



## NATIONAL COMMITTEE ON ACCREDITATION

### SYLLABUS

### FAMILY LAW (ONTARIO)

**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 ONTARIO

### 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 Ontario 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*, 3<sup>rd</sup> 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. *Family Law Act*, R.S.O. 1990, c. F.3, as amended
5. *Children's Law Reform Act*, R.S.O. 1990, c. C. 12, as amended
6. *Spousal Support Advisory Guidelines* (Department of Justice, Canada, July 2008)

## REFERENCE MATERIALS

T. W. Hainsworth, *The Ontario Family Law Act Manual*, Canada Law Book Inc.

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

B. Hovius, *Family Law: Cases , Notes and Materials*

D. Steinberg, E. Lenkinski and A. James, *Ontario Family Law Practice*, Lexis/Nexis

## 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 v. Bona*, [2002] 4 S.C.R. 325

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

*Amendments Because of the Supreme Court of Canada Decision in M. v. H. Act*, 1999, S.O. 1999, c. 6

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

*Vanasse v. Seguin*, [2009] O.J. No. 3211 (C.A.)

#### 2. Constitutional Framework

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

**3. Fragmentation of Judicial Jurisdiction**

*Divorce Act*, s. 2

*Family Law Act*, R.S.O. 1990, c. 4, ss. 1(1), 4(1) and 34(2)

*Children's Law Reform Act*, R.S.O. 1990, c. C.12, ss. 3 and 18

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

*Rothgiesser v. Rothgiesser*, [2000] O.J. No. 33 (Quicklaw), 46 O.R. (3d) 577 (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: Reconciliation, Negotiation, Mediation, Arbitration**

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

*Children's Law Reform Act*, ss. 30 (assessments) and 31 (mediation)

*Family Law Act*, s. 3 (mediation)

Payne C.F.L., 134-178

**4. Bars to Divorce**

*Divorce Act*, s. 11

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

*Bruker v. Marcovitz*, [2007] 3 S.C.R. 607

**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*, 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

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

*MacArthur v. Demers* , [1999] O.J. No. 5868 (Quicklaw), 166 D.L.R. (4<sup>th</sup>) 172 (Gen. Div)

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

*Park v. Thompson*, [2005] O.J. No. 1695 (Quicklaw), 13 R.F.L. (6<sup>th</sup>) 415 (C.A.)

*Lewi v. Lewi*, [2006] O.J. No. 1847 (Quicklaw), 28 R.F.L. (6<sup>th</sup>) 250 (C.A.)

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

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

*A.M.D. v. A.J.P.* (2002), 61 O.R. (3d) 711 (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

*MacKinnon v. MacKinnon*, [2005] O.J. No. 1552 (Quicklaw), 7 R.F.L. (6<sup>th</sup>) 121 (C.A.)

## 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 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

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

*Meiklejohn v. Meiklejohn*, [2001] O.J. No. 3911 (Quicklaw), 19 R.F.L. (5<sup>th</sup>) 167 (C.A.)

*Tierney-Hynes v. Hynes*, [2005] O.J. No. 2661 (Quicklaw), 75 O.R. (3d) 737 (C.A.)

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

*Fisher v. Fisher*, [2008] O.J. No. 38 (Quicklaw), 47 R.F.L. (6<sup>th</sup>) 235 (Ont. C.A.)

*Jessop v. Wright*, [2008] O.J. No. 3849 (Quicklaw), 56 R.F.L. (6<sup>th</sup>) 29 (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

*Wright v. Zaver* (2002), 49 O.R. (3d) 629 (C.A.)

*Bhupal v. Bhupal*, [2009] O.J. No. 2655 (Quicklaw) (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

Nicholas Bala and Joanna Harris, "Parental Relocation: Applying the Best Interests of the Child Test in Ontario" (2006) 22 Can. J. Fam Law 127

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

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

*Kaplanis v. Kaplanis*, [2005] O.J. No. 275 (Quicklaw), 194 O.A.C. 106 (C.A.)

*Ladissa v. Ladissa*, [2005] O.J. No. 276 (Quicklaw), 11 R.F.L. (6<sup>th</sup>) 50 (C.A.)

*Stefureak v. Chambers*, [2004] O.J. No. 4253 (Quicklaw), 6 R.F.L. (6<sup>th</sup>) 212 (Sup. Ct.)

