FAMILY LAW
SPRING 2013
SYLLABUS & INTRODUCTION
Professor Coombs

Class: WF 11-12:20
Office Hours: T 11:30-12:30 R 2-3 and by appointment
Office: G473 Law Library
Tel.: [305] 284-3616 mcoombs@law.miami.edu
Fax: [305] 284-6619
Assistant Gloria Lastres
glastres@law.miami.edu

1 I am frequently in my office with the door open; feel free to stop by.
TEXT AND OTHER MATERIALS: The texts for this course are Harris, Teitelbaum & Carb- bone, FAMILY LAW [4TH ED], the Statutory Compilation (downloadable from the class website) and additional materials (noted as “H” in syllabus) (also downloadable from the class website). There may also be questions and problems for class discussion; to the extent possible, I will post these on the class website during the week previous to the one in which they will be discussed. YOU MUST check the website regularly; you are irrebuttably presumed to have received any administrative material posted to the website.

Code Names: By 4 pm on Monday, January 28 2013, you should provide to my assis-tant (NOT to me) your name and the code name which you will use for the quizzes (see Grading, infra). I can then grade and return the quizzes, while maintaining confidentiality. Please provide this by emailing her from the email address you regularly use so she can reach you readily if needed.

GRADING: Please read the following section very carefully.

Grading in this class will be based on three distinct measuring tools.

First, there will be five short, in-class quizzes, which will be multiple-choice and/or short answer. Each quiz will be worth ten points; only your four highest grades will be counted. The quizzes will be given at the beginning of a class session, shortly after we have completed the segment of the syllabus to be tested. Note that if you have a disability problem that may require accommodation in taking the quizzes, you must see the Dean of Student’s office about this by January 28; we can, as needed, work out an accommodation that will minimize the risk of identification.

If you have a reason why you unavoidably must miss class on a quiz date, let me know ASAP but no later than three weekdays prior to the quiz. I can usually manage some kind of accommodation. Excuses presented after the quiz will only be entertained for, e.g., falling into a coma before class and letting me know within 2 hours of regaining consciousness!

Second, there will be five written assignments / in-class exercises during the course of the semester. These will be worth ten points.

These assignments/exercises are to be done in groups of four to five students. The group will submit a single written assignment. If there is an in-class exercise as well, it may be one where all the team members can participate or one in which a single person, designated by the group, will perform orally. In any event, the group will all receive the same grade.

Each student/student group must do one exercise; you should indicate in an email to me with a copy to Ms. Lastres who is in your group and your preferences among the exercises no later than 4 pm on Monday January 28 2013. If you do not wish to choose a group, indicate your preference among the assignments and I will use those, to the extent practical, to form groups. I will also, to the extent possible, honor requests that two or three people be placed in the same group. Indicate at least your first and second choice and your least-preferred among the exercises. Because I want
a particular number of participants for each, you may well not get your first choice. Those who submit their choices sooner and who provide more information will be given preference (e.g. if you only list your first choice, and that is over-subscribed, you run a greater risk of getting your last choice than if you indicate your full preference list).

The outlines of the exercises are indicated below. More details will follow prior to the time the exercise is due.

Third, there will be a final examination. It will focus particularly – but not entirely -- on issues that have not been tested by the quizzes or the assignments/exercises described below, but will not be limited to these subjects. It will be worth 50 points.

Finally, there are three options for calculating the final grade:
- a) quizzes + exercise: 40%; final exam: 60%
- b) quizzes + exercise: 50%; final exam: 50%
- c) quizzes + exercise: 60%; final exam: 40%

You should indicate your preferred option to my assistant, Ms. Lastres (not to me), no later than 4 pm on Monday January 28 2013; if you do not inform her by this deadline, your grade will be calculated according to option b.

