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FAMILY LAW IN PERSPECTIVE

FIFTH EDITION

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ROB

Joseph M. Saka

— a generous friend, a man of faith

RFW

Alice

— my mother, my North Star

INTRODUCTION TO THE FIFTH EDITION

The need for a fifth edition of this concepts and insights series results from the subject area's continuing evolution. Once focused on individual state regulation of marriage, fault divorce, spousal support, and child custody, family law now involves enforcement of nonmarital support agreements, assisted reproductive technology, international enforcement of custody decrees, and premarital, marital, and post-marital contracts. It also now encompasses an individual's liberty interest applied to marriage, spousal surveillance, and the independence of minors, to name but a few. A century ago, only the most prescient could have imagined the scope of today's domestic relations.

The purpose of this concise book is to introduce students of domestic relations to the themes and parameters of today's major family law issues from the perspectives of the law itself, practitioners, and commentators. There are few footnotes. Cases, statutes, and commentaries are added only to provide those interested with searchable resources upon which to build greater insight into the concepts identified. Our goal is to provide the reader with an insightful start, which we hope permits a more fruitful search into the topics discussed.

This edition discusses and illustrates current significant themes in domestic relations. First, challenges to Free Exercise prompt opinions issued by the United States Supreme Court. Second, the percentage of nonmarital cohabitants, many with children, continues to increase and with it issues of paternity, division of property held solely in one party's name, and whether there is sufficient evidence to warrant orders of future financial support. Third, all forms of assisted reproductive technology are increasingly utilized; financial support from insurance will only increase the numbers of persons utilizing surrogacy, in vitro fertilization, and artificial insemination. Multiple legal issues arise, such as maternity and paternity parentage, genome editing, ownership of the embryos, and inheritance rights.

Scientific advances enable assisted reproductive technology to permit conception and birth in situations unimaginable even a few decades ago. This prompts a fourth theme, establishing parenthood outside the existing presumptions found in statutes modeled on the Uniform Parentage Act (2017). Today, a child may be genetically related to more than two donors, thus increasing the number of parents with a genetic connection. Issues of parentage, essential to protection under the United States Constitution, are often litigated

and always contentious. Increasing the number of genetically related parents will pose questions.

A fifth theme is the continued emphasis on the individuality of an adult party in any committed relationship. This emphasis is illustrated in the ascendancy of premarital, marital, and post-marital contracting. There is heightened *ex parte* protection against domestic violence, marital sexual assault, spousal tort immunity, spousal privilege, and continued reliance on mutually agreed upon no-fault divorce. A sixth theme is the increasing mobility of citizens, both interstate and international, thereby prompting litigation concerning interstate enforcement and international recognition of orders and judgements. This is illustrated in custodial parent relocation, interstate and international enforcement of surrogacy contracts, support obligations, custody plans, and child adoptions.

States continue to be classified as either community or separate property states, but increasingly the distinctive laws and procedures arrive at similar approaches. This disparity forms a seventh theme. That is, there is less of a distinction today as states increasingly adopt uniform legislation, or federal statutes utilizing the Supremacy Clause, which mandates conformity and hence uniformity. Today, the ascending issue is federal enforcement of support orders through civil and criminal means, plus the imposition of child support guidelines throughout all of the states. A complementary issue is federal preemption of firmly established state laws, such as revocation of designated beneficiaries of ERISA governed plans whenever divorce occurs.

Similarly, an eighth theme, custody of children, has shifted from a gender-based presumption to a pursuit of parenting plans as a starting point in any determination of child custody. While all state statutes stress that support, custody, and visitation must serve the best interests of the child, increasingly a majority of states look to parents to initiate, with professional assistance, a parenting plan establishing their understanding of what is best for their child. The plan may be rebutted if it can be established that the parental plan is contrary to the child's best interests. Here too there are increasing federal efforts to enforce support and custody arrangements, even across international borders.

Finally, there is a ninth theme addressing permanency for children. Termination of parental rights continues to be dominated by the fundamental Due Process right of a parent to raise his or her own child. State and federal litigation involve issues of parentage, protection of children through innovations such as state Safe Haven statutes and strengthened efforts to protect minors from sexual abuse and mistreatment—especially from perils posed by the

Internet. Likewise, newly enacted adoption statutes promote the best interests of children through opportunities for stepparent adoption, adoption by extended family members, and intercountry adoption.

In addition to this book, we recommend two other books, both by the same authors. First, *DOMESTIC RELATIONS: CASES AND MATERIALS* (9th ed., 2021), and second, a compilation of uniform laws and federal and state statutes, plus international treaties, all addressing family law issues. These are found in the *STATUTORY AND DOCUMENTARY SUPPLEMENT: SELECTED UNIFORM LAWS, MODEL LEGISLATION, FEDERAL STATUTES, STATE STATUTES, AND INTERNATIONAL TREATIES* (2021). Both of these books complement the concepts and insights offered in this book.

With remorse, we share with you the news of the passing of Walter Wadlington, the founding author of this book and the other of the two cited pieces. He was a titan in this field of law, an empathetic teacher, empowering mentor, and sincere friend. He was and always will be for those who knew him. We miss him.

And as always, we welcome your comments and hope that these materials assist you in any discussion of family law. We extend our sincere appreciation to Emmett J. Whelan for his editorial expertise, conscientiousness, and good humor in the production of this book.

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NOTE ON EDITING AND ACKNOWLEDGEMENT

Footnotes begin numbering at the start of each chapter. Several cases include only a Westlaw or Lexis citation due to the fact that no other citation was available at the time the book went to press. In other cases, Westlaw reported that the citation would not be available in the National Reporter system or some other official reporter. In some places, due to space limitations, we have included references to materials in the text, rather than create a footnote. We express our appreciation to the National Conference of Commissioners on Uniform State Laws for permission to reprint the text of selected Uniform Laws.

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