

FAMILY LAW IN NEW YORK

FAMILY LAW IN NEW YORK

EDITED BY

Barbara Stark

PROFESSOR OF LAW

AND JOHN DEWITT GREGORY SCHOLAR

MAURICE A. DEANE SCHOOL OF LAW, HOFSTRA UNIVERSITY

Joanna L. Grossman

SIDNEY AND WALTER SIBEN DISTINGUISHED PROFESSOR OF FAMILY LAW

MAURICE A. DEANE SCHOOL OF LAW, HOFSTRA UNIVERSITY



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2016
Carolina Academic Press
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Family law in New York / Barbara Stark and Joanna Grossman (editors).
pages cm

Includes bibliographical references and index.

ISBN 978-1-61163-718-2 (alk. paper)

1. Domestic relations--New York (State) I. Stark, Barbara, 1952- editor. II. Grossman, Joanna L., editor.

KFN5115.F34 2015

346.74701'5--dc23

2015004581

Carolina Academic Press
700 Kent Street
Durham, NC 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

Contents

Table of Cases	xiii
Preface	xvii
Acknowledgments	xix
Chapter 1 · Family Court	
<i>Theo Liebmann</i>	3
A. Juvenile Delinquency and Persons in Need of Supervision	3
1. Delinquency	4
N.Y. Fam. Ct. Act § 301.2(1). Definitions	4
Crim. Proc. L. § 1.20(42). Definitions of terms of general use in this chapter	4
<i>Matter of Ibn Abdus S.</i>	4
Michael A. Corriero, Judging Children as Children: Reclaiming New York’s Progressive Tradition	5
Notes and Questions	6
2. Persons in Need of Supervision	6
N.Y. Fam. Ct. Act § 712(a). Definitions	6
<i>People v. Nancy C.</i>	6
Notes and Questions	7
B. Child Support and Paternity	7
N.Y. Fam. Ct. Act § 413(1)(a). Parents’ duty to support child	7
N.Y. Fam. Ct. Act § 511. Jurisdiction	8
<i>Matter of Shondel J. v. Mark D.</i>	8
<i>Foster v. Daigle</i>	10
Notes and Questions	11
C. Custody, Guardianship, Adoption and Termination of Parental Rights	12
<i>Matter of Joyce T.</i>	12
Notes and Questions	14
D. Family Offenses	15
<i>Seye v. Lamar</i>	15
Notes and Questions	17
E. Child Protection	17
N.Y. Fam. Ct. Act § 1011. Purpose	18
<i>Nicholson v. Scoppetta</i>	18
Notes and Questions	21
F. Representation of Children	21
N.Y. Fam. Ct. Act § 241. Findings and purpose	21
N.Y. Comp. Codes R. & Regs. tit. 22, § 7.2. Function of the Attorney for the child	22
<i>Carballeira v. Shumway</i>	23
Tamara Steckler & Gary Solomon, New Era in Representing Children	24

Working With Judges	26
Notes and Questions	26
Note and Problems	27
Chapter 2 · Marriage	
<i>Barbara Stark</i>	29
A. Substantive Requirements	30
1. Incest	30
N.Y. Dom. Rel. Law § 5. Incestuous and void marriages	30
Alan D. Scheinkman, Practice Commentaries	30
2. Bigamy	31
N.Y. Dom. Rel. Law § 6. Void marriages	31
<i>Mack v. Brown</i>	31
<i>Matter of Gomez v. Windows On World</i>	32
3. Age and Other Impediments	32
N.Y. Dom. Rel. Law § 7. Voidable marriages	33
N.Y. Dom. Rel. Law § 8. Marriage after divorce	33
N.Y. Dom. Rel. Law § 10. Marriage a civil contract	33
4. Same-Sex Marriage Restrictions	33
a. The Courts	33
Pamela S. Karlan, The Transformation of Judicial Self-Restraint	34
Questions	34
b. The Legislature	34
N.Y. Dom. Rel. Law § 10-a. Parties to a marriage	35
Marriage Equality Act, A. 8354, 234 Leg., 2011 Sess.	35
N.Y. Dom. Rel. Law § 10-b. Religious exception	35
Supreme Court of the United States, <i>Obergefell v. Hodges</i>	36
Kent Greenawalt, Religious Toleration and Claims of Conscience	37
Christopher W. Dickson, Note, Inseparability, Religious Exemptions, and	
New York's Same-Sex Marriage Law	38
c. Defense of Marriage Act (DOMA)	38
<i>Windsor v. U.S.</i>	39
<i>U.S. v. Windsor</i>	39
Notes and Questions	42
B. Formal Requirements	43
N.Y. Dom. Rel. Law § 11. By whom a marriage must be solemnized	43
<i>Ranieri v. Ranieri</i>	44
Joanna L. Grossman, A Difference of Opinion: Are Universal Life Church	
Weddings Valid in New York?	45
Notes and Questions	46
C. Recognition of Foreign Marriages	46
Note and Problems	47
Chapter 3 · Adoption, Guardianship, and Surrogacy Parenting Contracts	
<i>J. Herbie DiFonzo</i>	49
A. Adoption	49
1. Introduction	49
Joan Heifetz Hollinger & Naomi Cahn, Forming Families By Law:	
Adoption in America Today	50

