

BOOK REVIEW

**A BRIGHTLY COLOURED PHOENIX**

**Welstead and Edwards *Family Law: Core Text* ISBN 0 199 28235 8  
(Oxford: Oxford University Press, 2006) pp 372, price £18.95**

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Considering the pace and volume of legislation and cultural change in Family law over the past 10 years, lecturers everywhere must finally have begun to despair of ever containing family law within a manageable syllabus before this neat compendium of essential principles and supporting authority was published by Oxford University Press in their Core Text Series, at the same time that the long awaited English spring did not arrive to cheer us after the prolonged winter.

Buckingham's Family Law syllabus has long been admired within the Family Law teaching community for its realism for students, its relevance to Family Law in practice and its sheer spread, while nevertheless being taught by two specialists able to deliver a thorough grounding in the law both affecting adult relationships (Mary Welstead who has written the first part of the book on these topics) and child law (by Susan Edwards who is an acknowledged expert in this area and now has the added benefit of practical experience at the Bar in London: this is actually important as Family Law of all subject areas depends as much on how it works in practice as on the infrastructure of the black letter law, and sometimes more). Alone of the syllabuses of English and Welsh law schools Buckingham also views the progress of the family from (even before) the cradle to the grave, having early made the point that many more marriages (and alternative relationships) end in death than divorce or other dissolution.

For anyone who is trying to teach a holistic overview of the whole of Family Law, rather than (as many now do) splitting the subject matter into two separate courses this is the book that will give students the same enthusiasm for the subject that has for years driven the courses run by these two excellent tutors, who have now distilled their expertise into little more than the 350 pages which students of all abilities can be persuaded to read. For the able, this will be an introductory book, to fire their enthusiasm and to provide a solid grounding in the basics on which they will then build through the interesting Further Reading provided for each chapter. For the less able, it

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could be the only book they read, but if read thoroughly in conjunction with whatever lectures and tutorials a student's course provides, it would not only be enough to consolidate the mass of unorganised material which law students accumulate (and then often do not process sufficiently to benefit from) but should also inspire even the idlest student to creative thinking.

The authors do this in a number of ways.

First, there is the basic outline of the subject, carefully rendered down into the core principles, which have been restated with clarity, supported by the classic authorities and set into the contemporary context, such as in the chapter on the ground for divorce: this section, stripped of the over detailed case law found in many "core" texts, then also looks at the long standing criticisms of this area of the law and contextualises the divorce process - which only 40 years ago used to be the only regulated adult relationship breakdown and 50 years ago comprised the entire corpus of Family Law when the leading textbook was Tolstoy's "Divorce" - within the 21st century framework of civil partnerships, now with their own formal separation and dissolution processes under the Civil Partnership Act 2004, and unmarried cohabitation. The approach is clear from the start in the chapter title, which is no longer "Divorce" but "Ending Relationships". The only pity is that the book was published immediately in advance of the recent Law Commission paper which finally tackles informal opposite sex cohabitation with a suggested scheme for formalising this particular relationship breakdown. No doubt the next edition will admit this class of relationship to the authors' survey of ending those contemporary adult family relationships in which the law seeks to intervene.

Secondly, the authors provide excellent Further Reading in relation to each chapter. Again this is not simply a dense list of both pedestrian and recondite titles, sufficient to put off any but the most obsessive student, but in the tradition of the realistic Buckingham syllabus which aims to plug the study of law firmly into the everyday context to which a student can relate, in the chapter on Domestic Violence the reader is referred to such gems as Erin Pizzey's 1974 title "Scream Quietly or the Neighbours Will Hear" which as one of the memorable books of the past 40 developing years in Family Law imparts more about this particular issue than any amount of learned discourse on the subject whether in Government reports, journal articles or the classic textbooks, all of which nevertheless also have their places in the selective suggestions to expand each subject area. Other gems include Cretney's "History of Family Law in the Twentieth Century", which might be the one book which would most complement the authors' in making sense for the reader of where our contemporary Family Law came from, penetrating articles such as Nick Wikeley's on the Kehoe case "No Redress When the Child Support Agency Fails to Deliver", which for the law student really

encapsulates the farce of the CSA better than a hundred screaming newspaper headlines, and the “Report of the Inquiry into Child Abuse in Cleveland” 1987 which provides in an formal document a chilling insight into the infrastructure of child protection.

Thirdly, in paring away the forest of cases (including a shower of recent ones which may be of transient interest and which sometimes fog the essential message in a core textbook) the authors have chosen authorities which truly support their themes. While recent cases are there and have their place, there is a clear determination to make full use of older authorities which demonstrate a golden thread in the now rich tapestry of wider family law principles. Such a case is *MH v MH* [1982] 3 FLR 429, which is long forgotten by most textbooks which (in considering the relevance of the wife receiving spousal maintenance who cohabits with a non-contributing man, in this case a toy boy some 16 years younger than her, whom she does not marry) go for the more modern case of Mrs Atkinson and her laid back gardening partner with whom she had taken an express decision not to end her right to maintenance from a wealthy husband by remarrying since this would have required her new man to realise his earning capacity which would have put a stop to their more casual lifestyle. Yet the facts of *MH v MH*, which have some similarities with *Atkinson v Atkinson* [1987] 3 All ER 189, are not only much more entertaining (where the new man, instead of taking an express decision to marry her because she would then lose her right to maintenance from a wealthy husband who can afford it, instead decides he cannot marry the divorced lady as it is against his principles to marry anyone he cannot support!) but establish at a much earlier stage than the traditional authority that the rights to maintenance under the Matrimonial Causes Act 1973 distinguish marriage from the riskier relationship, with no such rights on dissolution, of unmarried cohabitation.

Fourthly, there are excellent thought provoking self test questions provided for each subject area which follow the Further Reading for each chapter. These are by no means all of the practical potential examination extract type (for example the authors obviously realised they were on to winner with the soap opera *MH v MH* since this case figures in one of these questions in which readers are for a critique) and some, such as on why, in view of the contractual nature of marriage, it cannot be ended immediately by mutual agreement are clearly designed for potential law reformers, but the real value for the reader is in the creative problems which enable the student in following the opportunities for debate with him- or herself to check understanding of the material in the preceding chapter in a creative way.

It is difficult to find any significant criticism of this useful book bearing in mind the space constraints of a core text. However although it is a core text it might have been helpful to include in the chapter on Adoption further

reference to the tensions between the welfare of the child (now paramount under the Adoption and Children Act 2002 but always the “first consideration” under the 1976 Act) and immigration policies. This is touched on in the case of *S and J (Adoption: Non-Patrials)* [2004] 2 FLR 111, but especially given the authors’ appreciation of key cases from the past it might have been worth a paragraph to include the earlier case of *Re B (Adoption: Nationality)* [1999] 1 FLR907, HL in which Lord Hoffman examined the interface between these two areas of law which is important especially as the child approaches majority.

Overall, this is a joy to read as it is such a page turner. Everywhere basic material is enlivened with illustration of an innovative type, critique and comment: a much livelier read than a law textbook traditionally is, without compromising the scholarship, although inevitably, as Professor Cretny commented when first asked to write his now well known “short” Textbook, there will be some sacrifices to the limited space. However this taste of Family Law in the round is likely to drive the reader to the weightier works which might otherwise not be opened.