

The PRA – hot topics

INTRODUCTION	1
Doing it our way	1
Purpose and principles of the PRA	3
Demographic changes	4
Rise in cohabitation	5
Work	5
Conclusion	6
1. UNEQUAL SHARING – ACHIEVING FAIRNESS	9
Section 15 - Economic disparity	9
<i>Introduction – Section 15, an elusive beast or one hard to tame?</i>	9
<i>Case law to date</i>	10
<i>Spousal maintenance</i>	22
<i>Summary</i>	23
<i>Areas of emerging clarity</i>	23
<i>Areas that remain unclear</i>	25
<i>Running a s 15 argument – tips for the practitioner</i>	26
<i>Use of experts</i>	27
<i>Conclusion</i>	28
Relationships of short duration	29
Other legislative avenues	31
<i>Separate or relationship property?</i>	32
<i>Section 13 - extraordinary circumstances</i>	33
Post-separation issues	43
<i>Post-separation contributions</i>	43
<i>Section 18C</i>	49
2. TRUSTS	51
Access to capital and income	51
<i>Trusts</i>	51
<i>Court remedies - Section 43 dispositions may be restrained</i>	52
<i>Section 44 dispositions may be set aside</i>	52
<i>Section 44A(2)(f)</i>	53
<i>Section 44C</i>	53
<i>Remedies</i>	54
<i>Section 182</i>	54
<i>Loan</i>	55
<i>Contract</i>	55
<i>Trustee's Conduct</i>	55
<i>Gifting programme</i>	55
<i>Sham trusts</i>	55

<i>New arguments - Section 10</i>	56
<i>Kerry Ayres' argument</i>	57
<i>Recent case</i>	58
<i>Section 9A - increase in value</i>	61
<i>Increase in value</i>	63
<i>Valuation</i>	63
<i>Section 9A</i>	63
<i>Constructive trust argument</i>	64
<i>Constructive trust claim against trustees</i>	64
3. DISCOVERY	67
Family Court Rules 2002	67
Banks	68
4. CONTRACTING OUT AGREEMENTS	69
Guidelines for contracting out	69
<i>Trigger point for agreements</i>	69
<i>Jurisdiction for agreements</i>	69
<i>Subject matter of agreement</i>	69
<i>Types of agreement</i>	69
<i>Advantages and disadvantages of different types of agreements</i>	70
<i>"Lifting the bar"</i>	74
<i>Independent advice</i>	76
<i>Setting aside agreement in whole or only part?</i>	77
<i>Does a lawyer certifying owe a duty to the other party?</i>	78
<i>Can you contract out of s 15 PRA?</i>	79
<i>Can you contract out of election on death of one of the parties?</i>	80
5. DEBTS	81
Classification of debts	81
Debts still owing	82
Conclusion	82
APPENDIX 1. ECONOMIC DISPARITY – CASE SUMMARY TABLE	83
APPENDIX 2. ASB BANK REQUIREMENTS FOR THE DISCLOSURE OF BANK STATEMENTS AND DIARY NOTES	85