FAMILY LAW ACT 1975. IN THE FULL COURT OF THE FAMILY COURT OF AUSTRALIA Appeal No. 6 of 1986 AT BRISBANE In the Marriage of: S Husband/Appellant and S Wife/Respondent JUDGMENT OF THE HONOURABLE MR.JUSTICE FOGARTY. CORAM: Fogarty, Murray & Strauss, JJ. DATE OF HEARING: 1 May, 1986 DATE OF JUDGMENT: 17 June, 1986 APPEARANCES: Mr. White of Counsel instructed by A.L.A.O., Solicitors for husband/appellant Mr. Page of Counsel instructed by Meerkin & Apel, solicitors for respondent/wife S & S Appeal No. 6 of 1986 Judgment: 17 June 1986 Coram: Fogarty, Murray & Strauss, J.J. FAMILY LAW - CONTEMPT - Child taken out of custody of custodian mother by thefather after custody hearing and retained until hisarrest 18 months later -Application to Trial Judge to disqualify himself on the ground of bias orpre-judgment - Husband sentencedto 15 months imprisonment with entitlement tobe released after 9 months - Appeal - Question of bias or pre-judgment - Whethersentenceexcessive - Family Law Act 1985, s. 108. In March 1984, after a contested hearing, custody of the daughter of theparties was granted to the wife. In May 1984 the husbandfailed to return thechild after an access period and disappeared with the child. After extensiveAustralia-wide searches he was arrested in November 1985 and the child returnedto the mother's custody. The contempt proceedings were heard in December 1985 before the originalTrial Judge and the husband imprisoned until 27 February1987 but was entitledto be released as from 27 September 1986 upon entering into a recognizance tocomply with certain injunctions. At the commencement of the hearingobjection was taken to the Trial Judge sitting on the matter in the lightofcomments which he had made at the original trial. On Appeal it was argued that the Trial Judge should have disqualified himselfas a consequence of remarks made during the 1984 trialand, in addition, thatthe Trial Judge had shown bias in the course of this hearing because of commentswhich he made during counsels'submissions. It was further argued that thesentence imposed was excessive. Held: 1. The sentence imposed was not excessive but was, infact, a modest penalty. 2. There was no case of bias or pre-judgment. 3. The authorities in Australia establish that the principleto be applied where bias or pre-judgment is alleged is that a Judgeshould not sit to hear a case if, in all the circumstances, theparties or the public might entertain a reasonable apprehension that he might not

bring an impartial or unprejudiced mind to thesolution of the question involved. 4. Whilst each case must be determined by the application ofthat principle to the particular circumstances, it is possible toextract from the Australian authorities the following points ofguidance: (a) If a Judge considers that there is a real- possibility that his prior involvement in the case might leadto a reasonable apprehension of pre-judgment or bias, he shouldrefrain from sitting. (b) The question of bias or pre-judgment is not to bedetermined by reference of the ability of a particular court or topublic confidence in the integrity of the judiciary. The issueusually is the appearance rather than the actuality of bias by reason of pre-judgment. (c) However, it would be an abdication of the judicial function and an encouragement of procedural abuse for a Judgeto automatically disqualify himself whenever he was requested todo so on the ground of possible bias or pre-judgment regardlessof whether the other party desired the matter to be dealt with by him as the Judge to whom the hearing had beenentrusted by the ordinary procedures and practices of the particularcourt. (d) A fair-minded observer might entertain a reasonableapprehension of bias by reason of pre-judgment if a Judge sits tohear a case at first instance after he has, in a previous case, expressed clear views about (i) a question of fact which constitutes a live andsignificant issue in the subsequent case, or (ii) the credit of a witness whose evidence is ofsignificance in such a question of fact. (e) It is not uncommon, and is sometimes necessary, for aJudge, during argument, to formulate propositions for the purpose ofenabling their correctness to be tested and as-a general rule anything that a Judge says in the course of argument will beregarded as "merely tentative and exploratory". The expression ofsuch provisional views is not ordinarily to be taken asindicative of bias. (f) An appeal court would not lightly conclude that the Judgemight reasonably be suspected of bias or pre-judgment; it must be"firmly established" that such a suspicion may reasonably beengendered in the minds of a party or the public. 5. The appeal is dismissed. By Notice of Appeal dated 10January 1986 Mr S (hereinafter referred to as "the husband") has appealedagainst orders whichwere made by Mr Justice Simpson in the Brisbane Registry ofthe Court on 17 December 1985, Those orders were:- (1) That the orders in relation to access contained in paragraphs 3 and 4 of the order of the 2nd March 1984 bedischarged. (2) That until further order the HUSBAND be restrained and an injunction

