



Marriage, Work, and the Dissolution of the Productive Household

Luke Taylor
SJD Candidate, Faculty of Law
University of Toronto

The 'family', in the sense in which the term is used today, emerged only after a long process of historical development. The many figures that populated the family in the seventeenth and eighteenth centuries gradually disappeared until the couple of husband and wife took centre of the stage, and the marriage contract became constitutive of domestic relations.

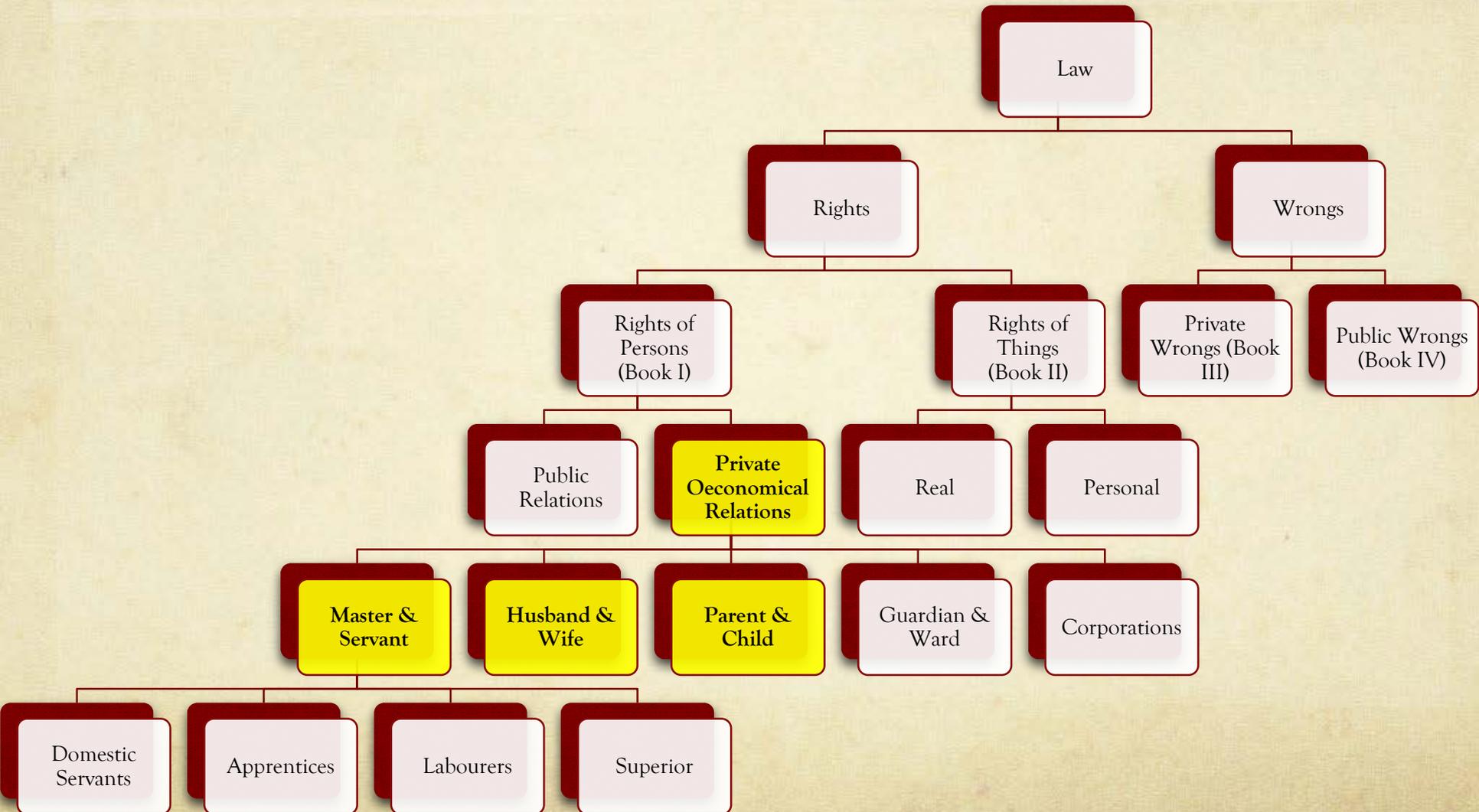
- Carole Pateman, *The Sexual Contract* (1988) 116.

CHAPTER THE FOURTEENTH.
OF MASTER AND SERVANT.

HAVING thus commented on the rights and duties of persons, as standing in the *public* relations of magistrates and people; the method I have marked out now leads me to consider their rights and duties in *private* oeconomic relations.

