Office:  Room 236; Phone 585-9697

Email:  kesslerl@law.utah.edu

Office Hours: If you want to meet with me, please email me to set up an appointment. If you want to see me without an appointment, feel free to stop by my office, and I will be glad to see you then unless I am tied up with another project. I will also answer questions by e-mail.

Administrative Assistant: Cynthia Lane, Secretarial Suite, Second Floor (581-5050); cynthia.lane@law.utah.edu

COURSE DESCRIPTION

This is an introductory course in family law. Topics include the law of marriage, divorce, and child custody, and the legal recognition of nontraditional family relationships.

COURSE GOALS

This class has various goals:

First, we will study family law as established by substantive state and federal law. This should assist you in preparing for the family law portion of the bar exam. Although the course does not focus on the law of any particular state, I will highlight the main features of Utah family law.

Second, by the end of the course, you will understand the majority and minority rules that states adopt for the major family law issues and the general principles that courts use to resolve family disputes. This should give you a solid grounding for the practice of family law in any state.

Third, we will examine family law in its historical, social, and political contexts. Because family law involves emotional relationships and fundamental values, it is frequently a subject of reform efforts. These reforms typically reflect greater social and political movements, such as the women’s, men’s, children’s, and gay rights movements, and the reactions against them. We will consider how, over time, family law has changed in response to these different movements, with the overall goal of gaining an appreciation of the historical trajectory of family law over the past century.
COURSE MATERIALS


(2) Various additional supplementary materials, such as law review articles and problems. Unless otherwise noted, **all supplementary materials are posted on TWEN**.

We will be focusing on chapters 2-7 of the case book.

SUGGESTIONS FOR FURTHER READING (on reserve)

(1) **Homer H. Clark, Jr., The Law of Domestic Relations in the United States** (2d ed. 1988)


COURSE REQUIREMENTS

(1) **Class Attendance.** You are expected to attend class. If you do not attend class regularly, I may lower your grade, or, in egregious cases (greater than five absences), bar you from the final exam.

(2) **Preparation for and participation in classroom discussion.** Topics covered in family law often evoke vigorous debate; the best classes are naturally those in which students share their views freely with each other. I encourage you to speak up in class, however unpopular your perspective or sensitive the topic, as long as you do so in a respectful, professional manner. Each class, I will call on students randomly by choosing names from a cup. I will also take volunteers and use small-group exercises to stimulate class discussion. Exceptional contributions to classroom discussion can raise your grade by one grade step (e.g., from A- to A). I generally do not grade down, but your grade may be decreased by one step if you are consistently not prepared when called upon in class or if you have excessive absences.

(3) **Final in-class, multiple choice closed-book exam,** plus a research paper for students who choose that option. (See details about grading, below). The final exam is scheduled for Thursday, December 15th, 2011, at 8:30 a.m.
GRADING

I want to make the class as user friendly as possible. To this end, I am offering two options for evaluation purposes: The Exam Option and the Exam plus Paper Option.

Exam Option: The exam is a closed book, 35 question multiple choice exam. For students choosing this option, the exam will constitute 100% of the final grade. Samples of multiple choice questions are posted on TWEN.

Exam plus Paper Option: Students who choose this option will take the multiple choice exam and write a research paper. In that case, the exam will count for 50% of the final grade and the paper will count for 50% of the final grade. The research paper should be at least 15 pages in length, double spaced. The paper should cover a topic in family law, with attention not only to describing current law but reviewing the pros and cons of alternative approaches. Each paper should make an attempt to survey the various approaches to the topic in question. Citations to the relevant parts of the textbook are encouraged, as well, along with reference to related discussions in class. I would be happy to discuss possible topics with you.

Students may choose to submit a “substantial research paper” of over 7000 words with faculty comment and a rewrite to meet the new research & writing requirement that may substitute for a seminar. Note that students submitting a substantial research paper of over 7000 words will not be included in the mandatory curve.

The paper is due the last day of final exams. For your benefit, it is probably best not to delay too long in submitting your paper. Students choosing the Exam plus Paper option must let me know in writing, preferably by email, by September 16.

Whether you choose the Exam Option or the Exam plus Paper Option, class participation will also be considered in assigning grades.

COURSE WEB SITE

I have established a course web site using Westlaw’s TWEN service. The syllabus, weekly assignments, all supplementary materials, and a link to the Utah Code are posted there. You are responsible for verifying that you are enrolled in the course web page and checking the web page regularly. If you have any technical difficulties accessing the TWEN course page, you can receive assistance by calling 1-800-Westlaw.

SCHEDULE CHANGES

Class is canceled on Thursday, September 29.
CLASS CANCELLATIONS

If class is canceled, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Utah web page. If the University is not closed, students should presume that classes are running on the normal schedule.

AMERICANS WITH DISABILITIES ACT ACCOMMODATIONS NOTICE

The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to Barbara Dickey, Associate Dean of Student Affairs, and to the Center for Disability Services (CDS), to make arrangements for accommodations. CDS is located at 200 S. Central Campus Drive (Union Building), Rm. 162, or you can call (801) 581-5020. All written information in this course can be made available in alternative format with prior notification.

COURSE CONTENT NOTICE

Some of the readings and presentations in this course may include material that conflicts with the core beliefs of some students. Please review the syllabus carefully to see if the course is one that you are committed to taking. If you have a concern, please discuss it with me at your earliest convenience.
ASSIGNMENTS: We will cover approximately 15-20 pages per class hour. Weekly reading assignments with specific dates are posted on TWEN. Please use the assignment sheet as a rough estimate of what we will be covering. Actual presentation of the material will be paced to accommodate class discussion and interest, therefore, don’t read too far ahead!

COURSE OUTLINE: Below, you will find a course outline, which you may wish to use as a template for your course outline when you prepare for exams.

