Family Law LAWS4217/ 8217

Winter 2022

Study and Reading Guide

**Key to using these guides;**

You will see that there are references to the textbook, which is Sifris et al ‘Family Law in Australia’ (Lexis Nexis 10th ed 2021). For eg Sifris TB10 [2.2- 2.3]. We are using the 10th edition this year. This is to be preferred as there have been many changes in the law in the last 5 years, which are included in the 10th edition.

However, I have also included references to relevant sections from the 9th edition, which we used last year and the year before, as students may prefer to buy second hand copies and refer to the 10th edition through the library were necessary. References to the previous edition of Young et al ‘Family Law in Australia’ (Lexis Nexis, 9th ed, 2016) is Young TB9 [1.5- 1.6]

The *Family Law Act 1975* (Cth) will be referred to as FLA.

# Course Overview

Please read the course study guide carefully. You can access it from a link at the top of the course webpage.

Introduction to Family Law: Key Concepts

This topic provides a foundation for understanding the regulation of separating families, through exploring a number of key topics that we will touch upon throughout the course including; the scope and limits of the FLA, use of discretion, gender, families and children, family violence and ADR.

Topics:

* Introduction and Overview to the FLA
* Families and Children
* ADR and Family Dispute Resolution
* Family Violence

Required reading

# Introduction and Overview to the FLA

The reading for this topic explains what areas the *Family Law Act* *1975* (Cth) regulates and what areas that it does not.

1. Australian Family Law: History, Scope and the Constitution
   1. FLA, s 4 definitions of ‘matrimonial causes’, ‘child’, ‘relative’, ‘parent’
   2. FLA ss 39, 39A, 39B
   3. The Australian Constitution, ss 51(xxi), 51 (xxii), 51 (xxxvii), and 51 (xxxix).
   4. Sifris TB10 [4.1 – 4.55, 4.78, 4.82, 4.89-4.92]/ [Young TB9 [para 4.1-4.46, 4.89 – 4.92]]
2. Overview of the *Family Law Act 1975* (Cth) ‘FLA’
   1. look at the structure of the Act, including the table of contents, and the headings of the Parts, Division, and Subdivisions.
   2. Sifris TB10: [1.40- 1.49]/ [Young TB9 [para 1.35- 1.44]]

Questions to consider

* Does the Australian family law system cater for the needs of the modern Australian family?
* What are some of the structural barriers that prevent the resolution of family law disputes in a comprehensive and integrated way?
* Why was a separate court created to deal with family law disputes? What are the advantages and disadvantages of doing so? What is the current proposal for court reform and how might that impact on Australian family law?
* Most of the states referred their power over children to the Commonwealth. Many have now also referred their power over de facto relationships to the Commonwealth. Why have the States agreed to these referrals of power, but kept jurisdiction over adoption and child welfare? Does this make the family law system fragmented and confusing?

Further Reading

If you have time and want to expand your understanding in these areas, I would recommend that you look at the following material;

* ALRC Report ‘Family Law for the Future’ (Final Report, March 2019) especially chapters 1, 2, 3, 4 and 8 (link to PDF provided in additional resources)
* *Marriage Act 1961* (Cth)
* *Matrimonial Causes Act 1959* (Cth)

1. **Families and Children**

We will begin by looking at the concept of ‘family’, and how it is (and is not) addressed under the FLA.

Then we will turn to look at children. We start with an overview of children’s rights in international law and its incorporation into domestic Australian law, before considering its impact on family law. We will consider the extent to which children’s rights language has been adopted by the FLA, and options for future reform. We then outline some basic theories of child development, with a particular focus on attachment theory. We will then consider how children’s attachment might be impacted by parental separation, conflict, and/ or family violence.