Notes and Questions	51
2. Legal Requisites for Adoption: Standing and Best Interests	51
N.Y. Dom. Rel. Law Art. 7 § 110. Who may adopt	51
N.Y. Dom. Rel. Law Art. 7 § 114. Order of adoption	52
<i>In the Matter of the Adoption of a Child Whose First Name is G.</i>	52
Notes and Questions	55
3. Consent	56
Joan Heifetz Hollinger & Naomi Cahn, <i>Forming Families By Law:</i>	
Adoption in America Today	56
Notes and Questions	57
4. Types of New York Adoptions: “Authorized Agency” and “Private Placement” Adoptions	58
5. Revocation of Consent	60
<i>In the Matter of Summer A.</i>	60
Notes and Questions	63
B. Guardianship	64
C. Surrogacy Parenting Contracts	65
J. Herbie DiFonzo & Ruth C. Stern, <i>Breaking the Mold and Picking Up the Pieces: Rights of Parenthood and Parentage in Nontraditional Families</i>	65
N.Y. Dom. Rel. Law § 121. Definitions	66
N.Y. Dom. Rel. Law Art. 8 § 122. Public Policy	66
Notes and Questions	67
<i>In the Matter of the Adoption of J.J.</i>	67
Notes and Questions	69
Chapter 4 · Dissolution of Marriage	
<i>Joanna L. Grossman</i>	71
A. Annulment	71
N.Y. Dom. Rel. Law Art. 9 § 140 Action for judgment declaring nullity of void marriages or annulling voidable marriage	72
N.Y. Dom. Rel. Law Art. 9 § 141. Action to annul marriage on ground of incurable mental illness for five years; procedure; support	73
N.Y. Dom. Rel. Law Art. 9 § 142. Dismissal of complaint in action by next friend to annul a marriage	73
N.Y. Dom. Rel. Law Art. 9 § 143. Jury trial	73
N.Y. Dom. Rel. Law Art. 9 § 144. Proof required	73
N.Y. Dom. Rel. Law Art. 9 § 146. Judgment, how far conclusive	74
<i>Kober v. Kober</i>	74
Notes and Questions	76
B. Divorce	77
N.Y. Dom. Rel. Law Art. 10 § 170. Action for divorce	77
1. Fault-Based Divorce	78
a. Cruelty	78
<i>Brady v. Brady</i>	79
<i>Pajak v. Pajak</i>	81
<i>Omahen v. Omahen</i>	81
<i>Gentner v. Gentner</i>	82
b. Abandonment	83

<i>Davis v. Davis</i>	83
c. Imprisonment	86
d. Adultery	86
N.Y. Dom. Rel. Art. 10 § 171. When divorce denied, although adultery proved	86
<i>Marrow v. Marrow</i>	87
<i>Hunter v. Hunter</i>	87
<i>Anonymous v. Anonymous</i>	88
e. Legal Separation	89
f. Separation by Agreement and Conversion Divorce	89
2. No-Fault	89
<i>Sorrentino v. Sorrentino</i>	90
<i>Tuper v. Tuper</i>	93
Notes and Questions	94
3. Religion and Divorce	95
N.Y. Dom. Rel. Law Art. 13 § 253. Removal of barriers to remarriage	95
<i>Kaplinsky v. Kaplinsky</i>	95
<i>Sieger v. Sieger</i>	96
Notes and Questions	97
C. Separation	97
Notes and Questions	98
D. Special Provisions Relating to Divorce and Separation	98
1. Statute of Limitations	98
2. Pleadings, Service, and Jury Trials	98
N.Y. CLS Dom. Rel. § 211. Pleadings, proof and motions	98
3. Jurisdiction	99
N.Y. Dom. Rel. Law Art. 13 § 230. Required residence of parties	99
<i>Stancil v. Stancil</i>	100
E. Dissolution on Grounds of Absence	104
N.Y. Dom. Rel. Law Art. 12 § 220. Special proceeding to dissolve marriage on the ground of absence	105
N.Y. Dom. Rel. Law Art. 12 § 221. Procedure	105
<i>In re Gall</i>	105
Note	106
Chapter 5 · Maintenance	
<i>Barbara Stark</i>	107
A. Temporary Maintenance	108
N.Y. Dom. Rel. Law § 236 Part A	108
<i>Roseanne P. v. Gustav P.</i>	108
N.Y. Dom. Rel. Law § 236 Part B	109
Nancy E. Gianakos, The Devolution of the Homemaker; It's Time for Legislative Redress	113
N.Y. Dom. Rel. Law § 236 Part B	114
<i>Tadesse v. Amanu</i>	114
<i>Dachille v. Dachille</i>	115
Notes and Questions	116
Problem 5-1	117
B. Post-Divorce Maintenance	117