EXERCISES:
1. Teams will submit a written assignment explaining what benefits and duties a gay couple will have under one of three situations: a) by marrying in a state that permits same-sex marriage; b) by entering a civil union in a state that permits this (for this piece, you may choose which state, since these are not identical), or c) by contract in Florida. I will assign teams to one of the three situations (though you may express a preference). This will be due shortly prior to the completion of the material on forming domestic bonds. In that class I will ask the teams doing this exercise to answer some specific questions regarding the effect of each legal regime. I will also ask you to explore the effects on these legal consequences if the couple moved to a jurisdiction following one of the other regimes.

2. I will provide a set of facts regarding the financial situation of a married couple. In particular, it will involve a couple whose financial situation has changed significantly since the marriage. I will have one team do an initial client interview in class and then ask each team shortly thereafter to submit a written memo to me and to report orally in class regarding the advice they would provide the client. We will do this exercise at about the same time as our discussions of property distribution and spousal support.

3. In conjunction with the materials on family definition, particularly regarding the question of legal parenthood, we will stage a legislative debate regarding a proposed bill to change Florida law by repealing Fl. Stat. §742.18 in any situation where the child at issue is two years olds or more and has some relationship with the father. Each participating team will provide a written memo beforehand regarding its position on this bill.

---

2 If a student would like to help by playing the client role, please let me know by February 1. Otherwise I will -- somewhat schizophrenically -- both act in and “direct” this little play.
(support/oppose/support with modifications – positions to be determined by me, taking into account expressed preferences) and reasons. We will then stage a short debate among designated spokespersons for each team.

4. I will provide a set of “stipulated” facts and some disputed facts regarding a proposed parental relocation which is taking place in Florida. One team each shall represent the mother and the father and submit a brief supporting its client’s position. We will then have a brief oral argument before a panel of judges (one from each other team on this project) who will have read the briefs and will question the attorneys. The judge teams will prepare and submit their proposed ruling and reasons in writing, which will be announced in class. This will all occur at about the time we discuss the material on relocation.

5. This will be similar to exercise 4 in structure. It will take place, however in an artificial jurisdiction and the disputed issue will involve motions to modify child support in light of changes in family formation by both parents.

In each of these exercises, during the oral presentation portion, other class members are strongly urged to participate with questions/comments after the original presentations by the assigned student teams.

CLASS ATTENDANCE/PARTICIPATION, PARTICIPATION IN CLASS BLOG AND GRADE EFFECT:
Family law, perhaps even more than most topics, is enriched by a variety of thoughtful perspectives on the interface of doctrine and the activities of people in families and of the various institutions that affect families and their members. Both regular attendance and participation in class discussions is expected. In addition there are numerous issues that arise that inspire both intellectual and emotive responses. In order to encourage students to share both materials they discover and their responses to both these materials and to ideas and arguments in class, I am setting up a UMFamilyLaw blog. All class members – and I -- will be able to post materials and to comment on others’ posts. You will receive an email shortly explaining how to participate. Participation in class discussion as well as in the class blog, will be taken into account in grading at the margins (e.g., a grade at the upper edge of a C+ could become a B if class participation were very good). Four or more absences, for whatever reason, subject you to sanctions, including lowering of grade and, in egregious cases, involuntary withdrawal from class.

INTRODUCTION TO TOPIC: The area of family law has exploded in recent years -- both in the sense of covering a far wider territory and, unfortunately, in the sense of a fragmentation among various sub-areas. In this course, I expect to focus primarily on the law governing the behavior of adults in families. After some introductory materials, we turn to the law governing the formation of marriage and other intimate partnerships and the legal regulation of ongoing relationships. Here, as elsewhere, marriage is the paradigm, but we will also consider how the law deals with the range of “non-marital” partnerships. We then move to the questions surrounding dissolution of marriage and its economic aftermath: division of property and spousal support. The next portion of the
course will focus on adult-child relationships, beginning with the question of when and how the law recognizes the existence of a parent-child relationship and when (not entirely the same question) the law creates rights and duties between an adult and a child. In that context, we will focus on the questions of parenting time (previously referred to as custody and visitation) and child support.

