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‘Matrimonialisation’ in *Standish v Standish*: new word, new battlegrounds?*

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ABSTRACT

This case note offers a critical analysis of the United Kingdom Supreme Court’s widely noted decision in *Standish v Standish*, exploring its implications for the conceptual boundaries between matrimonial and non-matrimonial assets. The judgment introduces and affirms the concept of ‘matrimonialisation’, offering clearer guidance on when or whether non-matrimonial property might fall within the pool of ‘divisible’ shared assets available for carving up following divorce or dissolution. While the decision brings greater definitional clarity, it perhaps does so at the expense of deeper engagement with equitable principles. We argue that *Standish* does at least reflect a turn towards greater, more formalised clarity in relation to familial assets protection. However, it leaves unresolved important questions about the status of such assets once they are earmarked by a common intention or transferred for shared or familial purposes. We consider the potential long-term effects of *Standish* on such practical matters as ancillary relief litigation and succession planning.

Keywords: ancillary relief; matrimonialisation; resulting trusts; promissory estoppel.

In *Standish*, the Supreme Court had to determine whether disputed assets were available to be divided by the court following the breakdown of a marriage. As short-hand, assets over which the court will exercise its powers to make orders as between the parties are referred to as ‘matrimonial’ and assets belonging to either party which are not subject to consideration for division are ‘non-matrimonial’. The Court also faced the question of whether a non-matrimonial asset had ‘matrimonialised’ to become a matrimonial asset.

This case note will consider the background to case, setting out the existing legal framework as well as the factual background to the case. It will then analyse the reasoning of the Supreme Court judgment which ultimately decided that a valuable pre-acquired asset which had

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been transferred from husband to wife had not become matrimonial by virtue of that transfer. It will then explore the implications of the reasoning.[1]

BACKGROUND TO THE CASE

Following the breakdown of a marriage or civil partnership, the courts have the power to make a number of different orders to divide assets between the parting parties. In England and Wales, the Matrimonial Causes Act 1973, section 25, provides a broad but structured discretion to the courts as to which orders are made. This is mirrored in the Matrimonial Causes (Northern Ireland) Order 1979, Article 27. The case law has shaped this discretion, identifying principles the courts should apply. Many of the leading authorities in ancillary relief are what has come to be known as 'big money' cases and this one was no different, with the Court itself using the term.[2]

The husband had a successful career in financial services, earning considerable wealth. In terms of the relevant section 25 factors, the length of the marriage was 15 years with a two-year relationship before that. The husband was aged 72 and the wife 57. There were relevant children, two from the marriage with each party also having children from a previous marriage.[3]

There was a significant pool of assets in the case, not all of which it was contested should be available for division. Among these was the former matrimonial home which the lower court accepted as having an agreed value of £21.6 million.4 The husband brought significant pre-acquired wealth into the relationship. He claimed that, at the outset of the relationship in 2004, his assets were worth £57 million – equivalent to approximately £155 million at the time of the hearing.[5] Although the wife also had pre-acquired wealth from a previous property and an inheritance, the scale of her assets was markedly less. The husband's holdings included a farm in Australia, the business operating that farm, a half share in the former matrimonial home, and an investment fund portfolio. The wife, by contrast, held a half share in the matrimonial home.[6]

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1 All analysis, views and explanations are the authors' own.

2 *Standish v Standish* [2025] UKSC 26, para 6. For research on a broader range of cases see Hitchings et al, Fair Shares? Sorting out Property and Money on Divorce (University of Bristol/Nuffield Foundation/BPSR 2023).

3 *Standish* (n 2 above) paras 8–15.

4 Ibid para 14.

5 Ibid para 17.

6 Ibid para 20.

The litigation centred on two principal financial issues. The first concerned a portfolio of investment funds valued at £77.8 million ('the investment funds'), which the husband transferred into the wife's sole name after 12 years of marriage. The second related to the allocation of shares to the wife in the company responsible for managing farming operations at the husband's farm. It was the first financial issue – the investment funds – which was the focus of the litigation by the time it reached the Supreme Court.[7]

The transfer of the investment funds from husband to wife (referred to as 'the 2017 transfer') formed part of a broader estate-planning strategy. It was undertaken following the family's relocation to the United Kingdom (UK), which had implications for both parties' domicile status and consequent tax liabilities. The wife remained non-domiciled in the UK. The husband argued that the intention was for the investment funds to be transferred into the wife's sole name and subsequently settled into an offshore discretionary trust for the benefit of the couple's two children.[8] This was accepted by the first instance judge, a finding later upheld by both the Court of Appeal and the Supreme Court.[9] On the husband's evidence, he would be added as a beneficiary of the discretionary trust at a later date, although at first instance the judge found there to be no evidence that the husband could be a beneficiary of the trust.[10]

