

FAMILY LAW

Law 322

Faculty of Law, University of Victoria
Professor Gillian Calder

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Course Outline

Fall 2009

I. Course Description

This course surveys the legal framework surrounding familial relationships and family breakdown in Canadian society. Topics include cohabitation, marriage, adoption, child protection, separation, divorce, child custody and access, property division, spousal and child support. Themes include state regulation of families through law; the relationship of law to social change such as shifts in familial forms; the use of social context in legal argument; socio-economic and cultural implications of family law; and the relevance of factors such as gender, sexual orientation, culture, class and race to family law. Particular attention is paid to the impact of family law on Aboriginal families in British Columbia. Family law is a wide and rapidly evolving area of law. Therefore, the course is designed to provide an overview of key legal issues in each topic, many of which may be explored in advanced course offerings.

II. Course Objectives

Family law is a complex and constantly changing area of law. As such, this course cannot be comprehensive in its scope, or in its treatment of any particular family law issue. Instead, this course aims to do the following:

- stimulate your interest in family law and the various legal and social issues in the area of familial relationships;
- convey basic principles that underlie and inform state regulation of families through law;
- enable you to find relevant legislation and case law and to identify current family law issues in order to make persuasive and effective family law arguments;
- introduce procedural and other practice issues unique to family law; and
- provide you with an opportunity to examine and discuss the law reform and theoretical debates that shape and inform family law in Canada.

III. Administrative Details

A. Class location and times

Mondays and Wednesdays, 10:30-12:00
Room 158

B. Office Hours

I have an open-door policy. If my door is open and I am in my office, you are more than welcome to drop by and ask a question. Please also feel free to call me at 472-5247, e-mail me at gcalder@uvic.ca, or stop me in the hall at any time to talk about the course. I am also happy to set office hours if that would be more convenient for students.

IV. Materials

A. Required Materials

Calder	Family Law (Volumes I & II)	(2009)
Queen's Press	Provincial Family Law Statutory Supplement	(2009)
On-Line	Federal Family Law Statutes	

B. Supplementary Materials

The following are some general reference texts that may be of assistance to students in preparing for the mid-term essay, or to supplement an area of interest.

Reference Texts:

- Atkin, Bill, ed., *International Survey of Family Law*, 2007 Edition (Bristol: Jordan Publishing Ltd., 2007)
- Baker, Maureen, ed. *Families: Changing Trends in Canada*, 4th ed. (Toronto: McGraw-Hill Ryerson, 2001).
- Bala, Nicholas, Joseph Hornick, and Robin Vogl, eds. *Canadian Child Welfare Law: Children, Families, and the State, Second Edition* (Toronto: Thompson, 2004).
- Boyd, Susan B. *Child Custody, Law, and Women's Work* (Toronto: Oxford University Press, 2003).
- Boyd, Susan B. and Helen Rhoades, *Law and Families* (Ashgate, 2006).
- Christopher, T. Catherine. Law of domestic conflict in Canada, looseleaf (Scarborough, Ont: Carswell, 2002).
- Collier, Richard and Sally Sheldon, eds., *Fathers' Rights Activism and Law Reform in Comparative Perspective* (Oxford: Hart Publishing, 2006).
- Diduck, Alison, *Law's Families* (Oxford: LexisNexis, 2003).
- Dingwall, Robert, John Eekelaar, and Topsy Murray. *The Protection of Children*, 2nd ed. (Aldershot, UK: Avebury, 1995).
- Fineman, Martha, *The Neutered Mother, The Sexual Family: And Other Twentieth Century*

