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Binding Financial Agreements: A Fickle Friend

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Binding financial agreements (“BFA”)

BFAs are contracts entered into between parties regulating how property and/or spouse maintenance issues are decided between them in the event of relationship breakdown. Where a BFA determines issues of property settlement and / or spouse maintenance, the Court is excluded from making Orders.

Typical parties who enter into BFAs include those couples where:

- There is a significant asset disparity between two parties.
- There is one particular asset that a party seeks to preserve, for example a family farm.
- Second or subsequent marriages where parties have had prior experience with the Courts and/or they seek to preserve assets for children of former relationships.
- Parties seek a high level of privacy.
- There is a desire to forfeit spouse maintenance entitlements.

BFAs for married couples are governed by Part VIIIA of the *Family Law Act 1975* (Cth) (“FLA”). De factos (same sex or otherwise) can also enter into BFAs under PART VIIIAB Division 4, FLA. The act only allows for de factos to enter into BFAs if the parties were ordinarily resident in NSW, Queensland, Tasmania, South Australia, Victoria, the ACT, the Northern Territory or Norfolk Island at the time of entering into the agreement.

Historical context

The *Family Law Amendments Act 2000* (Cth) came into being as of 27 December 2000, and for the first time in Australian history, married parties could enter into contracts which regulated their property rights, without the need for Court intervention.

Prior to the introduction of BFAs, parties involved in family law proceedings could enter into s.86 or s.87 agreements. These agreements differed significantly to BFAs because:

- s.86 agreements were not in substitution of rights; and
- s.87 agreements required judicial approval.

The *Family Law Amendments (De Facto Financial Matters and Other Measures) Act 2008* came into being as of 1 March 2009 and allowed de facto couples to enter into BFAs.

As BFAs are not required to be registered with the Courts, one can only estimate the level of usage of BFAs. However, in our experience, BFAs are becoming an increasingly relied upon tool of the family law practitioner.

There has been some reluctance in the profession to utilise BFAs as some practitioners perceive that they do not provide the level of certainty that they purport

to offer. There is some hesitancy that down the track, practitioners may be open to suit. These issues will be explored further in the paper.

Types of BFAs

A lay person may refer to a BFA as a “pre nup”. This analogy can be misleading because BFAs can be entered into at any stage of a relationship. The types of BFAs under Part VIIIA are;

- s.90 B agreements entered into before marriage;
- s.90 C agreements entered into during marriage but before separation;
- s.90 C agreements entered into during marriage but after separation; and
- s.90 D agreements entered into once parties have divorced.

The types of BFAs available to de facto couples under PART VIIIAB are:

- s.90 UB agreements entered into before the de facto relationship;
- s.90 UC agreements entered into during the de facto relationship; and
- s.90 UD agreements entered into after relationship breakdown.

A BFA needs to expressly stipulate which section of the FLA it falls under e.g. s90B or s.90Cetc. This may be particularly problematic if there is some confusion as to whether or not the parties are already in a de facto relationship and accordingly whether the agreement fall under s.90UB or s.90UC.

It is worth bearing in mind that a Part VIIIAB agreement ceases to be effective if the parties marry each other.¹

Content of BFAs

Section 90B(2) specifies the matters which can be set out in a BFA being:

- how, in the event of the breakdown of the marriage, any or all of the property (including superannuation) and financial resources of either or both of the spouses are to be dealt with;
- maintenance of either of the parties before, during or after marriage; and
- matters “*incidental or ancillary*” and “*other matters*”.²

By implication, s.90E allows child maintenance to be included in a BFA, but note that there are separate provisions relating to child support agreements set out in Part VI of the *Child Support (Assessment) Act 1989*.

BFAs versus consent orders

Upon relationship breakdown, a practitioner may need to provide advice to a client as to whether it is preferable for a client to enter into Consent Orders or a BFA. An essential feature of BFAs is that they oust the jurisdiction of the Court. Whilst consent

¹ S.90UJ(3)

² S.90B(3)

Orders are negotiated between parties (much like BFAs) they still require Court approval before they can come into effect, BFAs do not. In this way, parties can avoid (at least at the time of entering into the agreement) the s.79(2) “*just and equitable*” threshold that must be met before the Court can make property orders.

