



PRESIDENT'S MESSAGE:

The last few months have seen continuing development of the ISFL, with the new website almost completed. It will allow members to join and renew online, and provide a range of other benefits.

Dr. Rhona Schuz organized a very successful regional conference in Israel from 1st to 3rd January 2014, on the subject of International Family Law. It took place at Sha'arei Mishpat Law School and had about 70 participants. A report is contained in this newsletter.

I am looking forward to seeing many of you at the world conference in Recife, Brazil. This will be the first time that the Society has held a world conference in South America, and it will allow us to focus on many issues that are significant to that region as well as issues of universal

importance. We look forward to discussions with our Brazilian colleagues, both academics and practitioners.

I would encourage you to let academic colleagues in your country know about the conference, and more generally about the work of the ISFL. Comparative family law provides a rich source of insights for family law scholars in each country. It can generate many new ideas as well as warnings about what may not work well. As families become increasingly international, we need to be able to improve the processes that may be utilized to resolve disputes between people from different countries and with assets in different parts of the world. The work of international family law is both challenging and fascinating.

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

REPORT OF THE SECRETARY-GENERAL:

The next General Meeting of the Society will take place at the 15th World Conference in Recife, Brazil. At that meeting, the Society's new officers and Executive Council will be announced. Nominations for officers and the Executive Council are now open. Any two members of the Society may nominate a member to the Council and any five members may nominate an officer; I need to receive nominations by June 8, 2014. By the same date, I also need to receive from the candidate a statement indicating willingness to stand for election and a biographical statement of no more than 200 words. A candidate may, but need not, submit an additional statement of not more than 100 words.

Under the bylaws, nominations may be made by post, fax, or email; email nominations should go to marsha.garrison@brooklaw.edu. If you want to fax a nomination, please send to +1 718 780 0375.

You may vote for officers and the Council either at the World Conference or by emailing, faxing, or mailing your completed ballot to me before the World Conference. I'll be emailing the ballots in mid to late June. At that time, you'll also receive a copy of a proposed change in the Society's bylaws and a ballot regarding that proposed change.

The proposed bylaw change would create a new "associate membership" category. The Executive Council approved this new membership category to enable family law scholars to cannot afford an ordinary membership to participate in the Society at a lesser level.

The fees associated with an ordinary membership cannot be reduced because the cost of the Survey consumes most of each member's fees. But these fees are high enough to inhibit participation in the Society by family law scholars who lack institutional support, particularly those in developing nations. The new associate membership, if approved at the General Meeting, will provide access to the newsletter and "members-only" portion of the ISFL website, but not the Annual Survey, voting rights or eligibility for membership on the ISFL Executive Council. The dues associated with this new membership have not yet been finalized, but will be very low in relation to an ordinary membership.

Marsha Garrison
Brooklyn Law School, USA

REPORT OF THE TREASURER:

Dear colleagues,

Not many members paid their subscriptions (fees) before December 19, 2013 (see my report Autumn 2013). That is a pity because now I have again to ask individual members to pay their dues. As I already wrote you, the ISFL is trying to draw up a more advanced system to allow payment of the Membership fees. We will use the PayPal system which will mean that you can pay the ISFL directly with your credit cards. It will make the activities of the ISFL treasurer easier. For members within the European Union, it is easier to pay by international bank transfer. As soon as possible we will publish the details at the renewed ISFL website. Nobody answered my question about receiving his or her copy of the International Survey of Family Law 2013 Edition. So I hope everybody enjoyed reading this copy. I saw that some members still use a very old e-mail address for me. The actual right one is A.P.vanderLinden@uu.nl. (The capitals are new!).

As always, I will ask you that if your address will be changing, 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. Sometimes we hear about members who have passed away, sometimes a long time after they died. If you know about the passing away of a member, please let us know as soon as possible.

In February, 2014, I received the sad message that our Member Professor Maria do Carmo Medina has died on Wednesday, February 12, 2014, in Portugal. At her request, she was buried on Saturday, February 15, in Angola, where she has been lecturing a very long time.

Whenever you send me a letter or an e-mail, please do it by using your computer or typewriter. Often I can't read your handwriting, and especially where it involves your Bank data, this gives the ISFL a great deal of work. Also in many cases I receive subscription fees not by credit card but by Bank remittance, without the name of the member on it. It is possible that a member has paid his fees and I don't know that because of the absence of the member's name on the remittance.

Best regards to all! Have beautiful days of Pesach and Easter!

