Neutral Citation Number: [2017] EWFC 25

Case No: BV15D07863

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/05/2017

Before :

MR JUSTICE MOSTYN

- -

Between :

WM	**Applicant**
- and -	
HM	**Respondent**

- -
- -

Martin Pointer QC, Rebecca Carew Pole and Kyra Cornwall (instructed by **Boodle Hatfield**) for the **Applicant**
Lewis Marks QC and Katie Cowton (instructed by **RadcliffesLeBrasseur**) for the **Respondent**

Hearing dates: 28 February – 3 March 2017

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE MOSTYN

This judgment was delivered in private. The judge directs that this anonymised version of the judgment may be published. No report may identify the parties.

Mr Justice Mostyn:

1. I shall refer in this judgment to the applicant as "the wife" and to the respondent as "the husband".

2. This was a long marriage and the overall assets are substantial. I find the assets to be worth, net of latent taxes, £182 million. The husband argues that there should be a departure from equality for two reasons. First, he says that in 1986 he brought great value into his newly formed relationship with the wife. Second, he says that since 1986 he has made contributions of such a special nature that they outweigh those made by the wife.

3. In preparing this judgment I have borne in mind the wise words of Lord Justice Lewison in *Fage UK Ltd & Anor v Chobani UK Ltd* [2014] EWCA Civ 5 at para 115:

> "It is also important to have in mind the role of a judgment given after trial. The primary function of a first instance judge is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. He should give his reasons in sufficient detail to show the parties and, if need be, the Court of Appeal the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. There is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury. Nor need he deal at any length with matters that are not disputed. It is sufficient if what he says shows the basis on which he has acted."

Reference may also be made to *Re F (Children)* [2016] EWCA Civ 546, paras 22 - 23, which is to the same effect.

4. Virtually all the facts are agreed and are well known to the parties. It is not necessary to spell them out in detail. I only need to recite the bare minimum by way of background to make this judgment intelligible to the neutral reader.

5. The husband was born in 1949 and is now aged 68. The wife was born in 1962 and is now aged 54. In 1985 they began their relationship. At that time the wife was a worker on the shop floor of the husband's factory. The husband had been married twice before; the wife once. On 30 April 1986, they commenced cohabitation. They have two children: a son born in 1987 who is now aged 30; and a daughter who was born in 1989 and who is now aged 27. They married on 23 September 1989 shortly after the birth of their daughter. They separated in May 2015 and divorce proceedings then ensued. So, this was a 29-year partnership.

6. On 24 July 1978, the business which is now X Group plc ("XG") was incorporated and started trading. At first, the business was an equal partnership between the husband and a friend; that friend was bought out in April 1989. No science was brought to bear in the buy-out negotiations. The business manufactures and supplies materials, predominantly, but not exclusively, for installation in ceilings. In 1978 the

husband and his friend found a factory in a town in the South of England from where they manufactured the fittings. The business has gone from strength to strength and is now a vitally important source of local employment – there are over 500 employees who depend on the continuance of the business. It is the biggest employer in the town. The shares in XG are held 99% to the husband and 1% to the wife.

7. With the increasing prosperity of the business the parties' personal fortune has increased substantially. They have been able to buy a number of properties of exceptional quality in London, Hampshire, Somerset, Devon and Austria. They have enjoyed a very high lifestyle. All of this is agreed and does not need to be spelt out further.

8. The single joint expert, Mr Simpson of Saffery Champness, has valued the business as lying between £185 million and £227.5 million, on the basis that the husband would participate in a reasonable period of hand-over to the purchaser (which the husband in oral evidence accepted he would do). Mr Simpson's methodology was not controversial. Unsurprisingly, Mr Pointer QC argues that the top figure should be taken while Mr Marks QC argues for the bottom figure. Mr Pointer QC made some good points in cross-examination, and in argument, as to why a figure, if not at the very top of the bracket, then certainly in its upper reaches, should be taken. Mr Simpson accepted that the price that would be paid by the notional or hypothetical purchaser would be in the "middle to upper end" of the bracket. Having considered the matter carefully, bearing in mind that a lot of value hangs on my decision, I have concluded that the price that would now be paid by the notional or hypothetical purchaser would be at the 85th centile of the bracket. I therefore conclude that the round figure to be taken for the present value of the company is £221 million (£221,125,000 to be numerically exact).

