

# **Family Law**

University of Missouri School of Law  
Fall Semester 2021

Instructor: Jennifer Riedy Clark

Time: 9:30 a.m. – 10:45 a.m. Tuesday and Thursday in Room 112 (Courtroom)

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## **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 (including the changed landscape concerning marriage by same-sex couples); 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, upon successful completion of the course:

- have basic 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;
- have a basic knowledge and understanding of how common law principles and statutory law shape family law and have evolved over time;
- possess the ability to perform legal analysis, reasoning, and problem-solving concerning family law issues, and to convey such analysis, reasoning, and problem solving in written and in oral communication;
- understand the role of lawyers in family law matters and the proper professional and ethical responsibilities that lawyers engaged in family law practice have to clients and the legal system.
- be able to think critically about family law and its role in society; and
- understand how family law interrelates with other areas of law.

Students will be assessed on these learning objectives during the semester through:

- individual class participation in-person or by participating in online discussions through the Family Law Canvas Course
- students will be required to complete unit quizzes that will be available on the Family Law Canvas course (these quizzes will be ungraded, but will be required to be fully completed as part of the class participation grade)
- at the end of the semester, writing a final examination testing their substantive knowledge of family law

## **Required Course Material**

The required text is Abrams, Cahn, Ross, Meyer, and McClain, *Contemporary Family Law* (Thompson West, 5<sup>th</sup> ed. 2019). Further, I will provide statutory supplements that will be available on the Family Law Canvas course which you can access at [courses.missouri.edu](https://courses.missouri.edu) by logging in with your pawprint. During the semester, I may assign additional readings including any updates to the casebook which will be posted in the Family Law Canvas course and you will be notified well in advance.

## **Course Evaluation**

A Final examination will be the primary instrument for assessing students on the learning objectives listed above. It will be a 3-hour examination. The format of the exam has not been fully determined but may contain long essay, short answer and multiple-choice questions. The final exam will be worth 100% of your final grade.

## **Attendance Policy**

According to the American Bar Association accreditation guidelines, class attendance is required and expected of all students. I will record your attendance at the beginning of each class session. If you have to miss a class because of illness or Covid related issues, the “Accommodation” policy described below explains what you should do to satisfy the requirement of your attendance and class participation. You are permitted three (3) absences with no penalty. With each subsequent absence, one (1) point will be deducted from your final grade (up to 4 points). If you miss more than 6 classes (20% of the classes), you will be withdrawn from the course unless there are especially compelling circumstances.

## **Course Policies, Classroom Rules, and Course Requirements**

Classroom goals and environment: My goal is to foster a classroom atmosphere open to intellectual exchange and in which students freely discuss the readings in a manner respectful of each other’s opinions and in a cooperative spirit. The family is at the heart of many contentious legal, political, and social debates. Family Law is also a very dynamic area of law and intersects with many other areas of law. More fundamentally, this course and the practice of family law focus on people’s relationships. Everyone has some experience with a family as a child, parent, and/or intimate partner, and people often have strongly held views about family values issues. Your own familial background may affect your perspective on the issues we will address in the course, and your views may also be influenced by public discussion and media coverage of family law issues. We will have ample opportunity during the semester to discuss your views on various family law issues and the appropriate role of law in

regulating the family; the free exchange of ideas will help enrich the semester. Throughout these discussions, it remains important to look at the role of law in structuring the family and to ground policy-making the law.

Advisory on course content and terminology: In this course, which is a survey of family law, one topic we may cover is the law's changing response to intimate partner violence/domestic violence and well as spousal mistreatment or child abuse. I will try to alert you to those cases in advance if we cover them.

Also a few points about terminology: first, most of the cases in the casebook are fairly recent, but we also read some cases dating back several decades. In the context of cases involving race discrimination and sexual orientation discrimination, you will see that judges and Supreme Court justices employ some terms that were prevalent at the time (including in legal materials, such as statutes) but are no longer as prevalent or accepted today. Second, most of the materials we will read will use gendered terms, such as "husband", "wife", "mother," and "father," and also the pronouns "he/him/his" or "she/her/hers." Students will notice some shift in those terms as states have opened up civil marriage to "two persons," rather than only to one man and one woman, and as the law of parentage has expanded to include new pathways to legal parenthood. I realize that some people seek to avoid pronouns that attribute gender, and I will try to limit the use of singular pronouns when possible.

