Family Law
Professor Shani M. King
Fall 2016

Syllabus (Part 1 of 2)

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.

Learning Objectives and Outcomes

The learning objectives and expected outcomes of this Family Law Course are that students taking it will: (1) develop knowledge and understanding of substantive family law as well as of the various legal processes for dispute resolution and for private ordering in family law; (2) possess the ability to perform legal analysis and reasoning and problem solving and limited legal research concerning Family Law, and to communicate such analysis, reasoning, and problem solving in written and in oral communication; and (3) gain understanding of proper professional and ethical responsibilities that attorneys engaged in family law practice have to clients and the legal system. Finally, although this is not a “skills” course (by the criteria of the ABA), this course will include some attention to professional skills needed for competent and ethical participation as members of the legal profession and will include a guest presentation by a family law attorney.
Administrative Details

Class meetings: Mon., Tues. & Wed. 1:30-2:40, Room 359
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: Tuesday 3-5, and by appointment

Required Course Material

The required text is Abrams, Cahn, Ross, and Meyer, Contemporary Family Law (Thomson West, 4th ed. 2015). For some chapters, there will be supplemental readings; I will post these on the TWEN course page.

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 course related announcements, 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 as well as opportunities related to family law.

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 will 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 onibrate 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

This syllabus covers the first half of the course. Part II of the syllabus will cover the second half. These assignments may be revised from time to time
depending on recent developments in family law and how long certain topics take.

Week 1: August 15-17

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, 1-22
   B. The Status and Condition of Family Law Practice, 57-64
   C. Families and the law: The Right of Privacy, 22-43
   D. The Right to Same-Sex Intimate Relationships, 44-56

Week 2: August 22-24

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. 2, 65-67
      2. The Right to Marry as a Fundamental Constitutional Right, 67-81
      3. The Freedom to Marry the Person One Loves: Gender (intro), 82-109

Week 3: August 29-31

   B. Restrictions on Marriage
      1. Polygamy, 109-126
         Scott Anderson, The Polygamists (National Geographic) (FYI)
         John Schwartz, Polygamy as Lifestyle Choice, and Reality TV Brand
         Please spend a few minutes browsing the Sister Wives website, http://www.tlc.com/tv-shows/sister-wives
      2. Incestuous Marriage, 125-133

   C. Consent to Marriage, 133-139
      Ji Hyun Lee, Modern Lessons from Arranged Marriages.
      1. Minimum Age, 139-140

   D. Marriage formalities and curative doctrines, 140-146
      1. Common Law Marriage, 146-157
2. Putative Spouse Doctrine, 157-162

Week 4: September 5-7

III. Social and Economic Rights and Obligations (Incident to Being Married)

A. The Common Law on Marriage and Spousal Roles, Chap. 3, 163-166
B. Family Names, 166-168
C. Women’s Evolving Legal Status, 168-172, 176-177 (excerpt from VMI case, read the two paragraphs between the two ***, beginning “In 1971, . . .”)
D. Work and Family: Domestic and Economic Roles; Federal “Family Law,” 181-196
   (online, you will find some optional readings on work/family issues)
E. Interspousal Support Obligations, 197-207

Week 5: September 12-14

F. Medical Decisionmaking, 207-228
G. Familial Evidentiary Privileges, 228-231
H. Federal Law and Family Finances; Taxes and Family Forms, 231-247

IV. Nonmarital Couples

A. Intent, or Contract-Based Agreements, Chap. 4, 252-268
B. Status-Based Property Rights, 268-280
C. Other Incidents of Nonmarital Cohabitation, 280-281

Week 6: September 19-21

D. Domestic Partnerships, Civil Unions, and Other Legal Statuses, 281-294

V. Establishing Parenthood

A. Marriage and Biology, 295-318
B. Statutory Approaches, 318-324
C. The Marital Presumption Today, 324-326
D.
Week 7: September 26-28

E. Beyond Marriage and Biology, 326-350  
F. Beyond Marriage and Biology, 350-365

VI. Civil and Criminal Remedies for Family Injury

A. Domestic Violence, 415-416  
B. What is Domestic Violence? 417-421  
C. Civil Protection Orders, 421-436  
D. Enforcing CPOs, 436-447  
E. Battered Woman’s Syndrome, 447-448  
F. Criminal Justice Response, 448-453  
G. Other Domestic Violence Issues, 453-463  
H. Tort Law  
   1. The Retreat from Tort Immunity, 463-475  
   2. Intra-Family Torts, 475-477 (skipping cases on IIED)

Syllabus (Part II) will cover the second half of the course, in which we will take up the topics on Chapters 8-16 and (as time permits) Chapter 17.
This syllabus provides assignments for the second half of the semester. Please refer back to Syllabus (Part One) for basic course information, including: Course Description; Learning Objectives and Outcomes; Required Course Material; Course Website; and Course Requirements. I repeat Administrative Details below, for your convenience.

