

# FAMILYLAW NEWSMATTERS

Welcome to the third edition of Family Law Newsmatters 2011. In this newsletter we bring you:

- School Holiday Information
- Benefits of Early Advice
- Special Financial Contributions
- Father's Day



*Put your family first -  
find out what's fair at  
Family Law Matters*



## SCHOOL HOLIDAYS

There is often much debate amongst parents about how to calculate the half-way point in the school holidays. We receive many calls from confused and distressed parents when change-over plans fall apart.

This table sets out the holidays at the end of each term according to the NSW Board of Studies website.

Your child's school may have additional pupil-free days, you should always check start and conclusion dates with your school. If your children attend a private school, their holidays may be different.

Your Orders or Parenting Plan may define a different method for how the holiday should be arranged. If they don't, our suggestions of an appropriate half-way change-over are listed for your convenience.

If you are not sure what to do about school holidays, you should contact us to seek some advice. Applications for Contravention of Orders are commonly filed against a parent who has not properly complied with school holiday provisions.

### 2011 NSW Gazetted Public School Holiday Dates

	Commencement	Conclusion	Days	Half way point / Change-over
Term 1	Saturday 9 April 2011	Tuesday 26 April 2011	18	12 noon Sunday 17 April 2011
Term 2	Saturday 2 July 2011	Sunday 17 July 2011	16	5:00pm Saturday 9 July 2011
Term 3	Saturday 24 September 2011	Sunday 9 October 2011	16	5:00pm Saturday 1 October 2011
Term 4	Wednesday 21 December 2011	Thursday 26 January 2012	37	12 noon Saturday 7 January 2012



## BENEFITS OF EARLY ADVICE

When a couple separate there is often released a cocktail of emotions. The impact of those emotions can distort logical reasoning. The most basic of requirements and issues are often disguised by the emotions.

Michael could no longer live in the marriage and told Mary that he was leaving the matrimonial home. Mary was distraught. She was now a single mother of a small child aged 14 months. How was she to survive? Michael had gone.

Mary sought advice from her family. The family was angry with Michael. Mary was told, among other things, to tell Michael to wake up to himself; to take all of the money out of the bank account; not let Michael see his 14 month old daughter; and to run the credit card up to its maximum limit. Mary was even contemplating moving to Queensland, where her family lived, as they were prepared to pay all her fares to get her there. Michael was furious, and threatened to move back to the home, kick Mary out, and change all the locks.

In these circumstances, all of this advice is unhelpful.

Eventually, Mary sought the assistance of an experienced Family Lawyer. That Lawyer made an assessment as to what were Mary's immediate needs. Mary needed urgent financial assistance to cover her costs of living for herself and her daughter. Their child needed to spend time with both her parents. These matters can be dealt with quickly and sensibly.

A simple letter can often eliminate the need to do anything else. Mary's solicitor wrote to Michael. There was agreement

reached that the joint account into which Michael's wages were paid was to remain available to Mary. Mary and the child continued living at the home. Michael was able to see his daughter a few times a week, and keep his connection with her. That simple advice from Mary's Lawyer could possibly save Mary thousands of dollars. In addition, it had lifted enormous stress from Mary's shoulders.

Mary was now financially comfortable for the immediate future. She and their child were not going to starve. They had a roof over their heads. There was money available to them. Mary could now start to think logically in relation to her future needs and how those needs could be met in the long term.

If short term issues are identified and addressed people have space to think about the long term questions. The short term issues are generally accommodation, availability of money and spending time with children.

If the party to a separation gets advice that is destructive, unrealistic or plainly wrong in the initial period, then it is very difficult to achieve a long term realistic outcome. "I will get you everything. I will crush him." This is the type of advice that is destructive, unrealistic and just plain wrong.

If you obtain proper and realistic advice from the outset, it paves the way for an outcome which is acceptable to both parties and, most importantly, the children. To find out what's fair in your circumstances, call us to make an appointment with Antonella Sanderson.

## SPECIAL FINANCIAL CONTRIBUTIONS?

Miles and Miranda were married for 14 years. They have three children, aged 10, 7 and 5. They separated about 3 months ago.

