



## Inheritance

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Resolving financial issues and determining how to divide financial assets is inevitably at the forefront of the mind when separating. Determining how to treat assets one party believes is “theirs” such as inheritances can be even more emotive.

In approaching such issues the Court can distinguish between “Matrimonial Assets” and “Non Matrimonial Assets”.

“Matrimonial Assets” are those treated by the parties as joint. The asset has been used by the parties during the marriage and has been “intermingled” with other marital capital. Such assets may include the family home, savings acquired during the marriage and pensions accrued during marriage etc.

In such cases the Court will first consider the needs of any children and each party and how such needs can be met from the available assets and resources regardless of where they came from or who originally provided the asset.

“Non-Matrimonial Assets” are those which have not been treated as joint, such as inheritances received after separation. In such cases the Courts are more likely to exclude these assets from consideration and the party to whom it was given be allowed to keep it. Meeting the needs of the parties and any children will always take priority over the nature of the asset, including whether it was an inheritance and when it was received. In shorter marriages without dependent children the less claim one party will have against the others non matrimonial property.

Inheritances can be received before the marriage, during the marriage or after separation. They may have benefited both parties, been kept separate or a combination of the two. Inheritances may take some time to be paid by the estate and therefore is the date of receipt as opposed to the deceased’s death the relevant point in time? Whenever received they are not generated by the parties

own efforts and therefore should they be treated differently? What if one party provided a lot of care for their spouse’s elderly relative, would that make a difference. The parties themselves may have strong feelings about how an inheritance should or should not be viewed.

Meeting the parties needs will always take priority over the nature of the assets themselves but if needs are met regard can be had to excluding the “non-matrimonial assets” from consideration.

Inheritance prospects can also be considered as they will be a future resource available to the party concerned. Many people will have some prospects of inheritance usually from parents. The more distant or uncertain any such inheritance is the less likely it is that it would have any bearing on the financial arrangements made on divorce. Sometimes it is known that a party to the divorce will inherit and the timescale in which that will happen, this could be taken into account particularly if meeting the parties’ needs requires it. Talking about future inheritance which may involve the welfare of a living relative can be a particularly difficult topic to discuss and needs to be considered sensitively.

As with most aspects of family law there is no specific formula for working out a financial settlement and as far as inheritance is concerned there is no particular ‘rule’. The above is a summary of the current position given recent cases, in all situations however an assessment of all the circumstances will be required.

For more information please click [\*\*here\*\*](#) or to contact one of our family and divorce team please click [\*\*here\*\*](#).