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**ACCOUNTANTS AND SHARE VALUATIONS IN
AUSTRALIAN FAMILY COURT PROCEEDINGS**

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ABSTRACT

This paper investigates issues related to the role of accountants in presenting expert evidence in the form of share valuations in Family Court of Australia proceedings. By providing a background to the valuation rules applied by the Family Court and examining relevant cases, the paper emphasises that considerable ambiguity exists. The paper highlights some of the inconsistencies that are evident from reported decisions and stresses the difficulties that judges have experienced with valuations presented by accountants in Family Court cases. It is evident that the courts, despite the legal precedents, continue to have considerable difficulty with valuation issues and methodologies. By exploring issues related to accounting based valuations in the context of Australian family law cases, the present paper examines accounting in a particular social and institutional setting. The paper is interdisciplinary in nature, in that issues extending over accounting, finance and legal boundaries are considered.

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1. INTRODUCTION

This paper investigates issues related to the role of accountants in presenting expert evidence in the form of share valuations in Family Court of Australia proceedings. Since the commencement in Australia of the *Family Law Act 1975 (Cth)*, determining the extent and value of the financial position of the parties to Family Court proceedings has become one of the most time consuming and costly aspects of cases involving issues of property and maintenance (O’Ryan, 1989, p. 252). Issues of valuation are central to Family Court decisions involving property and maintenance settlements, and there are now a number of Family Court decisions that have wrestled with the application of valuation principles. As with all valuations, those prepared for Family Court purposes involve estimation and the exercise of judgment, and this often presents significant problems for the courts. The difficulties and inconsistencies highlighted by various cases provide the motivation for the analysis undertaken in this paper.

Despite the serious implications for the Family Court posed by the various difficulties and inconsistencies, there has been a paucity of prior research addressing these problems within the context of Australian family law. While O’Ryan (1989), Errington (1990) and Jensen (1996) describe at a general level the broad valuation principles that have been developed and applied by the Court, they do not examine the difficulties and inconsistencies that have arisen from the application of those broad principles in specific cases. Hence, the present paper aims to address this gap in the literature.

2. VALUATION AND THE FAMILY LAW ACT

The Oxford English Dictionary defines *valuation* as “[t]he act of valuing, the process of assessing or fixing the value of a thing...; worth or price as determined by deliberate estimation.” Similarly, valuation is defined in the Collins English Language Dictionary as “a judgement that someone makes about how much money something is worth.” These definitions highlight that the process of valuation involves *estimation* and that this requires the exercise of *judgment*. Also, the definitions imply that the aim of valuation is the provision of an assessment of the *worth* of something in money terms. In this respect, the appraisal may well be aimed at estimating market value.

When applied to business enterprises and various other business and financial interests, the process of valuation involves many considerations and raises many difficulties. Gole (1980, p. ix) states that:

Valuations are required for so many different things, at so many different times, and for so many different purposes, that one set of rules, one set of basic principles, and one set of precedents cannot be accepted without question in the many and varied circumstances in which valuations are required.

There are many different reasons that lead to the requirement for a formal valuation. Williams (1987, p. 2) lists the following typical examples of situations giving rise to the need for a valuation:

- Sale of a business or shares in a business;
- Merging of two or more companies;
- Determination of an interest in a partnership business or practice for the admission of a new partner, or retirement, resignation or death of a partner;
- Conversion of an unincorporated business into a limited liability company;
- Valuation in accordance with various provisions under company law (particularly in the case of an acquisition of shares);
- Transfer of shares in a company;
- Handling of deceased estates where a person was a shareholder in a company or proprietor of a business;
- Compulsory acquisition of property by the Crown; and
- Family law court disputes.

Because of the alternative reasons for business valuations, Pratt et al. (2000, p. 27) stress that:

No single valuation methodology is universally applicable to all appraisal purposes. The context in which the appraisal is to be used is a critical factor. Different statutory, regulatory, and case precedent standards govern valuations of businesses and business interests under various jurisdictions for diverse purposes.

For this reason, the valuer must fully appreciate the reasons for which an individual valuation is to be prepared. In this paper, valuation rules for Australian Family Court purposes are examined.

