

HISTORY 218

THE FAMILY & THE LAW

IN AMERICAN HISTORY

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Office: 2109 JFSB
Office Hours: Th, 9-11:00 am (via Zoom)

Winter 2021
3016 JKB
MWF 10:00-10:50 am

COURSE DESCRIPTION AND OBJECTIVES

This is a reading and research-intensive course introducing students to the intersections of the family and the law in American history, from the colonial era to the present. While not comprehensive in its scope, the course aims to help students accomplish the following learning objectives:

- Become familiar with American legal history as it pertains to family history research, understanding the laws, systems, and institutions that helped shape the lived experiences of individuals and families and how they changed over time and across different regions of the United States.
- Be able to thoughtfully articulate what individual family histories reveal about the law and its functions in American history.
- Be able to identify and locate various legal records for family history research, including vital records, tax lists, land records, court records, deeds, wills, and probate records, as well as secondary sources to support that research.
- Be able to produce detailed analyses of legal sources as the basis for clear, precise, and well-written genealogical research reports and narrative family histories.

**Please note that HIST 217: The Family Historian's Craft is a prerequisite for this course and a basic familiarity with family history research is assumed. If you have not taken that class, it may be beneficial to view the various Family History Workshops conducted by TAs, recordings of which are available on Learning Suite.*

REQUIRED READING

Each of the following books is available at the BYU Bookstore. You can also find copies (including e-copies) at various online retailers.

- John Ruston Pagan, *Anne Orthwood's Bastard: Sex and Law in Early Virginia* (New York: Oxford University Press, 2003)
- Tiya Miles, *Ties That Bind: The Story of an Afro-Cherokee Family in Slavery and Freedom*, Second Edition (Berkeley: University of California Press, 2013)

Additional readings will be available via Learning Suite.

ASSIGNMENTS AND GRADING

There are 10 graded components to this course:

1. ATTENDANCE AND PARTICIPATION – 10%

Students are expected to attend class in person on assigned days and tune in via Zoom on all other days. You are also expected to actively participate in class discussion. This necessitates reading the assigned material before class and coming prepared to critically and thoughtfully discuss it with both your classmates and myself. I will take roll regularly throughout the semester.

There are 15 students enrolled in this class. Approximately 2/3 of you will attend class in person each scheduled class meeting. The rest will tune into class via Zoom. I've divided you into three groups as follows:

- Group 1: All students whose last names start with A-H will attend class via Zoom on Mondays and in person Wednesdays and Fridays.
- Group 2: All students whose last names start with I-N will attend class via Zoom on Wednesdays and in person on Mondays and Fridays.
- Group 3: All students whose last names start with O-Z will attend class via Zoom on Fridays and in person on Mondays and Wednesdays.

Exceptions, of course, will be made for students in quarantine, who can attend class via Zoom those days. I will take roll regularly throughout the semester, but students will not necessarily be penalized for missing a specific number of classes. You will be graded based on class participation, though, which will factor in attendance. In addition, I reserve the right to adjust borderline grades up or down based on attendance and participation in class discussion.

2. BOOK REVIEWS – 10%

You will each write two 3-page book reviews: one of John Pagan's *Anne Orthwood's Bastard* and the other on Tiya Miles's *Ties That Bind*. I know that book reviews are not a standard genre of genealogical research and writing. They are an essential part of history and family history, however, encouraging

readers to engage with the research, argument, and evidence presented and to learn from and critique it.

Good reviews will accurately summarize the argument (as opposed to the subject or contents) of the book. More importantly, they will critique that argument, on grounds of logic, use of evidence, and so forth. Summarizing and then simply asserting “this book was persuasive” will not fly – you need to show why the argument was or was not persuasive. Also note: going on about how many sources the author used will not do. The number of sources is not what makes an argument convincing; it is the type of sources and how the author uses them. More specifically for this class, the book review(s) should also reflect on what the book tells us about the intersections of the law and family in the American past. For due dates see the class and readings schedule below.

3. TRANSCRIPTIONS AND ANALYSES (5%)

Over the course of the semester, students will read a variety of primary sources, ranging from manuscript copies of wills to typescript accounts of divorce proceedings. At several points of the semester, students will be required to submit *by the beginning of class* a transcription of a manuscript document and/or a brief (~1-2 page) analysis of an assigned primary source. Dates for each of these assignments can be found in the course schedule below or on Learning Suite. Further information can be found on Learning Suite.

4. IN-CLASS ASSIGNMENTS (2.5%)

In addition to the primary sources students will read, transcribe, and/or analyze over the course of the semester, there will also be a series of in-class assignments – usually a short reading response, problem-solving exercise, or multiple choice quiz. Unlike the transcriptions and analyses, the days of these in-class assignments will be unannounced ahead of time. Further information can be found on Learning Suite.

