

**Family Law**  
Professor Olnek  
Fall 2021

**Syllabus**

I am looking forward to meeting all of you and teaching family law live and in the classroom this fall. Class will meet on Tuesdays and Thursdays from 11:20 to 12:35 p.m. in Oakes 208, except as otherwise noted on the schedule.

**Course Description**

This course offers a survey of family law, including journal articles (both legal and psychological), case law and certain statutory laws. We will cover various topics such as the definition of family, constitutional limitations on the regulation of the family, marriage (formal and informal), limitations on marriage, divorce, the parent-child relationship, parenting time and custody issues, alimony (maintenance), property distribution upon divorce, child support, dispute resolution systems, and domestic violence.

**Objectives**

This course teaches the fundamental principles governing family law. The specific learning outcomes are defined in terms of doctrine, skills, and values as described below.

**Doctrine**

1. Students should develop a working knowledge of substantive family law, gain an understanding of the development of laws governing the family, gain an understanding of the current and the future direction of family law generally in the U.S.
2. Students should understand the constitutional issues impacting marriage and family and identify restrictions on marriage.
3. Students should understand the ways in which family law statutes and decisions intersect with issues of race, gender, and class, both historically and currently.
4. Students should be able to identify a common law marriage and apply this doctrine to hypothetical situations. They should be able to explain their conclusion and the rationale for their conclusion. They should be able to identify the policy underlying common law marriage.
5. Students should understand the difference between the dissolution of marriage and annulment. Students should be able to identify the grounds and defenses in dissolution actions as well as understand the legal process of family law proceedings.

6. Students should be able to distinguish between marital and non-marital assets; and understand the differences between various state statutes concerning distribution of property upon divorce. They should understand the rules governing maintenance. They should be able to analyze a fact situation, determine whether assets will be subject to the divorce process, how they should be divided, and explain their conclusion and the rationale for their conclusion.

7. Students should be able to identify different doctrines for resolving child custody disputes and understand how they have evolved over time. They should be able to apply those doctrines governing child custody and apply those doctrines to hypothetical situations. They should be able to explain their conclusion and the rationale for their conclusion.

8. Students should be able to identify and distinguish between the jurisdictional issues surrounding the parties, the assets, and the children in a dissolution or child custody proceeding, including transnational jurisdictional issues.

9. Students should be able to identify the elements of pre-marital and marital contracts. They should be able to analyze a fact situation, determine whether such an agreement will be upheld, and explain their conclusion and the rationale for their conclusion.

### **Skills**

1. Students will enhance their skills in reading and analyzing statutes, reading and analyzing cases, and problem solving.

2. Students will enhance their skills in identifying relevant issues, determining what legal principles are relevant, and in applying the appropriate legal principles to particular hypotheticals to justify a particular conclusion. Students will enhance their written and oral communication skills.

3. Students will identify the professional skills needed for competent representation of family law clients. Although this is not a skills class, students will have some opportunities to practice professional skills in a family law simulation.

4. Students will obtain experience in answering bar type family law questions.

### **Values**

Students will gain a basic understanding of client behavior and ethical principles governing representation of clients in the family law context.

Students will demonstrate professionalism in meeting course outcomes in terms of attendance, communication and preparedness for class.

### **Text**

Areen et al, Family Law: Cases and Materials, 7th Edition. Students will also be responsible for obtaining other course materials as assigned.

The syllabus and assignments are subject to change. I may add or update with new materials. I will also be arranging to have guest speakers come to class from time to time. Flexibility in scheduling is important and may result in additional changes to the syllabus.

### **Attendance**

I consider class attendance and participation to be extremely important and I believe that not only your success, *but the success or failure of our class will depend*, in part, upon the preparation and participation of each student in the class.

Pursuant to Vermont Law School's attendance policy, you are required to attend all classes except where religious observance, serious illness, personal emergency or a reason that is adequate in the judgment of the professor prevent attendance. If a student is absent from twenty (20%) of the regularly scheduled classes without adequate excuse, the student shall be automatically withdrawn from the course with a grade of F-Wd.

### **Grades**

There will be three major methods of evaluation in this course. Class attendance and participation are required. Your class participation will be worth 15% of your grade. If you pass three times when called upon, you will be given a grade of zero for class participation. If you are participating virtually, you are required to keep your video turned on during class; this is also part of your class participation grade. You will participate in a negotiation exercise that will constitute 25% of your final grade. The final will be a closed book exam. You will be able to bring in an outline (7 pages total). The final will constitute 60% of your final grade. The percentages and assignments are subject to adjustment or change as necessary.

### **Office Hours**

My office hours will be on Thursdays from 1:00 p.m. to 5 p.m.; you may also opt to schedule a time to meet with my TA Chris Constantino. Chris will have office hours in the main lobby of the library on Mondays between 11:30 a.m. and 1 p.m., as well as by appointment. It is possible that things will come up for me and I may need to be on a call or attending other meetings on campus, so if I am away from my desk during these hours, please just send me a chat message, and I will get back to you as soon as I can. You may also reach me by email at [molnek@vermontlaw.edu](mailto:molnek@vermontlaw.edu).

## Family Law Class Assignments

**Class #1:** Tuesday, August 31:

Read: pp. 1-25 of the text

Describe your definition of "family" by completing this sentence and bringing it to class. "A family"... (fill in the blank, one sentence only).

Listen to Podcast: The Nuclear Family Was A Mistake.

