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# INTERNATIONAL SOCIETY OF FAMILY LAW

THE FAMILY LETTER: NEWSLETTER OF THE ISFL  
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## WORLD CONFERENCE NEWS

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### 16TH ISFL WORLD CONFERENCE

Family Law and Family Realities

25 July to 29 July 2017

Amsterdam, The Netherlands, *Vrije Universiteit* of Amsterdam



The 16<sup>th</sup> World Conference of the International Society of Family Law (ISFL) <http://www.isflhome.org> 'Family Law and Family Realities' will take place in Amsterdam, The Netherlands from 25 July to 29 July 2017 at the *Vrije Universiteit* of Amsterdam. The Conference will explore whether existing national family laws adequately reflect the rapidly changing realities of family life. In various parts of the world both academic lawyers and practitioners are no longer content with focusing on family law alone. Concern about the correlation between family law and family realities triggers growing interest in empirical research involving both lawyers and social scientists. Experts in family law, social sciences and empirical research are most welcome to attend the conference and to present a paper. Papers may explore the correlation between family law both on the books and in action with actual family practices and needs of different types of families such as married and unmarried couples with and without children, and blended, extended and same-sex families. They may also consider the needs of various types of family members (e.g. adults, children, elderly persons, persons with disabilities and members of sexual minorities) in different social, cultural and religious settings (e.g. western, non-western, religious, secular, modern and traditional).

The participants are invited to submit an abstract of their paper.

The abstracts should be:

- no longer than 500 words.
- written in English or French
- submitted **before 15 January 2017** to: [ISFLabstracts2017@gmail.com](mailto:ISFLabstracts2017@gmail.com)
- including your name and the title of the proposed paper

The abstracts will be assessed by the Conference Scientific Committee before 15 February 2017.

All questions regarding abstract should be submitted to [ISFLabstracts2017@gmail.com](mailto:ISFLabstracts2017@gmail.com).

The preliminary program, the call for abstracts and the registration form are posted at the conference website <http://acfl.nl/en/isfl-2017-world-congress/>.

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## **PRESIDENT'S MESSAGE**

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Dear Friends in Family Law,

As a family law expert, I expect that you, too, are not infrequently asked for advice about very personal family matters. Over the past several months, I have been asked for advice on a wide range of family problems. Here is a sampling:

- A young woman, married for five years and possessing no assets other than household goods, wanted to terminate her childless marriage to a man who had dropped out of the workforce to pursue the medical treatments necessary to become a woman. “Do I need a lawyer,” she asked. “We have nothing to divide, and I really can’t afford one. But my husband will be very hurt and may be vindictive. He isn’t working, and I’m afraid that he’ll want me to keep supporting him. Could he get support?”
- A young man, married for about five years to a foreign-born woman who exhibited signs of mental illness, was deeply concerned that his wife would try to take their four-year-old child out of the country or cause the child harm by saying things that reflected growing her increasing paranoia and hostility; he knew more of his wife’s native language than she realized and had already heard her making statements that concerned him enormously.
- A middle-aged woman, married for seven years to a much older man, who had served as the primary caretaker of their five-year-old child, wanted to know if she stood any chance of losing a contest to become the child’s primary residential parent should she divorce her husband. “I would rather remain married than take a chance on losing custody of our son,” she said plaintively.
- An older, childless woman, married for more than thirty years to a man who had said that he wants a divorce, asked for advice about spousal support and property division. “I gave up working in the business we started together because he wanted to take over,” she reported. “Everything of value is in his name, and he earns almost all of our income. He says he wants a divorce. But he refuses to talk with me or my lawyer about money or a divorce settlement. I’m worried about how I will manage. I’ve always worked but the shop I opened isn’t earning much money. Can I get spousal support? And how much? Even if I get support, I’m afraid that there won’t be enough money for both of us to live well.”

These cases are wildly diverse on their facts, but they present some similar issues for family law.

One is law's relative powerlessness over human emotion and behavior. Family law adjudicates rights, obligations, and status. It can tell a divorcing spouse that he or she must pay support; it can order one parent to cooperate with the other; it can deny frivolous petitions brought largely (or totally) for vindictive reasons. Courts can impose sanctions their orders are disobeyed or when pointless lawsuits consume the other party's time and resources. But no amount of law can make individuals with hurtful and hostile intentions behave generously and cooperatively.

