

FAMILY Flyer



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FINAL PUBLIC SEMINAR – TOMORROW!

The final public seminar in our current series is on at Grange at 6pm TOMORROW!

Don't miss the opportunity to hear Accredited Family Law Specialist, Michael Lynch, explain how property settlements are determined. He will also identify some common traps people encounter and give some tips on how to overcome them. The Seminar 'Separation and Property' is being held:

- Grange: Wednesday, 29 May 2013, 6pm-7pm at the Brothers Grange Community Sports Club, 41 Agincourt St, Grange

The seminar is open to everyone and the attendance fee is ONLY \$20.

For more information, or to book your seat, contact our office on (07) 3221 4300 or email law@mlynch.com.au.

WHAT TO DO IF YOU SUSPECT DRUG USE?

With the vast variety of drugs that are used by people these days, it is important to understand that laboratories cannot test for all of them.

In Family Law parenting cases, the use (or not) of drugs can become critical to the appropriate behaviour of a parent and their ability to provide a safe environment for children.

Experts say that a urine test is better than a blood test if you are only looking to answer the question 'has the drug been

used in the past couple of days?'

Another option is hair testing. For most drugs if the person has not used it for 3 days, it will be out of their blood and urine. A hair test can look back many months (1cm = 1 month) to determine if the drug has previously been used.

PARENTING WITH SHIFT ROSTERS

Negotiating arrangements for what time children spend with each parent is often very difficult – but it has added complications when parents are involved in shift work.

In a recent case, the Court found that a Father that worked an eight (8) day shift roster which consisted of 2 x 10 hour day shifts, 2 x 14 hour night shifts and then four (4) days off was entitled to spend the period of time spanning his rostered days off (being 3 nights each 8 day roster) with the children.

At the time of the Court's decision the two (2) children were 8 and 6 years old. In the two years between separation and the Court's decision, the children had been through several changes including two changes in residence and also changes in schools; in total there had been four different parenting arrangements.

At the trial, the Mother sought that the children live with her and spend time with the Father each alternate weekend from Friday to Monday as well as time each Thursday.

The Father submitted that, if the mother's proposal was adopted, he would only be able to have the children one



weekend out of every four, due to his work roster. The Mother's proposal relied on the children either being returned to her care or being cared for by the paternal grandmother when the Father was required to work and the children were not in school.

The Court concluded that while the Mother's proposal was one commonly seen in parenting matters before the Court, it was based on certain assumptions about working patterns which were not present in this case.

The judge concluded " *A routine which revolves around their school week may be ideal, but it is not in my view practical, if the children are to have the benefit of the maximum amount of time actually with their Father, rather than simply being theoretically in his care.*"

Tip: The Court encourages parents to communicate and negotiate flexible arrangements for the benefit of the children. Think creatively and do not become entrenched in your own positions, as the Court does not have a fixed stance.

COURT CONSIDERS INHERITANCE

In a recent case the Court has had to decide what percentage weight to give to a Husband in a property settlement, for an inheritance he received from his Mother's estate.

Facts:

- Both the Husband and the Wife were 64 years of age and retired, at the time of the trial, they had been married for 38 years. They had 2 children aged 38 and 36 years.
- The Court valued the property pool at \$5.3 million.

- 4 years prior to the date of separation the Husband's Mother died providing the Husband with an inheritance of \$332,000.
- The Husband argued that the inheritance should be recognised on a "dollar for dollar basis", (i.e. in relation to its value compared to the property pool), therefore representing a 6% contribution in his favour.
- 7 years before the date of separation the Wife was injured at work and received a lump sum payment of \$27,000.

Court finding:

- The contribution of the inheritance must be assessed having regard to the contributions of the parties over 38 years of marriage. There should be an adjustment in the Husband's favour for the inheritance of 3%.
- The Husband had failed to disclose assets he held in Europe and the Court was unable to determine the real value of those assets other than estimates. The Court determined that it should make an adjustment in favour of the Wife of 3.5%.

Court Order:

- The Wife receive 50.5% and the Husband receive 49.5% of the property pool.

WHAT IS AN AFFIDAVIT?

An Affidavit is a written statement prepared by a party or a witness. It is the main way you present evidence (facts of the case) to the Court. You must swear or affirm the Affidavit before a person authorised to witness Affidavits, for example, a Lawyer or a Justice of the Peace.

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