

FAMILY LAW

1. **Course Materials:** The book for the course is D. Kelly Weisberg and Susan Frelich Appleton, *MODERN FAMILY LAW: CASES AND MATERIALS* (1998). I have prepared additional materials, which are available in the Records Office or which can be downloaded; these are referred to on the syllabus as the “Cahn Supplement.” For those of you who would like to do additional reading on family law, I recommend *FAMILY MATTERS* (Martha Minow ed. 1993), which is an interdisciplinary collection of materials, including fiction and law review articles, for basic backgrounds on family law, you may want to consult *DOMESTIC RELATIONS LAW* by Homer Clark (West, 2d ed. 1988), which is the standard (although somewhat dated) treatise on family law; and *FAMILY LAW: ESSENTIAL TERMS AND CONCEPTS* by Randy Kandel (2000) or *UNDERSTANDING FAMILY LAW* by John De Witt Gregory, Peter Swisher, and Sheryl Scheible (1993), which are guides to family law.

2. **Professor's Office Hours:** My e-mail address is ncahn@main.nlc.gwu.edu. My office hours will be on Wednesday from 12:50 p.m. - 2:30 p.m. in Old Main (1922 F Street, NW), Room 403. Because many of you are not at the school during the day, please feel free to call me if you would like to schedule an appointment for another time. I can be reached at (202) 994-6025. I invite any student who wants to discuss further any issues that we have (or have not) discussed in class to speak with me after class or to set up another time to talk. You can also access information through your e-mail log-in system.

3. **Requirements for the course:**

a. *Class participation:* I expect everyone to prepare for class, to attend, and to participate regularly. Where there are problems in the casebook, please think carefully about your answers. I encourage each of you to view this class as a seminar and as an opportunity for you to discuss your thoughts on the readings. We will be focusing on the policy rationales underlying the cases, as well as on images of men, women, and the family.

In order to stimulate class discussion, I plan to use a volunteer system and many small-group exercises. If, however, after a few weeks, this system is ineffective, I will change the class participation system. Moreover, students who recurrently miss class without excuse will not be permitted to take the final examination.

Class participation can affect your grade positively or negatively; it can raise or lower your grade by one grade step (e. g., from B to B+).

b. *Exam:* There will be a **take-home**, open book exam on Thursday, December 13. I will distribute additional instructions as the exam date approaches.

I.	Private Family Choices: Constitutional Protection for the Family and Its Members	1
A.	Evolution of the Right to Privacy	1-24, Supp. pp. 9-14
1.	The Birth of Privacy	
a.	Meanings of Privacy	
b.	<i>Griswold v. Connecticut</i> <i>Eisenstadt v. Baird</i>	
c.	Roots of Privacy <i>Meyer v. Nebraska</i> <i>Pierce v. Society of Sisters</i> <i>Troxel v. Granville</i>	
B.	The Limits of Privacy	49-59
1.	Privacy versus Morality <i>Bowers v. Hardwick</i>	
C.	When Privacy Rights Conflict	79-94
1.	Wives and Husbands <i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i>	Supp. pp. 1-8
2.	Children and Parents <i>Hodgson v. Minnesota</i>	
II.	Getting Married	115-118
A.	Premarital Contracts <i>Simeone v. Simeone</i> <i>In re Marriage of Greenwald</i>	138-151
B.	Getting Married: Substantive and Procedural Regulations	151-170
1.	Constitutional Limits on State Regulation of Entry into Marriage <i>Loving v. Virginia</i> <i>Zablocki v. Redhail</i> <i>Turner v. Safley</i> <i>Wisconsin v. Oakley</i>	Supp. pp. 15-24
2.	State Regulation of Entry into the Marital Relationship	170, 181-211; Supp. pp. 25-50
a.	Substantive Restrictions	
(i)	Capacity to Marry	
(1)	Same Sex <i>Baker v. Vermont</i>	
(2)	Incest <i>State of Missouri ex rel. Miesner v. Geile</i> Note: Void verses Voidable Distinction	
(3)	Bigamy <i>Potter v. Murray City</i> Prosecution of Tom Green	

