

Family Law
Professor Shani M. King
Fall 2019

Syllabus

Administrative Details

Class meetings: Wed. 3-4:15 (355C); Thurs/Friday 2:00-3:15 (285C)
Office: Room 380 Holland Hall
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Office hours: Thursday 3:30-5:30, and by appointment

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; 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 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.

Required Course Material

The required text is ABRAMS, CAHN, ROSS, AND MEYER, CONTEMPORARY FAMILY LAW (Thomson West, 5th ed. 2019). For some chapters, there will be supplemental readings; I will post these on the TWEN course page.

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, however, 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 may 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. If we do this, I will ask you to submit your jurisdiction’s relevant provisions to me by email, keeping a copy for yourself. I will also ask you to 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.

ABA Standard 310

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. This course has 4 “classroom hours” of in-class instruction each week, requiring at least 8 hours of preparation outside of class. Accordingly, you will have between 60-80 pages of reading each week. It is anticipated that you will spend approximately 2 hours of out of class preparation for every hour of class.

Course Evaluations

“Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.”

Grading

Final exam: 90%

Class Participation: 10%

You will be graded based on your performance on the final examination, and on your class participation. At the end of the semester, the points for all students will be calculated and the letter grades for the course will be assigned subject to the requirements of the mandatory curve. The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

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 28-30

- I. Marriage, Family and Privacy in Contemporary America (1-4, intro)
 1. The American Family Today, 4-9
 2. Families and the Law: Public Law, 9-21
 3. The Status and Condition of Family Law Practice, 55-65
 4. Families and the law: The Right of Privacy, 21-55

Week 2: September 4-6

- II. Creating Families -- and Legal Rights and Obligations -- through Marriage (intro, 65-66)
 - 1. Substantive Requirements for Entry into Marriage, 66
 - A. Freedom to Marry the Person One Loves: Race, 67-73
 - B. Can the Right to Marry Be Abridged?, 73-83
 - C. The Freedom to Marry the Person One Loves: Gender, 83-114

Week 3: September 11-13

- 2. Polygamy: The Next Frontier?, 114-130

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>

- 3. Incestuous Marriage, 130-139
- 4. Minimum Age at Marriage, 139-146
- 5. Consent to Marriage, 146-152

Ji Hyun Lee, *Modern Lessons from Arranged Marriages*

- 6. Annulment, 152-156
- 7. Marriage Formalities, 156-162
- 8. Common Law-Marriage, 162-173
- 9. The Putative Spouse Doctrine, 173-179

Week 4: September 18-20

- III. Social and Economic Rights and Obligations (Incident to Being Married) (intro, 179)
 - 1. Changing Views on the Legal, Social, and Economic Status of Women, 179-193
 - 2. Work and Family: Domestic and Economic Roles; Federal "Family Law," 193-204
 - 3. Interspousal Support Obligations, 204-214

Week 5: September 25-27

- 4. Medical Decisionmaking for One's Spouse, 214-231
- 5. The Delegation of Medical Decisionmaking for Incompetent Adults, 231-234
- 6. Confidential Relationship: Evidentiary Privileges, 234-237
- 7. Federal Law and Family Finances, 237-253

- IV. Nonmarital Couples (intro, 253-255)
 - 1. Intent (Contract-Based Agreements), 255-278
 - 2. Status-Based Property Rights, 278-288
 - 3. Other Incidents of Nonmarital Cohabitation, 288-291
 - 4. Domestic Partnerships, Civil Unions, and Other Legal Statuses, 291-305

Week 6: October 2-3

- V. Establishing Parenthood (intro, 305)
 - 1. Marital and Nonmarital parents
 - A. The Constitutional Framework, 305-328
 - B. Statutory Approaches to Recognizing Marital and Nonmarital Parents, 328-334
 - C. The Marital Presumption Today, 334-339

Week 7: October 9-11

- 2. Beyond Marriage
 - A. Assisted Reproductive Technology, 339-351
 - B. De Facto Parenthood, 351-352
 - C. Adoption, 352-354
 - D. Three Parents, 354-357
 - E. Disestablishing Parenthood, 357-365

