

INTERNATIONAL AND NATIONAL PERSPECTIVES  
ON CHILD AND FAMILY LAW



INTERNATIONAL AND NATIONAL  
PERSPECTIVES ON CHILD  
AND FAMILY LAW

Essays in Honour of Nigel Lowe

*Edited by*  
Gillian DOUGLAS  
Mervyn MURCH  
Victoria STEPHENS



intersentia

Cambridge – Antwerp – Portland

Intersentia Ltd  
Sheraton House | Castle Park  
Cambridge | CB3 0AX | United Kingdom  
Tel.: +44 1223 370 170 | Fax: +44 1223 370 169  
Email: mail@intersentia.co.uk  
www.intersentia.com | www.intersentia.co.uk

*Distribution for the UK and Ireland:*

NBN International  
Airport Business Centre, 10 Thornbury Road  
Plymouth, PL6 7PP  
United Kingdom  
Tel.: +44 1752 202 301 | Fax: +44 1752 202 331  
Email: orders@nbninternational.com

*Distribution for Europe and all other countries:*

Intersentia Publishing nv  
Groenstraat 31  
2640 Mortsel  
Belgium  
Tel.: +32 3 680 15 50 | Fax: +32 3 658 71 21  
Email: mail@intersentia.be

*Distribution for the USA and Canada:*

International Specialized Book Services  
920 NE 58th Ave. Suite 300  
Portland, OR 97213  
USA  
Tel.: +1 800 944 6190 (toll free) | Fax: +1 503 280 8832  
Email: info@isbs.com

International and National Perspectives on Child and Family Law. Essays in  
Honour of Nigel Lowe

© The editors and contributors severally 2018

The editors and contributors have asserted the right under the Copyright, Designs and Patents Act 1988, to be identified as authors of this work.

No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, without prior written permission from Intersentia, or as expressly permitted by law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to Intersentia at the address above.

Images on cover © DavidCC – jbdodane – Hans Verburg / Alamy Stock Photo

ISBN 978-1-78068-641-7  
D/2018/7849/23  
NUR 820

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

## FOREWORD

I can think of no-one in academic family law who is more deserving of a *Festschrift* than Nigel Lowe. What is a *Festschrift*? Literally it is a 'celebration writing' but more usually defined as 'a collection of essays or learned writings contributed by a number of people to honour an eminent scholar, especially a colleague'. Nigel is certainly worthy of the title 'eminent scholar'. The range of his contributions to scholarship in family law is quite extraordinary.

He is, first and foremost, a proper lawyer. He loves analysing decided cases at length and in real depth. This was apparent early on in his ground-breaking book with Richard White on *Wards of Court* and continues to be on show with every new issue of *Clarke Hall and Morrison on Children* to which he contributes. That he has agreed to take on the burden of its general editorship is tribute to his amazing resilience and energy. His work has always been of real value to legal practitioners as well as to academics, and he obviously enjoys working collaboratively with them.

But he was also an early pioneer of inter-disciplinary studies in family law, in particular in partnership with Mervyn Murch, with whom he conducted a number of studies on adoption funded by the Department of Health and the Economic and Social Research Council. Once again, he obviously enjoyed working collaboratively with a number of socio-legal scholars as well as with practitioners.

As if that were not enough, he then branched out into international collaboration, providing us with invaluable data on the practical working of the Hague Convention on the Civil Aspects of International Child Abduction, and working with both the Council of Europe and the European Commission on the various European instruments dealing with family law. No-one working in family law these days can afford to ignore its international aspects – such is the movement of people and families around the world but especially within the European Union. As we write, we are all wondering what reciprocal arrangements can and will be negotiated to provide for continued mutual recognition and enforcement of family court orders within Europe: unlike commercial lawyers, we cannot solve the problem with a simple choice of law and choice of forum clause.

This book is a rich and varied collection of contributions from academics, practitioners and judges, taking up each of the three themes which have dominated Nigel's work – the evolution of UK family law as it attempts to keep

up with evolving patterns of family life, inter-disciplinary collaboration in socio-legal research, and the ever-increasing scope of international family law and practice – and always with a strong emphasis on children rather than adults. Nigel has always been much more interested in the law relating to children than the law relating to adults, which tells us a lot about him as a person.

The affection in which Nigel is held by so many colleagues and friends is apparent in this volume – as was the affection in which he was held by all his students in Sheffield, Bristol and Cardiff apparent to anyone who visited there and saw him with them. Another term for a *Festschrift* is a *Liber Amicorum* – literally, a book of friends. This, Nigel, is your book of friends – a book written by your friends for their friend. We all hope that you enjoy it.

Brenda Hale

## ACKNOWLEDGEMENTS

We are enormously grateful to all our contributors for making this book a reality. To Nigel's wife, Brenda Sufrin, for managing to keep the secret, to Ann-Christin Maak-Scherpe for her enthusiastic support in publishing this volume and of course, to Nigel Lowe for being such an inspiration.





# CONTENTS

<i>Foreword</i> .....	v
<i>Acknowledgements</i> .....	vii
<i>List of Cases</i> .....	xvii
<i>List of Contributors</i> .....	xxv

## **Introduction: Nigel Vaughan Lowe: An Appreciation**

Gillian DOUGLAS, Mervyn MURCH and Victoria STEPHENS .....	1
---	---

## **PART I. FAMILY AND CHILD LAW IN ENGLAND AND WALES**

### **The Supreme Court and Family Law**

Stephen GILMORE .....	9
1. Introduction .....	9
2. Family Law Cases Heard by the Supreme Court .....	10
3. Composition of Panels of Justices in Cases .....	16
4. Summary and Concluding Thoughts .....	20
Appendix of Cases .....	21

### **The Development of Parent–Child Relationships in Family Law: The Cascade of Change**

Leanne SMITH .....	23
1. Introduction .....	23
2. The Twentieth-Century Story: The Rise of the Child’s Best Interests in the Context of Parent–Child Relationships .....	25
3. The Next Chapter: From Best Interests to New Relationships .....	30
4. Conclusion .....	37