<i>Guy v. Guy</i>	117
Twila L. Perry, Alimony: Race, Privilege, and Dependency in the Search for Theory	118
J. Thomas Oldham, Changes in the Economic Consequences of Divorces, 1958–2008	119
Judith G. McMullen, Spousal Support in the 21st Century	122
Notes and Questions	123
Problem 5-2	123
C. The Commission's Final Report	124
The New York State Law Revision Commission Final Report On Maintenance Awards in Divorce Proceedings, May 15, 2013	124
Mary Kay Kisthardt, Re-Thinking Alimony: The AAML's Considerations for Calculating Alimony, Spousal Support or Maintenance	128
D. The ALI Principles	129
E. Guidelines	129
Notes	131
Problem 5-3	131
Chapter 6 · Agreements	
<i>Joanna L. Grossman</i>	133
A. Agreements Before, During, and After Marriage	133
1. Premarital Agreements	133
N.Y. Dom. Rel. Law § 236(B)(3). Special controlling provisions; prior actions or proceedings; new actions or proceedings	134
N.Y. Gen. Oblig. Law § 3-303. Contracts in contemplation of marriage	135
N.Y. Gen. Oblig. Law § 5-311. Certain agreements between husband and wife void	135
<i>Galetta v. Galetta</i>	136
<i>Matter of Greiff</i>	140
<i>Brassey v. Brassey</i>	142
<i>Forsberg v. Forsberg</i>	143
<i>Cioffi-Petrakis v. Petrakis</i>	144
<i>Kessler v. Kessler</i>	148
<i>Strong v. Dubin</i>	151
<i>Panossian v. Panossian</i>	152
<i>Solomon v. Solomon</i>	153
Notes and Questions	153
2. Postnuptial Agreements	154
<i>Whitmore v. Whitmore</i>	155
<i>Petracca v. Petracca</i>	156
<i>O'Malley v. O'Malley</i>	158
Notes and Questions	159
3. Separation Agreements	160
<i>Christian v. Christian</i>	160
<i>Henderson v. Henderson</i>	165
<i>Friederwitzer v. Friederwitzer</i>	165
<i>Sagan v. Sagan</i>	168
<i>Zelnik v. Zelnik</i>	169
Notes and Questions	170

Chapter 7 · Equitable Distribution	
<i>Joanna L. Grossman</i>	173
N.Y. Dom. Rel. Law Art. 13 §236B(5). Disposition of property in certain matrimonial actions	174
<i>Thomas v. Thomas</i>	176
<i>Marcus v. Marcus</i>	176
<i>Majauskas v. Majauskas</i>	179
<i>Principe v. Principe</i>	183
<i>O'Brien v. O'Brien</i>	184
<i>Litman v. Litman</i>	191
<i>Blickstein v. Blickstein</i>	192
Joanna L. Grossman, The Cost of Hitting Your Wife with a Barbell Notes and Questions	195 197
Chapter 8 · Contested Custody, Support, Maintenance, and Counsel Fees	
<i>Barbara Stark</i>	201
A. Child Custody and Support	201
1. Custody	201
N.Y. Dom. Rel. Law Art. 13 §240. Custody and child support; orders of protection	201
2. Support	202
<i>Bast v. Rossoff</i>	203
<i>Rubin v. Salla</i>	207
<i>McCoy v. McCoy</i>	211
Solangel Maldonado, Deadbeat or Deadbroke: Redefining Child Support for Poor Fathers Notes and Questions	213 213
B. Contested Maintenance	215
<i>Christopher C. v. Bonnie C.</i>	215
Questions	219
Problem 8-1	219
C. Counsel Fees	219
N.Y. Dom. Rel. Law Art. 13 §237. Counsel fees and expenses	219
<i>Moccia v. Moccia</i>	220
<i>Belkhir v. Amrane-Belkhir</i>	222
Notes and Questions	223
Problem 8-2	223
Chapter 9 · Domestic Violence	
<i>Barbara Barron</i>	225
A. Domestic Violence Components	225
1. Victim and Abuser Defined	225
N.Y. Soc. Serv. Law §459-a. Definitions	226
2. Family Offense Requirement and the Special Problem of Strangulation	226
N.Y. Crim. Proc. Law §530.11(1). Procedures for family offense matters	227
<i>People v. Figueroa</i>	228
Notes and Questions	229
B. Court Orders of Protection	230