	(4) Age <i>Moe v. Dinkins</i>	
	b. Informal Marriages	230-239, Supp. pp. 51-56
	(i) Common Law Marriage <i>Jennings v. Hurt</i>	
	(ii) The Putative Spouse Doctrine and Other Curative Devices <i>Spearman v. Spearman</i>	
III.	Being Married: Regulation of the Intact Marriage	241
	A. Introduction: The Changing Nature of Marriage	241-248
	B. Roles and Responsibilities in Marriage	248-263, 285-293
	1. The Common Law View	
	2. Marital Property Regimes	
	3. Duty of Support <i>McGuire v. McGuire</i>	
	4. Parenting	
	a. Pregnancy Leave <i>Cleveland Board of Education v. LaFleur</i>	
	5. Domestic Violence: Wife Beating	357-361, Supp. pp. 57-96
IV.	Alternative Families	397
	A. The Extended Family <i>Moore v. City of East Cleveland</i>	408-416
	B. Cohabitation: Unmarried Couples	416-418, 423-445
	1. Introduction	
	2. Unmarried Couples' Rights Inter Se <i>Marvin v. Marvin</i> <i>Hewitt v. Hewitt</i>	
	C. Parents' and Children's Rights in the Nonmarital Family	505-534
	1. Support Rights of Nonmarital Children <i>Clark v. Jeter</i> <i>In re L. Pamela P. v. Frank S.</i>	
	2. Limitations on Unmarried Parents' Rights <i>Stanley v. Illinois</i> <i>Michael H. v. Gerald D.</i>	
V.	Divorce	535
	A. Introduction	535-541
	1. Divorce as a Historical Phenomenon	
	2. Divorce as a Social Phenomenon	
	B. Fault-Based Grounds for Divorce	542-557
	1. Adultery <i>Lickle v. Lickle</i>	
	2. Cruelty <i>Muhammad v. Muhammad</i>	
	3. Desertion	

	<i>Reid v. Reid</i>	
C.	Fault-Based Defenses	557-564
	1. Recrimination	
	<i>Parker v. Parker</i>	
	2. Condonation	
	<i>Haymes v. Haymes</i>	
D.	No-Fault Divorce	564-590, Supp. pp. 100-101, 139-153
	1. Divorce Reform	
	2. Legal Problems Raised by No-Fault Divorce	
	a. What Is No Fault?	
	<i>In re Marriage of McKim</i>	
	<i>Nieters v. Nieters</i>	
	<i>Bennington v. Bennington</i>	
	b. What Role for Fault?	
	<i>Twyman v. Twyman</i>	
	3. Assessment of the No-Fault “Revolution”	
	a. Divorce Reform in the United States	
	b. Divorce Reform: The Comparative Law Perspective	
E.	Access to Divorce	590-597
	1. Economic Obstacles	
	<i>Boddie v. Connecticut</i>	
F.	The Role of Counsel	608-613, 616-623
	1. Emotional Aspects of Divorce	
	2. Conflicts of Interest	
G.	Divorce Jurisdiction	629-646
	1. Over the Plaintiff and Defendant	
	<i>In re Marriage of Kimura</i>	
	2. Durational Residency Requirements	
	<i>Sosna v. Iowa</i>	
	3. Domestic Relations Exception to Diversity Jurisdiction	
	<i>Ankenbrandt v. Ankenbrandt</i>	
VI.	Financial Consequences of Dissolution	649
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B.	Property Distribution: From Title Theory to Contribution	654-667, Supp. p. 103, 154
	<i>Ferguson v. Ferguson</i>	
	Uniform Marriage and Divorce Act §307	
	American Law Institute, Principles of the Law of Family Dissolution: Analysis and Recommendations §4.18	
C.	Spousal Support: Theories of Need, Self-Sufficiency, and Beyond	666-677, 704-729, Supp. pp. 112
	<i>Orr v. Orr</i>	

