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# INTERNATIONAL SOCIETY OF FAMILY LAW

THE FAMILY LETTER: NEWSLETTER OF THE ISFL  
SPRING 2017



*Published by the International Society of Family Law by Professor Robin Fretwell Wilson, Newsletter Editor, Roger and Stephany Joslin Professor of Law and Director, Family Law and Policy Program, University of Illinois College of Law, email: [wils@illinois.edu](mailto:wils@illinois.edu)*

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## ISFL LEADERSHIP

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SECRETARY GENERAL: ANNA SINGER (2016-2017); URSULA BASSET (2017-2018)  
INTERNATIONAL SURVEY EDITOR: WILLIAM ATKIN (2016-2017); MARGARET BRINIG (2017-2018)  
NEWSLETTER EDITOR: MARGARET BRINIG (2016-2017); ROBIN FRETWELL WILSON (2017-2018)  
WEBMASTER: PATRICK PARKINSON

### EXECUTIVE COUNCIL MEMBERS:

|                       |                              |                        |
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## **WORLD CONFERENCE NEWS**

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The 16<sup>th</sup> World Conference of the International Society of Family Law ([ISFL homepage](#)) '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 be dedicated to the subject whether existing national family laws adequately reflect the rapidly changing realities of family life. At the moment circa scholars and law professionals from over 40 countries have submitted their abstracts for a presentation at the conference (see provisional programme <http://acfl.nl/en/isfl-2017-program>). The abstracts will be published at the conference website before the beginning of the conference. A selection of the presentations will be published in the Conference Proceedings. The registration for the conference is still open (<http://acfl.nl/en/isfl-2017-registration-form>). You all are welcome in July in Amsterdam!

On behalf of the Organizing Committee,

Prof. Dr. Masha Antokolskaia  
The convenor

## **UPCOMING ELECTIONS & IMPORTANT DATES**

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*The DEADLINE for nominations for both ISFL officers and members of the Executive Council is MAY 28. Five members are needed to nominate an officer; three members are necessary to nominate a member of the Executive Council. Placement on the ballot additionally requires the consent of the candidate, in writing, and a brief biographical statement from the candidate of not more than 200 words. This year there are (thus far) fewer candidates for the Executive Council than there are seats so we particularly encourage you to run for office! We also apologize for this late notice.*

The next ISFL Executive Council meetings are in Amsterdam. Times and dates are:

**Old Council:**

Tuesday, 25 July 11.00-13.30

**New Council:**

Saturday, 29 July 14.00-15.30

## **PRESIDENT'S MESSAGE**

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Dear Friends in Family Law,

As we approach our upcoming World Conference in Amsterdam (July 25-29), I feel a sense of pleasant anticipation at the prospect of reconnecting with old friends in Family Law and of making new connections. I suspect that this informal aspect of World Conferences is one of the greatest pleasures they provide to all of us.

I have now been attending ISFL conferences for more than thirty years. I can still recall the first conference I attended quite vividly. It was organized by Professor Sanford Katz, a former ISFL president and long-time Executive Council member; it took place in Boston in 1982. But despite the passage of more than three decades, I can still recapture my sense of excitement at having the opportunity to learn from, and even to meet, both experts whose work I already admired tremendously and those whose work I did not yet know. The formal presentations were illuminating and greatly expanded my budding knowledge of Family Law scholarship. The informal meetings and conversations made possible by the conference gave me my very first sense of Family Law community. In sum, the conference was deeply important to my growth as a Family Law teacher and scholar.

ISFL continues to provide these opportunities to young teachers and scholars; that is a crucial aspect of its mission. But ISFL cannot perform that mission well unless a continuing stream of young Family Law scholars, with diverse interests and from diverse legal systems and cultures, attend its conferences. The Executive Council, several years ago, initiated a scholarship program to facilitate attendance by young scholars who lack the funds to attend a world conference. But the encouragement of more established scholars is also crucial.

ISFL was founded in 1979. Most of those farsighted scholars who created the Society are now retired; some are no longer with us. To remain a vibrant institution, ISFL needs members at all stages of their careers.

My plea to you in this, my last letter as ISFL president, is to bring more young Family Scholars into ISFL activities and conferences by encouraging the participation of those you know and mentor. And while you're considering whom you can encourage, consider, also, other ways in which you can expand your own ISFL participation. The Executive Council election will take place soon; consider running. The newsletter constantly needs reports of new Family Law developments; consider writing up what's happening in your jurisdiction. To maximally support its members, ISFL needs all of us to volunteer, to invite, to make connections, and to sustain those connections.

I look forward to seeing many of you in Amsterdam.

Marsha Garrison  
[Marsha.garrison@brooklaw.edu](mailto:Marsha.garrison@brooklaw.edu)

## **INCOMING PRESIDENT'S MESSAGE**

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In our diversified world (diversity family lives, diversity of rules in the family law, divergent views concerning the family), the ISFL has, ever since its creation, been a priceless forum for dialogue and observation. A proof of it is the richness of subjects covered by the Annual survey, in the wide variety of approaches contained in world and regional conferences, and in the strength of the relationships built among the members of the Society around the world.

In some ways, the spirit of the founders of the ISFL might be even more necessary now than it was then. Despite of profound convergences in behaviour and aspirations, there are growing divergences of opinions on family matters between the different national States, and even within a given society. It is true that there is a wide number of issues to debate on: if the issue of divorce has reached a certain agreement, there is nevertheless the issue of children born out of wedlock, which in many States remains a sensitive issue—, as it is equality of men and women. On the other hand, besides these, new issues have arisen, such as new models of family life, children's rights, or solidarities between generations. Furthermore, issues concerning same sex marriage, medically assisted reproduction, and more generally the dominion humans have on life and human beings all of which divide deeply opinions and beliefs of our contemporary societies. It is safe to say that family matters have become nowadays a major political issue.

Beyond diversity, beyond divergences, something is however constant : opinion polls published in different States show that for the large majority of respondents, family remains a core value, regardless of its form, and the rules to which it is subjected. And this is yet another reason to keep our mind wide open, and, without giving up our beliefs, keep on, in our International Society, on the path of study and dialogue.

Hugues Fulchiron  
[hugues.fulchiron@free.fr](mailto:hugues.fulchiron@free.fr)

## **REPORT OF THE NEWSLETTER EDITOR**

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This edition of the Newsletter features 4 more brief articles about family law changes in Argentina, Australia, the Czech Republic, and Russia for the “What’s New?” section. Your reports are particularly welcome in the intervals between World Congresses and we continue to learn much from you. We would love to have others also write about developments of interest in their countries in the fall. 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 fall newsletter, we ideally would receive your report, news or announcement by October 15th, 2017. We also continue our Comparative Law series, working this time from a child support problem that Marsha Garrison kindly offered. These brief family law questions and your “answers” from your countries’ perspective and using your bodies of law are informative but also useful for comparative family law. Please

let us know if you find them valuable. If you have a problem to offer for future editions, I would be grateful to hear from you.

If you change your email address, could you please amend your entry in the directory on the website, or email your new email address to [patrick.parkinson@sydney.edu.au](mailto:patrick.parkinson@sydney.edu.au). As always, I and the Executive Council welcome comments about the general format of the newsletter.

Robin Fretwell Wilson, Editor  
*The Family Letter*  
[wils@illinois.edu](mailto:wils@illinois.edu)

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

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The 2017 edition's chapters have all been reviewed by the general editor and sent to Jordans for their edits. Dominique Goubaux has again been responsible for translating the abstracts into French. There will be 20 chapters representing all inhabited continents except South America. We therefore hope that someone from Argentina or Brazil can contribute to the next issue. We would also greatly appreciate an article from Japan since there has been no submission for several years. While we have a number of regular contributors, we would welcome new ideas of people who might wish to add their work.

Please check your address on the website. If the mailing address is not accurate and up-to-date, the new edition will not be sent to you.

