

*Family Law Property Disputes: Post-Separation Inheritances, Kennon Arguments and Litigation Injunctions*

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**Forum disputes and anti-suit injunctions**

- The seminal authority for *forum non conveniens* test is [Voth & Manildra Flour Mills Pty Ltd \[1990\] HCA 55](#) at [247]
- The High Court case of [ZP & PS \[1994\] HCA 29](#) establishes that where the parenting jurisdiction of the Court has been properly invoked, the best interests test is applied to determine disputes about fora rather than the *forum non conveniens* test
  - The recent case of [Kwok & Beng \(No 2\) FedCFamC1F 263](#) illustrates this insofar as the mother's application for a stay of the Australian proceedings is dealt with via the best interests test vis a vis parenting and via the *forum non conveniens* test in relation to the balance of the proceeding
- The factors informing the *forum non conveniens* test are set out in [Henry and Henry \[1996\] HCA 51](#) and include:
  - Whether each Court will recognise the other's decrees;
  - Which forum can provide more effectively for a complete resolution of the matters involved in the parties' controversy;
  - The order in which the proceedings were instituted and the stage they have reached;
  - The connection of the parties and their marriage to each jurisdiction;
  - Whether each party is able to participate in the proceedings on an equal footing
  - Any other relevant matters

It is likely that these matters will also be of relevance in determining forum disputes under the best interests test as illustrated by *Kwok* at [70].

**Family violence adjustments in property division post Kennon**

- Seminal case for adjustments for family violence prior to the 2024 amendments to the *Family Law Act 1975* (Cth) (FLA) was [Kennon & Kennon \[1997\] FamCA 27](#):
  - *'Put shortly, if there is a course of violent conduct by one party towards the other during the marriage which is demonstrated to have had a significant impact upon that party's contributions to the marriage, or ... to have made his or her contributions significantly more arduous than they ought to have been, that is a fact that the trial judge is entitled to take into account in assessing the parties' contributions'*

- Acknowledged that this was a relatively narrow band of cases that could be described as exceptional and made reference to the risk of opening the floodgates and returning the Court to the bad old days of fault and misconduct in property matters
- [FLA s. 79](#) now provides for the consideration of family violence at both the second (contributions) stage and the third (current and future circumstances aka 'needs') stage
  - FLA s. 79(4)(ca) - 'the effect of any family violence, to which one party to the marriage has subjected or exposed the other party, on the ability of the party to the marriage to make [contributions]'
  - FLA s. 79(5)(a) - 'the effect of any family violence to which one party to the marriage has subjected or exposed the other party, on the current and future circumstances of the other party'
- Contributions adjustment
  - Family violence not qualified with 'significant' a la *Kennon* - unclear whether this will expand the eligible cases beyond the original narrow band
  - No explicit reference to 'making contributions significantly more arduous'
    - Some uncertainty as to whether this as a stand alone ground would still enable an adjustment on account of family violence
    - Three recent Division 2 cases suggest yes, namely:
      - [Tedesco & Tedesco \(No 2\) \[2026\] FedCFamC2F 82](#)
      - [Burrell & Lawry \[2025\] FedCFamC2F 1646](#)
      - [Gronow & Gronow \[2026\] FedCFamC2F 107](#)
    - However, in *Stubbs & Stubbs (No 3) [2025] FedCFamC1F 534* Austin J declined to make any s. 79(4)(ca) adjustment on the basis that the wife had deposed that her ability to make contributions was greater than that of the husband and that she had made 'significant' contributions despite the family violence (at [94])
  - On my reading of some of the recent cases (see appendix 1), the adjustment still appear to typically be less than 5%, which is consistent with my experience under *Kennon*
- Current and future circumstances (aka needs) adjustment
  - Explicitly conditioned upon the effect on ... the current and future circumstances of the other party
  - Most cases reviewed did not include any adjustment under s. 79(5)(a). In the ones that did:
    - In [Acone & Paget \(No 2\) \[2025\] FedCFamC1F 649](#), the Court noted that the wife would need to fund continuing psychological treatment, that it was reasonable for her to continue to be scared of the husband, and her treatment was connected to her experience of the husband's violence (at [146])

- In [Sauter & Holt \(No 2\) \[2026\] FedCFamC1F 153](#) the family violence in question included severe financial abuse, including borrowing a large sum from a third party and dissipating same.
  - Resulted in a significant needs adjustment (of 12.5%) but relied also on other considerations such as material wastage per [FLA s. 79\(5\)\(d\)](#)
- Would appear that an adjustment under this head is more rare, but when it occurs it may be less prone to be fixed to a certain percentage range given the lack of jurisprudence, the overlap with other grounds (i.e. wastage) and the need to particularise impact on client's current and future circumstances

