D v D AND OTHERS AND THE I TRUST
[2009] EWHC 3062 (Fam)

Family Division

Baron J

23 October 2009

Financial relief – Post-nuptial settlement – Jersey trust – Whether court had jurisdiction to vary

The parties had been in a relationship together for about 5 years when they married; after about 5 years of marriage they separated. There were two children. Eventually, after about 6 years of 'marital limbo', the wife issued divorce and ancillary relief proceedings, seeking a lump sum of £1.53m to satisfy her reasonable needs. The husband failed to engage properly with the court process for a number of years: in particular he failed to pay the wife any of the interim maintenance ordered; by the hearing date the arrears were £89,000. The husband also persistently failed to comply with his duty of full and frank disclosure in the ancillary relief proceedings; not only was his Form E misleading and inadequate, but subsequent statements made by him proved equally misleading. It was eventually established that the husband had brought considerable assets into the marriage, but that these had reduced in value by the hearing date, in part because of poor decision-making by the husband. The main asset, the substantial matrimonial home (a working farm), which at the time of the marriage had been held in the husband's sole name, had been placed in a Jersey trust (through the intermediary of two BVI companies) before the separation. Although the husband denied being the settlor of the trust, he was viewed as such by the professional trustees. The trustees did not receive a letter of wishes until after the ancillary proceedings were underway, and there were no named beneficiaries. The wife argued that the trust was a nuptial settlement, subject to variation, and that the court could, therefore, require the trustees to provide her with funds. The total assets, including the trust assets, were valued at about £1.8m, but the couple had incurred between them legal costs of over £500,000 and there was a potential tax liability to the husband of up to £1.7m.

Held – awarding the wife £756,000 to satisfy her reasonable needs (to include the arrears of maintenance) –

(1) The husband and wife had each derived a benefit from the trust's main asset, the matrimonial property, because it had provided the husband with a home throughout, and had provided the wife with a home for some 4 to 5 years. Both the husband and wife had also lived off, and therefore derived a benefit from, the income that the whole of the farm enterprise (in its loosest sense) engendered. This produced a sufficient nuptial element to convince the court that the entire property, and therefore, the trust that held its ultimate title, constituted a post-nuptial settlement that the court was at liberty to vary as it considered fair and just. There were no other beneficiaries whose interests should be considered before making a variation, but, given the origin of the funds, the court should not seek to amend the settlement and to transfer assets unless needs demanded and fairness dictated (see paras [132], [133]).

(2) The court retained full jurisdiction in such cases, notwithstanding recent developments in Jersey case law. While the suggestion of the Royal Court of Jersey in *Re B Trust* [2006] JRC 185 that English courts ought to show 'judicial restraint' when dealing with assets held in Jersey trusts was to be taken into account, that case did not preclude the court from exercising its powers under s 24(1)(c) of the Matrimonial Causes Act 1973 (see paras [134], [135]).

Statutory provisions considered
Matrimonial Causes Act 1973, ss 24(1)(c), 25(2)
Recognition of Trusts Act 1987, Art 15
Jersey, Trusts (Amendment Number 4) (Jersey) Law 2006 (L 21/2006), Art 9(1)(d), (4)

Cases referred to in judgment
B Trust, Re [2006] JRC 185, Jersey RC
Ben Hashem v Al Shayif [2008] EWHC 2380 (Fam), [2009] 1 FLR 115, FD
C v C (Ancillary Relief: Nuptial Settlement) [2004] EWCA Civ 1030, [2005] Fam 250, [2005] 2 WLR 241 sub nom *Charalambous v Charalambous* [2004] 2 FLR 1093, [2004] All ER (D) 582 (Jul), CA
E v E (Financial Provision) [1990] 2 FLR 233, CA
Melvill v Melvill and Woodward [1930] P 159, CA
Miller v Miller; McFarlane v McFarlane [2006] UKHL 24, [2006] 2 AC 618, [2006] 2 WLR 1283, [2006] 1 FLR 1186, [2006] 3 All ER 1, HL
Mubarak v Mabarak [2007] EWHC 220 (Fam), [2007] 2 FLR 364, FD
N v N and F Trust [2005] EWHC 2908 (Fam), [2006] 1 FLR 856, FD
White v White [2001] 1 AC 596, [2000] 3 WLR 1571, [2000] 2 FLR 981, [2001] 1 All ER 1, HL

Valentine Le Grice QC and *Lynsey Cade* for the petitioner
Michael Glaser for the first respondent

Cur adv vult

BARON J:
[1] This is a claim for ancillary relief made by PD (to whom I shall refer as the wife) arising from the breakdown of her marriage to AD (the husband). The parties married on the 16 November 1994 and have two children namely C and B.
[2] This is a case with a tragically long history. A chronology of the proceedings has been produced which is now agreed. That chronology forms Appendix 1 to this judgment. The action starts in 2005 and ends with this date in October 2009. Thus, litigation has been ongoing for in excess of 4 years. Perhaps unsurprisingly, the legal costs are, in the context of the assets, horrific. The wife who has been represented throughout has racked up legal aid costs of some £312,000 odd (£454,000 on a solicitor and own client basis). The husband (who has acted in person for extended periods) has estimated costs of £201,000 odd. Therefore, using the wife's lower figures, the costs total some £513,000 and on the higher basis £655,000. This out of assets which were placed by the wife's advisers in opening at £3.2m (less potential unpaid tax currently assessed by Her Majesty's Revenue and Customs (HMRC) at a figure of some £1.7m (to which I shall refer as the potential tax)). By final submissions, even that asset base had reduced further because the parties accepted that Capital Gains Tax (CGT) had to be deducted from the main asset.
[3] In final submissions Mr Le Grice QC (for the wife) put the net assets at £2.16m less the potential tax. Mr Glaser (for the husband) put them at a mere £526,000 less the potential further tax. If this latter figure be correct then it is doubtful whether there would be any moneys available. For the reasons

which I shall explain, I find the current assets are about £1.8m less legal costs and less the potential tax. Thus, on any view the costs represent a mammoth proportion of the net assets.

[4] From my analysis of the papers and evidence the main reason for the wasteful expenditure lies primarily with the husband. It is a tragedy for this family because these moneys are no longer available to meet needs. Like so many cases such as this, I found that during the trial the parties wanted to highlight issues rather than concentrate on the figures. Perhaps, this is the reason why important calculations (for example, the CGT) were being presented to me for the first time in closing submissions.

[5] At the commencement of the trial the wife's open position was as follows:

(a) A lump sum payment of £1.53m net (either by way of lump sum from the husband or by way of variation of an allegedly post-nuptial settlement called the I Trust, so as to empower and require the trustees to pay her that amount comprising):

(i) Redemption of W's mortgage	£291,000
(ii) Redemption of W's liabilities	£55,000
(iii) A replacement vehicle	£25,000
(iv) Maintenance arrears	£74,126
(v) Capitalised income fund at £45,000 pa	£1,083,937
Total	**£1,529,063**

This sum was claimed to represent the wife's reasonable needs. The moneys sought were also, per the opening 'to provide W with a capital savings "buffer" and a "fighting fund" necessary for enforcement purposes'. In addition the wife sought her outstanding legal costs (some private and some which will constitute a charge to the LSC) to be paid in full. I am told if recovered from the husband they will, subject to assessment, automatically be on the solicitor and own client basis (thus the higher figure).

(b) A lump sum payment for the benefit of the children and their education totalling £274,000 (either by way of lump sum from the husband or by way of variation of the I Trust, as a post-nuptial settlement, so as to empower and require the trustees to pay to the wife of the said amount). The wife is willing to provide the necessary undertakings to utilise the lump sum of £274,000 to discharge the children's school and university costs and will further undertake to transfer any sums in remainder to the children absolutely forthwith upon completion of the son's full-time tertiary education. If the court deems it appropriate she is willing for these sums to be placed in trust provided she is one of the trustees or is able to nominate the trustees.

(c) The husband to pay child maintenance of £20,000pa and such payments to be secured.
(d) Upon payment of the sums referred to in (a) and (b) above a dismissal of the wife's claims in life and death.
(e) Dismissal of the husband's claims in life and in death.
(f) The husband to pay the wife's costs on an indemnity basis; such sum to be added to that in para (a) above in the event a variation of the I Trust is ordered.

The total capital for which she was contending was, therefore, about £2.25m plus retention of the net equity in her current home (about £120,000).

[6] The husband's offer dated 21 May 2009 did not give specific figures but he appeared to accept the following and I quote:

'(a) The Wife needs her house paid for in full;
(b) The Wife needs a family car;
(c) The Wife needs an income of £2,000 per calendar month (subject to inflation) plus £100 per calendar month in child maintenance.
(d) The husband will pay school fees for his son only as his daughter is now attending state school.'

No precise figures were put on those needs.

[7] The fundamental issues which were placed before the court at the commencement of the trial were as follows:

(a) the true beneficial ownership of the family farm of T Farm and whether the husband effectively controlled a Jersey settlement known as the I Trust which was the ultimate owner of those premises through the intermediary of two BVI companies known as CE and LW;
(b) whether, as a matter of English divorce law, the I Trust ranks as a nuptial settlement and thus is capable of variation by this court;
(c) the true extent of the husband's assets and income, given that the wife believes that he had undisclosed wealth;
(d) the true length of the marriage;
(e) whether a fund for school fees should be set aside;
(f) the effect of the husband's conduct in respect of diminishing the value of the assets available for distribution;
(g) the effect of the husband's litigation conduct;
(h) the relevance of HMRC's claim to tax arising from the husband's (or related entities) failure to account for tax on:

(i) farm profits from about 1992 onwards;
(ii) CGT when the farm was transferred from the husband's name into the name of various other entities and/or upon sale;
(iii) the income which it is alleged by HMRC was obtained as the result of the tipping of soil and waste products (the tipping income) upon the land at T Farm;

(i) whether the husband should be penalised for the reduced value of T Farm (assessed by me at about £1.05m) by reason of the tipping which was not authorised by the relevant planning authority with the result that enforcement notices are still extant;
(j) the parties' needs and the appropriate division of the assets.

The value of T Farm

[8] I determined the value of T Farm at a hearing on 6–8 April 2009. I found that the underlying value was (and is) £4.25m less a deduction of £1.05m as a result of the unauthorised tipping of waste products on the land. Accordingly, for the purposes of this hearing the value of that property is £3.2m less costs of sale and inherent CGT.

[9] The core issue to be determined is whether the I Trust is a post-nuptial settlement capable of variation by this court under s 24(1)(c) of the Matrimonial Causes Act 1973 and/or whether T Farm is an asset readily available to the husband and, as such, is a 'resource' under s 25(2) of the MCA 1973. It is clear that the property has been the husband's home and business since (at the latest) 1973 and the farmhouse was utilised as the parties' matrimonial home during the period of 1995–1999. Despite this, the husband denies any beneficial interest in T Farm which he maintains is held (via companies) by the I Trust solely for the benefit of his three children and his sister. He puts his occupation down to a licence which was granted by the former trustees who were a company based in Jersey called the LT. That company is no longer in existence and so in November 2008 pursuant to a deed of retirement and appointment new trustees were put in place (being another Jersey firm) called HT.

Closing positions

[10] At the end of 2 weeks of evidence the parties had each amended their positions as follows:

(a) The wife

A lump sum of £1.2m made up as to:

(i) Moneys to repay her mortgage	£293,000
(ii) Moneys to cover her debts	£52,000
(iii) Moneys for a car	£25,000
(iv) Moneys for the son's school fees	£150,000
(v) Duxbury Fund (£37,000 pa)	£680,000
Total	£1,200,000

I understand from Mr Le Grice QC that the *Duxbury* fund was a product of the lump sum sought rather than a scientific calculation based on the wife's long-term needs. In addition, the wife sought to retain the equity in her home and her indemnity costs on a solicitor and own basis of £454,000 being a total payment out of £1,650,000 odd.

(b) The husband

A lump sum of £460,000 (to be raised from borrowing against T Farm) made up as to:

(i) Moneys to repay the wife's mortgage	£293,000
(ii) Moneys to cover the wife's debts	£52,000
(iii) Security for school fees and periodical payments	£115,000*
Total	**£460,000**

* This sum was said to represent security for the periodical payments at (iii) for '3–4 years' based upon the wife's income need of say £10,000 pa and school fees for B of say £25,000 pa.