I. Introduction
   A. Family Law Themes/What is a Family?
      (1) Victoria M. Mather, Evolution and Revolution in Family Law
      (2) CB 339, Village of Belle Terre v. Boraas; CB 347-355, 399-401, 404-07
      (Notes 1-8)

II. Entering Marriage
   A. Marriage as a Fundamental Right: Constitutionality of State Marriage Restrictions
      CB 130-47
   B. Substantive Restrictions, continued: Same Sex
      (1) CB 58-74, 147-71
      (2) Vermont Civil Union and Reciprocal Beneficiary Laws (skim)
      (3) Utah Code § 30-1-2(5); 30-1-4.1
      (5) Utah Const. Art. I, § 29
      (7) Suggested reading: Judith Stacey and Timothy J. Biblarz, (How) Does the Sexual Orientation of Parents Matter?

      (all non-casebook materials available on TWEN).
   C. Substantive Restrictions: Incest, Bigamy, Age
      CB 172-94; Utah Code §§ 30-1-1; 30-1-2; 30-1-9; 30-1-9.1.
   D. State of Mind Restrictions: Fraud, Duress
      CB 194-97; Utah Code §§ 30-1-17.1 to 30-1-17.4.
   E. Formal Procedural Requirements: Licensure, Solemnization, Blood Tests, Waiting Periods, etc.
      CB 199-206; Utah Code §§ 30-1-4.5 to 30-1-16.
   F. Exceptions to the Formal Requirements/Informal Marriages:
      Common Law Marriage and the Putative Spouse Doctrine
      CB 206-14
III. Regulation of the Intact Marriage/Legal Significance of Marriage

A. The Changing Nature of Marriage

1. Introduction
   CB 215-22

2. Roles and Responsibilities in Marriage

   a. The Traditional View
      CB 222-26, 241-43, 226-32

   b. The Modern Perspective: Marriage as a Partnership
      CB 232-33; Jersey Shore Med. Ctr.-Fitkin Hospital v. Estate of Baum (on TWEN)

B. Reallocation of Duties within Marriage by Contract

1. During Marriage
   Borelli v. Brusseau (on TWEN)

2. Before Marriage (Prenuptial Agreements)
   CB 118-30; Utah Code §§ 30-8-1 to 30-8-9

IV. Alternatives Families: Cohabitation / Unmarried Couples

A. Introduction
   CB 355-60

B. Cohabitants' Rights Inter Se
   CB 360-72, 170-71 (latter pages were previously assigned; please skim); Unmarried Cohabitants Rights Chart (on TWEN).

V. Dissolution of Marriage

A. Introduction
   CB 451-58

B. Fault Based Grounds: Adultery, Cruelty, and Desertion
   CB 458-472; Utah Code Utah Code § 30-3-1.
C. No Fault Divorce

1. Divorce Reform
   CB 479-89

2. What Role for Fault?: Tort Theories
   CB 489-95

3. No Fault Assessment
   CB 496-505; Utah Code Utah Code §§ 30-3-11.3 to 30-3-12
   Comparative Divorce Chart (on TWEN)

VI. Child Custody

A. Introduction
   CB 679-82; Custody Chart (available on course web site)

B. Best Interests of the Child/Factors in Disputed Cases

1. Gender/Tender Years/Primary Caretaker Presumption
   CB 683-88

2. The Best Interest Standard
   CB 688-89; Utah Rule of Judicial Administration 4-903 (on TWEN)

3. Parental Fitness
   a. Careers
      CB 704-10
   b. Domestic Violence
      CB 710-17; Utah Code § 30-3-5.2 and 30-3-10.10
   c. Physical and Mental Health
      CB 717-18
   d. Other Miscellaneous Factors: Cooperative Parent Doctrine, Parental
      Alienation Syndrome, Family Unity, Criminal Record, Alcohol and
      Drug Abuse, Educational Needs
      By Lecture

4. Child’s Preference
   CB 754-58
C. Reform Efforts/Modern Trends

1. Primary Caretaker Presumption
   CB 686-88 (previously assigned; please skim)

2. Joint Custody
   CB 718-27; Utah Code §§ 30-3-10(1)(b); 30-3-10.1; 30-3-11.4(1)

3. ALI Principles - Pre-Dissolution Parenting Time
   American Law Institute Principles of the Law of Family Dissolution
   [hereinafter ALI Principles], §§ 2.06, 2.08, 2.09, 2.11 (on TWEN).

4. Mediation/Coin Flipping
   CB 783-93; Utah Code §§ 30-3-38 and 30-3-39.

VII. Economic Consequences of Divorce

A. Introduction
   CB 557-59; Chart Summarizing Property Division Systems.

B. Property Division: From Title Theory to Contribution
   CB 559-68; ALI Principles, § 4.12 Recharacterization of Separate Property.

C. Spousal Support
   CB 568-79; ALI Principles, § 5.04 Compensation for Loss of Marital Living
   Standard and § 5.05 Compensation for Primary Caretaker’s Residual Loss of
   Earning Capacity.

D. Applying Theories of Property Division and Support
   CB 579-91

E. Special Problems in Achieving a Fair Dissolution

1. Changed Circumstances: Cohabitation / Remarriage
   CB 591-95

2. Bankruptcy
   CB 596-601
F. Dividing the Marital Home  
CB 601-02

G. Divorce and “New” Property

1. Pensions and Employee Benefits  
CB 602-10; Pension Problem (on TWEN)

2. Professional Degrees/Earnings  
CB 610-17

H. Child Support

1. Introduction/Guidelines  
CB 626-33; Utah Code § 78B-12-301

2. Modification (Remarriage and New Families)  
CB 638-642

3. Enforcement  