Required reading:

1. What is family?
   1. Sifris TB10 [1.50- 1.64]
2. Children and the UNCROC
   1. Sifris TB10 8.2 – 8.4/ [Young TB9: 8.1 – 8.4],
   2. Eeakelar ‘The Emergence of Children’s Rights’ (1986) 6 *Oxford Journal of Legal Studies* 161
3. Children and the FLA
   1. Young et al (eds) ‘Children and the Law in Australia’ (Lexis Nexus, 2017) Chapter 2 ‘The Development of Children’s Rights’ pp 25 - 54
   2. Sifris TB10 [1.65 – 1.66]; [8.5 -8.16]
4. Theories of child development:
5. Sifris TB10 [9.18- 9.25], [1.88- 1.98]/ [Young TB9: 1.80- 1.92]
6. Parkinson ‘Australian Family Law in Context’ (6th ed, 2015, Lawbook) Chapter 22 especially [22.65 – 22.180]

Questions to consider:

* Do you think children should be a party to family law disputes? Why or why not?
* From what age do you think a child can (and/or should) make decisions for themselves?
* What factors do you think are important in weighing up the need for children to be independent versus the need to protect the children from dangers?
* Can children make decisions in their best interests?
* Do parents have rights?
* How are family law disputes different to other kinds of legal disputes? Why?
* What is your definition of family?

Further Reading:

* Kelly ‘Developing Beneficial Parenting Plan models for children following separation and divorce (2005) 19 *Journal of American Academy of Matrimonial Lawyers* 237
* Smyth and Chisholm, ‘Exploring Options’ (2006) 20 *Australian Journal of Family Law* 193
* Hesse and Hesse ‘Attachment theory and research’ (2011) 49 *Family Court Review* 426
* Cathy Humphreys and Meredith Kiraly ‘Developmentally sensitive parental contact for infants when families are separated’ (2010) 85 Family Matters <https://aifs.gov.au/publications/family-matters/issue-85/developmentally-sensitive-parental-contact-infants-when-families-are-separated>.

1. **ADR and Family Dispute Resolution**

This topic looks at mediation and its role in resolving family law disputes. As mediation is a dispute resolution process that builds relationships and reduces conflict, it has become the primary dispute resolution mechanism for families, with litigation as a last resort. We will watch, and discuss, a family law mediation. The pre-court actions that are required in Australian family law disputes will be explained, as will the exceptions (for family violence) and the potential limitations of mediation.

These three topics provide the context and background against which decisions about children are made under the FLA, which we will turn to next.

Required Reading/ Watching

1. Sifris TB10 [2.1- 2.21, 2.30-2.47]/ [Young TB9 2.1 – 2.18, 2.25 – 2.52],
2. Section 60I FLA
3. Watch: ‘Mediation – What to Expect’ (Family Court Australia): <https://www.youtube.com/watch?v=1UJihUzTRMY> (30 mins)

Questions to consider:

* What is the purpose of mediation? How can the presence of lawyers help (or hinder) mediation?
* Are there disputes for which mediation is inappropriate? Why?

### Additional Reading

* T Sourdin ‘Not teaching ADR in law schools?’ (2012) 23 *Australasian Dispute Resolution Journal* 148
* NADRAC ‘The Resolve to Resolve’: available through <https://apo.org.au/node/67039>
* K Douglas ‘Teaching ADR in law schools’ (2011) 22 *Australiasian Dispute Resolution Journal* 49
* Lilian Corbin ‘ADR Zealots, Adjudicative Romantics, and everything in between’ (2015) 38(2) *UNSWLJ* 492
* Baron and Gutman ‘Throwing the Babies out with the bathwater’ (2014) 40(2) *Monash University Law Review* 283
* T. Sourdin ‘A Broader View of Justice’ in Michael Legg (ed). Resolving Disputes (Lexis Nexis 2016), 19
* R. Fisher & W. Ury, ‘Getting to Yes: Negotiating Agreements without Giving In’ (1981)

1. **Family Violence**
   1. Sifris TB10 [1.67-1.87, 3.1 – 3.11, 3.29- 3.36]; / [Young TB9 [para 1.66- 1.79, 3.1-3.6, 3.27 – 3.29, 3.38-3.40]. ]
   2. FLA s4AB definition of ‘family violence’, s 4 ‘child abuse’

Questions to consider:

* Is family violence adequately recognized in the family law system? In what ways?
* If a person who had experienced family violence but wanted the opportunity to mediate in order to have their voice heard by the person who used violence against them, would you support them to do so? Why or why not?

