



Syllabus

Family Law (British Columbia)

(Revised January 2019)

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. 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 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; and
- 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*, 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.
7. *Interjurisdictional Support Orders Act*, S.B.C. 2002, c. 29
8. *Family Maintenance Enforcement Act*, R.S.B.C. 1996, c. 127

REFERENCE MATERIALS

- Payne and Payne, *Child Support Guidelines in Canada*, 2017, Irwin Law
- The Honorable Justice Carol Huddart and Trudi L. Brown, Q.C., *British Columbia Family Law Practice*, 2018 Edition, LexisNexis Canada



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

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., 12-13

4. Formation and Annulment of Marriage

Payne, C.F.L., 14-38

II. FAMILY VIOLENCE

Payne, C.F.L., 93-133

Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), [2004] 1 S.C.R. 76

III. DIVORCE (INCLUDING COROLLARY PROCEEDINGS FOR SUPPORT AND CUSTODY)

1. Emotional Dynamics of Marriage Breakdown: Dispute Resolution Processes

Divorce Act, ss. 9 and 10

Family Law Act, Part 2, Resolution of Family Disputes

Payne, C.F.L., 134-177

2. Jurisdiction

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) ss. 3-7, as amended by S.C. 1993, c. 8, s. 4

Payne, C.F.L., 179-191



L.R.V. v. A.A.V. (Virani v. Virani), [2006] B.C.J. No. 264 (Quicklaw) (C.A.), supp. reasons, [2006] B.C.J. No. 1610 (Quicklaw), 264 D.L.R. (4th) 524 and 532 (B.C.C.A.)

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

L.R.V. v. A.A.V. (Virani v. Virani), [2006] B.C.J. No. 264, supp. reasons, [2006] B.C.J. No. 1610, 264 D.L.R. (4th) 524 and 532 (C.A.)

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

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

7. Interim Support Orders

Divorce Act, subss. 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

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.)

McClement v. McClement, 2017 BCCA 416

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.)



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. 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., 311-333 and 467- 484

Federal Child Support Guidelines, s. 14

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

R.P. v. R.C., [2011] 3 SCR 819

11. Interjurisdictional Support Orders

Divorce Act, ss. 18 and 19

Herriman v. Beresford (Blais), 2012 BCCA 437, [2012] B.C.J. No. 2382 (C.A.) (Quicklaw)

12. Parenting Arrangements after Divorce: Custody and Access

Divorce Act, ss. 16 (original order) and 17 (variation, rescission or suspension)

Payne, C.F.L., 544-633

Gordon v. Goertz, [1996] 2 S.C.R. 27

Young v. Young, [1993] 4 S.C.R. 3



- 13. Effect of Corollary Orders**
Divorce Act, s. 20
- 14. Appeals**
Divorce Act, s. 21
- 15. Evidence and Procedure**
Divorce Act, ss. 23, 24, 25 and 26
- 16. Transitional Provisions**
Divorce Act, ss. 33, 34 and 35

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
Interjurisdictional Support Orders Act, S.B.C. 2002, c. 29
Payne, C.F.L., 647-653
- 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; CHILD ABDUCTION

- Family Law Act*, Part 4
Thomson v. Thomson, [1994] 3 S.C.R. 551
Office of the Children's Lawyer v. Baley, 2018 SCC 16



Payne, C.F.L., 653-702

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)

Shih v. Shih, 2017 BCSC 37

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

Family Law Act, ss. 95-96

Asselin v. Roy, 2013 BCSC 1681, [2013] B.C.J. No. 2005 (S.C.) (Quicklaw)

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)



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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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