In proceedings pursuant to the Family Law Act, the Family Court has addressed valuation issues perhaps more often than any other court dealing with civil proceedings in Australia, and in many cases has resolved disputes as to the value of property, including real property and shares (O’Ryan, 1989, p. 251). In such proceedings, the purpose of valuation is to determine the value of the property of the parties as a step in deciding what order it is just and equitable for the court to make[1]. To assist in the overall resolution of proceedings, the court is required to achieve an outcome that is just and equitable in all the circumstances.

The Family Law Act confers two substantial powers on the Family Court to declare and alter the property interests of the parties. Section 78(1) allows the Court to make a declaration as to title or rights with respect to existing property title or rights. Section 79(1) allows the Court to make such order as it considers appropriate altering the property interests of the parties. When considering any s 79(1) order altering property interests, s 79(4)(e) requires the matters specified in s 75(2) to be taken into account. Of most relevance to valuation issues, paragraphs (b), (n) and (o) require the following to be taken into account:

- (b) the income, property and financial resources of each of the parties...;

- (n) the terms of any order made or proposed to be made under section 79 in relation to the property of the parties...;
- (o) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

The exercise of judicial discretion has been consistently emphasised in case law since the High Court of Australia decision in *Mallet v Mallet*[2]. The extent of the powers conferred by the Act with regard to the distribution of property was highlighted by Gibbs CJ in that case:

...It is not surprising that given this diversity of opinions the Parliament did not require the power conferred by sec 79 to be exercised in accordance with fixed rules. On the contrary, it has conferred on the Court a very wide discretion to make such order as it thinks fit when it is satisfied that it is just and equitable that an order should be made...[3].

With respect to valuation issues, attention was drawn to the subjectivity and judgment required in property valuation by Mason J in *FCT v St. Helens Farm*, a taxation case, when he stated:

...the valuation of property by a court has many of the characteristics of a discretionary judgement. Valuation is a matter of estimation, not of precise mathematical calculation. It certainly involves the making of a value judgement in the metaphorical as well as the literal sense[4].

Citing from *St. Helens Farm*, Nygh J in the case of *In the Marriage of Hull* emphasised that the court must approach questions of valuation on a realistic basis and that the question of valuation is essentially a matter for the trial judge[5]. Nevertheless, Warnick J in *Ramsay v Ramsay* highlighted the difficulties in the following terms:

Not only has it been recognised in many of the cases later cited that...the purpose of valuation identified for Family Court cases differs from that in revenue and taxation cases, but it has also been recognised that the approaches developed for those cases may well be inappropriate for Family Court purposes. It may be however that, as earlier stated, there has been insufficient identification, both by the accountancy profession and by the courts, of the approaches which are appropriate for Family Court purposes[6].

The judgmental aspect of valuation is particularly highlighted when the trial judge is presented with conflicting valuations by the opposing parties to proceedings and their representatives. The general principle is that a trial judge is not required to choose one of the competing valuations but may arrive at a figure somewhere between[7]. Faced with differing valuations from the opposing parties, the court in *Commonwealth v Milledge* stated:

Since they (the valuers) differed so widely, not only in result but in approach and in choice of material, the task presented to a judge to whom they all seemed equally reliable was one which could not be satisfactorily performed in any other way than by making a critical selection of the most helpful facts from the mass of information provided by the evidence and applying correct principles in the light of the selected material[8].

After quoting from the above decision, the Full Court in *In the Marriage of MacGregor* concluded:

It is, we think, apparent that the High Court was not laying down a principle that the trial Judge was obliged to accept any particular valuer, but rather that it was necessary for him to satisfy himself by means of the application of proper principles, that he had arrived at the value of the property on the relevant date. If that value happens to be different to the values ascribed to the

relevant property by the valuers called in evidence, this in itself does not affect the validity of the judge's finding, provided that he has applied proper principles[9].

The dilemma faced by a trial judge when presented with conflicting valuation evidence is illustrated in the following statement by Young J in *Sapir v Sapir* (No. 2):

In my view all I should do with the evidence from the accountants is to be grateful for their assistance with the figures and for pointing out to me, as the tribunal of fact, how the valuation might be approached and what factors should be taken into account and why, but I need to do for myself the actual exercise of valuation[10].