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

The 2014 edition is progressing very satisfactorily and should be published at the usual time in July. So far, I have edited or am working on Brazil, Canada, Chile, Czech Republic, England and Wales, Germany, India, Iran, Japan, Lesotho, Macedonia, Papua New Guinea, Puerto Rico, Switzerland and the United States – a nice range of continents and some fascinating topics. Several more chapters are due to arrive within the next week or so. the General Editor: bill.atkin@vuw.ac.nz

TRANSITION TO NEW WEBSITE – EMAILS TO MEMBERS

As reported earlier in this newsletter, we are building a new website. It will have the same address as the present one (www.isflhome.org) but is not yet live. In the development stage of building the new website, many members received emails from no-reply@isflhomeorg.mycms.me>. This happened accidentally. Apologies for the error. Please ignore this email.

Patrick Parkinson

REPORT OF THE NEWSLETTER EDITOR:

I (and the Executive Council with me) welcome comments about the general format of the newsletter. The new logo and bannerhead reflect the updated website, but for many years it has consisted of short reports and news items. Certainly the Family Letter could certainly contain more serious scholarly articles or commentaries on various issues of general interest. The Executive Committee has asked me to solicit the names of people interested in being “country or regional correspondents” who would submit brief summaries of developments in terms of significant case law, statutes, constitutions or treaties. This type of addition would be particularly welcome in the times, like the present, between World Congresses. This issue we received such a report from Merle Weiner, which appears in a new section called What’s New? below.

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 soon-to-be-replaced 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 **(CURRENT VERSION ONLY):**

A new website for the ISFL will soon become operational, managed by a website development firm that is independent of any university. President Parkinson or his delegate will send notice to all ISFL members when that new website is up and running and inform members of the URL for it. The old website at <www.isflhome.org> will post a notice of the new website and will remain functional for several months,

but will cease to update old material or post new material after the new website has become operational.

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> will eventually be phased out.

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:

The XVth ISFL World Conference will be held in Recife, Brazil, August 6-9, 2014. The theme is Family Law – Universalities and Singularities.

Family Law is characterized by its diversity, deeply inlaid in a country's culture, history, values, mentalities and economic situation. These influences are reflected in the rules governing marriage – formal and informal; divorce; family responsibility; family finances; gender identity and manifestations of sexuality; and children's rights. Conference presentations may focus on those issues. International, comparative, social-science and interdisciplinary perspectives are all welcome. Presentation proposals, less than 300 words, should be sent to 2014@isflbrazil.com.br before the end of April 2014. In the proposal, please include the name, the institutional affiliations, and email address.

Conference venue

The conference will be held at the MAR HOTEL in Recife

<http://www.ponteshoteis.com.br/mar-hotel/>

Rates:

SINGLE – US\$136 approximately (R\$320,00)

TWIN – US\$159 approximately (R\$375.00)

Registration:

US\$515.

Scholarships

A limited number of scholarships are available to assist with conference registration and travel. The purpose is to support younger scholars and those from less affluent parts of the world. If you would like to apply, please send an application together with an abstract of your proposed conference presentation to Prof. Olga Dyuzheva odyuzheva@gmail.com by March 24th 2014.

Travel agency

The official Travel Agency is PONTESTUR www.pontestur.com.br.

Email: eventos@pontestur.com.br or eventos2@pontestur.com.br

55 81 3302.4505 or 55 81 3302.4516
Amanda or Alexandra.

Major Topics

- 1) The couple - the beginning and the end - formal and informal marriage fault and non-fault divorce and family responsibility
- 2) Economic and Ideological Influences same sex marriage and adoption by same-sex couples economical inequalities in gender roles within the family
- 3) Children the moral status of children international adoption, child abduction and their relation to economic development children's rights and family relationships after divorce or dissolution of informal marriage family life and the media: television and internet. thinking for more effective protection
- 4) Interdisciplinary and Access to Justice does the interdisciplinary approach provide for solutions?

THE SEVENTH SYMPOSIUM OF THE INTERNATIONAL ACADEMY FOR THE STUDY OF THE JURISPRUDENCE OF THE FAMILY (IASJF)

will take place on 9-10 June 2014 at the University of La Coruña, Spain, hosted by Professor Carmen Garcimartin. The topic of the symposium is: Family and Religion. The deadline for the submission of paper proposals is March 15, 2014 (earlier submissions are encouraged). Paper proposals may be sent to Professor Carlos Martinez de Aquirre (University of Zaragoza, Spain) at aguirre@unizar.es or to Professor Lynn D. Wardle (BYU) at wardlel@law.byu.edu. The Registration Fee (Proposed) for the symposium is 125 € for the presenters and participants (accompanying persons, 100 €).

It includes coffees, lunch and dinner for the two days, as well as local transportation at the venue of the Symposium.

