

The ISFL Family Letter
September, 2003

Published by the International Society of Family Law by Prof. Margaret F. Brinig, Editor, the Family Letter: Newsletter of the ISFL, College of Law, University of Iowa, Boyd Law Building, Iowa City, IA 52245

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MESSAGE OF THE PRESIDENT:

Comparative Studies of Nordic Law.

The Committee of Ministers of the Nordic Council (consisting of Denmark, Finland, Iceland, Norway and Sweden) decided in 1998 to do a comparative study of the Family Law (Law of Marriage and Child and Parent) and the Law of Inheritance and Wills. The reports were to be written in Norwegian, Swedish and Danish.

The task was originally given to Professors Anders Agell (Sweden), Linda Nielsen (Denmark), and Peter Lødrup (Norway). (All are ISFL members.) The advisor on Finnish law has been Professor Urpo Kangas. When Linda Nielsen became Rector of the University of Copenhagen, professor and judge Svend Danielsen took over her parts. Dr. Anna Singer (Sweden) has since 2002 worked with Anders Agell on Child maintenance.

According to the directives, the study should:

1. describe the more important differences in the legal systems of the five countries, its content, application and goals
2. describe the extent to which the differences may cause practical problems when people move between the countries and the number of cases where such problems has already occurred
3. describe the issues which from a practical point of view should be subject to a Nordic harmonization
4. create a picture of the questions in the legal systems in the Nordic countries which should be subject to a Nordic cooperation of harmonization in a short, middle and long perspective.

The work was split in the following way:

Anders Agell would write the study on the Law of Marriage, Peter Lødrup would write on Inheritance and Wills, and Svend Danielsen on Parental responsibility,

visiting rights, etc, while Anders Agell and Anna Singer should study Child maintenance and the connecting social security systems, and Peter Lødrup would deal with Parenthood.

During the last three years the members of the project have met about 15 times to discuss each others' manuscripts and the different aspects of the work.

Anders Agell and Peter Lødrup have now finished the first part of their studies, which has been printed in two books of 512 and 470 pages respectively, edited by the Nordic Council. The third volume on Children and Parents will be finished this year and will cover about 600 pages. Part I (in one volume) will be on Paternity and Motherhood, Child maintenance etc, while Svend Danielsen's study will be part.

II.

In December this year, the Swedish Ministry of Justice will host a conference with around 120 lawyers from all the five countries to discuss the result of these studies and the future of harmonization of these fields of law between these five countries with a common legal, social and cultural structure.

May I add some personal reflections after having spent so much time on this project the last couple of years.

First, I discovered that trying to learn the law of another country and go deep into it, was difficult and extremely time consuming. Reading the Statutes, cases and textbooks was not enough. Thorough discussions with Nordic colleagues was a necessity.

Secondly, some issues that had been discussed and subjected to much litigation in one country were more or less non-existing in another.

Thirdly, I got many question from my Nordic colleagues which I could not answer.

Forth, We found that the differences in our laws were

much greater than we had expected.

Fifth, In the beginning our responses were more than we had expected rooted in the law of our own countries, without the ability to evaluate the quality of different legal alternatives objectively. It took more than a year to learn that other solutions might be better than your own.

Finally, I think we all have a deep feeling that the task has enriched us immensely professionally. We hope that the 1500 pages of comparative studies will enrich the development of legal regulation of these fields of law which concern all the peoples in our countries. We also hope that the books will be of interest to those who work with the methodological question of comparative studies.

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REPORT OF THE SECRETARY-GENERAL:

Since the last newsletter, ISFL members have been undertaking a variety of activities on behalf of the Society. The proceedings of the Brisbane Conference held in 2000 have now been published, and Council members are grateful to the editors, Professors John Dewar and Stephen Parker for their work in preparing the volume. The book is entitled *Family Law: Processes, Practices, Pressures* and is published by Hart Publishing (www.hartpub.co.uk). Society members may purchase the book at a 25% discount.

