



Syllabus

Family Law (British Columbia)

(Revised August 2021)

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 (British Columbia)

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. Interjurisdictional orders fall outside the scope of the course. 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 collaborative law, mediation, arbitration and custody assessments.



PRIMARY TEXT AND STATUTES

1. Payne and Payne, *Canadian Family Law*, 8th ed., 2020, 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. *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)
6. *Family Law Act*, S.B.C. 2011, c. 25

REFERENCE MATERIALS

Payne and Payne, *Child Support Guidelines in Canada, 2020*, Irwin Law

Trudi L. Brown, Q.C., *British Columbia Family Law Practice*, 2020 Edition, LexisNexis Canada

EXAMINATION

The examination is a three-hour open-book exam. Students may take any printed 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 with this syllabus.



COURSE CONTENT

I INTRODUCTION

1. Definition of Marriage

Civil Marriage Act, S.C. 2005, c. 33

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

Family Law Act, ss.1 and 3

2. Constitutional Framework

Payne, C.F.L., 10-11

3. Fragmentation of Judicial Jurisdiction

Payne, C.F.L., 11-13

4. Formation and Annulment of Marriage

Payne, C.F.L., 14-34

II FAMILY VIOLENCE

Divorce Act, ss. 2(1), 16(3)(j), 16(4)

Payne, C.F.L., 89-128 and see ch. 10

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) and 10

Family Law Act, Part 2, Resolution of Family Disputes

Payne, C.F.L., 129-175

2. Jurisdiction

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



Payne, C.F.L., 177-188

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

Kong v. Song, 2019 BCCA 84.

3. Effective Date and Effect of Divorce

Divorce Act, ss. 12, 13 and 14

Payne, C.F.L., 188-191

4. Recognition of Foreign Divorces

Divorce Act, s. 22

Payne, C.F.L., 191-194

5. Recognition of foreign order that varies parenting or contact order

Divorce Act, s. 22.1

Payne, C.F.L., 194

6. Marriage Breakdown as Ground for Divorce

Divorce Act, s. 8

Payne, C.F.L., 195-209

7. Bars to Divorce

Divorce Act, s. 11

Payne, C.F.L., 209-220

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

8. Interim Support Orders

Divorce Act, s. 15.1(2) and 15.2(2)

Payne, C.F.L., 223-230 and 528-530



9. Spousal Support Orders

Divorce Act, ss. 15.2 and 15.3

Payne, C.F.L., 221-381

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

Chutter v. Chutter, 2008 BCCA 507, [2008] B.C.J. No. 2398 (C.A.) (Quicklaw)

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

Redpath v. Redpath, [2006] B.C.J. No. 1550 (C.A.) (Quicklaw)

McKenzie v. Perestrelo, 2014 BCCA 161, [2014] B.C.J. No. 734 (C.A.) (Quicklaw)

Sandy v. Sandy, 2018 BCCA 182

Parton v. Parton, 2018 BCCA 273

10. Variation, Rescission or Suspension of Corollary Support Orders

Divorce Act, s. 17

Payne, C.F.L., 305-326 and 465-481

Federal Child Support Guidelines, s. 14

L.M.P. v. L.S., [2011] 3 SCR 775



11. Retroactive Spousal Support Orders

Kerr v Baranow, 2011 SCC 10

Payne, C.F.L., 327-333

12. Spousal Support Advisory Guidelines

Payne, C.F.L., 333-380

13. 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., 382-547 and 639-642

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.)

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

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

14. Retroactive Child Support Orders

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

Michel v Graydon, 2020 SCC 24

15. Parenting Arrangements after Divorce

Fundamental legislative changes have been enacted with respect to parenting disputes that arise between divorcing and divorced parents. Due to the Covid-19 pandemic, they will only come into effect on March 1, 2021. 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: see Payne and Payne, *Canadian Family Law*, 8th ed, 2020, at pages 548-622. See also “The *Divorce Act* Changes Explained” on the Department of Justice, Canada website, 2019 CanLII Docs 3950. Examination candidates should focus their attention on sections 16(1) to 17(11) of the revised *Divorce Act*.

