

AALS MID-YEAR MEETING

Marrying Assessment Tools to Learning Outcomes in Course Design

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Assessment and Outcomes in an Introductory Family Law Class

Professor Jamie R. Abrams
GENERAL GRADING CRITERIA

The descriptions below will give you some idea of the reasons behind each grade.¹

An ‘A’ exam would make a supervising attorney (client) (the intended audience) feel confident about relying on your work with little or no corrections or interventions. A client would be pleased that you prepared her for all possible counter arguments and legal obstacles that the case would likely encounter. The reader would understand “what” the law is, “how” it applies to her case, and (where appropriate) “why” the law is what it is or why it is as uncertain as it is.

An ‘A’ exam will:

- (a) be easy to read due to strong large-scale organization, clarity, and focus;
- (b) have missed no major causes of action or misstated any major rules of law;
- (c) have further analyzed the minor or more subtle legal issues in the fact pattern;
- (d) connect fact and law seamlessly to reason to legal conclusions;
- (e) be based on a close, accurate, and thorough reading of the facts;
- (f) ground legal advice in a sophisticated understanding of how a torts case proceeds through the legal process

A ‘B’ exam would make a favorable impression on the intended audience. It would communicate that you know the law and legal analysis well. A supervising attorney would enjoy watching your growth and would feel confident that, with guidance, you will be a very good attorney. The work product might require some “gap filling” to thoroughly address all issues, to refine the precise terminology, or to tighten the analytical structure. The intended audience would generally understand the law, the conclusions, and the legal advice with strong clarity.

A ‘B’ exam will:

- (a) be similar to, but lack the thoroughness, power, or polish of an ‘A’ paper;
- (b) have generally hit “the big issues” and stated the law accurately, but missed some of the minor nuances and complexities;
- (c) be generally well-organized, but may require the reader to reread certain sentences or paragraphs before fully grasping the author’s point or may use excessive space to make minor points;
- (d) state defensible legal conclusions, but further clarity may be necessary to understand the reasoning in all its contours;
- (e) explain the “what” and “how” of the law, but may leave the client with further follow-up questions regarding why the result is as you suggest it is or why the other side might prevail

A ‘C’ exam would leave the intended audience uneasy about relying unguardedly on your work or unclear on how you produced the work. Your intended audience might pick up some

¹ Adapted from a model provided by the University of North Carolina Center for Teaching and Learning and by Professor Ruth McKinney of the University of North Carolina School of Law and from Mary Beth Beazley at Ohio State Law School.

interesting points of law from the work, but would feel compelled to rethink the legal reasoning and/or closely research your legal rules. However, a supervising attorney would likely see sufficient promise in your work to motivate him or her to invest time and energy in supervising your future assignments more closely.

A 'C' exam may:

- (a) present some good thoughts, but contain little organizational structure;
- (b) fail to identify all relevant issues fairly raised by the facts;
- (c) mis-state or omit important facts;
- (d) mis-state some propositions of law relevant to the facts;
- (e) rely upon legal doctrine whose relevance is not immediately apparent, or which is not relevant to the facts provided
- (f) fail to accurately or appropriately explain the meaning of the law discussed;
- (g) present legal analyses which do not follow the logic of the legal doctrines learned in the course; or which are not internally coherent from beginning to end;

A 'D' exam would not be acceptable to a supervising attorney or to the client. It may provide a few cases or ideas from which they could begin on their own, but would be wholly undependable standing alone. A supervising attorney would need to rework the document or assign it to a different associate. Both a judge and a supervising attorney might question the reliability of future work.

A 'D' exam may:

- (a) significantly misstate the facts, legal doctrine, or major issues;
- (b) significantly fail to use the facts from the exam hypothetical or legal authorities within the argument, present significant conclusions with little or no support, or fail to include significant arguments or major legal issues;
- (c) contain so many organizational or analytical errors as to inhibit the reader from following the writer's thoughts;

An 'F' exam will show a fundamental lack of grasp of the legal doctrines studied in the course, and a failure to adequately apply those doctrines to the facts presented. An "F" represents the judgment of the professor that this student should re-take the course in order to show sufficient mastery of the subject to be allowed to continue to upper-division courses in the same area, or to sit for the bar exam.

