

TABLE OF CONTENTS

TABLE OF CONTENTS..... 2

MARRIAGE..... 3

DIVORCE..... 6

DE FACTO RELATIONSHIPS..... 9

PROPERTY..... 12

MARRIAGE

Marriage Validity

- I (1) Unauthorised celebrant (s 41 MA) but belief (s 48(3) MA)
- I (2) Presence of minister of religion (s 5(2) MA; *W v T*)
- I (3) Marriage certificate (ss 48, 50)
- I (4) If not married, then features of a de facto relationship for jurisdictional purposes
- I (s 90SM)

STEP 1 → DEFINE MARRIAGE

1. Marriage means the union of 2 people to the exclusion of all others, voluntarily entered into for life (s 5 Marriage Act)

STEP 2 → IS THE MARRIAGE A NULLITY

1. Definition → Nullity refers to a declaration by the court that a marriage is void and therefore has no legal effect, aka decree of nullity.
2. An application under *FLA* for a decree of nullity of marriage shall be based on the ground that the marriage is void (s 51 *FLA*)
3. **Grounds on which marriage are void** (s 23B MA)
 - a. (1)(a) either of the parties is, at the time of the marriage, lawfully married to some other person;
 - i. *Hyde v Hyde* → marriage registered in Utah, held not recognised in Eng
 - b. (b) the parties are within a prohibited relationship
 - i. Prohibits marriage w ancestor or descendant, brother or sister of the whole or half blood
 - c. (c) by reason of s 48, the marriage is not a valid marriage
 - d. (d) the consent of either parties is not real consent
 - i. (i) it was obtained by duress or fraud;
 - ii. (ii) that party is mistaken as the identity of the other party or as to the nature of the ceremony performed; or
 - iii. (iii) that party did not understand the nature and effect of the marriage ceremony; or
 - e. (e) either of the parties not of marriageable age;

PROPERTY

| s 79 is to do with **married parties**

| s 90SM is to do with **de facto parties** [go back to what a de facto relo is]

| **STEP 1 → Identify each party's legal and equitable rights and interests in any property, and their liabilities. Consider what each party contributed to the relationship before, during and after the relationship. (s 79(3)(a)).**

| **STEP 2 → The court may then allocate an overall percentage entitlement to each party based on those contributions.**

| **STEP 3 → Consider the parties' current and future circumstances (s 79(3)(b)(ii) , s 79(5)).**
| At this step, the court may depart from its assessment of the parties' contributions-based entitlements and make an adjustment in favour of one party to account for their current and future circumstances, if it would be **just and equitable to do so**.

| **STEP 4 → Determine the final overall percentage split for dividing the property.**

[The court makes such orders it considers appropriate (s 79(1)). The court is not required to make an order, and will only do so if satisfied that it would be just and equitable (s 79(2); (Stanford)).]

STEP 1

[Identifying each party's legal and equitable rights and interests in any property, and their liabilities.]

[The global asset approach is where the court determines the overall contribution that each party has made to the totality of their past and present property (Norbis – Mason and Deane JJ).]

[Property is given a wide meaning and property under the FLA includes whatever property is at law (Duff).]

Now, look through the below section to help with identifying what is property and what is a financial resource.