ISSUES IN ADVANCED FAMILY LAW
Law 343-1
Spring 2008

Faculty of Law, University of Victoria
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Course Outline
Spring 2008

I Course Description

This course is an elective, upper-year course which provides a forum for in-depth consideration of critical perspectives on the relationship between law and unequal relations within and among families. This year's focus is on child custody and access law, with particular attention paid to the engagement of critical race theory. In this course we will examine child custody law in Canada from varying political, social and economic perspectives all with the aim of complicating the question of how issues of gender, race, sexuality and culture matter in determining the best interests of the child.

The substantive provisions of the laws that apply to families are not examined in detail, a task that is accomplished in Family Law 322. Instead, we focus at a more conceptual level on explanations of inequalities related to the "family" and connected to gender, race, class, sexual identity, and other social constructions that law plays a role in reinforcing. These explanations are found not only within the legal system, but also in the ways in which law is situated within its social, economic, cultural and political contexts.

This year, the course will also ask students to reflect on the relationship between the traditional pedagogies employed at law school and the skills that are particularly needed in the practice of family law. Critical pedagogy will be employed throughout the semester with the aim of enabling students to offer their views on this critical question for legal education.

II Course Objectives

The course aims to:

$ stimulate your interest in the relationship between family law and theoretical approaches to law; and in particular, the ways in which families are constructed as a result;
$ convey basic principles that underlie and inform child custody law in Canada, with

attention to explanations of inequalities related to the family such as gender, race, class and sexual identity;

$ enable you to identify key issues in family law, and to write about those issues with attention to complex social and legal forces;

$ provide you with an opportunity to examine and discuss the political forces and theoretical debates that shape the law and in particular, Canadian child custody law; and

$ challenge you to think critically about the role that legal education plays in the adequate preparation of family law advocates.

III Administrative Details

A. Class location and Times

Spring: Monday and Wednesday, 11:00 – 12:30
Room 142

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, G.M., *Issues in Advanced Family Law, Cases and Materials*;
Case law supplied weekly;
Other materials held weekly on reserve.

B. Recommended Materials

The following are some general reference texts that may be of assistance to students in preparing for the 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).
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: WestlaweCarswell <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 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/gcalder/343-4/index.html. Students may also find archived course materials on my family law site to be helpful: http://www.law.uvic.ca/gcalder/322/index.html.

V Teaching Methodology, Attendance and Participation

This course will be taught as a seminar. 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, and come to class prepared to discuss them. Students will be responsible for facilitating class discussions on a rotating basis. As well, the course will involve student presentations on assigned topic. The course will also use innovative pedagogy, where possible, to challenge students to think critically about the ways in which we learn law at law schools in Canada today.

There will, of course, be times when you will be unable to attend class due to illness, an unexpected occurrence and for other reasons. If you miss a class due to these reasons, you should feel free to come and discuss with me material that was covered in the class you were unable to attend.

If you would like to discuss classroom, assignment or exam accommodation necessitated by a permanent or temporary disability, or for other reasons, please see Associate Dean Kim Hart Wensley as soon as possible.

VI Evaluation and Expectations

A. Participation and Presentation

20%
Students are expected to attend the seminar, participate in discussions and initiate discussion on their research topics. Students will be required to facilitate the discussion for one week of the term. This will require circulating proposed questions for discussion in advance. In addition, each student will be required to make a short presentation on their research project in the final three weeks of the term.

B. Essay Proposal and Annotated Bibliography

10% Due date TBD
Students are expected to submit a 2-3 page typed proposal, including an explanation of your

topic, the conceptual framework used, your methodology, a tentative outline and a list of ten bibliographic sources. Value and purpose of the research must be explained. In addition, 3 of the key sources you intend to use must be annotated. In each annotation, provide a brief summary of the author=s approach and subject matter and explain why the source is useful in your own research.

C. Research Paper

70% Due date TBD

20-25 typed pages plus footnotes and bibliography. This paper should include discussion of one or more theoretical conceptions of the family, and relate the theoretical component to a discussion of one or more of the substantive issues raised in the seminar. The paper should reflect an appreciation of the literature and themes addressed in the course, but should also entail independent research. Suggestions for essay topics will be circulated early in the term, but students are not restricted by those topics. Students should meet with me early in the term to begin talking about potential research topics.

D. Page length

APages@ mean letter-size (8 2" 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.

VII. Regulations

A. Students should obtain and review all regulations and policies contained in the University of Victoria Calendar, 2007-2008 (“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).

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/calendar2007/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+ A A-	9 8 7	90-100% 85-89% 80-84%	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.
B+ B B-	6 5 4	75-79% 70-74% 65-69%	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.
C+ C	3 2	60-64% 55-59%	Satisfactory or minimally satisfactory performance. These grades indicate a satisfactory performance and knowledge of subject matter.
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: Spring 2008

The following are the required readings for each week of the seminar. Each week will be supplemented by student questions and facilitation, and other materials as the week=s subjects necessitate.

