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INTRODUCTION

The area of family law is a very complex area, multi-faceted, including every aspect of law and legal intervention into the lives, both private and domestic, of those who are related by blood or by association.

Looking at historical definitions of the meaning of 'family' this encompassed a wide group of people who shared the same household. Obviously, earlier interpretations could, in the light of the 21st century, be seen as outdated and oppressive. For example, in *R v Inhabitants of Darlington* (1792) Lord Kenyon CJ stated that: 'in common parlance the family consists of those who live under the same roof with the pater familias: those who form...his fireside'. Servants were also included in this definition, often living with the same family for the whole of their lives.

Over the years the law has evolved, as law tends to do. By the twentieth century, legal intervention in family life developed along with definitions of family. Rent Act legislation helped to frame definitions of what was and was not family. In *Langdon v Horton* (1951) the Court of Appeal refused Rent Act protection to two elderly women who had shared the same house with their cousin for 30 years. The cousin held the house on a statutory tenancy prior to her death. The Court of Appeal held that they had lived together for the sake of convenience and not because they were part of the same family, even though they were cousins.

The following case demonstrates just how much the law has changed. In *Gammans v Ekins* (1950) the Court of Appeal rejected the claim of a male cohabitant to remain in the family home on the death of his partner. Asquith LJ took the view that either the relationship was platonic and the couple were not members of each other's family or it was not. If the relationship was platonic Asquith LJ believed that to recognize the cohabitants as members of the same family would also

require the court to accord the same status to two 'old cronies' of the same sex innocently sharing the same flat. If the relationship were not platonic, Asquith LJ thought it:

'anomalous that a person could acquire a Rent Act protected status by living or have lived in sin, even if the relationship had not been a mere casual encounter but protracted in time and conclusive in character'.

He concluded by saying that to accept a same-sex couple, masquerading as husband and wife, as members of the same family was an abuse of the English language.

In 1964, *Ross v Collins*, a woman claimed the right to succeed to a statutory tenancy on the death of her partner. She had lived with the deceased for a substantial amount of time and was significantly younger than him, 40 years younger, and had looked after him as an elderly relative. Russell LJ ruled that this platonic relationship was not within the definition of family because there was no kinship between the couple. He stated:

'two strangers cannot ever establish artificially a family nexus by acting as brothers or as sisters, even if they refer to each other as thus.....Nor can an adult man and woman who establish a platonic relationship establish a family nexus by acting as a devoted brother and sister or father and daughter would act'.

However, by 1980, the courts had begun to recognize that those living in a stable heterosexual cohabiting relationship could be classified as each other's family. In *Watson v Lucas* (1980) it was held that a married man, who had left his wife and had lived with the deceased woman in a stable and long-term relationship, was a member of the family for Rent Act purposes.

The above case marked the departure from traditional ways of thinking. Another case which was a landmark ruling, *Fitzpatrick v Sterling*

Housing Association (2000), accepted that homosexuals could be members of each others families. Lord Slynn, in his judgment, viewed the essential hallmarks of a family relationship as a degree of mutual interdependence, the sharing of lives, the caring and love for each other, and the commitment and support for each other.

In Ghaidan v Mendoza (2004) the House of Lords further defined family and held that the term 'husband and wife' in Rent Act legislation could be read to mean 'as if they were husband and wife'. It, therefore, included a same-sex partner who had lived with the deceased in a spouse-like manner.

The concept of family and spouse has been further extended since these landmark decisions. In accordance with the Gender Recognition Act 2004, transgendered persons, who have obtained a gender recognition certificate, may marry a member of the opposite sex to that of their newly acquired gender. Prior to the Act this was not the case. The Civil Partnership Act 2004 has also given a quasi-spousal and familial status to same sex couples, which register their partnerships.

The law has moved on significantly, as can be seen. However, there are categories of excluded relationships that need further discussion.

Excluded relationships

There are two categories of relationship, which although functionally familial, have only been granted limited legal rights. The first category consists of cohabiting heterosexual couples and also same-sex cohabitants who have not registered a civil partnership. The Government has asked the Law Commission to undertake a review of the above category.

The second category consists of those who live together in the same household as members of the same family but have never engaged in sexual relationships with each other. This is because they are either

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closely related or because they are close friends who have assumed a personal responsibility for each other but a sexual relationship is considered inappropriate.

The increasing emphasis in family law today centers on the needs, rights and overall welfare of children from conception to adulthood. Parenthood is no longer primarily based on marital status and its definition has evolved to cover new forms of biological and social parent/child relationships. More complex means of assisted reproduction present new challenges to legal concepts of parenthood.

Another area which taxes all concerned is the financial implications of relationship breakdown. The emphasis is on the importance of recognizing equality between male and female roles and the establishment of rights in the family home.

The above outlines some of the complexities of family law and also illustrates that we have moved from a basic, paternalistic, mode of recognition of family to a more enlightened view, which encompasses much wider concepts such as same-sex relationships.

The law dealing with family and family related matters is ever changing and this book brings the reader up to date with legal changes in the new millennium, including the Human Rights Act and issues following on from the passage of this particular legislation in the United Kingdom. In addition, adoption is covered in depth and the Adoption and Children Act 2002 is covered.

It is hoped that by reading this book a valuable insight will be gained into this particular area of law. It must be stressed that this is very much an introduction, and is designed to be read and understood by all sections of the community. It will be equally valuable to the layperson as well as the student.