

S.M. CRETNEY

Elements of Family Law

SECOND EDITION



Sweet & Maxwell

ELEMENTS OF FAMILY LAW

by

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LONDON
SWEET & MAXWELL
1992

Published in 1992
by Sweet & Maxwell Ltd.
South Quay Plaza, 183 Marsh Wall, London E14 9FT
Computerset by
PB Computer Typesetting, Pickering, N. Yorks.
Printed in England by
Clays Ltd., St. Ives plc

A CIP catalogue record for this book
is available from the British Library

ISBN 0 421 450304

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**ELEMENTS
OF
FAMILY LAW**

AUSTRALIA
The Law Book Company
Sydney

CANADA
The Carswell Company
Toronto, Ontario

INDIA
N.M. Tripathi (Private) Ltd.
Bombay
and
Eastern Law House (Private) Ltd.
Calcutta
M.P.P. House
Bangalore
Universal Book Traders
Delhi

ISRAEL
Steimatzky's Agency Ltd.
Tel-Aviv

PAKISTAN
Pakistan Law House
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PREFACE

My objective in writing this book remains to serve the needs of those students who seek a clear and concise guide to the basic principles or central core of English family law and who are prepared to accept that such a guide can only be provided at the cost of some sacrifices both in range and depth of coverage. I had always believed that the book might best be used in conjunction with a selection of primary materials; and happily an admirable selection is readily accessible in Hoggett and Pearl's *The Family, Law and Society, Cases and Materials* (2nd ed., 1991). I have given relevant references to that work at the end of each Chapter of the text; and I have also included a number of other suggestions for further reading.

Some parts of the text follow the pattern of *Principles of Family Law* (5th ed., 1990); but the sections of that work dealing with Children were written entirely by its co-author, Professor Judith Masson, and accordingly the corresponding parts of this book are completely new. It is difficult to achieve in a short book the balanced approach to discussions of policy issues which can properly be expected in texts aiming to be comprehensive; and I have therefore been less hesitant than in the past to express my own views on a number of matters which are, or which I believe should be, controversial.

I remain convinced of the need for law students to study the law in its social and economic context; but I am even more convinced that students must understand that the law—concerned as it is with the question of the right of the State to coerce the unwilling—is a rigorous intellectual discipline in its own right. The family lawyer certainly needs to understand the language, skills and approaches of others professionally concerned with the family; but it is surprising—particularly in the light of the disturbing facts revealed by the Cleveland and other enquiries—that little emphasis seems to be given to the need for all concerned to understand at least the fundamental principles of the law. I hope that this book will be of some value in that respect.

I have included the facts of many decided cases in the text in an attempt to convey to the reader something of the reality of the subject. References are given to the Family Law Reports ("FLR"), but alternative citations may be found in the Table of Cases.

I have been much helped in preparing this edition by comments on sections of the text made by Gillian Douglas, Senior Lecturer in Law at the Cardiff Law School, and by Gwynn Davis, Senior Research Fellow in the Law Faculty at Bristol University. The whole text has been skilfully reduced to immaculate typescript by Mrs. Wendy Brett. I am grateful to them all.

Amongst the mass of new statutory material dealt with in this edition will be found the provisions of the Human Fertilisation and Embryology Act 1990 which seek to identify a child's parents; and it

PREFACE

therefore seemed not inappropriate to choose for the cover illustration the subject of the most celebrated maternity dispute in English history. The birth of a son to the wife of King James II—one of the principal events precipitating what generations of schoolboys were taught to call the Glorious Revolution—took place in the presence of some 30 witnesses (including the Lord Chancellor, the Lord President and Lord Privy Seal) but this did not suffice to quell rumours that the lawful heir to the throne was a supposititious child smuggled into the Royal bed in a warming-pan. All lawyers know that truth may be elusive; but the reader of this text will perhaps find in it other illustrations—albeit less constitutionally important—of the reality that law making is essentially a political process depending more on the tides of fashion and on what people wish to believe rather than on objective truth—if indeed there be such a thing.

I hope the law is correctly stated on the basis of the sources available to me today, April 4, 1992.

STEPHEN CRETNEY

The feast of St. Isidore of Seville, 1992

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