FAMILY LAW 4 credits Fall 2010 MTW 11:20 a.m.-12:30 p.m.

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Required Texts

Most of the reading for this course will be from Judith Areen & Milton Regan, Jr., Family Law: Cases and Materials (5th ed. 2006). Assignments from the casebook are marked "FL" below. Additional readings are contained in the course materials packet. Assignments from the course materials packet are marked "CM" below. The contents of the course materials packet have been uploaded to Bspace. Any additional materials will be distributed via Bspace and email. You are responsible for checking Bspace regularly. The casebook is available for purchase at the Bookstore. Additionally, it is on 1-hour reserve at the law library.

Class Requirements

The class is scheduled to meet on Monday, Tuesday, and Wednesday of each week from 11:20 to 12:30 p.m. I expect that all students will arrive to class <u>promptly</u>, attend class regularly, and be prepared to participate in the class discussion when called upon. If you are unable to attend class due to illness or another emergency, please let me know. If you are unprepared to participate in the class discussion, please let me know in advance of class (i.e. before class starts). Abuse of this option will impact your final grade. If you require clarification of the attendance and participation policies, please refer to § 1.07 of the Academic Rules.

If you need to contact me, please feel free to call me or e-mail me. If you have a substantive question about the class, please come to office hours. <u>I do not answer substantive questions by email or phone</u>.

Makeup Classes

Because it is inevitable that a class or two will be cancelled, I have scheduled a series of makeup classes that will be conducted over the lunch hour on specific days. Attendance at these sessions is considered part of the class requirements. I will announce the dates of these makeup classes.

Examination

At the end of the semester, there will be a 3-4 hour, open-book final examination. You may use the following <u>hard copy</u> materials during the exam: (1) the assigned text and handouts (or Westlaw and Lexis printouts of assigned cases); (2) your class notes; and (3) any outline that you created (individually or as part of a group). All other materials – <u>including electronic copies of the items listed above</u> – are not permitted. If you require an accommodation for the exam, please contact Student Services.

Syllabus

(subject to change)

I. INTRODUCTION: WHAT IS A FAMILY?

- A. Background: Perspectives on the Family
 - 1. John Demos, Images of the American Family, Then and Now, FL 155-62
 - 2. Claude Levi-Strauss, The Family, in THE VIEW FROM AFAR, CM
 - 3. Sam Roberts, Study Finds Wider View of "Family", CM
- B. Formal and Functional Definitions
 - 1. Penobscot Area Housing Development Corp. v. City of Brewer, FL 32-34
 - 2. Hann v. Housing Authority of the City of Easton, CM
 - 3. Borough of Glassboro v. Vallarosi, FL 34-37
 - 4. Braschi v, Stahl Associates Co., FL 15-19
 - 5. Jane Gross, Older Women Team Up to Face Future Together, CM
- C. State Interests and Constitutional Parameters
 - 1. USDA v. Moreno, CM
 - 2. Village of Belle Terre v. Boraas, FL 28-32
 - 3. Moore v. City of East Cleveland, FL 1118-24
 - 4. Overton v. Bazzetta, CM

II. MARRIAGE

- A. The Traditional Model
 - 1. Bradwell v. Illinois, CM
 - 2. Mackenzie v. Hare, CM
 - 3. Cashman v. Henry, CM
 - 4. McGuire v. McGuire and Notes, FL 146-51
 - 5. Graham v. Graham, FL 151-54
- B. Marriage, Sex, and the Constitution
 - 1. Griswold v. Connecticut, FL 238-41
 - 2. Eisenstadt v. Baird, FL 241-43
 - 3. Lawrence v. Texas & Note, FL 243-52
- C. Constitutional Boundaries on Marriage Restrictions
 - 1. Loving v. Virginia, FL 58-62
 - 2. Zablocki v. Redhail, FL 62-71
 - 3. Turner v. Safley, FL 71-74
 - 4. Keeney v. Heath, CM
 - 5. Moe v. Dinkins, FL 95-98
- D. Who Can Marry and How?
 - 1. CA Family Code §§ 300-310, 350-360, 400-402, 420-425, CM
 - 2. Marrying Relatives
 - a. CA Family Code § 2200, CM
 - b. *Singh v. Singh*, FL 83-89

