

Preface

This casebook is intended for a basic course in family law. It is a large book, in part because it covers a broad area and in part because of the characteristics of the fields it addresses.

One of these characteristics is enormous dynamism, amounting almost to revolution, in doctrines concerning families, parents and children, spouses, and domestic partners. Long-settled principles and practices regarding marriage, divorce, marital property, spousal support, and custody, to mention only a few areas, have been abandoned or substantially modified over the last few decades. Even the kinds of relationships relevant in family law have changed. Far more important than before, they now include unmarried cohabitants, same-sex couples, and single-parent families.

These and other issues are in flux. We have attempted a balanced presentation that compares innovative developments in some states with the reaffirmation of traditional principles in others, and does so in the context of a wider focus on family and the state, the role of mediating institutions, and the efficacy of law and particular methods of enforcing the law. In assessing these developments, we present many different voices and accounts without, we hope, privileging any particular account as representing that of the book as a whole. Perspectives in this book shift regularly, through the notes and questions and also through the Teacher's Manual, which continues conversations opened in the notes and questions.

Understanding family law, however, requires appreciation not just for the difficult social and theoretical issues underlying changes in doctrine, but the settings in which family practice occurs. Many of our students will practice domestic relations shortly after graduation, and a family law course must introduce them to the doctrine, procedures, and techniques they will encounter in law offices and courts.

In other areas, introduction to a body of statutory and judicial doctrine in the field will serve that purpose. Family law, however, draws on doctrines in a number of other areas, such as property, contracts, torts, criminal law, conflict of laws, and constitutional law, whose principles must be introduced or reviewed. Moreover, as families have become more complex, so has the law that serves them. Family law issues routinely intersect with eligibility for medical care, social security, bankruptcy and other forms of assistance.

The practice of family law is—even more than most other areas—cross-disciplinary. The foundation of family wealth has changed from land, cars and bank accounts to employment and benefits—and therefore pensions, businesses, and degrees. Some notion of financial principles (such as the time value of money) is essential to valuation of property at divorce. As paternity has become more contested, knowledge of genetics and statistics has become more important

to the determination of parenthood, and some understanding of clinical psychology is regularly necessary in custody disputes. Social history is important to understanding the context in which the law has developed and to the interpretation of current bodies of doctrine. And discussions of legal and policy responses to domestic violence should draw on social scientific evidence regarding the incidence, distribution, and causes of such violence.

Moreover, family law cannot be effectively taught without some attention to process. The text incorporates materials that address counseling, negotiation, alternative dispute resolution and ethics.

The casebook deals with the complexity of family law both in the organization of the chapters — separate units on family contracts, jurisdiction, and practice, for example, can be shortened, skipped, or taught in almost any order — and the diversity of material within each chapter. Each unit combines primary cases with comprehensive notes, the units also supplement the cases and statutes with academic and policy analyses that provide a foundation for evaluation, and detailed problems that extend the coverage or apply the commentary to real world examples. In constructing these materials and problems, we have sought to show that the gap between theory and practice is largely fictitious.

Finally, the casebook tries to convey our continued excitement about the study of family law, and our conviction that family practice requires appreciation of the complex interaction between human relations and legal process.

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November 2009

Editors' note: Throughout the book, footnotes to the text and to opinions and other quoted materials are numbered consecutively from the beginning of each chapter. Some footnotes in opinions and secondary authorities are omitted. Editor's footnotes added to quoted materials are indicated by the abbreviation: —Ed.