

# Table of Contents

The Authors	3
List of Abbreviations	17
General Introduction	21
§1. GENERAL BACKGROUND OF THE COUNTRY (DEMOGRAPHIC DATA)	21
I. Introduction	21
II. Demography	21
§2. HISTORICAL BACKGROUND OF FAMILY AND SUCCESSION LAW	24
I. Family Law	24
II. Succession Law	27
§3. SOURCES OF FAMILY AND SUCCESSION LAW	28
I. Constitution	28
II. Legislation	28
A. Family Law	28
B. Succession Law	29
III. Treaties	29
IV. Jurisprudence (Case Law)	32
§4. THE COURTS ADMINISTERING FAMILY AND SUCCESSION LAW	32
I. The Supreme Court	32
II. The Court of Appeal	33
III. The High Court	33
IV. The County Court	34
V. The Single Family Court	34
VI. Is the Matter Appropriate for Judicial Resolution?	35
Part I. Persons	37
Chapter 1. The Status of a Person	37
§1. DEFINITION OF A PERSON	37

## Table of Contents

§2. CAPACITY	38
I. Minors	39
A. Statute	39
B. Common Law	40
Chapter 2. Registration of Civil Status	43
§1. REGISTRATION	43
I. Births	43
II. Gender	44
III. Adoption and Parental Orders Register	45
IV. Marriages and Civil Partnerships	46
V. Deaths	46
§2. REGISTERS AND CERTIFICATES	46
Chapter 3. Personality Rights	47
§1. INTRODUCTION	47
§2. MINORS' CONTRACTS	47
I. Valid Contracts	48
II. Contracts That Will Be Valid until Repudiated	50
III. The Legal Effects of Minors' Contracts	51
§3. MINORS' RESPONSIBILITY FOR TORTS	51
§4. MINORS AND PROPERTY	53
§5. MINORS' RESPONSIBILITY FOR CRIMES	53
Chapter 4. Names	57
§1. COMPOSITION OF NAMES	57
§2. SURNAME	57
I. Acquisition of Surname	57
II. Change of Surname	58
§3. FORENAME	59
Chapter 5. Nationality	61
§1. INTRODUCTION	61
§2. ACQUISITION BY BIRTH	61

## Table of Contents

§3. ACQUISITION OF CITIZENSHIP DURING CHILDHOOD	62
§4. ACQUISITION OF CITIZENSHIP AS AN ADULT	62
Chapter 6. Domicile and Habitual Residence	64
§1. INTRODUCTION	64
§2. DOMICILE	64
§3. HABITUAL RESIDENCE	66
§4. DOMICILE OR HABITUAL RESIDENCE?	68
Chapter 7. Mental Incapacity	70
§1. BASIC PRINCIPLES	70
I. The Assumption of Capacity	70
II. Determining When a Person Lacks Capacity	71
III. Making Decisions on Behalf of a Person Who Lacks Capacity	72
IV. Decisions That May Not Be Made on Behalf of a Person Who Lacks Capacity	73
Part II. Family Law	75
Chapter 1. Marriage	75
§1. THE NATURE OF MARRIAGE	75
§2. THE CAPACITY TO MARRY	76
I. Age	76
II. Marital Status	76
III. Consanguinity and Affinity	77
§3. FORMALITIES OF MARRIAGE	78
I. Preliminaries	79
A. Parental Consent	79
B. Publicizing the Intention to Marry	79
II. Celebration	80
A. The Place of Celebration	80
B. The Celebrant	81
C. The Content of the Ceremony	82
D. When Are a Couple Married?	82
III. Registration	82
IV. Presumption in Favour of Marriage	83

## Table of Contents

§4. EFFECTS OF MARRIAGE	85
I. Common-Law Concepts	86
A. The Doctrine of Unity	86
B. The Concept of Consortium	86
C. Keeping Confidences	87
D. Contracts for Day-to-Day Living	88
E. Presumption of Advancement	88
II. Statutory Provisions: Express Rights and Responsibilities	88
A. Mutual Support	88
B. Occupation of the Matrimonial Home	89
C. Evidence	89
D. Actions in Tort	89
E. Criminal Law	90
F. Taxation	90
G. Rights on Death	90
III. Statutory Provisions: Implied Rights and Responsibilities	91
A. Sexual Intercourse	91
B. Living Together	91
C. No Other Marriage	92
IV. Areas in Which Marriage Has No Effect	92
A. Name	92
B. Citizenship	92
C. Ownership of Assets	92
V. Engaged Couples	93
§5. VOIDABLE, VOID AND NON-EXISTENT MARRIAGES	93
I. Voidable Marriages	94
A. Inability to Consummate	94
B. Wilful Refusal to Consummate	95
C. Lack of Consent	96
D. Mental Disorder	98
E. Venereal Disease	98
F. Pregnancy by Another	98
G. Gender Reassignment	99
II. Bars to an Application Where a Marriage Is Voidable	100
III. Void Marriages	101
IV. Non-existent Marriages	101
V. Consequences of Void and Voidable Marriages	102
Chapter 2. Civil Partnership	104
§1. THE NATURE OF A CIVIL PARTNERSHIP	104
§2. THE CAPACITY TO ENTER INTO A CIVIL PARTNERSHIP	104
§3. FORMALITIES FOR ENTERING INTO A CIVIL PARTNERSHIP	105

