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'Sex, Death and Witchcraft' - What Goes On In The Family Court Room? Transcript

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6 October 2016
**Sex, Death and Witchcraft:
What Goes On in the Family Court Room?**
Professor Jo Delahunty QC

Introduction

My motivating factor in taking on this Professorship was to walk you through the corridors of the Family Justice System, introducing you to some of the most emotive and complex issues which have to be grappled with within its court rooms. My seminar programme centres on the theme of 'transparency'- endeavouring to open the door to the family court so that the public gains a greater understanding of those it serves and how it functions.

Whilst some of you, or those you know, may have experience of private family law through divorce or separation and the subsequent legal wrangling over assets, income and child arrangements, relatively few will know what happens in a family case where allegations of child abuse are made. What you know may come from anecdotal information or from reading or listening to the news and following social media. What has been reported may or may not be accurate: it is almost never a full representation and balanced account of what goes on in family courts across the land.

In my lectures I will explore some of the most contentious, legally complex, and emotionally gripping real life dramas that are played out in the family court room across the country on a daily basis.

My focus will be on public law family cases with the child as the pivot around which arguments fly and where serious abuse is alleged- it is in that field I have practised for the last 30 years as a barrister, the last 10 as Queens Counsel.

As a barrister, I am self-employed and I prize my professional independence greatly; the views I express in this and all my subsequent lectures will be my own. Some listeners may find the content distressing when I later explore specific types of child abuse, including death through inflicted injury.

This, my first lecture, is intended to set out just some of the basic legal tenets of public law family cases: an overview of the particular branch of law I work in. Without that understanding the legal, medical, political and ethical issues that I wish to explore in future lectures will lose the thread that ties them together: the child's welfare

1. I have said I am a barrister and a Queens Counsel: what am I and what do I do?

To begin at the beginning:

What is a barrister, is it any different from being a solicitor? Aren't you all just 'lawyers'?

Solicitor and Barristers are lawyers and, whilst there is some overlap, we have different and complementary skills and specialisms.

As a general rule, solicitors deal with the client directly and tend to cover a broader range of general common law issues. Solicitors are the first point of contact for the client and the court. They deal with the practical aspects of litigation whilst undertaking some advocacy work, particularly in the lower courts. There are solicitor-advocates with rights of audience in the higher courts but the vast majority of higher court advocates are barristers.

A barrister is called in by the solicitor on behalf of the client when the complexity of the case requires specialist legal advice and representation in court. In public law children's cases the barrister always act through a solicitor, we don't go out interviewing witnesses, deal with the tsunami of correspondence that looms in a care case nor do we see the client without the presence their solicitor. We are self-employed, independent of any solicitor or client who instructs us, and when a matter comes to trial, we advise on merits and tactics, cross-examine witnesses, make the legal submission on statute and case law and advise and act on any appeals. The court room is our traditional domain.

Some of us become 'Silks', another word for a 'Queen's Counsel (Q.C)', and we act in the most serious and complex cases covering a small, but highly important, fraction of the family law matters that come to court. I am a Silk and the work I undertake is mainly legally aided. Permission to instruct someone like me in a family case has to be sought from the Legal Aid Agency, a limb of government administration. The public purse strings are tied very tight-: the case has to be exceptionally complex to permit us to be instructed.

I will cover ethics in future lectures but at this stage just bear in mind that barristers operate under a 'cab rank rule': if we are available and there is no conflict of interest then we are under a duty to take a client's case on. We can't and don't say 'no' to acting for someone because we don't like them or their case or what it is suggested they have done.

It is not for us to decide if our client is telling us the truth or not: that is the province of the court

2. What's the difference between a criminal case and a civil case and a civil case and a family case?

Criminal law and civil law operate under two different standards of proof:

- Criminal: beyond reasonable doubt
- Civil: balance of probabilities
- oFamily Law is a branch of civil law;

Family law can be subdivided into

- Private family law and
- Public family law (of which more later)

•The fundamental difference between the civil courts and the family courts is that the civil courts focus on what has happened in the past while the family courts look only to the past to identify the problem before focusing on what needs to happen in the future for the child's welfare .

3. Crime v Care (Family): What are the consequences of this different standard of proof and focus of the trial?

An Illustration:

A Tale of Two Cities

In 2015, in Liverpool Crown Court a jury found a man called Craig Beattie not guilty of killing his son; 6 week old Kye Kerr

In 2014, in the Family Division of The Royal Courts of Justice in London, Mr Justice Peter Jackson had considered the same allegation and found that Mr Beattie had caused his son's death .