Margaret F. Brinig, General Editor  
International Survey of Family Law

## **TREASURER'S MESSAGE & INSTITUTIONAL MEMBERSHIP**

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On January 1, 2017, the ISFL had in its accounts €76,871.83 (see full 2016 financial report here <http://www.isflhome.org/Resources/Newsletters/treasurerreport.pdf>). It should be, however, admitted that the ISFL yearly spends more money than it receives. For instance, in 2016 the ISFL had a deficit of €5,939.50, and in 2015 - of €7,971.24. This has to do with the relatively high costs of the ISFL Publishing survey that is yearly received by every ISFL full member and relatively low amount of the ISFL membership contribution. In order to improve the situation in 2017, the Executive Council has appointed a commission that is going to investigate the possibilities to bring the ISFL membership contribution in line with the actual needs of the society.

Prof. Dr. Masha Antokolskaia  
[m.v.antokolskaia@vu.nl](mailto:m.v.antokolskaia@vu.nl)

## **NEW INSTITUTIONAL MEMBERSHIP**

### **for organizations with less than 20 members.**

- Institutional rate at 3 times the individual rate for one, three or five years.
- One hard copy of the survey
- Entitlement of up to four members of the organization to attend any ISFL conference at the members' rate.
- Receipt of the newsletter by the secretary of the Society who can then forward it on to members.
- Password access to the members' only section of the website.

### **for organizations with more than 20 members to**

- Institutional rate at 5 times the individual rate for one, three or five years.
- One hard copy of the survey
- Entitlement of up to six members of the organization to attend any ISFL conference at the members' rate.
- Receipt of the newsletter by the secretary of the Society who can then forward it on to members.
- Password access to the members' only section of the website.

Individual rates vary depending on whether you sign up for one, three, or five years.

Individual rates vary depending on whether you sign up for one, three, or five years.

Individual rates are posted on the website.

## **REPORT OF WEBMASTER**

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In recent months a number of enhancements have been made to the website. First, PDFs of the full volumes of the International Survey of Family Law 2015 and 2016 have been uploaded to the members' only section of the website. Secondly, all the surveys from 2006 onwards have been broken up into chapters. It is now possible to search for information in any of those chapters using the Survey Search tool which can be found in the members' section.

It is important to be quite precise about your search. If you search for the word 'child' it is likely that the search would find almost every chapter published. If you can narrow your search to a more unusual word, it is more likely to yield fruitful results. You can also search by country and by year.

We have changed the payment mechanism to join or to renew membership of the ISFL, as some members were having problems making credit card payments through the website. We have now integrated a different credit card payment system which seems to have resolved all the problems.

We welcome contributions to the website of any material, including information about conferences of an international character which may be of interest to members.

Prof. Patrick Parkinson  
University of Sydney

## CONFERENCES AND CALL FOR PAPERS

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**ADULTS & CHILDREN IN POSTMODERN SOCIETIES**  
**INTERNATIONAL FAMILY LAW CONFERENCE**  
July 6 & 7, 2017  
Brussels – Auditorium Maisin, Université Catholique de Louvain



The conference will bring together family law experts from over 19 jurisdictions: Algeria, Argentina, Australia, Belgium, Canada, Democratic Republic of the Congo, England and Wales, France, Germany, Ireland, Italy, Japan, Lithuania, the Netherlands, Romania, Spain, Switzerland, Sweden, USA.

The conference will provide a critical comparative study of the ways countries recognize and protect legal relationships between adults and children in a contemporary context characterized by massive changes in family structures and by an increasing diversity of family configurations based on an expanding range of potential biological, social and emotional ties.

For more information on the conference and to register, please [click here](#).

The proceedings of the conference will be published with Intersentia.

Geoffrey Willems  
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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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**JOURNAL OF THE AMERICAN ACADEMY OF  
MATRIMONIAL LAWYERS**

Call for Papers



Professor Mary Kay Kisthardt, of the University of Missouri-Kansas City School of Law and Executive Editor of the Journal of the American Academy of Matrimonial Lawyers, is seeking submissions for possible publication in a forthcoming volume. ISFL members who have published with Mary Kay include Peg Brinig, June Carbone, and Robin Fretwell Wilson. In addition to the articles being published in print, they will also be posted on the International Academy of Family Law website. Articles should be between 3,000 and 10,000 words, and the deadline for initial drafts is August 15, 2017.

Mary Kay Kisthardt  
[KisthardtM@umkc.edu](mailto:KisthardtM@umkc.edu)



**THE NEW ART OF FAMILY: DEVELOPMENTS IN THE LAW OF ASSISTED  
REPRODUCTIVE TECHNOLOGIES**

SEPTEMBER 14, 2017

UNIVERSITY OF ILLINOIS COLLEGE OF LAW

**Save the Date**



Naomi Cahn, the Harold H. Greene Professor of Law at The George Washington University Law School, will speak at the College of Law on Thursday, September 14, 2017, at 12p.m. The University of Illinois Family Law and Policy Program will award its 2017 Lifetime Achievement award in Family Law to Naomi R. Cahn, the Harold H. Greene Professor of Law at The George Washington University Law School. Professor Cahn, also a Senior Fellow at the Evan B. Donaldson Adoption Institute, will present “The New ART of Family: Developments in the Law of Assisted Reproductive Technologies” at her receipt of the award in September. Professor Cahn joins inaugural recipients John Witte Jr. of the Emory University School of Law, Professor William Eskridge of Yale Law School, and Harry D. Krause of the University of Illinois College of Law.

Robin Fretwell Wilson  
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**MARRIAGE AND FAMILY LAW RESEARCH PROJECT  
SYMPOSIUM ON FAMILY AND RELIGION**

October 13, 2017

J. Reuben Clark Law School, Brigham Young University



The Marriage and Family Law Research Project at the Brigham Young University Law School and the Ave Maria Law School will co-sponsor a Symposium on “Family and Religion.” That one-day symposium will be held at the J. Reuben Clark Law School at Brigham Young University on Friday, October 13, 2017. Law professors are welcome to attend at no cost. Papers will be published later in the Ave Maria Law Review and in the BYU Journal of Public Law.

Lynn Wardle  
[wardlel@law.byu.edu](mailto:wardlel@law.byu.edu)



**BREXIT AND FAMILY LAW CONFERENCE  
TRINITY COLLEGE, CAMBRIDGE  
MARCH 27, 2017**

This informative and topical conference, at Trinity College, Cambridge, was jointly put on by the new family law research centre based at the Faculty of Law in the University of Cambridge – [Cambridge Family Law](#) – and [Child & Family Law Quarterly](#) (CFLQ), and supported by Lexis Nexis. The conference coincidentally took place just two days before the UK government triggered Article 50 TEU, thus beginning the process of leaving the European Union, making it immediately relevant to Family Law practitioners.

Over 80 participants attended: a mixture of practitioners, Family Law academics and students, including representatives from some EU governments and Central Authorities. The conference provided a perfect opportunity for networking and initiating illuminating (and mostly amicable!) discussions. A wide range of areas of family law were considered with topics covering everything from financial provision on divorce, to international child abduction, to rights of children in immigrant families.

The first panel of the day was chaired by Jens Scherpe, Director of Cambridge Family Law. Anatol Dutta from the University of Regensburg spoke first and compared the Brexit situation to divorce on demand (a comparison that continued throughout the different speeches of the day). He argued that Member States will not lose anything from the UK leaving the EU; instead it will be the UK that will feel the bigger change as they become treated as a third state by remaining EU states. Dutta suggested that Member States should require the UK to take ‘all or nothing’ with regard to EU Family Law.

Janeen Carruthers and Elizabeth Crawford, both from Glasgow University, presented a more theatrical illustration of the different arguments as to whether Brexit would be a positive thing for Family Law. They each illustrated alternative views and the arguments being put forward for either side. It was especially interesting to consider Brexit from the Scottish perspective. Ultimately they concluded with a warning that the UK should be careful: if it still has a link with the European Court of Justice then it will need to be aware that it will have lost the right to have a UK judge sitting in the Court.

Paul Beaumont, from the University of Aberdeen, concluded this first panel by presenting the view that, with regards to child law, the UK would be in a better position once it has left the EU. His argument focused around the idea that the Hague Convention provides more workable procedures than the current EU systems. He was particularly critical of the current ‘override system’ in relation to Child Abduction proceedings, arguing it gives ‘false hope’ to parents.

