4 PAPER BUILDINGS

A Financial Remedies Seminar for Thames Valley Family Law Society

Monday 21st October 2013

CHAIR

Michael Sternberg QC MCI Arb

TOPICS & SPEAKERS:

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(Freezing Orders: Safeguards: Standard Examples) **[2013] EWHC 1735 (FAM)**
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Section 1

4 Paper Buildings: About Us

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About Us

4PB has a distinguished history as a leading set of specialist family law barristers providing practical, expert legal advice, and including effective and assured advocacy, in all practice areas of family law. Our size, practice range, reputation and expertise are unrivalled and mark us out as unique amongst our competitors.

What the market says:

Chambers has won a large number of prestigious awards, including leading legal publisher, Jordan's 'Family Law Chambers of the Year Award' in 2011. Our work has been recognised by leading legal directories like the Legal 500 and Chambers & Partners as representing excellence, with 29 members recommended in all areas of family law.

Chambers & Partners 2012, for child law matters, says we are 'the best lawyers in London', as well as being 'the most experienced, specialist international set of chambers in the country, if not the world'. Our barristers are seen as 'able to handle high-net worth ancillary relief [claims] in divorces'.

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We specialise in family law, and any relevant area of law that relates to family matters. Our barristers deal with all aspects of the law connected with relationship breakdown, including separation, divorce, civil partnerships, and their financial consequences, such as matrimonial finance, ancillary relief, family financial settlements, such as money and property.

We are also known for our work in child law, such as Children Act proceedings, and in children-related conflicts and disputes, such as child care, residence and contact issues, the international movement of children, and visitation rights to/for children living abroad.

Many of the most serious, sensitive and significant family cases are undertaken by members of 4PB, from all sections of society, and instructions are received from clients ranging from government departments and local authorities, to individuals, ranging from celebrities, to parents trying to prevent children from being taken into care.

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a kidspace
Supporting children through family breakdown

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Each year a team of walkers from chambers enters the London Legal Walk to raise money for the London Legal Support Trust, the Free Representation Unit and the Bar Pro Bono Unit.

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We are well located in attractive premises in an historic building in the Inner Temple. The Royal Courts of Justice, the Principal Registry of the Family Division and other London courts are easily accessible.

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Memberships

Our barristers play a leading role in the development of our profession, and family law generally, through their membership of various specialist associations, including both the Family Law Bar Association and the Association of Lawyers for Children.

Members are also active in the Employment Law Bar Association and the Employment Lawyers' Association.

They are also active in the Commonwealth Legal Association, International Bar Association, and the International Academy of Matrimonial Lawyers.

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Our barristers write regularly for the legal, specialist, local authority and mainstream http://www.4pb.com/media, and provide insightful, practical, and relevant lectures of topical interest to solicitors, both in private practice or in-house, regional Resolution committees and family law groups.

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Section 2

The Importance of UL V BK
(Freezing Orders: Safeguards: Standard Examples)
[2013] EWHC 1735 (FAM)

Michael Sternberg QC MCI Arb

THE IMPORTANCE OF *UL v BK (FREEZING ORDERS: SAFEGUARDS: STANDARD EXAMPLES)* [2013] EWHC 1735 (FAM),

"In my decision of ND v KP I ventured the view that we do not have a system here of saisie conservatoire where assets are automatically frozen pending the disposal of a divorce or any other kind of claim. On the contrary, the freezing jurisdiction is subject to very strict principles and contains important safeguards…" Mostyn J [25]

In *The Bank v A Ltd & Ors* [2000] EWHC J 0517-13 (2000) LLR 271 Laddie J stated:

"Even so, Anton Piller and Mareva orders have rightly been described as the nuclear weapons in the court's armoury and as being at the very extremity of the court's powers. To reduce the risk of abuse, stringent safeguards have been put in place to protect, as far as possible, the interests of the absent respondent."

1. **EXECUTIVE SUMMARY**: The case concerned an application by a wife for the continuation of an ex parte freezing order granted by the High Court in February 2013. A second order was made which provided that certain documents which belonged to the husband should be handed over to the wife's solicitors and retained in sealed files until further order. Mostyn J provided valuable and essential guidance on the use, necessary safeguards and form of freezing and search orders in financial remedy cases. The President authorised Mostyn J to publish for general use the examples appended to the judgment which have since been up dated The President also approved the guidance given by the Judge (in para 51) set out below. The judgment also re-stated the principles established in *Tchenguiz & Ors v Imerman* concerning the illegal acquisition by one party (in this case the wife) of documents belonging to the other party

2. **IMPORTANT POINTS:**

   a. Mostyn J was very critical of the practice of applying ex parte for freezing and search orders without justification. He says: *"Freezing and search orders*

are almost invariably made ex parte and, as such, are a violation of the elementary rule of natural justice, audi alteram partem" – hear the other side!

b. "*The unilateral step taken at the beginning of case echoes down its history. Often the respondent is enraged by the step taken against him and looks to take counter-offensive measures. Every single subsequent step is coloured by that fateful first step. Costs tend to mount exponentially. And even after the lawyers close their files and render their final bills the personal relations of the spouses will likely remain forever soured. A nuclear winter often ensues.*"

c. Mostyn J set out the rules applicable to urgent applications for such orders: *"The requirement of exceptional urgency is expressly stipulated in para 5.1 of FPR 2010 PD 18A. This provides that an* ***application may be made without notice only where there is exceptional urgency; or where the overriding objective is best furthered by doing so****; or by consent of all parties; or with the permission of the court; or where paragraph 4.9 applies; or where a court order, rule or practice direction permits. Para 4.9 deals with the situation where a date for a hearing has been fixed, and a party who wishes to make an application at that hearing but does not have sufficient time to file an application notice.*"

d. There are appended to the judgment standard examples of freezing and search orders. Mostyn J, with the authority of the President, stated: *"The example for the freezing order should be used whether the application is made under s37 of the 1981 Act to a High Court Judge or to a District Judge under s37 of the Matrimonial Causes Act 1973. It will be seen that each example order requires that the reason for giving no, or short, notice is expressly stated on its face. If this, or any other standard term, is not proposed to be included in an order then the departure or omission must be drawn to the judge's attention and must be clearly justified."*

e. In para 51 of the judgment Mostyn J summarised the relevant principles and safeguards:

> *"i) The court has a general power to preserve specific tangible assets in specie where they are the subject matter of the claim. Such an order does not necessarily require application of all the freezing order principles and safeguards, although it is open to the court to impose them.*

ii) For a freezing order in a sum of money which is capable of embracing all of the respondent's assets up to the specified figure it is essential that all the principles and safeguards are scrupulously applied.

iii) Whether the application is made under the 1981 Act or the 1973 Act the applicant must show, by reference to clear evidence, an unjustified dealing with assets (which would include threats) by the respondent giving rise to the conclusion that there is a solid risk of dissipation of assets to the applicant's prejudice. Such an unjustified dealing will normally give rise to the inference that it is done with the intention to defeat the applicant's claim (and such an intention is presumed in the case of an application under the 1973 Act).

iv) The evidence in support of the application must depose to clear facts. The sources of information and belief must be clearly set out.

v) Where the application for a freezing order is made ex parte the applicant has to show that the matter is one of exceptional urgency. Short informal notice must be given to the respondent unless it is essential that he is not made aware of the application. No notice at all would only be justified where there is powerful evidence that the giving of any notice would likely lead the respondent to take steps to defeat the purpose of the injunction, or where there is literally no time to give any notice before the order is required to prevent the threatened wrongful act. Cases where no notice at all can be justified are very rare indeed. The order of the court should record on its face the reason why it was satisfied that no or short notice was given.

vi) Where no notice, or short informal notice, is given the applicant is fixed with a high duty of candour. Breach of that duty will likely lead to a discharge of the order. The applicable principles on the re-grant of the order after discharge are set out in Arena Corporation v Schroeder at para 213.

vii) Where no notice, or short informal notice, is given the safeguards assume critical importance. The safeguards are set out in the standard examples for freezing and search orders. If an applicant seeks to dis-apply any safeguard the court must be made unambiguously aware of this and the departure must be clearly justified. The giving of an undertaking in damages, whether to the respondent or to an affected third party, is an almost invariable requirement; release of this must be clearly justified."

3. In para 56 of the judgment Mostyn J re-stated the principles established in *Tchenguiz & Ors v Imerman* concerning the illegal acquisition by one party (in this case the wife) of documents belonging to the other party.

4. **SO WHAT HAPPENED:** No apology is made for a recitation of the facts:-

The freezing order –

i) prevented the husband from dealing with a property in Marbella said to be worth £10m and froze further assets "presently registered in his sole name" up to a combined value of £20m; and required the husband to file and serve a sworn statement providing details of all assets held worldwide in his sole name and details of any trust/settlement of which he is a beneficiary and to nominate which assets (up to £20m) should be frozen.

The freezing order did not –

i) clearly state on its face whether it is a worldwide freezing injunction or limited to England and Wales;

ii) state on its face why no notice, not even short informal notice, had been given to the husband;

iii) contain an exception which allowed for a specified amount to be spent by the husband on weekly living expenses and legal advice and for the disposal of assets in the ordinary and proper course of business;

iv) contain an undertaking by the wife to pay damages to the husband or any third party caused loss by the order which the court may be of the opinion ought to be paid;

v) contain an undertaking by the wife to pay the reasonable costs of anyone other than the husband which have been incurred as a result of compliance with the order;

vi) contain an undertaking by the wife not, without the permission of the court, to use any information obtained as a result of the order for the purpose of any civil or criminal proceedings, other than the present claim, either in England and Wales, or in any other jurisdiction;

vii) contain an undertaking by the wife, without the permission of the court, not to seek to enforce the order in any country outside of England and Wales; or

viii) contain a statement of the right of the husband to apply, within 7 days, to set the order aside. This requirement is prescribed by FPR 2010 rules 18.10 and 18.11. The right to apply afforded to any affected party by those rules does not prescribe any minimum period of notice. Here an order was made which granted the husband the right to apply to set aside or vary the order but only on giving 48 hours' notice. Nothing in the order or the note of the hearing explains why the husband's rights under rules 18.10 and 18.11 were cut down.