1. Definitions

Payne, C.F.L., 549-551

2. Interim Parenting and Contact Orders

Payne, C.F.L., 554-557

3. Parenting Orders; Parenting Responsibilities; Parenting Time; Shared Parenting

Divorce Act, ss.16.1-16.4

Payne, C.F.L., 557-576

4. Contact Orders

Divorce Act, s. 16.5

Payne, C.F.L., 549-550, 576

5. Terms and Conditions; Review Orders; Supervision Orders

Payne, C.F.L., 577-580

6. Intended Change in Place of Residence; Relocation Rights

Divorce Act, ss. 16.7-16.96

Payne, C.F.L., 580-585

7. Variation of Orders

Divorce Act, s. 17(1)-17(11)

Payne, C.F.L., 598-606

8. Best Interests of Child



Divorce Act, s. 16(1)-16(7)

Payne, C.F.L., 585-592

9. Voice of the Child

Payne, C.F.L., 608-615

10. Religious Upbringing

Payne, C.F.L., 597-598

11. Effect of Agreement; Parenting Plan

Divorce Act, s.16.6 (parenting plan)

Payne, C.F.L., 595-596 and 616-617

12. Conduct; Family Violence

Payne, C.F.L., 550-551, 592-595

13. Parental Conflict Resolution

Payne, C.F.L., 606-608

14. High Conflict; Parental Alienation

Payne, C.F.L., 618-622

IV CHILD AND SPOUSAL MAINTENANCE UNDER PROVINCIAL LEGISLATION

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

Family Law Act, ss. 1, 3 and 146

Payne, C.F.L., 636-643

2. Parentage

Family Law Act, Part 3

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



Family Law Act, Part 7.

4. Enforcement of Support Orders

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

5. Variation Proceedings

Family Law Act, ss. 152 (child support) and 167 (spousal support)

V CARE OF AND TIME WITH CHILDREN UNDER PROVINCIAL LEGISLATION

Family Law Act, Part 4

VI MATRIMONIAL PROPERTY

Family Law Act, Part 5 (Property Division) and Part 6 (Pension Division)

1. Definitions of "Spouse" and "Spouses and Relationships Between Spouses"

Family Law Act, ss. 1 and 3

2. Triggering Events

Family Law Act, ss. 81 and 83

3. Nature of Interest

Family Law Act, s. 81

4. Determining and Valuing Family Property and Family Debt; Excluded Property

Family Law Act, ss. 83-87

V.J.F v. S.K.W., 2016 BCCA 186, 2016 B.C.J. No. 853 (Quicklaw)

5. Court-Ordered Unequal Division of Family Property or Family Debt; Division of Excluded Property

Family Law Act, ss. 95-96

Parton v. Parton, 2018 BCCA 273

6. Pensions



Family Law Act, Part 6

7. Spousal Agreements

Family Law Act, ss. 92-94

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

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

8. Interim and Temporary Orders

Family Law Act, ss. 89-91

9. Giving Effect to Property Division

Family Law Act, s. 97

10. Notional Disposition Costs

Willie v. Willie, 2013 BCCA 318, [2013] B.C.J. No. 1433 (C.A.) (Quicklaw)



Canadian Publishers

Carswell (Thomson Reuters)

Corporate Plaza
2075 Kennedy Road
Scarborough, ON M1T 3V4

Tel: 416.609.3800 or 1.800.387.5164
Email: carswell.customerrelations@thomsonreuters.com
URL: <http://www.carswell.com/>

Irwin Law Inc.

14 Duncan St.
Toronto, ON M5H 3G8

Tel: (Canada & U.S.) 416.862.7690 or 1.888.314.9014
Fax: 416.862.9236
Email: contact@irwinlaw.com
URL: <http://www.irwinlaw.com/>

Emond Montgomery

60 Shaftesbury Ave.
Toronto, ON M4T 1A3

Tel: 416.975.3925
Fax: 416.975.3924
Email: info@emp.ca
URL: <http://www.emp.ca/>

Lexis Nexis Canada Inc.

(For printed material only and
not for access to Quicklaw)

Contact: Customer Service
Tel: 905.415.5823 or 1.800.668.6481
Fax: 905.479.4082 or 1.800.461.3275
Email: Customerservice@lexisnexis.ca
URL: <http://www.lexisnexis.ca/en-ca/home.page>

Canada Law Books

240 Edward St.
Toronto, ON L4G 3S9

Tel: (Canada & U.S.) 416.609.3800 or 1.800.387.5164
Email: carswell.customerrelations@thomsonreuters.com
URL: <http://www.carswell.com/>

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.

If you forget or lose your password to Quicklaw you may retrieve it by clicking on the "Forget Password?" link on the Quicklaw sign-in page. Any other issues please Email ftang@flsc.ca.

Please review and abide by all Terms of Use when you receive your Quicklaw credentials, otherwise your Quicklaw account will be closed without any prior notice.

Lexis Nexis Quicklaw customer support is available via service@lexisnexis.ca, or calling 1.800.387.0899.