



Contents

<i>Preface</i>	xxiii
<i>Acknowledgments</i>	xxvii

CHAPTER 1

Justifying the Legal Treatment of Family and Marriage 1

I. Changing Family Patterns in Contemporary America	1
II. How Does, and Should, the Law Define Family?	4
<i>Village of Belle Terre v. Boraas</i>	4
<i>Moore v. City of East Cleveland</i>	9
<i>City of Ladue v. Horn</i>	16
III. Questioning Marriage and Its Centrality	23
A. What Is Marriage?	23
The Book of Common Prayer	23
Society for Ethical Culture	24
Maha Alkhateeb, <i>Islamic Marriage Contracts</i> (2012)	25
B. Marriage at the Supreme Court	27
<i>Maynard v. Hill</i>	27
<i>Griswold v. Connecticut</i>	29
C. Contemporary Litigation over Marriage	34
<i>Perry v. Schwarzenegger</i>	34
<i>Obergefell v. Hodges</i>	36
D. Should the State Sponsor Marriage?	40
Law Commission of Canada, <i>Beyond Conjuality: Recognizing and Supporting Close Personal Adult Relationships</i> (2001)	40

CHAPTER 2

Access to Relationships 49

I. State Control over Adult Relationships	49
A. Criminal and Civil Regulation of Sexual Relationships	49
<i>Thomas v. State</i>	49
<i>Pace v. State of Alabama</i>	51
B. The Development of Sexual and Relationship Freedom	57
<i>Eisenstadt v. Baird</i>	57
<i>Lawrence v. Texas</i>	65
<i>Dobbs v. Jackson Women's Health Organization</i>	77

II. Eligibility to Marry	96
A. The Constitutional Framework	96
<i>Loving v. Virginia</i>	96
B. Marriage for Same-Sex Couples	103
<i>Obergefell v. Hodges</i>	109
C. Incest	114
<i>Israel v. Allen</i>	114
D. Plural Marriage	119
<i>State v. Holm</i>	122
III. Establishing a Valid Marriage	134
A. Capacity to Marry	134
<i>Edmunds v. Edwards</i>	134
B. Consent to Marry	139
<i>Leax v. Leax</i>	139
<i>In re Marriage of Meagher and Maleki</i>	141
C. Marriage Formalities	147
1. Marriage Licenses	147
<i>Estate of DePasse</i>	147
2. Solemnization	153
<i>In the Matter of Last Will and Testament of Robert C. Blackwell</i>	154
IV. Common-Law Marriage	161
<i>Hargrave v. Duval-Couetil</i>	161
V. Recognition of Prohibited Marriages	171
<i>In re May's Estate</i>	171
CHAPTER 3	
Regulating Ongoing Relationships	179
<hr/>	
William Blackstone, Commentaries on the laws of England Vol. 1(1765)	179
I. Care, Companionship, and Support	181
A. The Traditional Model of Marriage	181
<i>McGuire v. McGuire</i>	181
<i>Graham v. Graham</i>	184
Note: Sex Equality Under the Constitution	190
B. Modernizing Marriage?	193
<i>Cheshire Medical Center v. Holbrook</i>	193
<i>Borelli v. Brusseau</i>	195
C. Caregiving Across Contexts	201
1. Pregnancy	202
2. Family Leave	205
3. Caregiver Discrimination	208
II. Owning and Controlling Property and Wealth	212
III. Marital Naming	220
IV. Healthcare Decision-Making	222
A. Decision-Making for Incapacitated Adults	222