Another issue is the relative opacity of the legal rules applicable to the most common family disputes. In many jurisdictions (including all the American jurisdictions where all those who asked my advice lived), spousal support is highly discretionary. So is property division and the award and division of custody, now frequently renamed parenting time. Even a family law expert thus can typically offer advice only in terms of probabilities; certainty can rarely be offered. Highly discretionary rules create inconsistency. In the United States, for example, there is evidence of widespread inconsistency even in adjudicated divorce outcomes. Indeterminacy and uncertainty almost certainly complicate the settlement process as well.

Yet another issue – highly connected to the last – is the need for expensive legal assistance for routine matters. In case one, involving the young woman with no property whatsoever, I told her that she could get all the relevant forms and fill them out herself. But, after looking at the forms, she decided to borrow money from her parents and hire a lawyer. I was not surprised. Legal forms are intimidating. Many individuals find the process of filling out papers that employ one unknown term after another to be an added stress that they simply can't take on in the midst of an already stressful separation and divorce. But, of course, hiring legal advice is expensive, which induces even more stress. The average client also has very little way of determining whether his or her lawyer is doing a good job and justifying the bills the client is paying. Two of the four individuals I have just described had already spoken with a lawyer; indeed, each of these two had spoken with more than one lawyer. They had as many questions about how to evaluate their prospective lawyers as they had about the law itself.

Finally, these various cases indicate the extent to which the adjudicative model family law currently employs may foster the least desirable type of behavior. Adjudication determines not just rights and obligations, but winners and losers. Vindictive spouses, confronting adjudication, want to win; they want the other spouse to lose. Children, and even the individual spouses, may both lose when this happens, but it is hard for family lawyers to fully combat. After all, winning is what a lawsuit is about. "Collaborative" family law has arisen precisely because of the sense that the traditional adjudicative model often does not serve the real interests of family members. But its use is still infrequent and we have next to no evaluations of how well it works.

In sum, today's family law is often unresponsive to the realities of family life. Its adjudicative model applies in all cases, irrespective of whether there is any real need for adjudication. Its indeterminacy inhibits settlement and may encourage vindictive spouses to prolong litigation based on exaggerated feelings of entitlement. Its opacity produces a need for expensive lawyering that many, if not most, families simply cannot afford.

ISFL's next World Congress, to be held in Amsterdam July 25-29, 2017, takes up the theme "Family Realities and Family Law." I expect that the conference will offer many opportunities to hear innovative ideas about how family law can become more responsive to the realities of family life. I am very much looking forward to hearing from family law experts from a range of diverse legal systems and cultures debate these important issues.

I hope to see you there. Abstract submission has already begun. Indeed, your paper proposal is due in only a couple of months (by January 15). It is not too early to begin making your plans.

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## **REPORT OF THE INTERNATIONAL SURVEY EDITOR**

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By now, people should have received their copies of the 2016 International Survey. It contains 26 chapters with contributions from right around the world. In my Preface, I said “One of the great benefits of this annual survey of family law is the opportunity to see the panorama of challenges across the globe”. The topics this year range widely: the effect of terrorist attacks, adoption, abortion, child maintenance (including for adult students), children’s rights, affiliation and illegitimacy, child marriage, child support, relocation, co-motherhood, surnames, relocation, international child abduction, marriage in a pluralistic society, marriage equality, polygamy, divorce, spousal maintenance, marital property, domestic violence, succession law and adult guardianship.

This edition is the last for which I shall be responsible. Peg Brinig is the new General Editor and her appointment is wonderful news. She will do a fabulous job and is happy to receive expressions of interest from people who would like to write on developments in their country for the 2017 edition. Her email is [mbrinig@nd.edu](mailto:mbrinig@nd.edu).

It has been a great privilege to serve as General Editor. My first edition was in 2007, which makes 10 years – time to hand over to someone with fresh ideas and insights. I am very grateful to all who have written for the Survey, those who have acted as referees, research assistants who have willingly picked up a handful of tasks for me (I mention in particular David Neild, Zoë Lawton and Sean Brennan), Angela Funnell, my secretary, and the excellent staff at Jordans – especially Cheryl Prophett who has done the editing work for them throughout my time. Each chapter begins with a French résumé and this would not be possible without the excellent translation work done by Dominique Goubau and Christine Bidaud-Garon. Finally, I thank the Society itself, because without it the Survey would not exist, and our knowledge and understanding of family law would be so much the poorer.

