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FAMILY PROVISION

THE YEAR IN REVIEW

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Twomey v McDonald [2012] NSWSC 22		
Nicholas J		2 February 2012
Estate	\$627,507	
Beneficiaries	2 grandchildren	
Beneficiaries' circumstances	Grandchild # 1 (41 year old human resources manager)	Grandchild # 2 (38-year-old self-employed person)
Home:	\$815,000	\$650,000
Super:	\$383,000	\$49,000
Other:	<u>\$28,000</u>	<u>\$285,500</u>
Total assets:	\$1,233,000	\$984,500
Less liabilities:	<u>\$586,031</u>	<u>\$173,591</u>
Net assets:	\$646,969	\$810,909
Annual income (after tax):	\$140,000	\$28,800
Less annual expenditure:	<u>\$126,074</u>	<u>\$52,500</u>
Net cash flow:	-\$14,326	-\$23,700
Plaintiff	55-year-old child	
Plaintiffs' circumstances		
Home:	\$800,000	
Super:	\$40,000	
Other:	<u>\$24,000</u>	
Total assets:	\$864,000	
Less liabilities:	<u>\$824,000</u>	
Net assets:	\$40,000	
Annual income (after tax):	\$57,000	
Less annual expenditure:	<u>\$61,724</u>	
Net cash flow:	-\$4,524	
Issues / discussion	Time, extension where delay caused by solicitor's oversight: [7]-[18]	
Orders	\$185,000	
Costs orders		
Costs	Plaintiff/s	\$91,500
	Defendant/s	\$93,500
	Total	\$185,000

Harkness v Harkness [2012] NSWSC 35	
Hallen AsJ	2 February 2012
	Costs argument Unsuccessful plaintiff sought costs out of estate. Successful defendant sought costs from unsuccessful plaintiff.
Issues / discussion	Costs, rules and principles – generally and where family provision order sought
Orders	No orders as to the plaintiff's costs. Defendants costs out of the estate

Cobb v Cobb [2012] NSWSC 97		
Hallen AsJ	20 February 2012	
Estate	\$150,000	
Beneficiaries	Grandson & 2 great-grandchildren	
Beneficiaries' circumstances	Not disclosed. (Apparently all were infants.)	
Plaintiffs	69-year-old widow (48-year marriage)	
Plaintiff's circumstances		
Home:	Nil	
Super:	Nil	
Other:	<u>\$12,000</u>	
Total assets:	\$12,000	
Less liabilities:	<u>Nil</u>	
Net assets:	\$12,000	
Annual income (after tax):	\$20,410	
Less annual expenditure:	<u>\$22,568</u>	
Net cash flow:	-\$2,158	
Issues / discussion	Time within which to bring proceedings – extension – principles: [33]-[36]	
Orders	1. Time extended 2. Whole estate to plaintiff	
Costs orders	Plaintiff's costs assessed at \$30,000 to be paid out of estate. Defendant's costs on the indemnity basis.	
Costs	Plaintiff/s	\$45,686
	Defendant/s	\$11,565
	Total	\$57,251

Evans v Perpetual Trustee Company Limited [2012] NSWSC 139		
Macready AsJ	22 February 2012	
Estate	\$1,277,914	
Beneficiaries	Daughter (plaintiff) & disable grandson : life estate 3 other grandchildren : remainder	
Beneficiaries' circumstances	Not disclosed except that disable grandson had annual income of \$21,515	
Plaintiffs	57-year-old daughter	
Plaintiff's circumstances		
Home:	Nil	
Super:	Nil	
Other:	<u>Nil</u>	
Total assets:	Nil	
Less liabilities:	<u>\$11,896</u>	
Net assets:	-\$11,896	
Annual income (after tax):	\$26,448.80	
Less annual expenditure:	<u>\$13,636</u>	
Net cash flow:	\$12,852.80	
Issues / discussion		
Orders	<ol style="list-style-type: none"> 1. \$140,000 2. Trust varied – including P to receive \$200 per week indexed 	
Costs orders	Usual	
Costs	Plaintiff/s	\$45,209
	Defendant/s	\$59,451
	Total	\$104,660

Ogburn v Ogburn [2012] NSWSC 79		
Ball J		5 March 2012
Estate & potential notional estate	\$3,200,000	
Beneficiary	Widow (30-year marriage)	
Beneficiary's circumstances		
Home:	Nil	
Super:	\$752,320	
Other:	<u>\$646,082</u>	
Total assets:	\$1,398,402	
Less liabilities:	<u>\$0</u>	
Net assets:	\$1,398,402	
Annual income (after tax):	\$?	
Less annual expenditure:	<u>\$?</u>	
Net cash flow:	\$?	
Plaintiffs	2 adult children	
Plaintiffs' circumstances	Adult son # 1 (51)	Adult son # 2 (50)
Home:	Nil	\$490,000
Super:	\$137,594	\$68,471
Other:	<u>\$349,168</u>	\$38,000
Total assets:	\$486,762	\$597,071
Less liabilities:	<u>\$60,160</u>	<u>\$320,500</u>
Net assets:	\$289,008	\$277,071
Annual income (after tax):	>\$67,000*	E\$53,000
Less annual expenditure:	<u>\$90,436</u>	<u>\$?</u>
Net cash flow:	-\$23,436*	\$?
	*Not accepted	
Issues / discussion		
Orders	Adult son # 1: Dismissed Adult son # 2: \$150,000	
Costs orders	None (settled out of court)	
Costs	Plaintiff/s	\$58,000 + E\$35,000
	Defendant/s	\$197,000
	Total	\$290,000

Davis v Davis [2012] NSWSC 201		
Slattery J	7 March 2012	
Estate	\$325,000	
Beneficiaries	Son: 4/9ths Other 5 children: 5/9ths	
Beneficiaries' circumstances	Not much evidence: see [77]	
Plaintiffs	Intellectually disabled daughter	
Plaintiff's circumstances		
Home:	Nil	
Super:	Nil	
Other:	<u>Nil</u>	
Total assets:	\$0	
Less liabilities:	<u>\$0</u>	
Net assets:	\$0	
Annual income (after tax):	\$19,468	
Less annual expenditure:	<u>\$20,436</u>	
Net cash flow:	-\$967.20	
Parallel claims	Administration suit. <i>Held:</i> Executor had failed to properly administer estate	
Issues / discussion	1. Time, extension of – principles: [52]-[54] 2. Beneficiaries' financial circumstances, where no evidence of – principles: [80]	
Orders	\$100,000 or 1/3 rd of residue	
Costs orders	Plaintiff's costs on party-party basis No order as to (self-represented) defendant's costs	
Costs	Plaintiff/s	Not stated in judgment
	Defendant/s	Nil
	Total	\$?

Hatton v Hatton [2012] NSWSC 182			
Macready AsJ		8 March 2012	
Estate	\$954,296.71		
Beneficiaries	4 adult children (incl. plaintiff) equally		
Beneficiaries' circumstances	Child # 1 (71 years old)	Child # 2 (68 years old)	Child # 3 (66 years old)
Home:	\$740,000	\$700,000	Nil
Super:	Nil	\$176,260	\$0
Other:	<u>\$103,393</u>	<u>\$279,000</u>	<u>\$145,000</u>
Total assets:	\$843,393	\$1,155,260	\$145,000
Less liabilities:	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Net assets:	\$843,393	\$1,155,260	\$145,000
Annual income (after tax):	\$29,328	\$12,969	E\$33,000
Less annual expenditure:	<u>\$?</u>	<u>\$33,540</u>	<u>\$?</u>
Net cash flow:	\$?	\$20,571	\$?
Plaintiff	64-year-old son		
Plaintiffs' circumstances			
Home:	Nil		
Super:	\$0		
Other:	<u>\$337,000</u>		
Total assets:	\$337,000		
Less liabilities:	<u>\$87,200</u>		
Net assets:	\$249,800		
Annual income (after tax):	E\$60,000		
Less annual expenditure:	<u>\$51,383</u>		
Net cash flow:	-\$8,617		
Parallel claims	Possession (from plaintiff) of estate realty. Ordered (but each party to bear own costs).		
Orders	Summons dismissed		
Costs orders	Plaintiff to pay the defendant's costs.		
Costs	Plaintiff/s	\$150,000	
	Defendant/s	\$103,638	
	Total	\$254,238	
Notes	The court noted that, but for his claim, the plaintiff would have received \$233,324 under the will.		