### **Commitment-Based Parenting: Parental Responsibility in English Law**

Gillian DOUGLAS .....	39
1. Introduction .....	39
2. Parental Responsibility .....	40
3. Shared Parenting After Separation .....	44
4. Conclusion .....	50

**Rights Children Should Not Have**

John EEKELAAR . . . . . 53

1. What Does it Mean to Have a Right? . . . . . 54
2. Driving, Drinking, Smoking and Voting . . . . . 56
3. Marrying, Making a Will and having Sexual Relations . . . . . 57
4. Where to Live . . . . . 59
5. Education and Religion . . . . . 61
6. Health . . . . . 62
7. Conclusion . . . . . 63

**Empirical Research on Adoption of Children from Care**

Julie DOUGHTY . . . . . 65

1. Introduction . . . . . 65
2. A Brief History of Adoption Law and Policy . . . . . 66
3. The Lowe and Murch Research for the Department of Health . . . . . 69
4. The Adoption Research Initiative . . . . . 78
5. Conclusion . . . . . 79

**Pathways to Adoption: From Long and Winding Road to Obstacle Course?**

Judith MASSON . . . . . 81

1. Introduction . . . . . 81
2. Placement Orders, Revocation of Placement Orders, Placement and Adoption . . . . . 83
3. Fostering for Adoption and Adoption by Foster Carers . . . . . 86
4. Relinquishment . . . . . 88
5. Challenging Adoption Orders . . . . . 90
6. Delay . . . . . 93
7. Conclusion . . . . . 94

**Child Abuse and Public Inquiry Methodologies**

Trevor BUCK . . . . . 97

1. Introduction . . . . . 97
2. The Development of Public Inquiries into Child Abuse . . . . . 98
3. Inquiries: Policy Processes and Methods . . . . . 101
4. Independent Inquiry into Child Sexual Abuse (IICSA) . . . . . 103
5. A Public Inquiries Office . . . . . 107
6. Conclusion . . . . . 109

**Lowe and the Inherent Jurisdiction**

Richard WHITE . . . . . 111

<b>Wards of Court</b>	
James MUNBY .....	115
<b>PART II. INTERNATIONAL FAMILY LAW</b>	
<b>Judging Parental Child Abduction: What Does it Mean to Adopt a Children’s Rights-Based Approach?</b>	
Kathryn HOLLINGSWORTH and Helen STALFORD .....	125
1. Introduction .....	125
2. Is it Possible to Adopt a Children’s Rights-Based Approach to Child Abduction Cases? .....	127
3. Child-Friendly Procedures? An Analysis of How Children’s Objections are Presented to the Judiciary .....	131
4. Substantive Judicial Assessments of Children’s Objections to Return: Giving Due Weight .....	136
5. Crafting a Children’s Rights Judgment: The Importance of Form .....	140
6. Conclusion .....	146
<b>Judicial Activism: A 20-Year Evolution</b>	
Mathew THORPE .....	147
<b>Globalisation of Adjudication in International Family Law: Serving International Families by Producing International Solutions</b>	
David HODSON .....	153
1. Overview .....	153
2. The Lives of International Families .....	154
3. The Problems with International Family Laws .....	155
4. Some Present Solutions .....	157
5. Some Thinking About Future Solutions .....	161
6. Some Ways Forward .....	163
<b>Creating International Families: Private International Law and the Industry of Parenthood</b>	
Claire FENTON-GLYNN .....	167
1. The Changing Global Picture .....	167
2. The Convergence and Divergence of Intercountry Adoption and International Surrogacy .....	169
3. The Form and Content of Possible Instruments .....	173
4. Conclusion .....	177

**Issues in International Divorce Cases**

Rebecca BAILEY-HARRIS . . . . . 179

- 1. Introduction . . . . . 179
- 2. Jurisdiction in Divorce . . . . . 180
- 3. Avoiding the Potential Conflict of Competing Divorce Proceedings. . . . . 187
- 4. Recognition and Enforcement of Divorce and Ancillary Financial Orders . . . . . 189
- 5. Conclusion . . . . . 191

**Non-Judicial Divorce in France: Progress or a Mess?**

Frédérique FERRAND . . . . . 193

- 1. Introduction . . . . . 193
- 2. Contents of the Law Act No. 2016-1547 of 18 November 2016 on the Modernisation of Justice in the Twenty-First Century . . . . . 195
- 3. Criticism . . . . . 200
- 4. Conclusion . . . . . 204

**The Istanbul Convention: Is Domestic Abuse Violence Against Women?**

Jonathan HERRING . . . . . 205

- 1. Introduction . . . . . 205
- 2. The Istanbul Convention . . . . . 206
- 3. Domestic Abuse and Patriarchy. . . . . 208
- 4. The Case for Gender Neutrality. . . . . 212
- 5. Conclusion . . . . . 217

**Nationality and Migration Status in International Children’s Law**

Ann Laquer ESTIN . . . . . 219

- 1. Global Childhoods . . . . . 219
- 2. Litigating Parental Responsibilities . . . . . 223
- 3. Abduction Convention Disputes. . . . . 224
- 4. Conclusion . . . . . 229

**The Development of Child Protection Across International Borders for Children at Risk of Harm**

Ruth LAMONT . . . . . 233

- 1. Introduction . . . . . 233
- 2. The Complexities of Cross-National Child Protection. . . . . 234