## **Decreasing the Risk of COVID-19 in Classrooms and Labs**

**If you are experiencing any COVID-related symptoms**, or are otherwise feeling unwell, do not attend in-person classes and contact your health care provider and/or student health immediately. COVID symptoms include: fever greater than 100.4 or chills; cough, shortness of breath or difficulty breathing; fatigue; unexplained muscle or body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; diarrhea. If you are unable to attend a scheduled class due to illness or medical reasons, course sessions will be recorded for your review. See the Communication, Accommodation, and Pivot Plan below for more information.

- We will all wear **face coverings while in the classroom**, unless you have a documented exemption due to a disability or medical condition. You are responsible for bringing your own mask. I will have an extra mask available for your use if you do not have one. I will contact the Dean of Students if you do not wear a mask and do not have a documented exemption due to a disability or medical condition.
- Online office hours will be available for all students.
- This course may be recorded for the sole purpose of sharing the recording with students who can't attend class. The instructor will take care not to disclose personally identifiable information from the student education records during the recorded lesson.

Compliance with these guidelines is required for all; anyone who fails to comply will be subject to the accountability process, as stated in the University's Collected Rules and Regulations, Chapter 200 Student Code of Conduct.

If an instructor has concerns about how a student is following COVID-19 policies and protocols, please report those concerns to the Office of the Dean of Students. You can fill out a COVID Safety Measures Reporting Form

here: [https://cm.maxient.com/reportingform.php?UnivofMissouriSystem&layout\\_id=38](https://cm.maxient.com/reportingform.php?UnivofMissouriSystem&layout_id=38)

By taking the above measures, we are supporting your health and that of the whole Mizzou community. Thank you in advance for joining me and your peers in adhering to these safety measures.

## **Academic Dishonesty**

Academic integrity is fundamental to the activities and principles of a university. All members of the academic community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The academic community regards breaches of the academic integrity rules as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including failing the course for any violation, to disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

## **Academic Inquiry, Course Discussion and Privacy**

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in [section 200.015](#) of the Collected Rules and Regulations. In this class, students may not make audio or video recordings of course activity, except students permitted to record as an accommodation under [section 240.040](#) of the Collected Rules. All other students who record and/or distribute audio or video recordings of class activity are subject to discipline in accordance with provisions of [section 200.020](#) of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.

Those students who are permitted to record are not permitted to redistribute audio or video recordings of statements or comments from the course to individuals who are not students in the course without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of [section 200.020](#) of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.

## **Communication, Accommodation and Pivot Plan**

Please note the following:

- **Communication.** This Syllabus addresses how you may communicate with me during the course, both at the beginning and if it becomes necessary to transition the course to fully remote. You can email me or call me on my office or cell if there is an emergency. I will be holding office hours twice a week (Mondays and Wednesdays from 3:30-5:00 p.m.) which can be held either in-person or remotely via zoom. I will also meet with students at other times by appointments.

- **Accommodation.** If you are unable to attend a scheduled class in person due to illness or medical reasons, here is an explanation of how you should plan to participate:
  - If you are unable to attend a scheduled class, I will record the class and post the recording on the class Canvas site for your review. I will treat you as “present” for the class once you have certified to me that you have reviewed the recorded class and written a 500-word minimum reflection regarding the recorded lecture for that specific class on the course Canvas page.
- **Pivot.** If pandemic-related circumstances require the course to be moved fully online, scheduled class meetings will simply shift to synchronous Zoom sessions. Any such sessions will be recorded and posted on the class Canvas site for the duration of the semester and viewable by all students. Otherwise, the basic structure and coverage of the class will not change, other than all communication between you, your classmates, and myself will be fully remote. The accommodation plan above will still be in place for students that are unable to participate in the synchronous zoom meeting.

## **Assignments**

Generally, I will give out the reading assignments on the last class day of each week for the following week. I will post the assignments on Canvas and announce them in class. Beginning after the first week of classes, I will assign specific cases and problems to students who are expected to be on call for those that day. Below, please find the reading assignments for the first week of class. After that, please find an outline of the course with the list of chapters and topics we will cover in the approximate order we’ll cover them. I will also set up modules in the Canvas course that will loosely correlate with each topic we will cover. These modules will include the reading assignments, accompanying statutory provisions, and any other problems or discussion questions we will review.

