

Family Law
Fall 2024
Professor Marcia Zug

Class hours: Monday & Wednesday 10:45-12:15

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Office Hours: Monday 12:30-2 and Tuesday 1:30-3 or by appointment.

Course Materials: The majority of class readings and assignments will be taken from Judith Areen and Marc Spindelman Family Law casebook, 7th edition. Any additional reading materials will be posted on the class Twen page either under “Additional Reading Materials” (pdfs of most newspaper articles are here) or “web links” or they are available through Westlaw. These additional materials consist of articles, statutes, charts and cases not found in the casebook.

Course Description: This course examines federal and state laws concerning familial relationships (broadly construed) and the policies and principles that undergird them. The court focuses on legal family relationships between adults, specifically: who can get married; the rights, duties, and obligations of marriage; the state’s interest in marriage; the dissolution of marriage; the distribution of property upon dissolution; various jurisdictional issues relating to marriage and divorce; and the arrangements between divorced parents regarding custody, support and visitation of children. The course also considers alternatives to marriage. Special attention will be paid to policy-based and theoretical questions about families.

Learning Outcomes: In this class, you will learn the foundations of family law. You will leave with an understanding of how South Carolina courts address the issues of marriage, divorce, child custody and child support. You will also learn how South Carolina law differs from other states. The goal of this class is to provide the foundational family law knowledge necessary for the bar or for a potential career in family law practice. You will learn how to draft basic family law documents, such as prenuptial agreements, learn how to divide property and custody, and how to argue crucial issues of family law and policy.

Assessments: All students are expected to do all the assigned reading for every class, to attend class regularly and to be prepared to participate. Students who miss more than 25% of the class sessions (more than 6) will not be permitted to sit for the exam. The class will use an on-call system based on the seating chart. 3-5 students will be on call each class period. Students on call should be prepared to answer questions and readiness to answer questions will be part of the class participation grade. The remaining part of the class participation grade will be based on class participation in addition to the on-call days. Class participation will constitute 20% of a student’s final grade. The remaining portion of the grade will be based on the final exam. I will discuss the form and mechanics of the final exam in the latter part of the semester.

Reading Pace: Most classes will cover three cases, some will cover fewer and a few will cover four. In order to remain prepared for class, always read three cases ahead of where we stopped in the previous class. This means, if we only cover two cases during a particular class you should read the next new case and reread the two that were not yet covered.

Syllabus

I. What is A Family?

Class 1: The Unmarried Family

Casebook

- Casebook notes pages 575-581
- Village of Belle Terre 638-642
- Borough of Glassboro 644-648

Skim:

- When Every Relationship is Above Average: Perceptions and Expectations of Divorce at the Time of Marriage, Lynn A. Baker & Robert E. Emery, 17 Law and Human Behavior 439 (1993)
(posted on TWEN under *Additional Reading Materials in the articles folder*)

Articles: (additional reading materials folder)

- I Now Pronounce You Friend and Friend
- Older Women Team Up to Face Future Together, Jane Gross, The New York Times (Feb. 27, 2004)

II. Marriage Benefits and Prohibitions

Class 2:

Casebook

- *Notes:* 61 – 67,
- Moore v. City of East Cleveland 631-637
- York v. Longlands Plantation, 424 S.C. 280, 818 S.E.2d 215 (Ct. App. 2018),
- notes 568-573

Article

- The End of Marriage (Twen weblinks)
- The State of Our Unions (weblinks)

Class 3 Casebook

- 575-581
- State v. Sharon (Incest) 111-114

Statutes: (Pull from Westlaw)

- SC § 16-15-60
- Incest Prohibited [S.C. Code Ann. § 20-1-10]
- Criminal Incest [SC Code Ann. § 16-15-20]

Article

- Tainted Love, Ruth Elkins, The Independent on Sunday (London) (March

4, 2007) (in “additional reading materials/articles folder” on Twen)