3.	Evolution of Jurisdiction in Public Law Protection of Children: Who Should Decide? . . . . .	239
4.	Conclusion . . . . .	245
<b>Nigel Lowe and International Family Law: An Immense Contribution</b>		
	Mark HENAGHAN and Ruth BALLANTYNE . . . . .	247
1.	Introduction . . . . .	247
2.	Cooperation and Consistency in International Family Law . . . . .	248
3.	Statistical Data and International Family Law Conventions . . . . .	249
4.	Improving the Operation of the Hague Convention . . . . .	255
5.	Conclusion . . . . .	258
<b>The Spanish Constitutional Court and Protracted Child Abduction Proceedings: Time is of the Essence</b>		
	Cristina GONZÁLEZ BEILFUSS . . . . .	259
1.	Introduction . . . . .	259
2.	The Facts of the Case . . . . .	260
3.	The Reasoning of the Constitutional Court . . . . .	261
4.	Compatibility of the Reasoning of the Constitutional Court and the Hague Convention . . . . .	262
5.	The Spanish Constitutional Court and the European Court of Human Rights . . . . .	263
6.	Time Management . . . . .	264
7.	New Procedural Rules for Child Abduction Cases . . . . .	265
8.	Conclusion . . . . .	266
<b>Non-Recognition of Child Marriages: Sacrificing the Global for the Local in the Aftermath of the 2015 ‘Refugee Crisis’</b>		
	Maarit JÄNTERÄ-JAREBORG . . . . .	267
1.	Refugee-Related Challenges for Private International Law . . . . .	267
2.	The European Aversion to Child Marriages and Countermeasures . . . . .	269
3.	How to React to Marriages Among Refugee Children? . . . . .	270
4.	Sweden: A European Forerunner . . . . .	271
5.	Germany: Increased Protection Against Child Marriages . . . . .	276
6.	Comparisons . . . . .	278
7.	The Challenges Posed to Private International Law . . . . .	280

<b>Juvenile Justice in Bulgaria: Reforms and Resistance</b>	
Velina TODOROVA.....	283
1. The Context in Brief .....	284
2. Main Issues in the Current Debate .....	286
3. When the Child is at ‘Risk’ or is in Conflict with the Law.....	289
4. Acts and ‘Actors’.....	291
5. Conclusion .....	296
<b>Overriding Mandatory Provisions in EU Family Law Regulations</b>	
Dieter MARTINY.....	297
1. Introduction .....	298
2. The Problem of Mandatory and Overriding Mandatory Provisions .....	298
3. Different Techniques for Mandatory Rules .....	299
4. European Conflict-of-Laws Rules on Overriding Mandatory Provisions .....	303
5. Conclusion .....	310
<b>PART III. THE FUTURE FOR FAMILY AND CHILD LAW</b>	
<b>The Hague Child Abduction Convention in a Changing World</b>	
Rhona SCHUZ.....	315
1. Introduction .....	315
2. Interpretation and Application .....	317
3. Child Participation .....	323
4. Compliance.....	325
5. Conclusion .....	327
<b>Using Research to Improve Outcomes for Abducted Children</b>	
Nicola TAYLOR and Marilyn FREEMAN.....	329
1. Introduction .....	329
2. Research Contributions on International Child Abduction .....	331
3. Using Research to Improve Outcomes for Abducted Children.....	342
<b>Breaking the Existing Paradigms of Parent–Child Relationships</b>	
Jens M. SCHERPE .....	343
1. In the Beginning There Were Two, and They Were Married – and Now? .....	344
2. Societal Challenges to the Two-Parent Paradigm .....	344

3.	Medical Challenges to the Two-Parent Paradigm.....	348
4.	‘Splitting a Parent’, or Different Levels of Parental Links: Parentage, Parenthood, Parental Responsibility.....	350
5.	A Family Law for all Families.....	358





# LIST OF CASES

## AUSTRALIA

<i>Murray and Tam v Director of Family Services (ACT)</i> (1993) 16 Fam LR 982 .....	257
<i>RCB as Litigation Guardian of EKV, CEV, CIV and LRV v The Honourable Justice Colin James Forrest of the Family Court of Australia &amp; Others</i> [2012] HCA 47 .....	126
<i>U v U</i> 191 ALR 289, 2002 WL 2017079 (2002) .....	224
<i>Voth v Manildra Flour Mills Pty. Ltd.</i> (1990) 171 CLR 538 .....	189

## CANADA

<i>AMRI v KER</i> (2011) 106 O.R.3d 417 (Ont. CA).....	229
<i>Balev v Baggott</i> 2016 ONCA 680.....	318
<i>Borisovs v Kubiles</i> [2013] O.J. No. 863, Supreme Court of Canada.....	322
<i>MRR v JM</i> , 2017 ONSC 2655 (28.04.2017) .....	355
<i>Office of Children’s Lawyer v Balev</i> 2018 SCC 16.....	318

## COURT OF JUSTICE OF THE EUROPEAN UNION

Case C-34/09 <i>Gerardo Ruiz Zambrano v Office national de l’emploi</i> , ECLI:EU:C:2011:124.....	222
Case 76/76 <i>Silvana Di Paulo v National Employment Office</i> [1977] 2 CMLR 59 .....	181
Case C-90/97 <i>Swaddling v Adjudication Officer</i> [1999] 2 FLR 184 .....	181
Case C-102/91 <i>Doris Knoch v Bundesstadt für Arbeit</i> [1992] ECR I-4341.....	181
Case C-111/17 <i>PPU OL v PQ</i> , ECLI:EU:C:2017:436 .....	318
Case C-135/15 <i>Republik Griechenland v Grigorios Nikiforidis</i> , ECLI:EU:C:2016:774.....	306
Case C-173/16 <i>MH v MH</i> , ECLI:EU:C:2016:542 .....	158
Case C-184/12 <i>United Antwerp Maritime Agencies (Unamar) NV v Navigation Maritime Bulgare</i> , ECLI:EU:C:2013:663 .....	308
Case C-283/16 <i>M S v PS</i> [2017] 1 FLR 1163 .....	190
Case C-297 <i>Rigsadvokaten v Nicolai Christian Ryborg</i> [1991] ECR I-1943 .....	181
Joined Cases C-369/96 and C-376/96, <i>Criminal proceedings against J.-C. Arblade and Arblade &amp; Fils SARL (C-369/96) and B. Leloup, S. Leloup and Sofrage SARL (C-376/96)</i> , ECLI:EU:C:1999:575 .....	303
Case C-372/16 <i>Soha Sahyouni v Raja Mamisch</i> , ECLI:EU:C:2017:686 .....	305
Case C-399/12 <i>Germany v Council</i> , ECLI:EU:C:2014:2258.....	156
Case C-428/15 <i>Child and Family Agency v JD</i> , ECLI:EU:C:2016:819 .....	221, 230, 243
Case C-435/06 C, ECLI:EU:C:2007:714 .....	234, 241
Case C-452/93 <i>Pedro Magdalena Fernandez v Commission</i> [1994] ECR I-4295 .....	181

