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(Speech, Articles and Current Developments included in this part are linked to the LexisNexis platform)

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Speech

Pre- and post- nuptial agreements, vitiating factors and the role of a trial judge

— *James Edelman*

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What is the history of the ‘financial agreements’ recognised by the Family Law Act and sometimes described as pre-nuptial and post-nuptial agreements? What are some of the circumstances in which these agreements might be held to be invalid by trial judges? What is the role of the trial judge in assessing the validity of these agreements and how is that role relevant to any appeal from a decision by the trial judge? This presentation explores the answers to these questions, showing that the answers require knowledge and understanding of the history and development of law in the ecclesiastical courts, the common law courts and the court of Chancery and the role of the modern trial judge.

Articles

From bias to professionalism: How the court deals with applications to discharge independent children’s lawyers

— *Hawa Q Mohammad*

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The current jurisprudential framework on discharging independent children’s lawyers (‘ICLs’) sits uneasily with role and statutory duties of the ICL. The case law reveals conflicting interpretations of the principles governing the removal of ICLs, signifying the need for a cohesive framework. This article traverses the ways in which judges have addressed the removal of ICLs and contends that an ICL’s conduct should be measured against the standards of a solicitor (with the overarching purpose of achieving the proper administration of justice), rather than using the apprehended bias test applied to decision-makers. The concept of the proper administration of justice captures a wider range of misconduct whilst allowing an ICL to form an independent view and advocate for the best interests of the child.

Donor sibling linking in Australia: A qualitative analysis

— *Fiona Kelly and Adrienne Byrt*

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A number of Australian states provide world-leading statutory donor linking laws through which donor-conceived people and their donors are supported to make contact with each other. However, the same legal entitlements do not extend to donor siblings. In this article, we draw on in-depth qualitative interviews with 39 donor-conceived adults across Australia to demonstrate the need for urgent law reform to extend donor linking to donor siblings. Donor-conceived people expressed a belief in their

right to know donor siblings, whether as a means by which to explore their own identity and medical history or to avoid consanguineous relationships. This study argues that legislatures have underestimated the significance of donor sibling linking to donor-conceived people. Whether new laws take the form of a right to access information by consent or a voluntary register, it is time for all Australian states to recognise the importance of donor sibling linking to donor-conceived adults.

The legal regulation of family reports in Australia

— *Henry Kha and Jessica Botfield*

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The best interests of the child must be regarded as the paramount consideration in Australian family law. To determine what is in a child's best interests, family reports are prepared as expert evidence. These family reports are heavily relied upon in judicial decision-making in parenting orders. Family report writers are entrusted with assessing a family and providing individualised recommendations, particularly in matters involving allegations of family violence. This article assesses how the weight that is placed on family reports in parenting proceedings impacts the protection of children from physical and psychological harm. It is argued that the repeal of the presumption of equal shared parental responsibility is a positive step in the right direction, but the standards and requirements of family reports could be improved. It is important that Australia's family law better protects children in the making of family reports.

Current Developments

Glos, Venter and statutory reform of clients' and lawyers' financial disclosure duties

— *Dr Elizabeth Pearson*

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