



Accredited Specialisation Application Guidelines 2011

Family Law



What is an Accredited Specialist?

A lawyer who is accredited as a specialist is recognised as having an enhanced skill level, as well as substantial involvement in established legal specialty areas. The Law Institute of Victoria requires such specialists to demonstrate superior knowledge, experience and proficiency in a particular area of law to ensure that recognition as an accredited specialist is meaningful and reliable.

Eligibility for Accreditation

- Membership of the Law Institute of Victoria
- A current practising certificate
- At least five years experience in practice
- Substantial involvement in this area of practice over the past three years
- Three references in support of the application
- Successful completion of the prescribed assessment program

Candidates who do not meet the eligibility criteria may apply for an exemption from compliance in accordance with the Specialisation Scheme Rules (2010)

IMPORTANT:

Details of the conditions for gaining specialist accreditation are contained in the Specialisation Scheme Rules which can be found at: <http://www.liv.asn.au/PDF/Accredited-Specialisation/SpecialisationSchemeRulesMasterCopy> . Specialisation Candidates are particularly advised to read the *Specialisation Scheme Rules* and familiarise themselves with the requirements for any applications for exemption or special consideration. The Rules are located under the Scheme Administration tab of the *Specialisation Scheme* link.

Assessment

The assessment program for specialist accreditation in Family Law is in three parts. To gain accreditation, a candidate must pass **each** part of the program. Candidates may, in any or all of the assessment program, be assessed on any or all of the **Assessment Topics** listed in **Schedule 4**.

Part 1: Mock File– See **Schedule 1**.

Part 2: Written Examination – See **Schedule 2**

Candidates may seek exemption from the written examination in accordance with the provisions contained in Schedule 2

Part 3: Simulated Client Interview – See **Schedule 3**.

Further details of the assessment program and procedures are contained in the Schedules attached to these Guidelines.

Candidates will be examined on the law as it stands at the date of assessment.

Supplementary Assessment

Candidates may be required to undertake additional assessment at the discretion of the Specialisation Board.

Exemption from Written Component

Candidates may apply in advance for an exemption from the written examination if they have recently studied subjects relating to Family Law in a postgraduate course at a tertiary institution. Any such exemption is entirely at the discretion of the Specialisation Board and will be assessed on a case by case basis.

Eligibility for the exemption is subject to the following conditions. The completed LLM units **must**:

- have been completed within the preceding five years of the date of application
- assess knowledge that is equivalent in range to the knowledge assessed in the specialist accreditation exam
- be at a level of complexity and standard of knowledge that is equivalent to that assessed in the specialist accreditation exam
- contain knowledge that is of equivalent relevance to practice in the specialist accreditation exam

Any application for an exemption should be made at the time of lodging the application form, which is to be lodged no later than **4.00pm on Friday, 15 April 2011**.

Timetable

Monday 28th February 2011	Accredited Specialisation Information Night
Friday 15 April 2011	Applications requesting Board discretion (for those who do not meet eligibility criteria) close, no later than 4pm
Friday 13 May 2011	All other Applications close and must be received by 4.00pm
Friday 27 May 2011	Part 1: Mock File distributed
Monday 30 th May 2011	Accredited Specialisation Examination Techniques night
Friday 17 June 2011	Part 1: Mock File distributed due back to the LIV
Saturday 30 July 2011	Part 2: Written Examination.
Tuesday 2 August	Part 3: Simulated Client Interview
Late October 2011	Candidates will be advised of results
Thursday 24 November 2011	Accredited Specialisation Conferral Dinner and Ceremony

IMPORTANT: Candidates who wish to apply for special consideration in relation to their assessment tasks must do so in accordance with the Rules:

<http://www.liv.asn.au/PDF/Accredited-Specialisation/SpecialisationSchemeRulesMasterCopy>

Performance Standards

Practitioners wishing to be accredited should be able to:

- (a) perform at a high standard which is expected of practitioners wishing to hold themselves out as specialists in the area.
- (b) display a high standard of knowledge of the law and procedure which underpins the performance of tasks in this area of practice; and

General Recommendations

Candidates may find it of assistance in preparing for the assessment tasks to:

- (a) form a study group – to register your interest in forming a study group please contact Accredited Specialisation on 9607 9461 or special@liv.asn.au
- (b) attend appropriate LIV CPD events in the area of specialisation
- (c) review previous examination papers and videos of simulated interviews. These are available: <http://www.liv.asn.au/PDF/Accredited-Specialisation/2011AccreditedSpecialistsAssessmentMaterials>
- (d) read some or all of the Suggested Reading Material listed in **Schedule 4**

Legislation and other provisions

Candidates should be familiar with the relevant parts of legislation relating to the selected topics for assessment, and the legislation listed in **Schedule 4**.

Applications

Applications must be made on the prescribed application form.

Resume of Practice

As evidence of substantial involvement, applicants must submit a resume of their professional activities relevant to practice in **Family Law**. The resume should give the Board an overall picture of the applicant's experience and expertise in **Family Law**, with an emphasis on involvement over the past three (3) years. It is not expected that a comprehensive *curriculum vitae* will be submitted.

No standard format is prescribed. However, applicants might find it helpful to use some or all of the following headings:

- broad description of current practice activities
- experience in specific areas of activity in **Family Law**
- involvement with relevant professional organisations
- relevant publications and presentations
- academic qualifications
- other.

It is not necessary to repeat details provided on the application form.

Please forward to the Law Institute:

1. The completed application form
2. Three references
3. Resume of practice
4. Application fee of \$1,000.00 (including GST) payable to the Law Institute of Victoria.

Applications close

By 4:00pm Friday 15th April: for applicants wishing to apply for Board discretion because they do not meet the eligibility criteria.

By 4:00pm Friday 13th May: for all other applications.

The address for applications is:

*Accredited Specialisation
Law Institute of Victoria
GPO Box 263C OR DX 350
MELBOURNE 3001 MELBOURNE*

Enquiries: Telephone: 9607 9461
Facsimile: 9607 9404
Email: special@liv.asn.au

SCHEDULE 1: Examination Assessment Component Part 1 – Mock File and Portfolio of Documents

Overview

Distributed to candidates:	Friday, 27 May 2011
Returned by candidates:	No later than 4pm on Friday 17 th June

Section A - Applicants will be required to prepare an advice for a client in the form of a letter and prepare appropriate court documents with respect to the various issues raised. This is likely to include an initiating application and relevant supporting Affidavit(s) but may also or alternatively require the drafting of an agreement such as a Child Support Agreement, Financial Agreement or Parenting Plan. The examiners will assess communication skills as well as legal knowledge.

Assessment Criteria

Candidates will be assessed on their:

- (a) ability to identify relevant issues from the materials provided
- (b) depth of knowledge of the law and skill in applying that knowledge to the given fact situation
- (c) ability to provide practical, clear and accurate written advice
- (d) skills in interpreting and drafting documents

Section B - A portfolio of documents will also be required for review by the examiners. The portfolio will consist of documents prepared by the Applicant during his or her day to day work and will provide further evidence and assistance to the examiners of the Applicant's suitability to be considered for accreditation. The examiners will provide Applicants with a list of documents considered suitable for this purpose.

Assessment Criteria

Candidates will be assessed on their:

- (a) skill in drafting or amending documents
- (b) knowledge of relevant procedural rules and principles
- (c) ability to provide practical, clear and comprehensive advice
- (d) awareness of practical considerations

Take-Home assignment conditions

Candidates may use the resources of their offices in completing this exercise. However, consultation with any other person in completing the exercise is not permitted.