The terms "value" and "valuation" are not defined in the Family Law Act. This lack of a definition, however, has not been an obstacle to the Family Court in arriving at the valuation of any particular item. With the commencement of the Act, the Family Court was able to consider prior legal decisions dealing with the concept of value and issues of valuation[11]. The general concept of value established by the courts is the well known one of the "hypothetical purchaser and hypothetical seller". Lonergan (1998, p. 6) defines this concept of value as:

the price that would be negotiated in an open and unrestricted market between a knowledgeable, willing but not anxious buyer and a knowledgeable, willing but not anxious seller, acting at arm's length.

Under this concept, a valuer needs to remember that both the hypothetical buyer and the hypothetical seller should be "willing but not anxious". It is not sufficient to rely only on an estimate of a buyer's maximum price or on a seller's minimum price. The valuer must consider both buyer and seller and endeavour to determine where their ideas should meet. Although a seemingly simple concept of value, it has posed particular problems for the courts in certain circumstances.

The application of the concept of the willing buyer and willing seller can be illustrated by *Gamer v Gamer*, where the Full Court said:

In valuing the interest of a party in a private company, what must be valued is the shareholding of that party and not the assets of the company...The primary test is that of the hypothetical prudent purchaser...[12].

However, the concept of the hypothetical buyer and seller should be applied cautiously, particularly when valuing shares. With respect to shares, the purpose of valuation is to ascertain the *real* value of the shares to the shareholding party, and this may be different to their value to a hypothetical purchaser[13]. This will particularly be the case where minority shareholdings in private family companies are involved, as a ready and open market will not exist for such holdings[14].

In summary, the role of the Family Court in determining property valuations generally entails, firstly, consideration of s 79 and the s 75(2) matters to be taken into account. Based on supporting material presented to the court by the parties and any other relevant information, the court then applies "proper principles" and exercises "discretionary judgment" in arriving at an estimate of the value of the relevant property for Family Court purposes. This requires the court to come to its own conclusion based on the expert evidence before it, whether this involves acceptance of the valuations presented by one or other of the witnesses or, alternatively, arriving at its own conclusion based on the whole of the material before the court (Errington, 1990, p. 92). *MacGregor* endorsed the approach of making a commonsense

endeavour, after consideration of all the material before the court, to fix a sum satisfactory to the mind of the court[15].

3. ACCOUNTANTS AND VALUATIONS IN THE AUSTRALIAN FAMILY COURT: SOME CRITICAL CASES

The valuation provisions within Australian family law were introduced in the previous section. That background provides a basis for further discussion of the role of accountants within the process. Accountants often act as valuers presenting expert evidence to the court on behalf of parties to legal proceedings. Examination of Family Court cases in which accountants' valuations have been questioned, or have been questionable in some way, enables a critical perspective to be taken of accountants acting in this role. Such a case study also enables conclusions and recommendations to be drawn for the benefit of accountants undertaking this role in the future.

Before examining individual cases, it is appropriate to point out that the major problems perceived by the Family Court with respect to expert evidence generally are a lack of comprehension and clarity in the evidence presented and a perception that the evidence is often biased in the client's favour (Family Court of Australia, 2000). The cases examined in this section indicate that accountants have not always been well placed to present expert valuation evidence to the Family Court. Various instances reflect that accountants appear to have not always understood the context of the valuations and the relevant legal precedents, or that they have been faced with situations where there has been inadequate or inconsistent prior court consideration of the appropriate valuation method.

Four particularly relevant Australian Family Court cases are examined in this section. These cases are:

- Mallet (1984);
- Sapir (1989);
- Turnbull (1991); and
- Ramsay (1997).

Mallet (1984)

In *Mallet v Mallet*[16], a critical aspect of the dispute was the valuation of shares in a family company in which the wife held a 26 percent shareholding. As part of the settlement, the husband was to pay to the wife the value of her shares in the company and these shares were to be transferred to him. The wife's interests would therefore have been best served if the shares were valued at as high a figure as possible, while the husband would have been best served if the value of the shareholding was minimised.