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## **REPORT OF THE NEWSLETTER EDITOR:**

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I am stepping into the role as Newsletter Editor now that Peg Brinig has become the new General Editor of the ISFL Annual International Survey of Family Law. Peg leaves big shoes to fill. We are grateful for colleagues to share their personal news and initiatives from their programs and centres.

This edition features five more brief articles about family law changes in CHINA, ITALY, NORWAY, SOUTH AFRICA, AND the UNITED STATES for the “What’s New?” section. Your reports

are particularly welcome in the intervals between World Congresses, as we are now. We would love to have others also write about developments of interest in their countries in the Spring, too. Contributors may explore specific topics that they believe would be interesting to an international audience. Country reports offer an excellent opportunity for newer scholars to become known to an international audience of family law colleagues, so we encourage our newer members to contribute as well. For the Spring newsletter, we ideally would receive your report, news or announcement by March 15, 2017.

In the Spring we hope to repeat the feature inspired by the Colloquium Hugues Fulchiron and his team conducted in Paris in April of 2015 by sending a brief family law question that our members will “answer” from their countries’ perspective and using their bodies of law. We hope it will not only be informative but also useful for comparative family law.

Please continue to send 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 sends out increasingly often from the website. 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 Masha Antoloskoia, our Treasurer, though I will forward her your notes about address changes that are sent to me. I (and the Executive Council with me) welcome comments about the general format of the newsletter.

Robin Fretwell Wilson, Editor  
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## CONFERENCES AND CALL FOR PAPERS

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**INTERNATIONAL ACADEMY FOR THE STUDY OF THE  
JURISPRUDENCE OF THE FAMILY  
2017 ANNUAL SYMPOSIUM OF THE IASJF**  
July 19-21, 2017  
Bialystok, Poland at the University of Bialystok Faculty of Law



On July 19-20, 2017, The International Academy for the Study of the Jurisprudence of the Family will hold its annual symposium at the University of Bialystok in Poland. It will begin with a welcome reception, and then presentations and discussions will occur the following day. Attendees are welcome to participate in an optional tour the day after the symposium. The

theme is “Families in Judicial Proceedings.” Paper proposals (one page including contact information) may be sent to Professor Lynn Wardle at [wardlel@law.byu.edu](mailto:wardlel@law.byu.edu) or to Professor Carlos Martinez de Aguirre at [aguirre@unizar.es](mailto:aguirre@unizar.es) or to Professor Piotr Fiedorczyk at [fiedorczyk@tlen.pl](mailto:fiedorczyk@tlen.pl).

Lynn Wardle  
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**BREXIT AND FAMILY LAW  
A JOINT SEMINAR OF THE CHILD & FAMILY LAW QUARTERLY  
AND CAMBRIDGE FAMILY LAW**

March 27, 2017  
Trinity College, University of Cambridge

**SAVE THE DATE**

The withdrawal of the UK from the European Union will precipitate important change in the field of international family law. EU law has increasingly come to define key aspects of both jurisdiction and recognition & enforcement of judgments on divorce, maintenance, and disputes over children, including international child abduction, and provided new frameworks for cross-national cooperation. At this seminar, international experts and practitioners will discuss the impacts of ‘Brexit’ on family law, from a range of national and European perspectives, and reflect on the future of international family law practice in the UK.

Booking for this full-day seminar will open soon. CPD points will be available. Please visit [www.family.law.cam.ac.uk/](http://www.family.law.cam.ac.uk/) to join the Cambridge Family Law mailing list in order to receive an email when booking opens, and in due course to see the full programme for the day and to book your place.

Jo Miles  
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**UNIVERSITY UPDATES**

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**CFL** | **CAMBRIDGE** FAMILY LAW This academic year sees the launch of this new research centre in the Faculty of Law at the University of Cambridge, UK.

Cambridge Family Law is a centre of excellence for research and teaching in all aspects of family law and policy, domestic, comparative and international in the Faculty of Law. It offers a unique combination of academic, policy and practice-oriented insight into family law issues around the globe, covering the full range of family law issues, from international child abduction and surrogacy, to marital agreements and financial remedies, marriage, divorce and other adult partnerships, and issues arising in later life and following death.

Director, Jens Scherpe and Deputy Director, Joanna Miles have ambitious plans for the Centre, building on their existing track record of research publication and related event-management over the past several years, ranging from major international conferences to specialist

invitation-only workshops. Along with Centre colleagues Claire Fenton-Glynn and Brian Sloan, they are planning a series of events based in Cambridge, London and overseas. All Centre events will offer an academically rigorous forum for expert discussion and debate of family law and policy issues, and offer CPD points for practitioners.