Case C-497/10 PU <i>Mercredi v Chaffe</i> [2011] 1 FLR 1293 .....	181, 317
Case C-523/07 A, ECLI:EU:C:2010:289 .....	241, 317

## ENGLAND AND WALES

<i>A and S v Lancashire County Council</i> [2012] EWHC 1689 (Fam), [2013] 2 FLR 803 .....	72, 83
<i>Agbaje v Akinoye-Agbaje</i> [2010] UKSC 13.....	15, 21
<i>A Local Authority v The Mother and Another</i> [2017] EWHC 1515 (Fam).....	88
<i>A v A and Another (Children: Habitual Residence) (Reunite International Child Abduction Centre and Others Intervening)</i> [2013] UKSC 60.....	11, 22, 318
<i>A v B and C</i> [2012] EWCA Civ 285 .....	35–36
<i>A v Liverpool City Council and Another</i> [1982] AC 363, HL .....	116
<i>A v N (Committal: Refusal of Contact)</i> [1997] 1 FLR 533, CA .....	45
<i>AVH v SI, SIV</i> [2014] EWHC 2938 (Fam).....	128
<i>B v B (Abduction: Child with Learning Difficulties)</i> [2011] EWHC 2300 (Fam) .....	134–136, 138, 140
<i>Barlow Clowes International Ltd v Henwood</i> [2008] EWCA Civ 557, [2008] BPIR 778 .....	183–184
<i>Barnardo v McHugh</i> [1891] AC 388.....	31
<i>Bell v Kennedy</i> (1868) LR 1 Sc & Div 307.....	184
<i>Birch v Birch</i> [2017] UKSC 53.....	11, 15, 17, 19, 22
<i>C v C (a minor) (custody: appeal)</i> [1991] FLR 223 (CA) .....	24
<i>C v V</i> [2016] EWHC 559 (Fam) .....	135, 143, 145
<i>CB v CB</i> [2013] EWHC 2092 (Fam) .....	136–137, 139, 141
<i>de Dampierre v de Dampierre</i> [1988] AC 92.....	188
<i>Divall v Divall</i> [2014] 2 FLR 1104 .....	184
<i>EDG v RR (Enforcement of Foreign Maintenance Order)</i> [2015] 1 FLR 270.....	184
<i>Egeneonu v Egeneonu</i> [2017] EWHC 43 (Fam), [2017] 4 WLR 100, [2017] 2 FLR 1181 .....	115, 117
<i>F v M, B (by his Litigation Friend)</i> [2015] EWHC 3300 (Fam).....	128–129, 137–138, 143
<i>GB v RJB and GLB (In Re B (A Child))</i> [2009] UKSC 5 .....	11–12, 17, 19, 21
<i>Gillick v West Norfolk and Wisbech Area Health Authority</i> [1986] AC 112 .....	62
<i>Gohil v Gohil</i> [2015] UKSC 61.....	15–17, 19, 22
<i>Hewer v Bryant</i> [1970] 1 QB 357 .....	23
<i>Ikimi v Ikimi</i> [2001] 2 FLR 1288.....	182
<i>Ilott v The Blue Cross and others</i> [2017] UKSC 17.....	16–17, 20, 22
<i>J (Children)</i> [2013] UKSC 9 .....	12–13, 17, 21–22
<i>J v C</i> [1970] AC 668, HL .....	10, 29–31, 35–36
<i>Jones v Kernott</i> [2011] UKSC 53.....	16, 19–20, 22
<i>Joyce v Director of Public Prosecutions</i> [1946] AC 347 .....	119
<i>Kelly v British Broadcasting Corpn</i> [2001] Fam 59 .....	117
<i>Lancashire County Council v M and Others</i> [2016] EWFC 9.....	144
<i>Lancashire County Council v T and Others (Habitual Residence: Care Proceedings)</i> [2014] EWHC 3321 (Fam).....	236
<i>L and B (Children)</i> [2013] UKSC 8 .....	13, 22
<i>LCG v RL</i> [2013] EWHC 1383 (Fam) .....	128, 133, 145
<i>Leicester City Council v S and others</i> [2014] EWHC 1575 (Fam).....	236, 242

