

# Table of Contents

<i>Preface</i>	<i>xxiii</i>
<i>Acknowledgments</i>	<i>xxvii</i>
I. SOCIAL AND HISTORICAL PERSPECTIVE: EVOLUTION OF THE RIGHT OF PRIVACY	1
A. Social-Historical Context	1
Reva B. Siegel, “The Rule of Love”: Wife Beating as Prerogative and Privacy	1
Susan Schechter, The Roots of the Battered Women’s Movement: Personal and Political	6
Nadine Taub & Elizabeth Schneider, Women’s Subordination and the Role of Law	9
Notes and Questions	11
B. Legal Historical Context	16
1. Common Law View of Marital Roles and Responsibilities	16
1 William Blackstone, Commentaries of the Laws of England	16
Notes and Questions	17
2. Judicial Doctrine of Nonintervention in the Marital Relationship	20
McGuire v. McGuire	20
Notes and Questions	22
3. Interspousal Immunity Doctrine: Tort Actions Between Spouses	24
Thompson v. Thompson	24
Notes and Questions	27
II. CHARACTERISTICS OF DOMESTIC VIOLENCE	31
A. Extent of the Problem	31
Centers for Disease Control and Prevention, National Intimate Partner and Sexual Violence Survey: 2010 Summary Report, Executive Summary	31
Notes and Questions	34
B. Dynamics of Abusive Relationships	36
Angela Browne, Violence in Marriage: Until Death Do Us Part?	36
Judith A. Wolfer, Top Ten Myths About Domestic Violence	38
Clare Dalton, Domestic Violence, Domestic Torts and Divorce: Constraints and Possibilities	42
Lundy Bancroft, Understanding the Batterer in Custody and Visitation Disputes	45
Notes and Questions	47
C. Causes of Intimate Partner Violence	49
	vii

a. Biological Theories	49
b. Psychopathology Theories	49
c. Family Systems Theory	51
d. Sociological Theories	52
e. Feminist Theories	54
1. Theories of Intimate Partner Violence	49
2. Cycle Theory of Violence	55
Lenore E. A. Walker, The Battered Woman Syndrome	56
3. Duluth Model: Power and Control Wheel	58
Notes and Questions	62
D. Lethality Assessment	63
Neil Websdale, Assessing Risk in Domestic Violence Cases	63
Jacquelyn C. Campbell, Danger Assessment Instrument	66
Pettingill v. Pettingill	68
Notes and Questions	71
E. Consequences of Abuse	72
Centers for Disease Control and Prevention, Costs of Intimate Partner Violence Against Women in the United States	73
Centers for Disease Control & Prevention, Intimate Partner Violence: Consequences	75
Notes and Questions	77
III. INFLUENTIAL FACTORS	79
A. Age	79
1. Teen Dating Violence	79
Neilson ex rel. Crump v. Blanchette	79
Notes and Questions	81
Carrie Mulford & Peggy C. Giordano, Teen Dating Violence: A Closer Look at Adolescent Romantic Relationships	85
Problems	86
2. Elder Abuse	87
Gdowski v. Gdowski	87
Notes and Questions	91
Problems	94
New York Socialite Brooke Astor is a Victim of Elder Abuse	96
B. Sexual Orientation	97
Stephen White, Guilty of Britain's First Gay Domestic Murder	97
Center for American Progress, LGBT Domestic Violence Fact Sheet	97
Alexandra Masri, Equal Rights, Unequal Protection: Institutional Failures in Protecting and Advocating for Victims of Same-Sex Domestic Violence in Post-Marriage Equality Era	99

