

Course Outline

COURSE:	LAWS 3804A - Law of the Family
TERM:	Fall 2013
PREREQUISITES:	1.0 credit from LAWS 2003 [1.0] (no longer offered), LAWS 2201, LAWS 2202
CLASS:	Day & Monday 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: Monday 5:00 p.m. – 5:55 p.m. and by Appointment Email: Kathryn_Bortolussi@carleton.ca

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Academic Accommodations for Students with Disabilities: 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) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.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 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%

- **DUE: September 16, 2013 at 18:05**
 - Reflection paper should be submitted at the beginning of class
 - Any papers submitted after September 16, 2013 at 18:05 will be deducted by 2% per day.
- Students will be required to write one reflection paper based on the assigned reading for the **second class (Chapter 2 & Pages 41-43)**. The reflection paper should be analytical and critical and not 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.

- C. Quiz – 20%**
- **DATE:** September 30, 2013 (in class)
 - Multiple Choice and short answer
 - Closed Book
- D. Mid Term Exam – 25%**
- **DATE:** November 18, 2013 (in class)
 - Closed Book
- E. Final Exam - 40%**
- 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"
 - 2011 Census – Statistics Canada
- b. Evolution of Family Law
 - Divorce Act
 - Support
 - Common-Law Couples
- c. Jurisdiction
 - The *Constitution Act*, 1867
 - Judicial Jurisdiction

II. CREATING THE FAMILY**Class Number 2: Reflection Paper is Due at 18:05****Cohabitation & Contracting a Valid Marriage**

Statutes: *Marriage Act*
Change of Name Act

Readings: Chapter Two and pgs. 41- 43
Marcon v Cicchelle, 1993 CarswellOnt 339, 47 R.F.L. (3d) 403
Mastromatteo v Dayball, 2011 CarswellOnt 15930, [2013] W.D.F.L. 405

- a. Engagements
 - Property disputes on termination of engagement
 - Common Law Rule v S. 33 *Marriage Act*
- 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: *Access to Adoption Records 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

III. Family Breakdown: Separation, Divorce and Corollary Issues

Class Number 4: **Quiz = 20%**

Family Breakdown: Counseling, Mediation and Family Law

Statute: *Divorce Act*

Readings: Chapter 6 and Chapter 7

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

Class Number 5: Child Custody, Access, Mobility and Abduction

Statutes: *Divorce Act*
Children's Law Reform Act

Readings: Chapter 10 and 62-63
Young v Young, [1993] 4 S.C.R. 3
Gordon v Goertz [1996] 2 S.C.R. 27

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

Class Number 6: No Class

V. Economic Consequences of Family Breakdown:**Class Number 7: Child Support**

Statutes: *Divorce Act*
Family Law Act

Readings: Chapter 9
Family Law Act O. Reg. 391/97 S. 7 (Ontario Child Support Guidelines s.7)

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

Class Number 8: Class Cancelled – Fall Break

Class Number 9: Spousal Support

Statutes: *Divorce Act*
Family Law Act

Readings: Chapter 8
Bracklow v Bracklow (1999), 44 R.F.L. (4th) 1 (S.C.C.)
Moge v Moge [1992] 3 S.C.R. 813

- 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: Midterm Exam = 25% of Final Grade

Class Number 12: 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 13: Domestic Contracts

Statute: *Family Law Act*

Readings: Chapter 4
Levan v Levan, 2008 ONCA 388

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

Class Number 14: Review