<i>Lewisham London Borough Council v D</i> [2008] 2 FLR 1449.....	240
<i>L-K v K (No. 2)</i> [2006] EWHC 3280 (Fam) [2007] 2 FLR 729 .....	181
<i>L-K v K (No. 3)</i> [2006] EWHC 3281 (Fam) [2007] 2 FLR 741 .....	158
<i>MP v PS (Enforcement Procedure under the Maintenance Regulation: Reference to CJEU)</i> [2017] 1 FLR 394.....	184
<i>Marinos v Marinos</i> [2007] 2 FLR 101.....	181–182
<i>MR v HS</i> [2015] EWHC 234 (Fam) .....	137
<i>Norfolk County Council v VE</i> [2015] EWFC 30.....	235
<i>NP v JP</i> [2015] EWHC 2551 .....	132
<i>Paton v Trustees of British Pregnancy Advisory Service</i> [1979] QB 276.....	113
<i>Payne v Payne</i> [2001] EWCA Civ 166 .....	224
<i>Peng v Chai</i> [2017] 1 FLR 318.....	189
<i>Prest v Petrodel Resources Ltd</i> [2013] UKSC 34.....	15, 17, 20, 22
<i>Prospective Adopters v IA and Others</i> [2014] EWHC 331 (Fam).....	92
<i>P-S (Children)</i> [2013] EWCA Civ 223 .....	132
<i>Pugh v Pugh</i> [1951] P. 482, [1951] 2 All ER 680.....	272
<i>Radmacher (formerly Granatino) v Granatino</i> [2010] UKSC 42.....	15, 17, 19, 21
<i>Ray v Sekhiri</i> [2014] 2 FLR 1168.....	184
<i>RB v DB</i> [2015] EWHC 1817 (Fam) .....	137, 145
<i>Re A (A child)</i> [2012] UKSC 60 .....	14, 22
<i>Re A (A Child) (Custody); HA v MB</i> [2007] EWHC 2016 (Fam).....	3
<i>Re A (Area of Freedom, Security and Justice)</i> [2009] 1 FLR 1.....	181
<i>Re A (Children)</i> [2013] EWCA Civ 1611 .....	83
<i>Re A (Fact-Finding Hearing: Judge Meeting with Child)</i> [2012] EWCA Civ 185.....	144
<i>Re A (Jurisdiction: Return of Child)</i> [2014] 1 FLR 111.....	182
<i>Re A: Letter to a Young Person</i> , [2017] EWFC 48.....	144
<i>Re Agar-Ellis (No. 2)</i> (1883) 24 Ch D 317 .....	26
<i>Re AW</i> [2013] EWHC 2967 (Fam) .....	92
<i>Re a Ward of Court (Wardship: Interview)</i> [2017] EWHC 1022 (Fam), [2017] 3 WLR 593, [2017] 2 FLR 1515.....	116–117
<i>Re B (A Child)</i> [2013] UKSC 33.....	13, 18–19, 22, 77, 83, 86, 89
<i>Re B (A Child)</i> [2016] UKSC 4.....	14, 19, 22, 118, 318
<i>Re B (A Child) (Habitual Residence: Inherent Jurisdiction)</i> [2016] 1 FLR 561 .....	182
<i>Re B (role of biological father)</i> [2008] 1 FLR 1015, 1022.....	36
<i>Re B, RB v FB and MA (Forced Marriage: Wardship: Jurisdiction)</i> [2008] EWHC 1436 (Fam), [2008] 2 FLR 1624.....	119
<i>Re B-S (Children)</i> [2013] EWCA Civ 1146.....	77, 83, 86, 89, 91–93
<i>Re C (Children)</i> [2018] UKSC 8.....	318
<i>Re C (Internal Relocation)</i> , [2015] EWCA Civ 1305 .....	224
<i>Re C and V (Contact and Parental Responsibility)</i> [1998] 1 FLR 392, CA.....	42
<i>Re D (A Child)</i> [2016] UKSC 34.....	14, 22
<i>Re D (A Child) (Abduction: Custody Rights)</i> [2006] UKHL 51.....	132
<i>Re D (Children)</i> [2011] EWCA Civ 1294.....	133, 135, 137
<i>Re E (Brussels II Revised: Vienna Convention: Reporting Restrictions)</i> [2014] EWHC 6 (Fam).....	242
<i>Re E (Children)</i> [2011] UKSC 27 .....	11, 19, 22, 127
<i>R v E and F (female parents: known father)</i> [2010] 2 FLR 383.....	36
<i>R (EL) v Essex CC</i> [2017] EWHC 1041 (Admin) .....	84–85
<i>R (Hodkin) v Registrar General of Births, Deaths and Marriages</i> [2013] UKSC 77 .....	16, 18–19, 22

<i>R (on the application of SG) v Secretary of State for Work and Pensions</i>	
[2015] UKSC 16 .....	13, 20, 22
<i>R (Quila); R (Bibi) v Secretary of State for the Home Department</i>	
[2011] UKSC 45 .....	16, 19, 22
<i>Re F (Abduction: Acquiescence: Child's Objections)</i> [2015] EWHC 2045 (Fam).....	135, 138
<i>Re F (children)</i> [2016] EWCA Civ 546.....	324
<i>Re F (Child's Objections)</i> [2015] EWCA Civ 1022.....	135, 137, 139, 142
<i>Re F (International Relocation Cases)</i> [2015] EWCA Civ 882 .....	224
<i>Re F (Placement Order)</i> [2008] EWCA Civ 439, [2008] 2 FLR 550 .....	83–84, 92
<i>Regina v D</i> [1984] FLR 300.....	117
<i>Re G (Abduction: Children's Objections)</i> [2011] 1 FLR 1645 .....	132
<i>Re G (Children) (Residence: Same Sex Partner)</i> [2006] 1 WLR 2305 .....	12, 19, 21
<i>Re H</i> [2015] EWCA Civ 583.....	91, 93
<i>Re H (A Child) (Appeal)</i> [2015] EWCA Civ 1284, [2016] 2 FLR 1173 .....	88
<i>Re H (A Child: Summary Return: Child's Objections)</i> [2012] EWHC B32 (Fam).....	133, 136
<i>Re H (A Minor) (Contact and Parental Responsibility)</i> [1993] 1 FLR 484, CA .....	41
<i>Re H (Minors) (Local Authority: Parental Rights) (No. 3)</i> [1991] Fam 151, CA .....	41
<i>Re HA (A Child) (Brussels IIA: Article 15)</i> [2015] EWHC 1310 (Fam) .....	236
<i>Re HA (A Child) (Care Proceedings: Final Order)</i> [2015] EWHC 4172 (Fam) .....	242
<i>Re H and A (Children) (Paternity: Blood Test)</i> [2002] EWCA Civ 383.....	348
<i>Re HB (Abduction: children's objections)</i> [1998] 1 FLR 422.....	147
<i>Re I (A Child)</i> [2009] UKSC 10.....	14, 17, 21
<i>Re J (A Child)</i> [2015] UKSC 70.....	14, 22
<i>Re J (A Minor) (Contact)</i> [1994] 1 FLR 729, CA.....	45
<i>Re J (Abduction: Children's Objections)</i> [2012] FLR 457 .....	134
<i>Re JL and AO</i> [2016] EWHC 440 (Fam).....	90
<i>Re K (A Child) (Hague Convention: Child's Objections)</i> [2014] EWCA Civ 1364.....	136, 141
<i>Re KL (A Child)</i> [2013] UKSC 75.....	12, 22, 229–230
<i>Re KP (Abduction: Child's Objections)</i> [2014] EWCA Civ 554 [2014]	
2 FLR 660 .....	128, 132, 134–135, 146, 324
<i>Re KR (Abduction: Forcible Removal by Parents)</i> [1999] 2 FLR 542 .....	119, 120
<i>Re LC (Children) (Reunite International Child Abduction Centre</i>	
<i>Intervening)</i> [2014] UKSC 1 .....	12, 19, 22, 131–133, 135–136, 142–143
<i>Re LC (Habitual Residence: Grave Risk of Harm)</i> [2014] EWFC 8,	
[2015] 1 FLR 1019.....	133
<i>Re M (Abduction: Child's Objections)</i> [2007] 2 FLR 72.....	136
<i>Re M (a child) (Foreign Care Proceedings: Transfer)</i> [2013] Fam 308 .....	242
<i>Re M (A Child)</i> [2014] EWCA Civ 1519.....	135
<i>Re M (A Minor) (Care Orders: Jurisdiction)</i> [1997] Fam 67.....	234
<i>Re M (Children) (Abduction: Child's Objections)</i> [2015] EWCA Civ 26.....	128, 132
<i>Re M (Parental Responsibility Order)</i> [2013] EWCA Civ 969, [2014] 1 FLR 339 .....	41, 42
<i>Re M (Republic of Ireland) (Child's Objections)</i> [2015] EWCA Civ 26.....	136
<i>Re M (Wardship: Jurisdiction and Powers)</i> [2015] EWHC 1433 (Fam),	
[2016] 1 FLR 1055.....	113, 118–120
<i>Re M and another (Children) (Abduction: Rights of Custody)</i> [2007]	
UKHL 55 .....	3, 128, 131, 139, 227
<i>Re MJ (Abduction: international judicial collaboration)</i> [2000] 1 FLR 803 .....	147
<i>Re N (children)</i> [2016] UKSC 15 .....	22, 221, 230, 243
<i>Re N (Children) (Adoption: Jurisdiction)</i> [2015] EWCA Civ 1112.....	71, 242

