***Re: Cassandra Kathleen Kennon (Appellant/Wife) and Ian William Kennon (Cross-Appellant/Husband) Appeal* (1997) FLC 92-757; [1997] FamCA 27 (10 June 1997) – Full Court of the Family Court of Australia**

'Contributions' – 'Property proceedings' – 'Relevance of domestic violence' – 'Section 79' – 'Significantly more arduous'

Proceedings: Property settlement.

Facts: The parties cohabited for approximately five years before separating. The husband was very wealthy and the wife had far more modest means. The property pool was nearly $9 million. There were no children of the marriage. In 1994, the wife filed a property application under s 79 of the Family Law Act. The husband filed a cross application. The wife subsequently filed an amended application which included a claim under the cross-vesting legislation that the husband pay her damages for assault and battery. The husband denied the allegations of assault and restated his position regarding the property claim. The trial judge accepted that a number of assaults had occurred and awarded damages, but found that the husband's conduct had not affected the wife's contributions to allow an adjustment in relation to s 79(4).

Issue/s: The wife did not challenge the trial judge's finding that the husband's conduct had not affected her contributions. Consequently, the Full Court's comments on the relevance of domestic violence in claims under s79 of the Family Law Act were made in obiter.

Decision/Reasoning: The appeal was dismissed but the Full Court took the opportunity to clarify the relevance of violence in s79 property adjustments. The Full Court said that earlier authorities on s 79 precluding evidence of domestic violence were no longer binding, acknowledging that the 'pervasiveness and destructiveness of domestic violence' was now better recognized by the Australian community and courts.

The Full Court cautioned that s 79 of the Act is not a source of 'social engineering' or to be used as 'a means of evening up' the financial positions of the parties. They held:

'Put shortly, our view is that where there is a course of violent conduct by one party towards the other during the marriage which is demonstrated to have had a significant adverse impact upon that party's contributions to the marriage, or, put the other way, to have made his or her contributions significantly more arduous than they ought to have been, that is a fact which a trial judge is entitled to take into account in assessing the parties' respective contributions within s 79. We prefer this approach to the concept of "negative contributions" which is sometimes referred to in this discussion'.

The Court also referred to this principle as including 'exceptional cases' and noted, *'[i]t is essential to bear in mind the relatively narrow band of cases to which these considerations apply. To be relevant, it would be necessary to show that the conduct occurred during the course of the marriage and had a discernible impact upon the contributions of the other party*'.

(See also subsequent interpretation in *S & S (Spagnardi & Spagnardi)* [2003] FamCA 905 (8 September 2003), *Baranski & Baranski & Anor* [2010] FMCAfam 918 (1 September 2010) and *Damiani & Damiani* [2012] FamCA 535 (9 July 2012).)