- Tragedies* (New York: Routledge, 1995).
- Foster, Leslie T., and Brian Wharf, eds., *People, Politics, and Child Welfare in British Columbia* (Vancouver: UBC Press, 2007).
- Herman, Didi and Carl Stychin, eds. *Legal Inversions: Lesbians, Gay Men and the Law* (Philadelphia: Temple University Press, 1995).
- Hovius, Berend, *Family Law: Cases, Notes and Materials*, 6th Student Edition (Scarborough: Thomson Carswell, 2005).
- Kronby, Malcolm C., *Canadian Family Law, 9th Edition* (Mississauga: Wiley, 2006).
- Leckey, Robert, *Contextual Subjects: Family, State and Relational Theory* (Toronto: University of Toronto Press, 2008).
- MacDonald, James and Ann Wilton, *2005 Annotated Divorce Act* (Scarborough: Thomson Carswell, 2005).
- McLeod, James and Alfred A. Mamo, *Annual Review of Family Law 2004* (Scarborough: Thomson Carswell, 2005).
- Mandell, Nancy and Ann Duffy, eds. *Canadian Families: Diversity, Conflict and Change*, 2nd ed. (Toronto: Harcourt Brace & Co., 2000).
- Mandell, Nancy and Ann Duffy, eds., eds. *Reconstructing the Canadian Family: Feminist Perspectives* (Toronto: Butterworths, 1988).
- McGillivray, Anne and Brenda Comaskey, *Black Eyes All of the Time: Intimate Violence, Aboriginal Women, and the Justice System* (Toronto: University of Toronto Press, 1999).
- McLeod, James and Alfred Mamo, *Matrimonial Property Law in Canada*, looseleaf (Toronto: Carswell, 1988), online: WestlawCarswell <<http://www.westlawecarswell.ca/>>.
- Mossman, Mary Jane, *Families and the Law in Canada: Cases and Commentary* (Toronto: Emond Montgomery Publications Ltd., 2004).
- Payne, Julien, *Payne on Divorce, 4th Edition* (Scarborough: Thomson Carswell, 1996).
- Payne, Julien and Marilyn Payne. *Child Support Guidelines in Canada 2004* (Toronto: Irwin, 2004).
- Wintemute, Roberts and Mads Adenaes, eds., *Legal Recognition of Same-sex Partnerships* (Oxford: Hart Publishing, 2001).
- Wu, Zheng. *Cohabitation: An Alternative Form of Family Living* (Toronto: Oxford University Press, 2000).

Other materials (including the movie clips that are shown in this course) may be placed on reserve in the library or you may be given an internet site to consult, e.g. if a new case is released or to supplement your reading or interest. Any other relevant information will be posted to the course web-site: <http://www.law.uvic.ca/gcaldler/322/index.html>

V. Teaching Methodology, Attendance and Participation

This course will be taught through a combination of lectures, class discussion, small group work and take-home exercises. The goal is to have an active and engaged class room environment. In this regard, it is my expectation that students will have read and thought about the assigned materials before they come to each class. Each class will be taught on the assumption that students are prepared to discuss the assigned materials.

There will, of course, be times when you will be unable to attend class due to illness, an unexpected occurrence or for other reasons. If you miss a class for these reasons, you should

feel free to come and discuss with me material that was covered in the class you were unable to attend. Please make note of the university's regulations on attendance and assignments. If you would like to discuss classroom, assignment or exam accommodation necessitated by a permanent or temporary disability, religious holiday, or for other reasons, please see Associate Dean Heather Raven as soon as possible.

VI. Evaluation and Expectations

A. Evaluation

- take-home assignment, worth 40% of your grade
discussed in class: September 23, 2009
due: Monday, November 2, 2009
- take-home examination, worth 60% of your grade
to be handed out: Wednesday, December 2, 2009
due: Thursday, December 10, 2009

B. Detailed Assessment Expectations

1. Take-home assignment

Length: not to exceed 10 pages

Students will be required to write an essay not to exceed 10 pages. Students will be expected to write on a topic of their choice that critically examines an issue raised in Volume One of the materials. Students may do independent research, depending on their topic, in order to explore an aspect of family law that is engaged by our discussion of the legal regulation of the family in Canadian law. More details on this assignment, and suggested topics, will be handed out in class on Wednesday, September 23, 2009.

2. Take-home examination

Length: not to exceed 15 pages

The second component of the evaluation for this course will be open-book, take-home exam, due at the assigned date for the Family Law exam. The exam will enable students to draw on materials assigned for the year, but will emphasize Volume II materials. The exam will be solely based on a hypothetical problem. Procedure will be discussed in detail in class.

3. Page length

“Pages” mean letter-size (8 ½" x 11") paper, double-spaced, typed, with 12 point font and 1" margins. Students must use Times New Roman Font. Any assignments that exceed page limits will be docked one grade level (for example, A down to A-, B+ down to B) for each partial page over the limit. Please note the policy on extensions set out below.