Whilst this may appear as an initial benefit to a party wishing to avoid this hurdle, the BFA may later be subject to Court scrutiny if a party later brings an application to vary or set aside a BFA.

Requirements for an agreement to be binding

There are stringent requirements that must be complied with for a BFA to be binding. Predominantly, these are set out in s.90G (**Annexure A**) which provides that a BFA is binding “*if, and only if*” the requirements are met.³

A summary of the main requirements include:

- agreement is in writing;
- agreement is signed by both parties;
- before signing the agreement each party received independent legal advice as to the effect of the agreement on their rights and as to the advantages and disadvantages at the time the advice was provided, of entering into the agreement;
- agreement contains a statement to the effect that each party received the necessary independent legal advice;
- a certificate as to the provision of independent legal advice is signed by the respective solicitors and provided to the relevant party (the certificate must not necessarily be annexed to the agreement, although it is advisable); and
- the agreement has not been set aside or terminated by a Court.

Section 90G has been the subject of legislative amendment, it is currently in its fourth edition. There have been the following s.90G versions:

- i) original amendment from 27 December 2000 – 13 January 2004;
- ii) second edition in force between 14 January 2004 and 28 February 2009;
- iii) third edition from March 2009 (minor wording changes); and
- iv) current version as of 4 January 2010.

At the time of entering into the agreement, both parties must be able to support themselves without the need for an income tested pension, allowance or benefit.⁴

A BFA does not take effect until a separation declaration has been signed by at least one of the parties.⁵

³ Or see s.90UJ

⁴ S.90F(1A)

⁵ S.90D, s.90UF

Where a BFA seeks to regulate issues of maintenance it must include these details:

- the party or child / children for whose benefit maintenance is payable; and
- the amount payable or the value of the portion of the relevant property attributable as maintenance.⁶

Where a party dies, the BFA continues to be binding on the parties and is binding on the legal representative of the deceased party.⁷ Death, in the eyes of the legislative drafts people is not a ‘terminating event’.

Terminating events

The ways in which a BFA may conclude are:

- pursuant to the terms of the BFA;
- the parties enter into a termination agreement⁸;
- the parties enter into a new BFA which supersedes the old one; or
- by Court Order.

Courts have no power under the act to make financial agreements. However, s.90K (**Annexure C**) gives the Court power to determine questions of validity, enforceability and the effect of an agreement.⁹

Setting aside a BFA

Section 90 K allows a Court to set aside a BFA if, and only if, the Court is satisfied that:

- the BFA was obtained by fraud;
- the BFA was entered into to defraud a creditor;
- the BFA is void, voidable or unenforceable;
- circumstances have arisen since the BFA was made that make it impracticable for it to be enforced;
- since the BFA was entered into there has been a “*material change*” in circumstances relating to a child of the marriage, and as a result of that change, a party to the BFA will suffer hardship if it is not set aside; and
- a party engaged in conduct that was unconscionable at the time of entering into the agreement.

The threshold for having a BFA set aside by Court Order, is arguably lower than that applied to having consent Orders set aside by Court Order. Consent Orders will only be set aside where there are circumstances of an “*exceptional nature*”¹⁰ relating to a child, where as a “*material change*”¹¹ only is required to vary / set aside a BFA.

⁶ S.90E, S.90UH

⁷ S. 90H, s.90UK

⁸ See s.90J or s.90UL for the requirements for a termination agreement to be binding

⁹ S.90UM

¹⁰ S. 79A FLA

¹¹ S.90K(d)

Case law and legislative amendment

After the introduction of Part VIIIA, early case law tended to suggest a strict compliance approach to BFA requirements.

Australian Securities and Investments Commission v Rich and Another (2004) 31 Fam LR 667

O’Ryan J commented on s. 90G and noted that the requirements to make an agreement binding were justified because the effect of a binding financial agreement is to oust the jurisdiction of the court. He went on to say at para 64 “*I am of the view that the requirements of s 90G are not stringent. All that is required is that the agreement is signed by both parties, includes a statement addressing the matters in s90G(1)(b) and attaches a certificate from a legal practitioner.*”

Unfortunately he did not expand on this comment. His comment has been quoted in later cases. Perhaps he is referring to the fact that s90G does not require a particular form of words or style of document to be used.

