MATRIMONIALISATION – IS EVERYTHING UP FOR GRABS?

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Sharing Principle

- Lord Nicholls, in *Miller v Miller* [2006] UKHL 24:
- "Derives from the basic concept of equality permeating a marriage": at [16].
- "Marriage is a partnership of equals": at [16].
- "When their partnership ends, each is entitled to an equal share of the assets of the partnership, unless there is good reason to the contrary": at [16].
- "A short marriage is no less a partnership of equals than a long marriage" at [17].
- Sharing principle only applies in practice to matrimonial property (Charman v Charman [at 66], Scatliffe v Scatliffe [2016] UKPRC 36, Wagott v Wagott [at 128], XW v XH (Financial remedies: business assets [2019] EWCA Civ 2262 at [136].

Matrimonial vs Non-Matrimonial

- Applies to all assets which were "*the financial fruits of a marriage partnership*" at [20].
- "The nature and **source of the parties' property**" as being the relevant matters when determining the requirements of fairness at [20].
- Matrimonial Property
- "One of the circumstances is that there is a real difference, a difference of source, between (1) property acquired during the marriage otherwise by inheritance or gift, sometimes called the marital acquest, and (2) other property" at [22].
- "The former is the product of the parties' common endeavour, the latter is not" at [22].

Standish v Standish [2024] EWCA Civ 567

- First Instance Decision: **ARQ v YAQ [2022] EWFC 128.**
- H 71 years of age. Born in the UK. Successful career in financial services.
- W 51 years of age. Born in Australia.
- Parties began their relationship in 2003, married in 2005 and separated in 2020.
- Two children.
- Total wealth: £132 million.

THE ISSUES IN DISPUTE

There was no dispute between the parties concerning the FMH (£20 million) or other assets (£3.6 million) being divided equally.

The only dispute related to the '2017 assets'. In 2017:

- H transferred into W's sole name investment funds worth approx. £77 million.

- W was issued shared in Ardenside Angus (H's farm business).

DECISION OF J MOOR:

- An unequal division of the matrimonial property was justified because "to a significant extent [the 2017 assets] were pre-martial and had only been matrimonialised towards the end of the marriage".

- In so deciding, Moor J found that the transfer of H's investment funds worth £77 million to W made those funds matrimonial. This was the "only possibility".

- Awarded W 40% (£45 million) and H 60% (£67 million).

THE PARTIES' POSITIONS ON APPEAL

W's position

1. The transfer of 2017 assets made them 'separate property'. The sharing principle does not, therefore, apply.

2. Alternatively, as transfer of assets had taken place in context of marital partnership, there should be equality. The assets should be divided equally.

H's position

1. Moor J wrong to find that 2017 assets had become matrimonial property. The entirety of the 2017 assets were non-matrimonial. Award should be based on W's 'needs'.

2. Even if the assets had in part become 'matrimonialised' the division of wealth was unfair as it did not properly consider the extent of H's pre-marital endeavour.

MATRIMONIALISATION

This is a term addressed in the case of *K v L* [2011] EWCA Civ 550.

<u>Facts</u>

- W owned shares which she inherited more than 10 years before parties starting cohabiting.
- Shares worth c. £57 million at time of hearing (£27 million at time of separation in 2007).
- Parties together for 21 years. 3 children.
- During marriage, neither party worked.
- Lifestyle and needs met by dividends on W's shares and sale of shares.

H argued that sharing principle should apply, rather than awarding him £5 million based on his needs.

Appeal dismissed.

MATRIMONIALISATION – WHAT IS IT?

Treatment of assets which are not purely matrimonial as matrimonial property, so they fall under the sharing principle.

"Fairness may require or justify treating property, which was not purely the product of the parties' joint endeavours, as matrimonial property and, therefore, within the scope of the sharing principle" – *Standish*, at [160].

"It is about when an asset or assets which were at one stage non-marital property might be included within the sharing principle", ibid.

The concept should continue to be applied, at [161].

