Trinity Term
[2025] UKSC 26
On appeal from: [2024] EWCA Civ 567

JUDGMENT

Standish (Appellant) *v* Standish (Respondent)

before

Lord Reed, President
Lord Lloyd-Jones
Lord Burrows
Lord Stephens
Lady Simler

JUDGMENT GIVEN ON
2 July 2025

Heard on 30 April and 1 May 2025

Appellant
Lord Faulks KC
Richard Sear KC
(Instructed by Payne Hicks Beach LLP (London))

Respondent
Timothy Bishop KC
Rebecca Bailey-Harris
Thomas Harvey
(Instructed by Stewarts Law LLP (London))

LORD BURROWS AND LORD STEPHENS (with whom Lord Reed, Lord Lloyd-Jones and Lady Simler agree):

1. Introduction

1. This case concerns the application of section 25 of the Matrimonial Causes Act 1973, which deals with how courts should exercise their powers to make financial orders following a divorce. That section confers upon a court a wide discretion under which regard must be had "to all the circumstances of the case" albeit that first consideration must be given to the welfare, while a minor, of a child of the family and, in relation to a party to the marriage, particular regard must be had to certain specified matters.

2. Section 25 also applies where a marriage has been annulled or there has been a judicial separation; and, by reason of the Civil Partnership Act 2004, Sch 5, para 21, the same principles apply where there has been a dissolution, nullity or separation in respect of a civil partnership. The facts of this case concern a marriage and divorce. Therefore, while recognising that the same principles apply to other proceedings, we shall confine our attention to marriage and divorce. Throughout we shall refer to the parties as the wife and the husband for ease of reference. We do not intend any disrespect to either by so doing.

3. Whilst the first instance judgment was reported in an anonymised form, no application was made for the hearing before the Court of Appeal or before this court to be subject to reporting restrictions in relation to the identities of the parties or for the Court of Appeal's or this court's judgments to be so anonymised.

4. The courts have clarified that the overall aim in making a financial order is to achieve a fair outcome and that, rather than having a mere hope depending on the contingency that discretion will be exercised in the claimant's favour, a spouse is *entitled* to a fair outcome: see the conjoined cases of *Miller v Miller* and *McFarlane v McFarlane* [2006] UKHL 24; [2006] 2 AC 618 ("*Miller/McFarlane*"), para 9, and *Unger v Ul-Hasan, decd* [2023] UKSC 22; [2024] AC 497, para 8.

5. Several guiding principles have been developed on how to achieve that fair outcome. In particular, and at a high level of generality, it has been made clear in the leading cases that, where possible and fair to do so, the court should ensure that the parties' needs are met. This can be referred to as the "needs principle". There should also be compensation to a spouse who has given up valuable opportunities by marrying. This can be referred to as the "compensation principle". The third principle, which can be referred to as the "sharing principle", is that the matrimonial assets should be shared, usually but not invariably, on an equal basis. The cases have also clarified that, reflecting changes in social attitudes and working patterns, the courts will not discriminate in favour

of the spouse who has been the principal wage-earner at the expense of the spouse who has principally been the home-maker and (where relevant) child-carer. This can be referred to as the "non-discrimination principle".

6. In this case, which is what has been termed a "big money" case, we are solely concerned with the sharing principle (because no needs assessment has yet been undertaken; and because the compensation principle is not engaged, given that it is not suggested that the relevant spouse, here the wife, gave up valuable opportunities because of marriage). The essential question is as follows. How does the sharing principle apply where, a relatively short time before the divorce, the husband made a transfer of assets ("the 2017 Assets"), worth some £80 million, to the wife for the purpose of setting up trusts to negate inheritance tax and where, at the date of the divorce, the wife had not set up the trusts and retains the assets?

7. The cases have recognised a general distinction between assets which each spouse owned in his or her own right prior to the marriage, or by inheritance or gift from an external source during the marriage, which have been termed "non-matrimonial property", and assets that are earned or gained during the course of, and as a result of, the marriage, which have been termed "matrimonial property". It is not in dispute that matrimonial property is subject to the sharing principle with the starting point being equal sharing. Moreover, a concept of "matrimonialisation" has been recognised in some cases according to which non-matrimonial property can become matrimonial property and therefore subject to the sharing principle. On this appeal we must determine how, if at all, matrimonialisation applies in relation to the 2017 Assets.

