

FOR RICHER AND POORER: NAVIGATING DIFFICULT PROPERTY SETTLEMENTS MATTERS IN FAMILY LAW

1. From Erosion to Springboards:
The Assessment of Initial Contributions Over Time
2. Adjusting for Family Violence in Property Settlements
3. Trusts in Family Law Property Settlements – A Trustee’s Perspective
4. Going for Broke: What Family Lawyers Need to Know about Insolvency
5. Defences to Equitable Claims in Family Property Disputes:
Time for the Strategy

A SERIES OF 5 ON DEMAND WEBINARS



Leaders in online professional development for lawyers

ABOUT THIS SERIES

What's covered

Dealing with property settlement matters can be one of the most challenging aspects of practicing family law. Property settlements often involve complex legal, financial, and emotional issues that require careful consideration and negotiation. Difficulties can arise when parties have different interpretations of the value of assets, contributions made to the relationship, or are reluctant to come to an agreement.

In this five part webinar series, gain a deeper understanding of the property settlement process, learn practical tips for navigating complex cases, and develop the skills you need to achieve successful outcomes for your clients. Led by experienced family law experts, each webinar will delve into a specific aspect of property settlement matters, including the assessment of initial contributions, adjusting for family violence, as well as acting for the trustee in family law property settlements. It also includes dedicated sessions on insolvency, as well as defences to equitable claims in property disputes.

Training for as many staff as you want - no additional cost!

A single purchase entitles your company to access the on demand webinars online as you require them for as many training sessions and for as many staff as you want.

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THE PROGRAMS

Program 1: From Erosion to Springboards: The Assessment of Initial Contributions Over Time

The approach of the Court to the assessment of initial contributions and the weight that ought to be properly placed on initial contributions at trial has changed over time. From early arguments of erosion to later discussion of springboards – the language employed when discussing how the Court should assess initial contributions is vital, as use of an incorrect term could arguably lead the court into error. To assist practitioners, this session will explore:

- The arguments surrounding the appropriate assessment of initial contributions in property settlement matters
- The current views within the profession as to the ‘erosion’ and ‘springboard’ arguments and the preferred approach to assessing the relevance of the impact of time to initial contributions
- The scenarios in which a just and equitable outcome may arguably call for an assessment of initial contributions that merits ‘special’ recognition

Program 2: Adjusting for Family Violence in Property Settlements

The impact of family violence has been increasingly recognised by the courts in property settlement matters. However, one of the greatest challenges in cases involving family violence is satisfying the evidentiary burden. This session examines the financial consequences of family violence and how the goal posts are changing when it comes to the court’s consideration of evidence. Key issues covered include:

- What circumstances are necessary to raise the Kennon argument?
- Can the Kennon argument apply to post-separation violence and conduct?
- What evidence is required to rely on the argument? How has this evolved over time?
- The rise and recognition of emotional abuse and coercive control
- How the assessment on contributions is calculated: *Jabour & Jabour* [2019] FamCAFC 78; *Benson & Drury* [2020] FamCAFC 21; *Koch & Kest* [2021] FamCA 408; *Ferman & Lapham* [2022] FedCFamC2F 415
- Future reforms, including ALRC recommendations

THE PROGRAMS

Program 3: Trusts in Family Law Property Settlements – A Trustee’s Perspective

Trusts are relatively common in property settlement proceedings. But should you approach the matter differently when you are acting for the Trustee? This session focuses on the strategic and practical implications of running a property settlement case involving a third-party trust from the perspective of acting for the trustee and will explore the following:

- When - and when not to - intervene if you are acting for a trustee and when (and how) a third party may be joined
- Obligations of the trustee - in equity, corporations law and in family law proceedings
- Common scenarios where trustee’s obligations conflict with family law
- Responding to requests for information, documents and subpoenas on behalf of trustee
- Role of the trustee in disclosure, valuation of a trust and its underlying assets