Dugac v Dugac [2012] NSWSC 192			
Hallen AsJ		8 March 2012	
Estate	\$495,551		
Beneficiaries	3 grandchildren		
Beneficiaries' circumstances	Grandchild # 1 (34 years old)	Grandchild # 2 (33 years old)	Grandchild # 3 (28 years old)
Home:	\$450,000	Nil	Nil
Super:	\$?	\$0	\$0
Other:	<u>\$22,000</u>	<u>\$51,598</u>	<u>\$0</u>
Total assets:	\$?	\$51,598	\$0
Less liabilities:	<u>\$361,000</u>	<u>\$0</u>	<u>\$25,784</u>
Net assets:	\$?	\$51,598	-\$25,784
Annual income (after tax):	\$59,940	\$139,765	E\$28,600
Less annual expenditure:	<u>\$39,120</u>	<u>\$139,765</u>	<u>\$18,936</u>
Net cash flow:	-\$20,820	\$0	\$9,664
Plaintiff	61-year-old daughter		
Plaintiffs' circumstances			
Home:	Nil		
Super:	\$272,817		
Other:	<u>\$122,322</u>		
Total assets:	\$395,139		
Less liabilities:	<u>\$0</u>		
Net assets:	\$395,139		
Annual income (after tax):	\$49,140		
Less annual expenditure:	<u>\$53,872</u>		
Net cash flow:	-\$4,732		
Issues / discussion	Needs of applicant – do not include ability to make gifts to others: [173]-[194]		
Orders	Summons dismissed		
Costs orders	No order as to plaintiff's costs. Defendants costs out of the estate on the indemnity basis.		
Costs	Plaintiff/s	\$88,671	
	Defendant/s	\$69,556	
	Total	\$158,227	

Madden-Smith v Madden [2012] NSWSC 146		
Pembroke J	16 March 2012	
Notional estate (Estate wholly distributed)	\$182,934	
Beneficiaries	2 grandchildren: \$20,000 each Nephew: \$20,000 Son: Residue	
Beneficiaries' circumstances	Not disclosed except that son had a home valued at \$129,000 and an income of \$25,000 per annum	
Plaintiff	50-year-old daughter	
Plaintiff's circumstances		
Home:	Nil	
Super:	Nil	
Other:	<u>Nil</u>	
Total assets:	Nil	
Less liabilities:	<u>Nil</u>	
Net assets:	Nil	
Annual income (after tax):	E\$19,000	
Less annual expenditure:	<u>E\$19,000</u>	
Net cash flow:	\$0	
Issues / discussion	<ol style="list-style-type: none"> 1. Time, extension of – principles: [22]-[30] 2. Testamentary disposition, freedom of: [30]-[34] 3. Drug & alcohol abuse – relevance (including as ground for refusing to make an order): [38] 	
Orders	<ol style="list-style-type: none"> 1. Application to extend time refused 2. Summons dismissed 	
Costs orders	Parties to bear own costs	
Costs	Plaintiff/s	\$?
	Defendant/s	\$25,338
	Total	\$?

Gardiner v Gardiner [2012] NSWSC 269		
Macready AsJ	16 March 2012	
Estate	\$634,563	
Beneficiaries	Son # 1: \$100,000 Sons #s 1 & 2 (plaintiff & defendant): Residue equally	
Beneficiaries' circumstances	Son # 1	
Home:	Nil	
Super:	\$0	
Other:	<u>\$29,000</u>	
Total assets:	\$29,000	
Less liabilities:	<u>\$59,084</u>	
Net assets:	\$30,084	
Annual income (after tax):	E\$80,000	
Less annual expenditure:	<u>E\$80,000</u>	
Net cash flow:	\$0	
Plaintiffs	41-year-old son	
Plaintiffs' circumstances		
Home:	Nil	
Super:	Nil	
Other:	<u>\$29,000</u>	
Total assets:	\$29,000	
Less liabilities (incl trust):	<u>\$59,084</u>	
Net assets:	-\$30,084	
Annual income (after tax):	\$16,543.20	
Less annual expenditure:	<u>\$18,984.00</u>	
Net cash flow:	-\$2,440.80	
Issues / discussion	Costs – capping – where plaintiff's success marginal: [79]	
Orders	\$80,000 (additional)	
Costs	Plaintiff/s	\$53,200
	Defendant/s	\$71,857
	Total	\$125,057
Costs orders	Usual orders	
Notes	See also <i>Gardiner v Gardiner</i> [2012] NSWSC 1025 (29 August 2012)	

Carney v Jones [2012] NSWSC 352		
Macready AsJ		20 March 2012
Estate	\$546,758	
Beneficiaries	3 foster children (incl. plaintiffs): \$40,000, \$10,000 & \$10,000 respectively Natural son: Residue	
Beneficiaries' circumstances	69-year-old son	
Home:	\$1,250,000	
Super:	\$0	
Other:	<u>\$84,111</u>	
Total assets:	\$1,334,111	
Less liabilities:	<u>\$429,031</u>	
Net assets:	\$905,080	
Annual income (after tax):	\$0	
Less annual expenditure:	\$?	
Net cash flow:	\$?	
Plaintiffs	2 foster children	
Plaintiffs' circumstances	Foster child # 1 (61)	Foster child # 2 (67)
Home:	Nil	Nil
Super:	\$48,000	\$0
Other:	<u>\$7,200</u>	\$13,000
Total assets:	\$55,000	\$13,000
Less liabilities:	<u>\$0</u>	<u>\$4,568</u>
Net assets:	\$55,000	\$8,432
Annual income (after tax):	\$49,088	E\$18,512
Less annual expenditure:	<u>\$40,768</u>	<u>\$18,512</u>
Net cash flow:	\$8,320	\$0
Issues / discussion	Foster children, obligation to make provision for: [47]-[57]	
Orders	Foster child # 1: \$40,000 (in addition to \$40,000 under will) Foster child # 2: \$40,000 (in addition to \$10,000 under will)	
Costs orders	Usual	
Costs	Plaintiff/s	\$65,000
	Defendant/s	\$64,000
	Total	\$129,000

Allen v Allen [2012] NSWSC 140			
Macready AsJ		22 March 2012	
Estate	\$291,522.66		
Beneficiaries	4 adult children (incl. plaintiff, who received 15%)		
Beneficiaries' circumstances	Richard (62 years old)	Keith (62 years old)	Stephen (58 years old)
Home:	\$550,000	\$450,000	Nil
Super:	\$110,000	Yes, but not in evidence	\$0
Other:	<u>\$161,000</u>	<u>\$5,000</u>	<u>\$3,000</u>
Total assets:	\$821,000	\$?	\$3,000
Less liabilities:	<u>\$0</u>	<u>\$50,000</u>	<u>\$0</u>
Net assets:	\$821,000	\$?	\$3,000
Annual income (after tax):	E\$18,000	\$?	\$18,839.60
Less annual expenditure:	<u>\$?</u>	<u>\$?</u>	<u>E\$18,839</u>
Net cash flow:	\$?	\$?	\$0
Plaintiff	60-year-old daughter		
Plaintiffs' circumstances			
Home:	\$185,000		
Super:	\$0		
Other:	<u>\$1,500</u>		
Total assets:	\$186,500		
Less liabilities:	<u>\$0</u>		
Net assets:	\$186,500		
Annual income (after tax):	\$19,468.80		
Less annual expenditure:	<u>\$?</u>		
Net cash flow:	\$?		
Issues / discussion	<ol style="list-style-type: none"> 1. Evidence – allegations of serious wrongdoing in civil proceedings – standard of proof: [78]-[79] 2. Moral obligation towards adult children: [88]-[92] 3. Moral obligation – reduction as a result of bad conduct: [93]-[94] 4. Small estates: [97] 		
Orders	Summons dismissed		
Costs orders	No order as to the plaintiff's costs Defendants costs out of the estate on the indemnity basis.		
Costs	Plaintiff/s	\$75,395	
	Defendant/s	\$61,495	
	Total	\$136,890	