9. As noted above, XG was incorporated on 24 July 1978 and the parties began their relationship on a permanent basis on 30 April 1986. I heard final submissions in the case on 3 March 2017. I have found that the company is now worth £221,125,000. What present value should fairly be attributed to it on 30 April 1986?

10. I have recently had to consider the same issue in a judgment which has the neutral citation number [2017] EWHC 147 (Fam). I have not given leave for that decision to be reported as the case is incapable of camouflage and were its details to be reported there may be adverse economic consequences. However, a copy of the decision was given to the lawyers on each side in this case on strict terms of confidentiality. Apart from the passages of general application from it which I quote below the terms of confidentiality of that decision are firmly maintained.

11. In that decision, I stated at [38 – 39]:

> "38. I am firmly of the view that the correct approach to give effect to the sharing principle is to try to calculate the scale of the matrimonial property and then normally to share that equally leaving the non-matrimonial property untouched. This is logically pure, morally sound, easy to understand, and limits individual judicial caprice. I recognise that not everyone agrees with this approach. For example, the Hong Kong Court of

> Appeal in *AVT v VNT* (CACV 234/2014) at para 69 described it as "not helpful at all" apparently because it encroaches on the exercise of a wide discretion. Even so, I continue to oppose the school of thought that plucks a random percentage out of the air where the pool of assets is a mixture of matrimonial and non-matrimonial property.
>
> 39. The (equal) sharing (of matrimonial property) principle is not a Procrustean bed. Cases have shown how it has been modified (some might say manipulated) to achieve an overall intuitively fair result. Thus it has been described as a tool and not a rule. So, by way of example, Mrs Miller did not receive half of the value of Mr Miller's New Star shares, as the House of Lords felt that he had brought into the marriage some intangible unquantifiable knowhow which contributed to the later establishment of the business during the marriage. Similarly, Mrs Robertson did not receive half of the increase in value of Mr Robertson's ASOS shares, Mr Justice Holman considering that the numerically quantified figure for the value of those shares at the start just did not fairly reflect what Mr Robertson really brought into the marriage. Equivalently, Mr Jones succeeded in persuading Lord Justice Wilson to adopt a very creative, arguably artificial, inflation of the actual starting figure for the value of his business in order to shrink the amount of the matrimonial property. But in all of these cases there was fidelity to the basic principle, more or less."

I then in [40] dealt with some factual aspects specific to that case, and continued at [41 - 44]:

> "41. I agree with Mr Justice Moylan in *SK v WL* [2010] EWHC 3768 (Fam) that it is not merely legitimate but is realistic and right to use hindsight when making in family proceedings a historic valuation. Mr Chamberlayne QC rightly says that in any event the pass has been sold in this regard when we uprate a historic figure with passive growth. For passive growth is obviously a post valuation event.
>
> 42. It must be remembered that in this respect the court is exercising a pure discretion and whilst the case of *Jones v Jones* [2011] EWCA Civ 41, [2012] Fam 1 supplies a valuable guideline (that is to say it indicates the direction of travel), it is not supplying a tramline (that is to say a predetermined destination). And, as I have already stated, *Jones v Jones* is a good exemplar of the exercise of discretion in that the doubling of the initial figure £2 million to £4 million seems to be based more on instinctive feelings of fairness rather than being referable to any particular piece of evidence.