VII. Regulations

- A. Students should obtain and review all regulations and policies contained in the University of Victoria Calendar, 2009-2010 (“U Vic Calendar”), both generally and specifically for the Faculty of Law.
- B. The assignments and the examinations in this course will all be open-book.
- C. The assignments will come with instructions that stipulate time, date and location for the return of those assignments. These instructions must be followed carefully. Extensions are at my discretion and will only be granted in exceptional circumstances.
- D. There will be no extensions permitted for take-home examinations (see U Vic Calendar for regulations which pertain to special examinations). A late examination will not be accepted.
- E. Academic integrity is expected of all participants in the University Community. **Please familiarize yourselves with the University’s Policy on Academic Integrity set out in the U Vic Calendar; and on-line at:**
<http://web.uvic.ca/calendar2009/FACS/UnIn/UARe/PoAcI.html>
- F. The following breakdown of letters and percentages is the one that the University of Victoria Faculty of Law uses to determine course grades:

Letter Grade	Grade Point Value	Percentage Value	Narrative Description
A+	9	90-100%	Exceptional, outstanding, and excellent performance, normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation, and has an insightful grasp of subject matter.
A	8	85-89%	
A-	7	80-84%	
B+	6	75-79%	Very good, good, and solid performance, normally achieved by the largest number of students. These grades indicate a good grasp of subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.
B	5	70-74%	
B-	4	65-69%	
C+	3	60-64%	Satisfactory or minimally satisfactory performance. These grades indicate a satisfactory performance and knowledge of subject matter.
C	2	55-59%	
D	1	50-54%	Marginal performance. A student receiving this grade demonstrates a superficial grasp of subject matter.
F	0	49 and below	Unsatisfactory performance.

VIII. Detailed Outline

The attached syllabus should serve as a *reading guide* for the term. The listed subjects are not exclusive, but highlight the key questions and cases that will form the basis for the class discussion. We may move more quickly or more slowly through certain material, and we may consider additional cases, legislation and legal issues that arise throughout the year. Any revisions to the reading list will be announced in class, and a final revised reading list including all the material covered will be distributed to students prior to the final exam. Page references are to Vols. I and II of the materials; statutes are referred to by name.

The supplementary readings are not required, but may be of assistance to students looking to deepen their study of a particular topic.

FAMILY LAW

1. Introduction: The Family and Family Law

Class Number 1:

Histories, Definitions and Legal Change

Reading: Vol. I, pp. 1-44

- *histories, adults, children and communities*
- *religion and family law*
- *state, family and the market*
- *redefining family for the 21st century*

Supplementary readings:

- Bri ed, Joel, Fr ed eric Jiguet and Pierre Jouventin, “Why do Aptenodytes Penguins have High Divorce Rates?” (1999) 116(2) *The Auk* 504-512
- Calder, Gillian, “*Families and the Law in Canada: Cases and Commentary* by Mary Jane Mossman” (Book Review) (2005) 22(1) *Canadian Journal of Family Law* 101-116.
- Calder, Gillian, “Penguins and Polyamory: Using Law and Film to Explore the Essence of Marriage in Canadian Family Law” (2009) 21(1) *Canadian Journal of Women and the Law* 55-89
- Castellano, Marlene Brant, *Aboriginal Family Trends: Extended Families, Nuclear Families, Families of the Heart* (Ottawa: Vanier Institute of the Family, 2002).
- Graycar, Reg, “Family Law: Law Reform by Frozen Chook: Family Law Reform for the New Millennium?” (2000) 24 *Melbourne University Law Review* 737.
- Johnson, Rebecca, “‘Leaving Normal’ Constructing the Family at the Movies and in Law” in Lori G. Beaman, ed., *New Perspectives on Deviance: The Construction of Deviance in Everyday Life* (Scarborough: Prentice Hall Allyn and Bacon Canada, 2000) 163
- Leckey, Robert, *Contextual Subjects: Family, State and Relational Theory* (Toronto: University of Toronto Press, 2008).
- Olsen, Frances E. “The Family and the Market: A Study of Ideology and Legal Reform” (1983) 96 *Harvard Law Review* 1497.
- Smart, Carol, “Wishful Thinking and Harmful Tinkering? Sociological Reflections on Family Policy” (1997) 26 *Journal of Social Policy* 301.
- Singer, Jana, “The Privatization of Family Law” (1992) *Wisconsin Law Review* 1443.

Woods, Jamie, "Moving Beyond the Bedrooms of our Nation: Redefining Canadian Families From the Perspective of Non-Conjugal Caregiving" (2008) 13 *Appeal* 7.

Class Number 2: Legal Framework

Reading: Vol I, pp. 45-76

- *the public/private divide*
- *the Constitution Act, 1867*
- *the Charter and family law*
- *judicial jurisdiction*
- *First Nations and family law*
- *international law*

Supplementary readings:

Bala, Nicholas, "The Charter of Rights and Family Law in Canada: A New Era" (2001) 18 *Canadian Family Law Quarterly* 373.