The husband also offers an arrangement, per their letter dated 19 October 2009, whereby the trustees of the I Trust 'will, subject to legal advice, agree to a second charge to be obtained for security of £250,000 or any lower amount as the court assesses, exercisable one year after Mr D's death'. Apparently, this arrangement is said to guarantee belated payment of the wife's costs up to this sum. Given the amount of her costs, this would not cover them in their entirety and would not be payable for many years with the result that an unknown amount of interest would accumulate on the outstanding debt.

[11] It is immediately apparent from the above outline of their final positions, that the issues have narrowed considerably and the only financial issues which I am now asked to decide are:

(i) the amount for a suitable car;
(ii) whether a school fees fund is financially feasible; and
(iii) the amount of the wife's periodical payments and whether they should be capitalised.

The husband's failure to comply with his duty of full and frank disclosure

[12] To my mind, to spend some £5–600,000 on this type of issue would be regarded by many as foolish but, as I note in so many cases, adults can spend their moneys as they wish. However, once spent, funds are not available to meet reasonable needs. Unfortunately, this court was never able to reduce expenditure on costs because the parties' positions were so polarised and, as I find, the husband made the task more difficult by his attitude to the litigation.

[13] It is accepted by Mr Glaser (counsel for the husband) that his client did not give full and proper disclosure at the outset of this litigation. His Form E was, as I find, misleading and woefully inadequate. Moreover, I am satisfied that a number of statements made by him in affidavit have been proved to be equally misleading. Counsel for the wife have produced a summary of his 'failure to comply with his duty of full and frank disclosure'. Although this document was only produced for final submissions, its contents were not gainsaid by Mr Glaser (who had it overnight) and, having heard the evidence, I accept that that document is an accurate record of the husband's most serious defaults. In the course of this judgment I will deal with a number of the matters raised therein and highlight many of the ways in which the husband sought to mislead the court. However, for the avoidance of doubt, I

state at the outset of this judgment that I accept that this husband gave misleading evidence about the I Trust and his role within it. As a direct result of this failure, the wife has been put to added expense and effort in order to discover the truth. The additional work involved, inter alia, the obtaining of production orders and letters of request to the court in Jersey in order to discover the truth. All this added to the costs and it can be laid fairly on the husband's shoulders.

The husband's non compliance with court orders

[14] Mr Glaser also accepted that for 'the first 2 years' of this litigation his client failed to engage properly with the court process. I consider that that limited concession is well made. In fact, the wife's advisers consider that the husband's default has been greater than the concessions made and I accept that submission. Her counsel have produced a schedule of his 'Non-compliance with Court Orders 2006–2009' which speaks for itself and illustrates his contemptuous attitude to several court orders. I accept that it is an accurate record of his most serious defaults. Most importantly. from my perspective, is the husband's complete disregard of an order made on 3 March 2006 whereby he was ordered to pay maintenance to his spouse at the rate of £2,000 per calendar month. The arrears outstanding now total £89,000 odd. In reality, no payments have been received and this is a very relevant circumstance when considering his counsel's submission that this court should countenance continuing an order for periodical payments as opposed to capitalising them.

The children of the family

[15] The parties have two children C who was born on 25 April 1995 (14 1/2 years) and B who was born on the 12 July 1996 (13 years). Until recently both children attended private day school, lived with their mother and saw their father for regular contact. Recently, these arrangements have altered.

(a) C was at W School (albeit that her fees were not always paid on time). She appeared to be doing relatively well but was unsettled by this litigation and currently believes that her mother has been rather unfair towards her father. As a result, she has gone to live with him at T Farm where she has no less than five ponies and a large pet mastiff. Her father has enrolled her at a local state school (B School) as a day girl. He maintains that her current relationship with her mother is not good with the result that C only sees her intermittently. The wife told me (and I accept) that she still has a good relationship with her daughter and I note that she came to court with her on one occasion. The wife points to the fact that C has moved from home on previous occasions when, for example, she found the discipline not to her liking but she then returned. The wife considers that C will move back with her in the fullness of time. Obviously, this teenager is at an age when her views are not likely to be ignored. That established, having seen her parents, I would not be surprised if allegiances within this family wax and wane from time to time.

Accordingly, it is necessary to ensure (if possible) that each parent has a home for this child.

(b) B attends C School as a day boy. He is good at sport but is dyslexic with the result that he is rather behind in his academic work. His father referred to him as '*thick*' but I expect that he is brighter than his schoolwork to date might suggest. Currently he is redoing his last school year because his mother believes that this will improve his confidence. His father would like him to board and attend B School. The fees for these establishments total some £25,000 pa. Thus, that 5 year course (if completed) would cost in the region of £125,000. The wife would like these fees to be secured in some way. In fact, she has indicated that she would be prepared to reduce her own needs provided that her son's education is prioritised. I am being asked to determine whether this is feasible. I have come to the sad conclusion that it is not possible to set aside any fund for future schooling because the parties' underlying needs are so great that the current assets are required to cover them. It will, therefore, be for B's parents to decide whether they make provision for his private schooling from their own limited resources. It may be that private day school is feasible but I doubt that boarding school is financially feasible without great personal sacrifice. Accordingly, I decline to make any order setting aside funds for prospective school fees.

The factual matrix

[16] I will now set out the relevant facts as I find them. For the avoidance of doubt, insofar as the matters set out differ from the evidence of the husband, the wife or other witness this is because I have preferred the evidence of another or because I consider that the documents produced confirm my finding of fact.

[17] The wife was born on the 13 March 1956 (53 years). She has one son by a former relationship (now independent). During his childhood, the wife was a single parent and I have no doubt that she had to work hard to support herself and her son. She is a resourceful woman and was able to make ends meet by undertaking a number of different (albeit not particularly high paid) jobs. Since her marriage to the husband she has concentrated upon caring for the children but accepts that she will have to earn some money in the future. She is taking a course as a beautician which she will complete in mid 2010. Until that time she will be without income. Thereafter, she would like to work on her own account and anticipates that she might earn about £8,000 net pa plus commissions on the sale of additional beauty products. She will also be able to claim working tax credit. I asked for detailed calculations from her team but received no concrete figures. Mr Glaser calculated that she should be able to achieve some £13,000 net pa. I consider this sum is rather ambitious given her age, her role as a mother and the economic climate. Doing the best that I can, I consider that from mid 2010 she should be able to earn about £10,000 pa possibly a little more. These earnings will last for about 10 years until she retires at about age 65 years.

[18] As B lives with his mother (and as I doubt that she will receive any regular moneys from the husband to assist with his costs) I consider that her earnings are likely to be used for his needs, including any contribution towards his schooling which she feels able to afford. B is only 12 years old and so I would expect that his needs will predominate during the bulk of the wife's working life. In addition, I expect that she will have to care for C from time to time and her earnings will help to augment that expenditure. The parties have not invested me with power to make any order for periodical payments for the children. Of course, the wife may be able to claim child maintenance through the State agency but, having assessed the characters before me, I am not confident that she will receive regular subventions for the children. In the light of these findings, I find that the wife's earnings, such as they are, will not impact upon her own personal medium or long-term financial needs when I come to assess them under s 25. She is no longer a young woman and when she retires, given her working life, I am clear that she will never earn enough to be wholly self-sufficient. Moreover, she will be vulnerable in the longer term because she does not have any proper pension provision.

[19] The husband was born on 2 September 1938 (now 71 years old). His father was a carpenter by trade and, as I understand it, worked hard to provide for his family. The husband has one sister called Mrs M. He married for the first time on 7 December 1959 to G. They had one daughter Z who was born on 23 June 1958 (51 years). The husband began his working life by undertaking some speculative property developing. It would seem that after some two building projects he had sufficient 'grub stake' to follow his real passion which was farming combined with the keeping/training of race horses.

[20] In about 1968 the husband, G and his father bought a farm called H Stud. In his affidavit the husband claimed 'this stud was effectively purchased by my father. He kept his 1/5 share and then gave G and me 2/5 and my sister Mrs M and her then husband the remaining 2/5 share'. At first, in his oral evidence the husband said that his father had funded the purchase of the stud because 'although he was only a carpenter he came from a farming family'. Later he said that the capital for the venture came from 'the sale of both their homes' – meaning his/G's and his father's own house. He added that, it was only after some time that Mrs M and her husband bought shares and came to live at the stud.

[21] A third version of events emerged from the husband's affidavit of means to which he deposed in his first set of divorce proceedings (that is against G). In that document he stated 'In 1965 my father transferred to me, without incumbences (sic), a house known as and situated at [B Road]. Both the Petitioner and I occupied these premises. In 1968 I sold this property for the sum of £5,500 … I then purchased a farm known as ["H Stud"] … this was purchased with the assistance of a mortgage from the Pearl Assurance Co Ltd. This property was sold in March 1973 for £80,000 and the proceeds, after the discharge of the mortgage, was (sic) then used to purchase [T Farm]'.

[22] Each version is distinctly different. The reason for these inconsistencies is simple. As I find, this husband is, without much

compunction, accustomed to tailoring his evidence so as to fit the needs of the moment. If necessary, he is simply prepared to alter history to suit his perceived requirements.

[23] Mrs M gave me yet another version of events. She said that her husband worked as a speculative builder on his own account and had been quite successful. She said that the same was true of the husband and the two husbands had decided to work together and, as such, contributed equal amounts of capital towards the purchase of the stud. She said that it was agreed that Mr D Senior would be given a 1/5 share to mark the moneys that he had 'loaned his son/son in law over the years'. By the date of purchase, Mr D Senior had retired from his work and was in his late 60s.

[24] For the avoidance of doubt, on the balance of probabilities, I accept the following scenario as being the truth. Mr D Senior gave his son his house in about 1965 on the basis that he would have a home with him and be cared for for the rest of his life. The husband improved that property and developed one (or, possibly, two) other houses thereby making a profit and obtaining his 'grub stake'. That capital plus the moneys from the sale of B Road were used to purchase H Stud with a mortgage. Mr and Mrs M joined in with the purchase at a later date and contributed capital. It was agreed that each adult would have a 1/5 share of the new enterprise to mark their contribution. Mr D Senior's input being through the notional capital that had been held in B Road. I have seen no evidence to corroborate the assertion that he had loaned his son/son-in-law funds, or, as the husband put it, funded their business ventures. I do not accept that assertion because, as I find, it is highly unlikely that Mr D Senior, given his job, would have been able to acquire significant capital (apart from his house) during his working career. I am also clear that he had given the equity in his house to his son outright in about 1965. I do not know why it was thought prudent to give him a share in H Stud but I expect there were good reasons at the time.

[25] The family worked the stud farm and the husband developed his expertise with horses. He obtained a full training licence and, consequent upon his skill, became a very successful 'gambling trainer' as the term of art would have it.

[26] The husband stated in affidavit that the parties decided to sell H Stud because the M's marriage began to falter. He said 'However, in or around 1968, [Mrs M] and her husband divorced … as part of the divorce settlement [Mrs M's] husband kept his 1/5 share and *also took [Mrs M's] 1/5 share*. [Emphasis added] This forced the sale of H Stud'.

[27] Mrs M told me that, when the stud farm was sold, she bought a house with her husband in F Row and, thereafter, they acquired a small-holding because she wanted to return to farming. She said that their divorce had occurred at a much later date than that canvassed by the husband and confirmed that it was not causative of the sale of H Stud. She also informed me that, when her marriage ended, she had received her fair share of the M family capital albeit she did not receive any maintenance to support her or her five children. I accept Mrs M's evidence on this point. This evidence is important because it is contrary to the husband's stated position that Mr M took the full 2/5 share of H Stud for his own use. According to the husband,

Mr M's wrongful actions were the reason why, as he alleges, Mr D Senior wanted Mrs M to benefit from part of his (that is the father's) share of his notional estate after his death.

[28] The husband explained that on about 28 March 1973 the remaining 3/5 of the net proceeds of sale of H Stud were used to purchase T Farm. This was bought in the husband and G's joint names. The husband explained this as being his father's wish because 'he had emphysema' and agreed that he should not have any share of T Farm to avoid the potential payment of tax on his death. His father's only stricture, according to the husband, was to look 'after my sister [Mrs M] after he died which he eventually did in 1979'. Obviously, this explanation falls by the wayside given the husband's incorrect version of events. I consider that it was only advanced because it was the husband's excuse as to why Mrs M is an alleged beneficiary of the I Trust with a 25% share.

