

Family Law LAWG–273 (001) CRN 13139
 Professor Robert Leckey
CALENDAR AND LEARNING OBJECTIVES
Winter 2014

This document sets out the readings and learning objectives, themes, and questions for each class. It lists the steps of the multi–step writing assignment. It also shows any make-up classes and cancellations.

Largely in response to requests from past students, I have posted a number of optional readings on myCourses. I do not intend the optional readings to be a source of stress. There are three folders: Parent–Child Relationship, Adult Conjugality, and Family Law Generally. This Calendar does not list all optional readings. In response to student interest in further tasting a “practical” side of things, I have listed below as optional a number of forms connected to family practice in Quebec.

Date and topic	Readings	Learning objectives/questions/themes
Class 1 Jan. 6 Course Introduction	<ul style="list-style-type: none"> ▪ Robert Leckey, “Families in the Eyes of the Law: Contemporary Challenges and the Grip of the Past” (2009) 15:8 <i>IRPP Choices</i>, p. 12 (myCourses) ▪ optional: John Eekelaar, “‘Not of the Highest Importance’: Family Justice under Threat” (2011) 33 <i>Journal of Social Welfare and Family Law</i> 311–317 (myCourses) 	<ul style="list-style-type: none"> ▪ introduction to the course ▪ learning objectives, course themes ▪ concept map ▪ inclusions and exclusions ▪ family law in the federation ▪ liberalism and family law ▪ family law and rights
I. THE PARENT–CHILD RELATIONSHIP		
<p>The first part of the course treats relationships between children and adults who have the legal status of parent or who attract some of the effects of parenthood. While family law historically organized itself around marriage, today the filial relationship is more properly placed at the outset: distinctions persist, to varying degrees, in the legal treatment of married and unmarried adult couples, whereas laws are now chiefly indifferent as to the civil status of a child’s parents. The filial bond can thus be regarded as largely independent of adult relationships and is appropriately regarded as primary. This part of the course distinguishes <i>de jure</i> relationships, ones formally recognized by the law, from <i>de facto</i> ones, which law recognizes on informal bases.</p>		
<p>A. <i>De jure</i> relationships</p> <p>We begin with what can be called <i>de jure</i> or formally recognized filial relationships, the juridical bonds connecting people recognized by law as parents to children. Parental status is viewed as intrinsically, non–instrumentally valuable; it is also, as we shall see, a means by which various effects (rights and duties) attach.</p>		

Date and topic	Readings	Learning objectives/questions/themes
1. Establishment		
<p>A relationship of legal parenthood can be established several ways. We shall see that recognition of parentage by contemporary law derives, in ways that can feel contradictory, from genetic connection, intention, or relationship with a child’s mother. Establishment of parental status is usually prospective: it typically precedes the carrying out of parent-like functions. We begin with adoption, the mode of establishment in which intention and consent are most explicit. Beginning this way, and not with “natural” parentage or filiation by blood, aims to dislodge the sense evident in traditional doctrine of these latter modes as primary and of adoption as secondary.</p>		
<p>Class 2 Jan. 8 Filiation by adoption: wanted adoption?</p>	<ul style="list-style-type: none"> ▪ N Kasirer, “Note: Establishing the Bond of Filiation and the Civilian Conception of Family Relations” ▪ arts 543–584 CCQ ▪ Ont CFSA, ss 136–139, 146, 149(1), 157, 158, 160(1) ▪ <i>In Re Robert Paul</i>, 481 NY2d 652 (CA 1984) ▪ Jean Pineau & Marie Pratte, <i>La famille</i> (Montreal: Thémis, 2006) at paras. 468–75, pp. 749–62 ▪ optional: David L Eng, “Transnational Adoption and Queer Diasporas” (2003) <i>Social Text</i> 76, Vol 21, No 3(myCourses) 	<ul style="list-style-type: none"> ▪ the function of adoption ▪ adoption as mimetic filiation ▪ adoption as erasure of prior biological ties and creation of new family ▪ adoption’s political effects within family law ▪ locating adoption: legislative choices
<p>Class 3 Jan. 13 Unwanted adoption?</p>	<ul style="list-style-type: none"> ▪ <i>Racine v Woods</i>, [1983] 2 SCR 173 ▪ art 559 CCQ ▪ <i>Droit de la famille—1914</i>, [1996] RJQ 219 (CA) ▪ Adoptive Parents Group, “Adoption in Quebec: Banque Mixte Adoption” ▪ optional: Marlee Kline, “Child Welfare Law, ‘Best Interests of the Child’ Ideology, and First Nations” (1992) 30 <i>Osgoode Hall LJ</i> 375 (myCourses) ▪ optional: Malcolm Dort, “Unheard Voices: Adoption Narratives of Same-Sex Male Couples” (2010) 26 <i>Can J Fam L</i> 289 (myCourses) 	<ul style="list-style-type: none"> ▪ class, racial, and cultural overtones of best interest of the child ▪ problems with adoption: revocation of consent