5. RESEARCH PROPOSAL (2.5%)

Submit a proposal for your planned research project this semester in PDF format. It should include the following elements:

- an image (and, if a handwritten, manuscript document, a transcription) of the source you will focus your analysis on,
- a short (one paragraph) summary of that source,
- a short (one paragraph) explanation of how you plan to use that source, and
- a working bibliography of other primary and secondary sources you plan to

use to analyze the document, its historical context, and its significance. The bibliography should include at least two legal sources from the period and place the document was written, at least two scholarly sources (books and/or peer-reviewed articles) providing additional historical context, and at least four additional primary sources related to the individuals and family you are researching.

The research proposal is due via Learning Suite on Friday, February 12 by 11:59 pm.

6. WRITING A BIOGRAPHY (5%)

Prepare a biography of no less than 750 words about Archie Lee Brown (1884-1953) using the timeline and sources available on FamilySearch. Links to Brown's Family Tree can be found on Learning Suite.

The biography is due via Learning Suite on Friday, March 5 by 11:59 pm.

7. MIDTERM EXAM (10%)

Short exam consisting of some combination of multiple choice questions, short-answer IDs, document exercises, and longer essays. **The midterm will be available to take via LS between Wednesday, February 24 at 7:00 am and Saturday, February 27 at 11:59 pm.**

8. RESEARCH PROJECT DRAFT (10%)

In order to provide feedback before you submit your final research project, students will submit a draft of final research project. It does not need to be complete at this point, but should include the following information and elements:

- A working biography of at least one family member mentioned in the document,
- An analysis of the laws and legal systems that existed in the time and place where the document was produced,
- Historical context that considers what was happening at the time,
- Some consideration of the significance of the document. Does the document solve a genealogical puzzle? Speak to some subject of broader significance from the time period and place (inheritance laws, marital arrangements, childhood rights, etc.)?

It should include also include the following:

- Family Group Sheets for three generations of the selected family, updated to

reflect the information learned through that point in the semester,

- a working research log recording all of the sources consulted for the project to that point, and
- a compiled lineage for three generations of the family. Life stories do not need to be included at this point, but the basic biographical information should be in place.
- a working bibliography of all sources used in your research.

The draft is due via Learning Suite on Wednesday, March 24 by 11:59 pm.

9. FINAL RESEARCH PROJECT (30%)

The culminating project of this class will be a research report centered on a legal source. That source could be a marriage or divorce record, a land record, a probate inventory, or will. It could be a birth or death record, minutes or a summary of a court case, or any number of other sources.

Your analysis of the document should be contextualized by both additional genealogical and historical research. To that end, it should include the following elements:

- **A narrative biography** of at least one family member mentioned in the document,
- **An analysis of the laws and legal systems** that existed in the time and place where the document was produced,
- **Historical context** that considers what was happening at the time and in the place that shaped the family's experience(s),
- Some **consideration of what your analysis reveals** about a broader historical point.

In addition, you should submit each of the following (in PDF format) with your final research report:

- **Family Group Sheets** for three generations of the selected family, updated to reflect the information learned through your research this semester.
- A completed **research log** recording all of the sources consulted for the project and the time spent.
- A **compiled lineage** for three generations of the family, including life stories for each of the direct-line individuals (and their spouses) included.
- A **bibliography** of all sources used in your research.

Additional details about each component and expectations are available on

Learning Suite. **The final research project is due via Learning Suite on Friday, April 9 by 11:59 pm.**

NOTE: 45 hours of research, analysis, and writing are expected for this project. You may count your time on the project draft, as well as all research and writing for this assignment. Do not count time spent on class reading assignments, studying for exams, or work on assignments not related to this project.

10. **FINAL EXAM (15%)**

Final exam consisting of some combination of multiple choice questions, short-answer IDs, document exercises, and longer essays. **The final exam will be available to take via LS between Friday, April 16 at 7:00 am and Tuesday, April 20 at 11:59 pm**

POLICIES AND REMINDERS

This class is intended to be a space to critically and thoughtfully discuss family history. Please feel free to ask questions and offer opinions during class (in fact, your grade depends on it!), but always treat your classmates and your professor with respect. Disagreement is allowed, but personal attacks and insults are not. Harassment of any kind will not be tolerated. If you experience a problem, please report the situation to the professor immediately.

A NOTE ON TECHNOLOGY AND ELECTRONIC DEVICES

You are welcome to use laptops, tablets, and other electronic devices in class for taking notes and/or viewing reading materials. Each of us learns differently and takes notes differently. Regardless of your preferred method, please do your best to not distract the class or your fellow students. To that end, please silence your electronic devices when attending class in person and use them only to take notes or access course materials. Because at least some of you will be attending the class virtually on any given day, your compliance with these policies are less crucial. I would strongly encourage you to stay focused on class when attending via Zoom and do your best to not be easily distracted. I reserve the right to ask students attending in person to put electronic devices away at any point.