- c. Back v. Back, FL 89-90
- d. Ovid, The Metamorphoses, Book X, The Story of Cinyras and Myrrah (excerpt), CM

3. Monogamy Requirement

- a. CA Family Code § 2201, CM
- b. In re State in Interest of Black, CM
- c. Bronson v. Swensen, FL 99-102
- d. Sanderson v. Tyron & Note, FL 105-09

4. Procedural and State of Mind Restrictions

- a. CA Family Code §§ 2210-12, CM
- b. Rappaport v. Katz & Note 1, FL 132-35
- c. Dunn v. Palermo, CM
- d. Lester v. Lester, FL 135-38
- e. Johnston v. Johnston & Note 2, FL 138-41
- f. Sarita James, Mom, Dad, Let Me Find My Own Husband, CM

5. Opposite-Sex Requirement

- a. Jones v. Hallahan, CM
- b. Defense of Marriage Act, CM
- c. In re Marriage Cases, CM
- d. Proposition 8, CM
- e. Perry v. Schwarzenegger, CM

E. Marriage and Family Privacy

- 1. Constitutional Protection of Family Privacy
 - a. Griswold v. Connecticut, FL 238-41 (refresh your recollection)
 - b. Eisenstadt v. Baird, FL 241-43 (refresh your recollection)
 - c. Lawrence v. Texas, FL 243-51 (refresh your recollection)

2. Protection from Without

- a. Hoye v. Hoye, CM
- b. Oliverson v. West Valley City, CM

3. Protection from Within

- a. Shook v. Crabb, CM
- b. Trammel v. United States, CM

4. Violence and Privacy

- a. Warren v. State, CM
- b. Jill Elaine Hasday, Contest and Consent: A Legal History of Marital Rape, FL 281-89
- c. State v. Hadinger, CM
- d. Town of Castle Rock v. Gonzales, CM

F. Modern Marriage and Its Alternatives

- 1. Status and Contract
 - a. State v. Walker, CM
 - b. Stone-Blackwell Marriage Agreement, CM
 - c. CA Family Code, §§ 1500-03, 1610-17, 1620
 - d. Edwardson v. Edwardson, FL 201-04
 - e. Simeone v. Simeone, FL 204-09
 - f. Borelli v. Brusseau, CM

2. Family, Work, and Caregiving Roles

- a. Mc Courtney v. Imprimis Technology, Inc. & Note, FL 216-19
- b. Family and Medical Leave Act, CM
- c. Nevada Dep't of Human Resources v. Hibbs, FL 196-201
- d. Knussman v. Maryland, FL 228-32
- e. Vaughn v. Lawrenceburg Power System & Notes, FL 219-25

3. Defining and Regulating Non-Marriage

- a. Legal Disincentives to Non-Marriage
 - 1. Doe v. Duling, CM
 - 2. Jim Yardley, Unmarried and Living Together, Till the Sheriff Do Us Part, CM
 - 3. Berg v. State, CM
 - 4. Martin v. Ziherl, CM
 - 5. State v. Limon, CM

b. Common Law Marriage

- 1. In re Garges, CM
- 2. De Santo v. Barnsley, CM

c. Non-Marriage?

- 1. Marvin v. Marvin & Notes, FL 769-76
- 2. Jones v. Daly, CM
- 3. Whorton v. Dillingham, CM
- 4. Langan v. St. Vincent's Hospital, CM
- 5. CA Family Code \(\) 297-297.5, CM
- 6. Nat'l Pride at Work v. Governor of Michigan, CM

III. DIVORCE

- A. Fault-Based Divorce
 - 1. Introduction, FL 357-59
 - 2. Benscoter v. Benscoter, FL 359-60
 - 3. Arnoult v. Arnoult & Note, FL 361-63
 - 4. Rankin v. Rankin, FL 364-66
 - 5. Sargent v. Sargent, FL 367-68
 - 6. Willan v. Willan, FL 368-70
 - 7. Fuchs v. Fuchs, FL 370-71

