

FAMILY LAW

The Essentials

Second Edition



William P. Statsky

FAMILY LAW: THE ESSENTIALS

SECOND EDITION

WILLIAM P. STATSKY

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Cover Image:

Family Ties, 1999; Diana Ong
(b. 1940/Chinese-American)
Computer Graphics;
Diana Ong/SuperStock

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Printed in the United States
2 3 4 5 XXX 07 06 05 04

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5 Maxwell Drive, Clifton Park, NY 12065-2919

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Library of Congress Cataloging-in-Publication Data

Statsky, William P.
Family law: the essentials / William P. Statsky.—2nd ed.
p. cm.— (The West legal studies series)
Includes bibliographical references and index.
ISBN 1-4018-4827-3 (hardcover)
1. Domestic relations—United States. I. Title. II. Series.

KF505.S833 2003
346.73.1'5—dc22

2003061641

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*For Commie Farrell:
Her next eighty-three years should be as good as her first.*

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PREFACE

Say it isn't true. A recent *New York Times* story reported that a well-known divorce attorney was giving out pens to prospective clients that said, "Sue Someone You Love." This is not the image the legal profession wishes to project to the public. Yet newspapers, magazines, and talk shows do seem to give the impression that our society is in a litigation frenzy: "Son Sues to Divorce His Mother," "Wife Demands Half of Husband's Medical Practice in Divorce Settlement," "Surrogate Mother Refuses to Turn Over Baby," "Live-in Lover Seeks Palimony." Our goal in this book is to sort through the headlines to find an accurate picture of the state of family law today and the role of the attorney-paralegal team within it. Few areas of the law touch the lives of as many people as family law. From the cradle to the grave, traditional and new principles of family law profoundly affect who we are and how we relate to each other. As a student of family law for over thirty years, I continue to find the area a fascinating vehicle for understanding our legal system and, indeed, human nature itself.

CHAPTER FORMAT

Each chapter includes features designed to assist students in understanding the material:

- A chapter outline at the beginning of each chapter provides a preview of the major topics discussed in the chapter.
- Tables are used extensively to clarify concepts and present detailed information in an organized chart form.
- A chapter summary at the end of each chapter provides a concise review of the main concepts discussed.
- Selected terms are defined in the margin next to the text to which the terms are relevant.
- Key terms are printed in boldface type the first time they appear in the chapter. A list of key terms also appears at the end of each chapter to help students review important terminology introduced in that chapter.
- Internet resources for further study are found at the end of every chapter.

CHANGES TO THE SECOND EDITION

- Major new material has been added on civil unions (the equivalent of same-sex marriage), domestic partnership, domestic violence, covenant marriage, premarital agreements, adoption by gays and lesbians, confidentiality of adoption records, grandparent rights, sperm bank scandals, the legal status of frozen embryos, and "reality TV" family law (i.e., the legitimacy of a "marriage" ceremony performed before an audience of millions).

- New computer material has been added on child custody and visitation scheduling and on child-support worksheets on the Internet.
- The number of chapters has been reduced from 17 to 15 through a consolidation of material.
- Internet resources on family law have been added to each chapter.
- A new introduction has been added to chapter 1 on five of the major themes of family law in the twenty-first century.
- New developments on the enforceability of premarital agreements have been added to chapter 2. The chapter also includes a comprehensive checklist on the enforceability of premarital agreements.
- Chapter 3, on marriage formation, adds new material on marriage alternatives such as civil unions and domestic partnerships.
- Chapter 4 includes a discussion of the legal implications of the TV sensation “Who Wants to Marry a Multimillionaire?”
- The chapters on divorce grounds and procedure have been combined; the resulting revised chapter (chapter 5) now appears before the chapters on child custody and support. It includes coverage of dissolution procedures for Vermont civil unions, bifurcated divorces, and the domestic relations exception in federal courts.
- The role of domestic violence in child-custody decisions has been added to chapter 7.
- Chapter 7 also includes a major decision of the United States Supreme Court on grandparent visitation over the objection of a fit custodial parent.
- The most recent custody jurisdiction statute (the Uniform Child Custody Jurisdiction and Enforcement Act) is covered in chapter 7.
- The most important development in the field of child support has been the enactment of the Uniform Interstate Family Support Act, covered in chapter 8.
- New child-support enforcement methods covered in chapter 8 include new hire reporting, passport denial, and financial institution data matching (“freeze and seize”).
- The tax chapter (chapter 9) includes an expanded discussion of innocent spouse relief.
- The material in chapter 10 on domestic violence has been expanded to include a client sensitivity checklist and a paralegal’s firsthand account of working with women who have been abused.
- Reporting requirements in cases of suspected child abuse and neglect have been added to chapter 12.
- Coverage of adoption by gays and lesbians has been expanded in chapter 13. Chapter 13 also includes recent developments in the confidentiality of adoption records in light of efforts by adopted children to locate their biological parents.
- Chapter 14 includes recent developments in the law governing the disposal of frozen embryos when divorcing spouses disagree about what to do with them.
- Chapter 15 includes a discussion of whether an award of tort damages to one spouse can be divided upon divorce as part of a property division.



