

RAYDEN'S
Law and Practice in
Divorce and Family Matters
in All Courts

THIRTEENTH EDITION

VOLUME I TEXT

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PREFACE

Since the publication of the last edition of this work, there have been considerable changes in the law and practice in divorce and family matters. This has necessitated the rewriting of many parts of the book, particularly in relation to financial matters, all aspects of the law as to children, and to matrimonial proceedings in magistrates' courts. Parliament has continued its practice of passing laws without bringing them into force, and thereafter leaving it to Ministers to release, as they think fit, sections or sub-sections from the storehouse of enacted legislation. Statutes are not what they once were. Amendments to provisions not yet in force are commonplace, sometimes the amendments themselves not being in force. The practice of embalming legislation makes it difficult for practitioners and others to ascertain whether the body in question is actually dead or merely subject to deep-freeze for use at a later date. The law as to divorce is in a curious state. Mostly divorce is a paper-work transaction, but the substantive law supporting it is as large and complex as it ever was. Judges look with enormous disfavour at attempts to litigate a defended divorce, particularly, but not exclusively, where legal aid is involved. For those who, no doubt with some justification, advocate a simpler basis for divorce law, it would be as well to study the history of the Australian legislation where simplification has been achieved but where there is to be yet another inquiry into the working of what many assert is an unsatisfactory situation.

Among the statutes passed since the last edition, attention is drawn to the following.

(1) The Children Act, 1975, is an important innovative statute. It makes fundamental changes in the law of adoption, but not all its provisions have been brought into force, and all the law of adoption in the Act is prospectively repealed and replaced by the Adoption Act, 1976, itself not yet in force but already amended by another statute not yet in force. The Children Act, 1975, also introduces the concept of custodianship orders, but this part of the Act is again not yet in force. The Act of 1975 makes further provision as to children in care of local authorities and allied matters, and some but not all of these provisions are in force.

(2) The Inheritance (Provision For Family and Dependants) Act, 1975, fundamentally changes inheritance law, both in regard to the scope of those who are entitled to apply for provision out of a deceased's estate and as to the principles applicable. These principles are founded on those which were introduced by the new divorce legislation in 1969 and 1970, and it will be interesting to observe the

way in which the Act is administered in the two Divisions, Chancery and Family, which have jurisdiction to adjudicate on it.

(3) The Legitimacy Act, 1976, is a consolidating statute and is in force.

(4) The Domestic Violence and Matrimonial Proceedings Act, 1976. Never has such a short Act created such dissension in so short a time as to its fundamental meaning. Indeed, 8 senior judges interpreted the Act one way, 8 another. This Act, like the Inheritance (Provision for Family and Dependents) Act, 1975, gave non-related "third parties" rights in what hitherto was a domain where entry was only permitted on production of a marriage certificate. This is another area of the law where considerable expansion may be anticipated. Factual relationships will take their place alongside legal ones.

(5) The Domestic Proceedings and Magistrates' Courts Act, 1978. This statute, not in force yet, is a hotch-pot of legislative ideas. The Act reforms the basis on which matrimonial orders are to be granted and largely equates the principles to those applicable in divorce cases. Apart from these provisions, there is an enormous number of far-reaching amendments relating to many aspects of family law, including law applicable to children and to what used to be wilful neglect to maintain (but will, when the Act is in operation, be failure to maintain). The Guardianship Acts, the Affiliation Acts and the Children Act must all be read with an eye on the 1978 statute which adopts, to say the least, the inconvenient practice of having in more than one place amendments to a particular statute: there are amendments enacted in the body of the statute and in the schedules. Perhaps one might particularly note the right given to grandparents to seek access to their grandchildren and to the rights of parties to seek financial orders without establishing any ground of application. The magistrates are given limited jurisdiction as to lump sums.

As far as Rules are concerned, attention is drawn to the Matrimonial Causes Rules, 1977, largely consolidating. The Legal Aid Regulations have been amended so as to enlarge the scope of the Law Society charge. Legal aid is no longer available for the ordinary undefended divorce.

The precedents have been completely reorganised and many have been re-written and new ones introduced. The aim has been to make them as comprehensive as is required in all aspects of practice and procedure.

Case-law continues to abound. There have been a number of reported decisions on financial matters, stressing the importance of putting accurate information before the court, for example, as to tax-calculations, valuations, availability of suitable alternative accommodation, and so on. But, as was said in a recent decision, there is no substitute for "trial and error and imagination" (but whose?).

