

# LA396-15 Modern Challenges for English Family Law

**23/24**

**Department**

School of Law

**Level**

Undergraduate Level 3

**Module leader**

Rachael Blakey

**Credit value**

15

**Module duration**

10 weeks

**Assessment**

100% coursework

**Study location**

University of Warwick main campus, Coventry

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## Description

### Introductory description

This module explores current and topical issues in Family Law that challenge traditional normative values underpinning both family law and family policy. It provides an opportunity to look in greater depth at how the English and Welsh family justice system grapples with challenges such as cuts to legal aid, austerity, mobility, religious pluralism and scientific developments.

[Module web page](#)

### Module aims

To explore current and topical issues in Family Law that challenge traditional normative values underpinning both family law and family policy. The module provides an opportunity to look in greater depth at how the English and Welsh family justice system grapples with challenges such as cuts to legal aid, austerity, mobility, religious pluralism and scientific developments. The module is designed to change each year in response to current events and the model syllabus given is only a sample of the sorts of issues that might be discussed.

### Outline syllabus

This is an indicative module outline only to give an indication of the sort of topics that may be covered. Actual sessions held may differ.

The module is designed to change each year in response to current events and the model syllabus given is only a sample of the sorts of issues that might be discussed.

Three broad themes will enable students to make links across the module and consider how the issues relate to different types of families. The theme of austerity will be revisited across the module. Autonomy will be developed in a number of areas, such as Islamic marriage and international surrogacy, and we will also consider the idea of two-tier justice across a number of topics. The theme of religious pluralism has connections with mobilisation and globalisation.

Key Concepts – austerity, autonomy, vulnerability, access to justice, legal pluralism, legal cultural relativism, gender, exploitation and colonialism in family law.

- Introduction and overarching themes: Students are given an overview of the traditional family law system and encouraged to reflect on Law's role in shaping normative values for family life. What should be state's role in supporting family life? What types of family life is the state required to support? How should the law respond to developments that change or challenge traditional societal values?
- Austerity and the push for autonomy: This section of the module will look at changes both to substantive law and access to adjudicative legal processes that are driven by austerity measures and recent cuts to legal aid. Students will critically interrogate the narrative of decreased state support for the family and the increased individual responsibility that emerges. In any given year, this theme might explore:
  - Changes to social welfare provision for families such as cuts to Child Benefit, the Benefit Cap and the introduction of Universal Credit
  - Child Poverty
  - Care for older people
  - Cuts to Legal Aid.
  - The increased emphasis on private agreement and family dispute resolution, including mediation.
  - Rethinking access to justice.
- Religious pluralism: This section of the module will consider both the emergence of religious tribunals within the English family justice system and the accommodation of religious traditions in substantive family law. It will be critical of colonial structures within English Family Law. In any given year, this theme might explore:
  - Sharia Councils and Islamic marriage
  - Recognition of overseas marriages
  - Forced marriage
  - Kafala and adoption
- Mobilisation of families in a globalised age: In this section of the module the students will critically consider cross-border regulation of family relationships. In any given year, this theme might explore:
  - Domestic adoption of non-nationals
  - Inter country adoption
  - International surrogacy
  - International Child abduction

- International Child maintenance

## Learning outcomes

By the end of the module, students should be able to:

- Demonstrate understanding of how a broad range of laws may affect families and how the law affects different types of families in different ways.
- Critically assess Law's role in shaping normative values for family life and how the law should respond to developments that change or challenge traditional societal values.
- Evaluate the concept of 'the family' on which different laws are based and the policies adopted by the state in supporting and regulating families.
- Research a topic relevant to current family law issues using paper and electronic resources and specialist legal materials.
- Work independently to gain understanding of material and issues.
- Use legal concepts, empirical data, social work terms, policy principles and theoretical ideas in speaking and writing about law.

## Indicative reading list

As the module is centred around rapidly changing current issues, there is no textbook. Students will be referred to journal articles, reports and empirical sources. The non-exhaustive lists below are examples of relevant sources and will be updated to include current publications. Greater attention will also be placed on policy documents.

