

Accredited Specialisation Application Guidelines 2018

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 criteria in accordance with the *Specialisation Scheme Rules*. Such applications for exemptions must be lodged no later than **4pm on Friday 6 April 2018**.

IMPORTANT: Details of the conditions for gaining specialist accreditation are contained in the Specialisation Scheme Rules which can be found at:

https://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/LIV%20Documents/20180420_Master_SpecialisationSchemeRules_April16.pdf

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 Accredited Specialisation in Family Law is in three parts. To gain accreditation candidates must obtain a satisfactory mark in each of the three parts 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 and 5**.

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

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

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

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 Examination

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 post graduate course 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 **4pm on Friday, 6 April 2018**.

Timetable

Monday 26 February 2018	Accredited Specialisation information evening
Friday 6 April 2018	Applications requesting Board discretion (for those who do not meet eligibility criteria) or exemption from the Written Examination close, at 4pm
Friday 20 April 2018	All other Applications close at 4pm
Monday 28 May 2018	Accredited Specialisation Exam Techniques evening
Wednesday 16 May 2018	Part 1: Mock File released, due 6 June 2018
Saturday 14 July 2018	Part 2: Written Examination, 10am-1.00pm
Monday 30 July 2018	Part 3: Simulated Client Interview
Late October 2018	Results sent to candidates will be advised via email
TBC Late November 2018	Accredited Specialisation Conferral Ceremony

IMPORTANT: Candidates who wish to apply for special consideration in relation to their assessment tasks must do so in accordance with the Rules https://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/LIV%20Documents/20180420_Master_SpecialisationSchemeRules_April16.pdf

Performance Standards

Practitioners wishing to be accredited should be able to:

1. perform at a superior standard which is expected of practitioners wishing to hold themselves out as specialists in the area
2. display a superior standard of knowledge of the law and procedure which underpins the performance of tasks in this area of practice.

General Recommendations

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

- form a study group – to register your interest in forming a study group please contact **special@liv.asn.au**
- attend appropriate LIV CPD events in the area of specialisation
- review previous examination papers and recordings of simulated interviews - these are available at **http://www.liv.asn.au/PDF/Professional-Development/Accredited-Specialisation/AS_AssessmentMaterials.aspx**
- read some or all of the Suggested Reading Material listed in **Schedule 5**
- 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 5**.

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 **Schedules 4 and 5**.

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 of Victoria:

1. The completed application form
2. Three references
3. Resume of practice
4. Application fee of \$1,100.00 (including GST) payable to the Law Institute of Victoria.

Applications close

4pm Friday, 6 April 2018 for applicants wishing to apply for Board discretion because they do not meet the eligibility criteria or for applicants wishing to apply for exemption from the Written Examination.

4pm Friday, 20 April 2018 for all other applications.

The address for applications is:

Accredited Specialisation

Law Institute of Victoria
GPO Box 263, MELBOURNE 3001
or DX 350, MELBOURNE

Inquiries:

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

SCHEDULE 1: EXAMINATION ASSESSMENT COMPONENT PART 1

MOCK FILE

Distribution Date: Wednesday, 16 May 2018

Submission Date: Wednesday, 6 June 2018, by no later than 4pm

Candidates 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 Binding 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:

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

Note: The candidate is not expected to provide any advice relating to costs agreements or disclosure statements.

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.

The completed exercise must be submitted as a Word or PDF document through the submission box for this assessment piece on www.accreditedspecialisation.liv.asn.au by no later than 4pm on 6 June 2018.

SCHEDULE 2: EXAMINATION ASSESSMENT COMPONENT PART 2

WRITTEN EXAMINATION

Exam Date: Saturday, 14 July 2018

Exam Time: 10am-1.00pm

Exam Venue: Saxons Training Centre

The examination is divided into two sections.

Section A – 60 per cent

Two essay answer questions in areas of family law commonly encountered in practice.

Section B – 40 per cent

Short-answer questions that will test across areas of family law in a specialist's day-to-day practice.

In order to pass the examination, the candidate will need to achieve at least a 50 per cent score on each of Section A and Section B.

Assessment Criteria

Candidates will be assessed on their:

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

Examination Conditions

Typed Exams

Candidates in this area of specialisation have the option to elect whether they would like to submit a handwritten or typewritten examination. All candidates who elect to type their examination will use a computer supplied by the Law Institute of Victoria, and will only have access to a word processor on this computer.

General 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 COMPONENT PART 3

SIMULATED CLIENT INTERVIEW

Interview Date: Monday, 30 July 2018

Interview Time: By appointment

Interview Venue: LIV, 470 Bourke Street, Melbourne

The candidate will conduct a simulated first interview with a person acting in the role of a client. The exercise will take about 60 minutes, and will be recorded and the recording assessed by the examiners.

This simulated interview 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.

The candidate may (but is 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.

The candidate is expected to demonstrate a clear ability to take and receive instructions, deliver preliminary advice and provide information to the client in a manner which satisfies the assessment criteria, core knowledge and the performance standard.

Assessment Criteria

Candidates will be assessed on the following performance standards:

- gathering facts and assesses instructions
- advising
- rapport, empathy, attitude
- communicates clearly and appropriately.

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

SCHEDULE 4: TOPICS FOR ASSESSMENT

Candidates will be expected to display a high standard of knowledge regarding:

- the Family Law Act, Family Law Rules, the Child Support (Assessment) Act, the Federal Circuit Court Act and Rules and other relevant legislation and case law
- the core knowledge areas set out in Schedule 4 of the guidelines
- state legislation relating to domestic violence, children, medical procedures and professional responsibilities, and the intersection between state and federal legislation.

The contents of Schedule 4 (updated as at February 2018) should not be taken to be exhaustive. It is aimed at assisting candidates in their preparation for specialist accreditation.

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

Candidates will be expected to:

- Be able to address complex issues that might arise in any of the core knowledge areas.
- Be able to identify relevant issues and problems from the fact scenarios provided.
- Be able to provide practical, clear and accurate advice.
- Be able to draft documents in accordance with relevant procedural rules and principles.
- Demonstrate adherence to the ethical and professional “best practice” of family law.

Note: The cases and sections of legislation are provided by way of guideline assistance only. In the event that any new legislative reforms become effective before the date of assessment or new cases delivered, practitioners will be required to be aware of the changes to the law resulting from that legislation or those cases.

Parts, divisions, sections, orders and rules, if cited without legislative reference, are parts, divisions, sections, orders or rules of the Family Law Act 1975 (Cth) or the Family Law Rules 2004 (Cth).

1. Divorce

- Jurisdiction.
- Ground: section 48

- meaning of separation (including separation under one roof): section 49 Hedley v Hedley [2009] FamCAFC 179 FLC 93-413; Stanford v Stanford (2012) 247 CLR 108.

