

1 3. The parties met while at High School in Grand Cayman and then went to pursue their
2 tertiary education together at the same university in Orlando, Florida, USA, the Husband
3 on a scholarship from the Cayman Islands Government. Save for a couple of short breaks
4 their relationship continued and the parties were married in Orlando on 3rd September
5 1982. The Husband was 23 and the Wife 21.

6
7 4. On graduating in May 1982, the Husband then took and passed the Certified Public
8 Accountant (CPA) exams. A year later, in May 1983, the Wife graduated with a degree
9 in Business Administration and Management and the parties returned to Cayman to live
10 in rented accommodation. The Husband, being committed to work for the Cayman
11 Islands Government, went to work for the Government Treasury Department. The Wife
12 obtained employment with Guinness Mahon Trust Company as an assistant trust officer,
13 intending at that time to pursue a career in the financial sector. Shortly thereafter the
14 Husband was offered and accepted employment with accountants Arthur Young &
15 Company (now Ernst & Young). It therefore became necessary to refund his
16 Government scholarship. The parties agreed to do this partly with a bank loan, which
17 they repaid from their joint incomes, and partly with funds the Wife had received from
18 her father at the time of their marriage. The opportunities for advancement in their
19 respective chosen careers at the time for both the Husband and the Wife as bright,
20 university educated and committed Caymanians were clearly very good. However, like
21 many young professional couples they started off with no significant material wealth.

22

1 5. Approximately 2 years later, in June 1985, the Husband moved to the Cayman office of
2 the accountants firm which later became KPMG in the anticipation of future partnership
3 prospects there. At about this time the parties had decided to start a family and the Wife
4 became pregnant with the parties' first child. She subsequently ceased employment with
5 Guinness Mahon on maternity leave.

6

7 6. In August 1985 the parties' first child, a daughter, was born. She is now 24 years old and
8 has graduated from university in the USA. She was until recently employed by the Wife
9 at the equestrian centre, to which I will refer further below, but is now undertaking
10 equestrian training in the USA for the Pan American Games, being a very accomplished
11 rider.

12

13 7. Some 5 months after the birth the Wife returned to work. The parties agreed it would be
14 best for their child for the Wife to be able to devote time to her rather than leaving the
15 child all day with a helper and that the Wife should therefore work part-time.
16 Unfortunately Guinness Mahon was unable to give her part-time work and so the Wife
17 took a part-time job at her brother's law firm. There were no career advancement
18 prospects for the Wife at the law firm so this was clearly a step down career-wise for her.
19 However, it was necessary for her to work as the parties needed her income.

20

21 8. In September 1986, the Husband, having been advised that it would desirable for his
22 career advancement to gain work experience abroad, moved to work in KPMG's
23 associated office in Orlando. This involved the family relocating and of course

1 necessitated the Wife giving up her job. She was not legally permitted to work in the
2 USA. The Wife was not happy about the move and did not enjoy living in Orlando
3 where she had to spend most of the time on her own with one, and latterly two very
4 young children, while the Husband was at work. The Wife contended, and the Husband
5 accepted, that the move to Orlando was a "sacrifice" by her in support of the Husband's
6 career. After moving to Orlando the Wife became pregnant with the parties' second
7 daughter, who is now 22 years old and in her final year at university in the USA studying
8 accountancy.

9
10 9. After approximately 18 months living in Orlando, the parties returned to live in Grand
11 Cayman in February 1988. At this time, with the assistance of a bank loan, a cash gift
12 from the Wife's parents and a further loan from her brother, they purchased their first
13 matrimonial home, a house in Lower Valley. The Husband continued with KPMG and
14 the Wife resumed her part-time job with the same law firm and otherwise devoted her
15 time and effort to looking after the 2 children of the marriage, the home and the domestic
16 side of the family. 3½ years later, on 1st July 1991, the Husband became a partner at
17 KPMG.

18
19 10. About 1 year later, the parties' third daughter was born. She is now 17 years old (she will
20 be 18 later this year) and is at high school in Grand Cayman. It is anticipated that she too
21 will go on to tertiary education. She usually lives with the Wife, although over the
22 summer of 2009 she lived on a full-time basis with the Husband. She has a close
23 relationship and spends her time with both parties.