Austerity:

- R Goodwin, 'Self-Reliance Versus the Welfare State' (1985) 14 Journal of Social Policy 25-47.
- K Hollingsworth. 'Judging children's rights and the benefit cap: R (SG and others) v Secretary of State for Work and Pensions' [2015] CFLQ 445.
- C Emmerson and R Joyne (2014) Coping with the Cap  
<http://www.ifs.org.uk/publications/7482>
- House of Commons Briefing paper on the Troubled Families Programme  
<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05955>
- J Browne (2015) The Impact of Proposed Tax, Benefit and Minimum Wage Reforms on Household Incomes and Work incentives.
- T Ridge (2009) Living with poverty: a review of the literature on children's and families' experiences of poverty. (2009, Department for Work and Pensions Research Report; No 594)
- Centre for Social Justice, Rethinking Child Poverty (2012) available:  
<http://www.centreforsocialjustice.org.uk/publications/rethinking-child-poverty>.
- J Herring, (2009) Older People in Law and Society Oxford: Oxford University Press
- A Stewart (2012) 'From Family to Personal Responsibility: the challenges for care of the elderly in England' Journal of Social Welfare and Family law 34:2, 179-196.
- R Harding (2017) 'A Relational (Re)View of the UK's Social Care Crisis' Palgrave Communications DOI: 10.1057/palcomms.2017.96.

- J Miles, N Balmer and M Smith, "When exceptional is the rule: mental health, family problems and the reform of legal aid in England and Wales" (2012) 24 Child and Family Law Quarterly
- Mant, J. 2017. Neoliberalism, family law and the cost of access to justice. *Journal of Social Welfare and Family Law* 39(2), pp. 246-258
- Kaganas, FR. (2017) 'Justifying the LASPO Act: authenticity, necessity, suitability, responsibility and autonomy.'. *Journal of Social Welfare and Family Law*, 39 (2). pp. 168 - 188.
- Mant, J. and Wallbank, J. 2017. The mysterious case of disappearing family law and the shrinking vulnerable subject. *Social and Legal Studies* 26(5), pp. 629-648. (10.1177/0964663917691594)
- A Barlow, R Hunter & J Smithson (2017) *Mapping Paths to Family Justice: Resolving Family Disputes in Neoliberal Times* (Palgrave Socio-Legal Studies).
- A Diduck, "Autonomy and Family Justice." (2016) *Child and Family Law Quarterly* , 28 (2) , 133.

#### Religious Pluralism:

- H Jan (2014) *Equal and Free? 50 Muslim Women's Experience of Marriage in Britain Today*
- R. C. Akhtar, Rebecca Probert and Annelies Moors (2018) 'Informal Muslim Marriages: Regulations and Contestations', *Oxford Journal of Law and Religion*.
- R.C. Akhtar, 'Unregistered Muslim Marriages: An Emerging Culture of Celebrating Rites and Compromising Rights', in R Probert, J Miles and P Mody (2015) *Marriage Rites and Rights*, Hart Publishing, Oxford.
- Z Naqvi, 'A contextualised historical account of changing judicial attitudes to polygamous marriage in the English Courts' (2017) 21 *International Journal of Law in Context* pp408-428.
- S Ali, 'Authority and authenticity: Sharia councils, Muslim women's rights, and the English courts' (2013) 25 *CFLQ* 113.
- R Sandberg, G Douglas, et al, 'Britain's Religious tribunals: 'joint governance' in practice' (2013) 33 *Oxford Journal of Legal Studies* 263-291.
- Sandberg, R. and Thompson, S. 2018. "The paradox of pluralism: Towards a relational approach to religious freedom" in: Durham, W. C. and Thayler, D. eds. *Religion, Pluralism, and Reconciling Difference*. (2018) *ICLARS Series on Law and Religion* London and New York: Routledge

#### Mobilisation of families in a globalised age:

- H Markham, 'Is it right to apply English adoption law to non-English children? Re CB', [2015] *Fam Law* 1385.
- J Masson, 'Recognition of adoption orders: a problem for the courts of England and Wales?' [2016] *Fam Law* 1113.
- B Yuksel & K Trimmings *Choice of law aspects of non-consensual adoption of Eastern European children in England and Wales* [2017] *IFL* 202.
- Claire Fenton-Glynn, "Children's Rights in Intercountry Adoption: A European Perspective" (Intersentia, 2014).
- P Hayes, 'The Legality and Ethics of Independent Intercountry Adoption under the Hague Convention' (2011) 25 *International Journal of Law, Policy and the Family* 288.

