

## ■ PREFACE

The theme of this book—the conflict between respect for privacy and deference to state authority—offers a lens for examining family law today. Each chapter of this book uses this lens to explore the actual and appropriate role of the state in family decisionmaking. Chapter I considers the constitutional underpinnings of a right to privacy for the family and its members. Chapters II and III address the state’s regulation of marriage before and after celebration. Intimate partner violence provides the focus of Chapter IV. Chapter V explores the legal treatment of nonmarital relationships, during the intact relationship as well as after its termination through dissolution or death. Chapters VI and VII cover state regulation of divorce, including financial consequences, and Chapter VIII examines the state’s role in child custody matters. Chapter IX explores the establishment and the disestablishment or termination of the parent-child relationship.

*Modern Family Law* provides valuable interdisciplinary perspectives on family law. The field of family law has been heavily influenced by work in history, psychology, sociology, social work, medicine, anthropology, and philosophy. A comparative law perspective also helps students understand developments in the field. Many of the excerpts, as well as the Notes and Questions, incorporate all these different perspectives to shed new light on the nature of legal regulation of the family.

In addition, this book reflects an awareness of the impact that legal rules have on persons’ lives. Family law affects individuals in profound ways that legal abstractions cannot capture. The book attempts to reveal (through presentation of current sociological and psychological research as well as narratives) the subjective experiences of family members as they interact with the legal system. The narratives are a distinctive feature of the book that highlight the problems, concerns, and achievements of the parties and their lawyers in a way that evokes human interest and empathy. The book emphasizes throughout that family law is not just analyzed and applied—it is experienced.

### Changes in the Eighth Edition

This edition reflects important updates. Substantively, this edition incorporates legal developments on many topics included in the book. It reflects, for example, the significant impact of the Supreme Court’s decision in *Dobbs v. Jackson’s Women’s Health Organization* on both the law and the lives of people and their families.

In addition to the inclusion of the Supreme Court’s recent *Dobbs* opinion on abortion, this Eighth Edition includes riveting new principal cases that explore issues of discrimination based on sexual orientation and gender identity and the First Amendment (303 Creative v. Elenis); fault-based grounds for divorce (i.e., cruelty); spousal support; child support jurisdiction; child custody cases involving

transgender children (*Smith v. Smith*); the validity of the Indian Child Welfare Act (*Haaland v. Brackeen*); the application of the Hague Convention on the Civil Aspects of International Child Abduction international child abduction (*Golan v. Saada*); and victim protection in the context of domestic violence (*U.S. v. Rahimi and Counterman v. Colorado*). Many of these newly added cases are landmark decisions that transform the law.

The book continues to include materials that bring life to the law. New epilogues and background accounts have been added to many principal cases, including *Roe v. Wade*; *Cal. Fed. v. Guerra*; *Shahar v. Bowers*; *Marvin v. Marvin*; *Brewer v. Blumenthal*; *Beckwith v. Dahl*; *Feltmeier v. Feltmeier*; and *Haaland v. Brackeen*.

The Eighth Edition highlights new state and federal legislation, as well as pending and recently promulgated uniform and model laws, including provisions of the pending American Law Institute's Restatement of the Law: Children and the Law; Uniform Cohabitants' Economic Remedies Act (2021); Uniform Unregulated Child Custody Transfer Act (2021); Uniform Nonparent Custody and Visitation Act (2018); Uniform Parentage Act (2017); and the American Bar Association's Model Act Governing Assisted Reproduction (2019).

This updated version also includes additional background information on abortion (implications of abortion denial on the lives of pregnant people and their children; differential impact on abortion restrictions based on race and class; abortion restrictions targeting minors); the practice of online dating; First Amendment exceptions to nondiscrimination mandates and the impact of these exceptions on the lives of LGBTQ people; risks of child marriages; Pregnant Workers' Fairness Act of 2023; impact of COVID on various aspects of family law; demographic information on the decline of marriage and the rise in cohabitation; socioeconomic differences in marriage and cohabitation rates; economic inequalities among families; multigenerational households; fluidity among family types (dubbed "relational migration"); consideration of sex, sexual orientation, and gender identity in child custody proceedings; parentage of children born through assisted reproduction; multi-parent families; embryo disposition disputes; regulation of the fertility industry; the child welfare or family regulation system and its effect on children and families, particularly children and families of color; and background the Indian Child Welfare Act and the history that led to its enactment. Throughout the book, the cases and materials seek to identify and highlight the ways in which race, ethnicity, class, sex, sexual orientation, gender identity, religion, and immigration status impact the legal and social experiences of families and their members.

Like earlier editions, this revision gives instructors considerable flexibility in designing family law courses of varying lengths and emphases. The book can be adapted easily for shorter or longer courses from two to four units. For the problem-oriented instructor and student, the book includes many questions and problems, often derived from actual cases and current events. The Teacher's Manual accompanying the book provides further pedagogical suggestions and sample syllabi. Video clips and PowerPoint slides are also available to instructors to enhance learning and stimulate class discussion.

## Editorial Matters

Cases and excerpts have all been edited, often quite extensively. Most deletions are indicated by ellipses, with some exceptions. Some concurring and dissenting

opinions have been eliminated; citations have been modified or eliminated; some footnotes and references have been omitted; and paragraphs have been modified, and sometimes combined, to save space and to make the selections more coherent. Brackets are used at times to indicate substantial deletions. Original footnotes in cases and excerpts are reprinted nonconsecutively throughout the book. The author's textual footnotes are numbered consecutively and appear in brackets to differentiate them from original footnotes in the cases and excerpts. The book follows *A Uniform System of Citation* except when that style conflicts with the publisher's style.

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