

FAMILY LAW. By OLIVE M. STONE. [Singapore: Macmillan. 1977. xxxv+262 pp.+Bibliography and Index 15 pp. £12.50 (Hardback), £5.95 (Paperback)]

This book represents a most interesting and provocative addition to the textbooks on family law. By using a wealth of historical and comparative material it serves to emphasise that the law of domestic relations is a peculiarly vibrant part of the living law, constantly reflecting changing social pressures. This emphasis is heightened by Dr. Stone's incisive social judgments which may, however, find less support in Singapore than in England. How many Singaporeans would accept the suggestion that "some resources might usefully be devoted towards lessening social pressure to marry (as for example by the provision of low-cost housing for single people)?" (p. 108).

Dr. Stone's underlying theme is that the law is weighted against women and minors. In this regard, the discussion of the one-third rule reintroduced in *Wachtel v. Wachtel* [1973] Fam. 72 is especially cogent. It properly highlights the tension between this approach and property claims under the Married Women's Property Act 1882 where the courts have held "a woman's money to be of the same value as a man's." (p. 177.) Local lawyers should find food for thought in Dr. Stone's theme since Singaporean women and minors often have more to complain about than their English counterparts. An obvious example exists in custody. Under Section 1 of the English Guardianship Act 1973 the mother and father of a legitimate child have equal parental rights which are exercisable separately. In Singapore however the father remains entitled at common law to all parental rights. It is only when proceedings are before the courts that the Guardianship

of Infants Act applies to make the welfare of the child the first and paramount consideration.

The substantive areas encompassed by *Family Law* are much the same as those covered by other textbooks. But Dr. Stone has included a detailed account of the legal consequences following the dissolution by death of the marriage, a subject often given scant attention. The discussion seems justified since "the vast majority of marriages are still dissolved by the death of one of the spouses" (p. 147) and is especially timely given the recent Inheritance (Provision for Family and Dependants) Act 1975 which greatly extends the scope of family provision in England. However the account of custody appears unbalanced since the welfare principle is given only a cursory examination. One might expect at least some discussion of the factors influencing welfare and of the interrelationship which the welfare principle has with other considerations.

Specific criticism may be made of Dr. Stone's strident reproof of the decision in *Radwan v. Radwan* (No. 2) [1973] Fam. 85. In that case Cumming-Bruce J. applied the theory of the intended matrimonial home to capacity to enter into a polygamous marriage. However in 1972 Section 4 of the Matrimonial Proceedings (Polygamous Marriages) Act had amended Section 1 of the Nullity of Marriage Act 1971 to provide that a marriage should be void if it was a polygamous marriage celebrated outside England and Wales and either party was at the time domiciled in England and Wales. This provision, now Section 11(1)(d) of the Matrimonial Causes Act 1973, adopts the dual domicile theory. Dr. Stone thus characterises the decision in *Radwan* as "reached in defiance of the statute" and as "contrary to enacted law". This terminology seems too harsh since it may prompt the uninitiated to believe that the learned judge acted in excess of his powers by refusing to apply statutory provisions actually governing the case before him. However the statutory provision only applies to marriages celebrated after 31st July 1971. Thus the common law alone was applicable in *Radwan*, where the marriage had been celebrated in 1951. Cumming-Bruce J. only rejected the assumption made by Parliament and the Law Commission that Section 4 was merely reiterating an established common law principle.

Unfortunately Dr. Stone tends to cite cases in the main text whilst offering little or no explanation of their significance. Thus we are told that *Silver v. Silver* "illustrates the sham marriage" (p. 45); and that, in relation to the plea of grave financial hardship under Section 5 of the Matrimonial Causes Act 1973, "Other cases in which decrees were granted despite pleas of hardship by wives include *Talbot v. Talbot*, *Mathias v. Mathias and Collins v. Collins*," (p. 129). Indeed, local students may not expect high marks should they conclude a discussion of common law marriage with the delphic statement that: "An even more remarkable extension of the common law marriage was applied in *Penhas v. Tan Soo Eng*" (p. 52).

However, such defects should not overly detract from a most valuable contribution by Dr. Stone. *Family Law* should remain a stimulating basis for thought and discussion concerning the problems of the present law and the directions which reform might take.