Family Law in the World Community

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Family Law in the World Community

Cases, Materials, and Problems in Comparative and International Family Law

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This book is dedicated to Henry, Eli, and Tom.

Merle

This book is also dedicated

to Sean, whose creativity, courage, and humor
inspire me,

to Sarah, whose affectionate nature, perception, and determination
bring me joy,

to Meagan, whose smile I will always treasure, and

to Chris, who has stood by me through the laughter
and tears, and without whom I would never have
fully known the fulfillment family can bring.
With all my love,

Marianne

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Preface for Instructors

Before we began writing this book in 1999, we surveyed the courses in comparative and/or international family law offered by American law schools, both on campus and in their overseas programs. Our examination confirmed our suspicion that the courses were extremely diverse, both in structure and content. Some of these courses were two credit hours, others were three; some of these courses were seminars, others were not. The instructors' pedagogical goals and coverage fell along a continuum: some focused almost exclusively on training students for the practice of transnational family law; others concentrated mostly on examining discrete family law issues from a comparative perspective; some emphasized international human rights conventions affecting the family. Notwithstanding this variety, several generalizations were evident. The majority of the instructors utilized a combination of public international law, private international law, and comparative law sources. In addition, all taught with materials that they or others had gathered, as no casebook yet existed in this field.

Ours is the first casebook created for American law students in the field of comparative and international family law. As such, we tried to create a book that can be used flexibly in many types of courses. We included more material than can be taught in a course of two- or three-credit hours in order to ensure sufficient content to meet each instructor's interests and goals. We used recurring themes throughout the book to try to provide coherence regardless of the material chosen.

The first chapter presents an overview of the comparative and international law disciplines. We have presumed that students have not had either an international or comparative law course. Therefore, we use family law topics not covered elsewhere in the book to introduce the skills and information necessary to explore effectively the topical chapters that follow. The first chapter also contains a section on researching international and comparative family law, which may prove particularly useful for seminar students.

The remaining chapters are divided into two parts. Chapters Two through Six focus primarily on relationships between adult partners. Chapters Seven through Fourteen concentrate largely upon the relationships between children and their parents and other caregivers.

For those instructors who want to teach a mixture of comparative, international, and transnational law, and consequently will seek material by topic rather than by discipline, Chapters Two through Fourteen offer a range of options. The book is organized topically because we believe that the study of family law is particularly rich and exciting when one explores a particular topic through a combination of comparative law, public international law, and private international law. However, for those instructors who want to organize materials around a specific discipline, we offer the following suggestions. Instructors who want to emphasize transnational family law will find most useful

Chapters One (section B), Two (section E), Five, Eight, Ten, and Twelve. Chapter Six (sections B.3.c. and C.1), addressing the ability of family violence victims to successfully obtain asylum in the United States, might also be a beneficial addition to a transnational course. Instructors who wish to concentrate mostly on comparative family law might want to select Chapters One (section A), Two, Three, Four, Six (sections A and B), Seven, Nine, Eleven, Thirteen, and Fourteen. Chapter Eight might also be usefully included in such a course, as certain portions take a comparative approach to examining the topics of child abduction and custody jurisdiction, and many of the cases provide significant insight into the substantive custody law of the nations involved. Instructors who seek to focus on the intersection of international human rights law and family law will find most relevant Chapters One (section B), Two (sections B.4 and E), Four (section B), Six, Seven, Eleven, Thirteen, and Fourteen.

The book incorporates a broad range of materials, including judgments from international tribunals and domestic courts of many nations, statutes from around the world, and excerpts from professional journals in law and related fields. Each chapter includes problems and exercises that permit instruction through problem-solving and role-playing. Each chapter also contains both specific and open-ended questions to facilitate policy discussions and socratic dialogue.

A separate paperback, entitled *International Family Law: Conventions, Statutes, and Regulatory Materials*, complements this casebook and is also available through Carolina Academic Press. It contains the edited text of global and regional international conventions relevant to the field of family law, selected U.S. federal statutes and regulations, and the text of the Uniform Interstate Family Support Act (1996) and the Uniform Child Custody Jurisdiction and Enforcement Act (1997). We placed these materials in a separate supplement because these materials are referred to throughout the book and because they are lengthy. An instructor certainly could make available these treaties and statutory materials through other means; we have only sought to eliminate that inconvenience for those who would prefer not to have it.

This book was not created for the basic domestic Family Law course taught in most U.S. law schools, and this book is not well suited for that purpose. Although the book contains some U.S. cases, legislative materials, and summaries of legal doctrine, this material is provided solely for comparative purposes or to contextualize a discussion of transnational or public international law. Rather, our goals were to create a book that would allow students to explore family law issues from a global or comparative perspective, to understand the influence and limitations of international law in resolving familial conflicts, and to prepare for the practice of transnational family law. To those of you who share these goals, we hope that this book provides you a useful tool for exploring this fascinating and rapidly expanding field of law with students. We welcome your comments and suggestions. Please direct comments about Chapters 1.B, 3–5, 7, 8.B, 8.C, and 10–12 to Marianne Blair and comments about Chapters 1.A, 1.C, 2, 6, 8.A, 9, 13, and 14 to Merle Weiner.

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