> 43. I wholly disagree with Mr Pointer QC's submission that Mr Justice Holman incorrectly decided the case of *Robertson v Robertson* [2016] EWHC 613 (Fam). On the contrary, I regard it as a paradigm example of a wise and careful exercise of discretion. It was not appealed. The Supreme Court has recently stated that a High Court judge should follow the decision of a fellow High Court judge unless there is a powerful reason not to: see *Willers v Joyce (No 2)* [2016] UKSC 44 at para 9 per Lord Neuberger PSC. No good reason, let alone a powerful one, has been demonstrated to me.
>
> 44. Mr Chamberlayne QC argues that one third of the present residual net value of the business should be regarded as being non-matrimonial given what we now know about its development since 2003. In my judgment that is too much, but to allow only the bare numeric figures of the accountants would in my opinion not remotely do justice to the true latency of this business in 2003. In my judgment one quarter of the present value of this business is the fair quantum to attribute to the husband's premarital contribution. It is rather less than the proportionate amount which the House of Lords attributed to Mr Miller, which I calculate to be a third."

12. Mr Pointer QC courteously argues that it was a mistake for both Mr Justice Holman and me to have described the exercise of finding a fair figure for the historic value of an asset as one of "discretion". Rather, he argues the exercise is an evaluation. It involves weighing the evidence and then forming a value judgment. It is to be distinguished from picking a result from a range of choices none of which can be said to be right or wrong. Plainly, to decide whether periodical payments should be £15,000, or £20,000 or £25,000 annually will be a pure exercise of discretion. When the court determines future facts, i.e. makes predictions about the future, the exercise is evaluative, even if it is based on findings about past facts. Thus, the question whether a child is likely to suffer significant harm for the purposes of section 31(2) Children Act 1989 is an evaluation: see *Re B (A Child)* [2013] UKSC 33 [2013] 1 WLR 1911 at [44], [57] and [199]. Equivalently, to determine whether a party has a future earning capacity is an evaluative exercise. Determination of past facts may also have a significant evaluative component. For example, what a husband actually did by way of contribution is a simple matter of fact; whether it amounted to something special justifying a departure from equality is a value judgment: see *Work v Gray* [2017] EWCA Civ 270 at [105]. In the very recent case of *Ilott v The Blue Cross & Ors* [2017] UKSC 17, the Supreme Court has explained that whether a will (or the laws of intestacy) made "reasonable financial provision" for a claimant under the Inheritance (Provision for Family and Dependants) Act 1975 is an evaluative rather than a discretionary determination.

13. Therefore, I agree with Mr Pointer's polite criticism. The only relevance of this distinction is that there may be a lower appellate threshold for an evaluation rather than an exercise of discretion. It has no relevance to the primary decision that I must make.

14. The formation of a value judgment about the past value of something is essentially subjective but it must have some evidential basis. But the evidence is certainly not confined to a strict black-letter accountancy exercise. It involves a holistic, necessarily retrospective, appraisal of all the facts and then the application of a subjective conception of fairness, overlaid by a legal analysis. This is not arbitrary in the sense that it is unreasoned or capricious. Thus, in *Jones,* Mr Justice Charles held that 60% of the value of that business, founded ten years before that marriage, which itself lasted ten years, was to be treated as non-matrimonial. Lord Justice Wilson found that this was wrong and that 36% of the value was non-matrimonial. He achieved this by taking the agreed initial valuation of £2m, by doubling that to reflect the fact that the company was (to mix metaphors) pregnant with a springboard, and then by uprating the doubled figure by 116% to reflect the movement in the FTSE All Share Oil and Gas Producers Index, thus reaching £9m, which was 36% of the sale price of £25m. In paras 32 and 35 Lord Justice Wilson acknowledged that his approach was "arbitrary" even if it did have the merit of being based on financial evidence. I am not sure that I agree with his self-criticism. Lady Justice Arden did not agree with Lord Justice Wilson, holding at para 60 that all the value of the company should be treated as non-matrimonial, even if it was worked on during the marriage, for otherwise "the law rewards the spouse who buries her non-matrimonial assets in the ground rather than the spouse who actively manages them." She added: "the correct analysis in my judgment, in circumstances such as the present, is that, where a spouse has a non-matrimonial asset of the present kind, he is entitled to that element of the company at the end of the day which can fairly be taken to represent the fruits of the non-matrimonial assets that accrue during the marriage, even if the fruits are the product of activity by him or on his behalf." Sir Nicholas Wall P agreed with Lord Justice Wilson but seemed to rest his decision on the fact that the result was an "old-fashioned third": see para 67. It is difficult to extract a consistent ratio from the judgments. One thing is certain, however. Lord Justice Wilson's technique of A x B x C (or, to be exact, 2 x 2 x 2.16) is not to be taken as the sole prescription for dealing with this issue.

