

FAMILY LAW:
CASES, MATERIALS,
AND PROBLEMS

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FAMILY LAW: CASES, MATERIALS, AND PROBLEMS

THIRD EDITION

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Library of Congress Cataloging-in-Publication Data

Swisher, Peter N., 1944-

Family law: cases, materials, and problems / Peter Nash Swisher, Anthony Miller, Helene S. Shapo -- 3rd ed.

p. cm.

Includes Index.

ISBN 978-1-4224-2965-5 (hardbound)

1. Domestic relations--United States. I. Miller, Anthony . II. Shapo, Helene S., 1938- III. Title.

KF505.S92 2012

346.7301'5--dc23

2012006532

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MATTHEW  BENDER

ACKNOWLEDGEMENTS

We would like to gratefully acknowledge the valuable research assistance of Alice Newhall and Wyatt Taylor, and Nicole Hutchison and Raisa Garvin in the preparation of this Third Edition of our Family Law casebook.

Professor Swisher gratefully acknowledges a Hunton & Williams research grant in writing this casebook's third edition.

We are also grateful for the help and support of our LexisNexis Editor, Cristina Gegenschatz.

PREFACE

American Family Law is in a constant state in flux and transition in its attempt to address and meet the demonstrated needs and goals of contemporary American society. Some important family law concepts, such as the equitable distribution of marital or community property on divorce, generally have stabilized over the past decade. Other important family law concepts, such as the rights and obligations of non-traditional families, have experienced significant changes over the past decade.

Over the past three decades, both the scope and content of American family law have changed dramatically. Traditionally, the study of family law—also known as domestic relations law—focused on the regulation of marriage and divorce, and on the legal relationship between (married) parents and their children. Contemporary family law includes these subjects, but it has expanded to encompass such topics as the legal and economic relationships between unmarried cohabitants; the rights and obligations of unmarried parents; the regulation of reproductive decision-making and technology; and the appropriate role of the state in mediating between parental authority and child protection. In many areas, most notably divorce, the primary focus of family law has shifted from moral to economic issues, and the general practitioner or business lawyer must understand important family law concepts and principles in order to represent her clients adequately. At the same time, the legal principles governing family relationships have come to incorporate significant elements of constitutional law, criminal law, contract law, tort law, corporate law, and employee benefits and tax law. The modern family law practitioner must be aware of these elements and understand their impact on a wide range of family law doctrines and principles.

Family law scholarship has also flourished over the past 25 years. Leading law reviews and other journals are filled with articles on family law topics—from divorce to domestic violence, from gestational surrogacy to open adoption. Contemporary family law scholars have applied a variety of theories and jurisprudential approaches to the study of family law—from feminist theory to economic analysis, from empirical research to therapeutic jurisprudence and family systems theory. In many instances, this scholarship has contributed to significant changes in traditional family law doctrines and practice. In addition, both the study and the practice of family law has become increasingly interdisciplinary; a full understanding of many family law topics now requires the integration of knowledge from a variety of disciplines and perspectives. For example, lawyers and mediators who handle child custody disputes routinely draw upon psychological theory and methodology; adjudications of paternity rest on principle of genetics and statistical techniques; and social science evidence regarding the incidence and causes of intimate violence is central to developing effective legal and policy responses to such violence.

This casebook seeks to integrate the theory and practice of family law. Our goal is to give students a solid grounding in contemporary family law doctrines and practice, while at the same time situating that practice within a broader theoretical and historical framework. We focus on those areas of family law that are most important to the modern practitioner and that are the subject of ongoing public debate, both within the legal profession and in society at large—topics such as the economic and parenting consequences of divorce; the appropriate role of the state in regulating access to and exit from marriage; the legal and social meaning of parenthood; and state's role in protecting

PREFACE

children. We want students both to understand and to be able to think critically about contemporary family law doctrines and practice. To that end, the casebook uses an extensive set of problems — many based on recent court decisions — to apply and extend the doctrines introduced in the principal cases. Through these problems, combined with principal cases and substantial Notes and Questions, we challenge students to define what American family law presently is and what it should be, now and in the future.

We continue to strive for a realistic balance, and an objective approach, to American Family Law theory and practice, and we welcome your comments, questions, and inquiries.

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