# ‘What’s the latest judicial thinking on needs, conduct and sharing, including pre-acquired assets and income streams?’

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- Needs
- Conduct
- Sharing post Standish

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# Needs

- FO v OL, HHJ Barker, 1 April 2026
- Sched 1 claim against former tennis player
- Lump sum claim for tennis court, Wimbledon debenture, private tennis coach

# Needs

- “[77] Although the child has just turned one year old and is not yet walking, I am persuaded they have shown a talent which may suggest a future career as a professional tennis player”.
- M’s claim re child’s potential found to be a “justified evidential leap”: £250k ls awarded

# Needs

- The Sun: ‘WILL WAR’ 28 April 2026
- Partner of late bag designer fighting for his £1m fortune because his dog ‘stops him from working’
- “He is now trying hard to get back into working as an entrepreneur, which takes time to plan, adding that as well as having to care for his dog, at the age of almost 50 finding work is a struggle”

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# Needs

- Both parties always get their needs met?

# Needs

- No
- See Butler v Butler [2023] EWHC 2453 (Fam)
- Moor J dismissed appeal from Recorder
- W 53, H 64
- Marriage 2003, but W only moved to live with H in 2007, then separated 9m later

# Needs

- Ch of family 23 (W’s from previous) and 16
- W in LA accom post-separation until 2015
- H inherited house from father in 2007 but took time to evict tenants
- H sold this and bought new house in 2015
- W never lived there and never contributed

# Needs

- H on modest income
- W on UC including rent
- H house worth £410k
- W sought ¾ to buy at £300k

# Needs

- J ordered ls £58k – allowed W to clear debts
- W housing needs at least 400k
- If sold H house and 50/50 – neither could house
- W appeal dismissed

# Needs

- ‘The fact that a judge rightly concludes that a case is a “needs” case does not mean that the judge must then make an order that satisfies both parties' needs. In one sense, this is obvious, because there may simply be insufficient assets to satisfy the needs of either party, let alone both. [39]’
- Not just needs, but all the s 25 factors

# Needs

- TW v GC [2024] EWHC 949 (Fam)
- Cusworth J on appeal from HHJ Furness
- 19y r'ship, 3 ch aged 21, 20 and 7y
- H 56, W 40
- £10.9m net non-pension assets, £1.4m in pensions

# Needs

- W needs £1.02m housing
- W income needs £101,828 pa -> ls £2.36m (allowing for her ability to earn later)
- NB H said annual spend £317,614 in form E!
- W budget £150k pa lifetime Duxbury
- H said £54k pa lifetime Duxbury

# Needs

- J rejected challenge re H's future income too high
- J said CJ had been entitled to make only limited re W's future income
- J rejected argument that CJ had been wrong to capitalise the £100k pa over entire 50y period of W's life expectancy

# Needs

- No rule that fixed lifetime Duxbury can never be appropriate over a long period
- W making ongoing contribution – youngest child only 7y
- J did some tapering calcs, and they did not make much difference (W at 40 had 25+y to go before state retirement age)

# Needs

- But CJ had been wrong to make a ‘sharing’ based pension sharing order on top
- W’s future income needs met by Duxbury ls
- Can’t add your needs and sharing claims
- And J ignored W’s own pension resources
- J wrong to order interest on unpaid lump sum relating to Duxbury ls, where pp’s ordered until payment in full

# Conduct

- Two cases from Cusworth J:
- Loh v Loh-Gronager [2025] EWFC 483
- LP v MP [2025] EWFC 473

# Conduct

- In both of these cases, Cusworth J suggested that the ‘inequitable to disregard’ provision in s 25(2)(g) is the same as the Radmacher test in [75] ie uphold the agreement unless not fair to do so

# Conduct

- Dear me no sir!
- The s 25(2)(g) test is about whether conduct can even be considered
- The ratio of Miller is that personal misconduct short of s 25(2)(g) cannot be considered (front-door or back-door)
- The s 25(2)(g) test: would it be offensive to a reasonable person's sense of justice to ignore the conduct

# Conduct

- Radmacher is about the exercise of s 25 discretion
- Not whether a fact gets to be considered as part of the s 25 discretion
- There is no threshold to be met before a s 25 factor may render a pna unfair

# Conduct

- Loh-Gronager
- After 6y m, H entitled to £6.45m under pna
- But already taken £3.7m from the joint account, in breach of terms of pna
- J found this was to be treated on account of his entitlement
- No need to resort to conduct to get there

# Conduct

- But a further £750k – which he took out and used ‘broadly within the framework agreed’ in PNA
- J treated 50% of this as on account of sum due
- Why?
- Conduct

# Conduct

- (i) taken money in breach of pna
- (ii) harassment & undermining W throughout proceedings, including private investigator posing as press outside her house, and created Instagram account with personal photos of W on it day before pFDR
- (iii) forged emails to try to save the £3.7m were gifts
- (iv) continued denigration of W

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# Conduct

- J rejected as too extreme the suggestion that H had forfeited his entire entitlement under the pna
- Case shows conduct can reduce claimant's claim based on pna – both needs and sharing
- ? Forged emails – litigation conduct yes, but s 25(2)(g) conduct ??

