

NON-MATRIMONIAL PROPERTY & THE MINGLING PRINCIPLE

What is the latest judicial thinking on non-matrimonial property and the mingling principle, including inheritance and pensions, and how do you gain an edge for your clients?

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Back to basics...

Peel J's popular summary in *WC v HC* [2022] EWFC 22, ¶21:

1. The two-stage exercise;
2. Fairness;
3. Marriage of equals;
4. Section 25 and any child of the family;
5. The clean break thrust; and
6. The three core principles.

NB. Peel J's concise summary is adopted in the majority of the published financial remedies cases, although there has been comment that it may need some updating to consider the recent decision in *Standish*.

The sharing principle and non-matrimonial assets

Peel J in *WC v HC* [2022] EWFC 22 at ¶21

“Pursuant to the sharing principle,

- (i) the parties ordinarily are entitled to an equal division of the marital assets and
- (ii) non-marital assets are ordinarily to be retained by the party to whom they belong absent good reason to the contrary: *Scatliffe v Scatliffe* [2016] UKPC 36...”

So what are non-matrimonial assets?

Mostyn J in *JL v SL (No 2)* [2014] EWHC 360 (Fam) at [¶19]:

“...property received or created outside the span of the partnership, or gratuitously received within the partnership from an external source. ...

However, (...) pre-marital property not uncommonly becomes part of **the economic life of the spousal partnership** and thus acquires a matrimonial character giving rise to a (not necessarily equal) sharing claim in relation to it.”

How does the court approach non-matrimonial property?

Hart v Hart [2017] EWCA Civ 1306

[¶89] Guidance:

1. Case management;
2. Factual determinations; and
3. Section 25 exercise.

How does the court approach non-matrimonial property?

Martin v Martin [2018] EWCA Civ 2866

[¶113] “(...) a judge has an obligation to ensure that the method he or she selects to determine this issue leads to an award which, to quote Lord Nicholls of Birkenhead in *Miller* (...) gives ‘to the contribution made by one party’s non-matrimonial property the weight he considers just...with such generality or particularity as he considers appropriate in the circumstances of the case.’”

How does the court approach non-matrimonial property?

XW v XH [2019] EWCA Civ 2262

[¶128] “*Hart* (...) may have created some confusion when I added, at para [96] (...) I was talking about a broad assessment as being a permissible route to the division of the wealth which would be fair and not that the ultimate effect of this determination need not be identified.”

Standish v Standish [2024] EWCA Civ 567

Moylan, King and Phillips LLJ.

- Cross-appeals of Moor J's decision in ARQ v YAQ [2022] EWFC 128.
- W appealed, stating Moor J should have found the 2017 assets and shares in farm were her own separate property (she held the title).
- H cross-appealed, arguing the source of the funds was the critical factor, not the title.

W's appeal dismissed. H's cross appeal allowed, W's award reduced by £20 million.

Standish and ‘Matrimonialisation’

Clarification provided:

- a. Matrimonial vs non-matrimonial assets; and
- b. When non-matrimonial assets may be ‘matrimonialised’.

Standish – Narrowing ‘Matrimonialisation’

[¶163] – “it would be helpful to make clear, expressly, **that the concept of matrimonialisation should be applied narrowly.** This is not a hard and fast line but remains a question of fairness, reflecting, as Wilson LJ said in *K v L* at [18], that **‘the importance of the [non-marital] source of [an asset or assets] may diminish over time.’”**

Standish - Reformulating *K v L*

The following reformulation was proposed by Moylan LJ [¶163-166]:

(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.

Standish – the conclusion?

[¶166] – “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 allowance for the parties’ [*matrimonial*] wealth in part comprising or reflecting the product of **non-marital** endeavour’.”

Pre-acquired Assets and 'Matrimonialisation'

Pre-Standish:

- *FZ v SZ* [2010] EWHC 1630 (Fam), [2011] 1 FLR 64 (historic value only)
- *Jones v Jones* [2011] EWCA Civ 41 (historic value uprated for passive growth and springboard)
- *Robertson v Robertson* [2016] EWHC 613 (Fam) (half of a half)
- *Martin v Martin* [2018] EWCA Civ 2866 (straight line apportionment)
- *HO v TL* [2023] EWFC 215 (pre-owned personal wealth)

Pre-acquired Assets and ‘Matrimonialisation’

Post-Standish:

- **WW v XX [2024] EWFC 330 (B).**
- **AF v GF [2024] EWHC 3478**
- **Vince v Vince [2024] EWFC 406**

The Matrimonial Home / ('FMH')

**S v AG [2011] EWHC
2637 (Fam) – Mostyn J**

Unmatched contribution
by W

**FB v PS [2015] EWHC 2797
(Fam) - Moor J**

H had been raised in the
property and it had been
gifted by his father.