is hereby granted restraining him fromentering, attempting to enter or loitering in the vicinity ofany premises in which the WIFE may be residing from time totime. (3) That the HUSBAND [Mr S] be imprisoned until12.00 noon on the 27 February 1987 subject to the HUSBAND beingentitled to be released from the said imprisonment at any time after 12.00 noon on the 27th September 1986 onhis entering into a recognizance in an amount of $1,000.00 thathe will comply with the foregoing injunction". The proceedings before his Honour were constituted by twoapplications for contempt of Court pursuant to the provisionsof s.108 of theFamily Law Act, those applications being dated 1 June 1984 and 25 November1985. They are for practical purposes identical and each alleged that thehusbandwas guilty of contempt of court in that, contrary to the order of 2March 1984 granting to Mrs S (hereinafter referred to as "thewife") the custodyof the one child of the marriage, J, the husband on or before 6 May 1984 failedto return that child to the custodyof the wife and retained the child in hispossession ,contrary to that order until 27 November 1985. Those proceedings came on for hearing before his Honour on 13December 1985. The husband pleaded guilty to the allegationof contempt. Thematerial before his Honour consisted of affidavits filed on behalf of each ofthe parties, including affidavitsby the parties themselves, and the submissionsof Counsel. His Honour reserved his decision and pronounced judgment on 17December1985. The background facts leading up to the proceedings before his Honourmay be summarised in this way: The husband was born in1947 and is agedapproximately 39 and the wife was born in 1951 and is aged approximately 35.They commenced to live together in 1974 and married in May 1981. The onechildof their association, J, was born in 1978. The parties finally separated inQueensland in December 1982 although there hadbeen previous separations. Thereafter there were proceedings in the local magistrates' courtand until February 1983 the child was with each of herparents for a short time.However, from February 1983 the wife had the interim custody of J and thechild remained living with her until the custody proceedings were determinedbySimpson, J. on 2 March 1984. During that time the husband had access to hisdaughter. On 2 March 1984 at the conclusion of what his Honour described as "abitterly contested custody hearing which occupied a numberof days, his Honourgranted to the wife sole guardianship and custody of J and granted to thehusband access. A notice of appeal was filed

on behalf of the husband but in themeantime the husband availed himself of access to his daughter,in accordancewith the terms of that order, until the weekend of 5 and 6 May 1984. At theconclusion of access on that weekend the husband failed to return the childtothe wife and disappeared with the child. Thereafter the wife did not see or hearfrom her daughter until 27 November 1985 whenthe police arrested the husband inPerth and took possession of the child pursuant to orders and warrants which hadbeen issued bythis Court in the intervening period. The events between May 1984 and November 1985 were summarised by hisHonour in his judgment in the following passage: "As might be expected there were numerous developments following thehusband's abduction of the child. The wife, and those actingfor her in bothQueensland and Victoria, made or caused to be made extensive efforts to locatethe husband and [J]. Warrants wereissued directed to the Australian FederalPolice and others to take possession of the child for the purpose of restoringher to thewife and for the arrest of the husband for the purpose of having himbrought before the Court to show cause why he should not bedealt with forcontempt. Also the order for access in favour of the husband was suspended untilfurther order. There is evidencebefore me to the effect that the VictorianLegal Aid Commission has expended over $80,000 in the provision of legalassistance tothe wife in connection with the various applications to the Courtand with extensive enquiries directed to regaining the custodyof [J]. Thatamount is exclusive of the expenses incurred by the wife personally and theadditional public expenditure associatedwith the police enquiries. However, of more importance than the cost to the taxpayer and the wife inmaterial terms is the grief, anxiety and emotional strainsuffered by the wifeand the risk of emotional damage to [J] not only by being made to live the lifeof a fugitive but also by thechild being deprived of her right to be raised byher mother. During the course of her efforts to locate her daughter the wife was givenleave by the Court to publish some particulars of the circumstancesof theabduction and of the husband and child in the hope that such publicity wouldresult in information being made available tothe wife which would assist in thesearch. One result of the publicity was that the husband communicated with onereporter who is apparently a radio personality of some notorietyin Victoria. Arecord of the interview between the husband and the reporter is annexed to theaffidavit of Mr. [B]

