

Family Law
Professor Shani M. King
Fall 2018

Syllabus
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. 1:00-2:10, Room 355B
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 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%

Final Examination

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.

Assignments

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 20-22

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 27-29

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: September 4-5

- 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 10-12

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 17-19

- 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 24-26

V. Establishing Parenthood

- A. Marriage and Biology, 295-318
- B. Statutory Approaches, 318-324
- C. The Marital Presumption Today, 324-326
- D. Domestic Partnerships, Civil Unions, and Other Legal Statuses, 281-294

Week 7: October 1-3

- D. Beyond Marriage and Biology, 326-350
- E. 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)

Week 8: October 8-10

VII. 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

F. Legal Separation, 569-571

Week 9: October 15-17

VIII. 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

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Week 10: October 22-24

IX. 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

X. 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 11: October 29-31

- 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

Mass. Gen. Laws, Chap. 208, § 31A (on shared parenting plans)

8. Promoting Co-Parenting, 891-895

9. Mediation and Parenting Issues, Chap. 15, 1019-1027, 1029-1031 (domestic violence; cultural competence)

Week 12: November 6-7 (No Class Nov 5th)

XI. Visitation and Post-Dissolution Custody Disputes

A. Disputes about Major Childrearing Decisions, 897-898, Ch. 13

1. The Collapse of Joint Parenting, 898-909

B. Visitation, 914-916

1. Denial of Visitation, 916-922

2. Third-party Visitation, 922-923; 930-934 [review *Troxel*, 923-929]

3. *De Facto* Parents, 934-936

C. Modification of Custody or Visitation Orders

1. The Standard, 936-938

2. Substantial Change of Circumstances, 938-945

Week 13: November 13-14 (no class Nov 12, Veterans Day)

XI. Visitation and Post-Dissolution Custody Disputes (concluded)

C. Modification of Custody or Visitation Orders

2. Substantial Change of Circumstances, 943-945 (finish discussion)

3. Relocation, 945-958

4. International Relocation, 958-961

5. Kidnapping; International Child Abduction Under the Hague Convention, 961-968

XII. Child Support

Note: Some of this reading was previously assigned for November 18, and so this assignment includes those pages as well as new pages.

- A. Introduction, Ch. 11, 705-707 (previously assigned); 707-709
- B. The Nature, Source, and Extent of Obligation, 709-719
- C. Post-majority Support, 719-728 (719-721 previously assigned)

Week 14: November 19-21 (Tuesday, Nov 20 is a constructive Friday)

- D. Determining the Amount: Federal Law; State Child Support Guidelines, 728-733 (previously assigned)
 - 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, 733-745 (previously assigned)
- F. Modification, 745-753 (745-747 previously assigned)
- G. Imputing Income on Modification, 753-758
- H. Child Support Enforcement, 758-768

Note: I will lecture on pages 768-781. Reading it is optional.

XI. Private Ordering in Marriage and Divorce

- A. Introduction, 1051-1057 (background)
- B. Premarital Agreements, 1057-1067 (skipping *Mallen*); 1072-1074 (Notes and Questions 1-2); 1076-1080 (*Hollett* case)
- C. Specific Factors in Evaluating the Validity of Premarital Agreements, 1081-1090 (skipping Problems); Problem 16-5, 1111
- D. Provisions of Premarital Agreements, 1091-1095; 1098 (Problem 16-3)
- E. Separation Agreements, 1114-1124 (skip Note 6)

Week 15: November 26: TBD