**Final examination:** The final examination, as previously announced, will be *restricted open book.* By this, I mean: you may use your casebook (that is, either the actual casebook or the photocopied chapters of page proofs that I have distributed), your class notes, any supplemental readings posted on TWEN, any class handouts, and any outlines you prepared; you may **not** use any other books, including treatises, hornbooks, or commercial outlines. I will post some of my old exams on TWEN. These exams give an idea of the format and types of questions I have asked in the past and are a useful resource for preparing. Students should bear in mind that, while these exams may be informative, past format of exams does not preclude new types of questions; moreover, family law doctrine changes and, this semester, we are using a new edition of the casebook, with some new cases and other materials.

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**Week 12: October 31-Nov 7**

VI. Divorce: Grounds and Procedures

A. Introduction; Divorce in Context, Chap. 8, 501-507 (background reading)  
B. Modern Grounds for Divorce, 507-509  
C. Fault-Based Divorce  
   1. Cruelty, 510-515  
   2. Adultery, 515-526  
   3. Desertion, 526  
   4. Fault-Based Bars and Defenses, 527-531  
D. No-Fault Divorce  
   1. Exclusive No-Fault Regimes; Mixed Fault No-Fault Regimes, 531-535  
      Mass. Gen. Laws, Ch. 208, §§ 1, 1A & 1B, 2  
   2. Living Separate and Apart, 535-541
3. Irretrievable Breakdown, 541-547
4. Questioning No-Fault Divorce, 547-564
   (a) Parental Education at Divorce
       Standing Order 4-08, Parent Education Program Attendance
       (Mass. Probate and Family Court)
       New York Parent Education Program
   (b) Governmental Efforts at Marriage Education; Covenant Marriage
       Pamphlet prepared by Family Law Section of Florida Bar
       Affidavit, Covenant Marriage Act of 2001 (Arkansas)
       Marriage Matters! A Guide for Louisiana Couples [just browse this
       booklet, which is considerably longer than the above two examples]

E. Annulment, 564-569
G. Legal Separation, 569-571

Week 13: November 7-9

GUEST SPEAKER AND CLASS TIME/LOCATION CHANGE.
This week class on Wednesday will be from 12-1:30. I will let you know the room closer to the date.
The guest speaker is Robert J. Merlin. Bob is a UF Law Grad and a prominent collaborative family
law attorney in Florida. I will provide you the assignment closer to the date of the lecture.

VII. Division of Marital Property at Dissolution, Chap. 9

   A. Dynamics of Negotiating “in the Shadow of the Law,” Chap. 15, 1010-1019

Note: The excerpted articles in the above assignment relate to all aspects of bargaining at the time of
marital dissolution, not only economic but also custody.

   B. Introduction; Property Regimes During Marriage and at Divorce, 573-582
       Mass. Gen. Laws, Chap. 208, § 34
   C. Characterizing and Treating Assets, 582-595
   D. Appreciation of Separate Property During Marriage, 595-599
   E. Homemakers’ Contributions, 600-603

   F. The New Property and Its Common Forms, 603-612
   G. Valuation, Distribution, and Enforcement, 612-628
   H. What Distribution Is Equitable?, 629-642; 657-659
   I. Debts and Bankruptcy, 642-649
Week 14: November 14-16

VIII. Alimony

A. Overview; The History of Alimony, Ch. 10, 661-667 (introductory reading)
B. Justifications for Alimony, 668-674
C. How Should Courts Award Alimony?, 674-691
   Mass. Gen. Laws, Chap. 208, §§ 34, 48-55 [links on Blackboard; some of this new law
   is included in the casebook, as well, but we are reading additional sections]
D. Enforcement of Alimony Award, 691-693
E. Modification and Termination, 693-701
F. Tax Consequences, 702-704

IX. Custody of Children

A. Introduction and Constitutional Considerations, Chap 12, 783-802
   Troxel v. Granville, Chap. 13, 922-934 (we will come back to this in Visitation, as well)
B. Evolution of Presumptions and Standards concerning Child Custody, 802-803
   1. Tender Years, 803-804
   2. Best Interests of the Child, 804-805
      Robert E. Emery, How Divorced Parents Lost Their Rights (op-ed)
   3. Psychological Parent; Role of Experts, 805-813
C. Contemporary Interpretation of BIOC
   1. UMDA and state statutes, 813-818
      Mass. Gen. Laws, Chap. 208, §§ 31, 31A

Note: There are two cases in the above custody assignment. The other 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 15: November 21-22

C. Contemporary Interpretations of BIOC (cont.)
   2. ALI Principles, 818-821

D. Factors in BIOC
   1. Home Environment, Health, Gender Roles, 821-831
   2. Alleged Immoral Behavior, 831-840
   3. Race, 840-846
   4. Siblings and Religion, 846-854
      Jesse McKinley, Survivor of Word of Life Beatings Testifies in Court
   5. Domestic Violence, 854-860 (up through Note 1)
      Mass. Gen. Laws, Chap. 208, § 31A
5. Domestic Violence, 860-864 (Notes 2-6)
6. The Child’s Preference (including Debates about the Role of Attorneys for Children in Custody Disputes), 863-870; skim 870-875 (Atwood article); 875-877
7. Shared Parenting: Gender Wars or a Step Forward?; Reevaluating Joint Custody, 877-891
8. Promoting Co-Parenting, 891-895
9. Mediation and Parenting Issues, Chap. 15, 1019-1027, 1029-1031 (domestic violence; cultural competence)