

Inheritances and Initial Financial Contributions in Family Court property cases

A recent review of the leading 'Inheritance' and 'Initial Contribution' cases by Justice Cronin in **Sinclair** (2012) indicates a breadth of judicial discretion from which it can be difficult to draw a consistent thread.

In *Bonnici* ([1992](#)) [FLC 92-272](#), the Court said that property does not fall into a protected category merely because it was an inheritance but it could be quarantined in the hands of the inheriting party if sufficient funds were available to achieve an appropriate settlement from within the balance of the matrimonial property.

In *Dickson* ([1999](#)) [FLC 92-843](#) the wife had made both greater financial and non-financial contributions than the husband. The wife had invested well, raised the family and had a steady income as well as her inherited assets. On the other hand, the husband's income was irregular and modest. After the 26 year marriage, there was an asset pool of \$6.6M. The trial judge divided the matrimonial property on a 75/25 basis in favour of the wife. The Full Court criticised the approach taken by the trial judge particularly in relation to the issue of a reasonable standard of living for both and made an overall division of 70/30 in favour of the wife.

In *Schirmer* ([2005](#)) [FLC 93-213](#), significant property was inherited by the wife subsequent to separation. Until separation, contributions had otherwise been equal. Assets from all sources were included in "the pool" and the contributions determined to be 90/10 in favour of the wife but the Court made a further adjustment of 2.5% in the husband's favour to address the disparity in their future financial circumstances and needs.

In *Mistle* ([2010](#)) [FamCA 29](#), both parties who were doctors brought property into the 23 year marriage. At the time of separation, their assets totalled \$4.2M. Post-separation the husband received an inheritance of \$9.5M. While the husband's inheritance was excluded from the pool, the \$4.2M was divided 80/20 in favour of the wife.

In *Elgabri* ([2009](#)) [FamCA 227](#), the husband inherited \$527,000 late in a 25 year marriage in which both parties had otherwise made equal contributions of a financial and non-financial nature. The Court excluded the \$527,000 inheritance but divided the remaining pool of assets 57.5/42.5 in favour of the wife because the husband had the benefit of the inheritance.

In *Pierce* ([1998](#)) [FamCA 74](#); the Court said that initial contributions (which often take the form of inheritances) had to be considered in the light of their ultimate impact on the assets of the parties. However that significance will usually be eroded to some extent by other contributions made by the parties subsequent to that initial contribution.

In *Bremner* ([1994](#)) [FamCA 116](#) the Court noted that a substantial initial financial contribution may be eroded by later contributions even though those later contributions do not necessarily outstrip the financial value of the initial contribution.

In *Aleksovski* ([1996](#)) [FLC 92-705](#) the Court observed that in a long marriage, a variety of factors often have great significance and "ought not be left almost unseen by eyes dazzled by the magnitude of recent acquired capital" such as a substantial inheritance.

In summary isolating or quarantining an inheritance must be cautiously done to ensure that other important contributions to the family, are not ignored. There is a distinct possibility of that happening if the focus is entirely on the assets received from inheritances and gifts.

If you have any queries about these cases or wish to discuss their implications please contact me at either kim@mediatefirst.com.au or on 0414 863 507.

Please feel free to forward this commentary to any of your colleagues to whom it may be of interest or invite them to connect with me on LinkedIn.