At [163], LJ Moylan reformulated the situations in which the importance of the source of the asset may diminish over time as follows:

a. The percentage of the parties' assets (or of an asset) which were or which might be said to comprise or reflect the product of non-marital endeavour, is not sufficiently significant to justify an evidential investigation and/or an other than equal division of the wealth.
b. The extent to which and the manner in which non-matrimonial property has been mixed with matrimonial property mean that, in fairness, it should be included within the sharing principle; and
c. Non-marital property has been used in the purchase of the former matrimonial home, an asset which typically stands in a category of its own.

ONCE MATRIMONIALISED…

50/50 split of matrimonialised property? Not quite...

”Does fairness require or justify the asset as being included within the sharing principle?”…
“The conclusion that it does, however, does not mean that it must be shared equally” *Standish*, at [166].

As Mostyn J said in *JL v SL (No 1),* “the non-matrimonial source of the moneys in question”… remains a “relevant consideration”.

”The court will have to decide, adopting Wilson LJ’s formulation of the broad approach in *Jones, what award of such lesser percentage than 50% makes fair allowances for the parties’ wealth in part* comprising or reflecting the product of non-marital endeavour” – LJ Moylan in *Hart v Hart,* at [86].

THE DECISION IN STANDISH V STANDISH

- The source of an asset is the critical factor, not title – at [149].

- The court at first instance was wrong to conclude that the [2017] assets became matrimonial property. The transfer of the 2017 assets into W's name did not transform them into matrimonial property.

- In any event, the judge's award at first instance was far too generous to W. Maximum judge should have considered matrimonial was 25% of the investment funds (totalling £20million). This resulted in a total matrimonial pot of £50.48 million. 50% = £25 million.

- W's award reduced from £45 million to £25 million (by some £20million!)

RM V WP [2024] EWFC 191 (B)

W 52.
H 75.
Cohabited from 2005, married in 2007 and separated 2020. 2 children.
4 properties accrued by H prior to the parties meeting (all still vested in H's name at time of final hearing), comprising:

1 London Apartment £497, 583.
2 London Apartment £1, 021, 206.
Country Cottage £391, 369.
European property £49, 114.

H argued W's housing needs could be met by £450k - £500k property. W wanted £800k - £850k for housing.

Judge determined that W's needs could be met with an award of £680,000 including moving costs reduced to £657,000 to reflect W's personal responsibility to get a mortgage.

RM V WP [2024] EWFC 191 (B)

That award would leave H with £1,232,704 (£1,889,704 - £657k) which met his needs.

HHJ Hess wanted to say something about the 'sharing principle':

"I want to say something at this stage about the sharing principle. As a starting point in the division of capital after a long marriage, it is useful to observe that fairness and equality usually ride hand in hand and that matrimonial property will usually be divided equally. The court should be slow to go down to the road of identifying and analysing and weighing different contributions made to the marriage".

But that is exactly what HHJ Hess went on to do…

RM V WP [2024] EWFC 191 (B)

W argued that the sharing principle applied. She should not simply receive a 'needs based' award.

W argued that she should receive half of the net equity of all 4 properties.

W submitted that ALL the properties had been used at some point during the parties' relationship as a family home.

1 London Apartment	£497, 583
2 London Apartment	£1, 021, 206
Country Cottage	£391, 361
European Property	£49, 114
Total	£1, 959, 272
50%	£979, 636

RM V WP [2024] EWFC 191 (B)

HHJ Hess found that:

1. For the first 6 years of the marriage, the family home was the European property.
2. For the next 8 years, the family home was the country cottage.
3. For the final year, the family home was 2 London Apartment.
4. 1 London apartment had not at any time been the family home.

2 London Apartment	£1, 021, 206
Country Cottage	£391, 369
European Property	£49, 114
Total:	£1, 461, 689
50%	£730, 844

WHERE NEXT?

Supreme Court dates: 30th April 2025 – 1st May 2025.

Q & A SESSION