<i>Re N (Jurisdiction)</i> [2007] EWHC 1274 (Fam), [2007] 2 FLR 1196 .....	158, 185
<i>Re NB (A Child)(Residence)</i> [2014] Lexis Citation 19.....	135–136
<i>Re O (Contact: Imposition of Conditions)</i> [1995] 2 FLR 124 .....	45
<i>Re P(GE) (An Infant)</i> [1965] Ch 568.....	119
<i>Re R (Care Proceedings: Jurisdiction)</i> [1995] 1 FLR 711 .....	234
<i>Re RA (Baby Relinquished for Adoption)</i> [2016] EWFC 47.....	90
<i>Re RA (Baby Relinquished for Adoption Case Management)</i> [2016] EWFC 25.....	90
<i>Re S (A Child)</i> [2012] UKSC 10.....	11, 19, 22
<i>Re S (Care Proceedings: Jurisdiction)</i> [2008] EWHC 3013 (Fam).....	236
<i>Re S (Child Abduction: Joinder of Sibling: Child's Objections)</i> [2016] EWHC 1227 (Fam).....	132, 134
<i>Re S (Minors) (Wardship: Police Investigation)</i> [1987] Fam 199 .....	118
<i>Re S (Parental Responsibility)</i> [1995] 2 FLR 648, CA .....	44
<i>Re SR</i> [2014] EWHC 1777 (Fam).....	92, 94
<i>Re T (AJJ) (An Infant)</i> [1970] Ch 688 .....	117
<i>Re T (Early Permanence Placement)</i> [2015] EWCA Civ 983 .....	86, 87
<i>Re U-B (A Child)</i> [2015] EWCA Civ 60.....	133, 137, 141
<i>Re W</i> [2013] EWCA 1177.....	94
<i>Re W (Abduction: Child's Objections)</i> [2010] EWCA CIV 520, [2010] 2 FLR 1165.....	128
<i>Re W (A Child)</i> [2017] EWHC 829.....	87–88, 91–92, 94
<i>Re W (Adoption Application: Reunification with Family of Origin)</i> [2015] EWHC 2039 (Fam).....	88, 92
<i>Re W (Adoption Order: Set Aside and Leave to Oppose)</i> [2010] EWCA Civ 1535 .....	91–92
<i>Re W (A Minor) (Wardship: Jurisdiction)</i> [1985] AC 791, [1985] FLR 879 .....	116
<i>Re W (Children) (Family Proceedings: Evidence)</i> [2010] UKSC 12 .....	14, 21–22, 135
<i>Re W (Minors)</i> [2010] EWCA Civ 520.....	136
<i>Re X (A Child) (No. 5)</i> [2017] EWHC 2141 (Fam).....	116
<i>Re X and Y (Foreign Surrogacy)</i> [2008] EWHC 3030 (Fam).....	170
<i>S (A Child)</i> [2015] UKSC 20 .....	13, 22
<i>S-B (Children)</i> [2009] UKSC 17.....	12, 17, 21
<i>Sharland v Sharland</i> [2015] UKSC 60.....	15–17, 19, 22
<i>SP v EB</i> [2014] EWHC 3964 .....	136, 145
<i>Spiliada Maritime Corporation v Cansulex Ltd</i> [1987] AC 460 .....	188, 241
<i>Tan v Choy</i> [2014] EWCA Civ 251, [2015] 1 FLR 492 .....	182
<i>T (Children)</i> [2012] UKSC 36 .....	13, 18–19, 22
<i>The King v Casement</i> [1917] 1 KB 98 .....	119
<i>Undny v Undny</i> (1869) LR 1 Sc & Div 441 .....	184
<i>V v V (Divorce: Jurisdiction)</i> [2011] 2 FLR 778.....	182
<i>Ward v Laverty</i> [1925] AC 101 .....	26
<i>Wellesley v Duke of Beaufort</i> (1827) 2 Russ 1.....	121
<i>Wermuth v Wermuth (No. 2)</i> [2003] 2 FLR 1029.....	188
<i>Winans v Attorney-General</i> [1904] AC 287.....	183
<i>Wyatt v Vince</i> [2015] UKSC 14.....	15, 19, 22
<i>X v Y, Z Police Force, A, B and C (by their Children's Guardian)</i> [2012] EWHC 2838 (Fam).....	128, 132–133, 136–138
<i>Yemshaw v London Borough of Hounslow</i> [2011] UKSC 3.....	16, 19, 22
<i>Z County Council v R</i> [2001] 1 FLR 365, per Holman J .....	90
<i>Z v Y</i> [2013] EWHC 3381 (Fam).....	135, 143, 145

