Spring 2006
Legal 391F: Law and the Family
Instructor:
Prof. Bernie D. Jones

Class Meeting Time: Tuesdays and Thursdays, 9:30-10:45 am
Hasbrouck 137

Office Hours: Thursdays, 2:30pm-4:30pm

Office: Room 105, Gordon Hall

Mailbox: Room 102, Gordon Hall

Phone Number: 413-577-6164

Email: bdjones@legal.umass.edu

Course Description and Requirements:

Who has traditionally had the right to parent, and what has been the role of ideology in defining the "American family"? What has been the role of race and class in determining ideal family arrangements under law, for example, with respect to sterilization and welfare reform? What are some of the contemporary issues in American family law addressed by legal scholars, practicing lawyers, judges, legislators, policy analysts, and social commentators? How have changing social patterns such as rising divorce rates, women’s greater access to birth control, abortion, and professional careers—affected marriage and parenting arrangements? We will discuss recent developments that have redefined "the traditional American family": the increasing use of reproductive technologies, the rise of gay, lesbian and single parenting, and greater numbers of domestic, international and trans-racial adoptions.

Discussion will be our primary mode of learning. In these days of great controversy over families and the law, the goal here is not to polemicize (in the way we see the issues presented in the media—grounded in irrational, emotional outbursts over the right v. the left, with no discussion of logic and effective policy). To get beyond the polemics of right v. left, we will analyze the issues, discuss and talk about the implications for policy. Thus, it is important that you do all the assigned readings, and attend all class sessions, with a mind open enough to talk freely and consider the views of others we might not agree with, in our effort to consider the policy implications of contemporary aspects of family law.

Prior to our in-class meetings, whenever readings are assigned, submit a brief critique of the readings, discussed on page 7. Submit at most 10 critiques throughout the semester. Bring your critique and the reader to class in order to facilitate our discussion. Regular attendance and participation in discussion is important, so no unexcused absences; attendance and participation will be worth a total of 34% of the final grade.

Note that there are approximately 24 days of class meetings (counting from the day after add-drop ends, 28, if one counts from the first day of class) and 14 days when critiques can be submitted: Feb. 2, 9, 14, 23, 28; Mar. 9; Apr. 4, 13, 20, 27; May 2, 4, 9, 11. A superior attendance record, combined with excellent critiques and class participation will result in a better
discussion grade. I’ll take attendance daily and note daily participation. Please note that if you are on the roster but you don’t show up for the first two classes, you will be dropped.

What comprises excellence, then? Excellent critiques are well-written, address the complexities, the nuances of family law and policy as indicated by the readings, combined with a sophisticated analysis of the tensions those policies generate. Unexcused absences earn zero points, as do critiques that do not follow the guidelines described on page 7. Basic attendance with no in class participation earns one point; an okay, but not spectacular critique, also earns one point, the equivalent of a C grade. Good participation in class earns 2 points, as do good critiques, the equivalent of a B grade. Those who have excellent in-class participation and who write excellent critiques will earn 3 points, the equivalent of an A grade. Extra credit: Those who submit 14 critique papers, all of them timely, rather than the 10 required, and who attend every class, counting from the day after add drop ends, will earn an extra half point towards the final grade.

So imagine somebody who earns excellent participation points over the course of the 24 class meetings, would earn 72 points for in-class discussion. Let’s say the student also drafts excellent analytical papers, that would add another 30 points, for a maximum of 96 points. A student who did consistent B level work would earn around 68 points; a C level student, would earn around 34 points. A student working at the D level, would earn less than 34 points; those in the 24 range and below would fall into the F range.

There will be two papers. Each will be worth 33% of the final grade. The paper assignments will build upon your ability to understand and analyze family law issues that relate to the subjects of our readings and discussions in class, and argue for or against certain policies. For that reason, the paper assignments will be open book, where you can use your notes, WebCt materials and the assigned texts. You will be told which assigned materials you should refer to and what WebCt materials you might want to look at. No outside research required or permitted; so cite to the materials you use and include a bibliography. Because these will be paper assignments, it is important that your written work be your best. Accordingly, I’ve included on WebCt links to dictionaries, and grammar guides, including the university writing center and a link for proper citation format—use the link for Turabian.

In numerical equivalents, note that: A 92-100; A- 90-91; B+ 88-89; B 82-87; B- 80-81; C+ 78-79; C 72-77; C- 70-71; D+ 68-69; D 66-67; D- 65; F 64 and below.

Maximum Enrollment: 40

Prerequisite: Legal Studies 250

Important Dates:

February 13, last day to drop with no record appearing on transcript; March 29, last day to drop with a “W” appearing on transcript; May 28: Graduation Day; May 31: Grades are due.
Reading List (Course Packet)

The packet is available at Collective Copies, 71 South Pleasant Street, 413-256-6425, packet number 66, available as of Wednesday February 1, 2006.

I. Families: Public Policy and the Law--the Rise of Controversy

Bridget Maher, Why Marriage Should be Privileged in Public Policy, Family Research Council.

II. Families: Reproductive Freedom, Personal Choice and the Law

Birth Control

Mergerwatch Fact Sheet, Pharmacists Who Refuse to Dispense Contraceptives, September 2005.