The second panel was chaired by Joanna Miles, from Cambridge Family Law and the CFLQ. Nigel Lowe opened the panel presentations with his discussion focussing on the effect of Brexit on the law on international child abduction, and the future application of the revised Brussels II Regulation. He spoke about how the UK has much to gain from the proposed revisions, and should therefore seek to continue to be bound by the Regulation rather than simply enact its provisions domestically. In this way, it will be able to continue to enjoy the reciprocity of obligations under the Regulation.

A different perspective on Brexit and Family Law was then offered by Helen Stalford, from the University of Liverpool and the European Children's Rights Unit. She spoke about children's Right to Respect for Family Life under the ECHR, and how this would be affected by Brexit. It was especially interesting to consider the effect that Brexit would have for families who were immigrants or asylum seekers. Stalford did not seem optimistic about the national provisions for such children, if EU provisions were to be withdrawn. Her presentation served as a reminder that issues of Family Law overlap hugely with politically sensitive areas of discussion such as immigration rules.

This speaker panel was then concluded by Ruth Lamont from the University of Manchester. A key aspect of her presentation on the effect of Brexit for cross-national family life was the discussion around the principle of 'mutual trust' – how this would be difficult to maintain post-Brexit. Lamont also considered the possible application of the Hague Convention instead of EU Law, and highlighted the problems associated with this: that the Hague Convention is often applied by reasoning in analogy with the Brussels IIa regulation, something that would be hard to continue post-Brexit.

The final panel of the day was a practitioner discussion, chaired by Gillian Douglas from the CFLQ. Here, practitioners, including Rebecca Bailey-Harris, David Hodson, Rachael Kelsey, Tim Scott QC, Henry Setright QC and Gavin Smith, each gave short five-minute presentations on a particular aspect of Brexit and Family Law. These paved the way for a lively (and occasionally heated) discussion amongst the presenters and the audience on many of the themes that had emerged throughout the day.

The general conclusion from all of the discussions seemed to be that the implications of Brexit for Family Law remain uncertain. Possible advantages and disadvantages of Brexit were put forward by the various speakers and keenly debated. The general agreement from discussions was that there would clearly be some kind of effect on Family Law. Debates focused around whether relying on EU law or previous conventions (such as the Hague Convention) would be preferable, whether it would be realistic for the UK to consider European Court of Justice judgments without having a UK representative in the court, and to what extent the UK government would consider these points in the course of their Brexit negotiations. However, in discussing exactly what the effect of Brexit would be, everyone was very much in agreement that it would have to be a case of 'wait and see.'

Jo Miles  
[Jkm33@cam.ac.uk](mailto:Jkm33@cam.ac.uk)



The Family Law and Policy Program began a new series, *A Lens Into Family Law Practice: Conversations with Members of the Practicing Bar*, welcoming Michael Strauss, Partner at Schlesinger & Strauss, LLC as the inaugural speaker.

Along with the Epstein Health Law and Policy Program, the Family Law and Policy Program is joining together with the [Carl R. Woese Institute for Genomic Biology](#) at the University of Illinois, the [University of Virginia School of Medicine Center for Biomedical Ethics and Humanities](#), and MedAxiom to present a Symposium on the Medicalization of Poverty, which will explore creative approaches for improving the life chances of the most disadvantaged among us. Selections from the Symposium will be published in the Journal of Law, Medicine & Ethics in a special edition.

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).

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

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### **NEWS FROM AUSTRALIA**

Wide-ranging enquiry into changing the Family Law System in Australia announced by the Australian Government:

On 9 May, 2017 the Australian Government announced the first comprehensive review into the family law system since the commencement of the Family Law Act in 1976 with the intention of long term fundamental reform to better meet the needs of modern Australian families. As well, the Government announced an \$80 million funding boost to frontline family law and family violence services.

George Brandis Australia's Attorney General has directed the Australian Law Reform Commission to conduct the comprehensive review to ensure the family law system meets the contemporary needs of families and effectively addresses family violence and child abuse.

This review will report by the end of 2018 with interim reports to be delivered on key issues, providing recommendations to change the system.

The Government will also soon release amendments to the Family Law Act to ensure that victims of family violence are not personally cross-examined by alleged perpetrators, or required themselves to cross-examine their alleged perpetrator.

As well, the Government has announced controversial changes to assist with the resolution of parenting disputes and to improve the ability of courts to make faster and higher quality decisions.

The Australian Government will invest \$12.7 million to establish *Parenting Management Hearings* – a non-judicial forum for resolving simpler family law disputes between self-represented litigants. Unlike the traditional system where two opposing sides present their cases, those managing the hearings will run inquiries and gather evidence to inform their decisions. It is believed that lawyers generally will not be involved. It will be initially rolled out in Parramatta, NSW with a second early site to be announced later.

This project is based on the Informal Domestic Relations Trial (IDRT) pilot run out of Deschutes County Circuit Court in Oregon USA.

Secondly, to assist having cases involving vulnerable families dealt with sooner, \$10.7 million will be directed to the Federal Circuit Court of Australia, the Family Court of Australia and the Family Court of Western Australia to engage more family consultants. Family consultants are qualified social workers and psychologists who specialise in child and family issues after separation or divorce.

The Government is also spending a further \$3.4 million over two years to expand the domestic violence unit pilot, established as part of the Women's Safety Package in September 2015. This new funding will establish up to six new domestic violence units that deliver integrated specialist legal and social support to women experiencing, or at risk of, domestic and family violence.

The announcement by the Government of the review of the Family Law Act and particularly the *Parenting Management Hearings* pilot scheme was made without consultation with the legal profession and it is likely that any attempts to downgrade the Family Law Court system in Australia will be strongly opposed.

Richard Maurice  
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## NEWS FROM THE CZECH REPUBLIC

Act on the Registered Partnership and So-Called Negative Rule Making by the  
Constitutional Court of the Czech Republic

European Court of Human Rights noted that there is an emerging European consensus towards legal recognition of same-sex couples. Moreover, this tendency has developed rapidly over the past decades as many new acts passed by national law-makers in Europe reflected the evolution. However, there are more models of legal regulation in different countries.

The Czech Republic does not stay out of the European development.

In 2006, after many futile attempts the Parliament of the Czech Republic passed the Act on Registered Partnership (Act No 115/2006 Coll.). The President of the Czech Republic applied his power of veto but it was overridden in the second proceeding and the Act on Registered Partnership was passed. The main point of President's objections was that the draft did not regulate partnership - rights and duties of the partners, but just registration of itself. In addition, the new Act on Registered Partnership was said to be without any conception as it was passed only due to deputies' activities. Registered partnership was sometimes similar to marriage (maintenance duty between the partners and ex-partners) and sometimes similar to cohabitation without marriage (no duty to live together, no duty to be faithful to each other, no duty to help each other, no community property, no common tenancy of a flat by operation of law, no right to adopt a child neither as a single person, nor as a common one, no right to become common foster parents or guardians, etc.).

Ten years later, in 2016, thanks to the case law of the Constitutional court of the Czech Republic, there were done some changes in this field. The discriminative provision, that prohibited a single adoption by one of the partners during the registered partnership (§ 13/2 Act No 155/2006 Coll.), was cancelled (by the decision Pl. ÚS 7/15 from the 14th June 2016; there were 4 dissenting opinions). However, a common adoption of a minor child, including a step-parent adoption, is still allowed only to a husband and a wife.

Zdeňka Králíčková  
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## **NEWS FROM RUSSIA**

The Russian Family Code was recently amended (May 12, 2017) by providing requirements to a child's first name: it should not consist of numbers, combination of letters and numbers, bad language, titles, ranks and job positions. The law intends to prevent parents from giving their children "uncomfortable" names.

Olga Dyuzheva  
[odyuzheva@gmail.com](mailto:odyuzheva@gmail.com)

## **COMPARATIVE LAW PROBLEM & COUNTRY RESPONSES:**

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Many thanks to Marsha Garrison for generating this problem for discussion.