[29] In his oral evidence (and after hearing Mrs M give evidence) the husband modified his original account and informed me that, if it was not for the divorce, then it was still the case that Mrs M's husband had effectively forced the sale of the stud. He continued to assert that she had a share in T Farm because her husband had failed to support her and, as a result, Mr D Senior considered that she deserved some further compensation.

[30] The husband told me that his father had been most clear that he wanted his daughter to have a share of T Farm or his notional estate after his death. Mrs M told me that she had also understood that this would be the case. I do not accept these propositions because Mrs M had been given her due share of the stud and was on a financially sound footing. Moreover, I note that Mr D Senior had already given his assets solely to his son (when he made his original home over to him) without any such requirement.

[31] It may be that the husband thought that if his sister were ever in real need, it would be compassionate to help her, as he put it, 'to some extent' but this never amounted to giving her a substantial share in T Farm. Accordingly, for the avoidance of doubt, I do not accept the husband or Mrs M's evidence on this part of the case. The reasons advanced are fanciful and I note that the husband has not assisted (or had the need to assist) Mrs M for the last 30 years. Indeed, if his evidence be correct she has helped him. I am reinforced in my finding because, inter alia, I note that Mrs M has made no attempt to recover any such share for the last 30 years. Rather more importantly, she has taken no steps to ensure that her 'investment' in T Farm has been properly managed on her behalf. Over the years, as I shall explain more fully below, the farm has been transferred to various offshore entities and it has been mismanaged by the husband with the result that its value has been reduced very substantially. If Mrs M had any real expectation to a share in the farm, I have no doubt having seen her, that she would have taken effective action over the years. In any event as she told me she is financially comfortable and has no need of the funds.

[32] I am clear that the real reason for this brother and sister to claim that Mrs M has a share in T Farm is the perceived need to support the husband's submission that, together with Z and the two children of this marriage, Mrs M is a beneficiary of the I trust. Their assertions are simply fiction.

The husband's first divorce

[33] The husband's marriage to G crumbled in the early 1980s and she filed for divorce on 15 February 1983. He says that she was tired of his 'wild ways' and, in these proceedings, has asserted that this was because he drank and gambled to excess. I note that G's petition does not cite these matters but details his relationship with another woman and gives other examples of his unreasonable behaviour towards her, including his threats 'that he [would] prevent her from obtaining money' from him.

[34] In his affidavit of means dated 8 May 1984 the husband stated:

> 'The former matrimonial home is in joint names (sic) of myself and the Petitioner and was purchased on the 28 March 1973 for the sum of £60,000. The Petitioner contributed the sum of £14,000, my contribution the sum of £30,000 and the balance of £16,000 was given to myself (sic) by my father. … Making a total of £60,000. The Petitioner's and myself's (sic) contribution came from the proceeds of sale of our previous home.'

[35] He valued T Farm about £360,000 less a mortgage of £157,009, giving it a then equity of some £200,000. He did not mention any capital which, as I find, it was likely that he had retained as a result of his successful gambling exploits (of which more below). I was informed at one hearing that G had retained a share of T Farm after their divorce. Moreover, in affidavit, the husband asserted that G had retained a life interest. In the light of this, I made an order that his first divorce file be produced. The documents contained in that file proved such claims to be ill-founded.

[36] That file revealed the ancillary relief order which was made by consent on 11 November 1983. The order was approved by Registrar Segal (as the District Judges were then known). It shows that G was only ever granted a licence to remain on such part of the farm as she then occupied for so long as the lump sum due to her remained unpaid. The total agreed lump sum of £50,000 was payable in four instalments over a 3 year period. Most importantly, the order provided that G should transfer her interest in the farm forthwith upon payment of the first instalment which was due and payable upon the making of the order (namely November 1983). She was also awarded periodical payments of £50 per week.

[37] Mrs M told me, and I accept, she felt that:

(i) G had not received her proper entitlement upon divorce; and
(ii) her brother had been ungenerous – albeit that he had supported his former spouse with income thereafter.

[38] In his latest affidavit, the husband stated that, upon divorce, G stayed at the farm for a period but eventually moved to Ireland where she formed a relationship with a Mr W. I do not accept the last part of that contention. I am clear and accept that, in accordance with the terms of the order G remained living in the farmhouse for a period whilst awaiting payment of her lump sum. The husband states that she kept 'her' horses there for a longer period. I do not accept that in the sense that, although the animals were in her name, in reality they were always the property of the husband. He trained them and G was

merely the registered owner. In short, I am satisfied that the husband was responsible for making all the financial decisions and that G was simply compliant.

[39] The husband told me that he realised that G 'got a raw deal on divorce especially as she was the backbone of building the farm up'. He said that, during the period after their separation, the farm might have been lost because he was drinking and gambling. He now asserts that G was the reason why the farm survived although I very much doubt that:

(i) he would have given her such accolades at the time; and/or
(ii) that this claim is correct.

He said that Mrs M persuaded him to give G more funds but I have no details of what sums, if any, were involved.

[40] I am convinced this husband was parsimonious when it came to giving G a share of what he regarded as his money, albeit that later when she was in favour he was prepared to be more generous. That attitude towards his resources continues to this day. Certainly, he feels very aggrieved that the wife in this case (whom he considers made no real contribution to the farm and which is, as he described it, a 'D' asset) should be seeking 'to get her claws' on such a large share of the family wealth given that it was essentially built up before their relationship/marriage began.

[41] Eventually, G moved to live with Mrs M before buying her own property in Ireland. I have no clear date when G left the UK but it was probably in the late 1980s after she had received her lump sum per the court order. She went to Eire because her daughter, Z, was already living there with her then partner and their two young children.

[42] I had the clear impression that Mrs M had been close to G throughout and remained in contact with her. I asked Mrs M whether G had formed any attachments whilst in Ireland but she did not have that impression. She thought G had one relationship, which did not seem serious with a gentleman whose name she could not recall. The same question was put to Z. She could not recollect her mother having any serious relationship even though they lived close to one another and met regularly. This evidence is important because the husband has claimed that G was closely involved with Mr W. In his replies to questionnaire the husband stated:

> 'The respondent did operate a bank account in the name of [Mr W]. [Mr W] *was the partner of the respondent's first wife [G]* [emphasis added]. At one time he was considering purchasing [T Farm] but the transaction did not proceed. Instead [Mr W[returned *to live in Southern Ireland with [G]* [emphasis added]'.

[43] After hearing Mrs M's evidence in the witness box, the husband moderated his case on the degree of G's attachment. In his oral evidence before me, he said that they were only good friends with separate homes. He said the use of the expression 'partner' was meant to refer to their being involved in a modest business buying antiques, renovating them and selling them through auctions. In court he did not suggest that they had had a full relationship and indicated that he had only met Mr W in passing on his

occasional trips to Ireland. The husband was clear that he did not know Mr W well and had only met him a few times. It is obvious to me that the husband has altered his evidence in relation to Mr W's relationship with G. He did so only because his original assertions had become untenable and this is yet another example of his ability to trim evidence to suit.

Mr W

[44] The husband told me that Mr W was a respected member of the community and had been a civil engineer before his retirement. The evidence shows that Mr W lived in a cottage near Waterford. The husband said that he was perceived to be a wealthy man although I note his modest housing might belie this claim. Mr W is an important character in these proceedings because he is supposed to have:

(a) loaned the husband vast sums of money (between £300–£500,000); and
(b) permitted him to operate a bank account and sign cheques in the name of '[Mr W]'.

[45] In order to convince the court that this gentleman might have been inclined to act in this manner the husband originally decided that it was prudent to emphasise that he was G's partner by which I am sure he meant 'life partner' as the modern expression would term it. As I find, all this evidence was a tissue of lies. I observe that it has been impossible to check the assertions because Mr W has not been traced. In answers to questionnaire and in solicitor correspondence the husband stated that he was trying to make renewed contact with Mr W but, in fact, as confirmed in oral evidence these assertions were incorrect because the husband made no efforts at all to trace this man.

[46] I accept Mrs M's and Z's view of G's situation after divorce. G did not receive a fair financial settlement and was only able to buy a modest home. She had a small income from the husband by way of maintenance and supplemented her needs by a low level business dealing in antiques. I do accept that over time the couple had a rapprochement with the result that the husband helped G with some renovations to her cottage and, provided it was on his terms, was prepared to help her financially on an occasional basis with some extra cash payments. That stated, I do not believe that he gave her significant amounts.

[47] I am clear that the husband had some financial interests in Ireland probably arising from his gambling success. I have no detailed evidence that would permit me to assess what was held in Ireland at any one period or what remains. All I know is that for a period the husband had, at least, two or three separate bank accounts held jointly with (a) G and (b) Z. I accept that he may have used the account with Z because he dealt with her mother's estate on G's death in 2004. However, the reasons he needed an account with G is shrouded in mystery. It is the husband's case that G assisted him with the paperwork associated with T Farm and effectively ran the financial side of farming business from Ireland. I doubt that this explanation is true. I believe that he ran the farm as he had always done on his own terms and for his own benefit. I am clear that the husband has been accustomed to use other people's

accounts on an ad hoc basis as if they were his own. For that reason it has been impossible to trace funds with any ease.

The husband's gambling

[48] The husband states that in the late 1970s–early 1980s he was a very successful gambler. He was, of course, an excellent trainer until he gave up his licence in 1992. He told me that it was easy to gamble because his maternal uncle had a string of betting shops in the East End where bets could be placed without questions being asked. They were then laid off so that the relative did not sustain substantial losses.

[49] I accept that the husband became a master of the 'betting coup'. An investigative journalist with the *Sporting Life* put his success in the following terms in an article:

> '… Secrecy has always shrouded the career of [Mr D], the controversial gambling trainer, protecting him and his complicated business life from the unwanted attentions of the general public.
>
> Before embarking on his long, studiously low key career as a trainer of race horses, [Mr D] instinctively ticked the 'no publicity' box. A decision that he has stuck by with single minded dedication for 30 years going about his business without apparent reference to anybody else.
>
> The secrecy extends to those involved in the yard whose operation calls to mind the days of Druid's Lodge when lads were locked in the dormitories at night to prevent them from mixing with tipsters and touts.
>
> One jockey who has ridden for [Mr D] in the past remembered "he was *a very shrewd old operator* [emphasis added]. Although I rode regularly for him, I never once rode work for him or even set foot on his land. I would be contacted by his assistant about the ride and leave a message on an answer phone without any spoken message".
>
> A former assistant remembered "[Mr D] liked to play his cards close to his chest. None of us knew what half the horses in the yard were called".
>
> [Mr D's] desire for privacy had not simply meant avoiding the company of jockeys and journalists and refusing to give interviews: it meant not revealing anything to anybody about his horses, his yard or the running plans of his horses. Throughout his career, [Mr D] refused ever to list his string in that annual record of the training profession Horse in Training. This omission was typical unless absolutely forced to by regulation [Mr D] would rather the racing public knew nothing about his operation.
>
> He has largely succeeded although the extent of some of the [D] gambles – however well disguised – gave him a notoriety in the betting ring. In December 1978 a gamble at Leicester is alleged to have netted [D] £250,000 when Great Things won at 33–1.'

[50] In his affidavit in these proceedings the husband accepts that he was 'hugely successful in the 1970s and early 1980s'. Indeed, the husband told me that the level of winnings in the above mentioned article had been under-estimated. He accepted that he had won in the region of £500,000 by placing numerous small bets in Ireland. He confirmed that, whilst some

bookies did not pay out, he had received about £400,000 net from this series of punts. In addition, he agreed that, during this period, there were other six figure betting coups and he became 'notorious' as a successful punter. He claimed that most of the money was kept in cash 'in a safe place in the farmhouse'. He informed me that the Inland Revenue investigated matters at the time because they considered that his betting gains had been earned in the course of his business but, in the event, no tax was charged. In fact, the husband told me that in the early 1980s he had shown a tax inspector his cash stash but even, on this evidence, it had been agreed that no charge to tax was appropriate.

[51] Accepting that the husband made significant sums in this way, it might have been thought that part of his 'winnings' would have led to detailed disclosure in his affidavit of means in 1984. However, there was nothing set out in the relevant documents and it is obvious that he did not admit to any cash in the divorce proceedings with G.