Three expert witnesses were called to give evidence as to the value of the shares held by the wife, two on behalf of the wife and one on behalf of the husband. The two valuers called by the wife were experienced accountants. The first of these valuers placed a value of either \$5 718 or \$8 175 on each ordinary share, with this variation in values attributable to possible variation in the value of the freehold property and plant and equipment owned by the company. This valuation was rejected by the trial judge,

who considered the valuation to be prepared on the flawed assumption of the ultimate liquidation or winding up of the company. The second of the valuers called by the wife assessed the value of each ordinary share at \$7 906. While the written judgment did not specify the exact basis on which this value had been calculated, it appears to have been similar to the method used by the first valuer and was also rejected by the trial judge in the circumstances.

The expert called by the husband had acted for a number of years as the accountant for the Mallet group of companies. He used a capitalisation of future maintainable profits method in valuing the shares at \$2 435 each. The trial judge accepted this method for valuing the shares, but held that the calculation used by the husband's valuer was based on assumptions that resulted in too conservative a value. The judge accordingly decreased the capitalisation rate implicit in the valuation presented and increased the valuation of the shares to \$3 346 each, a figure still considerably below that submitted by the wife's accountants.

Sapir (1989)

In *Sapir v Sapir* (No. 2)[17], the wife held a 48 percent interest in two family companies that had been formed by her parents. The shares held by the wife were subordinate in rights to the shares held by her parents, the latter of whom had successive governing directors' rights. Given that the wife held the shares in this case, her interests would have been best served if her shareholdings in the two companies were valued at as low a figure as possible. In comparison, the husband would have wished the value of the shares to be maximised.

Two chartered accountants gave evidence in the case. The accountant called by the husband valued the shares of the wife in the two companies at between \$997 648 and \$1.228m. The wife's accountant valued the shareholdings at a considerably lower amount, being in the range of between \$373 775 and \$547 739. Accordingly, this latter range of values was less than half the range presented by the husband's accountant.

In reconciling the conflicting valuations presented, the judge considered that the two accountants were essentially valuing two different things. The wife's accountant valued the shares at what they would be worth to an independent third party; that is, their value to a hypothetical purchaser. Such a purchaser would discount the asset backing heavily because of the difficulty in either realising the investment by winding up the company or, alternatively, by selling the shares to some other third party who would face similar problems.

The husband's accountant had valued the shares at their value to the wife rather than to a hypothetical purchaser. The valuation was based on the principle that the only foreseeable purchasers of the wife's shares were her parents and that they would not be concerned that they were buying a minority shareholding. Hence, a reasonable person in the position of the wife would accept only a small discount on the asset backing of the shares. Only a small discount would be appropriate under this valuation approach as the wife would rather wait for her parents to pass on than part with the shares immediately. For this reason, the valuation of the shares submitted by the husband was considerably higher than that submitted by the wife.

The judge held that he should adopt the basis of valuation presented by the husband; that is, their value to the wife and not their commercial value or their value to a hypothetical purchaser. Hence, the circumstance of the valuation of a minority interest in a private family company was held in this case to again represent an exception to the principle of the value of the relevant property to the hypothetical purchaser. In this respect, it was held that:

It was artificial to value a wife's share in a private company in matrimonial proceedings according to the "hypothetical purchase rule". That rule was only applicable where there was a ready and available market. Where there was a closely held family corporation with restrictions on transfer, the court must value the shares on the realistic value they had to the parties[18].

However, while agreeing with the general approach, the judge did not completely accept the valuation for the shares presented by the husband of an amount in the range \$997 648 to \$1.228m. The judge considered that the husband's accountant had made too many unjustified assumptions in presenting this high valuation range. On this basis, the judge fixed the value of the wife's shareholdings in the two family companies at \$947 800. In commenting on the valuations presented by the two accountants, and no doubt in response to the biased nature of those valuations, the judge stated:

I have great difficulty in accepting either of the chartered accountants as putting forward expert evidence in the strict sense. Merely because a person is a chartered accountant does not give him expertise in valuing shares[19].

Turnbull (1991)

In the case of *In the Marriage of Turnbull*[20], the court was required to consider the value of two companies, Company A and Company B. The husband held shares in these two companies that entitled him to the equity, while his father held *governing director* shares with extensive powers to control the affairs of the company. Each party called an accountant to give evidence as to the value of the husband's shareholding in the two companies.