**Question:**

Mother and Father, both age 35, are the parents of two children, age eight and five. Mother and Father have been married for nine years. They are now planning to divorce. Both Mother and Father work outside the home. Father works full time as an electrician. He earns about 4000 euros per month. Mother works part-time as a nurse. She earns 1500 euros per month. Neither parent has children with another partner.

Both of Mother's and Father's children attend school from 8:30 am-3:30 pm. Both children attend publicly funded schools; Mother and Father do not pay for either child's school program. Neither child has special educational or health-care needs.

Mother has planned to return to work full-time when the children are older. If Mother worked full-time, her earnings would be about 3000 euros per month. An after-school program is available that would provide child-care from 3:30-6 pm at a cost of 400 euros per month per child.

Mother and Father have agreed to sell the family home and split the net proceeds, anticipated to be about 150,000 euros. Mother and Father have also agreed to split equally their remaining assets, valued at about 100,000 euros. Each plans to use his or her share to make a down payment on a new, smaller home in the same neighborhood in which the family currently lives so that the children can continue to attend the same school. Mother and Father have also agreed that neither spouse will receive spousal support.

**VARIATION ONE:**

Mother and Father have agreed that they will share legal custody of the children. They have also agreed that Mother will have primary residential care of both children and that Father will have residential care on alternate weekends (Friday night until Sunday night, i.e., 98 nights) and for three vacation weeks during the year (21 nights). Is the award of child support discretionary or based on a formula/guideline? If the award is discretionary, what factors are relevant and is it possible to predict an award based on these facts? If yes, what would it be? If a formula/guideline applies, does it produce a presumptive award? If a formula/guideline applies, what award would it suggest on these facts?

**VARIATION TWO:**

Mother and Father have agreed that they will equally share residential care of the children. The children will spend alternate weeks at each parent's home, which will be within five kilometers of each other. How, if at all, would this change affect the child support award?

Answers are reported in Euros.



**ANSWER FROM ARGENTINA**

Variation one :

- The award of the child support is discretionary.
- Relevant factors: Time spent with the child. Proportion to father's/mother's income, according to the child's necessities. However, personal care for the child counts as alimony (Art. 660)
- There is no formula. The Judge will take into account the above-mentioned criteria. There is a non-written rule implying that a child has the right to participate from its parent's welfare.

#### Variation two

- In principle, when residence is shared both parents are supposed to contribute equally to alimony.
- However, once again, shared residency implies that one of the parents assumes more responsibilities than the other (in Argentina this is possible even with shared residence), the assumption of care of the child would be considered as a contribution to alimony.
- Furthermore, there is a special rule dealing with this issue (Art. 666). If one of the parents has a larger income, the child has the right to enjoy an equal welfare in both family homes. This means that the wealthier parent will have to contribute with a larger sum to support the child.

No need to calculate, because there are no strict rules, everything depends on several concrete issues the Judge will take into consideration (for instance, if there are elder members of the family that need to be attended to, or on the activities and habits of the child and their parents, etc...).

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Pontificia Universidad Catolica, Argentina



#### **ANSWER FROM CHINA**

Regarding VARIATION ONE:

Is the award of child support discretionary or based on a formula/guideline?

In China, there is a statutory formula for the child support. According to article 7 in *the Opinions on Child Support When People's Courts Hearing Divorce Cases* (hereinafter referred to as *the Child Support Opinions 1993*) issued by the Supreme People's Court in 1993, the amount of child support payment can be determined based on the actual needs of the children, the affordability of both parents and the actual living standards of local community. Where the other parent has a fixed income per month, child support can be paid at a rate of 20 to 30 per cent of the total monthly income. If two or more children need to be raised, the proportion



shall be improved appropriately, but generally not more than 50 per cent of total monthly income.

It is shown that the direct caregiver in this case (based on their agreement) is the mother, while the father raises the children indirectly in Chinese legal terms. In that case, the father needs to pay child support. Considering the fact that the children will live with the father in the weekends (98 nights) and in the three vacation weeks (21 nights) (altogether 119 nights), the father can pay an amount of child support less than 50% of his monthly income proportionately. The specific figure would be determined by the judge, about 1,200-2,000 euros. Generally, it should be paid monthly or quarterly. Otherwise, for example that the father will leave his common residence, he can pay in a lump sum.

Regarding VARIATION TWO:

How, if at all, would this change (the manner of the children raised alternatively) affect the child support award?

In China, article 6 in *the Child Support Opinions 1993* further stipulates that where both parents agree to take turns to raise their child and it is beneficial to protect the child's rights, the court can grant their agreement. If the agreement is not beneficial to the child raised, it would not be granted. The court thus will determine that the father or the mother would be the direct caregiver, the other parent has the visitation right to the children and pays an amount of child support about 50% of his/her monthly income proportionately.

Chen Wei, Southwest University of Political Science and Law  
Shi Lei, Southwest University of Political Science and Law



### **ANSWER FROM CHINA**

For the first variation, the award of child support is discretionary. For the parents have made an agreement about their children's care program according to their own will and condition. And relevant factors can effect the decision. Such as the ability of supporting child, adequate time for accompanying child, economic capability and physical condition and both their will and their children's will about living together. According to formula/guideline, parents ' decision shouldn't violate the Best Interests of Child Standard, so for the children's interests, the parents ' decision can keep their joint custody to their children, and avoiding child scrambling after divorce. And It allows that parents can share joint care of their children. As to this case, the parents decided the mother have primary residential and father have residential care on alternate weekends and for three vocation weeks during the year. From my point of will, the mother doesn't have enough time to stay with their children, because during work days the children stay in school and she has to work and when weekends come, their children go to fathers home. It will do harm for children's growth mentally. And for the after school program it may be a difficult for mother because of low salary.

For variation two, if the parents decide that they will equally share residential care of the children and spend alternative weeks at each parent's home, it will be favorable for both themselves and their children. For one thing, their children can get both father and mother's care without long distance, it can keep children's life normal and avoid huge variation to their normal lives. It is conform to Best Interests of Child Standard. For another, this plan is convenient for parents to make common decisions about some important things about their children. It ensures that parents have common responsibilities for children's growths and support and make it available.

Xia Li

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## ANSWER FROM ENGLAND & WALES

### *Introductory observations*

English child support law applies identically to all parents/children, regardless of the nature of the parents' relationship – so the fact that these parents were married is immaterial.

In English law, both parents automatically retain full legal status – parental responsibility – following divorce (Children Act 1989, s 2), and so the “decision” to share legal custody would simply not arise in English law.

Child support in English law is formally calculated by means of a statutory formula: see generally Child Support Act 1991, esp Sched 1. Online calculators are available for parents to work out their liability. See <http://www.cmoptions.org/>. The earnings of the primary carer are irrelevant to the calculation of child support, which is based exclusively on the non-resident parent's gross earned income from the last tax year. The lack of other children is pertinent, as the presence of “relevant other children” (CSA 1991, Sched 1, para 10C) in the non-resident parent's new household would otherwise permit a reduction in the amount of support payable.

Parents are actively encouraged to reach their own “family-based arrangements” for child support. In theory of course, those parents could agree to pay an amount different from what the law would prescribe – or to agree that no support will be paid at all, even where it is formally due. But such agreements are not legally binding, so each parent remains free at any time to seek a formal calculation. Disputed cases of child support are dealt with by a statutory agency – the Child Maintenance Service – not by the family courts, save where the parties have agreed an amount for child support which the court then enshrines in a “consent order”.

### ***Variation 1***

Under the statutory formula:

- the father as “non-resident parent” (CSA 1991, s 3)
- of two “qualifying” children (s 55)
- is prima facie liable to pay child support to the mother as “parent with care” (s 3)
- at a rate of 16% of his gross weekly earned income up to £800 and 12% of any weekly earned income beyond £800 – this stepped formula takes account of the different income tax rate applicable to higher earnings (Sched 1, para 2)

With earnings of €4,000 per month, that equates to €923 per week, which on today’s exchange rate (€1 = £0.84) is £782, so below the £800 threshold. So the father would be liable to pay £125.12 per week in child maintenance, or £542.19 per calendar month – i.e. €147.52 per week or €639.25 per calendar month.

