



# family flyer

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## Introduction

The Family Flyer is a free community service by Michael Lynch Family Lawyers. The publication is designed to be informative and topical and to assist you in understanding the ever-changing field of Family Law.

## This edition includes:

- “Close-up” – Edition
- Seminar Series Success
- Holiday to India
- Unlodged Tax Returns
- Is it a Loan or a Gift?

## “CLOSE-UP” – EDITION

These days the topic of inheritance affects a lot of people – whether it is planning how to give it, or determining who might receive it.

In property settlements it is often a source of great confusion and conflict. What does the Court do with an inheritance? – let alone a prospective inheritance?

Read: [“Inheritance and Prospective Inheritance in Property Settlements.”](#)

## SEMINAR SERIES SUCCESS

Welcome to new readers of the Family Flyer who have joined after attending our recent public Seminar Series. The fortnightly Family E-flyer is now read by over 5,000 people.

The Seminar Series was well attended and it was great to have such interactive audiences.

Thank you to all who attended and provided feedback!

## HOLIDAY TO INDIA

Last month the Court had to decide whether a child should be allowed to travel to India with the Mother for 19 days.

The Father opposed the travel as India was not a Hague Convention country, which meant that the Court would have no legal power to Order the return of the child.

### The Facts:

- The parents were born and married in India and had a 1 year old daughter, who was born in Australia.

- The parents separated in India and Court proceedings began in India in relation to Domestic Violence.
- The Mother and Father then returned to Australia and lived separately.
- The Father began Court proceedings and had the child’s name placed on the airport watch list, to stop the child being taken overseas.
- The Mother wanted to travel with the child to India. She said the child was too young to be left in the care of the Father. The Father opposed the Mother taking the child as he believed she would not return with the child.
- The Mother denied that she would not return with the child, saying she was graduating the following month from a Masters Degree and seeking work in Australia.
- The Father argued that the child may suffer separation anxiety by being away from him, as she was in his care almost every alternative day.
- The Father had organised to take time off work to look after the child while the Mother would be away.

### Court Order:

- The risk that the Mother would not return with the child was low. The Court took into consideration that the child was still being breastfed and had not had over night stays with the Father.



- The Mother was allowed to travel to India with the child for 19 days, as long as she paid a security deposit of \$5,000 with the Court. She would receive the payment back upon her return.

## UNLODGED TAX RETURNS

A Family Court Property trial has recently been adjourned as a result of the Husband and the Wife's failure to lodge outstanding Tax Returns.

During the trial, the Judge found that when reviewing the couple's financial documents, there were several years where Tax Returns had not been lodged. This not only created an inaccuracy in the couple's financial position but also a significant potential tax liability. The Court determined that in such circumstances it had a duty and responsibility to protect the Commonwealth revenue.

The Judge Ordered that the trial be adjourned and that the parties file all outstanding Tax Returns. It was also Ordered that the Financial Statements of the parties be forwarded to the ATO.

Once these steps were completed, the proceedings in the Family Court could continue.

## IS IT A LOAN OR A GIFT?

In a recent case the Court had to consider whether a sum of money given to a Wife was a loan or a gift.

The difference – between the two – can have an impact on the final property pool available for

distribution. A loan is seen as a liability which will need to be repaid and would decrease the property pool, whereas a gift would increase the property pool and increase the percentage entitlement for the recipient spouse.

The Husband and Wife were together for 16 years and had total property valued at \$1 million. The Wife's mother had provided the couple with a lump sum of \$182,000. The Wife claimed this was a loan which needed to be repaid, and should therefore decrease the property pool.

The Husband, however, argued that the sum of money was a gift and was for their benefit.

In considering whether it was a loan or a gift, the Court considered what evidence there was that might suggest the money needed to be repaid.

The Court found that the money provided by the Wife's mother was not a loan which was repayable, as there was no evidence that either the Husband or the Wife needed a loan from the mother. The Wife was a capable financial manager and had available financial resources during the marriage.

The Court did find that the gift, however, amounted to a substantial percentage contribution on the Wife's behalf, along with other financial contributions. The Wife, therefore received 72.5% of the property pool and the Husband received 27.5%.

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