be permitted to use your laptop in this class, your grade may be lowered, or you may be dropped from the class.

Email. It is your responsibility to have a functioning “ufl.edu” email address at all times. There have been problems with email forwarding in the past, so I strongly recommend that you do not forward your ufl.edu to another ISP.

Student questions and feedback. I am available in and outside of class to answer any questions you have about the course and the course material. I welcome your feedback on the course and your classroom experience.

Accommodations for students with disabilities. Students requesting classroom accommodation must first register with the Dean of Students Office. The Dean of Students Office will provide documentation to the student who must then provide this documentation to me when requesting accommodation.
Policy regarding delay in taking exams: There is an established law school policy for students who are unable to take exams on the scheduled day; you are bound by that policy. If there are extraordinary circumstances that prevent you from being able to take the final exam on the scheduled day, you should contact the Assistant Dean for Student Affairs.

Professionalism in class. You are all bound by the University Student Code of Conduct, the College of Law Honor Code and the rules for this course. Proper conduct in the classroom is intended to encourage everyone to participate in, derive benefit from, and ultimately enjoy the class. Any unprofessional conduct and/or conduct that is in any way disrespectful to other students, disruptive, distracting or has a negative effect on classroom atmosphere is prohibited.

Any unprofessional conduct will be dealt with on a case-by-case basis at my discretion and may result in administrative removal from the course or a grade reduction.

Grading

Final exam: 90%
Class Participation: 10%

Assignments

The assignments listed below are tentative, and may be revised from time to time depending on recent developments in family law and how long certain topics take.

Week 1: August 18 & 19

I. Introduction: What is a Family? Why do Families Matter? What is the Relationship between Families and the Law?

A. The American Family – and Marriage – Today; The Functions of Family Law; Defining Family, Chap. 1, 1-19

B. Marriage, Family, and the Right to Privacy, 19-31

“Homework”: come to class prepared to share a recent news item you noticed that concerned a development in family law or families and the law.
8/19: B. Marriage, Family, and Privacy (continued), 31-38

II. Creating Families -- and Legal Rights and Obligations -- through Marriage

A. Entering Marriage: Substantive Requirements (and Restrictions)
   1. Introduction to the Regulation of Marriage, Chap. 3, 70-74
   2. The Right to Marry as a Fundamental Constitutional Right, 74-88
   3. Constitutional Privacy and Same-Sex Intimacy, 88-100

Week 2: August 25 & 26

8/25: B. Judicial (and Legislative) Recognition of Same-Sex Marriage

1. Fall 2015 Update

8/26: B. Judicial (and Legislative) Recognition of Same-Sex Marriage (Con’t)

1. Fall 2015 Update

Week 3: September 1 & 2

9/1: C. Restrictions on Marriage

1. Polygamy, 127-143
   Fall 2014 Update, 53-54
   Scott Anderson, The Polygamists (National Geographic), Supp.
   John Schwartz, Polygamy as Lifestyle Choice, and Reality TV Brand, Supp. (also, please spend a few minutes browsing the Sister Wives website, http://www.tlc.com/tv-shows/sister-wives)

   2. Incestuous Marriage, 143-152
   3. Minimum Age, 152-154

9/2: 4. Consent, 154-162


   5. Marriage Formalities, 162-168

D. Informal marriage; curative doctrines

      Common Law Marriage by State (National Conference of State
Legislatures, 8/24/14), Supp.
2. Putative Spouse Doctrine, 179-184

Week 4: September 8 & 9

9/8: III. Social and Economic Rights and Obligations (Incident to Being Married)

A. The Common Law on Marriage and Spousal Roles, Chap. 4, 185-187
B. Family Names, 187-190
C. Women’s Evolving Legal Status, 190-195, 197 (excerpt from VMI case, read the two paragraphs between the two ***, beginning “In 1971, . . .”)
E. Interspousal Support Obligations, 217-226

9/9: F. Medical Decisionmaking, 226-244
Carey and Grady, At Issue in 2 Wrenching Cases: What to Do After the Brain Dies, Supp.
G. Familial Evidentiary Privileges, 241-253
H. Federal Law and Family Finances, 253-258

Week 5: September 15 & 16

9/15: F. Medical Decisionmaking, 226-244
Carey and Grady, At Issue in 2 Wrenching Cases: What to Do After the Brain Dies, Supp.
G. Familial Evidentiary Privileges, 241-253
H. Federal Law and Family Finances, 253-258

9/16: IV. Nonmarital Families – Family Formation Outside of Marriage

A. Cohabitation: Intent, or Contract-Based Agreements, Chap. 5, 259-275
B. Cohabitation: Property Rights in the Absence of Agreement, 276-284
C. Other Incidents of Nonmarital Cohabitation, 284-285

Week 6: September 22 & 23

1. Determining Paternity; Paternity Registration, 289-311

2. Determining Maternity, 311-328

**Week 7: September 29 & 30**

9/29: V. Change in Family Law’s – and Society’s – Approach to Domestic Violence and to Intra-Family Tort Immunity

A. Civil and Criminal Controls on Domestic Violence, Chapter 6 (finish chapter 6; pages 340-376)

9/30: B. Tort Law, Chapter 7

A. The Erosion of Intrafamily Tort Immunity, 377-384


**VI. Divorce: Grounds and Procedures**

A. Introduction, Chapter 8, 421-424 (historical background reading)

B. Modern Grounds for Divorce, 425-426 (background reading)

C. Fault-Based Divorce

1. Cruelty, 427-431

2. Adultery, 431-432


**Week 8: October 6 & 7**

10/06: 3. Desertion, 437-438

4. Fault-Based Bars and Defenses, 438-442

D. No-Fault Divorce

1. Introduction to Pure and Mixed No Fault Regimes, 442-445

2. Living Separate and Apart; Irretrievable Breakdown, 445-455

E. Annulment, 463-465 (skipping *Splawn v. Splawn* case)

F. Questioning No Fault, 455-463

G. Governmental Efforts of Marriage Education and Divorce Prevention Affidavit, Covenant Marriage Act of 2001 (Arkansas), Supp.

