

**FAMILY PROPERTY LAW**  
**LAWG-300 (001) CRN 10972**  
**Professor Robert Leckey\***  
**Faculty of Law, McGill University**  
**Winter 2012**

**Class meetings:** Maxwell Cohen Moot Court, Room 100, New Chancellor Day Hall

**Mondays:** 4:35 to 5:55 p.m.

**Wednesdays:** 4:05 to 5:25 p.m.

**Office Hours:** Mondays, 10:30 to 12:30, or by appointment

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**Please pose substantive questions not by e-mail, but in person or by telephone.**

## 1. Foreword

This course is new to me. In several ways it is an experiment. In designing it, I have attempted to put into practice many of the things I have learned in my teaching career thus far. The readings are the briefest I have had yet. As in Constitutional Law and the most recent years of Family Law, I have organized the material by themes that I view as conceptually crucial. I have borrowed the quiz format from Constitutional Law and Family Law, based on my sense of the relevance of the skills it encourages and tests. I have borrowed some elements from the multi-step writing assignment in Family Law, based on my sense that it is important to create opportunities for students to work on their writing, specifically for you to revise and resubmit your work. With differing word limits from first to second version, I am prompting you to shorten your work, something lawyers often need to do. I am going to see how I find commenting on student work through myCourses. I have wondered for several years about eliminating a final exam, and I decided to go for it.

I think your investment in this course has the potential to teach you a great deal about family law and about legal craft more broadly. But how much you put into it is really up to you.

Your feedback throughout the semester will be deeply important to me. Academic regulations prevent me, however, from altering the evaluation scheme once the course begins. So unless one of us discovers an outright error in the evaluation scheme as I have set it out, your suggestions for improvements will matter for my revisions for subsequent years.

## 2. Learning Outcomes

By the end of this course, you should be able to do the following:

- Analyze a problem regarding family property and plan a research strategy for it
- Assess a proposal for reform of family property law against key principles in a common-law or civil-law jurisdiction
- Formulate an informed opinion as to the relative merits and demerits of legal approaches to allocating wealth within intimate relationships
- Articulate the legal construction of the married couple

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\* I acknowledge the generosity of Justice Nicholas Kasirer, who formerly taught the course by this name at the faculty.

You will have had occasion to practice and test your abilities to do the following:

- Discuss and tackle questions with your classmates
- Assess family property law in the light of a reading from outside traditional legal scholarship
- Formulate and advance a proposal for law reform
- Revise your written work on the basis of constructive feedback
- Shorten written work
- Read legislation closely and answer precise questions by accurate pinpointing to the text
- Sharpen your grasp of the core principles of the general private law by contrast with the law of family property

### **3. Course Content**

The registration materials described the course in this way:

Administration of and entitlement to wealth in conjugal and other close personal relationships, in chiefly the common law and civil law. Management and distribution of family resources through matrimonial regimes, marriage and domestic contracts, household mandates, common law trusts and equitable remedies, legislative division of family assets, liberalities, social practice. The course will combine analysis of legislative and judicial policy with close reading of legislation and judgments.

As the calendar of readings for the course shows, the course consists of five substantive parts: sharing under the general private law; legislative models for sharing assets; the operation of enactments for family property; legislation and historically unrecognized unions; and families in movement: private international law.

While inconsistent information has circulated, Assistant Dean Topsakal assures me that the course belongs in the Common Law and Civil Law baskets—1.5 credits in each—for purposes of satisfying your program requirements.

A word about the contrast with Family Law may be in order. While both are transsystemic, Family Property Law does not feature the interaction of federal and provincial law to the same degree. It is my expectation that Family Property Law will focus more closely than does Family Law on the distinctions between rules which attach in virtue of a family relationship and rules of the general law of property and obligations. I think we will engage in closer reading of judgments than I have done in recent years in Family Law.

### **4. Instructional Method and Conduct of Class Time**

In the service of its learning objectives, the course will integrate a number of instructional methods, including the following:

- Individual reading in preparation for each class
- My lectures
- Class and group discussion, including responses with clickers (see Teaching Technology, below)
- Writing and revision of short papers
- Your preparation for the quizzes
- My individualized feedback on your work
- My detailed memoranda discussing your work collectively

- Discussion with me during office hours

I shall conduct class in English. *Vous pourrez également intervenir en classe et soumettre vos travaux écrits en français.*

For this term I have been matched with a doctoral candidate at the Faculty of Law, Ms Bethany Hastie, as part of the DCL Mentorship Program. Her profile appears at <http://www.mcgill.ca/law-gradprograms/about/doctoralstudentsprofiles/#BHASTIE>. Ms Hastie will be attending class and meeting with me regularly to discuss the course. She will conduct at least one class and may participate otherwise as the term proceeds. Please welcome her.