REPORTS ON RECENT CONFERENCES

ISFL ISRAEL REGIONAL CONFERENCE 2014

The ISFL Israel Regional Conference, on the subject of International Family Law with an Emphasis on the Work of the Hague Conference on Private International Law, took place at Sha'arei Mishpat Law School from 1st to 3rd January 2013. This successful conference was attended by nearly 70 academics and practitioners from more than 10 countries.

The keynote session was devoted to discussing 30 years of the Hague Child Abduction Convention and Dr. Rhona Schuz's new book on this Convention. The keynote speech was delivered by honored guest, Lady Brenda Hale, Deputy President of the UK Supreme Court. Additional speakers at this session were Israeli Supreme Court Justice Neal Hendel, the Israeli Hague Network Judge Benzion Greenburger and Rhona Schuz.

At the beginning of the conference, Professor Louise Ellen Teitz, the first secretary of the Hague Conference updated us on the work taking place at the Permanent Bureau and its future plans. The two main topics discussed during the conference were the 1980 Hague Child Abduction Convention and international surrogacy, a highly topical subject on which the Hague Conference is currently working. In addition, there were sessions on inter-country adoption, relocation, implications of international human rights for family law and private international law aspects of other family law issues (marriage, non-marital intimate relationships and succession).

Conference delegates commended the high caliber, variety and stimulating nature of the presentations as well as the pleasant atmosphere throughout the conference and especially at the social events: the welcome reception (at the conference hotel) and the closing reception, which was kindly hosted by the British Ambassador to Israel at his residence.

Fifth CEFL-Conference in Bonn, Germany Family Law and Culture in Europe: Developments, Challenges and Opportunities

At the end of August 2013, the 5th Conference of the Commission on European Family Law (CEFL) was held in Bonn, Germany, headed with the title „Family Law and Culture in Europe: Developments, Challenges and Opportunities“. The CEFL was established in 2001 by Prof. Ferrand, Prof. Lowe, Prof. Martiny, Prof. Pintens, Prof. Schwab and by Prof. Boele-Woelki who – as founder and chair – was recently granted with the Anneliese Maier-Prize of the Humboldt Foundation for future research in International and European Family Law, also in co-operation with Prof. Dethloff from the University of Bonn.

The Conference was centered around the presentation of the new „Principles of European Family Law regarding Property Relations between Spouses“. Following the „Principles regarding Divorce and Maintenance between Former Spouses“ and „Parental Responsibilities“, these 58 CEFL-Principles aim to establish the common core of material law concerning matrimonial property law in European countries. Based on a comparative law research and combining elements of common law and civil law countries, the rights and duties of

spouses, marital property agreements and matrimonial property regimes are addressed in those principles. After discussing the CEFL-Principles in detail, corresponding European private international law aspects were highlighted.

Additionally, focus was set on two other themes. As some common law countries and Nordic countries have legislated non-formalized relationships recently, the rules concerning the termination of those relationships by voluntary dissolution were examined. Hereafter, young researchers were provided the opportunity to present on their research topics in four parallel workshops which embraced the topics of cross-border family relationships, transnational families, the (un-)wanted child and relationship breakups.

The final theme dealt with new concepts of social, biological and legal parentage in national laws but also in light of current decisions of the European Court of Human Rights. The conference concluded with a panel discussion with (former) judges of the German Constitutional Court, the French Cour de Cassation and the European Court of Human Rights.

The successful conference attracted a wide audience of more than 200 academics and practitioners from 34 (not only European) countries and gave broad opportunity for discussions on comparative and international family law aspects.

The conference' presentations will be published soon by Intersentia, EFL Volume 35.

Stefanie Sucker

WHAT'S NEW?

Merle H. Weiner

Philip H. Knight Professor, University of Oregon School of Law

Around the world, courts have recently decided a number of interesting cases involving the Hague Convention on the Civil Aspects of International Child Abduction, including *X v. Latvia*, Application No. 27853/09 (European Court of Human Rights Nov. 26, 2013) and *Re LC* (No. 2), [2014] UKSC 1. This column briefly focuses on two cases of interest decided by courts in the United States. In both cases, the outcomes appear to have been influenced by, and align the U.S. with, the approaches in other contracting states.

Equitable Tolling

On March 5, 2014, a unanimous U.S. Supreme Court handed down its decision in *Lozano v. Alvarez*, --- S. Ct. ----, 2014 WL 838515 (U.S.). The Court held that a petitioner cannot invoke equitable tolling to defeat the application of article 12's well-settled exception. The Court said that its decision on this issue aligns the United States with England, Canada, New Zealand, and Hong Kong.

