

The ISFL Family Letter
Fall, 2012

Published by the International Society of Family Law by Prof. Margaret F. Brinig, Editor, the Family Letter: Newsletter of the ISFL, Notre Dame Law School, Notre Dame Indiana 46556

Phone: (574) 631-2303, FAX: (574) 631-8078, E-mail: mbrinig@nd.edu

REPORT OF THE PRESIDENT:

When I studied family law as a student in England, some 30 years ago, what I studied was the law in England and Wales. We had a vague awareness that Scotland had different laws, and we might occasionally look at reform proposals from that jurisdiction, but we had almost no appreciation that the world beyond the borders of the British Isles was relevant to the study and practice of family law in England.

When I studied family law at postgraduate level in the USA, my horizons expanded. Now I was studying the law of 50 states, and the issues of cooperation and conflict between them. I learned little, however, of the way family law systems interact across continents and cultures beyond the borders of the USA.

Now, it seems scarcely possible to be a family law specialist without some knowledge and awareness of the international dimensions of the subject. International treaties such as the Hague Conventions on Child Abduction, Adoption and Child Protection, bilateral or multilateral international agreements about enforcement of maintenance obligations, and issues of appropriate forum for former couples from different jurisdictions to resolve disputes about property are all an important aspect of the law and practice of family law in each country.

The International Society of Family Law has done a great deal to promote the study of family law both in its international and comparative dimensions, and to improve the way in which disputes with an international dimension are resolved.

A number of long-standing members of the ISFL, including myself, participated in two conferences in Hong Kong in August. The first was a forum on Children and the Law, held at the University of Hong Kong. The second was the International Family Justice Judicial Conference, which was attended by chief justices, appellate court judges and senior family law judges from many parts of the world – but mostly from countries with a common law heritage. As academic lawyers, we were invited to present our research findings and to participate in discussions on such issues as international child abduction, relocation and commercial surrogacy. This kind of engagement between the academic community and the international family law judiciary has many benefits for both.

The North American regional conference, held at the University of Iowa in June, brought together not only scholars from the USA and Canada, but a great range of other countries. Thanks to Prof. Ann Estin for the superb organization of this event.

Next year regional ISFL conferences will be held in New York in June and in Seoul in early October. The World Congress on Family Law and Children's Rights will be held in Sydney in March. I do hope you will be able to come to these or other such events which have an international dimension.

Prof. Patrick Parkinson
University of Sydney, Australia
Prof. Patrick Parkinson
University of Sydney, Australia

REPORT OF THE SECRETARY-GENERAL:

conferences and publications sections.

No report this time, but see notices of

Marsha Garrison

REPORT OF THE TREASURER:

Dear colleagues,

In the past Months many of you have paid the (annual) fees. Colleagues who don't have an e-mail address will receive a letter from me next summer. If you did not send me your e-mail address, please do it now. Again I had to delete a number of a members because they did not pay their fees for some years. Soon the members who have paid their fees for the year 2012 (et cetera) will receive the International Survey of Family Law 2012 Edition. If you don't receive a copy, please let me know by e-mail (*a.p.vanderlinden@uu.nl*). In case you still have to pay for this year (and some members for more years), please send me a (printed) filled in Subscription Form by e-mail as soon as possible.

If you wish to be deleted as a member, which I hope you don't, send me a letter before the end of November 2012, otherwise you have to pay your membership dues for the year 2013. Some members think that they just can pay for one year and that is it. But again: when you are a member, you have to inform me about finishing your membership.

When your address will be changed, please sent me your new full new address and preferably also your e-mail address. We try to keep the membership list updated and with your help we can succeed in that. If you change your address or if you want to be deleted as member, please send me a message as soon as possible, but before the end of November 2012. Some countries have many more specialists in the field of Family and Juvenile Law have joined the ISFL. **So, I challenge you to invite at least one colleague to become a member of our Society. You will find the Subscription Form at the ISFL-site.** If you cannot find the Form, ask me. It should be nice to have at least 1000 members from all over the World.

We do have the possibility to pay for five years. Many members choose for this opportunity, which will save you and the ISFL costs. In all cases you when write me, please do so by using your computer or typewriter. As I wrote before, I can't always read your handwriting and especially as to your Bank data this gives me a lot of work.

Be a faithful member of the Society and be always keen on the best interest of families and the children who belong to these families.

