

CONTENTS

| | |
|---|----------|
| Foreword to First Edition | v |
| Foreword | vii |
| Preface | xix |
| Table of Cases | xxi |
| Table of Statutes | xxxix |
| Table of Statutory Instruments | xlvi |
| Table of European Materials | xlvi |
| Table of Abbreviations | xlix |
| Chapter 1 | |
| Introduction to Financial Remedies | 1 |
| Scope of this chapter | 1 |
| Definitions | 2 |
| The principles governing the exercise of the court's discretion | 2 |
| Equality and fairness | 3 |
| <i>White v White</i> | 4 |
| <i>Miller and McFarlane</i> | 5 |
| <i>White v White</i> re-affirmed | 6 |
| Legitimate expectations and standard of living | 7 |
| Application to smaller money cases | 7 |
| <i>Charman v Charman</i> | 8 |
| Case-law since <i>Charman</i> | 10 |
| Equality and periodical payments | 12 |
| Compensation | 12 |
| All the circumstances of the case | 13 |
| First consideration the welfare of children | 14 |
| No one factor more important than others | 15 |
| Financial resources | 16 |
| The duty of full disclosure | 17 |
| Income and earning capacity | 19 |
| Earning potential | 19 |
| Property | 19 |
| Dissipated assets | 22 |
| Expectations | 23 |
| Financial needs, obligations and responsibilities | 24 |
| Standard of living during marriage | 25 |
| Ages of parties and duration of marriage: age | 26 |

| | |
|---|----|
| Duration of marriage: short marriage | 26 |
| Pre-Miller/McFarlane cases | 27 |
| Miller/McFarlane guidance | 29 |
| Disability | 30 |
| Contributions | 31 |
| Financial contributions | 31 |
| Non-financial contributions | 39 |
| Future contributions | 41 |
| Conduct | 41 |
| Financial conduct | 41 |
| Non-financial conduct | 42 |
| Conduct in the course of the proceedings | 44 |
| Lost benefits | 45 |
| Agreements | 46 |
| <i>Radmacher v Granatino</i> | 47 |
| The general approach to agreements | 48 |
| Vitiating factors | 49 |
| The foreign element | 50 |
| Fairness | 50 |
| Case-law since <i>Radmacher</i> | 51 |
| Agreements to compromise litigation | 55 |
| Self-sufficiency | 56 |
| Guidelines in children orders cases | 56 |
| When may orders be made? | 57 |
| Jurisdiction | 57 |
| Chapter 2 | |
| Periodical Payments | 59 |
| Introduction | 59 |
| Definitions | 59 |
| Who may apply? | 59 |
| Procedure | 60 |
| General principles | 60 |
| How does the court make its orders? | 60 |
| Should there be an order at all? | 61 |
| Earning capacity/potential | 61 |
| Cohabitation | 61 |
| Conduct | 63 |
| Length of marriage | 63 |
| What should be the amount of the order? | 63 |
| Periodical payments after <i>Miller/McFarlane</i> | 66 |
| Should the order be limited in duration? | 70 |
| Maintenance pending suit | 70 |
| Legal services orders | 71 |
| Form of order | 75 |
| Tax considerations | 75 |
| The clean break | 75 |
| Introduction | 75 |