Table of Contents	ix
Doe v. State	100
Notes and Questions	103
C. Disability	106
Michelle Ballan, Introduction: Intimate Partner Violence and Individuals with Disabilities	106
Jennifer Nixon, Domestic Violence and Women with Disabilities: Locating the Issue on the Periphery of Social Movements	107
Notes and Questions	109
D. Race and Ethnicity	111
Callie Rennison & Mike Planty, Nonlethal Intimate Partner Violence: Examining Race, Gender, and Income Patterns	111
Lisa M. Martinson, Comment, An Analysis of Racism and Resources for African-American Female Victims of Domestic Violence in Wisconsin	112
Mary Ann Dutton et al., Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications	114
Sujata Warriar, (Un)Heard Voices: Domestic Violence in the Asian-American Community	116
Notes and Questions	117
E. Social Class	119
Karl Vick, Case of John Michael Farren Seen as Refresher Course on Domestic Violence	119
Claire M. Renzetti & Vivian M. Larkin, Economic Stress and Domestic Violence	122
Notes and Questions	124
F. Substance Abuse	127
Monica L. Zilberman & Sheila B. Blume, Domestic Violence, Alcohol, and Substance Abuse	127
Notes and Questions	128
G. Special Contexts	129
1. Military	129
Simeon Stamm, Note, Intimate Partner Violence in the Military: Securing Our Country, Starting with the Home	129
Notes and Questions	131
2. Police-Perpetrated Domestic Violence	134
Alex Roslin, Batterer in Blue	134
Notes and Questions	136
Safe Haven by Nicholas Sparks	141
3. Sports	141
Joan Ryan, O. J. Case Changed Rules for Cox	141
Chelsea Augelli & Tamara L. Kuennen, Domestic Violence and Men's	

Professional Sports: Advancing the Ball	142
Family Violence Prevention Fund, Domestic Violence and the Super Bowl	146
Notes and Questions	147
IV. SPECIFIC TYPES OF ABUSE	149
A. Physical Abuse	149
1. Strangulation	149
Carter v. State	149
Notes and Questions	152
Problem	154
2. Murder-Suicide	155
Clark v. Office of Personnel Management	155
Notes and Questions	157
3. Separation Assault	159
Crawford v. Commonwealth	159
Martha R. Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation	163
Sarah M. Buel, Fifty Obstacles to Leaving, A.K.A. Why Abuse Victims Stay	167
Domestic Violence: A Personal Safety Plan	170
Notes and Questions	173
Problem	175
Sondra Burman, Stages of Leaving Abusive Relationships	176
B. Sexual and Reproductive Abuse	179
1. Sexual Assaults: Marital Rape	179
S.D. v. M.J.R.	179
Notes and Questions	183
Famous Case of Marital Rape: Mary Murphy	186
2. Pregnancy-Related Abuse	186
Smith v. Martin	186
Notes and Questions	188
3. Birth Control Sabotage	190
Family Violence Prevention Fund, 1 in 4 Hotline Callers Report Birth Control Sabotage, Pregnancy Coercion	190
Ann M. Moore et al., Male Reproductive Control of Women Who Have Experienced Intimate Partner Violence in the United States	191
Notes and Questions	192
Problem	193
4. Interference with Abortion Decisionmaking	194

Planned Parenthood of Southeastern Pennsylvania v. Casey	194
Notes and Questions	198
C. Psychological Abuse	200
1. Background	200
Evan Stark, Coercive Control	200
2. Stalking	203
Weiner v. Weiner	203
Notes and Questions	207
Problems	213
Long Term Case of Stalking	215
3. Cyber Harassment	215
In re Marriage of Nadkarni	215
Notes and Questions	218
4. Financial Abuse	220
Jackson v. United States	220
Notes and Questions	222
Financial Abuse: Tax Implications	224
5. Pet Abuse	225
Cat Killer Denied Parole	225
Notes and Questions	225
Problems	228
6. Other Forms of Psychological Abuse	230
a. Litigation Abuse	230
David Ward, In Her Words: Recognizing and Preventing Abusive Litigation Against Domestic Violence Survivors	230
b. Domestic Violence by Proxy	232
Anique Drouin, Comment, Who Turned Out the Lights?: How Maryland Laws Fail to Protect Victims of Domestic Violence from Third-Party Abuse	233
Problem	234
V. LAW ENFORCEMENT RESPONSE	237
A. Police	237
1. Traditional Response to Intimate Partner Assaults	237
Joan Zorza, The Criminal Law of Misdemeanor Domestic Violence, 1970-1990	237
Notes and Questions	239
2. The Road to Mandatory Arrest	242
State v. Farrow	242
Notes and Questions	245