1. Concurrent Jurisdiction and Creation of the Integrated Domestic Violence Court	231
Jonathan Lippman, Ensuring Victim Safety and Abuser Accountability: Reforms and Revisions in New York Courts' Response to Domestic Violence	231
2. Violations	232
Notes and Questions	232
C. Mandatory Arrest Policy in Domestic Violence Cases	233
N.Y. Crim. Proc. Law § 140.10(4). Arrest without a warrant; by police officer; when and where authorized	233
<i>Pearce v. LaBella</i>	235
Notes and Questions	237
D. Domestic Violence as a Consideration for Financial and Custody Issues in Divorce	237
1. Egregious Fault and Equitable Distribution	238
N.Y. Dom. Rel. Law § 236B(5)(d)(14). New actions or proceedings	238
<i>De Silva v. De Silva</i>	238
2. Spousal Abuse and Custody	240
N.Y. Dom. Rel. Law § 240(1)(a). Custody and child support; orders of protection	240
<i>Wissink v. Wissink</i>	241
Notes and Problems	243
Chapter 10 · Paternity, Surrogacy, and Reproductive Technology	
<i>Janet Dolgin</i>	247
A. Paternity and Assisted Insemination	247
1. Fathers Seeking Paternity	248
N.Y. Dom. Rel. Law Art. 7 § 111. Whose consent is required	249
Putative Father Registry	249
Notes and Questions	250
B. Identifying Fathers	251
N.Y. Dom. Rel. Law Art. 3 § 24. Effect of marriage on legitimacy of children	251
Notes and Questions	251
N.Y. Fam. Ct. Act Art. 5 § 522. Persons who may originate proceedings	252
N.Y. Fam. Ct. Act Art. 5 § 542. Order of filiation	252
N.Y. Fam. Ct. Act Art. 5 § 532. Genetic marker and DNA tests; admissibility of records or reports of test results; costs of tests	252
Note	253
<i>Q.M. v. B.C.</i>	253
Questions	256
1. Assisted Insemination	256
N.Y. Dom. Rel. Law Art. 5 § 73. Legitimacy of children born by artificial insemination	257
Notes and Questions	257
<i>Laura WW v. Peter WW</i>	257
Notes and Questions	258
C. Surrogate Motherhood	259
1. "Traditional" Surrogacy	259

<i>In the Matter of Baby Girl L.J., an Infant</i>	260
Note	262
<i>In the Matter of the Adoption of Paul</i>	262
Notes and Questions	264
N.Y. Dom. Rel. Law Art. 8 § 121–123. Surrogate Parenting Contracts	264
Notes and Questions	265
2. In Vitro Fertilization and Gestational Surrogacy	268
<i>McDonald v. McDonald</i>	268
Notes and Questions	269
<i>Matter of Sebastian</i>	270
Note	270
<i>Matter of Seb C-M</i>	270
Notes and Questions	271
D. Cryopreserved Embryos	272
1. Disagreements over Embryo Disposition	272
<i>Kass v. Kass</i>	272
Notes and Questions	274
2. Posthumous Reproduction	274
Notes	275
Problem	275
About the Editors	277
About the Contributors	278
Index	281

Table of Cases

Principal cases are italicized, while cases cited in the text or in the authors' notes are in roman type.

Abbot v. Abbott, 560 U.S. 1 (2010)	vii
Allen v. Fiedler, 96 A.D.3d 1682 (2012)	64
<i>Anonymous v. Anonymous</i> , 395 N.Y.S.2d 103 (1977)	88
Anna J. v. Mark C., 286 Cal. Rptr. 369 (Ct. App. 1991)	271
Ansin v. Craven-Ansin, 929 N.E.2d 955 (Mass. 2010)	155
Arredondo v. Nodelman, 622 N.Y.S.2d 181 (Sup. Ct. 1994)	271
Astrue v. Capato, 132 S. Ct. 2021 (2012)	274
Avery v. Everett, 110 N.Y. 317 (1888)	86
Banaszak's Estate, 1 N.Y.S. 2d 15 (1938)	97
<i>Bast v. Rossoff</i> , 91 N.Y.2d 723 (1998)	203
Belkhir v. Amrane-Belkhir, 118 A.D.3d 1396 (2014)	223
Beth R. v. Donna M., 853 N.Y.S.2d 501 (Sup. Ct. 2008)	46
<i>Blickstein v. Blickstein</i> , 472 N.Y.S.2d 110 (App. Div. 1984)	192
Borelli v. Brusseau, 12 Cal. App. 4th 647 (1993)	154
<i>Brady v. Brady</i> , 64 N.Y.2d 339 (1985)	79
Brassey v. Brassey, 546 N.Y.S.2d 370 (App. Div. 1989)	142
Buckley v. Buckley, 537 N.Y.S.2d 943 (Sup. Ct. 1989)	171
Caban v. Mohammed, 441 U.S. 380 (1979)	57, 248
<i>Carballeira v. Shumway</i> , 710 N.Y.S.2d 149 (App. Div. 2000)	23
Cerami v. Cerami, 408 N.Y.S.2d 591 (Sup. Ct. 1978)	86
<i>Christian v. Christian</i> , 42 N.Y.2d 63 (1977)	160
Christopher C. v. Bonnie C., 968 N.Y.S.2d 855 (Sup. Ct. 2013)	215
Cioffi-Petrakis v. Petrakis, 960 N.Y.S.2d 152 (App. Div. 2013)	144, 153
Dachille v. Dachille, 983 N.Y.S.2d 193 (Sup. Ct. 2014)	115
Davis v. Davis, 842 S.W.2d 588 (1992)	274
<i>Davis v. Davis</i> , 889 N.Y.S.2d 611 (2009)	83
DeSilva v. DeSilva, 2006 Misc. LEXIS 2489 (Sup. Ct. 2006)	199, 238
Doe v. NYC Bd. of Health, 782 N.Y.S.2d 180 (Sup. Ct. 2004)	271
Estin v. Estin, 334 U.S. 541 (1948)	100
Feigenbaum v. Macomber, 2010 N.Y. Misc. LEXIS 6860 (Sup. Ct. 2010)	271

