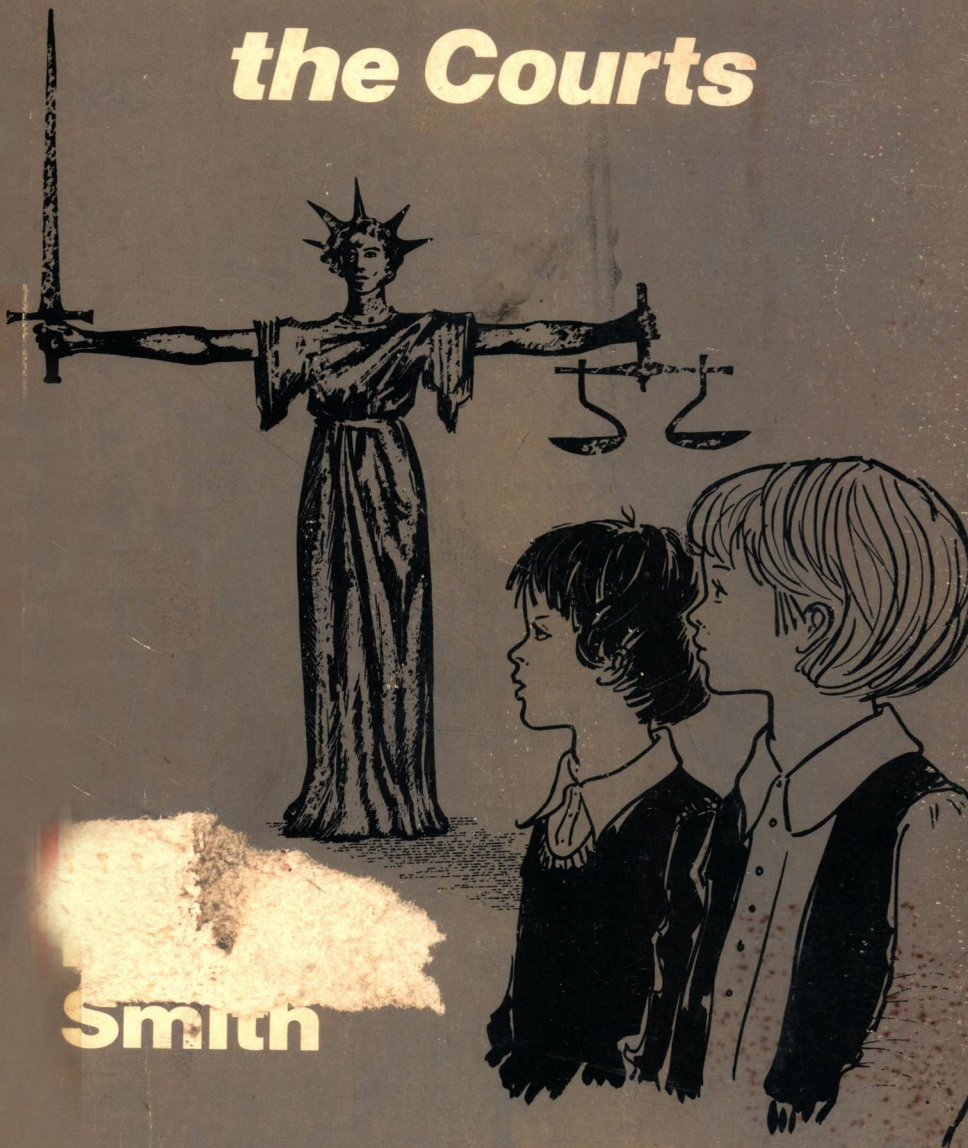


Social Work and Law

***Children and
the Courts***



Smith

Sweet & Maxwell

SOCIAL WORK AND LAW

**CHILDREN
AND THE COURTS**

ROGER SMITH, B.A.
Solicitor

LONDON
SWEET AND MAXWELL
1979

*Published in 1979 by
Sweet & Maxwell Ltd. of
11 New Fetter Lane, London.
Photoset by Red Lion Setters, London.
Printed in Great Britain by
Page Bros. (Norwich) Limited.*

ISBN 0 421 24160 8

©
Roger Smith
1979

SOCIAL WORK AND LAW

**CHILDREN
AND THE COURTS**

AUSTRALIA

The Law Book Company Ltd
Sydney: Melbourne: Brisbane

CANADA AND U.S.A.