3. Evaluation of Mandatory Arrest: Benefits and Shortcomings	249
Arthur L. Rizer III, Mandatory Arrest: Do We Need to Take a Closer Look?	249
Emily J. Sack, Battered Women and the State; The Struggle for the Future of Domestic Violence Policy	250
4. Unintended Consequences: Dual Arrest	251
David Hirschel et. al., Nat'l Inst. of Justice, Explaining the Prevalence, Context, and Consequences of Dual Arrest in Intimate Partner Cases	251
Postscript	253
5. Primary Aggressor Statutes	253
Iowa Code Ann. §236.12	253
S.C. Code Ann. §16-25-70	254
Wash. Rev. Code §10.31.100	254
Notes and Questions on Mandatory Arrest	255
6. Victims' Experience with the Police	259
Marsha E. Wolf et al., Barriers to Seeking Police Help for Intimate Partner Violence	260
7. Statutory Expansion of Police Powers to Ensure Victims' Safety	
Mass. Gen. Laws Ann. Ch. 209A §6	263
N.H. Rev. Stat. §173-B:10	264
Note: Introduction to the Violence Against Women Act (VAWA)	265
Remarks of Senator Joseph R. Biden, Jr.: Introducing the Violence Against Women Act Before Congress	266
VAWA Reauthorization	268
B. Prosecutors: No-Drop Policies	272
1. Background	272
Cheryl Hanna, No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions	272
2. Constitutional Issues	273
McClure v. Rehg	273
3. Victims' Reluctance to Prosecute: The Battered Woman's Dilemma	274
Donna Wills, Domestic Violence: The Case for Aggressive Prosecution	274
William Glaberson, Abuse Suspects, Your Calls Are Taped, So Speak Up	277
4. Criticisms of Mandatory Interventions	279
Leigh Goodmark, Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases	279
Notes and Questions	280
Note: Criminal No-Contact Orders	282
C. Suits Against Law Enforcement	283
1. Victim's Constitutional Rights	283

Town of Castle Rock v. Gonzales	283
Testimony of Jessica Lenahan (Gonzales) v. United States	287
Notes and Questions	291
Problem	296
2. Legacy of Lawsuits: Improvements in Police Training	297
VI. DOMESTIC VIOLENCE AS A CRIME: STATE LEGISLATIVE RESPONSE	301
A. Criminal Sanctions	301
1. Traditional Response: Assault and Battery	301
Bradley v. State	301
Notes and Questions	303
2. Modern Response: Domestic Violence Statutes	304
Eve S. Buzawa et al., Responding to Domestic Violence: The Integration of Criminal Justice and Human Services	304
Statutory Comparison: Traditional Criminal Assault Statutes Versus New “Domestic Violence” Statutes	306
Model Penal Code §211.1	306
Colo. Rev. Stat. §18-6-800.3	306
Ind. Code §35-31.5-2-78	306
N.J. Stat. Ann. §2C:25-19	307
N.M. Stat. Ann. §§30-3-11, 30-3-12	307
S.C. Code Ann. §§16-25-10, 16-25-20	308
Notes and Questions	309
Problems	311
B. Constitutional Challenges to State Laws	313
People v. Johnson	313
Notes and Questions	316
C. Cutting-Edge Crimes	317
1. Crime of Coercive Control	317
Problem	320
2. Revenge Porn	321
VII. JUDICIAL RESPONSE	325
A. Defenses	325
1. Historical Background	325
Garthine Walker, Crime, Gender and Social Order in Early Modern England	325
2. Battered Woman Syndrome: The Role of Expert Testimony	327
Hawthorne v. State	327
Lenore Walker, Terrifying Love: Why Battered Women Kill and How	