<i>Z v Z (Divorce: Jurisdiction)</i> [2010] 1 FLR 694 .....	180–181
<i>ZH (Tanzania) v Secretary of State for the Home Department</i> [2011] UKSC 4 .....	13, 22, 220

## EUROPEAN COURT OF HUMAN RIGHTS

<i>A and Others v Bulgaria</i> , Application no. 51776/08, ECtHR 29 November 2011 .....	290, 293
<i>Ahrens v Germany</i> , Application no. 45071/09 [2012] ECHR 515 .....	348
<i>Anayo v Germany</i> , Application no. 20578/07 [2010] ECHR 2083 .....	348
<i>AP, Garçon and Nicot v France</i> , Application nos. 79855/12, 52471/13 and 52596/13, (06.04.2017), [2017] ECHR 338 .....	347, 356
<i>Bălşan v Romania</i> , Application no. 49645/09 .....	208
<i>Blaga v Romania</i> , Application no. 54443/10 .....	264
<i>D v Belgium</i> , Application no. 29176/13, ECtHR, 11 September 2014 .....	169
<i>E v UK</i> , Application no. 33218/96 (2006) 36 EHRR 31 .....	235
<i>Ferrari v Romania</i> , Application no. 1714/10 .....	264
<i>Jeunesse v Netherlands</i> , Application no. 12738/10, [2014] ECHR 1036 .....	222
<i>Kautzor v Germany</i> , Application no. 23338/09, [2012] ECHR 516 .....	348
<i>Labassee v France</i> , Application no. 65941/11, [2014] ECHR 185 .....	169, 222
<i>Maumousseu v France</i> , Application no. 39388/05 (2010) 51 EHRR 35 .....	235
<i>Mennesson v France</i> , Application no. 65192/11, ECtHR, 26 June 2014 .....	169, 173–174, 222
<i>Neulinger and Shuruk v Switzerland</i> , Application no. 41615/07 [2011] 1 FLR 122 .....	11, 264
<i>Paradiso and Campanelli v Italy</i> , Application no. 25358/12, ECtHR, 24 January 2017 .....	170
<i>Povse v Austria</i> , Application no. 3890/11, ECtHR 18 June 2013 .....	126
<i>R and H v United Kingdom</i> , Application no. 35348/06 (2012) 54 EHRR 2 .....	238
<i>X v Latvia</i> , Application no. 27853/09, ECtHR, 26 November 2013 .....	11, 264
<i>ZH and RH v Switzerland</i> Application no. 60119/12, judgment (final) 8 December 2017 .....	280

## FRANCE

Cass. civ. 1, 20.11.2013, n°. 12-21.621 .....	202
Cass. civ. 1, 03.03.2010, n°. 08-70.214 and 08-12.395 .....	200
Cass. civ. 1, 05.11.2008, n°. 07-14.439, <i>Bull. civ. I</i> , n. 247; <i>Droit de la Famille</i> 2008, comm. 170 V. Larribeau-Terneyre .....	199
<i>Moore v McLean</i> iv 1ère 14 December 2005 (B No. 506) .....	181

## NEW ZEALAND

<i>A v A</i> [1996] 2 NZLR 517 (CA) .....	257
<i>AHC v CAC</i> [2011] 2 NZLR 694 (HC) .....	256
<i>S v S</i> (2009) 28 FRNZ 99 (FC) .....	256
<i>SE v WMH</i> (FC Taupo) FAM-2010-069-143, 30 July 2010 .....	256
<i>SMS v NDL</i> [2012] NZFC 7106 .....	256

## UNITED STATES OF AMERICA

<i>Alcala v Hernandez</i> , 826 F.3d 161 (4th Cir. 2016) .....	227
<i>Blondin v Dubois</i> , 238 F.3d 153 (2d Cir. 2001) .....	322
<i>Chafin v Chafin</i> , No. 11-1347, 568 US ____ (2013) .....	4
<i>Custody of ALR</i> , 830 N.W.2d 163, 172–173 (Minn. Ct. App. 2013) .....	223
<i>Feder v Evans-Feder</i> , 63 F.3d 217 (3rd Cir. 1995) .....	225
<i>Gonzalez-Caballero v Mena</i> , 251 F.3d 789 (9th Cir. 2001) .....	224, 227–228
<i>Hernandez v Garcia Pena</i> , 820 F.3d 782 (5th Cir. 2016) .....	227
<i>JM v GH</i> , 175 Cal.Rptr.3d 371 (Cal. Ct. App. 2014) .....	223–224
<i>Larbie v Larbie</i> , 690 F.3d 295 (5th Cir. 2012) .....	229
<i>Lenz v Lenz</i> , 79 S.W.3d 10 (Tex. 2002) .....	224
<i>Lozano v Alvarez</i> , 697 F.3d 41 (2d Cir. 2012) aff'd in part 134 S.Ct. 1224 (2014) .....	227
<i>Marriage of Abargil</i> , 131 Cal.Rptr.2d 429, 432 (Cal. Ct. App. 2003) .....	223
<i>Moreno v Basilio Pena</i> , 2015 WL 4992005 (S.D. N.Y. 2015) .....	228
<i>Mota v Castillo</i> , 692 F.3d 108 (2d Cir. 2012) .....	224, 226
<i>Mozes v Mozes</i> , 239 F.3d 1067 (9th Cir. 2001) .....	225
<i>Orantes v Orantes</i> , 381 S.W.3d 758 (Ark. 2011) .....	223
<i>Osmanagic v Osmanagic</i> , 872 A.2d 897 (Vt. 2005) .....	224
<i>Re B del CSB (minor)</i> , <i>Mendoza v Miranda</i> , 559 F.3d 999 (9th Cir. 2009) .....	227
<i>Rico v Rodriguez</i> , 120 P.3d 812 (Neb. 2005) .....	223
<i>Ruiz v Tenorio</i> , 392 F.3d 1247 (11th Cir. 2004) .....	226
<i>Sanchez v RGL</i> , 761 F.3d 495 (5th Cir. 2014) .....	227–228
<i>State of North Carolina v. Norman</i> 366 SE 2d 586, 588 (NC App 1988) .....	210