J and J [2006] FamCA 442

This case concerned s90G(1)(b). The certificates attached to the agreement were in the form repealed in January 2004. The agreement was signed in November 2004. The agreement contained a statement about the advice the parties received but Collier J could not be satisfied as to what advice was actually given and whether it covered the required subject matter as set out in s 90G. Collier J found that it was not a binding financial agreement. His dissatisfaction was also based on the wording of the certificates themselves. Collier J placed emphasis on the words “*if, and only if*” that appear in the first line of s90G as requiring a standard above substantial compliance, it must be full compliance.

Millington and Millington [2007] FamCA 687

This is a case decided by Carter J who found that the wording of s90G(1)(a) and (c) make it clear that there is to be one original agreement signed by both parties and a copy. To have counterparts signed by one party and exchanged does not comply with the provisions, there is to be one original only. For this reason the agreement was not binding. The agreement was also intended to oust the court’s jurisdiction in relation to spouse maintenance. The agreement was to become operative upon signing. As the wife was in receipt of a NewStart allowance when she signed the agreement, even if the agreement had been binding it would not have been binding with respect to spouse maintenance.

Ruzic v Ruzic [2007] FamCA 473

The solicitor acting for the wife used the wrong precedent for the certificate, that is a certificate that complied with an earlier version of s.90G. He realized this after reading the decision of *J and J* and wrote to the husband’s solicitor proposing to execute updated certificates. The solicitors signed new certificates in the correct form. Stevenson J stated that there was nothing in the Act which expressly required

the provision of advice and certification to occur contemporaneously. She went on to find that the original certificates were rectified by the second certificates. The body of the agreement itself contained a statement that the parties each received advice independently prior to signing the agreement.

***Fitzpatrick v Griffin* [2008] FMCAfam 555**

In this case the husband selected and paid for a single firm to act for both himself and the wife in respect the BFA. The Court found several reasons for finding that the agreement was not binding including noting at para 19 that “*there can be no question that there was little that resembled ‘independent advice’*”.

Black v Black First Instance Decision (2006) 36 Fam LR 680

The first instance decision was a decision of Benjamin J in relation to the interpretation of s90G. He handed down the decision on 15 September 2006. The husband in that case sought to have the financial agreement he and his wife entered into declared void because of non-compliance with s90G on two bases; the first being that the agreement was not certified properly because the agreement was amended after the certificates were signed, the second being that s90G requires the agreement to contain a statement as to the advice given in the agreement itself in addition to the certificates being annexed to the agreement. Alternatively, he sought to have the agreement set aside.

Benjamin J distinguished the decision of Collier J in *J and J*. He noted that the argument before Collier J had focused on the phrase “*if, and only if*” which appears in the first line of s.90G(1) but did not argue about the phrase “*to the effect that*” in s90G(1)(b) and the impact of s90K. Benjamin J went on to discuss the two common approaches to statutory interpretation being the strict or literal approach and the purposive approach. Benjamin J said at para 104 “*[t]he purposive approach seeks to give effect to the intention of Parliament in drafting the instrument, rather than the objective, natural meaning of the text alone.*” Benjamin J was of the view that if a strict interpretation was applied to agreements it would discourage people from entering into them, would increase the costs and fewer practitioners would be willing to advise in relation to them. This would be contrary to Parliament’s intention which was to encourage ordinary people to enter into agreements. Benjamin J stated that form should not defeat substance.

The House of Representatives’ Explanatory Memorandum to the Family Law Amendment Bill in 1999 released on 21 September 1999 stated in reference to s 90G (paragraph 129) notes that “*all of the criteria will have to be met in order for a financial agreement to be binding*”.

In the replacement supplementary Explanatory Memorandum it (Bill of Digest No. 88, 1999-2000) the fact that de facto couples were able to enter into binding contracts that married couples could not was discussed. After further consultation, amendments were made to the bill and the outline of the amendments at Paragraph 72 explains that 90.G sets out the circumstances that need to be satisfied before an agreement is binding. The amendments included: making independent legal advice compulsory and clarifying the nature of the advice to be provided using the same approach as s47 of

the *Property Relationship Act 1984* (NSW). It is interesting to note that there have been very few challenges to agreements under that Act. It is unfortunate that the Explanatory Memoranda does not provide any further guidance.

