

Family Law

Spring 2016

Law 607-1001

Mondays & Wednesdays, 1:30-2:55 p.m. in Room 110

PART I. OVERVIEW AND GENERAL INFORMATION

A. COURSE DESCRIPTION AND LEARNING OUTCOMES

Welcome to Family Law. I look forward to a lively and engaging semester together. This is a rich, expansive, multi-faceted, deeply personal, and dynamic area of the law to study. It is changing rapidly and profoundly and intersects with many other areas of law.

This course provides a broad introduction to family law, examining how families are constructed by and within legal and social institutions. The course particularly focuses on key components of “Domestic Relations” and “Community Property,” both of which are topics consistently tested on the Nevada bar exam. We study how federal and state governments both protect and confine family structures and individuals’ rights and responsibilities to their family unit; how marriages are entered into and dissolved; care and custody of children in the family unit; and the financial consequences to spouses and parents when families restructure. In addition to learning fundamentals of family law doctrine and how they respond to and shape social norms, this course also requires students to think critically about the roles legal professionals—lawyers and judges—play in shaping families’ lives.

By the completion of this course, you should be able to:

- Critique and analyze current legal frameworks regulating the family using a legal lens grounded in social, economic, and policy considerations and assess the implications of legal frameworks across cultures, communities, and diverse family structures;
- Construct persuasive client narratives to achieve specific client goals within an objective legal framework;
- Read and interpret statutory provisions regulating the family unit;
- Advocate for clients seeking spousal support and equitable distribution of property;
- Counsel individuals on their legal rights and responsibilities as co-parents regarding custody and support of their children;
- Calculate presumptive child support awards and raise arguments for deviations;
- Advise a client on the validity and enforceability of a pre-marital agreement;
- Identify professional and ethical challenges inherent to the practice of family law.

B. REQUIRED MATERIALS

DOUGLAS E. ABRAMS, NAOMI R. CAHN, CATHERINE J. ROSS, DAVID D. MEYER & LINDA C. MCCLAIN, CONTEMPORARY FAMILY LAW (4th ed. 2015) (hereinafter “CFL”). ***Copy on Reserve in Rogers Library***

Assigned readings not in CFL, statutes, and cases will be posted on TWEN and can also be found on Westlaw.

C. GRADING & EVALUATION

Final Exam	Other Assignments	Class Participation	TOTAL
65% +	15% +	20%	= 100%

Comprehensive Final Exam (65% of final grade):

The final exam will be given on Thursday, May 12th @ 1:00 p.m. The exam is a timed, 3-hour, closed-book essay exam.

Successful performance on the final exam requires you to i) identify legal issues clearly; ii) thoughtfully articulate and reason through to a conclusion for each identified issue; iii) demonstrate mastery of substantive material covered in the course; and iv) consider competing perspectives. The exam must also be written with appropriate legal tone and professionalism. An expanded description of final exam grading is provided in the Appendix to this syllabus.

Other Assignments: (15% of final grade)

There will be three “Skills Days” over the course of the semester. These days are designed to shift students’ focus from subject matter mastery to application and legal practice skills. Students will prepare for these classes differently—students will be given information in advance about a client in need of legal assistance and will come to class prepared for a hands-on legal skills exercise. Complete instructions for each day will be posted on TWEN well in advance. There will be a short, written component for each Skills Day that will be graded (each worth 5% of the final grade for the course). A student who is absent on a Skills Day or who fails to turn in a Skills assignment will receive a “zero” for that assignment.

Class Participation: (20% of final grade)

The class participation grade includes attendance, timeliness, attentiveness, preparation, in-class exercises, collegiality and professionalism, and engagement with peers. We will talk about sensitive subject matter, so I will accordingly expect the highest standards of respect for diverse viewpoints and thoughtful engagement. For every class I record a score for class participation: V+ (exceeds expectations); V (meets expectations); V- (below expectations) for each student. V+ means that you are actively pushing the classroom dialogue forward and contributing. V means that you are engaged and thoughtfully involved in class. V- means you were late, unprepared, distracted, or disrespectful.