At first instance, the Court found that the investment funds in the 2017 transfer were mostly pre-marital wealth, with only a portion accrued during the marriage and therefore the majority of the funds were not matrimonial property. However, the first instance court found the transfer of those assets caused them to become matrimonial property, but the source of the assets impacted the application of the sharing principle. When added to the other assets the pot totalled over £112 million, and, as such, the court determined the appropriate division for the wife amounted to £45 million.[11] The husband was awarded the greater share to take into account that he was the source of the assets and that these were mostly acquired pre-marriage.

The Court of Appeal disagreed. It determined that the *source* of the assets should be the determinative factor in whether an asset was considered to be matrimonial, and thus available for sharing. The Court agreed that the title was not determinative of how the asset was categorised but did not see the transfer as changing the categorisation of the asset, again focusing on the source. In other words, the act of

7 Ibid para 19.
8 Ibid para 22.
9 Ibid paras 21–22.
10 *Standish v Standish* [2024] EWCA Civ 567, [29], [49].
11 *Standish* (n 2 above) para 24.

transfer had not 'matrimonialised' any of the investment funds to render them subject to the sharing principle: as such, they remained outside of the pot. This assessment significantly lowered the amount to which the court could apply the sharing principle. Determining it to be £50 million meant that a fair outcome (half of the relevant pot) allowed for the wife to be awarded £25 million. The Court of Appeal remitted to the lower court a needs assessment for the wife, to determine if £25 million could meet her needs.[12]

A needs assessment in the context of an award of £25 million seems paradoxical but where statutory discretion requires consideration of the standard of living enjoyed by the family before the breakdown of the marriage (as well as consideration of any financial obligations and responsibilities) this is a necessary assessment. Arguably, in 'big money' cases such as this, different terminology might be considered, given that the notion of 'need' – particularly within family law cases – is often more associated with deprivation, and at times remains acutely unmet, post-divorce or separation.[13]

The wife's appeal to the Supreme Court was on the question of the investment funds and challenged the Court of Appeal's assessment that these had not been matrimonialised by the 2017 transfer. She argued that the investment funds were a gift – as evidenced by the transfer – and the Court of Appeal had been wrong to focus on the source of the assets, rather than looking to the transfer.[14]

THE SUPREME COURT'S REASONING

The Supreme Court reiterated the three principles derived from the existing case law with which practitioners will be very familiar – the 'needs' principle, the 'compensation principle' and the 'sharing principle'.[15] Straightforward to state and easy to understand though those principles may be, their operation in the individual case against the backdrop of the court's discretion keeps this area of practice alive with disputes. The Supreme Court added to these three principles the 'non-discrimination principle': the courts will not favour the wage-earner over the party who has been a 'home-maker'.[16]

The focus of the Court in this case was not on which principles should be applied (or even on how these should be applied) but rather what

12 Ibid para 25.

13 See Hitchings et al (n 2 above) 296: the survey finding that up to five years after their divorce, 'women – notably mothers with dependent children – were, on average, worse-off financially than men'.

14 *Standish* (n 2 above) para 27.

15 Ibid paras 5.

16 Ibid paras 5.

those principles can be applied *to*. As the Supreme Court summarised, in ancillary relief cases the court will consider matrimonial assets as being distinct from non-matrimonial assets. In some contexts, what might have been considered a non-matrimonial asset has, either through time or due to the actions of the parties to the marriage, become a matrimonial asset. The Supreme Court endorsed the term 'matrimonialisation' (of an asset) to capture this. [17]

Revisiting the stalwart cases of *White v White*, *Miller v Miller*, and *McFarlane v McFarlane*, the Court set out five principles to be referred to when considering matrimonial and non-matrimonial property alongside the sharing principle.[18] On first reading, it does so with a simplicity which will likely be welcomed by law students everywhere. With regards to matrimonial and non-matrimonial property, some clarity is offered. Firstly, the case states that there is a conceptual difference between these two terms based on the source of the asset. Non-matrimonial property is either pre-acquired or related to an inheritance or gift, whereas matrimonial property has come from the parties' *joint* efforts, to reflect the relational, co-owning nature of marital partnerships. The Court made clear that legal title alone does not determine whether an asset is to be treated as matrimonial or non-matrimonial in character.[19]

Second, and putting to bed some previous consternation, the Court definitively states that non-matrimonial property will *not* be subject to the sharing principle, though it can be subject to the twin principles of need and compensation.[20] Defining such property as non-matrimonial might have impacted upon our understanding of what proportion of the shareable pot of assets might be awarded to each party under the sharing principle. Similarly, and thirdly, the Court opted not to depart from the equality principle. Instead, it favoured a bright-line rule that non-matrimonial property will not be automatically subject to the sharing principle.

