

# 17.1 – FAMILY MATTERS

LAW 12 – Mr. Kletke

# Issues in Ending a Marriage

## □ child custody

### □ **custody...**

- ...is care of a child awarded to a parent by a court when the relationship ends

### □ **custodial parent...**

- ...is the parent with childcare responsibilities

### □ **access...**

- ...is the non-custodial parent's right to visit the child

### □ judge's primary concern is best interest of child

### □ **tender years doctrine...**

- ...the belief that young children should be in the custody of their mothers

# Issues in Ending a Marriage (continued)

## Types of Custody

<b>TYPE OF CUSTODY</b>	<b>LIVING ARRANGEMENTS</b>	<b>DECISION MAKING</b>
Sole custody	One parent has responsibility for child	Custodial parent makes all decisions about child
Joint custody	Child lives primarily with one parent, but spends much time with non-custodial parent	Parents cooperate to make decisions about the child's welfare
Shared custody	Child spends at least 40% of the time with each parent	Parents share major decisions affecting the child's upbringing
Split custody	When more than one child, siblings are separated and care is divided between parents – rarely done, and only if in best interests of the children	Custodial parent makes all decisions about the child

# Issues in Ending a Marriage (continued)

## □ access

- non-custodial parent is usually granted access – but what kind of access?

### ■ reasonable access

- ...where parents are left to agree about the terms of the non-custodial parent's right to visit the child

### ■ defined access

- ...where visitation terms for the non-custodial parent are defined by the Court

### ■ supervised access

- ...where visits with the child by the non-custodial parent requires the presence of a third party

# Issues in Ending a Marriage (continued)

## □ child support

- parents have legal obligation to provide for needs of children
- **child support**
  - ...the payment one parent makes to the other to meet the financial needs of their children
- court uses formulas to calculate amounts – makes it more fair
- amounts may go up/down as financial situations change

# Other Family Issues

- protection of children
  - parents required to protect children
  - gov'n't may intervene if abuse/neglect/abandonment is suspected
- adoption
  - **adoption**
    - ...is a legal process by which a couple (or a single person) becomes the legal parents of a child
    - once process is complete, adopted child has same legal rights as biological child

# Spousal Support

- support obligations
  - during marriage, spouses are obligated to support each other financially
  - financial obligations often continue after marriage ends
- **spousal support...**
  - ...is the money that one spouse pays the financially dependent spouse once the marriage or relationship has terminated
  - Judge considers need of one spouse, ability to pay of other spouse, length of relationship, role of each spouse, and any existing agreements

# Spousal Support (continued)

- self-sufficiency
  - support payments should be made to spouse until they reach self-sufficiency
  - What to do if they don't become self-sufficient?
    - courts will require honoring original support judgments or agreements between spouses – perhaps for indefinite period of time
- enforcing support payments
  - In BC, Family Maintenance Enforcement Program is established to enforce support payments

# Family Assets

- dividing up property
  - once relationship ends, certain types of property are divided between spouses
- family assets...
  - ...is the property owned by either spouse (or both) and normally used for family purposes
- equal division of property
  - net assets typically divided equally between former spouses

# Family Assets (continued)

- dividing the assets
  - **net family property**...
    - ...is the value of a couple's assets, less any debts, at the date the relationship ends
  - **equalization payment**...
    - ...what the spouse with the higher value of assets pays to the other spouse to make the division of total assets more equitable
- the **matrimonial home**
  - ...is the principal residence where the spouses resided before their separation

# Family Assets (continued)

- unequal division of property
  - **order of fairness or unconscionability...**
    - ...an order requiring a division of property that recognizes the unequal contribution of the spouses
    - Example: some of the assets brought into the marriage might not be divided between spouses
- division of property in a common-law relationship
  - some provinces treat common-law same as married
  - other provinces require domestic contract
  - common-law spouses may take property from relationship what they had when it started

# Family Assets (continued)

- division of property on death
  - **will...**
    - ...is a set of written instructions for the distribution of property and possessions after death
  - **intestate...**
    - ...is when someone dies without having written a will
  - **succession...**
    - ...is the legal right to inherit property
    - determined by Provincial legislation
    - not always legal protection for common-law couples
- division of property on reserve lands
  - different rules for reserve lands because it's not always 'owned'

# Final thoughts...

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**“The divorce judge wasn’t very impressed with either of us. Our dog got custody of the kids!”**