

Course Outline

COURSE:	LAWS 3804 A – Law of the Family
TERM:	Fall & Fall/Winter 2011-12
PREREQUISITES:	1.0 credit from LAWS 2003 [1.0] (no longer offered), LAWS 2201, LAWS 2202
CLASS:	Day & Time: Tuesday – 1805-2055
	Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Ms. Rebecca Jaremko Bromwich
(CONTRACT)	Ph.D Candidate, LL.M, LL.B., B.A. (Hon.)
CONTACT:	Office: B442 LA (Loeb)
	Office Hrs: By appointment
	Email: RBROM098@uottawa.ca

"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: <http://www2.carleton.ca/pmc/students/accommodations> . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by 11 November 2011 for December exams and 7 March 2012 for April exams. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

I. 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 critical, feminist and critical race theory-based legal scholarship through perspectives on themes that include:

- **Inquiring** into 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,
- **Exploring** domestic violence as a gendered problem, and
- **Critiquing** 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 naming and property division. Engagement with alternative possibilities and critical inquiry into the legal framework governing families in Canada is encouraged.

II. COURSE OBJECTIVES

Family law is a complex area of law that continues to undergo significant change. Accordingly, this course cannot be comprehensive in its treatment of any particular issue within family law or of family law in totality. Instead, this course aims to do the following:

- Explore and critique principles relating to state regulation of families through law;
- Enable students to find relevant legislation and case law and to identify current family law issues
- Cultivate students' ability to craft family law and policy arguments;
- Afford students an opportunity to think and talk about debates that shape and inform family law in Canada and to consider law reform.

III. ADMINISTRATIVA

Office Hourse: By appointment

IV. MATERIALS

A. Required Materials

Julien and Marilyn Payne, *Family Law* 3d. Ed. (Canada: Irwin Law, 2011)

V. Teaching Methodology, Attendance and Participation

This course will be taught through a combination of lectures, class discussion, small group work and response exercises. Learning is greatly enhanced by an active and engaged classroom environment. This kind of pedagogical setting is not just the responsibility of the professor to construct. It is something we can only build together. Consequently, I expect that students will have read and thought about assigned materials before they come to class.

Please make note of the university's regulations about attendance and assignments.

VI. Evaluation and Expectations

A. Evaluation

- In class exam, worth 40% of your grade
Last Day of Class
- Two Reading Responses, worth 50% of your grade
Due: to be circulated before NOON on the day before class for which comment is assigned
- One Engagement Response, worth 10% of your grade
Due: to be circulated before 9 PM on the day before class for which comment is assigned

B. Detailed Assessment Expectations

1. In Class Exam

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 semester. The exam will be based on a hypothetical problem and an essay. Procedure will be discussed in detail in class.

2. Reading Responses

Two to three pages in length. Not to exceed three double spaced pages. These should be in essay form. They should engage with the readings. All of the readings for the relevant day should be mentioned and, to some degree, described. Personal views and opinions should be mentioned. This can include opinions and/or personal responses to the readings. Outside sources can be cited as well as required readings but this is not mandatory.

3. Page length

"Pages" mean letter-size (8 ½" x 11") paper, double-spaced, typed, with 12 point font and 1" margins.

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 Carleton University Calendar.
- B. The assignments and the examination in this course will all be open-book.
- C. Academic integrity is expected of all participants in the University Community. **Please familiarize yourselves with the University's Policies on academic integrity and plagiarism.**

VIII. Detailed Outline

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### SCHEDULE - FAMILY LAW

#### 1. Introduction: The Family and Family Law

##### Class Number 1: Introduction and Syllabus Histories, Definitions and Legal Change

Reading: Chapter 1

- *the public/private divide*
- *Histories: legal and personal - adults, children and communities*
- *state, family and the market*
- *religion*
- *questions in the 21<sup>st</sup> century*