- Effect of resumption of cohabitation: section 50
- Family Law Accredited Specialisation Application Guidelines 2018

- requirements where marriage less than two years: section 44 (1B).

- Declaration – children: section 55A.
- Effect on wills.
- Time limits for property and maintenance applications: section 44(3) *Anderson v McIntosh* [2013] FamCAFC 200.
- Applications for leave to institute proceedings out of time: *In the Marriage of Whitford* (1979) 24 ALR 424; *Hedley* (2009).
- Effect of fraud: *Walton v Esposito* [2016] FamCA 336.

2. Nullity

- Grounds for nullity and consequences of nullity decrees: *Nagri v Chapal* [2012] FamCA 464; Attorney-General (Cth) v Kevin and Jennifer [2003] FamCA 94.

3. Children

3.1 Dispute Resolution

- Confidentiality re counselling and family dispute resolution: sections 10D and H.
- Admissibility of statement made in counselling and family dispute resolution: sections 10E and J.
- Definition of “family dispute resolution” : section 10F.
- Definition of “family dispute resolution practitioner”: section 10G.
- *Family Law (Family Dispute Resolution Practitioners) Regulations 2008 (Cth), reg 25(2) how assessment of suitability is made for family dispute resolution.*
- Role of Family Relationship Centres.
- Obligations of advisors: sections 63DA and 60D.
- Pre-filing dispute resolution requirements and exceptions: section 60I.
- Where dispute resolution not attended because of child abuse or family violence: section 60J.
- Arbitration: sub-sections 10L-P and 13E-K.

3.2 Jurisdictional Requirements and Discretion to Exercise Jurisdiction

- Who may institute proceedings and possible parties: sections 65C and section 69C: *KAM v MJR; JIG (Intervenor)* [1998] FamCA 1896; *Murray v Tomas* [2011] FamCA 433; *Burton v Churchin* [2013] FamCAFC 180.
- Limits as to jurisdiction.

- Re F; ex parte F (1986) 161 CLR 376 – Minority Judgement by Mason and Deane *JIG Intervenor* (1999) FLC 92-847.
- Possible parties: sections 69C and 65C, *KAM v MJR*; *JIG Intervenor* (1999).
- Definition of “parent”: sections 60H, 60HA and 60HB: *Keaton v Aldridge* [2009] FMCAfam 92 which was affirmed in *Aldridge v Keaton* [2009] FamCAFC 229.
- Court’s power to make parenting order: section 65D(1).
- Approach to making of parenting orders: *MRR v GR* (2010) 240 CLR 461; *Wing v Choi* [2013] FamCA 323.
- Meaning of “parenting order” and matters parenting orders can deal with: section 64B.
- Who they may be made in favour of: section 64C.
- Types of children parenting orders can deal with: section 65H.
- Parenting orders may be subject to later parenting plans: section 64C.
- Effect of death on parenting orders: section 65K.
- *B v B (Re Jurisdiction)* [2003] FamCA 105; *EJK v TSL* [2006] FamcA 730.

3.3 Parental Responsibility – Part VII, Div 2

- Meaning: sections 61B, 61C, 61D, 61DA and 61E.
- Effect of parenting order that provides for shared parental responsibility: section 65DAC:
 - how to approach the task of drafting orders for parental responsibility: *Pavli v Beffa* [2013] FamCA 144
 - a parent to have no parental responsibility: *Modlin v Anstead* [2013] FamCA 955.
- Difference between obligations regarding day-to-day issues and “major long-term issues”.
- *B v B* (1997) 21 Fam LR 676; *Goode v Goode* [2006] FamCA 1346.
- Definition of “major long-term issues”: section 4.
- Different consultation requirements for day-to-day issues and major long-term issues: 65DAE.

3.4 Parenting orders: general principles – Part VII, Div 5

- Pre-action procedures and exceptions.
- Considerations for interim and final orders.
- Approach of court to determining parenting orders.

- Best interests of children as paramount consideration: sections 60CA and 65AA; *Taylor and Taylor* (1996) FLC 92661; *T v S* [2001] FamCA 1147.
- Relevant sections: sections 60B, 60CA, 60CC, 61DA and 65DAA.
- Relationship between section 60B and section 60CC: *Goode and Goode* (2006).
- Objects and principles: section 60B.
- Best interests of children as paramount consideration: sections 60CA and 65AA; *AMS v AIF* (1999) 199 CLR 160.
- Relevant best interest factors: section 60CC; primary and additional considerations.
- How the court must apply the primary considerations: section 60CC(2A).
- Presumption of equal shared parental responsibility: section 61DA.
- Approach of court to these sections: *Goode and Goode* (2006); *Taylor v Barker* [2007] FamCA 1246, and obligation for court to work through primary and additional considerations in section 60CC, prior to considering whether section 61DA presumption applies, does not apply or is rebutted; *In the Marriage of Brown & Pedersen* (1991) 15 Fam LR 173; *Dundas v Blake* [2013] FamCAFC 133.
- Discussion of “meaningful relationship”: *G v C* [2006] FamCA 994; *Mazorski v Albright* [2007] FamCA 520; *McCal v Clark* [2009] FamCAFC 92; *McCall v Clark (No 3)* [2010] FMCAfam 1443.
- Where presumption applies, court’s obligation to consider equal time and substantial and significant time: section 65DAA; what court considers to determine whether appropriate; section 65DAA(3) and (5); *Wainder v Wainder* [2011] FamCAFC 155.
- Interpretation of section 65DAA: steps for court to work through; *MRR v GR* (2010) 240 CLR 461.
- What is “substantial and significant time”: section 65DAA(3); *KML v RAE* [2006] FMCAfam 528; *Dylan v Dylan* [2007] FamCA 842.
- Example of where presumption rebutted: *H v H* [2007] FMCAfam 27.
- Court’s power to make an order outside of what parties applied for: *U v U* (2002) 211 CLR 238.
- Principles in child-related proceedings: sections 69ZN and 69ZQ.
- Other issues concerning Parenting Orders – stay of proceedings pending appeal: *Lockley & Bardot* (2016) FamCAFC 185.
- Children’s views: *Bondelmonte* [2017] HCA 8
- One of the additional considerations: section 60CC(3)(a).
- Ways in which views can be put before the court: section 60CD.
- Admissibility of statements by children: *Family Law Rules 2004* (Cth), rule 15.02.

