



Syllabus

Family Law (British Columbia)

(Revised for January 2022)

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)

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

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*, 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, as amended

REFERENCE MATERIALS

- Payne and Payne, *Child Support Guidelines in Canada*, 2020, Irwin Law
- Trudi L. Brown, Q.C., *British Columbia Family Law Practice*, 2020 or 2022 Edition, LexisNexis Canada



COURSE CONTENT

A. INTRODUCTION

1. Definition of Marriage

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

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

X.W.L. v. J.L., 2021 BCSC 860

Family Law Act, ss.1 and

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

B. FAMILY VIOLENCE

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

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

C. 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.

Droit de la famille — 21910, 2021 QCCS 2081



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
Brucker 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)
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
Colucci v Colucci, 2021 SCC 24
Henderson v Micetich, 2021 ABCA 103



15. 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.

a. Definitions

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

b. Interim Parenting and Contact Orders

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

c. Parenting Orders; Parenting Responsibilities; Parenting Time; Shared Parenting

Divorce Act, ss.16.1-16.4

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

d. Contact Orders

Divorce Act, s. 16.5

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

e. Terms and Conditions; Review Orders; Supervision Orders

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

f. Intended Change in Place of Residence; Relocation Rights

Divorce Act, ss. 16.7-16.96

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

JYL v TLL, 2021 ABQB 680

g. Variation of Orders

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



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

h. Best Interests of Child

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

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

i. Voice of the Child

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

j. Religious Upbringing

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

k. Effect of Agreement; Parenting Plan

Divorce Act, s.16.6 (parenting plan)

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

l. Conduct; Family Violence

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

m. Parental Conflict Resolution

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

n. High Conflict; Parental Alienation

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

D. 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)

E. CARE OF AND TIME WITH CHILDREN UNDER PROVINCIAL LEGISLATION

Family Law Act, Part 4

F. 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. Exclusive Possession Orders

Glowacki v Nesbeth, 2021 BCSC 535.

Sangha v Sangha, 2021 BCSC 932

8. 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

9. Interim and Temporary Orders

Family Law Act, ss. 89-91

10. Giving Effect to Property Division

Family Law Act, s. 97

11. Notional Disposition Costs

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



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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). 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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