Domestic violence has caused considerable problems, culminating in the decision in *Davis v. Johnson* in the House of Lords, and since the alteration in the right of appeal in interlocutory matters to the House introduced by the Administration of Justice Act, 1977, it is anticipated that from time to time there will be appeals to the highest tribunal in such matters.

The application of section 3 of the Children Act, 1975, to the dispensing of parental agreement in adoption cases has led to different views.

The implementation of sections 1 and 2 of the Children Act, 1948, is to be considered by the House of Lords. Wardship procedure has been developing, and its expansion to cover important aspects of children's lives—from sterilisation to access by third parties—is one of the most interesting features of this sphere of the law.

Further changes are on the way. The Law Commission has reported on the matrimonial home and its contents, and other enactments are said to be in the pipe-line.

We are grateful to the publishers for their continued assistance and to the members of the profession and others who have from time to time made valuable suggestions to us, and to Mr. R. S. G. Norman for drafting the costs precedents.

The law is stated as at 6th November 1978, but attention is drawn to the subsequent decisions in *Minton v. Minton* (1978), *Times*, November 24th, H.L. (jurisdiction to dismiss claims once-and-for-all); *CA v. CC* (1978), *Times* November 18th (£5,000 provision out of estate for *de facto* wife); *In re Coventry, deceased* (1978), *Times*, November 14th (no provision for adult child out of estate).

November, 1978

JOSEPH JACKSON

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c. 26	..	Emergency Laws (Transitional Provisions) Act 1946
c. 36	..	Statutory Instruments Act 1946
c. 37	..	Straits Settlements (Repeal) Act 1946
c. 58	..	Borrowing (Control and Guarantees) Act 1946
c. 62	..	National Insurance (Industrial Injuries) Act 1946
c. 67	..	National Insurance Act 1946
10 & 11 Geo. 6 c. 14	..	Exchange Control Act 1947
c. 19	..	Polish Resettlement Act 1947
c. 24	..	Naval Forces (Enforcement of Maintenance Liabilities) Act 1947
c. 27	..	National Health Service (Scotland) Act 1947
c. 30	..	Indian Independence Act 1947
c. 33	..	Foreign Marriage Act 1947

10 & 11 Geo. c. 43	..	Local Government (Scotland) Act 1947
c. 44	..	Crown Proceedings Act 1947
c. 53	..	Town and Country Planning (Scotland) Act 1947
c. 54	..	Electricity Act 1947
11 & 12 Geo. 6 c. 3	..	Burma Independence Act 1947
c. 7	..	Ceylon Independence Act 1947
c. 10	..	Emergency Laws (Miscellaneous Provisions) Act 1947
c. 26	..	Local Government Act 1948
c. 29	..	National Assistance Act 1948
c. 38	..	Companies Act 1948
c. 43	..	Children Act 1948
c. 53	..	Nurseries and Child-Minders Regulation Act 1948
c. 56	..	British Nationality Act 1948
c. 58	..	Criminal Justice Act 1948
c. 67	..	Gas Act 1948
12, 13 & 14 Geo. 6 c. 9	..	Prize Act 1948
c. 41	..	Ireland Act 1949
c. 42	..	Lands Tribunal Act 1949
c. 47	..	Finance Act 1949
c. 51	..	Legal Aid and Advice Act 1949
c. 62	..	Patents and Designs Act 1949
c. 68	..	Representation of the People Act 1949
c. 76	..	Marriage Act 1949
c. 78	..	Married Women (Restraint upon Anticipation) Act 1949
c. 92	..	India (Consequential Provision) Act 1949
c. 94	..	Criminal Justice (Scotland) Act 1949
c. 98	..	Adoption of Children Act 1949
c. 99	..	Married Women (Maintenance) Act 1949
c. 100	..	Law Reform (Miscellaneous Provisions) Act 1949
c. 101	..	Justices of the Peace Act 1949
No. 3	..	Pastoral Reorganisation Measure 1949
14 Geo. 6 c. 5	..	Newfoundland (Consequential Provisions) Act 1950
c. 6	..	Statute Law Revision Act 1950
c. 11	..	Administration of Justice (Pensions) Act 1950
c. 20	..	Colonial and Other Territories (Divorce Jurisdiction) Act 1950
c. 25	..	Matrimonial Causes Act 1950
c. 26	..	Adoption Act 1950
c. 27	..	Arbitration Act 1950
c. 37	..	Maintenance Orders Act 1950
14 & 15 Geo. 6 c. 48	..	Dangerous Drugs Act 1951
c. 56	..	Guardianship and Maintenance of Infants Act 1951
c. 65	..	Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951
15 & 16 Geo. 6 & 1 Eliz. 2 c. 8	..	Home Guard Act 1951
c. 10	..	Income Tax Act 1952
c. 37	..	Civil List Act 1952
c. 44	..	Customs and Excise Act 1952
c. 46	..	Hypnotism Act 1952
c. 48	..	Costs in Criminal Cases Act 1952
c. 55	..	Magistrates' Courts Act 1952
1 & 2 Eliz. 2 c. 20	..	Births and Deaths Registration Act 1953
c. 33	..	Education (Miscellaneous Provisions) Act 1953
c. 37	..	Registration Service Act 1953
c. 47	..	Emergency Laws (Miscellaneous Provisions) Act 1953
2 & 3 Eliz. 2 c. 1	..	Regency Act 1953
c. 13	..	Local Government (Financial Provisions) (Scotland) Act 1954
c. 38	..	Supreme Court Officers (Pensions) Act 1954
c. 47	..	Marriage Act 1949 (Amendment) Act 1954
c. 53	..	Housing Repairs and Rents Act 1954
c. 56	..	Landlord and Tenant Act 1954
c. 57	..	Baking Industry (Hours of Work) Act 1954
c. 60	..	Electricity Reorganisation (Scotland) Act 1954
c. 63	..	Trustee Savings Banks Act 1954

