

Course Outline

COURSE:	LAWS 3804A - Law of the Family
TERM:	Fall 2012
PREREQUISITES:	1.0 credit from LAWS 2003 [1.0] (no longer offered), LAWS 2201, LAWS 2202
CLASS:	Day & Tuesday Time: 18:05 - 20:55 Room: Please check with Carleton Central for current room location
INSTRUCTOR: (CONTRACT)	Ms. Kathryn Bortolussi B.A., J.D., LL.B.
CONTACT:	Office: LA B442 Office Hrs: By Appointment Email: Kathryn_Bortolussi@carleton.ca

The Paul Menton Centre for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at **613-520-6608** or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (if applicable). For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

This course presents an overview of laws about the family, familial relationships, and family breakdown in Canada. These laws will be considered in the context of:

- examining the relationship of law to social change;
- questioning where state regulation should intersect with family lives;
- considering socio-economic and cultural implications of family law; and
- evaluating the relevance of factors such as gender, sexual orientation, culture, class and race to family law.

Topics include cohabitation, domestic contracts, marriage and dissolution of marriage, separation, support, custody and access. Further topics addressed include adoption, child protection, and property division.

COURSE OBJECTIVES

By the end of this course, students should be able to:

- Critique principles relating to state regulation of families through law;
- Find relevant legislation and case law;
- Identify current family issues; and
- Craft family law and policy arguments.

REQUIRED TEXTS

Julien Payne & Marilyn Payne, *Canadian Family Law* 4th Ed. (Canada: Irwin Law, 2011)

EVALUATION

(All components must be completed in order to get a passing grade)

A. Attendance - 10%

- Attendance will be taken at the beginning of each class.

B. Reflection Paper - 5%

- Students will be required to write one reflection paper based on the assigned reading for the second class. The reflection paper should be analytical and critical rather than descriptive. The paper can focus on one facet of the readings and does not have to focus on all aspects of the assigned readings. The reflection paper should be no longer than two pages, double spaced and 12 pt. font. The reflection paper is due by 6:05 p.m. on September 18, 2012 and should be submitted in class. Any papers submitted late will be deducted 2% per day.

C. Assignment - 40%

- Will be provided to students at the end of class on October 16, 2012 and available on WebCT following the October 16, 2012 class
- Due on October 23, 2012 no later than 6:05 p.m. The assignment is to be handed in at the beginning of class. Any assignments submitted after 6:05 p.m. on October 23, 2012, will automatically be deducted by 2.5% for each day the assignment is late.
- Students will be provided with two essay questions and will have the option to choose which one of the two questions to answer.
- Should be in essay format with correct spelling and grammar
- The response should reflect the readings and class discussions
- Personal views and opinions should be mentioned
- The Assignment will be discussed further in class on October 16, 2012.

C. Final Exam - 45%

- Scheduled during the exam period.
- Closed book
- Multiple choice, short answer and hypothetical problems.
- The final exam will be discussed further in class.

Standing in a course is determined by a course instructor subject to the approval of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Dean.

REGULATIONS

- A. Students should obtain and review all regulations and policies contained in the Carleton University Calendar.
- B. Academic integrity is expected of all participants in the University Community. Please familiarize yourself with the University's Policies on academic integrity and plagiarism.

Plagiarism:

The University Senate defines plagiarism as “*presenting, whether intentionally or not, the ideas, expression of ideas or work of others as one’s own.*” This can include:

- reproducing or paraphrasing portions of someone else’s published or unpublished material, regardless of the source, and presenting these as one’s own without proper citation or reference to the original source;
- submitting a take-home examination, essay, laboratory report or other assignment written, in whole or in part, by someone else;
- using ideas or direct, verbatim quotations, or paraphrased material, concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another’s data or research findings;
- failing to acknowledge sources through the use of proper citations when using another’s works and/or failing to use quotation marks;
- handing in "substantially the same piece of work for academic credit more than once without prior written permission of the course instructor in which the submission occurs."

Plagiarism is a serious offence which cannot be resolved directly with the course’s instructor. The Associate Dean of the Faculty conducts a rigorous investigation, including an interview with the student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They can include a final grade of "F" for the course.