The order freezing further assets "presently registered in his sole name" up to a combined value of £20m was made notwithstanding that in para 13 of her affidavit made in support of the application the wife stated "other than the Spanish Property, I am not aware of any other property in [the husband's] sole name; in fact, I fear that this may be the only asset in his sole name".

This sparse initial summary reveals either that this must either be a wholly exceptional case or that things must have gone seriously wrong. It is remarkable for this freezing order to have omitted every single standard safeguard and to have frozen, in addition to the Marbella property, other assets up to £20m held in the husband's sole name when the wife had positively deposed to a belief that he did not actually have any. This is not a wholly exceptional case. Things have gone seriously wrong. It is therefore necessary for me to set out once again the elementary principles, derived from legion authorities, in the hope that the approach adopted here never again recurs. The husband's position is that the wife has violated almost every known principle governing a freezing application and that therefore, without more, the order should be discharged. However, entirely without prejudice (a) to that contention and (b) his claim that he in fact has no legal or beneficial interest in the Marbella property, and in a spirit of pragmatism, he offers an undertaking that he will take no steps to dispose of charge or otherwise deal with it, nor will he encourage the company that owns it to do so.

5. NO DIFFERENCE BETWEEN SECTION 37 MCA 1973 AND SECTION 37 SCA AS APPLIED TO THIS SITUATION:

"I now turn to the question whether there is a difference in the test to be applied when ruling on an application for a freezing injunction depending on whether the application is made under s37 Supreme Court Act 1981 or s37 Matrimonial Causes Act 1973. In my decision of ND v KP [2011] 2 FLR 662 after a fairly cursory examination of the civil authorities I concluded that there was in fact no difference between the two tests; and that, indeed, it would be very strange if

there were. My decision was considered by the Court of Appeal in Edgerton v Edgerton [2012] 2 FLR 273 in a constitution presided over by Lord Neuberger MR and it was."

6. **WHAT YOU HAVE TO PROVE/ DO:-**

   a. **STRONG CASE:** An applicant must put forward an appropriately strong case, supported by evidence of objective facts (rather than mere expressions of suspicion or anxiety), that the respondent owned or had an interest in specified assets and that there was a real risk of their dissipation.

   b. **PROOF OF INTENTION**: Prima facie proof of a risk of dissipation requires, at least in general and broad terms, proof of an intention to dissipate – dissipation in this context surely means a deliberate or reckless dealing with assets rather than some random event unconnected to the motives of the respondent

   c. **SOURCE OF KNOWLEDGE:** It is often forgotten that by virtue of FPR PD 22A para 4.3(b) an affidavit or witness statement must "indicate the source for any matters of information and belief". This replicates the old rule in RSC Order 41 rule 5(2), which itself had an ancient pedigree. This requirement is vitally important where the affidavit or statement is being used to support a freezing application, and especially so where the application is made ex parte.

   d. **VIRTUAL MANDATORY REQUIREMENT OF AN UNDERTAKING AS TO DAMAGES:** The requirement to give an undertaking in damages is an express prescription in FPR PD 20A, para 5.1(a) of which provides that any order for an injunction, unless the court orders otherwise, must contain an undertaking by the applicant to the court to pay any damages which the respondent sustains which the court considers the applicant should pay. In contrast, by para 5.2 the court is merely obliged to 'consider' whether to require an undertaking by the

applicant to pay any damages sustained by a person other than the respondent, including another party to the proceedings or any other person who may suffer loss as a consequence of the order. In *Re W (Family Division: without notice orders)* [2000] 2 FLR 927 Munby J (as he then was) held that an undertaking in damages was not necessarily required as between spouses, but would almost invariably be required as between an applicant spouse and a third party. The terms of para 5.1(a) now mandate an undertaking in damages as between the spouses. This needs to be explained to the client as does the fact that she will be responsible for the costs of third parties in administering the orders obtained: footnotes below set out what the standard orders provide.[1] Banks served are allowed usually to claim a set off.[2]

e. **USE OF STANDARD WORDING***:* See the comment in the White Book at para 25.1.25.6 that *"any departure from the standard wording must be drawn to the attention of the judge hearing the without notice application"*. In this case there was wholesale departure from the standard safeguards but no explanation was offered to the judge. If an applicant seeks to dis-apply any safeguard the court must be made unambiguously aware of this and the departure must be clearly justified. The giving of an undertaking in damages, whether to the respondent or to an affected third party, is an almost invariable requirement; release of this must be clearly justified.

f. **BE UPFRONT:** Note well the high duty of candour with which an applicant for a freezing order made either ex parte or on short notice is

[1] The applicant shall pay the reasonable costs of anyone other than the respondent which have been incurred as a result of this order including the costs of finding out whether that person holds any of the respondent's assets and if the court later finds that this order has caused such person loss, and decides that such person should be compensated for that loss, the applicant shall comply with any order the court may make.

[2] This injunction does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the respondent before it was notified of this order.

fixed. In *ND v KP* at para 13 Mostyn J cited the masterly judgment of Mr. Alan Boyle QC in *Arena Corporation v. Schroeder* [2003] EWHC 1089 (Ch) where at para 213 he set out all the relevant principles [see the appendix] the duty of candour is not watered down in any way if short notice is given: see *CEF Holdings Ltd & Anor v City Electrical Factors Ltd & Ors* [2012] EWHC 1524 (QB) per Silber J at para 182.

g. **NEED TO SHOW URGENCY:** Where the application for a freezing order is made ex parte the applicant has to show that the matter is one of exceptional urgency. Short informal notice must be given to the respondent unless it is essential that he is not made aware of the application. No notice at all would only be justified where there is powerful evidence that the giving of any notice would likely lead the respondent to take steps to defeat the purpose of the injunction, or where there is literally no time to give any notice before the order is required to prevent the threatened wrongful act. Cases where no notice at all can be justified are very rare indeed. The order of the court should record on its face the reason why it was satisfied that no or short notice was given.

h. **EARLIER AUTHORITIES THOUGHT TO BE GOOD LAW ABOUT A GENEARL POWER TO "PRESERVE THE SUBJECT MATTER OF THE DISPUTE" WITHOUT THE NEED TO SHOW INTENTION TO DISSIPATE SEVERELY RESTRICTED:** The court has a general power to preserve specific tangible assets (Silver, paintings, gold, jewelry, furniture cars etc. etc.) in specie where they are the subject matter of the claim. Such an order does not necessarily require application of all the freezing order principles and safeguards, although it is open to the court to impose them.

i. PROCEDURAL FAIRNESS:

i. When making the application the advocate must take all relevant points against himself / herself so that the court has the full picture and knows the arguments that could be advanced if matters proceeded on notice. The authorities make it clear that the advocate is expected to tell the court of all matters mitigating against the grant of the order being sought.

ii. The effect of the order sought needs to be fully explained to the Court and what the consequences of freezing the assets will be.

iii. Almost always seek an up to date sworn statement of means [3]and when you get it considering seeking cross examination on it at the return day. This is a very valuable weapon which is seldom employed but if it is it may allow a cross examination in advance of an FDR let alone a trial.

iv. Obtain an order stating what is good service, E.g. by fax and /or E Mail.

v. The order obtained needs to be served as soon as possible; together with a full note of what happened at the hearing and literally everything, including, the application, all statements skeleton arguments and loose correspondence, which was before the court.[4]

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[3] . Unless the following paragraph applies, the respondent shall within 7 days of service of this order and to the best of his ability inform the applicant's solicitors of all his assets [in England and Wales] [worldwide] [exceeding £ in value] whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. AND Within 14 days of being served with this order, the respondent shall make and serve on the applicant's solicitors an [affidavit]/ [witness statement] setting out the above information.

[4] A note [prepared by [his]/ [her] solicitor] recording the substance of the dialogue with the court at the hearing and the reasons given by the court for making the order, which note shall

vi. The order cannot without a further application and direction be used in other proceedings.[5]

vii. It will be almost impossible to prevent the respondent from disposing of assets in the ordinary course of his business.[6]

7. **ILLEGITIMATELY OBTAINED DOCUMENTS: The observations of how these are factored into these sorts of cases is as important as the other requirements. One begins with [55] Tchenguiz & Ors v Imerman** [2010] EWCA Civ 908, [2011] Fam 11 [para 118] of the judgment of Lord Neuberger MR where he stated:

> *"So far as concerns the special role of the court in ancillary relief cases, we accept that the jurisdiction is inquisitorial and not purely adversarial, so that the well-known observations of Lawton LJ in Hytrac Conveyors Ltd v Conveyors International Ltd [1983] 1 WLR 44, page 47, must be read in the Family Division with this important caveat in mind. But this cannot be a justification for riding roughshod over established legal rights nor for permitting a litigant without sanction to evade by lawless recourse to self-help the safeguards of the Anton Piller (search order) jurisprudence (discussed in paragraphs [127]-[136] below), which are not merely enshrined in our domestic law but are indeed essential if there is to be proper compliance with the Convention: see Chappell v United Kingdom (1989) 12 EHRR 1."*

The principles are these:

i) "*Whatever the historic practice (and however alluring the arguments for pragmatism and practicality) it is simply and categorically unlawful for a wife (for it usually is she) to breach her husband's privacy by furtively copying his documents whether they exist in hard copy or*

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include (but not be limited to) any allegation of fact made orally to the court where such allegation is not contained in the affidavits or draft affidavits read by the judge.