3 & 4 Eliz. 2 c. 18 ..	..	Army Act 1955
c. 19 ..	..	Air Force Act 1955
c. 24 ..	..	Requisitioned Houses and Housing (Amendment) Act 1955
4 & 5 Eliz. 2 c. 8 ..	..	County Courts Act 1955
c. 31 ..	..	Pakistan (Consequential Provisions) Act 1956
c. 46 ..	..	Administration of Justice Act 1956
c. 50 ..	..	Family Allowances and National Insurance Act 1956
c. 60 ..	..	Valuation and Rating (Scotland) Act 1956
c. 68 ..	..	Restrictive Trade Practices Act 1956
c. 69 ..	..	Sexual Offences Act 1956
c. 75 ..	..	Education (Scotland) Act 1956
5 & 6 Eliz. 2 c. 6 ..	..	Ghana Independence Act 1957
c. 26 ..	..	National Insurance Act 1957
c. 27 ..	..	Solicitors Act 1957
c. 34 ..	..	National Health Service Contributions Act 1957
c. 35 ..	..	Maintenance Agreements Act 1957
c. 48 ..	..	Electricity Act 1957
c. 49 ..	..	Finance Act 1957
c. 53 ..	..	Naval Discipline Act 1957
c. 55 ..	..	Affiliation Proceedings Act 1957
c. 56 ..	..	Housing Act 1957
c. 58 ..	..	Registration of Births, Deaths and Marriages (Special Provisions) Act 1957
6 & 7 Eliz. 2 c. 29 ..	..	Marriage Act Amendment Act 1958
c. 31 ..	..	First Offenders Act 1958
c. 35 ..	..	Matrimonial Causes (Property and Maintenance) Act 1958
c. 39 ..	..	Maintenance Orders Act 1958
c. 40 ..	..	Matrimonial Proceedings (Children) Act 1958
c. 45 ..	..	Prevention of Fraud (Investments) Act 1958
c. 51 ..	..	Public Records Act 1958
c. 65 ..	..	Children Act 1958
7 & 8 Eliz. 2 c. 5 ..	..	Adoption Act 1958
c. 6 ..	..	National Debt Act 1958
c. 22 ..	..	County Courts Act 1959
c. 47 ..	..	National Insurance Act 1959
c. 69 ..	..	Wages Councils Act 1959
c. 72 ..	..	Mental Health Act 1959
c. 73 ..	..	Legitimacy Act 1959
8 & 9 Eliz. 2 c. 9 ..	..	Judicial Pensions Act 1959
c. 29 ..	..	Marriage (Enabling) Act 1960
c. 33 ..	..	Indecency with Children Act 1960
c. 48 ..	..	Matrimonial Proceedings (Magistrates' Courts) Act 1960
c. 52 ..	..	Cyprus Act 1960
c. 55 ..	..	Nigeria Independence Act 1960
c. 59 ..	..	Adoption Act 1960
c. 61 ..	..	Mental Health (Scotland) Act 1960
c. 65 ..	..	Administration of Justice Act 1960
9 & 10 Eliz. 2 c. 16 ..	..	Sierra Leone Independence Act 1961
c. 21 ..	..	Oaths Act 1961
c. 34 ..	..	Factories Act 1961
c. 39 ..	..	Criminal Justice Act 1961
c. 62 ..	..	Trustee Investments Act 1961
10 Eliz. 2 c. 1 ..	..	Tanganyika Independence Act 1961
10 & 11 Eliz. 2 c. 12 ..	..	Education Act 1962
c. 15 ..	..	Criminal Justice Administration Act 1962
c. 19 ..	..	West Indies Act 1962
c. 21 ..	..	Commonwealth Immigrants Act 1962
c. 23 ..	..	South Africa Act 1962
c. 27 ..	..	Recorded Delivery Service Act 1962
c. 30 ..	..	Northern Ireland Act 1962
c. 37 ..	..	Building Societies Act 1962
c. 38 ..	..	Town and Country Planning Act 1962
c. 40 ..	..	Jamaica Independence Act 1962