THE three great relations in private life are, 1. That of *master and servant*; which is founded in convenience, whereby a man is directed to call in the assistance of others, where his own skill and labour will not be sufficient to answer the cares incumbent upon him. 2. That of *husband and wife*; which is founded in nature, but modified by civil society: the one directing man to continue and multiply his species, the other prescribing the manner in which that natural impulse must be confined and regulated. 3. That of *parent and child*, which is consequential to that of marriage, being it's principal end and design: and it is by virtue of this relation that infants are protected, maintained, and educated. But, since the parents, on whom this care is primarily incumbent, may be snatched away by death or otherwise, before they have completed their duty, the law has therefore provided a fourth relation; 4. That of *guardian and ward*, which is a kind of artificial parentage, in order to supply the deficiency, whenever it happens, of the natural. Of all these relations in their order.

Blackstone



**Private
Oeconomical
Relations**

```
graph TD; A[Private Oeconomical Relations] --- B[Master & Servant]; A --- C[Husband & Wife]; A --- D[Parent & Child];
```

**Master &
Servant**

**Husband &
Wife**

**Parent &
Child**

“[Status in the common law is] a special condition of a continuous and institutional nature, differing from the legal position of the normal person, which is conferred by law and not purely by the act of the parties, whenever a person occupies a position of which the creation, continuance or relinquishment and the incidents are a matter of sufficient social or public concern.”

- R.H. Graveson, *Status in the Common Law* (1953)

THE
LAW
OF
BARON AND FEMME ;
OF
PARENT AND CHILD ;
OF
GUARDIAN AND WARD ;
OF
MASTER AND SERVANT ;
AND OF THE
POWERS OF COURTS OF CHANCERY.

WITH
AN ESSAY
ON THE TERMS,
HEIR, HEIRS, AND HEIRS OF THE BODY.

—  —
BY TAPPING REEVE.
—  —

NEW-HAVEN:
PRINTED BY OLIVER STEELE.

1816.

A

PRACTICAL TREATISE

OF

The Law of Marriage and Divorce;

CONTAINING ALSO

THE MODE OF PROCEEDING ON DIVORCES

IN THE

Ecclesiastical Courts and in Parliament;

THE

RIGHT TO THE CUSTODY OF CHILDREN;

VOLUNTARY SEPARATION BETWEEN HUSBAND AND WIFE;

THE

HUSBAND'S LIABILITY TO WIFE'S DEBTS;

AND THE

CONFLICT BETWEEN THE LAWS OF ENGLAND AND SCOTLAND
RESPECTING DIVORCE AND LEGITIMACY.

BY LEONARD SHELFDOR, Esq.,

OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

PHILADELPHIA :

JOHN S. LITTELL,

Law Bookseller and Publisher.

AND SOLD BY THE PRINCIPAL BOOKSELLERS THROUGHOUT THE UNITED STATES.

1841.