Abortion

Stephanie Poggi, No Abortion, No Exceptions, Alternet, April 28, 2005.
John Leland, Under Din of Abortion Debate, an Experience Shared Quietly, September 18, 2005.

Gay marriage, parenting and adoption

Goodridge v. Department of Public Health (Massachusetts, 2003).
Raphael Lewis, Boston Globe, After Vote, Both Sides in Debate Energized, September 15, 2005.
Massachusetts Society for Professors, Domestic Partner Benefits, 2005.

III. **Families: Is there a Right to Parent?**

**Sterilization**


**Adoption**

Cahn and Hollinger, Families by Law: An Adoption Reader, pages 37-42.


**Reproductive Technologies**

Harris and Teitelbaum, Family Law, 2nd ed.; In Re Baby M, pages 1146-1159.


**Single Motherhood By Choice**


**Welfare Reform**


**Fathers’ Rights**

Planned Parenthood v. Casey, 947 F2d 682 (1991) (spousal notification, with emphasis on Judge Alito’s opinion).


IV. Families: Special Topics Under the Law

Working Parents

Stacy A. Teicher, Emerging Bias: Your Family or Your Career, Christian Science Monitor, October 25, 2005.


Divorce

Harris and Teitelbaum, Family Law, 2nd ed.; Fault Divorce, pages 319-320.


Schedule of Class Meetings:

Jan. 31: Introduction to the Class
Feb. 2: Readings: Maher and Kessler
Feb. 7: Documentary: Birth Control: the Pill
Feb. 9: Documentary: The Education of Shelby Knox (DVD)
Feb. 14: Readings on Birth Control
Feb. 16: Documentary: Abortion: The Last Abortion Clinic (DVD)
Feb. 21: Tuesday is Monday: No class
Feb. 23: Read Shapiro on Abortion
Feb. 28: Other Readings on Abortion
Mar. 2: Documentary: Gay Marriage and Parenting: Our House
Mar. 7: Documentary: Gay marriage and Parenting: Daddy & Papa
Mar. 9: Readings: Gay Marriage and Parenting
Mar. 14: Take-home midterm paper assignment distributed in class
Mar. 16: No class scheduled: Papers due by 11 am, in class—
Late papers turned in later that day will be docked a half a grade. Those
turned in on any day thereafter will be docked a half a grade per day
lateness!
Mar. 21, 23: Spring Break
Mar. 28: Documentary: Sterilization: The Lynchburg Story
Mar. 30: Documentary: Sterilization: La Operacion
Apr. 4: Readings: Sterilization
Apr. 6: Documentary: Adoption: Unlocking the Heart of Adoption
Apr. 11: Documentary: Adoption: First Person Plural
Apr. 13: Readings: Adoption
Apr. 18: Documentary: Reproductive Technologies: Making Babies
Apr. 20: Readings: Reproductive Technologies
Apr. 25: Documentary: Single Motherhood: And Baby Makes Two
Apr. 27: Readings: Single Motherhood
May 2: Readings: Welfare Reform
May 4: Readings: Fathers’ Rights
May 9: Readings: Working Parents
May 11: Readings: Divorce
May 16: Last day of class; final paper assignment distributed
May 18: Final paper assignment due between 3 and 4pm, by delivery to my office,
Gordon Hall, room 105. Late papers turned in later that day will be
docked a half a grade. Those turned in on any day thereafter will be
docked a half a grade per day lateness!

May 31: Final grades due at the Registrar’s. The final papers will be available by
May 27 in the Gordon Hall main office, room 102, and the paper grades
will be posted to WebCt.

**Guidelines: Preparing for in-class Discussion**

**Objectives and Requirements:**

Objective: Developing and using critical thinking skills by drafting critiques of at least 2-
3 paragraphs. Note, a paragraph is comprised of at least 3-5 sentences that are complex, not
simplistic, in nature.

Requirements: Read the assigned readings and then think about the policy issues relating
to families that are being raised: arguments the authors raise, the legal and policy questions that
are at stake, and the cultural and social issues that underpin those legal and policy issues. Explain
what those are, and whether the solutions presented are effective as a matter of policy, in two to
three paragraphs, based upon all the readings, not in response to each one. Consider too, the
film(s) we might have seen relating to the topic and incorporate them into your discussion.

The University of Massachusetts web-based instructional program, WebCt,
http://www.oit.umass.edu/webct/campus/index.html, will be an important tool in our learning this
semester. You will find a calendar and general information relating to the class. You should
refer to it on a regular basis, for announcements and materials. WebCt is also the place for you to
send your critiques. They will be due by 8 am on the day the readings are scheduled to be
discussed in class. Late critiques will be docked a full grade. To find the place for submitting
them, look for the discussions link once you log in. You will find the subject heading for all the
topics we will be discussing.

In order to use WebCt, you must have a University of Massachusetts email account. If
you don’t have one, go to the Lederle building, the Office of Information Technology. You don’t
need to pay for an email account.

The issues we raise in class are controversial and relate to sensitive religious and political
beliefs. It is important to remember that as we think critically, question, formulate ideas, and talk
to each other, we must feel comfortable enough to express ourselves. Thus, as our ground rule,
we will have respect for each other. Respect means that even though we might criticize each
other’s views, we will criticize with civility, and avoid attacking each other.