

Aspects of exercising the s 25 criteria relating to inheritance and whether it should be included or excluded

Deborah Dinan-Hayward

Albion Chambers, Bristol

1. What is realistic and achievable regarding inherited assets,
2. What happened to them during the marriage,
3. The likelihood of future receipt
4. The position if one spouse mingled an inheritance but the other didn't?

1. Definition of inheritance as non matrimonial property

- *White v White* [2000] 2 FLR 981

‘It represents a contribution made to the welfare of the family by one of the parties to the marriage’ .. , “from a source wholly external to the marriage” (p. 994)

- *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24

‘assets originating from a source 'external to the marriage’.

- *Charman v Charman (No 4)* [2007] 1 FLR 1246

‘matrimonial property was defined as "the property of the parties generated during the marriage otherwise than by external donation" (para 66)’

- *Rossi v Rossi* [2006] EWHC 1482

“The non-matrimonial property represents an unmatched contribution made by the party who brings it to the marriage justifying, particularly where the marriage is short, a denial of an entitlement to share equally in it by the other party”

- *P v P (Inherited Property)* [2004] EWHC 1364

“There is inherited property and inherited property”.

A pecuniary legacy that accrues during the marriage -v- a landed estate that has been within one spouse's family for generations

- *Rossi v Rossi* [2006] EWHC 1482

”In relation to property owned before the marriage, or acquired during the marriage by inheritance or gift, there is little difficulty in characterising such property as non-matrimonial (provided it is not the former matrimonial home)”.

2. How the Court deals with inherited assets

- *White v White* [2000] 2 FLR 981

“The nature and value of the property, and the time when and circumstances in which the property was acquired ..”

”the importance of the source of the assets will diminish over time

”the source of the assets might be a reason for departing from the yardstick of equality”

- *N v N (Financial Provision: Sale of Company)* [2001] 2 FLR 69.

“the nature of the assets, where these are businesses which will be crippled or lose much of their value, if disposed of prematurely in order to fund an equal division”

- **Hart v Hart** 2017 EWCA Civ 1306

“Non-matrimonial property can, therefore, be broadly defined in the negative, namely as being assets (or that part of the value of an asset) which are not the financial product of or generated by the parties’ endeavours during the marriage”

3. The relevance of the origin of the inheritance is likely to be greater in a short marriage case than a long marriage case

- The importance of the source of non-marital assets (and thus the extent to which they are subject to the sharing principle) may diminish over time: because the significance of their value is reduced in relation to the overall value of marital assets accrued by virtue of mingling with marital assets or otherwise being treated as marital, and / or by their application to the purchase of the matrimonial home : K v L 2011 EWCA Civ 550 at 18

- N v F (Financial Orders: Pre-acquired Wealth) [2011] EWHC 586

“whether the existence of pre-marital property should be reflected at all, this depends on questions of duration and mingling”

5. Inheritance utilised as a contribution argument

- *Charman v Charman* [2007] EWCA Civ 503

“ Also conveniently assigned to the sharing principle, no doubt dictating departure from equality, is the conduct of a party in the exceptional case in which it would be inequitable to disregard it (s.25(2)(g)). Mr Singleton argued to the judge that the husband’s generation of substantial wealth was not only a special contribution on his part to the welfare of the family but conduct which it would be inequitable to disregard. We think, however, that it is as unnecessarily confusing to present a case of contribution as a positive type of conduct as it is to present a case of conduct as a negative or nil type of contribution”

- *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24

“Section 25(2)(f) of the 1973 Act does **not** refer to the contributions which each has made to the parties’ **accumulated wealth**, but to the contributions they have made (and will continue to make) to the **welfare of the family**”

6. There is no reported case where non matrimonial property has been shared since Charman.

- *JL v SL* [2015] EWHC 360. Mostyn J

“If you like, such a case would be as rare as a white leopard.”

“..there will be cases where the post-separation accrual relates to a truly new venture which has no connection to the marital partnership or to the assets of the partnership. In such a case the post-separation accrual should be designated as non-matrimonial property and save in a very rare case should not be shared”

- *Hart v Hart* 2017 EWCA Civ 1306

“Examples usually given are assets owned by one spouse before the marriage and assets which have been inherited or otherwise given to a spouse from, typically, a relative of theirs during the marriage”.

- *K v L* : “Three situations come to mind...”

7. The likelihood of future receipt of inheritance being taken into account

- *Michael v Michael* [1986] 2 FLR 389

in the ordinary course of events a party's inheritance prospects are disregarded by the court a 'financial resource' which he is likely to have in the foreseeable future

- *HRS Louis Xavier Marie Guillaume Prince of Luxembourg, Prince of Nassau and Prince of Bourbon-Parma v HRH Tessy Princess of Luxembourg, Princess of Nassau and Princess of Bourbon-Parma & Anor* [2017] EWHC 3095 (Fam)

future inheritance was not sufficiently certain to regard this as a financial resource.

- *Alireza v Radwan & Ors* [2017] EWCA Civ 1545

'does the wife's father's wealth / the wife's inheritance prospects constitute a financial resource which she has or is likely to have in the foreseeable future?'. the wife's future inheritance prospects consequent upon Saudi Arabia's laws of forced heirship is a 'foreseeable resource'.

8. The position if one spouse mingled an inheritance but the other didn't?

- *Michael v Michael* [1986] 2 FLR 389.

"... However those facts, being extremely special demonstrate that the occasions on which such an interest will fall within s.,25(2)(a) of the Act of 1973 as amended, are likely to be rare. In the normal case uncertainties both as to the fact of inheritance and as to the times at which it will occur will make it impossible to hold that the property is property which is likely to be had in the foreseeable future...The world is full of women in their 80s who had high blood pressure in their 60s"

9. If inheritance is going to be considered : Quantification – 2 ways of calculating the division of matrimonial and non-matrimonial property

- ***N v F (Financial Orders: Pre-acquired Wealth) [2011] EWHC 586.***
- Mostyn J referred to two schools of thought, the first of which was simply to adjust the percentage from 50% and the second being to exclude the non-matrimonial property, leaving the matrimonial property to be divided in accordance with the equal sharing principle.
- the assessment of need is not an insulated metric and the presence of pre-marital property may lead to a more conservative assessment of needs.
- *JL v SL (No 2)* : "that the court should always attempt to determine the partition between matrimonial and non-matrimonial property" (paragraph 25)."