1 11. By the early 1990's the parties were beginning to enjoy the fruits of their respective
2 work. The Wife always had an interest in horses and is a keen rider. She acquired a
3 horse of her own and subsequently the children were given ponies. However there was
4 insufficient space in the yard at the house in Lower Valley to keep horses so in about
5 1992/1993, in order to have somewhere suitable to keep their horses and to pursue their
6 interest, the Wife joined with a friend in setting up a small riding school on land in
7 George Town which the Husband had inherited. A company, Equestrian Centre of
8 Cayman Ltd. (ECL) was incorporated for the purpose and the Wife took a 60% interest in
9 ECL and her friend 40%. About 2 years later, as her earnings were no longer needed to
10 assist in maintaining the family, the Wife ceased her part-time job and devoted more of
11 her time instead to the riding school, which gradually developed and became, and
12 remains, a successful equestrian centre which over time acquired staff, more horses, more
13 relevant equipment and more stabling.

14
15 12. In April 1994 the parties incorporated a local asset holding company, Tstolen Tyme
16 Holdings Ltd (TTH Ltd), in which they have an equal interest and in which many of their
17 assets are held. At about this time the Wife acquired the 40% interest of her partner in
18 ECL and all the shares in ECL were then transferred to TTH Ltd. The parties
19 accordingly became joint 100% beneficial owners of the equestrian centre through TTH
20 Ltd.

21
22 13. After becoming a partner in KPMG over time the Husband acquired more units in the
23 partnership thereby increasing his equity and profit share. By 1999 he had as much as

1 40% of the equity in the firm. His income that year was over US\$1.5m. The family's
2 standard of living increased significantly and the parties acquired other assets and also
3 made significant savings and investments. In 1998, with the assistance of a loan from the
4 Wife's father, they purchased a new and larger matrimonial home in Websters Estates,
5 George Town. The following year they sold the house in Lower Valley. They also
6 acquired 3 other parcels of real property. In 1999, the Husband, who is a keen aviator,
7 purchased his own aircraft, subsequently replaced with a newer model. In April 2001 he
8 incorporated another holding company of which he is the sole beneficial owner, Skylane
9 Investments Ltd., (Skylane). That company owns his plane and also now holds various
10 bank accounts and deposits.

11
12 14. In June 2001 the Husband found the Wife and the Co-Respondent in a compromising
13 situation and it became obvious to him that the Wife was having an extra-marital affair
14 with the Co-Respondent. It is not entirely clear when this commenced but the Husband
15 started to have suspicions during 2000.

16
17 15. As a result of this the Husband immediately moved out of the matrimonial home in
18 Websters Estates. However, thereafter the Husband was persuaded by the Wife to
19 attempt a reconciliation and he returned to reside in the matrimonial home some 10 or 12
20 weeks later. Unfortunately, this attempt at reconciliation was not successful due to the
21 Wife persisting in her relationship with the Co-Respondent and the Husband moved out
22 of the matrimonial home for the second time in April 2002 and into rented
23 accommodation.

1

2

16. On 15th May 2002 the Husband filed the petition for divorce in these proceedings on grounds of the Wife's adultery. The grounds were not contested by the Wife and on 10th June 2002 an order was made that the grounds of the Petition were proved and ancillary matters were adjourned into Chambers.

6

7

17. However, over the next 2 years approximately the parties made a further attempt at reconciliation and the Husband returned to reside again in the matrimonial home. Unfortunately this further attempt at reconciliation was also unsuccessful and on 8th March 2005 the Husband ceased living at the matrimonial home for good and moved back into the separate accommodation he had previously rented. The Wife continued and continues to reside in the former matrimonial home. In September 2006 the Husband purchased his own house at Canal Point where he still lives. On 19th October 2006 the Husband changed attorneys and filed a Notice of Intention to Proceed with these proceedings. A year later, in October 2007, he became Managing Partner of KPMG.

16

17

18. Since the parties' separation the Husband has, as before, been paying for the education of their daughters and for all their maintenance costs and he agrees that he will continue to do so. He has also been paying the sum of \$14,000 per month into a bank account for the Wife's use as well as paying her credit card account, the cost of insuring and maintaining the former matrimonial home and the Wife's travel costs. The Wife has continued to operate and manage the equestrian centre.