| | |
|--|-----|
| Statutory provisions | 76 |
| Summary of statutory provisions | 77 |
| Judicial guidance as to when a clean break is appropriate | 77 |
| Should there be an immediate clean break? | 78 |
| Summary | 82 |
| The clean break on variation | 83 |
| Direction under the Inheritance (Provision for Family and Dependents) Act 1975 | 84 |
| Extension of terms | 84 |
| Chapter 3 | |
| Secured Periodical Payments | 85 |
| Introduction | 85 |
| Statutory provisions | 85 |
| Nature of the order | 86 |
| Secure | 86 |
| The term | 86 |
| The amount to be secured | 86 |
| The security | 86 |
| When will such an order be made? | 87 |
| Variation and amendment | 88 |
| Chapter 4 | |
| Lump Sum Orders | 89 |
| Introduction | 89 |
| Statutory provision | 90 |
| Number of lump sums | 90 |
| How are lump sum orders calculated? | 91 |
| Cases where assets do not exceed needs | 92 |
| Big money cases | 93 |
| The millionaire's defence | 93 |
| The <i>Duxbury</i> fund | 94 |
| Business cases | 95 |
| Tax considerations | 100 |
| Chapter 5 | |
| Transfer of Property Orders and Housing Needs | 101 |
| Introduction | 101 |
| Statutory provision | 102 |
| Rules | 102 |
| The basis on which orders are made | 102 |
| Types of transfer of property orders | 104 |
| Outright transfer | 105 |
| Transfer subject to charge | 106 |
| <i>Mesher</i> orders | 107 |
| <i>Martin</i> orders | 109 |
| Other orders | 109 |
| Transfer of tenancy | 110 |

| | |
|--|------------|
| Chapter 6 | |
| Settlement of Property Orders and Variation of Settlements | 113 |
| Introduction | 113 |
| Statutory provision | 113 |
| What is a settlement? | 114 |
| Variation of settlement | 114 |
| | |
| Chapter 7 | |
| Orders for Sale | 119 |
| Introduction | 119 |
| Order for sale under section 24A of MCA 1973 | 119 |
| How is jurisdiction exercised? | 120 |
| Interim orders | 121 |
| FPR 2010, rule 9.24 | 121 |
| The Trusts of Land and Appointment of Trustees Act 1996 | 121 |
| | |
| Chapter 8 | |
| Avoidance of Disposition and Other Injunctions | 123 |
| Introduction | 123 |
| Applications under section 37 of MCA 1973 for an avoidance of disposition order | 123 |
| Two types of remedy | 124 |
| The requirement for an application for a financial remedy | 125 |
| Only the applicant can apply | 125 |
| What is a 'disposition'? | 125 |
| 'With the intention of defeating the claim for financial relief' | 126 |
| Special considerations in applications to set aside dispositions | 127 |
| Reviewable dispositions | 127 |
| Presumption of intention to defeat claim in some cases | 128 |
| Consequential directions | 129 |
| How will the court exercise its discretion? | 129 |
| Foreign property | 129 |
| Procedure | 130 |
| Forms | 130 |
| Applications for avoidance of disposition under the inherent jurisdiction of the court | 130 |
| Freezing injunctions | 132 |
| Search orders | 133 |
| | |
| Chapter 9 | |
| Consent Orders | 135 |
| Introduction | 135 |
| The duty of the court | 135 |
| Information required by the court | 136 |
| Exceptions to the general rule | 138 |

| | |
|---|------------|
| Notes on drafting consent orders | 138 |
| The distinction between matters which may be ordered and those which may not | 139 |
| Recitals of fact | 139 |
| Recitals of agreement | 139 |
| Undertakings | 140 |
| Dismissal of claims and clean break orders | 141 |
| Some common faults | 141 |
| Forms | 141 |
| | |
| Chapter 10 | 143 |
| Pensions | 143 |
| Introduction | 143 |
| Evolution of the courts' powers relating to pensions | 145 |
| 1996 reforms | 146 |
| Matters to which the court must have regard | 147 |
| 2000 reforms | 148 |
| Summary so far | 148 |
| Valuation | 148 |
| What weight is to be attached to the value of the benefits? | 151 |
| Summary | 154 |
| Loss of widow's pension rights | 154 |
| What orders may be made? | 155 |
| Pension sharing orders | 156 |
| Restrictions on making pension sharing orders | 157 |
| Pension attachment (formerly known as earmarking) | 158 |
| Summary of attachment provisions | 159 |
| Restrictions on making pension attachment orders | 160 |
| Judicial consideration of pension attachment | 160 |
| Offsetting | 162 |
| The Pension Protection Fund | 163 |
| Benefits paid by the Pension Protection Fund | 163 |
| Court's powers to make orders where the Pension Protection Fund is involved | 163 |
| Orders made prior to the Pension Protection Fund assuming responsibility | 164 |
| Valuation of PPF benefits | 164 |
| How should the court approach the use of its powers in relation to pensions? | 164 |
| Points to consider when considering the use of the courts' powers to deal with pensions | 167 |
| Pension sharing orders | 167 |
| Pension attachment orders | 168 |
| Offsetting | 169 |
| Summary | 169 |

