



family flyer



Introduction

The Family Flyer is a free community service by Michael Lynch Family Lawyers. The publication is designed to be informative and topical and to assist you in understanding the ever-changing field of Family Law.

This edition includes:

- When does Separation occur?
- Indefinite imprisonment for Contempt
- Foreign Child Adoptions
- Pensions and Property Settlements
- What is a Marriage?
- New Divorce Kit
- Defacto Financial Matters - Changes Coming

WHEN DOES SEPARATION OCCUR?

The Court has recently had to decide the date of separation for the purposes of a Divorce Application where there had been sexual relations between the parties after the nominated date.

The facts were:

- The Wife's Application for Divorce was filed in October 2004. The Wife alleged that separation occurred in September 2003 when she left the matrimonial home.
- The Husband opposed the Application stating that 12 months separation had not occurred due to the parties having had sexual relations after the date of separation as claimed by the Wife.

The Court stated that:

- For a Divorce Application there must be 12 months separation immediately prior to the Application being filed.
- Separation means more than a physical separation, it involves the breakdown of the marital relationship and what comprises the marital relationship for each couple will vary.
- Sexual relations is but one aspect of the marital relationship.
- For the breakdown of the relationship it is not necessary to establish that all aspects of the "marital relationship" have ceased.
- Once the marital relationship has ended it will not be restored except by a clearly communicated intention by both parties to resume the marriage, i.e with some overt act, such as the resumption of cohabitation.

The Court held that separation had occurred on the date nominated by the Wife and the Divorce

INDEFINITE IMPRISONMENT FOR CONTEMPT

A Husband has been imprisoned indefinitely for contempt of Court for breaching a Property Order.

The facts were:

- After a Court Order for property settlement was made the Husband reduced the asset pool by more than \$500,000 to ensure that the Wife could not receive her entitlement.
- In addition, the Husband purchased a yacht to try and escape from Australia after a passport alert had been made preventing him leaving by plane.
- The Husband pleaded guilty to contempt.
- The Court sentenced the Husband to an indefinite term of imprisonment, not to be released without Court Order.

The Full Court concluded that the penalty imposed was within the range of a reasonable exercise of discretion. The Court was also mindful that the Husband could return the matter to Court on the basis that he could not comply with the Order and that he had complied as far as he could or that the coercive purpose of the Order had been exhausted because he could not comply with the Order in any event.

FOREIGN CHILD ADOPTIONS

The Federal Government has said that it will soon introduce amendments to the Family Law Act that will prevent legal recognition of the adoption of foreign children by same sex couples.

PENSIONS AND PROPERTY SETTLEMENTS

The Family Court has included a Husband's pension entitlement in the calculation of the parties property settlement pool.





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The facts were:

- The Husband received a pension entitlement.
- The Wife was continuing to earn income and had her own Superannuation entitlement.
- The Court considered the Husband's pension entitlement as part of his property entitlement in making a property settlement Order in favour of the Wife.
- The Husband argued that his pension entitlement should be equated to the Wife's income stream.

- The Wife changed her name on her passport but the Husband alleged this was out of convenience rather than as a result of a formal marriage.
- There was no credible evidence of an official Ghanaian wedding certificate.

The Court held that:

- It was unable to reach a positive conclusion as to whether the parties were formally married in a marriage ceremony in Ghana.
- The Wife was entitled to rely upon the legal presumption of marriage arising out of cohabitation and repute to prove the existence of a marital relationship.

The Court held that the parties were married but did not specify the date and place of marriage.

The Court held that the two incomes were different, that the Wife's income was as a result of her own efforts without contribution by the Husband while the Wife had made an indirect contribution to the Husband's pension.

WHAT IS A MARRIAGE?

The Family Court has recently found that a couple were married even though there was no credible evidence of a marriage.

The facts were:

- The Wife applied to obtain a property settlement.
- The Husband argued that the Application could not proceed as the parties were never actually married.
- The relationship began in the early 1990's. The Wife alleged there was a marriage ceremony in a Registry office in Ghana in 1997.
- During the period of cohabitation the parties referred to each other as Husband and Wife and were recognised socially as a married couple.

NEW DIVORCE KIT

The Federal Magistrates Court introduced a new Divorce form and a new Divorce Kit on the 5 February 2007.

The filing fee for a Divorce Application is \$405.

DEFACTO FINANCIAL MATTERS - CHANGES COMING

The Federal Government will soon introduce a Bill into Parliament to allow property settlement determinations for de facto relationships under the Family Law Act. This legislation will only relate to those States that have referred their powers (regarding Defacto Relationship Property Settlements) to the Commonwealth.

If passed, the changes will be dramatic. We will keep you up-to-date.

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