The background:

2011: On 11th July 2011, after just 13 days at home, 6 week old baby Kye died. He was discovered by his mother in his baby basket. A post-mortem revealed that he had sustained a catastrophic head injury at the time of death and a lesser brain injury 2 or 3 days earlier. Kye had a sibling (A) and she was temporarily removed from home to live with an Aunt. At that time it was decided that the cause of death was unascertained, the parents were not responsible and the CPS did not prosecute. No care proceedings were ever issued in respect of A. After 3 weeks A was returned to live with her parents. In 2013 the conclusions were reviewed and a report concluded that on the balance of probabilities the inflicted injuries were at least a significant contribution to, and probably the main cause of, Kye's death. The parents were arrested in September 2013 and care proceedings were initiated. A was taken into foster care initially under an emergency protection order, where she remained until the conclusion of the care proceedings later heard by Mr Justice Peter Jackson.

2014: Mr Justice Peter Jackson found that the injuries that Kye had sustained were non- accidental in origin and that the father was responsible for them

"On the first occasion, the father shook K in a manner clearly inappropriate for such a young baby. On the second, the father struck K's head against a hard surface with enough violence to fracture his skull and cause fatal brain injuries.

"He realised that K had been hurt, but instead of seeking help, put him in his Moses basket in the bedroom, hoping all would be well and determined to conceal what he had done."

Mr Justice Peter Jackson's criticisms of the investigation into Kye's death in 2011 were withering. The care hearing concluded before the criminal trial took place or was contemplated. That was because there was A's welfare to consider and she couldn't wait in limbo, in foster care, not knowing whether she was to return home or move to another family (delay being inimical to the welfare of the child).

2015: After the care case, the criminal investigation was reopened and that led to the father being charged with manslaughter in March 2015. He came to trial later that year and was acquitted .

How, the popular media have asked, can two different courts come to two different conclusions on the same allegation against the same man in relation to the same baby?

In the Liverpool crown court

- The charge is between the State (CPS) and Mr Beattie as the Defendant: **(Regina v D)**;
- Suspensions surrounding Kye's death were sufficient, given the evidence that the police had acquired, to lead to Mr Beattie being charged with his son's murder;
- The criminal court and family courts have different rules of evidence: matters that can be put in the public domain in a criminal court are more restrictive;
- The press are allowed in, as are the public;
- Barristers wear wigs and gowns;
- When matters of law arise the jury is sent out. In his summing up, the judge's advises the jury on the law, the jury hears the evidence and decides on the facts: the jury returns the verdict;
- The standard of proof is **'beyond reasonable doubt' ('satisfied as to be sure')**;
- The outcome is Guilty or Not Guilty. If found guilty the accused will be sentenced. He or she may go to prison;
- The judge determines the defendant's sentence: The purpose of it may be part punishment, part deterrent.

In the Family Division in London:

- The allegation was between the state (in the form of Cumbria Local Authority), with Mr Beattie, Kye's mother and A as the Respondents;
- Unless Kye had had a sibling (A) there would have been no care case as there would have been no child alive that potentially needed protection. In order to decide if it was safe for A to live with his parents the circumstances of Kye's death had to be investigated;
- The types of evidence admitted into the care case are wider than those that a jury can consider;
- The public are not allowed in, the press are but there are significant restrictions on what can be reported in order to protect the anonymity of A;
- Barristers don't wear wigs and gowns;
- The judge hears the entire case: he determines the facts and applies the law to the facts that he finds proven to the civil standard. There is no jury;
- The civil standard of proof is **'the balance of probabilities' (' more likely than not')**: a lower standard than the criminal standard of proof;
- The facts explored are those relevant to the question risk posed to surviving child A : the child's welfare is paramount;
- The judge will make Findings that enable decisions to be made about the future of child A. Where they are to live, under what type of order (if any), who they can have contact with.

Two cities, two Jurisdictions, two outcomes: why?

In the criminal court the standard is higher (beyond reasonable doubt: satisfied so as to be sure) because it is thought better that a guilty person goes free than an innocent person be convicted.

In a family court, the standard is lower (balance of probabilities: more likely than not) because the purpose of any hearing is to protect a child. If there is a risk that they could come to significant harm, the consequences could be too serious to subject them to the risk.