I expect that all students will have completed all of the reading in preparation for class. The assigned reading for each class typically averages 20-30 pages of casebook material (including cases, excerpts from secondary sources, notes, and problems) with additional statutes and cases specific to Nevada. Readings and assignments have been apportioned to take approx. 6 hours/week to complete.

Students are expected to complete all assigned pages in preparation for class and will be responsible for all assigned material on the final exam. Students may be asked to complete and turn-in problems from the assigned reading at the start of class.

D. COURSE POLICIES

1. Electronic Devices & Internet Usage

Please turn off or silence your cell phone and do not take it out during class.

Many of you use laptops in class to take notes and review statutes and cases. While I permit you to use your laptops in this way, I ask that you refrain from internet surfing during class. Random surfing (involving anything other than materials directly related to that day's class) during class is not permitted; if you are discovered surfing during class, you will be listed as absent for that day. This policy may seem harsh, but surfing during class is a distraction not only to you but also to everyone who can see your screen. Laptops will not be used during simulations and selected class presentations.

With regard to note-taking, students should seriously consider the learning impairments created by verbatim note-taking as opposed to writing by hand (*see, e.g., Pam A. Mueller & Daniel M. Oppenheimer, The Pen Is Mightier Than the Keyboard: Advantages of Longhand Over Laptop Note Taking, PSYCHOLOGICAL SCIENCE* (April 23, 2014) (on TWEN)). Students are encouraged to print-out their notes and any electronic materials and bring them to class to annotate during class discussion.

2. Email & TWEN

All course communications will be emailed via TWEN. Students are responsible for signing up for the TWEN course page and verifying their email addresses.

3. Attendance

Per rule 4.02a of the Student Policy Handbook, regular and punctual class attendance is required. Students with more than 5 absences may not receive credit for the course. Course material is cumulative, meaning that each successive class builds upon material previously covered. Students who fail to attend class face a severe disadvantage. **Students are responsible for obtaining any and all information given, handouts distributed, and assignments made during missed classes.**

4. UNLV-required Disclosures:

Academic Misconduct—Acceptance to the William S. Boyd School of Law (the Law School) represents much more than admission to the study of an intellectual discipline. The privilege of admission comes with a unique set of responsibilities, not only to fellow students, but to the Law School, to the legal profession, and to the public. The legal profession demands the highest degree of trustworthiness, honesty and public integrity. As future members of that profession, students of the Law School are bound to observe principles that reflect the same high standards that govern the practice of law. This Student Honor Code (the Honor Code) sets forth conduct that is prohibited, and it establishes minimum standards for student professional responsibility. The standards of conduct in the Honor Code are in addition to the standards set forth in the UNLV Student Conduct Code and the Law School Student Policy Handbook. Violations of the Honor Code will be subject

to the procedures and sanctions of the Honor Code, as set forth below.

<https://portal.law.unlv.edu/files/portal/Student%20Handbook.12-13.Honor%20Code.pdf>

Academic integrity is a legitimate concern for every member of the campus community; all share in upholding the fundamental values of honesty, trust, respect, fairness, responsibility and professionalism. By choosing to join the UNLV community, students accept the expectations of the Student Academic Misconduct Policy and are encouraged when faced with choices to always take the ethical path. Students enrolling in UNLV assume the obligation to conduct themselves in a manner compatible with UNLV's function as an educational institution.

An example of academic misconduct is plagiarism. Plagiarism is using the words or ideas of another, from the Internet or any source, without proper citation of the sources. See the *Student Academic Misconduct Policy* (approved December 9, 2005) located at:

<https://www.unlv.edu/studentconduct/student-conduct>.

Academic Success Program/CASE—The Academic Success Program assists students in removing barriers to academic success. This includes reviewing past exams, giving sample exams or hypotheticals, evaluating study habits, and assisting with time and stress management issues.