##### Class Number 2: Legal Framework

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

## 2. Creating the Family

### **Class Number 3: Cohabitation and Contracting a Valid Marriage Customary and Same-Sex Marriage**

Reading: Chapter 2 - Marriage

**Statutes:** *Marriage Acts*

- *legal organization of personal relationships*
- *formal and essential validity of marriage*
- *partnership registration (European examples)*
- *polygamy*
- *customary marriage*
- *same-sex cohabitants and marriage*
- *EGALE v. Canada*

### **Class Number 4: Having Children: Who is a Parent? Issues in Adoption**

Reading: pp. 2, 37, 39, 49-50, 64, 125-26, 467, 556, 562

- *donor insemination*
- *surrogacy*
- *lesbian and gay parenting*
- *introduction to adoption*
- *legislative framework*
- *King v. Low*
- *Re: K*
- *grandparents*
- *race, culture and adoption*
- *Racine v. Woods*
- *D.H. v. H.M.*
- *customary adoption*
- *consent*

## 3. Legal Regulation of Family Life

### **Class Number 5: Child Protection First Nations and Child Protection**

Reading: pp. 118- 133

- *child abuse within the family*
- *religion and family law*
- *section 43 of the Criminal Code*
- *Child, Family and Community Service Act, Ontario*
- *familial autonomy, culture and religion*

### **Class Number 6: Domestic Violence and Woman Abuse First Nations and Domestic Violence**

Reading: Chapter 5

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

#### 4. Family Breakdown: Divorce, Separation and Corollary Issues

**Class Number 7: Family Breakdown  
Counselling, Mediation and Family Law**

Reading: Chapter 6

- *consequences of separation and divorce*
- *the Charter and family breakdown*
- *the legal framework*
- *divorce in context*
- *gender equality in the justice system*
- *process issues*
- *access to justice*
- *collaborative law*
- *family mediation*
- *Hartshorne v. Hartshorne: marriage contracts*

**Class Number 8: Child Custody**

Reading: Chapter 10

- *best interests of the child*
- *Young v. Young*
- *the relevance of conduct, race and lifestyle*
- *Van de Perre v. Edwards*
- *joint custody and the primary caregiver*

**Class Number 9: Access, Mobility and Abduction**

Reading: pp. 526-563

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

#### 5. Economic Consequences of Family Breakdown

**Class number 10: Matrimonial Property**

Reading: Chapter 12

- *rationales and principles*
- *“feminization of poverty”*
- *Kerr v. Baranow, [2011] SCC 10*
- *Walsh v. Bona*
- *property claims of unmarried cohabitants*
- *constructive trusts*
- *family assets*
- *ordinary use for a family purpose*
- *hobbies*
- *debts*

**Class Number 11:      Spousal Support  
Contracts and Guidelines**

Reading:            Chapter 8

- *rationales and principles*
- *M. v. H.*
- *competing models of support*
- *self-sufficiency model*
- *compensatory model*
- *Moge v. Moge*
- *Bracklow*
- *separation agreements and variation*
- *Miglin v. Miglin*
- *Spousal Support Advisory Guidelines*

**Class Number 12:      Child Support  
Review**

Reading:            Chapter 9 and pp. 522 – 526

- *responsibility for child support*
- *defining the parent child relationship*
- *introduction to federal child support guidelines*
- *application of child support principles*
- *Francis v. Baker*
- *“retroactive” child support*
- *enforcement of child support*
- *Dickie v. Dickie*

## B. Supplementary Materials

The following are some general reference texts that may be of interest to students:

- 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*, 2<sup>nd</sup> 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*, 6<sup>th</sup> Student Edition (Scarborough: Thomson Carswell, 2005).
- Jaremko, Rebecca, "The Shangri-La Café" (June 2002) *Nasty: Academia at its Brattiest* online: [http://nasty.staticred.net/archives/cat\\_articles.php](http://nasty.staticred.net/archives/cat_articles.php)
- Kronby, Malcolm C., *Canadian Family Law*, 9<sup>th</sup> 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*, 2<sup>nd</sup> 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*, 4<sup>th</sup> 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).