The Centre has strong links with family law scholars from a wide range of overseas jurisdictions and with family law practitioners and judges worldwide, thanks to its members' connections with groups such as the International Society of Family Law, the International Academy of Family Lawyers, universities, law reform commissions and other governmental and non-governmental organisations across several jurisdictions.

One innovation of the Centre, aimed particularly to support its comparative law work, is the network of "corresponding members" that is being established with scholars from all over the world. The Centre has already hosted several academic visitors, ranging from senior academics to current PhD students registered at other universities.

The Faculty of Law is also offering one studentship for a new Ph.D. student commencing full-time doctoral research in any area of family law in 2017-2018. The studentship is available to Home UK/EU and overseas students, and is renewable for a further 2 years subject to satisfactory academic progress. The value of the studentship will be £10,000 per annum and may be used by the student to contribute towards the University Composition Fee or to contribute towards maintenance costs. Candidates wishing to be considered for this studentship should apply for admission to the Ph.D. by the Ph.D. course closing date of 1 December 2016 and return a completed studentship application form to [phdadmissions@law.cam.ac.uk](mailto:phdadmissions@law.cam.ac.uk) by the studentship application closing date of 31 March 2017.

To find out more about the Centre and to join the Centre's mailing list, please visit [www.family.law.cam.ac.uk](http://www.family.law.cam.ac.uk) or contact the Centre on [family@law.cam.ac.uk](mailto:family@law.cam.ac.uk)

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[The University of Illinois Family Law and Policy Program](#)

awarded its 2016 Lifetime Achievement award in Family Law to John Witte Jr., the Robert W. Woodruff Professor of Law, McDonald Distinguished Professor, and director of the Center for the Study of Law and Religion at Emory University School of Law. Professor Witte joins inaugural recipients William Eskridge of Yale Law School, and Harry D. Krause of the University of Illinois. In October 2016, the University of Illinois College of Law hosted Jonathan Rauch, a senior fellow of governance studies at the Brookings Institution as the 2016 David C. Baum Memorial Lecturer on Civil Liberties and Civil Rights, who spoke on "Gay Rights, Nondiscrimination, and Religious Liberty: Can We Avoid a Train Wreck?"

The Family Law and Policy Program continued the Harry Krause Emerging Family Law Scholars Workshop, co-sponsored by Chicago-Kent College of Law and Notre Dame Law School, with Katharine Baker (Distinguished Professor of Law Chicago-Kent College of Law, Illinois Institute of Technology) and Margaret F. Brinig (Fritz Duda Family Professor of Law Notre Dame Law School) acting as commentators with Professor Wilson. Dr. Karin Yefet (Faculty of Law, University of Haifa), Cynthia Godsoe (Brooklyn Law School), Anthony Michael Kreis (VAP, Chicago-Kent College of Law), and Sally Brown Richardson (Tulane University Law School)



were selected from among 26 scholars in five countries as the 2016 Emerging Scholars. If partnering on any of these activities is of interest to members, Professor Wilson may be reached at [wils@illinois.edu](mailto:wils@illinois.edu).

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## **FAMILY LAW AROUND THE WORLD: WHAT'S NEW?**

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### **NEWS FROM CHINA**

On October 16 and 17, 2016, The 2nd General Congress of China's Marriage Law Society under China Law Society, that is Conference of Legislation of the Marriage and Family Law of the Civil Code, was solemnly held in Youyi hotel, Beijing. This annual meeting was co-hosted by China's Marriage Law Society under China Law Society and the Law School of Minzu University of China. More than 160 representatives from all over the country, including experts and scholars, judges and lawyers, attended the meeting, which including teachers from Southwest University of Political Science and Law (SWUPL): Professor Zhang li, Vice Dean of School of civil and commercial law; Professor Chen Wei, Associate professor Zhang Huagui, Zhufan, Lijun, Du Jiangyong and Ran Qiyu.

Two topics were discussed in this conference. The first one is the general election of China's Marriage Law Society under China Law Society; second, the representatives discussed the legislative issues on the Marriage and Family Law of China's Civil Code.

In the morning of October 15, the executive vice president of China Marriage Law Society, professor Long Yifei from Remin University of China hosted the opening ceremony of the conference. Firstly, Dean Zhang Zetao and Vice president Shi Yazhou from Minzu university of China have delivered a welcome speech. Next, vice president Zhang Wenxian from China Law Society delivered a speech too. Then, President Xia Yinlan from China's Marriage Law Society delivered a five-year work report.

