

Family Law and Financial matters

What I need to know about Family Law

1. Why?

- So many people go through it
- It's not common sense
- You may be involved
- Separation is a major contributor to poverty
- It is the roadway to the future
- Assets and debts can be dealt with
- Knowledge is power....and peace!

What I need to know about Family Law

2. Who?

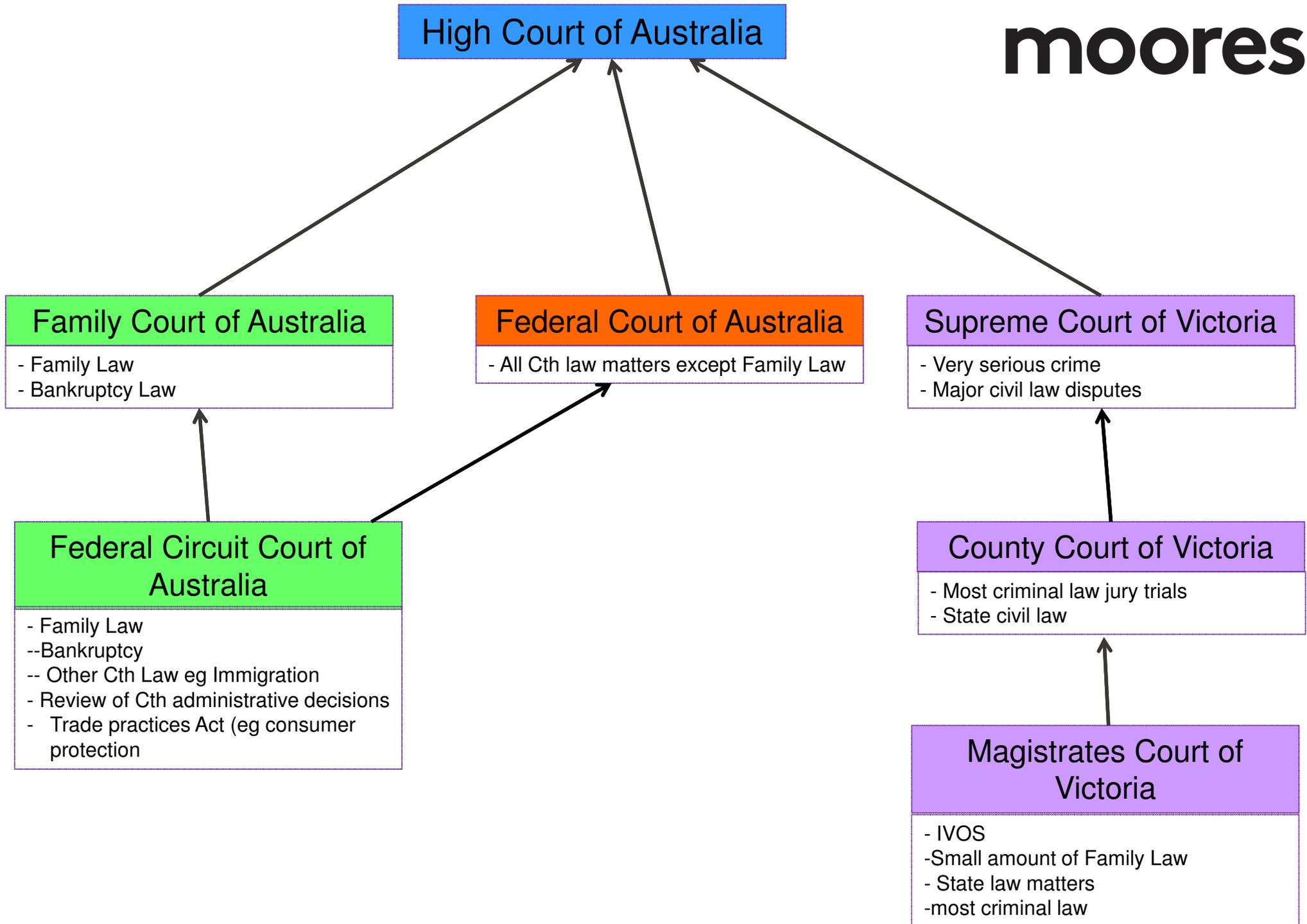
- Married couples
 - Before, during and after
 - Binding Financial Agreements
 - Property & Superannuation
 - Liabilities
 - “Spouse maintenance” & Child Support
- De facto/same sex couples
 - 2 years only
 - Children
 - Significant Contributions
 - And all of the above apply

