

Review: Bromley's Family Law by Nigel Lowe and Gillian Douglas

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Abstract: Bromley's Family Law is a long established core text for students of family law, and this 2015 edition was an attempt to update it. In terms of contemporary issues like Internet trolling and digital addiction, the authors of the book, Nigel Lowe and Gillian Douglas, fail to capture any of the implications contemporary technologies and cultures have had on family law. The absence of discussion of social media, particularly how Crown Prosecution Service guidance relating to it can impact on the enforcement of court orders and the treatment of children and those lacking maturity, is concerning. If one takes a traditional approach to family law this might be a worthwhile textbook, but on any programme looking for how technology has impacted on family law, it is not suitable for the age we are in.

Keywords: Family law, Internet trolling, digital addiction, bleasure, injury.

Introduction

Family law is one discipline where issues relating to inequality before the law on the grounds of sex are pervasive. Family law covers many of the issues relevant to Internet trolling, including harassment, restraining and other injunction orders, and parental responsibility. In this book, by Nigel Lowe and Gillian Douglas, the authors fail to account for many of the new demands put on family law lawyers following the increased incidents of Internet abuse, now the World Wide Web is used more widely.

The book sets as its aim to provide an accurate, detailed yet highly readable account of family law. Both authors are from a traditional family

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law background and this lack of experience is showing in the text, which cannot boast being fully updated, however accurate its contents. The previous version of this book was published in 2006, and there is little more value in this 2015 edition. A lot has changed in society since the last edition, especially in terms of technology, but this has not been captured in this newer version. Most significantly, the role social media is playing within families and surrounding family law disputes has little coverage. There is no mention of Facebook, nor social media at all. There are only two references to the word, “computer.” One is in reference to the Police National Computer and the other is relating to the acquisition of evidence for use in courts.

In 2013, the Crown Prosecution Service released guidelines on prosecuting cases involving communications sent via social media (Starmer, 2013), yet there is not one mention of this in the book. These guidelines make important references to young people and other things relevant to family law, such as breach of court orders, yet there is no coverage made of this. Court orders related to family law, such as non-molestation orders, feature in the CPS’s third limb of trolling offences, namely breach of court orders (Starmer, 2013). Again, this consideration is absent from this book. The CPS guidance also makes it clear that the age and maturity of those accused of trolling must be given significant weight, as children may not appreciate the significance of their actions (Starmer, 2013).

In the book there is no reference to Internet addiction, digital addiction, or any form of technology addiction. In fact, there is no mention of addiction whatsoever. Digital addiction refers to the situation where a person with a need for compulsive behaviour will use digital technologies to enable them, often in place of alternatives such as alcohol or drug addiction. It is becoming common for those with the most compulsive tendencies to use the Internet to build collections of obscene and indecent images of children. No reference is made in this book to the ease in which children can come into contact with sex predators online, and the impact

this might have on a child's wellbeing, and the implications as a result. In fact, the only reference to obscene publications is in relation to case law about a mother who tries to prevent a child's father from accessing that child because of that father's prior conviction for accessing indecent images of children.

The book further makes no reference to the Leveson Inquiry, despite it having occurred three years prior to this book's publication (Leveson, 2012). The Leveson Inquiry looked at areas relevant to family law, including the harassment of families by journalists and photographers. The main reference to media harassment is in passing, where the authors use sending photographs to the media to support the argument that if there is only one act of harassment, it does not amount to a course of conduct, as at least two related and connected acts are needed. In discussing the Protection from Harassment Act 1997, the authors claim that for a case of harassment to be successfully claimed does not require the need to prove psychological injury, simply that a person felt harassed, alarmed, or distressed.