Boyd, Susan B., "Legal Regulation of Families in Changing Societies" in Austin Sarat, ed., *The Blackwell Companion to Law and Society* (Oxford: Blackwell Publishing, 2004), pp. 255-270.

2. Creating the Family

Class Number 3: Cohabitation and Contracting a Valid Marriage

Reading: Vol. I, pp. 77-102

**Statutes: *Marriage Acts (B.C. and Canada)*
*Law and Equity Act (B.C.), s. 60***

- *the legal organization of personal relationships*
- *partnership registration schemes*
- *using marriage law to regulate relationships*
- *formal and essential validity of marriage*
- *polygamy*

Supplementary readings:

Barlow, Anne and Rebecca Probert, "Regulating Marriage and Cohabitation: Changing Family Values and Policies in Europe and North America – An Introductory Critique" (2004) 26(1) *Law and Policy* 1.

Deech, Ruth, "The Case Against Legal Recognition of Cohabitation" in John Eeklelaar and Sanford Katz, eds., *Marriage and Cohabitation in Contemporary Societies: Areas of Legal, Social and Ethical Change* (Toronto: Butterworths, 1980) at 300.

Gavigan, Shelley A.M., "Legal Forms, Family Forms, Gendered Norms: What is a Spouse?" (1999) 14 *Canadian Journal of Law and Society* 127.

Kaufman, Amy, "Polygamous Marriages in Canada" (2005) 21(2) *Canadian Journal of Family Law* 315.
Status of Women Canada, *Polygamy in Canada: Legal and Social Implications for Women and Children – A Collection of Policy Papers* (Ottawa: Status of Women Canada, 2005)

Kelly, Lisa M. "Bringing International Human Rights Law Home: An Evaluation of Canada's Family Law Treatment of Polygamy" (2007) 65 *University of Toronto Faculty Law Review* 1.

Class Number 4: Customary and Same-Sex Marriage**Reading: Vol. I, pp. 103-124****Statutes: Marriage Acts (B.C. and Canada)**

- *customary marriage*
- *same-sex cohabitants and marriage*
- *EGALE v. Canada*

Supplementary readings:

- Barker, Nicola, "Sex and the Civil Partnership Act: The Future of (Non)Conjugality" (2006) 14(2) *Feminist Legal Studies* 241.
- Boyd, Susan B. and Claire F.L. Young, "'From Same-Sex to No Sex?': Trends Towards Recognition of (Same-Sex) Relationships in Canada" (2003) 1(3) *Seattle Journal for Social Justice* 757.
- Cossmann, Brenda and Bruce Ryder, "What is Marriage-Like Like? The Irrelevance of Conjugality" (2001) 18 *Canadian Journal of Family Law* 269.
- Davies, Christine, "Canadian Same-Sex Marriage Litigation: Individual Rights, Community Strategy" (2008) 66(2) *University of Toronto Faculty of Law Review* 101.
- Emens, Elizabeth F., "Monogamy's Law: Compulsory Monogamy and Polyamorous Existence" (2004) 29 *New York University Review of Law and Social Change* 288-376.
- Forder, Caroline, "European Models of Domestic Partnership Law: The Field of Choice" (2000) 17 *Canadian Journal of Family Law* 371.
- Ertman, Martha, "Marriage as a Trade: Bridging the Private/Private Distinction" (2001) 36 *Harvard Civil Rights-Civil Liberties Law Review* 79.
- Thomas, Caroline A. "The Roles of Registered Partnerships and Conjugality in Canadian Family Law" (2006) 22 *Canadian Journal of Family Law* 223.
- Wardle, Lynn D. "'Multiply and Replenish': Considering Same-Sex Marriage in Light of State Interests in Marital Procreation" (2001) 24 *Harvard Journal of Law and Public Policy* 771.
- Young, Claire F.L. and Susan B. Boyd, "Losing the Feminist Voice? Debates on the Legal Recognition of Same Sex Partnership in Canada" (2006) 14(2) *Feminist Legal Studies* 213.
- Zlotnik, Norman, "Judicial Recognition of Aboriginal Customary Law in Canada: Selected Marriage and Adoption Cases" (1984) 4 *Canadian Native Law Review* 1.