[5] The applicant shall not without the permission of the court use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in England and Wales or in any other jurisdiction, other than this claim.

[6] This order does not prohibit the respondent from dealing with or disposing of any of his assets in the ordinary and proper course of business.

electronically. There may be factual issues about whether the documents are actually in the husband's private domain; but if they are (and they almost always are) then it is wholly impermissible for the wife to access and copy them.

ii) If a wife does access such private documents she is not only in jeopardy of criminal penalties but also risks being civilly sued by the husband for breach of confidence and misuse of his private material.

iii) If a wife supplies such documents to her solicitor then the solicitor must not read them but must immediately seek to obtain all of them from the wife and must return them, and all copies (both hard and soft), to the husband's solicitor (if he has one). The husband's solicitor, who owes a high duty to the court, will read them and disclose those of them that are both admissible and relevant to the wife's claim, pursuant to the husband's duty of full and frank disclosure. If before that exercise has taken place the husband's solicitor is dis-instructed the solicitor must retain those documents pending a further order of the court.

iv.) If the husband does not have a solicitor the wife's solicitor must retain the documents, unread, and in sealed files, and must approach the court for directions. Those directions will likely be to the effect that the wife shall pay for an independent lawyer to be instructed to determine which of those documents are admissible and relevant to the wife's claim. Copies can then be provided to the wife's solicitor before the files of documents are returned to the husband.

v) The wife is permitted to rely on her knowledge of the documents to challenge the veracity of the husband's disclosure in the proceedings. Her knowledge is admissible evidence. For this purpose she can express her recollection to her solicitor, and the solicitor can advise on it. However, if the expression of that recollection involves the revelation of clearly privileged matters then the solicitor must stop the conversation immediately. If things have gone too far the solicitor will have to consider carefully whether (s)he can continue acting for the wife. It is open to the husband to apply to the court, in the interests of justice, for an order barring the wife from relying on her knowledge in this way.

vi) If the wife's recollection is that the documents clearly show that the husband is unjustifiably dealing with his assets and that there is therefore a clear risk of dissipation to her prejudice then she can inform her solicitor of this. Subject to the point about privilege mentioned above, the solicitor is entitled to give advice on her recollection and can draft an affidavit in support of a freezing application. But if the wife elects to go down this route she is bound in that affidavit candidly to reveal that her knowledge derives from illegitimately obtained documents, and must explain how she got them. She must do this even if this leads to a civil suit or criminal proceedings. That is the price that she will (potentially) have to pay for making an application based on illegitimately obtained knowledge. Of course, there is no question of the wife being forced to incriminate herself as she has a free choice whether to go down this route."

CONCLUSION: This is a landmark judgment which affects all areas of without notice applications and the uses of illegitimately obtained documentation. If you read nothing else look at paragraph [51] of the judgment which contains a summary of the principles and safeguards.

APPENDIX: WHAT HAPPENS IF THERE IS A BREACH OF THE DUTY OF CANDOUR?

In *Arena Corporation v. Schroeder* [2003] EWHC 1089 (Ch) at para 213 Mr. Alan Boyle QC set out all the relevant principles, derived from numerous earlier high authorities, on the question of the exercise of the discretion to re-grant an injunction where a breach of the duty of candour has been demonstrated. He stated:

> "(1) If the court finds that there have been breaches of the duty of full and fair disclosure on the ex parte application, the general rule is that it should discharge the order obtained in breach and refuse to renew the order until trial.
>
> (2) Notwithstanding that general rule, the court has jurisdiction to continue or re-grant the order.
>
> (3) That jurisdiction should be exercised sparingly, and should take account of the need to protect the administration of justice and uphold the public interest in requiring full and fair disclosure.
>
> (4) The court should assess the degree and extent of the culpability with regard to non-disclosure. It is relevant that the breach was innocent, but there is no general rule that an innocent breach will not attract the sanction of discharge of the order. Equally, there is no general rule that a deliberate breach will attract that sanction.
>
> (5) The court should assess the importance and significance to the outcome of the application for an injunction of the matters which were not disclosed to the court. In making this assessment, the fact that the judge might have made the order anyway is of little if any importance.
>
> (6) The court can weigh the merits of the plaintiff's claim, but should not conduct a simple balancing exercise in which the strength of the plaintiff's case is allowed to undermine the policy objective of the principle.
>
> (7) The application of the principle should not be carried to extreme lengths or be allowed to become the instrument of injustice.
>
> (8) The jurisdiction is penal in nature and the court should therefore have regard to the proportionality between the punishment and the offence.
>
> (9) There are no hard and fast rules as to whether the discretion to continue or re-grant the order should be exercised, and the court should take into account all relevant circumstance"

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October 2013

Section 3

"Whilst You Were Busy Working"
- A Brief Financial Remedy Update

Stephen Lyon MCI Arb

"WHILST YOU WERE BUSY WORKING"

A BRIEF FINANCIAL REMEDY UP DATE

T v M [2013] EWHC 1585 (Fam) Coleridge J.

An interesting case management decision on the use of the strike out powers in FPR 4.4 (1)(a) which empowers the court to strike out a case "where the statement of case discloses no reasonable grounds for bringing or defending the action".

At the final hearing H was ordered to pay W spousal PP's of €87,000 pa plus 35% of his net bonus up to a total package not exceeding €192,000 pa. W's earning capacity had been a central issue and W had given evidence for 3 out of 4 of the allocated trial days.

Four months after the order was made H applied to vary downwards the PP's order, raising again issues as to W's income and earning capacity. W cross applied to strike out the application under rule 4.4 (1) (a) and was successful. H appealed. In dismissing the appeal Coleridge J referred back to the words of Bennett j in *Rose v Rose* in 2003 in which he said that it was absolutely essential that the courts had the power to put a stop to applications seeking to re-open matters already decided if the court is satisfied that no useful purpose would be served by re-opening the matter. He also observed that there was a very very high bar to get over to vary an order made as recently as four months previously.

Vince v Wyatt [2013] EWCA Civ 495. CA

Another interesting use of the strike out jurisdiction.

The parties married in 1981 and separated in 1984. They had one child born in 1981 and another, born in 1979 treated as a child of the family. Decree Absolute was pronounced in 1982 and but there was no satisfactory evidence that financial matters had ever been dealt with. During the marriage the parties had lived what was described as a "New Age or Traveller Lifestyle" and there were no assets.

Following the divorce W entered into a new relationship and had two further children. H re-married and had a four year old son. The magnetic feature was that following the divorce H stared a wind power business said now to be worth "many millions". In May 2011 some 18 years after DA, W made an application for a financial remedy and sought £125,000 by ay of a costs allowance. H sought to strike out both applications but was unsuccessful at first instance and a costs allowance was made. He appealed.

The CA (Thorpe LJ) said that rule 4.4 was complementary to the court's inherent powers of case management which included the proper use of the resources of the court. (The Judgement refers to the unremitting pressure on lists and delays). He observed that robust case management was required. In allowing the appeal the court said that the facts were extreme and that "Impecuniosity has been the experience of all the wife's adult life", and that whilst W could appeal to her former husband's sense of charity he should not be compelled to boost her income by the use of the court's jurisdiction under the 1973 Act – "He is not her insurer against life's eventualities". Indeed the court described the application as "harassment" and in ordering the repayment of the costs allowance observed that the reality was that W would recover nothing but that H would have to pay the costs of both sides for the privilege.

The court also said that the case had been stuck out, not under rule 4.4(1)(a) but 4.4(1) (b) which provides for a strike out where "the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings". Thorpe LJ stressed that such applications would be rare and cautioned against attempts to strike out merely because one side's assessment was that the other side's case was weak or unlikely to succeed. Such applications, he said would be the subject of a very dim view by the courts, and likely to result in indemnity costs.

Evans v Evans [2013] EWHC 506 (Fam) Moylan J.

Another attempt by a husband to run the defunct stellar contribution argument and an analysis of the definition of marital property.

This was a big money case with assets of £40m of which £32m was tied up in a company. The key issue was what appropriate percentage each should receive of the company shares. H's case was he had created the company from virtually nothing and that he had had what he described as a "flash of inspiration" by developing a niche piece of computer software. He sought a two-thirds, one-third split of the shares in his favour. Moylan J said that the issue was whether H's contribution was of a wholly exceptional nature such that fairness required that he received a greater share of the marital wealth. His Lordship said that no detailed analysis of contribution was required and that what was required was such a striking evidential foundation that "the question almost answers itself".

H's case was rejected, not least because in evidence H accepted that until separation he thought that a 50/50 split was fair!

The case is useful also because of its analysis of post separation contribution. It reaffirms the position that assets which accrue due to post separation endeavour are not subject to the same approach as the creation of the marital acquest. In particular the sharing principle does not apply in the same way. The court accepted that H was solely responsible for preparing the company

for sale some 2-3 years post separation and was making a significant on-going contribution to its value. The court determined that 5 of the 25 years of company life occurred post separation which justified a departure from equality in H's favour, awarding him 55% of the shares on sale.

Grocholewska-Mullins v Mullins. [2013] EWCA Civ 1121. CA

An interesting analysis of the approach to be taken on a capitalisation of a joint lives spousal PP's order.