- How children's views should be considered and weighed: *H v W* [1995] FamCA 30.
- *R v R (Children's Wishes)* [2000] FamCA 43; *Re In the Marriage of R (Children's Wishes)* [2002] FamCA 383; *C v C* [2002] FMCAfam 178.
- Family Reports/Expert Evidence.
- Section 62G; *In the Marriage of Hall* (1979) 5 Fam LR 609; *Gaines v Gaines* [2013] FMCAfam 108; *Sprowles v Makita* [1999] NSWSC 1239 (22 December 1999).
- Independent Children's Lawyer (ICL): Part VII, Division 10.
- Section 69L.
- Instances in which an order for an ICL can be made: *Re K* (1994) 17 Fam LR 537.
- Role of ICL.
- Child abuse:
 - definition of "abuse": section 4(1)
 - section 60CC(2)(b); section 67Z; section 67ZA; section 67ZBB; and definition of "interested person": section 67ZK
 - unfounded allegations: *L v T* [1999] FamCA 1699; allegations of child abuse: Part VII Division 8, subdivision D
 - unacceptable Risk Test: *M v M* (1988) 166 CLR 69.
- *Sharwin v Weldee* [2012] FamCA 1081; Standard of proof: *Re W* [2004] FamCA 768 (sexual abuse, standard of proof).
- Family violence and Intervention Orders Cases:
 - *Alam v Minister for Immigration and Citizenship* [2012] FMCA 616 FMCA 616.
- *Schieffer v Schieffer* [2013] FamCA 168; Family Violence:
 - Definition of "family violence": section 4AB(1)(3)
- - Part VII Division 2:
 - section 60B(1)(b); section 60CC(2)(b); section 60CC(2A); section 60CC(3)(j) and (k); section 67ZBA; section 67ZBB.
- *In the Marriage of G* (1994) 18 Fam LR 255; *T v N* [2003] FamCA 1129: Notice of abuse.
- Other issues:
 - occupancy of home
 - sexual orientation
 - religion
 - Aboriginality

- splitting of siblings : “maternal factor”
- “parental factor”
- surrogacy: *Farnel & Anor and Chanbua* [2016] FCWA 17
- families and sperm donor fathers
- schooling
- change of name: *Darley & Darley* (2016) FamCAFC 10, use and admissibility of academic opinion: *McGregor v McGregor* [2012] FamCAFC 69
- family violence – intersection between different jurisdictions.

3.5 Relocation

- Definition of “major long-term issues”: section 4:
 - *A v A (Relocation Approach)* [2000] FamCA 751
 - *Oswald & Carrington* (2016) FamCAFC 152
 - *Styles v Palmer* [2014] FamCA 383
 - *U v U* (2002) 211 CLR 238
 - *M v S* [2006] FamCA 1408; *Hepburn v Noble* [2010] FamCAFC 111; *Collu v Rinaldo* [2010] FamCAFC 53; *MRR v GR* (2010) 240 CLR 461; *McCall v Clark* [2009] FamCAFC 92; *Starr v Duggan* [2009] FamCAFC 115; *Sealey v Archer* [2008] FamCAFC 142; *Taylor v Barker* [2007] FamCA 1246.

3.6 Parenting Plans and Orders (Particular Issues)

- Part V11, Divisions 4 to 6.

3.7 Contravention of parenting orders

- The parenting compliance provisions: Part VII, Division 13A.
- *Stapleton & Hayes* (2016) FamCAFC 171.

3.8 Alteration of Parenting Orders: section 65D (2)

- The precondition of fresh circumstances: changed circumstances; undisclosed material facts
- The precondition as a preliminary issue:
 - *In the Marriage of Rice and Asplund* (1979) 6 Fam LR 570; *Biggs v Hurst* [2014] FamCA 217.
- When parenting order terminates:
 - *Family Law Act 1975* (Cth)
 - sub-section 65H
 - J and K.

3.9 Abduction of Children – Within Australia and Overseas

- Registration of state, territory and overseas orders: Part VII, Division 13
- *Family Law (Child Abduction Convention) Regulations 1986*
- Location and Recovery of Children: Part VII, Division 8 – Subdivision C.

3.10 Paternity

- Part VII, Division 12 – subdivisions D and E.
- *Clarence & Crisp* (2016) FamCAFC 171.

3.11 Reaching Agreement

- Parenting plans and consent orders. 3.12 Court Sanction of Medical Procedures
- Section 67ZC (1).
- *Re Marion* (1992) 175 CLR 218.
- *Re Carla* (2016) FamCA 7.
- *Re Jason* (2016) FamCA 772.
- Director Clinical Services & Child and Adolescent Services and *Kizko v Anor* [2016] FCWA 19, [2016] FCWA 34, 2016 FCWA 75 (medical procedures).
- *Re Alex* [2009] FamCA 1292.
- *Re Bernadette* [2011] FamCAFC 50.
- *Re Jamie* [2013] FamCAFC 110.

3.12 Court Sanction of medical procedures

- *Re Jaden* [2017] FamCA 269
- *Re Kelvin* [2017] Fam CAFC 258

3.13 Children in Detention

- *Minister for Immigration and Multicultural and Indigenous Affairs v B (No 3)* (2004) 219 CLR 365.

4. Spousal Maintenance

- Establishing a claim.
- Threshold finding under section 72; lack of adequate support and capacity to pay:
 - *In the Marriage of Eliades* (1980) 6 Fam LR 916
 - *In the Marriage of Bevan* (1993) 19 Fam LR 35
 - *In the Marriage of Mitchell* (1995) 19 Fam Lr 44 - Hall & Hall (2015) FamCAFC 137.
- Consideration of section 75(2) factors.

- Consideration of section 74 – exercise of discretion.
- “Adequately” and “properly”: *Brown v Brown* [2007] FamCA 151; Rolins – *Wallis v Wallis* [2008] FamCA 1272.
- Relationship between spousal maintenance and property orders.
- Section 77A requirements:
 - *Doig v Doig* [1999] FamcA 1363
 - *Caska v Caska* [1998] FamCA 118.
- In the Marriage of Clauson (1995) 18 Fam LR 693: Cessation of spousal maintenance orders.
- See also:
 - *In the Marriage of Vautin* (1998) 23 Fam LR 627
 - *DJM v JLM* [1998] FamCA 97
 - *Maroney v Maroney* [2009] FamCAFC 45
 - *In the Marriage of Naphali* (1988) 13 Fam LR 146
 - *Hall v Hal* (2016) 332 ALR 1
 - *Malone v Malone* [2016] FamCA 432
 - *Bardsley v Bardsley* [2016] FamCA 408
 - *Sandberg v Sandberg* [2016] FamCA 357
 - *F v F* [2016] FCWA 68.
- Registrable spousal maintenance liabilities.
- Lump sum spouse maintenance.
- Urgent v Interim orders.

5. Child Maintenance and Support

5.1 Child Maintenance

- Primary duty to maintain children: section 66C FLA.
- Jurisdictional aspects: section 66E FLA.
- Adult Child Maintenance: section 66L FLA.