The Academic Success Program also provides a series of pre-bar exam lectures to assist in preparing to take the bar, as well as opportunities for thoughtful feedback and individualized assistance in bar preparation through the bar prep period. More information can be found here: <https://law.unlv.edu/academics/asp/current-students>

Copyright—The University requires all members of the University Community to familiarize themselves with and to follow copyright and fair use requirements. You are individually and solely responsible for violations of copyright and fair use laws. The University will neither protect nor defend you nor assume any responsibility for employee or student violations of fair use laws. Violations of copyright laws could subject you to federal and state civil penalties and criminal liability, as well as disciplinary action under University policies. Additional information can be found at: <http://www.unlv.edu/provost/copyright>.

Disability Resource Center (DRC)—The UNLV Disability Resource Center (SSC-A 143, <http://drc.unlv.edu/>, 702-895-0866) provides resources for students with disabilities. If you feel that you have a disability, please make an appointment with a Disabilities Specialist at the DRC to discuss what options may be available to you. If you are registered with the UNLV Disability Resource Center, bring your Academic Accommodation Plan from the DRC to the law school Registrar's office to develop strategies for implementing the accommodations to meet both your needs and the requirements of the course.

Law Library—The Wiener-Rogers Law Library provides resources to support students' access to information. Reference librarians are available for consultation in person or by phone or email. For library services and resources, see <https://law.unlv.edu/law-library> and <https://law.unlv.edu/academics/law-library/student>.

Religious Holidays Policy—Any student missing class quizzes, examinations, or any other class or lab work because of observance of religious holidays shall be given an opportunity

during that semester to make up missed work. The make-up will apply to the religious holiday absence only. It shall be the responsibility of the student to notify the instructor **within the first 14 calendar days of the course for fall and spring courses (excepting intersession courses), or within the first 7 calendar days of the course for summer and modular courses**, of his or her intention to participate in religious holidays which do not fall on state holidays or periods of class recess. For additional information, please visit: <http://catalog.unlv.edu/content.php?catoid=6&navoid=531>.

Rebelmail—Rebelmail is UNLV's official email system for students. It is one of the primary ways students receive official university communication such as information about deadlines, major campus events, and announcements. All UNLV students receive a Rebelmail account after they have been admitted to the university. Students' email prefixes are listed on class rosters. The suffix is always [@unlv.nevada.edu](mailto:unlv.nevada.edu). The law school has two general email lists for students: INFO and ADMIN-MSGs. Some faculty will use TWEN or personal gmail groups to send specific class messages.

***** Continue to the Next Page for Class Assignments *****

PART II. COURSE READINGS & SCHEDULE

The following chart lists tentative course assignments. Assignments are subject to change; however, any changes to assignments will be posted at least one week in advance.

Unit 1: Families & the Regulatory State

Unit 2: Marriage

Unit 3: Marital Dissolution

Unit 4: Economic Consequences of Dissolution

Unit 5: Parents & Children

Unit 6: Harm within the Family

Unit 7: Family Contracts & Private Ordering

UNIT 1	Families & the Regulatory State
Class 1	Wednesday, January 20— <u>Introduction & regulating “family”</u> <i>Reading:</i> <ul style="list-style-type: none"> • Course syllabus • GROSSMAN & FRIEDMAN, <i>INSIDE THE CASTLE</i> 1-21 (2011) [TWEN] • CFL, pgs. 12-22
Class 2	Monday, January 25— <u>Constitutional privacy rights</u> <i>Reading:</i> <ul style="list-style-type: none"> • CFL pgs. 22-43
UNIT 2	Marriage
Class 3	Wednesday, January 27— <u>The right to marry... and its limits</u> <i>Reading:</i> <ul style="list-style-type: none"> • Review CFL, pgs. 65-72; 87-109 • CFL, pgs. 72-81; 109-133 • N.R.S. 122.020
Class 4	Monday, February 1— <u>Requirements for legal marriage</u> <i>Reading</i> <ul style="list-style-type: none"> • CFL, pgs. 133-146 • N.R.S. 122.010 <i>et seq.</i>
Class 5	Wednesday, February 3— <u>Socio-economic rights and obligations in marriage</u> <i>Reading:</i> <ul style="list-style-type: none"> • CFL, pgs. 163-166; 197-207; 228-231; 575-577 • N.R.S. 123.010 <i>et seq.</i>
Class 6	Monday, February 8— <u>Recognized relationships other than marriage</u> <i>Reading</i> <ul style="list-style-type: none"> • CFL, pgs. 146-162; 281-294
UNIT 3	Marital Dissolution
Class 7	Wednesday, February 10— <u>Void and voidable marriages: annulment and defenses</u>