The Carswell Company Ltd.
Agincourt, Ontario

INDIA

N.M. Tripathi Private Ltd.
Bombay
and
Eastern Law House Private Ltd.
Calcutta
M.P.P. House
Bangalore

ISRAEL

Steimatzky's Agency Ltd.
Jerusalem: Tel Aviv: Haifa

MALAYSIA: SINGAPORE: BRUNEI

Malayan Law Journal (Pte.) Ltd.
Singapore

NEW ZEALAND

Sweet and Maxwell (N.Z.) Ltd.
Auckland

PAKISTAN

Pakistan Law House
Karachi

TABLE OF CASES

<i>Al haji Mohammed v. Knott</i> [1969] 1 Q.B. 1; [1968] 2 W.L.R. 1446 . . .	132
<i>B., Re</i> [1964] Ch. 1; [1963] 3 W.L.R. 371; [1963] 3 All E.R. 125	192
<i>B., Re</i> [1975] Fam. 36; [1975] 2 W.L.R. 302; [1974] 2 All E.R. 915	166
<i>B., Re</i> [1975] Fam. 127 [1975] 2 W.L.R. 569	188
<i>B. (S), Re</i> [1966] 110 S.J. 671; 64 L.G.R. 431	196
<i>B. v. B.</i> [1971] 1 W.L.R. 1486; [1971] 3 All E.R. 682	65, 155
<i>B. v. B.</i> [1976]	129
<i>Barbour's Settlement Trust; National Westminster Bank v. Barbour</i> [1974] 1 W.L.R. 1198; [1974] 1 All E.R. 1188	208
<i>Barker v. Westmorland County Council</i> [1958] 56 L.G.R. 267	127
<i>C.S.A., Re</i> [1960]	192
<i>Caermarthenshire C.C. v. Lewis</i> [1955] A.C. 549; [1955] 2 W.L.R. 517	203
<i>Crick v. Crick</i> [1977] Fam. Law 239	155
<i>D., Re</i> [1970] 1 W.L.R. 599; [1970] 1 All E.R. 1088	43
<i>D., Re</i> [1976] Fam. 185; [1976] 2 W.L.R. 279	164, 168
<i>D. Re</i> [1973] Fam. 209; [1973] 3 W.L.R. 595	195
<i>D., Re</i> [1977] 2 W.L.R. 79; [1977] 1 All E.R. 145	154, 196
<i>D. v. N.S.P.C.C.</i> [1976] 3 W.L.R. 124; [1976] 2 All E.R. 993	43
<i>Deitz v. Lenning Chemicals</i> [1967] 3 W.L.R. 165	209
<i>Denmark Productions Ltd. v. Boscobel Productions Ltd.</i> [1969] 1 Q.B. 699; [1968] 3 W.L.R. 841	205
<i>F., Re</i> [1970] 1 W.L.R. 192; [1970] 1 All E.R. 344	196
<i>F., Re</i> [1977] Fam. 165; [1977] 2 W.L.R. 488	190
<i>F. (R.), Re</i> [1970] 1 Q.B. 385; [1969] 3 W.L.R. 853; [1969] 3 All E.R. 1101	195
<i>G., Re</i> [1963] 2 Q.B. 73; [1963] 2 W.L.R. 69	166
<i>H., Re The Times</i> , October 29, 1977; [1977] Fam. Law. 205	166
<i>H., Re</i> [1974] 5 Fam. Law. 54	191
<i>H., Re</i> [1977] 1 W.L.R. 471; [1977] 2 All E.R. 339	197
<i>Hill v. Denmark</i> [1895] 59 J.P. 345	178
<i>Humberside County Council v. D.P.R.</i> [1977] 1 W.L.R. 1251; [1977] 3 All E.R. 964	42
<i>J. v. C.</i> [1970] A.C. 668; [1969] 2 W.L.R. 540; [1969] 1 All E.R. 788	173
<i>Jarndyce v. Jarndyce</i>	1
<i>Johns v. Jones</i> [1978] 3 W.L.R. 792	128
<i>Jones v. Lawrence</i> [1969] 3 All E.R. 267	203