[52] The husband maintains that after huge success came abject failure because he took to drink and gambled at casinos in London. He also claims that he lost his successful training career through that excessive drinking. I acknowledge that he gave up his training licence in 1992 but it would seem that, despite this, he continued to operate in the racing world through associations with a Mrs L and a Mr Fl.

[53] In 1998 the husband and Mrs L were warned off by the Jockey Club for 6 years because of the manner in which a horse (trained by Mrs L with the husband's assistance) was placed in a race under the name of another trainer in contravention of the rules. I understand that this was part of a successful betting coup in 1994 which paid out long before the Jockey Club inquiries began.

[54] The husband told me that over time from the late 1980s to early 90s he 'blew most of the money' that he had won. He maintained that his gambling was so out of control that he had accumulated debts of about £300–500,000. His financial difficulty was, he says, so severe that he risked bankruptcy. He told me that Mr W agreed to bail him out and so, over time, T Farm was transferred to this gentleman as 'security for the debts' albeit the husband thought that Mr W 'only had a charge' over T Farm.

*The W '**Loans**'*

[55] The husband said that when he told G of his financial predicament, she asked Mr W to lend moneys to him. According to the husband, he did not speak directly to Mr W but, despite this, Mr W was prepared to lend him huge amounts. The husband could not recall the precise amount that he needed and I note that his best estimate of £300–500,000 would be up to £200,000 adrift. The husband thought that the money came in 'small amounts between £10,000–£50,000' and was transferred from Ireland in cash. He said 'The cash was delivered by someone who had been in Ireland who was coming back to England – it might have been [G] or someone on [W's] behalf'. The husband supposed that Mr W kept a ledger but he never asked for the sums to be confirmed. There was no interest payable on the moneys outstanding and so there was no apparent advantage to Mr W in extending these enormous

amounts. It is accepted that Mr W was neither a longstanding friend nor was he a former business associate who could be expected to have a particular degree of trust in the husband.

[56] There are no documents to confirm the alleged loans. The husband thought that the moneys had been loaned because '[*Mr W] trusted [G]*'. He put this proposition forward despite the fact that G, per her affidavit in their divorce proceedings, said that the husband was secretive about his finances. There was no specified date(s) for or guarantee of repayment.

[57] The husband informed me that he repaid Mr W from various undisclosed sources over 3 years so that the debts were repaid by 1997. Mr Le Grice QC (acting for the wife) totalled the farm income over the relevant period to £189,000. The husband indicated that the shortfall to repay Mr W must have come from renewed success in gambling.

[58] I am clear that the only reason why these 'loans' have been raised before me is because the husband had to have some excuse as to why T Farm was transferred (as detailed below) into the name of Mr W and thence into the names of other entities. I am wholly satisfied that the whole story about the loans is yet another tissue of lies. I do not accept that Mr W lent any moneys at all. I note, for example, that there is no connection between the amounts 'loaned' and the moneys supposedly 'paid' for the land by which the loans were supposed to have been secured until repaid at a later date.

The W Account

[59] In about 1992 a bank account in the name of Mr W was opened at Barclays Bank. It would seem that a gentleman called Mr W and the husband presented together at the branch where the husband was well known and had a compliant bank manager, a Mr G. It was agreed that the husband would have permission to operate the account. I remind myself that the account was opened before ever more strict regulations were in place to ensure that banks had full and clear proof of their customers and the source of their moneys. The husband maintained that the account arrangement was appropriate because G kept 'her' horses at T Farm. I have already expressed the view that the horses were in her name as a matter of paperwork rather than reality. Therefore, I do not accept that excuse. I do not know why the bank sanctioned the arrangement but I am wholly satisfied that Mr W did not operate or fund that account. The account was operated by the husband and he signed the cheques in the name of Mr W (and not as Mr D). I am clear that the husband operated it as if the account was his own and, in reality, Mr W had no interest in it.

Z

[60] At some time in the 1990s Z left Ireland to return to South East England because her relationship had ended. I accept that her eldest child (now aged 22 years) remained with her former partner in Eire whilst she retained custody of her youngest daughter, GE (now aged almost 16 years). Once back in the UK, Z found a new partner and had two more children now aged about 8 and almost 6 years. She lives at the S Stud which property is held in the name of her putative 'mother-in-law'. It is run as a stud and training yard although she retains a satellite yard at T Farm. Z would appear to have been a moderately successful trainer in her own right. Her father told me

that he had made a number of monetary 'gifts' to her over the years but could not put a figure on the amounts advanced. All I know is that he wound up G's estate and made moneys over to Z as he deemed appropriate. Accordingly, I do not know what funds represent those moneys and what he gave from his own resources. The arrangement was based on trust between father and daughter. I have little doubt that the sums must have been significant because, at one time, Jersey trustees were advising him to ensure that his 'loans' to Z were marked by her having a share in the stud premises.

[61] I am clear that in the past Z has had a rather turbulent relationship with her father. For the present, however, they are reconciled and she presented to me as a devoted daughter who was very supportive of her father. I have no hesitation in finding that, by his lights, the husband has been generous to his daughter and, over the years, he has assisted her with money and advice. Z's finances, upon her own admission, would seem to be rather insecure and I am confident that she is still in business because the husband has assisted from time to time. In this way the husband has already made a proper contribution towards Z's needs. As such, I do not consider that he would have made her an equal 25% beneficiary in the I Trust because she has obviously already had so much from him. For that reason, I remained wholly unconvinced that she ever was (or was intended to be) a beneficiary of that trust. In fact, I am clear that, save for the need to present her as such in this litigation, she never was a beneficiary of that trust.

[62] By 2000 G (who was still living in Ireland) was suffering from terminal cancer. It would seem that the husband assisted her and there was a further significant rapproachment between them. Certainly, he told me that he had sold goods on her behalf whilst she was alive (although it was unclear what has become of the proceeds). I understand that some nice items of G's furniture are currently in T Farm. G received the last rights in hospital in Ireland. The husband told me that both he and Mr W were present but having heard Z, who was also at the hospital with her mother on this occasion, I do not accept that Mr W was ever there because Z did not see him. She said that she saw only her father and I accept that evidence.

[63] Against the odds, G survived on that occasion and returned to England in about 2002. She went to live with her sister (who had a suitable annex to her home) eventually dying in 2004. The husband helped to sell G's remaining belongings and repatriated items/some cash to the UK. I do not know why the husband performed this role, save that Z was probably content to permit it. As I have already pointed out, I do not know how he accounted to Z for the moneys which he raised. He told the trustees in Jersey that he had a property in Ireland. I am convinced that he was referring to G's house which, because the moneys had emanated from him, he still regarded as his own. I so state because the dates in the trustee memoranda coincide with the period when he was managing G's affairs.

T Farm and illegal tipping on the land

[64] Despite his protestations to the contrary, I am completely satisfied that after his divorce the husband continued to manage the farm business. It would seem that in about 1993 (from a date which I cannot specify with more particularity) the husband began to permit the tipping of waste on to the land at T Farm. He told me that this was in order to improve the quality of the

agricultural land for cattle and flatten land for the training of race horses. He said that T Farm had been in bad order when it was purchased with, for example, a number of unfilled bomb craters which had been left since World War II. In order to make the best of the land he needed to level areas. He was clear that this would rank as an agricultural benefit. He said that he permitted screened soils on to the land in order to effect the necessary infill and improvement. He did not consider that this type of work on farmland required planning permission because the 'Ministry of Agriculture' had so indicated and, at one time had offered him 'a grant'. He told me that he had actually had to pay for lorry loads of top soil.

[65] Unfortunately, as I find, his position in relation to planning was not shared by the county council who were (and are) responsible by statute for waste management in the area. The relevant department believed that the materials which were being brought on to the land contained waste products and, as such, required planning permission. The husband did not apply for it and, for an extended period, tipping continued without any permission.

Difficulty with the planning authority

[66] When the county council became involved the husband believed that their stance was unreasonable and, as I find, he was determined to fight/obstruct it. In July 1991 the county council, issued:

(i) a stop notice requiring the cessation of the waste disposal; and
(ii) an enforcement notice requiring the land to be remediated.

[67] I am convinced that the husband considered that he could avoid the council's requirements by making it difficult for them to deal with enforcement. In the light of this, he decided that the best way of diverting attention was to transfer T Farm to other entities. As set out above the husband told me that the land was transferred to Mr W to repay debts but that explanation was false because, as I find, the real reason was to cause the council to search for Mr W. The council set a private investigator on to the case. He found a Mr PW at a known address. Whilst it may be that this Mr W was:

(a) Mr JPW; and
(b) was known to G or the husband, I am certain that he had nothing to do with running the farm and did not own it.

Equally, I am sure that he had not loaned the husband moneys, did not pay for the land and so was not entitled to any transfer of the land and/or buildings at T Farm.

The transfers of T Farm

[68] Documents show that the farmhouse was 'sold' to Mr W on about 13 April 1992 for £245,000. It would also seem that titles SY12345 and SY654321 were transferred to Mr W on that date. These transfers were registered at the Land Registry on 23 October 1992.

[69] In passing I note that the husband had already launched an appeal relating to the enforcement notice but it was dismissed by the inspector in

June 1992. The husband was, therefore, required to remove unauthorised waste and carry out work to restore the land to an acceptable state.

[70] At about this time, a UK company called S was incorporated. The husband told me that he believed that this was 'the trading name in the UK of a Gibraltar trust' which he maintained G had set up to hold land at T Farm.

The Gibraltar Trust

[71] It is husband's case that in 1992, at G's insistence and because she wanted to ensure that T Farm was '*secured for Z*', T Farm was put into a settlement set up by Price Waterhouse (as they were then called) in Gibraltar. The husband told me that G used her own advisers and she took the lead because she was interested in the land. Most unfortunately, there is no written evidence about this trust. The husband asserts that the documents may have been lost because G's documents were in a container which became damp and vanished thereafter. As to the absence of his own copies, he believes that the wife removed documents from T Farm in about 1997. I do not accept his assertions. Indeed, I do not accept that this alleged trust ever came into existence.

[72] Whilst there is documentation which shows that a company called G was incorporated in Gibraltar, I have no information about it and it would not seem that any part of T Farm was transferred into it.

[73] The husband claims that the Gibraltar settlement was called the I Trust and asserts that Z was the only named beneficiary. He told me that his sister was not a beneficiary because her ex-husband 'was back on the scene and looking for a hand out'. This is a self-serving statement but satisfies me further that there was never any intention that Mrs M would benefit from the farm.

[74] I heard evidence from a Mr P on behalf of the husband. He was a racing acquaintance 'who went to the farm once a month for a couple of years' with a client who was even more friendly with the husband. Mr P worked as an accountant in private practice but had an association with Price Waterhouse in Gibraltar and London. He told me that he had not been a chartered accountant since 1991 when he resigned from the roll to live in Spain. He recalled that he saw the husband and G on an occasional basis and reported that they seemed moderately friendly. Apparently, he was asked to give G some informal advice and recalled that he met her about half a dozen to a dozen times in total. He put the parties in touch with Price Waterhouse and understood from G that the husband had 'problems about gambling'. He said that he accompanied them to the Price Waterhouse offices and thereafter assumed that the trust was operative. But he confirmed that he did not know if the proposed trust was ever established. His evidence was not compelling. He was rather vague about events, not surprisingly, as some 17 years have passed. He did not confirm the existence of a trust as opposed to a meeting where it was discussed. I was wholly unconvinced and, as I find, no trust was ever set up in Gibraltar.

[75] On 19 August 1992 some farmland at T Farm was 'sold' to S for £162,000. That company made a retrospective application for planning permission to carry out the earthworks but this was refused. On 28 June 1994 S 'sold' that land for £162,000 to Mr W. The husband does not know if Mr W paid the money and 'can't be sure' if any moneys changed hands. For the

avoidance of doubt, I do not think that this was a proper third party transaction. On 5 July 1994 S was dissolved.

[76] As I find, it is unlikely that these series of transactions took place at market value and it may well be that the sums placed on the transfer documents were a matter of convenience rather than a proper representation of worth. In fact, I do not believe that any of these transactions were bona fide transfers for value to a third party. If a Mr W was involved in the transfers then it was as a mere nominee for the husband. Accordingly, I am convinced that the beneficial ownership of T Farm never left the husband.