Kastrounis v Foundouradakis [2012] NSWSC 264			
Hallen AsJ		22 March 2012	
Estate & notional estate:	\$617,708		
Beneficiaries	Five adult children : \$10,000 each Three of those (the defendants) held the notional estate (a house valued at \$563,328) as a result of a transfer shortly prior to death		
Beneficiaries' (defendants) circumstances	Anna	Connie	Irene
Home:	\$780,000	\$1,500,000	\$465,000
Super:	E\$17,943	\$434,000	\$15,000
Other:	<u>\$110,000</u>	<u>\$21,602</u>	<u>\$51,000</u>
Total assets:	\$907,943	\$1,955,952	\$531,000
Less liabilities:	<u>\$449,000</u>	<u>\$28,000</u>	<u>\$176,000</u>
Net assets:	\$458,945	\$1,927,952	\$354,979
Annual income (after tax):	\$98,968	\$79,724	\$26,000
Less annual expenditure:	<u>\$?</u>	<u>\$79,000</u>	<u>\$26,000</u>
Net cash flow:	\$?	\$724	\$0
Plaintiffs			
Plaintiffs' circumstances	Max		Maria
Home:	\$225,000		\$150,000
Super:	\$0		\$0
Other:	<u>\$1,800</u>		<u>\$570</u>
Total assets:	\$226,800		\$150,570
Less liabilities:	<u>\$43,000</u>		<u>\$0</u>
Net assets:	\$183,800		\$150,570
Annual income (after tax):	\$16,104		E\$20,160
Less annual expenditure:	<u>\$22,680</u>		<u>11,520</u>
Net cash flow:	-\$6,576		\$8,640
Orders			
Max: \$65,000 Maria: \$35,000			
Costs orders			
Usual orders			
Costs	Plaintiff/s	\$65,767	
	Defendant/s	\$67,658	
	Total	\$133,425	

Bowditch v NSW Trustee & Guardian [2012] NSWSC 275			
Hallen AsJ		26 March 2012	
Estate	\$414,515		
Beneficiaries	Equally to 2 adult children (including one of 3 plaintiffs)		
Beneficiary's circumstances	51-year-old son. Medically unfit to work.		
Home:	Nil		
Super:	\$0		
Other:	<u>\$13,417</u>		
Total assets:	\$13,417		
Less liabilities:	<u>\$0</u>		
Net assets:	\$13,417		
Annual income (after tax):	\$33,202		
Less annual expenditure:	<u>E\$28,000</u>		
Net cash flow:	\$5,202		
Plaintiffs	Adult child & 2 grandchildren (plaintiff's children)		
Plaintiffs' circumstances	Daughter (53)	Grandchild (25)	Grandchild (16)
Home:	Nil	Nil	Nil
Super:	\$0	\$0	\$0
Other:	<u>\$1,500</u>	\$350	\$0
Total assets:	\$1,500	\$350	\$0
Less liabilities:	<u>\$7,000</u>	<u>\$0</u>	<u>\$0</u>
Net assets:	\$5,500	\$350	\$0
Annual income (after tax):	\$7,410	\$10,140	\$0
Less annual expenditure:	<u>\$7,410</u>	<u>\$10,140</u>	<u>\$0</u>
Net cash flow:	\$0	\$0	\$0
Orders	Each of three claims dismissed		
Costs orders	Plaintiffs to bear own costs. Defendant's costs out of the unsuccessful plaintiff's share of the estate: see <i>Bodwitch v NSW Trustee & Guardian</i> [2012] NSWSC 702 (22 June 2012)		
Costs	Plaintiff/s	\$6,600	
	Defendant/s	\$42,027	
	Total	\$48,627	

Curran v Harvey [2012] NSWSC 276			
Hallen AsJ		27 March 2012	
Estate	\$4,420,000		
Beneficiaries	2 adult children (principally), a friend & 7 grandchildren		
Beneficiaries' circumstances	Daughter (40)	Daughter (34)	Grandchildren & friend
Home:	Nil	\$?	No evidence, other than the fact that the grandchildren were residing with the deceased's daughters
Super:	\$0	\$?	
Other:	<u>\$7,000</u>	<u>\$?</u>	
Total assets:	\$7,000	\$?	
Less liabilities:	<u>\$40,000</u>	<u>\$?</u>	
Net assets:	-\$33,000	\$?	
Annual income (after tax):	\$8,242	\$34,268	
Less annual expenditure:	<u>\$8,242</u>	<u>\$?</u>	
Net cash flow:	\$0	\$?	
Plaintiff	42-year-old daughter of former de facto		
Plaintiffs' circumstances			
Total assets:	\$0		
Less liabilities:	<u>\$5,650</u>		
Net assets:	-\$5,650		
Annual income (after tax):	\$17,914		
Less annual expenditure:	<u>\$17,914</u>		
Net cash flow:	\$0		
Issues / discussion	<ol style="list-style-type: none"> 11-13-year de facto relationship between plaintiff's mother and deceased. Plaintiff had criminal history (including 7 years imprisonment) but no evidence that this was the reason no provision made. Evidence, failure to adduce – effect: [165]-[168] Sexual assault alleged against deceased – standard of proof: [171]-[176] Social security, plaintiff's reliance upon – relevance: [99]-[203] Contribution to building up of estate by de facto spouse – relevance to claim brought by child of de facto: [228] Special Disability Trust: [237]-[239] Orders including payments contingent upon non-incarceration: [245] 		
Orders	\$645,000		
Costs orders	Usual		
Costs	Plaintiff/s	\$67,500	
	Defendant/s	\$85,941	
	Total	\$153,441	

Pletersky v Pletersky [2012] NSWSC 277		
Hallen AsJ	27 March 2012	
Estate	\$571,000	
Beneficiary	Son	
Beneficiaries' circumstances	51-year-old son	
Total assets:	\$0	
Less liabilities:	<u>\$4,308</u>	
Net assets:	-\$4,308	
Annual income (after tax):	\$17,680	
Less annual expenditure:	<u>\$17,680</u>	
Net cash flow:	\$0	
Plaintiffs	53-year-old daughter	
Plaintiffs' circumstances		
Net assets:	\$0	
Annual income (after tax):	\$22,048	
Less annual expenditure:	<u>\$22,048</u>	
Net cash flow:	\$0	
Issues / discussion	<ol style="list-style-type: none"> 1. Service of Notice on eligible persons, waiver of requirement for: [31]-[32] 2. Evidence of statements of deceased, treatment of: [82]-[85] 	
Orders	\$90,000	
Costs	Plaintiff/s	\$71,000
	Defendant/s	\$41,000
	Total	\$112,000
Costs orders	Not apparent from judgment	

Estate of Harrigan – Cowmey v Whimbley [2012] NSWSC 291	
Ward J	28 March 2012
	Interlocutory application for declaration that evidence of financial resources and future needs of persons not named as beneficiaries but interested as next of kin of the deceased sole beneficiary.
	Held: Not prima facie irrelevant
Orders	Application dismissed with costs

Morrison v Abbott [2012] NSWSC 320	
Hallen AsJ	5 April 2012
	<p>Application for approval of settlement affecting the interests of a minor – opposed by minor’s mother (the second defendant – an ex-wife of the plaintiff), principally on the ground that the plaintiff was \$19,330 in arrears of child support payments owing to her.</p> <p>Second defendant sought an order that part of the provision ordered to the plaintiff should be paid to her.</p> <p><i>Held:</i> no power to make such an order.</p>
Issues / discussion	<ol style="list-style-type: none"> 1. Court approval for cases involving the interests of a minor, reasons for seeking: [70]-[71] 2. Duties of executors in the face of a family provision claim: [72]-[75] 3. Court approval of settlements, jurisdiction and criteria: [76]-[89]
Orders	Application dismissed

Keep v Bourke [2012] NSWCA 64	
Macfarlan & Barrett JJA, Tobias AJA	5 April 2011
	<p>Appeal by executor against order (of Macready AsJ) that daughter estranged from deceased for 38 years to receive a legacy of \$200,000 – just under 1/3rd of the estate.</p>
Issues / discussion	<p><i>Held:</i></p> <ol style="list-style-type: none"> 1. Deceased instigated the estrangement and there were no attempts at reconciliation from either side. Therefore no error at Stage I of <i>Singer v Berghouse</i> 2. Discretion miscarried at Stage II of <i>Singer v Berghouse</i> because there was no reduction to the amplitude of provision ordered in favour of the plaintiff to reflect the respondent’s part in the estrangement.
Orders	Appeal allowed. Legacy reduced from \$200,000 to \$175,000