K., <i>Re</i> [1977]	154
Kane v. Wilcox [1968]	204
Krishnan v. London Borough of Sutton [1970] Ch. 181; [1969] 3 W.L.R. 683; [1969] 3 All E.R. 1367	129
L., <i>Re</i> [1962] 1 W.L.R. 886; [1962] 3 All E.R. 1	153
L., <i>Re</i> [1968] 1 All E.R. 20; [1967] 3 W.L.R. 1149	178
L. (A.C.) (An Infant) [1971] 3 All E.R. 743	114
M. v. J. [1977] 121 S.J. 759	155
O'Connor v. A. and B. [1971] 1 W.L.R. 1227; [1971] 2 All E.R. 1230	198
Official Solicitor v. K. [1965] A.C. 201; [1963] 3 W.L.R. 408; [1963] 3 All E.R. 191	66
P. <i>Re</i> [1976] 3 W.L.R. 924; [1977] 1 All E.R. 182	196
P.A. <i>Re</i> [1971] 1 W.L.R. 1976; [1971] 3 All E.R. 522	198
Proprietary Trades Association v. A.G. of Canada [1931] A.C. 310; 100 L.J.P.C. 84	48
R. <i>Re</i> [1974] 1 All E.R. 1033; [1974] 4 Fam. Law 51	173
R. v. Allen and Others (1976) 64 Cr. App. R. 297	76
R. v. Bebbington [1969] 1 W.L.R. 1348; [1969] 3 All E.R. 427	110
R. v. Elliot [1977] Crim. L.R. 551	76
R. v. Evans [1959] 1 W.L.R. 26; [1958] 3 All E.R. 673	107
R. v. G. [1971] Crim. L.R. 721	112
R. v. Jobes [1962] Crim. L.R. 714	106
R. v. K. (1977) 121 S.J. 728	137
R. v. Lincoln (Kesteven) County Justice, <i>exp.</i> M. [1976] Q.B. 957; [1976] 2 W.L.R. 143	138
R. v. Moore [1968] 1 W.L.R. 397; [1968] 1 All E.R. 790	106
R. v. Nottingham Justices, <i>exp.</i> Bostock [1960] 1 W.L.R. 1315; [1960] 3 All E.R. 625	46
R. v. Oxford City Justices Magistrates, <i>exp.</i> H. [1975] Q.B. 1; [1974] 3 W.L.R. 1; [1974] 2 All E.R. 356	126
R. v. R. [1977] 1 W.L.R. 1256; (1977) 121 S.J. 758	155
R. v. Roseda (1958)	109
R. v. Wallwork (1958) 122 J.P. 299; 42 Cr. App. R. 153	46
Rhodes v. Switherbank (1899) 2 Q.B.D. 577	208
S., <i>Re</i> [1967] 1 W.L.R. 396; [1967] 1 All E.R. 202	64
S. v. Huddersfield Borough Council [1975] Fam. 113; [1975] 2 W.L.R. 697	200
S. v. S. [1976] Fam. 18; [1975] 2 W.L.R. 615	151, 152, 153
S. (B.D.) v. S. (D.J.) same as S.v.S.	153
Singh v. Secretary of State (1918)	168

Somerset County Council <i>v.</i> Brice [1973] 1 W.L.R. 1169; [1973] 3 All E.R. 438	97
Stocks <i>v.</i> Wilson [1913] 2 K.B. 235; 82 L.J.K.B. 598; 108 L.T. 834	205
Sugden <i>v.</i> Sugden [1957] P. 120; [1957] 2 W.L.R. 210; [1957] 1 All E.R. 300	152
W. <i>v.</i> W. and C. [1968] 1 W.L.R. 1310; [1968] 3 All E.R. 409	153
W. (R.J.) <i>v.</i> W. (S.J.) [1972] fam. 152; [1972] 2 W.L.R. 371; [1971] 3 All E.R. 303	144
Whittall <i>Re</i> [1972] 1 W.L.R. 1027; [1973] 3 All E.R. 35	207
X., <i>Re</i> [1975] Fam. 47; [1975] 2 W.L.R.	165
Y. <i>v.</i> Y. [1973] Fam. 147; [1973] 3 W.L.R. 80; [1973] 2 All E.R. 574	155

