



# family flyer

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Family Lawyers

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## 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:

- Public Seminar – Update
- Easter – Avoid a Travel Ban!
- Is SMS Communication Sufficient?
- Separating Siblings
- Wasting Property

## PUBLIC SEMINAR – UPDATE

Welcome to those who attended our recent public seminar on “The New World of Child Support” and are now receiving the Family Flyer for the first time. It’s great to have you on board.

A lot of good questions came up at the seminar, only going to show that the lead up to the changes commencing on 1 July 2008, will be interesting times to say the least.

If you have any queries or require any assistance with your child support circumstances please contact us for a fixed-rate initial consultation on (07) 3221 4300 or visit us at [www.mlfl.com.au](http://www.mlfl.com.au)

## EASTER – AVOID A TRAVEL BAN!

Parents paying child support with Easter travel plans outside the country should ensure their holiday list has a tick next to “paid child support”.

If parents have significant child support arrears they may be prevented from leaving Australia and travelling to their desired destination.

This can occur by the Child Support Agency (CSA) issuing a Departure Prohibition Order resulting from data technology matching with non-paying parents.

During the last financial year more than 474 separated parents were prevented from leaving on their overseas travel.

## IS SMS COMMUNICATION SUFFICIENT?

The Court recently determined that a parent sending an SMS message advising of a delay in contact, does not amount to a “reasonable excuse” for failure to comply with the Court Order.

In this case the father filed a Contravention Application against the mother for numerous breaches of the Court Order relating to the arrangements regarding their daughter.

Several of these allegations included the failure of the mother to deliver the child to the father according to the Order. The first allegation was the failure to deliver the child to a police station at 3.30pm; the child was not delivered until 4pm.

The mother sent an SMS message to the father before the delivery questioning whether the father wanted to pick up their daughter from a different location.

The court was faced with the unusual question – does the forwarding of an SMS message in these circumstances provide a reasonable excuse?

The Court ordered that the communication by SMS message of such information cannot without agreement provide a reasonable excuse.

Although SMS messaging is one of the most instantaneous and easiest forms of communication, as this case indicates, it is not always the best form of communication.

## SEPARATING SIBLINGS

Where separated parents have shared parental responsibility, the court must consider whether the children should spend “equal time” or “substantial time” with each parent. This is determined by what is in the “best interests” of the children and whether it is “reasonably practicable”.

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**Court Order:**

- It was in the best interests of the 2 children that they spend equal time with their parents. The father's proposal was accepted as it involved the children not being split and there were fewer changeovers.

**WASTING PROPERTY**

In a property settlement case last month, the court decided that where one spouse during a marriage had wasted an unknown amount of funds through gambling, it would not add the money back into the "asset pool".

The wife, a 42 year old disability pensioner and the husband, a 44 year old electrician, separated after 20 years of marriage.

In addition to the agreed assets, the husband raised a wastage argument. He contended that the \$20,346 the wife withdrew from their joint account during the marriage and spent on gambling should be added back into the "asset pool".

The Court decided against this on the general principle that financial losses incurred by the parties during the marriage should be shared between the parties, except in certain circumstances

These circumstances included, if one of the parties had acted to intentionally reduce the value of matrimonial assets or acted recklessly or negligently with matrimonial assets resulting in a reduction in the value.

In noting that the total property pool was valued at \$647,494, the court also noted that the amount gambled was hardly likely to constitute a course of conduct designed to reduce matrimonial assets.

The Family Court recently determined that it was not in the best interests of 2 children to be separated for different amounts of time with each parent.

**Facts:**

- 2 children, aged 7 and 3.
- The mother proposed that the 7 year old spend more time with her than with her father as the child had expressed the wish for more time with her mother.
- The father proposed an equal share arrangement with 3 days to be the maximum either child spend apart from a parent.

**Court Findings:**

- Reasonably practicable – there was nothing preventing the children spending equal time with each parent.
- Primary consideration – it was beneficial for the children to have a meaningful relationship with both parents. In this case there was no physical or psychological harm to the children under the proposed arrangements.
- Additional consideration – The mother said that the 7 year old wished to spend more time with her. The court found that the children were too young to reliably communicate their views.