- Uniform Marriage and Divorce Act §308
 American Law Institute, Principles of the Law of Family
 Dissolution: Analysis and Recommendations §5.05
- a. Pensions and Employee Benefits
Cohen v. Cohen
 - b. Investments in a Spouse's Future Success:
 Degrees, Earning Capacity, and Goodwill
In re Marriage of Roberts
 - c. Taxation
 - (i) Spousal Support
 - (ii) Transfers of Property to Spouse
 - (iii) Child Support
 - (iv) Other Tax Considerations
- D. Child Support 729-755, Supp. pp. 119-130, 155-164
1. Imposing Support Obligations: From Discretion to Guidelines
Mehra v. Mehra
Cassano v. Cassano
 2. Postmajority Support
Curtis v. Kline
 3. Modification of Child Support
 - a. Remarriage and New Families
Feltman v. Feltman
 - b. Employment Changes
Antonelli v. Antonelli
- E. Enforcement 755-784
1. Traditional Remedies: Contempt
Hicks ex rel. Feiock v. Feiock
 2. New Approaches: From Private to Public Responsibility
 - a. Background
 - b. Modern Remedies
 - (i) Income Withholding
 - (ii) Tax Refund Interceptions, Automatic Seizures, and Administrative Procedures
 - (iii) License and Passport Suspension
 - c. Evaluation: "Small Change?"
 3. The Challenge of Multistate Cases
 - a. Jurisdictional Limitations
Kulko v. Superior Court
Lozinski v. Lozinski
 - b. Rethinking Jurisdiction and Enforcement: UIFSA
Deltoro v. McMullen
- F. Separation Agreements 787-797
1. The Policy of Favoring Settlement
 Uniform Marriage and Divorce Act §306

	2.	Incorporation, Modification, and Enforcement <i>States v. States</i>	
	3.	The Bargaining Process	
VII.		Child Custody	799
	A.	Introduction: Effects of Parental Divorce	800-801
	B.	Parental Disputes Concerning Child Custody	801-933, Supp. pp. 113-115
	1.	Standards for Selecting the Custodial Parent: What Should Be the Standard?	
	a.	Presumptions?	
		(i) Tender Years Presumption <i>Devine v. Devine</i>	
		(ii) Primary Caretaker Presumption <i>Shearer v. Shearer</i>	
	b.	Best Interests of the Child?	
		(i) Introduction Uniform Marriage and Divorce Act §402	
		(ii) Constitutional Factors	
		(1) Race <i>Palmore v. Sidoti</i>	
		(2) Religion <i>Abbo v. Briskin</i>	
		(iii) Fitness	
		(1) Sexual Orientation <i>Tucker v. Tucker</i>	
		(2) Careers <i>Rowe v. Franklin</i>	
		(3) Domestic Violence <i>Dschaak v. Dschaak</i> Note: Physical Disability	
	c.	Joint Custody: Presumption, Preference, or Option? <i>Bell v. Bell</i>	
	2.	Standards Governing the Noncustodial Parent Visitation	
	a.	Restrictions on Visitation <i>Hanke v. Hanke</i>	
	b.	Denial of Visitation <i>Turner v. Turner</i>	
	3.	Standards Governing Parent versus Non-Parent Disputes <i>Painter v. Bannister</i> <i>Alison D. v. Virginia M.</i>	
	4.	The Role of Special Participants	
	a.	The Child's Preference <i>McMillen v. McMillen</i>	
	b.	Representation for the Child <i>Leary v. Leary</i>	

- c. Role of Experts
In re Rebecca B.
 - 5. Modification
 - a. Standard
In re Marriage of Rosenfeld
 - b. Relocation
Tropea v. Tropea
 - 6. Jurisdiction and Enforcement
Schwartz v. Schwartz
California v. Superior Court (Smolin)
In re Mendel
- C. What Process Should Govern Custody Disputes? 934-949
 - 1. The Adversary System versus Mediation Process
McLaughlin v. Supreme Court
 - 2. Coin Flipping