18

19

20

21

22

23

1 **The Present Proceedings**

2 19. These proceedings have gone on for an unfortunately long time. The petition was filed
3 on 15th May 2002 and the grounds proved on 10th June 2002. As explained above, there
4 was then an attempt at reconciliation but regrettably that had failed at least by March
5 2005 when the Husband finally ceased living in the matrimonial home. The proceedings,
6 which since June 2002 have related solely to ancillary matters, were revived in October
7 2006, almost 3½ years ago, and it is now some 5 years since the parties' last lived in the
8 former matrimonial home together. Although over the period since the proceedings were
9 revived a number of affidavits relating to the parties' respective financial circumstances
10 have been served and there have been several interlocutory hearings, it has nonetheless
11 taken a long time for the matter to come on for hearing. As a result there has been a
12 somewhat lengthy period since the date of the parties' separation (the parties' dispute
13 which date should be used for the date of separation but it is at least 5 years ago on the
14 Wife's case and as much as almost 8 years ago on the Husband's case). Over the 5 years
15 since 2005 substantial further income has been earned by the Husband and further assets
16 of considerable value have accrued to or been acquired by him. There has also been a
17 change in the Husband's entitlement on his retirement from KPMG, ("the Retirement
18 Provision"). This has made the dispute between the parties about post-separation assets
19 and income much more significant in this case. I do not propose to endeavour to ascribe
20 blame for the delay in bringing the dispute to a hearing but as a result of it there is more
21 in issue and the parties have inevitably become more entrenched in their respective
22 positions. However, at the start of the hearing I allowed an adjournment to enable the
23 parties to attempt to reach agreement on certain outstanding values for the assets in issue

1 as listed in a "Scott"-type schedule of assets which had been, produced by counsel for the
2 Husband following a request to counsel by me for such a schedule. Fortunately (with one
3 relatively minor exception which I will mention later) they were able to do so and I was
4 informed of the further agreed values. I have proceeded on the basis of this schedule of
5 assets as so updated ("the Amended Agreed Schedule"). The Amended Agreed Schedule
6 identifies all of the assets in issue in 2 sections described respectively as "Matrimonial
7 Assets" and "Assets Acquired After 30th September 2005". The Matrimonial Assets are
8 also valued by each party as at 2005 and again as at 2009 (the latter date has been taken
9 as the date of the hearing for practical purposes; I will explain the significance of the 30th
10 September 2005 date later). There is a dispute as to whether the Retirement Provision
11 should be categorised as one of the Matrimonial Assets. The values of the Assets
12 Acquired After 30th September 2005 are all agreed.

13
14 **The Assets in Issue**

15 20. As I have said, the parties agreed the values of all the undisputed matrimonial assets both
16 as at 2005 and as at 2009 with one exception. This relatively insignificant difference
17 related to the value in 2009 of the furnishings and chattels in the former matrimonial
18 home in Websters Estates. The Husband valued these assets at 2005 at \$50,000 whereas
19 the Wife's value at 2005 was \$25,000. The Husband's value at 2009 was \$32,000
20 whereas the Wife ascribed a value to these assets at 2009 of \$20,000. The parties are
21 agreed that as part of the property division between them the former matrimonial home
22 and the furnishings and chattels in it should anyway be transferred wholly to the Wife.
23 For purposes of the final accounting between the parties which will be necessary in light

1 of my final conclusions below and adopting a broad brush approach, I consider it
2 reasonable to ascribe values to the furniture and chattels of \$38,000 as at 2005 and
3 \$29,000 as at 2009, some 4 years later. Subject to my determination below as to whether
4 the 2005 values or the 2009 values are appropriate for present purposes, these are the
5 relevant values are which should be used.

6
7 21. The undisputed matrimonial property listed in the Amended Agreed Schedule in
8 summary consists of the former matrimonial home and its contents, 3 other parcels of
9 land, a number of both CI\$ and US\$ bank accounts and fixed deposits as well as various
10 bonds, investment accounts and funds. There are also the Husband's aircraft, various
11 motor vehicles, the proceeds of sale of another vehicle, the proceeds of sale of a boat, life
12 insurance policies, a Chamber of Commerce pension and the assets of the equestrian
13 centre (which comprise the land and stabling, bank accounts, the horses - including 2
14 particularly valuable thoroughbred horses - a truck and various other related business
15 assets). There is in addition a significant loan receivable due to the Husband, as well as
16 substantial proceeds arising from a business sale receivable also payable to him,
17 presumably in his capacity as a partner of KPMG. There are also the Husband's drawings
18 account at and profit share due him by KPMG. The agreed values of these undisputed
19 matrimonial assets, excluding the disputed Retirement Provision and taking into account
20 the values I have ascribed above to the furnishings and chattels in the former matrimonial
21 home, as shown on the Agreed Amended Schedule do not entirely reconcile because the
22 parties have not both valued all of the relevant assets at 2005 and 2009. For example, the
23 Wife has not ascribed a 2005 value to the two thoroughbred horses, which have a total

1 agreed value as at 2009 of \$32,800 whereas the Husband has purported to ascribe a value
2 to them at that date, albeit the same value as at 2009. I do not know but it may be that
3 these horses had not been purchased by 2005. Similarly the Husband has ascribed values
4 to the bank accounts, horses and other assets of the equestrian centre as at 2005 but the
5 Wife has not done so. Nonetheless, broadly speaking and making due allowance for
6 these easily resolved disparities, the parties agreed total rounded figures for the values of
7 the undisputed matrimonial assets are approximately \$9,252,567 as at 2005 and
8 approximately \$9,567,697 as at 2009.