[77] On 28 February 1997 Mr W transferred all the land and farmhouse to CE for £300,000. Once again, I have no evidence that assists me as to the denominated value which appears on the transfer documents. Accordingly, I am unconvinced that the sum represents proper market value as at that date. CE had been set up in the BVI and was owned by the I Trust in Jersey.

The I Trust

[78] This settlement was set up on 2 February 1997. The husband claims that the professional Jersey trustees knew of the Gibraltar Trust but there is nothing in their records to confirm this assertion and I do not accept it. The husband denies that he is the settlor of the I Trust but I do not accept that contention either because the assets that went into that trust belonged to him beneficially. Equally important, the trust company LT regarded him as the settlor and throughout looked to him for instructions. These professional trustees confirmed this understanding to the Jersey court in answer to letter of request. The husband puts their response stating 'the husband as settlor' as a mistake or oversight by them. He is wrong and I am clear they were stating the real position with absolute clarity.

[79] The I Trust owned T Farm through the two corporate entities CE and LW. The latter company came into being on 20 August 2001. The husband informed me that the intention was to place all the land and buildings at T Farm into the new company save for an area upon which the council thought that there had been a large amount of illegal tipping. The plan was that CE would be the only entity which was vulnerable to the council's requirements whilst the remainder of T Farm would be safe in a clean entity. The husband maintains that LT 'got it wrong' and put the wrong area of land into LW.

[80] In February 2004 the husband was anxious to raise some £350,000. He asked LT to organise matters but they did not succeed in finding a suitable lender. The husband then asked a Ms Miller of LT to transfer the farmhouse at T Farm from CE into his own name as he thought that the Halifax would make the funds available to him on that basis. It is not clear what venture(s) he had in mind as a number of scenarios feature in the papers including:

(a) renovating the cottages near the farm;
(b) buying a stud for the wife; and
(c) entering into some other property venture that was to be held in the name of LW.

I am not in position to determine what the husband had planned at the time. However, it is patently obvious that he felt able to direct the trustees to do his

bidding. In the event no funds were raised and the farmhouse remained within the corporate structure because no project was concluded and these proceedings were commenced in 2005.

The beneficiaries

[81] The husband states that it was made clear from the outset that there were to be four beneficiaries of the I Trust namely Mrs M, Z and the two children of the marriage. This marked an obvious departure from the earlier Gibraltar Trust position when, according to the husband G had insisted that Z was the only beneficiary. The husband told me that he saw G and she agreed that Mrs M, C and B should be added as beneficiaries to the trust. She did so because 'she was that kind of person and family orientated'. This assertion beggars belief, defies logic and I do not accept it. If G had been protective enough to arrange for a Gibraltar trust to protect her only daughter (in circumstances where she had been short changed upon divorce) I cannot conceive that she would have agreed to Z's rights being reduced to a mere 25% without there being a good reason. No such explanation was proffered.

[82] In his Form E the husband stated that Mrs M was a trustee and 'that he did not know the identity of the other trustees. She along with the other trustees has dealt with the administration of the trust fund and I have not been involved in any way'. In his statement of issues the husband said that he was not a 'beneficiary of the trust, was not a trustee and over which he had no control'. In his oral evidence, he accepted that he was appointed 'an agent' so to that extent the original statement was incorrect. All this evidence was incorrect because he deliberately sought to mislead.

The letters of wishes

[83] There is no evidence of any specific beneficiaries being mentioned to the trustees until, at the earliest, 2006 long after these proceedings had commenced. Prior to that date, having read all the internal memoranda I am clear that the trustees appreciated that the husband ran the farm and regarded himself as the beneficiary.

[84] There are a number of unusual aspects to this trust. For example, there is no named settlor. Until these proceedings had began in earnest there was no letter of wishes and there are still no named beneficiaries.

[85] Clause 3.02 of the trust provides that 'The Trustees may subject as hereinafter provided at any times by instrument nominate persons or classes of persons to be members of the class of beneficiaries …'. Part II of the second schedule provides '1.01 Any person who is subject of a nomination under cl 3.02 hereof, notwithstanding that such nomination is not in respect of a charitable purpose … .1.02 Any trust association body or other organisation in any part of the world the objects of which are charitable'. No such nomination under cl 3.02 has ever been made and so there are no named beneficiaries.

[86] There was no letter of wishes to guide the trustees from 1997 until these proceedings commenced when it is obvious that the husband had an incentive to distance himself from the trust. The documents make it clear that the trustees took no part in nor approved any of the management decisions in respect of the farm. None of the corporate entities accounted for the farm income or drew up accounts. Indeed, although incorporated in the BVI, no

annual fees were paid for them with the result that the companies were struck off the record for many years. They were only reinstated when it became clear that if they did not exist then the land owned by them would become bona vacantia and revert to the Crown.

[87] The husband accepts that neither Z nor Mrs M had any farm income although he supposes that '[Z] and [Mrs M] may have received moneys in some shape or form'. The husband lived at T Farm, collected the moneys that arose and then used them for the needs of the wife and, as dependents, their children. He says that some funds were remitted to G in Ireland and he sought to suggest that this was because she was managing trust moneys. I do not accept this contention and specifically find that it is likely that such moneys as G received were by way of maintenance per the court order.

[88] The husband's so-called letter of wishes is a hand written document. It is undated but bears a date stamp of 16 June 2006. In that document he said:

> 'Can you confirm that
> *BD 25%*
> *CD*
> *BD*
> *Mrs M*
> are down as equal benefriary (sic) and MG is the nominated relative.'

The husband was 'not sure' whether he took any further steps to ensure that this request was implemented or confirmed. I was shown a file note by LT in which a Ms M replied as follows:

> 'I telephoned AD to confirm receipt of his letter detailing the people he wished to benefit from the Trust. I advised that we would require full names addresses and dates of birth before they could be entered on the LOW. He acknowledged this and then inquired what date the LOW would be dated. I advised that this would be dated today (being 27 June 2006). He then advised he wished to hold off on this due to the divorce proceedings. I advised that if he could provide us with the full details, we could draw up the LOW and have it here for his review upon his next visit. This would then mean that it would not be sent to the UK for signing.'

[89] There is another document which purports to be a letter of wishes from Z dated 22 January 2007. The letter states that she wishes the trustees to take future instructions from her and she specifies herself, C, B and Mrs M as the four beneficiaries. I find it difficult to understand her status to give such instructions as she did not settle the fund and, as I find, had no beneficial interest in them when they were settled.

[90] The husband said to me that Z:

> 'is just a country girl and does not have the brains to write a letter like that – somebody must have written it for her.'

Z accepted that she was simply presented with the letter (which came by post from Jersey) and upon her father's advice just signed it. In affidavit the husband stated:

> 'I have always understood from the outset that [G] was the settlor of the trust although I note that the [L Trust Company] say in their response to [the wife's] solicitors Letter of Request dated the 8 November 2006 that there is no settlor. I also understood that [G] had been granted a life tenancy over [T Farm] and that upon [G's] death this would have automatically passed to our daughter [Z] although I have no documentary evidence to support this and neither do the current Trustees although the original trustees (PWC) would have done. My understanding was also that from the outset [Z] was the sole beneficiary of the trust. At the outset, my sister [Mrs M] was not a formal beneficiary as [G] and I had agreed that we would honour my Father's wish to look after [Mrs M] generally. Therefore we did not feel that [Mrs M] needed to be a formal beneficiary. I personally did not wish to be the settlor or a beneficiary as I was just content to run the [T Farm] and in return live there for free (sic), get my modest expenses paid.'

All this is simply untruthful verbiage.

[91] The wife does not seek to assert that the trust is a sham and it is a matter for the Jersey courts to determine its ultimate status. However, as a matter of reality, I am clear that this trust has always operated for the benefit of the husband and through him the wife. He is the de facto settlor, there are no beneficiaries and the letters of wishes are only self-serving documents which were, prima facie, brought into being so as to convince this court that the husband had no interest in the I Trust. I am also clear that the wife has directly benefited from trust assets because she was able to live in the farmhouse for a period and during the marriage she received housekeeping and benefits which derived from farm income.

[92] For those reasons, which I confirm when I deal with the applicable law, I am clear that, as a matter of English divorce Law, the I Trust is a nuptial settlement which is capable of variation under the terms of the Matrimonial Causes Act 1973.

Diminution of the value of T Farm

[93] I have already set out the difficulties which the husband encountered in the 90s as a result of unauthorised material which was brought on to the land. For many years the husband successfully avoided dealing with the requirements of the county council and failed to comply with the enforcement notices. I am clear that, as a result of his obfuscation, council officials lost all faith in him.

[94] In about 2003 the husband decided that he should take steps to rectify the position and a firm called AH came on to the land and began to undertake remedial work. The husband maintains that he was not paid for the lorry loads of screened soils which came on to the farm. Rather he states that he had to pay for work done because he was undertaking remediation. He told me that the contractors were permitted to park some vehicles on the land on the basis that they would allow him to use their earth moving equipment at no cost in

order to disperse additional soil as necessary but otherwise there was no benefit to him. I have no reason to disbelieve this aspect of the husband's evidence but I cannot make a specific finding because the issues were not sufficiently ventilated before me.

[95] It would seem that by February 2004 the council were satisfied with the work that AH had undertaken but were not happy that it had not been completed. In the light of this the husband decided that he should change contractors and a Mr PF of CS came on to the site in about March 2004. He had been the main supplier of screened soils to AH and had a factory which dealt with various waste materials. The husband believed that the materials which Mr PF brought on to the site had an exemption certificate but it would seem that Mr PF had an enforcement notice on his own premises and the husband now believes that (unknown to him) Mr PF may have caused unauthorised materials to be brought on to T Farm.

[96] Certainly, the county council became concerned with the quality of the work that was being undertaken and the amount of material that was being dumped on T Farm and on the council's own land which abuts the farm. They were also concerned about the manner in which Mr PF's lorries were using the roads close to the farm in an allegedly dangerous manner. The council took proceedings and various orders were made, including an injunction preventing further work from being undertaken on the land. The husband is clear that he was effectively duped by Mr PF. He is equally certain that he did not receive any moneys for the works that were undertaken. It is his case that he has had to expend moneys of his own on what he thought were the final remedial works on the land. I have no reason to doubt the husband's explanation on this aspect of the case but I cannot make any finding as full evidence was not placed before me. If he was 'conned' by Mr PF then, prima facie, that is his fault because he should have taken more care to discover the quality of soil that was being imported.

[97] I am clear that the husband's personal relationship with council officials has reached a low point. When I dealt with the valuation hearing it was made clear to me that the council were no longer prepared to deal with him. The land has been devalued by £1.05m as a result of the unauthorised earth works and I have little doubt but that it will be more difficult to sell T Farm because the enforcement notices remain outstanding.

Potential tax

[98] The husband maintains that he did a 'good deal' because he did not have to pay AH or CS for the materials brought on the land. He is adamant on this point. Unfortunately, HMRC believe that the husband received considerable subventions from the contractors. Their belief is based upon aerial photographs and a calculation by an expert based upon the assessed amount of tipping/infill and the likely price per lorry load. HMRC have raised assessments upon the husband and CE. They consider that as much as £1.7m in tax, interest and penalties may be due. Indeed, it has been suggested that an even higher figure may be sought. The husband and his accountants do not agree.

[99] The two sides have met. The husband gave a detailed interview setting out his position. No doubt the next step will be proceedings and a careful negotiation to discover what, if anything, is properly due and payable. What is

plain is that the husband and the offshore entities have, to use a colloquialism, been below the radar so far as tax is concerned since about 1992.

[100] I have no doubt that the farm did produce an income in those years. The husband accepts this. I have seen a schedule, prepared by his accountant, of the husband's best estimate of the farm income from 1992 to date. It would seem on this basis that the total income tax which may be due amounts to some £494,000 inclusive of interest and penalties (totalling some £203,000).

[101] HMRC need to prove their case and I am not in a position to determine whether they will succeed. If they do and can enforce their order the husband may well become bankrupt. However, HMRC may have radically overstated their case in which event less (or even no tax) as a result of tipping may have to be paid.

[102] When this case was opened, Mr Glaser (for the husband) indicated that the trial should be adjourned for (what would have been) the third time because that tax was unknown and was, potentially, very substantial. I did not accede to that submission for the reasons which I gave in my separate extempore judgment. I stated that I proposed to deal with the tax position in a practical manner, if necessary, by ascribing proportions to such moneys as may be required/not required for tax. Mr Glaser confirmed that he was not seeking to appeal that ruling.

