

Family Law 437A
Spring 2018
Monday 6:40p.m.- 9:50p.m.
Office Hours: *By Appointment - Email Prof. Torres*

Professor Yolanda V. Torres
yvtorres@yvtorreslaw.com

Course Objectives:

This course surveys substantive law and common procedures involved in California Family Law Practice. Students will be introduced to common issues and procedures including conducting an initial client interview, initializing dissolution of marriage action, preparation of mandatory financial disclosures, preparation of and institution of a discovery plan, preparation of interim and post-judgment orders for spousal support, child support, and child custody and visitation. Students will also learn the basic steps for finalizing a divorce by default, or uncontested/contested situations, and will be introduced to some of the steps for enforcing judicial orders and requesting attorney fees.

Students will learn multiple practical skills for Family Practice attorneys including factual investigation, preparation of cases, and legal drafting.

Textbooks:

Required: 2017 PRACTICE UNDER THE CALIFORNIA FAMILY CODE,
Continuing Education of the Bar

Supplemental Cases and Materials as provided

PARTICIPATION, WRITING ASSIGNMENTS AND GRADING:

Both the two credit doctrinal portion and the one credit portion of the course are graded according to the following evaluation criteria:

- Class Preparation Participation and Teamwork (10% of grade).
- Final Examination/Final Project (80% of grade). The final exam/final project changes from year to year. You will be provided with ample notice as to the final exam/final project format before the end of the semester. The 2017 Family Law students were required to draft the required documents for a final judgment of marital dissolution and a memorandum of points and authorities for a child custody modification request.
- Course Portfolio (10% of grade).

Participation: Students are expected to be prepared for each class meeting, to timely attend classes and other course activities (if any), to engage in appropriate class dialogue and discussion, and to prepare and timely present assigned discussion topics. Reading assignments must be completed prior to each class meeting. Students should be prepared to engage in meaningful discussion of legal concepts introduced in the reading assignments, class lectures and class discussions. From

time to time, individual students will be assigned brief discussion topics for presentation at a class meeting. Students must timely perform necessary research on the discussion topic and be prepared to present the topic during class and to engage in discussion concerning the assigned topic. Tardiness, absences and lack of preparedness will adversely affect the student's participation grade.

Activities: Most classes will involve a "homework" component for students to complete documents that were reviewed and discussed in class. Unless otherwise notified, students may complete the homework assignments with a classmate and may consult practice guides as necessary; however, each student must have a copy of their individual work product to be kept in their course notebook/portfolio. Students are expected to demonstrate an understanding of legal concepts introduced in the reading materials, class discussions and class lectures. Student notebooks/portfolios will be collected at the end of the semester for review by Professor Torres.

Students are expected to spend a minimum of two hours for every one hour of class preparing for each class.

Students will be expected to bring a large, three-ring binder with them to class.

Students may be asked to present on special topics or cases throughout the semester as part of their activities grade.

ATTENDANCE

Students are subject to attendance and participation policies and procedures specified in the *Student Handbook*. Attendance is mandatory. Absence from more than 15% of class meetings will expose the student to academic discipline, and without further notice, may result in removal from the course. Students removed from the course for excessive absence will receive a course grade of "F" or "W" as determined by applicable academic policies and procedures. Excessive tardiness or unpreparedness will be deemed an absence. In addition to the foregoing, tardiness and absences will adversely affect the student's participation grade.

Throughout the semester, assignments, notices, announcements and other communications will regularly be made via e-mail and/or through Professor Torres' Blackboard page on LexisNexis. As part of the attendance requirement, students are expected to enroll in and regularly visit the online web course and check email daily to stay apprised of class-related announcements and communications.