Pamphlet prepared by Family Law Section of Florida Bar, Supp.

10/7: VII. Division of Marital Property at Dissolution

A. Property Regimes during Marriage and at Divorce, Ch. 9, 470-480
B. Characterizing Assets as Marital or Separate, 480-492
C. Appreciation of Separate Property, 492-498
D. Homemakers’ Contributions, 498-501

Week 9: October 13 & 14

F. What Distribution Is Equitable?, 515-525
G. Dividing Debts, 525-530

10/14: H. Post-Divorce Bankruptcy Filing, 530-539

VIII. Alimony

A. Overview, Ch. 10 (we are using the draft chapter for the 4th edition of casebook), 1-7
B. Justifications for Alimony, 7-13
C. Awarding Alimony
   1. Factors, Income Equalization, 13-25
   2. Problem 10-2, 25-26
   3. Guidelines and Forms, 26-30
D. Enforcement of Alimony Award, 30-32
E. Modification and Termination, 33-38
F. Tax Consequences, 38-41

Week 10: October 20 & 21

10/20: Guest lecturer, Bob Merlin.

X. Family Law Practice, Alternative Dispute Resolution

A. Family Law Practice, Ch. 2, 39-49; 55-60, 65-67
B. Negotiation, 896-907
C. Mediation, 914-929
D. Collaborative Law, 937-946

10/21: IX. Custody of Children

A. Introduction and Constitutional Considerations, Ch. 12, 657-673
B. Evolution of Presumptions and Standards concerning Child Custody, 673
   1. Tender Years, 673-675
   2. Best Interests of the Child, 675 (read Intro; skip Painter),
   3. Psychological Parent/Primary Caretaker, 682-697
C. Contemporary Interpretation of the Best Interests of the Child
   1. UMDA and state statutes, 687-690
      Mass. Gen. Laws, Chap. 208, §§ 31, 31A
      Standing Order 4-08 (of the Mass. Probate and Family Court):
      Parent Education Program Attendance

   Note: There is only one case in the above custody assignment. The reading provides an overview of the evolution of custody standards, rules, and presumption that sets the stage for considering contemporary interpretations and application of the contemporary best interests of the child standard

Week 11: October 27 & 28

10/27:C. Contemporary Interpretations of BIOC (cont.)
   3. ALI Principles, 691-693
D. Joint Custody, 743-758
   Robert E. Emery, How Divorced Parents Lost Their Rights (opinion piece)
E. Factors in BIOC
   1. Health, Home, Gender, 694-703
   2. Alleged Immoral Behavior, 703-709
   3. The Child’s Preference, 731-737, 741-743 (Notes and Questions)

10/28: F. Arbitration (of custody matter), 929-937

IX. Custody (concluded)
   E. Factors in BIOC
   4. Domestic Violence (plus Note on Expert Opinions), 709-718
   5. Race, 718-724
   6. Siblings; Religion, 724-731
Week 12: November 3 & 4

11/03:  XI. Visitation and Post-Dissolution Custody Disputes

A. Disputes about Childrearing Decisions, Ch. 13, 759-760
   1. The Collapse of Joint Parenting, 760-769
   2. Tie-Breaking Arrangements, 773-774 (note 2) (skip Newdow case)

B. Visitation
   1. Non-Custodial Parents, 774-781
   2. Third-party Visitation, 781-791

11/04:  3. De Facto Parents, 791-794 (skip case); 802-804

C. Modification; Relocation, 804-820

D. Parental Kidnapping, 820-824
   1. International Child Abduction, 824-835

Week 13, 14: November 10 & 11 & 17

11/10: XII. Child Support

A. Introduction, Ch. 11, 589-592

B. Nature, Source, and Extent of Obligation, 592-600

C. Post-majority Support, 601-609

D. Determining the Amount: Federal Law; Child Support Guidelines, 609-613
   Child Support Guidelines (Commonwealth of Mass, Trial Court Admin. Office) (take a look as an example of state guidelines)

E. Deviating from the Guidelines; Low- and High-Income Obligors, 614-618;
   Ciampa v. Ciampa, Fall 2014 Update, 68-73 (replaces Smith v. Stewart)

F. Modification, 624-630
11/17: G. Imputing Income on Modification, 631-636
   H. Child Support Enforcement, 636-641, 652-656
      Fall 2014 Update, 73-74 (read as additional text to p. 654, 2.
      Facilitations Child Support from “Dead-Broke Dads,” before Notes and
      Questions)

XIII. Private Bargaining/Private Ordering in Marriage and Divorce

   A. Private Ordering, Marriage as Contract or Status, and Forms of
      Agreement Affecting Marriages, Ch. 14, 836-840 (introduction)
      Fall 2014 Update, 75-76 (read just before Section 1, with introduction
to chapter)
   B. Premarital Agreements: Model Laws, Actual Laws, and Proposed Reforms,
      840-843
      Uniform Premarital and Marital Agreements Act (2012), Exercise, Fall
      2014 Update, 77-79
   C. Elements Required: How Do Courts Determine Enforceability?, 843-856

11/18: D. Factors in Evaluating Validity, 856-862 (relates back to 840-843 and the
   UPMA)

   D. Separation Agreements, 885-895

11/24: TBD.