

FAMILY Flyer



THIS ISSUE -

No. 275

- Date claimer!
- Boarding school not the answer
- Potential polygamous marriage
- Application for property settlement 18 years out of time?

DATE CLAIMER!

The second half of the year is fast approaching and so is our LAST public seminar series for the year.

For this final series, we will be running our most popular seminar.

Note the upcoming dates:

- Tuesday, 6 September – Brisbane City
- Wednesday, 7 September – Upper Mount Gravatt

More information coming soon!

BOARDING SCHOOL, NOT THE ANSWER

In a recent interim hearing regarding parenting arrangements, the father took the unusual approach of seeking an order that his 12 year old daughter attend a boarding school.

The existing arrangement had been that the child 'spend time' with her father 2 evenings a week, one day each weekend and during the school holiday periods. Difficulty had arisen however with the child refusing to spend time with him.

The father claimed that the child's rejection of him was entirely a reflection of the mother's attitude towards him and therefore he sought an order that the child be removed from the mother's influence and placed in boarding school.

The mother rejected the suggestion that she had influenced the child and was opposed to the boarding school saying it was not in the child's 'best interest' and the child was not mature enough.

The Court dismissed the father's application saying that overall the evidence before the Court did not support the making of the orders he sought. The issue of which school the child should attend was one in a bundle of parenting issues that should be determined at a final hearing. The Court was of the view that

there were risks to the child no matter what school she attended and that the relationship between the father and child was problematic and may not necessarily be resolved by the child attending a boarding school.

The parties consented to interim orders for the child to resume counselling and to receive assistance with problem solving skills to cope with relationships and relationship communication skills.

POTENTIAL POLYGAMOUS MARRIAGE

In Australia a marriage must be between a man and a woman 'to the exclusion of all others'. So what happens when cultural immigrants have multiple wives? The court recently considered just a case.

The Facts

The parties married in Iran in 1981. The law in Iran permitted the husband, subject to certain conditions the ability to take 3 additional wives.

The parties moved to England later that year and married in an English registry office. The certificate did not reflect the earlier marriage in Iran. The parties did however eventually register their Iranian marriage through the Iranian Embassy in the United Kingdom. The parties immigrated to Australia in the 2000's, but ultimately separated. In 2008 they filed a joint application for divorce, referring to the marriage in England only. The divorce was granted.

In 2011 the husband remarried another woman in Iran.

Proceedings were commenced by the wife in Iran to determine how the husband was able to marry in Iran without the wife's consent. The Iran Court determined that the Iran marriage was still in existence as there was no valid divorce. The husband therefore had entered into a second marriage.



The wife filed proceedings in the Family Court in Australia seeking that the first marriage in Iran be declared valid under the Marriage Act. The husband opposed the Application.

The Judge found that under the Marriage Act, for a foreign marriage to be recognised, it must be monogamous by being to the 'exclusion of all others', the Iran marriage could potentially be polygamous. The Judge found that the Iranian marriage therefore could not be valid in Australia. The wife's application was dismissed.

The Wife appealed.

The Appeal Court Found

The Appeal Court found that a marriage which is potentially polygamous at the outset, is still a marriage "to the exclusion of all others" until it becomes polygamous.

A potential polygamous marriage therefore is a marriage that could be recognised in Australia, on the basis that no other exceptions under the Marriage Act would apply (for example the marriage was not between a man and a woman).

The Court Ordered

The Iranian marriage from 1981 was declared valid.

APPLICATION FOR PROPERTY SETTLEMENT 18 YEAR OUT OF TIME?

For a married couple time runs out for bringing an application for property settlement to the court 12 months after a divorce order has been made. (For de facto couples it is 2 years after the date of separation). If you miss this deadline you are in trouble as you can only then proceed with the Application if the court specifically allows it.

So how long is too long? The court recently considered an Application that was 18 years late!!

The Facts

The couple separated in 1994 and shortly after separation, the wife's solicitors wrote to the husband and proposed that the wife retain a motor vehicle and some items of furniture. In exchange

the wife would transfer her interest in the jointly owned property to the husband, which at that time had equity of approximately \$15,000.

The parties were divorced the following year. No property division agreement was reached, nor were any Orders made by the court. The house remained in joint names and the wife remained jointly liable under the mortgage.

The wife consulted a solicitor in 2013. She argued that this was the first time she became aware of the limitation date, after her solicitors in 1994 failed to advise her of the limitation date. As she acted for herself in the divorce, she also argued that she failed to see the notation on the divorce certificate referring to the limitation date.

The husband had the benefit of living in the jointly owned property. The equity in the house had increased to approximately \$300,000. The wife filed a court application to commence property proceedings 'out of time'.

Whilst The Judge found that 'hardship' to the wife existed, as she would need to peruse remedies in the State Court as the property remained jointly owned, the court was not satisfied that she had provided an adequate explanation for the delay when there was a notation on the divorce order that there was a limitation date and she had previously consulted solicitors. The Judge also held it was prejudicial to the husband for property proceedings to be commenced so far out of time.

The Judge dismissed the wife's application. The wife appealed.

The Appeal

The Appeal Court found that there was some explanation for the delay on the part of the wife but it also noted that the husband had been equally inactive in formalising matters. Whilst either of the parties could make an application to the State Courts, this option did not reduce the hardship to the wife, as the State Courts could not take into consideration the wife's contributions to the children and other relevant matters.

The Court Ordered

The appeal was granted and the wife was allowed to proceed with her application for property proceedings 'out of time'.

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