Note: This component of the examination process is no longer linked to the simulated interview component as it was in previous years. The candidate is not expected to include any written material relating to costs agreements or disclosure statements.

The completed exercise must be lodged in person at the Law Institute or sent by registered post to arrive no later than 4.00 pm on Friday 17th June

SCHEDULE 2: Examination Assessment Component Part 2 - Written Examination

Exam Date: Saturday 30 July 2011
9.30am – 1.00pm (3 hours *plus thirty minutes* for reading and planning)

Exam Venue: Committee Room, Moonee Valley Racing Club,
McPherson Street, Moonee Ponds.

Overview

The examination is divided into two sections.

Section A - Section A, worth 60%, will involve questions in areas of family law commonly encountered in practice. This may include the exercise of discretion under s.79 of the FLA, parenting orders, apprehended violence orders and their equivalents in each State and Territory, spousal maintenance, departure orders in child support, and contact enforcement. Related issues might also be examined in this Section such as the jurisdiction of the courts, rules of evidence, the power to award injunctions, s.106B applications, and the means of giving effect to agreements. This will test core knowledge for any family lawyer.

Section B – worth 40% will test areas of family law less frequently encountered in practice. This may include issues relating to property division and children which do not commonly arise, for example, s.79A applications, the intersection with bankruptcy, and the sterilisation of intellectually disabled minors, and also other aspects of family law, for example, the law on dissolution and nullity, equitable principles to the extent that they are relevant to property division in family law, and family law issues arising under state legislation.

In order to pass the examination, the candidate will need to achieve at least a 50% score on both sections A and B.

Assessment criteria

Candidates will be assessed on their:

- (a) ability to identify relevant issues from a given fact situation
- (b) depth of knowledge of the law and skill in applying that knowledge to the given fact situation
- (c) knowledge of procedural rules and practices
- (d) ability to provide practical, clear and accurate advice.

Examination conditions

- The written examination is an open book exam
- Candidates may take into the examination room any books, notes or other written material
- Portable computers may be used for reference purposes on a read-only basis so long as their use does not disturb other candidates. Access to the Internet is strictly prohibited.
- Mobile telephones are not permitted
- Questions must be answered in the booklets provided
- Answers must be numbered correctly
- Handwriting must be legible
- Each candidate will be issued with an examination number
- The names of candidates will not appear on any material submitted for assessment

SCHEDULE 3: Examination Assessment Part 3 – Simulated Client Interview

- Interview Date:** Tuesday 2 August 2011
- Interview Time:** By appointment. Allow at least 1 hour in total.
- Interview Venue:** Law Institute of Victoria, 470 Bourke Street, Melbourne, 3000

Overview

The applicants will be asked to conduct a simulated first interview with a person acting in the role of a client. The exercise will take about 45 minutes, and will be videotaped and the videotape assessed by the examiners.

This exercise is intended to assess a wide range of performance standards, including those relating to interaction between the solicitor and client, taking instructions and giving advice, terms of engagement, assessing facts and legal options, canvassing the options with the client and developing the initial plan.

Applicants may, but are not required to bring written material to the interview including instruction sheets or notes. Any file note prepared as part of the simulated interview will not form part of the final assessment for this examination component.

Applicants will be expected to demonstrate a clear ability to take and receive instructions and deliver preliminary advice and provide information to the "client" in a manner which satisfies the requirements of paragraphs 1, 2 and 3 of the Performance Standards.

Assessment criteria

Candidates will be assessed on the following performance standards:

- (a) Gathers facts and assesses instructions
- (b) Advising
- (c) Rapport, empathy, attitude
- (d) Communicates clearly and appropriately

A sound knowledge of the relevant law, rules and procedures will also be required.

SCHEDULE 4: Topics for Assessment

The following list should not be taken to be exhaustive but indicates the range of matters which could be addressed in the assessment program. Candidates will be assessed on the law as it stands on the date of assessment. Candidates may be assessed on any matter relevant to environment and planning matters.

Part A

Applicants will be expected to display a working knowledge of all the core areas as well as to recognise typical problems, construct an advice to a client and to outline the steps which would be taken to prepare the matter for hearing. In addition, the applicant will be expected to have an in-depth knowledge of one of the core areas and be able to address more complex issues peculiar to that field and cover the matters set out in the application guidelines.

Applicants will be expected to display knowledge of all the core areas as well as to recognise typical problems, construct an advice to a client and to outline the steps which would be taken to prepare the matter for hearing, the applicant will be expected to be able to address more complex issues and cover the matters set out in the application guidelines.

Knowledge

Applicants' attention is drawn to the following knowledge which underpins the performance of tasks.

Applicants are expected to have general familiarity with the Family Law Act, the Federal Magistrates Act, the Child Support legislation and the Rules and Regulations associated therewith. Certain cases are listed below because they state or illustrate significant principles. Applicants should not assume that these cases are authoritative or that they state all the principles relevant to the topic.

This material has been prepared as at 29 November 2010. In the event that any new legislative reforms become effective before the date of the assessment, practitioners are required to be aware of changes resulting from the legislation. Parts, divisions, sections, orders and rules cited without legislative reference, are parts, divisions, sections, orders and rules of the *Family Law Act* or the *Family Law Rules 2004*.

1 Divorce

- jurisdiction
 - ground (including separation under the one roof): s.49(2): *Pavey* (1976);
 - effect of resumption of cohabitation: s.50
 - requirements where marriage less than two years: s.44 (1B)
 - s.55A declaration: *Maunder* (1999)
 - effect on wills s.18 Succession Act 1981 (Qld)
 - time limits for property and maintenance applications: s.44(3)
- 2011 Assessment Criteria for Family Law 14
- applications for leave to institute proceedings out of time: *Whitford*(1979), *Hedley* (2009)

2 Nullity

- Requirements of a valid marriage, including capacity to marry, prohibited relationships, formal requirements and defective consent (fraud, duress, mistake)
 - In *Re Kevin (validity of marriage of transsexual)* (2003) (FC)
- Nullity, including grounds for nullity and consequences of nullity decrees.
 - *AK and NC* (2004) (Capacity to consent to marry)

3 Children

a) Dispute resolution

- role of Family Relationship Centres
- obligations on legal practitioners s.12AG
- s.63DA obligations of advisors

- counselling ss.10B-E; s.65F
- ‘family dispute resolution’ definition in s10F and see ss 10G-K;
- s.60I pre-filing dispute resolution requirements
- s60I(1) requirement for “genuine effort”
- s60(8) types of certificates that can be issued
- s60(9) exceptions to pre-filing requirements
- s60J where dispute resolution not attended because of child abuse or family violence
- arbitration ss.10L-P, 13E-K
- confidentiality re counselling and family dispute resolution: s.10D and H,
- admissibility of statement made in counselling and family dispute resolution:s.10E and J:
- *Family Law (Dispute Resolution Practitioners) Regulations 2008 (Cth)*, regs 25 - 29.