### **Post-separation inheritances and overcoming *Bonnici***

Case of [Bonnici & Bonnici \[1991\] FamCA 86](#) has been extremely influential

- Provides that 'if there are ample funds from which an appropriate property settlement can be made and a just result arrived at, then the fact of a recently acquired inheritance would normally be treated as an entitlement of the party in question. The other party cannot be regarded as contributing significantly to an inheritance received very late in the relationship and certainly not after it has terminated, except in very unusual circumstances' (at [42]-[44])
- Stands as authority for the propositions that
  - a post-separation inheritance should often be dealt with separately from the rest of the pool
  - the other party's contributions towards the inheritance would usually be assessed as being negligible
- Other subsequent authorities have made it clear that *Bonnici* is not a guideline and the Court retains a discretion whether to deal with a post-separation inheritance separately, but the reality is that it has often been followed by the lower Courts in order to justify the effective quarantining of the inheritance (e.g. *Urbina*, *Mistle* - see Appendix 2)

Arguments that may provide the Court with a reason not to follow *Bonnici* include:

- Direct contribution towards the inheritance
  - Care of the testator prior to death (such as driving him or her to hospital) or financial contribution towards a (real) property forming part of the inheritance were identified in *Bonnici* itself as potentially constituting contributions towards the inheritance (at [43])
- Indirect contribution towards the inheritance
  - In cases where the inheritance was anticipated and there was some contribution by the inheriting party towards the inheritance, the non-inheriting party has been able to rely on this indirectly as making her own contributions more arduous. For example:
    - In [Stinson & Goldsmith \(No 2\) \[2021\] FamCA 540](#) the Court said that:
      - [To see the inheritance as a contribution of the husband] would ignore the myriad of contributions made by the wife during the

- marriage in circumstances where the husband expected the inheritance and worked the farming properties (at [73])
    - The time and energy spent by the husband on the farms must be balanced against the time and energy spent by the wife in caring for the children and the household in the husband's absence (at [73])
    - In [Addario & Addario \[2025\] FedCFamC1F 617](#) the Court said that the husband's ability to work for his parents at reduced rates of pay were made possible by the wife's contributions as wife and homemaker (at [88])
  - Justice and equity at large, e.g.
    - The principle in *Bonnici* is qualified by the precondition that 'if there are ample funds from which an appropriate property settlement can be made and a just result arrived at ...'
    - If pool consists largely of inheritance and non-inheriting party had made significant contributions
      - Contributions towards the entirety of the relationship are relevant, not just towards the inheritance itself ([Holland & Holland \[2017\] FamCAFC 166](#) at [33], [36])
    - If the parties' relationship had not taken on different characteristics during the period at which the s. 79 inquiry is directed
      - In [Zaruba & Zaruba \[2017\] FamCAFC 91](#) significant weight was placed on the length of time since separation and the fact that the parties' finances had also been separately conducted for a decade (at [39], [112]-[113]). It stand then to reason that the converse would also apply, i.e. if separation was recent and the parties' finances remain co-mingled, this may be a reason not to take an asset-by-asset approach.
      - Likewise, if the non-inheriting party continues to make substantial contributions (such as care of children) this will likely be a reason militating against the quarantining of the inheritance.
    - Other matters potentially bearing on justice and equity
      - After all, judges are human as well, and the authorities confirm that the Court retains a wide discretion over whether to quarantine an inheritance or not.
      - In *Schnell*, the fact that the non-inheriting party had also received an inheritance (that could not be excluded) may have had some bearing on the ultimate inclusion of the inheritance
      - Conversely, in *Schirmer* the inheriting party's contributions appeared to be greater even without counting the inheritance (not to mention her needs in terms of retaining the three minor children) and this may have had a bearing on the effective exclusion of the inheritance
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**David Ng**  
Owen Dixon Chambers East