In this conference, directors, managing directors and the chairmen of 8th Council of Directors of China's Marriage Law Society were elected.

The consultative group in charge of the key research project on legislation of the marriage and family law in the Civil code introduced their present work separately, namely, general provisions of the marriage and family law, marriage, spousal relationship, parent-children relationship, adoption, custody, divorce, altogether seven aspects. Afterwards, representatives were divided into six groups fully discussing questions on these aspects and each group reported their discussion to the general meeting.

In this conference, a special book launch was held for *Family Law Commentary Series* edited by China's Marriage Law Society too. The conference was finally successfully ended by the closing remarks of professor Long Yifei.

It's reported that teachers from SWUPL, professor Chen Wei was elected as the vice president of China's Marriage Law Society under China Law Society, professor Wang Hong as the standing director, professor Zhang Li, associate professor Huagui Zhu Fan as directors.

(Chinese report & the photos made by Shi Ting and the report translated by Shi Lei, Zhan Luxia)



## NEWS FROM ITALY

In the last months the debate in Italy has concentrated on a new law, recently approved on May 20, 2016 with no. 76, which has introduced Civil Unions (*unioni civili*) for same sex partners only. The same law has also adopted rules on de facto cohabitations (*convivenze di fatto*) both for heterosexual and same sex couples. Up to the passing of the law, the Italian jurisdiction regulated only marriage - between a man and a woman – while all other kinds of relations were informal.

The discipline of *civil unions* is for many legal aspects similar to marriage, with the exception of some provisions on stepchild adoption, affinity, family name, marriage procedure, and dissolution of the union. Parties to the union have direct access to divorce, while Italian spouses must first undergo a legal proceeding for separation and then wait for a significant lapse of time before filing a divorce application.

Civil unions are established through a formal, public declaration in front of the Official of Civil Status in the presence of two witnesses. Such declaration, included in the written act of civil union, will be registered in the archives of Civil Status.

Rules on *cohabitation* apply to adult partners who are bound by a lasting affective tie, live together and are not bound by a relation of kinship, affinity or adoption or by a marriage or a civil union with anyone else. Therefore, minors and any other person married or separated, or civilly united, as well as cohabitants bonded together by a tie of affinity or kinship are outside the scope of the law and their relations will be regulated by the previous rules (when there are any) on informal cohabitations.

The law 2016 requires that the cohabitants are inserted in the same family status certificate (so called “*stato di famiglia*”) according to the administrative rules on civil status. As a consequence of such registration the law applies some non-patrimonial and patrimonial effects, including for instance a maintenance right (art. 1 no. 65 of the law) after dissolution of the partnership, when a partner is in need. Apart from this provision, however, the law does not settle

any discipline for the patrimonial regime of the couple, which can, if partners so wish, sign a contract to regulate the matter.

Therefore, even cohabiting couples not registered in the same family status certificate will not fall into the scope of this instrument.

As an effect of the law, then, since May 2016 the Italian legal system formally recognizes quite a wide range of relations outside marriage: civil unions, de facto cohabitations complying with the law no. 76 - and among them de facto cohabitations regulated by contract and de facto cohabitations without any contract - and informal cohabitations.

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## NEWS FROM NORWAY

### *Norway: New provisions allowing legal action on paternity*

In Norway, the husband of the mother is automatically established as a child's father, and the child is thus ensured a social and legal framework from the start of its life.<sup>1</sup> When the mother is unmarried, paternity is normally determined by the father's declaration.<sup>2</sup> If legal actions on paternity are allowed in these cases where the child already has a father, the biological principle prevails: The court may require that blood tests be taken and if a man is identified as the father on the basis of the DNA analysis, he shall be adjudged to be the father.<sup>3</sup> Thus, the crucial issue is to what degree one should allow such legal actions to change the paternity. This question has been the subject of much debate and several legal amendments during recent years.<sup>4</sup> In 2016, the law was changed once again.

