



Domestic Relations

Class 1

Sources of Family Law in the U.S.

- **U.S. Constitution**

- Privacy (preventing certain pre-requisites to marriage; disallowing certain rules regarding who can live with whom...)
- Due process (the fundamental right to marry and procreate; entitling people to certain protections from interference with the right to raise one's children...)
- Equal protection (not allowing marriage laws that are discriminatory, disallowing property control laws that are gender specific.)

- **Federal law**

- Most federal law in this area involves interstate custody disputes and criminal penalties for “kidnapping” in a custody context.
- Almost all federal family law has to be connected to “interstate commerce” to be constitutional.



Sources of Family Law in the U.S.

- **State Law**

- Most family law comes from this area; including formalities of marriage and divorce, custody, etc.

- **Tax law**

- This can indirectly affect family law, as it can give benefits to married couples, child tax credits, etc.
- The tax laws can also define familial relationship for their purposes, thus indirectly making family law policy.

- **Zoning and other local regulations**

- These include multi-family housing rules, etc.



Limits of Contract Law with Regard to Family Law

- Courts will refuse to enforce certain contracts related to domestic relations simply because it is not good policy to enforce them.
- Examples:
 - ***Balfour v. Balfour (1919)*** - Courts won't enforce agreements in every day life. Example: "I will cook dinner if you will take out the trash"
 - ***Miller v. Miller (1887)*** - Husband and wife made a "contract" agreeing not to fight with each other and to live harmoniously. In consideration, they agreed to forgive any debts they owed each other. The court didn't enforce this because it reasoned that spouses owe the duty to each other to live amicably anyway.
 - ***White v. Blurette (1853)*** - An agreement for child to stop complaining in exchange for debts being forgiven is not enforceable!
 - ***In the Matter of Baby M (New Jersey 1987)*** - Surrogate mother agreement won't be enforced because it's against public policy.



Common Law – Property Rights of Married Women

- Personal property automatically became the husband's property
- Real property stayed the wife's property, but the husband had the right to the income generated by the property, along with various other rights ("curtesy"). Wife was entitled to "dower", i.e., a life estate in 1/3 of husband's property.
- A married woman could not contract for herself, but could contract for necessities on her husband's credit.
- She could not sue or be sued without her husband as a co-party.
- All of these rules are **irrelevant** today! Married women have the same status as married men. Both men and women, in general, are treated similar to unmarried people.



Statutory Concerns

- Civil Rights Act of 1964:
 - Discrimination in employment based on gender is illegal.
 - Classification in employment based on gender in any manner that would cause discrimination is illegal.
- Nothing about the Act inherently prevents employers from discriminating based on things like having to miss time for maternity or other “bona-fide” reasons, even if they disproportionately affect women.
- However, the Family Medical Leave Act allows ANY parent 12 weeks...
 - To care for a child after its birth, adoption or a foster care placement.
 - To care for a spouse, child or parent who has a serious health condition.
 - To care for oneself due to a serious health condition.





Equal Employment Opportunity - 1

- **Equal Pay and Compensation Discrimination**

- The Equal Pay Act requires that men and women be given equal pay for equal work in the same establishment.
- The jobs need not be identical, but they must be substantially equal.
- It is job content, not job titles, that determines whether jobs are substantially equal.

- A pay scale is a violation if it pays genders differently and the jobs require and are based on the same:

- **Skill** (including experience, ability, education, and training required to perform the job)
- **Effort**
- **Responsibility**
- **Working Conditions** including:
 - (1) physical surroundings
 - (2) hazards.

- **Note: Title IX and equality in school athletics!**



Equal Employment Opportunity - 2

- **Pregnancy**

- Discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII, which covers employers with 15 or more employees.
- Women who are pregnant or affected by related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.



Equal Employment Opportunity - 3

- Title VII's pregnancy-related protections include:

- 1. Hiring**

- An employer cannot refuse to hire a pregnant woman because of her pregnancy.

- 2. Pregnancy and Maternity Leave**

- An employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work. However, the employer may treat her like anyone else with a similar disability. The only thing the employer must not do is discriminate based on pregnancy!

- 3. Health Insurance**

- Any health insurance provided by an employer must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions.

- 4. Fringe Benefits**

- Pregnancy-related benefits cannot be limited to married employees.
- Employees with pregnancy-related disabilities must be treated the same as other temporarily disabled employees for accrual and crediting of seniority, vacation calculation, pay increases, and temporary disability benefits.



Equal Employment Opportunity - 4

- **Sexual Harassment**

- Sexual harassment is a form of sex discrimination that violates the Civil Rights Act of 1964.
- Sexual Harassment can include:
 - Unwelcome sexual advances
 - Requests for sexual favors
 - Other verbal or physical conduct of a sexual nature
- These actions constitute sexual harassment when the conduct:
 - Explicitly or implicitly affects an individual's employment
 - Unreasonably interferes with an individual's work performance
 - Creates an intimidating, hostile, or offensive work environment.



Equal Employment Opportunity - 5

- Other points:
 - The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
 - The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
 - The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
 - Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
 - The harasser's conduct must be unwelcome.