Frohlich v Herborn [2012] NSWSC 338		
Stevenson J	10 April 2012	
Estate	\$5,000,000	
Beneficiaries	1/3 rd of house to plaintiff (child); residue equally between other 5 children. Thus \$808,000 for plaintiff and \$\$838,400 for other children	
Beneficiaries' circumstances	Set out at Annexure A to the judgment. Each owned a home and was financially reasonably comfortable.	
Plaintiffs	Adult son	
Plaintiffs' circumstances		
Home:	\$1,647,505	
Other:	<u>\$454,475</u>	
Total assets:	\$2,101,980	
Less liabilities:	<u>\$744,956.60</u>	
Net assets:	\$1,357,023.40	
Annual income (after tax):	\$77,830	
Less annual expenditure:	<u>\$173,174.52</u>	
Net cash flow:	-\$95,344.52	
Parallel claims	Constructive trust – deceased said to have held estate realty on trust for plaintiff as tenants in common based on (a) alleged agreement between plaintiff and deceased and (b) a representation. <i>Held:</i> Constructive trust.	
Issues / discussion	<ol style="list-style-type: none"> 1. Valuations, differing: [63]-[66] 2. Constructive trusts, common intention: [78]-[85] 3. Estoppel, equitable & proprietary: [86]-[88] 4. Evidence of representations made by the deceased, treatment of: [99]-[101] 	
Orders	E\$270,000 (being additional provision in an amount equivalent to 1/9 th of the value of the estate realty.	
Costs	Plaintiff/s	Not stated
	Defendant/s	\$175,000
	Total	Not stated
Costs orders	Usual	

Hatton v Hatton (No 2) [2012] NSWSC 353	
Macready AsJ	11 April 2012
	Application to vary judgment under UCPR 36.16(3A) based on error in judgment. <i>Held:</i> no jurisdiction to alter orders (& wouldn't have in any event).
Issues / discussion	Judgment, variation of – based on court's misapprehension of facts: [8]
Orders	Application dismissed
Notes	Cf <i>Collins v Mutton [No 2]</i> [2012] NSWSC 353 (below)

Sydney v Sydney [2012] NSWSC 350		
Macready AsJ	12 April 2012	
Estate	\$224,550	
Beneficiary	Intestacy – no next of kin	
Plaintiffs	Members of household / dependants	
Plaintiffs' circumstances	Former de facto spouse	Son of former de facto
Home:	Nil	Nil
Super:	\$0	\$0
Other:	<u>\$70,350</u>	\$4,050
Total assets:	\$70,350	\$4,050
Less liabilities:	<u>\$0</u>	<u>\$0</u>
Net assets:	\$70,350	\$4,050
Annual income (after tax):	\$18,200	\$18,200
Less annual expenditure:	<u>\$?</u>	<u>\$?</u>
Net cash flow:	\$?	\$?
Issues / discussion	Extension of time for commencement of proceedings – principles: [15]-[21]	
Orders	Whole of estate to plaintiffs equally; ie (est.) \$100,000 each	
Costs orders	None	
Costs	Plaintiff/s	Not stated
	Defendant/s	Not applicable
	Total	Not known

Fallow v Mullins [2012] NSWSC 406		
Hallen AsJ		24 April 2012
Estate	\$501,394	
Beneficiaries	Brother & friend equally	
Beneficiaries' circumstances	Brother (88 years old)	Friend
Home:	Nil	\$850,000
Super:	\$0	\$0
Other:	<u>\$195,438</u>	<u>\$22,000</u>
Total assets:	\$195,438	\$872,000
Less liabilities:	<u>\$0</u>	<u>\$0</u>
Net assets:	\$195,438	\$872,000
Annual income (after tax):	\$26,438	\$19,812
Less annual expenditure:	<u>\$?</u>	<u>\$19,812</u>
Net cash flow:	\$?	\$0
Plaintiffs	Daughter (67)	
Plaintiffs' circumstances		
Home:	\$350,000	
Super:	\$308,000	
Other:	<u>\$236,000</u>	
Total assets:	\$894,000	
Less liabilities:	<u>\$0</u>	
Net assets:	\$894,000	
Annual income (after tax):	\$29,592	
Less annual expenditure:	<u>\$24,000</u>	
Net cash flow:	\$5,592	
Estrangement	45 years	
Orders	\$161,000	
Costs orders	Usual	
Costs	Plaintiff/s	\$69,000
	Defendant/s	\$16,000
	Total	\$85,000

Courtney v Powell [2012] NSWSC 460		
Ball J		11 May 2012
Estate & potential notional estate	\$1,131,000 of which \$206,000 actual estate	
Beneficiaries	\$2,000 to son John (first plaintiff) Residue to son Peter (second plaintiff) & daughter (defendant)	
Beneficiary's circumstances	Adult daughter	
Home:	\$925,000	
Super:	\$138,000	
Other:	<u>\$340,000</u>	
Total assets:	\$1,403,000	
Less liabilities:	<u>\$0</u>	
Net assets:	\$1,403,000	
Annual income (after tax):	\$158,000	
Less annual expenditure:	<u>\$181,920</u>	
Net cash flow:	\$23,920	
Plaintiffs	2 adult children	
Plaintiffs' circumstances	John (72)	Peter (69)
Home:	Nil	Nil
Super:	\$0	\$0
Other:	<u>\$0</u>	\$218,000
Total assets:	\$0	\$218,000
Less liabilities:	<u>\$12,000</u>	<u>\$33,000</u>
Net assets:	-\$12,000	\$185,000
Annual income (after tax):	\$18,961.80	\$25,1622.74
Less annual expenditure:	<u>\$18,961.80</u>	<u>\$24,635</u>
Net cash flow:	\$0	\$987.74
Parallel claims	1. Undue influence. <i>Held:</i> Presumption of undue influence arose but was rebutted. 2. Unconscionable dealing. <i>Held:</i> Not found.	
Estrangement	John: 36 years; no explanation	
Issues / discussion	1. Undue influence – principles: [37]-[44] 2. Unconscionable conduct – principles: [50]-[53] 3. Notional estate – intention to limit provision within s 80(2)(a): [66]-[69] 4. Estrangement – principles: [72]-[75]	
Orders	John: \$98,000 (additional), to be held by trustee Peter: E\$97,000 (additional)	
Costs orders	Peter: 90% of costs on ordinary basis up to Offer of Compromise (c. 2 days prior to hearing); thereafter on the indemnity basis. Otherwise usual orders.	
Costs	Plaintiff/s	John: \$86,000; Peter: \$97,000
	Defendant/s	\$93,000
	Total	\$276,000

Davidson v Sampson [2012] NSWSC 481		
Stevenson J	11 May 2012	
Estate	\$2,400,000	
Beneficiaries	Widower	
Beneficiaries' circumstances		
Home:	Nil	
Super:	\$240,000	
Other:	<u>\$550,000</u>	
Total assets:	\$790,000	
Less liabilities:	<u>\$0</u>	
Net assets:	\$790,000	
Annual income (after tax):	\$190,000	
Less annual expenditure:	<u>E\$80,000</u>	
Net cash flow:	\$0	
Plaintiff	13-year-old son of previous husband	
Plaintiffs' circumstances		
Home:	Nil	
Super:	\$0	
Other:	<u>\$0</u>	
Total assets:	\$0	
Less liabilities (incl trust):	<u>\$0</u>	
Net assets:	\$0	
Annual income (after tax):	\$0	
Less annual expenditure:	<u>\$0</u>	
Net cash flow:	\$0	
Orders	E\$1,381,200, to be held by trustees – \$150,000 immediately; balance payable within 6 months of the plaintiff turning 21 or the defendant ceasing to reside in the matrimonial home.	
Costs	Plaintiff/s	Not stated
	Defendant/s	Not stated
	Total	Not known
Costs orders	Usual orders (notwithstanding that plaintiff obtained a worse result than the one offered to him by Calderbank-type letter sent some 3 months prior to hearing.	