DISABILITY SERVICES STATEMENT:

Western State College of Law provides accommodations to qualified students with disabilities. The **Disabilities** Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite 119. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Associate Dean of Students Charles Sheppard at csheppard@wsulaw.edu or (714) 459-1152. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

READING ASSIGNMENTS:

Except as otherwise noted all references are to the required textbook, cases available through Lexis and Westlaw electronic research programs, and supplemental materials. *Topic dates noted may "shift" to accommodate discussions and other relevant course activities.*

Class One: January 22, 2018 - Introduction to Course, Initial Client Interview, Dissolution, Legal Separation, and Annulments

Readings

Cases

Obergefell v. Hodges, 135 S. Ct. 2584 (2015)

Marriage of Greenway, 217 Cal. App. 4th 628 (2013)

Marriage of Johnston, 18 Cal. App. 4th 499 (1993)

Marriage of Ramirez, 165 Cal. App. 4th 751 (2008)

Marriage of Weintraub, 167 Cal. App. 3d 420 (1985)

Stepanek v. Stepanek, 193 Cal. App. 2d 760 (1961)

Ceja v. Rudolph & Sletten, Inc., 56 Cal. 4th 1113 (2013)

Davis v. Davis, 220 Cal. App. 4th 1109 (2013)

Anti-Davis Legislation, SB -1255, Family Code § 70

Textbook: Chapter 3, Chapter 10 (Skim)

(Skip Section 3.34A - Terminating Domestic Partnership Without Court Action)

Assignment: Preparation of Fee Waiver, & Summary Dissolution documents, including Income and Expense Declaration.

Class Two: January 29, 2018 – Property. This class will be taught by Guest Lecturer Jason M. Schwartz, CFLS, of Stegmeier, Gelbart, Schwartz & Benavente.

Cases

Marriage of Epstein, 24 Cal. 3d. 76 (1979)

Marriage of Watts, 71 Cal. App. 3d 366 (1985)

Textbook: Chapter 5, 75-186 (Skim 115 at 5.30 -131 top of page) (skim 156 (D) – to the top of 167)

Skills:

- Client Interview, Fact Investigation, Preparation of cases for trial during pre-trial phase, Legal Drafting
- Read and Interpret Business Valuation Report

Class Three: February 5, 2018- Discovery, preparing a Discovery Plan, and Declarations of Disclosure

Cases

Marriage of Feldman, 153 Cal. App. 4th 1470 (2007)

People v. Sanchez, 63 Cal. 4th 665 (2016)

Textbook: Chapter 13

Skills:

- Finalize Income & Expense Declaration
- Draft Schedule of Assets and Debts
- Draft Property Declaration
- Introduction to Common Discovery Pleadings
- Interrogatories
- Demand for Production and Inspection
- Depositions
- Read and Interpret Vocational Evaluation

Class Four: February 12, 2018 - Interim and Post-Judgment Orders: Spousal Support

Cases:

Marriage of Burlini, 143 Cal. App. 3e 65 (1983)

Marriage of Gavron, 203 Cal. App. 3d 705 (1988)

Marriage of Khera & Sameer, 206 Cal. App. 4th 1467 (2012)

Marriage of MacManus, 182 Cal. App. 4th 330 (2010)

Marriage of Ostler-Smith, 223 Cal. App. 3d 33 (1990)

Marriage of Minkin, 11 Cal.App.5th 939 (2017)

Marriage of Reynolds, 63 Cal. App. 4th 1373 (1998)

Marriage of McLain, 7 Cal. App. 5th 262 (2017)

Marriage of Riddle, 125 Cal. App. 4th 1075 (2005)

Marriage of Winter, 7 Cal. App. 4th 1926 (1992)

Marriage of Wittgrove, 120 Cal. App. 4th 1317 (2004)

In re Marriage of Labass and Munsee, 56 Cal. App. 4th 1331 (1997)

Textbook: Chapter 6

Skills:

- Interpreting Marital Standard of Living Worksheet
- Draft Petition for Dissolution, Response to Dissolution of Marriage, Request for Spousal Support Order, Declaration for Spousal Support

Class Five: February 20, 2018 - Interim and Post-Judgment Orders: Child Custody and Visitation I

Cases:

Troxel v. Granville, 530 U.S. 57 (2000)

Marriage of Carey, 24 Cal. 3d 725 (1979)

Deborah M. V. Sup. Ct., 128 Cal. App. 4th 1181 (2005)

Marriage of Kreiss, 122 Cal. App. 4th 1082 (2004)