	<p><i>Reading</i></p> <ul style="list-style-type: none"> • CFL, pgs. 564-568; 135-139 • N.R.S. 125.290 <i>et seq.</i> • <i>McNee v. McNee</i>, 237 P. 534 (1925) • <i>Smith v. Smith</i>, 226 P.2d 279 (1951) • <i>Irving v. Irving</i>, 134 P.3d 718 (Nev. 2006)
NO CLASS	Monday, February 15 [President's Day]
Class 8	<p>Wednesday, February 17—<u>Divorce: Jurisdiction and grounds for dissolution</u></p> <p><i>Reading</i></p> <ul style="list-style-type: none"> • CFL, pgs. 501-526 • N.R.S. 125.010, N.R.S. 125.020
UNIT 4	Economic Consequences of Marital Dissolution
Class 9	<p>Monday, February 22—<u>Characterizing property</u></p> <p><i>Reading</i></p> <ul style="list-style-type: none"> • CFL, pgs. 582-595 • N.R.S. 123.130 <i>et seq.</i>; N.R.S. 123.220 <i>et seq.</i> • <i>Verheyden v. Verheyden</i>, 104 Nev. 342 (1988)
Class 10	<p>Wednesday, February 24—<u>Characterizing Property continued: increased value of separate property during marriage</u></p> <p><i>Reading</i></p> <ul style="list-style-type: none"> • CFL, pgs. 595-612 • <i>Malmquist v. Malmquist</i>, 106 Nev. 231 (1990) • <i>Johnson v. Johnson</i>, 89 Nev. 244 (1973) • <i>Cord v. Neuhoff</i>, 94 Nev. 21 (1978)
Class 11	<p>Monday, February 29 [Leap Year!]<u>—Distributing property</u></p> <p><i>Reading</i></p> <ul style="list-style-type: none"> • CFL, pgs. 577-582, 629-642 • N.R.S. 125.150 • <i>Gemma v. Gemma</i>, 105 Nev. 458 (1989) • <i>McNabney v. McNabney</i>, 105 Nev. 652 (1989) • <i>Lofgren v. Lofgren</i>, 112 Nev. 1282 (1996)
Class 12	<p>Wednesday, March 2—<u>Spousal Support/Alimony</u></p> <p><i>Reading</i></p> <ul style="list-style-type: none"> • CFL, pgs. 661-666; 668-671, 689-691, 693-701 • N.R.S. 125.150 • <i>Rodriguez v. Rodriguez</i>, 116 Nev. 993 (2000) • <i>Sprenger v. Sprenger</i>, 110 Nev. 855 (1994)
Class 13	Monday, March 7— <u>Skills Day #1: Negotiated Divorce Settlement</u>
UNIT 5	Parents & Children