Having addressed the main differences between a criminal and family case when a child is the focus of the allegation I would now like to turn to the distinction between private and public family law

4. Private family law and public family law: it's all 'family' what's the difference?

'Family': what's in a name?

Think of a 'family' and what comes to mind?

At best: a family united by children, love, partnership?

At worst: the death of love, separation, divorce, erstwhile partners and parents feuding over money, assets and children.

But what of the situation where the dispute is not between parents - but between The State and the Family-

- In the first scenario, while adults wrangle, the child may be caught in the middle of a private domestic crisis but is likely to be residing within the family for the duration of the dispute and beyond.

- In the second arena: a child may be removed by social services or the police from its home against the wishes of the parents, with accusations of abuse levelled against them, the child potentially never to return to either parent or the wider family if those allegations are proven to be true.

Therein lies the difference between private law and public law -

Private Law: **Parent a v Parent B**

Public Law: **Local Authority X v A, B and C (the child)**

A case becomes a public law matter when the problems in the family give rise to professional concern that the children within it have either been harmed or are at risk to harm by their carers or those their carers associate with.

'Harm' covers a wide range of ills: emotional, physical, sexual etc. - we aren't talking about minor parenting shortcomings- the harm has to be 'significant' and there has to be a legal and factual threshold to be crossed to justify why the state is seeking to intervene in a family's right to a private family life (the 'Threshold Criteria').

It's not social workers who make the decisions about whether compulsory measures should be taken to remove a child from their home: that's the courts role. Social workers have to apply to the court for permission to remove a child and to keep that child living away from its parents or family. The court can only approve a plan to remove the child if it is 'necessary' to do so to protect that child from significant harm.

The **burden of proof** (who has to prove it) is on the Local Authority. It is for the Local Authority to prove that the child has suffered significant harm, or is at risk of such harm, NOT for the parent to prove that the child isn't.

The **standard of proof** (how sure does the Court need to be?) is the balance of probabilities. As I have already said, that is a lower standard of proof than in criminal cases which is why you can have different outcomes in the two courts: a subject I am going to explore in lectures 3 and 4 in this series (**'When legal World's Collide'** on 26th January 2017 and **'Guilty until Proven Innocent?'** on 2nd March 2017)

The court applies statute and case law to determine what happens in any given case, either under its inherent jurisdiction or, if a public law case, under the Children Act 1989 and Adoption and Children Act 2002 . This is not an exhaustive list e.g. issues of mental capacity may arise for example and the Human Rights Act 1998 permeates everything. The headnote: The child's welfare is the courts paramount consideration. The court can and should only intervene and interfere with the families right to a private life when to do so is proportionate and necessary to protect the child's welfare.

A child may be removed from home because professionals fear that the child is no longer protected by their parents but at risk from them. They may be right or wrong in their beliefs. To initiate matters social work professionals must have a reasonable belief that harm or a risk of harm exists and cogent evidential grounds to substantiate that belief and their recommendation is tested in court and either confirmed or rejected. Removal of a child is subject to stringent case law and should be sanctioned by the court only if 'nothing else will do'. How that test is applied depends on the facts of the case and on the attitude of the court. The local authority has a duty to call the evidence they rely upon to seek to prove their case; they must clearly state what their case is against each parent and the parents or accused have a right to challenge it and to call evidence of their own in rebuttal. The child is separately represented and, at present, has its own legal representation who acts on its behalf independent of the parent or local authority's lawyers.

The court envisages in all these situations listening and hearing from the parents and giving their views serious and proper weight but what when the parent has learning difficulties and one parent has no capacity to litigate because her learning disabilities are so profound? They remain the child's parents. Their love is no less than a parent without disabilities. The ways in which we, acting on behalf of parents with disabilities is a matter I shall explore in my last lecture in this series **'Two Point One Children: Why there is no typical family in the Family Court'** on 4th May 2017.

5. Public Family Law: Care and Wardship

I am now going to move on from the basics of family law to the more complex subject areas that Family Courts (within the jurisdictions of Care and Wardship) have to grapple with.

What type of child abuse are they concerned with? : 'Significant Harm' what does it cover?

The law becomes open to criticism if it does not adapt to the society it seeks to serve. As a result the type of harm contemplated by Parliament when it legislated and created the Children act 1989 has evolved.

