



Syllabus

Family Law (Ontario)

(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 (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. 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 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 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* (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

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

Matrimonial Property Law in Canada (Looseleaf Service), Ontario tab, Carswell, Thomson Professional Publishing, Toronto/Vancouver

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

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

5. Support and Property Rights of Unmarried Cohabitants

Payne, C.F.L., 40-54

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

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: Reconciliation, Negotiation, Mediation, Arbitration

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) as amended, ss. s.7 to 7.7(3) and 10

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



Family Law Act, s. 3 (mediation)

Payne C.F.L., 129-175

2. Jurisdiction

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

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

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., 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, subs. 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

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

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

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

10. Retroactive Spousal Support Orders

Kerr v Baranow, 2011 SCC 10

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

11. Spousal Support Advisory Guidelines

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



12. 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

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

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.).

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*.

16. Definitions

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

17. Interim Parenting and Contact Orders

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

18. Parenting Orders; Parenting Responsibilities; Parenting Time; Shared Parenting

Divorce Act, ss.16.1-16.4

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

19. Contact Orders

Divorce Act, s. 16.5

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

20. Terms and Conditions; Review Orders; Supervision Orders

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

21. Intended Change in Place of Residence; Relocation Rights

Divorce Act, ss. 16.7-16.96

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

22. Variation of Orders



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

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

23. Best Interests of Child

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

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

24. Voice of the Child

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

25. Religious Upbringing

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

26. Effect of Agreement; Parenting Plan

Divorce Act, s.16.6 (parenting plan)

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

27. Conduct; Family Violence

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

28. Parental Conflict Resolution

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

29. High Conflict; Parental Alienation

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

IV CHILD AND SPOUSAL SUPPORT UNDER PROVINCIAL LEGISLATION; FAMILY LAW ACT

1. General

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

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, Part I

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., 643-694

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., 697

2. Definition of "Court"

Family Law Act, subs. 1(1)

3. Definition of "Spouse"



Family Law Act, subs. 1(1) and 1(2)

Payne, C.F.L., 698

4. First Nations Property; Foreign Immovable property

Payne, C.F.L., 698-699

5. Domestic Contracts

Family Law Act, subs. 2(10), 4.2(6) and 4(2)7

Payne, C.F.L., 699 and 744-745

6. Conflict of Laws

Family Law Act, s. 15

7. Ownership of Property; Resulting and Constructive Trusts

Family Law Act, ss. 10 and 14

Payne, C.F.L. 700-703

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, 7 and 2(8)

Payne, C.F.L., 703-712

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., 712- 745

11. Unequal Division of Net Family Properties



Family Law Act, sub. 5(6)

Payne, C.F.L., 745-751

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., 752-755

13. Financial Disclosure; Mandatory Property and Financial Statements

Family Law Act, s. 8

Payne, C.F.L., 755-757

14. Powers of Court; Interest; Restraining Orders and Preservation Orders; Retrospective Operation;

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

Payne, C.F.L., 757-764

15. Occupation Rent and Accountancy Claims

Payne, C.F.L., 764-765

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

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., 766

3. Disposition of Matrimonial Home



Family Law Act, ss. 21, 22 and 23

Payne, C.F.L., 766-767

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., 767-773

5. Partition and Sale

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

6. 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., 55-88

1. Marriage Contracts, Cohabitation Agreements, Separation Agreements

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

Payne, C.F.L., 66-71

2. Formal Requirements; Capacity to Contract

Family Law Act, s. 55

Payne, C.F.L., 71-72

3. Setting Aside Domestic Contracts;

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

Payne, C.F.L., 72-80 and 83-84

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

4. Incorporation of Terms of Domestic Contract in Judgments



Payne, C.F.L., 84-85

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

Family Law Act, ss. 35, 37 and 38

Payne, C.F.L., 85-87



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.