5.2 Child Support

- Limited and Binding Child Support Agreements.
- *Sathra v Sathra* [2013] FamCAFC 142.
- Child: section 24 Assessment Act.
- Parent: section 25 Assessment Act.

- Non-parent carer: section 25A Assessment Act.
- The Child Support Formula – Division 2.
- Elements of the Child Support Formula.
- Re-establishment income.
- Section 117 departures – Division 4, Part 7:
 - General Grounds of departures: section 117(2) Assessment Act
 - *In the Marriage of Gyselman* (1991) 15 Fam LR 219
 - Earning Capacity section 117 (4) (d), Section 117(7A), (7B)
 - *DJM v JLM* [1998] FamCA 97
 - *Skinner v Cluny* [2013] FamCA 301
 - *Child Support Registrar v Crowley* [2015] FamCAFC 76
 - Departures from Administrative Assessments section 98B section 98C(2), section 117(2) – grounds for departure.
- Change of Assessment:
 - estimates
 - sections 60, 61, 62, 63, 64: Child Support (Assessment) Act 1989 (Cth)
 - objections to registrar decisions
court review
 - Administrative Appeals Tribunal Social Services and Child Support Division
court review
 - review of AAT decisions – see above
 - Part VIII Registration Act
 - Family Law Rules division 4.2.5
 - when another application is pending: section 116(1)(b) Assessment Act
 - complex applications: section 98E and section 98R
 - disputed parentage: section 106, 107 *Assessment Act*.
 - stay orders: section 111C; Child Support Registration Act; *Abani v Abani* (SSAT Appeal) [2014] FCCA 2058; *Jones v Child Support Registrar* [2007] FCA 1732
 - time limit on backdating assessments: section 111(1) Assessment Act
 - *Teal v Teal* [2010] FamCAFC 120
 - non-periodic amounts: section 123 *Assessment Act*
 - Urgent child support: section 139(1) *Assessment Act*
 - Order for recovery of wrongly paid child support
 - section 143 Assessment Act
 - *Magill v Magill* (2006) 226 CLR 551
 - *DRP v AJL* [2004] FMCAfam 440: Recovery, Enforcement and Penalties.

Note:

- Assessment Act = *Child Support (Assessment) Act 1989* (Cth)
- Registration Act = *Child Support (Registration and Collection) Act 1989* (Cth)
- *Tribunals Amalgamation Act 2015* (Cth)

6. Financial Agreements

6.1 Conceptualising a Financial Agreement

- What constitutes a financial agreement within the meaning of the Act? *Senior v Anderson* [2011] FamCAFC 129.
- Contractual underpinnings of a financial agreement: *Sullivan v Sullivan* [2011] FamCA 752.
- Concurrent agreements under Part VIIIA and Part VIIIAB.
- *Piper v Mueller* [2015] FamCAFC 241.
- 6.2 Matters That a Financial Agreement Can Deal With (sub-sections 90B, 90C, 90D, 90UB, 90UC and 90UD)
 - Property.
 - Financial resources.
 - Spousal maintenance (see further sub-sections 90E and 90UH for specific drafting requirements, and sub-sections 90F and 90UI).
 - Incidental or ancillary matters (including adult child maintenance).
 - Lifestyle clauses: *Parke v Parke* [2015] FCCA 1692.
 - Agreements with third parties.

6.3 Challenging a Financial Agreement

- Onus of proof: *Hoult v Hoult* [2013] FamCAFC 109.
- Is the agreement binding (applying sub-sections 90G and 90UJ)?
- Legal advice:
 - *Logan v Logan* [2013] FamCAFC 151
 - *Ruane v Bachman-Ruane* [2009] FamCA 1101
 - *Pascot v Pascot* [2011] FamCA 945.
 - Operation of the saving provision (section 90G(1A)):
 - *Parker v Parker* [2012] FamCAFC 33
 - *Abrum v Abrum* [2013] FamCA 897.
- Ought the agreement be set aside (applying sub-section 90K and 90UM)?
- Unconscionable conduct and/or undue influence: - *Saintclair v Saintclair* [2015] FamCAFC 245 - *Adame v Adame* [2014] FCCA 42 - *Thorne v Kennedy* [2017] HCA 49
 - *Parkes v Parkes* [2014] FCCA 102.
- Non-disclosure of assets:

- *Adame & Adame* [2014] FCCA 42
- *Parke v Parke* [2015] FCCA 1692.
- Duress:
- Impracticability:
 - *Herold v Kay* [2012] FMCAfam 1071
 - *Bryson v Bryson* [2012] FMCAfam 197
 - *Sanger v Sanger* [2011] FamCAFC 210
 - *Parke v Parke* [2015] FCCA 1692.
- Material change in circumstances: *Parkes v Parkes* [2014] FCCA 102.

6.4 Agreements made prior to 2009 statutory amendments

- *Black v Black* [2008] FamCAFC 7
- Retrospective operation of the post-Black statutory provisions: *Wallace v Stelzer* [2013] FamCAFC 199

6.5 Third parties and financial agreements

- Separation declarations: *Australian Securities and Investments Commission v Rich* [2003] FamCA 1114
- Agreements binding on third parties
- Applications by third parties to set aside Financial Agreements
- *Grainger v Bloomfield* [2015] FamCAFC 221

6.6 Intersection with the accrued jurisdiction (actions in negligence against one's own advisors)

- *Noll v Noll* [2013] FamCAFC 24
- *Ruane v Bachman-Ruane* (Accrued Jurisdiction) [2012] FamCA 369
- *F Firm v Ruane* [2014] FamCAFC 189

7. Property

- Family Law Act 1975 (Cth) – Section 79 and 78
- Categorisation of de facto relationships
- *Fenton v Marvel* [2013] FamCAFC 132
- Part VIII & Part VIII AB of FLA, F.L. Rules 2004, FCC Rules 2001

7.1 Four Step Approach to Determining Property

- In the Marriage of Hickey [2003] FamCA 395; In the Marriage of Clauson (1995) 18 Fam LR 693 ; In the Marriage of Lee Steere (1985) 10 Fam LR 431; In the Marriage of Ferraro (1992) 16 Fam LR 1; In the Marriage of Townsend (1994) 18 Fam LR 505; In the Marriage of Biltoft (1995) 19 Fam LR 82; In the Matter of McLay (1996) 20 Fam LR 239; *Campbell v Kuskey* (1998) 22 Fam LR 674; *Stanford v Stanford* (2012) 247 CLR 108 ; *Baglio v Baglio* [2013] FamCA 105; *Sebastian v Sebastian (No 5)* [2013] FamCA 191; *Bevan v Bevan* [2013] FamCAFC 116; *Bevan v Bevan* [2014] FamCAFC 19; *Vass & Vass* (2015) FamCAFC 156
- Development of the concept that the Four Step Process is merely a shorthand distillation of the legislation which illuminates the path and not a legislatively mandated decision process - *Bevan v Bevan* [2013] FamCAFC 116; *Bevan v Bevan* [2014] FamCAFC 19

Preliminary Step:

It must be determined whether it is just and equitable to alter property interests *Stanford v Stanford* (2012) 247 CLR 108; *Bevan* (2013) section 79(2) FLA.

