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Is property acquired post separation included in property settlement disputes?

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Separating parties often take lengthy periods to attempt to resolve property settlement disputes. Significant problems can arise when people fail to formalise arrangements for property settlement which may place new wealth you acquire after you've separated at risk of being divided partly to your spouse by a Court. Whilst there have been cases where individual assets are excluded following separation, such as inheritances and the like, more recent decisions by Courts in Family Law have stipulated that:

“there is no basis for excluding from consideration any property in which the parties have an existing legal or equitable interest.”

The case of Holland v Holland

This statement stems from the decision of the Full Court of the Family Court in the case of Holland v Holland. Holland was heard on appeal by the Full Court in circumstances where a trial Judge had deemed an inheritance received by the husband approximately 3.5 years after separation as a ‘financial resource’ and excluded from the pool of assets for division noting timeframe it was received after the parties had separated.

In Holland, the Full Court said that overall “the nature of a particular interest or interests in property and when and how it was acquired, utilised, improved or preserved may be very relevant”. The Court was critical of a trend in previous cases to describe property by reference to a characteristic, using an ‘inheritance’ as an example. The Court went on to say:

“the categorisation of property as “an inheritance” or as “after-acquired” property often leads to an erroneous argument that unless contributions to that property can be established, the property should be “excluded from consideration”. As we have said, that argument is erroneous by reason of ignoring the fundamental premise that s 79 is directed to all of the existing legal and equitable interests in property of the parties or either of them without exclusion of any of those interests.”

Ultimately the Court in Holland allowed the appeal on the basis the Trial Judge had failed to correctly approach the relevant principles in the assessments of contributions and had made an erroneous finding that the inheritance of the husband was a ‘financial resource’ and not property.

The take home message from Holland is that parties should not presume assets are to be ‘excluded’ from the pool of assets for division, rather a proper assessment of those assets as contributions should be had and applied to the individual circumstances of that case. Parties should always get advice as early as possible following separation from their spouse.

For advice on [Family Law](#) matters, [contact Andersons](#) today.

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