2. A summary of the factual background

8. We here draw upon the admirable judgment of Moylan LJ, giving the leading judgment of the Court of Appeal (King, Moylan and Phillips LJJ), [2024] EWCA Civ 567; [2024] 4 WLR 60, in which Moylan LJ himself made detailed reference to Moor J's thorough and comprehensive judgment: *ARQ v YAQ* [2022] EWFC 128; [2022] 4 WLR 112.

(a) The husband's age, financial career and other personal circumstances

9. The husband was born in the United Kingdom on 17 March 1953. He moved to live in Australia in 1976. He is now aged 72. Moor J found that the husband was "an immensely able and intelligent man" (para 59). Over 35 years, between 1972 and 2007, the husband had a very successful career in the financial services industry rising to the top of UBS, the multinational investment bank and financial services firm. In 1999, he was appointed Chair and CEO of UBS Asia Pacific and joined the UBS Group Executive Board in 2002. In 2003 he was appointed Chief Financial Officer of UBS Group and

consequently had to move to Switzerland. He earned very large sums of money acquiring very considerable wealth before 2004, a relevant date because it was when the wife and her children joined him in Switzerland. He retired in October 2007.

10. The husband married his first wife in 1979. Their home was in Australia throughout their marriage. They have three children. They separated in 2002 and were divorced in 2003. A financial consent order was made in Australia.

(b) The wife's age and personal circumstances

11. The wife was born in Australia on 25 July 1967. She is now aged 57. She married her first husband in 1988, with whom she had three children. They were divorced in 2004.

(c) The relationship between the husband and wife and his earnings in Switzerland between 2004 and 2007

12. The husband and wife began their relationship in 2003. The same year, the husband's employment required him to move to live in Switzerland. The wife and her children joined him there in June 2004. The husband and the wife married on 19 December 2005, and they remained in Switzerland until 1 July 2008. Moor J found, at para 82, that "[o]n any view, [the husband] earned around US$40 million gross during [the] period [2004 to 2007]". Some of those earnings increased the value of funds held in his sole name, although the position was complicated as a large proportion of his earnings was by way of deferred shares and stock options on which he said he paid 80% tax upfront, but which lost all their value in the banking crisis in 2008 shortly after he left UBS. Therefore, whilst the increase in value of those funds held in his sole name was matrimonial property, as it was the product of the parties' common endeavour, there was difficulty in assessing what proportion was matrimonial property.

13. The husband and wife have two children together. We refer to the children as X and Y.

14. After the husband retired in 2007, the family returned to live in Australia on 1 July 2008. In 2009, the parties purchased a home in England and they, with the wife's three children and their two children, moved to live here in 2010. The property, the family matrimonial home ("the FMH"), was purchased in the joint names of the parties. It cost approximately £9.6 million and very substantial sums (the wife said £7 million; the husband's figure was a sum in excess of £2.5 million) were then spent on renovating it. All the funds were provided by the husband. The judge recorded, at paras 3 and 34, that the FMH had an agreed value on 16 February 2022 of £21.6 million.

15. The marriage broke down in early 2020 and a decree nisi was pronounced on 30 September 2020. The husband and wife have remained living in England, the wife at the FMH.

(d) The property of the parties when they married

16. When the parties married, the husband had accumulated very significant wealth through the financial rewards he had received from his employment. In broad terms, he owned: (i) financial investments and funds in bank accounts ("the investment funds"); (ii) a farm in Australia ("Ardenside"), consisting of 6,005 hectares, which had been purchased in the joint names of the husband and his first wife in 2002 and was transferred to the husband as part of their financial agreement in 2003; (iii) Ardenside Angus Pty Ltd ("Ardenside Angus") a company incorporated in Australia which carried on the farming business at Ardenside; Ardenside Angus had been purchased outright in 2002 and, at the date of the final hearing, the business involved farming 4,405 commercial cattle, 511 stud cattle, and 5,790 Merino sheep; (iv) a property in Melbourne which was sold in 2010.

17. The husband's case was that all these assets were worth £57 million as at June 2004 and that, if uprated to the date of the hearing before Moor J, would be worth £155 million.

18. The wife's resources at the start of the marriage comprised a property in Melbourne which she sold in 2011 and possibly some funds in bank accounts. The property was sold for AUS$5.6 million (with the husband having previously discharged the mortgage). The wife later inherited AUS$626,340. Compared to the scale of the husband's pre-marital wealth, the wife's pre-marital assets were very modest.