The North American Regional Conference was held on June 26 - 28, 2003 at the University of Oregon School of Law, Eugene, Oregon, USA, organised by Professor Leslie Harris. The European Regional Conference, convened by Professor Miquel Martin Casals, takes place in Tossa de Mar (Girona) in Catalonia, Spain on 9 - 10 October 2003. Professor Hugues Fulchiron will host a conference on international child abduction, under the auspices of the Society, in Lyon in November 2003. A conference planned to be held in Beijing, China in July was postponed due to the SARS epidemic, but is being re-scheduled to take place in 2004. Planning for the Society's next World Conference in 2005 in Salt Lake City is also well-advanced. Other meetings will be announced to members when preparatory plans can be confirmed.

Such meetings provide perhaps the best opportunity for the Society to attract new family law scholars to join colleagues in the exchange of information and ideas, since they take place in a relaxed and congenial atmosphere. The Society's website also offers a point of initial contact to those seeking information about family law developments around the world, and I receive an increasing number of email requests from enquirers wishing to make contact with scholars in their own, and other, jurisdictions to discuss legal developments with the experts in the field. Please do remember to look at the website to keep abreast of developments in between our newsletters.

As ever, I would appreciate hearing from colleagues whose address details change so that we can update our records as quickly as possible and keep you in the Society's communication network. Please send notifications of changes to me at douglasg@cf.ac.uk.

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REPORT OF THE TREASURER:

One of the problems a treasurer faces is the updating of addresses. Far too often, books and letters are returned to one of the officers or the publisher. Please note that you can send your change of address to me, preferably by email (or by card or fax). As we try to communicate much more often by email, I ask you to mention your email address to me if this address is not the one published in the current list, which can be viewed on our website.

If you want to be deleted as member, please mention this to me two months before the year you paid for will end. If I have not received such a message, I will see this as a renewing of your membership and you will have to pay for the coming year. Please note that those who will have to pay for the year 2004 (and the years after 2004) will receive a message from me. Thanks in advance for your kind cooperation in this matter.

Best wishes, Paul Vlaardingeboek (treasurer)
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Website Updates: A very preliminary version of the Website has been running for some time. At present, we are updating and reorganizing somewhat. The new version replaces the old one and can be found at <http://www.law2.byu.edu/ISFL/index.html>.

The American Association of Law School, Family Law Section Website is now available at <http://www.uiowa.edu/~mfblaw/aals.html>. Section members have provided material, but more suggestions would be welcome, including links, class materials,

exams you don't mind being generally available, or anything else you'd like to supply. You may write her at margaret-brinig@uiowa.edu, and may attach electronic versions of any submissions.

University of Oregon School of Law Hosts North American Regional Conference for the International Society of Family Law

On June 26-28, 2003, the University of Oregon School of Law in Eugene hosted the International Society of Family Law North American Regional Conference. More than 80 people registered as official participants, and more than 100 attended part or all of the conference. Approximately sixty individuals presented papers as part of twenty-one panels on topics ranging widely from regulatory competition in intercountry adoption to technological influences, including cloning, on the development of family law.

Conference attendees came from eleven countries, including Australia, Brazil, Canada, England, Japan, France, Mexico, Norway, Singapore, Spain, and the U.S., and from 25 U.S. states. Peter Lødrup, President of the ISFL, traveled from the University of Oslo to welcome conference participants, to moderate a panel on the developments in paternity law, and to present a paper on the Norwegian law of paternity.

Dr. Mary Ann Mason, Dean of the Graduate School, University of California, Berkeley, gave the keynote address on the voice of the child in custody litigation. Dr. Mason proposed that the law embody a presumption that adolescent's views control unless a party can demonstrate that view would be detrimental to the child.

Other highlights of the conference included a dinner at a local vineyard and a lunchtime presentation by Sheila Simon, Assistant Clinical Professor of Law at Southern Illinois University, who explored the topic of domestic violence in country music by leading all the attendees in song.

UPCOMING CONFERENCES & CALLS FOR PAPERS:

Notice of Rescheduled Beijing Conference and Call for Papers

**International Society of Family Law Regional Conference in Beijing, China
July 18-22, 2004**

Divorce: Causes and Consequences

The International Society of Family Law (ISFL) is pleased to announce that it will hold its Regional Conference in Beijing, China, on July 18-22, 2004. (This is rescheduled from July 2003.) Professor Wu Chang Zhen, Professor Xia Yinlan, and Professor Yang Quinho, from the China University of Political Science and Law in Beijing are collaborating with Professor Lynn D. Wardle of the ISFL and Brigham Young University in planning and hosting the conference. Chinese family law professors, lawyers, and government officials as well as family law scholars from many other countries will participate in the conference. There will be translation and interpretation services. We invite interested academics and professionals (including judges and other government officials) to submit proposals to present papers at the conference, or to just register to attend the conference.

