

**Family Law (LAWG-273 (001))**  
**Professor Robert Leckey**  
**Faculty of Law, McGill University**  
**Fall 2008**

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Substantive questions are best discussed by telephone or in person

*Safe Space.* I intend the classroom for Family Law in Winter 2008 to be an environment in which the diversity of McGill law students is respected and celebrated. I shall 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 (LGBTIQ). 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. Learning Outcomes**

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

- Plan a research strategy for a family law question in Canada
- Assess a proposal for family law reform against key principles of family law in a common law or civil law jurisdiction
- Formulate an informed opinion as to the merits of regulating on formal versus functional (informal) grounds
- Describe the interrelation of federal and provincial family law
- Reflect on the role of the legal profession in family matters
- Revise written work on the basis of constructive feedback
- Assess a colleague's written work

## II. Course Content

The registration materials described the course in this way:

Family law attempts to cram our most intimate relationships into the lawyer's lexicon of civil status, rights and obligations. This course examines legal conceptions of the family and family relationships. In particular, it will study the civil status and extrapatrimonial consequences of marriage and other intimate adult relationships, parent-child relationships, and relations between children and other parental figures. The course will examine how these issues are currently treated in the common and civil law traditions of Canada, setting contemporary regulation against historical treatments. The course will also introduce different theoretical approaches to family law, e.g. feminist, queer, legal pluralist, and law and economics. We will also study the relationship between the *ius commune* or foundational private law of the family and the entrenched rights in the *Canadian Charter of Rights and Freedoms*.

This course's curricular location sends ambiguous signals about its objectives and significance. Its availability to students in their first year represents a judgment that it may be undertaken relatively early during the undergraduate legal education. Yet its credit weighting in the Advanced Common Law and Advanced Civil Law baskets suggests a different sequence. More generally, the relative freedom that students have in ordering their upper-year courses implies, unhelpfully, that after the foundational first year, the remaining courses of their legal education are not sequentially developing skills and modes of analysis, but shallowly conveying data. This course does not seek to convey data about family law. Instead, it operates on several levels, most of them ones that will enrich your abilities as a lawyer and a legal scholar in other domains.

*Introduction to the ensemble of state legal principles and rules regulating the family.* Family law is occasionally denigrated, unjustly, as not "real law." Such assessments reveal more about the legal philosophy of their makers than about family law itself. You will become familiar with the basic organizing concepts of family law. The intention is not to prepare you to write a Bar examination in any jurisdiction, but rather to help you acquire the conceptual foundation and framework to undertake legal research and analysis of family issues in a common law or civil law jurisdiction.

*Development of lawyerly skills.* Through reading and discussion of substantive materials, the course will deepen your ability to read, interpret, and criticize legislative, judicial, and scholarly legal texts, including the *Civil Code of Québec*. The class may provide the first-year students one of their earliest opportunities to engage with federal and provincial legislation. Family law presents a rich occasion for examination of adjudication within a wide margin of discretion.

*Comparison of the common law and civil law.* The formal and substantive differences are patent between the civilian ambition of exhaustively presenting the rules regulating the family in the C.C.Q.'s Book 2 - The Family and the common law legislature's incremental reform of the extant common law by enacting derogations from it. Family law also presents a superb case

study for the interaction of federal and provincial law.

*Theoretical analysis.* Throughout the course we will deploy different theoretical approaches in analyzing issues of family law.

*Reflection on relation between state regulation, social life, and other regulatory orders.* In other legal domains, accepting that law creates the objects it regulates is less problematic. A *usufruct* is self-evidently, in at least some measure, a legal construct. This is much less so the case in family law, where the law shares a lexicon with everyday life. *Parent, child, and spouse*, for example, are statuses and roles that seem to exist rather independently of the consequences ascribed to them by state law. Indeed, their use in social life does not track their strict legal meaning. The course seeks to provide opportunity to reflect on the relationship between a state regulatory regime and social life. Moreover, there are clearly other regulatory systems operating on families, such as religious law. The course focuses mostly on state law, but it does so self-conscious of what its constraints artificially exclude.