[103] Having heard all the evidence I have decided to take no account of the alleged income from tipping as I have no evidence which convinces me either:

(a) that the husband received such income; or
(b) that he has moneys hidden away as a result of the receipt of such funds.

In fact, his lifestyle seems to have continued without any evidence of a substantial, additional influx of wealth. If HMRC succeed in proving their case then those assets will have remained undisclosed in these proceedings and, therefore, will remain unaccounted for in my calculations. It would seem to me that:

(a) if tipping income was not paid then no tax is due and my calculations are unaffected; but
(b) if those moneys were paid, then it is for the husband to pay the tax, interest and penalties from what would be an undisclosed resource.

Consequently, I do not propose to deduct any potential tax for tipping income in the schedule of assets.

[104] If HMRC prove that their case and any moneys remain after the due tax (with interest and penalties) has been paid, it would be open to the wife to seek to reopen these proceedings on the grounds of material non-disclosure depending upon the amount of additional moneys that result. Accordingly, not knowing the sums involved I do not propose to make an order dividing those potential but unknown moneys on any proportionate basis.

Other tax

[105] Farm Income. It is clear that other sums of tax will have to be paid. I have already adverted to the schedule prepared by the husband's accountant on income from 1992 to date. The income totals some £800,000 (an average of £47,000 pa) and the tax should have been £203,500 odd. As a result of non payment the interest due totals £85,500 odd and the penalties (100% of the tax) are a further £203,500 odd. I propose to deduct the tax and interest from the asset schedule but I will add back the penalties (£203,346) because the default is due to the husband's deliberate actions. I do not consider that the interest needs to be deducted because the whole family benefited from the use of those additional funds.

[106] CGT. It was obvious that CGT would be due on the sale of the land. The issue was raised at the outset of the trial but the calculations did not emerge until final submission. Unfortunately, the schedule produced on behalf of the wife shows a substantial spread of tax. If the transfers which took place in 1990s were at market value the tax due would be a maximum of £1,216,000. If the market value was higher (as I believe may well have been the case) then the tax could be as low as £676,000. The figures for market value as at 1996/97 in the schedule would seem to me to a pure guesstimate and I cannot make any proper finding as a result of the manner in which this evidence emerged at the 11th hour. I do not believe that it is right for me to allow this lacuna to pass unnoticed. I comment that for parties to spend in excess of £500,000 and yet have this degree of ambiguity seems inexcusable.

[107] The husband's solicitors produced an in-house note which indicated that the higher tax figure would be mitigated to £1,090,000 odd if CE were liquidated (rather than that the moneys were received by way of dividend). I believe that, as the husband is tax averse, he will seek to reduce this tax to the legitimate minimum. Therefore, doing the best I can, I propose to deduct £1,090,000 from the assets schedule on the basis that if the CGT upon sale of T Farm is less than that figure the surplus will be divided in the same proportion as my overall award and visa versa if the sum is greater.

The MO accounts

[108] These accounts were opened in about August 2008. The husband persuaded this bank employee to open accounts for his children, C and B, in her own name because he did not want the wife to know about them. This lady was, apparently, a close friend because they had a mutual interest in 'saving retired greyhounds'. The husband told me that he also used to give her racing tips and so he was popular with her. Her agreement to open accounts for the children was, I expect, a breach of her employment terms. It was inexcusable to involve this lady in this manner. There were quite substantial sums in the two accounts which the husband maintains were primarily for school fees. The wife discovered that there were accounts which she believed were in the name of the children and I made an injunction to stop funds being removed. Of course, my injunction did not cover the accounts where the moneys were held because they were in Ms O's name. The funds were removed in breach of the spirit of the order made.

[109] The husband told me that the moneys to fund these accounts effectively came from him, save for a farm subsidy in relation to B's cattle.

There were several entries on the accounts which may have lead to other sources of funds but they were not explored with any due diligence and so I can make no findings about them.

Undisclosed assets

[110] The wife asserts that the husband has failed to disclose all his assets. Her counsel point to the following facts:

(a) the husband told LT in about 2004 that he had a property in Ireland;
(b) the husband also told LT that he had a place in Tenerife;
(c) the husband told C that, when this case was all over, they would go and live in Ireland where she could continue to keep her horses;
(d) the husband admitted winnings of £400,000 net in 1979 (the equivalent of some £1.4m in today's values) and has allegedly failed to account for their use/loss of those funds with any particularity;
(e) the husband had joint bank accounts in Ireland which he did not admit at the commencement of the trial;
(f) there were Euro deposits in the MO account which the husband used;
(g) the husband has lied throughout the litigation and misled the court in many ways about his asset base.

The husband denies all the allegations. He explained that:

(a) the property in Ireland to which he had referred was G's home which he sold on behalf of Z. I am inclined to believe that explanation given that the timeline fits with selling that house after her death;
(b) he had tried to buy a place in Tenerife but the deal 'had fallen through' because of local difficulties. I am inclined to believe him as the wife knew nothing of this property and I doubt that she/the children would not have some knowledge of property in Tenerife if it had existed;
(c) the husband explained that he told C that he would show her where he was brought up. I accept that this discussion was not a reference to a property which is currently in existence. It may be that he will move to Ireland in the fullness of time. Indeed, he may have to if he does not have sufficient moneys with which to buy a home locally;
(d) the husband maintains that he lost all his winnings. He has given no particulars save for his excessive gambling in the 1980s/90s. I have not accepted his evidence about his accruing vast debts and so it may well be the case that he has some winnings left in Ireland. However, I do not consider that the sums would alter the amount of the wife's award in this case. Mr Le Grice QC accepted that anything 'up to £200,000' would not make a difference whereas a '£1 million definitely would'. He put a

sliding scale of relevance on the sums in between. I do not think that the evidence permits me to make a finding as to the amount available. But I am left with the clear suspicion that some funds may be available. However, I do not believe that those moneys will alter the outcome of this case;

(e) the joint accounts in Ireland with G and Z do not reveal hidden assets as moneys have been traced and no questions remain outstanding;

(f) the wife's team did not pursue the details of the Euro transactions in O account before trial even though they had the documents for in excess of 2 months. The husband purported to answer their queries. Whilst the evidence remains incomplete, I am in no position to hold that the husband has an undisclosed Euro account based on these entries;

(g) I accept that the husband is and has been untruthful in many respects. It may be that he has some moneys which remain undisclosed but, for the reasons outlined, I cannot put a figure on the amount.

The length of the marriage

[111] I am satisfied by the wife's evidence that these parties met in about 1989 and began a relationship. At a time which I cannot determine they began to live together in the wife's flat. She had some form of protected tenancy and I believe that she was paid a modest sum when she vacated it. The husband then 'sold' a property which he owned to her and she was able to make a profit when she sold it at a later date. That flat was used as their base from about 1990 onwards. Although the husband continued to reside at T Farm, I accept that he spent most nights with the wife at the flat. They married on 16 November 1994 and continued to live in the flat in the same manner as before even after C was born. Once the wife became pregnant with B it was clear that they could not remain in the flat as it was too small. Accordingly, in about December 1995 the wife and children moved into T farmhouse. The wife complained that the husband would not let her modernise it. The husband told me that she did not like it because of the 'spiders and mice'. It is clear that the relationship was already waning because both parties agree that their sexual relationship had ended by about 1996.

[112] In any event by July 1999, the husband had purchased E Close and the wife moved there with the children shortly thereafter. It is the wife's case that the marriage continued as before because the husband stayed most nights (albeit in a separate bedroom) and she continued to look after him by cooking and doing his laundry. He denies this and maintains that the marriage ended in 1997 after a rather unpleasant row.

[113] I have reached the conclusion that the move to E Close marked the real end of the marriage. Despite this, both parties were content to remain in a state of marital limbo. By this time the husband had discovered that G was ill with cancer and, as I highlighted above, that couple became closer as the years passed. As the husband became closer to G he became ever more distant towards the wife.

[114] In 2004 the husband tried to buy a small stud farm for the wife. The venture did not proceed because it was discovered that the house could not be

extended. I am satisfied that this property was not going to be a marital home but was a home for the wife and children. It was only considered because it was large enough to accommodate ponies.

[115] The wife was only galvanised into action to bring the marriage to an end when she discovered that the husband was having an affair in 2005 and thereafter the divorce proceedings began. Thus, as I find, the committed relationship lasted a total of 10 years with the real length of the marriage being about 4 1/2 years.

The witnesses

[116] The wife.

The wife gave me short evidence and I found her to be a bright and amusing witness. She said quite frankly that 'everybody knew that [she] would not get' the £1.5m award that she was seeking openly. That refreshing stance was a mark of her evidence to me. In general, I accept her evidence, save where I expressly find to the contrary. I have dealt with the bulk of my findings in relation to her evidence elsewhere in this judgment.

[117] The husband:

(a) I found the husband to be a charming rogue and I liked him. Despite that, I consider that he is a shrewd and manipulative individual who told me many untruths. His habitual modus operandi is to ignore authority and do things his way and on his terms. That attitude has characterised his life and his actions in these proceedings. To a large degree, he has buried his head in the sand and assumed that the difficulties will evaporate or he will be able to finesse them away. Unfortunately for him, all his unsolved (and often self-made) problems are coalescing into what may be, for him, an insoluble mess;

(b) I have dealt in detail with my specific findings in relation to his evidence in the body of this judgment, suffice it to note he was a fascinating but unsatisfactory witness.

[118] Mrs M:

(a) Mrs M (the husband's sister) is the mother of five children (three boys and two girls). She is now aged 74 years old and has obviously worked hard throughout her life and is still assisting one son with the administration of his business. She has an (old) book-keeping qualification and, even now, is working hard. She has been 'riddled with cancer' and yet has retained her work ethic and dignity. Mrs M has her own home. She is obviously intelligent and on the ball. She has supported her brother during these proceedings and accompanied him to a number of hearings (when he was acting in person) in order to assist him and offer moral support. She has been a very good sister and I liked her.

(b) In general, I found her to be an honest witness and save where I expressly so state I accept the tenor of her evidence. She told me

that she did not think that the wife had worked to achieve any share in the farm and I believe that this strongly held belief has coloured her objectivity. She considers that the wife is being greedy and is seeking more than G achieved upon divorce (who, a lady, actually 'worked for her share'). In the light of this, Mrs M was prepared to trim her evidence in relation to her alleged beneficial interest in the trust. For the avoidance of doubt, I do not believe that she was ever so entitled. She was not delineated as a potential beneficiary until these proceedings were well underway. As I have set out above I do not consider that she (or her brother) ever expected her to have a share in T Farm or its net value.

(c) Mrs M came to my court under subpoena. In fact, she did not appear on the due date and so I gave her an opportunity to attend on the next working day. She apologised for her initial absence and said that it 'had slipped her mind' because she was assisting one of her sons to move in the Bath area. With respect, I do not accept that explanation. I am sure that this case has been the focus of family attention for the last few months. Moreover, because Mrs M had been named in the rather unusual (and as I find suspect) letters of wishes, I had taken the precaution of insisting that she was served by these proceedings and, in particular, the wife's application to vary the I trust. Mrs M did not choose to avail herself of the opportunity to make submissions in support of her claim.

(d) Mrs M told me that she was comfortable financially and so had had no need to press her claim over the years. Whilst I accept the first part of that assertion I do not accept it as a reason for not persisting with her claim. I am clear that she did not do so because she did not and has never regarded herself as having any financial interest in T Farm or its proceeds of sale.

[119] Z:

(a) Z also attended under a subpoena. The first was not served in time and so she did not appear on the expected date. She was kind enough to attend as a result of the second subpoena which I granted during the course of the hearing on 12 October 2009.

(b) Z is a racehorse trainer. She has four children aged between 6 and 22. She moved to S Stud about 12 years ago. I found her to be an attractive and engaging personality. I accept her evidence as being truthful unless I have expressed the contrary in this judgment.

(c) She accepted that over the last 3 years her father had given her about £10,000 and he had dealt with the moneys from her mother's estate in Ireland which was sold in 2006/07. She had a joint account with her father so he could deal with everything as she 'had breast cancer at the time and a young baby'. She

confirmed that she trusted her dad and was not money orientated. She said that her mother's house sold for €180,000 (with no mortgage).