The husband argued that the agreement was void because it did not contain a statement to the effect of s.90G(1)(b) in addition to the certificates of advice. Benjamin J found that it was sufficient on a purposive interpretation that the certificates of advice were annexed to the agreement. They formed part of the agreement and consequently there was no need for a statement about the advice given to appear elsewhere in the agreement. Benjamin J went on to say that in any event the statement in Recital I of the agreement which acknowledged that the parties had each received independent legal advice was sufficient to comply with s.90G(1)(b).

The husband argued that the agreement was void because the agreement was amended after his solicitor signed the certificate of advice. Benjamin J rejected that argument as it was clear that he had received comprehensive advice before he signed the agreement and when the amendment was made. The husband initialed the amendment which Benjamin J found constituted signing the agreement for the purpose of s.90G(1)(b). Benjamin J dismissed the husband's application. The husband appealed.

Black v Black Full Court Appeal [2008] FamCAFC 7

Faulks DCJ, Kay J and Penny J allowed the husband's appeal, the effect of which was to set aside the financial agreement. The appeal focused on the interpretation of s.90G. The husband argued that the trial judge was in error in rejecting the proposition that the statutory requirements should be strictly interpreted. The Full Court stated at para 40:

“Care must be taken in interpreting any provision of the Act that has the effect of ousting the jurisdiction of the court. The amendments to the legislation that introduced a regime whereby parties could agree to the ouster of the court's power to make property adjustment orders reversed a long held principle that such agreements were contrary to public policy.”

The Court also said at para 42:

“The underlying philosophy that had guided the courts in enunciating that principle was seen to place too many restrictions on the right of the parties to arrange their affairs as they saw fit. The compromise reached by the legislature was to permit the parties to oust the court's jurisdiction to make adjustive orders but only if certain stringent requirements were met.”

The agreement did not refer specifically to the requirements although the certificate did. The statement in the agreement did not meet the requirements of s.90G(1)(b). The Full Court preferred the strict approach given that the effect of a binding agreement is to oust the court's jurisdiction. The Full Court did not think it was necessary to determine whether or not the fact that the solicitor's certificate predated the amendment meant the agreement was not binding as they had already found that the agreement was flawed.

Kostres and Kostres (2009) FamCAFC 2222

This was a Full Court judgment heard by Bryant CJ, Boland and Jordan JJ. The parties entered into the agreement prior to marriage. Unlike much of the case law, this case did not centre on s.90G but rather the meaning of the agreement. The Agreement provided for assets acquired during the marriage with joint funds to be divided between the parties. The Full Court held that there was no agreement between the parties as to the meaning of the words “*acquired by joint funds*”, “*assets*” and “*from their own monies*”. Therefore, the agreement was void for uncertainty. The Court held at para 164:

“A Court’s power to adjust property under s 79 is exercised using well defined guidelines to ensure the resulting order is just and equitable, and any order made may be subject of the safeguard of appellate review. That is not the case with property dealt with under a financial agreement. Thus care in establishing the mutual intention of the parties, and drafting the terms of the financial agreement with precision assume the utmost importance.”

Federal Justice System Amendment (Efficiency Measures) Act (No 1) 2009

This act was a legislative reaction to the Full Court’s decision in *Black v Black* and their preference for strict compliance. Following these amendments, s.90G(1A) was introduced whereby a Court can declare that an agreement is binding even in circumstances where there is not strict compliance with the provisions of s90G. The legislature has favoured the substantive compliance approach by introducing s.90G(1A) (**Annexure B**) which allows the Court to overlook technical errors.

Pursuant to s.90G(1A) a Court may determine that a BFA is binding even if:

- there is no statement in the body of the agreement that advice was given;
- no certificate of Independent Advice was attached;
- the wrong certificate was attached; or
- there was an incorrect signing sequence.

