

FAMILY LAW
Fall 2011
M/W 3:00-4:25 – Room 446
Professor Joel Nichols

Required Texts:

- D. Kelly Weisberg and Susan Frelich Appleton, Modern Family Law, Cases and Materials (4th ed) (Aspen Publishers, 2010).
- We will also review Minnesota Statutes periodically (and maybe other jurisdictions as well). These are available on Westlaw, LEXIS, or other free sources – and a Word document of the MN Statutes that we will use has been posted on Blackboard for your convenience.

Office Hours and Contact Information: My office is Room 339, located on the third floor of the law school. My office phone is 651-962-4827 and my email address is joel.nichols@stthomas.edu.

Regular office hours: Thursday 1:30-4:00
 Friday 1:30-3:00
 (Or by appointment.)

Classes: We meet in Room 446 on Monday and Wednesday from 3:00-4:25. Don't be late, eat or drink loudly in class, or talk to your neighbors during class.

BlackBoard: I will periodically post supplemental items, answer questions, and post blog entries on BlackBoard. You'll want to check it regularly.

Grading: Your course grade will primarily be based upon the final examination. More detailed information will be given slightly later in the term, but the exam will consist of primarily essay questions and likely some multiple choice (up to but no more than 1/3 of the final exam grade).

One or two reflection papers will be required during the semester. These will count toward your final grade, though no more than 15% -- and I do not expect these to adversely affect your grade if you have made a timely, good faith effort since I expect only small variance in these assignments.

And, per below, I reserve the right to adjust a student's final grade based on class participation and attendance in unusual circumstances.

Class Preparation and Attendance: The classroom environment depends upon your preparation and participation, and I expect it and reserve the right (in unusual cases) to penalize or reward the same by up to 1/3 of a letter grade on the final course grade. Per UST's Academic Policy Manual (III-C-5), excessive absences (or tardiness) or consistent lack of preparation may result in a grade reduction or, in extreme cases, an inability to sit for the final examination. There should not be a need to miss more than 6 class sessions (23% of the course) for any reason – and you may indeed not be permitted to sit for the final examination in such cases.

Computers (and other electronic devices): Computers and other devices may be used in class for appropriate educational activities (note-taking, accessing statutes, and the like). I reserve the right to revoke the use of electronic devices entirely during class if you abuse this policy.

You may not record (by audio or video) any portion of this class without my express permission.

Disability Accommodation: Any student with a documented disability needing academic accommodations should discuss the matter within the first two weeks of the term with the University's Enhancement Program – Disability Services. You may contact that Center by phone (651-962-6315) or in person at the O'Shaughnessy Educational Center, room 119. More information is available on the web at <http://www.stthomas.edu/enhancementprog/>.

Reading Assignments: The initial reading assignments are below, and more will follow as the term progresses. I have provided a proposed course outline on a separate handout. *CB = Casebook & Supp = Supplement. All statutory sections are to the Minnesota Code.*

1. **Preface and Introduction (xxvii-xxxii (esp. xxvii and xxi-xxii)), and CB Pages 1-20 , 58-65, 69-72 nn4-11, 15-16**
Griswold v. Connecticut; Eisenstadt v. Baird; Meyer v. Nebraska; Pierce v. Society of Sisters; Lawrence v. Texas
Right to Privacy.
2. **CB Pages 103-130**
Maynard v. Hill; Rivkin v. Postal; Fowler v. Perry; Simeone v. Simeone; In re Marriage of Shanks
Getting Married: Marriage Contracts and Premarital Controversies.
3. **CB Pages 130-147 and §§ 519.11, 517.03, 518.01, 518.02**
Loving v. Virginia; Zablocki v. Redhail; Turner v. Safley
Premarital Agreements, and Restrictions on Entrance to Marriage (Constitutional)
4. **CB Pages 172-187, 147-71 and §§ 517.08, 517.09, 517.18, 518.03, 518.04, 518.05, 518.055**
State v. Green; Goodridge v. Department of Public Health; Kerrigan v. Commissioner of Public Health
Restrictions on Entrance to Marriage (Procedural and Substantive, including Same Sex Marriage).
5. **CB pages 199-200, 202-210, 213-214, 215-226 and §§ 519.01 through 519.06**
Carabetta v. Carabetta; Jennings v. Hurt
More on Same-Sex Marriage; "Informal Marriage"; Being Married: Nature of Marriage.

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Course objectives

As you are preparing for this course, it may be helpful for you to understand what I consider to be the primary objectives of this course (though obviously not the only objectives). I will discuss these in more detail in class (and they bear some relevance to the course evaluations as well).

