

The ISFL Family Letter
Spring, 2013

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

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PRESIDENT'S MESSAGE:

Congratulations to Prof. Hugues Fulchiron and his team on the publication of [*Les solidarités entre générations /Solidarity between generations*](#). This book results from the ISFL World conference in Lyon, France in 2011. I am sure the book will make a lasting contribution to comparative family law research.

One of the themes of the book is caring for elderly family members. This is an issue which is gaining in importance as populations age around the western world. In addition to the population ageing in so many countries, people are also living longer. This is putting ever greater pressure on publicly-funded health and aged care services. Government budgets, already stretched in many countries because of the need to service interest payments on huge levels of public debt, need to accommodate further spending on health and welfare in the next three decades. Many countries with declining birth rates will need to manage the costs of caring for the elderly with a smaller working age population to pay income taxes. The more that care for elderly family members can be made a matter for private familial obligation, the less pressure there will be on public

funds.

However, the implications for family law go beyond the issue of private familial obligation for the elderly. The deteriorating situation for public finances around the world, due in part to this 'demographic transition', also has some long-term implications for the family law services that can be offered to working-age parents. In conversations with colleagues in England, New Zealand and elsewhere over the last few months, a recurring theme has been the search by governments to reduce their expenditure on family law. In England this is occurring in particular through severe reductions in the availability of legal aid, and in measures to encourage mediation. In New Zealand also, measures are being proposed to reform processes in the Family Court of New Zealand which will reduce reliance on lawyers, some of whom appear at public expense.

While governments are looking for ways to reduce expenditure, the underlying demographic trends in many countries would appear to indicate increasing demand for the resolution of family disputes. At a population-wide level, what drives demand for family law services is separation; and where the parents have

never lived together in the first place, the potential for family law disputes over paternity, child support, and the right to spend time with the child, may begin from birth. As marriage declines as a societal norm, and more couples have children outside marriage, so separation rates are likely to increase. Evidence from many countries indicates that extramarital cohabitation is less stable than marriage, even when there are children.

As family law scholars we need to anticipate these trends in the medium and long-term future. What will family

law look like in an age of scarcity when governments seek alternative ways to meet the demand for family law services while reducing public funding for lawyers and courts? There will be few easy choices. In the ISFL we are well-placed to share experience together on how family law systems can cope best in an age of scarcity while still offering some kind of service to people who are not sufficiently well off to hire private lawyers, and perhaps private arbitrators also.

Prof. Patrick Parkinson
University of Sydney, Australia

REPORT OF THE SECRETARY-GENERAL:

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 the members because they did not pay their fees for some years. Soon the members who have

paid their fees for the year 2013 (etc.) will receive the International Survey of Family Law 2013 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 2013, otherwise you have to pay your membership dues for the year 2014. Some members think that they just can pay for one year and that's it. But again: when you are a member, you have to inform me about finishing your membership.

When your address will be changed, please send 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 2013.

Some countries have more specialists in the field of Family and Juvenile Law than the ISFL has members. 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. When you cannot find the Form, ask me. It would be nice to have at least 1000 members from all over the World.

We do have the possibility to pay for 5 years. Many members choose for this opportunity, which will save you and the ISFL costs.

In all cases you write me, please do it by using your computer or typewriter. As I wrote before I can't always read your handwriting and especially 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 belongs to these families.

Best regards to all!

Adriaan P. van der Linden

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

Preparation for the 2013 edition of the International Survey of Family Law is well under way. There will be some "hot off the press" comments on issues such as same-sex marriage in France and New Zealand, and discussion of the extraordinary mélange of laws in the small Pacific country of Vanuatu. Many other fascinating topics arising in other countries are explored. Publication should occur as usual in July and copies will be posted out shortly after that. Anyone interested in contributing to the 2014 edition is more than welcome to contact Prof Bill Atkin, the General Editor: bill.atkin@vuw.ac.nz

REPORT OF THE NEWSLETTER EDITOR:

I (and the Executive Council with me) welcome comments about the general format of the newsletter. It currently consists of short reports and news items, but could certainly contain more serious scholarly articles or commentaries on various issues of general interest. The Executive Committee plans to discuss the topic at its next meeting, so I would be glad of your input.