Best regards to all!
Adriaan van der Linden

Adriaan P. van der Linden
Beetslaan 2
3818 VH Amersfoort
THE NETHERLANDS
Tel: +31 (33) 461 90 97
Fax: +31 (33) 465 94 29
a.p.vanderlinden@uu.nl

**REPORT ON THE INTERNATIONAL SURVEY
OF FAMILY LAW:**

The 2012 edition of the International Survey of Family Law has been published and members should have received their copies by now. The General Editor, Bill Atkin, is happy to hear from people who would like

to contribute to the 2013 edition.

Any inquiries should be directed to the General Editor, Bill Atkin, Professor of Law at Wellington, New Zealand:

bill.atkin@vuw.ac.nz

REPORT OF THE NEWSLETTER EDITOR:

Please continue to send me short articles dealing with developments in your country that might be of interested to ISFL members. This is particularly useful in the times, like the present, between World Congresses.

Many of you kindly send me updates of changes to your email addresses. This is very important, since otherwise not only will you miss the Family Letter, but also other notices that the Board asks me to send out increasingly often.

When you get these notices, please do not reply to me but to the address indicated in the notice. The most important place to send changes of address is to Adriaan van der Linden, our Treasurer, though I will forward him your notes about address changes that are sent to me.

The instructions for reaching the membership directory on the ISFL website are again included below, in Lynn's notes.

Margaret F. Brinig, Editor
The Family Letter
mbrinig@nd.ed

NOTES ABOUT THE ISFL WEBSITE:

To enter the secure portion of the website, including the membership directory, use the following information:

Username: ISFL

Password: ISFL2006

The ISFL website at

<http://www.law2.byu.edu/isfl/index.php> has been updated and revised in the following ways:

First, we have activated the "award plaque" and entitled it "In Appreciation for Exceptional Service to the International Society for Family Law" and put a link for it on the ISFL homepage. The first five recipients are now listed on the digital award plaque.

Second, a new feature has been installed on the ISFL Website. It is entitled "ISFL "Developments Blog and Comments Forum" and the link to it is on the front page (left) of

the ISFL website homepage at <http://www.law2.byu.edu/isfl/>. It is intended to provide a place for ISFL members to post "blog entries" describing interesting new developments in family law in their state, nation, region, or internationally relating to family law subjects in which they have an interest (marriage, adoption, etc.). ISFL members may post "comments" about the blog entries posted by other ISFL members. So this "Developments Blog and Comments Forum" can function like an old bulletin board in your law school building where people could post newspaper clippings, announcements, drafts or summaries of recent legislation, copies or summaries of recent case opinions, and others can react to those postings by adding comments. There is even an entry for ISFL Business where items relating to the ISFL organization can be posted.

Many of our students (the next generation of family law scholars, judges and lawyers) are very attuned to using such electronic blogs and making such electronic postings and comments. So this will be a way for ISFL member-scholars to begin to get familiar with such technology and to communicate with the rising generation of upcoming family law scholars through technology with which they are very comfortable.

The ISFL Developments Blog and Comment Forum includes simple instructions on how to post an entry are quite simple are included at the "Developments Blog and Comments Forum" at the first page. I invite all members of the ISFL to post an entry on the Developments Blog and to make a comment on someone else's posting on the Comments Forum.

Finally, feedback about suggested corrections and improvements in the ISFL website are welcome. Send such comments

by email to Lynn Wardle at WARDLEL@law.byu.edu.

I invite you to check out these website changes, and to let me know of any significant corrections that need to be made.

Lynn D. Wardle
ISFL Website Editor

Brooklyn, New York

CONFERENCES AND CALL FOR PAPERS:

JUNE 6-8, 2013

**CALL FOR PAPERS
NORTH AMERICAN REGIONAL
CONFERENCE
BROOKLYN LAW SCHOOL**

***FOSTERING FAMILY
HARMONY: PRINCIPLES AND
PRACTICES***

Whether families are intact or separated, family harmony is strongly associated with private and public benefits. Both children and adult partners experience health, wealth, and happiness benefits from family harmony. These benefits, and the higher likelihood of interfamilial support that go with them, produce public gains as well.

What legal principles, practices, and organizational structures can best promote family harmony? The conference theme is intended to be inclusive, extending to both public and private family law as well as the social sciences. International and comparative approaches are encouraged but not required. To the extent possible, the conference will feature panels in French and Spanish as well as English, but translation will not be available.