Essential

- 1. Developing specific skills, competencies, and points of view needed by professionals in the field most closely related to this course.** You are training to be attorneys – indeed, in many ways you have already entered the profession. There are a number of skills and competencies needed, including problem-solving, critical thinking, clear articulation (both oral and written), organization and persuasiveness, and the ability “think like a lawyer.” This Family Law class will build these skills and help you *apply* the rules that we learn to the set of facts at hand, for attorneys are called upon to use their training *in context*.

Important

- 2. Learning to analyze and critically evaluate ideas, arguments, and points of view.** In this class we will be reading cases, problems, statutes, and other excerpts carefully and critically. I will expect you to be thoughtful and discerning as you assess arguments and outcomes. We will ask questions about the motivation of authors; the effects of statutes and policies; and the persuasiveness of language and ideas.
- 3. Learning fundamental principles, generalizations, and theories.** We will study and learn specific rules of family law. But in addition to learning isolated rules, you will be expected to understand the principles and theories behind rules, to assess whether certain rules actually advance the theories that support them, and to extrapolate what you know from one area into another area.

Writing Assignment #1: You have a choice on this assignment, depending on your own judgment about your practical experience in Family Law.

(A) For those with less experience in family law, you should plan on attending 2½ - 3 hours of hearings in family law at a local court (or some other “practical family law setting,” such as a mediation or the like). It will likely be easiest to do this at the Hennepin County Court downtown, but other choices would be fine. Ask me if you have questions, but the exercise is merely intended to give you practical experience and exposure. (Note: Because this is required as coursework, you may not also count these observation hours for any other for-credit school endeavor.)

After your observations, write a short reflection paper (no more than 2-3 pages) on your experience and what you learned. Your paper should tell me what you did (watched a hearing, waited too long at the courthouse, basically saw only a flow of pro se litigants, had conversations with a mediator after a hearing, etc.) and then make some connection/reflection on the way that the casebook and readings do coincide (or not) with the lived experience of family law in the legal system.

(B) For those students with slightly more experience in the practice of family law (and I leave this to your own good judgment), you should submit a 2-3 page paper drawing upon your own past experiences and connect that to the materials. Because you will not be attending doing additional out-of-class work, I will expect your submission to be well-crafted and, quite possibly, more thoughtful. Specifically, please address: How does exposure to the lived experience of family law inform your understanding of the course readings?

Due date for Assignment #1: Tuesday, November 8, 9:00 AM. – although I am happy to receive your written reflection earlier.

Turn in your writing assignments to Cate Utrup at utru1701@stthomas.edu, and please use your NAME (not your exam number).

(tentative) Course Outline
Family Law (Fall 2011)
Professor Nichols

- I. Introduction, and Right to Privacy
- II. Getting Married
 - A. Marriage as Contract or Status
 - B. Premarital Controversies
 - 1. Breach of Promise to Marry
 - 2. Gifts in contemplation of marriage
 - 3. Prenuptial agreements
 - C. Restrictions on Entrance to Marriage
 - 1. Constitutional
 - 2. Substantive
 - 3. Procedural
 - 4. "Informal Marriages"
- III. Being Married
 - A. Introduction
 - B. Marital Roles
 - 1. Marital Property
 - 2. Duty of Support
 - 3. Parenting Issues
 - C. Domestic Violence
- IV. Alternative Families
 - A. Con Law Limits
 - B. Cohabitation
 - 1. Introduction
 - 2. Rights Generally
 - 3. Health and Family Benefits
 - 4. Parent/Child Rights
- V. Divorce
 - A. Fault-Based
 - 1. Defenses
 - B. No-Fault
 - C. Access to Divorce
 - D. Jurisdictional Issues
- VI. Financial Consequences of Dissolution
 - A. Property Distribution
 - B. Spousal Support
 - C. Application of Property and Support Theories
 - D. Child Support
 - 1. Obligations
 - 2. Modification
 - E. Enforcement
 - 1. Generally

- 2. Jurisdiction
- VII. Child Custody
 - A. Standard for selection
 - 1. Presumptions
 - 2. Best interests
 - 3. Joint custody
 - B. Visitation
 - 1. Non-parents?
 - C. Modification
 - D. Enforcement
- VIII. Child Abuse
 - A. State intervention into the family
 - 1. Discipline
 - 2. Neglect
 - 3. Abuse
 - B. Mandatory reporting
 - C. Foster care
 - D. Termination of parental rights
- IX. Adoption
 - A. Parental consent
 - B. Placement criteria
 - C. Legal consequences
- X. Law and Technology
 - A. Artificial insemination
 - B. In vitro fertilization