As a fourth principle, the Court accepted that what might start out as a non-matrimonial asset can in time become matrimonial.[21] On that subject, the *obiter dicta* of *Wilson LJ in K v L* were endorsed.[22] In that case, he considered three circumstances where the source of the asset might become less important. In paraphrase, those are:

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17 Ibid paras 7.

18 *White v White & Miller v Miller* [2001] 1 AC 596; *McFarlane v McFarlane* [2006] UKHL 24.

19 *Standish* (n 2 above) para 48.

20 Ibid paras 48–49.

21 Ibid paras 51.

22 *K v L* [2011] EWCA Civ 550.

1 That the matrimonial property has become so valuable that the initial contribution by one spouse of non-matrimonial property to it is no longer significant.
2 That the non-matrimonial and matrimonial properties have become so mixed together that it may be said the spouse who brought the non-matrimonial property has accepted this state of affairs: it was either, to their mind, becoming matrimonial or it was by now too difficult to unpick the mixing-up of assets, to correctly identify the value of the non-matrimonial property.
3 The non-matrimonial property has been used towards the matrimonial home.[23]

Though endorsing this analysis, Lord Burrows and Lord Stephens expressly state that these are not exclusive categories. Matrimonialisation is 'neither narrow nor wide':

> what is important (leaving aside matrimonial property resting on contributions from each party) is to consider how the parties have been dealing with the asset and whether this shows that, over time, they have been treating the asset as shared between them. That is, matrimonialisation rests on the parties, over time, treating the asset as shared.[24]

The treatment of the asset by the parties is key in terms of conveying – and establishing evidence of – intention. Treatment of an asset can, however, be complicated and subject to myriad factors. It was not for the Supreme Court to consider the facts beyond those which were before it. However, in the context of cohabitation, *Jones v Kernott* introduced to the law a complex analysis for courts around intention – actual, implied or imputed.[25] Actual treatment of an asset may differ from treatment of an asset to perhaps include the parties' intentions. These intentions might be very different from each other and might also vary over time. Whether an asset has come to be treated as a shared asset may well be a straightforward question in many cases. However, sometimes the parties may not be treating an asset in the same way or share the same understanding of why an asset is being treated in a particular way.

Further, one could foresee a situation in the context of domestic abuse, in particular financial abuse, where a dogged refusal to treat an asset as matrimonial may be an exertion of ongoing coercive control by one party enforcing their will and intentions over the other. There is a

23 *Standish* (n 2 above) para 51. This might be the principle that most affects – or vexes – clients and family law practitioners, where matrimonial assets are largely limited to the family home, or perhaps affected by negative equity.
24 Ibid para 52.
25 *Jones v Kernott* [2011] UKSC 53.

slight safety-net, in the sense that the distinction between matrimonial and non-matrimonial assets will come into play once the court has moved past the needs principle (to consider the issue of sharing). Though bringing some degree of helpful clarity, this judgment does not eradicate all potentially difficult situations, nor could it easily do so. The Supreme Court has confirmed the existing principle that matrimonial property should normally be shared on an equal basis, through there may be justified departures from that rule. This would seem to uphold the old 'yardstick of equality' maxim.[26] However, with that in mind, there will inevitably be a shift in argument between parties as to when an asset can truly be said to be non-matrimonial in nature, and then – even if so categorised – as to when can it be 'matrimonialised' to become a matrimonial asset, in the full and proper sense.

The final principle from the Court (which is somewhat fact-specific but will potentially have those tasked with providing financial advice in a state of some excitement) is that transferring an asset for the purpose of estate or tax planning does not, without more, show that asset has been treated as shared or mixed. Rather, the aim is simply to save tax.[27] While that may well be the intention of the parties involved, the special position of spouses in relation to some tax arrangements surely suggests that (in public policy terms at least) they are permitted special arrangements as between themselves for tax purposes precisely because their assets are familial. Even if an estate- or tax-planning arrangement is not possible in law only by virtue of the parties being spouses, it may be that it has only been entered into as a result of the trust between spouses. If the arrangement would not have been entered into with a friend or business associate but relies on the spousal bond, it suggests the transaction has a familial element.