III. The Fundamental Right to Marry

Class 4: Who May Marry

Cases

- Notes 116-120
- In re JMN 121-128
- Lukich v. Lukich, 379 SC 589 (2008)
- Brown v. Sojourner (In re Estate of Brown), S.C. Ct. App., No. 5578, 7/25/18(skim)

Statutes

- Age [S.C. Code Ann. §§ 20-1-250, 20-1-100]
- Bigamy [S.C. Code Ann. § 20-1-80]
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Class 5: Who May Marry Cont:

Cases

- Collier v Fox 129-141
- Loving v. Virginia 67-76
- Zablocki v. Redhail

Statutes

- Bigamy [S.C. Code Ann. § 20-1-80]

Articles

- The Persistence of Polygamy, Timothy Egan, The New York Times Sunday Magazine (Feb. 28 1999).
- Boys Cast Out By Polygamists Find Help, Erik Eckholm, The New York Times, (Sept. 9, 2007).
- Elizabeth Joseph, “My Husbands Nine Wives,” Dallas Morning News (May 24, 1991) (under additional materials/articles on Twen)
- Stephen Elliot “Three Men and a Woman” New York Times, (Sept. 4, 2005)(additional materials/articles)

Class 6: Restrictions on Marriage

Casebook 76-110

- Turner v. Safely
- Obergefell v. Hodges
- Dobbs v. Jackson Women’s Health (edited version of the case on twen/additional reading materials/cases)(focus on sections A1,2 and Thomas and Kavanaugh concurrence

SC cases

- Campbell v. Robinson, 398 SC 12 (2012)
- Optional reading (Widenhouse v. Colson, 2013 WL 4009149)

Statutes:

- Same Sex Marriage S.C. Code Ann. § 20-1-15]
- Full, Faith and Credit Clause (Const. Art. IV section 1)

Articles

- Get Sterilized and I'll Shave Off Jail Time
- Baby, Baby, Please! Woman Sues Ex-Fiancé for 100k in Wedding Costs. Time Magazine, Dec. 2010.

Class 7: Marriage Restrictions Cont:

Casebook

- Rappaport v. Katz (procedural) 141-144
- Jones v. Perry 144-151
- Lester v. Lester 152- 155
- Johnston v. Johnston 155-157

Class 8: Common Law Marriage

Westlaw

- Rodgers v. Herron, 226 SC 317 (1954)
- Callen v. Callen, 365 SC 618 (2005)
- Stone v. Thompson (2019) (under weblinks)
- *Swicegood v. Thomson* (available on Twen under weblinks)
-

Optional Reading: Thomas v. Five Star Transportation, 412 S.C. 1 (2015)

Statutes:

- S.C.Code Ann. §20-5-50 (2007)
- S.C. Code Ann. § 20-3-630(A)(4)

Class 9: Marital Contracts

Casebook

- Simeone v. Simeone 1362-1367
- Ansin v. Craven 1376-1387
- Marvin v. Marvin 581-850

Westlaw:

- Hudson v. Hudson, 408 S.C. 76, (Ct. App. 2014)

Articles

- Bill Murray prenup (Twen: additional reading materials)
- Bill Murray summons (Twen: additional reading materials)
- Rick Lyman, Trying to Strengthen an 'I Do' With a More Binding Legal Tie, The New York Times, Feb. 15, 2005
- Louisiana Covenant Marriage Statute, LA Rev. Stat 9:272 (2002) & La. Civil Code Art 102 (2002)

Statutes

- SC Code 1976 § 20-1-230 B

Class 10: Gender Roles in Marriage

Casebook

- Graham v. Graham 183-186
- Gender notes 186-199
- Orr v. Orr 199-201
- *Ricigliano v. Ricigliano* (on westlaw) Appellate Case No. 2012-212586
- Notes 236-245.