The child itself has always had the right to bring an action before the courts to change paternity that followed from marriage or the father's declaration, but for many years, the mother, the father and third persons had limited possibilities to bring such cases to court as strict time limits existed. Through law reforms in 1997 and 2002, legislation went far in respect of allowing legal action on paternity in cases where the child already had a father.<sup>5</sup> The basic philosophy behind these rules was that it is in the best interest of the child that the man who is the biological father should also be considered the legal father. However, the fact that a third party could intrude in this way on an existing family unit and disturb the harmony of a family relationship was heavily criticised. It was maintained that the child's right to know the identity of his or her biological father could be satisfied without entailing a change of paternity. On this background, a provision reintroducing time limits for the parties' entitlement to institute legal proceedings was proposed by the government led by the Social Democratic Party, and the bill was enacted into law in 2013.<sup>6</sup> According to this provision, either of the parents or a man who alleged he was the father could

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<sup>1</sup> The Norwegian Children Act, § 3.

<sup>2</sup> The Norwegian Children Act, § 4.

<sup>3</sup> The Norwegian Children Act, § 9 (with the exception of sperm donors).

<sup>4</sup> The Norwegian Children Act § 6.

<sup>5</sup> See P. Lødrup, 'Challenges to an Established Paternity – Radical Changes in Norwegian Law', in A. Bainham (ed.), *The International Survey of Family Law. 2003 Edition*, (Bristol: Jordan Publishing, 2003), pp. 353-362.

<sup>6</sup> LOV-2013-06-21-64.

only bring an action if he or she submitted information indicating that another person might be the father, and the action had to be brought within one year after the person became aware of the information. In addition, the man who alleged he was the father had to bring an action before the child was three years old. Furthermore, a new provision was introduced giving a child that have reached 18 years of age a right to know the identity of his or her biological father without this entailing a change of legal paternity.<sup>7</sup>

In June 2016, the pendulum swung backwards once again, as time limits and other requirements for bringing an action to change the paternity were repealed.<sup>8</sup> The child, either of the parents and a man who believes he is the father of a child that already has a father are now all entitled to institute legal proceedings concerning change of paternity. This means that a man who claims to be the biological father of a child born in marriage may at any time bring an action before the courts to change the paternity – no time limits exists for the entitlement to bring an action. Neither the mother, the child nor the husband may impede such legal proceedings. In the preparatory works, the government led by the Conservative Party points out that it is of fundamental importance for a person's self-awareness to know her or his biological origin. If there is doubt about who is the father of a child, it will therefore be in the best interests of the child to have these doubts clarified.<sup>9</sup>

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## NEWS FROM SOUTH AFRICA

**Children's Rights:** The strategic litigation by the Centre for Child Law has long been recognised as central in the development of children's rights in South Africa. It is with some pride then that its director and South African, Prof Anne Skelton was elected to the UN Committee on the Rights of the Child in June 2016. Two judgments involving children in 2016 stand out; the former litigated by the centre. *The Centre for Child Law v The Governing Body of Hoërskool Fochville* 2016 (2) SA 121 (SCA) case involved the matter of medium of instruction at a SA public school. On appeal, the court found that the children's right to legal representation, separate from their parents, was an important right, and could entail keeping questionnaires administered by the Centre confidential. The second case (*De Villiers v S* 2016 (1) SACR 148 (SCA)) builds on the jurisprudence of the precedent-setting Constitutional Court (CC) case of *S v M* 2008 (3) SA 232 (CC) (setting out a 'model' for how to deal with the sentencing of primary caregivers). The appeal court found that the failure of the lower court to consider the best interests of a primary caregiver's young children, when imposing a sentence, constituted a grave misdirection. Despite this, the court decided that a custodial sentence was appropriate even though the appellant was primary caregiver because of the seriousness of the crime – the mother had committed fraud on an employer whilst in a position of trust.

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<sup>7</sup> The Norwegian Children Act, § 6 a.

<sup>8</sup> The Norwegian Children Act, § 6, LOV-2016-06-17-27

<sup>9</sup> Prop.85 L (2015-2016) Endringer i barnelova m.m. (oppheving av tidsfristar i farskapssaker m.m.)

**Marriage in South Africa: Silos of inequality:** South Africa does not recognise cohabitation for purposes of property distribution or succession (ie. it does not recognise common law wife/husband), arguably leading to a position where many women are ‘left out in the cold’. Due to South Africa’s patchwork of family law statutes and cases, *Duplan v Loubser NO* [2015] ZAGPPHC 849 is a case which shows up the ironies and unintended consequences of this patchwork. The court allowed for the same-sex partner in a life partnership to inherit intestate from the deceased partner, despite never solemnising the partnership in terms of South Africa’s same-sex marriage act: the Civil Union Act 17 of 2006. Because of precedent set before the Act, the case arguably leads to discrimination against unmarried heterosexual couples who have *less* rights than same-sex couples in the same position. The matter is awaiting judgment by South Africa’s CC this year.

