

Recorded: On 882 6PR, this is [inaudible 00:00:06].

Host: Okay, it is six past one, our next guest is of course, Friedman Lurie Singh & D' Angelo, his name is Richard Crane. Richard is a family lawyer, specializes in all areas of family law including property settlement, superannuations, splitting, family trust and businesses, children's issues, divorce, defacto relationships, spousal maintenance [00:00:30] and child support. He's also got strong experience in negotiating prompt and effective settlements. He's an expert in all things family law. We're very privileged to have him for the next three weeks. I know this is going to be extremely popular, so it is with great pleasure that I welcome Richard Crane to the show. Hi Richard.

Richard: Hi. Thank you very much and welcome all listeners.

Host: Excellent. You're from the- I have a little bit of your resume here. Very impressive. When did you come out from the UK to Australia?

Richard: Well, I came at the [00:01:00] start of 2010.

Host: Okay, so you've been here a while. Also, I'm looking here in your CV. In your spare time, you enjoy swimming, motorcycling, cycling, arts and playing the piano. I wouldn't have thought there would be too much spare time for yourself there, Richard.

Richard: No, there's not too much at the moment, but there's always hope.

Host: Okay. So if you have a family law question, I've just read out all the areas of specialty and expertise that Richard possesses. Get in early [00:01:30] 92211882. Just like Mark has done. He's straight off the bat. We'll go straight to a call, why not. Good day, Mark. How are you going?

Mark: Good, how are you doing? Hi.

Host: Not too bad.

Mark: My question is, my partner has a child to another ... another man, obviously. And he has not paid a single cent of child support of my stepson's entire life. I just want to know what I can do to either get anything [00:02:00] out of it, or get rid of him.

Richard: Well, in terms of child support, in general, it's dealt with the child support agency. Do you know if your partner has contacted them? [crosstalk 00:02:11] Sorry?

Mark: They can't find him.

Richard: The first step is, that is dealt with by the child support agency. If you've exhausted all avenues with them, then in limited circumstances, an application can be made in a

family court. One can apply [00:02:30] for location orders and they sort of order [inaudible 00:02:33] would try to track down where he may have gone to. But that top secret situation sounds like your partner needs to get some specific advice from a legal practitioner in relation to the next step. I could only give general advice at this stage.

Mark: That's fine.

Host: Thank you very much Mark. Richard, just wanted to ask you- if you got a question for Richard, get in early. 92211882, about any family law issues at [00:03:00] all. What do you spend the majority of your time? What sort of family law issues are the most pressing and the most time consuming for yourself, Richard?

Richard: Well, it's mostly people separating. Whether it's from defacto relationships or from a marriage. Sorting out the finances is a big area. People don't know their rights and if they listen to friends and family, and don't get legal advice, then they can end up having the wrong impression of how that gets dealt with or what they're entitled to. [00:03:30] So probably the settlement is a big area. Also, children issues because there's a lot of people out there who, in some cases, aren't seeing their children when they should be, and all the procedures that needs to be followed in relation to that as well.

Host: Okay. Let's go through a few of the issues here when we're talking about family law issues. Most of it will center around divorce, separation, exactly what you just said, looking after the kids. Of course it's going to be- property settlement is going to be complex. No words about that, but I'm sure that the real complexity [00:04:00] comes into effect when there's children involved. Richard, let's talk about specifically then, what's the difference, first of all, in a legal sense between separation and divorce, as to how that will affect how the court views the breakup.

Richard: Well, separation is obviously something that would normally happen where there is a defacto relationship or a marriage. You can be separated under the same roof, so you don't have to be physically separated. In terms of property [00:04:30] settlement, you don't have to be divorced before the court can make orders in relation to property settlement. But there are time [bars 00:04:38] that are affected in relation to whether it's a defacto relationship or a marriage. There are time bars that kick in once you get divorced. So to answer your question, getting divorced itself is just ... the physical act of getting divorced, you've only got 12 months after you got divorced to make an application for property settlement. But before you get divorced, there's no time [00:05:00] bar so in everyone's case, if they are contemplating separation or they have separated, then they need to start thinking about how to sort out the finances sooner or later.

Host: Okay. When you say separated under the same roof, I understand financially, that would be probably the major reason why you'd want to separate but continue living under the same roof. Or is it, a continued access to the children. What are some of the reasons why you'll choose to separate but then remain under the same roof?