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* FL 13:
 - principle of “full and frank disclosure”
 - *In the Marriage of Weir* (1992) 16 Fam LR 154; *In the Marriage of Black and Kelner* (1992) 15 Fam LR 343; *Chang v Su* [2002] FamCA 156
 - *Tate v Tate* [2000] FamCA 1040
 - methods of obtaining financial information
 - identify and value relevant property: *In the Marriage of Duff* (1977) 15 ALR 476; *In the Marriage of Zorbas* (1990) 14 Fam LR 226

- treating assets of company or trusts as assets of a party/ discretionary trust: *Mercanti v Mercanti* [2015] WASC 297; *In the Marriage of Ashton* (1986) 11 Fam LR 457; *In the Marriage of Stein* (1986) 11 Fam LR 353; *In the Marriage of Harris* (1991) 15 Fam LR 26; *BP v KS* [2002] FamCA 1454; *Foda v Foda* (1997) 21 Fam LR 653; *Coventry v Smith* [2004] FamCA 249; *Kennon v Spry* (2008) 238 CLR 366
- interest in a partnership: *In the Marriage of Best* (1993) 16 Fam LR 937; *B v B* [1999] FamCA 1142; *Carbon & Klousner* (2015) FamCA 842
- superannuation: *Coghlan v Coghlan* [2005] FamCA 429 - prepaid legal costs: *DJM v JLM* [1998] FamCA 97
- valuations and expert evidence: *Higgins & Higgins* (2016) FamCAFC 32
- *In the Marriage of Clauson* (1995) 18 Fam LR 693 - *In the Marriage of Lenehan* (1987) 11 Fam LR 615 - *In the Marriage of Borriello* (1989) 13 Fam LR 415 - *In the Marriage of Harrison* (1996) 20 Fam LR 322 - *In the Marriage of Smith* (1991) 15 Fam LR 2061 - liabilities: *In the Marriage of Bilstoft* (1995) 19 Fam LR 82
- notional property: *In the Marriage of De Angelis* [1999] FamCA 1609
- income tax, capital gains tax, stamp duty and GST: *In the Marriage of Rothwell* (1993) 18 Fam LR 454; *Rosati v Rosati* [1998] FamCA 38; *Campbell v Kuskey* (1998) 22 Fam LR 674
- Income Tax Assessment Act
- *Rodgers v Rodgers* (No 2) [2016] FamCAFC 104
- *Pfenning v Snow* [2016] FamCA 29
- stamp duty: *Lake v Brand* [2016] FamCA 375
- section 90: *Gazzo v Comptroller of Stamps* (Vic) (1981) 149 CLR 227
- CGT: *Rosati v Rosati* [1998] FamCA 38
- Add-backs – three categories: *Omacini v Omacini* [2005] FamCA 195; *In the Marriage of Townsend* (1994) 18 Fam LR 505; *NHC v RCH* [2004] FamCA 633; *Bevan v Bevan* [2013] FamCAFC 116.

Step 2: Identify and evaluate the Contributions of Parties.

- Section 79 (4) and section 90SM (4): No starting point of equality; *In the Marriage of Malet* (1984) 156 CLR 605; *Figgins v Figgins* [2002] FamCA 688; *Global v Asset by Asset* approach; *In the Marriage of Norbis* (1986) 161 CLR 513; *Cahil v Cahil* [2003] FamCA 172; *In the Marriage of Lenehan* (1987) 11 Fam LR 615; *M v M* [2006] FamCA 913; *In the Marriage of Zyk* (1995) 19 Fam LR 797; *Pittman v Pittman* [2010] FamCAFC 30.
- Court's approach Section 79(4)(a)-(c): *In the Marriage of Zyk* (1995) 19 Fam LR 797; *In the Marriage of Waters and Jurek* (1995) Fam LR 190; *In the Matter of McLay* (1996) 20 Fam LR 239; *Malet* (1984); *Steinbrenner v Steinbrenner* [2008] FamCAFC 193; *Brodie v Brodie* [2009] FamCAFC 6 FamCAFC 6:
 - direct financial contributions
 - indirect financial contributions: *Palkovich & Palkovich* (2016) Fam CAFC 134
 - financial contributions by or on behalf of a child of the marriage
 - non-financial contributions
 - contributions to the welfare of the family.
- Special contributions or skills: *Smith & Fields* (2015) FamCAFC 57; *JEL v DDF* [2000] FamCA 1353; *Kane v Kane* [2013]
- FamCAFC 205; *Hoffman v Hoffman* [2014] FamCAFC 92.

- Financial contributions in short marriages: *In the Marriage of McMahon* (1995) 19 Fam LR 99; *In the Marriage of Goodwin* (1990) 14 Fam LR 801; post-separation contributions: *In the Marriage of Jacobson* (1988) 12 Fam LR 828; (2005); *Ilett v Ilett* [2005] FamCA 432.
- Third party contributions (gifts, loans etc): *In the Marriage of Gosper* (1987) 11 Fam LR 601; *In the Marriage of Kessey* (1994) 18 Fam LR 149; *AB v ZB* [2002] FamCA 1178; *In the Marriage of Pellegrino* (1997) 22 Fam LR 474.
- Gifts and inheritances: *In the Marriage of Bonnici* (1991) 15 Fam LR 138; *White and Tulloch v White* (1995) Fam LR 696; *In the Marriage of De Angelis* [1999] FamCA 1609.
- Redundancy packages: *In the Marriage of Burke* (1992) 16 Fam LR 324; *Tomasetti v Tomasetti* [2000] FamCA 314.
- Windfalls: *In the Marriage of Zyk* (1995) 19 Fam LR 797; *Farmer v Bramley* [2000] FamCA 1615.
- Expectation of an inheritance: *White and Tulloch v White* (1995) Fam LR 696; *G v G* [2000] FamCA 1075.
- Interest in a partnership: *In the Marriage of Best* (1993) 16 Fam LR 937.
- Waste: *In the Marriage of Kowaliw* (1981) FLC 91-092; *In the Marriage of Townsend* (1994) 18 Fam LR 505; *Browne v Green* [1999] FamCA 1483; *Gao & Wang* (2016) FamCAFC 183.
- Vicissitudes of life: *In the Marriage of Vautin* (1998) 23 Fam LR 627.
- Accident verdicts: *In the Marriage of Holmes* (1990) FLC 92-181; *In the Marriage of Zubcic* (1995) FLC 92-609; *Aleksovski v Aleksovski* (1996) 20 Fam LR 894.
- Relevance of domestic violence: *Kennon v Kennon* (1997) 22 Fam LR 1; *Rosati v Rosati* [1998] FamCA 38.
- Pre-marriage property and contributions: *In the Marriage of Bremner* (1994) 18 Fam LR 407.
- Big money cases: *Figgins v Figgins* [2002] FamCA 688; *JEL v DDF* [2000] FamCA 1353.
- Contribution to the welfare of children of the other party from a previous relationship: *In the Marriage of Robb* (1994) 18 Fam LR 489.
- *Pierce v Pierce* [1999] FLC 92-844