b) Jurisdictional requirements and discretion to exercise jurisdiction

- s64B, 65H, 69E, 69H, 69J and 69N
- who may institute proceedings and possible parties: s65C, s69C:*KAM v MJR; JIG Intervenor*(1999)
- effect of death on parenting orders: s.65K
- *B v B (Re Jurisdiction)* (2003), *Kwon & Lee* (2006) Inappropriate forum test in context of children’s matter

c) Parental responsibility

- Meaning: s61B, 61C, 61D, 61DA, 61E
- Different consultation requirements for day to day issues and major long-term issues:
 - *B & B: Family Law Reform Act 1995* (1997)
 - *Goode and Goode* (2006)
 - “Major long term issues” def’n: s4, requirement for consultation: s65DAC, s65DAE
- Decisions about major long term issues: s.64B(3)
- Usual issues (schooling, education, medical procedures, future employment prospects): *Re G: Children’s Schooling* (2000)
- Change of name: *Chapman and Palmer* (1978); *Flanagan v Handcock* (2001)
- Allocation of parental responsibility by consent to non-parent: s65G

d) Parenting orders: general principles

Parenting Orders Generally

- Matters parenting orders can deal with: 64B(2)-(5), who they may be made in favour of: s64C
- 65D(1): court’s power to make parenting order
- *Approach of court to determining parenting orders*
- Relevant sections: s60B, 60CA, 60CC, 61DA and 65DAA
- Approach of court to these sections: *Goode and Goode* (2006), *Taylor and Barker* (2007), *Collu and Rinaldo* (2010), *Lansa & Clovelly* [2010]
- Objects and principles: s.60B;
- Best interests of children as paramount consideration: s.60CA; s.65AA
- Relevant best interest factors: s.60CC: primary and additional considerations
- Presumption of equal shared parental responsibility: s61DA
- Relationship between s60B and s60CC: *Goode and Goode* (2006)
- Example of where presumption rebutted: *H and H* (2007)
- Where presumption applies, court’s obligation to consider equal time and substantial and significant time: s65DAA, what court considers to determine whether appropriate: s65DAA(5)
- Discussion of “meaningful relationship”: *G and C* (2006), *Mazorski and Albright* (2007), *McCall and Clark* (2010)
- Court’s power to make an order outside of what parties applied for: *U v U*(2002)
- Interpretation of s65DAA:
- *Goode and Goode* (2006)

Steps for court to work through: *MRR and GR* (2010)

- What is “substantial and significant time”: s65DAA(3), *KML and RAE*(2006), *Dylan and Dylan* (2007)
- possible parties: s.65C, s.65G ; *KAM v MJR*; *JIG Intervenor* (1999); *Keaton & Aldridge* (2008) (unreported decision of Pascoe CFM 9 February 2009); *Aldridge & Keaton* (2009) 42 FamLR 369; *Mulvaney & Lane* (2009) 41 FamLR 418
- 2011 Assessment Criteria for Family Law 16
- Definition of ‘Parent’. S.60H *Keaton & Aldridge* (2008) (unreported decision of Pascoe CFM 9 February 2009);
- Family Law Rules 2004 Rule 5.01A
- Approach to making of parenting Orders. *MRR v GR* [2010] HCA 4 (3 March 2010)

Relocation

- *Hepburn and Noble* (2010), *Collu and Rinaldo* (2010), *MRR v GR* (2010), *McCall and Clark* (2010), *Starr and Duggan* (2009), *Sealey and Archer* (2008), *Taylor and Barker* (2007),
- s.4 definition of ‘major long-term issues’ re (e) changes to the child’s living arrangements which make it significantly more difficult for the child to spend time with the other parent.

e) Parenting orders (particular issues)

- views of the child: principles as to how children’s views are weighed: *H v W* (1995); *R and R: Children’s wishes*, (2000); *R & R (Children’s wishes)* 2002 FLC 93-108; *Dylan and Dylan* (2007)
- evidence of child’s views:
 - *Family Law Act 1975* (Cth), ss.60CC(3)(a), 60CD(2)(a), 60CE, 62G(2), , 69ZV, 68L 100B and C; *Family Law Rules 2004* (Cth), rules 15.01, 15.02,
 - *Reynolds v Reynolds* (1973); *Ahmad v Ahmad* (1979); *ZN and YH and the Child Representative* (2002) FLC 93-10
- family violence:
 - *Family Law Act 1975* (Cth), Division 11; s.4 definition “family violence”, s.60B(1)(b), s.60CC(2)(b), 60CC(2)(j), s.60K, s.68R, s.68T, s 60CF
 - interaction of CW & State law- See *Family Law Act 1975* (Cth) ss68N, 68P, 68Q, 68R, s68T.
 - N and M Skelton and Donaldson – family violence: *JG and BG* (1994); *Patsalou and Patsalou* (1995) Part 7, Division 11, *Oakley and Cooper* (2009)
- allegations of Child Abuse:-
 - s.60B(1)(b), s.60CC(2)(b), s.67Z and Form 4 Notice of Abuse
 - restricted contact
 - supervised contact (s.65L); outside agencies: *B and B* (1993) in cases of abuse *Re C and J* (1996)
 - child sexual abuse *B and B* (1998); *Potter & Potter* (2007)
 - 2011 Assessment Criteria for Family Law 17
 - refusal of contact: limited circumstances where this might happen; the test of “unacceptable risk”; *M and M* (1988); *N and S and Separate Representative* (1995); *A v A* (1998); *Re W (Sex abuse: standard of proof)* (2004), *Napier and Hepburn* (2006), *Partington and Cade No.2*(2009),
 - limits on court’s power to restrict parent: *VR and RR* (2002)
 - admissibility of statements by children: *DT v JT* (1999)
 - Standard of proof *Re: W (sexual abuse, standard of proof)*(2004)
 - unfounded allegations: *L v T* (1999)
 - relationship to State Laws: *Northern Territory v GPAO* (1999), *A v A* (1998); *T and S* (2001)
- applicant’s physical and mental health
- child’s health
- proposals for accommodation
- child’s physical care

- sexual orientation: *L & L* (1983); *Doyle* (1992); *A and J* (1995)
- religion: *Paisio and Paisio*(No 2) (1979); *Firth* (1988), *Morrison and Morrison* (1995); *Elsbeth and Peter* (2006)
- aboriginality: *B and R and the Separate Representative* (1995); *Re CP* (1997), *Davis and Davis* (2007), *M and L (Aboriginal Culture)* (2007)
- splitting of siblings: *In the marriage of H and H* (1995), *Pannell and Pannell* (1996)
- “maternal factor”: *Gronow* (1979)
- “parental factor”: *Rice v Miller* (1993)
- surrogacy: *Re Evelyn* (1998); *Re Mark* (2003)
- occupancy of home
- KupaiOsmasker adoption: *Lara & Lara and Marley & Sharp* (2004)
- Lesbian families and donor fathers: *Re Patrick* (2002); *Re Mark: an application relating to parental responsibilities* (2003)
- Interim parenting orders
 - *Goode & Goode* (2006)
 - principles in *Cilento*(1980); *Cowling* (1998); *J v W* (1999); *Wilkie: unreported decision of Moore J* (2006)
- the nexus between time spent and child support
- school holiday contact: *Fooks and Clark* (2004)
- sharing costs of contact: *Craven* (1976)
- leave to adopt: s.60G

f) Section 62G reports, including

- normal content of the report
- admissibility of the report: *Wardle* (1990)
- right to cross-examine author of report
- Status of report: *Hall* (1979)

g) Enforcement of parenting orders

- The parenting compliance provisions: Part VII, Division 13A; D and C (2004)
- location and recovery orders (Part VII Division 8 Subdivision C)
- role of the Marshall of the court
- Part VII Division 6 Subdivision C
- applications involving third parties
- provisions for disclosure
- Contravention: *McClintock and Levier* (2009)

h) Alteration of parenting orders: s.65D (2)