Article 12 allows a court to refuse to return an abducted child if the child is well settled and one year has passed between the time of the wrongful removal or retention and the filing of the petition for the child's return. Courts had used equitable tolling to deny this exception when the respondent had concealed the child. Concealment can make it difficult or impossible for the petitioner to file the petition before the expiration of the one-year deadline that triggers the exception.

In rejecting equitable tolling, the Court rested its decision, in part, on the signatories' intent, noting that equitable tolling was not a background principle shared by the signatories, nor was equitable tolling explicitly included in the Convention. The federal statute enacted to implement the Convention did not give courts the ability to import common law background principles into an adjudication involving the Convention. The Court also held that even if equitable tolling were available as an argument in a Convention proceeding, it would not apply in the context of the well-settled defense because article 12 is not like a statute of limitations. A court can return a child even after the expiration of the one-year time period if the child is not well settled. Rather, article 12's purpose is to ensure that the court considers the child's interest in settlement after one year has passed.

The petitioner argued that more abductors would conceal their children without the availability of equitable tolling. The Court minimized that concern, noting that concealment is still relevant to the determination of whether a child is "well settled." It also suggested that deterring concealment, and even abduction, is not the only value undergirding the Convention. Citing Baroness Hale of Richmond in *In re M*, [2008] 1 A.C. 1288, 1310 (Eng. 2007), the Court noted that "These children should not be made to suffer for the sake of general deterrence of the evil of child abduction worldwide."

In footnote 5 of the opinion, the Court explicitly left unresolved the question whether a court has equitable discretion to return a settled child. The U.S. State Department had urged the Court to endorse equitable discretion. The concurrence by Justice Alito, joined by Justices Breyer and Sotomayer, expressed the view that equitable discretion exists. The difference between equitable tolling and equitable discretion is that the former would in all cases deny the availability of the well-settled exception when concealment precluded the petitioner from filing the petition within one year. In contrast, equitable discretion permits consideration of the well-settled exception regardless of concealment so long as the time requirement is met, but allows a court to exercise its discretion to return even a well-settled child, depending upon all the factors. The Court wisely avoided deciding the availability of equitable discretion, as its appropriateness will depend upon a close reading of the Convention's travaux preparatoires. The Court made clear in rejecting equitable tolling that the background concept has to be one that the signatories embraced in order for the Court to allow it. Did all signatories embrace equitable discretion when the Convention was promulgated? Why didn't the drafters explicitly include it? Is there significance to the fact that article 13 specifically uses the term "may," but article 12's wording suggests an absence of discretion once the court finds that the child is well settled? What did the drafters mean when they included articles 18 and 34, particularly? Do those provisions suggest anything other than a court can return a child after a full custody proceeding held in the aftermath of a successful article 12 exception?

Asylum

On February 21, 2014, the U.S. Court of Appeals for the Fifth Circuit decided *Sanchez v. R.G.L.*, --- F.3d ---, 2014 WL 684606 (5th Cir. Feb. 21, 2014), a fascinating case involving the intersection of the exceptions in article 13(b) and 20 of the Hague Abduction Convention and the U.S.'s obligations under the 1967 Protocol Relating to the Status of Refugees. The case involved three children who were born and raised in Mexico. In June of 2012, the children's aunt and uncle brought the children to Texas without the mother's permission. The aunt agreed to return the children, but the children, instead of crossing the border, presented themselves to the Department of Homeland Security (DHS) and stated that they did not want to return to Mexico. The oldest child claimed that the mother's boyfriend, with whom they had lived, was a gang member, drug trafficker, and child abuser. The mother denied the allegations, but DHS determined that the children were unaccompanied alien children with a credible fear of returning to Mexico and transferred the children to the custody of the Office of Refugee and Resettlement (ORR). ORR placed the children with Baptist Services, who in turn placed the children with a foster family, and ORR started removal proceedings. ORR appointed pro bono counsel for the children, and their counsel applied for asylum.

While the asylum proceedings were pending, the mother filed a Hague petition, naming as respondents the aunt, uncle, and Baptist Services. The aunt and uncle did not appear, and Baptist Services argued that it was the wrong party (that the right party was ORR). The children's immigration attorney appeared informally on behalf of the children and was allowed to participate in the hearing, but the court denied a motion to allow the children to intervene in the proceeding through a next friend. Although ORR asked the district court to hold the petition in abeyance pending disposition of the children's asylum applications, the district court ordered that the children be returned to Mexico, although it acknowledged that a grant of asylum would have

been relevant to the proceedings. Nonetheless, the court felt that the need for expediency in the Hague matter meant it should issue its ruling.

Following the district court's ruling, the children appealed. Before briefing on the appeal, the children were granted asylum. On appeal, the principal issue was the enforceability of the district court's order in light of the asylum determination. There were also subsidiary procedural issues raised, such as the children's standing to appeal, but none of these issues precluded the appellate court from reaching the merits of the dispute.