TABLE OF STATUTES

1750 Constables Protection Act (24 Geo. 2, c. 44)	73	1944 Education Act (7 & 8 Geo. 6, c. 31)	3, 133
1824 Vagrancy Act (5 Geo. 4, (5 Geo. 4, c. 83)	73	s. 32	133
s. 6	73	s. 39	133
1874 Infants Relief Act (37 & 38 Vict., c. 62)	205	s. 40	133
s. 1	205	1948 Children Act (11 & 12 Geo. 6, c. 43)	2, 17
s. 2	205	s. 1	123, 124, 125
1908 Children Act (60 & 61 Vict., c. 67)	17, 88, 107		133, 120,
1926 Adoption of Children Act (16 & 17 Geo. 5, c. 29)	185	s. 1	113, 120, 124,
.....	185		123, 125
1933 Children and Young Persons Act (23 & 24 Geo. 5, c. 12)	2, 3	s. 1 (1)	118
s. 1	118	s. 1 (2)	120
s. 16	74	s. 1 (3)	120, 129
s. 31	18, 79	s. 1 (3) (a)	120
s. 34 (2)	76	s. 2	14, 17, 20, 26, 30,
s. 38 (1)	46		46, 64, 122, 123,
s. 39	19		125, 126
s. 40	140, 117	s. 2 (4)	128
s. 44	20, 94	s. 2 (9)	126
s. 46 (1)	8	s. 3 (6)	122
s. 48 (3)	60	s. 3 (8)	123
s. 49	19	s. 4	14, 17, 20, 26, 30,
s. 50	53		129
s. 53	111	s. 4 B	129
s. 53 (1)	111	s. 10	126
s. 53 (2)	112	s. 12	121
s. 55	97	s. 12 (1)	103
s. 56 (1)	10	s. 13	120
s. 86	122	s. 29 (6)	124
s. 87	123	Part II	120
s. 88	123, 178	1948 Criminal Justice Act (11 & 12 Geo. 6, c. 58)	106
s. 107 (1)	97, 139	s. 4	106
Sched. 1	132, 140	s. 19 (1)	99
1934 Law Reform (Miscellaneous Provisions) Act (24 & 25 Geo. 5, c. 41)	204	s. 19 (8)	100
1938 Evidence Act (1 & 2 Geo. 6, c. 28)	41	s. 20	107, 108
		1949 Marriage Act (12, 13 & 14 Geo. 6, c. 76)	184
		s. 3	180
		s. 3 (1) (a)	184
		1949 Adoption of Children Act (12, 13, & 14 Geo. 6, c. 98)	187
		s. 13	187