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

The American Association of Law Schools, Family Law Section Website is also available at <http://www.nd.edu/~ndlaw/faculty/brinig/aals/>.

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 mbrinig@nd.edu, and may attach electronic versions of any submissions.

CONFERENCES AND CALL FOR PAPERS:

CALL FOR PAPERS
ISFL REGIONAL CONFERENCE IN
ISRAEL, DECEMBER 29TH – 31ST, 2013
Theme: International Family Law with
Emphasis on the Work of the Hague
Conference on Private International Law.
The conference marks the 30th anniversary of the entry into force of the Hague Convention on the Civil Aspects of International Child Abduction (in December

1983) and the publication of Dr. Rhona Schuz's book, "The Hague Child Abduction Convention – A Critical Analysis" (to be published in summer 2013 by Hart Publishing).

The conference will discuss:

- the operation of the Abduction Convention and the other Hague Conventions in the area of family law, including the 1996 Child Protection Convention, the 1993 Inter-country Adoption Convention and the 1978 Matrimonial Property Regimes Convention

- topics on which the Hague Conference is currently working, such as international surrogacy arrangements.
- other areas of international family law, such as relocation law, the EC Brussels II Regulations and recognition of foreign same sex-marriages.

Papers may deal with any aspects of the above topics, including social science studies and other inter-disciplinary research.

Location: **Sha'arei Mishpat Law School, Hod Hasharon Israel** (30 minutes from Tel-Aviv).

Dates: **29th-31st December 2013**, 29th December afternoon (registration, opening session and reception) 30th December and 31st December morning (plenary sessions and panels).

Conveners: **Dr Rhona Schuz** and **Dr. Ayelet Blecher-Prigat** (Senior Lecturers and Joint Directors of the Centre for the Rights of the Child and the Family, Sha'arei Mishpat Law School).

Submission of Paper Proposals: Persons wishing to present a paper at this conference should submit **a one-page abstract** together with the following information: Working Title of the Paper, Author's Name, Academic or Professional Title, Institutional Affiliation, Mailing Address, Phone, and Email Address. Send proposals as an email attachment to **intfamlaw@mishpat.ac.il**.

Deadline for submission of abstracts: May ³¹ 2013 (earlier submissions preferred; rolling acceptances).

Housing: Participants will be responsible for booking their own accommodation. Details about the recommended conference

hotel will be published on the ISFL website <http://www.isflhome.org/2013israel/> / Transport will be provided from this hotel to the Sha'arei Mishpat Law School and back during the conference.

Registration: Details to follow- will be published on the ISFL website.

Tourism: details of tourist options before and after the conference will be published on the ISFL website

Scientific Committee: Rhona Schuz (Sha'arei Mishpat), , Ayelet Blecher –Prigat (Sha'arei Mishpat), Lynn Wardle (Brigham Young), William Duncan (Consultant to the Permanent Bureau, Hague Conference), Nigel Lowe (Cardiff) and Ann Estin (Iowa)

Publication of Papers: Selected papers from the conference will be published in the International Journal of Law, Policy and the Family (edited by John Eekelaar and published by OUP) subject to academic review. Deadline for submission of papers to the journal – 31st January 2014.

CALL FOR PAPERS

ISFL REGIONAL CONFERENCE
SEOUL

SEOUL, KOREA

OCTOBER 1-2, 2013

FAMILY LAW, FAMILY COURT, AND FAMILY POLICY IN A CHANGING WORLD

The family law and the family court in Korea have been in the middle of incessant changes, reflecting the transformation in

Korean society. Since 2000, important legislative activities have been carried out including abolition of the family-head system, legislation of adult guardianship, and amendment of the adoption law. Moreover, family courts which were previously located only in Seoul have been established across the country in major cities since 2011. All these new systems are of significant importance in terms of family policy.

the website of the Korean Society of Family Law at: www.ksfl.or.kr.