- S Smolin, 'Child laundering: how the intercountry adoption system legitimizes and incentivizes the practices of buying, trafficking, kidnapping, and stealing children', (2006) 52 Wayne Law Review, 113–200.
- Culley L, Hudson N, Rapport F, Blyth E, Norton W, Pacey AA. 'Crossing borders for fertility treatment: motivations, destinations and outcomes of UK fertility travellers'. (2011) 21 Hum Reprod 2373 – 2381.
- Report of the Surrogacy UK Working Group on Surrogacy Law Reform, Surrogacy in the UK: Myth busting and reform (2015).
- C Fenton Glynn, 'Outsourcing ethical dilemmas: Regulating International Surrogacy Arrangements' (2016) 1 Medical Law Review 59.
- C Fenton-Glynn, 'The Regulation and Recognition of surrogacy under English law: an overview of the case-law' (2015) Child and Family Law Quarterly 83.
- P Torremans (ed) Cheshire, North and Fawcett Private International Law (OUP, 2017).
- S Morano-Foadi, 'Problems and Challenges in Researching Bi-national Migrant Families within the EU' (2007) International Journal of Law, Policy and the Family 21.
- N Lowe and V Stephens, A statistical analysis of applications made in 2015 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction — Global report (2018).

## **International**

Part of the module considers the mobilisation of families in a globalised age. This theme may explore topics such as: the domestic adoption of non-nationals; international child abduction; and, international surrogacy.

## **Subject specific skills**

- To demonstrate knowledge and understanding of the development of family justice in England and Wales.
- To demonstrate knowledge and understanding of the emergence of religious tribunals within family justice and the accommodation of religious traditions in substantive family law.
- To apply and evaluate notions of justice in the context of current family law within England and Wales.
- To critically analyse a number of issues within modern English and Welsh family law, including law's role in shaping normative values for family life.
- To research current family law issues by bringing in a range of material (both legal and non-legal, doctrinal and socio-legal).

## **Transferable skills**

- Effective communication, both written and verbal.
- Understand and summarise material, including academic commentary.
- Personal responsibility and decision-making.
- Teamwork and group-based skills.
- Time management.
- Presentation skills.

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## Study

### Study time

Type	Required
Lectures	18 sessions of 1 hour (12%)
Seminars	7 sessions of 1 hour (5%)
Private study	125 hours (83%)
Total	150 hours

### Private study description

Private study will primarily be reading. Certain topics in the module will also be designed to encourage students to undertake their own research and investigations on family justice.

### Costs

No further costs have been identified for this module.

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## Assessment

You must pass all assessment components to pass the module.

### Assessment group A

	Weighting	Study time
3,000 word essay	100%	

Students will write a 3,000 word essay on one of several given titles provided earlier in the term. These questions would reflect the various topics covered in the course.

### Feedback on assessment

For formative assessment, students will submit a 500-word draft of the introductory paragraphs to one of the summative questions. These introductory paragraphs should include information on: the essay's focus in relation to the question; the line of argument that the essay will follow; the structure of the full essay; and, key materials to be drawn upon. Students will receive feedback on the content of the submission as well as their writing.

For summative assessment, students will receive individualised written feedback. Generic feedback will be published on Moodle after the exam, with the opportunity for students to request a

meeting to raise any questions.