Class 14	<p>Wednesday, March 9—<u>Parenthood: Establishing/terminating rights and responsibilities</u></p> <p><i>Reading</i></p> <ul style="list-style-type: none"> • CFL, pgs. 295-318; 324-326; 363-365 • N.R.S. 126.011 <i>et seq.</i> • N.R.S. 128.005 <i>et seq.</i> • N.R.S. 125C.210 • <i>Love v. Love</i>, 114 Nev. 572 (1998)
Class 15	<p>Monday, March 14—<u>Child Access I: Jurisdiction, Criteria for Custody Between Parents & Other Adults</u></p> <p><i>Reading</i></p> <ul style="list-style-type: none"> • CFL, pgs. 802-813; 821-846 • 2015 Nevada Laws Ch. 445 (A.B. 263) • N.R.S. 125A <i>et seq.</i> (Unif. Child Custody Jurisdiction & Enforcement Act)
Class 16	<p>Wednesday, March 16—<u>Child Access II: Defining and determining “custody” and “visitation”</u></p> <p><i>Reading</i></p> <ul style="list-style-type: none"> • CFL, pgs. 877-895; 898-908 • 2015 Nevada Laws Ch. 445 (A.B. 263) • <i>Rivero v. Rivero</i>, 125 Nev. 410, 216 P.3d 213 (2009) (read through pg. 227/Part III)
NO CLASS	Mar. 21, 23 [Spring Break]
Class 17	<p>Monday, March 28—<u>Child Access III: Modifications & Relocations</u></p> <p><i>Reading</i></p> <ul style="list-style-type: none"> • CFL, pgs. 936-958 • <i>Cook v. Cook</i>, 111 Nev. 822 (1995) • <i>Mason v. Mason</i>, 115 Nev. 68 (1999) • <i>Hayes v. Gallacher</i>, 115 Nev. 1 (1999)
Class 18	<p>Wednesday, March 30—<u>Child Support</u></p> <p><i>Reading</i></p> <ul style="list-style-type: none"> • CFL, pgs. 705-714; 728-738; 764-777 • N.R.S. 125B.002 <i>et seq.</i>; N.R.S. 130 <i>et seq.</i> • <i>Rivero v. Rivero</i>, 125 Nev. 410, 216 P.3d 213 (2009) (only Part IV) • <i>Wright v. Osburn</i>, 114 Nev. 1367 (1998) • <i>Minnear v. Minnear</i>, 107 Nev. 495 (1991) • <i>Westgate v. Westgate</i>, 110 Nev. 1377 (1994)
Class 19	Monday, April 4— <u>Skills Day #2: Resolving a Custody and Parenting Dispute</u>
Class 20	<p>Wednesday, April 6—<u>Special Guest, Prof. Lipman: Families with Tax Policy</u></p> <p><i>Reading</i></p>

	<ul style="list-style-type: none"> • CFL pgs. 231-247; 702-704
UNIT 6	Harm within the Family Unit
Class 21	Monday, April 11— <u>Tentative: Intimate Partner Violence</u> <i>Reading</i> <ul style="list-style-type: none"> • CFL, pgs. 415-421; 453-463 • Nancy Ver Steegh, <i>Yes, No, and Maybe: Informed Decision Making about Divorce Mediation in the Presence of Domestic Violence</i>, 9 Wm. & Mary J. Women & L. 145 (2003) [TWEN]
Class 22	Wednesday, April 13— <u>Tentative: Torts Against Spouses & 3rd Parties</u> <i>Reading</i> <ul style="list-style-type: none"> • CFL, pgs. 475-497
Class 23	Monday, April 18— <u>Guest Panel: Ethics of Family Law Practice</u> <i>Reading</i> <ul style="list-style-type: none"> • CFL, pgs. 863-877; 1021-1027
UNIT 7	Family Contracts & Private Ordering
Class 24	Wednesday, April 20— <u>"Private Ordering": Pre- and Post-nuptial agreements</u> <i>Reading</i> <ul style="list-style-type: none"> • CFL, pgs. 1051-1059; 1061-1065; 1073-1080; 1091-1010 • N.R.S. 123A <i>et seq.</i> (Unif. Premarital Agreement Act) • <i>Sogg v. Nevada State Bank</i>, 108 Nev. 308 (1992)
Class 25	Monday, April 25— <u>Skills Day #3: Advising on Enforceability of Pre-Marital Agreement</u>
Class 26	Tuesday, April 26— <u>Semester Wrap-up</u>
Final Exam	Thursday, May 12 @ 1 p.m. [Good Luck!]

APPENDIX

The descriptions below will give you some idea of the reasons behind each grade.¹

An 'A' exam would make a supervising attorney (client) (the intended audience) feel confident about relying on your work with little or no corrections or interventions. A client would be pleased that you prepared her for all possible counter arguments and legal obstacles that the case would likely encounter. The reader would understand “what” the law is, “how” it applies to her case, and (where appropriate) “why” the law is what it is or why it is as uncertain as it is.