Richard: Well, obviously every case is different, but from [00:05:30] my experience, the main reason, as you said is financial reasons. [inaudible 00:05:35] people can't afford to be paying rental on a house and mort gage. Also it might be, as you said, in relation to children as well. It's always, in my view, the best thing for the children to be able to see both of the parents in general circumstances and it means that they're under the same roof, they can still do that. But obviously, on the other side of the coin, you've got perhaps emotional [00:06:00] situation, emotional atmosphere can be in the house, which may not be-

Host: That's not going to help anyone, isn't it, if it's a hostile environment. Particularly if there's kids involved. If you've got a question for Richard, 92211882. Tony in Beckenham would like to talk about separation and what I assume would be long service leave, if is it? Tony, how are you going?

Tony: Yeah. Good day. Yeah, I just want to find out, I'm going to go through separation and I'm looking like probably I'll leave my job and I've got the long service leave [inaudible 00:06:27] calling. Now I'm wondering if what [00:06:30] takes, I don't know, if I leave my job and get the long service. Can my wife claim part of that?

Richard: Well, you raise an interesting point because the simple answer is no asset is going to be quarantined as a separate category out of the asset pool so in effect, every case, if your money goes to the family court, then everything is up for grabs effectively. The court's going to consider all of your assets, all of your liabilities. [00:07:00] I'm not saying that she would get any payment that might be coming your way, but it's not going to be automatically quarantined from the asset pool so you need to be aware of that.

Tony: That's only if I go to court that that would become part of it. So if I got it out of court beforehand leaving work, then after that, she can't get it?

Richard: Well, she might well be listening to this radio, so it may well be a fact- [crosstalk 00:07:23]

Tony: She's not, I can guarantee that.

Richard: So just, at the end of the day, you always need to be honest and open about your circumstance, [00:07:30] to say. If your money goes to court before you leave the job, then no doubt, she might be raising this issue. And if it's after you've left the job, then it's still going to be, as I've said before, everything gets taken into account.

Tony: Sure. Okay, no worries.

Host: Thank you very much, Tony. Chris in High Wickham would like to talk about parenting order, Richard. Good day, Chris.

Chris: Good day, mate. How are you?

Host: I'm not too bad, mate. Fire away. Richard's listening.

Chris: Okay. Richard, I've got a parenting plan or parenting order which [00:08:00] was [inaudible 00:08:00] through the family court lawyers, probably that's [inaudible 00:08:04] there. The order is basically 50-50 the [inaudible 00:08:08] of one child, the way things are happening over the last year and a half is I've had- I need a [inaudible 00:08:17] when she had every second [inaudible 00:08:19] pretty much. Just wondering how I'd go about changing that plan. Do I have to go to courts? Or can I just- do I need to change [inaudible 00:08:29] [00:08:30] under the plan and order that what we currently got, we both have to agree?

Richard: Right.

Chris: [inaudible 00:08:36]

Richard: Okay, you raise a few issues there. First of all, you got an order, not a plan, by the sound of it. There is a difference. An order can be enforced by the court, but a plan isn't enforceable. So you've already got a parenting order in place. Then if you're wanting to change that parenting order, then the first step is to discuss it with your ex-partner and see what she says about [00:09:00] that. If she agrees to changing it, then you can do it by agreement. You can file a consent order. If she doesn't agree, then you're going to need to go through mediation to discuss the change of circumstances and then after that, it'll be open to, when you've been to mediation to apply back to family court if you need to.

Host: Chris, do you think your ex-partner will agree to the changes or do you think that there will be opposition?

Chris: Definitely opposition. We can't really communicate.

Host: Okay.

Chris: So [00:09:30] we'll go to mediation then. Which we're not going to agree on that either, then obviously walk straight back to court with lawyers, is that right?

Richard: Yeah. The family court will require you to at least try to resolve the matter without applying back to them, because in general circumstances, family dispute resolution is a compulsory pre-requisite before you apply it into the court.

Host: Thank you very much, Chris. Looks like you've got a long road ahead of you. Diane, Paul, you'll be next. We [00:10:00] need to take a short break. If you'd like to ask Richard

Crane, a family law specialist from Friedman Lurie Singh & D' Angelo a question,
92211882.