



Dixie Ann Middleton & ASSOCIATES

Family Law & Estate Administration

Welcome to the autumn edition of our Newsletter – *Yours, Mine, Ours*

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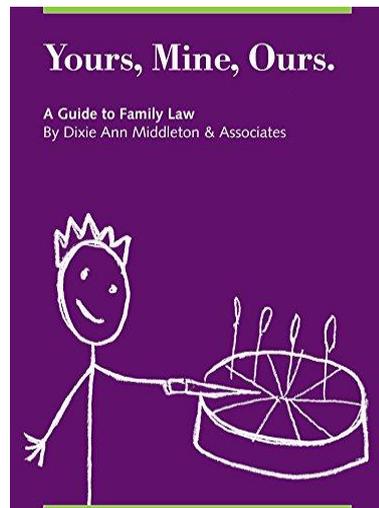
Please note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.

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Firm News

Our eBook

Our e-book, *Yours, Mine Ours: A Guide to Family Law* is available to purchase through Amazon for \$9.99. This is an excellent resource for secondary students undertaking legal studies or members of the community navigating Family Law and Estate Administration issues.



News from our readers

South East Brisbane Chamber of Commerce

The South East Brisbane Chamber of Commerce promotes and encourages local business to work together and build successful business partnerships.

The next Business at Sunrise event will be held on 4 April 2017 with Dr Daniel Angus from the University of Queensland speaking about data, a critical aspect of business marketing and preservation.

If you are interested in getting involved with the Chamber this year, please contact Alexandria via the SEBCC website – <https://sebcc.cciq.com.au/>.



If you have news that you would like to share with our readers, please contact us at mail@middletonlawyers.com.au.

Domestic Violence Changes

On 23 March 2017, the Queensland Parliament passed the *Bail (Domestic Violence) and Another Act Amendment Bill 2017*. The Act reverses the presumption of bail for an alleged offender charged with a serious domestic violence offence. Defendants will now need to show why their detention in custody is not justified – i.e. why they should be granted bail. Previously, it was up to the prosecution to argue why an offender should *not* be granted bail.

Other changes include the addition of provisions allowing the Court to order that an alleged offender wear a tracking device while on bail and requiring victims to be given information about an alleged offender's release.

The Effect of Abuse in a Family Law Property Settlement

When calculating a Family Law property settlement, the Court follows a four step approach. These steps are as follows:

1. Identify and value the property, liabilities and financial resources of the parties;
2. Identify and assess the contributions of the parties and express them as a percentage of the net value of the property;
3. Identify and assess the other facts relevant under section 79(4)(d)-(g) of the *Family Law Act*, including



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section 75(2) and determine the adjustment (if any) to be made to the contribution entitlements at step two; and

4. Consider the effect of the above and resolve what order is just and equitable in all the circumstances.

This article explores the third step. An issue which has arisen in many Family Law cases is whether family violence and abuse by one party to the marriage should be taken into account in the third step. The leading case on this question is the decision of *Kennon & Kennon* where the Full Court of the Family Court stated:

Put shortly, our view is that where there is a course of violent conduct by one party towards the other during the marriage which is demonstrated to have had a significant adverse impact upon that party's contributions to the marriage, or, to put the other way, to have made his or her contributions significantly more arduous than they ought to have been, that is a fact which a trial judge is entitled to take into account in assessing the parties' respective contributions within s 79.

That case established that it is necessary to provide the following:

1. Evidence of the incidence of domestic violence;
2. Evidence of the effect of domestic violence; and
3. Evidence to enable the Court to quantify the effect of that violence upon the parties' capacity to "contribute" as defined by section 79(4) of the *Family Law Act*.

Maddox & Merz

In this case, the parties married shortly after meeting in 2005. They separated in 2013. The Wife was 53 years old and the Husband was 76 years old. Both had been previously married and had adult children.

The Wife suffered abuse from the Husband throughout the marriage, with the judgment providing the following examples:

- He agreed that he called her "stupid" and "a liar".
- He unconvincingly denied that he called her "animal", "useless", "livestock from Africa", "elephant", "pig" and "animal without a tail".
- He agreed that he said to her "you are obligated to stay home" to look after him.
- He agreed that when they argued he said many things including words to the effect that she should "stand on the corner", the context clearly being prostitution.
- He openly said in evidence that if she "had a brain in her head" she would still be at home.
- He unconvincingly denied that he knew about death threats the Wife had received immediately prior to the hearing.

The Court assessed contributions at 10% to the Wife and 90% to the Husband, taking into account the short relationship and the Husband's greater initial contribution of his savings and his home at cohabitation.

The Wife argued that her contributions were rendered more arduous by the Husband's abusive behaviour, including verbal abuse, denigration and his use of prostitutes when the Wife was present in the home. The Court was satisfied that the Husband's conduct made the Wife's contribution to the marriage much more difficult and made a further adjustment of 10% in her favour.

After making an additional 10% adjustment in the Wife's favour on account of future needs (both parties suffered a number of health issues but the Husband received greater Centrelink benefits and the Wife had to pay for her accommodation), the Court divided the net property pool of \$332,222.00 70/30 in favour of the Husband.

This case provides an example of the type of abuse which may warrant an adjustment for family violence. However, whether or not the Court will actually make an adjustment will depend on the facts of each case. It is not enough to show that the marriage was an abusive one – the Court must be able to infer from the evidence that as a result of the abuse, a party's contributions have been affected.

For more information

Hickey & Hickey & Attorney General for the Commonwealth of Australia [2003] FamCA 395

Kennon & Kennon (1997) FLC 92-757

S & S [2003] FamCA 905

Maddox & Merz [2014] FCCA 2158