(e) Two financial events in 2017

19. Two financial events of importance took place in 2017, 14 years after the parties had started their relationship and three years before it ended. The first, and at the centre of this appeal, was the transfer from the husband's sole name into the wife's sole name of the 2017 Assets consisting of investment funds then worth approximately £77.8 million. At the time of the hearing before Moor J in May 2022, the 2017 Assets, which were held in the wife's sole name, were worth approximately £80 million. The second event was the wife being issued shares in Ardenside Angus.

20. Prior to these two financial events, in very broad terms the assets of the husband and wife were as follows. The husband owned: (i) a half share in the FMH; (ii) the farm known as Ardenside; (iii) the farm business known as Ardenside Angus; and (iv) the investment funds. The wife owned a half share in the FMH. Therefore, the overwhelming

preponderance of the wealth was in the sole name of the husband and had been throughout their marriage until 2017. The transfer of the 2017 Assets reversed that position. At the time of the hearing before Moor J the total assets amounted to £132.6 million of which £95.7 million was in the wife's name and £36.9 million was in the husband's name.

(f) The transfer of the 2017 Assets in more detail

21. We set out the judge's description, at para 11 of his judgment, of the circumstances in which the husband made the transfer of the 2017 Assets.

> "In 2016/2017, the Husband took advice from Mr P of Firm M as to tax planning. In particular, the Husband was concerned about Inheritance Tax as he was due to become deemed domiciled in this jurisdiction in April 2017. He was worried that, if he died here, his estate would have to pay approximately £32 million in UK IHT. The Wife, on the other hand, was non-domiciled due to her domicile of origin being [Australia]. He was advised that, provided he transferred his assets to the Wife before he became deemed domiciled, the assets would escape UK IHT. It is abundantly clear that he then intended, once a suitable period of time had elapsed, that the Wife would place the assets in discretionary trusts in Jersey. Indeed, a Jersey firm of professional trustees, was selected. Moreover, Firm M drafted trust deeds but the trusts were not established. The Husband says that he discussed whether it was time to do so with the Wife in April 2018 but nothing happened, either then or the following year. There are a number of issues surrounding this tax planning exercise. One such issue is whether the Husband would have been able to benefit from any such trusts once they had been established. In any event, pursuant to the scheme, the Husband transferred approximately £77 million worth of assets to the Wife in March and early April 2017. They are now worth just over £80 million."

22. In her evidence the wife accepted that the transfer of the 2017 Assets occurred because of an estate planning exercise to take advantage of her non-domicile status. She also confirmed that there had been discussion of establishing two offshore trusts. The judge, at para 18, stated that the husband had exhibited the file from Firm M as to tax planning. The judge concluded that the file "does make it clear that the intention was, in due course, for offshore trusts to be established to benefit the two children, X and Y".

23. As can be seen from Moor J's findings in relation to the transfer, and from the other undisputed evidence, the 2017 Assets were transferred by the husband to the wife to negate a potential future tax liability, namely inheritance tax on the husband's estate if he died while domiciled in the UK. Furthermore, the trusts to be established were to benefit the two children, X and Y. The wife never, in fact, established the trusts and she continued to hold the 2017 Assets in her sole name at the time of the hearing before Moor J.

3. A summary of the relevant reasoning of the lower courts

24. Moor J held as follows: (a) that "most of" the investment funds involved in the 2017 transfer of assets were the husband's pre-marital wealth and were, therefore, non-matrimonial property; (b) that, by virtue of the transfer of the 2017 Assets, the part of the 2017 Assets which was non-matrimonial property became matrimonial property so that all of the £80 million was subject to the sharing principle; (c) that the total matrimonial property, including the £80 million, amounted to £112,631,062; (d) the source of the funds remained a significant feature so that the appropriate division of the matrimonial property was not 50% to each spouse, but rather 40% to the wife and 60% to the husband. He rounded the wife's share down to £45 million (34% of the total assets), with the husband to receive £87,648,326; (e) there was no need to undertake a needs assessment as it was quite clear that the wife could live very well on the sum of £45 million; and (f) orders were to be made to give effect to this division of ownership of the matrimonial property.