If a Court is satisfied that “*it would be unjust and inequitable if the agreement were not binding*”¹² then a declaration to that effect can be made.

Wallace and Stelzer [2011] FamCa 54

Benjamin J heard this matter after the introduction of s.90G(1A). The certificates attached to the agreement reflected the wording of the original s.90G but the parties entered into the agreement in September 2005. In this fact scenario Benjamin J held that the certificates did not need to be remedied due to transitional provisions of the amendments but notwithstanding that, he noted that he would have, if necessary, made an Order under s.90G(1A) and the agreement would have otherwise been binding.

¹² S.90G(1A)(c)

***Parker & Parker* [2010]FamCA 664**

The Wife, who was provided with a letter of advice from her solicitor, entered into a BFA which was somewhat disadvantageous to her. Subsequently substantial handwritten amendments providing for the wife to pay \$60, 000 into a joint account and the husband to pay \$10, 000 were incorporated into the amendment. Although the wife and her solicitor did have a conference in which the amendments were discussed (as per a file note) the wife did not receive updated written advice. Strickland J found that it would be unjust and inequitable if the agreement were binding on the parties. In this case Strickland J refused to “rectify” a BFA to make it enforceable under s.90G(1A). His Honour said at paragraph 113:

“the intention of the amendments is to avoid Financial Agreements being found not to bind the parties due to technical difficulties. Although Section 90G(1A)(b) includes a subsection (1)(b) in the list of relevant subsections, it could be argued that the provision of legal advice is not a “technical” issue but a substantive matter going to the heart of the Agreement.”

Foreign cases

***Murphy v Murphy* [2009] FMCAfam 270**

The Wife, whilst present in the Philippines, received advice from a Filipino lawyer who also executed the certificate required under s.90G. As the Wife’s lawyer was not admitted to practice in Australia, this was sufficient to make the agreement not binding.

***Ruame v Bachmann-Ruane* [2009] FamCA 1101**

Here the BFA was considered not binding because the husband’s solicitor was admitted to practice in England. A legal practitioner who can give advice does not necessarily mean an expert in family law but does refer to one who is enrolled in to practice in Australian Federal, State or Territory jurisdiction. Cronin J stated at para 78 that whilst the intention of s.90G is not necessarily to require a specialist family lawyer to give advice, “*it is directed to lawyers who are subject to the controls of the state regulatory bodies as well as the courts because of the need to protect the public and ensure accountability*”.

Practical tips

BFAs are a relatively new instrument of Australian Family Law. The case law in the area should serve as a warning to practitioners to exercise diligence when drafting and executing the agreements. As parties have only been entering into BFAs since late 2000, it is expected that the number of litigated BFAs will increase with time. It is safe to assume that practices which now appear consistent with the legislation, may later be open to challenge.

Accordingly, the following considerations should be kept in mind when drafting BFAs:

- Do not rely solely on precedents for drafting BFAs. Legislative provisions need to be double checked to ensure they reflect the law as at the date of signing.
- Check the other provisions of the FLA to make sure the agreement complies with them. For instance, s.90DA relates to the need for a separation declaration.
- A client should be given a letter of advice prior to signing the BFA. The letter of advice should ideally be signed by the client and refer to such matters as s.90G and the client's obligation of full and frank financial disclosure.
- Make sure that the body of the agreement contains a statement about the advice given and refers to the matters listed in s90G. Do not just rely on the s90G certificate. For abundant caution, repeat the wording in the s90G certificate.
- If the advice is delivered over a series of letters, the final letter should refer (or perhaps annex) to the earlier letters of advice.
- If any last minute changes are required, consider taking the time to incorporate these amendments into the document. Handwritten amendments (even where initialed by both parties) leave a document open to scrutiny.
- It may be many years before BFAs are litigated, therefore, retaining a BFA file well beyond the seven (7) years as required by statute, may be advisable.
- As there is no official "registry" for BFAs, practitioners should go to some degree of effort to ensure that a copy of the agreement is safely stored.
- Practitioners may wish to consider including a paragraph in the body of the agreement, whereby the parties acknowledge that they retain a copy of the BFA.
- A confidentiality clause may be called for.