Collins v Mutton [2012] NSWSC 548		
Hallen AsJ		24 May 2012
Estate	\$365,409	
Beneficiaries	Long Jetty property (c \$220,000) to one son; racehorse interests (c \$5,000) to defendant; residue to 5 children (incl. defendant) equally	
Beneficiary's circumstances	Son	There was no evidence as to the circumstances of the non-party beneficiaries
Home:	\$520,000	
Super:	\$0	
Other:	<u>\$37,000</u>	
Total assets:	\$559,000	
Less liabilities:	<u>\$45,182</u>	
Net assets:	\$513,818	
Annual income (after tax):	\$32,240	
Less annual expenditure:	<u>\$32,240</u>	
Net cash flow:	\$0	
Plaintiff	61-year-old daughter	
Plaintiffs' circumstances		
Home:	Nil	
Super:	\$0	
Other:	<u>\$3,246</u>	
Total assets:	\$3,246	
Less liabilities (incl trust):	<u>\$575</u>	
Net assets:	\$2,671	
Annual income (after tax):	\$30,030	
Less annual expenditure:	<u>\$30,030</u>	
Net cash flow:	\$0	
Issues / discussion	<ol style="list-style-type: none"> 1. Notional estate – need for evidence that relevant transaction effected with the intention of limiting provision: [24] 2. Evidence of beneficiaries financial circumstances, lack of – inferences: [106]-[114] 	
Orders	\$105,000 (ie, \$135,000 in lieu of c. \$30,000 under will) but judgment subsequently varied (in light of error) to reduce order to \$80,000 (ie, \$110,000 in lieu of c. \$30,000 under will). See <i>Collins v Mutton [No 2]</i> [2012] NSWSC 1155 (below)	
Costs	Plaintiff/s	\$45,708
	Defendant/s	\$54,282
	Total	\$99,990
Costs orders	As per short minutes following <i>Collins v Mutton [No 2]</i> [2012] NSWSC 1155: Usual orders with plaintiff's costs capped at \$32,757 defendant's costs capped at 19,200.	

Ramsay v Schiller [2012] NSWSC 596	
Hallen AsJ	1 June 2012
	Application for separate determination of question of whether property could be designated as notional estate
Issues / discussion	Separate determination – can be ordered in family provision proceedings – factors – usual basis is that determination of the separate question will render unnecessary the determination of the remainder.
Orders	Application dismissed. Costs the motion the plaintiff's (respondent's) costs in the cause

Phillips v James [2012] NSWSC 688		
Stevenson J	22 June 2011	
Notional estate	E\$1,400,000 (wholly distributed)	
Beneficiaries	Three children approximately as follows: Gary: \$702,000; Gaye: \$695,000; Plaintiff: \$164,603	
Circumstances	Gary (66) Gaye (60)	
Home:	\$830,000 \$565,000	
Other:	<u>\$700,000</u> <u>\$47,815</u>	
Total assets:	\$1,530,000 \$612,815	
Less liabilities:	<u>\$0</u> <u>\$0</u>	
Net assets:	\$1,530,000 \$612,815	
Annual income (after tax):	\$8,124.15 E\$7,540	
Less annual expenditure:	<u>\$48,180</u> <u>E\$7,540</u>	
Net cash flow:	-\$40,055.85 \$0	
Plaintiff	Son (62)	
Plaintiffs' circumstances		
Home:	Nil	
Super:	\$32,000	
Other:	<u>\$34,000</u>	
Net assets:	\$66,000	
Annual income (after tax):	\$0	
Less annual expenditure:	<u>\$55,380</u>	
Net cash flow:	-\$55,380	
Issues / discussion	<i>Held:</i> Because plaintiff had not specifically identified property against which notional estate was sought the Court had no jurisdiction	
Orders	Summons dismissed	
Costs orders	No order as to costs	
Costs	Plaintiff/s	\$59,511
	Defendant/s	\$?
	Total	\$?

Butler v Morris [2012] NSWSC 748		
Hallen AsJ		5 July 2012
Estate	\$508,498	
Beneficiaries	Adopted daughter: 70% Adopted son Craig (first plaintiff): 30%	
Beneficiary's circumstances	Adopted daughter	
Home:	Nil	
Super:	\$13,000	
Other:	<u>\$22,000</u>	
Total assets:	\$35,000	
Less liabilities:	<u>\$53,000</u>	
Net assets:	-\$18,000	
Annual income (after tax):	\$5,133	
Less annual expenditure:	<u>\$5,794</u>	
Net cash flow:	\$661	
Plaintiffs	2 adopted children	
Plaintiffs' circumstances	Craig (43)	Carolyn (50)
Home:	\$565,000	Nil
Super:	\$130,000	\$0
Other:	<u>\$17,000</u>	\$49,425
Total assets:	\$712,000	\$49,425
Less liabilities:	<u>\$495,000</u>	<u>\$0</u>
Net assets:	\$217,000	\$49,425
Annual income (after tax):	\$99,000	\$24,731
Less annual expenditure:	<u>\$107,650</u>	<u>\$20,695</u>
Net cash flow:	\$8,650	\$4,036
Issues / discussion	1. Social security, applicant's dependence upon – relevance: [108]-[112] 2. Time, extension of – principles: [113]-[118]	
Orders	Craig: E\$27,000 Carolyn: E\$48,000	
Costs orders	Usual	
Costs	Plaintiff/s	\$105,564
	Defendant/s	\$79,962
	Total	\$185,562

Marando v Rizzo [2012] NSWSC 739		
Hallen AsJ		
5 July 2012		
Estate	\$1,386,863	
Beneficiaries	2 children aged 8 & 10	
Beneficiaries' circumstances	Wholly dependent on mother. Details of her circumstances not recorded in the judgment, except her annual income of \$48,524 and her annual expenditure of \$40,559	
Plaintiff	Member of household / dependant (former de facto spouse)	
Plaintiffs' circumstances		
Home:	\$380,000	
Total assets:	\$?	
Less liabilities (incl trust):	<u>\$261,000</u>	
Net assets:	E\$119,000	
Annual income (after tax):	\$12,021	
Less annual expenditure:	<u>\$11,908</u>	
Net cash flow:	\$104	
Issues / discussion	<ol style="list-style-type: none"> 1. De facto relationship – principles: [45]-[57] 2. Member of household / at some time dependent – principles: [58]-[67] 3. Factors warranting: [69]-[77] 4. De facto relationship, termination of: [128]-[129] 5. Evidence – credibility: [131]-[133] 	
Orders	\$50,000	
Costs	Plaintiff/s	\$90,000
	Defendant/s	\$45,000
	Total	\$135,000
Costs orders	Settled out of court – defendant to pay plaintiff's costs in an agreed liquidated amount.	

Keep v Packham [2012] NSWSC 782	
Hallen AsJ	
13 July 2012	
	Application by residuary beneficiary (subsequently withdrawn) opposing orders sought to be made by consent.

Scott Macrae Investments Pty Ltd v Baylily Pty Ltd [2012] NSWSC 823	
Hammerschlag AsJ	
16 July 2012	
	Application for approval of a release under s95.

Kelly v Deluchi [2012] NSWSC 841		
Hallen AsJ		26 July 2012
Estate & notional estate	\$1,472,810	
Beneficiaries	Son (Mark): \$50,000; 2 plaintiffs: \$75,000 each; friend; \$10,000; several grandchildren: \$36,461 between them; widow (Mary): residue	
Beneficiaries' circumstances	Mark (49) (Father of 2 grandchildren)	Mary
Home:	\$?	E\$625,000
Super:	\$370,000	\$0
Other:	\$?	<u>\$940,000</u>
Total assets:	\$2,777,705	\$1,565,000
Less liabilities:	<u>\$1,503,704</u>	<u>\$5,007</u>
Net assets:	\$1,274,001	\$1,559,993
Annual income (after tax):	E\$144,473.25	E\$28,000
Less annual expenditure:	\$?	<u>\$58,188</u>
Net cash flow:	\$?	-\$30,188
Plaintiffs	Two adult children	
Plaintiffs' circumstances	Peter (47)	Michelle (40)
Home:	\$291,000	\$?
Super:	\$0	\$?
Other:	<u>\$4,000</u>	<u>\$?</u>
Total assets:	\$295,000	\$847,644
Less liabilities:	\$439,000	\$204,349
Net assets:	-\$144,000	\$643,295
Annual income (after tax):	\$95,452	\$149,797
Less annual expenditure:	<u>\$91,425</u>	<u>\$130,524</u>
Net cash flow:	\$4,332	\$19,273
Orders	Peter: \$75,000 (additional to \$75,000 under will) Michelle: \$25,000 (additional to \$75,000 under will)	
Costs orders	Burdened on notional estate: Plaintiff costs on party-party basis to date of Offer of Compromise and beyond that on indemnity basis	
Costs	Plaintiff/s	\$131,494
	Defendant/s	\$81,810
	Total	\$213,304