Further Reading

* *Dragonfly Whispers* (link to PDF provided in additional resources)
* Family Violence Best Practice Principles, 2016: [**http://www.familycourt.gov.au/wps/wcm/connect/cfd25561-39fb-49c4-83c1-2aff5cf6e4a1/FVBPP\_edition4\_December2016.pdf?MOD=AJPERES&CONVERT\_TO=url&CACHEID=ROOTWORKSPACE-cfd25561-39fb-49c4-83c1-2aff5cf6e4a1-lyTuHJt**](http://www.familycourt.gov.au/wps/wcm/connect/cfd25561-39fb-49c4-83c1-2aff5cf6e4a1/FVBPP_edition4_December2016.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE-cfd25561-39fb-49c4-83c1-2aff5cf6e4a1-lyTuHJt)
* *Family Violence Act 2016 (ACT)*
* Esteal and Grey, ‘Risk of Harm to Children from Exposure to FV’ (2013) 27 *Australian Journal of Family Law* 59

Parenting Orders

This section of the course will help you to understand the basics of decision making in family law disputes regarding children. For this reason, we will dive into and out of various chapters of the textbook to build up an understanding of how the FLA resolves disputes concerning children.

This also means that other than having raised the impact of international law on family law in class 2, we won’t specifically look at this issue in any depth for eg, international child abduction. And because we can’t fit everything into a 3 week course, we won’t look at issues concerning the family law court’s welfare jurisdiction, frozen embryos, orders for enforcement, recovery or location, or disputes arising due to one parent seeking to relocate. We may however be able to come back to these important and interesting issues in last part of the course.

Topics

* Waves of Reform
* Parenting agreements and parenting plans
* Parenting Orders
* Key concepts in the FLA
* Decision making under Part VII
* Best Interests test in Part VII
* Family Violence and Parenting Orders

Required Reading

1. **Waves of reform – competing agendas** 
   1. Sifris TB10 [8.5-8.17]/ [ Young TB10 8.5-8.15]
2. **Parenting agreements and parenting plans** 
   1. FLA ss 12A- 12G, 13C, Part VII Division 4 especially s63DA
   2. Sifris TB10 [8.44 – 8.45] / [Young TB9 [8.40-8.41]]
3. **Parenting orders** 
   1. FLA ss 64B, 65DA, 65F
   2. Sifris TB10 [8.49 – 8.56, 8.101 – 8.114] / [Young TB9[8.45-8.68], [8.94 – 8.115]]
4. **Key concepts in Part VII , FLA:** 
   1. Objects and principles
      1. s60B FLA,
      2. Sifris TB10 [8.18- 8.20] / [Young TB9 [ 8.16-8.18]
   2. Parental responsibility
      1. s61B FLA,
      2. Sifris TB10 [8.21 – 8.32, 8.39 – 8.45] / [Young TB9 [8.19-8.35]
   3. Best interests as the paramount consideration
      1. ss60CA, 60CC FLA,
      2. Sifris TB10 [8.60 – 8.74] / [Young TB9 [8.55- 8.68]
5. **Decision making under Part VII from *Goode v Goode***
   1. A statutory decision making framework
      1. *Goode v Goode (2006) 36 Fam LR 422*
      2. Sifris TB10 [*9.2-9.5]*
   2. Who can apply for parenting orders?
      1. Ss 64C, 65C, 69C, 60I, 65F FLA,
      2. Sifris TB10 [8.46 – 8.47] / [Young TB9 [8.42- 8.43]
   3. Orders relating to parental responsibility:
      1. Who is a ‘parent’?
         1. Ss 60EA-60HB, 69P- 69U, 65DAC, 65DAE, 65G FLA,
         2. Sifris TB10 [7.6-7.9]/ [Young TB9 [7.7 – 7.24]
      2. The presumption of equal shared parental responsibility
         1. Sifris TB10 [8.26, 9.6-9.9] /[Young TB9 [9.5- 9.7],
         2. Ss 61DA, 64B(2)
   4. Orders relating to living arrangements (including time)
      1. Ss 65DAA, 64B(2),
      2. Sifris TB10 [9.25- 9.27], [Young TB9 [9.9- 9.15], [9.86-9.94]
6. **Best interests test under Part VII** 
   1. Ss 60CA, 60CC FLA
   2. Sifris TB10 [9.31 – 9.64] [9.90- 9.96]/[ Young TB9 [9.239.85]
7. **Family violence and parenting orders**
   1. s4s AB, 60B, 60CC(2)(b), 60CC(2A), 60CC(3)(j), 60CC(3)(k), 60CF, 60CG, 61DA(2), 60I(9) FLA
   2. Sifris TB10 [1.76], [1.84], [3.60-3.62]; [9.35-9.47]/ [Young TB9: [8.109- 8.115]