Program 4: Going for Broke: What Family Lawyers Need to Know about Insolvency

Many family law property settlement proceedings now involve third parties and corporate entities. It is increasingly common for one or both spouse parties in property settlement proceedings to be directors of a corporate entity – whether it be a ‘mum and dad’ family business or a multi-million dollar empire. A breakdown in the relationship of the spouse parties can have a significant impact on the financial viability of the business (whether intentional or inadvertent), yet the law of insolvency remains a mystery for many family law practitioners. This session aims to demystify insolvency law for family lawyers and will explore the following:

- The law of insolvent trading - the duty of directors, position of ASIC, potential defences and consequences of insolvent trading
- The impact of insolvency on the asset pool:
 - balancing the interests of the non-bankrupt spouse and creditors
 - what orders can be made in respect of property?
 - treatment of loan accounts
- Practical steps family lawyers can take if acting for a spouse party director where the other spouse party director is the ‘driving force’ of the entity
- When specialist advice or assistance is required - when urgent action is required and when an entity may require separate representation and/or advice
- Case studies and worked examples

THE PROGRAMS

Program 5: Defences to Equitable Claims in Family Property Disputes: Time for the Strategy

In a post *Thorne v Kennedy* landscape, equity can often be seen by an aggrieved party as a way in which to ensure ‘fairness’ prevails in property settlement matters. The equitable doctrine has underpinned property settlement matters and can be pivotal to the alteration of property interests in family law. This session focuses on what happens when the other side is seeking an equitable claim in a family law property settlement. What defences are available and how are these best run? This session explores:

- Arguing fault and misconduct by the claiming party:
 - laches and acquiescence - how they have been dealt with by the courts in recent years and how to articulate this defence in family law litigation
 - lack of clean hands
 - damages being an adequate remedy
- The presumption of advancement post the High Court’s decision in *Bosanac*:
 - the guidance provided by the High Court as to when a voluntary transfer of property may lead to the imposition of a resulting trust
 - how a resulting trust may impact family law property settlement proceedings
- Spotlight on binding financial agreements and claims involving unconscionability, undue influence and duress, including reflections on the impact of *Thorne v Kennedy* six years on
- Case studies

THE FACULTY

Rebecca Dahl, Partner, Nicholes Family Lawyers, Melbourne, Vic

Bec is a seasoned family law expert and Partner at Nicholes Family Lawyers. Bec assists clients to achieve outcomes that work (practically, emotionally, financially) - across the full breadth of family law services. Bec is dedicated to:



- Helping the LGBTQI+ community navigate donor agreements, parenting disputes, property agreements and disputes, donor / surrogacy arrangements
- Helping women before and after separation/divorce so they can live the best life they can – and to move onwards and upwards with confidence!
- Helping grandparents build and maintain valuable and life changing connections with their grandchildren – wherever they are
- Achieving outcomes that contain costs and risk, reduce anxiety and long-term damage
- Representing clients on issues across the lifespan of a relationship: from binding financial agreements (BFAs) (or “pre nups”) to marriage to separation/divorce and spousal maintenance to child support

Bec approaches all her matters with a human, caring approach and with an understanding that reflects the complexity and anxiety that is often associated with family law issues. Clients rely on Bec for her compassionate yet robust approach in looking after their needs.

She is trained as a Collaborative Practitioner and works hard to avoid costly and upsetting litigation unless it is needed.

Adam Cooper, Principal, Cooper Family Law, Brisbane, Qld

Adam has been a family lawyer and advocate for over 20 years. He is the principal of Cooper Family Law, having commenced practice at the private bar in Queensland.



Adam is the author of the domestic violence chapter for Queensland Legal Aid’s Duty Lawyer Handbook, and has authored papers ranging from capacity, to illicit drug use, to the impacts on family violence, and appears regularly in radio family law discussion forums.

Adam also has degrees in psychology and humanities and was a former professional footballer.

