

CHILDREN

NOTE: if the question deals with a DFR, must establish its existence

Even if marriage is invalid, will still fall within Family Court jurisdiction

Parenting Orders

1) In approaching any children's matter, despite not being the only consideration (**Marriage of Kress**) the best interests of the child are the paramount consideration (**s60CA**) and all orders should be consistent with the objects and principles identified in **s 60B**.

1) Jurisdictional issues

(Both parties have applied for Parenting Orders (PO) (s 65D))

a. In order to make an application to court for parenting order A must meet jurisdictional requirements for FLA to apply.

b. To apply A must be

(i) Aus Citizen: s39(4)

(ii) And is someone who can apply for parenting order... either:

- I. Parent: 65C(a)
- II. The child 65C(b)
- III. Grandparent: 65C(ba)
- *Valentine v Lacerra*
- IV. Any other person concerned with care, welfare or development of child. 65C(c)

'Other person' =

Mulvany & Lane

- L informed wasn't really paternal parent -

'social parent' and CAN make parent order.

Valentine & Lacerra and Anor

- *Natural parents not necessarily receive primacy*

King & Smith & Anor

- *S asked K to care for child – written statement K has full parental responsibility, no contact to be had with biological parent*

- *7 years later S demanded child back, court said NO – presumption of natural parents rebuttable, in C's best interest to stay with K.*

c. Assume parties have complied with s60I and therefore have made genuine attempt to resolve dispute before applying for parenting order by attending FDR: s60I(1).

Certificate can be obtained even of: one party refuses participation: s60I(8)(a), or would not be appropriate to attended family dispute resolution: s60I(8)(aa), or one party did not make genuine effort: s60I(8)(c) or both made genuine effort: s60I(8)(b).

UNLESS falls within an exception reasonable grounds to: believe abuse **60I** (9)(b)(i), risk of abuse if delay **60I** (9)(b)(ii), family violence **60I** (9)(b)(iii), risk of FV **60I** (9)(b)(iv).