Syllabus

Family Law (Alberta)

(Revised for May 2020)

Candidates are advised that the syllabus may be updated from time-to-time without prior notice.

Candidates are responsible for obtaining the most current syllabus available.
Family Law (Alberta)

This syllabus includes legislative changes that take effect on July 1, 2020. Every legislative change is addressed in a document that is available online at the Department of Justice, Canada website. The document is entitled: "The Divorce Act Changes Explained". Irwin Law plans on publishing Payne and Payne, Canadian Family Law, 8th ed., 2020 on or before July 1, 2020. References in the current syllabus necessarily can only refer to Payne and Payne, Canadian Family Law, 7th ed., 2017. The highlighted text hereafter appearing in this syllabus inform the candidate of particular sections of the Department of Justice document that require the candidate’s attention for the purpose of the Family Law examination.

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 restriction 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; and
- to identify the special nature of family disputes and innovative approaches to their resolution, such as mediation, arbitration and custody assessments.

EXAMINATION

The examination is a three-hour open-book exam. Students may take any material they wish into the examination room. 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 on the NCA website.

PRIMARY TEXT AND STATUTES


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

5. *Spousal Support Advisory Guidelines: The Revised User’s Guide* (Rogerson/Thompson, Department of Justice, Canada, April 2016)


7. *Family Property Act*, c. F-4.7 comes into force on January 1, 2020 and will apply to both married couples and interdependent partners.

REFERENCE MATERIALS


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
   Civil Marriage of Non-Residents Act, S.C. 2013, c. 32

2. Constitutional Framework
   Payne, C.F.L., 10-11

3. Fragmentation of Judicial Jurisdiction
   Payne, C.F.L., 12-13

4. Formation and Annulment of Marriage
   Marriage Act, R.S.A. 2000, c. M-5, as amended
   Payne, C.F.L., 14-38

II. FAMILY VIOLENCE

   Protection Against Family Violence Act, R.S.A. 2000, c. P-27
   Payne, C.F.L., 93-133

III. DIVORCE (INCLUDING COROLLARY PROCEEDINGS FOR SUPPORT AND CUSTODY)

1. Emotional Dynamics of Marriage Breakdown; Dispute Resolution Processes
   Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) as amended, s.7 to 7.7(3) (negotiation; mediation)
   Family Justice Services (Alberta Courts online)
   Payne C.F.L., 134-177
2. **Jurisdiction**
   *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) as amended, ss. 3 to 6.3
   Payne, C.F.L., 179-191

3. **Effective Date and Effect of Divorce**
   *Divorce Act,* ss. 12, 13 and 14
   Payne, C.F.L., 191-193

4. **Recognition of Foreign Divorces**
   *Divorce Act,* s. 22
   Payne, C.F.L., 194-196

5. **Marriage Breakdown as Ground for Divorce**
   *Divorce Act,* s. 8
   Payne, C.F.L., 196-210

6. **Bars to Divorce**
   *Divorce Act,* s. 11
   Payne, C.F.L., 210-221

7. **Interim Support Orders**
   *Divorce Act,* subs. 15.1(2) and 15.2(2)
   Payne, C.F.L., 224-230 and 528-529

8. **Child Support Orders**
   *Divorce Act,* ss. 15.1 and 15.3
   *Federal Child Support Guidelines,* as amended
   *Child Support Recalculation Program Regulation,* Alta. Reg. 287/2009, as amended
   Payne, C.F.L., 389-544 and 650-652
9. **Spousal Support Orders**

*Divorce Act*, ss. 15.2 and 15.3  
Payne, C.F.L., 222-388  
*Spousal Support Advisory Guidelines* (Rogerson/Thompson, Department of Justice, Canada, July 2008)  
*Spousal Support Advisory Guidelines: The Revised User's Guide* (Rogerson/Thompson, Department of Justice, Canada, April 2016)  
*Dowhaniuk v Dowhaniuk*, 2014 ABQB 217

10. **Variation, Rescission or Suspension of Corollary Support Orders**

*Divorce Act*, s. 17  
*Federal Child Support Guidelines*, s. 14  
Payne, C.F.L., 311-333 and 467-484  
*L.M.P. v. L.S.*, [2011] 3 SCR 775

11. **Parenting Arrangements after Divorce**

As of July 1, 2020, fundamental legislative changes will come into effect with respect to parenting disputes that arise between divorcing and divorced parents. Many of these changes reflect pre-existing provincial legislative provisions in Alberta, British Columbia or Nova Scotia. The changes include: replacing the traditional terminology of “custody” and “access” with terminology that relates to parenting; establishing a non-exhaustive list of criteria to assist courts in determining the “best interests of the child”; calling upon prospective litigants and their lawyers to address the feasibility of using out-of-court family dispute resolution services; introducing measures to assist courts in addressing family violence; and establishing a framework for situations where one of the parents wishes to relocate a child of the marriage. Candidates taking the Family Law examination in 2020 are expected to be familiar with these changes. The best current source respecting these changes are found online at the Department of Justice, Canada website in a document entitled: “The Divorce Act Changes Explained”. Examination candidates should focus their attention on sections 16(1) to 17(11) of the revised *Divorce Act* set out in this document.
12. Effect of Corollary Orders
   *Divorce Act*, s. 20

13. Appeals
   *Divorce Act*, s. 21

14. Evidence and Procedure
   *Divorce Act*, ss. 23, 24, 25 and 26

IV. CHILD AND SPOUSAL SUPPORT UNDER PROVINCIAL LEGISLATION

1. General
   *Alberta Child Support Guidelines*
   Payne, C.F.L., 647-653

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

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VII. MATRIMONIAL PROPERTY


1. **Property Division**

The *Matrimonial Property Act* has been amended so as to apply to both married couples and interdependent partners. The title and chapter number of the *Matrimonial Property Act* have been repealed and the following substituted: *Family Property Act*, c. F-4.7

*Smith v. Smith*, 2016 ABCA 376
*O’Neil v. Yaskowich*, 2018 ABQB 599
*Peermohamed v. Pirani*, 2018 ABQB 698

2. **Severance of Joint Tenancy**


3. **Possession of Matrimonial Home**

*Family Property Act*, c. F-4.7, 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

4. **Occupation Rent**

Online Resources

The majority of case law and legislative resources needed by NCA students are available on CanLII, the free legal information resource funded by the Federation of Law Societies of Canada (www.canlii.org). That includes all decisions of the Supreme Court of Canada, and all federal, provincial, territorial and appellate courts.

Your registration fee also includes free access to the Quicklaw resources of Lexis Nexis. Your ID and password will be arranged and emailed to your email address on file a few weeks after the end of the registration session.

Sign in to Quicklaw via http://www.lexisnexis.com/ca/legal. The first time you sign in to Quicklaw you will be asked to change or personalize your password. Remember your User ID and password are personal, and should not be shared with anyone.

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