It is disappointing that the authors use the term "psychological injury," when the term, "*blesure*," is available as an alternative. Some have argued that the term, "*blesure*," which was referred to in the case of *King v Bristow Helicopters Ltd* [2002] 2002 Scot (D) and from which "*blesure*" is derived (Bishop, 2014a; Bishop, 2014b; Bishop, 2014c), cannot simply be translated as "injury," as the context of the French word in the Geneva Convention requires an understanding of what was intended by that word and the French meaning must prevail (Ndikum & Ndikum, 2014). Some scholars overlook this, and it would seem that the authors of this book, Nigel Lowe and Gillian Douglas, are among them. Other researchers have argued that a translation of "*blesure*," namely "*blesure*," is better used to capture the essence of psychological injury and mental shock, without the need to qualify the word "injury" in one way or another (Bishop, 2014a; Bishop, 2014b; Bishop, 2014c). Indeed, in the section where the authors talk about criminal liability, a very wordy paragraph tries to explain the

difference between a physical injury or fear of such, and that of neglect or abandonment. The term, “*bleasure*” would have been more effectively used here, as *bleasure* refers to a sustained physical or mental injury that has an adverse effect on a person’s ability to enjoy normal day-to-day activities, which would normally have been brought on without the intention of the person who has been *bleasured*.

The closest the authors come to discussing the impact of public electronic communications networks on family law is in reference to offences committed via telephone. They refer to the case of *R v Ireland* [1997] 3 WLR 534 and *R v Burstow* [1997] UKHL 34, to support their claim that if someone received silent phone calls that this could amount to actual bodily harm if the silent calls made them fear for their safety. The book fails to discuss the cases of *DPP v Collins* [2005] EWHC 1308 (Admin), *DPP v Connolly* [2007] EWHC 237 (Admin) and *Chambers v DPP* [2012] EWH2 2157 (Admin), which were all in existence prior to the book’s publication. *DPP v Collins* established that if a group who share a protected characteristic are targeted with grossly offensive language, then even if they are not the recipients, an offence may still exist. For instance, a parent who uses racist language against one whom they are trying to deny parental responsibility would commit an offense if they said it on the telephone or via the Internet, even if the other parent did not hear it. In the case of *DPP v Connolly*, it could have been simply explained by the authors that if a person who had an abortion was sent an image of an aborted foetus to explain the consequence of their actions by the other party, that this would be illegal because the aborting person would not be expected to see such imagery, only accessible to the abortion surgeon performing the operation. Finally, in the case of *Chambers v DPP*, commonly referred to as the Twitter joke trial, it was established that in order for a person to commit an offense of sending threatening communications, the person receiving them has to feel apprehensive. On this basis, it could have been put that a parent could not claim abuse from a parent sending them unwanted text messages for instance, if those messages could not be seen to cause them apprehension.

This book might be revised and updated, but not in so far as the impact technology is having on family law or practice. References to technology are few and far between, and when it is discussed, it is usually as a minor example to explain a wider concept. Whilst the book might be suited to traditional family law courses, it is totally unsuitable for those who want to understand how technology impacts on children and families in the digital age.

References

Bishop, J. (2014a). 'U r bias love:' Using 'bleasure' and 'motif' as forensic linguistic means to annotate twitter and newsblog comments for the purpose of multimedia forensics. The 11th International Conference on Web Based Communities and Social Media, Lisbon, PT.

Bishop, J. (2014b). 'YouTube if you want to, the lady's not for blogging': Using 'bleasures' and 'motifs' to support multimedia forensic analyses of harassment by social media. Oxford Cyber Harassment Research Symposium, Oxford, GB.

Bishop, J. (2014c). Using the legal concepts of 'forensic linguistics,' 'bleasure' and 'motif' to enhance multimedia forensics. The 13th International Conference on Security and Management (SAM'14), Las Vegas, NV.

Leveson, B. H. (2012). *An inquiry into the culture, practices and ethics of the press*. London, UK: The Stationary Office.

Ndikum, P. F., & Ndikum, S. (2014). *Encyclopedia of international aviation law* (volume 3). Bloomington, IN: Trafford Publishing.

Starmer, K. (2013). *Guidelines on prosecuting cases involving communications sent via social media*. London, GB: Crown Prosecution Service.