

# **FAMILY LAW 240-001**

**Fall 2008**

**Tues/Thurs 3:00 – 4:30 p.m.  
Room 101 Curtis Law Building**

**Professor Susan Boyd**                      Office: 233 Curtis Law Building  
**Office Hours:**                      Wednesday 3:30 – 4:30 p.m.; or by appointment; or drop by if my door is open.  
**Phone:**                                      604-822-6459  
**Email:**                                        boyd@law.ubc.ca  
**Course Webpage:**                      <http://faculty.law.ubc.ca/boyd/LAW240.html>

## **I. Course Description**

This course surveys the legal framework surrounding familial relationships and family breakdown in Canadian society. Topics include defining ‘family’, cohabitation, marriage, adoption, child protection, domestic abuse, 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, First Nations status, class, poverty and race to family law.

## **II. Course Objectives**

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

- stimulate your interest in the various legal and social issues in the area of family relationships;
- convey basic principles that underlie and inform legal regulation of families;
- 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 policy debates that shape and inform family law in Canada.

## **III. Course Materials**

### **A. Required Materials (available at the Distribution Centre):**

<b>Boyd/Ramsbotham</b>	<b>Family Law 240 (volumes I &amp; II)</b>	<b>(Fall 2008)</b>
<b>B.C. Queen’s Printer</b>	<b>Family Law 240 Statutory Supplement</b>	<b>(2008)</b>

**Other materials** may be placed on reserve in the library or I may email you a web link to consult, e.g. if a new case is released or to follow up a discussion point in class. I will use the email addresses you have given the university to send you updates, discussion points, etc. via the Enrolment Services/Faculty Service Centre. In order to receive my emails, please ensure your

email address given to the university is up to date and valid. **Confirm** which address is registered by using the Student Service Centre: [www.students.ubc.ca](http://www.students.ubc.ca). I will also post some materials, including weekly handouts, to the course website, which you should check regularly. <http://faculty.law.ubc.ca/boyd/LAW240.html>. The website is password protected. The user name is "law240" and the password is "2forty".

## **B. Supplementary Materials (Optional)**

The following are some general reference texts that may be of assistance to students who choose the research essay option, or to supplement an area of interest. Family law changes rapidly, so be cautious about relying on summaries of the law without updating them. As well, the provincial laws on fields such as matrimonial property vary considerably, so make sure to check BC's law.

### **Reference Texts:**

- Atkin, Bill, ed., *International Survey of Family Law*, 2008 Edition (Bristol: Jordan Publishing Ltd., 2008) (or check out earlier editions).
- Baker, Maureen, ed., *Families: Changing Trends in Canada*, 4th ed. (Toronto: McGraw-Hill Ryerson, 2001).
- Bala, Nicholas et al. 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, S.B. and H. Rhoades, *Law and Families* (Ashgate, 2006).
- Collier, Richard and Sally Sheldon, eds., *Fathers' Rights Activism and Law Reform in Comparative Perspective* (Oxford: Hart, 2006).
- Christopher, T. Catherine, *Law of Domestic Conflict in Canada*, looseleaf (Scarborough: Carswell, 2002).
- Diduck, Alison, *Law's Families*, (Oxford: Lexis Nexis, 2003).
- 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).
- Hovius, Berend, *Family Law: Cases, Notes and Materials*, 6<sup>th</sup> Student Edition (Scarborough: Thomson Carswell, 2005).
- MacDonald, James and Ann Wilton, *2005 Annotated Divorce Act* (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).
- 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, 1993), online: WestlawCarswell <<http://www.westlawcarswell.ca/>>.
- Mossman, Mary Jane, *Families and the Law in Canada: Cases and Commentary* (Toronto: Emond Montgomery Publications Ltd., 2004).
- Payne, Julien and Marilyn Payne, *Canadian Family Law*, 2<sup>nd</sup> ed. (Toronto: Irwin Law, 2006).
- Payne, Julien and Marilyn Payne, *Child Support Guidelines in Canada 2004* (Toronto: Irwin, 2004).
- Wintemute, Robert & Mads Andenaes, eds., *Legal Recognition of Same-Sex Partnerships* (Oxford: Hart, 2001).
- Wu, Zheng, *Cohabitation: An Alternative Form of Family Living* (Toronto: Oxford University Press, 2000).