What I need to know about Family Law

3. How?

- Kitchen table negotiations
- Mediation
 - Family Dispute Resolution Practitioner
 - Without lawyers
 - With lawyers
- Traditional, adversarial lawyer-led negotiation
- Collaboration (www.vicollab.com.au)
- Arbitration
- Court

4. Where?



Tribunals

- Commonwealth

Administrative Appeals Tribunal (AAT)

- Child Support Reviews
- Centrelink challenges
 - Other reviews of administrative decisions by Cth Depts

Victoria

Victorian Civil & Administrative Tribunal (VCAT)

- **Small claims by consumers against retailers**
- **Residential tenancy disputes**
 - **Guardianship disputes**
 - **And much more**

Victims of Crime Assistance Tribunal (VOCAT)

About Property Disputes

1. Identify and value all assets and liabilities
2. Assess contributions
3. Assess future needs
4. Is it just and equitable?

About Child Support

1. The formula
2. Department of Human Services (Child Support)
3. Reviews
4. Appeals

About Spouse Maintenance

1. Interim
2. On-going?

Creditors & Trustees in Bankruptcy

1. Challenging “sweetheart” deals
2. What if he becomes bankrupt?
 - S.75(2)(ha)
3. Handling the trustee

About Parenting

1. FDRP & Mediation certificates (Section 60I)
2. No 60I certificate
3. Court

About Family Violence

1. Family Violence Intervention Orders
 - Police
 - Registrars
 - Breaches and crime
2. VOCAT: Victims of Crime Assistance

Intervention Orders (IVOs)

- Family Violence Protection Act 2008 (FVPA) defines family violence as behaviour that is:
 - Physically or sexually abusive; or
 - Emotionally or psychologically abusive; or
 - **Economically abusive**; or
 - Threatening; or
 - Coercive; or
 - In any other way controls or dominates the family member and causes them to feel fear for the safety or wellbeing of themselves or another person.

What is Economic Abuse?

FVPA: behaviour that is coercive, deceptive or unreasonably controls another person, without their consent

- In a way that denies them economic or financial autonomy; or
- By withholding or threatening to withhold financial support necessary for meeting reasonable living expenses, if they are entirely or predominantly dependent on them for financial support

What is economic abuse (cont)

Four broad categories

- Interfering with education or employment
- Controlling access to economic resources
- Refusing to contribute
- Generating economic cost or debt

** Taken from Women's Legal Service "Stepping Stones" Report*

[http://www.womenslegal.org.au/files/file/Stepping%20Stones%20Report\(1\).pdf](http://www.womenslegal.org.au/files/file/Stepping%20Stones%20Report(1).pdf)



Examples of economic abuse during relationships

- Victim has no access to funds (e.g. no credit/ATM card)
- All funds in sole name of the abuser
- Monitoring receipts for grocery shopping
- Insufficient funds for living expenses
- Forcing victim to hand over money needed for living expenses
- Abuser registers asset in his name and ensures the associated loan is in the victim's name

Examples of economic abuse after separation

- Refusing to return property
- Refuses items to be removed from joint residence
- Refusing to pay a joint debt (credit card/utilities/mortgage/school fees) despite the other partner having no income
- Refusing to transfer utilities out of joint names despite the victim moving out
- Cutting off essential supplies (electricity/telephone)
- Withholding child support or spousal maintenance
- Removing funds from a joint account or redraw facility*
- Using court to deliberately cause financial stress



Victims of Crime Assistance Tribunal (VOCAT)

- Assistance is available for a victim of an “act of violence” who has sustained an “injury” – within 2 years of last act.
- “Injury” is “actual physical or bodily harm; or mental illness or disorder; or pregnancy or any combination of these arising from an act of violence”.
- Not usually available solely on the basis of economic abuse
- Interim awards available for:
 - Cost of psychological treatment
 - Change of locks/security measures
 - Wellbeing (e.g. holiday, massage therapy, gym memberships) as recommended by psychologist
 - Necessary items (e.g. new laptop/mobile phone)

Case study 1(a): *January*

Daniel and Mary have been together for 10 years and married for 2 years. They have a 6 month old son, Marcus. Mary has fled with Marcus because of verbal and physical violence by Daniel including a recent assault. The violence has occurred in front of Marcus.

After Mary left, Daniel changed the locks. Mary only has a few personal belongings for her and Marcus. She does not work (she is on maternity leave) and only receives minimal Centrelink.