The Fifth Circuit decided that a grant of asylum did not supersede the district court's order. The provision of U.S. law that implements the United States' international obligations to refugees (8 U.S.C. § 1158(c)(1)(A), that "In the case of an alien granted asylum..., the Attorney General shall not remove or return an alien to the alien's country of nationality") did not bind the judiciary, but only the Attorney General and Secretary of Homeland Security, and neither were affected by the Hague order. However, the court found that the grant of asylum was relevant to the Abduction Convention's article 13(b) and article 20 exceptions, and it remanded the case to the district court to weigh the new evidence and make a determination. Notably, the Fifth Circuit did not make the grant of asylum determinative of either exception, or even presumptively weighty in an adjudication of them. Nor did the appellate court say that the trial court should only reach the merits of article 20 if the article 13(b) exception were unavailing, although the U.S. government had advanced that position.

The appellate court recognized that the children deserved intervener status and representation on remand. Calling the circumstances of the case "exceptional," the court noted that no respondent asserted exceptions that might benefit the children, and the informal participation of the children's attorney was insufficient to protect their interests.

The United States approach in Sanchez is similar to, although not as helpful to the asylee child as, the Ontario Court of Appeal's decision in *A.M.R.I. v. K.E.R.*, 278 O.A.C 166 (2011), a case that was brought to the attention of the Fifth Circuit. In *A.M.R.I.*, a Mexican girl was granted asylum in Canada because of her mother's alleged abuse. The girl ended up living with her aunts in Canada and her mother filed a Hague petition seeking her daughter's return. The court denied the aunts' motion to be named as parties and to have counsel appointed for the girl. Procedural irregularities led the court to conduct an *ex parte* hearing on the Hague petition, and then granted the mother's petition. Without warning, authorities removed the girl from her school, denied the girl an opportunity to produce her refugee papers, and returned her to her mother. The mother then flew them both back to Mexico.

The girl's father successfully appealed the court's decision. The appellate court ordered a new Hague hearing, and directed the parties to try to facilitate the child's return to Ontario to participate in the new hearing. The court recognized that ordering the return of a child pursuant to the Hague Abduction Convention could violate Canada's non-refoulement obligation if the child had refugee status. Consequently, articles 13 and 20 had to be interpreted to take account of the principle of non-refoulement. Going further than the Fifth Circuit, the Ontario court adopted a rebuttable presumption that there is a risk of persecution on return of a child to his or her country of habitual residence sufficient to satisfy article 13(b) when a child has been

recognized as a refugee. Like the U.S. court, the Ontario court was unwilling to make the refugee determination conclusive of the article 13(b) or article 20 exceptions, in part because the Hague petitioner had no notice of the asylum proceedings and the asylum proceedings are not governed by the technical rules of evidence. Moreover, if a grant of asylum were an absolute defense, some respondents might engage in gamesmanship.

The Ontario Court of Appeals deemed the original hearing flawed because the judge did not fully consider the child's refugee status with regard to any of the Hague exceptions and did not do a risk assessment regarding the risk of persecution upon return. The trial judge's refusal to join the aunts as parties, appoint counsel for the child, and have her voice heard in an oral hearing resulted in a lack of relevant evidence and a denial of procedural fairness for the child. The court remanded the case for a new hearing in which fresh evidence would be presented, counsel would represent the child, and proper notice would be given to all parties.

The merit and challenge of the A.M.R.I framework was illustrated by a subsequent decision of a district court in *Borisovs v. Kubiles*, 2013 O.N.C.J. 85 (2013). There the trial court appointed counsel for the asylee child at the outset, and then applied the rebuttable presumption articulated by the Ontario Court of Appeals. In so doing, the court looked beyond the immigration board's determination, but was still deferential to it. The court ended up denying the father's petition for the child's return to Latvia, citing the exceptions under both article 13(b) and article 20, because the court found compelling the mother's allegations that she fled with the child to escape serious abuse to the mother and child. The petitioner's denials and other evidence were simply insufficient to rebut the presumption regarding the father's abuse and Latvia's inability to protect the mother and the child. The court also took account of the child's views, which had been expressed to her attorney, regarding her fear for her mother's safety. While the result seemed to harmonize well the country's international obligations to refugees and abducted children, and also protected the interests of all involved, the trial judge acknowledged there was one drawback to the process. The Hague Abduction proceeding suffered considerable delay as the parties awaited the outcome of the refugee process and the investigation by the Office of the Children's Lawyer. Perhaps one lesson from this case is that countries should adopt procedures to expedite processes that are relevant to the Hague adjudication, so that both expediency and justice can be achieved.