- relevant principles *Hayman* (1976)
- the precondition of fresh circumstances: changed circumstances; undisclosed material facts
- the precondition as a preliminary issue *Rice and Asplund* (1979); *Bennett* (1991); *King and Finneran* (2001), *SPS and PLS* (2008), *Miller and Harrington* (2008)
- When parenting order terminates: *Family Law Act 1975* (Cth), ss65H,J and K

i) Abduction of children

- *A and GS and MQ and Attorney-General and Commonwealth Central Authority* (2004) (overruling *Marriage of Panayotides* (1996))
- appropriate forum: *ZP v PS Re ex parte ZP* (1994); *Karides v Wilson* (1998)
- recognition of overseas orders:
 - common law: *McKee* (1951); *Khamis* (1978); *Barrios and Sanchez* (1989)
 - effect and scope of Part VII Division 13
 - Hague Convention on the Civil Aspect of International Child Abduction of 1980; *P and Commonwealth Central Authorities* (2000)
 - *Family Law (Child Abduction Convention) Regulations 1987*: effect of regulations; convention countries; special circumstances, regulation 16(2) and 16(3); *McCall & McCall*; State Central Authority (Applications); *Emmett, D v Perry, PA; Director-General, Department of Family Services and Aboriginal and Islander Affairs; Attorney General of the*

Commonwealth of Australia (intervener) (1995); *De L v D-G Department of Community Services* (1996); *DP v Commonwealth Central Authority* (2001); *RWS & MMS v Secretary, Attorney General's Department* (2005)

- Offences: ss.65X - 65ZA
- practical aspects:
 - watch lists procedure
 - carriers: ss.65ZA - 65ZC

j) Paternity

- presumptions: ss.69P - 69T; *Re Mark* [2003] FamCA 822
- testing (Part VII Division 12 Subdivision E): *Re C* (No 1) (1992); *Re C* (no 2) (1992); *G v H* (1994)
- evidence and proof of paternity (Part VII Division 12 Subdivision E)
- declaration of paternity
- power to direct testing: s.69W *Brianna v Brianna* 43 Fam LR 309
- effect on child maintenance *G and N* (2003)
- rebuttal s.69U
- discussion: Walters FM in judgement *F&Z* (2005) FMCA 394

k) Representation of children

- s.68L Part VII, Division 10
- role of ICL: s.68LA and commentary, *P and P* (1995); *B and R* (1995)
- general rights and obligations of ICL: s.68M and interviewing, *Re P (A Child)* (1993); *DS and DS* (2003), *Re K* (1994)
- the relationship of the ICL with the child, court counsellors and other parties
- Cost of ICL: *Re JJT & ors; ex parte Victorian Legal Aid* (1998)
- ICL case management guidelines

l) Reaching Agreement

Parenting plans

- parenting plans: ss.63B, 63C, 63D, 63DB, 64D, 65H, 63DA
- Court to have regard to parenting plans: s.65DAB
- revocation or variation to parenting plans registered prior to 14 January 2004, s.63E
- parenting Orders subject to later Parenting Plans, s.64D

Consent Orders

- *Family Law Rules 2004 (Cth)*, 10.15, 10.15A
- *Re Nathan: limited contact consent orders* (2001)
- Requirement for court's sanction of Consent Orders: *T and N* (2003)

m) Court sanction of medical procedures

- *Marion's Case* (1992)
- *P v P* (1994); *P v P No 2* (1995)
- *Re A (a child)* (1993)
- *Re Michael* (1994)
- *Re Alex: Hormonal treatment for gender identity dysphoria* (2004)
- s.67ZC Orders relating to the welfare of children
- *Re Inaya (Special Medical Procedure)* 38 Fam LR 546. Issue of where power is derived.
- *Re Alex#2* (2009) 42 FamLR 645
- *Re Bernadette* [2010] Special Medical Procedure

n) Children in detention

- *MIMIA v B* (2004)
- "*Immigration and the Family Court the High Court speaks*" (2004) 18 AJFL 193
- s.67ZC Orders relating to the welfare of children
- *Minister for Immigration and Multicultural and Indigenous Affairs and B (No 3)* (2004) FLC 93 -174

o) Child abuse allegations

- Pt VII Division 11 “Family Violence”
- s.4 definition
- CF s.60B pre 2006 amendments
- s.60CC(2)(b)
- s.60K – s.67Z Form 4
- s.61DA(2) presumption of equal shared parenting responsibility
- Relevant principles when considering allegations of sexual abuse. *McCoy v Wessex* 38 FamLR 513.
- admissibility of statements by children: *DT v JT* (1999)
- Standard of proof *Re: W* (sexual abuse, standard of proof) (2004)
- unfounded allegations: *L v T* (1999)
- relationship to State Laws : *Northern Territory v GPAO* (1999)

3 Spousal maintenance

- establishing a claim
- threshold finding under s.72; lack of adequate support and capacity to pay: *Eliades & Eliades* (1981); *Bevan & Bevan* (1995); *Mitchell and Mitchell* (1995)
- consideration of s.75(2) factors
- consideration of s.74 - exercise of discretion
- “adequately” and “properly” – *Brown & Brown* (2007); *Rollins – Wallis & Wallis* (2008).
- relationship between spousal maintenance and property orders
 - distinction between s.75(2) component of property orders and claim for maintenance
 - consideration of award of spousal maintenance in light of property orders: *Clauson & Clauson*(1995); *Bevan & Bevan* (1995); *Mitchell & Mitchell* (1995)
 - lump sum orders
 - power of court to make order: s.74
 - necessity to consider periodic maintenance first: *Clauson&Clauson*(1995)
 - caution to be exercised in making lump sum orders:
 - *Clauson&Clauson*(1995); *Vautin v Vautin*(1998)
 - retrospective maintenance orders: *Milankov*(2002)
 - modification and variation of spousal maintenance orders
 - consideration of s.83
 - variation: *Caska*(1998)
 - orders for urgent maintenance
 - consideration of s.77 *Ashton* (1982)
 - specification in orders re spousal maintenance purposes
 - s.77A requirements: *Doig*(1999)
 - cessation of spousal maintenance orders
 - s.82 - death: effect of re-marriage

4 Child maintenance and child support**5.1 Child maintenance**

- use of published statistics: *Mitchell* (1995); *Streets* (1994); *Coon v Cox* (1994);
- *Mee and Ferguson* (1986)
- s.66C FLA – Primary duty to maintain children s.66C FLA
- s.66E FLA – jurisdictional aspects
- s.66L FLA – Adult Child Maintenance