It was contended on behalf of the husband that the value of his shares in both companies was their par value, resulting in a minimal valuation. The expert called by the husband reached this conclusion based on the fact that (i) the shares were in a proprietary company and transfers could only be registered if approved by the directors, (ii) the husband's father effectively controlled both companies by virtue of the governing director shares, and (iii) the husband's interest was a minority interest only and therefore no significant premium would be appropriate.

However, the judge completely rejected this approach to the valuation of the shares. This was on the basis that the par value ascribed to the shares in the two companies produced ridiculously low figures for the overall net worth of the companies, and because such figures ignored the reality of the husband's father's intentions regarding the companies. It was obvious that the valuation method presented by the husband's accountant expert was at odds with the precedent cases[21].

The accountant for the wife presented valuations to the court based on net asset backing reduced by a flat discount of 20 percent. This resulted in valuations of \$3.652m for Company A and \$281 332 for Company B. Of course, it was in the financial interest of the wife for the valuation of the husband's shareholdings to be as

high as possible. The wife's accountant stated that he had referred to various sources, including *Sapir* and certain textbooks, in arriving at the valuations and in suggesting a discount of 20 percent on net asset backing as being appropriate for the minority holdings.

Interestingly, while agreeing with the wife's accountant's basis for the valuation, the court considered the discount of 20 percent to actually be excessive given the relevant precedents. While the expert for the wife submitted that a discount on net asset backing of "up to 20 percent" was appropriate, the judge was critical that this top discount rate had in fact been applied. The judge found the evidence in relation to the discount percentage applied to be both "unsatisfactory and unrealistic"[22]. The judge continued on, saying:

The wife's accountant, in my view, has little understanding of the principles propounded in the authorities in relation to the valuation of private company shares in Family Law proceedings and his application of a discount rate of 20 percent for the reasons which he gave was, in my view, having regards to the facts, unsustainable[23].

The judge held that only a modest discount rate should be applied. In the case of Company A, a discount of only five percent of net asset backing was considered to be appropriate, given that the court was satisfied that the father's ultimate intention was for the property held within the company to effectively remain in the husband's ownership. This resulted in the court valuing Company A at \$4.337m. This can be compared to the valuation presented for the wife of \$3.652m, a difference of a not inconsiderable \$685 000. The court considered a slightly higher discount of 10 percent of net asset backing to be appropriate for Company B, resulting in a value of \$316 498 (compared to the valuation presented for the wife of \$281 332). The higher discount rate here was justified on the basis that the husband held only a one-fifth equity interest in this company. His four sisters held the balance of the equity shares, and the judge considered the higher discount to be appropriate as the husband would ultimately have to deal with them. Hence, in *Turnbull*, the court actually decided on a value for the shares in the two companies above that submitted by the accountant experts called by both parties to the proceedings.

Ramsay (1997)

One of the central issues in *Ramsay v Ramsay*[24] was the value of the husband's 22.73 percent minority shareholding in a family company. The husband and wife each utilised the services of chartered accountants to provide expert evidence in the case.

The husband's accountant submitted that it was appropriate to capitalise the income stream from the investment in valuing the shareholding, this resulting in a value of \$1.345m. This value was ultimately accepted by the judge. The income stream addressed in the husband's accountant's valuation included income historically received by the husband from a variety of sources, including salary, fringe benefits such as a motor vehicle and housing benefits, and income distributions. The accountant justified this basis of valuation on the grounds of the lack of control of the husband over the company due to the minority holding, the history of company distributions, the fact the husband had no intention of selling his interest, the fact that there was no intention to liquidate the group, and the understanding that the company would continue to pay out all profits to shareholders by way of dividends.

The wife's accountant adopted a net asset backing basis to value the husband's shareholding, this approach being rejected by the judge. While the actual amount of this valuation was not specifically stated in the judge's written judgment, it amounted to approximately \$3m. This is evident as it was specifically stated in the case that the husband's valuation of \$1.345m "represented a significant discount (approximately 55%) on the net asset backing of the shareholding"[25].

