

Case	Facts	Primary Area	Sub-Area	Principle
<i>Mackonochie v Lord Penzance & Martin (1881)</i> 6 App Cas 424		Historical Introduction to Family Law	English Ecclesiastical Law	“ecclesiastical law of English not foreign law. Part of general law of England – of CL – in wider sense which embraces ancient/approved customs of England which form law, including not only law administered in Cts Queen’s Bench, Common Pleas, & Exchequer, to which term CL sometimes in narrower sense confined, but also law administered in Chancery (equity), & law administered in Cts Ecclesiastical law consisting of canons & constitutions ecclesiastical as allowed by general consent & custom within realm – & form laid down in <i>Caudrey’s case</i> , King’s ecclesiastical law.”
<i>R v Hall (1845)</i>	On 1 April 1845 Mr. Justice Maule presided at bigamy trial of Thomas Hall. Hall (35) married Maria Hadley after he & his CH were deserted by his W, who went to live with another man. In sentencing Hall, Maule J set out procedure for obtaining a divorce in those days.	Historical Introduction to Family Law	English Ecclesiastical Law You ought to have instructed attorney to bring action against seducer of W for criminal conversation [action for damages based upon adultery]. Would have cost you £100. When obtained judgment for (though not necessarily actually recovered) substantial damages, you should have instructed proctor [lawyer practising in ecclesiastical Cts] to sue in Ecclesiastical Cts for divorce a mensa et thoro. Would have cost you £2-300 more. When obtained divorce a mensa et thoro, should have appeared by Counsel before Hol’s to obtain private Act of Parliament for divorce a vinculo matrimonii which would have rendered you free & legally competent to marry person whom you have taken on yourself to marry with no such sanction. Bill might possibly have been opposed in all its stages in both Houses, & together you would have had to spend about £1000-1200. You will probably tell me that you have never had 1000 farthings of your own in world; but that makes no difference. ... my duty to tell you this is not a country in which there is law for rich & one for poor ...` He should have created concubine (mistress) as cost so prohibitive, needed to be reform. Getting divorced prior to R v Hall very costly; only 2-3 granted/year
<i>Lansell v Lansell (1964)</i> 110 CLR 353		Cth & State Powers in Family Law	What are matrimonial causes?	Matrimonial causes given wider interpretation Owen J HCA); Kitto, Menzie, Windeyer – narrower view
<i>Russell v Russell; Farrelly v Farrelly (1976)</i> 134 CLR 495		Cth & State Powers in Family Law	What are matrimonial causes?	“could not bear its otherwise broad interpretation to mean any dispute btwn spouses arising from matrimonial r’ship” Gibbs & Mason JJ – narrower view of matrimonial causes
<i>Re F.; Ex parte F (1986)</i> 161 CLR 376		Cth & State Powers in Family Law	What are matrimonial causes?	“Expression cannot signify all proceedings btwn spouses” but those matters subsidiary & consequential to marriage & divorce, eg., judicial separation, restitution of conjugal rights, nullity of marriage, & jactitation of marriage.” Prevailing view: matrimonial cause not cover ANY proceedings btwn spouses; at most covers proceedings btwn spouses pertain to matrimonial r’ship
<i>Wedd v Wedd (1948)</i> SASR 104		Cth & State Powers in Family Law	Custody & Guardianship definitions	“Custody concerns control, preservation, care of CH’s person, physically, mentally, morally; responsibility for CH in regard needs, food, clothing, instruction & like” – Mayo J Guardianship at CL has broad & narrow meaning “in narrow sense, guardianship signifies “duties concerning CH ab extra; ie., warding off; defence, protection & guarding for CH, or his property from danger, harm, loss that may enure from without”. ” Broad includes full range of rights, powers that fall within scope of custody
<i>AG(Vic) v Cth (1962)</i> 10	AG(Vic) sought declaration from HCA that Part VI	Cth & State Powers in	Constitutionality of Marriage Act 1961 (Cth)	HCA held s94 to be valid as being law for protection of institution &

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<i>CKR 529</i>	(Legitimation) & s94 (Bigamy) of Marriage Act were invalid	Family Law		monogamous character of marriages. Held all provisions Part VI valid, dominant view: power to make laws with respect marriage includes power to legislate on status of CH born to those who marry or to those who go through marriage ceremony in belief marriage valid. Broad definition of marriage power should be preferred; Cth can legislate re: formation of marriage; status marriage involves including mutual rights & duties btwn spouses; & r'ship btwn married persons & their CH
