

FAMILY LAW COURSE OUTLINE - LAW 113

J. ROSSI - Instructor

(1) OVERVIEW/JURISDICTION

(a) FEDERAL

DIVORCE ACT

- (i) Divorce
- (ii) Corollary Relief - Support
- Custody

(b) PROVINCIAL

FAMILY LAW ACT

- (i) Support
- (ii) Property
- (iii) Marriage Contracts
- (iv) Matrimonial Home

CHILDREN'S LAW REFORM ACT

- (i) Children
- (ii) Paternity
- (iii) Custody

CHILD AND FAMILY SERVICES ACT

- (i) Adoption Proceedings
- (ii) Protection Proceedings

FAMILY SUPPORT PLAN AMENDMENT ACT, 1991

- (i) Enforcement

RECIPROCAL ENFORCEMENT ACT

- (i) Enforcement

deals with enforcement in other provinces

SUCCESSION LAW REFORM ACT

- (i) Estates
- (ii) Succession Law Proceedings

- dependant rights

- 2 -

/ (2) COURTS

ONTARIO COURT (PROVINCIAL DIVISION) "Family Court"

- (i) Support
- (ii) Custody
- (iii) Enforcement
- (iv) Protection Applications
- (v) Adoption

ONTARIO COURT (GENERAL DIVISION)

- (i) Divorce
- (ii) Support
- (iii) Custody
- (iv) Property
- (v) Enforcement (limited)

/ (3) SUPPORT

- (i) Family Law Act
- (ii) Divorce Act (Corollary Relief)
- (iii) Entitlement - Family Law Act
 - Spousal
 - Child
 - Parent
- (iv) Entitlement - Divorce Act
 - Spousal
 - Child
- (v) Quantum
- (vi) Duration (time limited?)
- (vii) Conduct
- (viii) Needs and Means Test
- (IX) Loco Parentis
- (X) Variation
- (XI) After Death

/ (4) PROPERTY

- (i) Title/Ownership
- (ii) Net Family Equalization
- (iii) Pensions

/ (5) CUSTODY/ACCESS

- (i) Entitlement
- (ii) Sole/Joint Custody
- (iii) Access
- (iv) Variation
- (v) Paternity

- 3 -

✓ (6)

DIVORCE

- (i) Jurisdiction
- (ii) Grounds
 - One year separate and apart
 - Cruelty
 - Adultery
- (iii) Corollary Relief
 - Support
 - Custody
 - Access
- (iv) Duty of Lawyer
- (v) Collusion
- (vi) Condonation
- (vii) Effective Date
- (viii) Effect

✓ (7)

PROCEDURE

- (i) Divorce
- (ii) Family Law Action
 - Statement of Claim
 - Notice of Application
- (iii) Financial Statement
- (iv) Adoption
- (v) Protection Application

✓ (8)

DOMESTIC CONTRACTS

- (i) Marriage Contract
- (ii) Separation Agreement

(9)

STEP-PARENT ADOPTION

(10)

PROTECTION PROCEEDINGS

EVALUATION AND GRADING

Students will be graded on the material taught. Attendance and classroom participation is also an important factor in grading.

The final grade will be weighted as follows:

Mid-term test or assignment	30%
Final examn or assignment	40%
Attendance/Class participation	30%

The following grades will be assigned to students:


A+	Consistently Outstanding
A	Outstanding Achievement
B	Consistently Above Average Achievement
C	Satisfactory or Acceptable Achievement in all areas subject to Achievement
R	The student has not achieved the objectives of the course and the course must be repeated

Sep 11 1995

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PROCEDURE(a) UNDEFENDED DIVORCE

- (1) Issue Petition for Divorce
 - (2) File Marriage Certificate
 - (3) Service of the Petition for Divorce upon the Respondent
 - (4) File and Serve Financial Statements where claim for support or division of property is made
 - When Petition issued and served with Petition
 - Respondent must serve and file with answer
 - Waiver
 - (5) Serve Motion for Interim Relief
 - (6) Requisition to Note Respondent in Default and move for Judgment for failure to deliver an answer
 - Petitioner must file an Affidavit in support.
 - Respondent may file an Affidavit in support.
 - At any time after the time for delivery of an answer has expired.
 - Marriage Certificate
 - (7) Divorce Judgment
 - Effective 31 days after Judgment granting the Divorce unless otherwise ordered
 - (8) Issue Divorce Certificate
 - Requisition accompanied by an Affidavit
 - At least 31 days after Judgment is granted
- 

- 2 -

(b) DEFENDED DIVORCE

- (1) Issue Petition for Divorce
- (2) File Marriage Certificate
- (3) Service of Petition
- (4) File and serve Financial Statement where claim for support or division of property is made.
 - Petitioner must file when Petition is issued and serve with Petition
 - Respondent must serve and file with answer
 - Waiver
- (5) Serve Motion for Interim Relief
 - Serve and file Answer
 - Within 20 days of service in Ontario
- (6) Alternatively serve and file Notice of Intent to Defend
 - Within time for delivery of Answer
 - Extension of time for delivery of an answer by ten days
 - If Respondent claims relief against the Petitioner - Serve a Counter-Petition
- (7) Serve and File a Reply
 - Within ten days after Service of the Answer
 - Necessary?
- (8) Serve and File Counter-Petition
 - By the Respondent within the time for delivery of the Answer and anytime before the Respondent is noted in Default
 - Counter-Petition is included in the Answer and is called Answer and Counter-Petition
 - Must be issued if against the Petitioner and a non-party

