COURSE TITLE: LAW AND THE FAMILY

INSTRUCTOR: MARSHA KORETZKY

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OFFICE HOURS: T/TH 3:00-3:30 PM OR APPOINTMENT
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CLASSROOM: TISCH 202
CLASS TIME: 3:40 - 5:00pm

COURSE DESCRIPTION:
How does the legal system deal with private family decisions, e.g., appropriate discipline for children, whether same sex couples should have the right to marry, who must be notified if a girl wants an abortion? What happens when families break apart or a teenager refuses to go to school? What is it like to represent a six year old? This course will give students an overview of the law as it relates to family matters. Reviewing the relevant statutes, case law and supplementary readings, we will learn when and how the courts intervene in family issues such as custody, abuse, and juvenile delinquency and discuss the legal, sociological, and ethical impact of current issues in family law. The course will emphasize the family court in New York State and give students a taste for what happens to real people caught up in the judicial system.

Texts: Brinig, et.al., Family Law in Action
       Supplemental material distributed in class

SYLLABUS:
Week 1
Readings: Brinig, Introduction, pp. 422-432
          Supplement: New York State Court System Chart
                       Samuelson, Family Law, NYS Bar Association

1) Overview of law and the family.
   a. The Family and Supreme Courts in NYS
   b. The issues litigated
      1. Custody/visitation
      2. Paternity/support
      3. Adoption
4. PIN/JD
5. DV
6. Neglect/Abuse/TPR/Permanency
7. Marriage, civil unions, abortion
8. Divorce and annulment

c. The players
   1. The parties
   2. Lawyers for adult parties
   3. Presentment agency
   4. Law Guardian
   5. Judge
   6. Ancillary agencies, etc.

2) Discussion topic: How effective are the courts in resolving family issues?
3) For next week: Together with your partner(s), be prepared to each take a pro or con position on the following question:
   Is same sex marriage constitutionally protected?
   Be sure to consider the issues of DOMA (the Defense of Marriage Act), alternatives such as Civil Unions, and the Full Faith and Credit Doctrine (i.e., the circumstance in which one state must enforce decisions made in another state).

Week 2
Readings: Brinig, pp. 45-60; 34-44
Supplement: Goodridge v Department of Public Health
          Wardle, Symposium on the Implications of Lawrence and Goodridge, Creighton Law Review, 2/05

1) Marriage, civil unions
   a. Historical perspective on the law of marriage
   b. Constitutional right to marry
   c. Contractual element of marriage
   d. Common law marriage and palimony
2) Discussion topic: Is same sex marriage constitutionally protected?
3) For next week: With your partner(s), decide on one of the two sets of readings. Be prepared to discuss the legal, social, and economic implications of the discussion questions for Week 3. Can you come up with statutes that successfully balance the interests of the state and those of all parties?

Week 3
Reading: Brinig, pp 293-339
Supplement: Child Support Standards Chart
            Conley, A Man’s Right to Choose, New York Times, 12/05
            Bennett, A Man’s Right to Choose, Boston Globe, 3/06
            Baker, Bargaining or Biology? Cornell J of L & PP, 2004
            OR
            Roe v Wade and Planned Parenthood v Casey
State Policies in Brief: Parental Involvement in Abortions
Florida Senate Bill: SB1908e1

1) **September 19 - Legal research tutorial** – please meet at the Scribner Library's electronic classroom, Rm. 128, for a legal research tutorial. You MUST attend this session as you will be doing legal research over the course of the semester.

2) Brief overview of 3 areas of the law and two hot button issues:
   a. Paternity
   b. Support - unwilling fathers’ support obligation.
   c. Abortion – proposed notice requirements

3) Discussion topics: Should a man have to pay support for an unwanted child?
   Should a woman be required to notify her spouse before having an abortion? What about parental notification before a minor aborts?

4) For next week: You are a law clerk in a large matrimonial firm. Ms. M. has come to your firm for a consultation. Write a short (750-1,000 word) memo to your boss setting forth the following:
   a) a brief statement of the law relevant to Ms. M.’s case;
   b) what she will need to show at trial to prevail;
   c) the strengths and weaknesses of her position;
   d) your best assessment of her chances of winning.