Class Number 5: Children: Who is a Legal Parent?**Reading: Vol. I, pp. 125-157****Statutes: Vital Statistics Act (B.C.)****Adoption Act (B.C.) Parts 1, 2 and 3, esp. ss. 29, 37, 46, 84, 85**

- *donor insemination*
- *Trociuk v. B.C.*
- *surrogacy*
- *lesbian and gay parenting*
- *introduction to adoption*
- *legislative framework*
- *King v. Low*

Supplementary readings:

- Andrews Lori B., "Beyond Doctrinal Boundaries: A Legal Framework for Surrogate Motherhood" (1995) 81 *Virginia Law Review* 2343.
- Baird, Patricia A., "Reproductive Technology and the Evolution of Family Law" (1997) 15 *Canadian Family Law Quarterly* 103.
- Boyd, Susan B., "Gendering Legal Parenthood: Bio-Genetic Ties, Intentionality and Responsibility" (2007) 25(1) *Windsor Yearbook of Access to Justice* 63.
- Garrison, Marsha, "Law making for baby making: An interpretive approach to the determination of legal parentage" (2000) 113 *Harvard Law Review* 835.
- Mykitiuk, Roxanne, "Beyond Conception: Legal Determinations of Filiation in the Context of Assisted Reproductive Technologies" (2001) 39 *Osgoode Hall Law Journal* 771.
- Storrow, Richard F. "Parenthood by Pure Intention: Assisted Reproduction and the Functional Approach to Parentage" (2002) 53 *Hastings Law Journal* 597.

Class Number 6: Issues in Adoption

Reading: Vol. I, pp. 158-188

**Statutes: Adoption Act, esp. ss. 5, 7, 10, 11, 13(2), 14, 19, 29, 38, Part 5
Law and Equity Act (B.C.), ss. 52, 61**

- *Re: K*
- *grandparents*
- *race, culture and adoption*
- *Racine v. Woods*
- *D.H. v. H.M.*
- *customary adoption*
- *consent*

Supplementary readings:

- Baldassi, Cindy, "The Quest to Access Closed Adoption Files in Canada: Understanding Social Context and Legal Resistance to Change" (2005) 21 *Canadian Journal of Family Law* 211- 265.
- Baldassi, Cindy, "The Legal Status of Aboriginal Customary Adoption Across Canada: Comparisons, Contrasts and Convergences" (2006) 39 *U.B.C. Law Review* 63.
- Black, Vaughan, "GATT for Kids: New Rules for Intercountry Adoption of Children" (1994) 11 *Canadian Family Law Quarterly* 253.
- Bracco, Katrysha, "Patriarchy and the Law of Adoption: Beneath the Best Interests of the Child" (1997) 35 *Alberta Law Review* 1035.
- Lazarus, Keri B., "Adoption of Native American and First Nations Children: Are the United States and Canada Recognizing the Best Interests of the Children" (1997) 14(1) *Arizona Journal of International Comparative Law* 255.
- Lomax, Bill, "Hlugwit'y, Hluuxw'y – My Family, My Child: Survival of Customary Adoption in British Columbia" (1997) 14 *Canadian Journal of Family Law* 197.
- MacDonald, Kisa, "Customary Adoption in British Columbia: Recognizing the Fundamental Differences" (2009) 14 *Appeal Review of Current Law and Law Reform* 17.

3. Legal Regulation of Family Life

Class Number 7: Child Protection

Reading: Vol. I, pp. 189-211

Statute: *Child, Family and Community Service Act (B.C.), esp. ss. 1-4, 29, 39*

- *current statutory regime and history*
- *child abuse within the family*
- *section 43 of the Criminal Code*
- *Child, Family and Community Service Act*
- *familial autonomy, culture and religion*

Supplementary readings:

- Bernd Walter, Janine Alison Isenegger and Nicholas Bala, “‘Best Interests’ in Child Protection Proceedings: Implications and Alternatives” (195) 12 *Canadian Journal of Family Law* 367.
- Bernstein, Marvin, “Child Protection Mediation: Its Time Has Arrived” (1998-99) 16 *Canadian Family Law Quarterly* 73.
- Callahan, Marilyn and Karen Callahan, “Victims and Villains: Scandals, the Press and Policy Making in Child Welfare” in J. Pulkingham & G. Ternowetsky, eds., *Rethinking Child and Family Policy: Struggles, Strategies and Options* (Halifax: Fernwood Press, 1997) at 44.
- Wharf, Brian, “The case for a comprehensive vision for Child Welfare” in Leslie T. Foster and Brian Wharf, eds., *People, Politics, and Child Welfare in British Columbia* (Vancouver : UBC Press, 2007) at 230.
- Zylberberg, Philip, “Minimum Constitutional Guarantees in Child Protection Cases” (1992) 10 *Canadian Journal of Family Law* 257.