Various Family Law looseleaf services and manuals, commonly used by practitioners, are on reserve in the Law Library (around KN 170-176), including *Family Law Sourcebook for B.C.* (substantive law) and *B.C. Family Practice Manual* (practice & procedure). They are not particularly good on Aboriginal family law, so you might also consult looseleaf services such as Woodward, *Native Law* or Reiter, *The Fundamental Principles of Indian Law*.

Several journals specialize in family law, including the *Canadian Journal of Family Law* (student-run journal produced at UBC Faculty of Law; volunteers welcome! <http://faculty.law.ubc.ca/cdnjfl/index.html> ) and the *Canadian Family Law Quarterly*. Browsing their Tables of Contents is useful to get a sense of current issues, debates, and practice questions.

#### **IV. Teaching Methodology, Attendance and Participation**

This course is taught through a combination of lectures, class discussion, in-class exercises, small group work, and guest speakers. The goal is an active and engaged class room environment. In this regard, it is expected that students will read and think about the assigned materials before they come to each class. Each class is taught on the assumption that students are prepared to discuss the assigned materials. **Please bring assigned materials to class.**

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, please ask a classmate for notes. If there is anything you do not understand, you may visit me during office hours to ask questions.

#### **V. Evaluation and Expectations**

**A. 15% Participation:** All students are responsible for participating in class discussion of assigned materials. Each student must also prepare one reflective commentary on the readings for a particular class; maximum 2 double-spaced typed pages (12 point Times New Roman). Due by Noon the day the readings are scheduled to be discussed in class (by email to [boyd@law.ubc.ca](mailto:boyd@law.ubc.ca) ). Details to follow.

#### **B. 85% Examination or Research Paper:**

**Exam:** A 2.5 hour final, scheduled, open book (course materials and notes only) examination. The exam is scheduled for Wednesday, **December 3rd, 2008 at 9 a.m.**

**OR**

**Paper:** You may prepare an original research paper of no more than 30 double-spaced pages (12 point Times New Roman), including footnotes, on a family law topic to be negotiated with your professor. The paper is due no later than Wednesday, **December 3rd, 2008, 12 Noon**. You are required to submit research papers both electronically and in hard copy. A hand-out will follow.

If you choose the paper option, you **must** submit a 3-page double-spaced typed proposal (12 point Times New Roman) including preliminary bibliography (10 sources) for the paper, outlining the topic, its significance in relation to family law, and how you plan to investigate it by **Oct. 28<sup>th</sup>, 2008** (early proposals welcomed). You are advised to discuss your topic with me prior to submitting your proposal. You may not choose the paper option unless you submit the proposal and I approve it. Even if you submit the paper proposal, you can still opt for the exam.

## ACCOMMODATION RULES and PROCEDURES:

[http://www.law.ubc.ca/current/academic\\_services/index.html](http://www.law.ubc.ca/current/academic_services/index.html)

If you require specific exam conditions please obtain an examination accommodation form from Susan Morin in Room 132. The **research papers** must be handed in to the Fishbowl, on Wednesday, **December 3rd, 2008, 12 Noon**. All **extensions** must be sought from the Examinations Committee. Apply using the form on the Faculty of Law website (<http://www.law.ubc.ca/forms/index.html>). Submit it to the Chair of the Examinations Committee via Director of Student Academic Services, Susan Morin, in Room 132. **Essays submitted late** without permission will be penalized: for each or any part of a day that the assignment is late, including weekends, statutory holidays and other days when the law school is closed, the student will lose 5 per cent of the maximum possible value of the assignment.

## UBC LAW FACULTY GRADING AND MARK DISTRIBUTION

In all courses having an enrollment of fewer than 40 the average shall be in the 70-76% range. Faculty are encouraged to use the following **Marking Guide**.

Assigned Mark	Required Letter Grade	Suggested Word Description	Suggested % W/I Categories
90> 85-89 80-84	A+ A A-	Excellent (87.5)	10-15
76-79 72-75 68-71	B+ B B-	Good (73.5)	50-60
64-67 60-63 55-59	C+ C C-	Satisfactory (61.5)	20-30
50-54	D	Barely Adequate (52)	5-10
0-49	F	Fail	1-5 1 <sup>st</sup> Year 0-3 2 <sup>nd</sup> & 3 <sup>rd</sup> Years

### Grading Criteria

I will generally follow these criteria when grading:

#### **80% to 100% (A- to A+)**

*Exceptional/Excellent* performance: strong evidence of original thinking; good organization; capacity to analyze and synthesize; superior grasp of subject matter with sound critical evaluations; evidence of extensive knowledge base.