*Ethical lawyering and the legal profession.* From time to time, the course will advert to the role of legal professionals in planning family life and framing and resolving family disputes. While the course's substantive focus bears on the status and obligations of family life more than on modes of dispute resolution, we will discuss lawyers' impact on family disputes and the relative advantages and disadvantages of state litigation and the more private arbitral and mediation forums. Does the advocate's role mollify or exacerbate family disputes? More broadly, what might justice be in family law?

### **III. Instructional Method**

The course will integrate a number of instructional methods in the service of its learning objectives:

- Individual reading in preparation for each class
- Peer assessment
- Instructor lectures
- Discussion with instructor during office hours
- Class discussion
- Think/pair/share followed by discussion
- Writing a short essay
- Revision of short essay
- Preparation for formal examination

### **IV. Course Materials**

The materials for this course are collected in the casebook *Family Law* prepared for this section, available at the McGill Bookstore. You will need a *Civil Code of Québec*.

### **V. Assignments and Evaluation**

Students are at liberty to participate in class and to submit written materials for evaluation in French or English.

This course includes *graded* and *ungraded* means of evaluation. Instructor and student questions and discussions in class provide opportunities for practice and feedback as *ungraded* evaluation.

Graded Evaluation

**75%** sit-down exam – open-book, 2.5 hours, Wednesday 10 December 2008, 2:30 p.m.

**25%** multi-step writing exercise (see below)

**100% Final Grade**

Multi-Step Writing Exercise (25%)

The parts of this exercise are weighted, collectively, as 25% of the overall grade. It is possible to earn a maximum of five (5) points. Five points out of five (5/5) convert into an A. Four points (4/5) convert into a B+. Three points (3/5) convert into a B-. Two points (2/5) convert into a C. One point (1/5) converts into a D. Total nonparticipation (0/5) converts into an F.

*Objectives.* The exercise aims to promote the development of several skills that I believe to be crucial to many kinds of legal practice: 1) selecting a strictly bounded topic; 2) reflecting critically on a legal question; 3) writing briefly and concisely; 4) evaluating a colleague's work; 5) revising your work in response to comments; 6) carefully reading and scrupulously following written rules. Formal or technical flaws detract from the substance of written work. At least some readers of your professional work will judge you severely, and trust you less on matters of substance, for errors betraying inattention to detail.

Step One. Bring to the start of class on 7 October your Draft #1 prepared according to the specifications below. I shall collect and redistribute the papers. I shall distribute evaluation criteria. You will then read and comment critically and constructively on your colleague's paper, signing your name at the end of your comments. I shall collect the papers and return them to their authors.

*Possible points earned:* one or none. If you miss this in-class exercise and have not made special arrangements with the instructor in advance, you will receive a zero. Step One is essentially graded Pass/Fail.

Step Two. Outside class, revise Draft #1 in light of your peer's constructive comments. Submit your revised draft essay, Draft #2, to the Student Affairs Office by 2:30 p.m. on 21 October. At the end of class on 11 November, I shall return your revised draft essay with my comments indicating ways to improve it. Keep it as you will need to resubmit it later. I will also have indicated any noncompliance with the formal and substantive requirements set out below. A central pedagogical objective of Step Two is to prompt you to demonstrate your ability to read and follow rules strictly.

*Possible points earned:* one or none. A Draft #2 that complies with every formal and substantive requirement will earn you one point. A Draft #2 that fails to comply with one formal requirement or more will earn you none. Like Step One, Step Two is thus essentially graded Pass/Fail. If you incur a penalty for lateness, you will earn no points for Step Two.