## 5. Course Materials

A calendar of readings specifies readings assigned for each class. They will form the focus of my teaching and the course evaluation. Obligatory course materials are available on the myCourses page. They consist of a big pdf and a folder with links to legislation. The pdf has been carefully constructed with bookmarks tagged to the course's parts, to individual classes, and to individual readings.

You will need to have your materials accessible for each class, whether printed or on your laptop. You will need a hard copy of the *Civil Code of Québec* for the in-class quizzes.

In my other class with pdf materials posted on myCourses, students have collaborated to negotiate a better printing rate at a copy shop. There may be less need for hard copies given that there is no final examination.

I intend class time to complement your reading of assigned texts, not substitute for it. Recommended supplementary resources are listed in Appendix A.

## 6. Evaluation

Please see Appendix B.

*NB.* This evaluation scheme represents a substantial departure from what was printed in the course registration materials.

## 7. Teaching Technology

*myCourses.* The myCourses (WebCT Vista) teaching platform is a core element of the course and you should explore it. I shall communicate with you regularly using myCourses mail. I suggest that you forward your myCourses mail to your McGill e-mail address through My Settings (accessible at the top right of the myCourses home page).

*Student Response System (clickers).* We will use clickers to enhance your learning by deepening engagement and increasing interactivity. New and used clickers are available at the McGill Bookstore, 3420 McTavish Street.

- Multiple students may not share a clicker (see Student Code of Conduct, <http://www.mcgill.ca/secretariat/policies/informationtechnology/>).
- Register your clicker to your McGill ID by going to our course in myCourses, clicking on the link “Register your clicker,” and following the instructions on screen.

- Lost clickers must be replaced at your own expense and re-registered using the link in myCourses stated above.
- For verification that a clicker is working correctly, please consult the ICS Service Desk at 688 Sherbrooke Street West, Room 285, between 9:00 a.m. and 5:00 p.m.
- For any other questions, please see the frequently asked questions: <http://www.mcgill.ca/tls/srs/resources/#FAQs>

Given that clickers may be resold, the true out-of-pocket expenditure is negligible. Note that I have made course materials available to you at no cost. Course evaluations from 2011 confirm that failure to buy and bring a clicker will seriously undermine your classroom experience.

*Lecture recording.* McGill IT services will record each lecture, including projections on the screen, and upload it to myCourses within roughly 48 hours. Past students have found the recordings helpful for making up missed classes or filling in things they did not understand.

## **8. General Information**

*Safe space.* I intend the classroom for Family Property to be an environment in which the diversity of McGill law students is respected and celebrated. I aim for it to be a space free from discrimination on the basis of sexual orientation or gender expression, a safe space for individuals who are lesbian, gay, bisexual, transgendered, two-spirited, intersexed, queer, or questioning (LGBTTIQQ). I also intend it to be a space free from discrimination on any other basis, including race, colour, sex, pregnancy, civil status, age, religion, political convictions, language, ethnic or national origin, social condition, and disability. I have been a workshop facilitator for the McGill Safe Space Program and try to follow its principles in my teaching. <http://www.mcgill.ca/tls/teaching/workshops/diversity>

*Academic integrity.* McGill University values academic integrity. All students must understand the meaning of cheating, plagiarism, and other academic offences under the *Code of Student Conduct and Disciplinary Procedures* (see “Keeping It Honest” at [www.mcgill.ca/integrity](http://www.mcgill.ca/integrity) for more information).

*Disabilities.* If you have a disability and require accommodation, please discuss your situation with me. It may also be helpful to contact the Office for Students with Disabilities at 398-6009 or [disabilities.students@mcgill.ca](mailto:disabilities.students@mcgill.ca). See also <<http://www.mcgill.ca/osd/>>. If you give the OSD and me notice at the start of term, you will be able to write the in-class quizzes under appropriately accommodating conditions. Advance notice is critical as I might not otherwise prepare the quizzes so early.