Conference Theme: *“Divorce: Causes and Consequences.”* (Specific subjects may include comparative divorce, legal principles, rules, procedures, practices, issues, and problems in divorce regulation and administration, and the causes and effects of divorce.)

Conference Hotel and Venue. The beautiful State Guest Hotel (a 5-star hotel) has been selected as the site to meet for the conference, and the non-Chinese participants will also stay at this hotel. (Participants must register and pay for their rooms individually.) The website of the hotel is www.stateguesthotel.com.

Conference schedule: The conference registration will be on Sunday, July 18, 2004. Conference sessions will be on Monday and Tuesday (July 19 & 20). On Wednesday (July 21), conference participants will be taken on a one-day field trip to visit a Chinese Family Court, a law firm or legal service center for women, the Great Hall of the People, and a university (law school) - as available. Thursday (July 22) will be for historical and cultural sight-seeing, and the hosts will arrange for some optional tours (to the Forbidden City, and to the Great

Wall).

Registration fees: The registration fee for all non-Chinese participants (*including all presenters*) will be 462US\$. This consists of two main expenses: (a) The general registration fees is 282US\$ which covers site and other expenses including the paper book (each participant will get one papers collection before the conference), meeting facility, equipment, copying, supplies, conference meals, field trips and sightseeing, transportation. (b) The translation fee for translating all the papers from Chinese to English or from English to Chinese, simultaneous interpreters, rent for the equipment of simultaneous interpretation, etc., is 180US\$. So, the total registration fee of one participant will be 462US\$ (not including the lodging fee, which all participants must pay.) The conference registration fee would include lunch and/or dinner on all conference days. *Accompanying persons* will pay a fee of about 125 US\$ to cover the evening meals/ banquet and the field trip and sightseeing trip.

Paper Proposals: Family Law scholars and other academics and professionals interested in presenting, discussing and learning about “Divorce: Causes and Consequences” are invited to submit proposals to present papers at this conference. The paper proposal should contain a brief, one- or two-paragraph description of the proposed paper. The paper proposal should also provide the following information: Presenter’s Name, Title or Position, University or Institution where employed, post address, telephone, fax, and email, and a one-paragraph (100-word) mini-resume. The paper proposal (with contact information and mini-resume) should be submitted to Professor Lynn D. Wardle by email (preferably) at <lynn_wardle@byu.edu> or by fax or post to the contact information below. Paper proposals must be received no later than April 15, 2003.

Final Paper Guidelines: The final papers that are accepted for presentation should be 9- to 12- pages long, single-spaced, including endnotes (not footnotes). They will be translated into Chinese so that the local Chinese participants can read them and respond to them.

Convenor: Professor Lynn D. Wardle is the co-convenor, and co-ordinator for the non-Chinese participants. He may be contacted at: 518 JRCB, Brigham Young University, Provo, UT 84602; telephone (801) 422-2617; fax (801) 422-0391; Email: <lynn_wardle@byu.edu>.

European Regional Conference ISFL, 2003

The Modernisation of Family Law in Europe

Tossa de Mar (Catalonia, Spain), October 2 and 3, 2003

Tossa de Mar is a small village on the Spanish Costa Brava, which is 100 Km north of Barcelona and approx. 100 Km south of the French border. Closest airports: Barcelona airport and also Girona-Costa Brava airport (much smaller, with less traffic, but very cheap flights).

For those participants who want to arrive earlier, the organisation will offer them opportunity of staying in Barcelona on October 1st., with a guided tour around the city, bed and breakfast in a traditional hotel in Barcelona for one night and transfer to Tossa de Mar by bus around 8.30 AM on October 2nd.

The Hotel in Tossa de Mar is a four star hotel located close to Mar Menuda beach and directly overlooking the Tossa bay. Approx. €90 bed and half-board per person (drinks not included).