Step Three. Outside class, revise your draft essay in light of my comments to produce your Final Paper. Rectify any noncompliance with a formal or substantive requirement for which you were penalized at Step Two. Ensure that your Final Paper complies fully with the formal and substantive requirements set out below (i.e. when revising, beware any fresh error). By hand, at the bottom of the essay or on the back, briefly explain what you did to improve your draft essay in response to my comments. If you undertake further improvements on your own, please also detail them by hand with your brief explanation of your other improvements. Submit your Final Paper, with your handwritten explanation of the improvements you made, together with the copy of Draft #2 with my comments on it, to the Student Affairs Office by 2:30 p.m. on 20 November.

*Possible points earned:* zero, one, two, or three. I shall assign you one point for submitting a Final Paper that complies fully with every formal and substantive requirement set out below. A Final Paper that fails to comply with one formal requirement or more will not earn this point. I will assign one point for submission of a Final Paper that includes a handwritten explanation of changes and that actually has, in my assessment, been improved to reflect my earlier comments. I will assign one additional point if I believe it to be merited by (a) further improvements to the paper beyond those I suggested or (b) the Final Paper's overall excellence. The penalty for lateness will be a loss of one point per day.

Shortly afterwards, I shall return to you the Final Paper with its grade out of three as well as the total grade out of five earned on the multi-step exercise.

Formal and substantive requirements. I recommend that you follow these requirements strictly. As established by the grading scheme above, two points out of the total five depend on your compliance with these requirements. I will hold you to these requirements strictly. Last year, a number of students failed a similar assignment for noncompliance with such requirements. Here are the requirements:

- include a title page in accordance with Student Affairs Office requirements, specifying the word count
- write a short argument on an issue you choose from the course, whether it has been already covered in class or is still to come
- do not refer to materials not included in the electronic or printed course materials, which of course include the C.C.Q.
- Draft #2 and the Final Paper must include at least 550 and no more than 650 words, including any footnotes but excluding the title page
- double space your paper
- use 12-point font
- leave top and bottom margins of 1.0 inch, a left margin of 1.5 inches and a right margin of 1 inch
- for Draft #2, include the word *Draft* at the top of the first page of text
- for the Final Paper, do not include the word *Draft* at the top of the first page of text
- do not provide full citations; use short forms adequate to identify the source
- focus on your argument and strive for concise, incisive, and elegant analysis and argument
- spell check and proofread (two spelling or proofreading errors will constitute non-compliance with this requirement)

Given the length constraint, it is advisable to select a small issue, or a precise aspect of a larger issue.

## **VI. General Information**

*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 [www.mcgill.ca/integrity](http://www.mcgill.ca/integrity) for more information) and their consequences. See also McGill's Web site "Student Guide to Avoid Plagiarism" <<http://www.mcgill.ca/integrity/studentguide/>>.

*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/>>.

## Appendix: 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). It is found within the reference section in the Nahum Gelber Law Library. 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)

M. Eichler, [\*Families in Canada Today: Recent Changes and Their Policy Consequences\*](#), 2d ed. (Toronto: Gage, 1988)

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

Winifred H. Holland & Barbro E. Stalbecker-Pountney, eds., [\*Cohabitation: The Law in Canada\*](#) (Toronto: Carswell, 1990) [loose-leaf]

Berend Hovius, [\*Family Law: Cases, Notes and Materials\*](#), 6th ed. (Toronto: Carswell, 2005)

JoAnn Kurtz, [\*Family Law: Practice and Procedure\*](#) (Toronto: Edmond Montgomery Publications, 2004)

Mary Jane Mossman, [\*Families and the Law in Canada: Cases and Commentary\*](#) (Toronto: Edmond Montgomery, 2004)

\*Julien D. Payne & Marilyn A. Payne, [\*Canadian Family Law\*](#), 2d ed. (Toronto: Irwin Law, 2006)

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

J.T. Syrtash, [\*Religion and Culture in Canadian Family Law\*](#) (Toronto: Butterworths, 1992)

\*Michel Tétrault, [\*Droit de la famille\*](#), 3d ed. (Cowansville, Qc.: Yvon Blais, 2005)