filed in the MelbourneRegistry on the 4 June, 1984. Itappears that in the course of that interview which took place on or about the 31May, 1984 the husbandgave his version of the relevant circumstances (which wasfar from an accurate account thereof) and the husband recounted that hehad cometo the decision to abduct his daughter about 3 weeks before he did so and gaveas his reason that he had - 'seen my daughterchanging so much and herpersonality being basically taken away from her and about three weeks before Idid it, I decided to do so'.At a later stage of the interview the husband inreply to the question by the reporter - 'And so then in May, you just took yourdaughter' replied 'Yes I did, I couldn't take any more, my daughter was changed so much, hersexual awareness had increased you know, I just couldn'tsee my daughter changeany more like what was happening. My wife and her de facto husband, for somereason, just didn't understandmy daughter, just didn't understand what theywere doing with her and I am the father and I love my daughter dearly and Icouldn'tjust keep letting this happen to her, you know, a Judge gave thisverdict but I mean he didn't really know the case, he didn't really know what it was about and whenhe threw out all our evidence which my wife's motherwas in Court testifying against her own daughter, my wife's sister flew from [B],thats North Queensland, to testify against her sister andthe Judge found thevindictive and, you know, the testimonies worth nothing and to me it was a bigthing that her own family wentagainst her but that meant nothing in Court'. It is to be noted that the husband did not raise with the reporter anysuggestion that his decision to abduct the child was motivatedby J telling herfather that her maternal grandfather had sexually interferred with her at sometime after the custody hearing. Itis not necessary nor desirable that I makeany comment about proceedings in the Melbourne Registry in relation to thewife's endeavourto locate the husband by interrogating the reporter. In much more recent times - October 1985 - the abduction of [J] was featuredin a television programme. That programme included aninterview with thehusband. It was during that interview that the husband first raised theallegation of sexual abuse of [J] by thewife's father after the order forcustody was made in favour of the wife. This sorry history can be concluded by again recording that the husband and[J] were located in Western Australia and the husbandarrested on or about the27 November, 1985. The husband has remained in custody since that date". In addition to the

affidavit material and the submissions his Honouralso had before him further material which was summarisedby his Honour asfollows: "The wife was present at the hearing of the present applications that thehusband be dealt with for contempt. In response to my enquiryCounsel for the wife informed me that [J], who is now 7 years of age, recognised hermother when the child was reunited with the wife; that[J] appeared to be physically healthy and well cared for; that she asserted that her namewas [N] rather than [J]; that she considered that therewas no need for her togo to school and was in fact reluctant to do so; that nevertheless [J] seemed tobe quite happy at school;that [J] thinks it necessary to wear a hat and darkglasses whenever she moves outside the home, and that the child often wants tocommunicate by using notes and sign language". The effect of his Honours orders were: By order no. 1 hisHonour discharged the access orders which he made on 2 March 1984. By order no.2 the husband was restrained from"entering, attempting to enter or loitering inthe vicinity of any premises at which the wife may be residing from time totime"and by order no. 3 the husband was imprisoned until 27 February 1987,subject to the circumstance that he was "entitled to be releasedfrom suchimprisonment at any time after 12 noon on 27 September 1986 on his entering intoa recognizance in the amount of $1000that he will comply with the foregoinginjunction". The injunction referred to in para. 3 is the injunction which hisHonour hadgranted in para. 2. At the commencement of the appeal Mr. White, who appeared for theappellant,was granted leave to amend the grounds of appeal.As argued before usthey raised a number of separate issues. It is desirable to deal with the issue raised in ground 4 first asthat ground attacks the validity of the whole of the orderswhich his Honourmade. That ground alleges that his Honour was in error in that he failedto disqualify himself from the hearing because: (a) "In his reasons for judgment dated 2 March 1984made at the termination of an earlier trial the learned Trial Judgehad disclosed an animosity and/or adverse evaluationof the appellant"; ... (e) ' a real likelihood of bias against the appellantappears from the conduct of the proceedings". I have not set out paras. (b) to (d). Paragraph (b) refers to thecircumstance that the appellant had appealed against theorders of 2 March;para. (c) purports to summarise the law to be applied in relation to such anissue, and para. (d) refers to thecircumstance that other Judges were availableto hear the