Questions to consider:

### Additional Reading

* J Millbank, ‘De facto relationships, same-sex and surrogate parents: Exploring the scope and effects of the 2008 federal relationship reforms’ (2009) 23 *Australian Journal of Family Law* 160
* Shoebridge, G., ‘Biological parent or not: Does it make a difference to a parenting application?’ (2007) 13 *Current Family Law* 20
* Kay Hull ‘Every Picture Tells a Story’, Parliament of Australia, Canberra 2003 available at <http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=fca/childcustody/report.htm>
* Jennifer McIntosh and Richard Chisholm ‘Shared Care and Children’s Best Interests in Conflicted Separation: A Cautionary Tale from Current Research’ 20 (1) (2008) *Australian Family Lawyer* 1
* R Chisholm, ‘The Family Law Violence Amendment of 2011: A Progress Report, Featuring the Debate about Family Violence Orders’ (2011) 25 *Australian Journal of Family Law* 79
* Chisholm, R., ‘Making it Work: Family Law Amendment (Shared Parental Responsibility) Act 2006’ (2007) 21 *Australian Journal of Family Law* 143
* Parkinson, P., ‘The Values of Parliament and the Best Interests of Children- A Response to Prof Chisholm’ (2007) 21 *Australian Journal of Family Law 213*
* Parkinson, P., ‘Decision-making About the Best Interests of the Child: The Impact of the Two Tiers’ (2006) 20 *Australian Journal of Family Law* 179
* Chisholm, R., ‘The Meaning of “Meaningful”: Exploring a Key Term in the Family Law Act Amendments of 2006’ (2008) 22 *Australian Journal of Family Law* 175
* D Bagshaw et al, ‘Family Violence: Parents’ and Children’s Experiences before and after the 2006 Reforms’ (2010) 21(2) *Australian Family Lawyer* 11
* Parkinson, P., ‘Family Law and Parent-Child Contact: Assessing the Risk of Sexual Abuse’ (1999) 23 *Melbourne University Law Review* 345
* Fogarty, J., ‘Unacceptable Risk: A Return to Basics’ (2006) 20 *Australian Journal of Family Law* 249
* Chisholm, R., ‘Child Abuse Allegations in Family Law Cases: A Review of the Law’ (2011) 25 *Australian Journal of Family Law* 1
* *B v B* (1988) FLC 91-978
* Note reports from the Australian Institute of Family Studies, the Family Law Council and Prof R Chisholm (for the Attorney-General) into family violence and the 2006 Amendments to the FLA. All reports are available at the Attorney-General’s website <http://www.ag.gov.au/www/agd/agd.nsf/Page/Families_FamilyCourtsViolenceReview>

Recognising and Ending Relationships

We will look at the relationships that are recognised and regulated under the *Family Law Act* *1975* (Cth). We consider first marriage and divorce, then de facto and separation. We note in passing the recognition of registered relationships.

We won’t be looking at the recognition of foreign marriages in any detail, but be aware that there are special considerations attached to them. Because it is only rarely used, we also won’t be looking at nullity, which is an alternative way that marriages can end. However, if you are interested in this topic (which has implications for CALD families) there are some additional readings identified at the end for your own exploration.