B. No-Fault Divorce

- 1. Introduction, FL 374-75
- 2. Herma Hill Kay, Equality and Difference, FL 375-77
- 3. California Governor's Commission on the Family, Report, FL 377-78
- 4. *Massar v. Massar*, FL 388-90
- 5. Diosdado v. Diosdado, FL 391-93
- 6. Twyman v. Twyman, FL 393-403
- 7. Nicholas Confessore, New York Moves Closer to No-Fault Divorce, CM

C. Limits on Access to Divorce

- 1. Same-Sex Unions
 - a. Kathy Duggan, I Earned This Divorce, CM
 - b. Rosengarten v. Downes, CM
 - c. Salucco v. Alldredge, CM
- 2. Financial Limits
 - a. Boddie v. Connecticut, FL 415-17
 - b. In re Smiley, CM
- 3. Religious Limits
 - a. Aflalo v. Aflalo, FL 408-15
 - b. Jewish Prenuptial Agreement, CM
 - c. Cindy Chupack, An Ancient Coda to My 21st Century Divorce, CM
- 4. Consensual Limits
 - a. Materials on Covenant Marriage, CM

IV. CHILD CUSTODY

- A. The "Best Interest" Standard, F: 436
 - 1. CA Family Code §§ 3010-3011,CM
 - 2. Gender Roles
 - a. Ex Parte Devine, CM
 - b. Garska v. McCoy & Note, FL 569-74
 - c. Young v. Hector, FL 579-88
 - d. In re Marriage of Carney, FL 525-32
 - 3. Race
 - a. Palmore v. Sidoti and Note, FL 538-40
 - b. *Jones v. Jones*, FL 540-43
 - 4. Religion
 - a. Kendall v. Kendall, FL 549-54
 - b. Elk Grove Unified School District v. Newdow, CM
 - 5. Sexual Orientation
 - a. Bottoms v. Bottoms, CM

- b. *M.P. v. S.P.*, CM
- c. Damron v. Damron, CM
- 6. Child's Preference
 - a. McMillen v. McMillen, FL 554-56
- 7. Robert Mnookin, Child-Custody Adjudications, FL 591-93
- B. Visitation by Parents and Others
 - 1. CA Family Code § 3100
 - 2. Restrictions on Parental Conduct
 - a. *Chicoine v. Chicoine*, CM
 - b. Eldridge v. Eldridge, FL 613-17
 - c. *Zummo v. Zummo*, FL 618-21
 - 3. Denial of Visitation
 - a. Kemp v. Kemp, CM
 - 4. Visitation Rights on Non-Parents
 - a. CA Family Code §§ 3101-3105, CM
 - b. Troxel v. Granville and Note, FL 621-30
 - c. Quinn v. Mouw-Quinn, FL 635-38
 - d. Alison D. v. Virginia M., CM
- C. Joint Custody
 - 1. CA Family Code, §§ 3002-3007, 3080-3088, CM
 - 2. Squires v. Squires & Note, FL 574-79
 - 3. Lynette Clemetson, Torn by Storm, Families Tangle Anew on Custody, CM
- D. Modifying Custody
 - 1. Wetch v. Wetch, FL 599-602
 - 2. Maynard v. McNett, CM

V. PROPERTY, ALIMONY, AND CHILD SUPPORT

- A. Standards For Awarding Property and Support
 - 1. Introduction, FL 696-700
 - 2. CA Family Code §§ 125, 130, CM
 - 3. CA Family Code, §§ 750-754, 760-761, 770-72, CM
 - 4. Homemaker Services
 - a. Ferguson v. Ferguson, FL 709-13
 - 5. Financial Misconduct
 - a. Siegel v. Siegel, FL 722-23

