INTRODUCTION

Relocation disputes arise between separated parents when one of them proposes to move to a new geographic location and take their child with him or her, and the other parent objects to the proposal. Compared with many parenting disputes, particularly about children's residence and contact arrangements, relocation disputes are rare. Nonetheless, the seriousness of the consequences of the decision, coupled with the fact that both parents usually have compelling arguments in support of their positions, makes relocation one of the most difficult issues that Family Courts address.

It is perhaps because of these difficulties that different jurisdictions around the world have adopted a wide variety of approaches to resolving relocation cases, and there is an increasingly global debate about the best way to resolve them. The law in most countries is subject to discussion and criticism, with commentators and practitioners looking to the approaches adopted elsewhere to see if legislators or judges in other countries have found better solutions.

Relocation Disputes: Law and Practice in England and New Zealand focuses on a comparison of relocation law and its practice in England and Wales[1] and in New Zealand. These two jurisdictions, which are in many ways very similar, have markedly different approaches to relocation disputes. The book draws on case law, literature and empirical interviews with judges, lawyers and court welfare advisers to explore and evaluate the ways in which relocation law is applied on the ground in these two countries. In doing so, the aim is both to understand more clearly the everyday reality of relocation cases as seen by practitioners, and also to learn from the experiences of those who use the law in order to comment on possible reforms.

The empirical interviews with family law professionals in England and New Zealand which underpin this work were conducted between October 2008 and June 2009. Inevitably, by now quite a lot of water has passed under the bridge. Some things have changed in both jurisdictions,[2] but informal follow-up discussions with some participants from the study suggest that the changes have been sufficiently modest that the core findings of this research remain important and valid. In particular, the New Zealand Supreme Court decision in *Kacem v Bashir* is widely thought to have re-affirmed the position which had been established by the New

[1] Throughout this book, the legal jurisdiction of England and Wales is referred to as 'England' in order to simplify the language used.

[2] For example, the important decisions of *K v K (Relocation: Shared Residence Arrangement)* [2011] EWCA Civ 793, [2012] 2 FLR 880, and *Kacem v Bashir* [2010] NZSC 112, [2010] NZFLR 884, both post-date the interviews.

Zealand Court of Appeal a decade earlier rather than instigating any change;[3] conversely, the UK Supreme Court's refusal of permission to appeal *Re F (Relocation)*[4] confirmed that, for now at least, the guidance set out by the English Court of Appeal in *Payne v Payne* remains valid.[5]

Indeed, as a result of luck more than judgement, the interviews reported in this book may have caught something of a transition moment in both jurisdictions. In England, this transition seems, for now, to have related primarily to the 'rigour' with which judges are thought to be assessing relocation applications within the guidance offered by *Payne v Payne*,[6] with the possible effect that relocation applications are now looked upon less favourably than they were a few years ago. In New Zealand, the transition has gone 'the other way', marking a shift from an initial view that the Care of Children Act 2004 militated against relocation applications, to a view now that the Act simply highlights factors to take into account with no predetermined effect on relocation law.

Both of these changes of emphasis were being picked up by some practitioners in 2008–09 and are reported in this book, but they found fuller expression in reported judgments given in the months and years after these interviews were conducted.[7] So far as possible, I have discussed those later changes and assessed the extent to which they may be reflected in the interview data gathered for this research. Where later shifts in judicial thinking appear to call findings of the research into question, I have endeavoured to make that clear and to discuss the possible consequences. At its core, though, this book is a report of the views and assessments of 44 experienced family law professionals about the state of relocation law in 2008–09, and readers will need to bear in mind that some of those practitioners may have revised their views to some extent as a result of subsequent events.

I have endeavoured to make all references to the law accurate as at 31 August 2013.

[3] *Kacem v Bashir* [2010] NZSC 112, [2010] NZFLR 884.

[4] *Re F (Relocation)* [2012] EWCA Civ 1364, [2013] 1 FLR 645; permission to appeal was refused on 4 February 2013.

[5] *Payne v Payne* [2001] EWCA Civ 166, [2001] 1 FLR 1052.

[6] ibid.

[7] In England and Wales, see in particular *Re H (Leave to Remove)* [2010] EWCA Civ 915, [2010] 2 FLR 1875; *J v S (Leave to Remove)* [2010] EWHC 2098, [2011] 1 FLR 1694; *Re W (Relocation: Removal Outside Jurisdiction)* [2011] EWCA Civ 345, [2011] 2 FLR 409; *K v K (Relocation: Shared Care Arrangement)* [2011] EWCA Civ 793, [2012] 2 FLR 880; and *Re F (Relocation)* [2012] EWCA Civ 1364, [2013] 1 FLR 645. In New Zealand, see in particular *Kacem v Bashir* [2010] NZSC 112, [2010] NZFLR 884; and *Millett v Clyde* [2012] NZFLR 351 (NZHC).