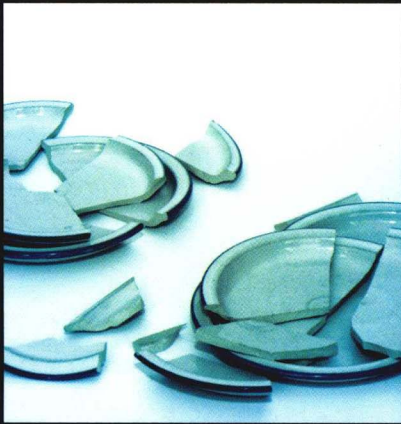


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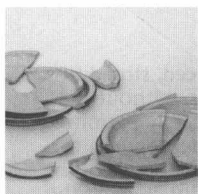
Family Law Handbook

2015

JANE SENDALL



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Family Law Handbook

JANE SENDALL

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For my parents

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The author and publisher would like to thank David Hodson for his kind permission for the use of his article on the case of *Charman*, which illuminates an area in which the decisions of the higher court become progressively more difficult to explain to students. Further information by David about English financial provision law on divorce including in the international context is available at www.davidhodson.com and www.iflg.uk.com.

NEW TO THIS EDITION

- Updates on the Single Family Court
- Updates on the Marriage (Same Sex Couples) Act 2013
- Updates on the Children and Families Act 2014 and child arrangement orders
- Updates on the Child Arrangements Programme and associated procedure where harm is alleged
- Updates on the new Public Law Outline
- Updates on allocation of cases in the Single Family Court

PREFACE

Working with families, children, parents, spouses, civil partners, and cohabitants in family law is a demanding job. It is also enjoyable, exhausting, stimulating, and full of variety. Learning family law means grasping a great deal of statute, case-law, and skills quite quickly over a range of topics, and this book is written to assist those learning family law. Family law is in a state of flux as sweeping changes are being made to funding, marriage, the structure of the courts, and the law concerning children. There are various pilots to review procedure in financial proceedings and the Law Commission is reporting on financial remedies. One article asks 'Will I retire before I read all of the changes made to the family system' and this is not a frivolous question. The changes made to family law in 2014 have been immense. The changes will need some time to settle down and for local practice to become clear. Until then, I have stated the law as it has been enacted and without speculation about how it is playing out in practice.

I would like to extend my love and thanks to David and my family for their support, also to my much-neglected friends for their encouragement and my students, past and present, for inspiration, honesty, and stimulation. Particular thanks go to Katrina Pescott, my friend and dedicated family solicitor, who advises me on matters of practice with patience and good humour. Her advice was essential in the writing of this book. As I work largely from home, I greatly enjoyed the friendship of my neighbours in Waterhouses and their company and sociability.

This text is designed for students on the LPC and BTPC studying family law and I keep in mind that some are studying family law for the first time. This text is not intended to be as complete as a lengthy, complex practitioner's text. I hope that the text is useful to those in the very early stages of a training contract, but it is primarily designed for the law student. As a result, it does not contain all the case-law and commentary one would expect from a practitioner's text, and emphasis has been placed on including useful pedagogical features and ensuring understanding. Practice varies widely across the country, and so when entering practice, differences will be found. I find practice varies from court to court!

I would also like to acknowledge my past and current colleagues involved in the LPC and BTPC and my colleagues at York University for their inspiration, and good humour, and judicial colleagues for their insight.

Family law is a big subject and I would like to acknowledge the assistance of Andrew Hayward of Durham University and Emma Duff of Northumbria University for their helpful comments on Chapter 22, the former Deputy Manager of Derwentside Citizen's Advice Bureau (or 'Mum') for her assistance with Chapter 21, David Hodson for his kind permission for the use of his article on the case of *Charman*, which illuminates an area in which the decisions of the higher court become progressively more difficult to explain to students. Further information by David about English financial provision law on divorce, including in the international context, is available at www.davidhodson.com and www.iflg.uk.com. Invaluable information on collaborative law came from Helen Robson of Caris Robson LLP and Norman Taylor of Zermanskys & Partners.

I would like to acknowledge the advice, encouragement, and enthusiasm of Thomas Randall in the completion of this edition and Lucy Read throughout the start of this project, and the excellent help from Fiona Tatham, Sarah Parker, Moira Greenhalgh, and Amar Pannu.

All errors are entirely my own.