Society Responds	328
Notes and Questions	330
3. Self-Defense	334
State v. Harden	334
Notes and Questions	339
4. Duress	343
Dixon v. United States	343
Keshia Dixon’s Story, Brief for the United States	347
Notes and Questions	349
Natalie’s Story, Avon Global Center for Women & Justice, From Protection to Punishment: Post-Conviction Barriers to Justice for Domestic Violence Survivors-Defendants in New York State	352
Marti Tamm Loring & Pati Beaudoin, Battered Women as Coerced Victim-Perpetrators	353
Problem	353
5. Cultural Defense	354
People v. Benitez	354
Notes and Questions	356
Problem	358
6. Provocation	359
Murray v. State	359
Notes and Questions	360
Problems	363
B. Evidentiary Issues	364
1. Spousal Testimonial Privilege	364
State v. Taylor	364
Notes and Questions	367
Problems	370
2. Marital Rape Exemption	371
People v. Liberta	371
Notes and Questions	375
Problems	377
3. Prior Act Testimony	378
People v. Brown	378
Notes and Questions	382
4. Confrontation Clause	384
Davis v. Washington	385
Note: O. J. Simpson Trial and Its Legacy for Domestic Violence Law	390
Janet Gilmore, Jurors Hear Frantic 911 Calls, Tape Captures Nicole Simpson Pleading for Aid	392

Police Chief Ass'n of Santa Clara County, 911 Call-Taker/Dispatcher Response	393
Notes and Questions	394
Problems	398
Note: Interfering with a 911 Call	399
5. Forfeiture by Wrongdoing	400
Giles v. California	400
Notes and Questions	405
Problem	409
6. Victim Recantation	410
People v. Santiago	410
Notes and Questions	414
Problem	417
VIII. FEDERAL CRIMINAL RESPONSE	419
A. Introduction	419
1. Setting the Stage: A Story of Interstate Violence	419
2. VAWA's Federal Criminal Provisions	420
a. Violence Against Women Act: Interstate Crimes	421
18 U.S.C. §2261, 2261A, 2262(a)	421
B. Interstate Domestic Violence as a Crime	423
United States v. Larsen	423
Notes and Questions	427
Problems	432
Note: VAWA's Impact on Rate of Domestic Violence	433
C. Interstate Threats to Injure on Social Media	434
Elonis v. United States	434
Notes and Questions	438
D. Firearm Regulation: Punishing Possession of Firearms	440
1. Background	440
Andrew R. Klein, Office on Violence Against Women, Enforcing Domestic Violence Firearm Prohibitions: A Report on Promising Practices	440
2. Lautenberg Amendment	447
United States v. Castleman	447
Notes and Questions	452
United States v. Skoien	455
Notes and Questions	459
Problem	464
Note: Role of Domestic Violence in Mass Shootings	464

E.	Federal Indian Law and Domestic Violence	465
	Andre B. Rosay, Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey 1, 2-3 (May 2016)	465
	Jacqueline P. Hand & David C. Koelsch, Shared Experiences, Divergent Outcomes: American Indian and Immigrant Victims of Domestic Violence	467
	Postscript	469
	United States v. Bryant	470
	Notes and Questions	472
IX.	PROTECTION ORDERS	475
A.	Introduction: Traditional Approach	475
	Keller v. Keller	475
	Notes and Questions	476
	Peter Finn, Statutory Authority in the Use and Enforcement of Civil Protection Orders Against Domestic Abuse	478
B.	Modern Approach: Scope of Protection	479
	1. An Overview of Modern Protection Orders	479
	a. Protection orders: What are they?	479
	Sally F. Goldfarb, Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?	482
	2. Who Is Eligible as a Petitioner?	485
	Evans v. Braun	485
	Notes and Questions	489
	Eve S. Buzawa & Carl G. Buzawa, Domestic Violence: The Criminal Justice Responses	491
	3. What Conduct Gives Rise to a Protection Order?	492
	Cloeter v. Cloeter	492
	Alaska Stat. §18.66.100	496
	Notes and Questions	497
	Problem	498
	4. How Long Does It Last?: Duration of an Order of Protection	499
	Dyer v. Dyer	499
	Sinclair v. Sinclair	502
	Notes and Questions	503
	5. Where Is Jurisdiction Over the Defendant?	505
	Hemenway v. Hemenway	505
	Notes and Questions	508
	Problem	509