25. Both the husband and the wife appealed to the Court of Appeal which held that: (a) the judge had incorrectly made the transfer of title from the husband to the wife the determinative factor in determining how the 2017 Assets were characterised; (b) the source of the 2017 Assets, rather than title to them, was the determinative factor; (c) there was nothing which justified the conclusion that the importance and relevance of the source of "most of" the 2017 Assets being non-matrimonial was in any way diminished as a result of the transfer of title to those assets to the wife; (d) the transfer of the 2017 Assets had not matrimonialised any of the transferred assets; (e) 75% of the 2017 Assets remained non-matrimonial property and were not subject to the sharing principle (and, although not explicitly spelt out, it was implicit in the Court of Appeal's reasoning that 25% of the 2017 Assets was matrimonial property by reason of the contributions of both parties and should be shared equally); (f) the correct figure for all the matrimonial property subject to the sharing principle was £50.48 million; (g) the fair outcome on an application of the sharing principle would provide the wife with approximately £25 million (half of £50.48 million) in place of the judge's award of £45 million, leaving the husband with approximately £107 million (which figure included his share of the matrimonial property and his non-matrimonial property); (h) the judge had not carried out a needs assessment and, as the Court of Appeal was unable fairly to determine the wife's needs so as to conclude that an award of £25 million met her needs, the matter was remitted for a needs assessment.

26. On 20 June 2024 the wife applied to this court for permission to appeal. This was granted on 17 October 2024.

27. On this appeal the wife contends that the Court of Appeal was wrong to conclude that the transfer to her of the 2017 Assets did not result in their matrimonialisation. She contends that, properly analysed, the transfer was effective as a gift of the 2017 Assets and the Court of Appeal fell into error by relying solely on the source of the 2017 Assets in determining that they remained non-matrimonial property. Rather, the Court of Appeal should have placed reliance on what the husband had done with the 2017 Assets by transferring them to her during the marriage.

4. The statutory framework

28. Sections 23 and 24 of the Matrimonial Causes Act 1973 lay down the financial provision orders and property adjustment orders that a court may make consequent on a divorce (or a nullity of marriage or judicial separation). Section 25 then sets out the wide discretion that is conferred on the courts in the exercise of those powers. So far as relevant it reads as follows:

> "**25 Matters to which court is to have regard in deciding how to exercise its powers under ss. 23, 24 …**
>
> (1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24 … above and, if so, in what manner, 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 eighteen.
>
> (2) As regards the exercise of the powers of the court under section 23…[or] 24 … in relation to a party to the marriage, the court shall in particular have regard to the following matters—
>
> > (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;

(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring."

29. Moor J stated, at para 45, that the matters set out in section 25(2) "were hardly mentioned by counsel in submissions". But while, of course, courts must take into account all the factors set out in (a) to (h) above, to which they are statutorily required to have particular regard, the dispute in this case relates to the "sharing principle" and matrimonialisation. They are principles that have been developed by the courts in line with their duty in section 25(1) to take account of all the circumstances of the case but are not specifically derived from the factors spelt out in section 25(2). It is therefore not surprising that the details of section 25(2) did not feature prominently in the submissions to the courts below or to this court.

5. The case law

(1) The two leading cases

30. In *White v White* [2001] 1 AC 596, a husband and wife had run a dairy farming business together. On their divorce after 33 years of marriage, the House of Lords upheld the Court of Appeal's lump sum order of £1.5 million for the wife. That represented an element of sharing of assets (about 40% to the wife and 60% to the husband) in a situation where the assets exceeded the parties' financial needs for housing and income and where some of the assets were attributable to money provided by the husband's father.

31. Lord Nicholls, giving the leading speech, said at p 599:

> "[D]ivorce creates many problems. One question always arises. It concerns how the property of the husband and wife should be divided and whether one of them should continue to support the other. Stated in the most general terms, the answer is obvious. Everyone would accept that the outcome on these matters, whether by agreement or court order, should be fair. More realistically, the outcome ought to be as fair as is possible in all the circumstances."

32. At p 605 he articulated the non-discrimination principle:

> "In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles."

33. Lord Nicholls also pointed to the distinction between, on the one hand, inherited property and property owned before the marriage and, on the other hand, matrimonial property. He said that the importance of this distinction depended on the particular facts of the case and that it would carry little, if any, weight where the financial needs of the claimant could not be met without recourse to the non-matrimonial property.