contempt proceedings in the Brisbane registry at the relevanttime. It is convenient to refer to the principles which apply whenissues of bias of the type suggested in this case are raised. Mr. White referred us to a number of earlier cases which relatedto this issue including Vincent v. Curran (1909) VLR 33; R. v. TheJustices of Queen's County (1908) I.R. 294; Re McCrory, Ex parteRivett [1895] VicLawRp 2; (1895) 21 VLR 3; and more recently R. v. Camborne Justices; Exparte Pearce (1954) 2 All E.R. 850. However it appears to me that theprinciples to be applied have been clearly established in a significant line ofrecent cases inthe High Court: R. v. Watson; Ex Parte Armstrong [1976] HCA 39; (1976)136 CLR 248 esp. @ p.258-263; Re Judge Leckie; Ex Parte Felman (1977) 52ALJR 155 @ p.158; Re: Lusink; Ex Parte Shaw (1980) FLC 90/884; Livesayv. N.S.W. Bar Association [1983] HCA 17; (1983) 57 ALJR 420; Re: Simpson; Ex ParteM.(1984) FLC 91/513. Reference might also be made to cases in the Full Courtof this Court including Lonard (1976) FLC 90/066; Axtell (1982)FLC 91/228; and Horton (1983) FLC 91/368. Those cases establish that the principle to be applied is that aJudge should not sit to hear a case if in all the circumstancesthe parties orthe public might entertain a reasonable apprehension that he might not bringan impartial and unprejudiced mind to the solution of the question involved init. While each case must be determined by the application of thatprinciple to the particular circumstances of the case, it ispossible to extractfrom the authorities the following points of guidance: Ifa Judge considers that there is a real possibility that his prior involvement inthe case might lead to a reasonable apprehensionof pre-judgment or bias, heshould refrain from sitting. Thequestion of bias or pre-judgment is not to be determined by reference of theability of a particular court or to public confidencein the integrity of thejudiciary. The issue usually is the appearance rather than the actuality of biasby reason of pre-judgment. However,it would be an abdication of the judicial function and an encouragement ofprocedural abuse for a Judge to automaticallydisqualify himself whenever he wasrequested to do so on the ground of possible bias or pre-judgment regardless ofwhether the otherparty desired the matter to be dealt with by him as the Judgeto whom the hearing had been entrusted by the ordinary procedures andpracticesof the particular court. Afair-minded observer might entertain a reasonable apprehension of bias by reasonof pre-judgment if a Judge sits to hear

a caseat first instance after he has,in a previous case, expressed clear views about (a) a question offact which constitutes a live and significant issue in the subsequent case,or (b) the credit of a witness whose evidence is of significance in such aquestion of fact. Itis not uncommon, and is sometimes necessary, for a Judge, during argument, toformulate propositions for the purpose of enablingtheir correctness to betested and as a general rule anything that a Judge says in the course ofargument will be regarded as "merelytentative and exploratory". The expressionof such provisional views is not ordinarily to be taken as indicative ofbias. Anappeal court would not lightly conclude that the Judge might reasonably besuspected of bias or pre-judgment; it must be "firmlyestablished" that such asuspicion may reasonably be engendered in the minds of a party or thepublic. The allegation of bias in this case is based upon twoseparate matters. The first relates to a passage in his Honour's judgment of 2 March1984 when he granted custody of J to the wife. In that judgment his Honour, after reviewing the background maritalfacts, referred to the reports and evidence of the counsellorsand said thatthat led him to conclude that he ought to express his reasons for judgment in asomewhat different form than he hadoriginally intended. His Honour thensaid: "Although I have no expectation that the relationship between the husband andthe wife will ever reach a stage where they can rationallydiscuss the future oftheir child, I retain some hope that the grandmothers, and the sisters of thewife, may reflect on the attitudethey have adopted in relation to theseproceedings. I did intend to say some rather harsh things about the husband, thegrandmothersand the sister, Miss [A]. However, on reflection, I have decided totry to dispose of the matter without further exacerbating a situationwhichshould not have arisen and which would not do anything to further the interestsof [J]". At the commencement of the contempt hearing Counsel for the husbandsubmitted that his Honour should, because of this, disqualifyhimself andarrange for another Judge to hear the application. His Honour rejected thatapplication. The emphasis in the appellant's submissions to us was upon the words"some rather harsh things" in relation to the husband. In other circumstances there may have been room for the view that thatpassage amounted to a finding against the husband onan issue of credibility;however, that had no relevance here because the husband had pleaded guilty andthere was no relevant issueof credibility which his Honour had to determine.The applications proceeded