However, additional rules reduce the amount payable by reference to the number of nights per year that the child spends with the non-resident parent. Assuming 119 nights total across the year, that entitles the father to have the liability reduced by two-sevenths (had it been no more than 103 nights, the reduction would have been one-seventh). So that in fact leaves this father with a liability of just €456.61 per calendar month. (See generally CSA 1991, Sch 1 para 7).

There are only very limited grounds on which the result produced by the statutory formula may be reduced, following an application to the agency for a discretionary “variation”, and there is no indication on the facts that any of those applies here: CSA 1991, ss 28A-G, Sched 4A and 4B and accompanying regulations.

### ***Variation 2***

The solution to this case will depend upon whether the parents can be said to be providing genuinely equal amounts of day to day care for the children. This is not a matter of simply calculating the number of overnight stays in each house, but of looking in detail at the child’s day to day arrangements and the parents’ input, and the sharing of expenditure on larger items such as clothing and equipment.

Unless there is evidence to suggest otherwise, whichever parents receives the child benefit (a widely available non-means-tested state benefit) for the child or children is deemed to provide more day to day care: Child Support Maintenance Calculation Regulations 2012, reg 50. If the mother retains her status as the “parent with care” and the father “non-resident parent” on this basis, then the father will remain liable to pay child support. But his payment will be half that calculated above, in recognition of the fact that the children will be spending half the nights of the year with him: so half of €639.25 per month – i.e. €319.63.

But if the parents are found to be providing truly equal day to day care, then neither will be regarded as “non-resident” and no child support will be payable by either parent – despite the disparity in the household incomes.

Jo Miles, University of Cambridge  
Nigel Lowe, Cardiff University



## ANSWER FROM ITALY

In order to answer the proposed Comparative Look at Family question in relation to Italy, we should consider the relevant sources of law. All pertinent provisions reside within the Italian Civil Code.

In the first place, art. 315-*bis* of the Italian Civil Code affirms children’s right to receive support from both parents. As a redundancy, art. 147 of the Italian Civil Code reiterates this principle in referral to marriage and children born into it. It is although art. 337-*ter* of the Italian Civil Code that works as a key factor when it comes to determine the award of child support. This extensive provision details relevant criteria in determining the amount of child support and predicting how it should divide within the obliged parties.

Just by considering this brief framework, it is possible to provide a comprehensive answer to both proposed variations.

The primary thing we should bear in mind is the fundamental rule set out in art. 337-*ter* of the Italian Civil Code: each parent has to contribute to child support correspondingly to his/her incomes. Therefore, child support should split between both parents in a manner that is proportionate to their financial position. In order to understand if a parent will be charged with support award, we have to take into account both salaries and financial assets of each party.

In the case given, both parties have an equal amount of financial assets. This entails the remaining marital assets (which they will divide equally) and what they will obtain by selling the family house. Altogether, 125.000 euros each. However, their salaries differs considerably, at least for the time in which the mother will be working part-time. Father’s incomes are over 50% higher than the mother’s one (4000 euros vs. 1500 euros per month). This data is bound to affect higher contribution of father into children support.

The proportional criterion does not mean we can mathematically assume the exact award of support though, for the many reasons we will carefully explain below.

First of all, although parents cannot decline their obligation to contribute to child support, the key criterion (proportionality to incomes) is not compulsory and can easily be subverted by private agreements. This chance indeed strengthened after 2014, when “assisted negotiation agreements” were introduced as an alternative vehicle of dispute resolution within the family

crisis. According to the Italian law, parents could therefore even agree that child support will completely be covered by one of them, assuming that has no negative effect on child's welfare. This kind of agreement will obviously be binding only between the parties, whereof both parents remain proportionally obliged to the child.

Secondly, assuming that parents reach no agreement on child support, the award of child support stays within the discretionary powers of the judge invested in the case. Art. 337-*ter* of the Italian Civil Code provides that the court could award support and that in doing so it should take into account five criteria set by law. The first corollary of discretionary award is that parents can mainly provide for support first-hand, during the time they share with the kids. This is harmonious with the Italian framework on parental responsibility, which demands shared custody as a rule and sole custody as an infrequently applied exception. Ideally, shared custody should combine with equally shared parenting time and direct contribution to the child needs. Obviously, this cannot always happen. Conditions and times of shared custody are laid down according to the child's welfare and differ on a case-to-case basis. Moreover, equally shared residential care does not imply absence of support award. Economic disparity still has the greatest influence and even the parent that has primary residential care – if he is the “financially stronger one” - would need to pay child support to the other parent.

At this point, the Italian legislator provides for criteria to which anchor child support. Neither of them gives the opportunity to predict an exact support award, but we could foresee an approximate award based on this indexes and trends in the courts' praxis.

There are five different voices the judge should consider in determining whether to appoint an award and what amount it should be.

Firstly, the judge is reminded to take into consideration the actual child needs (which comprehend all he requires, not only instruction and health but also secondary needs such as sport activities). This relates to the second criterion, which demands for conditions of parity to the life standard the child had within the marriage or cohabitation of his parents.

The third parameter set by the Italian legislator is, in accordance with the forth, the one we should mostly take into consideration in order to solve the question asked. It is indeed crucial to consider the amount of time the child shares with each parent. This principle mirrors the fact that the concrete way shared custody is implemented has consequences on expenses. The forth criterion recalls the necessity to scrutiny the financial resources of both parents, while the fifth insists in proper consideration of the domestic contribution of each parent.

In conclusion, this panoramic view of support child law in Italy consents to give an answer to the question asked and to underline the differences that are involved in the two variations.

Incidentally, it has to be noted that some of the given data have no impact on the case. Duration of marriage does not weigh on support award, while the age of spouses could only affect it indirectly (when it influences their ability to work).

As noted above, the pillar of the Italian law on child support resides within the idea of shared custody and shared obligations in referral to the child. The award of child support is discretionary and does not follow compulsory rules, neither has a precise formula. It is not possible to predict the exact amount that will be award by the judge.

Nevertheless, the guidelines laid down by the law allow us to make a guess in this hypothetical situation.

The evaluation of the financial resources of both parties determines how they should correspondingly concur to the obligation of child support.

Unless the parents agree on different conditions, as long as the father earns a lot more than the mother, he will be charged for support. The actual amount of it may vary in consideration of the time children actually spend with him.

Child support award will surely be higher in the **first variation**, which presents both parents sharing custody and the mother having primary residential care (father staying with the children on alternate weekends for two nights in a row and during vacations for 21 nights). Based on praxis, for the whole period the mother works part time, it is **plausible** that the judge will award the mother **approximately around 1200 euros for children support** (600 euros per child). As soon as she will start working full time again, support award will decrease considerably and we could imagine it to be around **750 euros** (comprehensive of both children).

On the contrary, equally share residential care (**second variation**) would have a proper impact on the amount awarded to the mother for children support, since the father would provide mostly firsthand in the alternate weeks children will spend with him. A support award to the mother would still exist and we could foresee it to be **around 600 comprehensively for the period of time the mother only works part-time**. Her choice to work full time will strongly affect support award, since her incomes will only slightly differ from the father's ones, while time within the children is alike. The judge may even choose to give no award (or a **minimum award**, around 200 euros for both children).

It has to be noted (and **this goes unchanged for both variations**) that as soon as the mother will start working full time again, parents will have to face 800 euros per month for the **after-school program**. This kind of **expense** is an **extraordinary** one (which, according to the Italian law, falls outside child support award). Therefore, parents will split the amount once again proportionally to their different economic position. Notwithstanding with whom the children mainly resides, father will be obliged to pay for after-school in higher proportion for the whole time the mother works part-time, while the difference between each parent's contribution to this expense will only slightly differ when both parents work full-time.

Finally, although the case in question involves minors, according to the Italian law provides support obligations on parents last until the children are economically independent. In accordance to this, the obliged parent would still have to pay for child support after the age of 18, by satisfying its debt directly to the child (and not anymore to the other parent).



### **ANSWER FROM JAPAN**

I am a lawyer practicing in Tokyo. Specializing in international family law.