Topics

* Marriage
* Divorce
* De facto relationships
* De facto separation
* Other recognised relationships

Required Reading

1. **Marriage: Who can get married? What are the formalities required for a marriage?** 
   1. Sifris TB10 [5.1-5.15, 5.23 -5.65]/ [Young TB9 [5.1- 5.56], [1.60- 1.63]
   2. *ss11-16, 23, 23B, 94 Marriage Act (1961) (Cth)*
2. **Divorce**
   1. Sifris TB10 [6.1 – 6.9], [6.75 – 6.122] / [Young TB9 [6.55-6.91], [6.97- 6.102]
   2. ss 44(1A), 44(1B), 44(5), 48- 55A, 59, 90RA-90RH FLA
3. **De facto relationships**
   1. Sifris TB10 [5.98 – 5.145], [Young TB9: [5.86- 5.115]
   2. s 4AA FLA
4. **De facto separation** 
   1. Sifris TB10 [6.153- 6.180] /[Young TB9 [6.113- 6.125]
   2. FLA
5. **Other recognised relationships**
   1. Sifris TB10 [5.147 – 5.154] , [6.182] / [Young TB9: [5.116-5.119], [6.126]]
   2. FLA

Questions to consider:

* In your opinion, how inclusive is the current *Marriage Act 1961* (Cth)?
* Are there still advantages to marriage over other legally recognised relationships? What are those advantages? What are the disadvantages?
* Do legally recognised relationships draw implicitly on the ideal of marriage relationships? (permanency, couple-dom, sexual intimacy?)
* What is the rationale for extending protection to de facto relationships. Do you think that there should be a way of ‘opting out’ of being in a de facto relationship?
* What are the difficulties/issues with determining who is in a de facto relationship, and who is not?

Further reading

You could read more about the different grounds upon which a marriage is void [6.10- 6.54]. Other recommended reading would involve delving into the cases which expand on the common law and the legislation considered above.

* *Hyde v Hyde & Woodmansee* (1866) LR 11 P & D 130
* *Re Kevin (validity of marriage of transsexual)* (2001) FLC 93-087
* *In Re Kevin (validity of marriage of transsexual) No 2* (2003) FLC 93-127 (Full Court)

You could read about the different kinds of relationships that are recognised in the ACT.

* *Domestic Relationships Act 1994* (ACT)
* *Civil Unions Act 2012* (ACT)

You could also read some cases where de facto relationships have and have not been recognised by the courts. Reading through even just a few of these cases will give you a good sense of how the different circumstances in s4AB are likely to be applied to different factual scenarios:

* *Aldridge v Keaton* (2009) 235 FLR 450– Full Court
* *Jonah v White* (2011) 45 Fam LR 460 – Full Court
* *Kazama v Britton* (2013) 48 Fam LR 664
* *Barry v Dalrymple* [2010] FamCA 1271
* *Moby & Schulter* (2010) FLC ¶93-447
* *Allenby v Kimble* (2012) 19 Fam LR 15
* *Ricci v Jones* [2011] FamCAFC 222
* *Baker v Landon* (2010) 238 FLR 210
* *Vaughan v Bele* [2011] FamCA 436
* *Vine v Carey* [2009] FMCAfam 1017

Property Orders

This topic looks at the financial side of a relationship breakdown. You will find out how the Court arrives at a property settlement – that is, whether interests in the property (the assets, liabilities and financial resources) owned by a couple should be altered after separation, and if so, how.

In December 2012 the High Court handed down a decision in the case of *Stanford* (2012) 87 ALJR 74. This decision initially created significant uncertainty in relation to how the courts would approach altering financial interests of the parties after separation. This uncertainty has to some extent been resolved, by the Full Court case of *Bevan & Bevan* (2013) 279 FLR 1.

You will learn about the stages of property division. By the end, you be able to provide advice as to the likely outcome of a relatively straight forward hypothetical property settlement dispute.

