



# Recent Decision Bulletin

## Prenuptial Agreement Enforced by Full Court Of The Family Court

In the recently decided case of Kennedy v. Thorne [2016] FCAFC 189 the full Court of the Family court of Australia considered an appeal from a decision of the Family Court which dealt specifically with the issue of Binding Financial Agreements (or “*Prenuptial Agreements*”).

In this case, the parties entered a Binding Financial Agreement and had separated.

The wife sought to challenge the Binding Financial Agreement on the grounds that she entered the contract under duress. It was apparent that the husband was a man who was very well off at the time of entering the agreement, as opposed to the wife.

There were other grounds of appeal but this blog seeks to only look at the point of Binding Financial Agreements.

The issue of possible duress of Ms Thorne was discussed by the Court. The Court said that the correct test to ascertain whether there has been duress is whether there is threatened or actual *unlawful* conduct, as it was recognised that in life, many acts are done under pressure. Further, an inequality of bargaining power alone could not establish duress.

The husband was at pains to point out to the wife from the outset that he wanted his wealth to go to his children and that as the wife was aware at all times, she agreed in spite of all this to sign the document and so was bound by it.

Accordingly, this case upholds what could be a cause of concern for Binding Financial Agreements and is authority for the proposition that to attempt to set aside such a document is going to be difficult and, if based on duress, must be duress of a type that is recognised by the Courts.