The judge stated that it was apparent that the wife's accountant assumed there was a very real prospect of the husband achieving control of the entity in the future. However, in the judge's view, this was not borne out by the evidence. He felt that all of the evidence about the intention of the husband's parents indicated that the husband could hold no reasonable expectation of gaining control of the company. In further oral evidence given this circumstance, the wife's accountant offered an opinion that a discount of the valuation may be appropriate. However, given the facts, the judge stated that the wife's accountant "failed to consider the importance of his (incorrect) assumption in the selection of the very methodology utilised by him"[26].

4. DISCUSSION AND CONCLUSIONS

Examination of the four cases in the previous section highlights the existence of ambiguity in valuations and valuation problems in Family court proceedings. An important point that can be emphasised is that the courts, despite the legal precedents, continue to have considerable difficulties with valuation issues and methodologies. This is aptly illustrated by the frustration expressed by Warnick J in *Ramsay*:

Why is there this repeated, costly re-run of a debate so often about the wrong questions? In my view it is because, though the object to be achieved by the valuation exercise has been often stated, the approaches appropriate to the achievement of that objective have not; nor has the place, in the overall exercise of discretion, which a valuation ought occupy, been sufficiently discussed[27].

The discussion in the preceding sections enables a number of conclusions to be drawn and recommendations to be made. The recommendations are all related, in that they aim at ensuring valuations presented to the Family Court are of high quality and of relevance to the judges in their deliberations. Also, it must be appreciated that valuations represent a costly disbursement for parties to family law proceedings when they are required. The cost does not only include the fees of the expert valuer, but also the time taken both before and during a trial in resolving issues raised by the evidence (Family Court of Australia, 2000, p. 40). In that the recommendations below are aimed at reducing the potential for conflict, they should also result in a reduction in costs for parties to proceedings. In its recent *Future Directions Committee Report*, the Family Court highlighted that a major problem with expert evidence generally is a lack of comprehension and clarity (Family Court of Australia, 2000, p. 41). The recommendations below are aimed at addressing areas where the comprehension and clarity of valuations could be improved.

It is obvious that a single valuation method will not be suitable for all circumstances. Lonergan (1998, p. 18) notes that, in the preparation of individual valuations, it is common practice for a number of valuation methodologies to be used, with a primary relevant method being employed to establish value, or a range of values, and other methods being utilised for cross-checking and/or refinement purposes. However, it appears from the vast majority of the Australian Family Court cases involving valuations that expert valuers who present valuations on behalf of parties to

proceedings generally utilise only a single methodology. This does not necessarily provide judges with all the relevant information required to decide on the appropriateness and reasonableness of a valuation. Accountants acting as expert valuers should provide valuations based on a number of different methods to establish a range of different values, based on differing methods and assumptions. It was highlighted earlier that judges must consider the material presented before the court. Presentation of a range of valuations by valuers under differing methods and assumptions would ensure more relevant and reliable information for use by the court in deciding cases. The analysis of Australian cases in the present paper supports the conclusion drawn by Pratt et al. (2000, p. 823) in the US legal environment that “the latitude afforded judges in the marital dissolution process should persuade the analyst to adopt more than one valuation method in order to provide mutually supportive evidence as to the valuation conclusion.”

While it is recommended that a range of valuations be presented to the court, it is also important for the primary valuation, which the expert valuer believes to be most appropriate to the fact situation, to be appropriately justified. Pratt et al. (2000, p. 856) emphasise that where valuations are performed within a litigation environment, the valuer must understand the legal context within which the valuation is being performed and must take into consideration all relevant statutory authority, judicial precedents and administrative rulings. Hence, the expert valuer must be thoroughly conversant with the precedent cases when preparing valuations for Family Court purposes.