- A decade ago it might have been thought inconceivable that a mother might sexually abuse her own child or make her baby available for sexual abuse by another

- A few years ago female genital mutilation remained hidden from view and forced marriage was a private affair

- This time last year the impact of ISIS upon our young people had been simmering , yet to come to public attention until a group of three academically promising young girls were captured on airport security cameras as they abandoned their families and studies to travel to Syria to become 'jihadi brides'. None has returned, one is believed to have died

'The family court system, particularly the Family Division, is, and always has been, in my view, in the vanguard of change in life and society. Where there are changes in medicine or in technology or cultural change, so often they resonate first within the family. Here, the type of harm I have been asked to evaluate is a different facet of vulnerability for children than that which the courts have had to deal with in the past.'

Per Hayden J:

Mr Justice Hayden was referring to Radicalisation and ISIS cases, the subject of my second lecture **'Is One**

Individual's Radicalism Another's Right To Free Speech? on 24th November 2016.

All of these issues, and more, come to be decided by family courts as a judge tries to decide whether;

- a) A child has been harmed or is at risk of harm in their family unit;
- b) Who poses a risk to them and whether there is anyone in the family who can protect the child;
- c) Is it safe for the child to remain or return to their family or a part of it?
- d) If not, how can that child best be given the chance of a substitute family life: foster care or adoption?

Put in such basic terms you may shrug your shoulders and think: where's the complexity in that?

If so, think again, for you do humanity, and the society you live in, a dis-service.

To wrongly remove a child from home, or not to intervene and remove a child when necessary, can have immense and heart-breaking consequences for the child, and the family, either way.

If a child isn't removed and kept safe and instead suffers fatal injuries in their home from which they could otherwise have been spared, there can be no greater tragedy.

If a child is removed and the court finds it's not safe for them to return home and so they need a permanent substitute family, through adoption let's say, then that is an irrevocable decision, the consequences of which are played out over that child's lifetime and beyond. We have closed adoptions in this country by which I mean that the norm is that all direct contact between the child and its birth family is severed upon an adoption order being made.

'with the state's abandonment of the right to impose capital sentences, orders of the kind which family judges are typically invited to make in public law proceedings are amongst the most drastic that any judge in any jurisdiction is ever empowered to make. When a judge makes placement order or an adoption order in relation to a twenty year old mother's baby, the mother will have to live with the consequences of that decision for what may be upwards of 60 or even 70 years, and the baby may be upwards of 80 or even 90 years'

Re J (A Child) [2013] EWHC 2894 (Fam)

So said the President of the Family Division in 2013.

This introductory lecture is not the place to explore whether the court always come to the right decision and why mistakes are made: I plan to explore those serious, and contentious issues, later in this series. For now I want to explore how immense the issues are that confront a family court.

6. Issues Impacting upon the Family Court: Solomon had it easy by comparison.

The breadth of issues covered by family law is immense and each case, each subject area, is as complex and unique as our DNA: think big and broad: **Geographical, Cultural, Sexual, Political, Religious, Scientific, Medical Matters of Life and Death.**

A. Geographical

Unaccompanied minors coming into the jurisdiction? Abducted children taken from or brought to the UK? Child slavery: a child hidden from the education and health system, living with an 'auntie' caring for 'nephews, whipped and abused as a servant?

What of so called 'miracle babies'? Desperate people attending 'fertility clinics' in Nigeria, women duped into thinking they were pregnant, 'delivered' of a child in Nigeria, returning to the UK to be confronted with the DNA reality that the child is not theirs and had been procured for them by illicit means in Nigeria.

What of a child born to foreign nationals lawfully resident in the UK but removed from them because of abuse in their care? Should that child be adopted in the UK, the only country it has known since birth but thereby cut off from his culture and history and absorbed permanently into a foreign country, or should it be removed from the society and language that is everything it has ever known to be transported back to his parents country without language or the emotional tools to understand the seismic shift in his infant world?

How does the court resolve these clashes of jurisdiction, geography and culture? Does the UK court have jurisdiction? What is the level of co-operation internationally between courts, what happens if there is a dispute over jurisdiction? How are these cases determined in the UK when they cross borders? How is the UK court's decision enforced in a different country?

When you think of international law you may think of Brussels, The Hague and matters of state and commerce. Few members of the public think of international law when they think of family law but it is embedded in our family justice system.

B. Cultural

How far do we embrace or prohibit different cultural behaviours? Amongst the many positives that a diverse cultural community brings there are (a minority) of practices that do not sit with the UK's accepted standards of parenting (applying significant harm as a measure of judgment).