<i>In re Guardianship of Atkins</i>	223
B. Reproductive Decision-Making	228
V. Violence	230
A. Civil Protection Orders	232
<i>Town of Castle Rock v. Gonzales</i>	232
B. Mandatory Interventions	240
<i>Williams v. State</i>	241
VI. Tort	247
<i>Bozman v. Bozman</i>	247
VII. Evidence	251
<i>Trammel v. United States</i>	251
CHAPTER 4	
Dissolution and Divorce	255
<hr/>	
I. Nonmarital Relationship Dissolution	255
II. Fault-Based Divorce	256
A. Fault-Based Grounds	257
<i>Benscoter v. Benscoter</i>	258
<i>Rankin v. Rankin</i>	259
<i>Ricketts v. Ricketts</i>	261
B. Fault-Based Defenses	267
<i>Kucera v. Kucera</i>	268
<i>Gilmartin v. Gilmartin</i>	270
III. No-Fault Divorce	277
<i>Desrochers v. Desrochers</i>	278
<i>Sinha v. Sinha</i>	279
Note on Legal Ethics in Divorce	286
IV. Re-Assessing No-Fault Divorce	288
Barbara Dafoe Whitehead, <i>The Divorce Culture</i> (1997)	290
Stephanie Coontz, <i>How to Stay Married</i>	290
Note on Covenant Marriage	293
V. Access to Divorce and Dissolution	294
A. Access to Courts	294
<i>Boddie v. Connecticut</i>	294
Note on Access to Justice	298
Note on Unified Family Courts	302
B. Divorce Jurisdiction	305
1. Subject Matter Jurisdiction	305
a. The Domestic Relations Exception to Federal Court	
Diversity Jurisdiction	305
<i>Ankenbrandt v. Richards</i>	305
b. Durational Residency and Domicile	310
<i>Sosna v. Iowa</i>	311
2. Personal Jurisdiction in Divorce Actions	314

CHAPTER 5	
The Economics of Dissolution	317
<hr/>	
I. Property Division at Divorce	318
A. What Is Equitable?	320
<i>Ferguson v. Ferguson</i>	321
Uniform Marriage and Divorce Act (1973)	325
B. Identifying and Characterizing Property	328
Principles of the Law of Family Dissolution: Analysis and Recommendations (2002)	328
C. Allocating Property	333
<i>Arneault v. Arneault</i>	333
<i>Wendt v. Wendt</i>	345
D. Special Issues in Property	353
1. Pensions and Retirement Benefits	353
<i>Laing v. Laing</i>	353
2. Professional Licenses, Degrees, and Enhanced Earning Capacity	360
3. Damages Awards	361
4. Debts	362
<i>Fitzgerald v. Fitzgerald</i>	362
II. Spousal Support	364
A. The Modernization of Divorce Law	364
<i>Orr v. Orr</i>	365
B. Different Types of Alimony	370
<i>Gnall v. Gnall</i>	370
C. Modification of Support Orders	379
<i>Pimm v. Pimm</i>	379
<i>Dace v. Doss</i>	383
Note on Spousal Support Jurisdiction	386
Note on Alternatives to Adversarial Litigation	389
III. Contracting for Dissolution	395
A. Premarital Agreements	397
<i>Simeone v. Simeone</i>	398
B. Marital Agreements	408
<i>Ansin v. Craven-Ansin</i>	408
C. Separation Agreements	417
<i>Gardella v. Remizov</i>	418
IV. Nonmarital Relationships	421
A. The Contractual Approach to the Economic Rights of Nonmarital Partners	422
<i>Marvin v. Marvin</i>	423
B. The Traditional Approach to the Economic Rights of Nonmarital Partners	432
<i>Hewitt v. Hewitt</i>	432
<i>Blumenthal v. Brewer</i>	436
C. The Status-Based Approach to the Economic Rights of Nonmarital Partners	443
<i>In re Marriage of Pennington</i>	444

CHAPTER 6	
Parents, Children, and the State	455
<hr/>	
I. Parental Rights and Responsibilities	455
A. Care, Custody, and Control	456
<i>Pierce v. Society of Sisters</i>	457
<i>Prince v. Commonwealth of Massachusetts</i>	458
Clare Huntington & Elizabeth S. Scott, Conceptualizing Legal Childhood in the Twenty- First Century	462
B. The Right to Exclude — Parents and Non-Parents	465
1. Grandparent Visitation	465
<i>Troxel v. Granville</i>	465
2. Third Parties or Parents?	479
<i>In re Parentage of L.B.</i>	479
II. Children’s Rights?	486
A. Relationship Rights	487
<i>Levy v. Louisiana</i>	487
B. A Right to Protection?	493
<i>DeShaney v. Winnebago County Department of Social Services</i>	493
III. Conflicts Among Child, Parent, and State	503
A. Education	503
<i>Wisconsin v. Yoder</i>	503
B. Healthcare	513
<i>Parham v. J.R.</i>	513
<i>Eknes-Tucker v. Governor of the State of Alabama</i>	522
<i>In re E.G.</i>	527
<i>Carey v. Population Services International</i>	533
CHAPTER 7	
The Child Welfare System	541
<hr/>	
I. The Federal Government’s Role in the Child Welfare System	542
II. Abuse and Neglect	546
<i>In Interest of W.P.</i>	548
<i>In re Mariah T.</i>	548
Josh Gupta-Kagan, Distinguishing Family Poverty from Child Neglect	551
III. State Intervention and Removal	556
A. Referrals and Reports	557
B. Investigations	558
C. Removal	560
IV. Foster Care	565
A. Origins of the Foster Care System	565
B. Federal Regulation of Foster Care	566
C. How Placement Decisions Are Made	566
1. Foster Care Placements	567
2. Planning for Permanency	568
D. The Foster Family and the Constitution	574
<i>Smith v. Organization of Foster Families for Equality and Reform (OFFER)</i>	574