## Table of Contents

§4. EFFECTS OF A CIVIL PARTNERSHIP	106
§5. VOID, VOIDABLE AND NON-EXISTENT CIVIL PARTNERSHIPS	107
<b>Chapter 3. Terminating a Marriage or Civil Partnership</b>	<b>109</b>
§1. INTRODUCTION	109
§2. FACTS JUSTIFYING A DIVORCE	109
I. Adultery	109
II. 'Unreasonable Behaviour'	110
III. Desertion	111
IV. Living Apart for Two Years Plus Respondent's Consent	112
V. Living Apart for Five Years	112
§3. PROCEDURE FOR OBTAINING A DIVORCE	113
I. Jurisdiction	113
II. Bar on Applications in the First Year of Marriage	113
III. undefended Divorces: The Special Procedure	114
IV. Defended Divorces	114
V. Decree <i>Nisi</i> and Decree Absolute	114
§4. JUDICIAL SEPARATION	116
§5. DISSOLUTION OF A CIVIL PARTNERSHIP	116
§6. LEGAL EFFECTS OF DIVORCE, DISSOLUTION, AND SEPARATION ORDERS	116
<b>Chapter 4. Cohabitation without Marriage</b>	<b>118</b>
§1. INTRODUCTION	118
§2. OPTIONS FOR PRIVATE ORDERING	118
§3. EXISTING RIGHTS	119
I. Equal Treatment	119
II. Lesser Rights	120
III. No Rights	122
§4. PROPOSALS FOR REFORM	123
<b>Chapter 5. Establishing Parenthood and the Status of the Child</b>	<b>125</b>
§1. INTRODUCTION	125

## Table of Contents

§2. WHO IS THE CHILD'S LEGAL PARENT?	125
I. Parenthood at Common Law	125
II. Parenthood under the Human Fertilization and Embryology Act 2008	126
§3. HOW MAY PARENTHOOD BE DETERMINED?	128
I. The Availability of Bodily Samples	129
II. The Value of Other Evidence	131
§4. THE STATUS OF THE CHILD	132
I. Child Born within Valid or Voidable Marriage	133
II. Child Born within Marriage Believed to Be Valid	133
III. Subsequent Marriage of Parents	133
IV. Adopted Children	133
Chapter 6. Parental Responsibility	134
§1. INTRODUCTION	134
§2. ACQUIRING PARENTAL RESPONSIBILITY	134
I. Registration	135
II. Private Ordering	135
A. Parental Responsibility Agreement	135
B. Appointment of a Guardian	136
C. Delegation	136
III. Court Orders	137
A. Orders Transferring Legal Parenthood	137
B. Appointment of a Guardian	138
C. Special Guardianship Orders	138
D. Parental Responsibility Order	138
E. Child Arrangement Orders	139
F. Care Orders	140
G. Emergency Protection Orders	140
§3. EXERCISING PARENTAL RESPONSIBILITY	141
I. The Content of Parental Responsibility	141
II. Limitations on Who May Exercise Particular Rights	142
III. Limitations on How Rights May Be Exercised	143
IV. Sharing Parental Responsibility	144
§4. ENDING PARENTAL RESPONSIBILITY	144
Chapter 7. Adoption and Its Alternatives	146
§1. INTRODUCTION	146

## Table of Contents

§2. ADOPTION	146
I. Who May Be Adopted?	146
II. Who May Adopt?	146
III. The Necessity of Consent	148
A. Whose Consent Is Required?	148
B. When Can Consent Be Given?	149
C. When May Consent Be Dispensed With?	149
IV. Should an Adoption Order Be Made?	150
V. What Are the Legal Implications of Adoption?	151
§3. SPECIAL GUARDIANSHIP	152
I. Who May Be a Special Guardian?	153
II. What Are the Legal Implications of an Order?	153
III. When Will a Special Guardianship Order Be Made?	154
§4. CHILD ARRANGEMENTS ORDER	156
§5. FOSTER CARE	156
Chapter 8. Child Arrangements Orders	158
§1. INTRODUCTION	158
§2. THE COURT'S JURISDICTION TO MAKE AN ORDER	158
I. Family Proceedings	158
II. Persons Entitled to Apply for an Order	159
III. Seeking Leave to Apply	160
IV. Restrictions on Making an Order	161
§3. GENERAL PRINCIPLES GOVERNING THE MAKING OF CHILD ARRANGEMENTS ORDERS	162
I. Orders as to Where and with Whom a Child Should Live	163
II. Order Relating to Contact with the Child	164
§4. APPLYING THE WELFARE PRINCIPLE	165
I. The Presumption of Parental Involvement	166
II. No Unnecessary Delay	167
III. No Unnecessary Orders	167
IV. The Welfare Checklist	167
A. The Wishes and Feelings of the Child	168
B. The Child's Needs	169
C. The Status Quo	169
D. The Child's Characteristics	169
E. Potential Harm	170
F. Capability of Potential Carers	170
§5. CONSEQUENCES OF A CHILD ARRANGEMENTS ORDER	171