6. Termination of an Order of Protection	510
Freeman v. Freeman	510
Notes and Questions	515
C. Procedural Issues	516
1. Standard of Proof	516
Crespo v. Crespo	516
2. Right to Jury Trial	519
Blackmon v. Blackmon	519
3. Right to Discovery: The Problem of Discovery Abuse	522
Depos v. Depos	522
Notes and Questions on Procedural Issues	525
D. Enforcement	527
1. Contempt: Criminal, Civil, and Private Actions	527
ABA Comm'n on Domestic Violence, The Domestic Violence Civil Law Manual: Protection Orders and Family Law Cases	527
In re Robertson	528
Notes and Questions	531
2. Violations of Restraining Orders: Criminal Sanctions	536
Report from the Attorney General's Task Force on Local Criminal Justice Response to Domestic Violence, Keeping the Promise: Victim Safety and Batterer Accountability	536
3. Interstate Enforcement of Protection Orders: Full Faith and Credit	542
Emily J. Sack, Domestic Violence Across State Lines: The Full Faith and Credit Clause, Congressional Power and Interstate Enforcement of Protection Orders	543
E. Victim's Actions	547
1. Mutual Restraining Orders	547
Williams v. Jones	547
Notes and Questions	548
Lundy Bancroft et al., The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics	551
2. Victim's Violation of Order	552
State v. Branson	552
Notes and Questions	554
3. Victim's Request to Withdraw	555
James C. Roberts et al., Why Victims of Intimate Partner Violence Withdraw Protection Orders	555
F. Effectiveness	556
Andrew R. Klein, Nat'l Inst. of Justice, Special Report: Practical Implications of Current Domestic Violence Research	556
Sally F. Goldfarb, Reconceiving Civil Protection Orders for Domestic	

	Violence: Can Law Help End the Abuse Without Ending the Relationship?	558
	Notes and Questions	560
X.	TORT REMEDIES	563
	A. State Causes of Action	563
	1. Against the Abuser	563
	Feltmeier v. Feltmeier	563
	Notes and Questions	567
	2. Against Third Parties	571
	McSwane v. Bloomington Hospital & Healthcare System	571
	Colo. Rev. Stat. §12-36-135	575
	Notes and Questions	575
	B. Defenses	579
	1. Interspousal Immunity	579
	Thompson v. Thompson	579
	Notes and Questions	579
	2. Statutes of Limitations	581
	Pugliese v. Superior Court	581
	Notes and Questions	585
	3. Procedural Barriers: Res Judicata	588
	Chen v. Fischer	588
	Notes and Questions	589
	C. Social Reality: Victims' Reluctance to Use Tort Remedies	592
	Jennifer Wriggins, Domestic Violence Torts	592
	Notes and Questions	596
	D. Federal Tort Liability: VAWA's Civil Rights Remedy	596
	United States v. Morrison	597
	Patrick Tracey, Christy's Crusade	604
	Brooke A. Masters, "No Winners" in Rape Lawsuit: Two Students Forever Changed by Case That Went to Supreme Court	605
	Joseph Shapiro, Myths That Make It Hard to Stop Campus Rape	607
	Notes and Questions	609
XI.	FAMILY LAW: MARRIAGE AND DIVORCE	617
	A. Marriage	617
	1. Introduction: Online Dating	617
	Phyllis Coleman, Online Dating: When "Mr. (or Ms.) Right" Turns Out All Wrong, Sue the Service!	617
	Notes and Questions	618