A NOTE ON BLENDED LEARNING

When you participate in class in person, you are expected to wear a mask that covers both your mouth and nose and to not remove it. When you participate in class via Zoom, please remove as many distractions as possible. If possible, use headphones and a microphone. Please limit use of the chat function. You are not required to turn

your camera on, but are expected to listen, pay attention, and comment or ask questions when appropriate.

I am very sympathetic to the reality that many of you find yourselves in less-than-ideal learning environments and situations right now. I recognize that you are balancing coursework with family and work responsibilities in apartments, dorm rooms, a corner desk in the library, etc. not specifically built for learning, that WiFi can be unreliable, and that the current situation may negatively affect your physical, emotional, and mental health. Here is what I expect:

- Do your best.
- Communicate with me when you need help/accommodations. There is no need to share private medical information with me, but please let me know if you will be joining us via Zoom instead of in person for whatever reason. I am here to help, and my ability to do so greatly improves when we remain in contact.
- Be understanding and respectful of classmates' situations.

I promise to do the same. In spite of these less-than-ideal circumstances, I am confident we can thrive this semester.

Honor Code: In keeping with the principles of the BYU Honor Code, students are expected to be honest in all of their academic work. Academic honesty means, most fundamentally, that any work you present as your own must in fact be your own work and not that of another. Violations of this principle may result in a failing grade in the course and additional disciplinary action by the university. Students are also expected to adhere to the Dress and Grooming Standards. Please call the Honor Code Office at (801) 422-2847 if you have questions about those standards.

Preventing + Responding to Sexual Misconduct: In accordance with Title IX of the Education Amendments of 1972, Brigham Young University prohibits unlawful sex discrimination against any participant in its education programs or activities. The university also prohibits sexual harassment—including sexual violence—committed by or against students, university employees, and visitors to campus. As outlined in university policy, sexual harassment, dating violence, domestic violence, sexual assault, and stalking are considered forms of "Sexual Misconduct" prohibited by the university.

University policy requires all university employees in a teaching, managerial, or supervisory role to report all incidents of Sexual Misconduct that come to their attention in any way, including but not limited to face-to-face conversations, a written class assignment or paper, class discussion, email, text, or social media post. Incidents of Sexual Misconduct should be reported to the Title IX Coordinator at t9coordinator@byu.edu or (801) 422-8692. Reports may also be submitted through EthicsPoint at <https://titleix.byu.edu/report> or 1-888-238-1062 (24-hours a day).

BYU offers confidential resources for those affected by Sexual Misconduct, including the university's Victim Advocate, as well as a number of non-confidential resources and services that may be helpful. Additional information about Title IX, the university's Sexual Misconduct Policy, reporting requirements, and resources can be found at <http://titleix.byu.edu> or by contacting the university's Title IX Coordinator.

Students With Disabilities: Brigham Young University is committed to providing a working and learning atmosphere that reasonably accommodates qualified persons with disabilities. If you have any disability which may impair your ability to complete this course successfully, please contact the University Accessibility Center (2170 WSC). Reasonable academic accommodations are reviewed for all students who have qualified, documented disabilities. The UAC can also assess students for learning, attention, and emotional concerns. Services are coordinated with the student and instructor by the UAC. If you need assistance or if you feel you have been unlawfully discriminated against on the basis of disability, you may seek resolution through established grievance policy and procedures by contacting the Equal Employment Office at (801) 422-5895, D-285 ASB.

Mental Health: Mental health concerns and stressful life events can affect students' academic performance and quality of life. BYU Counseling and Psychological Services (CAPS, 1500 WSC, (801) 422-3035) provides individual, couple, and group counseling, as well as stress management services. These services are confidential and are provided by the university at no cost to full-time students. For general information please visit <https://caps.byu.edu>; for more immediate concerns please visit <http://help.byu.edu>.

CLASS SCHEDULE & READINGS

WEEK 1 (January 11-15)

January 11 **Introductions**

January 13 **Genealogy and the Law**

Read: Marsha Hoffman Rising, *The Family Tree Problem Solver*, 89-109. Available via LS.

January 15 **Family History and the Law**

Read: David E. Narrett, *Inheritance and Family Life in Colonial New York City*, 1-11. Available via LS.

WEEK 2 (January 18-22)

January 18 **NO CLASS: Martin Luther King, Jr. Day**

January 20 **Beginnings**

January 21: Book Review of Anne Orthwood's Bastard due via LS by 11:59 pm

January 22 **Case Study: Virginia**
Read: Pagan, *Anne Orthwood's Bastard* (all)

WEEK 3 (January 25-29)

January 25 **Colonial Transformations, Part I**
Read: Jethro Boston Divorce Petition, 1741. Available via LS.