34. In *Miller/McFarlane*, the House of Lords dealt with two very different marriages. In the first, the husband was a very wealthy fund manager and the marriage had broken down after less than three years. In the second, both the husband and wife had had lucrative careers before marriage but, during the 16 years of marriage, the wife had given up paid work to care for the children.

35. In the first case, the House of Lords approved the order made at first instance, and upheld by the Court of Appeal, giving the wife a total award equivalent to £5 million (which included the matrimonial home). Equal sharing was departed from (in the husband's favour) not least because of the short duration of the marriage and because the principal source of the wealth was the pre-marital assets and expertise of the husband. In the second case, the House of Lords, applying the needs and compensation principles, restored the first instance order which required the husband to make periodical payments of £250,000 a year to the wife during their joint lives.

36. Baroness Hale gave the leading speech with which Lords Hoffmann, Hope and Mance agreed. Lord Nicholls gave a separate concurring speech with which Lords Hope and Mance agreed.

37. Both Baroness Hale and Lord Nicholls referred to the importance of three "rationales" or "strands" or "principles" in seeking to achieve a fair outcome in respect of ancillary relief.

38. Baroness Hale explained, at para 137, that:

> "given that we have a separate property system, there has to be some sort of rationale for the redistribution of resources from one party to another. In my view there are at least three."

39. She then explained these as being, first, that "*the relationship has generated needs* which it is right that the other party should meet" (para 138). "A second rationale, which is closely related to need, is *compensation for relationship-generated disadvantage*" (para 140). "A third rationale is *the sharing of the fruits of the matrimonial partnership*" (para 141).

40. Lord Nicholls's speech similarly referred to the three principles of "financial needs", "compensation" and "sharing". He said that in most cases the search for fairness begins and ends with needs because, in most cases, "the available assets are insufficient to provide adequately for the needs of two homes" (para 12). As regards sharing, Lord Nicholls said the following at para 16:

> "The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasise the qualifying phrase: 'unless there is good reason

> to the contrary'. The yardstick of equality is to be applied as an aid, not a rule."

41. Both Baroness Hale and Lord Nicholls also adverted to the distinction between matrimonial property and non-matrimonial property to which Lord Nicholls had referred in his speech in *White*.

42. Baroness Hale said at para 152:

> "The source of the assets may be taken into account but its importance will diminish over time."

And at para 153:

> "[I]n a matrimonial property regime which still starts with the premise of separate property, there is still some scope for one party to acquire and retain separate property which is not automatically to be shared equally between them. The nature and the source of the property and the way the couple have run their lives may be taken into account in deciding how it should be shared."

43. Lord Nicholls said, at paras 21-23:

> "I have referred to the financial fruits of the marriage partnership. In some countries the law draws a sharp distinction between assets acquired during a marriage and other assets. In Scotland, for instance, one of the statutorily prescribed principles is that the parties should share the value of the 'matrimonial property' equally or in such proportions as special circumstances may justify. Matrimonial property means the matrimonial home plus property acquired during the marriage otherwise than by gift or inheritance: Family Law (Scotland) Act 1985, sections 9 and 10. In England and Wales the Matrimonial Causes Act 1973 draws no such distinction….
>
> This does not mean that, when exercising his discretion, a judge in this country must treat all property in the same way. The statute requires the court to have regard to all the circumstances of the case. One of the circumstances is that there is a real

> difference, a difference of source, between (1) property acquired during the marriage otherwise than by inheritance or gift, sometimes called the marital acquest but more usually the matrimonial property, and (2) other property. The former is the financial product of the parties' common endeavour, the latter is not. The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose. As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been.
>
> The matter stands differently regarding property ('non-matrimonial property') the parties bring with them into the marriage or acquire by inheritance or gift during the marriage. Then the duration of the marriage will be highly relevant."

44. In these two leading cases, we see the House of Lords laying down the non-discrimination principle and the three principles of needs, compensation and sharing for determining a fair outcome. In terms of the sharing of the assets, the House of Lords made some reference to the distinction between matrimonial and non-matrimonial property, but those cases did not require a detailed working through of the relevance of that distinction.

45. Although there have been relevant cases in the lower courts, this is the first case, since those two leading cases, in which the highest court has considered the distinction between matrimonial and non-matrimonial property in the context of applying the sharing principle.