Step 3: Identify and assess the various relevant matters set out in section 79(4) (d) to (g), which includes section 75 (2), and section 90SM(4)(d) to (g), which includes section 90SF (3) factors.

- Approach recommended by the High Court: *In the Marriage of Mallet* (1984) 156 CLR 605.
- The various factors set out in the sub paragraphs of subsections 75(2) and 90SF(3) are to be applied to the extent that they are relevant: *In the Marriage of Colins* (1990) 14 Fam LR 162.
- It is not appropriate to consider and quantify each of the factors separately but to arrive at a decision of overall adjustment: *In the Marriage of Clauson* (1995) 18 Fam LR 693.

- The weight given to each factor is a matter for judicial discretion: *In the Marriage of Malet* (1984) 156 CLR 605.
- The factors are prospective but are based on the roles the parties adopted during their relationship: *In the Marriage of Waters and Jurek* (1995) Fam LR 190.
- It may be appropriate to make no adjustment: *In the Marriage of Zubcic* (1995) FLC 92-609.
- 75(2) factors considered.
- Age and state of health of the parties: *W v W* (1997) 21 Fam LR 343; *In the Marriage of Lawrie* (1981) FLC 91-102; *Fontana & Fontana* (2016) FamCAFC 11; health of one party – short life expectancy.
- Income, property and financial resources of each party and capacity for gainful employment: *DJM v JLM* [1998] FamCA 97; *Gould v Gould* [2007] FamCA 609; *Sindel v Milton* [2010] FamCAFC 232; *In the Marriage of Best* (1993) 16 Fam LR 937.
- Whether either party has the care of a child under 18: *In the Marriage of Abdo* (1989) 12 Fam LR 861; large number of children in the care of one party: *Wayne v Wayne* [2010] FamCAFC 33; *Davida & Davida* [2011] FamCAFC 38: shared care.
- Any fact or circumstance which the justice of the case requires to be taken into account: *In the Marriage of Black and Kelner* (1992) 15 Fam LR 343; *Gould and Gould* (2007); *Sebastian & Sebastian* (2013) FamCA 191; *Kane & Kane* – non disclosure of assets.
- Contribution to post separation redundancy package: *Bassi v Maas* [1999] FamCA 1352.
- Inheritances: *White and Tulloch v White* (1995) Fam LR 696; *In the Marriage of Dickson* [1999] FamCA 278.
- Allowance for CGT, health problems with children: *Rosati v Rosati* [1998] FamCA 38.
- Effect of orders on earning capacity: *Elsey v Elsey* (1996) 21 Fam LR 249.
- Lack of realisability of assets: *In the Marriage of Ramsay* (1997) FLC 92-742.
- Violence, short marriage, impact of relationship on earning capacity: *Kennon v Kennon* (1997) 22 Fam LR 1.
- Proposed orders to be made with one party assuming significant liabilities: *In the Marriage of Way* (1996) FLC 92-702.
- Adjustment in favour of one party where estate is modest and one has much higher income earning capacity: *In the Marriage of Waters and Jurek* (1995) Fam LR 190.
- Modest size of estate compared with disparity in income earning capacities – 100 per cent adjustment to one party: *In the Marriage of Mitchel* (1995) 19 Fam LR 44.
- Discussion of section 75(2) where one party killed the other: *Homsy v Yassa; Public Trustee* (1993) 17 Fam LR 299.

- Treatment of one party's interest in a trust – asset v resource: *In the Marriage of Goodwin* (1990) 14 Fam LR 801.
- *Grier v Malphas* [2016] FamCAFC 84.

4: Consider matters of justice and equity.

- *Redman v Redman* [2013] FamCAFC 183; *In the Marriage of Mallet* (1984) 156 CLR 605; *Russel v Russel* [1999] FamCA 1875; *JEL v DDF* [2000] FamCA 1353.
- *Stanford v Stanford* (2012) 247 CLR 108.
- *Watson v Ling* [2013] FamCA 57: equally applicable to sections 90SM(3) and 90SM(8) in particular.
- *Bevan v Bevan* [2014] FamCAFC 19.
- *Rodgers v Rodgers* (No 2) [2016] FamCAFC 104.
- *Chancellor & McCoy* (2016) FCCA 53.

7.2 Adjournment of Proceedings – section 79(5)

- *In the Marriage of Grace* (1997) 22 Fam LR 442.

7.3 Section 106B – Transactions to defeat claims

- *In the Marriage of Gould*.
- *Swire Investments Ltd* (1993) 17 Fam LR 156.

7.4 Consideration of Third Party Interests

- *Ascot Investments Pty Ltd v Harper and Harper* (1981) FLC 91-000.
- *Halabi v Artillaga and Ors* (1994) FLC 92-470.
- *Kennon v Spry* (2008) 238 CLR 366:
- High Court citation: [2008] HCA 56.

7.5 Effect of Death on Property Proceedings

7.6 Execution of Instruments by Order of Court – section 106A

- *In the Marriage of Corry* (1983) 9 Fam LR 201.

7.7 Effect of Bankruptcy

- *Bankruptcy Act 1966* – sections 35 and 35A; *Guirguis v Guirguis* (1997) 21 Fam LR 356; *O'Neil v O'Neil* [1998] FamCA 67; *Cummings v Claremont Petroleum N.L.* (1996) 185 CLR 124.
- Rights of creditors: *Lemnos v Lemnos* [2007] FamCA 1058; *In the Marriage of Biltoft* (1995) 19 Fam LR 82; *Re Chemaisse*; *Commissioner of Taxation (Cth) (Intervener)* (1990) 13 Fam LR 724; *Warby v Warby* [2001] FamCA 1469.

7.8 Equitable Estoppel

- *Sidhu v Van Dyke* (2014) 251 CLR 505.