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## Availability

## Courses

This module is Optional for:

- Year 2 of ULAA-M130 Undergraduate Law
- ULAA-M300 Undergraduate Law
  - Year 2 of M300 Law
  - Year 3 of M300 Law
- ULAA-M105 Undergraduate Law (3 year) (Qualifying Degree)
  - Year 2 of M105 Law (3 year) (Qualifying Degree)
  - Year 2 of M105 Law (3 year) (Qualifying Degree)
  - Year 3 of M105 Law (3 year) (Qualifying Degree)
  - Year 3 of M105 Law (3 year) (Qualifying Degree)
- Year 2 of ULAA-M131 Undergraduate Law (4 Year)
- ULAA-M106 Undergraduate Law (4 year) (Qualifying Degree)
  - Year 2 of M106 Law (4 year) (Qualifying Degree)
  - Year 3 of M106 Law (4 year) (Qualifying Degree)
  - Year 4 of M106 Law (4 year) (Qualifying Degree)
- ULAA-M104 Undergraduate Law (Year Abroad)
  - Year 2 of M104 Law (Year Abroad)
  - Year 4 of M104 Law (Year Abroad)
- Year 2 of ULAA-M132 Undergraduate Law (Year Abroad)
- ULAA-M108 Undergraduate Law (Year Abroad) (Qualifying Degree)
  - Year 2 of M108 Law (Year Abroad) (Qualifying Degree)
  - Year 2 of M108 Law (Year Abroad) (Qualifying Degree)
  - Year 4 of M108 Law (Year Abroad) (Qualifying Degree)
  - Year 4 of M108 Law (Year Abroad) (Qualifying Degree)
- Year 3 of ULAA-ML33 Undergraduate Law and Sociology
- Year 2 of ULAA-M133 Undergraduate Law with French Law
- Year 2 of ULAA-M10A Undergraduate Law with French Law (Qualifying Degree)
- Year 2 of ULAA-M134 Undergraduate Law with German Law
- Year 2 of ULAA-M10C Undergraduate Law with German Law (Qualifying Degree)
- Year 3 of ULAA-M110 Undergraduate Law with Humanities (3 Year)
- Year 2 of ULAA-M136 Undergraduate Law with Humanities (3 Year)
- ULAA-M113 Undergraduate Law with Humanities (4 Year) (Qualifying Degree)
  - Year 2 of M113 Law with Humanities (4 year) (Qualifying Degree)
  - Year 3 of M113 Law with Humanities (4 year) (Qualifying Degree)
- ULAA-M115 Undergraduate Law with Social Sciences (3 Year) (Qualifying Degree)
  - Year 2 of M115 Law with Social Sciences (3 year) (Qualifying Degree)
  - Year 2 of M115 Law with Social Sciences (3 year) (Qualifying Degree)
- UPHA-V7MW Undergraduate Politics, Philosophy and Law

- Year 2 of V7MW Politics, Philosophy and Law
- Year 2 of V7MW Politics, Philosophy and Law
- Year 3 of V7MW Politics, Philosophy and Law
- Year 3 of V7MW Politics, Philosophy and Law
- Year 4 of UPHA-V7MX Undergraduate Politics, Philosophy and Law (with Intercalated Year)

This module is Unusual option for:

- UPHA-V7MW Undergraduate Politics, Philosophy and Law
  - Year 2 of V7MW Politics, Philosophy and Law
  - Year 2 of V7MW Politics, Philosophy and Law
  - Year 3 of V7MW Politics, Philosophy and Law
  - Year 3 of V7MW Politics, Philosophy and Law

This module is Option list A for:

- Year 4 of ULAA-M10A Undergraduate Law with French Law (Qualifying Degree)
- Year 4 of ULAA-M10C Undergraduate Law with German Law (Qualifying Degree)
- Year 4 of ULAA-M113 Undergraduate Law with Humanities (4 Year) (Qualifying Degree)
- ULAA-M115 Undergraduate Law with Social Sciences (3 Year) (Qualifying Degree)
  - Year 3 of M115 Law with Social Sciences (3 year) (Qualifying Degree)
  - Year 3 of M115 Law with Social Sciences (3 year) (Qualifying Degree)

This module is Option list B for:

- ULAA-ML34 BA in Law and Sociology (Qualifying Degree)
  - Year 3 of ML34 Law and Sociology (Qualifying Degree)
  - Year 4 of ML34 Law and Sociology (Qualifying Degree)
- Year 5 of ULAA-ML35 BA in Law and Sociology (Qualifying Degree) (with Intercalated year)
- Year 4 of ULAA-ML33 Undergraduate Law and Sociology