(2) Matrimonial and non-matrimonial property and the sharing principle

46. In the light of what was said about matrimonial and non-matrimonial property in the two leading cases, as well as in subsequent cases in the lower courts, we consider that the following legal principles are relevant in relation to the application of the sharing principle.

47. First, it is important to recognise that there is a conceptual distinction between matrimonial and non-matrimonial property. In general terms, this distinction turns on the source of the assets. Non-matrimonial property is typically pre-marital property brought into the marriage by one of the parties or property acquired by one of the parties by external inheritance or gift. In contrast, matrimonial property is property that comprises the fruits of the marriage partnership or reflects the marriage partnership or is the product

of the parties' common endeavour. It has long been recognised that what is not determinative in deciding what is and what is not matrimonial property is who has title to the property: see, eg, Lord Nicholls in *White* at p 611 D–G. Moylan LJ correctly pointed out in the Court of Appeal in this case, at para 152, that to base an award on title would run counter to the discrimination and sharing principles.

48. Secondly, the time has come to make clear that non-matrimonial property should not be subject to the sharing principle (though non-matrimonial property can be subject to the principles of needs and compensation). With some exceptions (see, for example, *XW v XH (Financial Remedy: Non-matrimonial assets)* [2019] EWCA Civ 2262; [2020] 4 WLR 22, paras 136-137) the courts have been reluctant firmly to say that non-matrimonial property is not subject to the sharing principle. Indeed, the Court of Appeal in *Charman v Charman (No 4)* [2007] EWCA Civ 503; [2007] 1 FLR 1246, expressly rejected the proposition that there was such an exclusion (while discussing at some length the merits of the exclusion approach). Sir Mark Potter P said the following at para 66:

> "To what property does the sharing principle apply? The answer might well have been that it applies only to matrimonial property, namely the property of the parties generated during the marriage otherwise than by external donation; and the consequence would have been that non-matrimonial property would have fallen for redistribution by reference only to one of the two other principles of need and compensation to which we refer in para 68, below. Such an answer might better have reflected the origins of the principle in the parties' contributions to the welfare of the family; and it would have been more consonant with the references of Baroness Hale in *Miller* at paras 141 and 143 to 'sharing … the fruits of the matrimonial partnership' and to 'the approach of roughly equal sharing of partnership assets'. We consider, however, the answer to be that, subject to [some] exceptions …, the principle applies to all the parties' property but, to the extent that their property is non-matrimonial, there is likely to be better reason for departure from equality."

49. However, no example has been given in which there clearly has been, or hypothetically would be, sharing of non-matrimonial property (under the sharing principle as opposed to the needs or compensation principles). It was said in *JL v SL (No 2)* [2015] EWHC 360 (Fam); [2015] 2 FLR 1202, para 22, by Mostyn J, that "such a case would be as rare as a white leopard". Although courts have a broad discretion in this area and despite the temptation to "never say never", it is our view that the distinction between matrimonial and non-matrimonial property becomes largely meaningless if the sharing principle applies to the latter as well as the former. The law is also rendered clearer and more certain if one rejects the proposition that there can be sharing of non-matrimonial

property. We therefore accept the submission of Timothy Bishop KC, counsel for the husband in the present case, that the sharing principle only applies to matrimonial property and does not apply to non-matrimonial property.

50. Thirdly, the sharing of the matrimonial property should normally be on an equal basis. Although there can be justified departures from that, equal sharing is the appropriate and principled starting position. Indeed, once non-matrimonial property is excluded, much of the justification for not applying equality in sharing fades away.

51. Fourthly, what starts as non-matrimonial property may become matrimonial property. Roberts J referred to this as "matrimonialisation" in *WX v HX* [2021] EWHC 241 (Fam); [2021] 3 FCR 249, paras 104, 112 and 121; and the same label was used by Moylan LJ in the Court of Appeal in this case. Although it may be new to the English language, we accept that that is a useful shorthand term to describe the process or mechanism by which non-matrimonial property may become matrimonial property. But whether one is using that label or not, the important question on any facts is whether that transformation has occurred. The leading examination of matrimonialisation (although that term was not used) was in *K v L* [2011] EWCA Civ 550; [2012] 1 WLR 306. At para 18, Wilson LJ said:

> "Thus, with respect to Lady Hale, I believe that the true proposition is that the importance of the source of the assets *may* diminish over time. Three situations come to mind: (a) Over time matrimonial property of such value has been acquired as to diminish the significance of the initial contribution by one spouse of non-matrimonial property. (b) Over time the non-matrimonial property initially contributed has been mixed with matrimonial property in circumstances in which the contributor may be said to have accepted that it should be treated as matrimonial property or in which, at any rate, the task of identifying its current value is too difficult. (c) The contributor of non-matrimonial property has chosen to invest it in the purchase of a matrimonial home which, although vested in his or her sole name, has—as in most cases one would expect—come over time to be treated by the parties as a central item of matrimonial property. The situations described in (a) and (b) were both present in *White v White*. By contrast, there is nothing in the facts of the present case which logically justifies a conclusion that, as the long marriage proceeded, there was a diminution in the importance of the source of the parties' entire wealth, at all times ringfenced by share certificates in the wife's sole name which to a large extent were just kept safely and left to grow in value."

52. We agree with those obiter dicta of Wilson LJ. But it is important to note that Wilson LJ's three situations were plainly not expressed to be exclusive categories. In this case in the Court of Appeal, Moylan LJ said, at para 163, that "the concept of matrimonialisation should be applied narrowly". We disagree. There is no good reason to treat matrimonialisation as a narrow concept. It is neither narrow nor wide. Although this has not previously been clearly spelt out, what is important (leaving aside matrimonial property resting on contributions from each party) is to consider how the parties have been dealing with the asset and whether this shows that, over time, they have been treating the asset as shared between them. That is, matrimonialisation rests on the parties, over time, treating the asset as shared. This analysis draws on Lord Nicholls' reference in *Miller/McFarlane*, at para 25, to the way the parties organised their financial affairs as being relevant and to Wilson LJ's references in *K v L* to the acceptance by the contributor that the asset should be treated as matrimonial property. See also, for example, Mostyn J in *N v F (Financial Orders: Pre-Acquired Wealth)* [2011] EWHC 586 (Fam); [2011] 2 FLR 533, para 44. "Over time", which was the phrase used by Wilson LJ in relation to each of his three situations, means that the period of time must be sufficiently long for the parties' treatment of the asset as shared to be regarded as settled.

53. It further follows that we agree with the essential thrust of the following passage from Peter Duckworth, *Matrimonial Property and Finance* (2025) at B3[20]:

> "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."

54. It is the parties' treatment of the asset as shared over time that underpins at least the second and third situations articulated by Wilson LJ, but plainly there can be such treatment in other situations. In this case in the Court of Appeal, at para 165, Moylan LJ asked himself the question, "Does fairness require or justify the asset being included within the sharing principle?" We agree that the sharing principle must be tied back to seeking a fair outcome. But putting to one side contributions made by both parties so that the assets in question are matrimonial for that reason, it is our view that it is the parties' treatment of what was initially non-matrimonial property, over time, as shared between them, that is central in deciding the fairness of that property being viewed as matrimonialised. At least the second and third of Wilson LJ's three situations illustrate that. They are both situations where what was non-matrimonial property has become matrimonial property because of the way in which the parties have been dealing with the asset which shows that, over time, they have been treating the asset as shared between them.

55. In so far as the first of Wilson LJ's situations is not based on that principle, it rests on a pragmatic assessment that the matrimonial property is so much greater than the non-matrimonial property that it is "not worth the candle" – and, for that reason, it is unfair to the parties – to try to work out what percentage was non-matrimonial. Fairness (in saving needless expense) demands that one should instead simply treat it all as matrimonial property. This was, implicitly, Moylan LJ's preferred explanation of Wilson LJ's first situation because Moylan LJ reformulated that first situation as follows, at para 163:

> "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."

We agree that, as a matter of pragmatic fairness, that is a helpful additional reason for applying matrimonialisation.

56. The fifth and final principle relates directly to matrimonialisation in the context of the facts of this case. In relation to a scheme designed to save tax, under which one spouse transfers an asset to the other spouse, the parties' dealings with the asset, irrespective of the time period involved, do not normally show that the asset is being treated as shared between them. Rather the intention is simply to save tax. Tax planning schemes to save income tax, involving transfers of assets from one spouse to another, are commonplace given that there is no capital transfer tax on transfers between spouses. However, transfers of capital assets with the intention of saving tax, do not, without some further compelling evidence, establish that the parties are treating the capital asset as shared between them.