SUPPLEMENTAL TEACHING AND LEARNING MATERIALS

- **Instructor’s Manual**—Written by the author of the text, the *Instructor’s Manual* contains answers to selected assignments, competency lists for each chapter, and teaching suggestions.

- **Web page**—Come visit our Web site at www.westlegalstudies.com, where you will find valuable information, sample materials to download, as well as other West Legal Studies products.
- **WESTLAW®**—West's online computerized legal research system offers students "hands-on" experience with a system commonly used in law offices. Qualified adopters can receive ten free hours of WESTLAW®. WESTLAW® can be accessed with Macintosh and IBM PC and compatibles. A modem is required.
- **Strategies and Tips for Paralegal Educators**, a pamphlet by Anita Tebbe of Johnson County Community College, provides teaching strategies specifically designed for paralegal educators. A copy of this pamphlet is available to each adopter. Quantities for distribution to adjunct instructors are available for purchase at a minimal price. A coupon in the pamphlet provides ordering information.
- **Survival Guide for Paralegal Students**, a pamphlet by Kathleen Mercer Reed and Bradene Moore, covers practical and basic information to help students make the most of their paralegal courses. Topics covered include choosing courses of study and note-taking skills.
- **West's Paralegal Video Library**—West Legal Studies is pleased to offer the following videos at no charge to qualified adopters:
 - *Today's Paralegal: Domestic Relations Law 2* (The CNN Legal Issues Series) ISBN 0-7668-3439-5
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ACKNOWLEDGMENTS

A word of thanks to the reviewers who made valuable suggestions:

- | | |
|---|---|
| • Beverly Broman
Duff's Business Institute
Pittsburgh, PA | • Judith Sturgill
North Central State College
Mansfield, OH |
| • Les Sturdivant Ennis
Samford University
Birmingham, AL | • Michelle Wales
Samford University
Birmingham, AL |
| • Deborah A. Howard
University of Evansville
Evansville, IN | |
| • Sheila Merchant
Hillsborough Community
College
Tampa, FL | |

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FAMILY LAW IN THE TWENTY-FIRST CENTURY

Family law consists of legal principles that define relationships, rights, and duties within family units such as those formed by marriage. We will spend a good deal of time studying the rules of family law that have been part of our history for many years, but we must recognize that this area of the law is still growing. The world of our grandparents was dramatically different from today's world as we begin the twenty-first century. Among our vast population, the concept of a family is diverse and is shifting. Today, for example, more than 30 percent of all children under the age of eighteen live with only one parent. Furthermore, when two adults are at home, they are not always mother and father. The "two-mommy" or "two-daddy" household is no longer an isolated family unit that the law can ignore. We live in a society that sometimes appears to be in a state of perpetual change. Courts and legislatures have not always been able to fit traditional family law principles into the realities of modern life. New principles have had to be created. One of our central themes will be how family law has evolved in response to the shifting boundary lines of how people choose to live together.

Five important developments in family law are a product of this turmoil. They have shaped our recent history and will continue to play major roles in the twenty-first century. Here is an overview of these developments, which we will be studying throughout the chapters of this book along with the traditional principles of family law.

Equality of the Sexes: The Struggle Continues

There was a time in our history when a wife could not make her own will or bring a lawsuit in her own name. Without the consent of her husband, there was relatively little that she could do. Two centuries ago, the greatest scholar of the day, Blackstone, declared that "the very being or legal existence of a woman was suspended during the marriage, or at least was incorporated and consolidated into that of her husband."¹ Indeed, in the eyes of the law, the husband and

family law

The body of law that defines relationships, rights, and duties in the formation, existence, and dissolution of marriage and other family units.

¹Quoted in *Warren v. State*, 255 Ga. 151, 154, 336 S.E.2d 221, 223 (1985).