In addition to regular conference presentations, the meeting will include a limited number of workshop sessions (in English only) to provide an opportunity for discussion of scholarly work at an early stage. Workshop participants will be asked to circulate a brief (no more than five pages) summary of their projects before the meeting date.

Please send a one-page paper or workshop proposal to Marsha Garrison, Brooklyn Law School, at marsha.garrison@brooklaw.edu. Proposals submitted before January 15,

2013 will be given priority consideration. Acceptance notifications will be on a

Save the Date! 2014 World Congress Recife, Brazil, 6-9 August, 2014

rolling basis beginning on January 15.

For more information on the Fostering Family Harmony Conference and (after October 10) registration information, visit the conference website at: www.brooklaw.edu/isfl.

REPORTS ON CONFERENCES:

International Society of Family Law

OTHER CONFERENCES OF INTEREST

Notice of Academic Symposium and Call for Papers

“The Jurisprudence of Family Relations: Privacy, Autonomy, and Whether States Should Regulate Family Relations”

June 10-11, 2013, at Cardozo Law School, Yeshiva University, New York City

The International Academy for the Study of the Jurisprudence of the Family (“IASJF”) is pleased to announce that it will hold its sixth international symposium on the jurisprudence of the family on Monday (afternoon) and Tuesday, June 10-11, 2013, at Cardozo Law School of Yeshiva University in New York City, New York, USA. The symposium is on: *“The Jurisprudence of Family Relations: Privacy, Autonomy, and Whether States Should Regulate Family Relations.”*

Persons wishing to present a scholarly paper at the symposium should submit a short “Abstract” of the paper they propose (no more than one page) including a working title, the identity, institutional affiliation and full contact information of the author(s), and a brief description of the paper proposed. Proposals should be sent to Professor Lynn D. Wardle at wardlel@law.byu.edu by 15 March 2013. Acceptances will be on a rolling-acceptance basis. Presenters will receive symposium meals without charge, and register at a reduced fee of only US\$50. For further information about the IASJF or this conference, go to <http://www.iasjf.org/>.

Family Law in Europe: New Developments, Challenges and Opportunities 5th CEFL Conference, 29 – 31 August, Bonn, Germany

Under the title "New developments, challenges and opportunities", the 5th Conference of the Commission on European Family Law will be held in Bonn, Germany, on 28-31 August 2013. Aiming to enhance the exchange of ideas and arguments on comparative and international family law in Europe, topics include matrimonial property regimes in Europe, non-formalized relationships and parental relations.

The CEFL Principles on European Family Law regarding Property Relations between Spouses will be presented and discussed as well as the current proposals for EU regulations on matters regarding matrimonial property regimes and property relationships of registered partners. Taking into account recent developments, especially in Common law and the Nordic Countries, the conference will then turn to the analysis of rules governing the dissolution of non-formalized partnerships. The last session will deal with the juxtaposition of biological, social and legal parentage.

The conference is open both academics and practitioners. As at previous conferences, early career researchers will be invited to present their research in parallel working groups. For further details and the call for papers please see the conference website www.cefl2013.org.

Nina Dethloff

RECENT PUBLICATIONS OF NOTE BY ISFL MEMBERS:

(Compiled for this issue only by Margaret Brinig)

1. Family Law in General: History; Theories; Overviews

PARKINSON, Patrick, *Australian Family Law in Context: Commentary and Materials*, 5th ed 2012

ROGERSON, Carol, SEMPLE, Noel, "Access to Family Justice: Insights And Options" in Michael Trebilcock et al, eds, *Middle Class Access to Justice* (Toronto: University of Toronto Press, 2012)

Lynn D. Wardle, *Reconciling Private Autonomy and Public Interests in Family Law*, " in II CONFRONTING THE FRONTIERS OF FAMILY AND SUCCESSION LAW, LIBER AMICORUM WALTER PINTENS 1747-1761 (Alain-Laurent Verbeke, et al., eds, Interstitia 2012).

