

Family Law
Fall 2003
Professor Nancy Polikoff
Room 450
Phone: 202-274-4232; email: npoliko@wcl.american.edu
Office hours: Monday and Wednesday 3-4 p.m.

COURSE DESCRIPTION AND GRADING INFORMATION

This Family Law course has a number of goals. These goals include, in no particular order: 1) ability to read, apply and compare statutes; 2) ability to read, apply and compare cases; 3) ability to understand the life experiences of the people whose lives are affected by family law statutes, cases and policies; 4) ability to develop appropriate questions whose answers will drive the development of family law policy; 5) ability to identify avenues of recourse within the executive, judicial and legislative branches of government for those with family law problems; 6) ability to empathize with clients; 7) ability to assume the role of a lawyer in representing a client; 8) ability to recognize the differential experiences of families and members of families based upon race, class, gender, and sexual orientation; 9) ability to discuss theory as it affects families and family members; 10) ability to recognize the limits of the law as a tool for addressing the concerns of families and family members; 11) stimulation of your interest in seeking justice; 12) familiarity with constitutional doctrine affecting families, family members, and definitions of family.

These goals are ambitious. Most transfer to work you will do in other areas of the law. Some of you may be unhappy with how I balance these various goals and might prefer if I spent more time on some goals and less on others. I hope you will appreciate that it is difficult to accomplish everything in a three hour course, especially one in an area of law as large and as ever-changing as family law. I will try to meet the needs and interests of each of you through my availability outside of class for individual or small group meetings, and supervision of independent study.

You will note that memorizing principles of "black letter" family law is NOT a goal of this course. Most family law is state law and therefore varies from state to state. If family law is on the bar exam you take, you will learn the relevant "black letter" law at your bar review course. If you have signed up for this course only because family law is a subject on your state's bar exam, you may wish to consider dropping it. The basic principles are easy to learn for the bar, and the subject matter of this course is hard and may aggravate you if your interest in family law is a narrow one.

It is also not a goal of this course to teach you all of family law. That would be impossible. Therefore, I have made choices about the specific subjects we will study in this course. Several important areas of family law are not covered in this course; others are covered in a cursory fashion. If there is an area of family law you are especially interested in that does not appear in the syllabus, please feel free to come to me to discuss independent readings or the

possibility of completing your upper level writing requirement in your area of interest.

HOW YOU WILL BE GRADED IN THIS COURSE

There are two grading instruments for this course. Each will be graded anonymously, through the use of an exam number you obtain from the registrar's office.

Exam

Fifty percent (50%) of your grade for this course will be derived from a two hour, open book (for required course materials and any notes you make or outline you make or participate in making), in-class exam. Towards the end of the semester, I will let you know what material to study in preparation for the exam and I will distribute copies of some of my prior final exams (with their grading memos).

Negotiation simulation

Fifty percent (50%) of your grade for this course will be derived from your preparation of a negotiated separation agreement and related memos. This simulation will be conducted in groups of six students between October 29 and November 17. Details of this assignment will be distributed and discussed in class on October 29. **EVERYONE MUST ATTEND CLASS ON OCTOBER 29.** Anyone who does not attend because of an unforeseeable emergency must contact me personally by 1:30 p.m. on October 29. Failure to do so will result in your inability to get credit for this course. Let me repeat as bluntly as possible: you will fail or be required to withdraw from this course if you do not attend class on October 29. In the event of an unforeseeable emergency only, you will be permitted to continue in this class if you contact me personally by 1:30 p.m. on October 29.

Furthermore, be advised that completion of this assignment will require you to spend time meeting with other students. You should not plan to leave town during ANY of this period **UNLESS** you select **before October 27** the five other people you will do this assignment with and all of you agree on the dates that your group will and will not be available. Even if you are not leaving town, I suggest you pick people to work with based on similarities in schedules and available meeting times. You will have three weekends to schedule group meetings, and it is especially important that you not leave town those weekends, unless you have worked out your availability with a six-person group in advance.