Mary was forced to take Daniel's car when she left. He refuses to swap cars with her but fails to pay the registration on his car that Mary is driving. Daniel's car is subject to a loan. Mary does not know if it is being repaid.

Mary moves in with her brother but later finds a rental property and moves again. Mary has to return to work early in order to meet her living expenses.

Questions

- What are the indicators of economic abuse?
- Who should you refer Mary to?

Case study 1(b): *April - June*

The police charge Daniel with assault on Mary and apply for an IVO which Daniel contests. Mary gets a child support assessment, which Daniel does not pay.

Daniel continues to contact Mary despite the Intervention Order, insisting on seeing Marcus. He promises to provide Mary money if she meets up with him.

Mary receives letters from her bank to say that the mortgage payments are in arrears. These are later brought up to date by Daniel.

Daniel is charged with breaching the IVO which is a criminal offence. The contested IVO hearing is repeatedly adjourned until the criminal offence is dealt with. Daniel finally pleads guilty to the assault and the breaches and is given a community corrections order. He continues to contact Mary.

Daniel loses his job, he claims as a result of the criminal offences. He tells Centrelink he has no income and child support drops to \$7 per week. Mary believes Daniel is working for cash but does not have any evidence.

Daniel stops paying the mortgage and Mary gets further default letters from the bank. She asks Daniel to agree to sell the house and he refuses. Mary applies for hardship from the bank to pause the payments for 3 months.

- What are the indicators of economic abuse?
- What should Mary be doing practically and legally?

Case study 1(c): *September*

The hardship period from the bank ends. Mary is concerned that the bank will sell her house as Daniel continues to ignore the mortgage, but refuses to move out. She goes to a lawyer and issues urgent property proceedings for the house to be sold.

When Mary and Daniel bought the property, Daniel's parents gave them \$50,000. Mary did not have any expectation that those funds would need to be repaid. Shortly before separation, Daniel's parents started to say they wanted this "loan" repaid. Mary and Daniel withdrew \$5,000 from their joint credit card to pay to the parents. The parents put the \$5,000 in a bank account in Marcus' name. Mary continues to pay this credit card debt in both names to avoid a bad credit rating.

Mary asks the court to provide funds from the sale to pay joint credit card debts of approximately \$13,000. Daniel claims that he doesn't know what Mary spent it on. The court makes an order for \$5,000 only to be paid and the balance to be determined later.

Mary asks for an order for Daniel to leave the property as he is not paying the mortgage. Daniel says he needs to stay because he is repainting and he cannot afford to move. The court makes an order for Daniel to move out within 2 weeks, including an order Daniel to repair holes he punched in the wall and leave the house in a saleable state.

- What should Mary do next?

Case study 1(d): *October*

Mary now has a final intervention order against Daniel. However, she previously revealed her address to Daniel during a period they were getting along and now believes he is stalking her. She attends VCAT and seeks to have her lease terminated early because she is too scared to remain at her rental property. VCAT agrees and Mary moves house for a third time.

Daniel fails to leave the property on the date ordered. When he does move out, he has not painted the walls where the damage was made. Mary asks for Daniel to pay the cost of this. Daniel wants to do the work himself despite having not done it previously as ordered. Mary is forced to pay the upfront cost and recoup the costs from the settlement of the sale of the property.

The equity in the property is about \$90,000 to \$140,000. Daniel claims that the loan to the parents of \$45,000 should be paid and then the balance divided equally. Mary seeks the majority of the equity as she has higher future needs.

- What new questions or issues arise?

Case study 2(a): *During the relationship*

- Jessica and Sam have been in a defacto relationship for 6 years and have a 4 year old son, Jackson. The couple met in America, where Jessica is from. Not long into their relationship, they moved to Australia, Sam's home. Jessica's family remain in the USA.
- When Jessica became pregnant with Jackson, Sam became began to control her activities, what she ate and what she wore. Following Jackson's birth, Sam became verbally and emotionally abusive.
- Jessica only had one ATM card that connected to a bank account Sam controlled. She was only able to use the limited amounts that Sam would put in the account. Sam would not allow Jessica to join a gym because there might be male trainers at the gym. He did not allow her to work. Jessica had a curfew imposed and was only allowed to spend time with friends that Sam had vetted. Sam's explosive temper caused several of Jessica's friendships to end.
 - What are the indicators of family violence?