- 3 -

- (9) Serve and File Answer to Counter-Petition
- Within twenty days of party
 - Where the Petitioner serves a reply in the main action, the Answer and Counter-Petition must be included in the same document called a Reply and Answer to Counter-Petition
- (10) Serve and File a Reply to Answer to Counter-Petition
- If necessary
 - Within ten days after service of the Answer to Counter-Petition
- (11) Requisition to Note Respondent in Default and Move for Judgment for Failure to Deliver an Answer
- At any time after the time for delivery of an Answer has expired
- (12) Setting Down for Trial
- At any time after the Close of Pleadings if the party is ready for trial
- (13) Set the Action Down for Trial by serving and Filing a Trial Record
- (14) Matter placed on Trial List
- Registrar places matter on trial list 60 days after the Action is Set Down or on consent of the other parties after the Action is set down
- (15) Pre-Trial
- Normally after the Action is listed for trial but may be held at any time
 - In the District of Algoma, Pre-Trial must normally be held before the matter is tried
- (16) Trial - Divorce Judgment
- Unless otherwise ordered a Divorce takes effect 31 days after Judgment granting the Divorce
 - Corollary issues also dealt with

① Examinations
Take place here. →

② Discovery of Documents

- 4 -

(17)

Issue Divorce Certificate

- A Requisition accompanied by an Affidavit
- At least 31 days after Judgment is granted

- 5 -

(c)

PROCEDURE - APPLICATION

- (1) Issue Notice of Application
 - Form
 - Initial Return Date
- (2) Affidavit in Support of Application
 - Financial Statement
 - Required where claim for Division of Property, Support, Variation of Support
 - Serve with originating Process together with a Notice to File Financial Statement
- (3) Serve Notice of Application and supporting Affidavits and Financial Statement
 - At least ten days before the Return Date where Notice is served in Ontario
 - The Affidavits and Financial Statements must be filed in the Court Office not later than 2:00 p.m. on the day before the hearing
- (4) Serve and file Notice of Appearance
 - A Respondent who does not deliver a Notice of Appearance is not entitled to file material
- (5) Serve Affidavits to be replied on in Opposition to the Application by the Respondent.
 - The Affidavits must be filed no later than 2:00 p.m. the day before the hearing
- (6) Cross-Examination on Affidavit/Financial Statement
 - After delivery of all Affidavits
 - After a party is Cross-Examined on an Affidavit, the party cannot deliver an Affidavit for use at the hearing without leave of the Court
- (7) Notice of Examination is served on the Solicitor for the party who filed the Affidavit
 - In practice arranged through Solicitors

- 6 -

- (8) **Serve Application Record and Factum**
- At least 3 days before the hearing
 - File Application Record and Factum
 - Serve Respondent's Application Record and Factum
- (9) **File Respondent's Application Record and Factum**
- (10) **File Transcripts the Party intends to refer to**
- Application is heard
 - Presiding Judge may grant the relief sought or dismiss or return the Application in whole or in part and with or without terms
 - Or order that the whole Application or Issue proceed to Trial

- 7 -

(d)

PROCEDURE - STATEMENT OF CLAIM

- (1) Issue Statement of Claim
- (2) Service of Statement of Claim on the Defendant
- (3) Serve and File Statement of Defence
 - Within twenty days of service in Ontario
- (4) Alternative Serve and File Notice of Intent to Defend
 - Within time for Delivery of Statement of Defence
 - Extends time for Delivery of Statement of Defence by ten days
- (5) Serve and File Reply
 - If necessary
 - Within ten days after service of the Statement of Defence
- (6) Note Defendant in Default for failure to Deliver Defence
 - At any time after the time for delivery of Statement of Defence has expired
- (7) Sign Default Judgment
- (8) Move for Judgment
 - Serve and File Counter-Claim
- (9) Motion for Summary Judgment
 - At any time after the Defendant has served the Statement of Defence or Notice of Motion
 - The Motion must be supported by Affidavits
- (10) Serve Affidavit of Documents
 - Within ten days of close of pleadings
- (11) Serve Notice of Examination/Examinations on Discovery

- 8 -

- (12) Obligation to provide Continuing Discovery
- When new information is obtained or new documents discovered
- (13) Setting down for Trial
- At any time after the close of pleadings if the party is ready for trial
 - Set the Action down for trial by serving and filing a Trial Record
- (14) Place on Trial List
- Registrar places matter on trial list 60 days after the action is set down or on consent of the other party after the action is set down
- (15) Pre-Trial
- At any time but normally after the Action is listed for trial
 - In the District of Algoma, a Pre-trial must be held before the matter is tried
- (16) Trial

COUNTER-CLAIM

- (1) Against the Plaintiff or against the Plaintiff and another person
- (2) Included in the Statement of Defence and called Statement of Defence and Counter-Claim
- (3) Serve and File Defence to Counter-Claim or Reply and Defence to Counter-Claim
- (4) Serve and File a Defence to Counter-Claim
- (5) Serve and File a Reply to Defence to Counter-Claim