## OTHER JURISDICTIONS

<i>AR v RN (Scotland)</i> [2015] UKSC 35 .....	318
<i>KW v PW</i> [2016] IECA 364 .....	317
<i>MacLeod v MacLeod</i> [2008] UKPC 64, [2010] 1 AC 298 .....	17
<i>Mr Patrick (a pseudonym) Pursuer against Mrs Patrick (a pseudonym)</i> [2017] SC GLA .....	144
<i>Plonit v Ploni</i> (Nevo, 13.07.16) FamA 666-06-16 .....	319
<i>Re EV (A child) (Scotland) and In re EV (A Child) (Scotland) (No. 2)</i> [2017] UKSC 15 .....	12, 18, 20, 22
<i>Re K (A Child) (Northern Ireland)</i> [2014] UKSC 29 .....	12, 22
<i>Re KK, VK and AK v CC</i> [2013] NI Fam 6 (Maguire J) .....	139
<i>Thompson v Thompson</i> (unreported, 12.12.16) .....	321
<i>Union of India v Jan Balaz</i> (2015-10-121) Supreme Court of India, 14 October 2015 .....	169





## LIST OF CONTRIBUTORS

*Rebecca Bailey-Harris*

Barrister and Mediator, 1 Hare Court, Temple, London, United Kingdom

*Ruth Ballantyne*

Professional Practice Fellow, Faculty of Law, University of Otago, Dunedin, New Zealand

*Trevor Buck*

Emeritus Professor of Socio-Legal Studies, School of Law, De Montfort University, United Kingdom

*Julie Doughty*

Lecturer in Law, School of Law and Politics, Cardiff University, United Kingdom

*Gillian Douglas*

Executive Dean and Professor of Law, The Dickson Poon School of Law, King's College London, United Kingdom

*John Eekelaar*

Emeritus Fellow, Pembroke College, University of Oxford, United Kingdom and Fellow of the British Academy

*Ann Laquer Estin*

Aliber Family Chair in Law, College of Law, University of Iowa, United States of America

*Claire Fenton-Glynn*

Lecturer in Law, Jesus College, University of Cambridge, United Kingdom

*Frédérique Ferrand*

Professor of Law, Faculty of Law, Jean Moulin Lyon 3 University, France and Faculty of Law, University of Augsburg, Germany

*Marilyn Freeman*

Principal Research Fellow, Law School, University of Westminster, United Kingdom

*Stephen Gilmore*

Professor of Family Law, The Dickson Poon School of Law, King's College London, United Kingdom

*Cristina González Beilfuss*

Professor of Private International Law, Faculty of Law, University of Barcelona, Spain

*The Rt Hon Baroness Brenda Hale DBE*

President of the Supreme Court of the United Kingdom and Visitor, Girton College, University of Cambridge, United Kingdom

*Mark Henaghan*

Dean and Professor of Law, Faculty of Law, University of Otago, Dunedin, New Zealand

*Jonathan Herring*

Vice Dean and Professor of Law, Exeter College, University of Oxford, United Kingdom and DM Wolfe-Clarendon Fellow in Law

*David Hodson OBE*

Co-Founding Partner of The International Family Law Group LLP, London, United Kingdom and Visiting Professor, University of Law, United Kingdom

*Kathryn Hollingsworth*

Professor of Law, Newcastle Law School, Newcastle University, United Kingdom

*Maarit Jänterä-Jareborg*

Professor of Law, Faculty of Law, Uppsala University, Sweden

*Ruth Lamont*

Senior Lecturer in Family and Child Law, School of Law, University of Manchester, United Kingdom

*Dieter Martiny*

Emeritus Professor, Faculty of Law, Europa-Universität Viadrina, Frankfurt (Oder), Germany

*Judith Masson*

Professor of Socio-Legal Studies, Law School, University of Bristol, United Kingdom

*The Rt Hon Sir James Munby*

President of the Family Division of the High Court of England and Wales, United Kingdom

*Mervyn Murch CBE*

Emeritus Professor, School of Law and Politics, Cardiff University, United Kingdom

*Jens M. Scherpe*

Reader in Comparative Law and Director of Cambridge Family Law, Gonville and Caius College, University of Cambridge, United Kingdom

*Rhona Schuz*

Professor of Law, Sha'arei Mishpat Law School, Israel and Adjunct Professor,  
Faculty of Law, Bar Ilan University, Israel

*Leanne Smith*

Senior Lecturer, School of Law and Politics, Cardiff University, United Kingdom

*Helen Stalford*

Professor of Law, School of Law and Social Justice, University of Liverpool,  
United Kingdom

*Victoria Stephens*

Freelance Researcher based in Lyon, France

*Nicola Taylor*

Director, Children's Issues Centre, University of Otago, Dunedin, New Zealand

*The Rt Hon Sir Mathew Thorpe*

Former Lord Justice of Appeal of England and Wales, Vice-President of the  
Family Division of the High Court and inaugural Head of International Family  
Law, United Kingdom

*Velina Todorova*

Associate Professor, Law Faculty, Plovdiv University, Bulgaria

*Richard White*

Honorary Visiting Professor of Child Law, School of Law and Politics, Cardiff  
University, United Kingdom and Tribunal Judge