I have given you a few cases to start you off, but you will need to do some legal research for this. Do not go overboard -- I am more interested in knowing that you can find some cases and analyze the issues presented in them. In addition to case law, you might want to review the recent psychological literature in this area and let your boss know whether you think it would be helpful or harmful to Ms. M.’s position to call a psychologist as an expert witness.

Week 4
Readings: Brinig, 341-378
Supplement: Raymond Carver, *Popular Mechanics*
Children’s Bill of Rights
M. v M., fact pattern
**Eschbach v Eschbach; Tropea v Tropea, Miller v Pipia; Mascola vMascola; Huston v Jones; Kemp v Teeter; Long v Long; Zafran v Zafran; Matter of Rebecca B.**
Wallerstein abstract
Braver abstract
New York State Assembly Bill S 291
WBASNY position paper on Assembly Bill S 291
Testimony of Charles Fink

1) Child custody and visitation
   b. Best interest standard
Week 5
Readings: Supplement: Erickson, *Psychological Testimony on Trial*, Law Guardian Rptr, 12/03
        Dobrish, et.al., *Mental Health Professional Testimony*, LG Rptr, 6/05
        APA Guidelines for Child Custody Evaluations
        G v G – fact pattern
        G v G – Forensic Child Custody Evaluation
        G v G – Trial transcript (excerpt)

1) Use of mental health experts in custody cases
   a. Guest lecture – forensic psychologist
   b. APA guidelines
   c. Psychological testing
   d. Parental Alienation Syndrome and other psychological issues related to custody

2) Discussion topic: Psychology as art or science in the courtroom?
3) Student led discussion
4) For next week: Think about the most difficult ethical quandaries lawyers in the family law field face. Be prepared to state 2 examples and explain the lawyer’s obligations.

Week 6
Readings: Brinig, 163-187, 235-292
Supplement: ABA Model Rules of Professional Conduct - Rule 1.3
Preface to Bounds of Advocacy-AAML

Please note that the lecturer, Jo Katz, Esq., may submit additional materials

1) Domestic violence in the law – guest lecture – DV attorney
2) Divorce and annulment
   a. Grounds
   b. Equitable distribution
   c. Custody
   d. Support and maintenance
   e. Alternative dispute resolution
3) Discussion topic – ethics in matrimonial cases
4) Student led discussion
5) For next week: Be sure to come to class with questions
Week 7
1) Review
2) Mid-term
3) For next week: Be prepared to discuss the social, political, economic, and legal implications of open adoption.

Week 8
Readings: Brinig, 188-218
Supplement: Abstract, *Seeing is Believing*
*Domestic Relations Law, Section 112-b*
Reed, *Trends in the Case Law of TPR*

1) Abuse/Neglect/TPR/Permanency/drug court
2) Discussion topic: *Matter of Lisa K.*
3) Student led discussion
4) For next week: Consider what you think would best help at-risk families. What can the courts do? Do you think the threat of placement is a deterrent? Are you aware of any alternative programs or therapies that are effective? Are there educational programs that are working? Think about the roles of the legislators, the courts, and the agencies in creating solutions to these problems. Find out about one creative program that seems to be working and be prepared to report on it to the class.

Week 9
1) Film - *Aging Out*
2) Societal issues in abuse/neglect
   a. Interface of social work and law
   b. Problems of child witnesses
   c. Ethical obligations of the law guardian
   d. Cultural issues in abuse/neglect
   e. Society and the foster child
3) Discussion topic - student’s choice (be prepared!).
4) Student led discussion

Week 10
Readings: Supplement: Brief for *Matter of Charles S.*
*New York State Domestic Relations Law, Section 111*
*Social Services Law, Section 384-c (7)*

1) Adoption
2) Discussion: *Matter of Charlie S.*
3) Student led discussion
For next week: You are a probation officer charged with recommending a disposition for Kristy M., the child for whom the motions to dismiss were made. Assume the following: 1) the motion was granted; 2) Kristy again messed up at adjustment because she kept missing appointments; 3) another CPS report was filed against Kristy’s mother and she got another ACD; 4) you’re friends with one of the teachers at Kristy’s school and she’s told you Kristy looks terrible; 5) the original JD case was restored to the calendar, a trial was held and Kristy was found guilty of petit larceny; 6) at the end of the trial, the law guardian moved for the JD to be reduced to a PINS; and 7) the judge has reserved decision on that motion pending your report. What do you think should be done? Remember that you must find the least restrictive alternative appropriate for Kristy’s needs. Write a short summary (500-750 words) of your conclusion and the reasoning upon which you reached it.