**Forfeiture of benefits upon divorce challenge:** *MC v JC* 2016 (2) SA 227 (GP) is the latest in the debate about the position of fault in the division of the marriage estate in divorce proceedings (it will be recalled that SA has a no-fault divorce regime). The matter dealt with s 9(1) of South Africa’s Divorce Act 70 of 1979 which allows the court to order one party to forfeit the patrimonial benefits of the marriage on the basis of ‘undue benefit’ having regard to the duration of the marriage, the reasons for the marriage’s breakdown and any substantial misconduct on the part of either party to the marriage. The court a quo ordered the wife to partially forfeit the benefits of the marriage in terms of s 9 (1) due to her ‘substantial misconduct’, being adultery. On appeal, the court overturned this decision holding that the wife would not ‘unduly benefit’ were she to receive the patrimonial benefits. The court, in an obiter dictum, questioned the constitutionality of the section (s 9(1)) given that it might be ‘wholly outdated’ and infringe the right to equality and dignity, and possibly freedom and security of the person. Because of a procedural issue, the court declined to finally determine the constitutional point but gave directions for certain government institutions to be joined in the matter.

**Other matters of interest:** The South African courts were also faced with interesting issues regarding surrogacy and marriage by abduction (ukuthwala). For more, see *AB v Minister of Social Development* 2016 (2) SA 27 (GP) and *S v Jezile* 2016 (2) SA 62 (WCC) respectively.

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## NEWS FROM THE UNITED STATES

At the state level, some significant [revisions](#) to Illinois divorce law went into effect in January 2016. Among these was a move towards time-limited spousal maintenance (alimony) awards, and the creation of a specific formula for determining the amount of these awards in the event of divorce.

In early March, the U.S. Supreme Court issued a *per curiam* [opinion](#) in a case where a court in the state of Georgia had granted an adoption to the same-sex partner of a child’s mother, but the Supreme Court of the state of Alabama declined to recognize the adoption. The U.S.

Supreme Court held: “A State may not disregard the judgment of a sister State because it disagrees with the reasoning underlying the judgment or deems it to be wrong on the merits.” *V.L. v. E.L.*, No. 15-648 (2016).

In March, a committee of the National Conference of Commissioners on Uniform State Laws met to [draft amendments](#) to the Uniform Parentage Act, which has not been revised since 2002. The genesis of the effort came from a desire to modify Uniform Laws in the wake of the *Obergefell v. Hodges* so as to make references to parents gender-neutral. The committee is [trying to](#) ensure gender neutrality throughout the law, ensure that previous rules relying on proof of genetic parentage do not prevent equal application of parentage rules to same-sex couples, make a gender-neutral proposal for the presumption of paternity, give access to an acknowledgement of paternity procedure for same-sex couples, clarify the law of surrogacy, and address a child’s right to genetic information.

At the end of March, a federal district court in the state of Mississippi [ruled](#) that the state’s prohibition of adoption by same-sex couples was unconstitutional. The court said it was “unlikely” that the U.S. Supreme Court which “held a state cannot ban gay marriage because it would deny benefits—expressly including the right to adopt—would then conclude that married gay couples can be denied that very same benefit.” Thus, the court concluded the law was unconstitutional because it “caused stigmatic and more practical injuries” to married same-sex couples. *Campaign for Southern Equality v. Mississippi Department of Human Services*, case 3:15-cv-0578 (S.D. Mississippi 2016).

In August, the Supreme Court of the state of Illinois [affirmed](#) a 1979 precedent prohibiting alimony-like claims brought by unmarried partners. The state’s appeals court had [held](#) that the precedent was no longer binding, pointing to “numerous changes in Illinois law which indicate that public policy has shifted dramatically in the ensuing 35 years,” such as the repeal of the state’s anti-cohabitation law, a holding that “a parent’s cohabitation was not inherently harmful to a child and should not be used to deny custody,” the acceptance of no-fault divorce, enforcement of prenuptial agreements, the civil union law and same-sex marriage, among other changes. The Illinois Supreme Court disagreed. It acknowledged the changes the appeals court had noted, but held that the changes demonstrated that the legislature could amend the law if it chose; having failed to do so, the legislature had acquiesced in the court’s earlier ruling.