cf

3351

5
113

SYSTEM
OF THE
MODERN ROMAN LAW,

TRANSLATED FROM THE GERMAN OF

FRIEDRICH CARL VON SAVIGNY,

BY

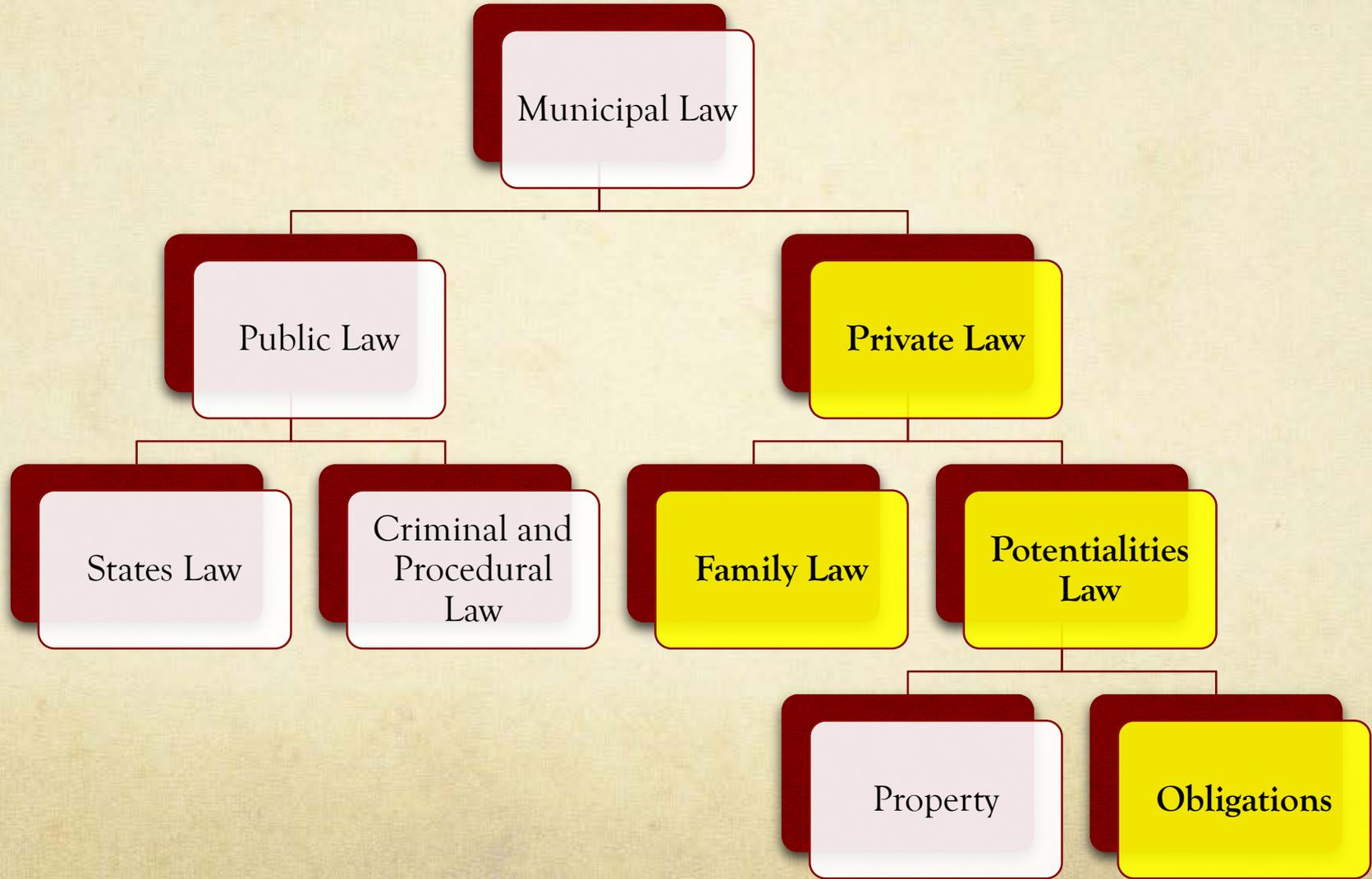
WILLIAM HOLLOWAY,
ONE OF THE PUISNE JUSTICES OF H. M.'S HIGH COURT OF
JUDICATURE AT MADRAS.

VOL. I.

YALE LAW LIBRARY.

MADRAS:
J. HIGGINBOTHAM, PUBLISHER.
1867.

Savigny



Anson

Under the definition of Agreement at which we have arrived would fall -

...

(2) Agreements which effect a change of status immediately upon the expression of the consent of the parties, such as Marriage, which, when consent is expressed before a competent authority, alters at once the legal relations of the parties in many ways.

...

It would seem then that Agreements the effect of which is immediate in creating rights *in rem*, or in effecting a change of status, are not such as we ordinarily term Contracts.

- William Anson, *The Law of Contract* (1st ed., 1880), p.3

THE LAW
OF
THE DOMESTIC RELATIONS,

INCLUDING

Husband and Wife: Parent and Child:

Guardian and Ward: Infants:

AND

Master and Servant.

BY

WILLIAM PINDER EVERSLEY, B.C.L., M.A.,
OF THE INNER TEMPLE, BARRISTER-AT-LAW.

