

FAMILY LAW
Fall 2006
T, Th, 10:30-11:45 AM

Contact information

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About the course

This course will address the legal rules governing marriage and divorce. The course will focus in particular on how these rules differ depending on whether the family is wealthy or poor, traditional or nontraditional, self-supporting or receiving public aid. This course will cut across traditional law school disciplines, such as civil, criminal, and constitutional law. We will consider important and complex questions, for example,

- What is a “family”? This theme will arise throughout the course as we examine how the definition of “family” varies according to the context, reflecting society’s values and policy goals.
- How does, and how should, family law address nontraditional families?
- How do race, gender, and class affect family law?

Please note that we will address sexually explicit material throughout the semester. If at any time this material makes you uncomfortable, please see me and we can discuss possible accommodations.

Required texts

- Judith Areen & Milton C. Regan, Jr., FAMILY LAW: CASES AND MATERIALS (5th ed. 2006)
- Additional reading. There will be numerous additional readings posted to the TWEN course page and on reserve in the library. The syllabus notes the location of such readings.

Class expectations and requirements

Final exam. There will be a three-hour, open-book final examination. This will count for 50% of your final grade.

Divorce negotiation. On October 31st and November 2nd the entire class will take part in a divorce negotiation exercise. I will provide the details of the exercise closer to the date, but the basic requirements are that you submit one paper (approximately 5-6 pages) on the first day of the negotiation (October 31st), participate in the two-day negotiation, which will result in a written settlement agreement, and then submit both the

settlement agreement and a short (2-3 page) reflection paper ten days after the negotiation concludes. You will receive the divorce negotiation package on October 19th. Your attendance at the two classes on October 31st and November 2nd is crucial, so please start planning now to ensure your availability on those two days (*e.g.*, mitigate clinic conflicts, rearrange personal commitments, etc.). The divorce negotiation and related papers will count for 50% of your grade.

Class participation. I highly value class participation and will count it toward your final grade. I expect you to be prepared to talk every class and will call on you without prior notice. If, however, you are unable to prepare for class on a particular day because of extenuating circumstances, please attend class. Leave a note with your name on it on the desk at the front of the room (*before the start of class*) and I will not call on you during that class. You may not use this “pass” more than three times during the semester. If you do not leave me a note but are unprepared when I call on you, your grade will be negatively affected.

In addition to the on-call system, voluntary participation is encouraged. Your grade will be positively affected by consistent, insightful contributions. Substantive postings to the TWEN discussion site count toward class participation.

Working together. I encourage you to speak up if you are not happy with any aspect of this class. Learning is a collaborative endeavor and we share responsibility for making this a good educational experience for you. I am always happy to contemplate changes to the course, but first I need to know that something is amiss. So I welcome your feedback throughout the semester.

Grading. To reiterate, 50% of your grade will be your final exam, 50% of your grade will be the divorce negotiation and related papers. Adjustments will be made up and down for class participation.

Class policies

Disability accommodations. The University of Colorado has a written policy on accommodating people with disabilities. If you qualify for accommodations because of a disability, please submit to me a letter from Disability Services in a timely manner so that your needs may be addressed. Disability Services determines accommodations based on documented disabilities. Contact: 303-492-8671, Willard 322, and www.Colorado.EDU/disabilityservices. The contact person for questions regarding For additional assistance, you may also contact the law School’s Assistant Dean Lorenzo Trujillo (303-492-6682, lorenzo.trujillo@colorado.edu).

Religious accommodation. The University of Colorado has a written policy on accommodations for religious observances and obligations. The policy requires that faculty make every effort to reasonably and fairly deal with all students who, because of religious obligations, have conflicts with scheduled exams, assignments or required attendance. In this class, if you need an accommodation, please notify me at least one week in advance so we can work together on an appropriate accommodation. Any work

missed can and should be made up. For the details of the University's policy, please see http://www.colorado.edu/policies/fac_relig.html

Classroom behavior. The University of Colorado has a written policy on classroom behavior. Students and faculty each have responsibility for maintaining an appropriate learning environment. Students who fail to adhere to such behavioral standards may be subject to discipline. Faculty have the professional responsibility to treat all students with understanding, dignity and respect, to guide classroom discussion and to set reasonable limits on the manner in which they and their students express opinions. Professional courtesy and sensitivity are especially important with respect to individuals and topics dealing with differences of race, culture, religion, politics, sexual orientation, gender variance, and nationalities. Class rosters are provided to the instructor with the student's legal name. I will gladly honor your request to address you by an alternate name or gender pronoun. Please advise me of this preference early in the semester so that I may make appropriate changes to my records. See policies at <http://www.colorado.edu/policies/classbehavior.html> and at http://www.colorado.edu/studentaffairs/judicialaffairs/code.html#student_code

Sexual harassment. The University of Colorado at Boulder policy on Discrimination and Harassment (<http://www.colorado.edu/policies/discrimination.html>), the University of Colorado policy on Sexual Harassment, and the University of Colorado policy on Amorous Relationships apply to all students, staff and faculty. Any student, staff or faculty member who believes s/he has been the subject of discrimination or harassment based upon race, color, national origin, sex, age, disability, religion, sexual orientation, or veteran status should contact the Office of Discrimination and Harassment (ODH) at 303-492-2127 or the Office of Judicial Affairs at 303-492-5550. Information about the ODH and the campus resources available to assist individuals regarding discrimination or harassment can be obtained at <http://www.colorado.edu/odh>

The sexual harassment policy requires all supervisors, which includes all faculty members, who experience, witness or receive a written or oral report or complaint of sexual harassment or related retaliation to promptly report it to the campus sexual harassment officer. This means that as a faculty member, I must report all allegations of sexual harassment that come to my attention; however, there are several offices on campus that can provide free, confidential guidance to faculty, staff and students who believe they have been sexually harassed. A complete list of these offices can be found at: <http://www.colorado.edu/sexualharassment/resources.html>

Care of dependents. Finally, although there is no University or Law School policy regarding students who are pregnant or who are taking care of young or elderly dependents, I am open to making reasonable accommodations for such students. Please see me in advance so that we can work out any necessary accommodations.

