



# 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 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

### 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**

1. Payne and Payne, *Canadian Family Law*, 7th ed., 2017, 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* (Department of Justice, Canada)
4. *Spousal Support Advisory Guidelines* (Department of Justice, Canada, July 2008)
5. *Family Law Act*, R.S.O. 1990, c. F.3, as amended.
6. *Children's Law Reform Act*, R.S.O. 1990, c. C. 12, as amended.

## **REFERENCE MATERIALS**

- J.G. McLeod and A.E. Mamo, *Matrimonial Property Law in Canada* (Looseleaf Service), Ontario tab, Carswell, Thomson Professional Publishing, Toronto/Vancouver
- Payne and Payne, *Child Support Guidelines in Canada, 2020*, Irwin Law



## **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

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

*Québec (Attorney General) v. A.*, 2013 SCC 5, [2013] S.C.J. No. 5 (Quicklaw)

*Kerr v. Baranow* and *Vanasse v. Seguin*, [2011] 1 S.C.R. 269

#### **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  
*Office of the Children’s Lawyer v. Balev*, 2018 SCC 16, [2018] 1 SCR 398

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

**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*, SOR/97-175, 8 April, 1997, as amended.  
Payne, C.F.L., 389-544 and 650-652  
*Senos v. Karcz*, 2014 ONCA 459, [2014] O.J. No. 2808 (C.A.) (Quicklaw)  
*Chartier v. Chartier*, [1999] 1 S.C.R. 242  
*Wright v. Zaver*, [2002] O.J. No. 1098 (Quicklaw), 24 R.F. L. (5th) 207 (C.A.)  
*Lewi v. Lewi*, [2006] O.J. No. 1847 (Quicklaw), 28 R.F.L. (6th) 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] O.J. No. 3731 (Quicklaw), sub nom. *Drygala v. Pauli* (2002), 29 R.F.L. (5th) 293(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 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)

*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

*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.)

*Davis v. Crawford*, 2011 ONCA 294, [2011] O.J. No. 1719 (Quicklaw)

## **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

*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. 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

*Whitaker 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

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

*Rick v. Brandsema*, [2009] 1 S.C.R. 295

### **7. Ownership of Property; Resulting and Constructive Trusts**





*Family Law Act*, ss. 10 and 14  
Payne, C.F.L. 707-710

**8. Effect of Bankruptcy on Equalization of Net Family Properties**

*Schreyer v. Schreyer*, 2011 SCC 35, [2011] S.C.J. No. 35 (Quicklaw)

**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  
*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., 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**

*Higgins v. Higgins*, [2001] O.J. No. 3011 (Sup. Ct.) (Quicklaw)

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

**6. Partition and Sale**

*Martin v. Martin* (1992), 8 O.R., (3d) 41 (C.A.)

**7. Severance of Joint Tenancy**

*Hansen Estate v. Hansen*, 2012 ONCA 112, [2012] O.J. No. 780(C.A.) (Quicklaw)

**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**



*Family Law Act*, s. 56 and subs. 33(4)

Payne, C.F.L., 77-84 and 86-87

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

**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



### Canadian Publishers

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### 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](http://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.

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