**In the event of extraordinary circumstances beyond the university’s control, the content and/or evaluation scheme in this course is subject to change.**

**Recommended Supplementary References**

A number of books will reward the student who consults them. I highly recommend Quebec Research Centre of Private & Comparative Law, ed., [Private Law Dictionary of the Family and Bilingual Lexicons](#) (Cowansville, Qc.: Yvon Blais, 1999). Books marked (\*) are located on reserve.

\*Mireille D.-Castelli & Dominique Goubau, [Le droit de la famille au Québec](#), 5th ed. (Sainte-Foy: Presses de l'Université Laval, 2005)

Jean Carbonnier, [Droit civil. Tome 2: la famille, l'enfant, le couple](#), 21st ed. (Paris: Presses universitaires de France, 2002)

Gérard Cornu, [Droit civil : la famille](#), 9th ed. (Paris: Montchrestien, 2006)

\*Simon R. Fodden, [Family Law](#) (Toronto: Irwin Law, 1999)

\*Julien D. Payne & Marilyn A. Payne, [Canadian Family Law](#), 3d ed. (Toronto: Irwin Law, 2008)

\*Jean Pineau & Marie Pratte, [La famille](#) (Montreal: Thémis, 2006)

\*Michel Tétrault, [Droit de la famille](#), 4th ed. (Cowansville, Qc.: Yvon Blais, 2010)

### Evaluation Scheme

**Please identify all work by your name.** Whatever the benefits of preserving anonymity by exam numbers, I am assuming—for this run-through of the course—that knowing your identity will enhance our exchanges through the submission and return of your graded work. Outside the examination format, this choice is open to me.

For me, constructing an evaluation in which a final examination does not play a major role is an experiment. One challenge for me is structuring my assessment of your work so that the final results comply appropriately with the faculty's grading practices, including the norms regarding an average final grade. In Family Law, for example, in which the final examination has counted for 65%, I have sometimes reached a median score of A (5/5) for the writing assignment, worth 25%. Where writing assignments prepared on your own time make up 85% of the final grade, I need to direct myself towards a grade distribution more in line with faculty practices. I have decided to address this issue by setting for myself a target of a B average for each component of the evaluation scheme. By contrast with what some of you have (perhaps unwittingly) experienced in Family Law, then, no element of the evaluation scheme will be graded more severely out of the need to compensate for another element which has been graded to an average higher than called for by faculty practices.

<b><u>THREE QUIZZES (3 x 5% = 15%)</u></b>		
<b>The quizzes aim to help you improve the following:</b>	<ul style="list-style-type: none"> <li>- Ability to learn through your reading of legislation</li> <li>- Substantive knowledge of key portions of the Civil Code regarding family property</li> <li>- Skill at interpreting the Code</li> <li>- Ability to respond directly to a pointed question</li> </ul>	
<b>Date:</b>	<b>Event:</b>	<b>Content:</b>
Mon. 16 Jan.	Quiz 1	Arts. 392–413 C.C.Q.
Mon. 30 Jan.	Quiz 2	Arts. 414–426 C.C.Q.
Mon. 6 Feb.	Quiz 3	Arts. 443–460 C.C.Q.
<b>Grading:</b>	Each quiz, out of 10, will be converted to an A, B, or C.	
<b>Notes:</b>	<p>Bring a hard copy of the Code to class. I will not allow you to access the text electronically.</p> <p>I have based the quizzes on the official and equally authoritative English text of legislation. Experience suggests that Francophone students may profitably study the English text of the Code or both versions.</p>	