(d) She confirmed that she had received £50,000 from the joint account held with her father in Ireland (which she thought was a part payment for moneys that were due to her from the estate) although it would seem to have come from a man who was returning moneys which he owed to the husband.

(e) Z was refreshingly frank stating that she knew nothing about the I Trust and had no knowledge of the workings. She had not been to Jersey and explained that Ms M had tried to contact her 'a few years ago but we never spoke. I had a letter through but I passed it on to dad because I did not understand it'. She confirmed that this was her so-called letter of wishes.

(f) She told me that she had never met Mr W although she knew her 'mum knew some-one of that name'. Given mother and daughter lived just 6 miles apart and saw each other regularly it is extraordinary that Z did not meet him (as I accept she did not) if Mr W was a large part of her mother's life. She thought that her mother's 'antiquing business was going round boot fairs, auctions and junk shops. She would do things up and sell them for a bit of a profit. I think that she did on her own.' I accept that evidence.

[120] Mr P:

(a) Mr P seemed ill at ease in the witness box and had some difficulty in recalling the events that had occurred some 17 years ago. I am sure he did his best but I do not consider that his evidence has assisted me in determining where the truth lies in this case.

The law

[121] I remind myself that I am bound by the terms of the Matrimonial Causes Act 1973 (the Act) as it has been interpreted in the House of Lords and the Court of Appeal. Under statute my first consideration is the two children of the family whilst they are minors. I must also take account of all the circumstances of the case and the factors set out in s 25 of the Act to produce a result which is fair, just and does not discriminate against either party on the grounds of gender or for any other reason. Although fairness has been stated to be in the 'eye of the beholder' I am conscious that I must apply the law carefully and clearly.

[122] In *White v White* [2001] 1 AC 596, [2000] 3 WLR 1571, [2000] 2 FLR 981 their Lordships decided that the court should apply statutory criteria to ensure a fair result. Lord Nicholls of Birkenhead said at 605, 1578 and 989 respectively :

> 'Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the statutory powers have

to be exercised vary widely. As Butler-Sloss LJ said in *Dart v Dart* [1996] 2 FLR 286, 303, the statutory jurisdiction provides for all applications for ancillary financial relief, from the poverty stricken to the multi-millionaire. But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently both parents work. Sometimes it is the wife who is the money-earner, and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering para (f), relating to the parties' contributions. This is implicit in the very language of para (f): "… the contribution which each has made or is likely … to make to the welfare of the family, including any contribution by looking after the home or caring for the family". If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer. There are cases, of which the Court of Appeal decision in *Page v Page* (1981) 2 FLR 198 is perhaps an instance, where the court may have lost sight of this principle.'

[123] The law was developed in *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24, [2006] 2 AC 618, [2006] 2 WLR 1283, [2006] 1 FLR 1186 where matrimonial and non-matrimonial property was delineated and their Lordships introduced the separate concepts of sharing, compensation and need. The relevant part of the headnote reads:

'Under the English system, the redistribution of resources from one party to another following divorce was justified on the basis of:

(1) the needs (generously interpreted) generated by the relationship between the parties;
(2) compensation for relationship-generated disadvantage; and
(3) the sharing of the fruits of the matrimonial partnership.

These three principles, each of which looked at factors linked to the parties relationship, rather than to extrinsic, unrelated factors, could guide the court in making an award; any or all of them might justify redistribution of resources, although the court must be careful to avoid double counting. Which of the three would be considered first would depend upon the circumstances of the case. In general it could be assumed that the marital partnership did not stay alive for the purpose of sharing future resources unless this was justified by need or

compensation. The ultimate objective was to give each party an equal start on the road to independent living.'

[124] I acknowledge the fact that property was inherited is one of the circumstances of the case, to be given such weight as is appropriate in the circumstances of this case. Inherited property is a contribution made to the welfare of the family by one party to the marriage. However, where the claimant's financial needs cannot be met without recourse to the inherited property its source can ultimately carry little weight because it is required to cover need. This proposition was put clearly by Lord Nicholls of Birkenhead in *White* at 610, 1583 and 994 respectively:

> 'This distinction is a recognition of 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.
>
> Plainly, when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, and the time when and circumstances in which the property was acquired, are among the relevant matters to be considered. However, in the ordinary course, 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.'

[125] Given the factual matrix in this case I am clear that the wife's claims will be fairly dispatched by approaching the award on the basis of her needs alone. I do not consider that she is entitled to a presumptive share in the assets for they were not built up during the marriage. I do not consider that she suffered any financial disadvantage by entering into the marriage. However, her age at marriage and divorce, coupled with her need to care for B, will impact upon long-term needs. To that extent, relationship-generated disadvantage is reflected in long-term requirements and needs. Consequently, this category does not need to be factored in twice because it is, in this case, part of a composite whole in relation to needs.

[126] I have to determine whether the I Trust ranks as a post-nuptial settlement from the perspective of the law of divorce in England. I have already stated that, on a purely factual basis, I am satisfied that the benefit of T Farm (its main asset) was enjoyed beneficially by the husband and the wife throughout the marriage. Equally, I am satisfied that, during the formal marriage, there were no other beneficiaries and the husband was regarded by

the trustees as the primary beneficiary. Through him the wife enjoyed direct benefits. The children as minors were supported in the usual manner by their parents.

Nuptial Settlements

[127] The meaning of a nuptial settlement under the terms of the Act has been considered in a number of cases. It is clear that a settlement made during the marriage that confers some benefit on either of the spouses may be regarded as a post-nuptial settlement. As long ago as 1930 in *Melvill v Melvill and Woodward* [1930] P 159 Greer LJ, at 177, went so far as to say

> 'As I understand [counsel's] argument it was this, that any settlement is a post-nuptial settlement, if it is a settlement during marriage by one of the parties, which gives some interest to either of the spouses or their offspring. That is a proposition which appeals to me as a fair and reasonable representation of what the section means.'

[128] In recent years there have been other cases and I have been referred in particular to *C v C (Ancillary Relief: Nuptial Settlement)* [2004] EWCA Civ 1030, [2005] Fam 250, [2005] 2 WLR 241 sub nom *Charalambous v Charalambous* [2004] 2 FLR 1093. In that case the Court of Appeal confirmed that this court could vary a trust even though it was settled under the laws of a foreign jurisdiction and held that the right to seek a variation of settlement derived not from the settlement itself but from the matrimonial regime of the jurisdiction that dissolved the marriage. In that case the necessary nuptial element was retained even though the parties had been removed as beneficiaries once the divorce proceedings commenced. Thorpe LJ at para [41] of his judgment referred to:

> '… the balanced appraisal to be found in the current edition of *Private International Law* by Cheshire and North (Butterworths, 13 edn, 1999) at 1043:
>
> > "There is power in the English court when granting a divorce, mullity or judicial separation decree, or at any time after the decree, to vary any settlement of movable and immovable property made on the parties to the marriage, whether by an ante-nuptial or a post-nuptial settlement. The court can also extinguish or reduce the interest of either of the parties to the marriage under such a settlement. Whenever the court has jurisdiction in the main proceedings for divorce, mullity or judicial separation, then it also has jurisdiction to order such variations. However, this application of English law as the law of the forum has not been restricted to settlements governed by English law or of English property. For example, in *Nunneley v Nunneley and Marrian*, the English court varied a settlement made in Scotland and in Scottish form of movables and immovables in Scotland. Is this power now limited by the Recognition of Trusts Act 1987 to settlements governed by English law? It would certainly seem undersirable that the power of the court in such family proceedings should be limited by the choice of law rules in the 1987 Act; and the exclusion of those rules might

> well be supported by reference to Art 15 which allows the English forum still to apply its conflict rules, here in fact leading to the application of the substantive law of the forum, to inter alia 'the personal and proprietary effects of marriage'."'

[129] In *N v N and F Trust* [2005] EWHC 2908 (Fam), [2006] 1 FLR 856 Coleridge J was asked to determine whether the parties' matrimonial home was the subject of an ante-nuptial settlement, such that the court had the power to vary the terms of the settlement under s 24(1)(c) of the Act. That property had been purchased by a Bahamian company, all of the shares of which were owned by a trust, in respect of which the husband was one of the beneficiaries. After 3 years of discussions the trustees granted an assured shorthold tenancy of the property to the husband and wife. The husband argued that the creation of the tenancy overrode any underlying trustee-beneficiary relationship. The wife argued that the property was bought in contemplation of marriage and, by its purchase, a licence to occupy it as the matrimonial home was indefinitely settled on the husband and wife. She further argued that the subsequent grant of the tenancy did not alter the fundamental relationship of trustee and beneficiary, which pre-existed the creation of the tenancy and continued to exist after it. The judge was satisfied that the home was subject to an ante-nuptial settlement which could be varied in accordance with s 24 because the court had to look to the substance of the arrangement. The relationship between the husband and the trustees continued to be one of trustee and beneficiary, rather than one of landlord and tenant, even though there was a supervening tenancy.

[130] In *Ben Hashem v Al Shayif* [2008] EWHC 2380 (Fam), [2009] 1 FLR 115 Munby J (as he then was) held that an arrangement which had provided the wife with a home had a sufficient nuptial element on the basis that it had been intended to make continuing provision for a period, more than temporary, albeit undefined. The court's discretion to vary a nuptial settlement under s 24(1)(c) of the Act was both unfettered and, in theory, unlimited. However, a settlement ought not to be interfered with more than was necessary to do justice between the parties, and the court ought to be very slow to deprive innocent third parties of their rights under the settlement. If the interests of such third parties were to be adversely affected, then the court, looking at the wider picture, would normally seek to ensure that they received some benefit which, even if not pecuniary, was approximately equivalent.

[131] I am also aware that, per *E v E (Financial Provision)* [1990] 2 FLR 233, I should not interfere with the terms of the trust more than necessary. I take that point fully into account.

[132] In this case, given the factual matrix as I have determined it, the husband and the wife each derived a benefit from the whole of T Farm because it provided a home:

(i) for the husband throughout; and
(ii) for the wife from about 1995 to 1999.

I also accept that both husband and wife lived off and, therefore, derived a benefit from the income which the whole of the farming (in its loosest sense) enterprise engendered. In line with the authorities which I have cited this

produces a sufficient nuptial element to convince me that the entire property and, therefore, the trust which holds its ultimate title (through the two BVI entities) constitute a post-nuptial settlement which I am at liberty to vary as I consider fair and just after the application of the criteria set out in s 25 of the Act.

[133] As I do not consider that there are any other beneficiaries to whose interests I should look before making such variation, I am at liberty to make such order as is appropriate. However, I am conscious, given the origin of the funds, that I should not seek to amend the settlement and transfer assets unless needs demand and fairness dictates.

Relevance of Jersey law

[134] I am satisfied that the powers of the Family Division remain unaltered by recent Jersey case law. This court retains full jurisdiction under s 24(1)(c). The amendment to Jersey law made by the Trusts (Amendment Number 4) (Jersey) Law 2006 (L 21/2006) states as follows: Article 9(1)(d):

> 'any question concerning … (d) the administration of the trust and "the obligation of trustees":
>
> shall be determined in accordance with the law of Jersey and no rule of foreign law shall affect such question.'

Article 9(4) of the substituted article provides that:

> 'No foreign judgment with respect to a trust shall be enforceable to the extent that it is inconsistent with this Article, irrespective of any applicable law relating to conflicts [sic] of law [sic].'

[135] In the matter of the *B Trust* [2006] JRC 185, a decision of the Royal Court of Jersey, the substantive part of the judgment reveals:

> 'If the purpose of the amended art 9 really is to protect trust assets to the extent that a manipulative spouse can evade the enforcement of a carefully considered judgment designed to do justice between husband and wife on divorce, that would seem to us to be a very unhappy state of affairs. But fortunately, we do not consider it to be the effect of the statutory provisions nor, we trust, do we believe it to have been the intention of the legislature.' (Paragraph 13.)