<i>In Marriage of Cormick; Salmon Respondent (1984) 156 CLR 170</i>		Cth & State Powers in Family Law	Custody & Guardianship definitions	Conveys idea of H&W "assuming status of parenthood towards CH, quasi adoption of CH, or assuming to displace or act as substitute for natural/legal parents." "H&W treat CH as if he/she were a CH of their marriage"
<i>R v Cook; Ex parte C (1985) 156 CLR 249</i>		Cth & State Powers in Family Law	Custody & Guardianship definitions	For purposes of law of guardianship/custody, marriage power cannot cover an ex-nuptial CH of H&W, or CH of other parents, altogether, even though CH been living with H&W as member of family (this is why States referred powers to Cth – except WA)
<i>Stowe [1995] DFC 95-164</i>		Cth & State Powers in Family Law	Abolition of action for breach of promise to marry (s111A of Marriage Act 1961 (Cth).	S111A prevents claims for pecuniary compensation being made upon failure to carry out promise to marry. Authority for proposition that remedy of constructive trust may be available to prevent unconscionable reliance on statutory provision
<i>Voth v Manildra Flour Mills Pty Ltd (1990) 171 CLR 538</i>		Cth & State Powers in Family Law	Ordinary rule relating to staying Ozn proceedings	Party who properly instituted proceedings in Oz has PF right to have proceedings determined by Oz Ct unless Oz a clearly inappropriate forum. Insufficient to stay proceedings that some other jurisdiction is more appropriate jurisdiction to determine matter. To stay proceedings properly instituted in Oz, Oz must be clearly inappropriate forum. [3.240] Continuous in Oz would have to be oppressive or vexatious. Clearly inappropriate = oppressive or vexatious Oppressive = seriously & unfairly burdensome, prejudicial or damaging, Vexatious = productive of serious & unjustified trouble & harassment. Object of stay of proceedings on ground Oz clearly inappropriate forum is to avoid injustice to parties involved. Can seek to prevent OP from commencing proceedings in another jurisdiction by seeking an anti-suit injunction
<i>Philip Morris v Adam P Brown Male Fashions (1981) 149 CLR 457</i>		Cth & State Powers in Family Law		Family Ct has additional jurisdiction including accrued jurisdiction
<i>Re Wakim; Ex party McNalley (1999) 198 CLR 511</i>		Cth & State Powers in Family Law	Cross-vesting legislation	X-vesting scheme unconstitutional in so far as it attempted to invest Cth Cts with State jurisdiction. Fed Govt has power to invest State Cts with Fed jurisdiction, no reciprocal power to invest Fed Cts with Dstate jurisdiction (states have to refer power to Cth)
<i>Re Kevin [2003] FLC 93-127</i>	Born female re-assigned being male. Had hormone treatment & irreversible surgery to be man. Went through marriage ceremony; sought declaration marriage valid	Marriage as a Contract	Transsexuals	Full Ct upheld validity of his marriage
<i>In Marriage of C & D (falsely called C) (1979) 35 FLR 340</i>	R displayed male & female characteristics but underwent surgery. Had some male features but still had female chromosomes. Did get married but sexual	Marriage as a Contract	Hermaphrodites	W sought order of nullity based on fact she thought he was all male but he was only actually part male. Bell J: ground of nullity made out

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	r'ship with W unsuccessful			Question whether if someone neither male nor female but a combination of both, they can get legally married under current law
<i>W v W [2001] 1 FLR 324 (UK)</i>	<p>H did not contest W's divorce petition but sought decree of nullity during ancillary relief proceedings. H contended marriage void because W not woman but physical inter-sex.</p> <p>W who was born in 1947 & registered as boy, had ambiguous external genitalia, & although chromosomal sex appeared male, developed female appearance. From time when W able to choose sexuality, had lived as woman & undergone gender reassignment surgery which allowed marriage to be consummated. That was sufficient to demonstrate that W was woman for purposes of marriage</p>	Marriage as a Contract	Transgender	Ct held refusing application that where gonadal, chromosomal & genital tests gave differing results, biological test was inadequate so that additional developmental, psychological, & hormonal factors together with 2ndary sexual characteristics could be considered. Those factors & characteristics demonstrated that W was a woman for purposes of marriage.