January 27 **Colonial Transformations, Part II**
Read: Peter Charles Hoffer, *Law and People in Colonial America*, 108-138. Available via LS.

January 29 **Revolutions in Law and Family Life**

WEEK 4 (February 1-5)

February 1 **Types of Law**
Read and transcribe: David Fling Estate, 1790. Available via LS.

Submit transcription to LS by 9:59 am

February 3 **Finding the Pertinent Law**

February 5 **NO CLASS: Visit the Harold B. Lee Library, browse available legal sources and local histories.**

Submit a bibliography of at least three sources to LS by 11:59 pm

WEEK 5 (February 8-12)

February 8 **Making Sense and Significance of Family History**

February 10 **Marriage Law**
Read: Bradwell v. The State of Illinois (1872). Available via *Justia* [here](#).

February 12 **Marriage Law: State by State**

Research proposal due to LS by 11:59 pm

WEEK 6 (February 15-19)

February 15 **NO CLASS: President's Day**

February 16 **Inheritance**

(Monday Classes) Read: Mary Beecher Will, Cook County, Illinois (1906). Available via LS.

Submit 1-2 page analysis of the document to LS by 9:59 am

February 17 **Inheritance, Part II**

Read: Carole Shammas, Marylynn Salmon, and Michel Dahlin, *Inheritance in America: From Colonial Times to the Present*, 83-101. Available via LS.

February 19 **Inheritance, Part III**

WEEK 7 (February 22-26)

February 22 **Inheritance: Finding Records**

February 24 **NO CLASS: Midterm Exam**

February 26 **NO CLASS: Midterm exam**

Midterm is available to take via LS between Wednesday, February 24 at 7:00 am and Saturday, February 27 at 11:59 pm

WEEK 8 (March 1-5)

March 1 **Land and the Law, Part I**

Read and transcribe: Charles Ingalls and Henry Quiner, Mortgage, Pepin County, Wisconsin, 1863. Available via LS.

Submit transcription and 1-2 page analysis of the document to LS by 9:59 am

March 3 **Land and the Law, Part II**

Read: Caroline Fraser, *Prairie Fires: The American Dreams of Laura Ingalls Wilder*, 44-65. Available via LS.

March 5 **Land and the Law: Key Terms**

Read: "Key Terms in U.S. Land Records." Available via LS.

Biography of Archie Lee Brown to LS by 11:59 pm

WEEK 9 (March 8-12)

March 8 **Property in Persons**
Read and transcribe: Inventory and Appraisement of the Estate of E. Lawrence Winn, Liberty County, Georgia (1864). Available via [FamilySearch](#).

Submit transcription to LS by 9:59 am

March 10 **Race, Family, and the Law, Part I**

March 12 **Race, Family, and the Law, Part II**

March 13: Book Review of *Ties That Bind* due via LS by 11:59 pm

WEEK 10 (March 15-19)

March 15 **Race, Family, and the Law, Part II**
Read: Miles, *Ties That Bind* (all)

March 17 **Immigration**
Read: D'Vera Cohn, "How U.S. immigration laws and rules have changed through history," Pew Research Center, 30 September 2015. Available [here](#); Jill Shoemaker, "U.S. Immigration and Emigration Class Handout," FamilySearch Wiki. Available [here](#).

March 19 **NO CLASS: Spring Break**

WEEK 11 (March 22-26)

March 22 **NO CLASS: Work on Research Project**

March 24 **NO CLASS: Work on Research Project**

Submit research project draft to LS by 11:59 pm

March 26 **Divorce in early America**
Read and transcribe: Sarah Everitt v. William Everitt (1787). Available via LS.

Submit transcription to LS by 9:59 am

WEEK 12 (March 29-April 2)

March 29 **Divorce in modern America**

March 31	Women
April 2	Children
	Read: B.F. Skinner, <i>Walden Two</i> , 128-137. Available via LS.
WEEK 13 (April 5-9)	
April 5	Women and Children in Records
April 7	Adoption
April 9	Gay Marriage and LGBTQ Rights
	Read: Tad Walch, "LDS Church's FamilySearch database to add same-sex families to Family Tree feature," <i>Deseret News</i> , 14 June 2018. Available here .

Final research report due via Learning Suite by 11:59 pm

WEEK 14 (April 12-14)	
April 12	Case Study: Albert Eccles
April 14	Conclusion and Review
FINAL EXAM: Available to take via LS between Friday, April 16 at 7:00 am and Tuesday, April 20 at 11:59 pm	