

PROPERTY SETTLEMENT AND FARMS – DISPELLING THE MYTHS

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Determining a property settlement involves considering various factors in the *Family Law Act*, in conjunction with someone's specific situation. In broad terms, the "pool" of property must be determined i.e. identified and valued (it is worth noting that the definition of "property" is very broad and can include individual, company and trust property), and then there needs to be a consideration of what contributions each spouse has made to the "property pool". (This includes a range of factors, including financial and non-financial contributions).



Divorce settlements involving farms have historically had a chequered history in the Family Court, both with regards to how the farm should be treated and valued as "property" and what "percentage" credit should be given to each spouse for either the introduction of the farm or the ongoing contributions to it. These uncertainties have now been clearly resolved by the Court. The purpose of this brief article is to dispel any misunderstandings that people in the farming community may still have.

History:

Family law property cases prior to 1985 involving farms, determined that land used for farming purposes and to produce an income, were in a different category from land that simply provided a place for the family home. Judges in these cases specifically looked at a section of the *Family Law Act* requiring them to consider the earning capacity of either spouse. The main

is no 'farming case' exception to the ordinary principles applicable to deciding family law property matters. The case rejected any notion of preservation of the farm as a viable entity at the expense of the wife. This case is still used today as a guideline to determine a property division.

Following the *Lee Steere* decision, farms do not have any special status in family law property proceedings. The same principles apply whether one spouse inherited the farm or it was acquired during to the relationship.

The last 20 years:

Farm cases, particularly after the 1995 decision of *In the Marriage of Guthrie* [1995], indicate that the Courts consider a range of factors. Courts consider not just, for example, the initial contribution of the husband 'bringing the farm' into the marriage but also the contributions of both parties to farm work and domestic work (homemaker/parenting duties) during the marriage. Courts also consider the future earning capacity of the wife after separation and the earning capacity of the husband which in many cases may be his need to retain the farm, as well as ensuring a 'just and equitable' outcome in each unique matter.

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