## Table of Contents

§6. RESTRICTIONS ON REMOVAL OF CHILDREN FROM THE JURISDICTION	172
I. Restrictions on Removal	172
II. The Form of Application to the Court	172
III. Factors Taken into Account in Deciding whether to Grant Leave	173
Chapter 9. Kinship and Affinity	177
Part III. Matrimonial Property Law	179
Chapter 1. Rights and Obligations of Spouses	179
§1. GENERAL PRINCIPLES	179
§2. THE HOUSEHOLD EXPENSES	179
§3. MAINTENANCE DURING THE MARRIAGE	180
§4. THE MATRIMONIAL HOME	181
I. Ownership	182
II. Occupation	185
III. Disposition	186
IV. Protection	187
A. Bankruptcy	187
B. Claims by Other Creditors	187
Chapter 2. Division of Assets on Divorce, Dissolution or Annulment	189
§1. INTRODUCTION	189
§2. PRIVATE ARRANGEMENTS	196
I. Prenuptial Agreements	196
II. Post-nuptial Agreements	198
III. Separation Agreements	198
IV. Consent Orders	199
V. Financial Dispute Resolution	199
§3. ADJUDICATION BY THE COURT	200
I. The Statutory Factors	200
A. Resources	200
B. Needs	202
C. Standard of Living	202
D. Age of Parties and the Duration of the Marriage	203
E. Disability	203
F. Contributions	203
G. Conduct	204

## Table of Contents

H. Loss of Future Assets	204
II. The Clean Break	205
§4. DIVORCE AND BANKRUPTCY	205
Part IV. Succession Law	207
Chapter 1. Intestate Succession	207
§1. THE OPENING OF THE SUCCESSION	207
I. Death	208
II. Missing Persons and Absentees	208
§2. ENTITLEMENT TO SUCCEED	208
I. Capacity to Succeed	208
II. <i>Commorientes</i>	208
III. Unworthiness to Succeed	209
§3. THE SYSTEM OF DESCENT	210
I. The Classes of Beneficiaries	210
A. Surviving Spouse or Civil Partner	210
B. Descendants	212
C. Ascendants	213
D. Collaterals	214
II. Representation	214
III. Adoption	214
§4. <i>BONA VACANTIA</i>	214
Chapter 2. Testamentary Succession	216
§1. INTRODUCTION	216
§2. THE CAPACITY TO MAKE A WILL	216
I. Mental Capacity	217
II. Undue Influence	219
§3. FORMALITIES FOR MAKING A WILL	220
I. Writing, Signatures, and Witnesses	221
II. Joint Wills	223
III. Alterations	223
§4. DIFFERENT TYPES OF WILL	224
I. Privileged Wills	224
II. Statutory Wills	225

## Table of Contents

§5. REVOCATION OF A WILL	226
I. Destruction	226
II. Another Will or Codicil	228
III. Writing Declaring an Intention to Revoke	229
IV. Marriage	229
§6. REVIVAL OF A WILL	230
§7. RESTRICTIONS	232
I. Contracts to Make a Will	232
II. Mutual Wills	232
§8. INTERPRETATION OF A WILL	233
I. Knowledge and Approval of the Contents of the Will	233
II. Rectification	234
III. Construction	235
§9. LOSING THE RIGHT TO BENEFIT UNDER A WILL	236
I. Witnesses	236
II. Divorce, Dissolution, or Annulment	236
III. Forfeiture	236
IV. Lapse	237
Chapter 3. Provision for Family and Dependants	238
§1. INTRODUCTION	238
§2. ELIGIBILITY TO APPLY	238
§3. POWERS OF THE COURT TO MAKE ORDERS	238
§4. THE BASIS FOR THE COURT'S AWARD	239
Chapter 4. Acts <i>Inter Vivos</i> Related to the Estate	241
§1. INTRODUCTION	241
§2. GIFTS	241
§3. TRUSTS	242
I. Fixed Trusts	243
II. Discretionary Trusts	243
III. Secret Trusts	243
IV. Purpose Trusts	244
§4. <i>DONATIO MORTIS CAUSA</i>	245

## Table of Contents

§5. JOINT TENANCIES AND TENANCIES IN COMMON	246
§6. NOMINATIONS	248
§7. INSURANCE POLICIES	248
§8. PROPRIETARY ESTOPPEL	248
Chapter 5. Acquisition and Administration of the Estate	251
§1. DETERMINING WHO IS TO ADMINISTER THE ESTATE	251
§2. ACQUISITION OF THE ESTATE	251
§3. ADMINISTRATION OF THE ESTATE	252
Selected Bibliography	253
Index	259

<http://www.pbookshop.com>

**Table of Contents**

<http://www.pbookshop.com>