| | |
|--|-----|
| Chapter 11 | |
| Children | 171 |
| Introduction | 171 |
| The Child Support Act 1991 | 171 |
| Basic principles of the formula | 172 |
| Changes from 2008 | 175 |
| When may applications be made to the court? | 177 |
| (a) Cases where the Commission does not have jurisdiction | 177 |
| (b) Applications to the court permitted by the Act | 177 |
| (c) Certain consent orders | 178 |
| (d) Capital orders | 178 |
| (e) Applications under 'transitional provisions' | 178 |
| (f) Variation and duration of orders | 179 |
| Applications to the court | 179 |
| Jurisdiction | 180 |
| Age limits | 180 |
| Principles on which the court exercises its jurisdiction | 181 |
| Periodic orders for children | 181 |
| Capital provision for children | 183 |
| School fees | 184 |
| Interim applications | 185 |
| | |
| Chapter 12 | |
| Insolvency and Rights of Creditors | 187 |
| Introduction | 187 |
| The Insolvency Act 1986 and sale of the matrimonial home | 187 |
| Effect of bankruptcy on order for financial relief | 190 |
| Property adjustment orders | 191 |
| Lump sum orders | 193 |
| Periodical payments orders | 194 |
| The rights of third-party creditors | 195 |
| | |
| Chapter 13 | |
| Variation | 199 |
| Introduction | 199 |
| Statutory provisions | 199 |
| What orders can be varied? | 199 |
| Capital orders | 200 |
| Maintenance pending suit and periodical payments | 201 |
| Secured periodical payments | 201 |
| Lump sum payable by instalments | 202 |
| Provision in respect of pension rights | 202 |
| Settlement of property or variation of settlement | 202 |
| The principles on which the court exercises its discretion | 203 |
| The clean break on variation applications | 204 |
| Changes in circumstances | 204 |
| Procedure | 206 |
| Forms of order | 206 |

| | |
|--|-----|
| Variation subject to conditions | 206 |
| | |
| Chapter 14 | |
| Miscellaneous Applications | 209 |
| Introduction | 209 |
| Applications under MCA 1973, section 27 | 209 |
| Applications under MCA 1973, section 10(2) | 211 |
| Orders for alteration of agreements during lifetimes of parties | 213 |
| | |
| Chapter 15 | |
| Financial Relief after Overseas Divorce | 215 |
| Introduction | 215 |
| Jurisdiction | 215 |
| Applications for permission | 216 |
| Orders which may be made | 218 |
| | |
| Chapter 16 | |
| Procedure | 223 |
| Introduction | 223 |
| Issue of proceedings | 224 |
| The overriding objective | 226 |
| Issue of application | 226 |
| Service and parties | 227 |
| Special rules relating to pensions | 229 |
| Filing of evidence | 231 |
| Other documents to be served | 232 |
| The statement of apparent issues | 233 |
| Questionnaires and requests for documents | 234 |
| The first appointment | 235 |
| Expert evidence | 237 |
| The financial dispute resolution hearing | 239 |
| The final hearing | 241 |
| Inspection appointments | 243 |
| Interim orders | 244 |
| Variation application | 245 |
| The protocols | 245 |
| | |
| Chapter 17 | |
| Costs | 247 |
| Introduction | 247 |
| Some general principles of costs | 248 |
| The general rule | 248 |
| Exceptions to the general rule | 249 |
| Failure to comply with rules, orders, etc | 250 |
| Open offers | 250 |
| Whether reasonable to raise or pursue allegations or issues and the manner in which allegations or issues were pursued or responded to | 251 |

