

What are the secrets to arguing that inheritance is relevant for a financial settlement (a) during the marriage and (b) post-separation?

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“IT DEPENDS”

STARTING POINT 1

- S.25 MCA 1973
- Y v Y [2013] 2 FLR 924

In the dispatch of a claim for financial remedy the court must apply the statute – being the Matrimonial Causes Act 1973 (as amended) – to produce a result which is fair to both parties after considering all the circumstances of the case.

STARTING POINT

2

Robson v Robson [2011] 1FLR 751

H 66 W54

H inherited large estates worth £22m

21 year marriage with children approaching independence

W sought share; H sought to restrain

Robson

- Principles: Ward LJ para 43:

(1) Concentrate on s 25 of the Matrimonial Causes Act 1973 as amended because this imposes a duty on the court to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18; and then requires that regard must be had to the specific matters listed in s 25(2). Confusion will be avoided if resort is had to the precise language of the statute, not any judicial gloss placed upon the words, for example by the introduction of 'reasonable requirements' nor, dare I say it, upon need always having to be 'generously interpreted'.

(2)The statute does not list those factors in any hierarchical order or in order of importance. The weight to be given to each factor depends on the particular facts and circumstances of each case, but where it is relevant that factor (or circumstance of the case) must be placed in the scales and given its due weight.

(3)In that way flexibility is built into the exercise of discretion and flexibility is necessary to find the right answer to suit the circumstances of the case.

(5) Need, compensation and sharing will always inform and will usually guide the search for fairness.

(6) Since inherited wealth forms part of the property and financial resources which a party has, it must be taken into account pursuant to subs 2(a).

Subtleties

- (7) But so must the other relevant factors. The fact that wealth is inherited and not earned justifies it being treated differently from wealth accruing as the so-called 'marital acquest' from the joint efforts (often by one in the work place and the other at home). It is not only the source of the wealth which is relevant but the nature of the inheritance. Thus the ancestral castle may (note that I say 'may' not 'must') deserve different treatment from a farm inherited from the party's father who had acquired it in his lifetime, just as a valuable heirloom intended to be retained in specie is of a different character from an inherited portfolio of stocks and shares. The nature and source of the asset may well be a good reason for departing from equality within the sharing principle.

- (8) The duration of the marriage and the duration of the time the wealth had been enjoyed by the parties will also be relevant. So too their standard of living and the extent to which it has been afforded by and enhanced by drawing down on the added wealth. The way the property was preserved, enhanced or depleted are factors to take into account. Where property is acquired before the marriage or when inherited property is acquired during the marriage, thus coming from a source external to the marriage, then it may be said that the spouse to whom it is given should in fairness be allowed to keep it. On the other hand, the more and the longer that wealth has been enjoyed, the less fair it is that it should be ringfenced and excluded from distribution in such a way as to render it unavailable to meet the claimant's financial needs generated by the relationship.

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(9) It does not add much to exhort judges to be 'cautious' and not to invade the inherited property 'unnecessarily' for the circumstances of the case may often starkly call for such an approach. The fact is that no formula and no resort to percentages will provide the right answer. Weighing the various factors and striking the balance of fairness is, after all, an art not a science.

So:

- Source of wealth
- Nature of wealth (castle/farm/shares/chattels)
- Duration of marriage and period of enjoyment
- Whether “preserved, enhanced or depleted”
- There is no formula

Note however:

[76]: “Since they had drawn upon capital to support their lifestyle, there can be no complaint about the fact that the judge required the inherited property to continue to be the source to fund the wife’s future income needs. Given the husband’s age, lack of earning capacity, and the loss of the farm income, he could hardly provide future support for the wife otherwise

Also:

[95]: “That the origin of assets in inheritance is a relevant factor for the court in no sense means that the approach to inherited assets ought always to be the same. What is fair will depend on all the circumstances; those cannot exhaustively be stated but will often include the nature of the assets, the time of inheritance, the use made of them by the parties and the needs of the parties at the time of trial. In the present case, although the assets were inherited from the husband’s family, the parties had jointly elected to live off them and, in effect, to use them as a substitute for earned income. There can be no possible complaint about an order which treated the capital in this case in the way the parties had themselves jointly treated it.” (Hughes LJ)

Result?

- W received a housing fund of £4m
- W received a gradually reducing income capitalised at £3.5m
- Thus: a needs based award but which was checked against the £14m value of the main home.