#### **68% to 79% (B- to B+)**

*Competent/Good* performance: evidence of grasp of subject matter; some evidence of critical capacity and analytic ability; reasonable understanding of relevant issues; evidence of familiarity with the readings.

#### **50% to 67% (D to C+)**

*Adequate/Satisfactory* performance: understanding of the subject matter; ability to develop solutions to simple problems in the material; acceptable but uninspired work, not seriously faulty but lacking style and vigour.

#### **00% to 49% (F)**

*Inadequate* performance: little or no evidence of understanding of the subject matter; weakness in critical and analytic skills; limited or irrelevant use of the material in answers.

## VI. Academic Offences <http://www.students.ubc.ca/calendar/index.cfm?tree=3,54,111,959>

Methods of evaluation depend, for their success and fairness, on the ethical standards of both students and instructors. Be scrupulous in avoiding the presentation of the work of others as your own. Note that it is a serious academic offence to submit “the same essay, presentation, or assignment more than once whether the earlier submission was at this or another institution, unless prior approval has been obtained.” **The Faculty of Law takes this rule very seriously.** Academically recognized practices of citation and attribution must be followed. Never quote or use an idea from another author without citing that person’s work. Familiarize yourself with the UBC Calendar rules and penalties for plagiarism and other offences. Students who submit research papers must submit them both electronically and in hard copy. I reserve the right to use the **TurnItIn** service to verify the originality of your work.

## VII. Course Outline

In general, we follow the order of Volumes I and II of the course materials. You are expected to read the assigned materials before class. I will rarely describe the readings to you in class, but rather will raise themes and issues arising from them. ***Please have the materials in front of you in class for easy reference.*** 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. I may send out revised schedules from time to time. The planned schedule is below. Page references are to Vols. I and II of the materials. Statutes are referred to by name. Provincial statutes are in the B.C. Queen’s Printer, *Family Law Statutory Supplement*. Federal statutes (*Civil Marriage Act*, *Marriage (Prohibited Degrees) Act*, *Divorce Act*, *Federal Child Support Guidelines*) can easily be found online and excerpts are included in Vols. I & II (see especially the end of Volume II for the *Divorce Act* and the *Child Support Guidelines*).

The supplementary readings listed under each class are completely optional. They may be of assistance to students looking to deepen their study of a particular topic or to prepare research papers.

## 1. INTRODUCTION: THE FAMILY AND FAMILY LAW

### Class Number 1 – Sept 2: Introduction and Syllabus

Reading: None (but overview will touch on some themes at pp. 1-56)

### Class Number 2 – Sept 4: Histories, Culture and Legal Change

Reading: Vol. I, pp. 1-56

- *histories: adults, children and communities*
- *religion and family law*
- *the public/private divide: state, family and the market*
- *redefining family for the 21<sup>st</sup> century*

#### Supplementary readings:

- Boyd, S. B., “Legal Regulation of Families in Changing Societies” in A. Sarat, ed., *The Blackwell Companion to Law and Society* (Oxford: Blackwell Publishing, 2004), pp. 255-270.
- 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 Millenium?” (2000) 24 *Melbourne University Law Review* 737.
- 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.

### Class Number 3 – Sept 9: Legal Framework

Reading: Vol. I, pp. 57-76

- *the Constitution Act, 1867*
- *the Canadian Charter of Rights and Freedoms and family law*
- *judicial jurisdiction*
- *First Nations and family law*
- *Access to justice*
- *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.
- Leckey, Robert, “Family Law as Fundamental Private Law” (2007) 86 *Can Bar Review* 69.

## 2. CREATING THE FAMILY

**Class Number 4 – September 11: Cohabitation, Contracts and Marriage**

**Reading: Vol. I, pp. 77-102**

**Statutes: *Marriage Act (B.C.)*  
*Law and Equity Act (B.C.), s. 60*  
*Marriage (Prohibited Degrees) Act (Canada) (p. 102 casebook)***

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

**Supplementary readings:**

- Barker, Nicola, “Sex and the Civil Partnership Act: The Future of (Non)Conjuality” (2006) 14(2) *Feminist Legal Studies* 241.
- Barlow, Anne & Rebecca Probert, “Regulating Marriage and Cohabitation: Changing Family Values and Policies in Europe and North America – An Introductory Critique” (2004) 26(1) *Law & Policy* 1.
- 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.
- Cossman, Brenda and Bruce Ryder, “What is Marriage-Like Like? The Irrelevance of Conjuality” (2001) 18 *Canadian Journal of Family Law* 269.
- Deech, Ruth, “The Case Against Legal Recognition of Cohabitation” in J. Eeklelaar & S. Katz, eds., *Marriage and Cohabitation in Contemporary Societies: Areas of Legal, Social and Ethical Change* (Toronto: Butterworths, 1980) 300.
- Forder, Caroline, “European Models of Domestic Partnership Law: The Field of Choice” (2000) 17 *Canadian Journal of Family Law* 371.
- 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) *Can. J. Fam. L.* 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)