15. In *Robertson* Holman J decided that half the value of ASOS was non-matrimonial, a favourable decision to that husband, given that the business was founded only two years before the marriage, which went on to last 14 years. In contrast in [2017] EWHC 147 (Fam) I decided that 25% of the value of that business was non-matrimonial. That was a decision that was favourable to that wife since the company had been founded 17 years before the marriage, which itself had lasted for the lesser period of 14 years.

16. In *Jones* Lady Justice Arden rejected a linear or arithmetical apportionment based on the respective periods of time before and after the marriage. In para 60 she stated:

> "In parenthesis, I would add that, because of this principle of 'reality', I would reject the graphs provided by Miss Stone seeking to establish the values of the company at certain dates based on an artificial assumption of a straight-line growth up to eventual sale."

The other two judges do not mention this argument. I am surprised that it was so lightly dismissed or disregarded as it seems to me to provide a useful heuristic basis

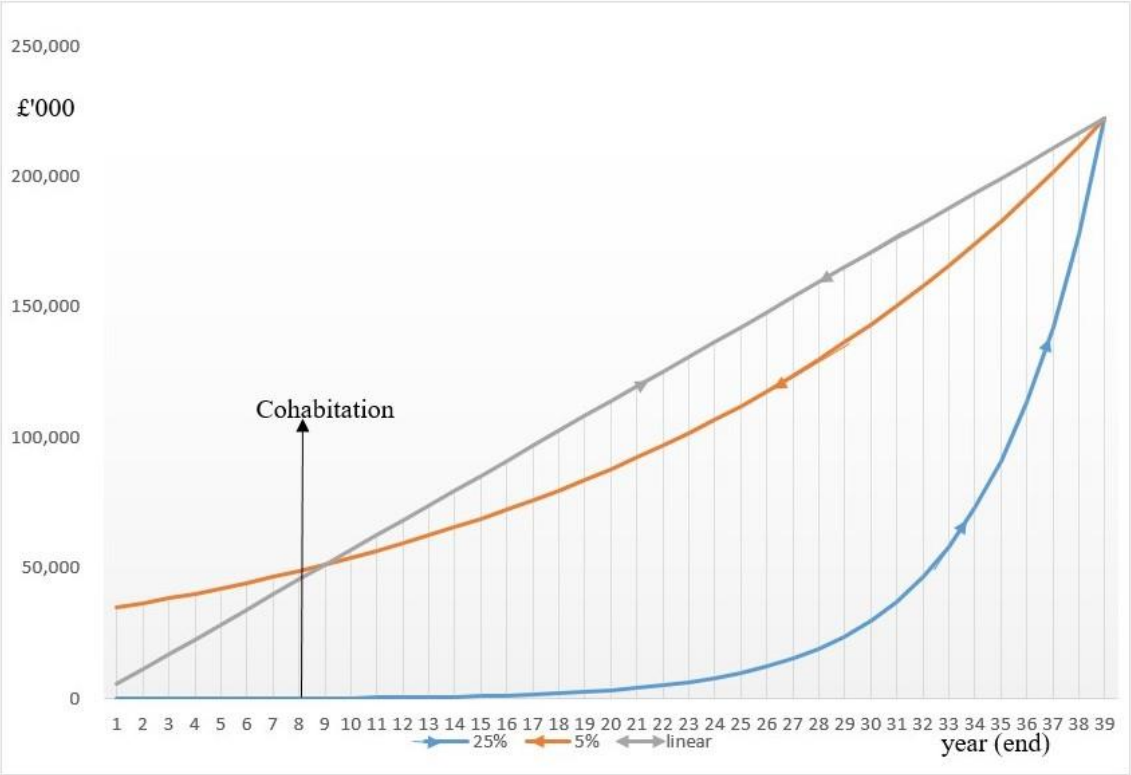
for analysing the issue, which if commonly adopted would have the beneficial side effect of eliminating arid, abstruse and expensive black-letter accountancy valuations of a company many years earlier at the start of the marriage.