Cross-cutting all these substantive areas of family law are issues of procedure, jurisdiction and lawyering. Particularly in a place like South Florida, the rules to apply are affected by mobility before or after the legal conflict being examined. We will thus consider during the course how courts deal with marriages, divorces and support and custody arrangements originally entered into in other jurisdictions and the impact on disputes when parties move out of the jurisdiction, where “other jurisdictions” means both other states, such as New York, and other States, such as France.

The above is primarily what is sometimes called “private” law or, what I sometimes call “rich people family law,” where the state is deciding or channeling disputes between private parties. We will not deal directly with other “family law” material, regarding direct state control of children or of parenting (i.e., delinquency, and determinations of dependency and/or termination of parental rights based on parental abandonment, abuse or neglect). We will also not deal except very tangentially with adoption or with the complex issues of parenting raised by alternative reproductive technologies.

In exploring doctrine, I hope to set it within the framework of certain overriding questions that seem to infuse a wide range of issues comprised by “family law.” One overriding concern is the conception of the family itself. The family (like the corporation) can be conceived essentially as an entity in and of itself, upon which the state operates and which the state is committed to fostering and protecting. Alternatively, the family can be conceived of as an institution within which individuals interact, with the individuals themselves as the primary objects of government concern. The first perspective, as we shall see, is the more traditional. It is reflected in notions of marriage as a status and in the reluctance of the state to intervene in family matters. The latter perspective, rooted in liberal insistence on individual rights and autonomy, is reflected in notions of marriage as a contract and, simultaneously but somewhat contradictorily, in a greater willingness to permit the state to intervene in family matters at the behest of parties with less power within the family constellation.

Other overriding themes include questions of what a “family” or a “marriage” is, who has the power to make those definitions and how immutable the definitions are. We will thus constantly be considering the role of the parties, tradition, and explicit state regulation in defining “marriage” or “family” and in delimiting the permissible interactions within the family and between the family and various other entities. We will explore the extent to which both the rules defining family and the rules governing families are prescriptive or default rules. That is, to what extent may persons choose to operate under a different set of rules and still obtain legal recognition of those choices? And should the choice between state-imposed status and party-chosen contract be different when the disputes are purely "horizontal," i.e., between adults or also “vertical,” involving the relationship of adults and children?
Family law is in a state of flux in its answers to these fundamental questions. It also bears a problematic relationship to the actualities of human behavior in families. Consider, in particular, the effect of such variables as class, ethnicity and sexual orientation on both the legal and sociological aspects of “family.”

This leads to two other overarching questions for family law. First, to what extent is “law,” in its traditional role as a relatively stable, predictable set of rules, appropriate for dealing with the highly individualized and fluid questions with which family law deals. To what extent is a body of law rooted in vague standards and readily subject to modification in light of “changed circumstances” “law” at all? To what extent should appellate courts control the decision-making of trial courts? What legal rules facilitate such control and uniformity, and what are the costs of imposing a rule-like structure?

Secondly, how might the peculiar characteristics of family law and of the kinds of disputes upon which family law operates lead us to a different conception of the role of the lawyer vis-á-vis the client or vis-á-vis broader social interests.? How should lawyers respond to the negative emotional climate that often operates in family law disputes?

Over the course of this semester, I hope we can use a close study of certain family law doctrines, to explore these questions. In addition, I want to examine the role of the family law practitioner, as lawyer, advocate, counselor and businessperson. How can the family lawyer best apply family law doctrines (as well as other relevant legal rules) in the pragmatic context of the ongoing relationships among his/her client and other family members?
SYLLABUS

All page references are to Harris, Teitelbaum & Weisbrod, FAMILY LAW, unless preceded by an "H", in which case they refer to the handout. In addition many assignments include statutory sections (almost all Florida Statutes), indicated as §§xx. All can be found in the Statutory Compilation, ordered by section number. In addition, I will intermittently post on the class website sets of “Questions and Problems” to be used together with the assignments to which they correspond. Note that when there is a “Problem” I will expect you to be able to analyze that problem in class, unless I have indicated otherwise.