5.2 Child support

- Child support agreements
- Jurisdiction
 - Child (s 24 *Assessment Act*)
 - Parent (s 25 *Assessment Act*)
 - Non –parent carer (s 25A *Assessment Act*)
- The new Child Support Formula
 - the basic formula (s.35 *Assessment Act*)
 - the non-parent carers formula (s36 *Assessment Act*)
 - multiple child support cases with no non-parent carer formula (s 37 *Assessment Act*)
 - multiple child support cases with non-parent carer formula (s38 *Assessment Act*)
 - non-parent carer and no-residential parent or special circumstances formula (s39 *Assessment Act*)
 - non-parent carer and deceased parent formula (s40 *Assessment Act*)
 - Fixed annual rate (s65A *Assessment Act*)
 - Minimum annual rate (s66 *Assessment Act*)
- Elements of the new Child Support Formula
 - parent's child support income
 - parent's combined child support income
 - each parent's income percentage for the child
 - each parent's percentage of care for the child
 - each parent's cost percentage for the child
 - each parent's child support percentage for the child
 - costs of the child
- Re-establishment income (s44 *Assessment Act*)
- Reconciliation of relationship s. 150E *Registration Act* 1988
- Non-agency payments (s71C *Registration Act*, regulation 7D *Child Support (Registration and Collection) Regulations* 1998)
- Section 117 Departures
 - General Grounds of departure
 - s. 117 (2) *Assessment Act*
 - *Gyselman* (1992)
 - *S v S* (2005)
 - *PJ & Child Support Registrar* (SSAT Appeal)
 - *C.S.R. v Wolbers v Wolbers v Keppel* [2007]
 - Earning Capacity
 - s117 (4) (d), s117(7A), (7B)
 - *DJM v JLM* (1998)
 - Step children
 - S117(2)(aa), s117(10)
 - Departures from Administrative Assessments
 - s. 98B
 - s. 98S(3)B – time limits for departure applications
 - s. 98C(2), s. 117(2) – grounds for departure
- Change of Assessment
 - Estimates
 - s 60, 61, 62, 63, 64 *Child Support (Assessment) Act* 1989
 - estimate penalties s. 64A *Assessment Act*
 - Objections to Registrar Decisions
 - objections to assessment or decision of registrar Part VII *Registration Act*
 - time limits for objections s.81 and 82 *Registration Act*

- appeals from a refusal of Registrar to extend time limit s.89 *Registration Act*
- Court Review
 - extension of time for objections s. 82(2) *Registration Act*
- Social Security Appeals Tribunal Review
 - Matters which can be reviewed by SSAT s. 80(1) *Registration Act*
 - Time limits s. 90 *Registration Act*
 - Application for extension of time s. 92
 - Application procedures s. 94 *Registration Act*
 - Notice of application s. 95(2) *Registration Act*
 - Parties s. 101(1) *Child Support Registration Act*
 - Hearing procedure s. 103 *Child Support Registration Act*
 - Reasons for decision s. 103X(3) *Registration Act*
 - Costs of SSAT review s. 103Z *Registration Act*
 - Review from SSAT
 - Question of law only s.110B, s110G *Registration Act*
 - Referral of questions of law s.110K *Registration Act*
 - Time limit *Registration Act*
 - Powers of the Court s. 110F *Child Support Registration Act*
- Court Review
 - Review of SSAT decisions – see above
 - Part VIII *Registration Act*
 - Family Law Rules division 4.2.5
 - When another application is pending s.116(1)(b) *Assessment Act*
 - Complex applications s.98E, S.98R
 - Disputed parentage – s.106, 107 *Assessment Act*
 - Stay orders s. 111C *Child Support Registration Act*
 - Time limit on backdating assessments s. 111(1) *Assessment Act*
 - *Teal & Teal* [2010] Fam CAFC 120
 - Non-periodic amounts s. 123 *Assessment Act*
 - Urgent child support s. 139(1) *Assessment Act*
 - Order for recovery of wrongly paid child support
 - s. 143 *Assessment Act*
 - *Magill* 2006
 - *DRP and AJL* 2004
- Recovery, Enforcement and Penalties
 - Payee of registered maintenance liability can bring court proceedings to recover debts s. 113A *Registration Act*

Note:

- *Assessment Act – Child Support (Assessment) Act 1989*
- *Registration Act – Child Support (Registration and Collection) Act 1989*

6 Financial agreements

- Part VIIIA Family Law Act
 - Requirements for a binding agreement
 - *Black* (2008)
 - *Kostres* (2009)

- Transitional provisions *Federal Justice System Amendment (Efficiency Measures) Act (no 1) 2009*
 - *Ruane* (2009)
 - *Suffolk* (2009)
- Matters that a binding agreement can deal with (s 90B,C, D, UB, UC, UD)
- *Fevia* (2009) Setting aside valid agreements
 - *Cole* (2008)
- Setting aside financial agreements.
 - *Fevia and Carmel Fevia* (2009) Fam CA 816
- Grant & Grant-Lovett [2010] FMCA fam 162
- Setting Aside Binding Financial Agreements
 - *Parker* (2010) FamCA 664
- Third parties and financial agreements
 - *ASIC v Rich* (2003)

7 Property

- *Family Law Act 1975* (Cth) – Section 79
- Part VIII & Part VIII B of FLA, F.L. Rules 2004, FMC Rules 2001
- *Family Law Amendment Act 2003*

7.1 Four Step Approach to Determining Property

Hickey (2003) FLC 93-143; *Clauson* (1995) FLC 92-595; *Lee Steere* (1985) 91-626; *Ferraro*, (1983) FLC 92-335; *Townsend* (1995) FLC 92-569; *Biltoft* (1995) FLC 92-614; *McLay* (1996), FLC 92-667; *Campbell-Kuskey* (1998) FLC 92-795

Step 1: Identifying and Valuing Property, liabilities and financial resources

- The court seeks to ascertain the net value of all property of the parties by deducting from their total gross property their liabilities, including unsecured liabilities.
- Property is defined under Section 4 of the *Family Law Act*
- Financial resources and expectation do not constitute property but are relevant and should be identified and evaluated
- duty of full disclosure of relevant financial circumstances: *Family Court Rules*
- Principle of “full and frank disclosure”:
 - *Oriolo* (1985)
 - *Black and Kellner* (1992)
 - *Weir* (1993)
 - *Anderson* (2000)
- obtaining financial information
 - specific questions
 - discovery
 - third party discovery
 - subpoena: *National Employers v Vaind* (1978) NSWLR; *Sharpe and Dalton* (1990); *Epstein* (1993); *Hatton* (2000); FLR 2004 part 15.3
- notices to produce: FLR 2004, rule 14.76
- non-disclosure: *Tait* (2000)

- identify and value relevant property: *Duff* (1977); *Warne* (1982); *Zorbas & Zorbas*(1990)
- long service leave: *Bourke* (1993); *Gould* (1996)
- treating assets of company or trusts as assets of a party/discretionary trust:
 - *Stephen & Stephen* [2007] FamCA 680; *Ashton* (1986); *Stein* (1986); *Davidson* (1990); *Harris* (1991); *BP & KS* (2002); *Foda* (1997); *Coventry&Coventry and Smith* (2004)
 - *Spellson* (1989) FLC-044; *Milanokov* (2002) FLC 93-095 at [111]
- interest in a partnership: *Best* (1993) FLC 92-418; *W & W* (1980) FLC 90-872; and *B vB* (2000) FLC 93-002
- right to sue for personal damages not a proprietary right; *Zorbas* (1999) FLC 92-160
- Superannuation under the Family Law Act Part VIII B is to be treated as property and its value determined.
- Future expectations; *Milankov* (2002) 93-095
- *Kennon v Spry* (2008) 40 FamLR 1
- Prepaid legal costs; *Farnell* (1996) FLC 92-681; *DJM v JLM* (1998) FLC 92-816
- Valuations and Expert Evidence
 - Family Court Rules
 - Federal Magistrates Rules
 - *Dah & Hull* (1983)
 - *Clauson* (1995)
 - *Best & Best* (1993)
 - *Georgeson* (1995)
 - *Lenehan* (1987)
 - *Harrison* (1996)
- Notional property; *De Angelis and De Angelis* (2003)
- Liabilities: In the Marriage of *Biltoft* [1995] FLC 92-614