Case study 2(b): *January*

- The relationship ended after a violent incident in the car. Sam, who had been drinking, became verbally abusive to Jessica. He tore her handbag, kicked in the front panel of the glove box and grabbed her wrist, breaking her bracelet whilst Jessica was driving on the freeway. Jackson was in the back seat of the car.
- Jessica contacted the police who applied for an Intervention Order. Jessica fled the property with Jackson, taking few belongings. As a result of not being in the house, only a limited Intervention Order was made.
- Sam earns \$200,000 per year from his 50% share of his business. Jessica does not work and has no access to cash. She has to have her family wire her money from the USA. Sam has access to Jessica's email and phone. Sam cut off Jessica's phone contract which was in the name of Sam's business. Jessica had to buy a new phone and change her email address.
 - Do you have any suggestions for Jessica for what she should do next?
 - Who would you refer Jessica to? What about Sam?

Case study 2(c): *February*

- Jessica and Jackson were sleeping in a friend's spare room for 2 weeks. Jessica's brother came from the USA and convinced her to return to the house with Jackson. The house is in Jessica's sole name.
- Sam had chained the door closed and Jessica was advised to have a locksmith change the locks. Sam was notified via his lawyer.
- Minutes later, Sam turned up with 4 friends and family members, broke in through a window and began removing items from the house. Sam takes anything he perceives as valuable, such as a Dyson vacuum and expensive pots and pans, despite not using these items.
- A few days later, Jessica's internet and electricity are cut off. Her petrol card (owned by Sam's company of which he is a 50% owner) stops working.
 - What is your advice to Jessica?

Case study 2(d): *April*

- Sam misreports his income to Child Support and fails to pay the correct amount. As a result, when his tax return is done, the arrears increase from \$3,000 to more than \$10,000. Sam asks child support to have \$10,000 of child support credited against “other expenses” incurred by him, including payments of the loan over the wife’s car, which the court has ordered him to pay.
- Sam insists that the child should attend a private school the following year, the same school he went to. Jessica does not trust that Sam will pay the school fees. He offers to pay 1 year upfront but Jessica does not want to send the child to the school and later have to withdraw him or pay the fees herself.
- What should Jessica do in each of these situations?

Case study 2(e): *December*

- Sam tells the Family Court that he should no longer have to pay the mortgage and the loan on Jessica's car. He claims that he is suffering from mental health issues and he can only work part time because of the "stress" of the separation and court proceedings. Sam provides no medical evidence of his mental health or change in income.
- Sam and Jessica reach a property settlement, contingent upon Sam providing updated financial documents. Sam does not provide the documents. He insists that Jessica's lawyers are at fault for not sending through the settlement for him to sign.
- What new issues arise from Sam's actions?

Case study 2(f): *The following year*

- Following the finalisation of court proceedings, Jessica finds a new partner. Sam files for an Intervention Order against Jessica and her new partner Nick, without proper grounds. Sam is ordered to file further and better particulars, which fail to particularise his case.
- Jessica attends three court hearings, paying \$1,500 – 2,000 each time for a barrister.
- At the 11th hour, days before the adjourned contested hearing, Sam withdraws his application.
- What, if anything, could Jessica have done differently?
- What would your advice for Jessica be going forward into the future?

Economic abuse? Yes or no

- “My wife spends too much money on online shopping, we simply can’t afford it. So I give her an allowance each week and keep the rest of my income in a separate account she can’t touch.”
- “My fiancé earns a lot more than I do, but he insists we keep separate accounts. We each contribute 50% to expenses. I have nothing left over each month whilst he can afford to go on holidays with his friends.”
- “My partner keeps taking my Myki card, leaving me without it when I get to the train station. I have been late to work multiple times as a result of having to purchase a new Myki card. If it happens one more time, I’ll be fired.”
- Are these examples of economic abuse? Why / why not?

Domestic violence resources and referrals

For counselling:

- Safe steps family violence response centre (24 hours, women's refuges)
- 1800 Respect (1800 737 732) (24 hours, telephone and online counselling)
- Relationships Australia

Information and referrals can be provided by:

- WIRE (Womens Information and Referral Exchange)
- Domestic Violence Resource Centre (have a list of services in your area)

For legal advice / referrals:

- Your local trusted family lawyer (call us at Moores on 9843 2100)
- Women's Legal Service Advice Line 8622 0600
- Victoria Legal Aid (VLA) information line 1300 792 387

We specialise in:

- Family Law
- Estate Planning
- Wills and Probate
- Property and Construction
- Workplace Relations
- Not for Profit
- Commercial Law

Contact us on 9843 2100
reception@moores.com.au