<i>Forsberg v. Forsberg</i> , 631 N.Y.S.2d 709 (App. Div. 1995)	143
<i>Foster v. Daigle</i> , 809 N.Y.S.2d 228 (App. Div. 2006)	10
<i>Friederwitzer v. Friederwitzer</i> , 55 N.Y.2d 89 (1982)	165
<i>Frize v. Frize</i> , 698 N.Y.S.2d 764 (App. Div. 1999)	64
<i>Galetta v. Galetta</i> , 21 N.Y.3d 186 (2013)	136, 153
<i>Gentner v. Gentner</i> , 736 N.Y.S.2d 431 (2001)	82
<i>Gomez v. Windows on the World</i> , 23 A.D.3d 967 (2005)	vii
<i>Graham v. Graham</i> , 33 F. Supp. 936 (E.D. Mich. 1940)	154
<i>Greschler v. Greschler</i> , 51 N.Y.2d 368 (1980)	60
<i>Guy v. Guy</i> , 987 N.Y.S.2d 751 (App. Div. 2014)	117
<i>Havell v. Islam</i> , 301 A.D.2d 339 (2002)	195
<i>Henderson v. Henderson</i> , 365 N.Y.S.2d 96 (App. Div. 1975)	165
<i>Hernandez v. Robles</i> , 7 N.Y.3d 338 (2006)	29
<i>Howard S. v. Lillian S.</i> , 14 N.Y.3d 431 (2010)	198
<i>Hunter v. Hunter</i> , 614 N.Y.S.2d 784 (1994)	87
<i>In re Adoption of Doe</i> , 14 N.Y.3d 100 (2010)	60
<i>In re Adoption of Garrett</i> , 841 N.Y.S.2d 731 (Surr. Ct. 2007)	56
<i>In re Baby Girl, L.J.</i> , 505 N.Y.S.2d 813 (1986)	259, 260, 264
<i>In re Baby M.</i> , 109 N.J. 396 (1988)	67
<i>In re Bobrowich</i> , No. 159/02, 2003 WL 230701 (N.Y. Civ. Ct. 2003)	vii
<i>In re Gall</i> , 258 N.Y.S. 1 (N.Y. App. Div. 1932)	105
<i>In re Rockefeller's Trust</i> , 12 N.Y.2d 124 (1962)	60
<i>In the Matter of Adoption of Paul</i> , 550 N.Y.S.2d 815 (Fam. Ct. 1990)	262
<i>In the Matter of Baby M.</i> , 109 N.J. 396 (1988)	247
<i>In the Matter of Summer A.</i> , 854 N.Y.S.2d 195 (App. Div. 2008)	60
<i>In the Matter of the Adoption of a Child Whose First Name is G.</i> , 978 N.Y.S.2d 622 (2013)	52
<i>In the Matter of the Adoption of J.J.</i> , 984 N.Y.S.2d 841 (2014)	67
<i>Ira S. v. Janice S.</i> , 4/8/14 NYLJ (Sup Ct N.Y. Co 2014)	199
<i>J.S. v. J.S.</i> , 857 N.Y.S.2d 427 (2008)	113
<i>Johnson v. Calvert</i> , 5 Cal. 4th 84 (1991)	268, 271
<i>Kaplinsky v. Kaplinsky</i> , 603 N.Y.S.2d 574 (1993)	95
<i>Kass v. Kass</i> , 91 N.Y.2d 554 (1998)	272
<i>Kessler v. Kessler</i> , 818 N.Y.S.2d 571 (App. Div. 2006)	148
<i>Kober v. Kober</i> , 16 N.Y.2d 191 (1965)	74
<i>Kulko v. Superior Ct.</i> , 436 U.S. 84 (1978)	99
<i>Laura WW v. Peter WW</i> , 856 N.Y.S.2d 258 (App. Div. 2008)	257
<i>Lawrence v. Texas</i> , 539 U.S. 558 (2003)	34, 36
<i>Lehr v. Robertson</i> , 463 U.S. 248 (1983)	57, 248