N.J. Stat. Ann. §56:8-171	619
2. Mail-Order Brides and Domestic Violence	620
Fox v. Encounters International	620
Notes and Questions	626
Note on Asylum for Domestic Violence Victims	633
B. Divorce	635
1. Modern Fault-Based Grounds	635
Peters v. Peters	635
Notes and Questions	638
Problem	640
2. What Role for Fault in a No-Fault System?	640
Feltmeier v. Feltmeier	640
Notes and Questions	640
3. The Relationship of Divorce and Tort Law: Joinder	642
McCulloh v. Drake	642
Notes and Questions	645
Problem	647
4. Role of Domestic Violence in Spousal Support	648
In re Marriage of Cauley	649
Notes and Questions	651
5. Role of Domestic Violence in Property Division	653
Havell v. Islam	653
Ira Mark Ellman, The Place of Fault in a Modern Divorce Law	657
Notes and Questions	658
Problem	661
C. Name Changes	662
In re E.F.G.	662
Notes and Questions	665
XII. FAMILY LAW: PARENTING	669
A. Introduction	669
Peter G. Jaffe et al., Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans	669
Lundy Bancroft et al., The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics	672
B. Standards to Award Custody	675
1. Fitness	675
Custody of Vaughn	675
Notes and Questions	679

2. Rebuttable Presumptions	683
Peters-Riemers v. Riemers	683
Leslie Joan Harris, Failure to Protect from Exposure to Domestic Violence in Private Custody Contests	685
Notes and Questions on <i>Vaughn</i> and <i>Peters-Reimers</i>	687
C. Conditions on Visitation: Supervised Visitation	692
In re Marriage of Fischer	692
Kim Barker & Arthur Santana, Slain Woman Was “Very Afraid”	695
Maureen Sheeran & Scott Hampton, Supervised Visitation in Cases of Domestic Violence	696
Nat’l Council of Juvenile & Family Court Judges, Model Code on Domestic and Family Violence	699
Notes and Questions	700
Problem	704
D. Role of Special Participants	705
1. The Child’s Preference and Traumatic Bonding	705
Wissink v. Wissink	705
Notes and Questions	708
2. Role of Child’s Representative	711
Richard Ducote, Guardians Ad Litem in Private Custody Litigation: The Case for Abolition	711
Notes and Questions	712
3. Role of the Custody Evaluator	716
Lundy Bancroft et al., The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics	716
Notes and Questions	718
Note: Parental Alienation Syndrome	719
E. Dispute Resolution Process: Mediation	721
F. Fleeing with Children	724
1. Domestic	724
Desmond v. Desmond	724
Schultz v. Schultz	727
Notes and Questions on <i>Desmond</i> and <i>Schultz</i>	729
Problem	735
2. International Child Abduction	735
Simcox v. Simcox	735
Notes and Questions	740
Problem	744
G. Children’s Exposure to Domestic Violence: A Novel Approach	745
Bevan v. Fix	745

Notes and Questions	749
H. Domestic Violence and the Child Protection System	754
1. Background: Fundamental Tensions in the Law's Response to Domestic Violence and Child Protection	754
Susan Schechter & Jeffrey L. Edleson, In the Best Interests of Women and Children: A Call for Collaboration Between Child Welfare and Domestic Violence Constituencies	754
2. Failure to Protect	758
Nicholson v. Scopetta	758
Jill M. Zuccardy, Nicholson v. Williams: The Case	761
Note: The Green Book Initiative	764
Notes and Questions	766
3. Termination of Parental Rights	768
State ex rel. C.J.K.	768
Notes and Questions	773
Problem	776
<b><i>Table of Cases</i></b>	<b>777</b>
<b><i>Index</i></b>	<b>785</b>