

Child Law in Ireland

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CHILD LAW IN IRELAND

By

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FOREWORD

The vigorous growth of reforming legislation in the area of what can loosely be described as “family law” has mushroomed in recent years. In this book, *“Child Law in Ireland”*, Dr Lydia Bracken approaches the topic from the perspective of the child and provides the reader with an up-to-date and a concise analysis of the Irish child law system. The book addresses a wide range of child law topics including children’s rights; parentage; donor-assisted human reproduction and surrogacy; guardianship, custody and access; an overview of child protection legislation and case law; representation and participation of children in proceedings which affect them; and education. Richard A Posner said that the best books for practicing lawyers, law students, and academic lawyers are books that judges should also read. This book is one of those books that we will all benefit from reading because it provides a very accessible overview of the many developments in both public and private child law issues in the last number of years including: the General Scheme of the Assisted Reproduction Bill 2017; the Children and Family Relationships Act 2015; the Adoption (Amendment) Act 2017; the Adoption (Information and Tracing) Bill 2016; the Children First Act 2015; and the Education (Admission to Schools) Bill 2016, among others. The author treats these topics comprehensively and cuts cleanly to the core of the issues involved.

Lydia is a lecturer and Director of Clinical Legal Education at the School of Law, UL. She is a graduate of UCC (BCL, 2010; LLM, 2011; PhD, 2015) and is also a barrister. Her PhD thesis examined the implications of “the best interests’ principle” in the context of same-sex parenting in Ireland and she has a particular interest in “non-traditional” families and contemporary issues in family formation including surrogacy. Lydia combines both academic excellence and legal practice, yet has a very down to earth practical approach typified by her management and supervision of students involved in the Street Law project run by University of Limerick. This project is an innovative approach to legal education where law students teach law at grassroots level to allow them an opportunity to apply their “learned” black letter legal knowledge at university to raise awareness and educate secondary school pupils about the law, rights and legal system. This is not a “one way” exchange however as university law students develop clinical legal skills and ability to distil legal principles and put them into plain English

in a clear and concise manner. This “win win” concept has been utilised by FLAC since the late 1960’s and has enabled many, many newly qualified solicitors and barristers to develop these skills in the same way and the Street Law project takes this approach deeper providing undergraduates with opportunities for acquiring valuable transferrable skills.

In the same practical way, *Child Law in Ireland* provides the reader with knowledge and information in a well laid out and accessible manner. This book will serve as a welcome addition for both students and members of the different branches of the legal profession.

Judge Rosemary Horgan
President of the District Court
August 2018

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PREFACE

Child law addresses the law as it relates to children and young people. It encompasses aspects of international human rights law, constitutional law, criminal law, the law of torts, medical law and equality law to name but a few. It engages various actors: the child, parents (both legal and social), members of the extended family, teachers, health care professionals, administrators, government officials and others. It also impacts on wider society as we all play an important role in the protection of children and in creating a social environment that embraces different family forms, respects personal choices, and values the voices of children within that society.

This book is written for those working within or studying the operation of Ireland's child law system. In each chapter, the book incorporates an examination of Ireland's international obligations under the United Nations Convention on the Rights of the Child (UNCRC) and the European Convention on Human Rights (ECHR), as well as examination of the Irish Constitution and the domestic legislative framework. This book addresses a wide range of child law topics including children's rights; parentage; donor-assisted human reproduction and surrogacy; guardianship, custody and access; child protection; representation and participation; and education. This book does not address all child law topics, for example child abduction or youth justice. Although both topics undoubtedly form part of Ireland's child law system, they are vast topics that raise issues concerning international law and the criminal process. As such, this concise book simply could not do justice to the myriad of issues arising in those areas. Experts in those fields have comprehensively addressed both topics elsewhere.

A number of changes have occurred in Irish child law in recent years. These changes are documented in each chapter of this book. The reform process makes child law a very interesting and dynamic area of practice and study, but equally, the absence of consolidated legislation in Ireland makes it difficult to keep up-to-date with the most recent developments. While every effort has been made to ensure that this book reflects the most recent developments in Irish child law, the law stated in this book is as it stood in April 2018. It has been possible to incorporate some changes that occurred after this date.

I would like to thank everyone who has supported the writing of this book. I am particularly grateful to David McCartney of Clarus Press for his advice and enthusiasm throughout the writing and publication process. I am also grateful to my colleagues at the School of Law, University of Limerick, for their collegiality and for fostering a wonderful working environment. I have had the benefit of working with, and learning from, many inspirational mentors and friends over the years and so I thank all of those who have shaped my understanding and knowledge of child law to date. Finally, I thank Gill, Caroline, Tim, Patrick and John for their unwavering support and encouragement, not only in the writing of this book, but in every endeavour that I take on.

Dr Lydia Bracken

July 2018

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