<i>Litman v. Litman</i> , 463 N.Y.S.2d 24 (App. Div. 1984)	191
Lori F. v. Raymond F., 657 N.Y.S.2d 235 (App. Div. 1997)	251
<i>Mack v. Brown</i> , 919 N.Y.S.2d 166 (App. Div. 2011)	31
Majauskas v. Majauskas, 61 N.Y.2d 481 (1984)	179
Marcus v. Marcus, 525 N.Y.S.2d 238 (App. Div. 1988)	176
Marrow v. Marrow, 508 N.Y.S.2d 789 (1986)	87
Matter of Greiff, 92 N.Y.2d 341 (1998)	140
<i>Matter of Ibn Abdus S.</i> , 939 N.Y.S.2d 294 (App. Div. 2012)	4
Matter of Jacob, 86 N.Y.2d 651 (1995)	50, 55
<i>Matter of Joyce T.</i> , 65 N.Y.2d 39 (1985)	12
Matter of M./B. Children, 792 N.Y.S.2d 785 (Fam. Ct. Kings Cnty. 2004)	58
Matter of Raquel Marie X., 545 N.Y.S.2d 379 (App. Div. 1989)	248, 250
<i>Matter of Seb C-M, X 2013-21, NYLJ 1202640083455 (Surr. Ct. 2014)</i>	270
Matter of Sebastian, 25 Misc.3d 567 (Surrogate's Ct. 2009)	253, 270
Matter of Shondel J. v. Mark D., 7 N.Y.3d 320 (2006)	8
McAlpine v. McAlpine, 574 N.Y.S. 2d 995 (Sup. Ct. 1991)	198
<i>McCoy v. McCoy</i> , 985 N.Y.S.2d 629 (App. Div. 2014)	211
McDonald v. McDonald, 608 N.Y.S.2d 477 (App. Div. 1994)	268, 271
McSparrow v. McSparrow, 639 N.Y.S.2d 265 (1995)	198
Michael H. v. Gerald D., 491 U.S. 110 (1989)	248
<i>Moccia v. Moccia</i> , 918 N.Y.S.2d 802 (2011)	220
Nicholson v. Scopetta, 3 N.Y.3d 357 (2004)	17, 18
<i>O'Brien v. O'Brien</i> , 66 N.Y.2d 576 (1985)	129, 174, 184, 197
<i>Omahen v. Omahen</i> , 735 N.Y.S.2d 236 (2001)	81
O'Malley v. O'Malley, 836 N.Y.S.2d 706 (App. Div. 2007)	158
Orr v. Orr, 440 U.S. 268 (1979)	71
Oswald v. Oswald, 107 A.D.3d 45 (2013)	45
<i>Pajak v. Pajak</i> , 56 N.Y.2d 394 (1982)	81
Panossian v. Panossian, 569 N.Y.S.2d 182 (App. Div. 1991)	152
Pearce v. LaBella, 971 F. Supp. 2d 255 (N.D.N.Y. 2013)	235
People v. Figueroa, 968 N.Y.S.2d 866 (Rye City Ct. 2013)	228, 229
People v. Liberta, 64 N.Y.2d 152 (1984)	7
<i>People v. Nancy C.</i> , 727 N.Y.S.2d 867 (2001)	6
<i>Petracca v. Petracca</i> , 956 N.Y.S.2d 77 (App. Div. 2012)	156, 159
<i>Principe v. Principe</i> , 644 N.Y.S.2d 1005 (App. Div. 1996)	183
Q.M. v. B.C., P-13761-13 (Fam. Ct. 2014)	253
Quilloin v. Walcott, 434 U.S. 246 (1978)	57, 248
Ranieri v. Ranieri, 539 N.Y.S.2d 382 (App. Div. 1989)	43, 71
Reynolds v. U.S., 98 U.S. 145 (1878)	47