9
10 22. Pursuant to an order made on 26th January 2007 (Levers J.) the parties were directed to
11 exchange affidavits of means disclosing their respective assets and income over the 3
12 year period ending 30th September 2005. I was informed that 2005 was selected because
13 in the view of the Judge that was arguably, at the latest, the year of the parties' final
14 separation (although that date is disputed by the Husband) and 30th September was
15 selected by the Judge because the financial year of KPMG ends on 30th September. It is
16 for this reason that in the Amended Agreed Schedule the parties, in setting out the details
17 of all of the assets in issue, in addition to identifying assets up to 30th September 2005, in
18 accordance with the order, have also identified assets acquired after 30th September 2005
19 and ascribed agreed values to them.

20
21 23. The assets acquired after 30th September 2005 as set out on the Amended Agreed
22 Schedule include in summary the Husband's present house at Canal Point, a further
23 parcel of land in Little Cayman jointly owned by the Husband and his present partner, a

1 boat, certain fixed deposits, savings accounts and a brokerage account all of substantial
2 amounts in name of the Husband as well as a significant outstanding loan due to him. In
3 addition there are several current and savings accounts and a fixed deposit, totalling 6 in
4 all, of relatively small amounts, attributable to the Wife. The total value of all the assets
5 acquired since 30th September 2005 in name of the Husband is \$7,684,494. The Wife's
6 bank accounts total \$68,067. Accordingly the total agreed value of all the assets
7 acquired by the parties after 30th September 2005 is \$7,752,561. The grand total of all
8 the assets in issue at the 2009 values is therefore approximately \$17,320,258 and at the
9 2005 values is approximately \$17,005,128. There is also as I have mentioned, the
10 disputed asset of the Husband's Retirement Provision which I shall discuss below.
11

12 **The issues between the parties**

13 24. The Husband argues that the matrimonial property comprises solely the property listed as
14 such on the Amended Agreed Schedule being the pre 30th September 2005 assets. He
15 accepts that in principle the matrimonial property, should be divided equally between the
16 parties. He does not agree, however, that the assets acquired after the parties' separation,
17 the post-separation assets, constitute matrimonial property and should be divided between
18 the parties. His primary submission is that they should not be taken into account at all
19 but that the parties should each keep their own post-separation assets. In other words he
20 says that only the matrimonial assets totalling approximately \$9,567,697 (or \$9,252,567
21 if the 2005 values are used as he proposes) should be divided between the parties. On the
22 basis of an equal division of those assets each party would therefore, on the Husband's
23 case, receive or retain assets to the approximate value of \$4,783,849 (or \$4,626,286 on

1 the 2005 values). This would leave the Husband also with his post-separation assets
2 totalling a further CI\$7,684,494 and the Wife with her post-separation bank accounts
3 totalling just over \$68,000. The Wife's primary position, on the other hand, is that all of
4 the assets in issue, whether pre-separation or post-separation, totalling (she says on their
5 2009 values) \$17,320,258, should be considered matrimonial property and divided
6 equally between the parties with the result that they would thereby each retain or receive
7 assets totalling approximately \$8,660,129. If that approach is not adopted by the Court
8 she argues in the alternative that the post-separation assets should at least be taken into
9 account in the division of assets and that she should be entitled to a share of their value so
10 as to achieve an appropriate and fair outcome overall as between the parties.

11
12 25. It will therefore be necessary to determine in particular whether the assets acquired in the
13 period after the parties' separation are to be categorised as matrimonial or non-
14 matrimonial property and, if and to the extent that they are to be categorised as non-
15 matrimonial, whether they should therefore be left entirely out of account for these
16 purposes or, if they are to be taken into account, how and to what extent that should be
17 done. A related issue is the date at which the available assets should be valued for these
18 purposes, whether 2005 or 2009, which in turn arguably involves a determination of the
19 appropriate date to be taken as the date of the parties' separation and the significance, if
20 any, of that date.

21
22 26. There are also two other significant issues to be determined. The first relates to the
23 Husband's entitlement on his retirement from KPMG, which I have called the Retirement

1 Provision, and whether that should be taken into account in determining the division of
2 property between the parties and, if so, how. The second other issue concerns the
3 Husband's continuing earnings, and whether or not the Wife should be compensated for
4 not sharing in these earnings in the future and, if so how. The Wife anyway seeks
5 periodic payments in order to meet her claimed needs in maintaining the standard of
6 living to which she has become accustomed. However, before I endeavour to address
7 these issues it seems to me that, as it is a factual issue, I should first determine the date of
8 the parties' separation.

