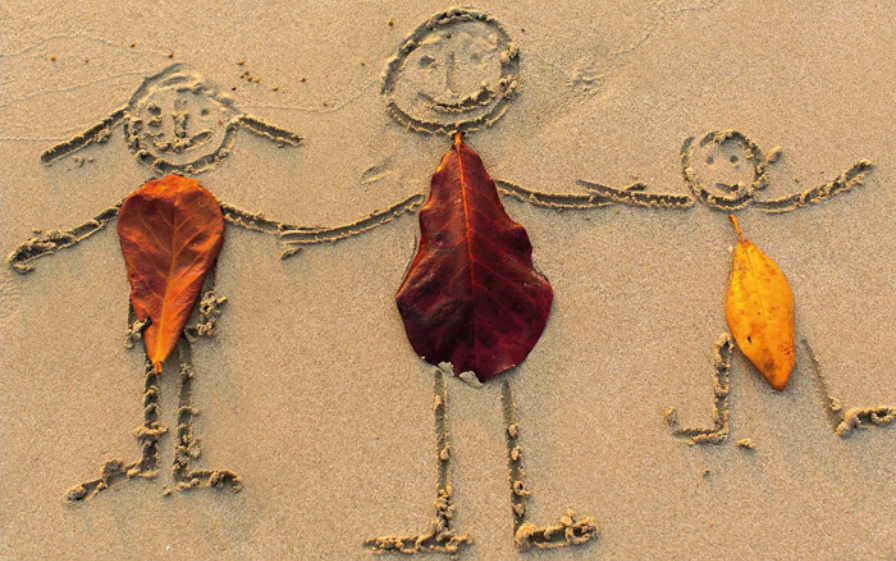


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Eighth Edition

Jonathan Herring

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Eighth edition

**Jonathan Herring**

Exeter College  
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To Kirsten, Laurel, Jo and Darcy

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## Preface

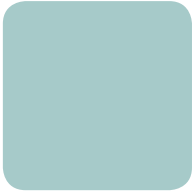
This text tries to present family law in its context. I hope readers will gain not only an understanding of what the law actually is, but also an awareness of the complex tensions in social, philosophical and political forces which surround 'family life'. This means the text not only contains much law, but also a little sociology, political theory and philosophy. Of course, a little of anything might be said to be a bad thing and the text can only give a flavour of the wide-ranging issues surrounding family life and its regulation. Still, it is hoped the reader can see that family law is not simply a set of rules cast down from up on high, but rules that have to operate in the messy world of personal relations where many people do not know what the law says, and even if they do, do not care very much about it.

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The text seeks to present the law as at 1 August 2016.

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*September 2016*

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# Acknowledgements

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## **Text**

Extract on page 5 from *Gammans v Ekins* [1950] 2 KB 328 at 331; extract on page 60 from Lord Dyson (2010) 'Mediation in the English legal order six years after Halsey', Speech, October 2010; extract on page 105 from *Corbett v Corbett* [1971] P 83; extract on page 174 from *Jones v Maynard* [1951] Ch 572; extract on page 456 from *J v C* [1970] AC 668; extract on page 693 from *Re B (Adoption: Jurisdiction to Set Aside)* [1995] Fam 239 at 245C; extract on page 705 from *JD v East Berkshire Community Health NHS Trust* [2005] 2 AC 373, para 85.

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# 1

## What is family law?

### Learning objectives

When you finish reading this chapter you will be able to:

1. Explain and evaluate how different theories seek to define a 'family'
2. Discuss the arguments for and against family life and its alternatives
3. Explain and evaluate how different theories seek to define 'family law'
4. Summarise the broad issues which underpin family law
5. Describe how the Human Rights Act 1998 affects family law and discuss the impact of its proposed repeal

### 1 Introduction

Families can be the scenes of some of the greatest joys, as well as some of the greatest sadnesses, that life can bring. Studies suggest that for a substantial majority of people families are more important to them than jobs or status.<sup>1</sup> In one survey 92 per cent of people felt very or fairly close to their families.<sup>2</sup> The interaction of law and the family therefore gives rise to questions of enormous importance to the individuals who appear before the courts and to society at large.<sup>3</sup> In *Huang v Secretary of State for the Home Department*<sup>4</sup> the House of Lords emphasised the importance of families to individuals:

Human beings are social animals. They depend on others. Their family, or extended family, is the group on which many people most heavily depend, socially, emotionally and often financially. There comes a point at which, for some, prolonged and unavoidable separation from this group seriously inhibits their ability to live full and fulfilling lives.

The importance of families to the general social good was recognised by the Government in 2014 when it announced a 'family test' for all new policies and legislation.<sup>5</sup> This requires

<sup>1</sup> Future Foundation (1999).

<sup>2</sup> Centre for the Modern Family (2011).

<sup>3</sup> For a remarkable history of family law during the twentieth century, see Cretney (2003a).

<sup>4</sup> [2007] UKHL 11, para 18.

<sup>5</sup> Department for Work and Pensions (2014a).