Class Number 8: First Nations and Child Protection;

Reading: Vol. I, pp. 212-226

- *First Nations and child protection*

Supplementary readings:

- Calder, Gillian, “‘Finally I Know Where I am Going to be From’: Culture, Context and Time in a Look Back at *Racine v. Woods*” in Kim Brooks, ed., *One Woman’s Difference* (Vancouver: U.B.C. Press, 2008) forthcoming.
- Davies, Christine, “Native Children and the Child Welfare System in Canada” (1992) 30 *Alberta Law Review* 1200.
- Hughes, The Honourable Ted, *B.C. Children and Youth Review* (2006) available on line at: http://www.childyouthreview.ca/down/BC_Children_and_Youth_Review_Report_FINAL_April_4.pdf
- Park, Tae Mee, “In the Best Interests of the Aboriginal Child” (2003) 16 *Windsor Law Review of Legal and Social Issues* 43.
- Patterson, Julienne, “Spousal Violence” in Canadian Centre for Justice Statistics, *Family Violence in Canada: A Statistical Profile 2003* (Ottawa: National Clearinghouse on Family Violence, Health Canada, 2003) at 4, online at: www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/pdfs/2003famvioprofil_e.pdf
- Union of B.C. Indian Chiefs (2002), “Calling Forth Our Future: Options for the Exercise of Indigenous Peoples’ Authority in Child Welfare” online at: http://www.ubcic.bc.ca/files/PDF/UBCIC_OurFuture.pdf.

Class Number 9: Domestic Violence and Woman Abuse

Reading: Vol. I, pp. 227-248

- *civil law and domestic violence*
- *criminal law and domestic violence*
- *culture, class and stereotypes*

Supplementary readings:

- Bala, Nicholas, "Spousal Abuse and Children of Divorce: A Differentiated Approach" (1996) 13 *Canadian Journal of Family Law* 215.
- Boal, Augusto, *Theatre of the Oppressed* (New York: Theatre Communication Group, 1985).
- Buckingham, Laura, "Striking Back: The Tort Action for Spousal Violence" (2007) 23 *Canadian Journal of Family Law* 273.
- Calder, Gillian, "Embodied Law: Theatre of the Oppressed in the Law School Classroom" (2009) 1 *Masks: An Online Journal for Law and Theatre* 1-35
- Jaffe, Peter et al., *Child Custody & Domestic Violence* (Thousand Oaks: Sage, 2003)
- Patterson, Julienne, "Spousal Violence" in Canadian Centre for Justice Statistics, *Family Violence in Canada: A Statistical Profile 2003* (Ottawa: National Clearinghouse on Family Violence, Health Canada, 2003 at 4, online at: www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/pdfs/2003famvioprofil_e.pdf)
- Robson, Ruthann, "Lavender Bruises: Intra-Lesbian Violence, Law and Lesbian Legal Theory" (1990) 20 *Golden Gate University Law Review* 567.

4. Family Breakdown: Divorce, Separation and Corollary Issues

Class Number 10: Introduction to Family Breakdown

Reading: Vol. II, pp. 1-39

Statute: *Divorce Act, 1985*, definitions and ss. 3, 8-14

- *overview and cases of the corollaries of separation and divorce*
- *the Charter and family breakdown*
- *the legal framework*
- *divorce in context*
- *gender equality in the justice system*
- *process issues*
- *legal aid*

Supplementary readings:

- Ambert, Anne-Marie, "Divorce: Facts, Causes, and Consequences" (Ottawa: Vanier Institute of the Family 2005) online at: www.vifamily.ca/library/cft/divorce_05.html
- B.C. Justice Review Forum, *A New Approach to Family Law in B.C.* online at: <http://www.bcjusticereviewforum.ca/familyrules/>
- Cornell, Arthur B., "When Two Become One, and Then Come Undone: An Organizational Approach to Marriage and Its Implications for Divorce Law" (1992) 26 *Family Law Quarterly* 103.
- Mossman, Mary Jane, "Gender Equality, Family Law and Access to Justice" (1994) 8 *International Journal of Law, Policy and Family* 357.
- Mnookin, Robert H. and Lewis Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce" (1978-1979) 88 *Yale Law Journal* 950.
- Trebilcock, Michael J. and Rosemin Keshvani, "The Role of Private Ordering in Family Law: A Law and Economics Perspective" (1991) 47 *University of Toronto Law Journal* 533.