Date and topic	Readings	Learning objectives/questions/themes
<p>Class 4 Jan. 15 The classic model of adoption disintegrates</p>	<ul style="list-style-type: none"> ▪ Ont CFSA, s 153.6 ▪ BC Adoption Act, s 46(1) ▪ Bill 81, <i>An Act to amend the Civil Code and other legislative provisions as regards adoption and parental authority</i>, explanatory notes, clauses 1–7, 22–58, 71, 74 ▪ Robert Leckey, “Le passé de l’adopté aux frontières du droit” in Institut canadien d’études juridiques supérieures, ed, <i>Droits de la personne : La circulation des idées, des personnes et des biens et capitaux</i>, (Cowansville: Yvon Blais, 2013) 487–504 ▪ optional: Janet Carsten, “‘Knowing Where You’ve Come from’: Ruptures and Continuities of Time and Kinship in Narratives of Adoption Reunions” (2000) 6:4 <i>Journal of the Royal Anthropological Institute</i> 687–703 (myCourses) ▪ optional: Cindy Baldassi, “The Legal Status of Aboriginal Customary Adoption across Canada : Comparisons, Contrasts, and Convergences” (2006) 39 <i>UBC L Rev</i> 63 (myCourses) ▪ optional: Barbara Yngvesson, “Negotiating Motherhood: Identity and Difference in ‘Open’ Adoptions” (1997) 31:1 <i>L & Soc’y Rev</i> 31–80 (myCourses) 	<ul style="list-style-type: none"> ▪ challenges to adoption’s effacement of prior ties ▪ rethinking models of adoption
<p>Class 5 Jan. 20 “Natural” parentage and filiation by blood</p>	<ul style="list-style-type: none"> ▪ Jonathan Ives et al, “Becoming a Father/Refusing Fatherhood: An Empirical Bioethics Approach to Paternal Responsibilities and Rights” (2008) 3:2 <i>Clinical Ethics</i> 75, esp pp 78–83 ▪ arts 522–527, 530–533, 535, 535.1 CCQ ▪ Ont CLRA, ss 1, 4–6, 8–10 ▪ Ont Vital Statistics Act, ss 8–10 ▪ <i>Massie c Carrière</i>, [1972] CS 735 ▪ optional: Enregistrement des naissances (myCourses) 	<ul style="list-style-type: none"> ▪ historical overview: illegitimacy and bastardy ▪ the parental relationship as central ordering device of family law ▪ different paternities ▪ marriage and parentage ▪ basic legislative regimes for identifying parentage and filiation ▪ the revolutionary, and now foundational, character of art. 522 and s. 1 CLRA

