

Disputes Concerning Property

1. Agreement.

- parties resolve the division of property between themselves.
- No Court Involvement
- Disadvantages Include:
 - not knowing legal rights
 - one parties may dominate the negotiations.
 - No court enforcement.

2. Consent Orders.

- parties resolve the division of property between themselves.
- They register the agreement with the court
- The agreement is subject to approval by the court.
- if disputes occur they can then be settled by the court.
- Same force and effect as if the court made the order.

3. Financial Agreements.

- Written agreements to resolve the division of property.
- For it to be binding:
 - It must be in writing
 - Signed by both parties
 - be between parties getting married, are married or separated
 - each party must seek independent legal advice before signing.
 - Each legal representative must sign documents confirming they have given advice.
- No court intervention when creating Agreement.
- Not called a pre-nup in Aust.
- Disadvantages:
 - They can not be registered
 - usually difference in bargaining power and negotiation skills
 - No court to check fairness.
- F.A. can be set aside due to:
 - Fraud or failure to disclose relevant information eg assets
 - Now impracticable to carry out agreement
 - A child changes the needs of the parties
- Not fully adopted by legal professionals as they worry about future negligence claims.

4. By having the Court Decide.

- If the parties cannot agree then either party can apply to the court to decide. The application can be made any time after separation + before divorce proceeding start. i.e. in the 12 mths.
 - The Court uses the following steps:
 1. Determining the pool of assets
 - They have to determine the assets to be shared.
 - identifies + values assets by using professional valuers.
 - Issues can include:
 - Adding back money spent after separation. Any unreasonable expenditure will be added back.
 - deciding when to value assets.
 - Failing to disclose assets - this can be perjury.
 - In 2002 Superannuation is included in the pool of assets. They are called splitting orders.
 2. Considering the contributions of each party.
 - This can include:
 - Financial and non financial.
 - Impact of future earning capacity
 - what property they contributed at the time of marriage
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 - They will determine if there was a marked difference in contributions.
 - The longer the marriage the more likely they will find the contributions equal.
 3. Considering the future needs of the parties.
 - Some considerations include:
 - The age + health of each party
 - Whether either party has care or central of a child at the marriage who is not yet 18 yrs.
 - capacity (physical + mental) to find appropriate + gainful employment.
 - commitments to other children + former spouses.
 - if they are cohabitating with another person + the financial issues in that relationship.
 - 1/3 division stated.
 4. Considering whether the proposed order is just + equitable.
 - look back + check its fair.
- * READ CASES P991