Step 2: Assessing Contributions of Parties

- No starting point of equality; *Mallett* (1984) 156 CLR 605; *Figgins* (2002) FamCA 688
- Glovalvs Asset by Asset approach; *Norbis* (1986) 161 CLR 513; *Cahill & Cahill* (2006); *Norbis* (1986); *Lenehan* (1987); *M & M* (2006); *Zyke* (1995)
- Court's approach s.79(4)(a)-(c); *Zyk* (1995); *Waters and Jurek* (1995); *McClay* (1996); *Mallett* (1984);
 - direct financial contributions
 - indirect financial contributions
 - financial contributions by or on behalf of a child of the marriage
 - non financial contributions
 - contributions to the welfare of the family
- relevance of contributions to assets: *Shaw* (1989)
- special contributions or skills: *Ferraro* (1993); *JEL and DDF* (2001); *Figgins* (2002); *Whitely*
- financial contributions in short marriages: *McMahon* (1995); *Goodwin* (1991); *D & D*
- post separation contributions: *Williams* (1984); *Jacobson* (1989); *Mackie and Mackie* (1981) FLC 91-069; *Spiteri*(2005); *Coghlan & Coghlan* (2005), *Wilkinson & Wilkinson* (2005)
- third party contributions (gifts, loans etc): *Gosper*(1987); *Kessey* (1994) of third party contributions (to the welfare of the family ie. Child minding): *AB and ZB* (2003); *Pelegrino* (1997) FLC 92-789
- gifts and inheritances: *Bonnici* (1992); *White* (1995); *De Angelis and De Angelis* (2003)
- redundancy packages; *Burke* (1993) FLC 92-356; *Tomascetti*(2000) FLC 93-023

- expectation of an inheritance: *Tulloch v. White* (1995); *G & G* (2000)
- interest in a partnership: *Best* (1993)
- windfalls: *Zyk* (1995), *Farmer v Bramley* (2000)
- vicissitudes of life: *Vautin* (1998)
- accident verdicts: *Holmes* (1990); *Zubcic* (1995); *Aleksovski* (1996)
- relevance of domestic violence: *Kennon* (1997); *Rosati*(1998)
- Add-backs – three categories *Omacini and Omacini* (2005) FLC 93-218; *In the Marriage of Townsend* [1995] FLC 92-569
- waste: *Kowaliw* (1981); *Townsend* (1995); *Brown v Green* (1999)
- contributions after separation: *Jacobson* (1989); *Farmer v Bramley* (2000)
- pre-marriage property and contributions: *Money* (1994) FLC 92-485; *Bremner*(1995)92-560; *Kowalski* (1993) FLC 92-342; *Shaw* (1989) FLC 92-010
- big money cases; *Figgins*(2002) FamCA 688; *JEL & DDF* (2001) FLC 93-075

Step 3: Identify and assess the relevant s. 75 (2) Factors – ss 79(4) (d), (f) and (g)

- superannuation: *Family Law Act* Part VIII B
 - types of funds
 - superannuation being treated as “property”
 - splitting orders
 - flagging orders
 - superannuation agreements
 - valuation
 - court – powers and obligations
 - obligations with respect to trustees – procedural fairness (90MZD)
 - options after a splitting order is made
 - consent declarations as to superannuation/valuation required
 - self managed funds
- Superannuation: *Coghlan and Coghlan*(2005) FLC 93-220
- bankruptcy
- assess future needs and financial resources and overall disparity of financial position:
- Employment: *Mitchel* (1995) FLC 92-601
- Terminal illness of a party. *Leggero v Jagger* 38 FamLR 561

Step 4: Just and Equitable Requirement

- Just & Equitable – *Mallett*(1984) 156 CLR 605; *Hickey* (2003) FLC 93-143; *Russell* (1999) FLC 92-877; *Jel & DDF* (2001) FLC 93-075
- Interrelationship with maintenance orders: *Rosati* (1998)
- Section 77A
- No fault? *Soblusky*(1976); *Kennon*(1997)
- Redundancy: *Burke* (1993)
- Adjournment of property proceedings: s.79(5)
- Income tax, capital gains tax, stamp duty and GST:
 - *Rothwell* (1994); *Rosati*(1998); *Campbell v Kuskey*(1998)
 - *Income Tax Assessment Act*
- Stamp duty:
 - s.90: *Gazzo*(1981)
- s.106B:
 - elements for section to apply: *Pflugradt*(1981); *Ivanovic*(2000)
 - When discretion to set aside will be exercised

- Consideration of 3rd party interests; need to show that the disposition would have the effect of diminishing the pool of assets available for distribution. *Bourke v Bourke* 43 Fam LR 139
- Constitutionality: *Gould* (1993)
- s.85A:
 - Types of settlements affected
 - Meaning of “nuptial”: *Knight* (1987)
 - Execution of instruments under s.106A
- Effect of death on property proceedings:
 - s.79(8)
 - Admissibility of evidence of deceased party
 - Enforcement of orders after death: s.79 (1A)
 - The effect on a joint tenancy of a property application and property orders *Pertsdilis*(1980); *Patzak*(1984); *Public Trustee & Pfeiffle*(1991)
 - s.79A: *Anderson* (2000); *Prowse* (1995); *Sandrak*(1991); *Rohde*(1984)
 - Relationship between claims of spouses and claims of creditors:
 - General principles: *Chemaisse*(1990); *Biltoft*(1995); *Mateo* (2003)
- Effect of bankruptcy:
 - Where respondent is bankrupt: *Daniel v Daniel & Jones* (2004)
 - Where proposed applicant is bankrupt: *Corke: Official Trustee* (1994); *Re Sabri*(1997); *Official Trustee in Bankruptcy v Mateo* (2003); *Parianos v Meluish* (Trustee) (2003)
- Rights of Creditors; Court’s power. *Lemnos and Others v Lemnos & Another* (2008) 38 FamLR 594.
- *Bankruptcy and Family Law Legislation Amendment Act 2005*
- Rights of and against third parties: *Ascot Investments Pty Ltd and Harper* (1981); *Warby* (2002); *Family Law Amendment Act 2003*; Part VIII A FLA; *B Pty Ltd & Ors and K & Ors* [2008] FLC 93-380
- Joinder of third parties. S106B; s90AE. *Bourke v Bourke* (2009) 41 famLR 85

5. Injunctions

- Substantive Law: s. 68(B) (s. 235); s. 114(1) (s. 235A(1)); s. 114(2); s. 114(3); Part VIII A (commenced 17 December 2004) (Part 5A Division 2A);
- Relevant principles (re: power and exercise of discretion):
 - General: *Waugh* (1999); *Mullen and De Bry* (2006);
 - Circumstances arising out of marital relationship: *Tansell* (1977); *McCarney* (1977); *F & F* (1989);
 - Personal protection/non-molestation: *Kemsley* (1984); *Plows* (1979); *Oates Crest* (2008);
 - Limits on the power to grant interlocutory injunctions in the context of section 79A (s. 205ZH) proceedings: *G & T* (2004).
- To restrain dealings in property:
 - Personal rights v legal or equitable interests: *Mullane*(1983);
 - Merits of claim and degree of danger of prejudice: *Sieling*(1979);
 - Real danger of prejudice: *Stowe* (1981);
 - Prejudice to third parties: *Martiniello*(1981);
 - Ordinary business dealings: *Martiniello*(1981);
 - Minimum restrictions imposed: *Sieling*(1979);

- Undertakings: *Blueseas v Mitchell and McGillvray*(1999).
- Injunctions and third parties:
 - Part VIIIAA FLA (Part 5A Division 2A);
 - Injunctions which affect third parties: *Dovey ex parte Ross* (1979); *Tiley*(1980);
 - Injunctions directly against third parties;
 - Sham/puppet/alter ego: *Ascot Investments Pty Ltd* (1981);
 - Power no wider for interlocutory injunctions than for permanent injunctions: *Re Ross – Jones* (1984);
 - Injunctions against third parties in s. 106B proceedings: *Collins* (1987);
 - Jurisdictional questions: *Yunghanns v Yunghanns*(1999).
- Injunctions binding third parties: s. 90AF (s. 205ZLG); *Christie* (2007);
- Exclusive Use and Occupation:
 - Conduct: *Rowe* (1980);
 - Balance of convenience: *Davis* (1983);
 - Relevant matters to consider: *Davis* (1983); *O’Dea* (1980); *Borzak*(1979); *Fedele*(1986).
- Ex Parte Applications:
 - Family Law Rules 2004 Part 5.3 Applications without notice:
 - Real and urgent need to protect: *Sieling*(1979);
 - Duty of full disclosure: *Dean* (1977); *Stowe* (1981);
 - Preservation of Evidence: Anton Pillar Orders;
 - Preservation of Property: Mareva Orders.