Date and topic	Readings	Learning objectives/questions/themes
<p>Class 6 Jan. 22 Filiation by blood: secrets and family stability</p>	<ul style="list-style-type: none"> ▪ arts 525, 530, 535.1 CCQ ▪ Ont CLRA, s 6 ▪ <i>Droit de la famille—09358</i>, 2009 QCCA 332, [2009] RDF 37, leave to appeal to SCC refused (<i>sub nom GR v IB</i>), [2009] 2 SCR vi ▪ Carol Smart, “Secrets and Lies” in her <i>Personal Life: New Directions in Sociological Thinking</i> (Cambridge: Polity, 2007), 122–32; optional: entire chapter ▪ optional: John Eekelaar, “Truth” in his <i>Family Law and Personal Life</i> (Oxford: Oxford University Press, 2006), 54–76 (myCourses) ▪ optional: <i>Pratten v British Columbia (Attorney General)</i>, 2012 BCCA 480, [2013] 2 WWR 6, leave to appeal to SCC refused, File No 35191, 30 May 2013 	<ul style="list-style-type: none"> ▪ “blood” vs. biology ▪ secrets and lies
<p>Class 7 Jan. 27 Assisted conception and same-sex couples</p>	<ul style="list-style-type: none"> ▪ arts 538–541 CCQ ▪ Philippe Malaurie & Hugues Fulchiron, <i>La famille</i>, 4th ed. (Paris: Defrénois, 2011) at paras. 1432–7, pp. 572–575 ▪ <i>M.D.R. c. Ontario (Deputy Registrar General)</i>, [2006] O.J. No. 2268 (S.C.J.) (headnote) ▪ Vital Statistics Act Regulation 1094, as am, s 2(1) “assisted conception”, 2(2)2 ▪ Robert Leckey, “Law Reform, Lesbian Parenting, and the Reflective Claim” (2011) 20 <i>Social & Legal Stud</i> 331 at 334–43 ▪ optional: <i>DWH v DJR</i>, 2013 ABCA 240 ▪ optional: Eric Blyth & Lucy Frith, “Donor–Conceived People’s Access to Genetic and Biographical History: An Analysis of Provisions in Different Jurisdictions Permitting Disclosure of Donor Identity” (2009) 23 <i>Int’l J L Pol’y & Fam</i> 174 (myCourses) ▪ optional: Jenni Millbank, “The Limits of Functional Family: Lesbian Mother Litigation in the Era of the Eternal Biological Family” (2008) 22 <i>Int’l J L Pol’y & Fam</i> 149 (myCourses) 	<ul style="list-style-type: none"> ▪ parental projects and two parents of the same sex ▪ <i>Charter</i> challenges versus legislative reform ▪ different legislative approaches
<p>Class 8 Jan. 29 A third parent?</p>	<ul style="list-style-type: none"> ▪ BC Family Law Act, s 30 ▪ <i>Buist v Greaves</i>, [1997] OJ No 2646 (Ont Gen Div) (QL) (headnote and paras 33–35) ▪ <i>AA v BB</i> (2007), 83 OR (3d) 561 (CA), leave to appeal refused (<i>sub nom Alliance for Marriage and Family v AA</i>), 2007 SCC 40, [2007] 3 SCR 124 	<ul style="list-style-type: none"> ▪ <i>parens patriae</i> jurisdiction ▪ filling gaps ▪ recognizing a third parent

Date and topic	Readings	Learning objectives/questions/themes
<p>2. Effects</p> <p>Parental status has a number of entailments. We shall examine the obligation of support and the rights and responsibilities of parental authority, including custody. Our study will not, however, exhaust the effects of formal parent–child relationships; for example, courses on successions or on the law of persons will present further effects.</p>		
<p>Class 9 Feb. 3 Obligation of support</p>	<ul style="list-style-type: none"> ▪ Divorce Act, s 15.1 ▪ arts 585–596 CCQ ▪ Ont FLA, ss 31, 32, 33(1), (2), (7), (11), (12), (14), 34(1) ▪ Jean Carbonnier, <i>La famille, l'enfant, le couple</i>, 21st ed. (Paris: Thémis, 2002), 51–59, 89–92 ▪ <i>Willick v Willick</i>, [1994] 3 SCR 670 (excerpts) 	<ul style="list-style-type: none"> ▪ the obligation of support as reciprocal ▪ contrast the civilian obligation of support with the more open-ended idea in the <i>Divorce Act</i>: is there a contrast between deontological and teleological obligations? ▪ revisions to support orders pre-Guidelines ▪ child support law vis-à-vis broader social context
<p>Class 10 Feb. 5 Obligation of support cont'd</p>	<ul style="list-style-type: none"> ▪ Divorce Act, ss 2(5), 26, 26.1 ▪ Federal Child Support Guidelines, ss 1, 3, 4, 5, 8, 9, 10 ▪ Order Designating the Province of Quebec for the Purposes of the Definition “applicable guidelines” in Subsection 2(1) of the Divorce Act, SOR/97-237 ▪ <i>Droit de la famille—139</i>, 2013 QCCA 15, [2013] RJQ 9, leave to appeal to SCC refused, File No 35259, 30 May 2013 ▪ optional: Robert Leckey, “But What Is Judicial Guidance? Debating Canadian Judgments on Children” (2010) 32:4 <i>Journal of Social Welfare and Family Law</i> 381–90 (myCourses) ▪ optional: Paul Millar and Anne H. Gauthier, “What Were They Thinking? The Development of Child Support Guidelines in Canada” (2002) 17:1 <i>Can J L & Soc’y</i> 139 (myCourses) ▪ optional: <i>Avis de contestation pension alimentaire</i> (myCourses) 	<ul style="list-style-type: none"> ▪ instrument choice in governance: recourse to guidelines ▪ the persistence of discretion ▪ unintended consequences of the Guidelines: fraud, underemployment ▪ federal and provincial guidelines ▪ federalism and the <i>Charter</i>