17. In this case the SJE has valued the company in July 1986 as between £188,000 and £414,000. His approach eschewed any hint of retrospective analysis. He identified (in May 2016, when he wrote his main report) a 540% increase in the FTSE All-Share Sector relevant to this business. That would be about 700% now. Thus, using a strict *Jones* technique he would give a non-matrimonial value of the company of £1.5m - £3.3m.

18. I do not consider that this low bracket begins to reflect fairly the true present value of what the husband brought into the marriage through XG. A linear time apportionment would suggest that just over 20% (20.12% to be exact) of the present value had been accumulated at the time of the marriage. In numeric terms this is £44.5m. The straight-line method is not the only way of looking at the matter. An alternative is to take a discount rate of say 5% and work backwards from the current value. 5% has long been thought to be the "natural value of money". Locke thought so in 1722 when writing about interest on an unsecured debt. Using this technique, £221m in year 39 shrinks to £49m in year 8[1]. This approach would suggest that the business had a notional present day value of £33m at the end of the first year, which may be another way of expressing the idea, used by the House of Lords in *Miller v Miller* [2006] UKHL 24, [2006] 2 AC 618 of attributing a sizeable value to a good idea at the very start. The objection of the wife's legal team is to echo Lady Justice Arden. It does not reflect reality, they say. They have produced a graph which plots in separate lines the increase in turnover and post-tax profit. For each line the business had barely got off the ground in 1985. It made a loss in that year on a turnover of £2m. Compare that, they say, to turnover of £63m and profit of £13.4m in 2015. Their lines have an exponential shape. If one were to start with say £46,000 of value and to increase that every year by 25% you would end up with £221m[2]. The graph would look the same as Mr Pointer's. I do not agree that it is reasonable to look at this company as having started with a tiny figure which has grown by 25% in each and every year. Even though it does not match the turnover/profits graph I consider that the linear or discount method much more fairly and realistically reflects the true potential of this company at the start of the marriage.

[1] $221 \div (1.05)^{31} = 49$
[2] $46 \times (1.25)^{38} = 221{,}482$

19. The techniques I have described can be graphically portrayed thus:



20. The linear approach is the evaluation which I make in this case. It resonates with fairness. It reflects my opinion of the true latency of the business at the time that the marital partnership was formed, and that, intrinsically, value is (at least) as much a function of time as it is of work or market forces. In argument, I asked "how could it be said that a day's work in 1980 in creating this company was less valuable than a day's work last week?" In my judgment, the answer is that it could not.

21. After this judgment was distributed in draft counsel for the wife, Mrs Carew Pole, sought to persuade me to change in her client's favour most of my calculations because the business was co-owned by the husband and his friend when the cohabitation began in April 1986 and remained so until April 1989 (see para 6 above). That fact does not alter, in the slightest, my evaluative assessment of what element of the present value of the business should be treated as existing at the time the relationship started and which is therefore certainly to be characterised as non-matrimonial. The wife's arguments have made me ponder whether a further element, to reflect the co-ownership between April 1986 and April 1989, should also be designated as non-matrimonial property. The linear approach would suggest that the business was worth £61.5m in April 1989. So, it may be argued that £8.5m, being half of the difference between that figure and £44.5m, should also be treated as non-matrimonial. I do not take that step, but it does show that you should be careful what you wish for.

22. I therefore take the matrimonial element of the business to be £176,634,650 and the non-matrimonial element to be £44,490,350. That is my value judgment on the facts of this case.