<https://www.theatlantic.com/magazine/archive/2020/03/the-nuclear-family-was-a-mistake/605536/>

**Class #2:** Thursday, September 2:

Restrictions on who may marry; Constitutionality of Marriage Restrictions:

**14:**

Read:

pp. 48-52: Race, Dignity, and the Right to Marry

(Supplemental: Feminist theory: pp. 52-59)

(Supplemental: Intro pp. 61-67)

pp. 67-76: Loving v. Virginia

**Class #3,** Tuesday, September 7:

pp. 92-110: Obergefell

Zablocki?

Turner?

**Class #4:** Thursday, September 9:

**48**

Traditional Restrictions on who may marry:

-incest, age, polygamy.

Read:

pp. 111-120 - State v. Sharon; Back v. Back; Levi-Strauss article; Margaret Mead article

pp. 121-141 -In Re JMN; Collier v. Fox

**Class #5:** Thursday, September 9:  
Traditional Restrictions, continued:  
pp. 152-160 State of mind restrictions: Lester, Johnston, Farr

Common Law Marriage  
Read: pp. 160-171-Hargrave/Duval; Coon

**Class #6:** Tuesday, September 14:

**23**  
The Traditional Model of Marriage  
Read text pp. 173-182;

Intro to Domestic Violence:  
pp. 297-310;  
Wynona Ward, Have Justice Will Travel – guest speaker

**Class #7:** Thursday, September 16:

13 plus  
14  
12  
= 39  
Domestic Violence cases and articles  
Read pp. 311-324  
Read text pp. 336-350  
pp. 350-362

**Class #8,** Tuesday, September 21:

Fault/defenses/no fault grounds for divorce:  
Read: pp. 775-798; 807-816

**Class #9,** Thursday, September 23:

Custody issues: Applying the Best Interest Standard  
Read: pp. 940-960; 966-974

**Class #10,** Thursday, September 23:

No assigned reading. Get started or catch up on your outline!  
Parental Alienation lecture

**Class #11**, Tuesday, September 28:

Custody issues: Child's preference, Counsel for the child, Joint Custody:  
Text: pp. 974-985;

Parenting plans:  
Review: pp. 1006-1028

On Teams:  
Review very light article on joint parenting

**Class #12**, Thursday, September 30:

**17**  
Divorce issues: Division of Property and Debt  
Text pp. 1111-1128 - Innerbichler, Holder

**Class #13**, Tuesday, October 5:

Text pp. 1134-1139 Laing (pensions)  
Text pp. 1152-1166 -Polacheck, Tucker, Finan

**Class #14**, Thursday, October 7:

**31**  
Spousal Support (Alimony)  
Read: pp. 1166-1192  
Read: pp. 1193-1198 (article)

**Tuesday, October 12:**

Fall Recess – Indigenous People's Day  
No class

**Class #15, Thursday, October 14:**

**38**

Child Support:

Read: pp. 1208-1230

Review Vermont's Child Support Statute on Westlaw: 15 VSA 656

Answer the question: What model of child support does Vermont follow?

**Class #16, Tuesday, October 19:**

Child Support, pp. 1237-1242, 1245-1246 (notes only), 1249-1251, 1267-1270.

**Class #17: Thursday, October 21:**

**39 – not including apel**

Alternative Dispute Resolution: pp. 1407-1424

**Class #18: Tuesday, October 26:**

Alternative Dispute Resolution: Collaborative Law pp. 1424-1434

Nanci Smith

Supplemental reading: Prof. Susan Apel article on TEAMS – Collaborative Law.

**Class #19, Thursday, October 28:**

Read: Bargaining in the Shadow of the law, text pp. 1356-1362

Review all negotiation materials and instructions

In class you will meet your "client"

We will use the remainder of class time to meet with your co-counsel; research, prepare calculations, income and expense sheets, etc.

**Class #20, Tuesday, November 2:**

Prepare for your meeting with opposing counsel; Begin negotiations.

**Class #21, Thursday, November 4:**

Negotiate with opposing counsel

After negotiations are complete; draft final agreements with your group of 4.

Final stipulations will be due no later than 4:59 p.m. on Friday.

Submit to Brenda Caron – Waterman, First Floor

Points will be deducted for late submissions.

If you have not submitted your stipulation by this time (you haven't been able to settle), you must meet with me, the judge, in the conference room on the first floor of Waterman, for a settlement conference. The judge will not be pleased.

**Class #22, Tuesday, November 9:**

No assigned reading. Use this time to catch up on your outline!

Review negotiations

**Class #23, Thursday, November 11:**

Unmarried Adults

Read text pp. 581-594

Uniform Law

**Class #24, Tuesday, November 16:**

Begin study of Assisted Reproductive Technologies:

Read text pp. 665-692 (Baby M; In Re X and Y)

(Listen to RadioLab: link is on TWEN)

**Class #25, Thursday, November 18:**

ART and the unmarried partner's parental status, pp. 693-709; 713-729

Access to Genetic Information and Contact with the Gamete Donor

Read text pp. 734-738

**Class #26, Tuesday, November 23:**

Third parties: 1064-1073; including Troxel/GP visitation: on pp. 448-457



De Facto Parents; 1074-1085

Thursday, November 25  
No Class – Thanksgiving Day

**Class #27**, Tuesday, November 30:

Family Law Jurisdiction, Recognition and Choice of Law  
Read Text pp. 1277-1290 (Skim Ankenbrandt)

UCCJEA Text pp. 1290-1314

**Class #28**, Thursday, December 2:

Property, Spousal, and Child Support Jurisdiction  
Text pp. 1314-1343.

**Class #29**, Tuesday, December 7:

Pre-marital contracts: 1362-1387.

**Class #30**, Thursday, December 9:

TBD

Reading Period: Monday and Tuesday, December 13 and December 14.  
Final Exam: TBD; closed book, outline only