Date and topic	Readings	Learning objectives/questions/themes
<p>Class 11 Feb. 10 Welfare principle/ Best interests of the child</p>	<ul style="list-style-type: none"> ▪ arts 32–34 CCQ ▪ Quebec Charter, s 39 ▪ Ont CLRA, s 24(2) ▪ Édith Deleury & Dominique Goubau, <i>Le droit des personnes physiques</i>, 4th ed by Dominique Goubau (Cowansville: Yvon Blais, 2008) at paras. 630–7; optional: paras 638–49 ▪ <i>Young v Young</i>, [1993] 4 SCR 3 (excerpts) ▪ optional: Helen Reece, “The Paramountcy Principle: Consensus or Construct?” (1996) 49 Current Legal Problems 267 (myCourses) 	<ul style="list-style-type: none"> ▪ historical evolution ▪ from paternal rights to children’s rights? ▪ adjudication using a broad discretionary principle ▪ the constitutional status of best interests ▪ religion
<p>Class 12 Feb. 12 Authority of parent over the life of the child</p>	<ul style="list-style-type: none"> ▪ arts 597–612 CCQ ▪ Divorce Act, s 16 ▪ N Kasirer, “Note: Parental Authority” ▪ Marie Christine Kirouack, “La jurisprudence relative à la garde: où en sommes-nous rendus?” in Barreau du Québec, Service de la formation permanente, ed, <i>Développements récents en droit familial</i> (Cowansville: Yvon Blais, 2007) 665 at 722–5 ▪ Rachel Birnbaum, Nicholas Bala & Francine Cyr, “Children’s Experiences with Family Justice Professionals in Ontario and Ohio” (2011) 25 Int’l J L Pol’y & Fam 398, 398–400, 408–415 ▪ Helen Rhoades, “The Dangers of Shared Care Legislation: Why Australia Needs (Yet More) Family Law Reform” (2008) 36 Federal Law Review 279, 281–3, 296–9 ▪ optional: Richard Collier & Sally Sheldon, <i>Fragmenting Fatherhood: A Socio-Legal Study</i> (Oxford: Hart Publishing, 2008) at 163–70 (myCourses) ▪ optional: Felicity Kaganas, “Regulating Emotion: Judging Contact Disputes” (2011) 23 Child & Family Law Quarterly 63 (myCourses) 	<ul style="list-style-type: none"> ▪ parental authority in the C.C.Q. vs. provision for custody in the <i>Divorce Act</i> ▪ gendered conceptions of parental roles ▪ a non-legislative move towards sharing custody

