

Family Law

Professor Olnak - Summer 2022

Syllabus

I am looking forward to meeting all of you and teaching family law live and in the classroom this summer. Class will meet on Mondays and Wednesdays from 1:00 to 3:00 p.m. in the Map Room. There will be two Friday classes, during the first two weeks of the term: Friday June 3 and Friday June 10. Please check the syllabus as assignments are subject to change.

Course Description

This course offers a survey of family law, including journal articles (both legal and from a social science perspective), 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. Please be aware that this although this is a condensed summer course, you will be expected to do the same amount of reading and preparation as you would in the fall or spring semesters.

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 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.
6. Students should understand the difference between the dissolution of marriage and annulment. Students should be able to identify grounds and defenses for dissolution actions as well as understand the legal process of family law proceedings at the trial and appellate levels.
7. 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.
8. Students should be able to identify, explain and apply the evolving rules that pertain to parentage of children, including children conceived through Assisted Reproductive Technology.
9. 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. They should be familiar with rules regarding child support and demonstrate the ability to calculate child support based on different fact patterns.
10. Students should be able to identify the different jurisdictional issues involved in any family law proceeding, including the court's ability to assert jurisdiction over the parties, the assets, and the children, as well as identify and apply transnational jurisdictional issues.

Skills

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

1. Students will demonstrate respect for other students of different backgrounds and diverse views.
2. Students will demonstrate professionalism in meeting course outcomes in terms of attendance, communication, and preparedness for class.
3. Students will gain a basic understanding of client behavior and ethical principles governing representation of clients in the family law context.

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 may also arrange 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, I am required to record class attendance. If a student is absent from twenty (20%) of the regularly scheduled classes, the student shall be automatically withdrawn from the course with a grade of F-Wd. In this summer class, this means that if a student has missed more than 3 classes, they will be automatically withdrawn from the course with a grade of F-Wd. I have no authority to excuse any absence or to allow more absences than the Attendance Policy allows. For more information, please speak directly with the Registrar's Office.

Grades

There will be three major methods of evaluation in this course. Class attendance and participation are required. Your class participation will be worth 20% of your grade. You will participate in a negotiation exercise that will constitute 25% of your final grade. The final will be a closed book exam. The final will constitute 55% of your final grade. The percentages and assignments are subject to adjustment or change as necessary.

Office Hours

I will almost always be available right after class for thirty minutes to answer any questions. If you would like to meet me at another time, please send me a message on teams. I can be flexible and meet in my office or online, whichever is convenient for you. You may also reach me by email at molnek@vermontlaw.edu. My office is located at #306 Waterman.

Family Law Class Assignments

Class #1: Wednesday, June 1:

Text: pp. 1-25

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

Text: pp. 61-67: Intro and articles, "What is marriage" and "What if marriage is bad for us"

Listen to Podcast: The Nuclear Family Was A Mistake.

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

The first class is a broad overview, but please take notes of the reading so that we can have a full discussion of the topic.

Class #2: Friday, June 3:

Restrictions on who may marry; Constitutionality of Marriage Restrictions:

Text pp. 49-59 "Race, Dignity, and the Right to Marry", Bowman and Schlafly articles;

Text: pp. 67-76: Loving v. Virginia

Text: pp. 92-110: Obergefell

Class #3: Monday, June 6:

Traditional Restrictions on who may marry:

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

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

Text: pp. 152-160 State of mind restrictions: Lester, Johnston, Farr

Class #4: Wednesday, June 8:

Common Law Marriage:

Text: pp. 160-171-Hargrave/Duval; Coon

Unmarried Adults:

Text: pp. 581-609

Uniform Cohabitants' Economic Remedies Act on Teams

Class #5: Friday, June 10:

The Traditional Model of Marriage

Text: pp. 173-182;

Intro to Domestic Violence:

Text: pp. 297-310;

Text: pp. 311-324

Text: pp. 336-362

Class #6: Monday, June 13:

Fault/defenses/no fault grounds for divorce:

Read: pp. 775-798;

Defenses: 708-807

No fault grounds 807-816

Class #7: Wednesday, June 15:

Custody issues: Applying the Best Interest Standard

Read: pp. 940-960; 966-974

Parental Alienation lecture

Class #8: Wednesday, June 22:

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 #9: Monday, June 27:

Divorce issues: Division of Property and Debt

Text pp. 1111-1128 - Innerbichler, Holder

Text pp. 1134-1139 Laing (pensions)

Class #10: Wednesday, June 29:

Text pp. 1152-1166 -Polacheck, Tucker, Finan

Spousal Support (Alimony)

Read: pp. 1166-1192

Read: pp. 1193-1198 (article)

Class #11: Monday, July 11:

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?

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

Class #12: Wednesday, July 13:

Alternative Dispute Resolution: pp. 1407-1424

Article: Murphy, Singer: pp. 1431-1434

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

Alternative Dispute Resolution: Collaborative Law pp. 1424-1430

Prof. Susan Apel article on TEAMS – Collaborative Law.

Class #13: Monday, July 18:

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 #14: Wednesday, July 20:

Prepare for your meeting with opposing counsel; conduct negotiations.

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 #15: Monday, July 25:

The reading material for today has been posted in the general channel on teams.

Review negotiations.

Begin study of Assisted Reproductive Technologies:

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

Listen to RadioLab: link: <https://www.wnycstudios.org/podcasts/radiolab/articles/birthstory2018>

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

(skip Conover – we will read it next week)

Class #16: Wednesday, July 27:

Access to Genetic Information and Contact with the Gamete Donor

Read text pp. 734-738

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

De Facto parents; 1074-1085

Class #17: Monday, August 1:

Family Law Jurisdiction, Recognition and Choice of Law

Read Text pp. 1277-1280 (Skim Ankenbrandt – it should be familiar)

UCCJEA Text pp. 1286-1314

Property, Spousal, and Child Support Jurisdiction

Text pp. 1314-1343.

Class #18: Wednesday, August 3:

Pre-marital contracts: 1362-1387

Reading Period: August 5

Final Exam: TBD; closed book