**AD v BD [2020] EWHC
857 (Fam) – Cohen J**

H paid for purchase +
renovation using gifted
funds just 3 years prior to
separation.

**RM v WP [2024] EWFC 191 (B) – HHJ
Hess.**

Four properties all pre-acquired by H
were the FMH at one point; fairness
dictated W receive a needs based
award with an overall departure in
favor of H.

**QW v GH [2025] EWFC 19 (B) – DJ
Worthley.**

One of the rare published smaller
money finance cases – post-separation
mortgage repayments by H and delay
in bringing a claim by W.

Inheritance/Gifts

Keep in mind the following:

- a. When the inheritance was received and the duration of the marriage;
- b. The nature of the inheritance;
- c. Whether the inheritance has been mingled.

Munby J in *AB v CD (Inherited Property)* [2004] EWHC 1364 still ring true:

“there is inherited property and inherited property ... Fairness may require quite a different approach if the inheritance is a pecuniary legacy that accrues during the marriage, than if the inheritance is a landed estate that has been within one spouse’s family for generations and has been brought into the marriage with an expectation that it will be retained in specie for future generations.”

Inheritance/Gifts

ST v AR [2025] EWFC 4 – HHJ Vincent

- Whether H's substantial inheritance (£120m/largely illiquid) had been 'matrimonialised'.
- W claimed H had been actively involved in managing his inherited assets during the marriage, thus they fell within the category of being a 'matrimonial asset.'
- H cited *Standish* relying on Moylan LJ's statement that "the concept of matrimonialisation should be applied narrowly."

Pensions

- RN v TT [2024] EWFC 264 (B) – HHJ Hess at ¶46]
- SP v AL & Ors [2024] EWFC 72 (B) – ¶¶37-41

Post-Separation Accrual/Endeavour

- **JL v SL (No2) [2015] 2 FLR 1202** – Mostyn J
- **SK v WL [2011] 1 FLR 1471** - Moylan J (as he then was)
- **Cooper-Hohn v Hohn [2015] 1 FLR 745** – Roberts J
- **CB v KB [2019] EWFC 78** – Mostyn J
- **CO v YZ [2020] EWFC 62 [¶5]** – Moor J
- **DR v UG [2023] EWFC 68** – Moor J
- **CG v SG [2023] EWHC 942 (Fam)** - HHJ Hess (sitting as a DHCJ)

Unilateral Assets / Special Contribution

- Exceptionally rare, last successful case was **Cooper-Hohn v Hohn** (*supra*)
- The principles remain those enunciated by the Court of Appeal in **Work v Gray** [2017] EWCA Civ 270 (the COA endorsed Holman J's principles in **Gray v Work** [2015] EWHC 834 (Fam) at [¶140]).
- **XW v XH** [2019] EWCA Civ 2262 – The Court of Appeal stated that core concept of unilateral assets would be limited to “a small minority of cases.”
- **E v L** [2021] EWFC 60, Mostyn J stated, “a case where there can be legitimate non-discriminatory unequal sharing of matrimonial property earned in a short marriage will be as rare as a white leopard.”
- **DR v UG** [2023] (*supra*), H attempted to run a special contribution argument, this was not successful; H's financial achievement was admittedly significant but there was an element of windfall and being in the right place at the right time.

'Mingling' and 'Matrimonialisation'

1. Is there property which had a non-matrimonial origin (is the source gift/inheritance/pre-/post-acquired wealth, etc.)?
2. Was such property 'mingled'?
3. If so, which of the three categories of $K \vee L$ does it come into?
4. Has it been 'mingled' so as to be 'matrimonialised' – (a) and (c)?
5. As to (b), despite being 'mingled', is it 'matrimonialised', or does it retain a non-matrimonial character?
6. Even if 'matrimonialised', does its source nonetheless justify an unequal division?



Questions?

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Thank you!

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