Y v Y [2013] 2 FLR 924

- 1 year before marriage H inherited family estate (but purchased by parvenu grandparents in the 1940s!) worth £36m at divorce after 26yr marriage
- Had devoted life to estate whereas his own father had lived a life of leisure in London
- Accepted that the estate's character was such as to make this a "needs based award"

BUT:

..while that would be reflected in the award it was also to be considered that:

- (i) the mansion house was the matrimonial home and the heart of the parties' relationship and family life;
- (ii) the estate income was used to support the family lifestyle;
- (iii) the capital value of the estate was also deployed in funding the family via increased indebtedness secured on the estate;
- (iv) this was a long marriage to which the wife made a full contribution

Offers and result:

- W sought 42% (£11.23m)
- H offered 23% (6.2m)

Result:

W awarded £5.4m for a London house and 3m Duxbury with smaller sums to cover debts.

Analysis:

- “Needs award”, however highly generous compared to some
- Use of capital for lifestyle during marriage meant that the potential sale of assets to meet the award was acceptable
- Lifestyle (“patrician” “highest echelons of society”) justified v large housing fund and £125k pa income fund

- Interesting however to compare to Robson in which the award was checked against value of FMH (£14m)
- In Y v Y the FMH was worth £16.5m and W's award like in Robson was roughly 50% of that very matrimonial seeming asset

BD v FD [2017] 1FLR 1420

- 11 Year marriage
- H had inherited wealth of £58m and interests in trust of £105m
- £30m was the “family estate” but the rest was liquid capital
- W sought £29m [£10m housing for main and secondary homes; 17m Duxbury]
- Award: £8.6m [3.6m housing and £5m Duxbury at £175k pa)

WHY SO MEAN?

- Lifestyle was modest in the circumstances – whole family lived on £200k pa and W's share of income was £110k pa.
- There were no settled second homes so W had no basis to claim one after divorce
- W had initially accepted a home of £2.5m in her name but later realised she wanted more
- H was clearly and saw himself as a “custodian” of the wealth for future generation

Also

- W was very profligate after separation, spending 3 times the interim maintenance award – a Norris “add-back” was ordered.
- M’s claim for £500k pa was wholly disproportionate.
- The modest (in the circumstances) lifestyle was a benchmark.

K v L [2012] 1 WLR 306

- Long marriage
- Modest semi-detached lifestyle
- Children grown up
- W inherited shares worth £57m at time of separation
- H awarded needs sum of £5m

NEEDS???

- Family home a 4-bed semi worth £225,000
- Housing “need” set at £2m
- Expenditure of family £79,000 pa
- Income “need” set at £130k pa

AR v AR (Treatment of Inherited Wealth) [2012] 2 F.L.R. 1

- H inherited shares in manufacturing company set up by his father, later sold and reinvested
- Farms and other properties together with a large investment portfolio - £21m plus W's own funds of £1m = £22m total
- Country lifestyle in a “not particularly attractive” modern house worth about £1.3m maximum – “very comfortable”
- 25 year marriage, one child

- H's case: W should keep the £1.1m in her own name and have a further £1.3m Duxbury fund at £75k pa – total £2.4m
- W's case – to keep her £1m and a lump sum of £6m on the basis of seeking a needs award but which reflect also a share of 30% of assets

- Award:
- Housing: £1.1m
- Duxbury: £2.5m at £115k pa
- Increase for “Discretionary Spending” to £3.2m

CONCLUSIONS?

GRAVITATIONAL FACTORS DURING MARRIAGE:

(1) More than source of wealth: lifestyle!

In all cases the marital lifestyle had a huge effect on the “needs” calculation.

(2) Use of capital

In Robson and in “Y” capital had been used to enhance a luxurious lifestyle – easier to “invade”

(3) Ringfencing – K v L and AR v AR; Also BD v FD where H was able to portray himself as a “custodian”. See also para 18 of K v L – 3 means by which non-matrimonial property may be incorporated.

(4) Source of wealth

Obvious point but easier to make a case to restrict invasion where the wealth is all from one inherited source – AR v AR. Less troublesome where wealth is very large – K v L

- (5) Sheer amount: despite ringfencing and source of wealth and lifestyle the H in K v L got a housing fund of £2m!!

- Post Separation?

(1) Interim position – learn from the position of W in BD v FD:

- £200k pa interim maintenance followed by long term award of £175k itself significantly more than her expenditure in marriage.
- However: accepted a house worth £2.5m before thinking about it properly and effectively capped her needs claim

(2) Don't annoy the judge!

- W in *BD v FD* went on a massive spree – don't do it.
- Better to firmly push the envelope than to engage in a Knightsbridge lifestyle that was not the marital norm.