On divorce in 1992, W was awarded a lump sum of £50,000 and a joint lives spousal maintenance award of £24,000 pa. Fourteen years later her maintenance was reduced to £12,000 by reason of her cohabitation. When that relationship ended W applied to re-instate her original award. By this time H had a business which he envisaged could be sold for over £2m. At a hearing in November 2012 HHJ Horowitz QC re-instated her award and added a further £1,000 to take account of inflation. He then considered capitalisation and ordered H to pay £297,500 in three tranches - £47,500 by March 2013, £25,000 by January 2014 and £224,000 by December 2014.

W appealed complaining that the overall sum was insufficient, asserting that on a Duxbury the correct figure was £380k. She complained at the lack of a formal RPI increase and also that the structure of the order would cause real hardship since the first tranche would go on servicing her debts. The first two arguments were rejected. Interestingly the court said that the quantum on a capitalisation was a matter of discretion, that the court was entitled to take account of W's earning capacity, and that affordability on the part of the payee is an important factor – ie it is not simply a case of taking the figure in the tables. The court also stated that a failure to apply an RPI increase did not amount to an error of law.

As to the third point the court said that the court had failed adequately to factor in W's income position until each trance was paid when fixing a series of payments and that some on-going

monthly payment was required until payment in full was made, particularly as using the first trance to clear debts would leave her with no income at all.

S v S [2013] EWHC 991 (Fam) Sir Hugh Bennett.

An application to re-open on grounds of non-disclosure where heads of Agreement and a Consent Order had been agreed but the order had not yet been sealed.

This was a 17 year marriage which produced 3 children. The parties had agreed on a 50/50 split of their assets. The sticking point was if, and how, the shares in a company should be divided. There was also an issue as to the calculation of the value of the company. During the course of the final hearing the parties did a deal which was initially the subject of Heads of Agreement and then a consent order. Before sealing, W discovered that behind the scenes H was preparing for a public floatation- having said in evidence that such was unlikely before 3, 5 or 7 years and that there was "nothing on the cards today".

W sought to re-open and H was ordered to swear an affidavit setting gout the true position. Sir Hugh specifically stated that he retained jurisdiction as the order had not been sealed. In re-considering the matter the Judge confirmed the position that in such circumstances the historic test in *Livesey v Jenkins* still applied, ie if proper disclosure been made, on balance would the court have made an order which was substantially different to the order which it in fact made.

The court considered what it would have done and concluded that it would have progressed the case as far as possible and then adjourned to await the outcome of the floatation. However, by the time of the appeal the floatation had not occurred and was no longer in prospect. Whilst highly critical of H's position the court concluded that in those circumstances there would have been no change to the original order and accordingly the appeal failed.

Ac v DC & Ors (Fiancial remedy:Effect of s37 Avoidance order (No1). [2012] EWHC 2032 (Fam). Mostyn J.

An important analysis of the retrospective effect of an order under s37(20 MCA 1973.

On W's application the court set aside the transfer by H of his 86.24% shareholding in a valuable company to an Isle of Man corporate trustee which transfer was subsequently routed through a series of Respondents, all of whom were joined.

The Respondents did not oppose the set aside but requested the court to rule on whether the set aside operated retrospectively since there were significant tax consequences attaching to the transactions. H was in very poor health and had a limited life expectancy. Accordingly because of the time constraints it was not possible to join HMRC or otherwise give them an opportunity to be heard, and so the ruling was specifically said not to be ultimately binding on the Revenue.

The court ruled that the language of the statute was such that it operated as between the parties retrospectively and a set aside operated so as to nullify the transaction *ab initio.* The court said that the law of tax was not an "island entire of itself" and there was no public policy reason why a third party (such as HMRC) should benefit fiscally from the short life of a transaction which, for all other purposes been set aside.

The court did however consider the position where a transaction had been made to a bona fide third party who had acted in good faith, and concluded that whilst as between H and W the transaction was void and would operate to prevent a later re-vesting anew in H "As between the parties it annuls the transaction ab initio, but bona fide concluded third party transactions will not be disturbed".

CR v SR [2013] EWHC 1155 (Fam). Moylan J.

A decision on the test to be applied on an application for permission to appeal.

This was a 12 year marriage with 2 children. After a contested hearing W received the fmh outright, subject to mortgage (the only asset) and a joint lives spousal maintenance order, the quantum of which left W with a far greater monthly disposable income than H. H was left with all the debts. He sought permission to appeal arguing that the result was manifestly unfair not just in terms of the quantum of maintenance, but that the decision to award her the home should have been off-set either by no maintenance or a Mescher order. He also complained about the quantum of spousal maintenance which was based upon an unrealistic assessment by the court of his likely future income stream. Moylan J considered the "real prospect of success" test in FPR 30.3(7) and concluded that the same test as applied in the civil courts (*Tanfern Limited v Cameron-Macdonald),* should apply name that "real" meant realistic rather than fanciful.

In granting permission the court accepted that H had a real prospect of establishing that the orders made were outside the band of reasonable orders in that they did not achieve a balanced outcome. He also cautioned against courts being to robust in assessing future income stating that a reasonable degree of caution was required so as to ensure that any award was not only affordable but did not result in an undue imbalance in the parties' respective financial positions.

Mohan v Mohan [2013] EWCA Civ 586 CA

An important decision on the admissibility of documents on a committal application.

The factual background is fairly tortuous.

H and W settled their financial proceedings by a Deed pursuant to which H was to pay W £5.7m. He failed to comply and W issued a Notice to Show Cause. That was compromised when the parties agreed that W would receive 31% of the sale proceeds of the fmh. Her Notice to Show Cause was adjourned generally. In fact the sale achieved a greater price than the parties had anticipated and W agreed to take her 31% of the greater amount in full and final satisfaction of all her claims. H paid the first tranche due, but defaulted on the second. W commenced

enforcement proceedings and H was ordered to swear a new Form E and an affidavit exhibiting certain documents in advance of an oral examination.

H complied and having seen those documents W issued both a Judgement Summons and a committal application asserting that H had failed to comply fully with his disclosure obligations as ordered. Within those applications she sought to rely on the sworn documents filed – ie the Form E and Affidavit and exhibits.

H was neither present nor represented.

At first instance the court refused W permission to rely on those documents. She appealed and an Advocate to the Court was appointed to represent H's interests.

The CA noted that on a Judgement Summons application the debtor is no longer a compellable witness - FPR 33.14(2) provides "the Debtor may not be compelled to give evidence". It drew the distinction between enforcement proceedings where imprisonment is a potential penalty, and general enforcement applications (such as the application for an oral examination) where no such a sanction exists and where the sworn documents had been produced under no such threat. The court also reminded itself of the debtors right against self - incrimination, and ruled that the statements although made in prior – but nevertheless contemporaneous proceedings relating to the same subject matter –as part of a general enforcement application were inadmissible on a subsequent application where there was a risk of imprisonment.

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4 Paper Buildings

Section 4

"It was mine before..."
How the Courts treat pre-acquired assets

Kate Van Rol

"IT WAS MINE BEFORE..."

HOW THE COURTS TREAT PRE-ACQUIRED ASSETS

OR:

"All that I am I give to you,

And I all that I have I share with you"

INTRODUCTION:

1. Pre-acquired wealth excites strong opinions, whether you happen to have some or not, and depending on which end of the political spectrum you occupy. The excerpt from the Church of England marriage service quoted above will hardly be reflective of the experience of practitioners in this area.

2. This paper proposes to set out the background to the development of this aspect of the law, and to see if any coherent set of principles can be said to apply to claims involving a pre-acquired element, both as to the quantification of those assets and their subsequent distribution. The law as set out below is accurate as at 11 July 2013.

3. As a single issue, pre-acquired capital can be said to trespass on many of the most controversial features of the jurisprudence.

4. Inevitably, this invites focus on those cases where the assets can be said to exceed needs; per Lord Nicholls in ***White v White*** [2000] 2 FLR 981, at 994: "*this factor can be expected to carry little weight, if any, in a case where the claimant's financial needs cannot be met without recourse to this property*".

5. The corollary is that claims in which pre-acquired wealth is a relevant feature are also generally those in which the sharing principle is or may be engaged.

6. Moreover, if practitioners are concerned to restrict or enhance their client's 'share', working out whether the claim does or does not extend to non-matrimonial property (and if so to what extent) may be of central importance. Following Potter P in ***Charman (No.4)*** [2007] 1 FLR 1246, the sharing principle applies

"*to all the parties' property but to the extent that their property in non-matrimonial there is likely to be better reason for departure from equality".*[7]

7. No better example of the importance of the distinction can be found than ***K v L*** (Non-matrimonial: Special Contribution) [2011] 2 FLR 980.

- 21 yr marriage / 3 children
- FMH worth £250,000 and parties lived modestly
- At trial W had (inherited) shares held offshore worth £700k at the date of marriage, £28m at separation and £57m at trial
- Bodey J awards H £5m at first instance
- H's appeal to CoA fails

[7] Paragraph 66

MATRIMONIAL v NON-MATRIMONIAL PROPERTY

8. What is the origin of the distinction?

9. There is no community of property in English law. We assume separate property.

10. The starting-point is the familiar passage in ***White*** per Lord Nicholls at 994 in referring to:

> *"the view, widely but not universally held, that property owned by one spouse before the marriage, and inherited property whenever acquired, stand on a different footing from what may be loosely called matrimonial property. According to this view, on a breakdown of the marriage these two classes of property should not necessarily be treated in the same way. Property acquired before marriage and inherited property acquired during marriage come from a source wholly external to the marriage. In fairness, where this property still exists, the spouse to whom it was given should be allowed to keep it. Conversely, the other spouse has a weaker claim to such property than he or she may have regarding matrimonial property*".

