

Sample ALARM Question Legal Studies

Evaluate the effectiveness of the law in achieving justice for parties involved in relationship breakdown.

The effectiveness of the law in achieving justice for parties involved in breakdown varies between different aspects of family law. Justice is the concept of moral rightness based on ethics, rationality, natural law, fairness, and equity. In the legal sense, justice is the result of the fair and proper administration of law.

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DEFINE

In Australia, there has been significant reform in the area of Family Law over the past decades. Family Law involves aspects such as marriage and divorce, custody of children, property division, child support and domestic violence. Current laws regarding the dissolution of marriage have been quite successful in achieving just outcomes. Conversely, the legal consequences of children and property have been limited in some circumstances. Although the law plays a role to help parties achieve justice, this can be greatly assisted when parents comply with their legal rights and obligations.

DESCRIBE

Traditionally, Australia's marriage and divorce laws have been strongly influenced by United Kingdom (UK) law. For example, the *Matrimonial Causes Act 1959 (Cth)* allowed fourteen grounds for divorce, thirteen of which, were based on fault, as was reflected in UK law. The need to prove fault, however, lead to aggressive behaviours and distressing consequences. *The Family Law Act 1975 (Cth)* was introduced to address this shortcoming by removing all grounds for divorce except for the irretrievable breakdown of marriage demonstrated by 12 months of separation. This Act established the principle of 'no fault' divorce in Australian law. This meant that the Family Court no longer had to consider which partner was at fault in the marriage breakdown. **This has been widely seen as a more just approach to divorce law.**

ANALYSE

(Breaking down and examining all the aspects of family law listed in the **EXPLAIN** paragraph and explaining whether it achieved its purpose)

This Act, however, required certain other provisions. For example one section of the Act allowed for the '*Kiss and Makeup*' clause. This clause encouraged couples, who had been married for two years or less, to attempt to overcome their differences through counselling, before proceeding to court. In some instances, this **proved to be quite successful** in achieving justice for both parties, as they are not given court orders until more passive approaches have been taken during relationship breakdown.

Parties with children that have been married for more than two years are encouraged to enter into a parenting plan under the Family Law Act. Although there is no legal responsibility to do so, parenting plans have proved relatively successful, as parties have the opportunity to come to a mutual agreement and thus avoid the distress and cost of court proceedings. As a result, *The Family Law Act 1975 (Cth)* **has been more successful than older laws in achieving justice for parties involved in relationship breakdown.**

In contrast to this, the **law is less successful** in achieving justice in some cases relating to children and property, despite law reform attempts. The *Family Law Reform Act 1996 (Cth)* introduced new terminology such as 'spend time with' rather 'custody of'. This terminology was intended to encourage children to have a meaningful relationship with both parents. It also included provisions to protect them from harm by outlining the importance of making decisions in the 'best interests of the child. As such, the law required minors to be protected from drug use and domestic violence. **This aspect of the law did not necessarily achieve justice for both parties, but it protected the children above all else as they are viewed as most vulnerable.**

The significant of maintaining a strong relationship with both parents, whenever possible, was emphasised in the *Family Law Amendment (Shared Parental Responsibility) Act 2006*, to try to ensure all parties had just outcomes. Nevertheless, there has been criticism of this Act. For example, the presumption of *equal* shared parental responsibility has been given more weight than some warranted. Many have misinterpreted this to mean 50/50 custody of the children, that is, equal time with both parents. **The law, in this respect, requires reform to make this particular aspect more clear.**

Property division is a great source of conflict in relationship breakdown. To diminish this, the *Property Legislation (Amendment) Act 1998* was introduced to allow parties come to a mutual property agreement. Such agreements can be created before, during, or after marriages under the Act. The Act details consideration such as earning capacity and future needs of parties in attempt to seek fair treatment. To achieve just outcomes, however, the court may intervene should one party feel they have received an unfair result. For instance, in the case of *C and M 2006*, the wife received only 7.5% of property assets. Upon appeal, the court took into consideration the lack of restriction on the wife's earning capacity and the short duration of the marriage. As a result the court denied an adjustment to the settlement of 7.5%. This successfully achieved justice for the other party who was entitled to assets accrued before the marriage. The 2008 amendment of the Family Law Act extended these considerations to de Facto and same sex couples to **increase equality for all couples undergoing relationship breakdown.**

With regards to domestic violence, State law has been given jurisdiction under the *Crimes (Personal and Domestic) Violence Act 2007 (NSW)*. This allows the state to issue twelve standard *Apprehended Domestic Violence Orders (ADVO)* to protect individuals from harm. This provision is **regarded as being more effective** than the former practice of injunctions issued by federal courts. It also demonstrates that the law takes domestic violence very seriously as breaches of an ADVO can result in a fine up to \$5500 and two years imprisonment to protect vulnerable members of our society.

ANALYSE

(Continues to break down and examine all the aspects of family law listed in the *EXPLAIN* paragraph and explains whether it achieved its purpose)

To achieve justice for children and young persons, the *Children and Young persons (Care and Protection) Act 2007* was introduced. The Act requires public sector workers such as medical professionals, teachers to report suspected incidences of child abuse and neglect to the NSW the *Department of Family and Community Services (DFCS)*. As a result, there were 25000 children under care and protection orders in 2009 reflecting an increase of 88% from 2000. There has been, however, a **lack of communication and synchronisation between federal and state law** and this has denied justice in a number of instances as parties were often unaware that both courts required notification regarding ADVOs and contact orders.

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In NSW the *Department of Family and Community Services (DFCS)* is responsible to provide safe and secure environments for children. According to the *Submission of the Ombudsman to the Wood Inquiry 2006*, the reported number of 'risk of harm' reports made to the DFCS increased by 19% from the previous year. Many of these reports, however, were not necessarily serious, and as a result, the DFCS could not cope with following up with reports and ensuring the safety of all children at risk. The grim consequence was the death of 150 children at hands of their parents. **This demonstrates an extreme instance of the failure of the law to ensure just outcomes for children.**

Following the breakdown of a relationship, a substantial number of parents neglect to comply with paying child support. In 1988 the Child Support Scheme was introduced to help address the 70% non-compliance rate of parents failing to pay child support on time. The scheme today has been able to lower this figure to 50% and achieve more justice for broken relationships. It is clear, however, that **there is still much room for improvement.**

As demonstrated, Family Law reform has generally been successful in achieving just outcomes for parties involved in relationship breakdowns by reducing conflict in the areas of divorce and parenting plans. It has proved less successful, however in achieving justice in relation to property, domestic violence, contact orders and child protection. As a result it is determined that further reform is required in these areas to achieve justice for parties involved in relationship breakdown

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