8. Injunctions

- Section 68B and section 114: *Norton v Locke* [2013] FamCAFC 202.
- Relevant principles (re: power and exercise of discretion):
 - general: *In the Marriage of Waugh* [2000] FamCA 1183; *Mulen v De Bry* [2006] FamCA 1380; *G v T* [2003] FamCA 1076
 - circumstances arising out of marital relationship
 - personal protection/non-molestation (section 68B): *In the Marriage of Kemsley* (1984) 10 Fam LR 125; *Oates v Crest* [2008] FamCAFC 29.
- To restrain dealings in property:
 - personal rights versus legal or equitable interests: *Mullane v Mullane* (1983) 158 CLR 436
 - merits of claim and degree of danger of prejudice: *In the Marriage of Sieling* (1979) 4 Fam LR 713
 - real danger of prejudice: *In the Marriage of Stowe* (1980) 6 Fam LR 757
 - prejudice to third parties: *In the Marriage of Martiniello* (1981) 7 Fam LR 299
 - ordinary business dealings: *In the Marriage of Martiniello* (1981) 7 Fam LR 299
 - minimum restrictions imposed: *Sieling* (1979)
 - undertakings: *Blueseas Investments Pty Ltd v Mitchell* [1999] FamCA 745.
- Injunctions and third parties:
 - Part VIII A FLA
 - injunctions which affect third parties: *Re Dovey; ex parte Ross* (1979) FLC 90-616; *In the marriage of Tiley and Tiley* (1980) 6 Fam LR 528.
 - injunctions directly against third parties
 - sham/puppet/alter ego: *Ascot Investments Pty Ltd v Harper and Harper* (1981) FLC 91-000
 - power no wider for interlocutory injunctions than for permanent injunctions: *Re Ross-Jones, Marinovich and Marinovich* (1984) FLC 91-555
 - injunctions against third parties in section 106B proceedings: *In the marriage of Collins and Collins* (1987) 11 Fam LR 382
 - jurisdictional questions: *Yunghanns v Yunghanns* [1999] FamCA 64
 - circumstances in which the court may make final orders in property proceedings against a third party, and what must be satisfied for the court to exercise this power under the *Family Law Act*.
- Exclusive Use and Occupation:
 - relevant matters to consider: *In the Marriage of Davis* (1982) 8 Fam LR 975; *In the Marriage of O'Dea* (1980) 6 Fam LR 675; *In the Marriage of Borzak* (1979) 5 Fam LR 571; *In the Marriage of Fedele* (1986) 10 Fam LR 1069.
- Ex Parte Applications:
 - *Family Law Rules 2004* (Cth) Part 5.3: applications without notice

- real and urgent need to protect: *In the Marriage of Sieling* (1979) 4 Fam LR 713
- duty of full disclosure: *In the Marriage of Dean* (1977) 2 Fam LR 11; *In the Marriage of Stowe* (1980) 6 Fam LR 757
- preservation of evidence: Anton Pillar Orders - preservation of property: Mareva Orders.

9. Evidence

- Relevant Legislation
 - *Family Law Act 1975* (Cth)
 - *Evidence Act 1995* (Cth)
 - *Federal Circuit Court of Australia Act 1999* (Cth)
 - expert evidence single expert witnesses: Chapter 15 *Family Law Rules 2004*; *Bass v Bass* [2008] FamCAFC 67
 - other experts.
- Admissibility of report/valuation evidence: *Paino v Paino* [2008] NSWCA 276 *NSW Supreme Court – Court of Appeal* (2009) 40 FamLR 96.
- Fresh evidence on Appeal: *CDJ v VAJ (No 1)* (1998) 197 CLR 172; statements by children.
- Evidence in state court proceedings.

10. Enforcement

- Part VII FLA, Division 13 A – children.
- Review of “reasonable excuse” for contravention of parenting order – *Saldo v Tindal* [2012] FamCA194.
- *Family Law Rules 2004* (Cth): Chapter 20 – Financial Orders.

11. Costs

- Lawyer-client costs governed by state or territory in which lawyer practises (eg Legal Profession Act 2004 of relevant state for cases commenced after 1 July 2008 and in other limited circumstances).
- *Federal Circuit Court Rules 2001* (Cth), rule 21.09.
- *Family Law Rules 2004* (Cth), chapter 19.
- Section 117: *Penfold v Penfold* (1980) 144 CLR 311; *Parker v Jacks (No 3)* [2009] FMCAfam 993.
- Reasons for the making of Costs Orders.
- Contracting out with client: *Schilliro v Gadens Ridgeway* (1995) 19 Fam LR 196; *Twigg v Rutherford* (1996) 20 Fam LR 862.
- Party-party costs are ordered by the court where appropriate:
 - section 117: *Penfold* (1980)

- *Federal Circuit Court Rules 2001 (Cth)*, rule 21.09
- *Family Law Rules 2004 (Cth)*, chapter 19.
- Interim costs: *In the Marriage of Barro* (1982) 8 Fam LR 85500; *Strahan v Strahan* [2009] FamCAFC 166; *Bronson v Bronson* [2013] FamCA 11.
- Section 117C offers: *In the Marriage of Harris* (1987) 11 Fam LR 629; *In the Marriage of Kowalski* (1994) 18 Fam LR 193; *Re Marriage of Camilleri* [2002] FamCA 1157.
- Written offers of settlement.
- Costs ordered due to pre-action offer to settle – *Firmer v Britton* [2012] FamCA 576.
- Costs orders against legal representatives: *Anstis v Anstis* [1999] FamCA 842; *Yunghanns v Yunghanns* [2000] FamCA 681; *Parker & Jacks (No.3)* [2009] FM CA fam 993.

12. Reviews/Appeals/Transfers

- Appeals from Court of Summary Jurisdiction:
 - Nature of Hearing de novo: *Harris v Caladine* (1991) 172 CLR 84.
- FMS appeals: section 94AAA and section 94AA *Family Law Act*.
 - *Re Marriage of Grayden* [2003] FamCA 359
 - *Lawson and Lawson* [2007] FamCA 1472.
- Section 104(2) of *the Federal Circuit Court of Australia Act 1999 (Cth)*.
- Appeals from Interlocutory Decree:
 - *In the Marriage of Tudor* (1991) 15 Fam LR 16592-273.
- Leave to appeal.
- Appeals to the Full Court: Chapter 22, *Family Law Rules*.
- Fresh evidence:
 - *Collu and Rinaldo* [2010] FamCAFC 53
 - *CDJ v VAJ (No 1)* (1998) 197 CLR 172; *Allesch v Maunz* (2000) 203 CLR 172; *In the Marriage of Wall* [2002] FamCA 257; *Van Ballekom v Kelly* [2005] FamCA 853.
- Stays:
 - pending appeal: *Family Law Rules* 22.11
 - pending a review: *Family Law Rules* 18.09
- Summary dismissal:

- *Linden v The Commonwealth (No 2)* (1996) 136 ALR 251
 - *Hunter v Morrison (Contravention)* [2014] FamCA 198
 - *Barden v Barden* [2014] FamCA 745.
- *Derek v Derek* [2006] FamCA 339; *Simpson v Brockmann* [2010] FamCAFC 37 – relevant to the issue of:
 - fresh evidence
 - nature of appeals generally
 - deals with *Allesch v Maunz* (2000) 203 CLR 172; *CDJ v VAJ* (No 1) (1998) 197 CLR 172.
 - McKenzie Friend.

