

Family Law Exam Revision 2014

1. Separation and divorce

Threshold provision

- s 4(1)(a) “*matrimonial cause*” means (i) divorce (ii) decree of nullity
- s 8(1)(a) matrimonial causes shall not be instituted other than under the FLA

Nexus provision

- s 39(1) may be instituted under FLA; if
- s 39(3) *either* party to marriage is (a) Aus citizen; (b) domiciled in Aus; or (c) ordinarily Aus resident and has been for 1 year prior to application

Ground for divorce

- s 48(1) sole ground is that marriage has broken down irretrievably
- s 48(2) qualified by providing parties must have been separated for 12 months prior to date of application
 - *In the Marriage of Bozinovoc* day application filed not taken into account for 12 month period
- s 48(3) court must not make order if reasonable prospect of resumption of cohabitation..... (*more in full version*)

2. Parenting orders

Threshold provision

- s 69B Part VII proceedings (children’s matters) must be brought under Part VII of the FLA
- s 60F(1) “child of a marriage” (a) adopted during marriage; (b) born before marriage; or (c) child of husband and wife under s 60H(1) artificially conceived or s 60HB where court has ordered child is a child of one of the parties
- s 69H(1) confers jurisdiction on the FCA on all matters arising under Part VII (children).
- s 69ZJ confers jurisdiction on the court with respect to parental responsibility, child maintenance and child-bearing expenses in proceedings between residents of different States

Nexus provision

- s 39(1) may be instituted under FLA; if
- s 39(3) *either* party to marriage is (a) Aus citizen; (b) domiciled in Aus; or (c) ordinarily Aus resident and has been for 1 year prior to application
- section 69E(1) proceedings may be instituted if... (*more in full version*)

3. Spousal maintenance

Threshold provision

- s 8(1)(a) – proceedings by way of a matrimonial cause MUST be instituted under the FLA.
- s 4(1)(c) of the FLA defines “matrimonial cause” to include proceedings between the parties to a marriage with respect to the maintenance of one the parties
- Section 31(1)(a) FLA confers original jurisdiction on the Family Court with respect to “matrimonial causes”. The court can therefore make orders re spousal maintenance proceedings

Nexus

- s 39(4) further provides that for spousal maintenance proceedings to be instituted:
 - (a) either party to the marriage must be an Australian citizen,
 - (b) either party to the marriage must ordinarily be resident in Australia; or
 - (c) either party to the marriage must be present in Australia

- at the relevant date.

Section 74(1)

- s 74(1) the court may make such order as it considers proper for the provision of maintenance in accordance with this Part... (*more in full version*)

4. Property orders

- **Step 1** – Iden...
- **Step 2** – Assess...
- **Step 3** – Assess...
- **Step 4** – What ...

Threshold provision

- s 8(1)(a) – proceedings by way of a matrimonial cause **MUST** be instituted under the FLA.
- s 4(1)(ca)(i) of the FLA defines “matrimonial cause” to include proceedings between the parties to a marriage with respect to the property of the parties
- s 31(1)(a) FLA confers original jurisdiction on the Family Court with respect to “matrimonial causes”.

Nexus

- s 39(4) further provides that for property proceedings to be instituted:
 - (a) either party to the marriage must be an Australian citizen,
 - (b) either party to the marriage must ordinarily be resident in Australia;
 - or
 - (c) either party to the marriage must be present in Australia
 - at the relevant date... (*more in full version*)