RECENT PUBLICATIONS OF NOTE BY ISFL MEMBERS:

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

1. Family Law in General: History; Theories; Overviews
BASSET, Ursula C, "Incidencia en el

Derecho de Familia del Proyecto de Código Civil con media sanción" ("Incidence of the Argentine Civil Code Draft in Family Law, according to the text passed in the Senate"), *Suplemento del 16-12-2013 LA LEY. REVISTA JURIDICA ARGENTINA*, Buenos Aires, La Ley, Volumen: 2013-F, pp. 1056 a 1068

BASSET, Ursula C., “Responsabilidad endofamiliar: perspectivas y prospectivas” (“Liability in Family Law: perspectives and prospectives”), Anuario Uruguayo Crítico de Derecho de Familia y Sucesiones, pp. 9-23

GARRISON, Marsha, 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 pp. 413-449

EEKELAR, John and George, Robert (Eds.), Routledge Handbook of Family Law and Policy, London, 2014.

FULCHIRON, Hugues , « La reconnaissance de la famille homosexuelle: étude d'impact », (« Legal Recognition of the Homosexual Family : Impact Study »), Recueil Dalloz, N° 2, 2013 , págs. 100-106

FULCHIRON, Hugues, « Le mariage homosexuel est d'ordre public en droit français » (« Homosexual Marriage and Public Order in France »), Dalloz (2013) 2578 - <http://hal-univ-lyon3.archives-ouvertes.fr/hal-00948575>

GOUBAU, Dominique, « Le mariage pour tous, dix ans après. L'expérience canadienne » (« Marriage « pour tous », Ten Years After . The Canadian Experience »), Droit de la Famille, N° 7-8, 2013 , págs. 62-66

PARKINSON, Patrick, “The Idea of Family Relationship Centres” (2013) 51 Family Court Review, 195–213.

WARDLE, Lynn D., STRASSER, Mark and Kohm, Lynn, Family Law From Multiple Perspectives: Cases and Commentary, West Acad. Publish. 2014) <http://www.westacademic.com/Professors/ProductDetails.aspx?NSIID=3044> .

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

FULCHIRON, Hugues, « Le mariage entre personnes de même sexe en droit international privé au lendemain de la reconnaissance du "mariage pour tous" » (« Marriage Between Same Sex Spouses in International Private Law the Day After the Legal Recognition of the Marriage « pour tous »), Journal du droit international, N° 4, 2013, págs. 1055-1113

FULCHIRON, Hugues, « La reconnaissance du mariage homosexuel en droit français à l'étranger : un monde incertain » (« The Legal Recognition of Homosexual Marriage, Abroad : A World of Uncertainties »), Revue Droit de la famille, n°30 (2013) 230

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

BASSET, Ursula C. “ Wrongful life: el problema de decidir qué vidas merecen la pena ser vividas”, (“Wrongful Life: the Issue of Deciding Which Lives are Worth Living”), Revista Mestrado em Direito. Direitos Humanos Fundamentais, Sao Paulo, Brasil, v. 13, n. 2 (2013)

BASSET, Ursula C., “Filiación después de la muerte: un caso de adopción”, (“Filiation after death: a rare case of adoption”), Case note, LA LEY. REVISTA JURIDICA ARGENTINA, Buenos Aires, La Ley, Volumen: 2013-F), pp. 1056 a 1068

DETHLOFF, Nina & Gerhardt, Walter, „Ein Reproduktionsmedizingesetz ist überfällig“, Zeitschrift für Rechtspolitik, Vol. 46, Nº. 3, 2013 , págs. 91-93

FULCHIRON, Hugues (Dir), Parenté, filiation, origine : le droit et l'engendrement à plusieurs. (« Kinship, Filiation, Origins : The Right to Conceive by Multiple Parents »). Bruylant. 2013, 365 pp (2013) 365 - <http://hal-univ-lyon3.archives-ouvertes.fr/hal-00948202>

FULCHIRON, Hugues, « Vérité v. stabilité des filiations ? » (« Filiation: Truth v. Stability? »), Dalloz (2013) 2435 - <http://hal-univ-lyon3.archives-ouvertes.fr/hal-00948087> pp. 2435

4. Spousal Relations in the Ongoing Family or Similar Relations

MARTIN-CASALS, Miquel , “El derecho a la “convivencia anómica en pareja”: ¿Un nuevo derecho fundamental?”, (“The Right to “an Anomic Cohabitation within the Couple”: A New Fundamental Right?”), Case Note to the STC de 23.4.2013 (RTC 2013\93), REVISTA INDRET, WWW. INDRET.COM, Universidad de Girona, BARCELONA, JULIO 2013 <http://www.indret.com/pdf/990.pdf>

