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# FAMILY LAW

CASES, NOTES AND MATERIALS

by

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## PREFACE

The initial impetus for this book was the lack of an up-to-date casebook dealing with family law. My principal aim has been to provide a teaching and learning tool for a basic course in family law, although it is hoped that the lawyer whose practice includes family law will find the final product a useful research and reference aid. The cases and materials reproduced in the book have been chosen in an effort to expose the student to the fundamental concepts embodied in the substantive law, the various methods available to deal with family problems in a legal context, and the current issues which should be the subject of critical analysis and debate. The Notes and Questions have been formulated so as to stimulate further thought and to facilitate additional research and reading. They have also been used to present topics and issues not specifically covered by the reproduced cases and materials. Descriptive text has been included mostly to introduce various topics and to provide helpful background information. The book is meant to be used in company with a separate compilation of statutory material. Few excerpts from legislation have been reproduced, but citations for the relevant statutory provisions have been provided. Initials have been used for three statutes: the Family Law Reform Act, R.S.O. 1980, c. 152 (the F.L.R.A.); the Children's Law Reform Act, R.S.O. 1980, c. 68 (the C.L.R.A.); and the Succession Law Reform Act, R.S.O. 1980, c. 488 (the S.L.R.A.).

This book focuses mainly on the traditional subjects of family law: marriage, separation and divorce, property rights of spouses during the marriage and on marriage break-down, support obligations of spouses to one another, the care and custody of children, support obligations of parents to their children, the intervention of the state in the child-parent relationship, and the establishment of a child-parent relationship through adoption. In addition, such topics of current interest and concern as the rights and obligations of unmarried cohabitants, artificial insemination, incest and domestic violence are examined when relevant to the subject being covered in a particular chapter. Finally, such subjects as the law of succession, income taxation, fatal accidents legislation, juvenile delinquency, and social security have not been given separate coverage and are only referred to peripherally from time to time. Any basic course on family law must be kept within manageable limits and these subjects have to a large extent been allocated to other courses in the typical law school curriculum.

Only a few materials which can be classified as non-legal or interdisciplinary have been included. When included, they relate to the specific legal issue being considered. The extent to which non-legal materials should be considered in a family law course is, of course, a subject for legitimate debate. This book reflects my view that there is little time in a basic family course for competent interdisciplinary analysis. The most that one can hope to accomplish is to introduce the student to the available literature and to identify those problems where work in other disciplines may be helpful. This, at least, avoids the danger of superficiality.

This book does not purport to cover family law in all of the jurisdictions in Canada. The focus is obviously on family law in Ontario, although references to developments in the other provinces have been included for comparative purposes.

It remains only to thank those who have helped in this endeavour: my colleagues at the University of Western Ontario who gave me the benefit of their comments and advice; my research assistants, Michael Coyle, Brenda Pritchard, Judith Turner-MacBeth, and, particularly, Steven Hartley; my secretary, Jean Tasker; my typists, Victoria Vieau and Teresa Bourne; and Fran Meyer, who handled the photocopying. I would also like to express my appreciation to the Ontario Law Foundation, whose grants made it possible for me to hire research assistants.

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