Topics:

* History and Background
* Property alternation for De Facto couples
* Stanford and the 4 stages
* Stage 1
* Stage 2
* Stage 3
* Stage 4
* Putting it all together

Required Reading

1. **History and background of property division after relationship breakdown:**
2. Sifris TB10 / Young TB9 [12.8-12.15], [12.5-12.6]
3. **Property alteration for de facto couples under the FLA**
4. Ss 4AA, 90SK, 90SB LFA
5. Sifris TB10 [12.52 – 12.55] / Young TB9:[12.17 – 12.28], [10.51- 10.56], [12.43-12.46]
6. **Time Limits**
7. Ss 44(3)-(6), 81, 90ST FLA
8. Sifris TB10 [13.3- 13.6] / Young TB9 [13.2-13.7]
9. **Decision making approach: Stanford and the ‘4 stages’?**
   1. *Stanford v Stanford* (2012) 293 ALR 70
   2. *Hickey and Hickey* (2003) FLC ¶93-143 (especially paragraph 39)
   3. Sifris TB [13.6 – 13.22], [13.47 – 13.58]
   4. *Bevan v Bevan* (2013) 279 FLR 1
10. **Stage 1: Identifying and Determining the Existing Legal and Equitable Interests**
    1. Overview
       1. ss 79(1), 79(2), 79(4), 75(2), (90SM(1), 90SM(3), 90SM(4), 90SF(3) FLA
       2. Sifris TB10 [13.23 -13.24], / Young TB9 [13.1],[13.4-13.6], [13.14-3.19], [13.34-13.40]
       3. *Chancellor & McCoy* (2016) FamCAFC 256 (2 December 2016)
    2. What is property?
       1. s4(1) (definition of property) FLA
       2. Sifris TB10 [13.25 - 13.35]/ Young TB9 [13.20 – 13.31], [15.10- 15.11]
    3. Valuing property
       1. Sifris TB10 [13.41- 13.42]
    4. Assets and Liabilities
       1. Sifris TB10 [13.43 – 13.44]
    5. What obligations do the parties have to give each other information?
       1. *Family Law Rules 2004 (Cth)* r13.04
       2. Sifris TB10 [13.45] / Young TB9 [13.33]
    6. Superannuation
       1. Ss 90MS, 90MT FLA
       2. Sifris TB10 [15.1-15.09] / Young TB9 [15.2, 15.5-15.12]
11. One pool or two?
    1. *Coghlan v Coghlan* (2005) 193 FLR 9
    2. Sifris TB10 [15.10- 5.15]
12. **Stage 2: Contributions**
    1. ss 79(4)(a),(b) and (c), s 90SM(4)(a),(b) and(c) FLA
    2. Sifris TB10 [14.11 – 14.28], [14.31- 14.36], [14.37-14.44], [14.52 -14.80] / Young TB9 [14.1-14.23], [14.45-14.55]
    3. *Mallet v Mallet* (1984) 156 CLR 605;
    4. *Norbis v Norbis (1986) 161 CLR 51*
    5. *Kennon v Kennon* (1997) 22 Fam LR 1
13. **Stage 3: Future Needs**
    1. *ss* 79(4)(d),(e),(f) and (g), 75(2), s90SM(4)(d),(e),(f) and (g), 90SF(3) FLA
    2. Sifris TB10 [14.81 – 14.93] / Young TB9 [14.56-14.64]
14. **Stage 4: Just and Equitable (Again?)**
15. ss 79(2), 90SM(2) FLA
16. Sifris TB10 [14.94] / Young TB9 [14.65]
17. **Putting it all together** 
    1. *Coghlan v Coghlan* (2005) 193 FLR 9
    2. *Teal & Teal* [2010] FamCAFC 120 – only read up to paragraph 75 as the remainder of the case relates to child support

Questions to consider:

* What information do you need to know to decide whether a separated de facto couple will be able to make a claim under the Family Law Act?
* What, ultimately, does the Court have to be satisfied of before making an order in relation to property settlement?
* Is superannuation treated differently from other property in family law?
* How are contributions to superannuation considered? Is it the same as contributions to other assets owned by the parties to the marriage?
* How does family violence affect the assessment of contributions?
* What factual matters are taken into account in Stage 3?
* How are the relative needs and financial resources balanced?
* Are the percentage adjustments different if it is a “big pool” rather than a “small pool”?
* How does family violence affect property orders?
* What has changed as a result of the decisions in *Stanford* and *Bevan*?