Their financial contributions over the course of the marriage were relatively typical – they both earned income and pooled their funds together as a joint endeavour to improve their lives and provide for the family. Miles became the primary income earner after the birth of the children, and Miranda became the primary carer of the children.

Around three years ago, Miranda lost both her parents rather suddenly. Miranda received a substantial sum of money by way of inheritance, and most of the funds were used to pay off the mortgage on the family home. Some funds were used to enjoy a family holiday, and Miranda took a year off her part-time work to stay at home and be completely available for the children.

Miles felt that Miranda's inheritance was her financial contribution to the marriage, given that he was the primary income earner and Miranda had not made a great deal of financial investment after the children were born. He didn't agree that Miranda should receive any adjustment of their overall property due to her receipt of the inheritance funds.

Miranda felt that her inheritance had become lost in their joint assets, and wanted a refund of all the money she had received.

There was a big financial difference between them in negotiations – enough of a difference for them to keep spending money on solicitors to argue their points. Miranda's siblings, in particular, were pressuring her to "fight" for her inheritance and not allow Miles to "take it away".

Usually, courts adopt a four-step process in coming to a decision on property settlement:

- Identify the assets, superannuation, liabilities and financial resources;
- Determine the contributions made by each party to the property and the welfare of the family;
- Determine the future needs and the resources of each party; and
- Determine whether the result is just and equitable.

Inheritances, such as the one received by Miranda, are considered as a special contribution and are dealt with in "step 2". Other special contributions may be lottery winnings, a compensation payment or a gift of property from parents.

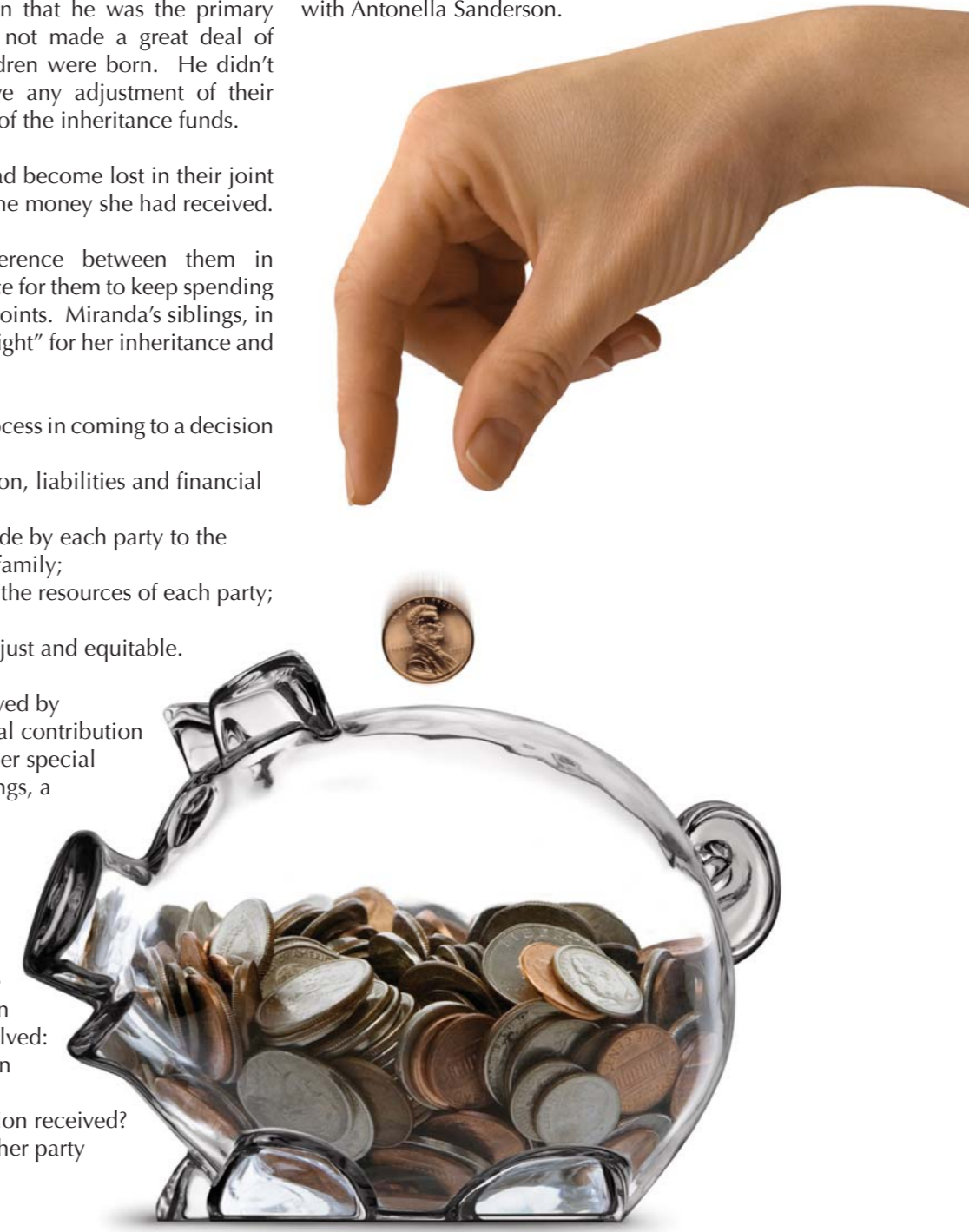
Each case is different, as each family's contributions and future needs will be unique. However, generally the Courts have taken the following matters into consideration when a special contribution is involved:

- How has the special contribution been used?
- When was the special contribution received?
- Have the contributions of the other party off-set the special contribution?

Miranda sought advice from a family law solicitor, and discovered that although her inheritance was received only a few years before separation, she may not expect to receive a full refund of that money.

The way those funds were used meant that part was applied to the family's assets and part was applied to fund a better lifestyle. An adjustment would be made in her favour to recognise her contribution, but this did not equate to a full "refund". Miles accepted this position after receiving his own advice, and the parties sensibly reached an agreement without having to take the case to a Court.

It is important to seek advice about the impact of your special contribution. When the financial stakes are high, and the passions of the argument take over, it is very easy to spend much time, energy and emotion on the "fight". This may leave you disappointed with the final result, and cost impact of the argument itself may surpass any financial gain. If you want to find out what's fair for your circumstances, call us and speak with Antonella Sanderson.





## MOTHER'S DAY & FATHER'S DAY

Although Mother's day has passed, Father's day will approach very soon. This year Father's day falls on Sunday 4 September 2011. When negotiating parenting arrangements, some parents forget about making special provision for these special occasions. Consequently, these special days can become a very stressful period for all involved.

Try and remember that Mother's day and Father's day is about making an enjoyable and memorable experience for the children – cold cups of tea and burnt toast presented to their parent as breakfast in bed is something most children remember with glee. These days should not turn out to be a tug-of-war about whose "day" it really is.

An example of an arrangement that could work for special occasions such as Mother's day and Father's day may be:

The children spend Father's day with their Father from 4:00pm on Saturday, 3 September 2011 to 4:00pm on Father's day Sunday, 4 September 2011; and

The children spend Mother's day with their Mother from 4:00pm on Saturday, 12 May 2012 to 4:00pm on Mother's day Sunday, 13 May 2012.

The usual living arrangements then re-commence from 4:00pm on the Sunday, so that the parent usually spending the weekend with the children received the children back into their care.

## FAMILY LAW MATTERS

At Family Law Matters, we have dedicated ourselves to the practise of Family Law. Our Solicitor Director, Antonella Sanderson, established the firm in 2002 (originally named Sanderson Partners Lawyers), as a result of recognising a need in the community for a practical and sensitive approach to Family Law.

Our philosophy is that it is in our client's interests to settle their matter in a way that is fair, reasonable and realistic, and that their legal costs reflect this manner of settlement.

We achieve this by approaching each matter in a sensitive yet sensible way. By empowering our clients with the knowledge of their rights and responsibilities, we assist in securing a cost-effective, practical outcome.

Our Head Office is located in Cronulla and we have access to boardrooms in Sydney CBD and Penrith for appointments. Call us on (02) 9523 3007 to arrange a consultation at a location that suits you. With our knowledge of your rights and responsibilities, we ease the pain of separation.



FamilyLawMatters

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