23. The husband is a very active man. He loves shooting, skiing and motor racing. At the age of 68 one might suppose that he would be thinking of retirement so that he can enjoy his pastimes to the full whilst his health permits. But he told me that he had no intention of retiring and he would wish to continue working in the business until his 75th birthday. He told me "this is my life, my passion, and when I walk around the factory with the staff and things, it is the ultimate zing. It is as good as driving a racing car. That is what drives me. So I know loads of people that do not retire until into their 80s. I am not saying I am going to try and leave it that long". I was told by Mr B, the CEO of the business, that there was certainly a plan, quite recently formed, for the husband to exit when he was 75. He told me that he started talking about 75 "probably two years ago. At 65 he said he will do at least 10". It is true that in the context of the breakdown of the marriage the husband had some desultory conversations with two possible purchasers, but I do not believe that at that time he was sincerely exploring a disposal of the business. I think he was probably acting emotionally in the context of the failure of the marriage. It is inconsistent with my view of him which is that he is devoted to his business and wishes to continue taking it forward, as well as providing work for so many local employees.

24. In the letter of wishes accompanying the husband's current will it is proposed that on his death the business should first be offered to management to purchase and only placed on the open market should they not do so. The husband confirmed to me that this would in fact be his intention on his 75th birthday. Therefore, but for this divorce I proceed on the footing that it was the husband's intention to cash out at that time – seven years from now. Of course, the divorce alters everything. However, it is my judgment that it is reasonable for the husband to be able to continue with his life's work if most of the wife's award can be provided now either by transfers of real property or in cash. Generally speaking, a *Wells* sharing arrangement should be a matter of last resort, as it is antithetical to the clean break. It is strongly counterintuitive, in circumstances where one is dissolving the marital bond and severing as many financial ties as possible, that one should be thinking about inserting the wife as a shareholder into the husband's company. Its inaptness was well illustrated when Mr Marks QC put it to the wife that a form of *Wells* sharing would have happened had the marriage continued, to which her pithy response was "but it hasn't continued". However, *Wells* sharing is not so objectionable if it only applies to a minority element of the claimant's award.

25. Therefore, it is my central finding that if most of the wife's award can be provided to her now, or soon, it is not unreasonable to proceed on the basis that the business will not be sold until the husband chooses to sell it. This finding has two consequences so far as the wife's award is concerned. First, and obviously, and as I have already mentioned, it means that a minority part of the wife's award will be expressed as an enlarged shareholding in XG. For reasons I will explain the wife's shareholding will be enlarged from 1% to 17.5%. This is about 26% of her overall award, which is a not unreasonable proportion.

26. The second consequence is that in calculating the net assets the latent tax has to be assessed on the basis that a very large dividend is paid in order to give the husband the means to pay the wife a substantial lump sum, while at the same time allowing him to continue working in and on the business. The dividend tax rate of 38.1% is higher than the capital gains tax rate of 20%[3]. This means that the overall net value of the assets is slightly less that it would have been on a notional immediate sale, and that the value of the wife's share is correspondingly less. I am not disconcerted by this in the slightest. If somewhat more tax is paid, or taken to be paid, because I have decided that it is fair that the husband should be allowed to continue with this business, then that is a consequence that the wife will have to bear.

27. I now set out the marital assets as I find them to be. This is taken from the agreed schedule of assets. There are a few matters of controversy which are noted and dealt with below.

Property (net of debt and sale costs)		Note
Somerset House	5,022,063	
Hampshire House	10,670,000	
Kings Rd	2,640,640	
Austria	207,062	
Teignmouth	223,100	
Shooting Estate	1,486,459	1
	20,249,324	
Bank accounts		
H	412,602	
W	222,079	
Joint	258	
	634,939	
Monies owed	(1,276,173)	2
Costs		
H	(119,409)	
W	(253,547)	
	(372,956)	
Pensions		
H	1,956,884	3
W	15,185	
	1,972,069	

[3] In fact, 10% on the first £1m of gains and 20% on the rest.

