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TURNER HOPKINS

BARRISTERS, SOLICITORS & NOTARY PUBLIC

The Bank of Mum and Dad  
RISKS, CONSIDERATIONS  
&  
BEST PRACTICE TIPS

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## RECENT CASES

02

## ISSUES AND RISKS

03

## STRUCTURE AND MITIGATION

### DISCLAIMER

*The above information is of a general nature only. The information contained in this document does in no way constitute legal advice and all readers should contact a lawyer for advice relating to your specific circumstances.*



**Part 1**

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**RECENT  
LITIGATION**

## 'We are not a bank': Parents sue daughter to recover thousands in loans

10 May, 2017 02:55 PM

© 3 minutes to read



Marian Warin and husband, Trevor, took their daughter to court over unpaid loans totalling more than \$360,000. Photo / Facebook

### Warin v Warin

High Court, Wellington, 26/4/2017, Smith Associate Judge

CIV-2016-485-293

[2017] NZHC 786 

## Dad takes daughter to court over 'loans' of \$330k for two properties, which she says were gifts

Marine Lourens · 08:04, May 06 2022



WAH MCGREGOR/STUFF

Gregory Bernard Clark applied to the High Court in Christchurch for a summary judgment on what he claims are four loans he made to his daughter, Felicity Kate Clark, above. (File photo)

Clark v Clark  
High Court, Christchurch, 13/4/2022,  
Paulsen Associate Judge  
CIV-2021-409-463  
[2022] NZHC 786

## Woman, 88, may have to sell home so son can build house in Australia


Jono Galuszka · 12:42, May 18 2022



### Van Der Byl v Van Der Byl

High Court, Palmerston North, 28/4/2022, France J

CIV-2021-454-32

[2022] NZHC 850 

## Zhang v Li

High Court, Wellington, 10/2/2017, France J

CIV-2015-485-998, CIV-2015-485-1077

[2017] NZHC 129  



[View of The Presumption of Advancement in New Zealand: A Confused and Inconsistent Existence](#)  
([victoria.ac.nz](http://victoria.ac.nz))

- Ms Li and Mr Zhang get married in 2007
- In 2008 they buy a house for \$427k (remember those days??)
- The money came from savings , a \$40k bank loan and \$335,500 from Ms Li's Parents
- In 2012 the couple separated and the question of whether the funds from Ms Li's Parents becomes an issue

WHY IS IT SO IMPORTANT DURING A SEPARATION TO ESTABLISH WHETHER IF THE FUNDS WERE A LOAN OF A GIFT?

## QUICK QUIZ

**HOW MANY COURT CASES BETWEEN FAMILY MEMBERS ABOUT THE \$\$ Being A Gift or a Loan between 2000 and 2020 ?**

**A Survey in the UK commissioned by a building Society and ran by the London school of economics asked parents that had parted with money for their children if they expected repayment – What percentage said yes?**

## KEY TAKE AWAY POINTS FROM THE CASES





# Part 2

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# ISSUES AND RISKS

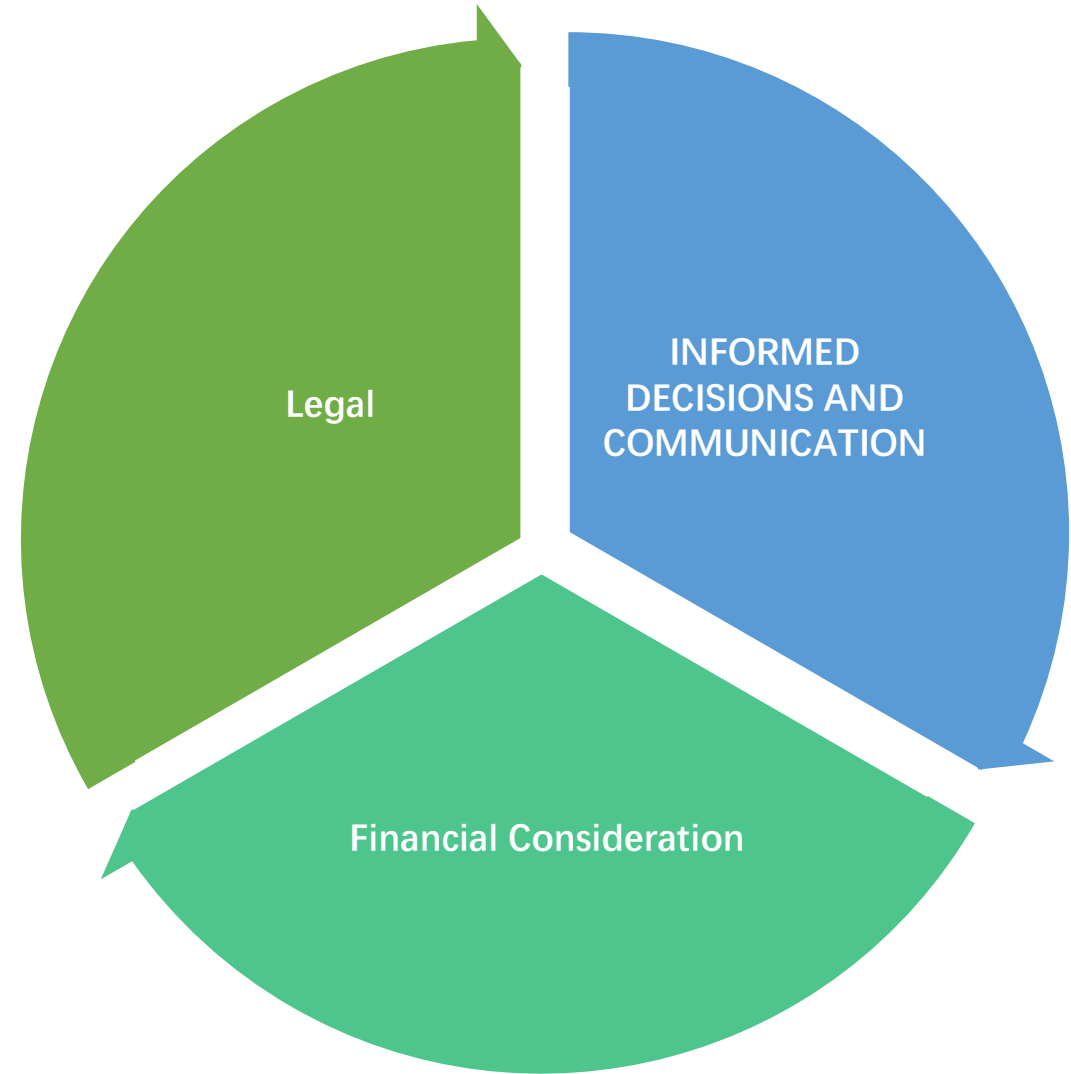


# (Due Diligence)

Communication is key all parties need to understand potential risks and mitigate them as best as possible.

Considerations:

1. Where is the gift/loan coming from?
2. Can the parent(s) afford it and what about other obligations/retirement needs?
3. Estate planning and consideration of other siblings
4. What happens if the bank insist on a gift  
(the banks DOAD is all but a gift -sensible lending criteria changes circa 2015)
5. Repayment requirements and obligations



# Part 3

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# STRUCTURE AND MITIGATION

# Endow.

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