**Class Number 5 – September 16: Customary Marriage and Same Sex Marriage**

**Reading: Vol. I, pp. 103-124**

**Statutes: *Marriage Act (B.C.)*  
*Civil Marriage Act (Canada) (p. 119)***

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

**Supplementary readings:**

- Emens, Elizabeth F., “Monogamy’s Law: Compulsory Monogamy and Polyamorous Existence” (2004) 29 *New York University Review of Law and Social Change* 288-376.
- Ertman, Martha, “Marriage as a Trade: Bridging the Private/Private Distinction” (2001) 36 *Harvard Civil Rights-Civil Liberties Law Review* 79.

- 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.
- Zlotnik, Norman, “Judicial Recognition of Aboriginal Customary Law in Canada: Selected Marriage and Adoption Cases” (1984) 4 *Canadian Native Law Review* 1.
- 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.

**Class Number 6 – September 18: Children: What is a Legal Parent?**

**Reading:** Vol. I, pp. 125-157

**Statutes:** *Vital Statistics Act (B.C.)*, especially ss. 3-5  
*Adoption Act (B.C.)* esp. ss. 37, 84, 85  
*Family Relations Act (B.C.)*, ss. 94-95.1  
*Law and Equity Act (B.C.)*, ss. 61

- *donor insemination*
- *birth registration*
- *naming*
- *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.
- Kelly, Fiona, “Nuclear Norms or Fluid Families? Incorporating Lesbian and Gay Parents and Their Children Into Canadian Family Law” (2004) 21 *Can. J. Fam. Law* 133.
- 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 7 – September 23: Issues in Adoption**

**Reading:** Vol. I, pp. 158-188

**Statutes:** *Adoption Act*, esp. ss. 5, 7, 10, 11, 13(2), 14, 19, 29, 38, 46

- *Who can adopt?*
- *Consents*
- *access*



- *race, culture and adoption*
- *customary adoption*

**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.

### 3. LEGAL REGULATION OF FAMILY LIFE

**Class Number 8 – September 25: Child Protection**

**Reading: Vol. I, pp. 189-211**

**Statute: *Child, Family and Community Service Act (B.C.)*, esp. 1-12, 13-14**

- *current statutory regime and history*
- *child abuse within the family*
- *section 43 of the Criminal Code*
- *Child, Family and Community Service Act (overview)*

**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 9 – October 30: Issues in Child Protection: Culture, Religion, First Nations**

**Reading: Vol. I, pp. 212-226**

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

- *familial autonomy, culture and religion*
- *First Nations and child protection*

**Supplementary readings:**

- 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](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.

**Class Number 10 – October 2: Domestic Abuse**

**Reading: Vol. I, pp. 227-248**

**Statute: *Family Relations Act (B.C.)*, ss. 37, 67, 38, 126**

- *domestic violence and family law proceedings*

**Supplementary readings:**

- Cynthia L. Chewter, "Violence Against Women and Children: Some Legal Issues" (2003) 20(1) *Can. J. Fam. L.* 99-178.
- 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](http://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 11 – October 7: Introduction to Law & Family Breakdown**

**Reading: Vol. II, pp. 1-30**

**Statute: *Divorce Act, 1985*, Definitions and ss. 3, 8-14 (at p. 403 of Vol. II)**

- *definition of spouse*
- *legal framework of family breakdown*
- *the Charter and family breakdown*
- *divorce in economic context*

**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](http://www.vifamily.ca/library/cft/divorce_05.html)
- Mossman, Mary Jane, "Gender Equality, Family Law and Access to Justice" (1994) 8 *International Journal of Law, Policy and Family* 357.

**Class Number 12 – October 9: Divorce and Legal Process**

**Reading: Vol. 11, pp. 31-49**

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

- *legal aid*
- *mediation*
- *collaborative lawyering*

**Supplementary readings:**

Bailey, Martha, “Unpacking the ‘Rational Alternative’: A Critical Review of Family Mediation Movement Claims” (1989) 8 *Canadian Journal of Family Law* 61. (For response 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).