XG		
Value	221,125,000	
79.88% marital	176,634,650	
less costs of sale	(4,239,232)	
less dividend tax on £80m	(30,480,000)	4
less CGT	(17,369,653)	4
	124,545,765	
TOTAL	**145,752,969**	

Note 1: The husband purchased the shooting estate at the end of last year, shortly before the pre-trial review. I then expressed the provisional view that I would regard that purchase as not having happened and would treat the husband as if he still had the relevant funds in his bank accounts. I maintain and confirm that view. The husband did not need to purchase this property at that time – it is not his primary home – and it would not be fair and reasonable to deduct from the pool of marital assets the costs and taxes of purchase let alone the notional costs of sale.

Note 2: This figure includes the sum of £800,000 which is the best estimate, albeit not particularly well evidenced, of sums by way of back taxes, penalties and interest that will have to be paid. It is reasonable for these sums to be deducted from the pool of marital assets especially (but not necessarily) as I am satisfied that the wife was aware of the conduct that gives rise to this liability.

Note 3: I have excluded from the value of the husband's pension the sum of £1 million which I accept is a reasonable value to attribute to the husband's premarital pension pot.

Note 4: Although the husband's initial stance before me was that the wife should receive very little by way of cash award, and a much larger shareholding in XG, by the time that final submissions were made Mr Marks QC on behalf of the husband accepted that a dividend of £80 million could be declared. There is a dispute as to how much of this should be made available to the wife as a lump sum – the husband claiming that he has liquid needs comparable to hers, and I will deal with this below. However, my calculation of the net marital assets proceeds on the basis that a dividend of £80 million will be declared and the dividend tax of 38.1% will be paid on it. In calculating the capital gains tax the amount of the dividend is of course deducted from the starting point value.

28. Should this figure of £145,752,969 be divided unequally to reflect the husband's asserted special contribution? I think not. In *Miller* the House of Lords said that the question of special contribution should be judged by reference to the same standards that an allegation of misconduct is judged. Although conduct has its place in the statute (in section 25(2)(g) of the 1973 Act) it is undeniable that marital (as opposed to litigation) misconduct virtually never plays a part. So, the same standard of rarity should be applied to a claim of special contribution. I can see why in the extraordinary case of *Cooper-Hohn v Hohn* [2014] EWHC 4122 (Fam) that standard was met, but

while making £145 million over the course of a long marriage is a highly creditable achievement it simply does not meet the standard of rarity needed to justify what is, after all, a highly discriminatory unequal division of the product of the matrimonial partnership. The problem with the whole concept of special contribution is that it gives rise to the Orwellian oxymoron that "all contributions are equal but some are more equal than others". Therefore, (like the idea of sharing non-matrimonial property) it should be confined to cases which are as rare as a white leopard. And this is not one of them. In *Gray v Work* [2015] EWHC 834 (Fam) Holman J determined that for the husband to have made $225m (£175m at current exchange rates) over 18 years was not a special contribution, and his determination was upheld by the Court of Appeal. At para 103 it was said that the task of the judge is simply to evaluate whether the claimed contribution is "wholly exceptional", no more, no less. At para 108 it was said that comparisons between cases are unhelpful. Even so, I am reassured that in this case the husband has made rather less money than Mr Work did, over rather a longer period. I am also reassured that in *Chai v Peng & Ors* [2017] EWHC 792 (Fam) Bodey J did not regard the accumulation of £161m over 46 years as a special contribution justifying a departure from equality – see para 72. I make these observations in passing. The results in those cases have not influenced my core determination that the scale and quality of the husband's contributions here do not justify discrimination in his favour.

29. I am aware that in *Chai v Peng & Ors* Bodey J divided the "kitty" 60:40 in favour of the husband because the wife's award would be largely cash or easily realisable assets: see para 140. I do not adopt that approach. A valuation of an asset is the estimate of what it will sell for now. If it is perceived as being hard to realise then its value will be discounted to reflect that difficulty. It does seem to me to use discounted figures and then to move away from equality is to take into account realisation difficulties twice. Whatever the asset the only difference between it and its cash proceeds is, as Thorpe LJ once memorably said, the sound of the auctioneer's hammer.