11. And then later in ***Miller/McFarlane*** [2006] 1 FLR 1186 (Lord Nicholls again), with greater force:

> *"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.*
>
> ***[23]*** *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.*

12. The distinction has firmly taken root in the jurisprudence and in a raft of cases decided since. Of course s.25 of the MCA 1973 is entirely silent on the question of non-

matrimonial property, meaning that account has been taken of it as either 'a circumstance of the case', or else as a species of (unmatched) contribution, but NB not as a 'stellar contribution' in the specific meaning of that phrase[8].

IDENTIFYING THE NON-MATRIMONIAL PROPERTY

13. Examples of non-matrimonial property to look out for might include (non-exhaustively);

    a. Real and other property brought into the marriage by one spouse;
    b. Gifts and inheritances;
    c. Lottery wins;
    d. Businesses brought into the marriage;
    e. Assets defined by / within pre-nuptial agreements for this purpose.

14. And it may also include the 'passive economic growth' on the non-matrimonial property[9] achieved over the course of the marriage, although the court will not invariably allow for this.[10]

15. But it does not follow that simply because the asset with which you are concerned falls within one of the categories above that it will be immune from attack.

[8] Again, see ***K v L***. But NB no reason in principle why non-matrimonial and stellar contribution arguments can't run in tandem, subject to overall fairness?
[9] E.g. ***Jones v Jones*** [2011] 1 FLR 1723
[10] ***N v F*** [2011] 2 FLR 533

RELEVANT FACTORS IN THE ASSESSMENT AND IDENTIFICATION OF NON-MATRIMONIAL PROPERTY

16. In ***Robson*** [2011] 1 FLR 1171, Ward LJ summarised the approach to be taken thus (authors' emphasis in **bold**) :

> ***[43]*** *How then does the court approach the 'big money' case where the wealth is inherited? At the risk of over-simplification, I would proffer this guidance:*
>
> *(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.*
>
> *(4) Like every exercise of judicial discretion, the objective must be to reach a just result and justice is attained when the result is fair as between the parties.*
>
> *(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).*
>
> *(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.

(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.*

17. In the subsequent case of ***Y v Y*** [2012] EWHC 2063, a case in which the Husband had previously inherited a considerable amount more than the £27m with which the court was concerned at trial, Baron J approved the following factors as being relevant to the question whether or not to share in the Husband's inherited wealth:

(i) the nature of the assets (eg land/property, art, antiques, jewellery on the one hand, and cash or realisable securities on the other);

(ii) whether the inherited assets have been preserved in specie or converted into different assets, realised or even spent;

(iii) how long they have been "in the family";

(iv) the established or accepted intentions of both the previous holders of the assets and the spouse who has inherited them;

(v) whether they have been "mingled" (for example by being put into joint names of the spouses, or by being mixed with assets generated during the marriage);

(vi) the length of the marriage and therefore the period over which they have been "enjoyed" by the other spouse;

(vii) whether the other spouse has directly contributed to the improvement or preservation of the inherited wealth.

18. The approach from case to case is highly fact-specific.

19. Moreover, there will be limits to the court's indulgence even where valuable assets have been retained in specie for generations, per Munby J in ***P v P*** [2005] 1 FLR 576:

> *"There is inherited property and inherited property. Sometimes, as in White v White [2001] 1 AC 596,* [2000] 2 FLR 981 *itself, the fact that certain property was inherited will count for little: see the observations of Lord Nicholls of Birkenhead at 611 and 995 respectively and of Lord Cooke of Thorndon at 615 and 998 respectively. On other occasions the fact may be of the greatest significance. 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.*
>
> *That said, the reluctance to realise landed property must be kept within limits. After all, there is, sentiment apart, little economic difference between a spouse's inherited wealth tied up in the long-established family company and a spouse's inherited wealth tied up in the long-held family estates".*

20. 'Money is money'. It is suggested that there can be little objective justification for the courts treating dynastic wealth differently to comparable riches accrued over the mere course of a marriage[11].

21. An interesting question arises in relation to 'mingling', where the focus has conventionally been on whether the inherited assets have been utilised to joint ends or amalgamated with other funds so as to take on a matrimonial quality. But what happens

[11] See also ***Y v Y*** supra, where Baron J described the likely future sale of the Husband's inherited estates as 'sad' for him (as it no doubt will be)

where, for matters of (say) administrative convenience, a family depletes unarguably matrimonial capital for its daily expenditure safe in the knowledge that there are plentiful non-matrimonial assets left in reserve?

22. On the authorities, the non-inheriting spouse is vulnerable to the argument that the non-matrimonial property has been kept separate. One solution would be to take into account the standard of living during the marriage as an addition to the ***Y v Y*** factors[12].

The FMH

23. Different considerations apply in respect of the FMH, which per Lord Nicholls in ***Miller***, is unlikely to qualify as non-matrimonial:

> "*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".*[13]

24. Does it make any difference if the property has been retained in the sole name of the contributing spouse? Probably not, per Wilson LJ (as he then was) in ***K v L*** , identifying the situation where:

> *"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."*[14]

25. So the FMH has proven to be something of a special case in this respect, usually 'mingled' by virtue of its status as the parties' home, even if no formal steps have been taken by the contributing spouse to share out the legal ownership[15].

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[12] Indeed there would appear to be some support for this proposition from Ward LJ in ***Robson***
[13] Paragraph 22
[14] Paragraph 18

26. While that may not sound controversial in the context of a lengthy first marriage, is there potential for unfairness in much shorter second or third marriages where, say, one spouse 'contributes' the FMH as a home for the parties, while the other retains in specie other property not needed for their occupation?

27. See the decision of Munby J (as he then was) in ***P v P*** (supra), a farming case in which the entirety of the assets had been contributed by the Husband. In determining the Wife's claim, no distinction was made by the court between the inherited farmland and the farmhouse.

28. But just because the FMH may *now* be characterised as matrimonial, that does not necessarily mean it falls to be divided equally if initially provided from a non-matrimonial source; see ***Y v Y***. See also Mostyn J in ***S v AG*** **(Financial Orders: Lottery Prize)** [2011] EWHC 2637 (Fam):

> *"Sometimes one party brings assets in which become, 'part of the economic life of [the] marriage… utilised, converted, sustained and enjoyed during the contribution period' (ibid at para 190). This is the concept of mingling referred to by me in N v F (Financial Orders: Pre-acquired Wealth) at para [9] [...].*
>
> *But even if there has been much mingling, the original non-matrimonial source of the money often demands reflection in the award. Thus in S v S (Non-Matrimonial Property: Conduct) [2006] EWHC 2793 (Fam), [2007] 1 FLR 1496 Burton J divided the matrimonial property 60/40 to reflect this factor".*

Pensions

29. Anecdotal evidence suggests that courts appear to be significantly more reluctant to permit the non-contributing spouse to share in the other's pre-marital pension pot; e.g:

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[15] Again see ***Y v Y*** in which Baron J described the inherited FMH as the "*heart of the parties' relationship and family life*"

GS v L (Financial Remedies: Pre-acquired assets: Needs) [2013] 1 FLR 300, where King J made a needs-based award in favour of the wife, holding:

> *"There is no doubt that the husband came into the marriage with substantial assets, which assets are capable of being the subject of forceful arguments in favour of their being excluded as non-matrimonial property. In my judgment however, for the reasons set out in my consideration of the s 25 factors set out below, those assets are (with the exception of the pension) required in order to satisfy both the immediate and long-term needs of the wife and children (and indeed the husband). It is, therefore, on the facts of this case inappropriate and unnecessary to get into the vexed question of whether the London flat is a matrimonial home and if so whether it has become matrimonial property, or how growth on any of the assets should be assessed.*
>
> *"So far as the pension is concerned, it can and should, in my judgment, properly be excluded from the division of the assets, a position effectively, although not absolutely, conceded by the wife. The pension cannot be drawn down for many years and was accrued in its entirety before the marriage; the fund cannot be used to provide for the wife's needs in either the short or medium term. Given the benefit of the capital with which she will leave the marriage and a working life of 25 years ahead of her, fairness in my judgment requires that the husband should retain his pension fund absolutely."*

30. Why this should be so is not clear as a matter of logic. While the case turned on its own facts, it is not obvious why pre-acquired liquid assets were made available to meet the wife's long-term needs but not pre-acquired pension assets.[16]

Assessment of Need

31. Can the assessment of need be informed by the presence in the case of substantial non-matrimonial property? The answer, following ***K v L,*** would appear to be that it can, the husband's needs-based award of £5m being vastly in excess of the standard of living which operated throughout the marriage.

[16] Although it is conceded as a matter of practicality it is obviously far easier to quarantine pension assets given (i) that their value upon marriage can be easily quantified and (ii) thereafter they are unlikely to be mingled.

QUANTIFICATION OF NON-MATRIMONIAL PROPERTY

32. So having identified relevant non-matrimonial property, is it necessary to quantify precisely the matrimonial and non-matrimonial assets in existence at the date of trial?

33. Different judges have evolved different approaches so that two conflicting schools of thought have developed:

    a. The 'two-stage' approach; and
    b. The broad-brush 'fairness' approach

34. In essence the two-stage approach holds that the court should (i) identify the matrimonial and non-matrimonial assets before (ii) dividing them up, usually equally as to the former and only so far as is fair in respect of the latter. The result can then be cross-checked against overall fairness as a safety precaution. The fairness approach is simply to weigh the s.25 factors before exercising discretion.