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

OLDHAM, Tom, "A Reevaluation of the Uniform Premarital Agreement Act After Three Decades", in 19 Duke J. Gender L. & Policy 83 (Fall 2011)

WARDLE, Lynn D. *Making the World a Better Place for Families* in II ESSAYS IN HONOR OF PENELOPE AGALLOPOULOU 1495-1522 (N. Sakkoulas Publishers, Greece, 2011)

WARDLE, Lynn D. *The Impacts on Education of Legalizing Same-Sex Marriage and Lessons from Abortion Jurisprudence*, 2011 B.Y.U. Ed. & L. J. 593-635).

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

BASSET, Ursula C., "The Right of the Child to the Unity of All the Elements of its Identity" (Derecho del niño a la unidad de toda su identidad), Rev. Jur. LA LEY. REVISTA JURIDICA ARGENTINA, Thomson Reuters, Buenos Aires, La Ley, Vol. 2011-F, pp. 1005-1015

4. Spousal Relations in the Ongoing Family or Similar Relations

BASSET, Ursula C. "Marriage in the Argentinian Civil Code Draft", (El matrimonio en el Proyecto de Código), Rev. Jur. LA LEY. REVISTA JURIDICA ARGENTINA, Buenos Aires, La Ley, Thomson Reuters, Vol: 2012-D, pp. 1- 5

BRINIG, Margaret F. *The Division of Labor Across Time and Generations*, 54-72, to be published in *Marriage at the Crossroads* (E. Scott and M. Garrison, eds., Cambridge University Press, 2012).

OLDHAM, Tom, "Should Separate Property Gradually Become Community as a Marriage Continues?", in 72 La. L. Rev. 127 (Fall 2011)

PARKINSON, Patrick, "Family Trusts and Third Parties under the Family Law Act 1975" (2012) 26 Australian Journal of Family Law 5-27

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

BASSET, Ursula C., "Amicus Brief to the Interamerican Court on Human Rights in Re "Atala v. Chile", (Carta de Amigo del tribunal en el caso "Atala contra Chile"), Rev. Jur. EL DERECHO, Buenos Aires,

Universitas, Volumen: 244, pp, 723-751

BASSET, Ursula C., “The Changing Standard of the ‘Best Interest of the Child’ and its Impact on the Exercise of Parenting and on Children”, *International Journal of the Jurisprudence of the Family*, Vol. 2, 2011, pp. 407-436.

BRINIG, Margaret F. “Explaining Abuse of the Disabled Child”, *46 Family Law Quarterly* 267-95 (Summer,, 2012).

PARKINSON, Patrick, “When is Parenthood Dissoluble?” (2012) *26 BYU J Public Law* 147-185.

ROGERSON, Carol, “Canada: A bold and progressive past but an unclear future,” chapter 3 in Elaine Sutherland, ed., *The Future of Child and Family Law: International Predictions* (Cambridge: Cambridge University Press, 2012) (see http://www.cambridge.org/us/knowledge/isbn/item6823160/The%20Future%20of%20Child%20and%20Family%20Law/?site_locale=en_US) (this chapter reviews the last 30 years of family law reform in Canada)

ROGERSON, Carol, THOMPSON, Rollie, “The Canadian Experiment with Spousal Support Guidelines” (2011) *45 Family Law Quarterly* pp. 241-270 (special issue on “Current Issues in Child and Spousal Support)

WARDLE, Lynn D., “Dilemmas of Indissoluble Parenthood: Legal Incentives, Parenting, and the Work-Family Balance”, *28 BYU J. Pub. L.* 265-308 (2012),

WARDLE, Lynn D., “The Disintegration of Families and Children’s Right to Their Parents”, *10 Ave Maria Law Review* 1-52

(2011)

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

Allen, Douglas, and BRINIG, Margaret, “Child Support Guidelines and Divorce Incentives”, *32 International Review of Law and Economics*. 309 (2012).

ROGERSON, Carol, “Spousal Support Agreements and the Legacy of Miglin”(2012) *31 Canadian Family Law Quarterly*, pp. 13-70.

ROGERSON, Carol, “Child and Spousal Support in Canada: The Guidelines Approach Part 1”, (2011) *14(3) Irish Journal of Family Law* pp. 72- 80 and “Child and Spousal Support in Canada: The Guidelines Approach Part 2”, (2012) *15(1) Irish Journal of Family Law* pp. 18-28.

7. Termination/Post-Relations of Parents and Children

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. Ursula Basset, ucbasset@yahoo.com/ucbasset@gmail.com

OTHER PUBLICATION NOTES:

Sanford Katz is the co-author of *Adoption Laws in a Nutshell* published in September by West Publishing Co.