V. Termination of Parental Rights	578
A. Parental Unfitness and Best Interests of the Child	579
B. Termination Proceedings	583
1. Procedural Protections	583
<i>Santosky v. Kramer</i>	583
2. Applying Law to Facts	593
<i>In re M.B. and N.B.</i>	594
VI. Rethinking the Child Welfare System: Reform or Abolition?	599
Dorothy Roberts, Abolish Family Policing, Too	599
Dee Wilson, Abolish Child Welfare: What Then?	601
CHAPTER 8	
Adoption	607
<hr/>	
I. Types of Adoption	608
II. Procedural Requirements	611
<i>Vela v. Marywood</i>	611
<i>In re B.G.C.</i>	618
III. Open Adoption	624
<i>Groves v. Clark</i>	624
IV. Race Matching	629
<i>DeWees v. Stevenson</i>	630
V. The Indian Child Welfare Act	637
<i>Mississippi Band of Choctaw Indians v. Holyfield</i>	642
<i>Adoptive Couple v. Baby Girl</i>	647
<i>Haaland v. Brackeen</i>	656
Note on International Adoption	663
CHAPTER 9	
Who Is a Parent?	665
<hr/>	
I. Reproductive Autonomy and the Right Not to Be a Parent	665
A. Contraception and Abortion	666
B. Surrogacy	667
C. Embryo Disposition	671
II. Parenthood Based on Marriage	676
A. The Marital Presumption	676
<i>C.C. v. A.B.</i>	676
B. Marital Children Conceived with Donor Sperm	684
Uniform Parentage Act (1973)	684
C. Same-Sex Couples and the Marital Presumption	686
<i>Gartner v. Iowa Department of Public Health</i>	687
Douglas NeJaime, Marriage Equality and the New Parenthood	690
<i>Pavan v. Smith</i>	691
III. Parenthood Based on Biology	695
A. The Constitutional Rights of Unmarried Fathers	696

<i>Stanley v. Illinois</i>	696
Petition of Doe	703
Serena Mayeri, Foundling Fathers: (Non-)Marriage and Parental Rights in the Age of Equality	706
<i>Lehr v. Robertson</i>	708
<i>Michael H. v. Gerald D.</i>	718
B. The Obligations of Unmarried Fathers	727
<i>Davis v. Wicomico County Bureau</i>	730
C. Assisted Reproduction: Donors or Fathers?	734
<i>L.F. v. Breit</i>	735
IV. Parenthood Based on Intent	743
A. Sex Versus Assisted Reproduction	743
Courtney Megan Cahill, Reproduction Reconceived	743
B. Biological Parents and Intent	746
1. Co-IVF	746
<i>St. Mary v. Damon</i>	746
2. Surrogacy and Genetics	753
<i>Johnson v. Calvert</i>	754
<i>Soos v. Superior Court</i>	758
Elizabeth S. Scott, Surrogacy and the Politics of Commodification	760
C. Nonbiological Parents and Intent	764
1. Surrogacy and Egg Donors	764
Douglas NeJaime, The Nature of Parenthood	765
2. Genetic (or Traditional) Surrogacy	766
3. Donor Insemination and Nonmarital Families	767
<i>Brooke S.B. v. Elizabeth A.C.C.</i>	767
Uniform Parentage Act (2017)	774
V. Parenthood Based on Conduct	775
A. Common-Law and Equitable Doctrines	776
<i>State ex rel. Combs v. O'Neal</i>	776
B. The Codification of De Facto Parenthood	780
Delaware Code Annotated Title 13, § 8-201	780
Uniform Parentage Act (2017), § 609	781
C. The “Holding Out” Presumption	782
<i>In re Nicholas H.</i>	782
VI. Multiple Parents?	786
<i>C.A. v. C.P.</i>	787