In addition to the deficiencies of a "D" exam, an "F" exam may:

- (a) demonstrate consistent lack of knowledge of or mis-application of legal doctrine;
- (b) demonstrate a failure to closely read or understand the legal relevance of the facts;
- (c) exhibit poor organization, inconsistent legal analysis, and conclusions which do not follow from the premises of the argument;
- (d) spend significant time discussing issues not fairly raised by the facts

Student: _____

Score: _____

**Family Law Final Exam
Assessment Criteria for Essay Responses**

This grading sheet identifies the criteria that I will use in grading your essay exams. Part A is worth 40% of the overall grade. It is a critical component because it confirms your subject-matter mastery in this course particularly. Part B is worth 25% of the overall grade. It is a critical lawyering component to develop across all subject matters. Part C is worth 35% of the overall grade. This component is critical to preparing practice-ready students ready to advise real clients with limited resources and only lay understanding of the law.

A. Issue-Spotting Claims and Defenses Using Precise Rules to Reach Accurate Conclusions (40%)

<ul style="list-style-type: none">• Spots relevant legal <u>i</u>ssues triggered by the facts presented, including claims and defenses. (See grading memo and sample high-performing answers for a complete list of issues presented.)• Avoids discussing claims that are not presented by the facts.• States accurate legal <u>r</u>ules governing each cause of action and each element using precise terminology.• Reaches a clear legal <u>c</u>onclusion on all elements and claims.• As appropriate, identifies the source of authority governing the legal rules being careful to distinguish between cases, statutes, constitutions; federal v. state; and uniform acts or restatements v. adopted rules.• Articulates counter arguments, as appropriate.• Explains jurisdictional splits, as relevant.	
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B. Legal Analysis (25%)

<ul style="list-style-type: none">• Analyzes the legal rules by applying the law to the facts provided in the fact pattern accurately and explicitly. Shows the reasoning that leads to the stated conclusion fully and completely.	
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C. Client-Centered Framing (35%)

<ul style="list-style-type: none">• Organizes analysis clearly and thoughtfully to maximize client understanding.• Explains in a client-centered manner why the rule is what it is, particularly when the outcome is adverse to the client's expectations or needs.• Explains <i>who</i> specifically will raise each claim and counter claim.• Grounds legal analysis of each legal claim in appropriate level of coverage given the viability of the claim consistent with client resources.• Clearly advises client of why particular claims may be advantageous or disadvantageous, particularly where multiple claims are analyzed.• Appropriately explains the result to the client in procedural, evidentiary, and litigation-based context. Not just "who will win," but "when" and "how" this might occur in the process.	
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OVERVIEW OF THE FAMILY LAW SKILLS SERIES
Professor Jamie R. Abrams, Spring 2015

Now that we have built a theoretical, constitutional, and historical foundation to family law, we are moving into the “bread and butter” of family law lawyering in which we address the day to day questions of family law clients, “Can I get a divorce?” “How will property be divided between the parties?” “What financial support will I get?” “What custodial and visitation arrangements will govern the kids?” In this unit, we will shift our approach beyond just subject matter mastery to also include bar readiness and practice-readiness. You will prepare for some of these classes differently than you have prepared for typical law school classes. In a typical course you would read cases in advance of class and discuss those cases in class. For upper-level students this can become a particularly passive exercise, short of the rare occasions when you are directly on call for a case recitation. This approach teaches rules and rule application in the abstract. You are rarely thinking about the rules from a client’s perspective and you are rarely using the rules actively to meet a client’s objectives.

Our approach for this unit begins from the premise that you can learn the basic rules and frameworks independently with some short, guided instruction. Rather than me dispensing more information in class while you passively take notes, more substantive content will be delivered outside of class and class will be used to actively apply the rules. Rather than reading a series of cases and discussing them in class, you will read a shorter summary of the legal concepts and watch a 5-10 minute video that I have prepared. This allows you to digest the material at your own pace and to revisit the videos as needed. The preparation time should be shorter, but my expectation is that every student comes to class 100% prepared to apply the concepts accurately.

Topics Covered: The family law skills series includes (1) fault v. no-fault divorce; (2) equitable distribution of marital property; (3) spousal support; (4) child support calculations; (5) child support enforcement; (6) child custody and visitation.

Preparation: For each of these classes, you will prepare for class by:

- (1) Completing a short reading summarizing doctrinal law generally (approximately 10 pages) and reading a specific state statute. The assigned statutes will all apply on our final exam
- (2) Listening to a pre-recorded PPT presentation that is approximately 10 minutes in length.
- (3) Between the materials in #1 and #2 you should come to class with a mastery of the rules. This may include your own preparation of a short outline, flow chart, etc.