Date and topic	Readings	Learning objectives/questions/themes
<p>Class 13 Feb. 17 Authority of parent over the life of the child: the darker side</p>	<ul style="list-style-type: none"> ▪ Divorce Act, s 17 ▪ BC Family Law Act, s 38 ▪ <i>Gordon c. Goertz</i>, [1996] 2 R.C.S. 27 (excerpts) ▪ Rachel Birnbaum & Stephanie Chipeur, “Supervised Visitation in Custody and Access Disputes: Finding Legal Solutions for Complex Family Problems” (2010) 29 Can Fam LQ 79, 87–94 ▪ Denyse Côté et France Dupuis, “Garde partagée et violence conjugale : un bon mariage ?” (2011) ▪ Rob George, <i>Ideas and Debates in Family Law</i> (Oxford: Hart, 2012), 121–5 ▪ optional: Robert H George, “Practitioners’ Views on Children’s Welfare in Relocation Disputes: Comparing Approaches in England and New Zealand” (2011) from 2011 CFLQ 178 (myCourses) ▪ optional: Susan B Boyd, “Autonomy for Mothers? Relational Theory and Parenting Apart” (2010) 18 Fem Legal Stud 137 (myCourses) 	<ul style="list-style-type: none"> ▪ feminist concerns about the attribution of custody and amendment orders ▪ the trend towards shared parenting post-separation and its consequences for women’s autonomy ▪ the regulatory effects of child custody and access ▪ violence
<p>B. De facto relationships: establishment and effects mingled</p> <p>While formal parental status remains conceptually and legally central, many children have adults in their lives who perform functions of parenting in a way that feels inconsistent with their status as legal stranger. There are ways by which laws can assign some of the rights and duties associated with parents to figures absent formal parental status. Unlike formal parentage or filiation, a de facto filial relationship is not recognized in a forward-looking way for its own intrinsic worth; by contrast, it is typically recognized or established for legal purposes in the process of recognizing some effects. We shall see recognition of some of the effects of parenthood on the part of non-parents in relation to the duty of support and the right of custody.</p>		
<p>Class 14 Feb. 19 <i>De facto</i> parenthood</p>	<ul style="list-style-type: none"> ▪ Divorce Act, ss 2(1) “child of the marriage,” 2(2) ▪ Ont FLA, s 1 “child” ▪ Interpretation Act, RSC 1985, c I-21, s 8.1 ▪ <i>Chartier v Chartier</i>, [1999] 1 SCR 242 ▪ <i>VA c SF</i>, [2001] RJQ 36 (CA) 	<ul style="list-style-type: none"> ▪ troubling the parent–stranger dichotomy ▪ notion of <i>in loco parentis</i>: is past contact with children a foundation for a duty of support? ▪ contextual appreciation of parental relationships ▪ interaction of federal and provincial law

Date and topic	Readings	Learning objectives/questions/themes
<p>Class 15 Feb. 24 <i>De facto</i> parenthood and alternative family forms</p>	<ul style="list-style-type: none"> ▪ <i>Jane Doe v Alberta</i>, 2007 ABCA 50, 404 AR 153, leave to appeal to SCC refused (<i>sub nom Doe v The Queen</i>), [2007] 2 SCR vi (headnote) ▪ arts 32–34 CCQ ▪ Quebec Charter, s 39 ▪ <i>Droit de la famille—3444</i>, [2000] RJQ 2533 (CA) ▪ Robert Leckey, “Two Mothers in Law and Fact” (2013) 21 Fem Legal Stud 1, 4–8, 11–16 	<ul style="list-style-type: none"> ▪ <i>Chartier</i> in action: radical rewriting of parenthood or patriarchy reinforced? ▪ the question of intention and consent ▪ grant of custody to someone other than the holder of parental authority ▪ best interests of the child and the question of its reach
<p>Class 16 Feb. 26 PEER EVALUATION OF SHORT ESSAYS Bring your first draft to class</p>	<ul style="list-style-type: none"> ▪ No readings 	<ul style="list-style-type: none"> ▪ identification of evaluation criteria ▪ circulation of papers ▪ peer evaluation exercise ▪ return of papers to their authors
<p>READING WEEK: No classes on March 3 & 5</p>		
<p>II. ADULT CONJUGALITY</p> <p>The course’s second part addresses conjugal relations between adults. This label, which enfolds married and unmarried couples on equal terms, reflects a break with the traditional organization of family law (cf. Title I, Marriage, of the C.C.Q.’s Book on the Family). As in the case with parent–child relationships, we distinguish status–conferring, <i>de jure</i> relationships that are recognized on formal bases from <i>de facto</i> relationships, in which recognition on informal or functional bases is typically bound up with the effects.</p>		
<p>A. <i>De jure</i> relationships</p> <p>The paradigmatic formal adult conjugal relationship is marriage. It has been joined in recent years by the civil union in Quebec and registered partnerships in a few other provinces.</p>		
<p>1. Establishment</p> <p><i>De jure</i> relationships are formalized by an informed exchange of consent. In recent years, it has become possible for same–sex couples to obtain a formal state recognition of their relationships, a development not without controversy.</p>		