30. Therefore, in my judgment the figure of £145,752,969 should be divided equally giving the wife a target allocation of £72,876,484.

31. A dividend of £80 million is £49,520,000 after tax. In my judgment, the wife should have £40 million from this. The balance, of just under £10 million, is reasonably needed to give the husband some cash, which he will use principally to pay off the borrowing which he has raised to purchase the shooting estate. The evidence was that of this dividend of £80 million, the sum of £50 million could be raised immediately, and the balance would have to be deferred. Of the £50 million, the sum of just over £30 million would have to be paid in tax. Thus, the wife can be paid £20 million more or less immediately and £20 million would have to be paid over a period of time. Mr Marks suggested £5 million a year over four years, but in my judgment, that is too long. In my judgment, the husband should have two years from the date of my order to pay the deferred sum of £20 million. In her oral evidence the wife accepted that it would be reasonable for her to have to wait for a large chunk of her award. There will be a charge over the husband's shares to secure this deferred payment.

32. After this judgment was distributed in draft Mrs Carew Pole suggested that if £30m of the payment of the declared dividend was deferred then £10m of dividend tax would

be equivalently deferred. I received no evidence or submissions about this, and would have thought that if a dividend is declared then the tax has to be promptly paid even if payment of part of the dividend is deferred. Even if £10m of tax is deferred this alters nothing in my conclusions as the sum must be carefully husbanded to pay that tax in due course.

33. Upon payment in full a clean break will come into effect.

34. Certain transfers are already agreed in the wife's favour and so on this basis the wife will receive the following in the immediate future:

Hampshire House	10,670,000
Kings Rd	2,640,640
Teignmouth	223,100
Her and Joint banks	222,337
From monies owed	184,000
pension	15,185
costs	(253,547)
from dividend	40,000,000
	53,701,715

The target allocation is £72,876,484, so there is a shortfall of £19,174,769, which, as I have stated earlier, represents 26% of the wife's overall allocation. The net residual value of 100% of XG, after payment of the £80m dividend, I calculate to be £109,760,543. £19,179,769 is 17.5% of £109,775,543. Therefore, the wife's shareholding will be increased from 1% to 17.5% immediately following the payment to her of the deferred element of the lump sum of £20 million.

35. Following distribution of this judgment in draft Mrs Carew Pole asked me to "amplify" my reasons for deferring the transfer of 16.5% of the shares in the business to her until payment of the second tranche of £20m. I would have thought that the reason was obvious. In all likelihood, the husband will need to declare further dividends in order to raise that sum and his ability to do so would be seriously compromised if 16.5% of such dividends were paid to the wife. The wife accepted that part of her award should be deferred, and, in my judgment, that should extend to the transfer of the shares.

36. I expect the terms of the wife's shareholding to be agreed. If not I will rule on them. Alternatively, if the parties agree, any disagreements could be arbitrated by a specialist in company law.

37. The overall assets are £182m. £73m is 40% of that. In my judgment that is a perfectly fair proportion for the wife to receive on the facts of this case. As it happens, it would be a fair percentage if I were doubly wrong - about both of special contribution and pre-marital property, but that is not a consideration which bolsters my conclusion.

38. I confirm that I have taken into account all the matters in sections 25 and 25A of the Matrimonial Causes Act 1973, as well as the relevant case law. As is apparent from what I have written above I am satisfied that my disposition is fair.

39. Finally, I would observe that the demands by Mrs Carew Pole for correction and amplification of the draft judgment went far beyond what is permissible, and amounted to blatant attempts to reargue points which I had already rejected. This practice is becoming commonplace and should be stopped in its tracks in the interests of efficiency and the conservation of the resources of the court. Suggested corrections should be confined to typographical or plain numerical errors, or to obvious mistakes of fact. Requests for amplification should be strictly confined to claimed "material omissions" within the terms of FPR PD 30A para 4.6.

40. That concludes this judgment.