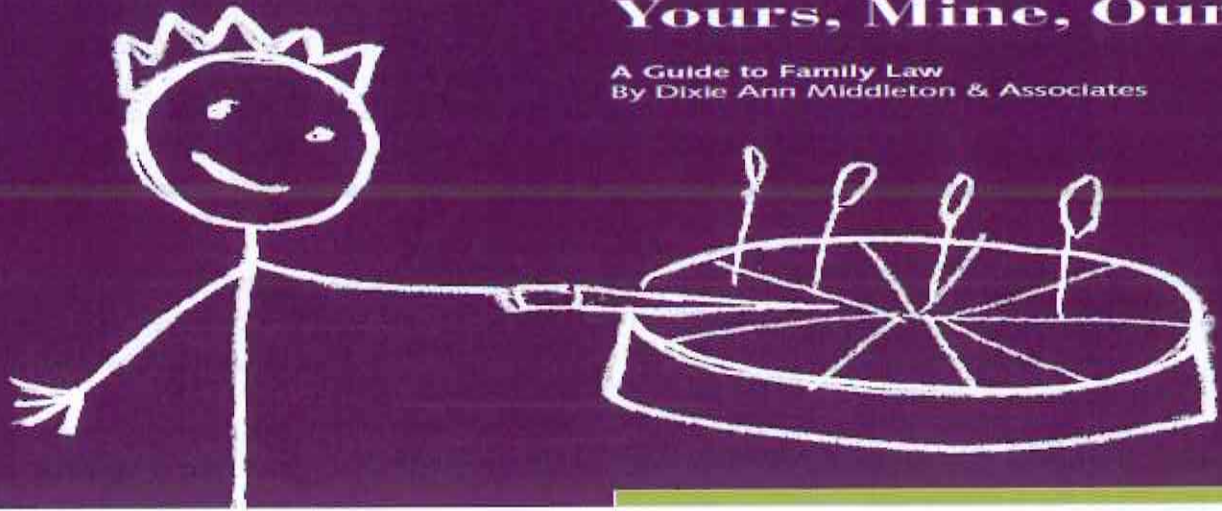


Yours, Mine, Ours.

A Guide to Family Law
By Dixie Ann Middleton & Associates



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March 2011

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Welcome to the first edition of our Newsletter—"Yours, Mine, Ours".

We aim to produce this Newsletter on a regular basis to keep you informed of any Family Law/ Estate issues which we consider need to be brought to your attention.

We will also keep you informed of the latest Court decisions and what they mean.

Firm Profile

As a leading Queensland boutique Family Law firm, Dixie Ann Middleton & Associates has the necessary expertise and sensitivity to assist you with all your Family Law related needs. Our entire team is dedicated to providing expert Family Law, Defacto Law and Estate Administration advice for our many satisfied clients.

We have been providing legal services to clients living in Queensland, elsewhere in Australia and overseas since 1992.

The Principal, Dixie Ann Middleton, was admitted to the Supreme Court Roll to practice as a Solicitor in Queensland in 1983. The Associate, Emma Turner, who is an Accredited Family Law Specialist, was admitted to the Supreme Court Roll to practice as a Solicitor in Queensland in 2002.

We are an innovative and progressive boutique law firm practicing in Family (including estate administration) and Defacto Relationship Law.

Our service is of the highest standard. We provide *sensible, commercial solutions*. The majority of our business is generated by referrals from existing and past clients which is the measure of the reputation of a legal practice.



Tips and Traps

1. **Marriage** revokes Wills made prior to the Marriage, unless they were made in contemplation of that particular marriage. Check whether your Will is current.
2. On separation, give consideration to revoking the Enduring Power of Attorney given to your former partner or spouse.
3. Get legal and accounting advice before going guarantor for another person's liability.
4. Keep all your financial records, particularly evidence of your financial position at commencement of marriage or defacto relationship.

TRUSTS

Limited Protection against the Power of the Family Court

The Family Court has been entertained by many arguments over the years about the inclusion of assets belonging to a Family Trust in a matrimonial property settlement. It is said that the landmark decision of *Spry v Kennon*, which was decided by the High Court of Australia in 2008 has at long last put this argument to rest. What is clear is that the Court has extensive powers to make orders with respect to property.

