**Joan Heifetz Hollinger. Law 281.1**

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**Creating and Sustaining Children and Families: 21st Century Challenges**

**Spring 2013**

**Units:** 3  
**Meeting Time:** M 3:35-6:15  
**Room** 136 Law School  
**Course Start:** January 07, 2013  
**Course Control Number (1Ls):** 49994  
**Course Control Number (Non-1Ls):** 49991  
**Open to graduate students in other UCB Schools and Departments with instructor’s permission**  
  
This seminar is intended for students interested in cutting-edge parentage and family law issues and in devising effective legal and socio-cultural strategies to protect and sustain children both within and beyond our borders.   
  
Biomedical and technological advances as well as dramatic societal and demographic changes are challenging traditional understandings of family and parent-child relationships. A complex and confusing system of state, federal, and international laws and policies facilitates, but also significantly impedes, the legal recognition and protection of our increasingly diverse contemporary families. Particularly at risk of harm because of uncertainty about their legal status are children conceived through assisted reproductive technology, children raised by same-sex parents, children abused or neglected by their biological parents, children “trafficked” from one country to another and undocumented children and youth. Students in this seminar will have an opportunity to think and write about various ways to mitigate the threats to the legal stability and emotional security of these children and their families.  
  
Students will be encouraged to undertake an original project that culminates in a 22-25 page paper that may take various forms, including a theoretical or doctrinal analysis, a case study based on empirical research, a well-crafted legislative or policy proposal, a critical assessment of the efficacy of class action litigation aimed at reforming the child welfare system, or a “Brandeis brief” synthesizing the social science research on children and families relevant to pending federal court appeals, including the litigation challenging the constitutionality of the federal Defense of Marriage Act (DOMA)that Professor Hollinger is participating in.   
  
Students can use their work in this seminar as a basis for satisfying their Writing Requirement by completing a more substantial paper (30-35 pages) in the Spring or Fall 2013 semester and enrolling in one-unit of Law 299 under Professor Hollinger’s supervision. Several students who selected this option in recent years have had their papers published.  
  
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This seminar may satisfy the Writing Requirement.

Graduate students in other UC Berkeley Departments should e-mail Prof. Hollinger at [jhollinger@berkeley.edu](mailto:jhollinger@berkeley.edu) as soon as possible if they are interested in joining the class and she will forward the law school registration requirements to them.

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Readings will include Cases, Statutes, Appellate Briefs, Social Science materials, and articles relevant to the following tentative schedule of topics:

I. Introduction: Sociocultural and Demographic Profile of Our Children and their Families

II. Allocating Power among Parents, Children, and the State: The Commonlaw Tradition

III. Allocating Power among Parents, Children, and the State: The Constitutional

Tradition and Federal Laws Affecting Parent-Child Relationship

IV. Establishing the Parent-Child Relationship

A. The Marital Presumption

B. Historical and ongoing efforts to reconceptualize “illegitimate” children as nonmarital children who deserve the same legal protections as marital children

C. Assisted Reproductive Technology (ARTs) and Parentage: Presumed or Intentional Parentage Versus Biogenetic Parentage [who should have access to ARTs?]

D. Determining Who is a "Father"

E. Determining Who is a "Mother"

F. Guardianship: What It Is and What It Is Not

G. DeFacto, Functional and Psychological Parents

V. Adoption as A Means to Establish a Parent-Child Relationship

A. Requirement of Parental Consent or Grounds to Involuntarily Terminate Parental Rights

B. Determining “Suitability” of Prospective Adoptive Parents: Who Decides? Criteria? Categorical or Presumptive Inclusions and Exclusions?

C. Adoption as Legal Fiction, Creating the “As-If” Family

D. Challenges to Adoption as Asserted Equivalent of Bio-Family: The Ups and Downs of Open Adoption

E. Adoption as “Baby-Selling” or “Child Protection”?

F. Decline of Domestic Adoption and Barriers to Intercountry Adoption: Case Studies

VI. The Use and Abuse of Social Science Research in Child Placement, Parentage and Adoption Cases

A. Overview of recent research on child development, parenting and “outcomes” for children

B. Case study: Relevance of social science research to determining if sexual orientation of parent or child should ever be a factor in determining parentage

C. Determining a child’s “best interests”: A legal standard or an empirical question?

VII. The Mobile Family: Ensuring Interstate and International Recognition and Protection of Children and their Families

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