European Law Academy (ERA/ELA) (Trier): The ELA is a Centre for continuing legal education *founded* in 1992 which is acting as a bridge between the centres of European legal decisions located in Brussels and Strasbourg and European practitioners.

University of Girona: Its research team *The European Private Law Research Group* (currently 4 senior researchers and 8 junior researchers), directed by Prof. Miquel Martín-Casals, Vice-president of the ISFL, has been organising national and international conferences for the last twenty years. More information is available at the following website address: <http://civil.udg.es/ISFL/EuropeanRegionalConference?003>

The meetings will take place in Tossa de Mar and the closing session will be held at the University of Girona (only 40 KM from Tossa de Mar). After the closing session a Catalan dinner will be served in a typical restaurant on the way back to the hotel.

Organised: by the International Society of Family Law,

In cooperation, as co-organisers, with:

Observatori de Dret Privat de Catalunya: This is an institution created in 2000 by the Catalan Ministry of Justice and Interior which aims at promoting the study of Private Law in order to improve Catalan Private Law legislation. The Catalan Codification Commission, which is currently drafting the Catalan Civil Code (First Book passed by the Catalan Parliament in December 2002), is part of the Observatory.

"Child abductions across international boundaries" University Lyon 3, Jean Moulin, 20/21 November 2003

Frequently, the different drama following the separation of couples are picked up by current developments, when children become the stakes and the victims of the dispute between their father and mother. The international dimension of the dispute make the issue more complicated when the borders are used by parents as a weapon, even if they think acting for the children interest.

To fight against this curse, several international instruments from various source and scope appeared. Two of them are specifically devoted to this question : the Hague Convention of October, 25th 1980 on the Civil Aspects of International Child Abduction, and the European convention of May, 20th 1980 on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children.

This two instruments seek to protect the right of custody by providing a procedure allowing a prompt return of the children in his usual residence country, and the protection of the right of access, which is the consequence of the right of custody. These conventions were signed in 1980. They entered into force in France in 1983.

Following the report "Familial conflict, children abduction and judicial cooperation in Europe", made by the Family law research centre (University Jean Moulin Lyon 3) on the request of the French

Ministry of Justice and the European Union, this conference will serve three purposes:

- To draw up an assessment of these 20 years of enforcement of the Hague and Luxembourg conventions in France and in the other States
- To analyse the link between the Hague and the Luxembourg conventions with the general statutes took by the European Union and the European Council - To formulate some suggestions to improve the fight against the children abductions and the failure to respect the right of access.

This international conference will bring together researchers, academics, European Union, European Council and Hague Conference on Private International Law representatives, responsible people of the Central authorities, judges, lawyers, social workers and association members. A wide part of the conference will allow debates and "workshop", especially for the French and foreign professionals charged to solve these issues.

The speech will be made in French and in English (translation modalities are currently studied). These works will be published.

Contact:

Hugues FULCHIRON, Centre de droit de la famille, Faculte de droit, Universite Jean Moulin, Lyon 3

RECENT PUBLICATIONS OF NOTE BY ISFL

MEMBERS:

(Compiled by Associate Editor Laurence C. Nolan, Professor of Law, Howard University School of Law, 2900 Van Ness St., N.W., Washington, D.C. 20008, tel. (202)806-8064, fax - 8428
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1. Family Law in General: History; Theories; Overviews

Brian H. Bix, "Physician-Assisted Suicide and Federalism, 17 Notre Dame Journal of Law, Ethics & Public Policy 53 (2003).

Margaret F. Brinig, "Empirical Work in Family Law," 2002 University of Illinois Law Review 1083.

Margaret F. Brinig, "Promoting Children's Interests Through a Responsible Research Agenda," 14 University of Florida Journal of Law and Public Policy 137 (2003).

Ann Laquer Estin, "Families and Children in International Law: An Introduction," *Transnational Law & Contemporary Problems*, Vol. 12:271 (2002).

Ann Laquer Estin, "Marriage and Belonging," 100 Michigan University Law Review 1690 (2002).

Sally F. Goldfarb, "The Supreme Court, the Violence Against Women Act, and the Use and Abuse of Federalism," 71 Fordham Law Review 57 (2002).

