

BOOK REVIEW

"CHILD LAW"

(Thomson Round Hall, 2005)

Geoffrey Shannon

URSULA KILKELLY*

Shannon's text highlights clearly the extent to which child law has become a subject and an area of law in its own right, separate from the subject of family law. Ranging from the areas of health and safety to education, from youth justice to adoption, the book brings together in one place the many legal issues concerning children. *Child Law* is a comprehensive and detailed text, consistent with Shannon's own encyclopaedic knowledge of this increasingly broad-ranging area of law.

Chapter One begins by addressing the legal status of the child in Irish law addressing the legal provision and protection of children under the laws of contract and tort, health and safety, employment regulation and licensing. It addresses the question of succession rights and marriage, but curiously omits from this analysis the issue of criminal responsibility, while the area of consent to medical treatment is dealt with in chapter 4. Shannon then moves on, in Chapter Two, to the subject of custody and access and analyses the by now well-established law in this area. Discussion of parental alienation syndrome, over which there is little consensus from a medical perspective, points to the more practical problem created by one parent frustrating contact with the children by the other. In this regard, it might have been useful to consider the case-law of the European Court of Human Rights explaining the duty of the authorities to supervise implementation of such court orders, as well as to highlight the Council of Europe Convention on Contact Concerning Children, which specifically addresses this problem. Nonetheless, chapter four contains practical elements, including the access check-list for legal practitioners, and very important

* B.A., LL.M, Ph.D, Senior Lecturer, Faculty of Law, University College Cork.

discussions of both the law relating to allegations of abuse arising in the course of matrimonial proceedings and alternative means of dispute resolution.

Chapter Three concerns the area of education. It begins with an analysis of the constitutional case-law in the area and then usefully sets out the legislative framework established by the Education Act 1998, the Education (Welfare) Act 2000 and more briefly, the Education for Persons with Special Educational Needs Act 2004. Unusually, perhaps, the slightly longer section of the chapter deals with health and safety in the school where the author's practitioner's perspective results in a focus on the school as a place of employment. Reference is made to the important issues of bullying and child protection, although consideration might also have been given more expressly to children's rights in school and to curriculum development.

The next four chapters of *Child Law* deal with aspects of the system of alternative care dealing with procedures under the Child Care Act 1991 for removing children from their families (Chapter Four), foster care (Chapter Five) and residential care (Chapter Six) as options for care. Chapter Seven deals with some "miscellaneous matters" concerning the important issues of sexual abuse, institutional abuse and child pornography. The law on adoption comes some time later in chapter nine. These chapters contain a considerable amount of important and practical information regarding the legislative framework for alternative care in Ireland and the many practical challenges and issues that will concern the practitioner here. The section on case conferences in Chapter Four contains useful ECHR law on parents' rights to be involved in the decision-making process, while the discussion of *Re H. and R. (Child Sexual abuse: Standard of proof)*¹ enhances the discussion of care orders. This chapter also sets out the various options open to the Health Board (now Health Service Executive) under the Child Care Act 1991 although the completeness of the text might have been better served by integrating the new provisions of this Act, inserted by the Children Act 2001, into this analysis rather than setting them out in Chapter Eleven. In this regard, it is welcome that the

¹ [1996] 1 F.L.R. 81 (HL).

provisions of the 2001 Act on private foster care are included in chapter Five.

Overall, the focus of the book is encapsulated in the emphasis and critical analysis in chapter Five of the area of foster care, where discussion of the practical and constitutional issues, integration of the case-law of the European Court of Human Rights and a considerable focus on reform mean that it undertakes a comprehensive and wide-ranging description of the current legal issues here.

Chapter Six on residential care is a little disappointing insofar as it comprises, predominantly, the regulations on the standards that must be maintained in residential centres. Consideration might have been given to Special Care Orders and Special Care Units, under Part two of the Children Act 2001, the role of the Special Residential Services Board, a body established under the Act with advisory and co-ordinating powers in this area, and the importance of inspecting residential centres. The importance of providing independent advocacy to vulnerable children in residential care might also have been highlighted in light of Ireland's past experiences.

Chapter Seven, on miscellaneous matters, addresses the important questions of child sexual abuse and child pornography and it is perhaps surprising that these areas were not considered worthy of a chapter in their own right. Nonetheless, the discussion of Canadian case-law on vicarious liability for institutional abuse is particularly interesting.

Chapter Eight, concerning the involvement of children in the court process, sees Shannon returning to what is perhaps more familiar territory. This is an excellent discussion of the practical challenges of child witnesses and separate representation for children. The comparison between the woefully inadequate Irish guardian *ad litem* system and the 'model of best practice' operating in England and Wales is particularly important. While it is useful that the chapter explains the role of the Ombudsman for Children in representing and advocating on behalf of children, however, the chapter might have been completed with a look at the child in the criminal process.

The comprehensive and detailed nature of Chapter Nine, on

adoption, is perhaps not surprising given Shannon's recent work in this area for the Department of Health and Children, although the sharp focus on guiding and informing the practitioner is maintained nonetheless. In this way, the chapter combines the practical issues with an analytical discussion of legal reforms, international issues and constitutional and human rights dimensions. Chapter Ten on child abduction finds this balance equally well. The rich nature of case-law is evident here, as is the extent to which the 'international phenomenon' of child abduction is being addressed in a manner which incorporates international approaches into domestic law.

Chapter Eleven deals, essentially, with the Children Act 2001 and sets out the Act's provisions on children in conflict with the law as well as the amendments to the Child Care Act 1991 with reference to family welfare conferences and children in need of secure care. While the proposed amendments to the Act, particularly Part 5 concerning the age of criminal responsibility and Part 10 concerning detention, under the Criminal Justice and Children Bill 2005 mean that these sections are already out-of-date, the chapter is nonetheless informative presenting a user-friendly version of the Act not available elsewhere. The discussion of the New Zealand experience of family conferences highlights the lessons that need to be learned for these important elements of the 2001 Act to work well here.

The final chapter addresses international and European Community law principally looking at the case-law of the European Court of Human Rights and the (revised) Brussels II Convention on jurisdiction, recognition and enforcement of judgments in family matters. Given their importance – the ECHR now binds public bodies and is required to be taken into account by the courts in relevant cases under the ECHR Act 2003, and Brussels II has acquired the status of a Regulation meaning it is superior to domestic law when they conflict – it is unfortunate that these treaties were not given more prominent status either earlier on in the book or by integrating them into the substantive chapters where appropriate. Nonetheless, the discussion of the revised Brussels II, in particular, is clear and provides an essential guide to this complex area of Community law. The full text of the Convention is set out in Appendix 17. In fact, all 17 appendices provide a further well of

information and guidance for the legal practitioner.

Shannon's text is at once a comprehensive reference-book covering most issues relating to the law and children as well as a practitioner's manual, which includes useful check-lists and guidance for those involved in proceedings concerning children's issues. While Shannon is clearly more comfortable with some areas than others – the areas of medical law receives little attention for example - the approach throughout is meticulous, practical and informative. *Child Law* will undoubtedly be the text that no child or family lawyer, or judge, can do without.