Changes in family law are not limited within South Korea, but have been taking place all over the world. As such, the Korean Society of Family Law, the Korean Women's Development Institute, and the Seoul Family Court will jointly host a regional conference to take a global perspective on how to evaluate recent changes in family law, family court, and family policy. In addition, the conference will be held as part of commemorating the 50th anniversary of the Seoul Family Court.

The conference will include three workshop sessions: The first session on the function and roles of family courts; the second on family structure, values, and future outlook on family policy; the final on family law, e.g. changes in family law litigations and judicial precedents with international and comparative approaches.

Scholars who wish to present a paper at the conference are asked to submit a short proposal (no more than 300 words) including a working title, institutional affiliation, and contact information of the author(s). Please send a proposal to Ms. Y. Hong at yunseonhong@gmail.com by May 31, 2013. Acceptance notifications will be on a rolling basis. The presenters will be asked to submit full papers by August 31, 2013. The registration will take place on-site, and registration fee is not required. For more information on the conference, visit

RECENT PUBLICATIONS OF NOTE BY ISFL MEMBERS:

(Please send any submissions for future newsletters to Ursula Bassett, ucbbasset@yahoo.com).

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

FULCHIRON, Hugues (Dir), *Les solidarités entre générations. Solidarities between generations*, Bruylant, 2013, Bruxelles.

BASSET, Ursula C. (2012), ““El cambio de paradigma de la nueva ley argentina sobre matrimonio”, GOZZO, Débora, LIGIEIRA, Ricardo (eds.). *Direito e Dignidade da familia*, Portugal, 2012, Ed. Almedina, pp. 187-204.

BRINIG, Margaret F., MCCLAIN, Linda, iRevisiting Mary Ann Glendon: Marriage, Divorce, Dependency and Rights Talk in Western Law, *Les solidarités entre générations (Solidarity Across the Generations)* (Hugues Fulchiron, ed. , Bruylant, 2013)

WARDLE, Lynn D. “Involuntary Imports: Williams v. Lutwak, the Defense of Marriage Act, Federalism, and 'Thick' and 'Thin' Conceptions of Marriage”, 81 *Fordham L. Rev.* 771-828 (2012).

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

VERSCHRAEGEN, Bea, “Die eingetragene Partnerschaft”, in Gerald Kohl, Thomas Olechowski, Kamila Staudigl - Ciechowicz, Doris Täubel Weinreich (Hg.), *Beiträge zur Rechtsgeschichte Österreichs 1 / 2012. Eherecht 1811 bis 2011 - Historische Entwicklungen und aktuelle Herausforderungen*, pp. 89-100.

FULCHIRON, Hugues, "La reconnaissance de la famille homosexuelle: étude d'impact", *Recueil Dalloz*, 17/1/2013, available online: <http://www.dalloz-actualite.fr/revue-de-presse/reconnaissance-de-famille-homosexuelle-etude-d-impact-20130121>

MILES, Jo, « Cohabitation : Lessons for the South from North of the Border ? », *The Cambridge Law Journal*, Vol. 71. Issue 03. November 2012. Pp. 492-495

WARDLE, Lynn D., “Interjurisdictional Transportability of Same-Sex Marriages in the United States: DOMA, 'Full Faith and Credit' and the Importance of Marriage”, 3 *Interdisziplinäre Studien zur Comparatistik und zum Kollisionsrecht/Interdisciplinary Studies of Comparative and Private International Law* 159--196 (2012).