In the postscript the court stated:

> 'It would, in our view, avoid sterile arguments, and expense to the parties, if the English courts were, in cases involving a Jersey Trust, having calculated their award on the basis of the totality of the assets available to the parties, to exercise judicial restraint and to refrain from invoking their jurisdiction under the Matrimonial Causes Act to vary the trust. Instead they could request this Court to be auxiliary to them … we can see no reason why the trustee or one or more of the parties before the English court as the case might be, should not be directed to make the appropriate application to this court for assistance in the

> implementation of the English court's order. It appears to us that this would be a more seemly and appropriate approach to matters where the courts of two civilised and friendly countries have concurrent interests. It would furthermore be more likely to avoid the risk of the delivery of inconsistent judgments.'

I take this postscript fully into account but in this case I cannot avoid making the order which appears below. Moreover I do not feel precluded from exercising my powers under s 24(1)(c) of the Matrimonial Causes Act 1973. I am supported in this stance by Holman J's remarks in *Mubarak v Mabarak* [2007] EWHC 220 (Fam), [2007] 2 FLR 364 at para [146]:

> '… the language of the postscript in paragraphs 30–32 is more general and is very politely, but also very appropriately, directed precisely at judges of the English courts when faced, as I am, with applications to vary a Jersey settlement or trust. I myself am very respectful indeed of the sovereignty of the foreign state and of the jurisdiction of the foreign court. I hope I do exercise considerable "judicial restraint", but the postscript does not preclude that the English court may yet, in some appropriate case, exercise its variation of settlement power, even in relation to a Jersey trust; and that in such a case, the Jersey court will not be "insouciant of the reasoned decisions" of this court.'

Section 25 factors

[136] I now turn to deal with the s 25 factors:

(a) Income, earning capacity, property and other financial resources

Capital

The asset schedule which appears at Appendix 2 sets out my findings in relation to the parties' assets. I am aware that some £203,000 of that asset base is a notional add back in respect of penalties due to HMRC. It also includes a CGT figure of £1.09m which may prove to be incorrect.

The overall current assets are some £1.8m in the round. As set out below, as a result of the husband's conduct a further £1.3m of assets have been wasted/dissipated as a result of the husband's financial conduct being:

(a) £1,050,000 million 'lost' on the value of the farm;
(b) about £250,000 in wasted additional costs (see below for the detailed analysis of these figures).

If these moneys had still been available the asset base would have been £3.1m.

All these figures ignore the potential tax in respect of tipping income which could be as much as £1.7m (possibly more or less).

Income

The farm has produced an average income, per the schedule, of some £47,000 pa less tax and the husband has habitually 'earned' some £30,000 pa from his gambling exploits.

Undisclosed assets

I would not be surprised if the husband had retained some non-taxable winnings from his gambling exploits over the years. Having assessed the evidence above, I do not believe that the sums involved are sufficient to alter my award but those moneys may ease the husband's needs in the fullness of time.

(b) The financial needs, obligations and responsibilities which each has for the foreseeable future

The wife's capital needs

(i) A home (value £425,000)	£293,000 (outstanding mortgage)
(ii) A car	£10,000
(iii) Debts paid	£53,000
	£356,000

The wife's income needs

The husband used to pay the wife's mortgage and gave her £2,000 per month for her household needs. She has not received moneys from him for a number of years and so she has been reliant upon State benefits.

Upon separation there was about £100,000 available in various bank accounts which she used to fund her living expenses. She was cross-examined upon the basis that she had been extravagant and wasted moneys. I do not accept that assertion. I have seen a breakdown showing how she used that capital and, to my mind, there is nothing worthy of adverse comment.

Neither counsel spent much time analysing the wife's budget. The current request of an annual income of £37,000 is fixed only upon the basis that the moneys remaining from her claim would produce that sum on a *Duxbury* basis.

I have analysed the wife's ability to earn and I have reached the conclusion that the bulk of her earnings will be needed to assist the children. The wife told me in evidence that she could service her needs on £24,000 pa. I consider that this was a fair concession. I am clear that, given her future commitments to the children (particularly B) and her age she will need and she deserves long-term support otherwise I do not believe that she will have the ability to earn enough to meet her running costs in old age. Given the assets in this case, I do not believe that she should be a burden on the State after retirement. In fact, I am clear that the State has already had to step in unnecessarily as a result of the husband's default. I do not propose to give the wife a sum (£89,000) to mark the arrears to date but I have factored this 'loss' into my general considerations by making sure that she has a proper/realistic *Duxbury* fund for the long term.

The capital required to produce an annual income of £24,000 is about £425,000. Mr Glaser has suggested that in the fullness of time, the wife could release some capital by selling her home to buy something more modest. I note as a broad brush 'calculation' at her current age about £100,000 worth of capital will provide a long-term income stream of about £5,000 net pa. By

65 years old some £80,000 buys £5,000 net pa worth of income. I consider that there is some scope for the wife raising some such capital (say £50,000 net) at a later stage in her life. I was not given bespoke Duxburies by the wife's team. Of course, I accept that *Duxbury* is merely a tool and, after taking all the arguments into account, I have come to the conclusion that the fair award to capitalise the wife's periodical payments is £400,000. This will provide her with around £22,500 on a full *Duxbury* basis but rather more if she folds in some capital upon retirement.

The husband has submitted that the wife should receive semi-secured ongoing maintenance. I do not accept that submission. I consider that, given his track record, it is unlikely that the moneys would be paid. In the light of this capitalisation is essential. The submission that £110,000 would rank as security is, quite frankly, derisory and I do not accept it. *Her total needs therefore amount to £756,000.*

The husband has asserted that he does not wish to sell T Farm. He has produced a letter from HT indicating that they have approached Barclays Wealth and could raise £560,000 against T Farm of which £100,000 would be used to cover their fees etc and £460,000 would be available to the wife for the proposed lump sum and security. I do not consider that her award should be pegged to the sum that it is alleged might be raised. I note that the offer is hedged with caveats. In particular the bank require their own valuation and the term of the loan is but one year. The bank know nothing of the potential problem with HMRC and I consider that, once this is known, the likelihood of the offer being crystallised is almost nil.

The husband has needs which are broadly equivalent to those of the wife. He wants to stay on the farm but if necessary he could live in a home worth about £425,000 or less. He will need an income for his own use of about £24,000 pa net. I so state because, although I received no detailed evidence on this point, that seems a basic but reasonable sum. A *Duxbury* (given his age) equates to some £225,000. Thus his basic needs are £650,000 or less depending on the sum required for housing – possibly in Ireland – about which I have no detailed evidence in respect his particular wishes. I expect that he will need additional moneys to help fund C and assist with B. He has informed the court that it is his habit to earn about £30,000 pa gambling. I do not suppose that this skill is age-related and so he may be able to continue earning from this source for as long as he lives.

I have no doubt that he wishes to retain the farm and if this were possible then that would an ideal. Equally, given his financial contribution, in normal circumstances, he would deserve much more than his basic needs. However, that degree of comfort may not be possible because of his own actions. If he had not acted in such a foolish manner there would be plenty of capital available to deal with his needs and pay the wife out. Unfortunately, his own behaviour (whether deliberate or by failing to monitor sufficiently) means that the farm has been devalued by £1,050,000. Moreover, by failing to pay tax he has incurred unnecessary penalties of £203,000 odd. He has also increased the legal costs of what should have been a relatively simple case by his woeful disclosure and failure to co-operate with these proceedings. Indeed, given my experience in dealing with similar cases, I would not be surprised if the wife's costs had been more than doubled as a result of his actions. On a broad brush

basis I expect that a further £250,000 odd has been wasted. In addition, he may face another huge tax bill if he has lied to me and has been in receipt of tipping money.

Whilst I have every sympathy for him as a human being, I cannot permit empathy to cloud my judgment. If a man is author of his own misfortunes then it is not for the court to reduce his former wife's just entitlement so that he does not suffer the consequences of his own culpability. I am clear that, if he had not been foolish – there would be an extra £1.3m available for him to deploy. If he does not have sufficient now I am afraid he has no one to blame but himself.

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

The parties had a good standard of living. They owned nice homes, the farm was valuable and living on it brought perks in terms of space and the ability to have a number of horses and the like. The children were educated privately.

However, I do not regard the standard of living as having been 'lavish' as the wife described save for occasional holidays abroad. This couple did not have the frills that go with lavish living. The husband controlled expenditure and so extravagance was not the order of the day.

(d) The age of each party and the duration of the marriage.

The husband is 71 years old. The wife is 53 years old. As I find the relationship lasted some 10 years and the marriage 4 1/2 years. Throughout, it had a rather unusual quality but that is not relevant because it was the parties' chosen modus vivendi. I do not regard this as short marriage case. The wife has an entitlement based on need but, given the length of the relationship/marriage and the origin of the assets, she is not entitled to share in the wealth per se. Her needs as assessed above are to my mind a proper reward in the context of this marriage. The result would have been the same even if the additional £1.3m odd had been available (given that the penalties he incurred have been added back in the assets schedule).

(e) Any physical or mental disability of either party

Not applicable.

(f) The contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home and caring for the family.

All the assets in this case were acquired prior to this marriage as a result of inheritance and by dint of the husband's hard work. As such they are not matrimonial property and are not susceptible to the sharing principal. The wife's award must be judged by her needs. The wife's contribution as a wife is for a relatively short period. Her contribution as a mother is much longer. That latter contribution will continue for the next 6–9 years. The husband is currently caring for C but his caring role has been more confined than the wife's, particularly as he was, by agreement, absent from the wife's home for extended periods.

(g) The conduct of the parties insofar as it would be inequitable to disregard it.

There are various distinct elements of the husband's conduct in this case which merit consideration

The first is his marital conduct which could affect the size of the award in this case, when viewed in terms of the percentage which the wife receives of such assets that remain. My findings are:

(i) the husband's marital conduct as an absentee husband is not relevant;
(ii) his failure to pay income tax is a relevant circumstance and I have explained how this will be accounted for in the schedule of assets;
(iii) if the husband has a tax bill as a result of undisclosed tipping income then that would also amount to marital conduct that it would be inequitable to disregard. However, for the reasons set out above I am not including that in my award or calculations;
(iv) the fact that his actions devalued T Farm is a relevant circumstance which, in fairness, cannot be ignored in this case.

The second element is litigation conduct which, in accordance with authority, is dealt with when consideration is given to the apportionment of costs. My findings are:

(i) for the reasons set out in the body of this judgment the husband's litigation conduct merits proper consideration when dealing with costs because his attitude and actions have increased the costs;
ii) the value of any pension which will be lost upon divorce.

Not applicable because the pension is not valuable and it will be retained by the husband.

Conclusion

[137] The post-nuptial settlement will be varied so as to provide that the wife will receive a lump sum of £756,000 and such other sum as is appropriate to pay such costs as I order the husband to pay to her.

[138] The effect of my award is to leave the wife with assets of totalling about £823,000 and the husband, subject to costs, of just over £1m (of which £203,000 is notional cash because it will have to be paid over to HMRC). The proportionate split on this basis is the wife has approximately 45% of the current net assets and the husband 55%. However, I consider that there should have been another £1.3m available and on that basis the division would be roughly 26% for the wife with the remainder to the husband. Given the length of the marriage that would have been fair. For the avoidance of doubt the proportion of CGT payable to each party should it be less than £1.09m is a 45/55%.

[139] This case is subject to the old rules on costs and so I have not deducted them from the asset schedule. Moreover, in this case I did not consider that a *Leadbetter* add back was appropriate. There may be *Calderbank* offers which

affect the position and I cannot forecast what the result may be. If the husband has to bear all the costs then, I am afraid, his asset base will reduce very substantially and he may not have enough to cover his needs. If he is in this position, then it will be as a result of his default and because I will have had to find that:

(i) his litigation conduct has brought it about; or
(ii) some other reason has caused me to hold him responsible.

Equally, it may be that the wife has not accepted a reasonable offer in which case she will have to bear the consequences of her decisions. With a current asset base of just over £1.8m it is inevitable that legal costs of £5–600,000 will have an adverse impact on one or other or both of these parties. That is inevitable if parties cannot resolve issues without a lengthy trial and costly (but no doubt justified) legal expertise.

[140] I heard a number of submissions as to the manner in which the order should be implemented. However, it was agreed by both counsel that such submissions as they wanted to make were probably best made when they knew the result of my decision and had had the opportunity to absorb it. Accordingly, I will take such further submissions on these points when this judgment is handed down.

[141] That is my judgment.

Order accordingly.

Solicitors: *Sherwood Wheatley* for the petitioner
Speechley Bircham for the first respondent

PHILIPPA JOHNSON
Law Reporter