

FAMILY LAW REVIEW

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ARTICLES

The High Court and family law: Two recent excursions – Hon Justice Paul Brereton AM RFD

In this article, two recent adventures of the High Court of Australia in the field of family law are considered – one in a financial matter, namely *Kennon v Spry*, in which the majority decision holding that assets of a discretionary family trust could be counted as property of the parties to the marriage, has become the subject of considerable, but the author will suggest unwarranted, controversy; and the other in a children’s matter, namely *Bookhurst v Bookhurst*, in which the refusal of special leave has left open a significant debate as to how the views of children are to be considered. 63

Family property law and the three fundamental propositions in *Stanford v Stanford* – Patrick Parkinson AM

This article considers the implications of the High Court’s decision in *Stanford v Stanford*. The court indicated that s 79(2) of the *Family Law Act 1975* (Cth) is in effect a statutory condition for the exercise of the power to alter property rights and that it should not be conflated with the considerations under s 79(4). The article suggests ways in which the terms “just” and “equitable” can be construed separately from the s 79(4) and s 75(2) factors; the order in which matters need to be considered; the future of the four steps; the implications of having to determine legal and equitable title as a first step; whether it is sufficient to satisfy s 79(2) that both parties seek orders altering property rights; the potential for greater use of equitable doctrines in family property law; and other issues. 80

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