Date and topic	Readings	Learning objectives/questions/themes
Class 17 March 10 Marriage	<ul style="list-style-type: none"> ▪ Rules respecting the solemnization of civil marriages and civil unions, RRQ, c CCQ, r 3 ▪ skim arts 365–379 CCQ ▪ N. Kasirer, “Note: Marriage” ▪ arts 380–382 CCQ ▪ H.R. Hahlo, “Legal Requirements for a Valid Marriage” in <i>Nullity of Marriage in Canada</i>, Toronto, Butterworths, 1979, 1 (excerpts) (skim) ▪ <i>Droit de la famille</i>—2254, [1995] RDF 556 (CS) ▪ optional: “Les paradoxes du jugement de Lille”: <i>Le Monde</i> 2008 (myCourses) 	<ul style="list-style-type: none"> ▪ why have state marriage? ▪ marriage and the division of powers ▪ validity and nullity of marriages
<u>SUBMISSION OF REVISED PAPERS BY TUES. 11 MAR. BY 15h</u>		
Class 18 March 12 EXAM PRACTICE AND IN-CLASS PEER EVALUATION	<ul style="list-style-type: none"> ▪ No reading ▪ In preparation for this session, please spend no more than 75 minutes planning and typing a draft answer to the sample exam question posted on myCourses ▪ Bring a hard copy of your typed answer to class; <u>identify it with a pseudonym</u> 	<ul style="list-style-type: none"> ▪ Some past students have complained that they felt unprepared for the form of my exam questions as well as for my evaluation criteria ▪ This exercise gives you practice at writing out an answer to a typical question ▪ Evaluating your peer—by applying my evaluation scheme—will help you to internalize my criteria
Class 19 March 17 Formal unions for same–sex couples	<ul style="list-style-type: none"> ▪ arts 521.1–521.19 CCQ ▪ Gérard Cornu, <i>La famille</i>, 9th ed (Paris: Montchrestien, 2006) at para. 53 ▪ Philippe Malaurie & Hugues Fulchiron, <i>La famille</i>, 4th ed (Paris: Defrénois, 2011) at paras 17, 18, 107, 108 ▪ Civil Marriage Act, Preamble and ss 1–4 ▪ <i>Halpern v Canada (Attorney General)</i> (2003), 65 OR (3d) 161 (CA) ▪ Michael Warner, <i>The Trouble with Normal: Sex, Politics, and the Ethics of Queer Life</i> (New York: Free Press, 1999) (excerpt) ▪ optional: Egale Canada 2013 intervention factum (myCourses) ▪ optional: Katherine Osterlund, “Love, Freedom and Governance: Same-sex Marriage in Canada” (2009) 18 Soc & Legal Stud 93 (myCourses) ▪ optional: <i>Saskatchewan (Marriage Act, Marriage Commissioners) (Re)</i>, 2011 SKCA 3, 366 Sask R 48 (myCourses) 	<ul style="list-style-type: none"> ▪ formal recognition of same–sex unions: from unthinkable couplings to married spouses ▪ inclusion/exclusion, validation/shame: the queer critique of gay marriage

Date and topic	Readings	Learning objectives/questions/themes
<p>2. Effects</p> <p>Formal conjugal relationships produce a new civil status for the partners. In the cases of marriage and civil union, they create new bonds of kinship. They entail rights and duties immediately. Admittedly, many of these rights are exercised and duties carried out unself-consciously during a relationship's happier days; they become more visible when the relationship founders.</p>		
<p>Class 20 March 19 Rights and duties of spouses</p>	<ul style="list-style-type: none"> ▪ arts 391–396 CCQ ▪ Divorce Act, s 8 ▪ Christine Davies, <i>Power on Divorce and Other Matrimonial Causes</i>, 3d ed. (Toronto: Carswell, 1976) at 9–12 ▪ Quebec Charter, s 47 ▪ Ont FLA, ss 29, 30 ▪ <i>Divorce Act</i>, SC 1967–68, c 24, s 3 [repealed] ▪ <i>Morrison v Morrison</i> (1972), 2 Nfld & PEIR 465 (PEISC) ▪ <i>Horvath v Fraess</i> (1997), 36 RFL (4th) 32 (excerpts) ▪ <i>Barron v Bull</i> (1987), 76 AR 120 (QB) ▪ <i>P (SE) v P (DD)</i> 2005 BCSC 1290, 50 BCLR (4th) 34 ▪ optional: KLS v DRS, 2012 NBCA 16, 383 NBR (2d) 47 (can spouses be living separate and apart while periodically having sex?) 	<ul style="list-style-type: none"> ▪ historical evolution: from <i>chef de famille</i> to equal rights ▪ marital life through its pathologies ▪ changing views on adultery, the common law and <i>Charter</i> values

