



NATIONAL COMMITTEE ON ACCREDITATION

SYLLABUS

FAMILY LAW (BRITISH COLUMBIA)

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 BRITISH COLUMBIA

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 content. This course will focus, therefore, on federal divorce legislation and British Columbia 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, as amended.
4. Family Relations Act, R.S.B.C. 1996, c. 128, as amended.
5. Spousal Support Advisory Guidelines (Department of Justice, Canada, July 2008).

REFERENCE MATERIALS

James G. McLeod and Alfred E. Mamo, *Matrimonial Property Law in Canada*, Volume 1 (Looseleaf Service), (**hereafter M.P.L.C.**), tab, British Columbia, Carswell, Thomson Professional Publishers, Vancouver/ Toronto

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 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

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

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

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

Family Relations Act, s. 1

2. Constitutional Framework

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

3. Fragmentation of Judicial Jurisdiction

Divorce Act, s. 2

Family Relations Act, ss. 5, 6, 7 and 12

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

4. Formation and Annulment of Marriage

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

II FAMILY VIOLENCE

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. 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

L.R.V. v. A.A.V. (Virani v. Virani), [2006] B.C.J. No. 264, supp. reasons, [2006] B.C.J. No. 1610, 264 D.L.R. (4th) 524 and 532 (B.C.C.A.)

2. Marriage Breakdown as Ground for Divorce

Divorce Act, s. 8

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

3. Emotional Dynamics of Marriage Breakdown: Dispute Resolution Processes

Divorce Act, ss. 9 and 10

Family Relations Act, ss. 2, 3 and 15 (family advocate; family court counsellor; expert witnesses)

Payne, C.F.L., 134-178

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

L.R.V. v. A.A.V. (Virani v. Virani), [2006] B.C.J. No. 264, supp. reasons, [2006] B.C.J. No. 1610, 264 D.L.R. (4th) 524 and 532 (C.A.)

7. Interim Support Orders

Divorce Act, subss. 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, SOR/97-175, 8 April, 1997, as amended

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

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

H.(U.V.) v. H.(M.W.), [2008] B.C.J. No. 717 (Quicklaw), 59 R.F.L. (6th) 25 (C.A.)

Mancuso v. Weinrath, [2005] B.C.J. No. 2509 (Quicklaw), 22 R.F.L. (6th) 165 (S.C.)

W.P.N. v. B.J.N., [2005] B.C.J. No. 12 (Quicklaw), 36 B.C.L.R. (4th) 330 (C.A.)

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

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

Maultsaid v. Blair, [2009] B.C.J. No. 467 (Quicklaw), 267 B.C.A.C. 139 (C.A.)

Clarke v. Babanese, [2009] B.C.J. No. 533 (Quicklaw) (C.A.)

Van Gool v. Van Gool [1998] B.C.J. No. 2513 (Quicklaw), 44 R.F.L. (4th) 331 (C.A.)

Kowalewich v. Kowalewich, [2001] B.C.J. No. 1406 (Quicklaw), 19 R.F.L.(5th) 330 (C.A.)

Hausmann v. Klukas, [2009] B.C.J. No. 121 (Quicklaw), 64 R.F.L. (6th) 54 (C.A.)

Teja v. Dhanda, [2009] B.C.J. No. 928 (Quicklaw) (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

9. Spousal Support

Divorce Act, ss. 15.2 and 15.3

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

Spousal Support Advisory Guidelines (Rogerson/Thompson, 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 Carswell and Quicklaw)

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

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

Gill-Sager v. Sager, [2003] B.C.J. No. 121 (Quicklaw), 36 R.F.L. (5th) 369 (C.A.)

Leskun v. Leskun, [2006] 1 S.C.R. 920

Chutter v. Chutter, [2008] B.C.J. No. 2398 (Quicklaw), 60 R.F.L. (6th) 263 (C.A.)

Yemchuk v. Yemchuk, [2005] B.C.J. No. 1748 (Quicklaw), 16 R.F.L. (6th) 430 (C.A.)

Beninger v. Beninger, [2007] B.C.J. No. 2657 (Quicklaw), 47 R.F.L. (6th) 11 (B.C.C.A.)

MacEachern v. MacEachern, [2006] B.C.J. No. 2917, 33 R. F. L. (6th) 315 (C.A.)

Mann v. Mann, [2009] B.C.J. No. 829 (Quicklaw) (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

Earle v. Earle, [1999] B.C.J. No. 383 (S.C.) (Quicklaw)

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

Chera v. Chera, [2008] B.C.J. No. 1807 (Quicklaw), 55 R.F.L. (6th) 247 (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 AND MAINTENANCE UNDER PROVINCIAL LEGISLATION; THE BRITISH COLUMBIA FAMILY RELATIONS ACT

1. Definitions of "Child", "Parent" and "Spouse"; Status of Applicant

Family Relations Act, ss. 1 and 91

Gostlin v. Kergin, [1986] B.C.J. No. 365 (Quicklaw), 1 R.F.L. (3d) 448 (C.A.)

Leveque v. Leveque (1990), 25 R.F.L. (3d) 1 (B.C.C.A.)