Rocano v. Rocano, 12 Misc. 3d 1169(A) (Sup. Ct. 2006)	238
Romer v. Evans, 517 U.S. 620 (1996)	34
Roofeh v. Roofeh, 525 N.Y.S.2d 765 (Sup. Ct. 1988)	230, 245
<i>Roseanne P. v. Gustav P.</i> , 981 N.Y.S.2d 638 (Sup. Ct. 2013)	108
Rosenberg v. Rosenberg, 155 A.D.2d 428 (N.Y. App. Div. 1989)	197
<i>Rubin v. Salla</i> , 964 N.Y.S.2d 41 (App. Div. 2013)	207
Russell v. Russell, 339 N.Y.S.2d 319 (1972)	99
Saff v. Saff, 402 N.Y.S.2d 690 (1978)	173
<i>Sagan v. Sagan</i> , 422 N.Y.S.2d 98 (App. Div. 1979)	168
Santosky v. Kramer, 455 U.S. 745 (1982)	14
<i>Seye v. Lamar</i> , 900 N.Y.S.2d 112 (App. Div. 2010)	15
Sieger v. Sieger, 829 N.Y.S.2d 649 (2002)	96
Simkin v. Blank, 19 N.Y.3d 46 (2012)	171
<i>Solomon v. Solomon</i> , 637 N.Y.S.2d 728 (App. Div. 1996)	153
Sorrentino v. Sorrentino, 13313/11, NYLJ 1202539608395 (Jan. 2012)	90
Speranza v. Repro Lab Inc., 875 N.Y.S.2d 449 (App. Div. 2009)	275
<i>Stancil v. Stancil</i> , 310015/2014, NYLJ 1202718609940 (Feb. 2015)	100
Stanley v. Illinois, 405 U.S. 645 (1972)	57, 248
Stempler v. Stempler, 143 A.D.2d 410 (N.Y. App. Div. 1988)	197
Strnad v. Strnad, 78 N.Y.S.2d 390 (Sup. Ct. 1948)	256
<i>Strong v. Dubin</i> , 851 N.Y.S.2d 428 (App. Div. 2008)	151, 154
T.V. v. NYS Dep't Health, 929 N.Y.S.2d 139 (App. Div. 2011)	70, 271
<i>Tadesse v. Amanu</i> , 985 N.Y.S.2d 133 (App. Div. 2014)	114
<i>Thomas v. Thomas</i> , 535 N.Y.S.2d 736 (App. Div. 1988)	176
Tropea v. Tropea, 87 N.Y.2d 727 (1996)	vii
<i>Tuper v. Tuper</i> , 946 N.Y.S.2d 719 (2012)	93, 98
Valdez v. City of New York, 18 N.Y.3d 69 (2011)	234, 237
Walker v. Walker, 86 N.Y.2d 624 (1995)	232
Wendy G-M. v. Erin G-M., 985 N.Y.S.2d 845 (Sup. Ct. 2014)	69
<i>Whitmore v. Whitmore</i> , 778 N.Y.S.2d 73 (App. Div. 2004)	155
Williams v. North Carolina, 317 U.S. 287 (1942)	100
<i>Windsor v. U.S.</i> , 833 F. Supp. 2d 394 (S.D.N.Y. 2012)	39
<i>Wissink v. Wissink</i> , 749 N.Y.S.2d 550 (App. Div. 2002)	241
Zelnik v. Zelnik, 573 N.Y.S.2d 261 (App. Div. 1991)	169, 171

Preface

Family Law is basically state law. While federal law mandates child support guidelines, state law sets them. While federal law prohibits parental kidnapping, state law determines what constitutes “kidnapping,” and what distinguishes it from “rescue.” From the prerequisites for entering into marriage through the grounds for divorce and the “equitable” distribution of marital property, state law governs and state law varies, often widely. This book provides a cogent but comprehensive introduction to family law, for students as well as practitioners, as it is practiced in New York.

New York deserves its own family law text for several reasons. First, family law in New York is unique. New York was the last state to hold out against the “no-fault revolution,” for example. In 2010, when it finally succumbed, it became one of the first states to provide a formula for temporary alimony. It is the only state that considers a degree (such as a law degree) acquired during marriage part of divisible “marital property.” Like California, New York can be seen as a leader in family law reform. But it is often a leader with few followers. *Family Law in New York* explores these anomalies and offers some explanations.

Second, while family law stories have long been fodder for the tabloids, New York family law has produced unusually gripping stories that resonate far beyond its own family courts. In *Gomez v. Windows on the World*, for example, the grieving widow of a restaurant worker killed on 9/11 learned that her husband of ten years in fact had a wife (and large extended family) still waiting for his return in Latin America.

Third, even without its singular aspects and compelling stories, New York decisions and laws comprise a disproportionate share of the family law canon. New York cases (such as *In Re Bobrowich* (name change), *People v. Liberta* (rejection of spousal rape exemption), and *Tropea v. Tropea* (relocation)) are ubiquitous in family law textbooks. Are New York families especially litigious? Do New York judges write particularly well?