In Class: We will use class time in the following ways:

- (1) You will immediately complete a timed practice bar question applying the rule (approx. 10 minutes). These will be graded. There will be no make-ups. I will throw out your lowest grade. They will collectively be worth 15% of your final course grade.
- (2) We will represent adversarial family law clients in small groups. Group work will be due at the end of class. These assignments will be worth 5% of your final course grade.

It is my sincere hope that this skills series is an engaging, dynamic, and rewarding way to study family law. I look forward to your feedback and comments.

Family Law Client Representation Work Plan Spousal Maintenance

All work that you complete today will be done in groups and will be submitted for “other participation” points. The groups should be no more than three – four persons. These “other assignments” cumulatively are worth 10% of your overall course grade. I intend for everyone to contribute to the dialogue and shift the drafting roles around. List at the top of your document the names of all group members contributing.

STEP 1 – NEEDS ASSESSMENT. For the purposes of this exercise only, assume that the \$1.5MM inheritance that Lucy received is in a trust that can only be used for the care and well-being of Lucy’s daughters. Assume further that Lucy will seek maintenance from Brad. Brad will not seek any maintenance from Lucy. Analyze the relevant code provisions to determine each party’s respective arguments under the “needs assessment” provision of the maintenance statute 403.200(1) only. Write a persuasive argument using the facts.

STEP 2 – AWARD AMOUNT. Assuming Lucy meets the “needs assessment” under 403.200(1), use the factors in 403.200(2) to make the most persuasive argument possible for your client regarding (a) how much maintenance should be awarded; and (b) what type of maintenance to be awarded (permanent, durational, rehabilitative). Don’t worry so much about attaching a dollar figure to your request, but explain why you are asking for a particular award.

Family Law Client Representation Work Plan Child Support Calculation

All work that you complete today will be done in groups and will be submitted for “other participation” points. The groups should be no more than three – four persons. These “other assignments” cumulatively are worth 10% of your overall course grade. I intend for everyone to contribute to the dialogue and shift the drafting roles around. List at the top of your document the names of all group members contributing.

STEP 1 – CALCULATE INCOME. Calculate each spouse’s percentage share of the gross monthly income. For the purposes of this exercise, assume that Brad is no longer receiving rental income because he is now living in the condominium. Brad will stipulate that he will receive \$125,000 a year in future annual bonuses. Assume further that Lucy’s \$1.5MM inheritance is structured as a trust to be paid out for the care and well being of Lucy’s daughters at \$3,000 a month.

STEP 2 – PRESUMPTIVE AWARD. Use the child support guidelines to calculate the presumptive award and use strong client counseling language to explain not just how much will be awarded, but the strong public policy reasons and federal mandates that dictate this outcome.

STEP 3 – DISCRETIONARY ADD-ONS. Consider whether there are any arguments for deviations from the presumptive award. If so, make the argument in the context of client counseling.

EQUITABLE DISTRIBUTION PRACTICE PROBLEM
*** Excerpted from Georgia Bar Exam, July 2012**

Spring 2015

You are an associate in a law firm. The domestic relations partner asks for your assistance with Mary Smith, a new client. Mary has contacted the firm because she and her husband, John, have separated and John has filed for divorce. Mary provides you with the following facts:

She and John were married on April 1, 2001. When they married, John owned a home, which was paid off in full, and Mary had \$15,000.00 in cash. Right before their marriage, John sold his home and invested all of the proceeds, \$200,000.00, in a marital home for the two of them. The new home, purchased for \$300,000.00, was titled in both names and they jointly signed a mortgage for an additional \$100,000.00. In 2004, Mary spent her \$15,000.00 to add a pool and pool house to the marital home. Both parties have worked throughout the marriage, and the mortgage on the marital home was paid off in full in 2011. The house has a current value of \$280,000.00

1. What claim, if any, does Mary have to the equity in the marital residence?
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CHILD CUSTODY PRACTICE PROBLEM
***Excerpted from the Pennsylvania Bar Exam, February 2011**

Mark and Beth were married in 2000. They have two children together who are currently 8 and 9 years old. Beth is a truck driver who is away from home five to six days per week, and she is often not accessible even by cell phone. As a result, Beth has always left most of the major decisions concerning the children up to Mark. For the past three years, Mark has managed the home and has been primarily responsible for the overall care of the children. The children have been happy under their father's care. Mark and Beth began having marital problems, and in March of this year, Mark filed for divorce and custody of the children. Upon receiving the divorce papers, Beth moved out of the marital home and has been sleeping in the cab of her truck on the few days that she is in her hometown per week.