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**APPENDIX 1 - CASES OF FAMILY VIOLENCE-BASED ADJUSTMENT IN PROPERTY  
DIVISION POST JUNE 2024 AMENDMENTS**

| Case citation                                                     | Size of pool | Duration of relationship | 79(4) (%)     | Other contrib factors                                                                                                                                          | 79(5)(a) (?)<br>79(5) (%)         | Other needs factors                                                                                                                                                                   | Observations                                                                                                                                                                                         |
|-------------------------------------------------------------------|--------------|--------------------------|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <a href="#">Tedesco &amp; Tedesco (No 2) [2026] FedCFamC2F 82</a> | 1.7m         | 30 years                 | 53/47 (W)     | No differentiators                                                                                                                                             | N<br>Nil                          | H's business's earning capacity and sole use of a real property; W's use of matrimonial funds for legal fees; H's lack of disclosure. Factors balance each other out (at [273]-[279]) | Court declined to take FV into account per 79(5)(a) as 'no evidence that FV affecting her ongoing earnings or work capacity, nor that she was continuing to seek therapeutic support (at [223])      |
| <a href="#">Burrell &amp; Lawry [2025] FedCFamC2F 1646</a>        | 2.6m         | 27 years                 | 53/47 (H)     | Greater initial contribution - i.e. ownership of Perth apartment (at [26])<br><br>Greater post-sep contributions by H i.e. 892K in TPD payment (at [63]-[64])  | N<br><br>3% overall adjustment    | Income disparity - W would work for another five years while H had cancer and would not (at [96]-[109])                                                                               | Serious FV - hitting kids and sexual abuse of wife (at [84])<br><br>Further 79(5) adjustment in H's favour of 3%<br><br>Speculate that 79(4) assessment of 55/45 might have been appropriate sans FV |
| <a href="#">Diamonto &amp; Reyvan [2026] FedCFamC1F 109</a>       | 800K         | 11 years                 | 50/50         | 73K advanced by paternal grandparents (at 52) characterised as gifts (at [81]) and disbursed as H saw fit, incl contributions and also PGPs expenses (at [83]) | N<br>[\$62,896]                   | No 79(5) adjustment made in percentage terms, only an adjustment of \$62,896 to offset a partial property distribution (at [102])                                                     | Relatively low level of FV: verbal abuse, threats, coercion, contributions more difficult (at [89]-[93])<br><br>Speculate that 5% differential (i.e. 52.5/47.5) might have been appropriate sans FV  |
| <a href="#">Sauter &amp; Holt (No 2) [2026] FedCFamC1F 153</a>    | 3m           | 8 years                  | 52.5/47.5 (W) | Limited - suggestion that contribution assessment would otherwise have been equal (at [137]-[150])                                                             | Y<br><br>12.5% overall adjustment | Substantial financial abuse taken into account under this head including failure to pay spousal maintenance as                                                                        | Serious FV including multiple acts of choking (at [144]-[147])<br><br>Would speculate that there might                                                                                               |

|                                                                  |      |          |       |                                                                                                                                                                                                                                    |                                 |                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                              |
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|                                                                  |      |          |       |                                                                                                                                                                                                                                    |                                 | ordered and withdrawal of large sums (at [145]-[156])                                                                                                      | <p>have been a 79(5) adjustment of up to 5% from income discrepancy, such that 79(5)(a) adjustment was up to 7.5%</p> <p>Turns on its own facts a bit due to extent of financial abuse which was accepted due to MC findings (at [154])</p>                                                                                                                  |
| <a href="#">Borreau &amp; Ivers (No 2) [2025] FedCFamC1F 417</a> | 650K | 21 years | 50/50 | Father received compensation for accident of 630K in 2008, but characterised in part (i.e. 540K of it) essentially lost income (at [103]). Might then be contribution of 90K, also offset by mother bringing 23K (at [93]) to 70K. | N<br><br>10% overall adjustment | Wife sought and husband conceded 10% adjustment (20% differential) based on her primary care of two kids aged 13 and 10. No stated provision for 79(5)(a). | <p>Very serious FV, including choking and hitting, threats to kill, killing family pets, surveillance and exposing child to sexual abuse over unpaid drug debt (at [30]-[40])</p> <p>However, contribution assessment would likely only have been 52.5 / 47.5 for the net 70K contribution by father, so 2.5% adjustment (5% differential) for 79(4)(ca)</p> |
| <a href="#">Acone &amp; Paget (No 2) [2025] FedCFamC1F 649</a>   | 4m   | 33 years | 50/50 | Paternal grandparents contributions but offset by unquantified but substantial withdrawals by husband post separation, e.g. net 400K (at [98])                                                                                     | Y<br><br>15% overall adjustment | Transfer of property by husband to his brother and 251K to himself, with these two things totalling 500K                                                   | <p>FV involved verbal abuse and threats and one very serious incident at separation involving assault and threat to kill with firearm (at [107]-[108])</p> <p>The post separation withdrawal of 500K plus the 79(5)(a) adjustment (with judge citing ongoing psych treatment cost) amounting to</p>                                                          |