Class Number 11: Collaborative Law**Reading: Vol. II, pp. 40-68****Statute: *Family Relations Act*, ss. 56**

- *collaborative lawyering*
- *divorce mediation*
- *Hartshorne v. Hartshorne: marriage contracts*

Supplementary Readings:

- Bailey, Martha, "Marriage à la carte: A Comment on Hartshorne v. Hartshorne." *Canadian Journal of Family Law*, 20 (2004).
- Bailey, Martha, "Unpacking the 'Rational Alternative': A Critical Review of Family Mediation Movement Claims" (1989) 8 *Canadian Journal of Family Law* 61. (For response to this article see: Landau, Barbara (1990) 9 *Canadian Journal of Family Law* 193).
- Grillo, Trina, "The Mediation Alternative: Process Dangers for Women" (1991) 100 *Yale Law Journal* 217.
- Macfarlane, Julie *The Emerging Phenomenon of Collaborative Family Law (CFL): A Qualitative Study of CFL Cases*, (Ottawa: Department of Justice, 1995).
- Michaela Keet, Wanda Wieggers and Melanie Morrison "Client Engagement Inside Collaborative Law" (2008) 24 *Canadian Journal of Family Law* 145.

Class Number 12: Child Custody**Reading: Vol. II, pp. 69-96****Statute: *Divorce Act*, ss. 16, 17*****Family Relations Act*, Part 2, esp. ss. 21, 22, 24, 34-38**

- *best interests of the child*
- *Young v. Young*

Supplementary Readings:

- Bala, Nicholas, "The Best Interests of the Child in the Post-Modern Era: A Central but Paradoxical Concept" in Harold Niman and Gerald P. Sadvari, eds., *Family Law: 'Best Interests of the Child'* (Toronto: Law Society of Upper Canada, 2001).
- Boyd, Susan B., "Backlash and the Construction of Legal Knowledge: The Case of Child Custody Law" (2001) 20 *Windsor Year Book of Access to Justice* 141.
- Elrod, Linda D. & Dale, Milfred D. "Paradigm Shifts and Pendulum Swings in Child Custody: The Interests of Children in the Balance" (2008) 42 *Family Law Quarterly* 381.
- Fineman, Martha L. and Anne Opie, "The Uses of Social Science Data in Legal Policy Making: Custody Determinations at Divorce" (1987) *Wisconsin Law Review* 107.
- Millar, Paul, "Explaining Child Custody Determinations in Canada" (1998) 13(2) *Canadian Journal of Law and Society* 209.

Class Number 13: Child Custody, cont'd**Reading: Vol. II, pp. 97-131****Statute: *Divorce Act*, s. 16(9)*****Family Relations Act*, ss. 24(3), (4)**

- *the relevance of conduct, race and lifestyle*

- *Van de Perre v. Edwards*
- *joint custody and the primary caregiver*

Supplementary Readings:

- Bala, Nicholas, Lorne D. Bertrand, Joanne J. Paetsch, Bartha Maria Knoppers, Joseph P. Hornick, Jean-François Noel, Lorraine Boudreau, and Susan W. Miklas, *Spousal Violence in Custody and Access Disputes: Recommendations for Reform* (Ottawa: Status of Women in Canada, 1998), online at:
www.swc-cfc.gc.ca/pubs/pubspr/spousal_violence/spousal_violence_e.html
- Boyd, Susan B., "Lesbian (and Gay) Custody Claims: What Difference Does Difference Make?" (1998) 15 *Canadian Journal of Family Law* 131.
- Cahn, N.R., "Civil Images of Battered Women – The Impact of Domestic Violence On Child Custody Decisions" (1991) 44 *Vanderbilt Law Review* 1041.
- Cohen, Jonathan and Nikki Gershbain, "For the Sake of the Fathers? Child Custody Reform and the Perils of Maximum Contact" (2001) 19 *Can. Fam. L. Qrtly* 121.
- Hughes, Elizabeth. "Mother's Vicarious Hand: Primary Caregiving Reconcepted as Relationship and Responsibility" (2002) 20 *Can. Fam. Law Quarterly* 467.
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Class Number 14: Access, Mobility and Abduction

Reading: Vol. II, pp. 132-168
Statute: *Divorce Act*, ss. 16(5), (10), 17(5)
Criminal Code, ss. 280-286
Family Relations Act, ss. 42-55