In similar cases, the mother has the sole legal custody and the father have to pay child support in Japanese family courts.

Children are eight and five, under fifteen. Not private schools. Father's annual income 4000 (around 5933280 yen / year before tax deduction). Mother's annual income 1500 (2224980) -> Child (Children) Support is 70000 yen/month if Mother's 3000 (4449960)-> 600000 yen/month.

Decided by the amount of incomes of both party. Parenting time will not be taken into consideration. Award is not discretionary.

If the mother is not able to know what property he has and who is his employer, the court will not help her to find them and the mother cannot do attachment.

Hiroataka Honda  
<http://www.hondalaw.com>



### **ANSWER FROM RUSSIA**

There is no such thing as family home according to Russian law.

The legal regime of marital property is community property unless spouses decided otherwise in a prenuptial agreement. If home was purchased during marriage each of the spouses is entitled to its half. In certain cases court can increase a share of a spouse who has custody after divorce.

Shared custody is not directly permitted by the Family Code. However courts sometimes grant shared custody at parents' request if they convince the court that it meets child's best interests.

A parent who has a custody may ask for the child's support which is  $\frac{1}{4}$  for one child,  $\frac{1}{3}$  for two children and  $\frac{1}{2}$  for three and more children of the other parent's income (Family Code, Art. 81).

In rare cases of shared custody parents can make an agreement on a different ratio, the agreement needs to be approved by court, i.e. court should be convinced that the agreement meets child's best interests.

Variation one: It is likely that court will order father to pay child support calculated in accordance the above rule.

Variation two: the court would look for the same standard of life for a child with each parent. Thus agreement between the parents should grant same life standards for a child is likely that if one parent has lower income then it should be “equalized” by child support from the other parent.

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## ANSWER FROM SOUTH AFRICA

In terms of South African law both parents have parental responsibilities and rights (previously referred to as “parental authority”), which includes care (custody), guardianship, contact (access) and maintenance (see section 18 of the Children’s Act 38 of 2005).

Generally, the duty of support depends on the facts of each case and is based on the child’s needs and the parent’s ability to contribute. In addition, the principle of the best interests of the child is taken into consideration (section 28 of the Constitution and sections 7 and 9 of the Children’s Act 38 of 2005). Upon divorce the parents usually enter into a settlement agreement, which allocates specific amounts for particular expenses. Alternatively, they could agree on a certain amount with an additional clause providing for the payment of the child’s reasonable expenses relating to, for example, medical care and education. These settlement agreements are included into the decree of divorce.

The Divorce Act 70 of 1979 provides that a decree of divorce shall not be granted until the court is satisfied that the provisions made or contemplated with regard to the welfare of any minor or dependent child of the marriage are satisfactory or are the best that can be effected in the circumstances (section 6(1)(a). In *Kemp v Kemp* 1958 3 SA 736 (D) it was held that the court as the upper guardian of the child, when it grants a decree of divorce, usually regulates the duty of support of the parents, and that the order for maintenance is ancillary to the common-law duty. Section 6(3) determines that a court granting a decree of divorce may make any order which it may deem fit.

After divorce, both parents are obliged to support their children, which duty is apportioned between both parents in accordance with the respective means of each parent (section 15(3)(a) of the Maintenance Act 99 of 1998 and section 21(2) of the Children’s Act); *Herfst v Herfst* 1964 4 SA 127 (W); *Zimelka v Zimelka* 1990 (4) SA 303 (W); *Osman v Osman* 1992 (1) SA 751 (w); *B v B* [1999] 2 All SA 289 (SCA)) .



The scope of the duty of support in respect of a child depends on the facts and circumstances of each case. Relevant factors to be considered include: the child's needs, age, state of health, the means, income and social status of the parents (*Kemp v Kemp* 1958 3 SA 736 (D); *Herfst v Herfst* 1964 4 SA 127 (W); *Vedovato v Vedovato* 1980 1 SA 772 (T)). Also relevant is the question whether the care-giving parent meets his or her duty of support by taking responsibility for the daily care (*Zimelka v Zimelka* 1990 (4) SA 303 (W); *B v B* [1999] 2 All SA 289 (SCA)) .

First, the needs of the child must be established. Secondly, the amount of each parent's maintenance contribution will be calculated (based on the means of the person concerned), see *Mentz v Simpson* 1990 4 SA 455 (A).

A court which issues a maintenance order should only stipulate the amount to be paid and not specify how much the amount is for individual expenses, e.g. school fees, or medical expenses (*Du Toit v Du Toit* 1991 (3) SA 856 (O)).

#### **Variation one:**

Parents share legal custody of the children. However, the mother has primary residential care, which means that she may decide on matters relating to the daily care, e.g. the education of the child(ren) ((*Mentz v Simpson* 1990 4 SA 455 (A)). On the basis of section 15(2) of the Maintenance Act the children are entitled to reasonable maintenance, which provides for proper living and upbringing and includes the provision of food, clothing, accommodation, medical (and dental) care and education. Usually the non-care-giving parent (*in casu* the father), is ordered to pay the care-giving parent (mother) a specific amount of maintenance for the children on a monthly (or weekly) basis.

In making an award of child support, the courts use the guideline of a pro rata contribution, based on the needs of the children (not a presumptive award/no prescribed amount; every award depends on the circumstances of each case). Thus, after establishing the needs of the children, the parents will have to contribute pro rata, according to their means, which includes the assets/capital (*Lamb v Sack* 1974 2 SA 670 (T); *Harwood v Harwood* 1976 4 SA 586 (C)) and the income of each parent (at the moment 4000 euro v 1500 euro). However, the latter might be adjusted in future, in case the mother would take up full-time employment, provided that the decree of divorce includes a maintenance order. In terms of South African law one can only request the amendment of a maintenance order in the maintenance court if the divorce order included a maintenance order.

#### **Variation two:**

When parents equally share residential care of the children, the guideline of a pro rata contribution, based on the needs of the children still applies. Each parent pays for his/her own home etc. The costs relating to the needs of the children (which include schooling, sports, extra-mural activities etc) need to be shared on a pro rata basis, according to each parent's means.



## ANSWER FROM SOUTH KOREA

### VARIATION ONE:

The award of child support is, basically, up to the family court judge's discretion. The judge should consider the child's living standard and needs, the parent's financial status, and all other relevant factors when she decides the amount of award, according to article 977 of the Korean Civil Code.

The Seoul Family Court, the biggest family court in South Korea, however, announced the guideline for child support in 2009 and revised it in 2014. Although this guideline is not binding, many other family courts adopted the same or similar guidelines for child support. This guideline suggests a prima-facie award for child support, based on the monthly total income of the parents, their residence (in urban or rural area), and the minor child's age. In the case provided, the parents' monthly total income is 5,500 euros, and the children's ages are eight and five for each. Suppose they live in urban area and the exchange rate is approximately 1,230 Korean won per euro. Then, the child support for elder one would be 1,115 euros per month, and the child support for younger one, 1,085 euros per month. Thus, the total amount would be 2,200 euros per month. As the father's monthly income is 4,000 euros and the mother's, 1,500 euros, and the mother will have the primary residential care for both children, the father should pay the mother 1,600 euros per month as child support (= 2,200 euros X 4,000/5,500). All other factors such as the family asset division and the waiver of spousal support have little to do with this decision. Of course, this figure is just a presumptive one, and the judge can adjust the amount when she sees it proper or necessary.

### VARIATION TWO:

Equally shared care of minor child between divorced parents is not common in South Korea, though it is definitely acknowledged. Thus, neither court practice nor the guideline addresses child support issue in this case. Judging by the rationale adopted in the abovementioned guideline, the father seems to be obliged to pay the mother half the total child support, 1,100 euros per month (= 2,200 euros / 2), as child support.

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## ANSWER FROM MASSACHUSETTS, UNITED STATES:

### VARIATION ONE:

Mother and Father have agreed that they will share legal custody of the children. They have also agreed that Mother will have primary residential care of both children and that Father will have residential care on alternate weekends (Friday night until Sunday night, i.e., 98 nights) and for three vacation weeks during the year (21 nights).

