

# **FAMILY LAW PRACTICE PRACTICAL GUIDE**



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## TABLE OF CONTENTS

### Contents

<b>1. HOW TO USE THIS PRACTICAL GUIDE .....</b>	<b>3</b>
<b>2. FILE NOTE OF INTERVIEW, RESEARCH AND FURTHER ADVICE .....</b>	<b>4</b>
<b>3. LETTER OF ADVICE .....</b>	<b>14</b>
<b>4. APPLICATION FOR DIVORCE .....</b>	<b>21</b>
<b>5. URGENT AND INTERIM APPLICATIONS: FILE NOTE OF TELEPHONE ATTENDANCE, RESEARCH AND ADVICE.....</b>	<b>22</b>
<b>6. PARENTING APPLICATIONS: FILE NOTE OF ATTENDANCE, RESEARCH AND ADVICE.....</b>	<b>27</b>
<b>7. DIVORCE HEARING .....</b>	<b>30</b>
<b>8. PROPERTY APPLICATIONS .....</b>	<b>32</b>
<b>9. SPOUSAL MAINTENANCE .....</b>	<b>33</b>
<b>10. ROLE PLAY ADVOCACY ASSESSMENT TIPS .....</b>	<b>34</b>

## 1. HOW TO USE THIS PRACTICAL GUIDE

This practical guide has been developed for your assistance in the College of Law elective unit Family Law Practice. Typically, a client in a family law matter may provide instructions at the initial client interview that are fraught with emotion and a multitude of legal and non-legal issues. This guide is structured in a way that aims to equip you with the problem solving skills to discern the legal issues from these instructions, and go on to provide practical legal advice to the client and represent them in family law matters as instructed. These issues include the breakdown of a marriage or other relationships, obtaining a divorce order, matters relating to parenting, obtaining a parenting order, property settlement, child support and spousal maintenance.

The types of assessment in the College of Law elective unit currently include participation in on-site workshops, the preparation of a file note of advice following a client interview and a role play of the conduct of a court appearance. This practical guide is structured in a way that simulates these types of assessment through presenting a file note of advice following a fact scenario from a fictitious client interview and providing support as to the conduct of court appearances. Lawskool Pty Ltd recommends that you follow this practical guide in the order as it appears, and work through the fact scenario to each practical task in a way that ensures you understand the steps taken along the way.

Throughout your studies, you may adopt an engaged learning style which enables you to actively explore ideas and issues about a topic, and connect with your peers and mentors about real life situations and how they apply to the topic. Lawskool Pty Ltd hopes that you may use this practical guide as a tool in your engagement about Family Law Practice in the College of Law.

## 2. FILE NOTE OF INTERVIEW, RESEARCH AND FURTHER ADVICE

**Names:** Adam Johnson attendance with Elizabeth Black

**Date:** 20 February 2015

**Time Spent:** 10 units (60 minutes)

**Client Details:** Elizabeth Jane Black

**Name of Matter:** Elizabeth Black – Family Law Advice

Sample

**Instructions from client:**

1. On 12 April 1972 Elizabeth Jane Black and John Byron Black married in Australia.
2. On 14 February 2014, Elizabeth separated from John. Elizabeth stayed in the matrimonial home which they both jointly own while John went travelling in his van around Australia. At this time both the parties considered the marriage to be over.
3. On 24 May 2014, John moved into the bungalow located on the matrimonial property. The bungalow is distinct from the main house, with its own shower and toilet. While John was living in the bungalow, Elizabeth continued to live in the main house and was online dating.
4. On 26 December 2014 after a Christmas spent together with their children, Elizabeth and John resumed their matrimonial relationship and John moved from the bungalow back into the main house, sleeping in their matrimonial bed.
5. After John found out about Elizabeth's online dating, they separated again on 13 February 2015 and John returned to live in the bungalow. Since that date Elizabeth has rarely seen or spoken to John, mainly on account of John travelling to Tasmania for work.
6. Elizabeth has entered into a new relationship with Tyrone from her internet dating and wants to divorce John once and for all. In her mind their marriage is well and truly over. Elizabeth has provided instructions to act for her to obtain a divorce.
7. Elizabeth's neighbour Floral Butter is aware of Elizabeth and John's various living arrangements over the time and regularly spends time at the matrimonial home tutoring their son Diezel.

8. However, she is firstly seeking advice as to the procedures for divorce, and whether there are likely to be any complications. Elizabeth suffers symptoms of stress and anxiety, and wishes for the divorce to be finalised as soon as possible so that she can start her new life with Tyrone and her children in France.
9. Elizabeth and John have three Australian-born children: Diezel (13 years of age), Shania (9 years of age) and Twilight (5 years of age).
10. The children currently live with Elizabeth in the matrimonial home.
11. Within the next 6 months, Elizabeth wishes to take the three children to France where they will live and be raised by Elizabeth and Tyrone.
12. Elizabeth is seeking advice as to whether John can stop her taking their children to France.
13. Elizabeth earns about \$400 per week before tax as a beautician, and John earns about \$800 per week as a travelling sales person.
14. Elizabeth is also seeking advice as to whether John can be forced to pay child support, and what the formula for determining child support is.

**Issues:**

- (i) Legal
  1. Divorce;
  2. Relocation and international child abduction;
  3. Parenting plans and parenting orders; and
  4. Child support.
  
- (ii) Non Legal:
  1. Stress; and
  2. Anxiety.

**Further Information required:**

- (i) Who to supply? I am to supply Elizabeth Black with a written advice, which as I explained to her during the interview, I will send in about one week's time after further research.

Elizabeth is to supply the following:

1. Her and John Black's marriage certificate; and
2. Instructions about what arrangements will be made for each child.

- (ii) If yourself: How to be obtained? Research issues by perusing and applying provisions of the *Family Law Act 1979 (Cth)*, *Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth)* and *Child Support (Assessment) Act 1989 (Cth)*.

**Action to be taken:**

- (i) By yourself: I am to provide Elizabeth Black with a written advice, as well as prepare an Application for Divorce and represent Elizabeth in her divorce proceedings in accordance with her instructions. I am also to seek Elizabeth's instructions in respect to acting on her behalf for any potential proceedings involving relocation and international child abduction, parenting plans and orders, and child support.
- (ii) By Client: Elizabeth Black is to provide the further information required outlined above. I also advised her during the interview to contact me if she has any queries or any further instructions at any stage.
- (iii) By third parties: Floral Butter is to provide instructions and swear an Affidavit in support of the Application for Divorce.

**Advice on Each Issue:**

(i) Given at  
Interview:

I gave the following advice contingent on further advice:

1. In order to file divorce proceedings, Elizabeth and John need to be separated for a period of 12 months and 1 day. The date of separation is 14 February 2014, but Elizabeth and John resumed living together as a couple on 26 December 2014 until 13 February 2015 when they again separated. I advised Elizabeth that a complication could arise as to the period of separation as she and John resumed living together as a couple and that I would provide advice as to the earliest date on which divorce proceedings may be filed in my letter of advice.
2. John could possibly stop Elizabeth taking their children to France. A potential issue as to international child abduction arises, which is an issue I will provide advice on in my letter of advice.
3. Elizabeth and John could negotiate a parenting plan or a Court could impose a parenting order, which are issues I will advise on in my letter of advice.
4. The Child Support Agency has a formula to determine child support. I will provide advice as to whether John would be required to pay child support in my letter of advice.



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