1952 Costs in Criminal Cases	s. 29	198
Act (15 & 16 Geo. 6 & 1	s. 34	198
Eliz. 2, c. 48)	s. 37	187
s. 6 (1)	s. 38	193
97	s. 39	193
1952 Prison Act (15 & 16 Geo.	s. 40 (4)	193
6 & 1, Eliz. 2, c. 52)	s. 43 (3)	124
s. 1	s. 50	194
107	s. 50 (4)-(10)	194
s. 44 (1)	s. 193	
111	1958 Children Act (6 & 7 Eliz.	
s. 44 (2)	2, c. 65)	117
111	s. 2	117
s. 45 (3)	s. 3 (2)	193
109	s. 4	117
s. 45 (4)	s. 5	117
109	s. 7	118
s. 45 (5)	s. 7 (4)	124
109	s. 12	117
s. 49	s. 13	117
75	s. 26	177
1952 Magistrates' Courts Act	1959 County Courts Act (7 & 8	
(15 & 16 Geo. 6 & 1	Eliz. 2, c. 22)	
Eliz. 2, c. 55)	s. 80	207
s. 28	1959 Mental Health Act (7 & 8	
7	Eliz. 2, c. 72)	101
s. 28 (1)	s. 4 (1)	127
110	s. 60	135
s. 29	1961 Criminal Justice Act (9 &	
6	10 Eliz. 2, c. 39)	
s. 39	s. 1 (2)	108
71	s. 7 (2)	106
s. 40	s. 10	100
79	s. 12	110
s. 54 (3)	s. 13	
162	Sched. 1	107
s. 56-64	1963 Children and Young	
15	Persons Act (c. 37)	
s. 58 (1A)	s. 1	116, 119
16	s. 3	132
s. 59	s. 27	46
66	1967 Criminal Law Act (c. 58)	
s. 60	s. 1	6
67	s. 2	73
s. 71	s. 2 (5)	74
96	s. 3	72
s. 80	s. 5	85
67	s. 36	98
s. 83 (3)		
10		
s. 86 (3)		
95		
s. 104		
129		
1957 Affiliation Proceedings		
Act (5 & 6 Eliz. c. 55)		
..... 175, 183		
s. 1		
176		
s. 2 (1)		
176		
s. 4 (1)		
48		
s. 4 (2)		
179		
s. 4 (4)		
179		
s. 5 (3)		
178		
s. 5 (4)		
179		
1958 Adoption Act (7 & 8 Eliz.		
2, c. 5)		
3, 185		
s. 3		
192		
s. 9 (7)		
190		
s. 20		
200		
s. 20 (A)		
200		

1968 Theft Act (c. 60)	73	s. 15	102
s. 12	73	s. 15 (1)	103
1968 Criminal Evidence Act		s. 16 (6)	103
(c. 64)	41	s. 17	103
1969 Family Law Reform Act		s. 20 (3)	137
(c. 46)		s. 21	137
s. 1	201	s. 21 A	137
s. 6	169	s. 21 (2)	60
s. 7	169	s. 21 (3)	137
s. 20	178	s. 22 (4)	14, 60, 137
1969 Children and Young		s. 23 (1)	59
Person's Act (c. 54)		s. 23 (2) (3)	59
2, 3, 68, 81, 82, 87,		s. 24	122
89, 91, 92, 99, 102,		s. 24 (2)	121
107, 113, 121, 125,		s. 27 (3)	104, 121
133, 134		s. 27 (4)	121
s. 1	17, 46, 63, 101,	s. 28 (1)	139
130, 139, 166, 167		s. 28 (2)	75, 140
s. 1 (4)	135	s. 29	80
s. 2	130, 131	s. 31	110
s. 2 (1)	130	s. 32	75
s. 2 (3)	130	s. 32 A	27, 136, 138
s. 2 (8)	133	s. 32 B	136
s. 2 (9)	59	s. 32 (1)	123
s. 2 (10)	60	s. 32 (2) (a)	123
s. 2 (12)	95, 137	s. 34 (2)	61
s. 2 (13)	95	s. 34 (5)	97
s. 3 (a)	95	s. 46 (1) (c)	
s. 3 (7)	95	s. 62	122
s. 3 (8)	137	s. 70 (1)	134
s. 4	53	1971 Guardianship of Minors	
s. 5 (2)	82	Act (C.3)	169, 170
s. 5 (8)	82	s. 1	153, 164
s. 6 (1)	7	s. 4 (4)	172
s. 6 (1) (A)	9	s. 5	172
s. 6 (1) (a)	7	s. 6	172
s. 6 (1) (b)	8	s. 9	173
s. 6 (3)	97	s. 11 A (1)	174
s. 7	87	s. 14 A	173
s. 7 (1)	107	s. 14 (2)	174
s. 7 (7)	95, 103	1973 Matrimonial Causes Act	
s. 7 (8)	8	(c. 18)	145, 157
s. 9		s. 1 (2)	145
s. 9 (1)	62	s. 1 (1)	145
s. 12	100	s. 2	159
s. 13	102	s. 3	146
s. 14	101	s. 5	158