If Mark wants to secure maximum custody rights to his children, what type of custody should Mark argue for and with what success?

Chapter 21. Child Custody

§ 21:5. Child custody—Substantive criteria for determinations

[KRS 403.270](#) requires that a trial court determine custody cases using a best interest of the child standard. The standard applies both to contested and uncontested custody. The trial court has a duty to determine that a custodial arrangement is in the child's best interest in an uncontested case. [KRS 403.180](#), governing property settlement agreements, points out that the agreement's terms on custody, visitation, and child support are not binding on the court. The parties to a custody agreement should provide the trial court with sufficient information to permit the court to make the required best interest determination. [KRS 403.270\(3\)](#) also permits a trial court to grant joint custody if it is in the child's best interest.

[KRS 403.270](#) provides some guidelines for the court. The trial court must give each parent equal consideration in making its custody decision. It must also consider all relevant factors, including parental desires concerning custody, the child's desire for a particular custodian, the child's interaction with the immediate family and others who significantly affect his or her best interest, the child's adjustment to his or her environment, and the mental and physical health of all involved persons. * * *

§ 21:6. Child custody—Best interest

The guidelines provided by [KRS 403.270](#) do not define the statutory term "best interest of the child."¹ Kentucky opinions have always used a child-centered standard for determining custody. Early cases stated that neither litigant in a custody dispute possessed rights that dominated the child's present and future welfare.² Courts usually determined the child's welfare by making value judgments concerning allocation of child-rearing responsibilities or parental conduct. * * * In most cases, the courts looked for a custodian who best mirrored ideal social values. Drinking,⁶ extramarital activities,⁷ illegal activities,⁸ failure to attend church services,⁹ and other factors were often cited by courts in making custody determinations.

A more modern view of the "best interest of the child"¹⁰ requires a trial court to look to the child's specific psychological needs, in addition to other factors.¹¹ Rather than judging each parent against a standard of conduct acceptable to the trial court, the court must look to the individual child's developmental needs. Pursuant to [KRS 403.270\(2\)](#), if unacceptable parental conduct does not affect the parent-child relationship, it should not be considered by the court.***

Law schools do not train psychologists. They train attorneys. Because most judges are not separately trained as psychologists, a psychological standard is unfamiliar to them. Some trial courts may be inclined to accept the expert witness testimony of psychologists without further

FAMILY LAW COURSE SYLLABUS, Fall 2015

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Course Overview

Welcome to Family Law. I look forward to a lively and engaging semester together. This is a rich, expansive, multi-faceted, and dynamic area of the law to study. It is changing rapidly and profoundly. It intersects with so many other areas of law and provides great depth and breadth in job opportunities and law reform initiatives.

This course provides a broad introduction to family law, examining how families are constructed by and within legal and social institutions. We study how the federal and state constitutions both protect and confine family structures and activities; how marriages are entered into and structured vis-à-vis the state, how marriages are dissolved; alternative family structures; and children in the family unit, including the care and custody of biological and adopted children.

We will focus as a starting point on learning the doctrinal foundations of family law. Yet succeeding as a family law practitioner only *begins* with “black letter” law knowledge. It also includes reading and analyzing cases and statutes rigorously; contextualizing how family law interconnects with social norms; advocating in the executive, judicial, and legislative branches of government; careful factual development; and more. We will often be looking at cases and concepts holistically to place them in their social, legal, political, historical, and theoretical context. Our primary course goal is to prepare you for practice by generating the requisite substantive knowledge, skills, and tools to succeed as a family law practitioner.

Family law is an expansive topic and it is heavily state specific. It is not feasible or practical for us to cover all aspects of family law in this course. I have selected the topics on our syllabus carefully based on the subjects tested on the Kentucky state bar examination, current developments in family law, and professional expectations in the field. My overarching goal is to equip students with analytical tools to utilize in practice.

By the completion of this course, you should be able to:

- Critique and analyze current legal frameworks regulating the family using a legal lens grounded in social, economic, and policy considerations and considering the implications of legal frameworks across cultures, communities, and diverse family structures;
- Construct persuasive client narratives to achieve specific client goals within an objective legal framework;
- Advise clients on the following issues: marriage validity, grounds for divorce, defenses to divorce, divorce pleading requirements, property distribution, spousal support, child support, child custody, and visitation,
- Read and interpret statutory provisions regulating the family unit;
- Analyze the constitutional issues that arise from laws regulating the family