35. Proponents of the two-stage approach <u>in the right case</u> have included:

    a. Wilson LJ (as he then was) in ***Jones v Jones***, in which the Court of Appeal preferred that approach on the facts of that case in circumstances where the central valuation of the key asset (an oil and gas company) had been crystallised by a sale. Having made allowance for passive economic growth on the underlying value of the company, the Wife ended up with half of the matrimonial property but none of the non-matrimonial (overall a third);

b. Mostyn J in ***FZ v SZ*** [2011] 1 FLR 64, in which he praised the rigour of the two-stage approach and derided the '*palm tree justice*' meted out by the 'fairness' brigade. And subsequently in ***S v AG*** (supra) he held that

> "*the law is now reasonably clear*[17]*. In the application of the sharing principle (as opposed to the needs principle) matrimonial property will normally be divided equally (see para [14](iii) of my judgment in N v F (Financial Orders: Pre-acquired Wealth)). By contrast, it will be a rare case where the sharing participle will lead to any distribution to the claimant of non-matrimonial property. Of course an award from non-matrimonial property to meet needs is a common place, but as Wilson LJ has pointed out, we await the first decision where the sharing principle has led to an award from non-matrimonial property in excess of needs.*"[18]

36. But the criticism of this approach has been sustained and vigorous from some quarters (notably from Moylan J), both intellectual and practical. First, it is said that the drive to isolate and exclude the non-matrimonial property amounts to putting an impermissible gloss on s.25 since it elevates consideration of 'contributions' above all other factors – something which plainly troubled Ward LJ in ***Robson.***[19]

37. Moreover, the 2-stage exercise places a premium on obtaining reliable and robust valuations – fine in ***Jones*** where the company valuation had been crystallised by a sale, but how is this to work otherwise? Moylan J refused to be drawn down this path in ***SK v WL*** [2011] 1 FLR 1472 (in which Mostyn QC appeared as counsel), in which he referred to the parties' valuation evidence as "*guesswork, though of course intelligent guesswork*" and declined to enter *"a dim world peopled by the indeterminate spirits of fictitious or unborn sales".*

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[17] NB this decision predates ***Robson*** in the Court of Appeal

[18] c.f. dicta of Moylan J in ***AR v AR*** [2012] 2 FLR 1: "*the sharing principle can apply to non-matrimonial property if such an approach is justified by the facts of the case"* [80]

[19] And see also ***Z v A*** [2012] EWHC 1434, a Part 3 MFPA 1984 claim in which Coleridge J approved counsel's exhortations to simply hear the evidence, weigh the relevant factors and 'do what is right'

38. And given the renewed emphasis on the need for expert evidence to be '*necessary'* (arising from FPR 2010 r.25.1), there would appear to be further disincentive to travel down this path.

39. But if Moylan J's alternative is largely based on 'feel' – i.e. simply to impose a departure from equality to reflect the presence of non-matrimonial property, applying s.25 – the charge against him is that his approach is impossibly unpredictable, although perhaps no more so than Mostyn J's: per Wilson LJ in ***Jones***:

> *"Criticism can easily be levelled at both approaches. In different ways they are both highly arbitrary. Application of the sharing principle is inherently arbitrary*[20]*; such is, I suggest, a fact which we should accept and by which we should cease to be disconcerted".*

40. And given that on either approach, fairness is the goal (by reference to s.25) is there much difference between the two in terms of outcome? Doesn't the two-stage approach simply provide a distinct starting-point?

41. Coleridge J sympathised with both practices in the recent case of ***R v R*** [2013] 1 FLR 120, in which he praised the '*logic'* of the two-stage approach before ending with some cautionary words about the potential for disproportionate academic debate to the detriment of a sensible resolution of the issues:

> "*the extra evidence and calculations called for when trying to pin down precise values for 'sharing' and, for example, the extent of pre-acquired assets leads to many extra layers of complication, forensic debate and expensive evidence on the part of both legal teams. At the end of the day, the result in this case has been mostly driven by needs and practicalities"*

42. So is the law indeed '*reasonably clear'?*

---

[20] "arbitrary" per OED = adjective (i) based on random choice or personal whim, rather than any reason or system (ii) (of power or a ruling body) unrestrained and autocratic in the use of authority

Harry Gates
Kate Van Rol

4 Paper Buildings

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Section 5

Prest and Petrodel Resources Limited [2013] UK
What next after the Supreme Court?

Christopher Hames

Prest v Petrodel Resources Limited [2013] UK

What next after the Supreme Court?

The problems posed by the case:

•All H's assets held in properties registered in the name of companies registered in the Isle of Man.

• H's conduct was "characterised by persistent obstruction, obfuscation and deceit, and a contumelious refusal to comply with rules of court and specific orders"

Basic facts

•Marriage 1993; W's petition 2008

•4 children

•Affluent lifestyle – second home in Nevis

•H was prominent and successful in international oil development and trade

•Property transactions predated separation

•W claimed H was worth 10s of millions; H claimed liabilities exceeded liabilities by £48m

Moylan J found:

•H's net assets were £37.5m
•H was the sole beneficial owner and controller of the companies
•The fmh was held on trust by one of the companies for H
•The 7 UK properties were held beneficially by the companies for H
•H's purpose in setting up the companies was wealth protection and tax avoidance

Moylan J ordered

•H to procure transfer of fmh in London to W, free of encumbrances
•H to pay W a lump sum of £17.5m
•Husband to procure the transfer of 7 properties in the UK from the companies to W
•The companies were directed to execute all necessary documents to give effect to the properties.
•Periodical payments of 2% of lump sum per annum until payment plus school fees
•Costs

•Moylan J did NOT find:

•That there was any general principle of law which entitled him to reach the companies' assets by piercing the corporate veil.
•That there was no relevant "impropriety" – meaning the separate legal personality was not being used for an improper purpose
•Any particular beneficial interest was owned by H in any particular property

Moylan J justified himself by finding that in financial order cases, there was a wider jurisdiction to pierce the corporate veil.

He found

•H's personal expenditure vastly exceeded salary and bonuses
•H had unrestricted access to company assets
•Companies were "H's money box"

Piercing the veil

Court of Appeal

- The companies appealed to the Court of Appeal.
- The majority, comprising non-family judges, Rimer and Patten LJJ, allowed the appeal on basis that there was no wider jurisdiction to pierce the corporate veil absent 'impropriety' or 'sham'.
- They criticised the practice in the family courts which amounted to a separate system of law unaffected by principles of English property and company law (UDI).
- Despite Thorpe LJ's valiant defence of family practice:

The practice “must now cease.”

Salamon v A Salamon and Co Ltd [1897] AC 22 –

- A company has its own a legal entity,
- own rights and liabilities.
- its owns property distinct from its shareholders.
- This is true also of a company wholly owned and controlled by one man

But as an exception:
“where a person who owns and controls a company is said in certain circumstances to be identified with it in law by virtue of that ownership and control”

There is limited principle:
“When a person is under an existing legal obligation of liability of subject to any existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control”

Section 24(1)(a) of the MCA empowers court to order one party to the marriage to transfer to the other "property to which the first-mentioned party is entitled either in possession or reversion"

Section 25(2)(a) of the MCA: "... 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"

Trusts
Beneficial ownership of properties

What presumptions can be made against H because of his obfuscation?

- Drawing of adverse inferences in financial order proceedings.
- Public interest in proper maintenance of ex-spouses particularly but not only where children.
- Although proceedings in form adversarial have inquisitorial element
- As often family finances commonly been responsibility of H, W "in reality dependent on the disclosure and evidence of the husband to ascertain the extent or her property claim"

•Points of claim – W expressly alleged H used companies to hold legal title in property beneficially owned by him
•Fact specific
•H and companies failed to disclose completion statements or evidence of the source of funds
•"It is a fair inference from all these facts, taken cumulatively, that the main, if not the only, reason for the companies' failure to co-operate is to protect the properties. That in turn suggests that proper disclosure of the facts would reveal them to have been beneficially by the husband"
•Where properties transferred for £1 to corporate owner, there was nothing to rebut presumption of equity that company not intended to acquire beneficial interest – and so companies held on resulting trust for H.

Former matrimonial home

Inquiry is fact specific, but fmh:

•facts are quite likely to justify the inference that property held on trust for spouse who owned and controlled the company.

•How is occupation justified in company's interest?

•Usually company controller will maintain control over occupation which inconsistent with company's beneficial ownership

Conclusion

Declaration: all 7 disputed properties held by their corporate legal owners on trust for F – and Moylan J's order restored in respect of those properties

Advice for non-controlling spouse

- Are you arguing Section 24(1)(a) or section 25.
- Transfer of shares?
- Points of Claim: Beneficial ownership of properties and legal control of companies. Use law of trusts
- Disclosure from spouse and company?
- Section 37 –setting aside dispositions
- Piercing corporate veil going to be difficult
- Is company a nuptial settlement?

Advice for controlling spouse

- Avoid declarations of beneficial ownership
- Avoid adverse factual inferences
- Use of other "asset protection" devices: discretionary trusts with "trigger" events; split shares
- Timing and even agreement critical

Section 6

Profiles of the Speakers

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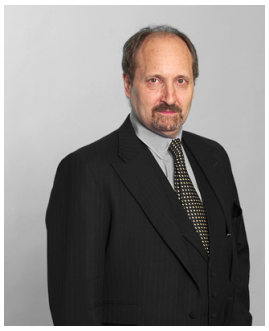

Michael Sternberg QC

"He is everything one could want in a QC. Intelligent, precise and thoughtful, he is a joy to work with." Chambers and Partners

Experience

Year of Call: 1975
Year of Silk: 2008

Education

MA LLM (Cantab) MCIArb
Fellow of the International Academy of International Lawyers
Fully Qualified Family Law Arbitrator
Qualified Collaborative Lawyer
Qualified Mediator
Fellow of the Royal Society of Arts

Languages

Basic French

Profile

Michael Sternberg's practice covers the two main areas of family work - financial remedy and child cases. He has a substantial practice in high-value financial cases and is instructed by a number of the top London firms. He regards negotiation as of great importance in getting the best result in the speediest time at the lowest cost to the client. So many of his cases settle avoiding the costs and publicity of what would otherwise be high profile contests. The financial work involves not only the latest developments in family law, but also a high degree of expertise in company law and valuation, farming divorce cases, prenuptial agreements, tax law and cases where there is a conflict of jurisdiction.

