

The Modern Family in the Law of the United States – Lecture 1

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Lecture 1 – What we will cover

- Thank you to János Dúl
- Introduction to Loyola, New Orleans and Puerto Rico
- Introduction to U.S. law and and legal systems
- Introduction to U.S. Family Law
- Marriage, covenant marriage, same sex marriage
- Premarital contracts and prenuptial agreements
- Questions?

About the university I come from

- Loyola University New Orleans College of Law is a private law school in New Orleans, Louisiana.
- It is affiliated with Loyola University New Orleans, an undergraduate Jesuit university.
- Named after Ignatius of Loyola, a Spanish Basque Catholic priest and theologian, who co-founded the Jesuit religious order in 1534.
- It opened in 1914 and is now located on the Broadway Campus of the University in the historic Audubon Park District of the city.

The Jesuits are here in Hungary:



Loyola University New Orleans

- Four year undergraduate institution, about 2400 students
- Most popular majors: Music Management; Psychology; Business Administration and Management; Public Relations, Advertising, and Applied Communication; and Finance.
- Also has graduate programs in Business, Law, and Nursing. There are about 400 law students.
- These come after 4 years of undergraduate.
- In our law school,we teach common law and civil law. 2 tracks.



This is where New Orleans, Louisiana is located



About New Orleans, Louisiana

- One of the oldest cities in the U.S.
- On the banks of the Mississippi River, a major port, with access to the Gulf of Mexico
- Before the founding of the City, Native Americans lived in the area.
- Explorers passed through in the 16th and 17th centuries, but it was not until 1718 that Jean-Baptiste Le Moyne, Sieur de Bienville founded New Orleans on high ground 100 miles from the mouth of the Mississippi River.

New Orleans Just Celebrated 300 years



New Orleans and Louisiana

- The French ruled over the city until 1763, when they ceded the territory to the Spanish.
- Another 40 years later, the French regained control of the colony in 1803, and shortly thereafter sold it to the United States in the Louisiana Purchase.
- Louisiana became a state of the United States in 1812. Therefore our legal system has influences from France, Spain and U.S.

I myself come from the island of Puerto Rico, part of the U.S.



Basics of Puerto Rico

- Puerto Rico is an island, the smallest of the Greater Antilles, located in the Caribbean. The other islands in the Greater Antilles are Cuba, Jamaica and Hispaniola, an island that is divided in two and contains Haiti and the Dominican Republic.
- The capital city of Puerto Rico is San Juan.
- The island measures 100 miles by 35 miles.
- It has been part of the U.S. since 1898. Before that, it was a Spanish colony following Columbus' "discovery" in 1492. Before that, inhabited by Taino Indians.

Images of Puerto Rico



Louisiana and Puerto Rico have the following in common:

- They are now both part of the United States, Louisiana is a state and Puerto Rico is a commonwealth with free association, but not a state. It is also called unincorporated.
- The country of Spain colonized them and left them the civil law. In Louisiana and in Puerto Rico, the Civil Code forms the basis of private law.
- 4 Books: Persons, Things, Acquiring Things, Conflicts.
- This is different from the rest of the U.S. (the other 49) where they have common law that came from England.
- Both have become hybrid/mixed jurisdictions.

United States Law

- Other than Louisiana and Puerto Rico, the U.S. legal system is a “common law” system, which relies heavily on court precedent in formal adjudications. In this system, even when a statute is at issue, judicial determinations in earlier court **cases** are extremely critical to the court’s resolution of the matter before it.
- Civil law systems rely less on court precedent and more on codes, which explicitly provide rules of decision for many specific disputes. When a judge needs to go beyond the letter of a code in disposing of a dispute, the judge’s resolution will not become binding or perhaps even relevant in subsequent determinations involving other parties.

Common Law -Cases

- The defining principle of common law is the requirement that courts follow decisions of higher level courts within the same jurisdiction. It is from this legacy of *stare decisis* that a somewhat predictable, consistent body of law has emerged.
- Cases are legal determinations based on a set of particular facts involving parties with a genuine interest in the controversy.
- **Case Law May Be of Several General Types:**
- (1) *Pure decisional case law*—Court called upon to decide cases on the basis of prior court decisions (precedent) and / or policy and a sense of inherent fairness. In cases of pure decisional law, there is no applicable statute or constitutional provision that applies. This type of decisional law is what is referred to as “judicially-created doctrine.” Historically, the term “case law” referred to certain areas of law (*e.g.*, torts, property) that began as judge-made, or pure decisional law.

- (2) *Case law based on constitutional provisions*—Court called upon to consider whether a particular statute or governmental action is consistent with the United States Constitution or a particular state constitution. Court interpretation may rely upon prior decisional law interpreting same or some other constitutional provision.
- (3) *Case law based on statutory provisions*—Court called upon to interpret a statute. Court interpretation may rely upon prior decisional law interpreting the same or similar statute.

All of the U.S. has two legal systems

- The U.S. legal system is based on a system of federalism, or decentralization. While the national or “federal” government itself possesses significant powers, the individual states retain powers not specifically enumerated as exclusively federal.
- Most states have legal and court systems which mirror that of the federal law court system.
- Family law is state law but the federal law can override it, for example, in Constitutional matters, e.g. Same sex marriage.

Family Law in the U.S.

- “One of the law’s most important and far-reaching roles is to govern family life and family members. Family law decides how family relationships are created and dissolved, and what legal rights and responsibilities come with marriage, parenthood, and other family bonds.
- Family law permits and enforces a wide variety of economic exchanges within the family. Spouses [and sometimes cohabitants] are free to enter into legally valid agreements specifying with great variety, creativity, and detail how they will distribute property, earnings, and other economic assets between themselves.”
- Marriage is a fundamental right under U.S. Constitution, so state cannot abridge without justification. Zablocki, Loving

Entering into Marriage

- All states and P.R. regulate
- Overall Requirements
- Special case in Louisiana- Covenant Marriage
- Same Sex Marriage –early history
- Obergefell U.S. Supreme Court case from 2015 and its consequences
- In some states, statute may say marriage between man and woman, not enforced

Premarital Contracts

- Old view: Parties only allowed to contract for what would happen at death because “the law will not permit parties contemplating marriage to enter into a contract providing for, and looking to, future separation after marriage.”
- Courts thought prenuptial agreements made divorce more likely.
- Courts today:
- Premarital contracts allowed as long as there is full and fair disclosure (ie no duress).
 - » BUT there are limits to what court will enforce
 - Enforce business contracts between spouses.
 - Will not enforce contracts on household activities (lifestyle provisions)
 - Enforce contracts about assets.
 - Contracts about child-support and visitation are not necessarily honored. These provisions can be evidence of parties’ intentions.

Questions?