Fourth, New York judges, including the four currently sitting on the U.S. Supreme Court, have played important roles in shaping family law even when they are not addressing New York law. This was demonstrated in the *Abbot v. Abbott* decision, in which the Supreme Court held that the Hague Abduction Convention required the return of an American teenager to his British father, notwithstanding the arguments of American family law professors. The decision, applauded by international law professors, took a cosmopolitan approach, implicitly reproaching the Texas court for its provincialism.

This book covers all significant aspects of family law in New York. Each section is followed by notes and questions, probing the reader’s understanding and suggesting additional sources for the curious. Each chapter concludes with a set of broader questions

and problems that test the reader's understanding of the chapter as a whole. Local examples, from popular culture (*The Honeymooners*, Stefon and Seth from SNL) as well as recent headlines (Rupert Murdoch's latest divorce, Edith Windsor's triumph over DOMA, the baby found in the subway and subsequently adopted by the finder and his husband), are drawn upon throughout.

The authors of the chapters that follow all currently teach at the Maurice Deane School of Law at Hofstra University. The law school has long been known for its outstanding family law programs and teachers. The Sidney and Walter Siben Distinguished Professorship in Family Law was established in 1984 and is supported by a gift from the firm of Siben & Siben LLP, in Bay Shore, N.Y. Its purpose is to promote scholarly research, conferences and publications in the field of family law. Every year a notable family law professor has been invited to give the Siben and Siben Lecture, which has become one of the country's most prestigious awards in family law. The Siben and Siben Professorship is currently held by Joanna Grossman, one of the two primary authors of this book.

The authors are grateful for research assistance from Jaclyn Waters and Jacqueline Smith and administrative assistance from Joyce Cox.

Acknowledgments

We gratefully acknowledge and appreciate the many individuals who made this book possible, including our research librarian, Patricia A. Kasting, research assistants, Christina Pingaro, Jacqueline Smith and Jaclyn Waters, our support staff, especially Joyce Amore Cox, our colleagues, and others who have shared their expertise with us about various substantive issues.

Corriero, Michael A., *Judging Children as Children: Reclaiming New York's Progressive Tradition*, 56 N.Y.L. Sch. L. Rev. 1413, 1415 (2011/2012). Reprinted with permission of New York Law School Law Review.

Dickson, Christopher W., *Note, Inseverability, Religious Exemptions, and New York's Same-Sex Marriage Law*, 98 Cornell L. Rev. 181 (2012). Reprinted with permission of Cornell Law Review and author.

DiFonzo, J. Herbie, *Breaking the Mold and Picking Up the Pieces: Rights of Parenthood and Parentage in Nontraditional Families*, 51 Fam. Ct. Rev. 104 (2013). Reprinted with permission of authors.

Gianakos, Nancy E., *The Devolution of the Homemaker; It's Time for Legislative Redress*, The Nassau Lawyer, Oct. 2008. Reprinted with permission of The Nassau County Bar Association and author.

Greenawalt, Kent, *Religious Toleration and Claims of Conscience*, 28 J.L. & Pol. 91, 115–17 (2013). Reprinted with permission of author.

Grossman, Joanna L., *A Difference of Opinion: Are Universal Life Church Weddings Valid in New York?*, *Verdict. Justia*, May 17, 2013. Reprinted with permission of Verdict. Justia and author.

Hollinger, Joan Heifetz & Naomi Cahn, *Families By Law: Adoption in American Today*, 36 Hum. Rts. 16 (2009). Reprinted with permission of authors.

Karlan, Pamela S., *The Transformation of Judicial Self-Restraint*, 100 Cal. L. Rev. 607, 614–15 (2012). Reprinted with permission of California Law Review.

Kisthardt, Mary Kay, *Re-thinking Alimony: the AAML's Considerations for Calculating Alimony, Spousal Support or Maintenance*, 21 Am. Acad. Matrimonial L. 61, 61–62, 64–65, 72–73, 80–81 (2008). Reprinted with permission of the American Academy of Matrimonial Lawyers and author.

Maldonado, Solangel, *Deadbeat or Deadbroke: Redefining Child Support for Poor Fathers*, 39 U.C. Davis L. Rev. 991 (2006). Reprinted with permission of author.

- McMullen, Judith G., *Spousal Support in the 21st Century*, 29 *Wis. J.L. Gender & Soc'y* 1, 6–8 (2014). Reprinted with permission of author.
- Oldham, J. Thomas, *Changes in the Economic Consequences of Divorces, 1958–2008*, 42 *Fam. L.Q.* 419, 431–34 (2008). Reprinted with permission of author.
- Perry, Twila L., *Alimony: Race, Privilege, and Dependency in the Search for Theory*, 82 *Geo. L. J.* 2481, 2483–84; 2519–20 (1994). Reprinted with permission of Georgetown Law Journal and author.
- Steckler, Tamara & Solomon, Gary, *New Era in Representing Children*, *N.Y.L.J.*, (Oct. 22, 2008) (online version). Reprinted with permission of authors.