At the end of September, the Court of the Judiciary of the state of Alabama suspended the Chief Justice of the Alabama Supreme Court, Roy Moore. The court [found](#) that the Chief Justice had wrongfully ordered all state probate judges not to comply with federal court orders to issue marriage licenses to same-sex couples in January 2016. The ruling has been [appealed](#) to a special panel of retired state court judge. *In the Matter of Roy S. Moore*, Case No. 46 (Alabama Court of the Judiciary 2016).

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**MEMBER NEWS & RECENT AND FORTHCOMING PUBLICATIONS**

**Chen Wei** (Southwest University of Political Science and Law) was elected as the vice president of China's Marriage Law Society under China Law Society.

**Huagui Zhu Fan** (Southwest University of Political Science and Law) was elected as a director of China's Marriage Law Society under China Law Society.

**Sanford N. Katz** (Darald & Juliet Libby Professor of Law Emeritus at Boston College Law School), reports that a Festschrift has been published by Brill in his honor, entitled *Family Law in Britain and America in the New Century -- Essays in Honor of Sanford N. Katz*. The collection of writings has been edited by John Eekelaar and consists of chapters written by members of the Society from both the USA and the UK.

**Lynn Wardle** (Bruce C. Hafen Professor of Law at the J. Reuben Clark Law School of Brigham Young University) co-hosted a multidisciplinary "Symposium on Assisted Suicide: Implications for Families and Society" at the J. Reuben Clark Law School at Brigham Young University. *Ave Maria Law Review* co-sponsored the event. Nine experts in law, medical ethics, and pharmacology ethics made presentations. Their papers will be published in the *BYU Journal of Public Law* and in the *Ave Maria Law Review*. The Symposium was open to and attended by faculty, staff, students, and members of the Utah State Bar. Professor Wardle also presented a paper, *A Death in the Family: How Assisted Suicide Harms Families and Society*, at the "Symposium on Assisted Suicide: Impacts Upon Families and Society" at J. Reuben Clark Law School.

**Robin Fretwell Wilson** (Roger and Stephany Joslin Professor of Law at the University of Illinois College of Law and Director of the Family Law and Policy Program) received a \$250,000 grant from the National Science Foundation and the National Institute for Justice to support "Family Court Decisions About Child Custody in the Context of Intimate Partner Violence" from July 2016 – July 2019 (co-investigator with faculty in Human and Community Development, University of Illinois). The University of Illinois and Professor Wilson also received a gift from the Templeton Religion Trust to support the Fairness for All Initiative, which Professor Wilson directs. That initiative seeks to support state lawmakers who are striving to balance LGBT rights and religious liberty, as Utah did in the Utah Compromise. Professor Wilson's forthcoming book, *THE CONTESTED PLACE OF RELIGION IN FAMILY LAW* (Robin Fretwell Wilson, ed.), is under contract with Cambridge University Press for publication in 2017. She also published "*Squaring Faith and Sexuality in Religious Institutions: The Unique Challenge of Sports*," 34 *LAW AND INEQUALITY: A JOURNAL OF THEORY AND PRACTICE* 385 (2016), "[Bargaining for Religious Accommodations: Same-Sex Marriage and LGBT Rights after Hobby Lobby.](#)" in *THE RISE OF CORPORATE RELIGION LIBERTY* (Micah Schwartzman, Chad Flanders, Zoë Robinson, eds., Oxford University Press, 2016) and "[Getting the Government Out of Marriage](#)" *Post Obergefell: The Ill-Considered Consequences of Transforming the State's Relationship to Marriage*, 2016(4) *U. ILL. L. REV.* 1445 (2016). In the popular press, Professor Wilson has published, "[There's still time for Pa. to pass protections for LGBT citizens that respect the rights of all](#)" in the *Harrisburg Patriot News* (Oct. 14, 2016). Professor Wilson was recently ranked as one of the Top 10 Family Law Scholars in the United States in terms of scholarly impact in Brian Leiter's 2016 Review of Scholarly Impact. On January 13-14, 2017, Professor Wilson will be co-convening a Conference on FAITH, SEXUALITY, AND THE MEANING OF FREEDOM at Yale Law School, with Professor William Eskridge.

**Wang Hong** (Southwest University of Political Science and Law) was elected as the standing director of China's Marriage Law Society under China Law Society.

**Zhang Li** (Southwest University of Political Science and Law) was elected as a director of China's Marriage Law Society under China Law Society.