Reading Assignments

CB = Casebook

I. What is a Family?

Class 1:

CB 2-10

Older Women Team Up to Face Future Together, Jane Gross, THE NEW YORK TIMES (Feb. 27, 2004) (available on TWEN under “Course Materials”)

Class 2:

CB 28-38, 1118-24 (we will discuss these cases in the following order: *Penobscot* and *Vallorosi*, then, later in the class, *Village of Belle Terre* and *City of East Cleveland*)

II. Marrying

For this unit, please print out, read, and bring to class the following Colorado statutes

Purposes [[C.R.S.A. § 14-2-102]]

Formalities [[C.R.S.A. § 14-2-104]]

Solemnization and registration [[C.R.S.A. § 14-2-109]]

Prohibited marriages [[C.R.S.A. § 14-2-110]]

Declaration of invalidity [[C.R.S.A. § 14-10-111]]

Class 3:

Incest and age restrictions

CB 83-91, 95-99

The Truth About Cousin Couples, Anjana Ahuja, THE TIMES (LONDON) (April 29, 2002)

Class 4:

Monogamy

CB 99-109

Polygamy now!, Elizabeth Joseph, HARPERS MAGAZINE (Feb. 1, 1998)

The Persistence of Polygamy, Timothy Egan, THE NEW YORK TIMES SUNDAY MAGAZINE (Feb. 28, 1999)

Class 5:
Constitutionality of restrictions
CB 58-74

Class 6:
Procedural and state of mind restrictions
CB 130-141

Class 7:
Opposite-sex requirement, civil unions, and same-sex marriage
CB 109-21

Class 8:
Common law marriage
CB 141-145

Defending Against a Common Law Marriage Claim, COLORADO
LAWYER (March 2005) (available on Westlaw with the following
cite: 34-MAR COLAW 69)

Recognition of marriage in other states
Full, Faith & Credit Clause (Const. Art IV, § 1) (posted on TWEN)

CB 121-26

Laurence Tribe, Toward a Less Perfect Union, THE NEW YORK
TIMES (posted on TWEN)

III. Dissolution of marriage

Class 9:
Introduction
*When Every Relationship is Above Average: Perceptions and
Expectations of Divorce at the Time of Marriage*, Lynn A. Baker
& Robert E. Emery, 17 LAW AND HUMAN BEHAVIOR 439 (1993)
(on reserve in the library)

The 37-Year Itch, Alex Kuczynski, THE NEW YORK TIMES (Aug. 8,
2004) (posted on TWEN)

Fault-based divorce

CB 357-374

Class 10:

No-fault divorce

CB 374 - top of 378, 380-88

C.R.S.A. § 14-10-106

C.R.S.A. § 14-10-110

“Divorce Laws and Family Violence,” National Bureau of Economic Research,
<http://www.nber.org/digest/mar04/w10175.html>. You are responsible only for the digest review of this study, available at the above link.

Class 11:

Religious limits on civil divorce

CB 408-15

Dissolution of relationships of unmarried co-habitants

CB 779-82

Ann Laquer Estin, *Ordinary Cohabitation*, 76 NOTRE DAME L. REV. 1381 (2001)

IV. Consequences of Divorce

Class 12:

Child custody

C.R.S.A. § 14-10-124

CB 525-38, 554-57, 566-79, 588-91

Class 13:

Child custody cont'd

CB 538-54

In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004)

Class 14

Relocation and visitation

Ciesluk v. Ciesluk, 113 P.3d 135 (Colo. 2005)

CB 612-21

Class 15:

Property distribution and spousal support

CB 696-706, 709-19

Who Really Owns the Family Wage?, ANN CRITTENDEN, THE PRICE OF MOTHERHOOD (2001) (on reserve) pages 149-61

Class 16:

Property distribution and spousal support (cont'd)

CB 722-27, 734-37, 746-52, 763-69

You will receive the divorce negotiation materials in this class period (Oct. 19th) and have until October 31st, the first day of the negotiation, to write the first paper.

Class 17:

Child support

Tough Child Support Laws Put Poor Fathers in a Bind, Leslie Kaufman, NEW YORK TIMES (Feb. 19, 2005) (on TWEN)

FindLaw article to be distributed in previous class

Class 18:

Child and family investigators

For Arbiters in Custody Battles, Wide Power and Little Scrutiny, Leslie Eaton, THE NEW YORK TIMES (May, 23, 2004) (on TWEN website)

Classes 19 & 20 (October 31st & Nov. 2nd):

Divorce negotiation (meet in room at beginning of class, then break into small groups; no need to return at end of period)

Later in the semester I will distribute a syllabus for the remaining classes. In those classes we will cover marriage (as opposed to getting married), jurisdiction (a difficult but very important topic), and the practice of family law (which will entail a series of guest speakers who will talk about the actual practice of family law).