s. 6	158	1975 Children Act (c. 72)	2,
s. 6 (3)	158	3, 17, 103, 121, 159	
s. 7	146, 158	185, 186, 187, 188	
s. 7 (3)	158		194
s. 8 (1)	159	s. 2	190
ss. 11-13	146	s. 3	190
s. 12 (3)	153	s. 4 A	130
s. 17	146	s. 6 (2)	192
s. 19	147, 159	s. 7 (1)	124
s. 23 (2)	152	s. 8 (2)	159
s. 23 (3)	150	s. 8 (7)	159, 200
s. 25	150, 159	s. 9	160, 192
s. 25 (2)	150	s. 10	160, 189
s. 25 (3)	151	s. 10 (3)	201
s. 27	147, 209	s. 11	189
s. 29 (3)	152	s. 12	159, 194
s. 41 (3)	148	s. 12 (2)	195
s. 42	152	s. 12 (4)	192
s. 43	153	s. 12 (5)	195
s. 52	142	s. 14	160
s. 52 (1)	144	s. 14 (3)	160
s. 88 (1)	158	ss. 14-16	201
1973 Guardianship Act (c. 29)		s. 17	201
.....	169, 170	s. 18 (1)	193
s. 1	170, 188	s. 19	159
s. 1 (1)	126	s. 20	160
s. 1 (2)	146, 171	s. 20 (10)	160
s. 2 (2)	174	s. 20 (12)	160
s. 4 (2 A)	174	s. 21 (3)	18, 189
s. 6	66	s. 22 (4)	199
1973 Powers of the Criminal		s. 27	160
Courts Act (c. 62)		s. 28	160
s. 1	112	s. 28 (3)	161
s. 7	96	s. 29	161
s. 8 (6)	96	s. 30	199
s. 21	27, 106	ss. 33-46	180
s. 35 (4)	96	s. 33 (3)	181
s. 35 (5)	97	s. 34 (1)	159, 182
1974 Legal Aid Act c. 4	3	s. 34 (5)	183
s. 2 (1)	34	s. 34 A	182
s. 7 (5)	32	s. 34 B	182
s. 8 (1) (e)	34	s. 35 (2)	183
s. 28 (6 A) ...	27, 136	s. 36 (2)	183
s. 29 (1)	28	s. 37 (1)	200
s. 30 (3)	34	s. 37 (2)	181, 200
s. 40 (1)	28	s. 37 (3)	173, 181
Sched. 1	30	s. 39 (1)	66

s. 40	182	s. 37	102
s. 41	184	s. 62	75
s. 42	184	1976 Domestic Violence and	
s. 43 (A)	183	Matrimonial Proceedings	
s. 44	180	Act (c. 50) ...	156, 161
s. 45	178	s. 2	156
s. 60	130	s. 16	161
s. 61	130	s. 16 (3)	161
s. 69	59	s. 16 (4)	161
s. 86	142, 180	s. 16 (8)	162
s. 101	199	s. 16 (10)	161
s. 101 (3)	188	s. 18	162
Para 4, Sched. 1	188	1976 Bail Act (c. 63)	59
1975 Inheritance (Provision for		Sched. 1 para 2	59
Family and Dependents)		Sched. 1 para 3	59
Act (c. 63)	152	1978 Domestic Proceedings and	
1976 Fatal Accidents Act (c. 30)		Magistrates' Courts Act	
.....	205	(c. 22)	3, 15, 16,
1976 Adoption Act (c. 36)		141, 143, 147, 156, 163,	
.....	186	169, 173, 174, 183, 186	
1976 Police Act (c. 46) ...	86	s. 8(4)	142
1977 Criminal Law Act (c. 45)		s. 12 (4) - (9)	66
.....	5, 49, 100	s. 12 (7)	66
s. 28	6	s. 83	67
s. 34	9	s. 88 (1)	142, 144

