



NATIONAL COMMITTEE ON ACCREDITATION

SYLLABUS

FAMILY LAW (ALBERTA)

JANUARY 2010

Note: Family Law is an evolving subject that makes it imperative that examination candidates read the cases in the syllabus in addition to the latest editions of relevant texts.

FAMILY LAW SYLLABUS FOR ALBERTA

COURSE DESCRIPTION

This course will review fundamental principles of family law. Significant emphasis will be placed on the economic and parenting consequences of family breakdown and divorce. This course will not deal with the specialized topic of child protection. Contemporary issues such as family violence, rights of unmarried cohabitants, domestic contracts, and alternative dispute resolution processes will be addressed.

The primary sources of family law in Canada are found in the federal *Divorce Act* and in diverse provincial and territorial statutes. Provincial and territorial legislation in Canada differs widely in form. This course will focus, therefore, on federal divorce legislation and Alberta statute law. Cross-references to statutes in other provinces and territories are not feasible because of their multiplicity and lack of uniformity.

The objectives of this course are as follows:

- to provide an overview of family law with particular emphasis on the economic and parenting consequences of family breakdown and divorce
- to analyse contemporary issues in family law
- to develop legal skills in dealing with family disputes
- to identify the special nature of family disputes and innovative approaches to their resolution, such as mediation, arbitration and custody assessments.

PRIMARY TEXT AND STATUTES

1. Payne and Payne, *Canadian Family Law*, 3rd ed., 2008, Irwin Law, (**hereinafter Payne, C.F.L.**)
2. *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), as amended
3. *Federal Child Support Guidelines*, SOR/97-175, 8 April, 1997, as amended.
4. *Spousal Support Advisory Guidelines* (Department of Justice, Canada, July 2008)
5. *Family Law Act*, S.A. 2003, c. F-4.5, as amended
6. *Matrimonial Property Act*, R.S.A. 2000, c. M-8, as amended
7. *Family Orders and Agreements Enforcement Assistance Act* (Canada), as amended

REFERENCE MATERIALS

CCH, *Family Law Guide* (looseleaf service)

J.G. McLeod and A.E. Mamo, *Matrimonial Property Law in Canada* (Looseleaf Service), (**hereafter M.P.L.C.**), tab, Ontario, Carswell, Thomson Professional Publishing, Toronto/Vancouver

Payne and Payne, Child Support Guidelines In Canada, 2009, Irwin Law

EXAMINATION

The examination is a three-hour open-book exam. Students may take any material they wish into the examination room (**with the exception of handwritten or typed notes**). Students who are unfamiliar with open-book examinations are advised that they must know their material before the examination is held. There will not be time during the examination for students to search for solutions in areas with which they are not already familiar. A sample examination question paper is provided with this syllabus.

COURSE CONTENT

I INTRODUCTION

1. Definition of Marriage and Family

Reference re Same-Sex Marriage, [2004] 3 S.C.R. 698

Civil Marriage Act, S.C. 2005, c. 33

Nova Scotia (Attorney General) v. Walsh and. Bona, [2002] 4 S.C.R. 325

M. v. H., [1999] 2 S.C.R. 3

Peter v. Beblow, [1993] 1 S.C.R. 980

2. Constitutional Framework

Payne, C.F.L., 16-17

3. Fragmentation of Judicial Jurisdiction

Payne, C.F.L., 17-20

4. Formation and Annulment of Marriage

Marriage Act, R.S.A. 2000, c. M-5, as amended

Payne, C.F.L., 21-44

II FAMILY VIOLENCE

Protection Against Family Violence Act, R.S.A. 2000, c. P-27

Payne, C.F.L., 91-133

Canadian Foundation for Children, Youth and the Law v. Canada (Attorney-General), [2004] 1 S.C.R. 76

III DIVORCE (INCLUDING COROLLARY PROCEEDINGS FOR SUPPORT AND CUSTODY)

1. Emotional Dynamics of Marriage Breakdown; Dispute Resolution Processes

Divorce Act, ss. 9 and 10 (negotiation; mediation)

Family Law Act, S.A. 2003, c. F-4.5, ss. 5, 32(2)(c), 97-98

Family Justice Services (Alberta Courts online)

Payne C.F.L., 134-178

2. Jurisdiction

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) ss. 3-7, as amended by S.C. 1993, c. 8, s. 4

Payne, C.F.L., 181-191

Rothgiesser v. Rothgiesser, [2000] O.J. No. 33 (Quicklaw), 46 O.R. (3d) 577 (C.A.)

3. Marriage Breakdown as Ground for Divorce

Divorce Act, s. 8

Payne, C.F.L., 196-211

4. Bars to Divorce

Divorce Act, s. 11

Payne, C.F.L., 211-221

Bruker v. Marcovitz, [2007] S.C.J. No. 54 (Quicklaw), 46 R.F.L. (6th) 1 (S.C.C.)