| | |
|---|-----|
| Any other aspect of conduct in relation to the proceedings which the court considers relevant | 252 |
| The financial effect on the parties of a costs order | 252 |
| How will costs be treated? | 252 |
| Procedure | 253 |
| The basis of assessment | 254 |
| What use should the court make of costs estimates? | 255 |
| Lump sum orders as to costs | 256 |
| Legal Aid | 257 |
| Orders for payments on account of costs | 257 |
| Wasted costs orders | 257 |
| Security for costs | 258 |
| Appeals | 258 |
| Chapter 18 | |
| Appeals and Setting Aside | 259 |
| Introduction | 259 |
| Permission required | 259 |
| Time limits | 260 |
| Routes of appeal | 261 |
| Contents of notice | 261 |
| Powers of appellate court | 261 |
| Material omissions | 264 |
| Procedure | 264 |
| Applications to set aside consent orders | 264 |
| Non-disclosure, fraud and misrepresentation | 265 |
| New or supervening circumstances | 268 |
| (1) Disputes as to the value of an asset | 270 |
| (2) Remarriage or cohabitation | 271 |
| (3) Death | 271 |
| (4) Other matters | 272 |
| Appeal or setting aside? | 274 |
| Chapter 19 | |
| Enforcement | 275 |
| Introduction | 275 |
| The preliminary step | 275 |
| Execution | 277 |
| Charging orders | 277 |
| Third party debt order | 278 |
| Attachment of earnings | 278 |
| Judgment summons | 279 |
| Appointment of a receiver | 281 |
| Registration of order in a magistrates' court | 281 |
| The Maintenance Enforcement Act 1991 | 281 |
| Execution of documents by nominated person | 282 |
| Sequestration | 282 |
| Reciprocal enforcement | 282 |

| | |
|---|-----|
| Chapter 20 | |
| The Impact of the Human Rights Act 1998 | 283 |
| Introduction | 283 |
| The principal provisions of the HRA 1998 | 283 |
| Application and interpretation of Convention rights | 284 |
| Declaration of incompatibility | 285 |
| Acts of public authorities | 285 |
| Remedies available | 286 |
| Parts of the Convention which may affect ancillary relief | 286 |
| The right to a fair trial | 287 |
| Respect for private and family life | 288 |
| The right to marry and found a family | 289 |
| The right to freedom from discrimination | 289 |
| The right to property | 289 |
| Equality of rights of spouses | 289 |
| The effect of HRA 1998 in practice | 290 |
| Chapter 21 | |
| The Proceeds of Crime Act 2002 | 293 |
| Introduction | 293 |
| The purpose of POCA 2002 | 293 |
| Money laundering | 294 |
| Offences under POCA 2002 | 294 |
| Judicial guidance as to the operation of POCA 2002 | 296 |
| (a) Whether and in what circumstances it is permitted to act in relation to an arrangement | 296 |
| (b) Whether and in what circumstances a legal adviser, having made an authorised disclosure, is permitted to tell others of this fact | 298 |
| Good practice | 299 |
| Distribution of 'tainted' funds | 302 |
| Chapter 22 | |
| Arbitration | 303 |
| What is arbitration? | 303 |
| Judicial approval of arbitration | 304 |
| Procedure | 305 |
| Future developments | 306 |
| Chapter 23 | |
| Future Developments | 307 |
| Introduction | 307 |
| Reform of MCA 1973, section 25 | 307 |
| The Family Justice Review | 310 |
| Appendices | |
| Appendix A | |
| Forms and Orders | 313 |