



Syllabus

Family Law

(Alberta)

Revised for 2023 - 2024

Candidates are advised that this syllabus may be updated from time to time without prior notice.

Candidates are responsible for obtaining the most current syllabus available.



Family Law (Alberta)

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 Alberta 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*, 9th ed., 2022, Irwin Law, (hereinafter Payne, C.F.L.)
2. Payne and Payne, *A Basic Guide to Canadian Family Law*, 2023, 1st ed., Irwin Law
3. *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), as amended
4. *Federal Child Support Guidelines*, SOR/97-175, 8 April, 1997, as amended.
5. *Spousal Support Advisory Guidelines* (Department of Justice, Canada, July 2008)
6. *Spousal Support Advisory Guidelines: The Revised User's Guide* (Rogerson/Thompson, Department of Justice, Canada, April 2016)
7. *Family Law Act*, S.A. 2003, c. F-4.5, as amended
8. *Family Property Act*, c. F-4.7, as amended



COURSE CONTENT

A. INTRODUCTION

1. Definition of Marriage and Family

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

2. Constitutional Framework

Payne, C.F.L., 11-12

3. Fragmentation of Judicial Jurisdiction

Payne, C.F.L., 12--13

4. Formation and Annulment of Marriage

Marriage Act, R.S.A. 2000, c. M-5, as amended

Payne, C.F.L., 14-35

B. FAMILY VIOLENCE

Payne, C.F.L., p. 93-128

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, ss. s.7 to 7.7(3) and 10

Family Law Act, S.A. 2003, c. F-4.5, ss. 5, 32(2)(c),97-98

Family Justice Services (Alberta Courts online)

Payne C.F.L., 130-178

Association de médiation familiale du Québec v. Bouvier, 2021 SCC 54

2. Jurisdiction

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

Payne, C.F.L., 179-192

Office of the Children's Lawyer v. Baley, 2018 SCC 16

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., 193-195



4. Recognition of Foreign Divorces

Divorce Act, s. 22

Payne, C.F.L., 195-198

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

Divorce Act, s. 22.1

Payne, C.F.L., 198-199

6. Marriage Breakdown as Ground for Divorce

Divorce Act, s. 8

Payne, C.F.L., 199-213

7. Bars to Divorce

Divorce Act, s. 11

Payne, C.F.L., 213-225

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., 228-236 and 541-542

9. Spousal Support Orders

Divorce Act, ss. 15.2 and 15.3

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)

Payne, C.F.L., 226-387

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

10. Retroactive Spousal Support Orders

Kerr v. Baranow, 2011 SCC 10

Payne, C.F.L., 332-337



11. Spousal Support Advisory Guidelines

Payne, C.F.L., 338-366

Wild v Wild, 2019 ABCA 159

12. Variation, Rescission or Suspension of Corollary Support Orders

Divorce Act, s. 17

Federal Child Support Guidelines, s. 14

Payne, C.F.L., 313-328 and 475-488

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, as amended

Child Support Recalculation Program Regulation, Alta. Reg. 287/2009, as amended

Payne, C.F.L., 388-563 and 677-681

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.)

Francis v. Baker, [1999] 3 S.C.R. 250

Ewing v. Ewing, 2009 A.J. No. 712 (Quicklaw) (C.A.)

Contino v. Leonelli-Contino, [2005] 3 S.C.R. 217

Peters v Atchooay, 2022 ABCA 347

14. Retroactive Child Support Orders

Payne, C.F.L., 545-558

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

Fundamental legislative changes have been enacted 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: see “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*.

a. Definitions

Payne, C.F.L., 566-569

b. Interim Parenting and Contact Orders

Payne, C.F.L., 571-575

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

Divorce Act, ss.16.1-16.4

Payne, C.F.L., 576-601

Barendregt v. Grebliunas, 2022 SCC 22

C.N.L. v. G.A.M., 2023 ONSC 3397 (indigenous children)

d. Contact Orders

Divorce Act, s. 16.5

Payne, C.F.L., 601-602

e. Terms and Conditions; Review Orders; Supervision Orders

Payne, C.F.L., 602-606

f. Intended Change in Place of Residence; Relocation Rights

Divorce Act, ss. 16.7-16.96

Payne, C.F.L., 606-614

J.Y.L. v. T.L.L., 2021 ABQB 680

g. Variation of Orders

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

Payne, C.F.L., 631-640



h. Best Interests of Child

Divorce Act, s. 16(1)-16(7)
Payne, C.F.L., 614-624

i. Voice of the Child

Payne, C.F.L., 642-650
S.K. v. D.G., 2022 ABQB 425

j. Religious Upbringing

Payne, C.F.L., 629-631

k. Effect of Agreement; Parenting Plan

Divorce Act, s.16.6 (parenting plan)
Payne, C.F.L., 627-629 and 651-652

l. Conduct; Family Violence

Payne, C.F.L., 616-619 and 624-627

m. Parental Conflict Resolution

Payne, C.F.L., 640-642

n. High Conflict; Parental Alienation

Payne, C.F.L., 653-659

D. CHILD AND SPOUSAL SUPPORT UNDER PROVINCIAL LEGISLATION

1. General

Family Law Act, S.A. 2003, c. F-4.5, as amended
Adult Interdependent Relationships Act, S.A. 2002, c. A-4.5
Alberta Child Support Guidelines
Payne, C.F.L., 674-681

2. Definitions

Family Law Act, ss. 46-48

3. Child Support Statutory Criteria

Family Law Act, ss. 49-55

4. Spousal Support or Adult Independent Partner – Statutory Criteria

Family Law Act, ss. 56-63

5. General Matters

Family Law Act, ss. 64-82



E. ESTABLISHING PARENTAGE

Family Law Act, ss. 6-15

F. GUARDIANSHIP, CUSTODY AND ACCESS (PARENTING AND CONTACT ORDERS) UNDER PROVINCIAL LEGISLATION; CHILD ABDUCTION

Family Law Act, S.A. 2003, c. F-4.5, ss. 16 – 45

G. MATRIMONIAL PROPERTY

1. Property Division

Family Property Act, c. F-4.7, Part 1

2. Application by spouse

Family Property Act, s.3

3. Application by adult interdependent partner

Family Property Act, ss.1, 1.1 and 3.1

4. Conditions precedent to application — spouses

Family Property Act, s. 5

5. Conditions precedent to application — adult interdependent partners

Family Property Act, s. 5.1

6. Time for application — spouses

Family Property Act, s. 6

7. Time for application — adult interdependent partners

Family Property Act, s. 6.1

8. Distribution of Property

Family Property Act, s. 7

9. Matters to be considered

Family Property Act, s. 8

10. Power of the Court

Family Property Act, s. 9



11. Severance of Joint Tenancy

Felske Estate v. Donszelman, [2009] A.J. No. 619 (C.A.) (Quicklaw)

12. Possession of Matrimonial Home

Family Property Act, c. F-4.7, Part 2

Protection Against Family Violence Act, R.S.A. 2000, c.P-27, as amended

13. Occupation Rent

Milne v. Milne, [2009] A.J. No. 360 (C.A.) (Quicklaw), paras. 83-84



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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 exam registration fee also includes free access to the Advance Quicklaw resources of LexisNexis. 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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