Zachata v. Zachata (1992), 41 R.F.L. (3d) 61 (B.C.C.A.)

Austin v. Goerz, [2007] B.C.J. No. 2546 (Quicklaw), 287 D.L.R. (4th) 69 (B.C.C.A.)

2. Proof of Paternity

Family Relations Act, ss. 94 and 95

3. Statutory Support Obligations; Applicable Criteria; Types of Order

Family Relations Act, ss. 88, 89, 90 and 93

4. Enforcement of Support Orders

Family Maintenance Enforcement Act, R.S.B.C. 1996, c. 127

5. Variation Proceedings

Family Relations Act, s. 96

Shortt v. Shortt (1987), 11 R.F.L. (3d) 95 (B.C.S.C.) (spousal support)

Luney v. Luney, [2007] B.C.J. No. 2483 (Quicklaw), 45 R.F.L. (6th) 10 (B.C.C.A.)

V CHILD CUSTODY UNDER PROVINCIAL LEGISLATION; THE BRITISH COLUMBIA FAMILY RELATIONS ACT; CHILD ABDUCTION

Family Relations Act, ss. 21-55

Thomson v. Thomson, [1994] 3 S.C.R. 551

Beatty v. Schatz, [2009] B.C.J. No. 1557 (Quicklaw) (C.A.)

VI MATRIMONIAL PROPERTY

1. Introduction

M.P.L.C., B.C. 4

2. Definition of "Spouse"

Family Relations Act, s. 1

3. Indian Lands

Derrickson v. Derrickson, [1986] 1 S.C.R. 285

4. Triggering Events

Family Relations Act, ss. 56 and 57

M.P.L.C., B.C. 4-8

5. Nature of Interest

Family Relations Act, s. 56

M.P.L.C., B.C. 8-10

6. Family Assets

Family Relations Act, s. 58

M.P.L.C., B.C. 10-28

Keith B. Farquhar, "Family Assets in British Columbia" (1995), 12 Can. Jl. Fam. Law 229

7. Debts and Liabilities

Stein v. Stein, [2008] 2 S.C.R. 263

8. Inherited Property

Lamb v. Lamb, [2007] B.C.J. No. 2149(S.C.) (Quicklaw)

9. Pensions

H.E.D.C. v. R.M.C., [2003] B.C.J. No. 1757 (Quicklaw), 43 R.F.L. (5th) 23 (C.A.)

Family Relations Act, ss. 70-86

Pension Benefits Standards Act, R.S.B.C. 1996, c. 352

10. Business Assets; Contributions; Onus of Proof

Family Relations Act, ss. 59 and 60

M.P.L.C., B.C. 28-40

11. Onus of Proof

Family Relations Act, s. 60

M.P.L.C., B.C. 40-41

12. Tracing

Billingsley v. Billingsley [1991] B.C.J. No. 2614 (Quicklaw), 36 R.F.L. (3d) 188 (C.A.)

13. Marriage Agreements

Family Relations Act, s. 61

Hartshorne v. Hartshorne, [2004] 1 S.C.R. 550

Rick v. Brandsema, [2009] S.C.J. No 10 (Quicklaw), 62 R.F.L. (6th) 239 (S.C.C.)

14. Canada Pension Plan

Family Relations Act, s. 62

15. Filing in Land Title Office

Family Relations Act, s. 63

16. Enforceability of Interest in Property

Family Relations Act, s. 64

17. Judicial Reapportionment on Basis of Fairness

Family Relations Act, s. 65

M.P.L.C., B.C. 41-78

Clarke v. Clarke (1991), 31 R.F.L. (3d) 383 (B.C.C.A.)

Lodge v. Lodge, [1993] B.C.J. No. 1468 (Quicklaw), 48 R.F.L. (3d) 365 (C.A.)

Toth v. Toth, [1995] B.C.J. No. 1993 (Quicklaw), 17 R.F.L. (4th) 55 (C.A.)

P.C.J.R. v. D.C.R., [2003] B.C.J. No. 792 (Quicklaw), 38 R.F.L. (5th) 408 (C.A.)

Gould v. Sandau, [2005] B.C.J. No. 694 (Quicklaw) (C.A.)

18. Powers of Court

Family Relations Act, s. 66

M.P.L.C., B.C. 78-92

19. Interim Orders

Bodo v. Bodo (1990), 25 R.F.L. (3d) 295 (B.C.S.C.)

Reilly v. Reilly (1992), 44 R.F.L. (3d) 72 (B.C.C.A.)

20. Possession of Matrimonial Home; Occupation Rent

Boeckler v. Boeckler, [1987] B.C.J. No. 1544 (Quicklaw), 9 R.F.L. (3d) 375 (C.A.)

Oyama v. Oyama, [2009] B.C.J. No. 527, (Quicklaw), 63 R.F.L. (6th) 1 (C.A.)

21. Variation of Marriage Settlements

Family Relations Act, s. 68

VII CHANGE OF NAME

Trociuk v. British Columbia (Attorney General), [2003] 1 S.C.R. 835

VIII WILLS VARIATION ACT

Picketts v. Hall Estate, [2009] B.C.J. no. 1415 (Quicklaw) (C.A.)

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

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