Unusually Michael also has extensive experience in difficult child cases. He was instructed consistently in the past not only by the Official Solicitor, and Cafcass Legal, but also by local authorities in highly demanding cases in the High Court, Court of Appeal and House of Lords, which have raised difficult questions of fact and law.

Michael is an expert in contests between England and Wales and other jurisdictions as to which should decide the divorce - both in respect of Brussels II (revised) and generally - also in relation to injunctions to prevent a party from proceeding with divorce in a foreign jurisdiction. He has lectured on the topic.

Michael has acted as an advocate to the court in a series of reported decisions. He succeeded against the UK Government in relation to a breaches of Articles 8 and 12 of the ECHR, on behalf of a post-operative transsexual, heard by the Grand Chamber in Strasbourg (I v UK [2002] 2 FLR 518). Michael was previously listed as a leading junior in the relatively small list of practitioners in London within The Legal 500 since 2001. Chambers Guide to the UK Legal Profession also for many years rated him as one of the few leading juniors. Michael is a member of the Family Law Bar Association and he was the Assistant Secretary from 1986 - 1988.

Michael is also the author of two chapters in David Davidson’s book “Pensions and Marriage Breakdown “ 3rd Edition (published by the Law Society in 2005).

Michael was in 2009 nominated by the Chairman of the Bar to chair a joint tribunal set up by the Bar Council and the Law Society / OSS to

resolve major dispute between a leading junior Barrister and a prominent firm of solicitors.

Michael was one of only 3 Leading Counsel to be invited to appear as a principal speaker on issues of spousal support after divorce, at the Butterworths Lexis Nexis Matrimonial Finance and Divorce National Conference on 28th April 2010.

On 4th February 2011 Michael chaired a day conference on advanced ancillary relief topics at the RAF Club attended by over 100 solicitors at which 5 QC's spoke.

He chaired a similar financial remedy day conference for the White Paper Company in January 2013.

Michael is a Qualified Mediator and Collaborative lawyer. In September 2011 he attended the first course run by The Chartered Institute of Arbitrators to become one of the first Family Law Arbitrators.

In March 2013 Michael chaired a Lexis Nexis webinar on all aspects of ADR.

Michael is the Chair of the Trustees of the Three Faith Forum – the country's leading active interfaith charitable agency, which since 1997 has been generating understanding, goodwill and friendship between Muslims, Christians and Jews, as well as people of other faiths and in the wider society.

Professional Memberships

Family Law Bar Association
International Academy of Matrimonial Lawyers
Three Faiths Forum Legal Group (founder member)
Gray's Inn
Inner Temple
Affiliate Member of Resolution

Directories

The '*tenacious*' Michael Sternberg QC is '*extremely capable on his feet*'.
Recommended as a Leading Silk in the area of Family Law (including divorce and ancillary relief)
Legal 500 2013

The "meticulous" Michael Sternberg QC has a broad family law practice and is highly rated for his work in both the children law and matrimonial finance spheres. He is regularly instructed in high-value ancillary relief cases and complex child abduction matters, and is an accredited mediator and collaborative lawyer.
Recommended as a Leading Family Silk in Chambers & Partners **2013** -

'If battle is required', Michael Sternberg QC is 'your chosen gladiator'.
Recommended as a Leading Family Silk in The Legal 500 **2012**

Michael Sternberg QC's outstanding practice continues to cover both complex international children matters and ancillary relief cases. Sources say: "He is everything one could want in a QC. Intelligent, precise and thoughtful, he is a joy to work with."
Recommended as a Leading Silk in both Children and Matrimonial Finance in Chambers and Partners **2012**

Michael Sternberg QC 'thinks outside the box and is a great strategist'.
Recommended as a Leading Family Silk in The Legal 500 **2011**

Michael Sternberg QC now focuses primarily on matrimonial finance work and is often instructed in cases with cross-jurisdictional issues. Commentators note that "he thinks out detailed strategies and is always popular with clients."
Recommended as a Leading Silk in Chambers and Partners**2011**

Michael Sternberg QC has a mixed practice but won most support from the market for his children work. His recent cases include D v D, R v R, and S v S, all of which were contested children and ancillary relief cases where millions of pounds were at stake.
Recommended as a Leading Silk in Chambers and Partners **2010**

Michael Sternberg QC 'provides a first-class service and often comes up with creative solutions to difficult problems'.
Recommended as a Leading Family Silk in The Legal 500 **2010**

New silk Michael Sternberg QC is a "meticulous and detailed" barrister who carries out both ancillary relief and children-related matters. He has a particular interest in cases with an international dimension.
Recommended as a Leading Family Silk in the area of Children in Chambers & Partners **2009**

Michael Sternberg QC who has 'excellent attention to detail', and is 'very good at cross-examination'.
Recommended as a Leading Family Silk in The Legal 500 **2009**

Michael Sternberg is "first choice for anything with an international dimension - be it Hague Convention, forum shopping or money matters." He is still best known for his varied work with children.
Recommended as a leading junior in Family/Children in Chambers & Partners **2008**

Michael Sternberg has a more varied practice and undertakes a mixture of both children and finance work. He is "particularly supportive of clients and is extremely conscientious" managing to maintain a "delightful manner in the most difficult cases."

Recommended as a leading junior in Family/Children in Chambers & Partners **2007**

Michael is also recommended as a Family Leading Junior in The Legal 500 **2006**

Practice areas

- Financial Remedies
- Private Law

Dispute resolution

- Collaborative Lawyer
- Mediation
- Early Neutral Evaluator
- Arbitration

Direct Access

- Direct Access

Cases

Re M (A Child) Sub Nom Re M (Adoption: International Adoption Trade) (2003)
[2003] EWHC 219 (Fam)

Field v Field
[2003] 1 FLR 376

I v United Kingdom
[2002] 2 FLR 518

Re B (Adoption by one Natural Parent to Exclusion of other)
[2001] 1 FLR 589

Re AGN (Adoption: Foreign Adoption)
[2000] 2 FLR 431

Re AMR (Adoption: Procedure)
[1999] 2 FLR 807

Re M (Sexual Abuse Allegations: Interviewing Techniques)
[1999] 2 FLR 92

Re S (Removal from Jurisdiction)
[1999] 1 FLR 850

S v S (Judgment in Chambers: Disclosure)
[1997] 1 WLR 1621

Re M (Petition to European Commission of Human Rights)
[1997] 1 FLR 755

Note H v H (Residence Order: Leave to Remove from Jurisdiction)
[1995] 1 FLR 529

R v Plymouth Justices Ex Parte W
[1993] 2 FLR 777

Re F (A Minor) (Blood Tests: Parental Rights)
[1993] 3 WLR 369

Re F (A Minor: Paternity Test)
[1993] 1 FLR 598

H v H (Financial Provision: Capital Allowance)
[1993] 2 FLR 335

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Stephen Lyon

Experience
Year of Call: 1987

Qualifications
Stephen has recently been admitted to the Chartered Institute of Arbitrators.

Education
LLB (Hons) (Nottingham)

Languages
German

Appointments
MCIArb

Profile
Stephen has a wide range of expertise in all areas of family law, from leading child care cases to complex ancillary relief disputes. Although family law is Stephen's specialist area of practice, his background includes extensive experience in both civil law and criminal law, which gives him highly developed skills as an advocate.

Stephen’s principal specialism is ancillary relief, in which he has built up a successful practice built upon a reputation for incisive analysis and, where appropriate, robust advocacy. His civil expertise lends itself well to “big money” cases in which he is able to demonstrate a rigorous and structured approach to complex financial issues.

Stephen has been described by the legal press as “approachable and dependable”. He is in great demand by leading family solicitors both in London and the regions and as a consequence enjoys a nationwide reputation as a leading family lawyer. Stephen places great importance on an open and friendly relationship with both solicitors and lay clients, and is a firm believer in providing a service which is practical, realistic, and tailored to meet the needs of individual clients.

Stephen is an active participant in the continuing education of solicitors, by way of lectures and seminars.

Professional Memberships
Family Law Bar Association
Affiliate Member of Resolution
Chartered Institute of Arbitrators

Practice areas
- Financial Remedies
- Private Law

Dispute resolution

- Collaborative Lawyer
- Arbitration

Direct Access

- Direct Access

Cases

O v P (2011)
[2011] EWHC 2425 (Fam)

Re G (A Child) (2006)
[2006] EWCA Civ 348

Margot Alison Clarke v Christopher Michael Harlowe (2005)
LTL 31/8/2005

Re ET (Serious Injuries: Standard of Proof) (2003)
[2003] 2 FLR 1205

Kean v Kean
[2002] 2 FLR 28

Medway Council v British Broadcasting Corporation (2001)
[2002] 1 FLR 104

Re C (Children) (Residential Assessement)
[2201] 3 FCR 164

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Kate Van Rol

Kate is a superb advocate with an incisive mind and is extremely tenacious in court. Her preparation is second to none and clients always comment on how confident they feel with her representation.
Nicola Walker - Irwin Mitchell

Experience
Year of Call: 2002

Education
LLB (Hons) University of Newcastle
College of Law, London
Qualified Collaborative Lawyer

Profile
Kate is a specialist family practitioner with a particular interest in matrimonial finance disputes. The mercurial nature of family law is what attracted Kate to practice in this area and she is committed to keeping up with its numerous developments. Kate is dedicated to providing a proficient and friendly service to both her professional and lay clients. Her approach to cases and clients together with her advocacy skills has resulted in her practice continually expanding.