Let me be clear. If you do not put together a group **BEFORE** October 27, you will be assigned a group on October 29, and you must be available during the entire two and a half week period. That means that you cannot inform your group mates that 1) you are out of town for a moot court competition or a job interview; 2) your cousin is getting married and you are the maid of honor; or 3) you have any other commitment that will make you unable to get this project done throughout the two and a half week period. It will not take the full period to

complete this assignment, but if there are six of you, and each is unavailable for three or four days of the period, and they are different three or four days, it is easy to see how the scheduling would collapse. **THERE IS A SIMPLE SOLUTION.** If you are not available for the entire two and a half weeks, form your own group before October 27.

Classes will be held throughout this period as we move along to cover other course material. You are expected to attend and be prepared for these classes, and for class on November 17, as usual.

CLASS PARTICIPATION

Class participation is very important. Class participation will not automatically improve your grade, but consistent, quality class participation will result in your receiving "points" which will improve your grade if you are very close to the next highest grade when your exam and assignment scores have been tabulated. I will sometimes call on students who do not volunteer. I expect you to be prepared at all times.

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SYLLABUS

The text for this course is Modern Family Law: Cases and Materials -- SECOND EDITION, by D. Kelly Weisberg and Susan Frelich Appleton. There is also a volume of supplemental readings, referred to below as "Supp."

Getting Married

- August 25 Constitutional Limits on State Regulation of Entry into Marriage 151-166, 167-169.
- August 27 Same Sex Marriage 171-190, Supp: 1-20.
- September 3 Incest and Bigamy 190-209; Common Law Marriage 238 (Note 2) - 241 (end Note 6).

Being Married

- September 8 The Changing Nature of Marriage and Roles and Responsibilities in Marriage 245-279, 284-285 (note on domicile), 327 (Hochschild and Machung)-331, 380-388.
- September 10 Catch-up.

Divorce

- September 15 533-540, Supp: 21-30, 564-570, 574-577, 586-591; Divorce jurisdiction 632-640

Child Custody

- September 17 Parental Disputes 799-810, Supp: 31-33, 883-887 (child's preference), 893-899 (experts)
- September 22 810-841
- September 24 Joint Custody 841-852, Supp: 34-37; Visitation 854-855 (Notes and Questions 1-4) and 856-857 (Note 9).

September 29 Parent vs. Non-parent Disputes 863-883, Supp: 38.

October 1 Modification 899-909; Custody Jurisdiction: Notes--916-923

October 8 Catch up.

Financial Consequences of Dissolution: Property Division and Alimony

October 13 653-680; 441-2 (note 12), 442-3 (note 15).

October 15 680-694, 705-706 (The Family Home)

October 20 706-730

Financial Consequences of Dissolution: Child Support

October 22 730-740

October 27 745-756

October 29 Catch up. Distribution of Negotiation Assignment in class. **Before you begin negotiating, read Supp: 39-47**

I will distribute the instructions for your negotiation simulation in class on October 29. **YOU MUST BE PRESENT IN CLASS. IF YOU MISS THIS CLASS YOU WILL FAIL THIS COURSE.** The assignment is due on November 17 at 1 p.m. and must be handed in to THE REGISTRAR'S OFFICE by that time on that date. **Late assignments will be penalized a full letter grade.** YOU MUST OBTAIN YOUR NEW EXAM NUMBER FROM THE REGISTRAR'S OFFICE AND USE THAT NUMBER ON YOUR ASSIGNMENT. DO NOT PUT YOUR NAME ON THE ASSIGNMENT.

State Regulation of the Parent-Child Relationship: Child Abuse and Neglect

November 3 Abuse and Neglect 972-998, 1002 (note 3)-1003 (through note 7), 1008-1024

November 5 Dispositional Alternatives: 1073-1082, 1051-1072

November 10 1082-1104.

Adoption: Choosing an adoptive family

November 12 1151-1165, Supp: 48-67.

Families and parenthood outside of marriage

November 17 Communal Living and Couples. 397-416. S: 68. **Negotiation assignment due at 1 p.m. today.**

November 19 Health, Domestic Violence, and Familial Benefits. 464-479, 494 (note 1), 499-501; Supp: 69-80.

November 24 Above continued and Domestic Partnership. 479-502.

November 26 Parents' and Children's Rights in the Nonmarital Family. 515-532 (Read note 2 as carefully as you would read a case).

December 1 1139-1149, Supp: 81-85, 1193-1196, 1197 (note 2) through 1198, 1217-1218 (through note 3).

December 3 Catch up