10 & 11 Eliz. 2	c. 47	..	Education (Scotland) Act 1962
	c. 48	..	Law Reform (Husband and Wife) Act 1962
	c. 54	..	Trinidad and Tobago Independence Act 1962
	c. 57	..	Uganda Independence Act 1962
1963	c. 2	..	Betting, Gaming and Lotteries Act 1963
	c. 3	..	Capital Allowances Act 1963
	c. 27	..	Oaths and Evidence (Overseas Authorities and Countries) Act 1963
	c. 37	..	Children and Young Persons Act 1963
	c. 41	..	Offices, Shops and Railway Premises Act 1963
	c. 44	..	Wills Act 1963
	c. 45	..	Matrimonial Causes Act 1963
	c. 47	..	Limitation Act 1963
	No. 1	..	Ecclesiastical Jurisdiction Measure 1963
1964	c. 19	..	Married Women's Property Act 1964
	c. 30	..	Legal Aid Act 1964
	c. 41	..	Succession (Scotland) Act 1964
	c. 42	..	Administration of Justice Act 1964
	c. 46	..	Malawi Independence Act 1964
	c. 55	..	Perpetuities and Accumulations Act 1964
	c. 57	..	Adoption Act 1964
	c. 65	..	Zambia Independence Act 1964
	c. 81	..	Diplomatic Privileges Act 1964
1965	c. 2	..	Administration of Justice Act 1965
	c. 12	..	Industrial and Provident Societies Act 1965
	c. 25	..	Finance Act 1965
	c. 34	..	British Nationality Act 1965
	c. 49	..	Registration of Births, Deaths and Marriages (Scotland) Act 1965
	c. 51	..	National Insurance Act 1965
	c. 52	..	National Insurance (Industrial Injuries) Act 1965
	c. 53	..	Family Allowances Act 1965
	c. 54	..	National Health Service Contributions Act 1965
	c. 61	..	Judges' Remuneration Act 1965
	c. 62	..	Redundancy Payments Act 1965
	c. 64	..	Commons Registration Act 1965
	c. 72	..	Matrimonial Causes Act 1965
	c. 74	..	Superannuation Act 1965
	c. 76	..	Southern Rhodesia Act 1965
1966	c. 6	..	National Insurance Act 1966
	c. 18	..	Finance Act 1966
	c. 19	..	Law Reform (Miscellaneous Provisions) (Scotland) Act 1966
	c. 20	..	Supplementary Benefit Act 1966
	c. 23	..	Botswana Independence Act 1966
	c. 24	..	Lesotho Independence Act 1966
	c. 29	..	Singapore Act 1966
	c. 32	..	Selective Employment Payments Act 1966
	c. 35	..	Family Provision Act 1966
1967	c. 13	..	Parliamentary Commissioner Act 1967
	c. 17	..	Iron and Steel Act 1967
	c. 34	..	Industrial Injuries and Diseases (Old Cases) Act 1967
	c. 43	..	Legal Aid (Scotland) Act 1967
	c. 54	..	Finance Act 1967
	c. 56	..	Matrimonial Causes Act 1967
	c. 58	..	Criminal Law Act 1967
	c. 71	..	Aden, Perim and Kuria Muria Islands Act 1967
	c. 75	..	Matrimonial Homes Act 1967
	c. 80	..	Criminal Justice Act 1967
1968	c. 19	..	Criminal Appeal Act 1968
	c. 23	..	Rent Act 1968
	c. 36	..	Maintenance Orders Act 1968
	c. 46	..	Health Services and Public Health Act 1968
	c. 49	..	Social Work Scotland Act 1968
	c. 53	..	Adoption Act 1968
	c. 63	..	Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968