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

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BASSET, Ursula C. “Restitución internacional de menores, ¿crisis de paradigmas?” (“International Restitution of Minors: a crisis of paradigms?”), Suplemento del 30-10-2013 LA LEY. REVISTA JURIDICA ARGENTINA, Buenos Aires, La Ley, Volumen: 2013-F, pp. 18 a 22

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

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7. Termination/Post-Relations of Parents and Children

BRINIG, Margaret, F., Drozl, Leslie, and Frederick, Loretta, “Perspectives on Joint Custody Parenting as Applied to Domestic Violence Cases”, 52(2) Family Court Review, 272 (2014)

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State Require Fathers to Pay When Families Separate?”, June 15, 2013, Family Law

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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.

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:

Sanford Katz contributed to the Festschrift for Michael Freeman with a article, “The Family Law World of Michael Freeman.” He also is a contributor to the book, “Family Law and Policy,” edited by John Eekelaar and Robert George and to be published by Routledge in England.

G. de Jonge, *A.P. van der Linden*: “Handboek Jeugd & Strafrecht”. A studybook and practical book about the (International) Criminal Law and Criminal Proceedings Law for youngsters. Third Edition. Kluwer: Deventer 2013 The Netherlands.
ISBN 978-90-13-05255-8
NUR-401
Families and End-of-Life Treatment Decisions

An international Perspective

« The book of life is the supreme book that we can neither close nor reopen at will. » This quotation from Lamartine, the French poet, once a perfect illustration of the end of life in bygone societies, can no longer be said to apply. In fact, today, in one out of two cases in our modern societies, it is the medical team who closes this book without any intention of cutting life short.

Generally, however, the physicians do not make this decision alone. While a competent patient increasingly participates in medical decisions, including when it’s a matter of life or death, those nearest to him (usually the family but not always) endorse this responsibility once he becomes incapable of expressing his wishes. Many questions surround not only this concept of « nearest and dearest » or « loved ones », but also their roles and legitimacy. Whether they act

as the patient's legal representative, authorized agent or trustee, or if they are stripped of all legal power, will the loved one be simply consulted by the caregivers on the presumed wishes of the patient regarding end-of-life choices?

Or must they guarantee him a genuine right of self-determination? To this end, will they be granted a right of information only about the patient's condition, or even access to his medical records? Will their role be affected by the existence of living wills drawn up by the patient in question?

The outcome of debates between legal experts and physicians, philosophers and sociologists from seventeen countries, the chapters in this book analyse the current status and role of these relatives (and non-relatives) close to the patient at the end of life. Numerous European national laws are thus compared and are also benchmarked against other practises, in North and South America, in Africa and in some Asian countries.

Beyond the legal, cultural and ethical differences that clearly separate these various traditions, a recurrent question arises: more than providing paternalistic protection, does the « loved one » not always have to ensure respect for what « their patient » would have wanted, thus guaranteeing up to the end of his life a basic right, namely his decision-making autonomy? If this book demonstrates the difficulty of such a task in different contexts, it also attempts to pave the way to a more humanistic approach across cultures to advocate respect for the patient at the very end of his life.

Brigitte FEUILLET-LIGER is a professor at the University of Rennes, member of the Institut Universitaire de France, Director of the Centre de Recherche Juridique de l'Ouest (IODE, UMR CNRS n° 6262) and chair of the International Academic Network

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Thérèse CALLUS is Senior lecturer at the University of Reading, UK.

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BAYSAL, Kristina ORFALI, Verónica SAN JULIAN, Judit SANDOR, Geneviève SCHAMPS, Irène THÉRY.

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Foreword, Mark SIEGLER

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The individual nature of death, David LE BRETON, Professor of Sociology, University of Strasbourg (France),

Member of the Institut Universitaire de France, Member of the Cultures and Sociétés in Europe URA-CNRS Laboratory (France)

The dying person and the triangle of loved ones: for a relational approach to the end of life, Irène THERY, Director of studies at EHESS (France)

A physician’s view on the complexity of end of life care and the role of family and close friends, Jean-Marc

LA PIANA, Medical director, La Maison la Gardanne, Palliative care center, Marseille (France)

Family and loved ones in end of life care in French law: does end of life shape and define the “family”?,

Francis KERNALEGUEN, Professor, Faculty of Law, University of Rennes 1, (France)

The central role in Germany of the “Angehörige” in enhancing patient autonomy at the end of life, Françoise

FURKEL, Emeritus Professor at the French-German Legal Center at the University of the Sarre (Germany)