# Conduct

- LP v MP
- H came to m with c £21m
- H 72, W 60
- 12y daughter – now living with H, no contact W

# Conduct

- W pretended she was High Court judge
- She conned and bullied money out of H
- Coercive control
- Significant physical abuse last 4y
- False allegations of abuse; H spent 800k on CAO

# Conduct

- Sharing claim – no acquest
- But 2 matrimonial homes
- W made no financial contribution
- W conduct egregious and 'obvious and gross'
- J reduced her sharing claim – partly because matrimonial homes can be shared unequally
- Partly because lack of contribution rendered more acute viewed through glass of conduct

# Conduct

- No reason to assess needs generously given conduct; not entitled to be maintained at marital standard of living any longer
- With £2m (including funds already paid to her and then sent overseas etc), she could house at £1m and have £55k net pa
- Even after costs order of £275k could still meet needs at reduced level

# Conduct

- Conduct can reduce the applicant's claim
- But is not going to increase it
- Unless, in a needs case, the conduct of the respondent justifies his needs being suppressed

# Sharing

- Standish [2025] UKSC 26 [2026] AC 506 recap
- (1) Conceptual difference between matr pty and non-matr pty – in general, distinction turns on the source of the assets
- Matr pty comprises the fruits of the marriage partnership
- Title not determinative

# Sharing

- (2) Non-matr pty is not subject to the sharing principle – the time has come to say never
- (3) Matr pty usually shared on equal basis (see LP v MP – unequal sharing of matrimonial home deemed to be matr pty still permitted)
- (4) Non-matr pty can become matrimonialised

# Sharing

- (5) If A transfers assets to B as part of tax saving scheme, dealings do not normally show asset being shared, but intention is simply to save tax
- See also RRE v JPR [2026] EWFC 7
- Cf A v Z [2026] EWHC 654 (Fam) – not just for tax [104]-[134]

# Matrimonialisation

- Back to (4)
- How does non-matr pty become matrimonialised?
- See [51] – court cites *K v L* [2012] 1 WLR 306, [18] in full
- Matrimonialisation rests on parties, **over time**, **treating the asset as shared**
- Reference to acceptance by the contributor that the asset should be treated as matrimonial (K v L)

# Matrimonialisation

- “a better view may be that matrimonial property is not something that is predetermined at the outset of a marriage, but is governed by the parties' intentions and how they treat the relevant asset over a period of time. Thus where a party has demonstrated an intention to use an inheritance for the benefit of the family, by translating it into actual use and enjoyment, the parties have elected to treat it as matrimonial property, even if its origin was from outside the marriage”

# Matrimonialisation

- [53] This is quote from Peter Duckworth
- How asset treated over time
- Use inheritance for the benefit of the family
- By translating it into actual use and enjoyment
- Demonstrates intention/ election to treat as matr

# Matrimonialisation

- This might work for mingled savings
- Pre-acquired car
- Pre-acquired holiday home ??

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# Matrimonialisation

- Family heirloom?
- After all, the Old Master above drawing room fireplace has actually been ‘used and enjoyed’
- Vintage car that stays in the garage but gets a run out once a year??

# Matrimonialisation

- If actual use and enjoyment is the test, are the only assets safe from matrimonialisation assets that are useless/ incapable of being enjoyed?
- Eg the cash that stays under the mattress
- The krugerrands in the safe
- The Premium Bonds that don’t win any prizes

# Matrimonialisation

- What about income stream?
- Eg H settles shares in trust on himself for life, in remainder for any children he might have
- Then gets married
- He appoints W a successive life interest for tax reasons
- The income from the shares supplements the family income

# Matrimonialisation

- Assume trustees say they will appoint the shares out to H
- Are the shares matrimonial property?

# Matrimonialisation

- Not even argued in AF v SF (Dynastic Trust: Needs-Based Award) [2020] 1 FLR
- See Moor J: ‘clearly non-matrimonial’ [51]
- Is this no longer good law?

# Matrimonialisation

- Does it make a difference if the shares are not in trust?
- Just in one spouse's name
- Some shares sold over the years as well and spent?

# Matrimonialisation

- NB K v L [2012] 1 WLR 306
- No earned income – lived off dividends from W's inherited shares, and occasional share sales
- J said £5m for needs only
- H appealed – said too low – said the importance of the source of the assets <u>**will**</u> diminish over time

# Matrimonialisation

- Wilson LJ said W's shares entirely non-matr
- The famous para 18
- Importance of source of assets <u>**may**</u> diminish over time
- Importance of source did not diminish in this case

# Matrimonialisation

- K v L not expressly over-ruled by UKSC in Standish
- Impliedly over-ruled??
- See also NV v GD [2022] 1 FLR 716, [48] ('ordinary course of events …' cited without comment post Standish in RRE v JPR)
- Intention + detrimental reliance?

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# Matrimonialisation

- Cf Hammond v Mitchell [1991] 1 WLR 1127, 1139-E: ‘the tenderest exchanges of a common law courtship may assume an unforeseen significance many years later when they are brought under equity’s microscope and subjected to an analysis under which many thousands of pounds of value may be liable to turn on fine questions as to whether the relevant words were spoken in earnest … and with or without representational intent’

# Conclusion

- The role of fairness in determining matrimonialisation
- Especially where, eg, inherited property has been mingled/ used/ enjoyed but not a needs case

# The end!

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