13. Inherent, Associated and Accrued Jurisdiction

- *Associated jurisdiction.*
- *Section 33 Family Law Act.*
- Limited Statutory Jurisdiction: *Minister for Immigration and Multicultural and Indigenous Affairs v B (No 3)* (2004) 219 CLR 365:
 - High Court's citation: [2004] HCA 20.
- *Corporations Act 2001* (Cth).
- *Inherent: DJL v Central Authority* (2000) 201 CLR 226.
- *Slip Rule – Horleck v Horleck (No 2)* [2008] FamCA 683.
- *Cross-vesting: Re Wakim; Ex parte McNaly* (1999) 198 CLR 511.
- *Accrued: Warby v Warby* [2001] FamCA 1469; *Finlayson v Finlayson* [2001] FamCA 49; *Foley v Farquharson* [2003] QSC 021; *Bishop v Bishop* [2003] FamCA 240; *Noll v Noll* [2013] FamCAFC 24; *Bergman v Bergman* [2009] FamCAFC 27.
- *C v C* [2001] FamCA 459.
- *Selen v Selen* [2013] FamCAFC 39; *Wentworth v Hamilton* [2014] FamCA 533; *Ruane v Bachman-Ruane (Accrued Jurisdiction)* [2012] FamCA 369.

14. Individual State Jurisdictions

- Domestic violence.
- Children.
- Medical procedures.
- Professional responsibilities and obligations.

15. Court Processes

- Steps to include:
 - interim hearings
 - conciliation conferences
 - trials.
- Anticipated length of time.
- Likely costs (financial or otherwise).
- 16. Alternative to Court Processes
- FDR (parenting matters).
- Mediation.
- Arbitration.
- Collaborative practice.
- Agreements:
 - BFA or consent orders (financial matters)
 - orders or parenting plans (parenting).

SCHEDULE 5: RELATED LEGISLATION AND OTHER MATERIALS

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

Commonwealth Legislation

- *Child Support (Assessment) Act 1989* (Cth)
- *Child Support (Registration and Colection) Act 1988* (Cth)
- *Child Support Legislation Amendment (Reform of the Child Support Scheme – Initial Measures) Act 2006* (Cth)
- *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2000* (Cth)
- *Child Support (Assessment) Regulations 1989* (Cth)
- *Child Support (Registration and Colection) Regulations 1988* (Cth)
- *Child Support Reform (New Formula and Other Measures) Regulations 2007* (Cth)
- *Family Law Act 1975* (Cth)
- *Federal Circuit Court of Australia Act 1999* (Cth)
- *Marriage Act 1961* (Cth)
- *Superannuation Industry (Supervision) Regulations 1994* (Cth)

Related Procedures Family Court

- *Family Law Rules 2004* (Cth) (as amended)
- *Family Law Regulations 1984* (Cth)
- Practice Directions including:
 - No.1 of 2017 - Conduct of appeals
 - No.2 of 2017 - Digital Court File
 - Principal Registrar's Notification January 2008 – consent parenting orders and allegations of abuse
 - No. 1 of 2007 – Omnibus Practice Direction
 - No 9 of 2004 Victorian and Queensland Registries: Medical Procedures Applications

- No. 6 of 2003 – Divorce applications to be filed in Federal Magistrates’ Court Federal Circuit Court
- *Federal Court and Federal Circuit Court Regulations 2012 (Cth)*
- *Federal Circuit Court Rules 2001 (Cth)*
- *Family Law (fees) Regulation 2012 (Cth)*
- Federal Circuit Court Practice Direction No 2 of 2008 Family Dispute Resolution – Applications for orders under Part VII of the *Family Law Act 1975*; No 2 of 2017 Interim Family Law Proceedings (1 January 2018)
- Federal Circuit Court Information Notice 2011 – Communicating with Judges’ Chambers
- Federal Circuit Court e-filing: filing by electronic communication pursuant to rules 2.07A and 2.07B of the Federal Circuit Court Rules 2001: Divorce Application, Initiating Application (Family Law), Response to Initiating
- Application (Family Law) and Supplementary documents

New South Wales Legislation

- *Crimes (Domestic and Personal Violence) Act 2007 (N SW)*
- *Children and Young persons (Care and Protection) Act 1998 (NSW)*
- *Duties Act 1997 (NSW)*
- *Legal Profession Uniform Law and Legal Profession Uniform Law Application Act 2014 (NSW)*
- *Property (Relationships) Act 1984 (NSW)*
- *Suitors Fund Act 1951 (NSW)*
- *Status of Children’s Act 1996 (NSW)*
- *Surrogacy Act 2010 (NSW)*
- *Victims Rights and Support Act 2013 (NSW)*

Queensland Legislation

- *Child Protection Act 1999 (QLD)*
- *Domestic and Family Violence Protection Act 2012 (QLD)*
- *Legal Profession Act 2007 (QLD)*
- *Property Law Act 1974 (QLD)*

- *Status of Children Act 1978 (QLD)*
- *Surrogacy Act 2010 (QLD)*
- *South Australian Legislation*
- *Family Relationships Act 1975 (SA)*
- *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*
- *Legal Practitioners Act 1981 (SA)*
- *Stamp Duties Act 1923 (SA)*

Victorian Legislation

- *Assisted Reproductive Treatment Act 2008 (Vic)*
- *Births Deaths and Marriages Registration Act 1996 (Vic)*
- *Children Youth and Families Act 2005 (Vic)*
- *Duties Act 2000 (Vic)*
- *Family Violence Protection Act 2008 (Vic)*
- *Legal Profession Uniform Law Application Act 2014 (Vic)*
- *Personal Safety Intervention Orders Act 2010 (Vic)*
- *Property Law Act 1958 (Vic)*
- *Relationships Act 2008 (Vic)*
- *Status of Children Act 1974 (Vic)*

Related Guidelines

- Australian Solicitors Conduct Rules and relevant legislation in states and territories
- Ethical Guidelines
- Family Law Council and Family Law Section of the Law Council of Australia, *Best Practice Guidelines for lawyers doing Family Law Work* (2nd edn) (Note: These are currently under review)
- LIV Capacity Guidelines and Toolkit (September 2015)