- 6. Duration of Marriage
 - a. Rose v. Rose, CM
- B. What Counts as Property?
 - 1. CA Family Code §§ 781-783, CM
 - 2. CA Family Code \(\) 850-853, CM
 - 3. Postema v. Postema & Note, FL 713-19
 - 4. Elkus v. Elkus & Note, FL 719-22
 - 5. In re Marriage of McTiernan, CM
- C. Alimony/Spousal Support
 - 1. Introduction & Note, FL 730-32
 - 2. CA Family Code \(\) 4300-4303, 4320-4325, CM
 - 3. Orr v. Orr, FL 174-76
 - 4. In re Marriage v. Wilson, FL 732-34
 - 5. *Clapp v. Clapp*, FL734-37
 - 6. Twila L. Perry, Alimony: Race, Privilege, and Dependency in the Search for Theory, CM
- D. Child Support
 - 1. CA Family Code §§ 4050-4055, CM
 - 2. Uniform Marriage and Divorce Act § 309, FL 784
 - 3. Schmidt v. Schmidt & Notes, FL 784-88
 - 4. Ainsworth v. Ainsworth, FL 798-804
 - 5. *T.F. v. B.L.*, CM
- E. Separation Agreements
 - 1. Robert Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law*, FL 429-35
 - 2. Duffy v. Duffy, FL 848-52
 - 3. Toni v. Toni, FL 852-56

VI. DEFINING PARENTHOOD

- A. Legal Construction of the Parent-Child Relationship
 - 1. Roe v. Doe, FL 1017-20
 - 2. Prince v. Massachusetts, FL 1022-25
 - 3. Parham v. J.R. & Note, FL 1025-30
 - 4. Nicholson v. Scoppetta, FL 1222-28
- B. Functional Definitions of Parenthood
 - 1. In re Nicholas H., CM
 - 2. Elisa B. v. Superior Court, FL 958-66
 - 3. Steven S. v. Deborah D., CM
- C. Parenthood and Marriage
 - 1. Stanley v. Illinois, FL 638-41

- 2. Lehr v. Robertson, FL 641-49
- 3. Michael H. v. Gerald D., FL 74-83
- 4. Lalli v. Lalli, FL 1107-1112
- 5. Nguyen v. INS, CM
- 6. Kristin Collins, Note, When Fathers' Rights are Mothers' Duties, CM

D. Adoption

- 1. CA Family Code §§ 8600-8622
- 2. Age of Parents
 - a. In re Adoption of Michelle T., CM
- 3. Race and Ethnicity
 - a. *Petition of R.M.G.*, FL 1362-68
 - b. The Indian Child Welfare Act of 1978, CM
 - c. Mississippi Band of Choctow Indians v. Holyfield, FL 1370-76
 - d. Lynette Clemetson & Ron Nixon, Overcoming Adoption's Racial Barriers, CM
- 4. Stepparent Adoption
 - a. CA Family Code § 9000, CM
 - b. In the Matter of the Adoption of K.J.B., L.D.B., AND R.J.B., FL 1329-34
 - c. Tamar Lewin, It's a Boy: 228 Pounds and 6-Foot-3, CM
- 5. Sexual Orientation ad Second-Parent Adoption
 - a. Lofton v. Dep't of Children and Family Services, FL 1376-78
 - b. *In re M.M.D.* & Notes, FL 1378-85
- 6. Adoption Procedures and Consequences
 - a. *Vela v. Marywood*, FL 1308-15
 - b. Groves v. Clark and Note, FL 1340-46
- 7. Foster Care and Adoption
 - a. *In re Michael B.*, FL 1256-66
 - b. Adoption and Safe Families Act, CM
 - c. Laurie P. Cohen, A Law's Fallout: Women in Prison Fight for Custody, CM
- E. Surrogacy and New Reproductive Technology
 - 1. In re Marriage of Witheck-Wildhagen, FL 954-58
 - 2. *K.M. v. E.G.*, FL 997-1006
 - 3. *J.B. v. M.B.*, FL 1006-15
 - 4. Ian Austen, Canadian Court Rules Lesbian Partner is a Parent, CM