Professional Memberships
Family Law Bar Association
Lincoln's Inn
Affiliate Member of Resolution

Practice areas
- Financial Remedies
- Private Law

Dispute resolution
- Collaborative Lawyer

Direct Access
- Direct Access

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Christopher Hames

Christopher Hames comes highly recommended for his expertise in cross-jurisdictional children expertise. Sources say: "He is a very safe pair of hands and is excellent with clients." Chambers and Partners

Experience

Year of Call: 1987

Education

LLB Hons (Sheffield)
Qualified Collaborative Lawyer

Profile

Christopher Hames appears regularly in High Court abduction and relocation cases, as well as mid and top end financial remedies cases particularly with international issues.

His ancillary relief practice includes "big money" and not so big money cases frequently involving companies, trusts and an international element. He has developed a particular specialty in ancillary relief cases involving criminal restraint and confiscation orders: Re MCA [2003] 1 FLR 164 CA; X v X [2005] 2 FLR 487; T v B and Revenue and Customs Prosecutions Office [2009] 1 FLR 1231; and Stodgell v Stodgell [2009] 2 FLR 244 CA. He appears and advises on TOLATA. Schedule 1 and Inheritance Act cases.

Christopher has an extensive practice in cases involving the international movement of children. He acts for both applicants and respondents in Hague Convention and non-Hague Convention cases: K v K [2010] 1 FLR 57 and [2010] 1 FLR 782; Re O [2011] 2 FLR 1307; Cambra v Jones [2012] EWCA Civ 1511 and [2013] EWHC 88 (Fam) [acting through the Bar Pro Bono Unit]; VK v JV [2012] EWHC 4033 (Fam). He has experience of BIIR cases: D v D & N [2011] 2 FLR 462. He has a particular interest in abduction cases involving the stranding and abandonment of mothers abroad: Re P [2007] 2 FLR 439. He acts for both sides in relocation disputes. He has recently acted in care proceedings involving international adoptions in the USA: Re LA [2013] EWHC 578 (Fam).

Christopher is able to advise and represent clients in all aspects of international cases covering disputes over jurisdiction, children and matrimonial finance.

Professional Memberships

Family Law Bar Association
Affiliate Member of Resolution

Directories

Christopher Hames focuses his international family law practice on cases concerning child abduction, relocation and cross-jurisdictional disputes. Commentators note that "he cuts straight through to the issues" of the most complex of cases.
Recommended as a Leading Family Junior Chambers & Partners **2013**

Christopher Hames comes highly recommended for his expertise in cross-jurisdictional children expertise. Sources say: "He is a very safe pair of hands and is excellent with clients." Hames is much in demand.
Recommended as a Leading Family Junior Chambers and Partners **2012**

Christopher Hames is highly regarded for cross-jurisdictional children work.

Recommended as a Leading Family Junior in Chambers and Partners **2011**

Christopher Hames, who is praised for his handling of Children Act matters.
Recommended as a Leading Family Junior in Chambers and Partners **2010**

Practice areas

- Financial Remedies
- Private Law
- International

Dispute resolution

- Collaborative Lawyer

Direct Access

- Direct Access

Cases

Re Jones (No 2) [2013] EWHC 2730 (Fam)
[2013] EWHC 2730 (Fam)

HM Solicitor General committal to prision of J. Jones for alleged contempt of Court
[2013] EWHC 2579 (Fam)

Re LC (Children) (2013)
[2013] EWCA Civ 1058

LCG v RL [2013]
[2013] EWHC 1383 (Fam)

CB v CB [2013]
[2013] EWHC 2092 (Fam)

Kent County Council v. PA-K and IA (a child) [2013]
[2013] EWHC 578 (Fam)

Cambra v Jones [2013]
[2013] EWHC 88 (Fam)

VK v JV [2012]
[2012] EWHC 4033 (Fam)

Re J (Children) [2012]
[2012] EWCA Civ 1511

Re D (A Child) [2011]
[2011] 2 FLR 464 : [2011] Fam Law 571: [2011] EWHC 471 (Fam).

Re O (Children)
[2011] 2 FLR 1307 : [2011] 1 FCR 363 : [2011] Fam Law 452 : (2011) 108(9) LSG 19; [2011] EWCA Civ 128

Re K (Children) (2009)
[2009] EWCA Civ 986

Re K (Children) (2009)
[2010] 1 FLR 57; [2009] EWHC 1066 (Fam)

Stodgell v Stodgell (2009)
[2009] EWCA Civ 243; (2009) 2 FLR 244

T v (1) B (2) Revenue & Customs Prosecutions Office (2008)
[2008] EWHC 3000 (Fam); (2009) 1 FLR 1231

Re P (Children) (2006)
[2006] EWHC 2410 (Fam)

X v X (Crown Prosecution Service Intervening)
[2005] 2 FLR 487

W v W (Divorce Proceedings: Withdrawal of Consent after Perfection of Order)
[2202] 2 FLR 1225

Customs and Excise Commissioners v A and another A v A
[2003] 2 WLR 210

Re MCA; HM Customs and Excise Commissioners and Long v A and A

(1) HM Customs & Excise (2) Richard Long v (1) MCA (2) JMA : JMA v MCA & Richard Long (Intervenor) (2002)
[2002] EWHC 611 (Admin); (2002) 2 FLR 274

Re R (Children) (Sexual Abuse: Standard of Proof)
[2001] 1 FCR 86

Section 7

Members of Chambers

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Barristers

4 Paper Buildings has an ‘unrivalled collection of senior and junior barristers in the field. Predominantly known for its children work, but also has some ’really excellent people for matrimonial finance cases’. Legal 500 2011

Barristers

Alex Verdan QC
Call: 1987 | Silk: 2006
Head of Chambers

Jonathan Cohen QC
Call: 1974 | Silk: 1997

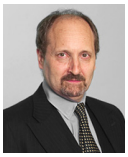
Baroness Scotland QC
Call: 1977 | Silk: 1991

Henry Setright QC
Call: 1979 | Silk: 2001

Marcus Scott-Manderson QC
Call: 1980 | Silk: 2006

Kate Branigan QC
Call: 1985 | Silk: 2006

Jo Delahunty QC
Call: 1986 | Silk: 2006



Michael Sternberg QC
Call: 1975 | Silk: 2008

Catherine Wood QC
Call: 1985 | Silk: 2011

Rex Howling QC
Call: 1991 | Silk: 2011

Teertha Gupta QC
Call: 1990 | Silk: 2012

David Williams QC
Call: 1990 | Silk: 2013

Brian Jubb
Call: 1971

Amanda Barrington-Smyth
Call: 1972

Robin Barda
Call: 1975

Jane Rayson
Call: 1982

Mark Johnstone
Call: 1984

Elizabeth Coleman
Call: 1985

Alistair G Perkins
Call: 1986

Christopher Hames
Call: 1987

Stephen Lyon
Call: 1987

James Shaw
Call: 1988

Mark Jarman
Call: 1989

Sally Bradley
Call: 1989

Barbara Mills
Call: 1990

Joy Brereton
Call: 1990

Joanne Brown
Call: 1990

Sam King
Call: 1990

Alison Grief
Call: 1990

David Bedingfield
Call: 1991

John Tughan
Call: 1991

Cyrus Larizadeh
Call: 1992

Charles Hale
Call: 1992

Michael Simon
Call: 1992

Justin Ageros
Call: 1993

Rob Littlewood
Call: 1993

Paul Hepher
Call: 1994

Cliona Papazian
Call: 1994

Judith Murray
Call: 1994

Ruth Kirby
Call: 1994

Sarah Lewis
Call: 1995

Nicholas Fairbank
Call: 1996

James Copley
Call: 1997

Justine Johnston
Call: 1997

Oliver Jones
Call: 1998

Lucy Cheetham
Call: 1999

Hassan Khan
Call: 1999

Cleo Perry
Call: 2000

Harry Gates
Call: 2001

Rebecca Foulkes
Call: 2001

Katie Wood
Call: 2001

Rhiannon Lloyd
Call: 2002

Kate Van Rol
Call: 2002

Ceri White
Call: 2002

Matthew Persson
Call: 2003

Dorothea Gartland
Call: 2004

Samantha Woodham
Call: 2006

Laura Morley
Call: 2006

Nicola Wallace
Call: 2006

Michael Gration
Call: 2007

Jacqueline Renton
Call: 2007

Andrew Powell
Call: 2008

Henry Clayton
Call: 2007

Sophie Connors
Call: 2009

Michael Edwards
Call: 2010

Harry Nosworthy
Call: 2010

Rachel Chisholm
Call: 2010

Julia Townend
Call: 2011

Zoe Taylor
Call: 2011

Door Tenants

Paul Hopkins QC
Call: 1989 | Silk: 2009
Door Tenant

Professor Marilyn Freeman
Call: 1986
Door Tenant

Susan Baldock
Call: 1988
Door Tenant

Elizabeth Couch
Call: 2003
Door Tenant

Belle Turner
Call: 2003
Door Tenant