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

WOODHOUSE, “Intercountry Adoption in Italy and the United States: Divergent Approaches to Privatization, Discrimination and Subsidiarity”, University School of Law; University of Florida - Fredric G. Levin College of Law, 2012. *Emory Legal Studies Research Paper* No. 12-233

BASSET, Ursula C. (2012), “La adopción y sus problemas en el Proyecto de Reforma del Código Civil”, [Adoption and its problems in the new Civil Code Draft] in RIVERA, Julio C. (dir) *Comentarios al Proyecto de Código Civil de la Nación 2012*, Buenos Aires, 2012, Abeledo Perrot, pp. 441-462.

4. Spousal Relations in the Ongoing Family or Similar Relations

FULCHIRON, Hugues, „Le "mariage pour tous" en droit international privé: le législateur français à la peine... », *Semaine Juridique*, N° 49, 2012, pp. 2215-2222

DEHTLOFF, Nina, “The Franco-German Optional Matrimonial Property Regime - A Trailblazer for the Alignment of Family Law?” (Der deutsch-französische Wahlgüterstand Wegbereiter für eine Angleichung des Familienrechts?). *Rebels Zeitschrift fuer auslaendisches und internationales Privatrecht*, Volume 76, Number 3, July 2012 , pp. 509-539(31)
PARKINSON, P, “The Idea of Family Relationship Centres” (2013) 51 *Family Court Review* 195–213.

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

WARDLE, Lynn, “The Jurisprudence of Parenting and the Influence of Religion on Effective Parenting”, 2 *Int'l J. Jurisprud. Fam.* 437-477 (2012).

GOUBAU, Dominique, « La réforme de la protection de la jeunesse : quand l'éducation familiale devient une course contre la montre », in *Enfance, familles, générations*, N° 16 -2012. Accessible online : <http://efg.inrs.ca/index.php/EFG/issue/view/17>

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

7. Termination/Post-Relations of Parents and Children

STEPHENS, Victoria, LOWE, Nigel, “Children's welfare and human rights under the 1980 Hague Abduction Convention – the ruling in Re E”, *Journal of Social Welfare & Family Law*, 34 (1) ,pp 125-135

LOWE, Nigel Vaughan “A supra-national approach to interpreting the 1980 Hague Child Abduction Convention – a tale of two European courts - Part 2: the substantive impact of the two European Courts' rulings upon the application of the 1980 Convention”. (2012) *International Family Law* , pp. 169-178.

LOWE, Nigel Vaughan “A supra-national approach to interpreting the 1980 Hague Child Abduction Convention – a tale of two European courts: Part 1: setting the scene.”, (2012) *International Family Law* , pp. 48-52.

LOWE, Nigel Vaughan “Inherently disposed to protect children – the continuing role of wardship”. In: (2012) Probert, Rebecca and Barton, Chris eds. *Fifty Years in Family Law: Essays for Stephen Cretney*, Antwerpen: Intersentia, pp. 161-173.

GARRISON, Marsha, “Taking the Risks out of Child Protection Risk Analysis”, *Journal of Law & Policy*, 2012, Vol. 21 Issue 1, p5-35. 31p.

GARRISON, Marsha, GODSOE, Cynthia, “Reforming Child Protection Law: A Public Health Approach”, (2012) *Journal of Law & Policy*. Vol. 21 Issue 1, p1-3. 3p

BELL, F, CASHMORE, J, PARKINSON, P & Single, J, “Outcomes of Child-Inclusive Mediation”, (2013) 27 *International Journal of Law, Policy and the Family* 116-142.

BELL F, CASHMORE J, PARKINSON P & Single J, “Choosing Child-Inclusive Mediation”, (2012) 23 *Australasian Dispute Resolution Journal* 253-264.

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.

OTHER PUBLICATION NOTES:

Stephen Cretney (ed. By Chris Barton and Rebecca Probert, Intersentia, 2012) (includes contributions by ISFL members Andrew Bainham, Nigel Lowe, Gillian Douglas, John Eekelaar, Ruth Deech, and Sanford Katz)

Sanford Katz is the author of *Adoption Laws in a Nutshell*, published this year by West Publishing Co as part of its Nutshell Series. The book provides a comprehensive analysis of adoption laws in the United States and has charts listing the laws state by state.