5. Effective Date and Effect of Divorce

Divorce Act, ss. 12, 13 and 14

Payne, C.F.L., 191-193

6. Recognition of Foreign Divorces

Divorce Act, s. 22

Payne, C.F.L., 193-196

Rothgiesser v. Rothgiesser, [2000] O.J. No. 33 (Quicklaw), 46 O.R. (3d) 577 (C.A.)

7. Interim Support Orders

Divorce Act, subs. 15.1(2) and 15.2(2)

Payne, C.F.L., 224-228 and 455-456

8. Child Support Orders

Divorce Act, ss. 15.1 and 15.3

Federal Child Support Guidelines, as amended

Payne, C.F.L., 353-473 and 522-525

Chartier v. Chartier, [1999] 1 S.C.R. 242

Rebenchuk v. Rebenchuk, [2006] M.J. No. 130 (Quicklaw), 35 R.F.L. (6th) 239 (C.A.)

Francis v. Baker, [1999] 3 S.C.R. 250

Ewing v. Ewing, 2009 A.J. No. 712 (C.A.)

Ewing v. Mallette, [2009] A.J. No. 346 (Quicklaw), 64 R.F.L. (6th) 46 (C.A.)

Wright v. Zaver, [2002] O.J. No. 1098 (Quicklaw), 24 R.F.L. (5th) 207 (C.A.)

Hanmore v. Hanmore, [2000] A.J. No. 171 (Quicklaw), 4 R.F.L. (5th) 348 (C.A.)

Contino v. Leonelli-Contino, [2005] 3 S.C.R. 217

Schick v. Schick, [2008] A.J. No. 556 (Quicklaw), 55 R.F.L. (6th) 1 (C.A.)

Hunt v. Smolis-Hunt, [2001] A.J. No. 1170 (Quicklaw), 20 R.F.L. (5th) 409 (Alta. C.A.).

D.B.S. v. S.R.G., L.J.W. v. T.A.R., Henry v. Henry, Hiemstra v. Hiemstra, [2006] 2 S.C.R. 231

Fleury v. Fleury, [2009] A.J. No. 105 (Quicklaw), 62 R.F.L. (6th) 14 (C.A.)

Haisman v. Haisman, [1994] A.J. No. 553 (Quicklaw), 7 R.F.L. (4th) 1 (C.A.)

9. Spousal Support

Divorce Act, ss. 15.2 and 15.3

Payne, C.F.L., 222-352

Spousal Support Advisory Guidelines (Department of Justice, Canada, July 2008)

Carol Rogerson and Rollie Thompson, “The Spousal Support Advisory Guidelines Three and a Half Years (almost) Later”, July 2008 (Online Quicklaw or Carswell)

Moge v. Moge, [1992] 3 S.C.R. 813

Bracklow v. Bracklow, [1999] 1 S.C.R. 420

Miglin v. Miglin, [2003] 1 S.C.R. 303

Liboiron v. Liboiron, [2008] A.J. No. 1185 (Quicklaw), 59 R.F.L. (6th) 265 (C.A.)

Boston v. Boston, [2001] 2 S.C.R. 413

Leskun v. Leskun, [2006] 1 S.C.R. No. 920

Sawatzky v. Sawatzky, [2008] A.J. 1171 (Quicklaw), 59 R.F.L. (6th) 88 (C.A.)

Shields v. Shields, [2008] A.J. No. 598 (Quicklaw), 53 R.F.L. (6th) 9 (C.A.)

10. Variation, Rescission or Suspension of Corollary Support Orders

Divorce Act, s. 17

Payne, C.F.L., 295-311 and 425-432

Federal Child Support Guidelines, s. 14

Rosario v. Rosario (1991), 37 R.F.L. (3d) 24 (Alta. C.A.)

11. Interjurisdictional Support Orders

Divorce Act, ss. 18 and 19

12. Custody and Access

Divorce Act, ss. 16 (original order) and 17 (variation, rescission or suspension)

Payne, C.F.L., 474-518

Gordon v. Goertz, [1996] 2 S.C.R. 27

Nieuwesteeg v. Barron, [2009] A.J. No. 677 (Quicklaw) (C.A.)

Van de Perre v. Edwards, [2001] 2 S.C.R. 1014

V.L. v. D.L., [2001] A.J. No. 1259 (Quicklaw), 206 D.L.R. (4th) 325 (C.A.)