The preeminence of relationships in the legal recognition of the rights of the patient's loved ones in Switzerland, Dominique MANAI, Professor at the Faculty of Law at Geneva University (Switzerland)

End-of-life medical treatment: a limited role for loved ones to enhance patient autonomy, Thérèse CALLUS, Senior Lecturer in Law, University of Reading (United Kingdom)

A role for loved ones to enhance patient autonomy at the end of life, Geneviève SCHAMPS, Professor, Université Catholique de Louvain, Director of Centre for medical and Biomedical Law (Belgium)

The broad definition of "relatives" in end of life care in Spain, Verónica SAN JULIAN, Civil Law Professor, Law School, University of Navarre (Spain)

The central power of doctors over end of life matters in Italy, Silvia BRANDANI and Gianluca NAVONE, Lecturers, Law School, Siena University (Italy)

Patient rights at the end of life and the role of family and loved ones in Greek Law, Pénélope AGALLOPOULOU, Emeritus Professor, University of Piraeus (Greece)

Ethical and legal debates on a dignified end-of-life and the role of the family in Hungary, Judit SÁNDOR, Professor of Law, Central European University (Hungary)

Loved ones and end-of-life medical care: the particular approach of Tunisian law, Amel AOUIJ-MRAD, Professor, Faculty of Law and Political Science, University of Tunis (Tunisia)

Family, 'loved ones' and medicalized end-of-life decision making in Senegal, Mamadou BADJI, Professor, University Cheikh Anta Diop de Dakar (Senegal)

Multiculturalism and religion in end-of-life care in Lebanon, Dina EL MAOULA, Lecturer, French-speaking section of the Faculty of Law, Lebanese University (Lebanon)

Loved ones and end-of-life medical care in Turkish Law, Saibe OKTAY OZDEMIR, Professor at the University of Istanbul, Faculty of Law, Civil Law and Contract Law Section (Turkey), Basak BAYSAL, Assistant Professor at the University of Istanbul, Faculty of Law, Civil Law and Contract Law Section (Turkey)

End-of-life medical care: Towards recognition of patient autonomy in Brazil, Maria-Claudia CRESPOBRAUNER, Professor at Federal University of Rio Grande – FURG and the University of Caxias do Sul UCS (Brazil), Anderson ORESTES CALVALCANTE LOBATO, Professor at Federal University of Rio Grande – FURG (Brazil)

'Loved ones' and end-of-life medical treatment in Chile, Carmen DOMINGUEZ, Professor of Civil Law, Director of the Centre for the family of the Pontifical Catholic University of Chile (Chile)

Surrogate decision-making role in end of life care: the case of the USA, Kristina ORFALI, Associate Professor of bioethics, Columbia University, New-York (USA)

The family and end-of-life medical treatment in Japan, Ryuichi IDA, Distinguished Visiting Professor, Graduate School of Global Studies, Doshisha University (Japan)

Families and end-of-life treatment decisions, Brigitte FEUILLET, Professor, Faculty of Law, University of Rennes I, Member of the Institut Universitaire de France, Director of the Centre de Recherche Juridique de l'Ouest (France)

Personal Notices:

Professor Ruth Farrugia (Malta) within the past year has been named as Chairperson of the National Commission for Children's Strategy and Policy and also has been a Consultant to Parliamentary Committee on Family Affairs. There is a new New Child Protection Law in Malta. Dr Farrugia, Chairman of the National Commission for the Development of Strategy and Policy for Children, explained that care orders will now fall under the responsibility of the courts, allowing for better enforcement, and new concepts, like mandatory reporting, will be introduced. Workers in the sector will be required to file a mandatory report whenever they learn of cases of child abuse and could face fines if they do not. There will also be a "specific" Child Protection Registry. Children under care orders can also be freed for adoption in specific cases and the concept of shared parenting will also be introduced. There will also be five different types of care order, rather than two. Another feature will be a Children's House, serving as a single place where abused children can give all details about their experiences under one roof and only once, saving them the trauma of reliving their experiences over and over again. Social workers will be able to meet and assess children in a Child Assessment Centre. To learn more see

'First Chapter' of Children's Act strengthens Child Protection, Malta Independent, 19 March 2014, available at:

<http://www.independent.com.mt/articles/2014-03-13/news/first-chapter-of-childrens-act-strengthens-child-protection-4246208513/>
(seen 140319)Harmony."

Prof Datin Noor Aziah Mohd Awal has recently been appointed as Deputy Vice Chancellor, Student Affairs of Universiti Kebangsaan Malaysia (The National University of Malaysia) effective from 1 February 2014-31 Jan 2017. Her new address is:

Prof Datin Noor Aziah Mohd Awal
Deputy Vice Chancellor (Students Affairs
and Alumni)
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