before his Honour on the basis of a plea in relationto the penalty which ought to be imposed given the husband's admitted breachof the custody order, and the circumstances of it. The second aspect related to comments which the Trial Judge madeduring the course of submissions. Mr. White referred us tofour particularpassages at pp.39, 40, 41 and 43 of the transcript. At p.39 his Honour, during the course of discussion with Mr. White,was commenting upon the fact that the husband had pendingthe appeal abductedthe child. His Honour said, "He wanted it both ways. That is all I am saying. He wanted to have a go inthe Court, he did not succeed so he then chose to dealwith it in his ownway". It is difficult to believe that this could amount to bias orpre-judgment. The passage is no more than an observation duringargument uponthe reality of the situation There is nothing I think in the passage at p.40 that calls for anycomment, and at p.41 his Honour, referring against to theconduct of thehusband, said "All his actions have done is establish that my decision wasright" and then elaborated somewhat uponthat observation. Again his Honour wasentitled to express that view. It could not be understood as amounting to biasor pre-judgmenton the issue before him, namely the question of penalty inrelation to the contempt. It was no more than a passing observation duringthecourse of submissions Finally at p.43 his Honour referred to the circumstance that bothparties were on legal aid and the cost to the taxpayer ofthat circumstance. HisHonour had before him evidence of the very significant cost that the husband'sconduct had imposed upon thecommunity through legal aid and otherwise. It was,in my view, a perfectly proper observation. There is, in my view, no substance in ground 4. I turn then to the other grounds of appeal. Ground 3 related toorder no. 1. That was an order discharging the accessorders in favour of thehusband which had been made on 2 March 1984. Those access orders had beensuspended on 24 May 1984 and thatorder for suspension was still inoperation. Mr. White submitted that there was no application made by thewife for such an order nor was there any evidence directedtowards it, and hisHonour made it clear in that he was considering the contempt proceedingseparately. In addition Mr. Whitedrew our attention to passages at p.43a, 43band 44 of the transcript where his Honour indicated during the course ofdiscussionthat he was not proposing during those proceedings to deal with thequestion of access. Mr. Page, who appeared for the wife, conceded that no applicationhad

been made by the wife in relation to this matterand it had not been raisedduring the course of the proceedings. It appears to me that his Honour may have overlooked thesediscussions and made the order in circumstances when it was notappropriate todo so and accordingly that it should be discharged. It should be added that theorder which his Honour made for practicalpurposes makes no difference to theexisting situation. Ground 1 relates to order No.2. That was an order in the followingterms : 2) That until further order the HUSBAND be restrainedand an injunction is hereby granted restraining him from entering, attempting to enter or loitering in the vicinity ofany premises in which the WIFE may be residing from time totime". However, that has to be seen in conjunction with order No.3. By thatorder the husband was imprisoned until 27 February 1987but was entitled torelease on 27 September 1986 on his entering into a recognizance in an amount of$1,000 that he would complywith the "foregoing injunction," that is, theinjunction in order No.2. Mr White submitted in relation to order No.2 that the proceedingsbefore his Honour were proceedings for contempt under s.108and his Honour wasrestricted to the imposition of the penalties which are set out in that section,that an application for injunctionof the type contained in order No.2 ought tohave been supported by material but was not, and that the matter proceeded onthe basisthat the contempt proceedings were being dealt with separately and inthe circumstances the husband had not had the opportunity ofmeeting thepossibility of an order of the type contained in order No.2. He submitted thatthere was no evidence to demonstrate thatsuch an order was appropriate and ithad not been the subject of discussion during the course of submissions. Considered in isolation there may be substance in Mr. White'ssubmissions, but it appears to me that order no. 2 was part ofthe overallscheme contained in orders 2 and 3 and together they fell within his Honour'spower under s.108(5). That sub-section gives the following powers in proceedings unders.108: "The Court may make an order for - (a) punishment onterms; (b) suspension of punishment; or (c) the giving ofsecurity for good behaviour". It appears to me that as part of the power which his Honour exercisedin order no. 3 to allow for the release of the husbandbefore the expiration ofhis term of imprisonment, his Honour could have imposed terms or conditions uponthe circumstances of anysuch release and, given the background history of thismatter, it would not have been

