Law and Policy in Modern Family Finance: Property Division in the 21st Century
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Publisher: Intersentia
Date published: December 2017
Hardback
xxvi + 420 pp
€83

Arising out of a colloquium considering reform of the New Zealand Property (Relationships) Act 1976, this edited collection is arranged in three sections, each examining a central question on the regulation of family relationships:

I. Who should be covered by a property sharing regime?
II. What property should be covered by a property sharing regime?
III. How should property be shared at the end of a relationship?

As Joanna Miles points out in chapter 11, in practical terms these three central questions interrelate. For example, the question of to whom the scheme applies informs the rules for sharing that property; a wider constituency may require a greater degree of discretion for example. Nevertheless, the questions provide an effective framework for the book, and the introductions, both to the collection as a whole and to the individual sections, provide clear signposting throughout.

From an English and Welsh perspective, the New Zealand legislation is quite different. The Property (Relationships) Act 1976 provides for a matrimonial property regime for both spouses and cohabitants (for those unfamiliar with the concept of matrimonial property regimes, in chapter 14 Jens M Scherpe provides a rare user-friendly introduction). This regime does not deal with spousal maintenance or consider the needs of children, but it does potentially allow for compensation for economic disparity. Nevertheless, despite the different legal framework, there are clear overlaps in the debates addressed by this book and the concerns of English and Welsh family lawyers.

In its quest to address the three central questions outlined above, the book engages with wider themes relevant to contemporary debates within family law. For example, the first common theme in the collection, why intimate family relationships should have consequences that other relationships do not, ties into debates around whether care should be at the heart of family law (see, for example, Herring 2013).

Several of the other common themes are concerned with the nature of the consequences of intimate relationships; the second, third and fourth themes consider respectively the underlying objective of property sharing regimes, the role of the state and whether a holistic approach should be taken to regulating the financial consequences of such relationships. These are of clear relevance to ongoing debates around reform of the law of financial remedies in England and Wales.

John Caldwell's chapter 15, which considers whether there should be a firmer steer towards clean break settlements, notes the changing social backdrop which underpins at least some calls for reform of the law in England and Wales (see, for example, Deech 2018): 'female participation in the workforce and shared parenting, for example, are hardly remarkable'. However, one of the difficulties, at least in England and Wales, is that while neither of these things is unusual, women are still more likely to work part-time and to perform a greater share of childcare (see, for example, ONS 2011, ONS 2013, Scott and Clery 2012, ONS 2016). This has long-term financial consequences that often need to be addressed (see, for example, Department for Culture Media & Sport 2014 and Costa Dias et al. 2018). Caldwell suggests that '[w]omen in a relationship need to continue working and men need to do more childcare.'

Miles recognises this dilemma in chapter 11, which proposes a Canadian-style formula for spousal maintenance. Drawing on research about the gendered nature of negotiation, she suggests that discretionary approaches, which require the claimant 'to seek provision from what are (by way of starting point) the respondent's resources' means that negotiations will be imbalanced. In contrast, clearer entitlements could level the playing field. Nevertheless, Miles recognises that such formulas may be inaccessible to unrepresented parties. This illustrates the need to think realistically about what law reform alone can achieve, particularly in the English and Welsh context of increasing numbers of litigants representing themselves. Reforming the law can aim to find a principled basis for the law. A formula for spousal support could also have the effect of resulting in greater predictability and consistency in the law. However, this does not necessarily translate into making that system accessible to litigants in person (see, for example, Trinder et al. 2014 and Mant 2019), nor does it eliminate power imbalances that prevent applicants being willing or able to pursue such entitlements, even if they can otherwise navigate the system.

The collection's treatment of family property does, however, go beyond a consideration of the consequences when a relationship breaks down because of the different scope of the New Zealand legislation. Nicola Peart's Chapter 5 and Rosalind Croucher's Chapter 6, for example, consider the position on death. This different context also offers a useful perspective on the fact that even in apparently similar systems norms can differ. For example Simon Jefferson and Paul Moriarty's discussions in chapter 10 around valuing relationship property engages critically with the question of single joint experts versus separate experts. This is an important reminder that familiar norms, such as the preference for single joint experts in England and Wales, are not universal or beyond reproach.

The final theme addressed by the collection is whether Indigenous and multicultural property rights should be accommodated and, if so, how. Whilst there is some engagement with this theme in Patrick Parkinson's Chapter 2, the primary discussion takes place in Jacinta Ruru and Leo Watson's Chapter 9, which considers whether indigenous property should be relationship property. Although this specific question is geared at the New Zealand

context, this wider theme is of clear contemporary relevance to family law more generally. The recent Court of Appeal decision in *Attorney-General v Akhter & ors* [2020] EWCA Civ 122, for example, is a stark illustration of how the law can fail to respond to the needs of different groups within a multicultural society. This collection will, therefore, be of clear relevance to those interested in the regulation of adult relationships as a whole, and financial remedy scholars in particular.

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Costa Dias, M., *et al*., *2018. The gender pay gap in the UK: children and experience in work.* Available from : https://www.ifs.org.uk/uploads/publications/wps/MCD_RJ_FP_GenderPayGap.pdf

Deech, R., 2018. Financial Provision Reform. *Family Law*

Department for Culture Media & Sport, 2014. *Attitudes Towards Equality: Findings from the YouGov Survey.* Available from : https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316290/Attitudes_towards_Equality.pdf

Herring, J., 2013. *Caring and the Law*. Oxford: Hart

Mant, J., 2019. Litigants' experiences of the post-LASPO family court: key findings from recent research. *Family Law*

ONS. 2011. *Census Analysis: Ethnicity and the Labour Market, England and Wales.* Available from : https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/articles/ethnicityandthelabourmarket2011censusenglandandwales/2014-11-13

ONS. 2013. *Women in the Labour Market: 2013.* Available from : https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/womeninthelabourmarket/2013-09-25

ONS. 2016. *Women Shoulder the Responsibility of Unpaid Work.* Available from : https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/womenshouldertheresponsibilityofunpaidwork/2016-11-10

Scott, J., and Clery, E., *Gender Roles. In:* A Park, *et al,* eds. *British social attitudes.* Available from: https://www.bsa.natcen.ac.uk/media/38457/bsa30_gender_roles_final.pdf

Trinder, L., *et al*., *2014. Litigants in person in private family law cases.* Available from : https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/380479/litigants-in-person-in-private-family-law-cases.pdf