Mark Strasser, "Harvesting the Fruits of Gardiner: On

Marriage, Public Policy, and Fundamental Interests," 71 Geo. Wash. L. Rev. 179-230 (2003).

2. Before/Creation of Spousal or Quasi-Spousal Relations

Lynn D. Wardle, "Counting the Costs of Civil Unions: Some Potential Detrimental Effects on Family Law," 11 Widener Journal of Public Law 401 (2002).

3. Before/Creation of Parent-Child or Similar Relations

4. Spousal Relations in the Ongoing Family

Jennifer Wriggins, "Interspousal Tort Immunity and Insurance 'Family Member Exclusions': Shared Assumptions, Relational and Liberal Feminist Challenges," 17 Wisconsin Women's Law Journal 251 (2002).

5. Parent-Child Relations in the Ongoing Family or Similar Relations

Robin Fretwell Wilson, "The Cradle of Abuse: Evaluating the Danger Posed by a Sexually Predatory Parent to the Victim's Siblings," 51 Emory Law Journal 241 (2002).

6. Termination/Post-Relations of Spouses & Quasi-Spouses

Brian H. Bix, "A Choice of Law and Marriage: A Proposal," 36 Family Law Quarterly 255 (2002).

Margaret F. Brinig, "'Money Can't Buy Me Love': A Contrast Between Damages in Family Law and Contract," 27 Journal of Corporation Law 567 (2002).

Ann Laquer Estin, "Ordinary Cohabitation," 76 Notre Dame Law Review 1381 (2001).

7. Termination/Post-Relations of Parents and Children

Brian H. Bix, "Parental Rights for All Parents: A Comment on Gregory," 36 Family Law Quarterly 189 (2002).

John DeWitt Gregory, "Family Privacy and the Custody and Visitation Rights of Adult Outsiders," 36 Family Law Quarterly 163 (2002).

Cynthia Starnes, "Swords in the Hands of Babes: Rethinking Custody Interviews After Troxel," 2003 Wis. L. Rev. 115 (2003).

Lynn D. Wardle, "Parental Infidelity and the "No Harm" Rule in Custody Litigation," 52 Catholic University Law Review 82 (2002).

Barbara Bennett Woodhouse, "Horton Looks at the ALI Principles," 4 Journal of Law & Family Studies 151 (2002).

Other Publications of Note:

j.sinclair@chass.usyd.edu.au, her Telephone +61 2 93516366 and her FAX is +61 2 93516368.

Stephen Cretney, FAMILY LAW IN THE TWENTIETH CENTURY: A HISTORY, Oxford University Press, 950 pages, ISBN 0-19-826899-8.

CHILDREN and THEIR FAMILIES: CONTRACT, RIGHTS and WELFARE, (Edited by *Andrew Bainham*, Bridget Lindley, Martin Richards, and Liz Trinder) forthcoming fall 2003.

Patrick Parkinson, CHILD SEXUAL ABUSE AND THE TEACHERS: UNDERSTANDING THE ISSUES (Haworth Press, 2003).

MARRIAGE AND SAME-SEX UNIONS: A DEBATE 1-396 + iii-xiii (*Lynn D. Wardle, Mark Strasser, William C. Duncan, & David Orgon Coolidge*, eds. Praeger, 2003)

NOTE: The Newsletter will publish notices of recent publications dealing with family law topics if the following information—Name of author, title of article or chapter, title of book or journal in which it is published, the volume and pages, the year of publication (and if the title of the article, chapter and/or book or journal is not in English a translation of the same into English - so that the entry can be placed in the appropriate category)—is sent to Prof. Laurence C. Nolan, Howard University School of Law, 2900 Van Ness Street, N.W., Washington, DC 20008; 202-806-8428 (fax); lnolan@law.howard.edu (e-mail).

PERSONAL NOTICES:

Prof. Lowell Schechter writes that he is beginning a significant project on homeless youth at Northern Kentucky University College of Law, where he is working with the Children's Law Center. Anyone interested in the project should contact him at: schechterl@exchange.nku.edu

June Sinclair, member of the Executive Council, has moved to Australia where she is now Pro-Vice-Chancellor, College of Humanities and Social Sciences, University of Sydney. Her email address is