LES SOLIDARITÉS ENTRE GÉNÉRATIONS / SOLIDARITY BETWEEN GENERATIONS
Sous la coordination d'Hugues Fulchiron

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Ouvrage disponible en version anglaise sur www.strada.be

L'ampleur des enjeux humains, économiques et sociaux posés par la question des solidarités entre générations a conduit l'International society of Family Law (ISFL) à choisir ce thème pour son XV^e congrès mondial. Plus de 200 intervenants, venus de 50 pays, ont abordé ces questions sous l'angle juridique, mais aussi philosophique, économique et anthropologique. Cet ouvrage présente une partie de ces communications organisées autour de deux grands thèmes : l'enfant au cœur des solidarités familiales et la prise en charge des aînés par la famille. Des phénomènes tels que l'allongement de la durée de la vie, l'urbanisation des populations, la difficulté d'entrée sur le marché du travail ou encore l'éclatement des modèles familiaux traditionnels marquent le monde contemporain et impliquent la disparition d'anciennes solidarités et l'apparition de nouvelles solidarités redessinant les relations entre générations, posant alors le problème du sort des personnes les plus fragiles : les enfants, les malades, les handicapés et, surtout, les personnes âgées.

- Quel est alors le rôle de la famille et des collectivités dans la protection de ces personnes ?
- Quels rapports entre solidarités publiques et solidarités privées ?
- Quels sont les droits et libertés reconnus aux personnes que l'âge, la maladie ou le handicap, placent en situation de dépendances ?

Telles sont les questions au cœur de cet ouvrage.

The importance of human, economic and social issues caused by the question of generations' solidarities led the International Society of Family Law to choose this theme for its XVIth World Congress. More than 200 speakers from 50 countries studied these questions from the legal angle, but also philosophic, economic and anthropological. This work collects a part of these papers about two big issues: the child, as the center of family solidarities; and the support for elders by family. Phenomena such as increasing life expectancy, population urbanization, labor-market entry barriers, decline of traditional family patterns, mark in depth our contemporary world and involve old solidarity disappearance and new solidarity emergence, reshaping relations between generations while bringing up the problem of the fate of the most vulnerable: children, the sick, disabled, and especially elderly people.

- What then is the role of families and communities in protecting these people?
- What is the relationship between public and private solidarity?
- What are the rights and freedoms of people placed by age, illness or disability in a dependence situation?

These are the issues addressed by the authors of this book.

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

Bea Verschraegen. Private International Law (2012, Manz publ.; in German) 286 pp.

Fifty Years in Family Law - Essays for

Personal Notices:

Ruth Deech has been named Queen's Counsel, honoris causa. The honor is reported at <http://www.law.ox.ac.uk/newsite/m=551>. The award honors lawyers who have made an important contribution to the law of England and Wales outside practice in the courts.

Olga Khazova has been elected to the U.N. Committee on the Rights of the Child. The Committee's website notes that it is "composed of 18 independent experts who are persons of high moral character and recognized competence in the field of human rights."

I am very sorry to report that active ISFL member for many years, David Rosettenstein, passed away on February 19, 2013. He was Professor at Quinnipiac Law School in the USA, and a friend to many in the ISFL. He fought the metastatic prostate cancer that he was diagnosed with in May 2010 very courageously, never complaining and wanting to stay alive and with us to the very end. The Executive sends condolences to his widow, Abbie Baker.

We are very sad to share with you that Professor Irina Zhilinkova, a distinguished Ukrainian legal scholar, an ISFL member, a Fulbright-stipendiat, passed away the last fall (September 2012). She had been working at the Kharkov National Academy of Law for many years and dedicated the whole her professional life to the students of this Law school. She was one of the main authors of the Family Code of Ukraine and of numerous academic papers, books, and textbooks. The students admired her, and she was the most favorite teacher on family and civil law. We will be missing Irina.