



Relief in the State Courts – *outside our comfort zone*

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Jurisdiction of the FCFCOA

- Family Court of Australia and Federal Circuit Court of Australia
 - still exist
 - renamed – Division 1 and Division 2
 - s8 *Federal Circuit and Family Court of Australia Act 2021* (Cth) (*New Act*)
- **Note Part IV and IVA of FLA repealed**
 - (incl s 31 original jurisdiction of Family Court and s 33 associated matters)

FCFCOA (Div 1)

- superior court of record, court of law and equity - *s 9 New Act*
- original jurisdiction - matters transferred to it or as conferred by other Acts - *s 25 New Act*
 - *matrimonial causes s 39 FLA including third party proceedings s 4A FLA; ss 51(xxi), (xxii) and (xxxvii) Australian Constitution*
 - *de facto financial causes s 39B FLA including third party proceedings s 4B FLA*
- appeals - *s 26 New Act*
- associated matters - *s 29 New Act*
- accrued jurisdiction to determine the entire justiciable controversy
 - *Duarte and Morse (2019) 59 Fam LR 323*
- family law or child support proceedings may not be **instituted/commenced** in Division 1
 - *s 50 New Act*

FCFCOA (Div 2)

- court of record, court of law and equity - *s10 New Act*
- original jurisdiction for
 - matters vested in it by laws made by Parliament - *s 131(1) New Act*
 - appeals from decisions of persons, authorities or tribunals other than courts - *s 131(2) New Act*
 - family law or child support matters - *s 132 New Act*
 - *incl matters instituted under the FLA*
 - *Part VII matters re children s 69H FLA*
- accrued jurisdiction to determine the entire justiciable controversy
 - *But see obiter in Yu v Wang [2021] NSWSC 1280*
- Commonwealth tenancy disputes - *s 133 New Act*
- associated matters - *s 134 New Act*

Choice of Court – when might it arise?

Corporations Act 2001 (Cth) civil matters:

- appointment of receivers/administrators
- injunctions
- oppression actions
- damages for breach of director's duties

- Relevant court:
 - CA s 1337B(2) - Supreme Court
 - CA s 1337C - FCFCOA Division 1
 - CA s 1337J - proceedings may be transferred

Brant v BLK International Pty Ltd [2021] FCCA 688 per Jarrett J

Choice of Court – when might it arise?

Set aside/terminate personal insolvency agreements:

- *Bankruptcy Act 1966* (Cth) ss 222, 222C

- Relevant court:

- BA s 27 - Federal Court of Australia
- BA s 27(1) - FCFCOA Division 2
- BA s 35 - FCFCOA Division 1
- BA s 35A – transfer of proceeding

Choice of Court – when might it arise?

Lodgement and removal of caveats

- *Land Title Act 1994* (Qld) s 127
- Relevant court:
 - LTA Sch 6 - Supreme Court of Queensland

Choice of Court – when might it arise?

Orders dealing with property of de facto partners

- *Property Law Act 1974 (Qld) Chapter 19*
 - only to the extent that *Family Law Act 1975* does not apply - s 255A
- Relevant court:
 - PLA s 329 – Queensland State Courts
 - PLA ss 331, 333 - may be transferred

Choice of Court – when might it arise?

Sale of jointly owned property or chattels

- *Property Law Act 1974 (Qld)* - ss 38, 41
- Relevant court:
 - PLA Sch 6 - Supreme Court of Queensland

Choice of Court – when might it arise?

Application for provision from a deceased estate

- *Succession Act 1981* (Qld) s.41
- *Ryan v Harrison [2020] QSC 267*

- Relevant court:
 - s.5 - Supreme Court of Queensland

You might not need to cross-over

- Equitable trusts
 - *Khalif and Khalif* [2021] FamCAFC 123
 - *Zubic and Zubic* [2021] FamCAFC 168
 - *Duarte and Morse* (2019) 59 Fam LR 323
 - *Gregg v Gregg* [2019] FamCA 927
 - *Nolan v Nolan* [2015] QCA 199
- Removal of caveats
 - *Skye v Saidel* [2020] FamCA 18
- Relief for shareholders from oppressive conduct
 - *N Pty Ltd v A Pty Ltd* [2021] FamCAFC 134

Tips should you need to cross-over

- Find out about your destination and how it compares
 - filing and document management protocols
 - listing timeframes
 - potential decision makers
 - method of hearing (in person, phone, Teams, other?)
 - fees

Tips should you need to cross-over

- Head toward the light
 - focus on the rules and practice directions/practice notes of the relevant jurisdiction

Tips should you need to cross-over

- Be prepared
 - isolate legislative or other basis for client's right to relief
 - marshall evidence focussed on relief being sought
 - viva voce evidence cf evidence in chief by affidavit
 - consider implications for both the case and the client/witness
 - cost consequences



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