- VI. Civil and Criminal Remedies for Family Injury (intro, 413)
 - 1. Domestic Violence
 - A. Introduction (prevalence, history), 413-415
 - B. Domestic Violence: A Contemporary National Profile, 415-420
 - C. Civil Protection Orders, 420-445
 - D. The Criminal Justice Response, 445-450
 - E. Other Domestic Violence Issues, 450-458
 - F. Tort Law, 458
 - G. What is Domestic Violence?, 417-421
 - H. Civil Protection Orders, 421-436
 - I. Enforcing CPOs, 436-447
 - J. Battered Woman's Syndrome, 447-448
 - K. Criminal Justice Response, 448-453
 - L. Other Domestic Violence Issues, 453-463
 - 2. Tort Law (intro, 458-459)
 - A. The Contemporary Retreat from Intra-Family Tort Immunity, 459-470
 - B. Intra-Family Torts, 470-478
 - C. Tort Recovery Against Third Parties, 480-491

Week 8: October 16-18

- VII. Divorce (intro, 491)
1. Introduction, 491-496
 2. Divorce in Historical Context, 496-498
 3. Contemporary Grounds for Divorce, 498-501
 4. Fault-Based Divorce, 501
 - A. Fault Grounds, 502-519
 - B. Fault-Based Bars and Defenses, 519-525
 5. No-Fault Divorce, 525-543
 6. Questioning No-Fault Divorce, 543-557
 7. Legal Separation, 557-561

Week 9: October 23-25

- VIII. Division of Marital Property at Dissolution (intro, 561-563)

Dynamics of Negotiating “in the Shadow of the Law,” Chap. 15, 1017-1026

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.

1. Introduction; Property Regimes During Marriage and at Divorce, 563-570
2. Characterization and Treatment of Separate Assets, 570-589
3. The Contributions of Homemakers, 589-592
4. The New Property and Its Common Forms, 592-603
5. Valuation, Distribution and Enforcement, 603-619
6. What Distribution is Equitable, 619-633
7. Debts and Bankruptcy, 633-648
8. Have We Achieved Equity?, 648-651

Week 10: October 30-November 1

- IX. Alimony (intro, 651)
1. Overview; The History of Alimony, 651-658
 2. Justifications for Alimony, 658-663
 3. How Should Courts Award Alimony?, 663-680
 4. Enforcement of Alimony Awards, 680-682
 5. Modification and Termination of Alimony, 682-690
 6. Tax Consequences of Alimony, 690-693

- X. Custody of Children

1. Introduction, 773-776
2. Constitutional Considerations, 776-793

Troxel v. Granville, Chap. 13, 919-929 (we will come back to this in Visitation, as well)

3. Evolution of Standards concerning Child Custody, 793
 - A. The Tender Years Doctrine, 793-794
 - B. The Best Interests of the Child, 794-796

Robert E. Emery, *How Divorced Parents Lost Their Rights* (op-ed)

- C. The Psychological Parent and the Role of Experts, 796-804
- D. Contemporary Interpretation of BIOC, 804-812

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: November 6-8

4. Factors in Determining Best Interests
 - A. Home Environment, Health Issues, and Gender Roles, 812-821
 - B. Alleged Immoral Behavior, 821-833
 - C. Race, 833-838
 - D. Siblings and Religion, 838-845

Jesse McKinley, *Survivor of Word of Life Church Beatings Testifies in Court*

- E. A Note on “Custody” of Animal Companions, Commonly Known as Pets, 845-847
- F. Domestic Violence, 847-862
- G. The Child’s Preference, 862-876
5. Shared Parenting: Gender Wars or a Step Forward?, 876-894
6. Mediation and Parenting Issues, Chap. 15, 1026-1038

Week 12: November 13-15

XI. Visitation and Post-Dissolution Custody Disputes (intro, 895-896)

1. Disputes about Major Childrearing Decisions, 896-911
2. Visitation, 911-939
3. Modification of Custody or Visitation Orders, 939-969

Week 13: November 20-22

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

4. Parents Who Kidnap Their Own Children, 969-98