9 Procedures

Relevant Rules, Regulations, Guidelines, practice Directions and Protocols including:

- Procedures in both Courts including:
 - Philosophy of the Courts
 - Legal Practitioners responsibilities to the Courts
 - Jurisdiction
 - Counselling and mediation facilities available
 - Starting proceedings including urgent applications
 - Pre-action S.601 requirements
 - Service
 - Transfer of proceedings between Federal Magistrates Court and Family Court
 - Transferring a case to another Registry
 - Conduct of proceedings including seeking priority
 - Trial management
 - Consent Orders
 - Disclosure – obligations
 - Evidence including single experts
 - Subpoenas
 - Financial matters
 - Dissolution of marriage
 - Child support
 - Enforcement
 - Forms
 - Costs
 - Open offers
 - Adding and removing a party/Intervening
 - Procedure for appeal

- Federal Magistrates Court - Summary dismissal/judgment s. 17A Federal Magistrates Act 1999; *Jacobs & Vale* [2008] FMCAfam 641
- Rice and Asplund principles: Rice and Asplund (1979); SPS & PLS (2008)
- Family Court
 - Delegation of Powers of Judicial Registrars, Registrars and Deputy Registrars FLR2004 Chapter 18
 - Pre-Action Procedures
 - Directions Hearings, Case Assessment Conference, Trial Notice Listings, Conciliation Conferences, Pre-trial Conferences and Defaulters Lists
 - Associated, Accrued and Cross-vesting Law
 - Medical procedures
 - Persons with disabilities and appointment of case guardian
 - Costs risk – *Starkey v Starkey (Costs)* (2009) 41 FamLR 177
 - Court protocols with third parties e.g. Family Court and The Department of Human Services (this will need to be variable for each State's relevant Department protocol)
 - Non-party production of documents
 - Orders and Injunctions Binding Third Parties (Part VIIIA)
 - Expert evidence and use of single expert witness
 - Bankruptcy, s.79 (11)-(12), third party debt notice, sequestration of property and receivership
 - Review of decisions of Registrars and Judicial registrars: *Harris and Caladine* (1990)
 - Exercise of Discretion on Appeal: *Allesch and Maunz* (2000); *Wall* (2002); *Caska and Caska (No 3)* (2004)
 - Counselling and mediation facilities available
 - Mediation and arbitration – interface with Court
 - Self represented litigants: *Re F: Litigants in Person Guidelines* (2001); *Kousal and Tack* (2003)
 - Nullity rule: rule 11.02 FLR 2004
 - Application to dispense with compliance: rule 1.12 FLR 2004
 - Listing procedures (duty list requirements)
 - Procedure as to priority of hearing an Appeal & s.79A Application arising from the same single instance judgment. *Arthurman & Arthurman* (2008) 40 FamLR 512
 - Judicial bias: *Johnson v Johnson* (2000); *Re B (Alleged apprehension of Bias)* (2004); *Tratnik and Riordan & Partners* (2004)
 - Summary Dismissal: *Bigg and Suzi* (1998); *Pelerman* (2000); *Beck and Beck* (2004)
- Courts referral to private mediation rather than conciliation conferences in both the Family Court and the Federal Magistrates Court.
- Procedure for obtaining family reports in both courts
- Filing fee waiver provisions and how to implement them

10 Evidence

- relevant Legislation
 - *Family Law Act 1975*
 - *Evidence Act (Commonwealth) 1995*
 - *Federal Magistrates Court Act*
- affidavit evidence – interim, procedural, and final proceedings: *Miller, M and Miller, HD* (2005)
- oral evidence
- expert evidence
 - single expert witnesses: chapter 15 Family Law Rules 2004: *Bass and Bass* (2008)

- Family Court Rules
- Court counsellors: *Hall* (1979); *Ahmad* (1979); *Re Cook, Ex Parte Twigg*(1980)
- Other experts: *Re W and W: Abuse Allegations: Expert Evidence* (2001); *WeatherallAndWeatherall and Ors* (2006)
- Admissibility of report/valuation evidence – *Paino v Paino* [NSW Supreme Court – Court of Appeal] (2009) 40 FamLR 96
- fresh evidence on Appeal *CDJ v VAJ* (1998) (HC); *Gaspaldi and Gaspaldi* [2008]
- evidence of children
 - family report
 - statements by children
 - oral evidence: *Todd and Todd (no 1)* (1976); *Barnett and Hocking* (1983); *Foley andFoley* (1978)
- protection of Witnesses
- exclusion of matters disclosed during conciliation conference: *Low & Harrington* (1995) FLC; s.131 Evidence Act
- Evidence Act (Commonwealth) 1995
 - witness – competence and compellability
 - relevance
 - hearsay
 - opinion
 - admissions
 - privilege
 - documents and business records
 - rule in *Browne v Dunne; LC v TC* (1998)
 - unfavourable witnesses
 - Judicial Notice *X v X* (2000); *A v A: Relocation Approach* (2000); *Lamereaux and Noirnot*(2008)
- statements by children
- evidence in State Court proceedings
- part VII, Division 12A s.69ZT
- Improperly or Illegally obtained Evidence. *Ames v Ames* (2009) 42 FamLR 95

11 Enforcement

- enforcement issues raised under heading “children”
- maintenance *Reid* (1978); *Daniels and Bell*; *Daniels and Ithaca Pty Ltd &Anor* (2007)
- contempt and quasi contempt: s.35; Part XIII A:
 - principles and practice: *Sahari*(1976); *Rutherford and Marshall of the Family Court ofAustralia*(1999); *K and J* (2004); *Tate and Tate (no 3)* (2003); *Mead and Mead*(2006); *Abduramoska, D* (2005); *Myers and Myers* (2006)
 - standard of proof: *Tate* (2002)
- *Family Law Rules 2004*: Chapter 20 Enforcement of financial orders and obligations; *Collins, MH and Olsthoorn, QPW* (2005); *Barrak, B and Ors and Barakat, DM* (2005); *Samootin v Wagner and Anor*(2006); *Hatton and Hatton* (2007); *Gitane and Velacruz*(2008); *Pera and Pera*(2008)
- factors when exercising discretion
- use of bankruptcy

12 Costs

- Lawyer-client costs governed by State or Territory in which lawyer practises eg. *Legal Profession Act* of relevant state for cases commenced after 1 July 2008 and in otherlimited circumstances
- *Federal Magistrates Court Rules* 2001 (Cth), r21.09