Mnookin, Robert H. and Lewis Kornhauser, “Bargaining in the Shadow of the Law: The Case of Divorce” (1978-1979) 88 *Yale Law Journal* 950.

Neave, Marcia. “Resolving the dilemma of difference: A critique of “The role of private ordering in family law”” (1994) 44 *University of Toronto Law Journal* 97-131.

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 13 – October 14: Divorce and Marriage Contracts**

**Reading: Vol. II, pp. 50-68**

**Statute: *Family Relations Act*, ss. 56**

- *Hartshorne v. Hartshorne: marriage contracts*

**Supplementary Readings:**

Bailey, Martha, “Marriage á la carte: A Comment on *Hartshorne v. Hartshorne*.” (2004) 20 *Canadian Journal of Family Law* 249

Shaffer, Martha, “Domestic Contracts, Part II: The Supreme Court’s Decision in *Hartshorne v. Hartshorne*” (2004) 20 *Canadian Journal of Family Law* 261.

**Class Number 14 – October 16: Child Custody (Introduction)**

**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).
- 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.

**Class Number 15 – October 21: Child Custody Decisions**

**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:**

- Boyd, Susan B., "Lesbian (and Gay) Custody Claims: What Difference Does Difference Make?" (1998) 15 *Canadian Journal of Family Law* 131.
- 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. Q'tly* 121.
- Hughes, Elizabeth. "Mother's Vicarious Hand: Primary Caregiving Reconceived as Relationship and Responsibility" (2002) 20 *Can. Fam. Law Quarterly* 467.
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**Class Number 16 – October 23: Access and Mobility**

**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 (Hague Convention)*
- *law reform efforts*

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- Gilbert, Jason, "Oh Yeah, I Have a Dad": The Dismissal of the Father Figure in Custody and Access Determinations" (2001) 19 *Canadian Family Law Quarterly* 327.
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## **5. ECONOMIC CONSEQUENCES OF FAMILY BREAKDOWN**

**Class number 17 – October 28: Matrimonial Property (statutes and trusts)**

**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 18 – October 30: Matrimonial Property (BC scheme)**

**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 19 – Nov. 4: 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 20 – November 6: Spousal Support (Introduction)**

**Reading:** Vol. II, pp. 257-273

**Statutes:** *Family Relations Act, Part 7*  
*Divorce Act, 1985, ss. 15.2, 15.3, 17*

- *rationales and principles*
- *M. v. H.*
- *competing models of support*
- *self-sufficiency model: the Pelech trilogy*

**Supplementary Readings:**

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.

Brito, Tonya L., "The Welfarization of Family Law" (2000) 48 *University of Kansas Law Review* 229.

Cossmann, Brenda, "A Matter of Difference: Domestic Contracts and Gender Equality" (1990) 28 *Osgoode Hall Law Journal* 303.

Grassby, Miriam. "Two income Couples: Presumption of Need for the Lower Income Spouse" (2004) 20(2) *Can. J. Fam. Law* 321-366

**November 11<sup>th</sup>: University closed, no classes.**

**Class Number 21 – November 13: Spousal Support: Modern Models?**

**Reading: Vol. II, pp. 274-310**

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

- *compensatory model: Moge v. Moge*
- *non-compensatory model: Bracklow*
- *Fault? Leskun*

**Supplementary Readings:**

Boyd, John-Paul, “Tsunami in a Teapot: *Leskun v. Leskun*” (2007) 40 U.B.C. Law Review 293.

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**Class Number 22 – November 18: Spousal Support: Contracts and Guidelines**

**Reading: Vol. II, pp. 311-339**

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

**Supplementary Readings:**

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**Class Number 23 – November 20: Child Support**

**Reading: Vol. II, pp. 340-363**

**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* (p. 419 of Volume II)**

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

**Supplementary Readings:**

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**Class Number 24 – November 25: Child Support (Application) & Enforcement**

**Reading:** Vol. II, pp. 364-402

**Statutes:** *Family Relations Act*, s. 96

*Divorce Act, 1985*, ss. 17(1), (4), (6.1), (6.3), (6.4)

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- *application of child support principles*
- *Francis v. Baker*
- "Retroactive" Child Support
- *Dickie*
- *McIvor*

**Supplementary Readings:**

Mossman, Mary Jane, "Child Support or Support for Children? Re-thinking "Public" and "Private" in Family Law" (1997) 46 *University of New Brunswick Law Journal* 63.

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**Class Number 25 – November 27: LEFTOVERS & REVIEW**

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