THE FACULTY

Monique Robb, Special Counsel, Lander & Rogers, Sydney, NSW

Monique is an accredited specialist in family law. Monique has acted for clients in all areas of family law, including parenting (custody) and property matters, child support, spouse maintenance and financial agreements (including pre-nuptial agreements).

Monique is known for providing clients with pragmatic, commercial advice and robust representation in both negotiating and litigating a resolution to their family and relationship law concerns.

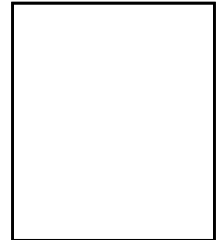
Monique has worked solely in the area of family law since 2007, including as the associate to a judge in the Federal Circuit Court. As a result, she provides clear, strategic advice and representation in matters which require litigation, and, more importantly, to assist clients to avoid litigation wherever possible.

In addition to her work as a solicitor, Monique has taught Family Law at the University of Notre Dame, Australia, since 2014.

Monique's family law experience includes handling disputes where one or both parties live overseas. She also has significant experience in drafting financial agreements, including drafting mirror agreements to foreign pre-nuptial agreements. Monique also acts for third parties, including corporate entities, in family law matters.

Monique became an accredited specialist in family law in 2015, and additionally has completed a Master of Laws at the University of Sydney, with a focus on family law and areas of law affecting children. Her strong academic and practical expertise are applied to ensure her clients receive efficient, effective advice, particularly in areas where novel issues arise.

Monique has been named as a Rising Star in family law in Doyle's Guide. She is also a member of the Family Law Section of the Law Council of Australia.



THE FACULTY

Stephen Mullette, Principal, Matthews Folbigg Lawyers, Parramatta, NSW

Stephen is a specialist insolvency and financial restructuring practitioner.

He has extensive experience in all forms of both corporate and personal insolvency, including bankruptcy, liquidations, voluntary administrations, receiverships, as well as informal and formal financial restructuring. He regularly advises and represents insolvency practitioners and also personal and corporate creditors and debtors in relation to insolvency and restructuring matters.



Stephen regularly appears in Federal, Family and State Supreme Courts on behalf of insolvency practitioners in respect of legal issues involved with insolvency administrations, including trust and property disputes and the recovery of voidable transactions under the Bankruptcy and Corporations Acts.

He also advises on asset protection and acts for individuals and corporations in dealings with insolvency practitioners, negotiating deeds of company arrangement, personal insolvency agreements and compositions, and claims for the recovery and sale of real property as well as disputes over voidable transactions, insolvent trading, and director's duties as well as the interaction of Family Law with insolvency.

Stephen has published numerous articles and contributing author to CCH Australian Master Family Guide on "Bankruptcy and Third Parties" and CCH Family Law and Practice Looseleaf service on "Debt and Bankruptcy". He is on the Editorial Board for the LexisNexisInsolvency Law Bulletin.

Malcolm Gittoes-Caesar, Consultant, Lander & Rogers, Sydney, NSW

Malcolm Gittoes-Caesar is an Accredited Specialist in Family Law with over 20 years experience, and an Accredited Family Law Mediator and Arbitrator. He has been a member of the Law Society of NSW's Specialist Accreditation committee for 4 years and has worked as a Casual Academic at Western Sydney University. He has featured in various publications, and regularly delivers CLE's, both in NSW and nationally.



Malcolm is passionate about mentoring in the legal profession, and speaks regularly in relation to mental health and work/life balance.

Malcolm was awarded the Lawyers Weekly Family Law Partner of the Year in 2019 and 2020, and the Wellness Advocate of the Year in 2020.

He is currently a rated by the Doyle's Guide as a Recommended Family Lawyer in Sydney in 2022, and as a recommended Family Lawyer, Parenting and Children's matters in NSW in 2022."

WHAT YOU GET

This video webinar series includes the following components:

- Online access to the on-demand webinar programs. Programs are expected to be 1 hour each in length.
- The programs are being recorded in early June 2023 and will be available to purchasers online by mid-June.
- Online access to the technical support papers and/or powerpoint presentations accompanying each program.



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