

My Half is Bigger Than Your Half

The Latest Thinking On Post Separational Acquest

Mark Calway

The Latest Thinking On Post Separational Acquest

1. Cute pictures of babies (kittens on strike)
2. Meet up in the year 2000
3. Post separation Acquest
4. *E v L (Financial Remedies) [2021] 1 FLR 952*
5. Delineation between Income and Businesses
6. Getting it Right from the Outset - Case Prep

Marital and Non-marital Assets

- The evaluation by the court of the demarcation between marital and non-marital assets is not always easy.
- It must be carried out with the degree of particularity or generality appropriate in each case; Hart v Hart [\[2018\] 1 FLR 1283](#).
- Usually, non-marital wealth has one or more of three origins, namely
 - i. property brought into the marriage by one or other party
 - ii. property generated by one or other party after separation (for example by significant earnings) and/or
 - iii. inheritances or gifts received by one or other party
- Mr Justice Peel in WC v HC [2022] EWFC 22 at §21 (xi)

The Latest Thinking on Post Separation Acquest on Divorce

WHITE v WHITE [2000] 2 FLR 981

- The paradigm case for equal sharing?
- Rexton Farm
- Wife recovered £1.5M from a pot of £4.6M

The Latest Thinking on Post Separation Acquest on Divorce

- 'When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is good reason to the contrary' (Lord Nicholls Miller, at para [16]).
- Baroness Hale of Richmond put it in terms of 'the sharing of the fruits of the marital partnership' (at para [141]) and 'roughly equal sharing of partnership assets' (at para [143]).
- ***Jones v Jones [2011] 1 FLR 1723***
- ***Robertson v Robertson [2017] 1 FLR 1174***
- ***Hart v Hart [2018] 1 FLR 1283***

The Latest Thinking on Post Separation Acquest on Divorce

- *E v L (Financial Remedies)* [2021] 1 FLR 952
- Childlessness is irrelevant to the principal of equal sharing (“Children change everything” is confined to needs arguments)
- Length of marriage is irrelevant to the principal of equal sharing (*GW v RW* “recanted”)

E v L (Financial Remedies) [2021] 1 FLR 952

[73] In my view there are already in this field too many uncertainties and subjective variables. The law needs to be transparent, accessible, readily comprehensible and should propound simple and straightforward principles. In my experience convention and tradition dictate that save in cases where there has been undue delay between the separation and the placing of the matter for trial before the court, the end date for the purposes of calculation of the acquest should be the date of trial. This rule of thumb should apply forcefully to assets in place at the point of separation which have shifted in value between then and trial. For new assets, such as earnings made during separation, I would apply the yardstick in Rossi v Rossi [\[2006\] EWHC 1482 \(Fam\)](#), [\[2007\] 1 FLR 790](#), at [24.4] where I stated: 'I would not allow a post-separation bonus to be classed as non-matrimonial unless it related to a period which commenced at least 12 months after the separation'.

Mostyn J

The Latest Thinking on Post Separation Acquest on Divorce

Income

- When received and to what periods did it relate?

Businesses

- Trading with undivided shares
- Undrawn “salary” dividend income
- Growth Passive or Active
- *G v T [2020] EWHC 1613 (fam) [2021] 1 FLR 57*

Laying the Foundations

Case Prep

Income

- When received
- More than a year
- Undrawn salary dividends
- To what period of effort did the bonus relate?
- When received and to what periods did it relate? Is it run-off?

Businesses

- Value at date of separation and at present date
- Careful instructions on post-separation developments and innovations with analysis of impact





Mark Calway
Barrister

London
020 7583 8055

Birmingham
0121 289 4333

Bristol
0117 928 1520

Oxford
01865 793 736

Winchester
01962 868 884

Bournemouth
01202 292 102