Articles

- A letter to...my wife, who won't get a job while I work myself to death
- When Mom and Dad Share it All, NY Times Magazine, July 15, 2008

Class 11: Benefits and Responsibilities of Marriage

Casebook

- McGuire v. McGuire 176-182
- Holman v. Holman
- Borelli v. Bruseau v 1387-1394

Westlaw

- Trammel v. United States 445 US 40 (1980) (Testimonial privilege)
- Boone v. Boone 345 S.C. 8 (2001) (Abolished inter-spousal tort)

Statutes

- Doctrine of Necessaries [SC Code Ann. §20-5-60]

Class 12: Marital Violence

Casebook

- A Legal History of Marital Rape 297-301, 352-358
- People v. Humphrey 301 -307

Westlaw

- Kizer v. Commonwealth, 228 Va. 256 (marital rape)
- Taylor v. Taylor
<https://www.sccourts.org/opinions/HTMLFiles/COA/5978.pdf>

Statutes

- Spousal Rape [S.C. Code Ann. § 16-3-615]
- Mandatory Reporting [S.C. Code Ann. § 16-25-70]
- Red Flag Law SC Code Ann Section [16-25-30](#).
-

Articles (under weblinks and additional materials)

- How is Spousal Rape Treated?
- Jill Hasday, Donald Trump's Lawyer was Right
- Till Death Do Us Part, Charleston Post and Courier,
- SC Takes First step on Domestic Violence

Class 13: The Doctrine of Family Privacy

Casebook

- Griswold v. CT 246-250
- Eisenstadt v. Baird 251-253
- Lawrence v. TX 286-295

III Getting Out of Marriage

Class 14: Separation & Fault

Divorce

Casebook

- Benscoter v. Benscoter 795-796
- Edwards v Edwards 780-788
- Jenkins v. Jenkins 788-792
- Eason v. Eason, 384 SC 473 (2009)

SC Cases:

- *Dover v. Ball*, 437 S.C. 82, (Ct. App. 2022)(skim)
- *Hayduk v. Hayduk*, 436 S.C. 411, (Ct. App. 2022) (skim)

Articles

- When Every Relationship is above Average: Perceptions and Expectations of Divorce at the Time of Marriage, Lynn A. Baker & Robert E. Emery, 17 Law and Human Behavior 439 (1993)
- The 37-Year Itch, Alex Kuczynski, The New York Times, (Aug 8, 2004)

Optional Reading

- Brown v. Brown, 379 S.C. 271 (2008) (no sex adultery)

Class 15: Divorce Cont:

- Rankin v. Rankin 798-801
- Hollis v. Hollis 801-804
- Willan v. Willan 804-807
- Fuchs v. Fuchs 64 NY2d 487 (1946)

- Anonymous v. Anonymous (236 NY2d 288 (1962) (skim))

Optional Reading

- Srivastava v. Srivastava, 411 S.C. 481 (2014) (condonation and credibility)

Class 16: No Fault Divorce

Casebook

- In re Marriage of Dowd 812-814
- Masser v. Masser 817-819
- In re marriage of Cooper 819-822
- Twyman v. Tywman 822-833

Article:

- Conservatives are coming for no fault divorce, (Twen)

IV. Division of Property, Alimony and Child support

Sanford Draft Divorce Agreement on Twen

Print this out and familiarize yourself with the facts. As we learn different aspects of divorce law you will be asked to draft divorce provisions based on these facts.

Class 17: Standards for Awards

Casebook

- Holman v. Holman 1128-1133
- Postema v. Postema 1143 – 1152
- Jenkins v. Jenkins, 401 SC 191 (2012)
- Sanders v. Sanders, 396 SC 410 (2011)

Statute

- SC Code 20-3-130

Article

- Alimony Chart (under “additional reading materials” on Twen)

Class 18: Standards for Awards Cont:

- Barrow v. Barrow, 394 SC 603 (2011)
- Polacheck v. Polacheck 1152-1157
- Tucker v. Tucker 1158-1162 (skim)

Article

- Ruth Franklin, The Opt-Out Problem We Don’t Talk About, The New Republic Magazine, Jan 12, 2011