**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; THE ONTARIO FAMILY LAW ACT**

**1. General**

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

*Uniform Federal and Provincial Child Support Guidelines Act*, S.O. 1997, c. 20

*Ontario Child Support Guidelines*, Ont. Reg. 391/97

**2. Definitions of "Child", "Parent", "Spouse" and "Dependant"**

*Family Law Act*, ss. 1 and 29

**3. Statutory Support Obligations**

*Family Law Act*, ss. 30, 31, 32

- 4. Status of Applicant**  
*Family Law Act*, subs. 33(2) and (3)
  - 5. Statutory Criteria**  
*Family Law Act*, s. 33
- V. STATUS OF CHILDREN UNDER ONTARIO CHILDREN'S LAW REFORM ACT**
- 1. Abolition of Illegitimacy**  
*Children's Law Reform Act*, ss. 1 and 2
  - 2. Establishment of Parentage**  
*Children's Law Reform Act*, ss. 3-17  
*A.A. v. B.B.*, [2007] O.J. No. 2 (Quicklaw), 35 R.F.L. (6<sup>th</sup>) 1 (C.A.)
- VI CHILD CUSTODY UNDER PROVINCIAL LEGISLATION; THE ONTARIO CHILDREN'S LAW REFORM ACT; CHILD ABDUCTION**
- Children's Law Reform Act*, ss. 18-46, especially ss. 24, 30, 31 and 46  
*Payne*, C.F.L., 526-563  
*Thomson v. Thomson*, [1994] 3 S.C.R. 551  
*Cannock v. Fleguel*, [2008] O.J. No. 4480 (Quicklaw), 242 O.A.C. 221 (C.A.)
- VII OWNERSHIP AND EQUALIZATION OF FAMILY PROPERTY - PART ONE OF ONTARIO FAMILY LAW ACT**
- 1. Introduction**  
*Payne*, C.F.L., 564-566
  - 2. Definition of "Spouse"**  
*Family Law Act*, subs. 1(1) and 1(2)  
*Payne*, C.F.L., 567-568
  - 3. Definition of "Court"**  
*Family Law Act*, subs. 1(1)

- 4. Definition of “Property”**  
Payne, C.F.L., 579-581
- 5. Indian Lands**  
Payne, C.F.L., 568
- 6. Conflict of Laws**  
*Family Law Act*, s. 15
- 7. Domestic Contracts**  
Payne, C.F.L., 568 and 603-604
- 8. Ownership of Property; Resulting and Constructive Trusts**  
*Family Law Act*, ss. 10 and 14  
Payne, C.F.L. 568-570  
*Rawluk v. Rawluk*, [1990] 1 S.C.R. 70
- 9. Triggering Events for Equalization of Net Family Properties; Limitation Periods**  
*Family Law Act*, ss. 5 and 7  
Payne, C.F.L., 571-573
- 10. Equalization of Net Family Properties; Significance of Ownership; Definition of Property; Pensions; Valuation; Pre-Marital Deductions; Excluded Property**  
*Family Law Act*, s. 4  
Payne, C.F.L., 573-604  
*Lowe v. Lowe*, [2006] O.J. No. 132 (Quicklaw), 22 R.F.L. (6<sup>th</sup>) 438 (C.A.)
- 11. Unequal Division of Net Family Properties**  
*Family Law Act*, sub. 5(6)  
Payne, C.F.L., 604-612  
*Serra v. Serra*, [2009] O.J. No. 432 (Quicklaw), 246 O.A.C. 37 (C.A.)
- 12. Entitlement on Death**  
*Family Law Act*, subs. 5(2) and s. 6

Payne, C.F.L., 612-616

**13. Financial Disclosure; Mandatory Property and Financial Statements**

*Family Law Act*, s. 8

Payne, C.F.L., 616-617

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

*LeVan v. LeVan*, [2008] O.J. No. 1905 (Quicklaw), 51 R.F.L. (6<sup>th</sup>) 237 (C.A.)

**14. Powers of Court; Retrospective Operation; Prejudgment Interest**

*Family Law Act*, ss. 9, 11, 12 and 13

Payne, C.F.L., 617-623

**VIII POSSESSION AND DISPOSITION OF MATRIMONIAL HOME UNDER PART II OF ONTARIO FAMILY LAW ACT**

**1. Jurisdiction**

*Family Law Act*, s. 1(1)

**2. Definition of Matrimonial Home**

*Family Law Act*, s. 18

Payne, C.F.L., 625

**3. Designation of Matrimonial Home**

*Family Law Act*, s. 20

Payne, C.F.L., 625

**4. Disposition of Matrimonial Home**

*Family Law Act*, ss. 21, 22 and 23

Payne, C.F.L., 626

**5. Possession of Matrimonial Home; Variation Proceedings; Effect of Death; Registration Against Land; Situs**

*Family Law Act*, ss. 19 and 24

Payne, C.F.L., 626-631

**IX DOMESTIC CONTRACTS****1. Marriage Contracts, Cohabitation Agreements, Separation Agreements**

*Family Law Act*, ss. 51, 52, 53 and 54

Payne, C.F.L., 71-90

**2. Formal Requirements; Capacity to Contract**

*Family Law Act*, s. 55

Payne, C.F.L., 76-77

**3. Setting Aside Domestic Contracts;**

*Family Law Act*, s. 56

Payne, C.F.L., 78-86

*LeVan v. LeVan*, [2008] O.J. No. 1905, 51 R.F.L. (6<sup>th</sup>) 237 (C.A.)

**4. Incorporation of Terms of Domestic Contract in Judgments**

Payne, C.F.L., 86-87

**5. Filing, Enforcement, Variation and Termination of Support Provisions of Domestic Contracts**

*Family Law Act*, ss. 35, 37 and 38

Payne, C.F.L., 87-90

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

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