Week 11
Matter of Kristy M., Motion to Dismiss 1 and 2
1) PINS
2) JD’s
3) Discussion: Ethical obligations of LG as defense attorney
4) Student led discussion
5) For next week: Be prepared to discuss the pros and cons of scared straight vs therapeutically based programs for kids in the juvenile justice system.

Week 12
Readings: Supplement: Abstract- Addressing Needs of At-Risk...
For the Good of the Child, Harvard LR
How to Establish and Run a Truancy Program
Abstract - Transitioning from Congregate Care
1) Alternatives to court intervention for kids/alternative dispos/education nexus
2) Discussion: Should kids be treated like adults in the criminal system?
3) Student led discussion

Week 13
1) Court observation
2) Discussion of court observation
3) Student led discussion

Week 14
1) Panel discussion – children and the law
2) Review

Week 15
Final
Class requirements:

Class participation – 25%
This class will be heavy on discussion, light on lecture. You will be expected to come to class already having read the material and able to discuss it analytically. You will each be leading at least one class discussion and must be prepared to participate when your classmates present their material. You will also need to spend a day observing in the Family Court and be prepared to discuss the experience at the next class session.

Student led discussion and papers – 25%
At the start of the class, you will be divided into teams. As a pair or group (depending on the size of the class), you will lead the class in a discussion of an issue relevant to the class work. Please look for an issue that stimulates you. The more it excites your passion the better. You may present the issue in any way agreed upon within your group. Each member of your team will be expected to actively engage the rest of the class for at least 20 minutes. Please go over the issue you wish to present and the method in which you plan to present it with me at least one week before you are scheduled to lead the discussion.

You must also submit 2,500 words of critical analysis of your discussion topic. You may look at the issue from your own perspective and I would encourage you to consider it in terms of what interests you. It should include a review of the relevant law, its sociological or political impact, and any ethical considerations raised by it. Please do not simply regurgitate information gleaned from the readings or wax philosophical about legal justice or injustice. I want to know that you have an understanding of a complex legal issue and have thought about it seriously. Legal references should be cited in Bluebook form. This paper is due the day of your presentation.

There are two other short papers assigned over the course of the semester.

Mid-term exam - 25%
This will be an open book exam made up of some short answer and some essay questions. The essays will be in the form of hypothetical questions. You will be expected to spot and analyze the legal issues presented by the fact pattern.

Final exam – 25%
This will be an open book exam made up of some short answer and some essay questions. The essays will be in the form of hypothetical questions. You will be expected to spot and analyze the legal issues presented by the fact pattern.

Extra credit - up to 10%
1,000-1,500 words describing your experience at court observation. Due on or before December 12.
SUGGESTED READING LIST:
There are many, many excellent sources in both academic literature and pop-culture. If you have suggestions to add to this rather short list, please let me know.

Fiction:
Ellen Foster, Gibbons
Bastard Out of Carolina, Allison
Black and Blue, Anna Quindlen
My Sister’s Keeper, Picoult
Before and After, Brown
The Good Mother, Miller
Sleepers, Carcaterra (you might find this in nonfiction, but…)

Non-fiction:
A Heartbreaking Work of Staggering Genius, Eggers
The Kid, Savage
Girl Interrupted, Kaysen
In the Best Interests of the Child, Goldstein, et.al.
Juvenile Justice: The System, Process, and Law, del Carmen & Trulson
Monster, Shakur
Savage Inequalities, Kozol
Second Chances, Wallerstein
8 Ball Chicks, Sikes

Film:
The Squid and the Whale
Losing Isaiah
Kramer vs Kramer
The Deep End
Tying the Knot
Clockers
Hate
The 400 Blows