Jane Sendall
September 2014

GUIDED TOUR OF THE BOOK

Sendall's *Family Law Handbook* contains numerous features that have been specifically designed to facilitate your learning and understanding of family law and practice. To help you get the most from your text, this 'Guided Tour of the Book' highlights the features used by the author to explain the law and its application in practical situations.

WITHIN EACH CHAPTER

- 4.1 Introduction
- 4.2 Judicial separation
- 4.3 Nullity
- 4.4 Void marriages
- 4.5 Voidable marriages
- 4.6 Forced marriages

- 4.1 Introduction
- 4.2 Judicial separation
- 4.3 Nullity

CHAPTER CONTENTS

Use the detailed contents list featured at the beginning of each chapter to identify quickly and clearly the key topics to be covered and to locate where each topic appears in the wider subject area.

1.1 INTRODUCTION

This chapter is required by a family lawyer; professional conduct issues which include confidentiality and money

- consider the importance of the first interview

CHAPTER AIMS

Use the brief chapter aims at the start of each chapter to help you focus your reading and learning.

Practical Considerations

It is sensible to obtain a written statement from the respondent fact and lists the costs of the respondent may be able to claim their costs of

PRACTICAL CONSIDERATIONS

Use these sections to gain a practical understanding of how a solicitor may use the rules and procedures available. This is an opportunity to prepare on a practical level for your training contract.



Example

and they have seven children. Fred of finance, cooking, and childcare, and be money and takes absolutely no notice of Brenda is married to unreasonable behaviour fact and lists the 2009. Brenda has no money of her own and nowhere else to live with Fred until shortly before the decree nisi. Even though Brenda

EXAMPLES

Look for the example icon to find practical scenario-based examples of how the law is applied in a realistic practice situation. These will provide you with a valuable insight into what might happen day-to-day in a solicitor's practice.



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to the questions above can be found at www.oxfordtextbooks.co.uk/orc/familyhandbook15/

ONLINE RESOURCE CENTRE ICON

Look out for this icon, used to highlight where further information is available on the Online Resource Centre accompanying this handbook. Visit www.oxfordtextbooks.co.uk/orc/familyhandbook15/ to see the full range of supporting resources accompanying this book. Also see page xxvi overleaf for an introduction to these online resources.

END OF CHAPTER FEATURES

SUMMARY POINTS

The key points covered are summarized in a user-friendly list at the end of each chapter. Look at these summaries to help you consolidate your learning or to check your knowledge at revision time.

SUMMARY POINTS

- Brussels II (see 7.1.1) provides for jurisdiction in divorce and the Domicile and Matrimonial Proceedings Act 1973 considers where a person lives on a day-to-day basis.
- Jurisdiction is based on dependence, or choice.
- Domicile is based on where a person is born.
- Domicile of dependence depends on where a person's father or mother lives when a person

SELF-TEST QUESTIONS

These questions allow you to test yourself on particular areas of the law in preparation for exams or to assess your learning throughout the duration of the course. Use these questions to uncover areas where you might need to improve your understanding by re-reading the text or asking your lecturer.

SELF-TEST QUESTIONS

- What is 'jurisdiction'?
- Which court in England and Wales may have jurisdiction?
- What are the requirements that must be established for jurisdiction?
- Where are you domiciled?

CASE STUDIES

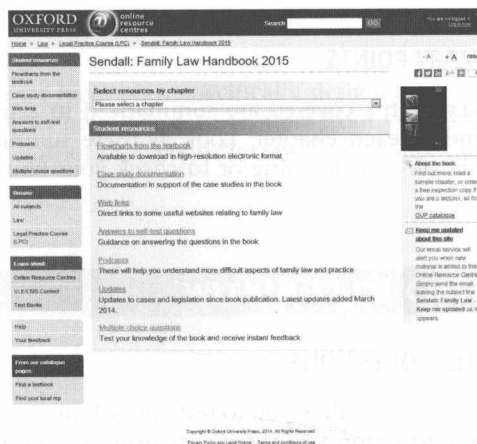
Throughout the book, the author refers to two fictional case studies, which provide a practical focus to the law and procedures described in the text. The case studies also show you how the law would be applied in an ongoing scenario, allowing you to see procedures in context from the start of a case through to its conclusion. Example documents available on the Online Resource Centre ensure that these case studies remain realistic. See the 'Guided Tour of the Online Resource Centre' at page xxvi for more information.

Case Study Two

In Case Study Two, your supervisor asks you to complete the documentation for an undefended divorce. You will also find a blank form for the documentation for an undefended divorce.