On the facts of the case before it, the Supreme Court's reasoning was bolstered by the fact that the investment funds were transferred not just as part of a tax-planning arrangement but also with a view to being held on trust for the children of the marriage. Therefore, they were not to be used or kept for the benefit of the wife, now or in the future: as such, the Court concluded, they were not matrimonialised because they were not being treated as an asset that was being shared between them.[28] It is hard not to lean towards the argument made on the wife's behalf that the investment funds were being transferred for the benefit of the children and as such were being used for the family. The Court rejected this, however, saying it elides the benefit to the children, merging it with a benefit to be shared between the spouses,

26 *Standish* (n 2 above) para 40.
27 Ibid para 56.
28 Ibid paras 60–61.

namely that of a lower tax bill.[29] Here, the intended tax benefit was to be passed on to the children. The Court concluded that the investment funds were not matrimonialised by the 2017 transfer: the proportion considered to be non-matrimonial thus remained unchanged. It did not enter the pot and would not therefore be subject to the sharing principle.

AFTERMATH AND IMPLICATIONS FOR EQUITY AND FAMILY LAW

Many cases will not progress beyond the 'needs and compensation' stage to reach the sharing principle. When assets go beyond needs or compensation the court must decide whether they are matrimonial or non-matrimonial for the sharing principle. While these principles are often associated with 'big money' cases, they will also matter in more modest disputes. Clearer statements of principle therefore provide courts and practitioners with a firmer basis for predicting how assets will be characterised, offering welcome certainty in an area where privately crafted agreements are often reached in anticipation of judicial outcomes.

At the same time, policy tensions remain. It is potentially problematic to allow a spouse to rely on the domicile of the other to claim a benefit (even if not for themselves but for other family members) while simultaneously asserting that the assets protected by those arrangements are not available to be shared with that same spouse as they are not family assets. While in this case the courts accepted there was clear intention for the children to benefit from the exercise, one can envisage other factual scenarios where the benefit to be derived from the assets is different.

Where parties deliberately rely on tax arrangements available solely by virtue of one spouse's status, this may be taken to indicate a shared and intentional treatment of the assets in question. Even if the parties did not expressly intend that either would benefit from the arrangement at the time it was made, such joint reliance arguably bears upon the proper characterisation of the asset in the event of subsequent dispute. Had the objective been limited to fiscal ring-fencing, the parties could have achieved this through the use of an offshore company or independent trust structure at an earlier stage. The decision instead to depend upon the domicile and activities of one spouse arguably imports an element of shared intention or mutual understanding regarding the treatment of the assets – a proposition the Court ultimately rejected.

29 Ibid para 62.

Looking forward, changes in practice might include greater, more normative, use of post- or mid- nuptial agreements, for example in the form of periodical revisitation of pre-nuptial agreements, to take account of newly gained wealth, pensions, debts, windfalls, changed intentions, and odd transfers between spouses aimed at setting up intergenerational trust funds. This could provide a much clearer mechanism for the protective ring-fencing of assets which a party does not intend to share. The Law Commission's current project on financial remedies upon divorce/dissolution suggests a renewed focus on some of the principles being developed by the courts.[30] No doubt there will follow some interesting judgments on the application of the principles set out by the Supreme Court. The ways in which parties can argue that assets have been matrimonialised (or not) will likely be as varied as the intentions, assets, and circumstances of those involved.

CONCLUSION

On the one hand, the Court has brought a welcome degree of definitional clarity by expressly distinguishing between matrimonial and non-matrimonial assets and endorsing the concept of 'matrimonialisation'. For practitioners, this bright-line approach should assist in advising clients with greater certainty, particularly in high-value disputes where complex asset portfolios are in play. The reiteration of the sharing, needs, and compensation principles – alongside the confirmation that non-matrimonial assets are generally immune from the sharing principle – reflects a pragmatic desire to simplify an area long characterised by judicial discretion.

However, this clarity comes at a cost. By framing the analysis almost exclusively in terms of property categories, the Court avoided engaging with the more intricate equitable dimensions of the dispute. A richer exploration of how equitable principles operate in practice could have offered valuable insight into the parties' common intention and shared purpose, as well as the broader question of fairness that underpins equitable intervention. In this sense, the judgment's coherence in legal categorisation arguably came at the expense of a fuller understanding of the equitable relationships at stake.

30 Law Commission, *Financial Remedies on Divorce and Dissolution: A Scoping Paper* (Law Com No 417 2024).