An 'A' exam will:

- i. be easy to read due to strong large-scale organization, clarity, and focus;
- ii. have missed no major causes of action or misstated any major rules of law;
- iii. have further analyzed the minor or more subtle legal issues in the fact pattern;
- iv. connect fact and law seamlessly to reason to legal conclusions;
- v. be based on a close, accurate, and thorough reading of the facts;
- vi. ground legal advice in a sophisticated understanding of how a family law case proceeds through the legal process.

A 'B' exam would make a favorable impression on the intended audience. It would communicate that you know the law and legal analysis well. A supervising attorney would enjoy watching your growth and would feel confident that, with guidance, you will be a very good attorney. The work product might require some “gap filling” to thoroughly address all issues, to refine the precise terminology, or to tighten the analytical structure. The intended audience would generally understand the law, the conclusions, and the legal advice with strong clarity.

A 'B' exam will:

- i. be similar to, but lack the thoroughness, power, or polish of an 'A' paper;
- ii. have generally hit “the big issues” and stated the law accurately, but missed some of the minor nuances and complexities;
- iii. be generally well-organized, but may require the reader to reread certain sentences or paragraphs before fully grasping the author’s point or may use excessive space to make minor points;
- iv. state defensible legal conclusions, but further clarity may be necessary to understand the reasoning in all its contours;
- v. explain the “what” and “how” of the law, but may leave the client with further follow-up questions regarding why the result is as you suggest it is or why the other side might prevail.

A 'C' exam would leave the intended audience uneasy about relying unguardedly on your work or unclear on how you produced the work. Your intended audience might pick up some interesting points of law from the work, but would feel compelled to rethink the legal reasoning and/or closely research your legal rules. However, a supervising attorney would likely see sufficient promise in

¹ Adapted from Professor Jamie Abrams of the University of Louisville Brandeis School of Law, which is in turn adapted from a model provided by the University of North Carolina Center for Teaching and Learning and by Professor Ruth McKinney of the University of North Carolina School of Law and from Mary Beth Beazley at Ohio State Law School.

your work to motivate him or her to invest time and energy in supervising your future assignments more closely.

A 'C' exam may:

- i. present some good thoughts, but contain little organizational structure;
- ii. fail to identify all relevant issues fairly raised by the facts;
- iii. mis-state or omit important facts;
- iv. mis-state some propositions of law relevant to the facts;
- v. rely upon legal doctrine whose relevance is not immediately apparent, or which is not relevant to the facts provided
- vi. fail to accurately or appropriately explain the meaning of the law discussed;
- vii. present legal analyses which do not follow the logic of the legal doctrines learned in the course; or which are not internally coherent from beginning to end.

A 'D' exam would not be acceptable to a supervising attorney or to the client. It may provide a few cases or ideas from which they could begin on their own, but would be wholly undependable standing alone. A supervising attorney would need to rework the document or assign it to a different associate. Both a judge and a supervising attorney might question the reliability of future work.

A 'D' exam may:

- i. significantly misstate the facts, legal doctrine, or major issues;
- ii. significantly fail to use the facts from the exam hypothetical or legal authorities within the argument, present significant conclusions with little or no support, or fail to include significant arguments or major legal issues;
- iii. contain so many organizational or analytical errors as to inhibit the reader from following the writer's thoughts.

An 'F' exam will show a fundamental lack of grasp of the legal doctrines studied in the course, and a failure to adequately apply those doctrines to the facts presented. An "F" represents the judgment of the professor that this student should re-take the course in order to show sufficient mastery of the subject to be allowed to continue to upper-division courses in the same area, or to sit for the bar exam.

In addition to the deficiencies of a "D" exam, an "F" exam may:

- i. demonstrate consistent lack of knowledge of or mis-application of legal doctrine;
- ii. demonstrate a failure to closely read or understand the legal relevance of the facts;
- iii. exhibit poor organization, inconsistent legal analysis, and conclusions which do not follow from the premises of the argument;
- iv. spend significant time discussing issues not fairly raised by the facts.