### **Week 1 (Aug 24, 26)**

#### **August 24:**

- I. Marriage, Family and Privacy in Contemporary America (Chapter 1)
  - a. The American Family Today
  - b. Families and the Law: Public Law
  - c. The Status and Conditions of the Family Law Practice

***Reading: CB Chapter 1, pg. 1-20 and pg. 55-63***

#### **August 26:**

- d. Ethics in Contemporary Family Law Practice (Chapter 14)
  - i. Ethical Foundations
  - ii. Access to Domestic Relations Counsel
  - iii. Client Confidences
  - iv. Conflicts of Interest

- v. Obligation to Third Parties and Opponents
  - vi. Obligations to the Parties' Children
  - vii. Domestic Misconduct by Lawyers
  - viii. The Relationship Between Ethics and Malpractice
- Reading: CB Chapter 14, pg. 989-1014**

**Subject Matter—An Outline of the Course**

- I. Marriage, Family and Privacy in Contemporary America
  - a. The American Family Today
  - b. Families and the Law: Public Law
  - c. Families and the Law: The Right of Privacy
  - d. The Status and Conditions of the Family Law Practice
- II. Ethics in Contemporary Family Law Practice
  - a. Ethical Foundations
  - b. Access to Domestic Relations Counsel
  - c. Client Confidences
  - d. Conflicts of Interest
  - e. Obligations to Third Parties and Opponents
  - f. Obligations to Parties' Children
  - g. Domestic Misconduct by Lawyers
  - h. The Relationship Between Ethics and Malpractice
- III. Entering Marriage
  - a. Substantive Requirements for Entry into Marriage
  - b. Polygamy
  - c. Incestuous Marriage
  - d. Minimum Age at Marriage
  - e. Consent to Marriage
  - f. Annulment
  - g. Marriage Formalities
  - h. Common-Law Marriage
  - i. The Putative Spouse Doctrine
- IV. Nonmarital Couples
  - a. Intent (Contract Based Agreements)
  - b. Status -Based Property Rights
  - c. Other Incidents of Nonmarital Cohabitation
  - d. Domestic Partnerships, Civil Unions, and Other Legal Statuses
- V. Establishing Parenthood
  - a. Marital and Nonmarital Parents
- VI. Divorce
  - a. Divorce in Historical Context
  - b. Contemporary Grounds for Divorce
  - c. Fault-Based Divorce
  - d. No-Fault Divorce
  - e. Questioning No-Fault Divorce
  - f. Legal Separation
- VII. Division of Marital Property at Dissolution
  - a. Property Regimes During Marriage and at Divorce

- b. Characterization and Treatment of Separate Assets
- c. The Contributions of Homemakers
- d. The New Property and Its Common Forms
- e. Valuation, Distribution and Enforcement
- f. What Distribution is Equitable
- g. Debts and Bankruptcy
- h. Have We Achieved Equity?
- VIII. Alimony (Spousal Support)
  - a. Justifications for Alimony
  - b. How Should Courts Award Alimony
  - c. Enforcement of Alimony Awards
  - d. Modification and Termination of Alimony
  - e. Tax Consequences of Alimony
- IX. Child Support
  - a. The Contemporary Landscape and Future Challenges
  - b. The Nature of the Child Support Obligation
  - c. The Federalization of Child Support
  - d. The Operation of State Child Support Guidelines
  - e. Modification of Child Support Orders
  - f. Child Support Enforcement
- X. Child Custody
  - a. Constitutional Considerations
  - b. Evolution of Standards Governing Child Custody
  - c. Factors in Determining Best Interests
  - d. Shared Parenting: Gender Wars or a Sep Forward?
- XI. Visitation and Post-Dissolution Custody Disputes
  - a. Disputes about Major Childrearing Decisions
  - b. Visitation
  - c. Modification of Custody or Visitation Orders
  - d. Parents Who Kidnap Their Own Children
- XII. Alternative Dispute Resolution
  - a. Negotiation
  - b. Mediation
  - c. Arbitration
  - d. Collaborative Family Law
- XIII. Private Ordering in Marriage and Divorce: Premarital, Postnuptial, and Separation Agreements
  - a. Marriage—Contract or Status?
  - b. Premarital Agreements
  - c. Postnuptial Agreements
  - d. Separation Agreements
- XIV. Locations of Family Law Litigation
  - a. Divorce Jurisdiction
  - b. Appropriate Locations for Litigating Alimony and Property Distribution
  - c. Child Custody Jurisdiction
  - d. Support Jurisdiction
  - e. Unified Family Courts