

**FAMILY LAW: CASES,  
TEXT, PROBLEMS**



# FAMILY LAW: CASES, TEXT, PROBLEMS

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## *Abridged Fifth Edition*

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# *Dedication*

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*When I remember bygone days  
I think how evening follows morn;  
So many I loved were not yet dead,  
So many I love were not yet born.*

Ogden Nash, *The Middle*.

In memory of the lives of Edward Ellman and Larry Spector,  
and in awe of my marvelous luck 42 years ago when I married Tara.

**I.M.E.**

To Mom and Dad, who taught me the meaning of family and who I miss every day;  
to my loving sisters who have taught me over the years that geography is  
no impediment to closeness; and, most especially to the incredible Carol and our son,  
Benji,  
and to Claire who has made our family complete.

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To Zachary and Cara (the lights of my life), and in memory of my mother  
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**L.A.W.**

To Karen and David.

**B.B.**

To Dana, Cecily, Jake, Max and Nathan,  
who teach me something new about family every day.

**K.C.**

To Eric, and to Hannah, Abe, and Eli,  
who simultaneously delayed this project and gave it meaning.

**M.E.**



# Preface

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This abridged edition is based on the Fifth Edition of *Family Law: Cases, Text, Problems*, published in 2010. We have, however, revised as needed to take account of important new developments in this rapidly changing field. Most obviously, but not exclusively, the treatment of same-sex marriage in Chapter 2 now incorporates the important decisions of the Supreme Court in 2013.

This is the first time an abridged edition of *Family Law* has been offered. This version is less than half the length of the full text. The traditional version served a dual role as reference work and teaching tool. We believe many teachers will find that this new abridged edition better serves the teaching function. The reduction in length has been achieved without changing the book's basic orientation. Textual notes still inform as well as challenge, and problems are still featured. But detailed discussion of state-by-state variations, or of doctrines that are tangential to the law's main story, have often been eliminated or reduced in length. We have also eliminated coverage of some subjects that are rarely covered in the basic family law class.

We thank the many users of past editions whose feedback has helped inform this new version.

I.M.E.  
P.M.K.  
L.A.W.  
B.H.B  
M.E.  
K.C.

November 2013





# *Preface to the Fifth Edition*

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Twenty-five years ago, Ira Ellman carefully taped up a very large and very heavy box, preparing it for shipment to a publishing company called Michie. The box contained many hundreds of pages of typescript, and of Xerox copies of cases and articles that had been edited by cutting them up with scissors and pasting them with tape. The product of countless months of work by both Ellman and Paul Kurtz, the contents would become the first edition of *Family Law*. It was among the earliest law school casebooks published by Michie, which had recently acquired the casebook business previously owned by the Bobbs-Merrill Company — a company better known for having been the original publisher of the most popular American cookbook ever written, *The Joy of Cooking*, as well as the first American fairy tale, *The Wonderful Wizard of Oz*. *Family Law* never sold as well as they both did, although it has not done badly for a casebook. But it did get off to a rocky start. Unprepared for the potential heft of a law school casebook, Michie, which had its own printing plant, discovered that its factory's binding machines could not accommodate a book as large as *Family Law*'s first edition. The crisis was abated when the factory manager thought to place the unbound pages in large stacks under heavy weights, forcing out the air and compressing the pages just enough to allow them to be bound.

A lot has changed since the first edition appeared in 1986. Neither Bobbs-Merrill nor Michie any longer exist, and no publisher would allow an author to submit his work in the form of an actual physical *manuscript*. Nor do many publishers manufacture books themselves, and indeed we seem to be in sight of the day when no one will, when electronic distribution will entirely replace printed copies.

And of course the law continues to change. This new edition reflects those changes through the time when the electronic “manuscript” was submitted to the editor in November of 2009. We have omitted, in statutory citations, any references to a year, because statutory language is no longer checked against printed volumes and pocket parts with publication year, but against electronic research services. Such a check was made on all statutory citations at the time of the manuscript's preparation during 2009, and the citations were current as of that time.

Finally, the authors of *Family Law* continue to change. Successful collaborations create bonds that are one of the great pleasures of authorship. Ira Ellman and Paul Kurtz experienced that in the first edition, as we both remember, back before the age of email, the special pleasure we took in meeting one another for our very first face-to-face conversation some months *after* the first edition's publication. In the years since, we have been very fortunate in the additional partners we have been able to enlist to work with us, beginning with Kate Bartlett in the second edition, and Elizabeth Scott in the third and the fourth, and our friendship with each of them happily continues even though they have both gone on to focus on other endeavors. Ira and Paul are delighted that Lois Weithorn and Brian Bix, who joined for the fourth edition, have continued to contribute to this one, and all four of us have been very pleased to welcome Maxine Eichner and Karen Czapanskiy to the endeavor. Adding new authors adds new perspectives and new ideas, to the benefit of the entire enterprise, and their impact will undoubtedly grow in the future. We have nonetheless adhered to two features that were distinctive among family law casebooks in the first edition: extensive text along with cases and excerpts from the

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## *Preface to the Fifth Edition*

scholarly literature, and Problems. The goal is to minimize the time the teacher must spend on making clear what the law is so that class time can instead focus on complications in the law's application, and on the policy issues presented by its formulation.

We all have people to thank, among the colleagues, librarians, staff, and students in our respective institutions, for invaluable assistance in this project and others. They know who they are, and they know that we do also.

I.M.E.

P.M.K.

L.A.W.

B.H.B.

M.E.

K.C.

November 6, 2009

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