Optional Reading:

- Smallwood v. Smallwood, 392 SC 574 (2011)
- Feldman v. Feldman, 380 S.C. 538 (co-habitation)
- Miles v. Miles, 2011 WL 2139101 (2011)(health insurance and alimony)
- Simmons v. Simmons (392 SC 412)(soc sec benefits not property)

Class 19: Property

Awards

- Finan v. Finan 1162-1165
- Moore v. Moore 427 S.C. 26, (Ct. App. 2019). (skim)
- Gnall v, Gnall 1169-1174
- Notes pages 1212-1219

Class 20: Child Support

Casebook

- Kraisinger v. Kraisinger 1219-1222
- Smith v. Smith 1242-1246

Westlaw

- McLeod v. Starnes, 396 S.C. 647 (2012) (will focus on this case)
- Webb v. Sowell, 387 S.C. 328 (2010)(skim)
- Risinger v. Risinger, 273 S.C. 36 (1979)

(note the Risinger factors)

Articles

- For the Rich, Child Support Means Living in style (“additional reading materials” on Twen)
- Tough Child Support Laws Put Poor Fathers in a Bind (weblinks)
- Sentenced Bank Robber Says she Did it for Child Support (weblinks)
- Skip Child Support. Go to Jail. Lose Job. Repeat. (weblinks)

Statute

- Full Faith and Credit for Child Support Orders, 28 USC 1738B

Optional Reading

- Myers, John E.B. "I won't pay child support, but I insist on visitation." Should visitation and child support be linked? 45 McGeorge L. Rev. 695-705 (2014)

Class 21; Modification of Awards (catch up day)

Casebook

- Schwarz-Schwarz 1179-1185
- Little v. Little 1237-1241

Statute

- SC Code: § 63-17-310

V. Child Custody and Visitation

Class 22: Best Interests of Child Standard

Casebook

- Arneson v. Arneson 941-946
- Hollon v. Hollon 946-953
- Spencer v. Fossett,
<https://www.sccourts.org/opinions/HTMLFiles/COA/6000.pdf>

Class 23: Custody Cont.

- Palmore v. Sidoti 954-956
- Jones v. Jones (skim) 956-960
- Weisberger v. Weisberger 966-974
- Young v Hector 993-1002

Articles

- Lynette Clemetson & Ron Norris “Overcoming Adoptions Racial Barriers,” The New York Times, Aug. 17, 2006.
- Fighting War and Custody

Optional Reading

- Chastain v. Chastain, 381 S.C. 295(2009) (flagrant promiscuity exception)

Class 24: Custody Cont:

Casebook

- Farmer v. Farmer 1107-1109
- Troxel v. Granville 448-457
- Smith v. Smith 1044-1052

Optional Reading : Puser v. Owens 396 S.C. 531, 722 S.E.2d 225 (Ct. App. 2011)

Westlaw

- Middleton v. Johnson, 369 S.C. 585 (2006)
- S.C. Code § 63-3-530 (A)(33) (grandparent visitation statute).

Class 25: Custody Jurisdiction

Casebook

- Notes pages 1290-1294,
- Foster v. Wolkowitz 1294-1300
- Thompson v. Thompson 1301-1304
- Abbott v. Abbott 1304-1310

Statute

- SC Statute: § 63-15-302

Class 26: Jurisdiction Regarding Support Awards

Casebook

- Vanderbilt v. Vanderbilt 1314-1316
- Kulko v. Superior Court of California 1323-1326
- Notes 1331-1333
- Hamilton v. Hamilton 1341-1347

Twen: Donna Tillis Convinces Court to Clear Vet's Debt

Tobin v. Richardson (in Twen additional materials/documents folder)

Additional Class (if time):

Class 27: Enforcement

Casebook

- United States v. Amer 1101-1107
- Khalifa v. Shannon 1094-1101
- Eunique v. Powell 1251-1255
- Turner v. Rogers 1261-1267