6. Application of the law to the facts

57. Applying the legal principles that we have set out in the previous section to the facts of this case, the essential question is whether the 2017 Assets are matrimonial property and are therefore subject to the sharing principle. The 2017 Assets comprise, first, the husband's pre-marital assets and, secondly, earnings that the husband made in the years 2004-2007 to which the wife contributed by being the home-maker and child-carer during those years. It is not in dispute that the latter constitutes matrimonial property. That should be shared on an equal basis.

58. The Court of Appeal assessed the latter (ie the matrimonial property) as comprising 25% of the £80 million (so that that 25% was to be shared equally) and the former (ie the pre-marital assets/non-matrimonial property) as comprising 75% of the £80 million (see para 25(e) above). We see no reason to interfere with that assessment. The crucial point is that the 2017 Assets are largely non-matrimonial property and only a relatively small

element comprises matrimonial property. That point was lost in the approach taken by Moor J at first instance and the Court of Appeal was therefore entitled to intervene and to make its own assessment. On the Court of Appeal's approach, none of the husband's pre-marital assets (ie the 75% of the £80 million) became matrimonial property (see para 25(d) above). That is, none was matrimonialised. Why is that?

59. Mr Bishop submitted that that was because no part of the pre-marital assets fell within the three situations set out by Wilson LJ in *K v L.* Those situations were, it was argued, a derogation from the sharing principle based on contribution and should therefore be narrowly confined. That was in line with Moylan LJ's view that matrimonialisation should be applied narrowly (see para 52 above).

60. We disagree with that submission. As we have said at para 52 above, Wilson LJ's three situations were not expressed to be exclusive and it is inaccurate to regard matrimonialisation as narrow, just as it would be inaccurate to regard it as wide. It is neither. What it is important to consider is how the parties have been dealing with the asset and whether this shows that, over time, they have been treating the asset as shared between them.

61. Here the source of the pre-marital assets within the 2017 Assets was exclusively the husband. Those assets have been transferred to the wife. But the problem for the wife is that there is nothing to show that, over time, the parties were treating the 2017 Assets as shared between them. Rather the transfer was in pursuance of a scheme to negate inheritance tax and it was for the benefit exclusively of the children. The parties' intention was that the £80 million should not be retained by the wife but should be used by her to set up trusts for the children, thereby negating inheritance tax. In short, there was no matrimonialisation of the 2017 Assets because, first, the transfer was to save tax and, secondly, it was for the benefit of the children not the wife. The 2017 Assets were not, therefore, being treated by the husband and wife for any period of time as an asset that was shared between them.

62. Lord Faulks KC, counsel for the wife, submitted that there was matrimonialisation because the transfer of the 2017 Assets was for the benefit of the family. It is true that in many situations, where there are children, benefiting the family will embrace the spouses sharing the benefit of the assets. For example, a home or a holiday-home or a family car may benefit children as well as the spouses. And it may not be easy to differentiate the benefit to the spouses from the benefit to the children. But in the context of an intended scheme to mitigate the impact of inheritance tax, the intention is simply to save tax. Furthermore, in this case it is clear (because inheritance tax does not apply as between spouses) that the intended benefit is for the children. In this case, to focus on the benefit to the family incorrectly elides a benefit to the children and a shared benefit between the spouses. As was discussed at the hearing following questions from the Bench, there would have been no question of the pre-marital assets being (or being matrimonialised into)

matrimonial property had the husband declared himself a trustee of the 2017 Assets for the benefit of the children. Yet here the husband's intention was essentially the same ie to benefit the children and not the wife.

63. In our view, therefore, and in agreement with much, albeit not all, of the relevant reasoning of Moylan LJ, the Court of Appeal was correct that none of the non-matrimonial proportion (which was assessed to be 75%) of the 2017 Assets was matrimonialised. That percentage remains non-matrimonial property and is not subject to the sharing principle.

7. Conclusion

64. The decision and orders of the Court of Appeal should therefore be upheld. In this judgment, we have thought it important to clarify that the sharing principle (as opposed to the needs and compensation principles) does not apply to non-matrimonial property; and to explain what underpins matrimonialisation and precisely why it is inapplicable to the transfer of the 2017 Assets in this case.

65. For all these reasons, we would dismiss the appeal.