Johnson v Wright [2012] NSWSC 879		
Macready AsJ		1 August 2012
Estate	\$974,770.81	
Beneficiaries	Plaintiff: right of residence (with limited flexibility); Residue to children & stepchildren	
Beneficiaries' circumstances	No evidence of circumstances was adduced by the 2 step-children	
	Karen (daughter) (48 years old)	James (son) (46 years old)
Home:	\$610,000	Nil
Super:	\$157,000	\$?
Other:	<u>\$320,000</u>	<u>\$1,500</u>
Total assets:	\$1,087,000	\$1,500
Less liabilities:	<u>\$370,000</u>	<u>\$32,000</u>
Net assets:	\$717,000	-\$30,500
Annual income (after tax):	\$135,000	\$20,800
Less annual expenditure:	\$?	\$?
Net cash flow:	\$?	\$?
Plaintiffs	De facto widow (67)	
Plaintiffs' circumstances		
Home:	Nil	
Super:	\$38,000	
Other:	<u>\$692,000</u>	
Total assets:	\$790,000	
Less liabilities:	<u>\$0</u>	
Net assets:	\$790,000	
Annual income (after tax):	\$15,960	
Less annual expenditure:	<u>E\$21,204</u>	
Net cash flow:	-\$5,244	
Issues / discussion	De facto widow – proper provision for – adequacy of right of residence: [18]-[38]	
Orders	Crisp order	
Costs orders	No order as to plaintiff's costs Defendant's costs at \$24,000 out of the estate – balance after property sold	
Costs	Plaintiff/s	\$43,490
	Defendant/s	\$42,240
	Total	\$85,730

Gardiner v Gardiner [2012] NSWSC 1025	
Macready AsJ	29 August 2012
	Application for, inter alia, an order that plaintiff pay an occupation fee for the period after which he ought to have vacated estate property pursuant to orders made in <i>Gardiner v Gardiner</i> [2012] NSWSC 269 (above).
Orders	Plaintiff to pay an occupation fee of \$595 per week from 5 July 2012 to the date on which he vacates the premises

Buggle v Buggle [2012] NSWSC 1009		
Hallen AsJ	31 August 2012	
Estate	\$1,143,000	
Beneficiaries	Widow (68)	
Beneficiaries' circumstances		
Home:	Nil	
Super:	\$0	
Other:	<u>\$0</u>	
Total assets:	\$0	
Less liabilities:	<u>\$0</u>	
Net assets:	\$0	
Annual income (after tax):	\$19,630	
Less annual expenditure:	<u>\$20,280</u>	
Net cash flow:	\$650	
Plaintiffs	Son (50)	
Plaintiffs' circumstances		
Home:	Nil	
Super:	\$0	
Other:	<u>\$119,591</u>	
Total assets:	\$119,591	
Less liabilities (incl trust):	<u>\$0</u>	
Net assets:	\$119,591	
Annual income (after tax):	\$0	
Less annual expenditure:	<u>\$?</u>	
Net cash flow:	\$?	
Issues / discussion	Estrangement, effect of: [193]-[195]	
Orders	\$95,000	
Costs	Plaintiff/s	\$61,887
	Defendant/s	\$69,841
	Total	\$131,728
Costs orders	Usual	

Sammut v Kleeman [2012] NSWSC 1030		
Hallen AsJ	3 September 2012	
Estate	\$808,609	
Beneficiaries	Son & daughter-in-law in equal shares	
Beneficiaries' circumstances	No evidence of circumstances was adduced by either beneficiary	
Plaintiff	Grandson (34)	
Plaintiffs' circumstances		
Home:	\$515,000	
Super:	\$146,608	
Other:	<u>\$22,176</u>	
Total assets:	\$683,784	
Less liabilities:	<u>\$292,000</u>	
Net assets:	\$391,784	
Annual income (after tax):	\$114,720	
Less annual expenditure:	?	
Net cash flow:	?	
Issues / discussion	1. Grandchildren, claims by – principles: [107]-[111] 2. Dependence: [164]-[175]	
Orders	\$96,500	
Costs orders	Usual	
Costs	Plaintiff/s	\$73,646
	Defendant/s	\$36,007
	Total	\$109,653
Note	This judgment may be the subject of an appeal	

Malone v Runge [2012] NSWSC 1032		
Hallen AsJ		10 September 2012
Estate	\$754,344	
Beneficiaries	2 children (the plaintiffs) & 7 grandchildren: \$10,000 each; residue to 3 rd child (Lyn)	
Beneficiary's circumstances	Daughter (Lyn)	
Home:	\$540,000	
Super:	\$0	
Other:	<u>\$3,700</u>	
Total assets:	\$543,700	
Less liabilities:	<u>\$134,000</u>	
Net assets:	\$409,000	
Annual income (after tax):	\$12,732	
Less annual expenditure:	<u>\$14,928</u>	
Net cash flow:	-\$2,196	
Plaintiffs	2 adult children	
Plaintiffs' circumstances	Rhonda (56)	Barbara (61)
Home:	\$370,000	Nil
Super:	\$118,927	\$0
Other:	<u>\$768,999</u>	\$0
Total assets:	\$1,256,927	\$0
Less liabilities:	<u>\$1,193,514</u>	<u>\$0</u>
Net assets:	\$63,413	\$0
Annual income (after tax):	\$88,400	\$22,568
Less annual expenditure:	<u>\$117,936</u>	<u>\$27,768</u>
Net cash flow:	-\$29,536	\$5,200
Orders	Rhonda: \$80,000 (additional to \$10,000 under will) Barbara: \$140,000 (additional to \$10,000 under will)	
Costs orders	Not set out in judgment	
Costs	Plaintiff/s	\$97,310
	Defendant/s	\$67,649
	Total	\$146,959

Mather v Mather [2012] NSWSC 1142		
Macready AsJ		20 September 2012
Estate & notional estate	\$2,442,598.57 (of which \$2,338,870 actual estate)	
Beneficiaries	Mother: \$103,728 (superannuation - \$103,728) 2 brothers (Christopher & Howard): \$2,338,870	
Beneficiaries' circumstances	Christopher (54 years old)	Howard (60 years old)
Home:	\$1,500,000	\$420,000
Super:	\$547,000	\$116,000
Other:	<u>\$732,000</u>	<u>\$796,000</u>
Total assets:	\$2,779,000	\$1,323,000
Less liabilities:	<u>\$40,000</u>	<u>\$190,000</u>
Net assets:	\$2,739,000	\$1,142,000
Annual income (after tax):	\$131,700	\$76,000
Less annual expenditure:	<u>\$148,421</u>	<u>\$?</u>
Net cash flow:	\$16,721	\$?
Plaintiffs	Adopted son (19)	
Plaintiffs' circumstances		
Home:	Nil	
Super:	\$0	
Other:	<u>\$1,708</u>	
Total assets:	\$1,708	
Less liabilities:	<u>\$0</u>	
Net assets:	\$1,708	
Annual income (after tax):	\$?	
Less annual expenditure:	<u>\$?</u>	
Net cash flow:	\$?	
Orders	\$1,100,000 to be held on trust until plaintiff turns 25	
Costs orders	Usual	
Costs	Plaintiff/s	\$113,814
	Defendant/s	\$82,000
	Total	\$195,814

Battersby v McIvor [2012] NSWSC 1137**Hallen AsJ****24 September 2012**

Estate	\$716,000	
Beneficiaries	(Following settlement of FP claims by 2 children): Child #1: 75,000 Child #2: \$55,000 Child #3 (plaintiff): \$20,000 3 Grandchildren: \$20,000 between them Child #4 (defendant): Residue	
Beneficiaries' circumstances	Defendant	
Home:	Nil	
Super:	\$0	
Other:	<u>\$65,627</u>	
Total assets:	\$65,627	
Less liabilities:	<u>\$16,000</u>	
Net assets:	\$49,627	
Annual income (after tax):	\$41,461	
Less annual expenditure:	<u>\$?</u>	
Net cash flow:	\$?	
Plaintiffs	Daughter	
Plaintiffs' circumstances		
Home:	Nil	
Super:	Nil	
Other:	<u>\$3,102</u>	
Total assets:	\$3,102	
Less liabilities (incl trust):	<u>\$800</u>	
Net assets:	\$2,302	
Annual income (after tax):	E\$26,208	
Less annual expenditure:	<u>\$16,172</u>	
Net cash flow:	\$10,036	
Issues / discussion	Leave to file notice of ceasing to act, where less than 28 days prior to hearing: [24]-[27]	
Orders	\$55,000 (additional to \$20,000 under will)	
Costs	Plaintiff/s	\$107,315
	Defendant/s	\$70,300
	Total	\$177,615
Costs orders	Usual orders	