13. Effect of Corollary Orders

Divorce Act, s. 20

14. Appeals

Divorce Act, s. 21

15. Evidence and Procedure

Divorce Act, ss. 23, 24, 25 and 26

16. Transitional Provisions

Divorce Act, ss. 33, 34 and 35

IV CHILD AND SPOUSAL SUPPORT UNDER PROVINCIAL LEGISLATION

1. General

Family Law Act, S.A. 2003, c. F-4.5

Interjurisdictional Support Orders Act, S.A. 2002, c. I-3.5

Adult Interdependent Relationships Act, S.A. 2002, c. A-4.5

Maintenance Enforcement Act, R.S.A. 2000, c. M-1

Alberta Child Support Guidelines

Payne, C.F.L., 522-525

2. Definitions

Family Law Act, ss. 46-48

3. Child Support Statutory Criteria

Family Law Act, ss. 49-55

4. Spousal Support or Adult Independent Partner – Statutory Criteria

Family Law Act, ss. 56-63

5. General Matters

Family Law Act, ss. 64-82

V. ESTABLISHING PARENTAGE

Family Law Act, ss. 6-15

VI GUARDIANSHIP, CUSTODY AND ACCESS (PARENTING AND CONTACT ORDERS) UNDER PROVINCIAL LEGISLATION; CHILD ABDUCTION

Family Law Act, S.A. 2003, c. F-4.5, ss. 16 - 45

Extra-Provincial Enforcement of Custody Orders Act, R.S.A. 2000, c. E-14

International Child Abduction Act, R.S.A. 2000, c. I-4
Criminal Code, ss. 249-250.5
Payne, C.F.L., 526-563
Thomson v. Thomson, [1994] 3 S.C.R. 551
King v. Low, [1985] 1 S.C.R. 87, *sub nom. K.K. v. G.L. & B.J.L.* (1985), 44 R.F.L. (2d) 113 (S.C.C.)
Gordon v. Goertz, [1996] 2 S.C.R. 27
Beckedorf v. Beckedorf, [2008] A.J. No. 1367 (Quicklaw), 61 R.F.L. (6th) 265 (C.A.)

VII MATRIMONIAL PROPERTY

1. Property Division

The Matrimonial Property Act, R.S.A. 2000, c. M-8, Part 1
Best v. Best, [1999] 2 S.C.R. 868
Rick v. Brandsema, [2009] S.C.J. No 10 (Quicklaw), 62 R.F.L. (6th) 239 (S.C.C.)
Mazurenko v. Mazurenko, [1981] A.J. No. 23 (Quicklaw), 23 R.F.L. (2d) 113 (C.A.)
Dwelle v. Dwelle, [1982] A.J. No. 24 (Quicklaw), 31 R.F.L. (2d) 113 (C.A.)
Quigg v. Quigg, [1983] A.J. No. 488 (Quicklaw), 32 R.F.L. (2d) 113 (C.A.)
Wilson v. Wilson, [1986] A.J. No. 419 (Quicklaw), 2 R.F.L. (3d) 86 (C.A.)
Adderson v. Adderson, [1987] A.J. No. 252, 7 R.F.L. (3d) 185 (C.A.)
Harrower v. Harrower, [1989] A.J. No. 629 (Quicklaw), 21 R.F.L. (3d) 369 (C.A.)
Jackson v. Jackson, [1989] A.J. 630 (Quicklaw), 21 R.F.L. (3d) 442 (C.A.)
Brokopp v. Brokopp, [1996] A.J. No. 77 (Quicklaw), 19 R.F.L. (4th) 1 (C.A.)
Krolik v. Krolik, [1996] A.J. No. 875 (Quicklaw), 24 R.F.L. (4th) 205 (C.A.)
Hughes v. Hughes, [1998] A.J. No. 1424 (Quicklaw), 168 D.L.R. (4th) 112 (C.A.)
Hodgson v. Hodgson, [2005] A.J. No. 22 (Quicklaw), 13 R.F.L. (6th) 339 (C.A.)
Carmichael v. Carmichael, [2007] A.J. No. 1, 40 R.F.L. (6th) 21 (C.A.)
Hanson v. Hanson, [2009] A.J. No. 623 (C.A.)

2. Severance of Joint Tenancy

Felske Estate v. Donszelman, [2009] A.J. No. 619 (C.A.)

3. Possession of Matrimonial Home

Matrimonial Property Act, R.S.A. 1980, c. M.-9, Part 2

Q.B. Family Law Practice Note 4 (Ex Parte Restraining Orders) (Sept. 1, 1997)

Protection Against Family Violence Act, R.S.A. 2000, c.P-27, as amended

Portigal v. Portigal, [1987] A.J. No. 1119 (Quicklaw), 12 R.F.L. (3d) 45 (C.A.)

Timms v. Timms, [1997] A.J. No. 463 (Quicklaw), 29 R.F.L. (4th) 392 (C.A.)

Boutin v. Viau, [2007] A.J. No. 716, 33 C.B.R. (5th) 212 (Q.B.)

Veselik-Titheridge v. Titheridge, [2007] A.J. No. 766 (Quicklaw), 427 A.R. 384 (Q.B.)

4. Occupation Rent

Milne v. Milne, [2009] A.J. No. 360 (C.A.), paras. 83-84

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<http://www.attorneygeneral.jus.gov.on.ca/english/legis/>

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<http://www.bclaws.ca/>

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<http://www.qp.alberta.ca/>

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<http://scc.lexum.umontreal.ca/en/index.html>