Further, accountants acting as expert valuers must realise that, if they fail to act objectively, they are actually doing their client a disservice. This will particularly be the case if the valuation presented on the client's behalf is rejected by the court as being inappropriate in the circumstances. This has obvious repercussions for the accountant's reputation. The problem of valuers sometimes acting more as an advocate of the client than as an impartial appraiser of value is mentioned by Lonergan (1998, p. 8). Also, in its *Future Directions Committee Report*, the Family Court highlighted that perhaps the most serious problem with expert evidence presented in family litigation is the *partisanship* of the evidence (Family Court of Australia, 2000, p. 40). The report states that it frequently happens that the expert's opinion is *tailored* in the interest of the party engaging the expert, and that this can result in longer trials and in more cases not being settled out of court (ibid). An expert presenting a valuation in court proceedings must ensure the valuation takes all relevant factors into account and that it is not solely based on a method and/or on biased assumptions that are obviously weighted in the client's favour. As the court must determine a valuation based on all the material before it and taking all relevant factors into account, any obvious and/or excessive bias could well result in the valuation being disregarded in its entirety. Again, a conclusion drawn by Pratt et al. (2000, p. 826) in the US family law environment is equally applicable to the Australian legal environment:

More often in family law than in any other area of valuation, the courts justifiably accuse experts of bias and advocacy in favor of their clients. This does not help the client, the analyst, or the profession. The client is best served by having the court accept a reasonable value rather than having the court reject the expert's evidence as not credible.

The four cases examined in this paper serve to illustrate that the preparation of valuations for family law purposes can be a task fraught with difficulty. Given the myriad of cases, some of which contain inconsistent valuation methods presented to the court or which require a detailed understanding of the specific facts of the individual case, accountants presenting valuations to the Family Court should ideally be specialists in the area, and should certainly be aware of the various legal precedents.

5. SUMMARY

Following an introduction to valuation provisions and the Australian Family Law Act, this paper investigated a number of issues related to the use of accounting based valuations and valuation methodologies in proceedings before the Family Court. In particular, the paper highlighted some of the problems that are evident from reported decisions, and a number of recommendations of relevance to accounting experts preparing valuations for Family Court purposes were presented. The analysis in the paper examines accounting-related issues in the social and institutional setting of Australian family law, and considers issues that extend across the accounting, finance and legal disciplines.

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Notes

1. The term *property* is used in this paper in its broad legal sense; i.e. referring to all property and not merely *real* property.
2. (1984) 156 CLR 605; 9 Fam L R 449; FLC 91-057.
3. Ibid, at CLR 608; Fam LR 450; FLC 79,110.
4. (1981) 81 ATC 4,040 at 4,061; 11 ATR 544 at 574.
5. (1983) 9 Fam LR 241 at 247-8; FLC 91-360 at 78,410.
6. (1997) FLC 92-742 at 83,997.
7. See, for example, *Commonwealth v Milledge* (1953) 90 CLR 157; *In the Marriage of Borriello* (1989) 13 Fam L R 415, FLC 92-049; *In the Marriage of Lenehan* (1987) 11 Fam L R 615, FLC 91-814; *In the Marriage of MacGregor* (1996) 21 Fam L R 57, FLC 92-710.
8. (1953) 90 CLR 157 at 160-162.
9. (1996) 21 Fam L R 57, FLC 92-710.
10. (1989) 13 Fam LR 362 at 364; FLC 92-047 at 77,542.
11. Commencing with *Spencer v Commonwealth of Australia* (1907) 5 CLR 418.
12. (1988) 12 Fam L R 73 at 73.
13. *In the Marriage of Hull* (1983) 9 Fam L R 241.
14. See, for example, *Hull* (1983); *Sapir* (1989); *In the Marriage of Turnbull* (1991) FLC 92-258; *Harrison v Harrison* (1996) FLC 92-682.
15. (1996) 21 Fam L R 57 at 57, FLC 92-710 at 83,515.
16. (1984) 156 CLR 605; 9 Fam L R 449; FLC 79,110.
17. (1989) 13 Fam L R 362.
18. (1989) 13 Fam L R at 362, applying *In the Marriage of Hull* (1983) 9 Fam L R 241 and *In the Marriage of Bowman* (1984) 9 Fam L R 619.
19. (1989) 13 Fam L R at 364.
20. (1991) FLC 92-258.
21. In this respect, Baker J specifically referred to *Hull*, *Reynolds* and *Sapir*.
22. (1991) FLC 92-258 at 78,736.
23. Ibid.
24. (1997) FLC 92-742.
25. (1997) FLC 92-742 at 84,001.
26. (1997) FLC 92-742 at 84,000.
27. (1997) FLC 92-742 at 83,996.