Thus you should each have (1) the casebook; (2) the Handout, (3) the Statutory Compilations, and (4) the Questions and Problems as they are posted.

The operative presumption is that each listed assignment will comprise the materials for one class, except for the starred assignments, which will likely take 1½ or 2 class periods to complete (listed assignments 10 & 11 will probably extend over a total of three class periods).

Forming Domestic Bonds

Update page references for handout when get from GL
(Note that much of the statutory material for the first several classes is found in Fl. Stat. ch. 61; in addition to the specifically assigned sections, you should consult §§1.046 [Definitions] as needed.)

1.* Marriage and Family: Introduction
   3-32; H 2 [Diverging Family Structure]
2. Marriage and its limits
   153-54, 159-86, 208-13, 220-33, §§741.0305, 741.04
3. Alternatives to ceremonial marriage
   243-76, § 741.211; H 7 [Posik]
4. Legal Regulation of Same-Sex Intimacy; Conflicts of laws
   186-207, 276-79, 283-84 [Wardle], 234-41; §741.212, 1 USC §7; H 12 [Windsor]

[Exercise One due written materials before we begin day 4; in class during day 4]

Ongoing Intimate Relations

5. Introduction to marriage and marital property
   33-65, §§708.05-.10
6. Managing the economics of the marriage
   65-88, 94-109, §§61.09-.10, H 25 [Connor]
7. Some other legal effects of marriage
   129-52, §§741.23-.235, §§741.28, H 29 [Waite]

Dissolving Domestic Bonds

8. Divorce: fault or no-fault? and evaluating divorce reform
   291-313, 321-28, 333-42, §§61.001-044,.052
9. Divorce jurisdiction 794-806, §§ 61.021, 61.061
11. * Spousal support [Skim 393-401], 401-22, §61.08, H 32 [Noah, Rosecan]

[Exercise Two Client interview at end of day 10 materials; written materials due/ discussion before we begin day 13]

Family Definitions
14. Who is a Father/What are his Rights and Duties I 865-67, 876-95 [skim §§742.011, -.031, -.091-.10, -.12], H 47 [G.F.C.]
15. Who is a Father/What are his Rights and Duties II 895-938, §742.18, H 52 [G.W.B.]
16. Rights and Duties of Step-Parents, Other Partners and Other Family Members 938-73, §§751.01-05, H 63 [Kazmierazak, Embry]

Exercise Three: Written memos due before/ discussion during day 15 materials

Access to Children

(Note that §61.13 is relevant to all aspects of custody and visitation and should be referred to and available for discussion in connection with ALL the assignments dealing with access to children.)

17. * Custody: Introduction, Different approaches 583-625, skim §§61.122, 61.125 , §61.13(2) and (3)
18. Judging Parents 625-660
19. Visitation, Relocation, Modification of Custody 660-89, §§61.13001, 61.13(4), §752.01-.07, H 70 [Perez, Flint, Dorta-Duque, Von Eiff]

Exercise Four: Briefs due before Day 19. Oral Arguments at end of Day 19, Written Decisions on Relocation Request Shortly Thereafter

Children/Money

20. * Child Support

________________________
465-83, 490-505, §§ 61.13(1), 61.30, H 85 [Payne, Finley, Saporta]

21*. Modification of Financial Obligations
   513-42, § 61.14, H 93 [Pimm, Overbey, Pohlmann]

22. Enforcement of Financial Obligations
   543-65, [Skim §§ 61.1301, -.13015, -13016], H 105 [Gregory]

Exercise: Briefs due before Day 21, Oral Arguments at end of Day 21, Written Decisions on Support Modification Request Shortly Thereafter

Jurisdictional Disputes

23. Jurisdiction and custody
   825-43, 845-54, H 109 [Abbott]

24. Jurisdiction and Support
   807-24