inappropriate for his Honour to have imposedas aterm of such release a condition in the terms of the injunction contained inorder no. 2. Order no. 2 should be read with no. 3 as part of an overallscheme by his Honour and, so read, was well within hisHonour's power and musthave been within the reasonable contemplation of the parties and their advisersif his Honour was moved toprovide circumstances in which the husband may obtainan early release from imprisonment. Were this not so I think there is substance in Mr. Page's submissionthat we should exercise our own discretion by addingto order no. 3 a conditionof the type covered by order no. 2. However, in the circumstances it isunnecessary to take that step. In those circumstances ground no. 2 can be dealt with briefly. Itasserted in relation to order no. 3 that his Honour erredin imposing thatcondition because no application for such a term had been made or evidencecalled specifically in relation to itand the appellant had not had theopportunity to be heard on the issue and, in any event, such a term was notshown to be necessary. It appears to me that it was within his Honour's power to make ordersunder s.108 to impose that term. Although may not havebeen specificallydiscussed during the course of submissions, a term of that type must have beenin the contemplation of those actingfor the husband and, given the backgroundcircumstances of this matter, was well within his Honour's discretion. That leads me to ground no. 5 which is that the penalty imposed was"manifestly excessive". In particular the ground assertedthat his Honour failedto take into account adequately or at all the likely effect on the child of theimprisonment of her father,the need to consider the parties' futurerelationship, the husband's motivation in acting as he did and the circumstancesreliedupon by the husband as precipitating the conduct which constituted thecontempt. However, a perusal of the material before his Honour and thesubmissions made by both Counsel clearly in my view indicatethat all of thesematters were before his Honour and his Honour gave the whole matter anxious andcareful consideration. In his judgmenthe extensively evaluated the competingissues. In my view the penalty which his Honour imposed, particularly havingregard to the power of the husband to obtain his ownearly release, was far fromexcessive but was in fact a modest penalty. Finally it was submitted as an alternative under ground 5 that hisHonour had taken into account in determining the penaltyextraneouscircumstances. This was a reference to comments which his

Honour made towardsthe end of his judgment relating to what he saw as a "general breakdown incommunityrespect for the rule of law" and he gave a number of then contemporaryexamples of what he had in mind. However, it does not appear to me thatthese general observations formed a part in his determination of the penaltywhich it was appropriateto impose upon the appellant. Both counsel submitted that if our conclusion was that upon any ofthe grounds argued his Honour's discretion in relationto penalty hadmiscarried, this Court should exercise its own discretion in relation to thematter rather than remit it for a further hearing. In the event it is unnecessary to consider that aspect other than torepeat what I have already said, namely that in my viewthe penalty imposed byhis Honour was a modest one in the circumstances of this case. Accordingly I would order as follows: 1. That Order no. 1 of the orders of 17 December 1985 be discharged. 2.Otherwise the appeal is dismissed. FAMILY LAW_ACT 1975 IN_ THE_ FULL_ COURT OF THE FAMILY COURT OF AUSTRALIA AT_ BRISBANE Appeal No. 6 of 1986 IN THE MARRIAGE OF : S Appellant/Husband - and - S Respondent/Wife CORAM : Fogarty, Murray & Strauss JJ. DATE_ OF_ HEARING : 1 May, 1986 DATE OF_JUDGMENT : 17 June, 1986 JUDGMENT OF THE HONOURABLE MRS JUSTICE MURRAY APPEARANCES : Mr. White of Counsel instructed by A.L.A.O. of 201 Edward Street, Brisbane Solicitors for Appellant/Husband. Mr. Page of Counsel instructed by Meerkin &Apel, of 46 Caroline Street, South Yarra Solicitors for Respondent/Wife. MURRAY J : I agree with the orders whichFogarty J. proposes and his reasons for such orders. FAMILY LAW ACT 1975 IN_ THE_ FULL_ COURT OF THE FAMILY COURT OF AUSTRALIA AT_ BRISBANE Appeal No. 6 of 1986 IN THE MARRIAGE OF : S Appellant/Husband and S Respondent/Wife CORAM : Fogarty, Murray & Strauss JJ. DATE_ OF_ HEARING : 1 May, 1986 DATE _ OF_ JUDGMENT : 17June, 1986 JUDGMENT OF THE HONOURABLE MR. JUSTICE STRAUSS APPEARANCES : Mr. White of Counsel instructed by A.L.A.O. Solicitors for Appellant/Husband. Mr. Page of Counsel instructed by Meerkin & Apel Solicitors for Respondent/Wife. STRAUSS J : I agree with the orderswhich Fogarty J. proposes and his reasons for such orders.