<i>AB v Western Oz & Anor. (2011) 281 ALR 694</i>		Marriage as a Contract	Gender Reassignment	
<i>In Marriage of Hosking (1994) 121 FLR 196</i>	H sought a decree of nullity of marriage on ground consent to marriage induced by fraud, in that W went through ceremony in Oz for immigration purposes.	Marriage as a Contract	Fraud inducing consent – Ceremony within Oz	<p>Held: (dismissing application)</p> <p>(1)Where marriage was solemnised in Oz after 7 April 1986, validity of marriage falls to be determined according to Marriage Act 1961 (Cth), s 23B(1)(d)(i).</p> <p>(2) term “fraud” as it appears in s 23B(1)(d)(i) has limited scope. Concerned with fraud as to ID of OP or as to nature of ceremony; not as to motives of party entering into marriage. Ct should never be entitled to say party's reasons for marriage so improper will declare marriage void.</p>
<i>Griffith v Griffith [1944] IR 35 (Ireland)</i>	<p>DURESS CASE – THIS IS WHAT SC WANTS US TO USE</p> <p>Decree of nullity granted to petitioning H, who had gone through ceremony of marriage under threat of prosecution for carnal knowledge of R, girl <17</p>	Marriage as a Contract	Duress inducing Consent	<p>Law of duress in relation to marriage has evolved greatly</p> <p>Law applicable:</p> <p>" 'Marriage is invalid when contracted because of force or grave fear, caused by external agent, unjustly, to free oneself from which one is compelled to choose marriage. No other fear can bring about invalidity of marriage. As all forms of fear not sufficient, following conditions must be fulfilled, before invalidity can be declared:-</p> <ol style="list-style-type: none"> 1. fear must be grave; 2. It must be imposed ab extrinseco; 3. It must be unjustly caused, & 4. must be so compelling marriage is really only alternative in order to liberate oneself from it." <p>Added potential limitation duress or intimidation may well produce fear that may lead person to marriage: "But if fear is justly imposed resulting marriage, when contracted, is valid & binding." Thus, third proposition may be stated to effect that, even if fear reasonably entertained, will not vitiate consent, unless arises from external circumstance for which petitioner himself not responsible.</p>
<i>Parojcic (or se Ivetic) v Parojcic [1958] 1 WLR 1280</i>	<p>DURESS CASE – THIS IS WHAT SC WANTS US TO USE</p> <p>Yugoslav refugee ordered daughter to marry man chosen by him (Yugoslav refugee), threatened to send her back to Yugoslavia if refused. F also hit daughter in argument over refusal to marry man. Ct found girl terrified into obedience to F & ensuing marriage void on account of duress.</p>	Marriage as a Contract	Duress inducing Consent	<p>Coercion by parents arising from cultural issues given rise to finding of lack of consent:</p> <p>A contract of marriage, like any other contract, is vitiated (rendered void or at least voidable) by duress inducing one of parties to enter into it, such duress effectively rendering that party's consent to contract no real consent:</p>

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				Held: Although evidence would not support contention by petitioner she had been mistaken as to nature of ceremony & that she had believed it merely to have been betrothal ceremony, she never consented to marriage, but been driven to go through ceremony by F, entitled to a decree nisi of nullity on ground of duress.