CHAPTER 10

Custody and Visitation 795

I. Evolving Presumptions and Best Interests of the Child	797
A. The Demise of the Tender Years Presumption?	797
<i>Pusey v. Pusey</i>	797
B. Best Interests of the Child in the Modern Era	799

<i>Painter v. Bannister</i>	799
C. Primary Caretaker	803
<i>Garska v. McCoy</i>	803
D. Past Allocation of Care	808
<i>Young v. Hector</i>	808
II. Joint Custody	812
<i>Rivero v. Rivero</i>	813
<i>Bruegman v. Bruegman</i>	818
III. The Role of the Child	824
A. Children's Preferences	824
<i>Maier v. Maier</i>	824
B. Children's Representation	828
IV. Parental Characteristics, Nondiscrimination, and Parental Fitness	831
A. Race	832
<i>Palmore v. Sidoti</i>	832
B. Sex of Parent and Child	837
<i>Dalin v. Dalin</i>	837
C. Sexual Orientation and Gender Identity	839
<i>Ex Parte J.M.F.</i>	839
D. Disability	845
<i>Arneson v. Arneson</i>	845
E. Religion	851
<i>Pater v. Pater</i>	851
V. Custody Modification and Relocation Disputes	857
<i>Arnott v. Arnott</i>	858
Note on Child Custody Jurisdiction	867
VI. Visitation	873
A. Denial of Visitation	873
<i>E.A. v. R.A.</i>	874
<i>Tran v. Nguyen</i>	875
<i>Desantis v. Pegues</i>	876
B. Restrictions	883
<i>Carter v. Escovedo</i>	883
<i>Pratt v. Pratt</i>	884
C. Visitation and Child Support	890
<i>Perkinson v. Perkinson</i>	890
CHAPTER 11	
Family Support	895
I. Who Supports Dependency?	895
Martha Albertson Fineman, The Vulnerable Subject and the Responsive State	895
Maxine Eichner, The Free- Market Family: How the Market Crushed the American Dream (and How It Can Be Restored) (2019)	896
II. Child Support	899

A. Who Must Pay? Proving and Disproving Paternity	902
<i>Hermesmann v. Seyer</i>	903
<i>Parker v. Parker</i>	905
B. How Child Support Amounts Are Determined	912
1. Guidelines, Calculations, and Deviations	914
<i>Turner v. Turner</i>	914
Jane C. Venohr, Child Support Guidelines and Guidelines Reviews: State Differences and Common Issues	916
Pamela Foohey, Child Support and (In)ability to Pay: The Case for the Cost Shares Model	918
2. High-Income Families	921
<i>Ciampa v. Ciampa</i>	921
3. Post-Majority Support	926
<i>In re Marriage of Crocker</i>	926
<i>Curtis v. Kline</i>	930
4. New Families and Subsequent Children	936
<i>Harte v. Hand</i>	936
5. Earning Capacity and Imputed Income	940
<i>Sharpe v. Sharpe</i>	941
<i>Chen v. Warner</i>	945
C. Child Support Enforcement	953
1. Criminal Nonsupport	953
<i>Wisconsin v. Oakley</i>	953
2. Civil Enforcement System	964
<i>Turner v. Rogers</i>	965
Laurie S. Kohn, Engaging Men as Fathers: The Courts, the Law, and Father-Absence in Low-Income Families	972
Note on Child Support Jurisdiction	979
III. Other Questions of Family Support	980
A. The Obligation of Adult Children to Support Parents	980
<i>Peyton v. Peyton</i>	980
<i>American Healthcare Center v. Randall</i>	982
Lee E. Teitelbaum, Intergenerational Responsibility and Family Obligation: On Sharing	986
B. Incentives for Adult Children to Support Aging Parents	990
<i>Table of Cases</i>	993
<i>Index</i>	1001