- *Family Law Rules 2004* (Cth), Chapter 19 (now of more limited relevance)
 - See Schedule 2 of the Family Law Amendment Rules 2008 (no. 1) LegislativeInstrument 2008 No 62 (commenced on 1 July 2008)
- s.117: *Penfold*(1980)
- contracting out with client: *Barrett v Whitten* (1992); *McInnes v Twigg*; *Weiss v BarkerGosling* (No. 1) (1993); *Weiss v Barker Gosling* (No. 2) (1994); *Schiliro v GadensRidgeway* (1995); *Twigg&Twigg v Rutherford* (1996)
- legal aid: *Telfer v Telfer* (1996)
- maintenance order to pay costs: *Hogan* (1986); *Breen* (1990)
- interim costs: *Barro*(1983); *Hogan* (1986); *Poletti*(1990); *Chester*(1995); *Szchokke*(1996); *Strahan & Strahan* (No. 7) [2008] FamCA 905 (24 September 2008)
- s.117C offers: *Harris* (1987); *Kowalski v Kowalski* (1994)
- written offers of settlement
- withdrawal of offer: *Murray*(1990); *Kowalski v Kowalski* (1994)
- solicitor's position in relationship to award obtained: *Gadens Ridgeway v Paroulakis*(1992); *Twigg&Twigg v Ready* (1996)
- applicability of Family Law Scale to Family Court Proceedings: G and G (2004)
- case management guidelines
- court's power to order funding of separate representative: *Re JJT* (1998)
- case management guidelines and practice directions re notification as to costs
- costs orders against legal representatives: *Anstis and Anstis and Hill*, *Doyle and Teague*(1999); *Yunghanns and Ors*(2000)

12 Reviews/Appeals

- appeals from Court of Summary Jurisdiction; Nature of Hearing de novo: *Harris v Caladine*(1991)
- FMS appeals: s94AAA *Family Law Act*, *Grayden and Grayden*(2003) FLC 93-146, s104(2) of the *Federal Magistrates Act* 1999
- appeals from Interlocutory Decree: *Tudor* (1992)
- leave to appeal
- appeals to the Full Court: Chapter 22 Family Law Rules
- grounds of Appeal
- fresh evidence: *DCJ v VAJ* (1998); *Allesch v Maunz*(2000); *Wall* (2002); *Van Ballekom v Kelly* (2005)
- stays pending Appeal
- summary dismissal: *Derek* (2006)
- case stated
- *Simpson & Brockmann* [2010] FamCAFC 37 – relevant to both the issue of fresh evidence and nature of appeals generally
- *Collu & Rinaldo* [2010]FamCAFC 53
- *Wadsworth & Wadsworth and Anor* [2008] FamCAFC 149

13 Inherent, Associated and Accrued Jurisdiction

- associated Jurisdiction
- s.33 Family Law Act
- limited Statutory Jurisdiction: *Minister for Immigration & Multicultural & Indigenous Affairs and B* (2004) (HC)
- Section 1337C(1) and Section 58AA (1) *Corporations Act*
- inherent: *DJL v Central Authority* (2000)
- *Taylor and Taylor* (1979)
- cross-vesting: *R v Wakim*; *ex parte McNally* (1999)

- accrued: *Warby* (2002); *Finlayson v Finlayson and Gillam*(2002); *Foley v Farquharso&Anor*(2003); *Bishop* (2003)
- *C and C* (accrued Jurisdiction) (2001)
- *Bergman and Bergman and Ors* (2009)
- *ASIC v Edensor Nominees* (2001)
- *Phillip Morris v Adam P Brown* (1981)
- *Klintock v Ferder* 43 Fam LR 135

14 Miscellaneous Matters

- constitutional framework of Family Law: *Russell v Russell* (1976)
- ethics
- family trusts and family maintenance trusts
- duty of confidentiality *Re Bell, Ex Parte Lees* (1980); s.118 *Evidence Act 1995* (Cth)
- conflicts of interest: *Thevanez*(1986); *McGillivray v Mitchell* (1998)
- Family dispute resolution and arbitration 10F-K, 10L-P, s13C- K, s601, Family Law Act,Part 5 Family Law Regulations 1984 (Cth)

PLEASE NOTE: Candidates should be aware of all impending amendments to legislation. All assessments will be based on the law as at the date of the assessment.

Part B - Individual Jurisdictions

Topics which might be examined:

- Domestic relationship property disputes in matters where parties separated before 1 March 2009
- Common Law and equitable remedies – *Calverley v Green* (1984); *Muschinski vDodds*(1985); *Baumgartner v Baumgartner* (1987)
- Statute – Property Law Act (Victoria) 1958 Part IX – Property of Domestic Partners –*Burns v Chazan*(2000); *Evans v Marmont*(1997-NSW); *Robertson v Austin* (2003);*Zegarac v Tomasevic*(2003), *Steinbath v Peters* (2005); *P. Y v C. Y* (2005-QLD); *Chanter v Caffs* (2006-NSW); *Merigan – James v James* (2006).
- Cohabitation Agreements: *The Trustees of the Property of John Daniel Cummins, ABankrupt v Cummins* (2006) HCA 6 (Cummins)
- Children’s welfare laws
- Family violence and Intervention Orders Cases – *Stephens v Melis*& Magistrates’ Court of Victoria (2002); *De Angelis v De Angelis*(2000)
- Legal professional responsibilities
- Stamp duty
- Taping conversations
- Caveatable interests

PLEASE NOTE: Any matter relevant to practice in **Family Law** may be examined, including the areas listed above. The following list gives an indication of other matters which candidates might be asked to address. Candidates may be asked questions arising under any legislation, related regulations and other materials listed in these guidelines. This is not intended to be an exhaustive list.

SCHEDULE 5: Related Legislation and Procedures

Related Legislation and Procedures

This is not necessarily an exhaustive list. Candidates will be examined on the law as it stands at the date of assessment

**Family Law Act,
Federal Magistrates Act,
Child Support legislation and the Rules and Regulations**

Procedures:

- Family Court
- Family Law Rules 2004 (as amended)
- Case Management directions March 2004
- Practice Directions including:
 - Principal Registrar's Notification January 2008 – consent parenting orders and allegations of abuse
 - No. 1 of 2007 – Omnibus Practice Direction
 - No. 2 of 2006 - Child related proceedings (Division 12A)
 - No. 2 of 2005 - Practice Direction for the Melbourne Implementation of the Children's Cases Program Incorporating the Child Responsive Pilot
 - No. 3 of 2005 - The National Children's Cases Program
 - No. 2 of 2004 - The Children's Cases Program
 - No. 3 of 2004 - Case Management Directions
 - No. 7 of 2004 - Appeals - Family Law Rules 2004
 - No. 8 of 2004 – Applications to the Court arising from traditional and customary adoption practices – KupaiOmasher
 - No. 6 of 2003 – Divorce applications to be filed in Federal Magistrates' Court
- Federal Magistrates Court
- Federal Magistrates Court Act 1999 (as amended)
- Federal Magistrates' Court Rules 2001
- Federal Magistrates' Regulations 2000
- Federal Magistrate Service Rules 2004

Victorian legislation:

- Family Violence Protection Act 2008
- Infertility Treatment Act 1995
- Legal Profession Act 2004
- Duties Act 2000

South Australian legislation:

- Stamp Duties Act (1923)
- Legal Practitioners Act (1981)
- Domestic Violence Act (1994)

PLEASE NOTE: Candidates should be aware of all impending amendments to legislation. All assessments will be based on the law as at the date of the assessment.