Colin John Cassidy

Submitted on Thursday, May 3, 2018 - 22:37

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Question 1

Question 2

Question 3

Question 4

Question 5

Question 6

Question 7

Question 8

Question 9

Question 10

Question 11

Question 12

Question 13

Question 14

Question 15

Question 16

Question 17

**Pre Marriage Balance Sheet**

A legal prerequisite for marriage is that both parties prepare, sign and have witnessed a legally binding Pre Marriage Balance Sheet (PMBS). The PMBS will detail the fixed and liquid assets of each party at the date of marriage. The PMBS thereby determines the pre acquired property pool (PAPP) for each party. The PMBS will be registered along with the associated marriage documentation and will be legally accessible by the court. The PMBS must be applied by the court during all property settlement cases. Irrespective of factors the court must exclude the value of each parties PAPP when determining property division orders.

**Separation Balance Sheet**

A prerequisite for the issuing of a court divorce order is that both parties in a case prepare, sign and have witnessed a legally binding Separation Balance Sheet (SBS). The submitted SBS will detail the sum value of the parties assets at the time of separation. A pre requisite for the issuing of property division orders in a case is the issuing of a divorce order for the same case. The court will calculate the value of the marital asset pool (MAP) by subtracting the sum value of the two PAPP's from the sum value of the SBS. This is the only calculation method the court can use to determine the value of the MAP. The court cannot make property orders in a case that exceed the value of the MAP of the same case. Additionally where a party to a case has remarried the court can not make property orders that violate section 51 (xxi) of the Australian constitution.

**Factors**

The court will require a sworn testimony from both the applicant and the respondent regarding the irreconcilable differences in a case. Marriage is defined by section 5 of the marriage act as " marriage means the union of 2 people to the exclusion of all others, voluntarily entered into for life." and this law can not be ignored by the court. Currently under divorce law marriages can be dissolved by one party without accountability as to the reasoning for the irreconcilable differences. This lack of accountability can lead to the emotional and financial abuse of the other party and also the children in a case. The court will have the power to examine the Federal and State records ( Police, Medicare, DCP, Centre Link ) of both parties in a case and to asses the legitimacy of the irreconcilable differences. From these records the court can determine evidence for on going physical violence, on going child abuse, on going emotional abuse and on going substance abuse. According to the legal definition of marriage the court is also bound to consider the parties sworn testimony in terms of adultery. The court will have the power to vary the allocation of the MAP by a factor of no less than 15% and not more than 30% if it determines the irreconcilable differences are not substantive.

**Out of Time Application - Part 1**

If the court permits a case out of time and the applicant is also the applicant for divorce in the same case then the court must apply the following:

Out of time by less than six months. Not more than 45% of the value of the MAP can be awarded to the applicant.

Out of time by greater than 6 months but less than 18 months. Not more than 40% of the value of the MAP can be awarded to the applicant.

Out of time by greater than 18 months but less than 24 months. Not more than 30% of the Value of the MAP can be awarded to the applicant.

Out of time by greater than 24 months. Not more than 10 % of the value of the MAP is available to the applicant.

**Out Of Time Application - Part 2**

If the court permits a case out of time and the applicant is not the divorce applicant in the same case then the court must apply the following:

Out of time by less than six months. The courts will make orders allocating not less than 55 % of the value of the MAP to the applicant.

Out of time by greater than 6 months but less than 18 months. The court will make orders allocating not less than 60% of the value of the MAP to the applicant.

Out of time by greater than 18 months but less than 24 months. The court will make orders allocating not less than 65 % of the value of the MAP to the applicant.

Out of time by greater than 24 months but less than 72 months. The court will make orders allocating not less than 70% of the value of the MAP to the applicant.

Out of time by greater than 72 months. The court will make orders for 100% of the MAP to be allocated to the applicant.

Question 18

Question 19

Question 20

Question 21

Question 22

Question 23

Question 24

Question 25

Question 26

A case within the family court cannot commence without the referral of a recognised dispute resolution or conciliation service provider. The minimum referral guideline shall be that both parties in a case attend at least one conciliation meeting in an attempt to settle the property matters.

Question 27

Question 28

Question 29

Question 30

Question 31

Question 32

Question 33

Question 34

Question 35

Question 36

Question 37

Question 38

Question 39

Question 40

Question 41

Question 42

Question 43

All correspondence between the legal represtatives in a case shall always be transparent and able to be presented in court. Use of the term "without prejudice" within correspondence shall not preclude that correspondence from being presented in court. In this way unreasonable and initimidating threats within correspondence will be curbed.

Question 44

Question 45

Question 46

An independent commission shall be established to over see the entire family law system. The commission shall have the power to randomly audit family law cases and the associated case outcomes. The commission will have the power to take corrective action in a case where it finds corruption within the court or a miscarriage of justice by the court. Legal representatives in a case will be held accountable by the commission if the commision finds unreasonable advisory errors have been made. The commission will audit a minimum 2% of all family law cases with Australia each calendar year.

Question 47

Other comments?

File

The results of this submission may be viewed at:

<https://www.alrc.gov.au/node/8362/submission/7358>