GUIDED TOUR OF THE ONLINE RESOURCE CENTRE

Online Resource Centres have been developed to provide students and lecturers with ready-to-use teaching and learning resources. They are free of charge, designed to complement the text, and offer additional materials that are suited to electronic delivery.



STUDENT RESOURCES

All the resources in this area of the site are freely accessible to all, with no password required. Simply visit the site at www.oxfordtextbooks.co.uk/orc/familyhandbook15/

ANSWERS TO SELF-TEST QUESTIONS

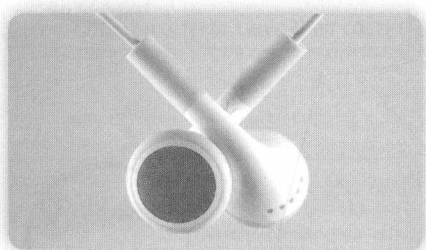
This section has now been given student access, following recent lecturer and student feedback. Guidance is given on appropriate answers to the self-test questions which appear in the book. This provides you with feedback on your answers.

Chapter 3: Guidance on answering the self-test questions

Question 1: List and explain three advantages of ADR over a

Advantages of ADR include:

- May be quicker
- May be cheaper
- Can help the parties to overcome emotional difficulties and retain a civil relationship
- ADR can be less formal than court proceedings
- ADR can be flexible.



PODCASTS

Short podcasts have been created by the author to help consolidate your understanding of key aspects of family law and practice.

UPDATES

Updates will be posted on the website when the law changes or when significant cases pass through the courts, allowing you to keep fully informed of developments. The updates are freely accessible to all and offer an easy way to keep abreast of events in this rapidly changing subject area.

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Sendall's Family Law Handbook 2015

Updates

Updates covering changes to the law since book publication will be posted here.

To be informed when updates are added to the site, please click the link below and send the email, leaving the subject line 'Sendall's Family Law Handbook 2015'.

<http://www.oxfordtextbooks.co.uk/orc/familyhandbook15/>

March 2015 (PDF, Size: 99KB)

Contains updates to Chapters 1, 11, 18, 20 & 25

GLOSSARY

Ancillary relief	The division of money and property following divorce or dissolution of a civil partnership. Now called financial remedy proceedings
Bailiff	A person employed by the court to serve court papers and to enforce judgments
Bundle	The term given to the collation of documents to be referred to in court. A bundle will contain an index, will be paginated and organized in a useful way
CAFCASS	The Child and Family Court Advisory Support Service. CAFCASS looks after the interests of children in court proceedings and advises the court on what is in the best interests of the children
Charge	A charge is placed on a property and when the property is sold, a certain proportion of the proceeds are given to the person with the charge
Client	The most important person in a family lawyer's job
CPS	The Crown Prosecution Service. The CPS makes decisions on the prosecution of criminal offences and prosecutes criminal cases in court
Decree	A type of court order
Deed	A written document, which must be signed
Disbursements	The name given by solicitors to the various fees which are incurred during a case, e.g. expert fees or court fees
Disclosure	The process by which one party tells the other party certain information about their case or gives information
Duress	Unlawful pressure placed on a person in order to coerce them or overcome their resistance into doing something they do not wish to do
File	To give a document to the court
Free standing	Court proceedings which are made as an application solely based on a cause of action and not within other proceedings
Guardian ad litem	Now called a Children's Guardian; they look after a child's interest in public children proceedings
Inherent jurisdiction	The ability of a superior court to hear a case unless a rule or statute restricts that jurisdiction
Injunction	A court order requiring a person to do or refrain from certain acts
LAA	Legal Aid Agency – it has responsibility for the administration of public funding
Leave	The permission of the court to do a certain act
Litigant in person	A person who represents themselves at court without a lawyer
LSC	Legal Services Commission who used run the public funding scheme in England and Wales
Mediation	A process which aims to settle disputes between people over money and property or children
NSPCC	National Society for the Prevention of Cruelty to Children
Nullity	A decree which annuls a marriage

Privilege	A legal device which protects the disclosure (see earlier) of documents to the court or other party in court proceedings
Refuge	A place of safety for those fleeing domestic abuse
Return date	Following a hearing without notice to one party, a return date is the date on which the court will hear the case with all parties present
Serve	When a document is formally given to a person
Spouse	A married person, including same sex spouses
SRA	The Solicitors Regulation Authority which regulates the solicitors' profession
Undue influence	Where one person takes advantage of a position of power over another person
Usages	A firmly established practice or custom

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