Is the award of child support discretionary or based on a formula/guideline? **Based on Guidelines.**

If the award is discretionary, what factors are relevant and is it possible to predict an award based on these facts? If yes, what would it be? If a formula/guideline applies, does it produce a presumptive award? **Yes.** If a formula/guideline applies, what award would it suggest on these facts? **Assuming that neither parent has any costs associated with child care, health insurance, or support obligations to other children, the presumptive award would be € 249,00 per week to Mother (€ 1.079,00 per month).**

### VARIATION TWO:

Mother and Father have agreed that they will equally share residential care of the children. The children will spend alternate weeks at each parent's home, which will be within five kilometers of each other. How, if at all, would this change affect the child support award? **Assuming that neither parent has any costs associated with child care, health insurance, or support obligations to other children, the presumptive award would be € 155,00 per week to Mother (€ 671,67 per month).**

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## ANSWER FROM ILLINOIS AND TEXAS, UNITED STATES:

### *Child Support Across the United States Shares Common Elements*

In the United States, family law, including the awarding of custody and child support payments, are generally within the competence of the states, although federal law has brought some consistency to awards across the states. This means that in the United States, there are 51 separate sets of statutes governing child support. Despite that variability, the states use one of three approaches or models for determining an award of child support: the Income Share Model, the Obligor Model, and the Delaware "Melson" Model, which is used only in Delaware. *See* WALTER WADLINGTON, RAYMOND C. O'BRIEN & ROBIN FRETWELL WILSON, DOMESTIC RELATIONS CASES

AND MATERIALS 339 (2017). The National Conference of State Legislatures is a wonderful resource for academics and others; it reports that the Income Shares Model is the most widely used, followed by the Obligor Model. *See* National Conference of State Legislatures, State Child Support Oversight Entities, <http://www.ncsl.org/issues-research/human-services/state-child-support-oversight-entities.aspx> (current as of May 2017). This review illustrates the difference between the two prevailing by using the law of Virginia as an example of the Income Shares Model and Texas as an example for the Obligor Model.

### **1. Is the award of child support discretionary or based on formula/guidelines?**

**Virginia Income Share Model.** In the Income Shares Model, both parents share child support obligations pro-rata, in relation to how much gross income each earns in relationship to their combined income. The Court first calculates the couple's combined gross income, then generates from a chart a presumptive basic child support amount. To that basic amount the Court adds amount for health insurance coverage for the children, and any daycare expenses required for the parents to work, generating a presumptive final award amount.

So, if Mother has primary residential care of both children (for virtually all of the year, ignoring the facts for a moment), the Court will allocate the total award between the two parents. In this case, she makes €1500; he makes €4000, so the mother contributes 27% of the income and therefore the child support, the father contributing 73% of the income and therefore the child support. Virginia has guidelines for how much "basic" child support will be awarded, based on the combined gross monthly income and the number of children. Here, their combined gross income of €5500 per month yields a basic child support amount of €1187 for 2 children. Va. Code Ann. § 20-108.2. Each parent would then be responsible for their share of the 1187€ based on the percentage of their income. The mother would be responsible 27% of the monthly amount or €320.49 a month, and the father would be responsible for 73% of the monthly amount or €866.51, with the custodial parent (here, the mother) essentially paying herself.

To the "basic" child support amount two additional amounts are added: cost of health care coverage for the two children and the parent's work-related child-care costs. This total for each parent shall be multiplied by that parent's income share. Va. Code Ann. § 20-108.2 ("Any child-care costs incurred on behalf of the child or children due to employment of the custodial parent shall be added to the basic child support obligation. Child-care costs shall not exceed the amount required to provide quality care from a licensed source."). There are grounds for deviating from the presumptive award but there is a high burden for doing so.

On these facts, there is a considerable amount of shared parenting. Then the Court looks to the amount of time the child spends with each parent, which will determine the amount of the child support award. Shared parenting situations may lead to variations when the Court completes a calculation of child support under the Income Shares Model. In Virginia, where a parent has custody or visitation of a children for more than 90 days of the year, the court calculates a shared custody child support amount based on the ratio in which the parents share the custody and visitation of any child or children. The presumptive support to be paid shall be the shared custody support amount and this amount shall then be multiplied by the other parent's custody share.

Here, the father has the children for 119 nights during the year, or 32.6% of the year, and the mother has the children 246 nights or 67.4% of the year. The father would pay €624 to the mother, essentially receiving a €242.51 offset for more time with the children and the mother's share of child support would increase to €563 and what she receives would decrease. Va. Code Ann. § 20-108.2.

**The Texas Obligor Model.** The Texas Family Code states that a child support award will be determined based upon the net resources of both parents. Tex. Fam. Code § 154.062. Texas' Obligor Model is simple; the non-residential parent is required to pay child support to the residential parent. The number of hours of parenting are not factored into the child support award so that the nonresidential parent does not realize an offset for more hours spent with the child. However, the Family Court is free to deviate from the statutory guidelines if the award would be unjust or inappropriate and not in the best interest of the child. Tex. Fam. Code § 154.062. The child support award will be adjusted if an obligor has prepaid health insurance and child care payments but the scenario does not give enough information to determine if offsets apply.

In the scenario given, the father would be the Obligor under the Texas statute since the children will primarily live with the mother. The Texas model sets the support of two children at 25% of the Obligor's Net Resources, which includes 100% of all wages and salary income. Here the father earns 4000 euros per month so his child support obligation would be 1000 euros per month. The child support award may be lowered if the father prepays the health insurance or child card payments for the children. The Court may lower the presumptive award in light of the parents' decision to split the house and other assets or in light of the mother's lower wage. Here, the Court may simply adhere to the statutory guidelines. Generally, support payments would be made monthly.

## **2. How, if at all, would this change (the manner of the children raised alternatively) affect the child support award?**

**Virginia Income Share Model.** In Virginia, under the Family code, parents are free to share residential custody of the children. As before, the amounts of support are shared pro-rata, they reflect the amount of "custody share," meaning the "number of days that a parent has physical custody, whether by sole custody, joint legal or joint residential custody, or visitation, of a shared child per year divided by the number of days in the year." Here the custody is shared equally.

The presumptive support to be paid is the "shared custody support amount, unless a party affirmatively shows that the sole custody support amount calculated as provided in subdivision G 1 is less than the shared custody support amount." The shared custody support amount is the shared support need—that is presumptive guideline amount, multiplied by 1.4. The payor parent is the "one whose shared support is the larger," here the father. Va. Code Ann. § 20-108.2(G)(3).

What does all this mean here? The parents' combined gross income of €5500 per month yields a basic child support amount of €1187 for 2 children. Multiplied by 1.4, we get €1661. We divide by 2 because time is shared equally, yielding €830.5. Mom pays 27% of €830.5, or €224.24. Dad pays the remainder, or €606.27.

**The Texas Obligor Model.** In Texas, under the Family Code, parents are free to share residential custody of the children, meaning the children would split time as equally as possible between the residences of both parents. However, the court will only order shared residential custody if it is in the best interest of both children. In this case, since the parents are agreeing to live in the same neighborhood as the current home and the children will attend the same school, the Court may grant shared residential custody unless it determines it is not in the best interest of the children. Although the children would split time between both parents' houses, with no parent having the children for a majority of time, the Court may still award the mother child support since her wage is lower than the father's.

*Robin Fretwell Wilson &*

*Kaylyn Belcher, J.D.  
University of Illinois College of Law,  
2016 and a member of the Texas Bar*

## **MEMBER NEWS**

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It is with great excitement that I announce the Nominating Committee's slate of officers for the 2017-20 term. We nominate Hugues Fulchiron to serve as President and Ursula Basset as Secretary General. Vice Presidents (Olga Khazova, Maria Donata Panforti, Robbie Robinson, and Jinsu Yune), we nominate as new Vice Presidents Chen Wei and Hazel Thompson-Ahye. Masha has agreed to serve as Treasurer for another term; Masha, we are grateful.

The Nominating Committee is incredibly excited about this slate. We are confident that this team will provide superb leadership and that it has the capacity to extend our reach into parts of the globe where ISFL is underrepresented. Many thanks to Hugues, Ursula, Hazel, and Chen Wei for agreeing to take on these new responsibilities.

