

**McGILL UNIVERSITY – FACULTY OF LAW**

**EXAMINER INSTRUCTION FORM**

**COURSE:** Family Law – LAWG 273 **SECTION:** 001  
**EXAMINER:** Professor Angela Campbell  
**CO-EXAMINER:** Professor Robert Leckey  
**DATE:** December 20, 2006 **TIME:** 9:30 a.m.  
**DURATION:** 3 hours  
**WEIGHT:** 100% (or 65% if optional assignment completed)  
**NATURE:** Final Exam **TERM:** Fall

1. Books, texts and materials from the Law Library are not permitted into the examination room for any examination whatsoever.
2. No electronic devices with recorded notes permitted in examination room.
3. No cell phones.

**TYPE:** Open-Book

**INSTRUCTIONS:**

**This exam is comprised of two questions. Students who completed the optional assignment must respond to Question 1 only. All other students must complete both questions on this exam.**

**For all questions, please be sure to:**

- draw upon and refer to relevant authorities;
- note any distinctions in federal/provincial and/or Civil Law/Common Law approaches to the issues raised;
- state any assumptions made.

**This examination paper contains 2 questions on 4 page(s) (not including cover page) and 0 page(s) of attachments. Check to ensure that it is complete before starting.**

**Question 1 (65 percent)****ALL STUDENTS MUST RESPOND TO QUESTION 1**

Robert Frost's poem, *The Death of the Hired Man*, recounts the story of Silas, an older man who returns, at the end of his life, to the farm where he had worked sporadically during his lifetime. From the poem, we understand that Silas is not very dependable, and reappears to work as a farmhand only when he needs money; once he has earned enough to get by, he leaves. This time, however, Silas has come back to the farm not to work, but to spend the last moments of his life. Frost tells us that Silas returns to the farm, his "home", rather than – as Frost puts it – "claiming kin" by going to his brother, a wealthy banker. These ideas emerge particularly from the following lines of the poem, which represent a dialogue between Mary and Warren, the married couple who own the farm and who are discussing whether or not to take Silas back this time:

<b>The Death of the Hired Man</b>	
<b>Robert Frost</b>	
<b>1915</b>	
[...]	
"Warren," she said, "he has come home to die: You needn't be afraid he'll leave you this time."	115
"Home," he mocked gently.	
"Yes, what else but home? It all depends on what you mean by home. Of course he's nothing to us, any more Than was the hound that came a stranger to us Out of the woods, worn out upon the trail."	120
"Home is the place where, when you have to go there, They have to take you in."	
"I should have called it Something you somehow haven't to deserve."	125
Warren leaned out and took a step or two, Picked up a little stick, and brought it back And broke it in his hand and tossed it by. "Silas has better claim on us you think Than on his brother? Thirteen little miles As the road winds would bring him to his door. Silas has walked that far no doubt to-day. Why didn't he go there? His brother's rich, A somebody—director in the bank."	130
"He never told us that."	135
"We know it though." [...]	

Within *The Death of the Hired Man*, “home” – and within that, “family” and its inherent obligations – are presented as concepts infused with meaning primarily by the individuals themselves, rather than the law; indeed, we do not find (nor would we expect!) any mention in the poem of where law would direct Silas to go for care and comfort at the end of his life.

**a) (50 percent)**

How do the ideas and depictions of “family” communicated through *The Death of the Hired Man* compare to the stories about families and relationships seen throughout your Family Law course? Consider this question with reference to the following characters:

- A couple, like the one in *Rypkema v. H.M.T.Q. et al.*, [2003] BCSC 1784 (IJCCan), who contracts for the services of a surrogate.
- A female ex-spouse, like the one in *Marcovitz v. Bruker*, (2005) QCCA 835 (CanLII)

Explain the congruence (or lack thereof) between, on one hand, the perceptions about family relationships, rights and responsibilities likely held by these characters, and on the other hand, the legal frameworks applicable in each situation.

In your analysis, you might also wish (but are not required) to draw upon other examples, such as the following:

- Step-parents subject to claims for child support in regard to step-children.
- Children who recognize more than two adults as parents.
- Children whose cultural, religious or racial identity might differ from that of one or both parents.

**b) (15 percent)**

In *The Death of the Hired Man*, Frost might be taken to suggest that it is the *individual’s* own perception of family – rather than any definition of family supplied by the state – that will matter most. We might agree with this point, especially in view of the fact that we have freedom to order our social relationships consensually. We can, for example, use wills or contracts to generate rights or obligations similar to those that law imposes on family relationships. We can also, to a more limited extent, limit or deny obligations imposed by family law.

But if this is true, why do individuals care about and seek formal recognition of family status and relationships? We have seen several examples in Family Law of quests for public affirmation in regard to both the *existence* and *non-existence* of family connections. What generates such claims? Discuss with reference to cases and other authorities involving claims related to paternity.

## **Question 2 (35 percent)**

**STUDENTS WHO COMPLETED THE OPTIONAL ASSIGNMENT FOR FAMILY LAW ARE RELIEVED OF RESPONDING TO THIS QUESTION.**

Consider the excerpts from the two articles presented below. What distinguishes the couples in these articles, and do these distinctions justify differential treatment under the law?

In your response, consider and address:

- The factors and assumptions that drive legal determinations as to whether a “spousal” (or “spouse-like”) relationship, and all of its concomitant rights and obligations, *exist* or *should be dissolved*.
- The difficulties that have been identified as embedded within legal approaches to identifying “spousal” (or “spouse-like”) relationships.
- Whether, particularly in view of the two stories presented here and the ideas and materials considered in your Family Law course, you might propose an alternate method for determining whether domestic relationships between adults, and the benefits and obligations that normally attach to spouses (e.g., support, recognition of status under social legislation (e.g., tax, pensions)), should be subject to legal recognition.

### **Article #1**

***Tired? Low libido? Find the real reasons for sexless marriages***

**- Laura Berman**

**The Chicago Sun-Times**

**October 30, 2006**

Nearly 20 percent of couples are in sexless marriages, defined as having sex 10 times or less per year.

Sex is a battleground in these relationships.

In fact, I hear from men who are caught in sexless or low-sex marriages more than any other single topic. These men are on the brink of ending their relationships, but struggling with a sense of obligation to their partners, their marriage vows and -- more than anything -- their children.

[...]

I should say that it's not just men who find themselves wanting more sex in their marriages; however, they do make up the vast majority. [...]

**Article #2****Straight Spinster Sisters Sue For Gay Partnership Rights**

*by 365Gay.com Newscenter Staff*

September 4, 2006

(London) Two elderly sisters who live together say the British government is discriminating against them because they are not lesbians and in a same-sex relationship.

The women, who have lived together since birth and have never married are suing the government in the European Court of Human Rights.

In their lawsuit Joyce Burden and her sister Sybil, both in their 80s, claim that [they are treated unfairly under a civil partnership law that extends to unmarried same-sex couples rights that benefit married partners].

In court papers the women's lawyer says that when the [civil partnership] law, allowing gay and lesbian couples to register their partnerships and attain all of the rights of marriage, was passed it should have included cohabitating family members who are dependant on one another.

[...]

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**END OF EXAM**

**ENJOY YOUR HOLIDAY!**

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