<b>TWO WRITING ASSIGNMENTS (35% + 50% = 85%)</b>	
<b>The writing assignments aim to help you improve the following abilities:</b>	<ul style="list-style-type: none"> <li>- To write concisely and clearly</li> <li>- To identify and frame a bounded topic</li> <li>- To foreground your analysis and voice, minimizing summary of others' texts</li> <li>- To edit your work, including after time away from it</li> <li>- To use blacklining/track changes</li> <li>- To anchor your discussion concretely to authorities or texts</li> </ul>
<b>Specifications applicable to all stages of both writing assignments:</b>	<ul style="list-style-type: none"> <li>- Submit all work via the Assignment function in myCourses</li> <li>- Include a title page as specified by the Student Affairs Office</li> <li>- Submit Word documents only</li> <li>- Word counts do not include the title page, but do include footnotes and quoted material</li> <li>- Double-space all writing, with margins of at least 1" on all sides</li> <li>- Footnotes are unnecessary; feel free to use parenthetical references and to use short names for texts</li> <li>- Please proofread your work</li> </ul>
<p>My hope is that your legal writing improves during the course. I have structured the assignments so as to encourage and reward such improvement—for example, your need to submit a revised version of Assignment 1 and the heavier grade weighting of Assignment 2.</p> <p>As a number of us have had Family Law together, I should specify that these assignments differ from the multi-step writing assignment in that course. The grading scheme set out below makes plain that the focus here is less on compliance with formal rules. Still, your attention to detail will positively affect your work's impact and your results.</p> <p>As there is no examination, I wanted a summative element in the last assignment, one which would help sustain engagement with the readings and class sessions to the end (see instructions, below, regarding the last part required in Assignment 2). (My former colleague, Dean Kim Brooks of the Schulich School of Law at Dalhousie, ran a tax class with no exam in which the students had to submit responses for five out of ten weekly assignments. Student feedback indicated a preference for placing the final assignment at the end of the course, to avoid the sense that "finishing" the work for the class made the remaining sessions irrelevant.) You will let me know whether I got the timing right, for example, whether 13 April is disagreeably close to your exams.</p>	

<b><u>Assignment 1: Essay (25% + 10% = 35%)</u></b>		
<b>Key objective:</b>	Read assigned legal material in the light of a secondary reading; reflect on course material using the insights from family scholarship other than conventional legal doctrine	
<b>Method/task:</b>	Prepare a brief argumentative essay in which you combine one secondary source chosen from the selection on my Courses with legislation or case law from the course	
<b>Date</b>	<b>Task or event</b>	<b>Instructions/comment</b>
Thurs. 16 Feb., 12 p.m.	Submission of first draft	- Maximum length of 750 words
Mon. 27 Feb., 10 a.m.	Return of your papers with my comments as well as the grade	- Numerical scoring will be out of 11, using the grading chart on myCourses - I shall convert scores out of 11 to letter grades worth 25% of your overall grade, aiming for a B average
Thurs. 8 Mar., 12 p.m.	Submission of revised paper	- Submit with changes tracked (blackline) - Maximum word count of 650 words
Mon. 19 Mar., 10 a.m.	Return of your papers with my grade	- Grading at this stage, worth 10% of your overall grade, is on a basis of High Pass (A), Pass (B), Low Pass (C), or Fail/Did Not Submit (F) - I expect that at most one-fifth of you will receive a High Pass

<b><u>Assignment 2: Law-Reform Memorandum (50%)</u></b>		
<b>Key objectives:</b>	Engage critically with a precise issue and situate that issue within the course overall; identify a particular point of view and reason from it	
<b>Method/task:</b>	Advocate for a legal reform on behalf of a chosen client or constituency (for example, a women's group or a men's group) via a tightly structured memorandum	
<b>Date</b>	<b>Task or event</b>	<b>Instructions/comment</b>
Thurs. 5 Apr., 12 p.m.	Submission of first draft	<ul style="list-style-type: none"> <li>- Maximum length of 1,000 words</li> <li>- Whether or not you use headings, the memo should consist of these parts, in this order: <ul style="list-style-type: none"> <li>▪ recommendation or proposal, specifying the group you write for;</li> <li>▪ summary of the status quo from which that proposal would depart;</li> <li>▪ exposition of the proposal's expected effects;</li> <li>▪ identification of its advantages and disadvantages;</li> <li>▪ discussion of the proposal's coherence vis-à-vis Family Property Law more generally</li> </ul> </li> <li>- Timely submission of an adequate draft which satisfies the word count affects the ultimate grading</li> </ul>
Ensuing days	You take a break from your paper and return to revise it	<ul style="list-style-type: none"> <li>- I am not really grading this stage, although I hope you find this forced interval between completion of draft and final paper helpful. I require you to summarize your revisions on the final version</li> <li>- My hunch is that you will find it difficult to meet even the initial word count and that the break will help you find ways to condense and cut further</li> </ul>
Fri. 13 Apr., 12 p.m.	Submission of revised paper	<ul style="list-style-type: none"> <li>- Include the same parts and order as for the first draft</li> <li>- Submit with changes tracked (blackline)</li> <li>- Maximum word count of 850 words</li> </ul>
Later in April	Return of your papers with my grade	<ul style="list-style-type: none"> <li>- Numerical scoring will be out of 14, using the grading chart on myCourses</li> <li>- I shall convert scores out of 14 to letter grades worth 50% of your overall grade, aiming for a B average</li> </ul>