Contents

<i>Table of Cases</i>	<i>page</i> ix
<i>Table of Statutes</i>	xii
INTRODUCTION	1
1 CHILDREN AND THE COURTS	4
1. The Criminal System of Courts	4
2. Civil Courts	12
3. The Magistrates' Court as Domestic Court	14
4. The Juvenile Court	17
2 LEGAL AID AND THE LEGAL PROFESSIONS	21
1. The Legal Profession	21
2. Legal Aid	25
3. Legal Aid for Criminal Proceedings and in the Juvenile Court	26
4. Civil Legal Aid	29
5. Legal Advice	34
3 EVIDENCE	37
1. Rules of Evidence	38
2. What must be Proved	48
3. Standard of Proof	51
4. Legal Presumptions and the Ages of Criminal Responsibility	52
4 PROCEDURE AND REPORTS	55
1. Court Procedure	55
2. Juvenile Court Procedure	58
3. Social Enquiry Reports in the Juvenile Court	60
4. Reports in Matrimonial, Domestic and other Proceedings	64
5 JUVENILES IN CRIMINAL PROCEEDINGS: PRIOR TO COURT	68
1. The Criminal Process Prior to Court	69
2. Police Juvenile Bureaux and Police Cautions	81
3. Complaints Against Police Behaviour	84

6 JUVENILES IN CRIMINAL PROCEEDINGS:	
SENTENCING	87
1. Sentencing Philosophy and Practice	87
2. Bindover	94
3. Conditional and Absolute Discharges	95
4. Fines, Costs and Compensation	96
5. Attendance Centres	99
6. Supervision Orders	100
7. Care Orders	103
8. Detention Centres	104
9. Borstal	107
10. Detention	111
11. Deferred Sentences	112
7 CHILDREN IN CARE: GENERAL PROVISIONS	113
1. Duty of Local Authority to Avoid Taking Children into care	115
2. Fostering	116
3. Reception into Care	118
4. Local Authority's Powers and Duties in Relation to Children in Care	120
8 CHILDREN IN CARE: LOCAL AUTHORITIES' COMPULSORY POWERS	125
1. Assumption of Parental Rights	125
2. Care Proceedings	130
3. Termination of a Care Order	137
4. Emergency Action	139
9 CHILDREN AND MATRIMONIAL PROCEEDINGS	141
1. Children of the Family	144
2. Divorce and Allied Proceedings	145
3. Matrimonial Proceedings in the Magistrates' Court	156
10 CHILDREN AND NON-MATRIMONIAL DOMESTIC PROCEEDINGS	163
1. Wardship Proceedings	163
2. Guardianship Proceedings	169
3. Affiliation Proceedings	175
4. Custodianship Orders	180
5. Consent to Marriage	184
11 CHILDREN AND ADOPTION	185
1. Adoption	185
2. Applicants for Adoption Order	189

Contents

vii

3. Preconditions for Adoption Orders	190
4. Further Protection of Child in Relation to Adoption	198
5. Orders that are Available to the Court	199
6. Applications for Orders Freeing a Child for Adoption	201
12 CHILDREN AND CIVIL PROCEEDINGS	202
1. Children in the Civil Courts: Some Cases of Action	202
2. Children in Civil Procedures: Procedure	206
<i>Further Reading</i>	211
<i>Index</i>	213

Introduction

Courts now deal with very large and growing numbers of children each year. Over 140,000 children appear in the criminal court accused of criminal offences; over 50,000 are in care after proceedings in the juvenile court; about 40,000 are the subject of applications in divorce proceedings. Faced with such numbers and the changes in society that they represent, courts have been forced to adjust dramatically over the last 100 years. New courts, procedures and laws have been devised. A century ago Dickens described his disgust at the abstract and irrelevant way the Court of Chancery decided a custody application in the never-ending court action, *Jarndyce v. Jarndyce*, in the opening chapter of *Bleak House*:

“On such an afternoon, some score of members of the High Court of Chancery ought to be — as here they are — mistily engaged in one of the ten thousand stages of an endless cause, tripping one another up on slippery precedents, groping knee deep in technicalities, while running their goat hair and horse hair warded heads against walls of words, and making a pretence at equity, as players might.”

The picture is not without a recognisable air, particularly of the High Court, today; the law relating to children remains in many ways “knee deep in technicalities.” The intention of this book is to act as a guide to such technicalities at the level which will provide a general understanding of the law for a lay person, and an introduction to a lawyer unfamiliar with its specialised provisions. As befits a book in a series entitled “Social Work and Law,” the book’s concern is with those problems which are likely to affect children who are the clients of social workers. Such children are also likely to be the clients of legal advice centres, law centres, or solicitors in legally aided practices. In addition, the problems of such children are likely