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MATRIMONIAL CLAIMS AGAINST THE OTHER PARTNER'S SEPARATE PROPERTY

Last month, the Supreme Court released the decision of *R v R* which is significant because the Court has allowed a successful claim against anther partner's separate property and awarded up to 40% of the increase in value to the non-owning party.

This is the first opportunity that the new Supreme Court in New Zealand (*that replaced the right of appeal to the Privy Council*) has had to consider an issue under the Property Relationships Act 1976. For this reason, this decision is significant.

In brief, Mr R already owned a farm property at the time of his marriage to Mrs R. Throughout the marriage Mr R worked on the farm exclusively and converted part of the farm to grapes. The conversion of part of the land to the growing of grapes was significant because it assisted the increase of the capital value of the farm property overall. Mrs R took care of the household duties including care of the children. She also worked from time to time and assisted with income to the household expenses.

The Supreme Court held:

- (a) Because the farm property was owned by Mr R prior to the commencement of the marriage, it remained his separate property.
- (b) That by Mrs R carrying out the domestic duties of the household, she indirectly freed up the time for Mr R to work and develop the farm;
- (c) That these indirect contributions were causative of the farm increasing in value. Although inflation was probably the largest factor, that did not matter. Provided the

indirect contributions by way of domestic duties was causative of some of the increase, then this would be sufficient to meet the test required in s9A of the Property Relationships Act 1976;

- (d) Finally, Mrs R was awarded 40% of the increase in value of the farm from the commencement of the marriage until the time that the case was heard in the Family Court (i.e. hearing date).

It is important for clients to understand that if they hold separate property assets which could include:

- (a) Assets acquired before the commencement of the marriage or relationship (except the family home and chattels);
- (b) Inheritance moneys received;
- (c) Or assets received from a family trust.

even then though those assets retain their separate property status, they will as a result of the decision in *R v R*, be subject to a claim of a significant proportion of any crease in value upon the breakdown of the marriage or de facto relationship.

The decision in *R v R* again highlights the importance of placing your separate property assets in a Trust or alternatively, entering into a Contracting Out Agreement pursuant to s21 of the Act.

- The next newsletter will cover the topic of **Leaky Buildings—The Process** — by Eugene Collins

Family Trusts

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Relationship Property Queries?

If any clients have any issues at all in respect of relationship property on the breakdown of a marriage or relationships, please feel free to e-mail Lloyd Collins at

Lloyd@collinsmay.co.nz