Three examples:

Forced marriage is not acceptable, arranged marriage is. Forced marriage is a marriage in which one or both parties is married against his or her will. It differs from an arranged marriage in which both parties consent to the assistance of their parents or a third party (such as a match maker) in identifying a spouse. We have had arranged marriages in our society for hundreds of years (think of royal dynasties created by political matches) but forced marriage is an abuse of power that targets vulnerable victims.

Female Genital Mutilation (FGM) is not acceptable, male circumcision is. FGM is a criminal offence under the Female Genital Mutilation Act 2003 but until 2015 it had not authoritatively been considered under the Children Act 1989. Munby P reiterated that it was a criminal offence, was an abuse of human rights and had no basis in religion, medical or health grounds and fell squarely within the CA 1989 definition of 'significant harm' whether within s31 or s 100.

But what is the difference between FGM and male circumcision? Munby P concluded that if Type IV FGM amounts to significant harm for the purposes of s 31(2)(a) of the children Act 1989 then so too must male circumcision BUT, whilst the infliction of FGM can never be an aspect of reasonable parenting, the position was very different with male circumcision, noting that the latter is tolerated by society and the law for religious or even for purely cultural reasons.

What of Kindoki? How many in the audience know what 'Kindoki' is let alone that for the past decade the family courts have had to deal with its consequences for children who have fallen victim to its clandestine practice?

Kindoki is a belief in evil spirits originating in the Democratic Republic of Congo which can lead to acts of child abandonment, victimization and ritual abuse. It is a form of faith and belief-based child abuse, including spirit possession.

Child abuse linked to faith or belief can be separated into four areas in general:

- Abuse that occurs as a result of a child being accused of witchcraft or of being a witch;
- Abuse that occurs as a result of a child being accused of being 'possessed by spirits' that is, 'spirit possession';
- Ritualistic abuse;
- Satanic abuse.

The forms the abuse can take include:

- **Physical abuse:** beating, burning, cutting, stabbing, semi-strangulation, tying up the child, or rubbing chilli peppers or other substances in the child's genitals or eyes;
- **Emotional abuse:** in the form of isolation e.g. not allowing a child to eat or share a room with family members or threatening to abandon them. The child may also be persuaded that they are possessed;
- **Neglect:** failure to ensure appropriate medical care, supervision, school attendance, good hygiene, nourishment, clothing or warmth;
- **Sexual abuse;** within the family or community, children abused in this way may be particularly vulnerable to sexual exploitation.

Where does it take place?

Child Abuse linked to faith and/or belief is not confined to one faith, nationality or ethnic community. Examples have been recorded worldwide among Europeans, Africans, Asians and elsewhere, as well as in Christian, Muslim, Hindu and pagan faiths among others.

Not all those who believe in witchcraft or spirit possession harm children. Data on numbers of known cases suggests that only a small minority of people with such beliefs go on to abuse children.

Underreporting of this form of child abuse is extremely likely .

C. Sexual

'Paedophile!!!' screams a headline and most minds turn to stranger abduction and abuse of child by a man. But sexual abuse occurs not just between stranger and victim, man and child, but within a family network: woman and child, mother and grandmother to child and grandchild, child to child. It can be multi-generational, inter sibling, same sex, and inter sex.

Acts of abuse can occur over periods of time within the family, corrupting generations of children, abuse concealed by a culture of secrecy. The 'villain of the piece' is obvious when an adult abuser is identified as a sexual predator and held accountable for his or her actions but what do you do when a child victim of sexual abuse becomes an abuser of other children?

What do you do when the victim of abuse does not want to be separated from their family even if it means returning to the circle of abuse because they have 'normalised' their abuse, find foster care too alien, restrictive and lonely and are old enough to vote with their feet?

D. Political

What is the threshold for intervention? When does the right to hold and promote a political cause cross a boundary so as to become a risk to the children who may be exposed to it?

When does a parent's religious beliefs cross the line? Moving from a right to freedom of religious belief and political expression to become a legitimate child safe-guarding concern?

The courts are not 'Guardians of morality'

Consider this judgment...

'the mere fact, if fact it be, that the father was a member, probably only for a short time, of the (English Defence League) is neither here nor there, whatever one may think of its beliefs and policies. It is concerning to see the local authority again harping on about the allegedly 'immoral' aspects of the fathers behaviours... membership of an extremist group such as EDL: is not, without more, any basis for care proceedings'

When do we intervene?