The book surveys and analyses the adoption laws in the United States.

Marriage at the Crossroads

Law, Policy, and the Brave New World of Twenty-First-Century Families

Marsha Garrison, Brooklyn Law School

Elizabeth Scott, Columbia Law School

Cambridge University Press

About the Book

The institution of marriage is at a crossroads. Across most of the industrialized world, unmarried cohabitation and nonmarital births have skyrocketed while marriage rates are at record lows. These trends have generated political controversy and pose a number of challenges for policy makers: Should access to marriage be extended? Should lawmakers increase or reduce government support for marriage? The interdisciplinary approach offered by this edited volume provides tools to inform the debate and to assist policy makers in resolving questions about marriage at a critical juncture. Drawing on the expertise of social scientists and legal scholars, the book will be a key text for anyone who seeks to understand marriage as a social institution and to evaluate proposals for marriage reform.

Available from October 2012 | 384 pages

Hardback | 978-1-107-01827-3

List Price: USD 99.00

Discounted Price: USD 79.20

Paperback | 978-1-107-62370-5

List Price: USD 34.99

Discounted Price: USD 27.99

Visit www.cambridge.org/us/9781107623705

For Discount, enter code **GARRISON12**.

Offer expires 12/31/2013

THE FUTURE OF CHILD AND FAMILY LAW: INTERNATIONAL PREDICTIONS

The Future of Child and Family Law:

International Predictions, edited by *Elaine E. Sutherland*, was published in August 2012 by Cambridge University Press in honour of Professor Eric M. Clive. Eric is a founder member of the International Society on Family Law, whose scholarship on, and contribution to, family law will be thoroughly familiar to ISFL members. As a leading academic in the field and Scotland's longest serving law commissioner, he has been responsible for many of the developments in family law in Scotland over recent decades, but his contribution reaches far beyond a single jurisdiction, not least through his work with the Hague Conference on Private International Law, and, indeed, far beyond family law. Eric is currently a visiting professor at the School of Law, University of Edinburgh, and continues to research and write.

In the volume, experts (most of them ISFL members) examine child and family law in thirteen countries – Australia (Frank Bates), Canada (Carol Rogerson), China (Michael Palmer), India (Anil Malhotra and Ranjit Malhotra), Israel (Rhona Schuz and Ayelet Blecher-Prigat), Malaysia (Noor Aziah Mohd Awal), The Netherlands (Paul Vlaardingbroek), New Zealand (Bill Atkin), Norway (Tone Sverdrup), Russia (Olga A. Khazova), Scotland (Elaine E. Sutherland), South Africa (Jacqueline Heaton) and the United States (Margo Shire Melli).

Each chapter identifies the imperatives and influences that have prevailed to date and offers informed predictions of how child and family law will develop in the years to come. A common chapter structure facilitates comparison of the jurisdictions and in the introduction the editor highlights common trends and salient differences. *The*

Future of Child and Family Law therefore provides academics, policy-makers and practitioners with access not just to an overview of child and family law in a range of countries around the world, but also to insights into what has shaped it and options for reform.

For further information, see:

http://www.cambridge.org/gb/knowledge/isbn/item6823160/The%20Future%20of%20Child%20and%20Family%20Law/?site_locale=en_GB and click on “change location” at the top right of the screen to find publication details in countries other than the United Kingdom.

Available from Hart Publishing:

Marital Agreements and Private Autonomy in Comparative Perspective

Edited by Jens M Scherpe

This book deals with a subject that has recently been the focus of debate and law reform in many jurisdictions: how much scope should spouses have to conclude agreements concerning their financial affairs – and under which circumstances should such agreements be binding and enforceable?

9781849460125; £75 / €97.50; February 2012

Ideas and Debates in Family Law

Rob George

This book is written for the student of family law, at undergraduate level and beyond, who is looking for less orthodox ideas about family law. Useful as a teaching tool by itself or alongside a textbook, it offers new and thought-provoking perspectives on family law issues.

9781849462549; £17.95 / €23; August 2012

Children and the European Union

Rights, Welfare and Accountability

Helen Stalford

This book offers a critical analysis of the legal and policy framework underpinning EU children’s rights across a range of areas.

9781841137650; £27.50 / €36; August 2012

Personal Notices: