Syllabus

Family Law
( Ontario )

(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 (Ontario)

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 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

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

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

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
   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., 12-13

4. Formation and Annulment of Marriage
   Payne, C.F.L., 14-38

II. FAMILY VIOLENCE

   Payne, C.F.L., 93-133

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

1. Emotional Dynamics of Marriage Breakdown: Reconciliation, Negotiation, Mediation, Arbitration
   Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) as amended, ss. s.7 to 7.7(3) (negotiation; mediation)
   Children’s Law Reform Act, ss. 30 (assessments) and 31 (mediation)
   Family Law Act, s. 3 (mediation)
   Payne C.F.L., 134-177
2. **Jurisdiction**

   *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) as amended, ss. 3-6.3
   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
   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)  

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

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

11. **Parenting Arrangements after Divorce: Custody and Access**

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; FAMILY LAW ACT; INTERJURISDICTIONAL SUPPORT ORDERS ACT

1. **General**
   
   Payne, C.F.L., 647-653


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. Parentage
   *Children’s Law Reform Act, Pat 1*

VI. CHILD CUSTODY UNDER PROVINCIAL LEGISLATION; THE ONTARIO CHILDREN’S LAW REFORM ACT

   *Children’s Law Reform Act, ss. 18-46, especially ss. 24, 30, 31 and 46*
   Payne, C.F.L., 653-702
   *Whitteker v. Legue, 2018 ONSC 1557 at paras. 13-16 (grandparents)*
   *Office of the Children’s Lawyer v. Baley, 2018 SCC 16*

VII. OWNERSHIP AND EQUALIZATION OF FAMILY PROPERTY - PART ONE OF ONTARIO FAMILY LAW ACT

1. Introduction
   Payne, C.F.L., 705

2. Definition of “Spouse”
   *Family Law Act, subs. 1(1) and 1(2)*
   Payne, C.F.L., 706

3. Definition of "Court"
   *Family Law Act, subs. 1(1)*

4. Definition of “Property”
   Payne, C.F.L., 719-725

5. Conflict of Laws
   *Family Law Act, s. 15*

6. Domestic Contracts
   Payne, C.F.L., 707 and 742-743

7. Ownership of Property; Resulting and Constructive Trusts
8. Effect of Bankruptcy on Equalization of Net Family Properties

9. Triggering Events for Equalization of Net Family Properties; Limitation Periods
   Family Law Act, ss. 5 and 7
   Payne, C.F.L., 710-713

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., 713-743

11. Unequal Division of Net Family Properties
    Family Law Act, sub. 5(6)
    Payne, C.F.L., 743-750

12. Entitlement on Death
    Family Law Act, subs. 5(2) and s. 6
    Payne, C.F.L., 750-754

13. Financial Disclosure; Mandatory Property and Financial Statements
    Family Law Act, s. 8
    Payne, C.F.L., 754-755

14. Powers of Court; Retrospective Operation; Prejudgment Interest
    Family Law Act, ss. 9, 11, 12 and 13
    Payne, C.F.L., 755-760

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; Designation of Matrimonial Home**

   *Family Law Act*, ss. 18 and 20
   Payne, C.F.L., 763-764

3. **Disposition of Matrimonial Home**

   *Family Law Act*, ss. 21, 22 and 23
   Payne, C.F.L., 764

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

   *Family Law Act*, ss. 19 and 24
   Payne, C.F.L., 764-770

5. **Occupation Rent and Accounting Claims**

   Payne, C.F.L., 762-763

6. **Partition and Sale**


7. **Severance of Joint Tenancy**


**IX. DOMESTIC CONTRACTS**

Payne, C.F.L., 60-92

1. **Marriage Contracts, Cohabitation Agreements, Separation Agreements**

   *Family Law Act*, ss. 51, 52, 53 and 54
   Payne, C.F.L., 70-74

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

   *Family Law Act*, s. 55
   Payne, C.F.L., 75-76

3. **Setting Aside Domestic Contracts**
4. **Incorporation of Terms of Domestic Contract in Judgments**
   Payne, C.F.L., 88-89

5. **Filing, Enforcement, Variation and Termination of Support Provisions of Domestic Contracts**
   *Family Law Act*, ss. 35, 37 and 38
   Payne, C.F.L., 86-89
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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