SCHEDULE

I. INTRODUCTION: THE FAMILY & FAMILY LAW**Class Number 1: Introduction and Syllabus
Definitions, History, Legal Change and Jurisdiction**

Reading: Chapter One

- a. What is the definition of "family"
- b. Evolution of Family Law
- c. Jurisdiction
 - The Constitution Act, 1867
 - Judicial Jurisdiction

II. CREATING THE FAMILY**Class Number 2: Cohabitation & Contracting a Valid Marriage**

Statutes: *Marriage Act*
Change of Name Act

Readings: Chapter Two and pgs. 41- 43

- a. Engagements
- b. Marriage
 - Definition of Marriage
 - Monogamous and Polygamous Marriages
 - Formal and Essential Validity of Marriage
 - Void and Voidable Marriages
 - Bars to Annulment
 - Change of Name
- c. Cohabitation
 - Definition of Cohabitation
 - Reasons for cohabitation v. marriage

**Class Number 3: Having a Child: Who is a Parent?
Issues in Adoption**

Statutes: *Adoption Information Disclosure Act*
Children's Law Reform Act
Child and Family Services Act
Divorce Act
Family Law Act

Readings: pgs. 361 - 371

- Who is a Parent?

- Introduction to adoption
- Legislative framework
- Consent
- Access to Identifying Information

Class Number 4: Class Cancelled

III. Legal Regulation of Family Life

Class Number 5: Domestic Violence and Child Protection

Statutes: *Criminal Code*
Child and Family Services Act

Readings: Chapter 5

- a. Family Violence
 - Civil law and domestic violence
 - Criminal law and domestic violence
- b. Child Protection Proceedings
 - Section 43 of the *Criminal Code*
 - *Child and Family Services Act*

IV. Family Breakdown: Separation, Divorce and Corollary Issues

Class Number 6: Family Breakdown: Counseling, Mediation and Family Law

Statute: *Divorce Act*

Readings: Chapter 6 and Chapter 7

- Divorce
 - Divorce Judgments
 - Ground for Divorce
 - Bars to Divorce
- Consequences of Separation and Divorce
- Access to Justice
- Alternative Dispute Resolution
 - negotiation
 - mediation
 - arbitration
 - parenting coordinator

Class Number 7: Child Custody, Access, Mobility and Abduction

Statutes: *Divorce Act*

Children's Law Reform Act

Readings: Chapter 10 and 62-63

- Best interests of the child
- *Young v. Young*
- The relevance of conduct, race and culture
- Joint custody
- Mobility
- Abduction
- *Gordon v. Goertz*

V. Economic Consequences of Family Breakdown:

Class Number 8: Child Support

Statutes: *Divorce Act*
Family Law Act

Readings: Chapter 9

- Responsibility for child support
- Introduction to Child Support Guidelines
- Application of Child Support Guidelines
- Section 7 Expenses
- Variation of Child Support Orders

Class Number 9: Spousal Support

Statutes: *Divorce Act*
Family Law Act

Readings: Chapter 8

- Entitlement to Spousal Support
- Objectives of Spousal Support
- Spousal Support Advisory Guidelines
- Separation Agreements and Variation

Class Number 10: Matrimonial Property

Statute: *Family Law Act*

Readings: Chapter 12

- Rationales and principles
- Family assets and debts
- Sample Net Family Property and Equalization Questions
- Unequal Division of Net Family Property
- Matrimonial Home

Class Number 11: Property Rights of Unmarried Cohabitants

Readings: pgs. 44-48, 53-62
Kerr v. Baranow, [2011] SCC 10

- Property rights of unmarried cohabitants
- Constructive trusts and unjust enrichment
- *Walsh v. Bona*
- *Kerr v. Baranow*

Class Number 12: Domestic Contracts and Review

Statute: *Family Law Act*

Readings: Chapter 4

- Formal Requirements
- Marriage Contracts
- Cohabitation Agreements
- Separation Agreements
- Setting Aside Domestic Contracts
- *Levan v. Levan*