Date and topic	Readings	Learning objectives/questions/themes
3. Dissolution		
<p>The statuses of marriage and civil union persist even if the relationship is breaking down and even, say, if the partners have physically separated. Marriage is dissolved by the death of one spouse or by a judgment of divorce, a process in which the state is profoundly implicated. As we shall see, a spouse may owe the other spouse a duty of support after dissolution. A key issue is the extent to which spouses may modify by agreement the rights and duties otherwise attached to them by law.</p>		
Class 21 March 24 Family breakdown	<ul style="list-style-type: none"> ▪ Divorce Act, ss 8, 11 ▪ arts 493–515 CCQ ▪ arts 814.3–814.14 CCP (skim) ▪ Rachel Birnbaum, Nicholas Bala & Lorne Bertrand, “The Rise of Self-Representation in Canada’s Family Courts: The Complex Picture Revealed in Surveys of Judges, Lawyers and Litigants” (2013) 91 Can Bar Rev 67, 91–5 ▪ Wanda Wieggers & Michaela Keet, “Collaborative Family Law and Gender Inequalities: Balancing Risks and Opportunities” (2008) 46 Osgoode Hall LJ 733, 733–41 ▪ art 2639, para 1 CCQ ▪ Ontario Arbitration Act, ss 1 “family arbitration,” 2.1, 2.2 ▪ Sherene H. Razack, “The ‘Sharia Law Debate’ in Ontario: The Modernity/Premodernity Distinction in Legal Efforts to Protect Women from Culture” (2007) 15 Fem. Legal Stud. 3 at 5–15, 27–29 (optional: read the rest) ▪ optional: Robert Dingwall, “Divorce Mediation: Should We Change Our Mind?” (2010) 32:2 Journal of Social Welfare & Family Law 107 (myCourses) ▪ optional: Demande en divorce and Demande en divorce – avocat (myCourses) ▪ optional: Entrevue matière familiale – avocat (myCourses) 	<ul style="list-style-type: none"> ▪ historical overview ▪ dissolution of marriage ▪ relationship between civil and religious divorce ▪ alternative dispute resolution and religious practices
Class 22 March 26 Obligation of spousal support	<ul style="list-style-type: none"> ▪ arts 392, 521.6, 521.17, 585 CCQ ▪ Ont FLA, ss 30, 33(8), (9), (10) ▪ Divorce Act, ss 15.2, 17(1), 17(4), 17(7) ▪ <i>Willick v Willick</i>, [1994] 3 SCR 670 (tiny excerpt) ▪ <i>Moge v Moge</i>, [1992] 3 SCR 813 (headnote) ▪ <i>Bracklow v Bracklow</i>, [1999] 1 SCR 420 ▪ optional: Lucinda Ferguson, “Family, Social Inequalities, and the Persuasive Force of Interpersonal Obligation” (2008) 22 Int’l J L Pol’y & Fam 61 (myCourses) ▪ optional: Spousal Support Advisory Guidelines 	<ul style="list-style-type: none"> ▪ support obligations post–divorce vs. obligation to support during marriage ▪ consensual alteration of statutory rights and obligations ▪ various factors in entitlement and quantum ▪ the economic harms of marriage ▪ compensation for the past versus meeting present needs ▪ different models of marriage
PAPERS WITH INSTRUCTOR COMMENTS AVAILABLE BY FRI. 28 MAR.		