Additional reading

The commencement date for the de facto property settlement provisions is not easy to find. If you want to experience the legislative puzzle that is required to confirm the commencement date have a look at:

* *Family Law Amendments (De Facto Financial Matters and Other Measures) Act 2008 (Cth) –* Schedule 1, Part 2, Item 86 *NB*
* *Family Law Amendments (De Facto Financial Matters and Other Measures) Act 2008 (Cth) –* Schedule 1, Part 2, Item 86A *NB*

If you want to know more information about the extent to which the State and Territory laws about de facto property settlement which existed prior to 1 March 2009 now apply check out:

* *Family Law Act 1975 (Cth) –* s90RC

If you would like to know more about the constitutional basis for the Family Law Act’s property settlement provisions and the limits of the jurisdiction look at:

* Textbook: TB9 [12.16, 12.29-12.40]

We are focusing on the Courts’ power to make orders altering property interests. TheCourts can also make orders declaring interests in property. The relevant sections are:

* *Family Law Act 1975 (Cth) –* s78 and s90SL

If you would like to know more about the limits of what is seen as “property” by the Family Court look at:

* *Duff and Duff* (1977) FLC ¶90-217

If you would like to know more about contributions generally, including some critical commentary:

* *Brown v Brown* (2005) 33 Fam LR 246;
* P Parkinson, “Reforming the law of family property” 13 *AJFL* 1

More about when the Court uses an asset by asset approach:

* *In the Matter of McLay* (1996) Fam LR 239
* *McMahan and McMahon* (1995) 19 Fam LR 99

More about the emphasis on financial contributions in short (particularly childless) relationships and about the erosion principle:

* *Lawler v Lawler* (1988) 12 Fam LR 319
* *Marriage of Pierce* (1998) 24 Fam LR 377
* *Brown v Brown* (2005) 33 Fam LR 246
* P Parkinson, “The Diminishing Significance of Initial Contributions to Property” (1999) 13 *AJFL* 1

More about how the Court treats non-financial contributions other than homemaker and parenting contributions:

* *Marriage of Zappacosta* (1976) 1 Fam LR 11
* *Marriage of Whiteley* (1992) FLC ¶92–304
* *Marriage of Zubcic*  (1995) FLC ¶ 92–609

More about how the Court compares financial and non-financial contributions to the family:

* *Marriage of Ferraro* (1992) 16 Fam LR 1

More about how family violence affects property settlement:

* Fehlberg, Kaspiew, Millbank, Kelly & Behrens, Australian Family Law – the Contemporary Context, Oxford University Press Australia, 2014, 2nd edition
* S Middleton, “Domestic violence and contributions to the welfare of the family: why not negative?” (2002) 16 *AJFL* 2
* S Middleton, “Matrimonial property reform: Legislating for the ‘financial consequences’ of domestic violence” (2005) 19 *AJFL* 10

More about negative contributions

* *Marriage of Kowaliw* (1981) FLC 91-092

Leading cases to see how the future needs of parties are treated:

* *DJM v JLM (1998) 23 Fam LR 396;*
* *Marriage of Clauson* (1995) 18 Fam LR 693
* *Waters v Jurek (1995) 20 Fam LR 1990*

More about how prospective inheritances are taken into account:

* *White and Tulloch v White* (1995) FLC 92-641
* J Eades, Prospective Inheritances in Family Law Property Proceedings (2002), 40(9) Law Society Journal 46
* R Glezer, “Prospective Inheritances: Should they be taken into account in property proceedings” (2003) 16(4) *Australian Family Lawyer* 27
* R Glezer, “Prospective Inheritances: an Update” (2003) 17(1) *Australian Family Lawyer* 24