“A”

Section 90G When financial agreements are binding

(1) Subject to subsection (1A), a financial agreement is binding on the parties to the agreement if, and only if:

- (a) the agreement is signed by all parties; and
- (b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the agreement; and
- (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b) was provided to that party (whether or not the statement is annexed to the agreement); and
- (ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and
- (d) the agreement has not been terminated and has not been set aside by a court.

Note: For the manner in which the contents of a financial agreement may be proved, see section 48 of the *Evidence Act 1995*

“B”

Section 90G When financial agreements are binding

- (1A)** A financial agreement is binding on the parties to the agreement if:
- (a) the agreement is signed by all parties; and
 - (b) one or more of paragraphs (1)(b), (c) and (ca) are not satisfied in relation to the agreement; and
 - (c) a court is satisfied that it would be unjust and inequitable if the agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and
 - (d) the court makes an order under subsection (1B) declaring that the agreement is binding on the parties to the agreement; and
 - (e) the agreement has not been terminated and has not been set aside by a court.

“C”

90K Circumstances in which court may set aside a financial agreement or termination agreement

(1) A court may make an order setting aside a financial agreement or a termination agreement if, and only if, the court is satisfied that:

(a) the agreement was obtained by fraud (including non-disclosure of a material matter); or

(aa) a party to the agreement entered into the agreement:

(i) for the purpose, or for purposes that included the purpose, of defrauding or defeating a creditor or creditors of the party; or

(ii) with reckless disregard of the interests of a creditor or creditors of the party; or

(ab) a party (the *agreement party*) to the agreement entered into the agreement:

(i) for the purpose, or for purposes that included the purpose, of defrauding another person who is a party to a de facto relationship with a spouse party; or

(ii) for the purpose, or for purposes that included the purpose, of defeating the interests of that other person in relation to any possible or pending application for an order under section 90SM, or a declaration under section 90SL, in relation to the de facto relationship; or

(iii) with reckless disregard of those interests of that other person; or

(b) the agreement is void, voidable or unenforceable; or

(c) in the circumstances that have arisen since the agreement was made it is impracticable for the agreement or a part of the agreement to be carried out; or

(d) since the making of the agreement, a material change in circumstances has occurred (being circumstances relating to the care, welfare and development of a child of the marriage) and, as a result of the change, the child or, if the applicant has caring responsibility for the child (as defined in subsection (2)), a party to the agreement will suffer hardship if the court does not set the agreement aside; or

(e) in respect of the making of a financial agreement—a party to the agreement engaged in conduct that was, in all the circumstances, unconscionable; or

(f) a payment flag is operating under Part VIII B on a superannuation interest covered by the agreement and there is no reasonable likelihood that the operation of the flag will be terminated by a flag lifting agreement under that Part; or

(g) the agreement covers at least one superannuation interest that is an unsplitable interest for the purposes of Part VIII B.

(1A) For the purposes of paragraph (1)(aa), *creditor*, in relation to a party to the agreement, includes a person who could reasonably have been foreseen by the party as being reasonably likely to become a creditor of the party.

(2) For the purposes of paragraph (1)(d), a person has *caring responsibility* for a child if:

- (a) the person is a parent of the child with whom the child lives; or
- (b) a parenting order provides that:
 - (i) the child is to live with the person; or
 - (ii) the person has parental responsibility for the child.
- (3) A court may, on an application by a person who was a party to the financial agreement that has been set aside, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.
- (4) An order under subsection (1) or (3) may, after the death of a party to the proceedings in which the order was made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
- (5) If a party to proceedings under this section dies before the proceedings are completed:
 - (a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and
 - (b) if the court is of the opinion:
 - (i) that it would have exercised its powers under this section if the deceased party had not died; and
 - (ii) that it is still appropriate to exercise those powers;the court may make any order that it could have made under subsection (1) or (3); and
 - (c) an order under paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
- (6) The court must not make an order under this section if the order would:
 - (a) result in the acquisition of property from a person otherwise than on just terms; and
 - (b) be invalid because of paragraph 51(xxxi) of the Constitution.

For this purpose, *acquisition of property* and *just terms* have the same meanings as in paragraph 51(xxxi) of the Constitution.