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**Dr. Nina Dethloff** was elected as Executive Director of the Käte Hamburger Kolleg, Center for Advanced Study in the Humanities "Law as Culture". The Center is funded by the Federal Ministry of Education and Research and attached to the University of Bonn. It is hosting fellows from a variety of disciplines who pursue their research in the field of law and culture. The Center has now received further financing for a second funding phase from 2016 to 2022.

**Xia Li** accepted the invitation of the China Law Society to draft the Family Law of the Revised Civil Code of People's Republic of China. As the leader of the research of adult guardianship, she was invited to be a member of committee of Legislative Research Group of the Family Law of the Revised Civil Code of People's Republic of China to be responsible for drafting and reviewing a specific section of adult guardianship. They also invited Prof. Wei Chen who is the Vice President of Marriage and Family Law Committee of the China Law Society and the professor of Southwest University of Political Science and Law. According to the delegation of the committee, Prof. Wei Chen and Prof. Xia Li are in charge of the draft of the guardianship section. After six months of hard work, they had already finished drafting, and the draft had been submitted to the China Law Society.

Prof. Li received a ¥400,000 from the Justice Department to support "Civil Code: Research on Alternatives For Adult Guardianship" from Dec. 2016-Dec. 2018. In terms of writings .In Dec.2016.Prof. Xia Li published two works, "*A Comparative Study of Mental Health Law System*", which is the first work in the comparative law perspective. As well Prof. Xia Li published "*Commentary on Adoption Law*".

**Dara E. Purvis** has recently been promoted to Associate Professor at Penn State Law, University of Pennsylvania. She received the Penn State Commission on LGBTQ Equity Academic Achievement Award on April 10, 2017.

**Arianne Renan-Barzilay** My forthcoming article: *Power in the Equality Age: Economic Abuse, Masculinities and the Long Road to Marriage Equality* investigates the socio-legal and historical background that enables economic abuse in intimate partner relationships to flourish and the conceptual challenges to legal thought they pose.

My article *Parenting Title VII* just out in the *Yale Journal of Law and Feminism*, considers how feminist history promotes a revised reading of antidiscrimination law and its importance for parents and familial caregiving.

My article *Economic Violence in the Family*, which identifies the phenomena of economic abuse in intimate partner relationships in Israel, analyses its breadth, the dearth of legal attention to it, and suggests policy proposals to ameliorate the phenomena, is just out in the *Tel Aviv University Law Review*. Based on the article the Israeli Ministry of Justice has adopted my proposals and has drafted a bill to address economic abuse for the first time in Israel.

Also, I've won a grant from the Israeli Ministry of Science to investigate legal mechanisms to promote women, specifically to conduct comparative research on the gender equity aspects of parental leave policies.

**Mary Kay Kisthardt** In addition to my faculty position at the University of Missouri - Kansas City I also serve as the Executive Editor of the Journal of the American Academy of Matrimonial Lawyers. Our journal is published twice a year and uses a symposium format. Our next issue to be published in November is on international family law. I am reaching out to you to see whether or not you would be willing to include an announcement on the ISFL listserv concerning the opportunity for members to have a paper published in this volume. Several of your members, Peg Brinig, June Carbone and others have published with us before we also published a book review of Ann Estin's International Family Law Deskbook. In addition to the articles being published in our print volume, they will also be posted on the international Academy of Family Law website.

The articles we are looking for need not be lengthy, we generally publish articles between 3000 and 10,000 words. My colleague Nancy Levit, who is an editor par excellence assists with the editing and provides very valuable feedback to authors. The deadline for first drafts would be August 15.

Thank you for your consideration of my request. I look forward to hearing from you.

**Kees Waaldijk** You might be interested to know about The Laws And Families Database – Aspects of legal family formats for same-sex and different-sex couples (ed. by K. Waaldijk et al., Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu)) that was launched last month. This interactive database, including more than 140 papers, provides systematic information about 60 aspects of marriage/partnership/cohabitation, for 23 European jurisdictions over the last 50 years. A full announcement of the LawsAndFamilies Database can be found at <https://www.universiteitleiden.nl/en/news/2017/04/same-sex-couples-in-europe-more-rights-in-more-countries>. Half a dozen of the national legal experts who contributed to this database are in fact presenting papers at ISFL 2017.

And some of you (plus some of your students) might be interested to stay after the conference to take part in the second run of our Summer School on Sexual Orientation & Gender Identity in International Law, The Hague (& Amsterdam), 31 July – 4 August 2017, <http://summerschool.universiteitleiden.nl/courses/sexual-orientation-and-gender-identity-in-international-law>.

**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, and she continues to pursue this work. Professor Wilson has been approached by the United States State Department to assist a partner country to develop a family law system for adjudicating matters between non-muslims using civil, not sharia law.

## **RECENT AND FORTHCOMING PUBLICATIONS**

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### **Xia Li**

“A Review on Article 34 and 35 of the Consultation Draft of the General Principles of Civil Law of the People's Republic of China—Revocation and Recovery of Guardianship Executor” in 6 Journal of Anhui University(Philosophy and Social Sciences Edition)(2016).

### **Giacomo Oberto**

Prenuptial Agreements in Contemplation of Divorce: European and Italian Perspectives: [http://www.giacomooberto.com/prenuptial/Oberto\\_prenuptial\\_agreements\\_English\\_2014.htm](http://www.giacomooberto.com/prenuptial/Oberto_prenuptial_agreements_English_2014.htm)

### **Dara Purvis**

“The Rules of Maternity,” Tennessee Law Review (Vol. 84.2, page 1)

### **Elaine Sutherland**

Elaine E Sutherland and Lesley-Anne Barnes Macfarlane (eds), *Implementing Article 3 of the United Nations Convention on the Rights of the Child: Best Interests, Welfare and Well-Being* (Cambridge: Cambridge University Press, 2016).



Elaine E Sutherland, 'The Best Interests of the Child: The Challenges of Vagueness and Priorities' in Elaine E Sutherland and Lesley-Anne Barnes Macfarlane (eds), *Implementing Article 3 of the United Nations Convention on the Rights of the Child: Best Interests, Welfare and Well-Being* (Cambridge: Cambridge University Press, 2016) 21-50.

Elaine E Sutherland, 'Raising the Minimum Age of Criminal Responsibility in Scotland: Law Reform at Last?' (2016) 67(3) *Northern Ireland Legal Quarterly* 387-406.

Elaine E Sutherland, 'Beyond the named person service': *Journal of the Law Society of Scotland online*, uploaded 19 September 2016:

<http://www.journalonline.co.uk/Magazine/61-9/1022210.aspx>

### **Robin Fretwell Wilson**

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. On January 13-14, 2017, Professor Wilson co-convoked a Conference on FAITH, SEXUALITY, AND THE MEANING OF FREEDOM at Yale Law School, with Professor William Eskridge, [resulting in a new edited collection entitled FAITH, SEXUALITY, AND THE MEANING OF FREEDOM](#) (William N. Eskridge, Jr. & Robin Fretwell Wilson, eds.) (in conversation with Cambridge University Press). [Professor Wilson is also publishing her chapter for the volume, Bathrooms and Bakers: Removing Roadblocks to LGBT Nondiscrimination Protection in FAITH, SEXUALITY, AND THE MEANING OF FREEDOM](#) (William N. Eskridge, Jr. & Robin Fretwell Wilson, eds.), a chapter in *Oxford HANDBOOK OF CHILDREN AND THE LAW* (Jim Dwyer, ed., 2018), entitled *The Separating Bad Risks from Good When Awarding Parental Rights to "De Facto" Parents*, and a new piece, *Moving Beyond Marriage: The Economics and Fairness of Lifting All Families From Poverty*, for the *JOURNAL OF LAW, MEDICINE & ETHICS*, Symposium on The Medicalization of Poverty. In the popular press, her op-ed "[HB 159: The Hard Questions Facing Georgia on Adoption](#)," GeorgiaPol, was published, as was her Response Essay for Cato Unbound, "[Time for One America, Not Two.](#)"