

简明法学案例丛书(影印版)

# briefcase on FAMILY LAW

## 家庭法简明案例

(第二版)

(Second Edition)

LB·科增

LB Curzon



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# 本书导读

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本书精选了当代英国家庭法领域最具代表性的一系列经典案例,原汁原味,选材得当,是快速学习了解英国国家家庭法的最佳原始资料。

该书分为五个部分:婚姻的缔结与无效、离婚和司法分居、家庭暴力、经济扶持和财产纠纷、有关子女的家庭法问题。为了方便读者学习与查找,在每个部分下,该书又根据内容不同分为若干节,节下又细分小节,所有案例都在每个小节下大致按年代先后顺序展开,而每一节结尾都会留下一个发人深省的思考题,对这些问题并没有现成的标准答案,给读者的学习思考留下了很大空间。

该书的每个案例中都有对案件事实和法院裁决的概要描述,还有许多案件直接引用了法官的判词,每个案例都反映了英国法院在家庭法这个专门领域所采取的基本法律原则,且其中许多案例都是 2000 年新近发生的,更有助于读者把握当代英国国家家庭法的发展走向,在阅读时读者可将前后相似案例对照起来进行比较,去发现法律原则的变化和法官推理思路的不同,尤其是那些经由上诉法院或枢密委员会新近作出的判决、裁定,这部分案例的裁决结果具有相当的权威性,在很大程度上影响着今后类似案件的裁决结果,具有很高的学习价值。

在学习这些英国案例时,读者可将其与中国的婚姻家庭法制度联系起来,比较两国法院在遇到相同案件情形时可能作出的不同决定,如对事实婚姻的处理、准予离婚的认定标准、离婚后的财产分割原则等;对于一些在英国已经相当完备,但在中国目前尚未建立的婚姻家庭法制度尤其是儿童利益保护方面的诸如诉讼监护人制度等,这些可能是值得中国借鉴移植的,有利于中国对外国优秀立法成果的吸收;而还有一些案例是目前在中国尚未出现过的,如变性者主张婚姻权案例、个人变性后的夫妻、子女关系处理案例,国内医学技术的高度发达已经将变性人作为一个新的社会现象摆在我们面前,虽然现在中国国内并不存在这方面的法律争议,但这并不代表将来也不会出现这种争议,所以这仍是值得我们中国读者关注和预先思考的问题,而该书收录的有关案例则可为我们提供一定借鉴;另外,对于专门研究国际私法的学者而言,该书中有相当多的案例涉及到了跨国婚姻效力、跨国收养、外国法院判决的承认与执行问题,在管辖权的确定和准据法的选择

上,英国法官所采取的态度可见一斑,具有很大参考价值。

本书的目录、法规一览表、索引等内容由徐妮娜翻译,纰漏之处在所难免,敬请读者批评指正!

译 者

2004 年 3 月

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# Preface

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This text, which comprises a selection of important cases in family law, is intended primarily for law students and others who are preparing for first examinations in this subject area. It is intended to provide a digest of cases which illustrate the application of principles in this field of law. The cases chosen will offer useful adjunctive material for the group of Cavendish publications concerned with family law.

For this second edition, cases which are no longer relevant have been omitted, and some 80 new cases have been added.

For students who find access to the full reports difficult, there is now a valuable set of summaries of current cases available: *Family Law* (monthly) gives full summaries of recent decisions, together with authoritative commentaries; *Current Law* (monthly) provides abstracts of the decisions of the courts in cases relating to family law; *New Law Journal* (weekly) often includes summaries of developments in the field of family law; *Student Law Review* (triannually) contains a section devoted specifically to matters of interest in family law.

LB Curzon  
2001

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# Abbreviations

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|       |                                                        |
|-------|--------------------------------------------------------|
| AA    | Adoption Act 1976                                      |
| CACA  | Child Abduction and Custody Act 1985                   |
| Ch A  | Children Act 1989                                      |
| CLSA  | Courts and Legal Services Act 1990                     |
| CSA   | Child Support Act 1995                                 |
| DMPA  | Domestic and Matrimonial Proceedings Act 1973          |
| DPMCA | Domestic Proceedings and Magistrates' Courts Act 1978  |
| DVMPA | Domestic Violence and Matrimonial Proceedings Act 1976 |
| FLA   | Family Law Act 1986/1996                               |
| FLRA  | Family Law Reform Act 1969                             |
| HFEA  | Human Fertilisation and Embryology Act 1990            |
| LPA   | Law of Property Act 1925                               |
| LRA   | Land Registration Act 1925                             |
| MA    | Marriage Act 1949                                      |
| MCA   | Matrimonial Causes Act 1973                            |
| MFPA  | Matrimonial and Family Proceedings Act 1984            |
| MHA   | Matrimonial Homes Act 1983                             |
| MWPA  | Married Women's Property Act 1882                      |
| SCA   | Supreme Court Act 1981                                 |

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