Collins v Mutton [No 2] [2012] NSWSC 1155	
Hallen AsJ	27 September 2012
	Application to vary judgment based on error in judgment. <i>Held:</i> Application granted
Issues / discussion	Judgment, variation of – based on court's misapprehension of facts: [22]-[36]
Orders	Provision for plaintiff reduced from \$105,000 (ie, \$135,000 in lieu of c. \$30,000 under will) to reduce order to \$80,000 (ie, \$110,000 in lieu of c. \$30,000 under will). Defendant to pay the plaintiff's costs of the motion capped at \$2,000.
Notes	Cf <i>Hatton v Hatton</i> (No 2) [2012] NSWSC 353 (above)

Andrew v Andrew [2012] NSWCA 308	
Alsop P, Basten & Barrett JJA	28 September 2012
	Appeal by an adult daughter against order (of Hallen AsJ) dismissing claim on basis that unexplained estrangement of 38 years had extinguished any duty owed by testator.
<i>Held:</i> 2:1 (Barrett J dissenting):	
The trial judge erred in applying s 59(1) of the <i>Succession Act</i> 2006 in accordance with the test laid down in <i>Singer v Berghouse</i> [1994] HCA 40 (which concerned s 7 of the <i>Family Provision Act</i> 1982.	
Under the new Act there is no longer a two-stage test and the discretion is wider: at [26] per Basten JA.	
<i>That which could satisfy a court that the provision made is "not adequate", for the purposes of the Succession Act, might not have been sufficient to remove the prohibition [ie, in s 9(2)] under the Family Provision Act: ibid.</i>	
Section 60 of the <i>Succession Act</i> (replacing s 9(3) of the <i>Family Provision Act</i>) is also different.	
<i>The intention of a two-stage process is no longer apparent in the structure of either ss 59 or 60 of the Succession Act. at [27]</i>	
Orders	Appeal allowed. Appellant to receive additional provision in the sum of \$50,000.

Fillingham v Harrison & Carrette [2012] NSWSC 1145		
Macready AsJ		5 October 2012
Estate	\$522,487	
Beneficiaries	2 children	
Beneficiaries' circumstances	Son (46)	Daughter (20)
Home:	Nil	\$400,000 (=½ interest)
Super:	\$0	\$0
Other:	<u>\$21,000</u>	<u>\$11,000</u>
Total assets:	\$21,000	\$411,000
Less liabilities:	<u>\$0</u>	<u>\$200,000</u>
Net assets:	\$21,000	\$810,909
Annual income (after tax):	\$48,000	\$26,000
Less annual expenditure:	<u>E\$0</u>	<u>E\$26,000</u>
Net cash flow:	\$0	\$0
Plaintiff	Separated wife (37). 5½-year marriage.	
Plaintiffs' circumstances		
Home:	Nil	
Super:	\$1,007	
Other:	<u>\$11,000</u>	
Total assets:	\$12,007	
Less liabilities:	<u>\$0</u>	
Net assets:	\$12,007	
Annual income (after tax):	\$33,488	
Less annual expenditure:	<u>\$49,556</u>	
Net cash flow:	-\$16,068	
Issues / discussion	<ol style="list-style-type: none"> 1. Obligations to separated spouse where informal property settlement: [8]-[10] 2. In any event (<i>held</i>) there had not been a property settlement. 3. Test for orders under the Act – whether Singer v Berghouse still applicable in NSW following Andrew v Andrew [2012] NSWCA 308: [21] 	
Orders	\$125,000	
Costs orders	Usual orders	
Costs	Plaintiff/s	\$85,000
	Defendant/s	\$86,900
	Total	\$171,900

Lumsdon v Gargano 2012] NSWSC 1169		
Hallen AsJ		23 October 2012
Estate	\$4,107,282	
Beneficiaries	\$50,000 to friend Residue to only child	
Beneficiaries' circumstances	Son (46)	Daughter (20)
Home:	Nil	\$400,000 (=½ interest)
Super:	\$0	\$0
Other:	<u>\$21,000</u>	<u>\$11,000</u>
Total assets:	\$21,000	\$411,000
Less liabilities:	<u>\$0</u>	<u>\$200,000</u>
Net assets:	\$21,000	\$810,909
Annual income (after tax):	\$48,000	\$26,000
Less annual expenditure:	<u>E\$0</u>	<u>E\$26,000</u>
Net cash flow:	\$0	\$0
Plaintiff	Daughter (by previous husband) of former wife	
Plaintiffs' circumstances		
Home:	Nil	
Super:	\$1,007	
Other:	<u>\$11,000</u>	
Total assets:	\$12,007	
Less liabilities:	<u>\$0</u>	
Net assets:	\$12,007	
Annual income (after tax):	\$33,488	
Less annual expenditure:	<u>\$49,556</u>	
Net cash flow:	-\$16,068	
Issues / discussion	<ol style="list-style-type: none"> 1. Obligations to separated spouse where informal property settlement: [8]-[10] 2. In any event (<i>held</i>) there had not been a property settlement. 3. Test for orders under the Act – whether Singer v Berghouse still applicable in NSW following Andrew v Andrew [2012] NSWCA 308: [21] 	
Orders	\$125,000	
Costs orders	Usual orders	
Costs	Plaintiff/s	\$93,901 (ordinary basis)
	Defendant/s	\$79,220
	Total	\$173,121

Wolff v Deavin [2012] NSWSC 1315	
Macready AsJ	30 October 2012
	Application for summary dismissal.
Issues / discussion	1. Member of household – whether new test under <i>Succession Act</i> 2006: [13]-[32] 2. Summary dismissal – when appropriate: [35]-[38]
Orders	Motion dismissed with costs.

Khreich v NSW Trustee & Guardian [2012] NSWSC 1299			
Hallen AsJ		30 October 2012	
Estate	\$3,151,271		
Beneficiary	Grandson: 50% 4 others grandsons: 37.5% 3 granddaughters: 12% on trust until 21; remainder to grandsons equally		
Beneficiary's circumstances	Set out at [178]-181]		
Plaintiffs	Widow & 2 sons (Joe & Marwan)		
Plaintiffs' circumstances	Widow (71)	Joe (53)	Marwan (50)
Home:	Nil	\$550,000	\$400,000
Super:	\$66,000	\$210,000	\$53,623
Other:	<u>\$1,307,095</u>	<u>\$647,630</u>	<u>\$450,000</u>
Total assets:	\$1,373,098	\$1,434,630	\$903,623
Less liabilities:	<u>\$0</u>	<u>\$320,000</u>	<u>\$0</u>
Net assets:	\$1,373,098	\$1,114,630	\$903,623
Annual income (after tax):	E\$65,000	\$118,031	\$78,343
Less annual expenditure:	\$?	<u>\$?</u>	\$52,272
Net cash flow:	\$?	\$?	\$26,071
Issues / discussion	<i>Singer v Berghouse</i> (two-stage) test – can continue to be followed, despite <i>Andrew v Andrew</i> : [54]-[56] & [80]-[83]		
Orders	Widow: \$820,000 Joe: \$400,000 Marwan: \$500,000		
Costs	Plaintiff/s	\$97,809	
	Defendant/s	\$43,150	
	Total	\$140,959	
Costs orders	Not set out in judgment		

Vezar v Vezar [2012] NSWSC 1380		
Lindsay J	16 November 2012	
Estate	E\$1,900,000	
Beneficiaries	Widow: \$965,000 Son (previous marriage): \$850,000	
Beneficiaries' circumstances	Adult son	
Net assets:	\$1,100,000	
Net cash flow:	?	
Plaintiffs	Widow	
Plaintiffs' circumstances		
Net assets:	\$2,111,000	
Net cash flow:	?	
Issues / discussion	<ol style="list-style-type: none"> 1. Test – whether <i>Singer v Berghouse</i> still applicable (<i>Held</i>: no): [92]-[97], [180] 2. Time, extension of – principles: [98]-[118] 	
Orders	Additional \$383,000	
Costs	Plaintiff/s	\$135,000
	Defendant/s	\$135,000
	Total	\$270,000
Costs orders	Not apparent from judgment	