I. The Case Study: *Van de Perre v. Edwards*

K.V. v. T.E. [1999] B.C.J. No. 434 (B.C.S.C.)
K.V. v. T.E. [2000] B.C.J. No. 491 (B.C.C.A.)
Van de Perre v. Edwards [2001] S.C.J. No. 60 (S.C.C.)

II. The Materials

The Appellant's Record: The Supreme Court of Canada
Guest Lecturer

III. Setting the Stage: Critical Engagement with Law, Child Custody in Canada

Young v. Young [1993] 4 S.C.R. 3

Carol Smart, "The Power of Law" in Carol Smart, *Feminism and the Power of Law* (London and New York: Routledge, 1989), pp. 4-25

Susan B. Boyd, "Child Custody Law, Gender and Difference: Shifting Relations" in Susan B. Boyd, *Child Custody, Law and Women's Work* (Toronto: Oxford University Press, 2003), pp. 1-19

Maria Coley, "Children's Voices in Access and Custody Decisions: The Need to Reconceptualize Rights and Effect Transformative Change" (2007) 12 *Appeal* 48-72

IV. Rethinking and Complicating: Best Interests of the Child

Goertz v. Gordon, [1996] 2 S.C.R. 27

Philip Alston, "The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights" (1994) 8 *International Journal of Law and the Family* 1-25

Marlee Kline, "Child Welfare Law, 'Best Interests of the Child' Ideology, and First Nations" (1992) 30(2) *Osgoode Hall Law Journal* 375-425

Kathy Lynn Grant, "Deserving of Further Attention: A Case Streaming Approach to Child Custody and Access in the Context of Spousal Violence" (2005) 22 *Canadian Journal of Family Law* 57-100

V. Critical Race Theory

The Leeds Teaching Hospitals NHS Trust v. A. [2003] E.W.J. No. 906

Carol Aylward, "Critical Race Theory" in Carol Aylward, *Canadian Critical Race Theory: Racism and the Law* (Halifax: Fernwood Publishing, 1999), pp. 19-49

Ruth Frankenberg, "Growing up White: Feminism, Racism, and the Social Geography of Childhood" (1993) 45 *Feminist Review* 50-84

Maneesha Deckha, "Is Culture Taboo? Feminism, Intersectionality, and Culture Talk in Law" (2004) 16(1) *Canadian Journal of Women and the Law* 14-53

VI. Race and Child Custody Law

D.H. v. H.M. [1997] B.C.J. No. 2144, aff'd by the SCC

Emily F. Carasco, "Race and Child Custody in Canada," (1999) 16 *Canadian Journal of Family Law* 11-50

Gayle Pollack, "The Role of Race in Child Custody Decisions Between Natural Parents over Biracial Children" (1997) 23 *New York University Review of Law and Social Change* 603-640

annie bunting, "Complicating Culture in Child Placement Decisions" (2004) 16(1) *Canadian Journal of Women and the Law* 137-164

VII. The Legal Construction of Motherhood: Feminist Analyses of Child Custody Law

Tyabji v. Sandana [1994] B.C.J. No. 469.

Carol Smart, "Power and the Politics of Child Custody" in Carol Smart, *Child Custody and the Politics of Gender* (London: Routledge, 1989), pp. 1-26

Susan B. Boyd, "Is there an Ideology of Motherhood in (Post)modern Child Custody Law?" (1996) 5(4) *Social and Legal Studies* 495-521

Marlee Kline, "Complicating the Ideology of Motherhood: Child Welfare Law and First Nation Women" (1993) 18(2) *Queen's Law Journal* 306-342

VIII. The Legal Construction of Fatherhood: Finding Fathers in the Legal System

Trociuk v. British Columbia (Attorney General) [2003] 1 S.C.R. 835.

Susan B. Boyd, "'Robbed of their Families'? Fathers' Rights Discourses in Canadian Parenting Law Reform Processes" in Richard Collier and Sally Sheldon, eds., *Fathers' Rights Activism and Law Reform in Comparative Perspective* (Oxford: Hart Publishing, 2006) pp. 27-51

Robert Menzies, "Virtual Backlash: Representations of Men's 'Rights' and Feminist 'Wrongs' in Cyberspace" in Dorothy E. Chunn, Susan B. Boyd, and Hester Lessard, eds., *Reaction and Resistance: Feminism, Law and Social Change* (Vancouver: U.B.C. Press, 2007) pp. 65-97

Richard Collier, "In Search of the 'Good Father': Law, Family Practices and the Normative Reconstruction of Parenthood" (2001) 22 *Studies in Law, Politics and Society* 133-169

IX. Complicating the Notion of Who is a Parent: The Challenges of New Reproductive Technologies, Sexuality and Otherness

A.A. v. B.B. and C.C., 2007 ONCA 2

Sally Sheldon, "Fragmenting Fatherhood: The Regulation of Reproductive Technologies" (2005) 68(4) Modern Law Review" 523-553

Susan B. Boyd, "Gendering Legal Parenthood: Bio-Genetic Ties, Intentionality and Responsibility" (2007) 25 *Windsor Yearbook of Access to Justice* 55-85

Dorothy Roberts, "The Genetic Tie" (1995) 62 *University of Chicago Law Review* 209-273 at 209-238

X. Student Presentations and Discussion