In the *Spry* case, the Husband established a Trust 10 years before he was married. He was the Settlor of the Trust and the beneficiaries of the Trust included all the children of the Husband's father and any person married to any of the Husband's father's children. By the time the Husband and the Wife had brought the matter to the Court, the beneficiaries included the Husband's sister, his nieces and nephews and his daughters. The Husband was the Appointor of the Trust. He could remove the trustees and appoint other trustees.

When the Husband and the Wife were married in 1978, the Trust held a small parcel of shares. During the marriage, a house was purchased in the name of the Trust using savings accumulated by the Husband prior to marriage. Other assets were purchased in the name of the Trust as a result of the contributions of the Husband and the Wife.

Some 5 years after the parties were married, the Husband varied the Trust with the result that he no longer had any beneficial interest in the Trust and he ceased to be a beneficiary. He also appointed the Wife as Trustee of the Trust in the event of the Husband's death or his resignation as trustee.

In 1998, after 20 years of marriage, the Husband again varied the Trust, but he did so without the knowledge of the Wife. By that time, the marriage had become problematic. The Wife was removed as Trustee and he excluded himself and the Wife as beneficiaries of the Trust.

In 2002, after the parties had separated, the Husband caused all of the assets of the Trust to be transferred to other Trusts, of which he was Trustee, and his 4 children were beneficiaries.

The Wife applied to the Court for property settlement and asked the Court to make an Order setting aside the variations which had been made by the Husband in 1998. The Family Court set aside the 1998 and 2002 variations of the Trust. The Husband's appeals to the Full Court of the Family Court and the High Court were dismissed.

The High Court found that it had the power to proceed in the property settlement proceedings "as if" the changes the Husband had made to the Trust in 1998 and 2002 had not yet occurred. The Court could do this as long as it was fair and reasonable to proceed on this basis. The Court also said that the right of the Wife to due administration of the Trust and the Husband's power to apply the whole of the property to his Wife during the marriage meant that the assets of the Trust could be treated as matrimonial property. The Court went on further to say that Trust property which has been acquired by or through the efforts of either party to the marriage, whether before or during the marriage, can be treated as matrimonial property. This is irrespective of whether it can be given away to other persons at the discretion of either the Husband or the Wife, as Trustee.

The Court also considered the possibility that it could make Orders in relation to property held in the Trust, even in circumstances where the parties to the marriage had no interest in the Trust. It could do this if the property had been acquired using matrimonial funds and for the benefit of the Husband and the Wife in contemplation of their marriage.

It is now clear that the right of a party to a marriage to due administration of a Trust can be treated as property, as can the power of a party to a marriage to apply property belonging to the Trust to the other spouse.

What is not clear is how the Court will deal with property held in a Trust over which the parties have no control or rights, but which has been purchased using matrimonial funds. You should seek further legal advice from a lawyer experienced in family law if this situation applies to you.

BOOK LAUNCH - "YOURS, MINE, OURS." A Guide to Family Law.

We are very excited to announce that our long awaited publication was launched by Senator Claire Moore in November 2010 at Riverbend Books.

The book sets out in easy to understand language, not only the law in relation to divorce, property settlement, children & parenting, child support but also deals with subsequent issues such as preparing a will and power of attorney after the experience of going through a divorce etc. The book also delves into the issue of adoption.

It contains useful contacts such as counselling centres, Child Support Agency and the Courts. It is available for purchase at Riverbend Books for \$25.00.

FAREWELL GLENYS

After a long career in the legal industry Glenys Douglas retired in January 2011. Glenys joined the team at Dixie Ann Middleton and Associates in 2006 after working in the Family Court of Australia and the Federal Magistrates Court of Australia for 20 years as both a Court Officer and a Judge's Associate.

In her retirement Glenys plans to travel, spend time with family and enjoy her hobbies including knitting and gardening. We thank Glenys for her invaluable contribution to the team and wish her all the best for her retirement.