' many parents are hypochondriacs, many parents are criminals or benefit cheats, many parents discriminate against ethnic or sexual minorities, many parents support vile political parties or belong to unusual or militant religions. All of these follies are visited upon their children, who may well adopt or 'model' them in their own lives but those children could not be removed for those reasons'

We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours which may be copied by our children. But the State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities, or who espouse antisocial political or religious beliefs'

E. Religious

'Social services re not the guardians of morality, nor is this court' ?

What of the so called ISIS cases that have come to the fore over the last year in our schools, streets and the criminal courts?

Is radicalisation different? What does 'radicalisation' even mean in a child care context? We have had a slew of family care cases in the last 18 months which have had to consider the ramifications of the emergence of ISIS and the declaration in 2014 that it had re-established The Caliphate.

In the UK, the law protects our right to express our beliefs freely so long as they do not harm children or break the law in some other way. But it does not give people the right to force their beliefs on someone else. Nor can a person's actions in support of their religious and political beliefs be permitted to place a child at risk of harm, e.g. by seeking to take a child to Iraq and Syria to join 'the Caliphate' or to encourage a school friend to do so. The High Court is now confronted on a regular basis with cases where there are allegations that children, with their parents or on their own, are planning or being groomed with a view to travel to areas controlled by the so called Islamic State.

The family court has had to master a wealth of material, often emanating from a counter surveillance/ counter terrorist investigative police team that raises concern that a child is, or is at risk of, being radicalised, leaving the UK to join IS or becoming involved in terrorist activities in this country or abroad.

These cases are reserved to the High Court: they grapple with essential rights recognized and protected under the Human Rights Act 1998 :

- Article 9:Freedom of thought, belief and religion;
- Art 10:Freedom of expression;

- Article 11:Freedom of assembly and association);
- Art 8:Respect for your private an family life, home and correspondence;
- Art 6:Right to fair trial and
- Art 1: Right to life.

These cases are unusual in that, aside from the fear of harm caused by radicalised activism, the children are often otherwise well cared for. The harm comes from the consequences of radicalised beliefs being imposed upon them, not from the day to day parenting which can often be loving and attentive.

Question: If the threat of flight is removed, do you remove a child and risk alienating that child, or the wider Muslim community, by that act, fuelling ISIS propaganda that English courts are taking Muslim children away from loving homes?

Or do you have to remove a child or sibling group because you fear that they will be contaminated by the allegedly radicalised parent into sharing their pro ISIS beliefs and acting on them : watching video of state supported executions and graphic images of 'infidels' meeting their death ? What do you do if the risk of exposure arises for an older child but not for the baby or toddler? Remove one, neither or both?

These are some of the issues I will explore in my second lecture **'Is one Individuals Radicalism another's Right to Free Speech'** on 24th November.

Does a parent, a committed Jehovah Witness for instance, have the right to refuse to permit the blood transfusion for their child that doctors say is vital to save that child's life? If they refuse, can the court intervene so as to permit the lifesaving treatment to be administered against the wishes of the parent? This question illustrates how narrow the division is between matters of religion, science and medicine are in the family court.

F. Scientific

Babies die at home in parental care and the family court has to determine if death came about by violence or from a benign cause mimicking abuse?

Science is constantly evolving and miscarriages of justice have happened with parents wrongly accused of shaking their child to death based on scientific research and hypothesis, genuinely held, but discarded or refined as science develops.

The 'Triad' is an interpretative tool applied and explored in cases where it is alleged that a baby has been shaken leading to injury or death. The Triad as an interpretative tool is complex and can divide experts as much as lawyers. I will be considering its use in my fourth lecture **'Guilty until Proven Innocent?'** on 2nd March 2017.

In alleged Non Accidental Injury cases the significance of Vitamin D deficiency, rickets and syndromes affecting bone density are emerging as areas now to be considered as alternative causative factors in fractures that would otherwise imply physical abuse. A subject I will also explore in my Fourth lecture. In cases where a child dies, and the Local Authority alleges and the carer denies, that they caused the death: the medical evidence plays a pivotal role in informing the court as to how a child came to die and whether the local authority has made out its case against the carer.

G. Medical

Matters of life and death. What of a parent of a seriously ill child with a malignant brain tumour where urgent radiography was advocated by the medical treating team but the mother refused consent, genuinely believing that the medical treatment proposed for her son was not necessary , may even be harmful and advocated alternative holistic treatment which the experts opined was either experimental or unsuitable?