D

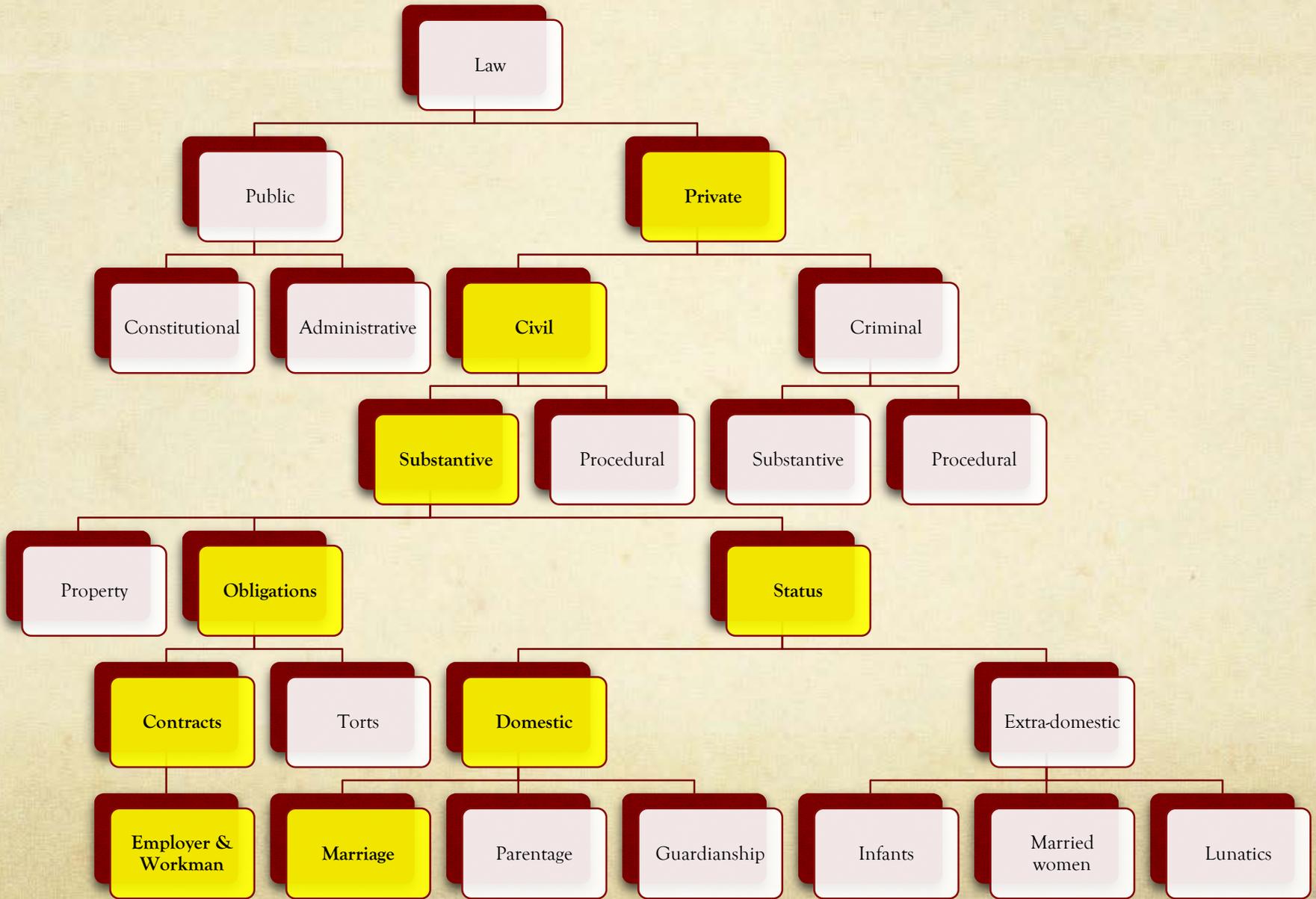
B-
LONDON:
STEVENS & HAYNES,
Law Publishers,
BELL YARD, TEMPLE BAR.
1885.

Eversley

The scope of this portion of the law of Domestic Relations will be *confined to domestic and menial servants*, and will embrace but a small portion of the law that is ordinarily treated of under the head of Master and Servant. Indeed, strictly speaking, the very term domestic or family relations would exclude all those persons who could not satisfy its requirements. That wide branch of the law which deals with *the relations of those who are popularly known as "Employers and Employed"* will not be discussed in the succeeding chapters; nor will there be any need to have recourse to the intricate legislation which in more recent years has appeared on the Statute Book, owing to the great increase of commercial wealth and the development of trade and the general resources of the country.

W.P. Eversley, *The Law of Domestic Relations* (1885), p.909.

Salmond



Digest of English Civil Law

BOOK I. — GENERAL *Edward Jenks*

BOOK II. — OBLIGATIONS

Part I. Obligations arising from Contract (General) *R. W. Lee*

Part II. Obligations arising from particular Contracts *R. W. Lee*

Part III. Obligations arising from Quasi-Contract and Tort *J. C. Miles*

BOOK III. — THINGS (PROPERTY LAW) *Edward Jenks*

BOOK IV. — FAMILY LAW *W. M. Geldart*

BOOK V. — SUCCESSION *W. S. Holdsworth*

Digest of English Civil Law