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|                                                           |    |          |           |                                                                                                  |                                 |                                                                                                                                                                        | <p>15% or differential of 1.2m.</p> <p>A likely scenario husband would be 6% adjustment for the 500K (12% differential). This would see the wife receiving almost complete indemnity for this unilateral withdrawal.</p> <p>So net adjustment for 79(5)(a) is very large at 8%. Perhaps justified to some degree by length of relationship and hence suffering, as well as continuing treatment and fear</p>                                                                                                                             |
| <a href="#">Gronow &amp; Gronow [2026] FedCFamC2F 107</a> | 2m | 18 years | 58/42 (W) | Equal contributions during relationship but wife's were greater post-separation due to 79(4)(ca) | Y<br><br>15% overall adjustment | Unquantified but significant disparity in income, continued care of four disabled children for up to another 13 years, no likelihood of child support (at [127]-[132]) | <p>Post-separation FV such as intimidatory breaches of IVOs, placing loans in default (at [103]); made wife's care of four disabled children more onerous</p> <p>Both the adjustment to contribution assessment due to 79(4)(ca) and to 79(5) assessment due to 79(5)(a) seem significant in this case, again a bit of an outlier. Particularly in relation to the former - the latter is more ambiguous since the disabled children and income discrepancy might have led to a large adjustment of themselves (one that is variable</p> |

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|                                                               |      |          |                 |                                                                                                                                                                                                         |                             |                                                                                                    | due to lack of quantification of income discrepancy)                                                                                                            |
| <a href="#">Pryor &amp; Pryor (No 2) [2026] FedCFamC1F 77</a> | 400K | 17 years | 57.5 / 42.5 (W) | Capital contribution of 30K in 2009 (at [49]), sole care of kids in 2021-22, primary care and sole financial responsibility for kids since separation (in mid-2022) (at [60]), in addition to 79(4)(ca) | N<br>10% overall adjustment | Based on future care of two kids aged 12 and 10 and likely income discrepancy (lack of disclosure) | Sub 5% adjustment (maybe 2-4%) based on 79(4)(ca) as the other 79(4) matters are of some significance, such as sole responsibility for kids for some four years |

## APPENDIX 2 - POST-SEPARATION INHERITANCE CASES

| Name                                                             | Key elements                                                                                                    | Treatment of inheritance | Rationale given                                                                                                                                                                                                                 | Disposition                                                                                                                                                                               |
|------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <a href="#">Besim &amp; Zehra [2025] FedCFamC1A 181</a>          | Post-separation inheritance and contribution of 17% of the net pool                                             | Single pool              | None                                                                                                                                                                                                                            | Discretion re-exercised due to failure to account for inheritance contribution. Contributions assessed at 70/30, taking into account also a net initial contribution of 28.5% of net pool |
| <a href="#">Bachman &amp; Self [2023] FedCFamC1A 50</a>          | Pre-separation inheritance of around \$300,000 out of a pool of \$10m that was quarantined                      | Single pool              | 'No fact or argument to justify [asset-by-asset] approach                                                                                                                                                                       | None (overturned and remitted)                                                                                                                                                            |
| <a href="#">Addario &amp; Addario [2025] FedCFamC1F 617</a>      | Post-separation inheritance of 4.7m towards a pool of \$9m                                                      | Single pool              | Indirect contributions by W towards H's inheritance where the latter was aware of the inheritance and worked at the family business at reduced pay. W also provided some care to PGM by way of driving and medical appointments | Contribution based assessment of 70/30                                                                                                                                                    |
| <a href="#">Alieva &amp; Polzin [2025] FedCFamC1F 222</a>        | Small inheritance of 800K towards pool of 18m, received eight years post-separation                             | Single pool              | None. Possibly the fact that the inheritor sought that the inheritance be treated as a financial resource rather than an asset-by-asset approach per <i>Bonnici</i>                                                             | Contribution based assessment of 60/40 in favour of non-inheritor based on other matters                                                                                                  |
| <a href="#">Schnell &amp; Frey [2021] FedCFamC1A 55</a>          | Inheritances of \$2m during relationship to H and \$2.5m to W four years post-separation towards pool of \$8.3m | Single pool              | Distinguished from <i>Bonnici</i> on the basis that both parties had received inheritances                                                                                                                                      | 53/47 contribution based assessment amounting to differential of \$499K compared to net contribution differential of \$537K                                                               |
| <a href="#">Stinson &amp; Goldsmith (No. 2) [2021] FamCA 540</a> | Post separation inheritance of \$1.34m towards net pool of \$5.25m                                              | Single pool              | Contribution not solely made by husband where he expected the inheritance and worked the farming properties with that in mind. W spent time and energy caring for children and own money to support them in H's absence.        | 57.5 / 42.5 contribution based assessment in favour of husband.                                                                                                                           |
| <a href="#">Farmer and Bramley [2000] FamCA 1615</a>             | Post separation lotto win of \$5m by husband constituting entirety of                                           | Single pool              | None. Matter was argued below on the basis of who owned                                                                                                                                                                         | W received \$140,000 out of the \$5m pool, being 2.8% of the net                                                                                                                          |