What of the parents who believe life-saving, proton beam therapy could save their child without the side effects of conventional radiotherapy but is unavailable in the UK and the parents take their child out of hospital, out of the country and away from the UK medical team? The treating hospital fears that without their treatment the child's condition could seriously decline. Should the family be tracked down, the parents arrested, the child removed and placed in the nearest hospital, thence returned to England to resume the treatment plan advocated by the doctors, against the wishes of the parents ? Or should the parents be allowed to continue their journey and secure the treatment for their son they believe will cure him? This was the Aysah King case that hit the news in 2014.

When does the court intervene? How does it decide whether it should intervene and what it should do if it does? Such applications as these come before the court as an emergency, medical evidence is heard alongside the parent's rationale for resisting medical advice. They may be applications under the courts inherent jurisdiction, wardship, or care proceedings under the Children Act 1989. Whatever the jurisdiction, the focus is on the child

and the task of the judge hearing these cases is immense.

The family court will make a decision based on the best interests of the child, making the child's welfare its paramount consideration, balancing the wishes, opinions and views of the parent against the medical advice and child's needs; for whilst the court must give 'very great weight' to the parent wishes, they are 'subordinate to welfare'.

In lecture 5 on 12.4.17 I will be considering the role of experts ***'Expert Witnesses ;a Zero-sum Game'*** and in lecture 6, on 4.5.17 I will be considering how vulnerable parties are treated in the family court: ***'Two point One Children'; Why There is No Such Typical Thing in the Family Court'***. I will be dealing with the ways in which the court, and specifically the parent's lawyers, try to ensure that a parent's case is not disadvantaged by innate limitations, such as a learning disability, deafness, blindness for example.

7. CLOSING REMARKS

In any one week, in any Family Court in the land these scenarios are being argued and explored.

The common thread that unites all the decisions made in a family court is the welfare of the child. It is the courts paramount consideration. Anyone that does this type of work does it as a vocation. It exposes you to graphic images and tales of abuse that you would not dream any person was capable of inflicting upon a vulnerable child.

Child abuse is the stuff of nightmares: just as being falsely accused of harming your child is.

We no longer live in an age where a child can be treated as a chattel. From the point of its birth the child has rights of its own to live a life without being subjected to significant harm and abuse within its family. That 'right' matters more than the 'right' of his or her parents to care for their child if by so doing the child has or may suffer serious harm which has or may blight its healthy development.

The lawyers involved in these cases play a crucial part in enabling the court to come to best decision for a child. If we are acting for the accused parents we face a case where the Local Authority has already persuaded the court that they have reasonable grounds to be in proceedings. The parent can't walk away unless they walk away from having any role in their child's future. We, their lawyers, have to gain their respect and trust out of court to deliver the best representation in court. But we aren't our client's social workers, or their friends, we don't decide on guilt or innocence, we consider the evidence, advice and act on the instructions we receive. We may have to move from simple ways of communicating with a client with profound disabilities outside court and shift to specialised language in court when we cross examine the experts: the barrister seeks to become a mini expert in ophthalmology, pathology, neuro pathology, osteo-pathology, radiology, genetics, burns and bites, psychiatry and psychology. We seek to cross examine specialists who have made their subject their life's work and for whom it is a year round occupation in clinic and in court. For us it will one case amongst range of others, equally serious but of a different nature (a dead baby case alleged through shake can't be more different than a sex abuse case for example). How can we hope to pick apart an experts conclusion? But we do because that is what our instructions require and we have a duty to pursue their case to the best of our ability. We are on our own when we are on our feet, facing the witness box, and the responsibility is immense.

The world I work in is mucky, chaotic, unpredictable, sometimes sordid and brutal, often sad, sometimes tragic. What you read, see and hear can tarnish and even scar you. But what you do and who you do it for can also inspire you and make you proud to do the work you do. To be a public law care lawyer is to follow a vocation.

My intention in this introductory lecture has been to set the scene for the rest of the series ***'When World's Collide: The Family and The Law'***. Today's introduction has been no more than a summary of some of the issues that come before a family court and the legal framework within which we operate. Think of it as background. Over the course of the year I hope to explore the dilemmas and decisions of the family court so as to provide some context to the sporadic, sometimes inflamed, debate that breaks out in the press or on social media when a particular case attracts attention.

I hope it has triggered an interest that will encourage you to return