- *the access parent*
- *grandparents*
- *mobility: Gordon v. Goertz*
- *abduction*
- *efforts to amend the Divorce Act*
- *efforts to amend the Family Relations Act*

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- Himel, Andrea, "Parents Stealing Kids: Part III – A Canadian Perspective on the Legal and Social Problem of Child Abduction" (200) 18 *Canadian Family Law Quarterly* 225.
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5. Economic Consequences of Family Breakdown

Class number 15: Matrimonial Property

Reading: Vol. II, pp. 169-198

Statutes: *Family Relations Act (B.C.), Part 5, ss. 1, 120.1*

- *rationales and principles*
- *Walsh v. Bona*
- *property claims of unmarried cohabitants*
- *constructive trusts*

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Class Number 16: Matrimonial Property: B.C. Framework

Reading: Vol. II, pp. 199-229

Statutes: *Family Relations Act (B.C.), Part 5*

- *family assets*
- *ordinary use for a family purpose*
- *hobbies*
- *debts*

Supplementary Readings:

Cole, Stephen R. and Andrew J. Freedman, "Recent financial issues in family law: fair value and contingent income tax liability" (1990) 6 *Canadian Family Law Quarterly* 101.

Klotz, Robert A., "Wrestling with Pensions, Bankruptcy and Family Law" (1992) *Canadian Family Law Quarterly* 189.

Class Number 17: Matrimonial Property: Special Issues

Reading: Vol. II, pp. 230-256

Statutes: *Family Relations Act, Part 6, ss. 58, 59, 62, 65, 66*

- *pensions*
- *ventures*
- *business assets*
- *valuation of assets*
- *First Nations and provincial property law*
- *division of assets and spousal support*

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Class Number 18: Client Counselling

Reading: None

Supplementary readings:

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Pirie, Andrew, *Alternative Dispute Resolution: Skills, Science, and the Law* (Toronto: Irwin Law, 2000).

Class Number 19: Spousal Support: Principles and Models

Reading: Vol. II, pp. 257-289

Statutes: *Family Relations Act, Part 7*

Divorce Act, 1985, ss. 15.2, 15.3, 17, 17(1), 17(4.1), 17(7)

- *rationales and principles*
- *M. v. H.*
- *competing models of support*
- *self-sufficiency model*
- *compensatory model*

- *Moge v. Moge*

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- Boyd, Susan B., “Best Friends or Spouses” Privatization and the Recognition of Lesbian Relationships in *M. v. H.*” (1996) 13 *Canadian Journal of Family Law* 321.
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- Semple, Noel, “In Sickness and in Health? Spousal Support and Unmarried Cohabitants” (2008) 24 *Canadian Journal of Family Law* 317.
- Williams, Joan, “Is Coverture Dead? Beyond a New Theory of Alimony” (1994) 82 *Georgetown Law Journal* 2227.

Class Number 20: Spousal Support: Contracts and Guidelines

Reading: Vol. 11, pp. 289-322; 331-339

Statutes: *Divorce Act, 1985*, s. 15.2, 17, 17(1), 17(4.1), 17(7)

- *Bracklow*
- *Leskun*
- *separation agreements and variation*
- *Miglin v. Miglin*
- *Spousal Support Advisory Guidelines*

Supplementary Readings:

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Class Number 21: Child Support

Reading: Vol. II, pp. 340-364

**Statutes: *Family Relations Act*, ss. 88, 93, 93.1, 93.2, 94, 95
Divorce Act, 1985, esp. ss. 15.1, 15.3, 25.1, 26.1
*Federal Child Support Guidelines***

- *responsibility for child support*
- *defining the parent child relationship*
- *introduction to federal child support guidelines*

Supplementary Readings:

- Bala, Nicholas, "Ottawa's New Child-Support Regime: A Guide to the Guidelines" (1999) 21 *Reports of Family Law* (4th) 301.
- Cossman, Brenda, "Parenting Beyond the Nuclear Family: Doe v. Alberta" (2007) 45 *Alberta Law Review* 501.
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Class Number 22: Child Support: Application and Enforcement**Reading: Vol. II, pp. 364-400****Statutes: *Family Relations Act*, s. 96
Divorce Act, 1985, ss. 17(1), (4), (6.1), (6.3), (6.4)**

- *application of child support principles*
- *Francis v. Baker*
- *"retroactive" child support*
- *enforcement of child support*
- *Dickie v. Dickie*

Supplementary Readings:

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Class Number 23: Review