Kallidis v Kallidis [2012] NSWSC 1485		
Hallen J	5 December 2012	
Estate	\$959,904	
Beneficiaries	Equally to seven children	
Beneficiaries' circumstances	See [336]-[382]	
Plaintiffs	Daughter (50)	Grandson (15)
Plaintiffs' circumstances		
Net assets:	\$25,766	Nil
Annual income (after tax):	<u>\$42,614</u>	<u>\$?</u>
Less annual expenditure:	\$42,614	\$?
Net cash flow:	0	0
Parallel claims	<ol style="list-style-type: none"> 1. Letters of administration (foreign will) 2. Construction 	
Issues / discussion	<ol style="list-style-type: none"> 3. Dependence: [147]-[154] 4. Factors warranting: [155]-164] 5. Time, extension of: [221]-[237] 6. Grandchildren: [251]-[255], [435] 	
Orders	Daughter: Additional legacy of \$69,205 Grandson: Claim dismissed	
Costs	Plaintiff/s	E\$33,586 (ordinary basis)
	Defendant/s	E\$46,514
	Total	E\$80,100
Costs orders	Not apparent in judgment	

Re in the estate of Margaret dec'd [2012] NSWSC 1490				
White J		6 December 2012		
Estate	\$804,609.53			
Beneficiaries	¾ to 3 children ¼ to 4 th child & 4 children of that child equally			
Beneficiaries' circumstances	Adult child # 1	Adult child # 2	Adult child # 3	4 grand-children
Home:	\$700,000	Yes	Yes	No evidence from one. Other 3: negligible assets & income
Super:	\$200	\$500,000	?	
Other:		\$?	?	
Total assets:	\$900,000	\$?	?	
Less liabilities:	<u>\$88,000</u>	<u>\$?</u>	<u>?</u>	
Net assets:	\$812,000	\$440,000	\$5,000	
Annual income (after tax):	E\$45,000	\$60,000	\$65,000	
Less annual expenditure:	\$?	\$?	\$?	
Net cash flow:	\$?	\$?	\$?	
Plaintiffs	Daughter (43)			
Plaintiffs' circumstances				
Net assets:	E\$60,000			
Annual income (after tax):	E\$42,000			
Less annual expenditure:	E\$42,000			
Net cash flow:	E\$0			
Parallel claims	Informal will			
Issues / discussion	1. Conduct of plaintiff as a mother, relevance of: [52] 2. Costs, where applicant unsuccessful: [56]			
Orders	Claim dismissed			
Costs orders	Defendant's costs on indemnity basis No order as to plaintiff's costs			
Costs	Plaintiff/s	\$56,000		
	Defendant/s	\$95,000		
	Total	\$151,000		

Goldsmith v Goldsmith [2012] NSWSC 1486		
Hallen J		6 December 2012
Estate	\$831,433	
Beneficiaries	\$4,000 each to five grandchildren \$10,000 to plaintiff (being one of three children) Residue to other two children equally	
Beneficiaries' circumstances	Son # 1	Son # 2
Home:	Yes	No evidence as to financial circumstances
Super:	?	
Other:	?	
Total assets:	\$882,500	
Less liabilities:	<u>\$25,000</u>	
Net assets:	\$857,000	
Annual income (after tax):	?	
Less annual expenditure:	?	
Net cash flow:	?	
Plaintiff	Son (51)	
Plaintiffs' circumstances		
Home:	Nil	
Super:	\$173,532	
Other:	<u>\$442,050</u>	
Total assets:	\$615,582	
Less liabilities:	<u>\$150,000</u>	
Net assets:	\$465,582	
Annual income (after tax):	\$38,929	
Less annual expenditure:	<u>\$30,492</u>	
Net cash flow:	\$8,437	
Estrangement or conflict	8-year estrangement	
Issues / discussion	1. Test – whether Singer v Berghouse still applicable: [34]-[37]; [55]; [63]-[67]	
Orders	27.5% of proceeds of sale of Cronulla property, ie, E\$214,500 in lieu of \$10,000 under will	
Costs orders	Not apparent from judgment	
Costs	Plaintiff/s	\$64,052 (party-party basis)
	Defendant/s	\$68,800
	Total	\$132,852

Shields v Shields [2012] NSWSC 1507			
Macready AsJ		7 December 2012	
Estate:	E\$340,000		
Beneficiaries	Whole estate to defendant (72-year-old son) for life; remainder to defendant's children		
Beneficiaries' circumstances	Son (72)	Grandchild # 1	Grandchild # 2
Home:		No evidence as to financial circumstances	No evidence as to financial circumstances
Super:			
Other:			
Total assets:	Nil		
Less liabilities:	<u>\$20,000</u>		
Net assets:	-<u>\$20,000</u>		
Annual income (after tax):	\$19,760		
Less annual expenditure:	<u>E\$19,760</u>		
Net cash flow:	0		
Plaintiff	Son (74)		
Plaintiffs' circumstances			
Home:	\$602,000 (owned by wife & son)		
Super:	\$0		
Other:	<u>\$86,000</u>		
Total assets:	\$688,000		
Less liabilities:	<u>\$25,377.11</u>		
Net assets:	<u>\$662,622.89</u>		
Annual income (after tax):	\$15,095		
Less annual expenditure:	<u>E\$15,095</u>		
Net cash flow:	\$0		
Issues / discussion	1. Expenditure by executors in the face of a claim: [29]-[45] 2. Andrew v Andrew: [17]		
Orders	\$60,000		
Costs orders	Not apparent from judgment		
Costs	Plaintiff/s	\$53,800 (ordinary basis)	
	Defendant/s	\$41,200	
	Total	E\$95,000	

Varls v Varls [2012] NSWSC 1553		
Macready AsJ		12 December 2012
Estate	\$482,113.87	
Beneficiaries	Plaintiff (daughter): \$50,000 Defendant (son): Residue	
Beneficiaries' circumstances	Son (58)	
Net assets:	\$72,000	
Net cash flow:	E\$0	
Plaintiff	Daughter (61)	
Plaintiffs' circumstances		
Home:	\$460,000	
Less liabilities:	\$275,604	
Net assets:	\$184,396	
Annual income (after tax):	\$20,087.60	
Less annual expenditure:	\$37,596	
Net cash flow:	\$17,508.40	
Issues / discussion	1. Test – whether <i>Singer v Berghouse</i> still applicable (<i>Held</i> : uncertain): 16	
Orders	Claim dismissed	
Costs	Plaintiff/s	\$49,140 (party-party basis)
	Defendant/s	\$51,975
	Total	E\$101,115
Costs orders	Not apparent from judgment	

Camernik v Reholic [2012] NSWSC 1537		
Hallen J	13 December 2012	
Notional estate only	\$354,402	
Beneficiaries	Matrimonial home passed to widower (defendant) by survivorship	
Beneficiaries' circumstances	Widower (78) 50-year marriage	
Home:	\$354,402 (½ of matrimonial home not the subject of a relevant property transaction)	
Other:	\$28,800	
Net assets:	\$383,202	
Annual income (after tax):	\$20,072	
Plaintiff	Son (66)	
Plaintiffs' circumstances		
Net assets:	\$5,000	
Annual income (after tax):	\$19,500	
Less annual expenditure:	\$17,880	
Net cash flow:	-\$1,620	
Issues / discussion	1. Test – whether <i>Singer v Berghouse</i> still applicable (<i>Held: yes</i>): [92]-[104]	
Orders	Claim dismissed	
Costs	Plaintiff/s	\$35,500
	Defendant/s	\$35,000
	Total	\$70,500
Costs orders	None	

Sassoon v Rose [2012] NSWSC 1554

Macready AsJ

14 December 2012

Estate:	\$465,500		
Beneficiaries	Three (of five) adult children equally		
Beneficiaries' circumstances	Michael (33)	Joel (28)	Roxanne
Home:	Nil	Circumstances not apparent in judgment	Disabled – intellectual disability & autism. Financial circumstances not apparent in judgment
Super:	\$14,000		
Other:	<u>\$3,200</u>		
Total assets:	\$17,200		
Less liabilities:	<u>\$7,954</u>		
Net assets:	\$9,246		
Annual income (after tax):	\$28,000		
Less annual expenditure:	<u>E\$28,000</u>		
Net cash flow:	\$0		
Plaintiff	Former wife		
Plaintiffs' circumstances			
Home:	Financial circumstances not disclosed.		
Super:			
Other:			
Total assets:			
Less liabilities:			
Net assets:			
Orders	Claim dismissed		
Costs orders	Plaintiff to pay defendants' costs		
Costs	Plaintiff/s	Unknown	
	Defendant/s	\$25,000	
	Total	?	