

Australian Journal of Family Law (AJFL)

Volume 32 Parts 1–2

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We use data from the UK Household Longitudinal Study (Understanding Society) to examine income, housing and wealth for those who divorce in England and Wales. We consider variation between different generations and examine how circumstances at divorce, the year of divorce, and re-partnering behaviour post-divorce affect our results. We find that women in all cohorts have lower household income if divorced, but that men's household income does not suffer. Men and women in all cohorts have lower housing wealth if they have divorced. Remarriage is an important pathway for recovery.

The financial consequences of divorce: Law and reality — *John Eekelaar* 28

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The main purpose of this contribution is to indicate what recent research has shown to be the economic circumstances of former spouses after divorce and, in particular, how this is affected by financial or property arrangements made on divorce. This is set in the context of a proposal to amend the English law governing the use of the jurisdiction of the courts to make financial and property orders on divorce. Attention is drawn to the varying nature and scope of the research, but the conclusion is reached that, while men's financial position usually improves on divorce, and women who have had dependent children do suffer adverse financial consequences, financial orders play but a small part in post-divorce financial arrangements overall. Nevertheless, child support payments and court orders can still have a positive effect in a small number of cases.

Financial remedy outcomes on divorce in England and Wales:
Not a ‘meal ticket for life’ — *Joanna Miles and Emma Hitchings*

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This article reports data from a recent mixed methods study of financial settlement on divorce in England and Wales. It aims to contribute to current debates about the prevalence of, and justification for, orders for spousal support (maintenance/periodical payments) following divorce. A central finding from the court file data examined in this study is how spousal support (paid almost exclusively by husbands to wives) is very largely confined to cases involving minor dependent children. The article situates the discussion of cases that proceed through the legal system (only a minority of all divorces) in the wider context of general population data that show continuing economic disadvantage for women following divorce, largely as a result of their child care responsibilities. It concludes with a plea that discussion of reform in this area be underpinned by a firm grounding in the best available empirical data about the realities of financial provision on divorce, which are not to be found in media reporting of high-profile, predominantly ‘big money’ cases.

Australian family property law: ‘Just and equitable’ outcomes?
— *Belinda Fehlberg and Lisa Sarmas*

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In this article we focus on the broad discretion under Australia’s *Family Law Act 1975* (Cth) to reallocate interests in property of spouses and separating de facto partners. We look at previous empirical research on the discretion’s operation and consider options for change. We identify that there is a lack of up-to-date empirical research data on the discretion’s operation, and that there is potential risk and possibly limited effect associated with legislative reform in this area. Yet the consistent empirical research finding that women, particularly mothers with dependent children, experience significant economic disadvantage post-separation leads us to see some merit in legislative reform that identifies the need to provide for the material and economic security of the parties and their dependent children as key factors to be considered when making property orders.

Sharing financial losses as well as gains on divorce
— *Gillian Douglas*

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Financial remedies law in England and Wales is generally regarded as in need of fundamental reform. The development of the case law underpinning the statutory regime has become increasingly skewed by the prevalence of ‘big money’ cases. A law which is concerned only with uber-rich couples is a kind of fantasy family law of increasing irrelevance to the needs of those at the other end (or even in the middle) of the financial spectrum. But the current English law of open-ended discretion cannot meet the needs of the non-rich in a system that no longer attempts to provide affordable access to dispute resolution mechanisms intended to ensure fair outcomes. I suggest that any reform of the law of financial remedies on divorce could usefully start by elucidating a modern conception of marriage, as not (just) a partnership of two equals, but as a joint enterprise. Drawing on a range of economic and social factors applying to families in England and Wales, I contend that in designing such a law, reform proposals should consider a focus at least as much on how to bear the losses of marriage as on how to share the gains.

Commentary

Sharing loss on divorce — A commentary — *Alison Diduck* 132

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Special contribution — Another barbarous relic in Blighty?
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Why have the courts of England and Wales — in contrast to the Family Court of Australia — declined to abolish the concept of special contribution in financial remedy proceedings? Does recent case law demonstrate a judicial reluctance to engage with analysis of the rationales for asset distribution on marriage breakdown? Does the survival of special contribution have a significance greater than the handful of cases in which it arises? This article is written from the perspective of a practising barrister in the courts of England and Wales, albeit one with a previous career in academia in Australia and England.

The soul goes marching on: Contribution, commodification
and the great leap forward — *Richard Ingleby* 150

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This article argues that the Full Court of the Family Court of Australia's rejection of the doctrine of special contribution is not of itself sufficient to make the adjustive jurisdiction of the Family Court enough to achieve substantive equality on an individual or societal level. The continuing emphasis on 'evaluation' in a legal system which is based on the commodity form means that financial contributions are necessarily prioritised because their nature means that they do not require the same evaluation to which non-financial contributions are subject.

Is there a need for more certainty in discretionary decision-making
in Australian family property law? — *Lisa Young and Jo Goodie* 162

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As family law in Australia is under consideration by the Australian Law Reform Commission, it is an opportune time to consider whether the family property regime is in need of reform, in particular to provide more certainty. This article explores, and details, the courts' power to circumscribe the exercise of discretion in this area by making legitimate guidelines and binding rules. The article argues that insufficient attention has historically been paid to this power, resulting in a lack of clarity as to the status of statements of legal principle. The article concludes that this, alone, does not justify wholesale property law reform. It supports targeted, limited, legislative reform and greater focus by the judiciary on the classification of statements of principle.

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This article presents some of the findings of our Mapping Paths to Family Justice research with regard to out-of-court settlements in financial cases, considering what parties and practitioners respectively bring to the process of dispute resolution, and how outcomes are influenced by practitioners' and parties' contributions. Practitioners play an important role in determining the extent to which the 'shadow of the law' falls on out-of-court dispute resolution, and this might vary by the type of dispute resolution process and the individual practitioner's views, but is also complicated by the fact that the law's shadow in a highly discretionary system may be distinctly hazy. Parties, in turn, bring to the process their own normative conceptions of a fair outcome, which are markedly gendered. Outcomes thus tend to be a function of the interaction between the respective norms of the parties, their respective needs to settle and willingness or compulsion to compromise, and the nature and direction of practitioner (non-)intervention. Despite these complexities and the range of individual circumstances, some clear patterns of outcomes were observed, some of which gave rise to concerns about systematic disadvantages for women in financial dispute resolution.

The *Family Law (Scotland) Act 1985*: A principled system
in context — Jane Mair

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The *Family Law (Scotland) Act 1985* introduced a detailed and tightly structured framework of statutory principles and guidance to be applied by the Scottish courts in making orders for financial provision on divorce. Within Scotland, the legislation is highly regarded and viewed as achieving a good balance between certainty and flexibility. Beyond this domestic context, there is sometimes a different perception of the Act as being overly rigid and lacking in discretion. Drawing on findings from a recent empirical study of 30 years of the 1985 Act in practice, this article will explore the gap between internal and external perceptions, stressing in conclusion the importance of context.