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|                                                           | the pool                                                                                                               |                                                                                                                           | the lottery ticket.                                                                                                                                                                                                                       | pool. \$50,000 (1%) was based on contribution-based entitlements in the form of post-separation care of the child                                                                                                                                                                                                                                                                                                                                            |
| <a href="#">Schirmer &amp; Sharpe [2005] FamCA 40</a>     | Post-separation inheritance of around \$610,000 towards pool of \$833,833                                              | Notionally single pool, but functionally the inheritance was excluded. Listed as an asset-by-asset case in <i>Addario</i> | W's contributions were greater even during the relationship, including provision of rent-free accommodation by her parents. She also retained care of the three children without the benefit of child support                             | 90/10 division in favour of W where she retained the entirety of her inheritance (and then some)                                                                                                                                                                                                                                                                                                                                                             |
| <a href="#">Elgabri &amp; Elgabri [2009] FamCA 227</a>    | Pre-separation inheritance of \$549,396 where net non super pool was otherwise \$826,072                               | Asset-by-asset                                                                                                            | None. W appeared to approach the case based on an argument that she contributed 10% towards the inheritance, implicitly conceding an asset-by-asset approach                                                                              | Contribution-based entitlement towards inheritance assessed as 5%, with conservation of the capital during the two years before separation seen as an indirect contribution by her<br><br>A 7.5% needs adjustment was applied on the basis of the inheritance but only to the non-inheritance pool                                                                                                                                                           |
| <a href="#">Urbina &amp; Urbina [2024] FedCFamC1F 179</a> | Post-separation inheritance of \$1.9m received by W where non-super pool was otherwise \$49K and super pool was \$492K | Asset-by-asset                                                                                                            | Applied <i>Bonnici</i> whereby non-inheriting party cannot be seen as contributing to a post-separation inheritance outside unusual circumstances. H failed to demonstrate any such circumstances.                                        | Net non super pool and super pool equalised. Inheritance retained by W; Court found no basis for needs adjustment given H's high income earning capacity.                                                                                                                                                                                                                                                                                                    |
| <a href="#">Mistle &amp; Mistle [2010] FamCA 29</a>       | H received an inheritance of \$9.5m where net pool was otherwise \$4.2m, including \$684K super                        | Asset-by-asset                                                                                                            | Applied <i>Bonnici</i> and noted that W claims no contribution towards or interest in H's inheritance. Fact that both parties were wealthy and W was likely to receive an inheritance of not less than \$1m later may have been relevant. | Contribution-based assessment of 60/40 to H based on greater initial contributions, gifts from grandparents and post-separation contributions. However, Court applied a substantial needs adjustment of 40% of the non-inheritance pool based on W's poor health, reduced earning capacity, care of adult children and the fact of H's inheritance. Compare with <i>Urbina</i> and <i>Elgabri</i> where much smaller needs adjustments were applied based on |

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|-------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                       |                                                                                                                         |                |                                                                                                                                                                                                 | the inheritance.                                                                                                                                                                                                                                                                                                              |
| <a href="#">Zaruba &amp; Zaruba [2017] FamCAFC 91</a> | W received inheritance of \$1m in the form of a real property where net pool otherwise consisted of FMH worth \$450,000 | Asset-by-asset | Upheld asset-by-asset approach based on unusual factual matrix including that parties had not lived together for 10 years, been divorced for 20 years and separated their finances 30 years ago | Discretion re-exercised so that inheritance is excluded altogether; no alteration authorised under s. 79(2) per <i>Stanford</i> . A needs adjustment of \$75,000 was made so H would need to pay W \$150,000 rather than \$225,000 to buy her out of the FMH. This consisted of a 16% adjustment of the non inheritance pool. |
|                                                       |                                                                                                                         |                |                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                               |