Wainwright v. Sup. Ct., 84 Cal. App. 4th 262 (2000)

Textbook: Chapter 7, 233 - 300

Skills:

- Preparing a Custody Parenting Plans
- Interpreting a custody Evaluation Report
- Draft Request for Orders re: Child Support and Custody, Child Custody a Visitation Application Attachments
- Draft Stipulation and Order for Custody and Visitation
- Draft Child Custody and Visitation Order Attachment
- Draft Children's Holiday Schedule Attachment
- Draft Joint Legal Custody Attachment
- Draft Additional Provisions/Physical Custody Attachment

Class Six: February 26, 2018 - Interim and Post-Judgment Orders: Child Custody and Visitation II

Cases:

Marriage of Birnbaum, 211 Cal. App. 3d 1508 (1989)

Burchard v. Garay, 42 Cal. 3d 531 (1986)

Marriage of Stoker, 65 Cal. App. 3d 878 (1977)

Marriage of La Musga, 32 Cal. 4th 1072 (2004)

Montenegro v. Diaz, 26 Cal. 4th 249 (2001)

Mark T. v. Jamie Z., 194 Cal. App. 4th 1115 (2011)

Marriage of Williams, 88 Cal. App. 4th 808 (2001)

Marriage of Rosson, 178 Cal. App. 3d 1094 (1986)

Marriage of Burgess, 13 Cal. 4th 25 (1996)

Marriage of Mehlmauer, 60 Cal. App. 3d 104 (1976)

Marriage of Mosley, 165 Cal. App. 4th 1375 (2008)

Textbook: None

Skills:

- Finalize Request for Orders (RFO) Re: Child Custody and Visitation

Class Seven: March 5, 2018 - Interim and Post-Judgment Orders: Child Support

Cases:

Marriage of Alter, 171 Cal. App. 4th 718 (2009)

Anna M. v. Jeffrey E., 7 Cal. App. 5th 439 (2017)

Zablocki v. Redhail, 434 U.S. 374 (1978)

Marriage of Drapeau, 93 Cal. App. 4th 1086 (2001)

Marriage of Drake, 53 Cal. App. 4th 1139 (1997)

Jones v. Jones, 179 Cal. App. 3d 1011 (1986)

Marriage of Schopfer, 186 Cal. App. 4th 524 (2010)

Marriage of McHugh, 231 Cal. App. 4th 1238 (2014)

Textbook: Chapter 8

Skills:

- Draft memorandum of Points & Authorities - Child Custody and Move-Away

[Spring Break - No Class on March 12, 2018]

Class Eight: March 19, 2018: Pretrial Procedures, Trial Preparation and Trial

Cases:

Marriage of James & Christine C., 158 Cal. App. 4th 1261 (2008)

Elkins v. Sup. Ct., 41 Cal. 4th 1337 (2007)

Marriage of Carlsson, 163 Cal. App. 4th 281 (2008)

Blumenthal v. Sup. Ct., 137 Cal. App. 4th 672 (2006)

Class Nine: March 26, 2018: Catch up Class

Skills:

- Draft Wage Garnishment Form
- Draft Proof of Service Forms

Class Ten: April 2, 2018: Parentage/Parental Rights/Paternity

Cases:

MLB v. SLJ, 519 U.S. 102 (1996)

Stanley v. Illinois, 405 U.S. 645 (1972)

Santoski v. Kramer, 455 U.S. 745 (1982)

Wisconsin v. Yoder, 406 U.S. 205 (1972)

Quilloin v. Walcott, 434 U.S. 246 (1978)

Elisa B. v. Sup. Ct., 37 Cal. 4th 108 (2005)

Marriage of Buzzanca, 61 Cal. App. 4th 1410 (1998)

Marriage of Shiffman, 28 Cal. 3d 640 (1980)

Michael H. v. Gerald D., 491 U.S. 110 (1989)

Steven W. v. Matthew S., 33 Cal. App. 4th 1108 (1995)

California Family Code § 7822

California Probate Code §1516.5

Textbook: Chapter 8A

Skills:

- Draft Petition to Establish Parental Relationship

Class Eleven: April 9, 2018 - Domestic Violence

Cases:

Marriage of Nadkami, 173 Cal. App. 4th 1483 (2009)

Eneaji v. Ubboe, 229 Cal. App. 4th 1457 (2014)

Marriage of Cauley, 138 Cal. App. 4th 1100 (2006)

Jacobs v. Fire Ins. Exchange, 227 Cal. App. 3d 584 (1991)

O’Kane v. Irvine, 47 Cal. App. 4th 207 (1996)

People v. Whitehurst, 9 Cal. App. 4th 1045 (2004)

Ritchie v. Konrad, 115 Cal. App. 4th 1275 (2004)

Marriage of Freitas, 209 Cal. App. 4th 1059 (2012)

Burquet v. Brumbaugh, 223 Cal. App. 4th 1140 (2014)

Phillips v. Campbell 2 Cal. App. 5th 844 (2016)

Hauck v. Riehl 224 Cal. App. 4th 695 (2014)

Celia v. Hugo H. 3 Cal. App. 5th 655

California Penal Code Section 273.5

California Family Code Section 3044

Textbook:

Chapter 11 with an emphasis on those sections pertaining to the Domestic Violence Prevention Act and Ex Parte Motions; Section 5.76 A.; Section 7.23 and 7.45; 20.44B (form)

Skills:

Draft Ex Parte Request for Temporary Restraining Orders with Children

Class Twelve: April 16, 2018: Defaults, Uncontested Divorce, Bifurcation of Marital Status

Cases:

Gregory v. Gregory, 92 Cal. App. 2d 343 (1949)

Marriage of Brennan, 124 Cal. App. 3d 598 (1981)

Klemm v. Sup. Ct., 75 Cal. App. 3d 893 (1977)

Textbook:

Chapter 14

Skills: Review and Discuss Final Project Assignment

- Appearance, Stipulations and Waivers Form
- Notice of Entry of Judgment
- Marital Settlement Agreements (MSA)
- Restoration of Name - FL 395
- Proposed Stipulated Judgment

Class Thirteen: April 23, 2018 - Enforcement

Cases:

County of Shasta v. Smith, 38 Cal. App. 4th 329 (1995)

People v. Mozes, 193 Cal. App. 4th 1124 (2011)

U.S. v. Dann, 652 F 3d 1160 (9th Cir 2011)

Coursey v. Super. Ct., 194 Cal. App. 3d 147 (1987)

Textbook: Chapter 20

Final Project Assigned

Final Project Skills:

- Draft Uncontested Judgment (Forms and Documents)
- Calculate Child Support
- Draft Appearance, Stipulation, and Waiver Forms
- Draft Memorandum of Points & Authorities: Imputation of income for support
- Prepare Portfolio

Class 14: April 30, 2018 - Mediation

Assigned Reading:

Read: Family Court Services Mediation Orientation, please obtain from the website listed below:

Read: Parenting Plan Guidelines please obtain from the Orange County Superior Court website:

<http://www.occourts.org/media/pdf/parenting-plan-guidelines.pdf>

If the link does not work, go to:

<http://www.occourts.org>

Type “Parenting Plan Guidelines” in the search box in the upper right corner to obtain the guidelines

Read: Family Court Services and Mediation overview, Preparing for the Child Custody Recommending Counseling Appointment, and After the Child Custody Recommending Counseling Appointment.

Obtain this information from the Riverside Superior Court website at the link:
<http://www.riverside.courts.ca.gov/familylaw/custodyvisitation.shtml>

Argosy University Institutional Learning Outcomes:

1. Analytical Reasoning

Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems

2. Effective Communication

Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation

3. Information Competency

Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action

4. Interpersonal Effectiveness

Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals

5. Personal and Professional Integrity and Ethical Behavior

Demonstrate a multi-dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.

6. Professional Competence

Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession

Western State College of Law – Programmatic Learning Outcomes

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) Doctrinal Knowledge

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) Practice Skills

Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting

project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

(4) Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

(5) Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

(6) Advocacy of Legal Argument

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

(7) Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness

that cultural issues may affect the relevance of facts and application of the law.

(8) Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.