Date and topic	Readings	Learning objectives/questions/themes
Class 23 March 31 Obligation of support cont'd – private ordering	<ul style="list-style-type: none"> ▪ <i>Miglin v Miglin</i>, 2003 SCC 24, [2003] 1 SCR 303 (headnote) ▪ MJ Trebilcock & R Keshvani, “The Role of Private Ordering in Family Law: A Law and Economics Perspective” (1991) 41 UTLJ 533 (excerpt) ▪ optional: LEAF 2011 intervention factum (myCourses) ▪ optional: Leckey, “Contracting Claims and Family Law Feuds” (2007) 57 UTLJ 1 (myCourses) 	<ul style="list-style-type: none"> ▪ changing conceptions of the state–family relation ▪ law and economics analysis of family law ▪ a role for contract? ▪ the role of the legal profession
<p>B. De facto relationships: establishment and effects mingled</p> <p>As a consequence of a variety of legislative and judicial developments, unmarried couples have achieved an uneven recognition by the various Canadian legal regimes of the family. Placement of <i>de facto</i> relationships in the course after <i>de jure</i> ones helps illuminate the difficulties associated with assimilating relationships with no formal formation into the regimes attaching to statuses obtained by informed consent. <i>De facto</i> relationships, chief among them unmarried cohabitation, are recognized ex post for the purposes of enforcing some obligations. As we shall see, unmarried cohabitation or <i>de facto</i> union (confusingly referred to in popular discourse as a “common–law relationship”) distinguishes itself from marriage in that it does not produce a legal status that survives until dissolution by a court.</p> <p>If the recognition of marital status as an analogous ground for the purposes of s. 15 of the <i>Canadian Charter</i> hinted at considerable promise for evening the effects of marriage and unmarried cohabitation, that promise has borne less fruit than some would have hoped. Meanwhile, while same–sex unmarried couples were enfolded into the regimes already attaching to unmarried, opposite–sex couples, questions were raised as to the extent to which such “recognition” merely advanced a neo–liberal project of privatizing support costs.</p>		
Class 24 April 2 Pushing the boundaries of recognized conjugality	<ul style="list-style-type: none"> ▪ Former art 768 CCLC ▪ Law Commission of Canada, <i>Beyond Conjugality: Recognizing and Supporting Close Personal Adult Relationships</i> (excerpt) ▪ Ont FLA, ss 29, 30 ▪ BC Family Law Act, s 3(1) ▪ F Allard <i>et al</i>, eds, <i>Private Law Dictionary and Bilingual Lexicons</i> (Cowansville: Yvon Blais, 2003) <i>sv</i> “natural obligation” ▪ <i>LL c EJ</i>, [2004] RJQ 3062 (Sup Ct) ▪ Simon Duncan <i>et al</i>, “Legal Rights for People who ‘Live apart Together’?” (2012) 34 <i>Journal of Social Welfare and Family Law</i> 443 ▪ optional: <i>Contrat de vie commune</i> (myCourses) 	<ul style="list-style-type: none"> ▪ adult conjugality introduced ▪ cohabitation and the ordinary private law of general application ▪ cohabitation and choice ▪ the <i>Charter</i> and family law ▪ the focus on cohabitation

Date and topic	Readings	Learning objectives/questions/themes
Class 25 April 7 Charter litigation for unmarried couples	<ul style="list-style-type: none"> ▪ Leckey, “Strange Bedfellows” UTLJ [forthcoming] (myCourses, in Readings, Course packs folder) ▪ optional: <i>Miron v Trudel</i>, [1995] 2 SCR 418 (excerpts) ▪ optional: <i>M v H</i> [1999] 2 SCR 3 (excerpts) ▪ optional: Nicholas Bala & Robert Leckey, “Family Law and the <i>Charter</i>’s First 30 Years: An Impact Delayed, Deep, and Declining but Lasting” (2013) 32:1 Can Fam LQ 21 at 25–27, 30–35 	<ul style="list-style-type: none"> ▪ the constitutionality of distinctions between married and unmarried couples ▪ the CCQ vs. social legislation on <i>de facto</i> unions ▪ same–sex cohabitation
<u>SUBMISSION OF FINAL REVISED PAPERS BY TUES. 8 APRIL AT 14h</u>		
Class 26 April 9 Rethinking the push for recognition	<ul style="list-style-type: none"> ▪ Stéphanie Grammond, “La calculatrice de l’amour,” <i>La Presse</i>, 14 February 2013 ▪ Brenda Cossman, “Family Feuds: Neo–Liberal and Neo–Conservative Visions of the Reprivatization Project” in Brenda Cossman & Judy Fudge, eds., <i>Privatization, Law and the Challenge of Feminism</i> (Toronto: University of Toronto Press, 2002) 169 (excerpts) ▪ optional: Helen Reece, “Leaping without Looking” in Robert Leckey, ed, <i>After Legal Equality: Family, Sex, Kinship</i> (Abingdon: Routledge) [forthcoming in 2014] ▪ optional: Kim Brooks, “Cameos from the Margins of Conjugalities” in Robert Leckey, ed, <i>After Legal Equality: Family, Sex, Kinship</i> (Abingdon: Routledge) [forthcoming in 2014] 	<ul style="list-style-type: none"> ▪ dilemmas of recognition: the role of the state and unintended consequences ▪ feminist critique of expanding private support obligations