9
10 **The date of Separation**

11 27. The Husband argued that the date of the parties' separation should be taken as 10th June
12 2002, almost 8 years ago, being the date of the order that the grounds of the Husband's
13 Petition were proved thereby establishing that the marriage had broken down
14 irretrievably. It was submitted on his behalf that this was conclusive evidence that the
15 relationship between the parties had terminated and that their respective roles as husband
16 and wife had concluded. Accordingly, it was contended, that 10th June 2002 is the date
17 which should be taken as the date of the parties' separation for these purposes. Counsel
18 for the Husband also suggested the date on which the Husband first left the Wife on
19 discovering her adultery in June or July 2001 as an alternative for the date of separation
20 but I did not understand that suggestion to be her primary contention in light of the
21 parties' attempted reconciliation and resumption of co-habitation a matter of weeks after
22 that date.

1 28. The Wife argued that the date of separation was 8th March 2005, being the date when the
2 Husband finally moved out of the matrimonial home for good following their second
3 unsuccessful attempt at reconciliation. As I have already explained, for approximately 2
4 years after the order of 10th June 2002 the parties attempted a reconciliation, during
5 which time the Husband resumed living in the matrimonial home. He did not stop living
6 there until he finally left in March 2005. It was the Wife's evidence, on which she was
7 not cross-examined, that during this period of almost 2 years of attempted reconciliation
8 the Husband continued to reside at the matrimonial home and for much of that time they
9 shared a bedroom.

10
11 29. In my opinion reconciliation is generally to be encouraged and it would be inconsistent
12 with that for either party to a genuine attempt at reconciliation which was ultimately
13 unsuccessful to be advantaged or disadvantaged as a result of the attempt. I note too that
14 Section 10 (2) (a) of the Law provides that spouses shall be treated as living apart unless
15 they are living with each other in the same household. Accordingly it seems to me that
16 for purposes of the Law the Husband and the Wife were not living apart during the period
17 of their attempted reconciliation as they were living with each other in the same
18 household. I also take into account the fact that, albeit in accordance with the order for
19 discovery made on 26th January 2006, I was provided by both parties in the Amended
20 Agreed Schedule with valuations of the undisputed matrimonial assets as at 2005 and as
21 at 2009, I was not provided by the Husband with any valuations as at June 2002,
22 notwithstanding his argument that June 2002 should be taken as the date of the parties'
23 separation and therefore, according to him, the date on which the matrimonial assets

1 should be identified and valued. In all the circumstances I consider it fair and appropriate
2 that March 2005 should be taken as the date of the parties' final separation for these
3 purposes. Having now set out, at least in summary, the factual circumstances of the case
4 I now turn to consider the relevant law.

5
6 **The Statutory Provisions**

7 30. The general principles to be followed and the Court's powers in proceedings such as
8 these are set out in Sections 19 and 21 of the Law. Section 19 requires the Court to have
9 regard first of all to the best interests of any children of the marriage and thereafter to
10 *"the responsibilities, needs, financial and other resources, actual and potential earning*
11 *power and the deserts of the parties"*. Section 21 requires the Court, at the time of
12 pronouncing a decree of divorce, *"as appropriate"*, to make orders [insofar as relevant to
13 the present case] for *"(b) the disposition of matrimonial property, (including the*
14 *matrimonial home)"*; *"(e) financial provision from the property of either spouse for the*
15 *children of the marriage and for the other spouse"*; *"(f) periodic payments to be made by*
16 *either spouse for the benefit of the children of the marriage and for the other spouse"*;
17 *"(g) costs"*.

18
19 31. It is accepted that these provisions give the Court a particularly wide discretion, to be
20 exercised having regard to the factors referred to in Section 19, in determining what it
21 considers to be appropriate orders pursuant to Section 21. However, there is, of course, a
22 considerable body of jurisprudence both here and in England providing guidance as to the
23 general objectives which the Court should seek to achieve in exercising this jurisdiction,

1 or its equivalent in England, and how that should usually be done, although always in
2 light of the particular circumstances of the case.

3
4 **General Objectives**

5 32. The first and foremost objective is always to achieve fairness as between the parties in
6 the division of property between them on divorce. This has been described as “*that most*
7 *intractable of problems*” (see *Miller v Miller/McFarlane v McFarlane* [2006] 1 FLR
8 1186 per Lord Nicholls). Section 21 of the Law uses the word “*appropriate*” rather than
9 the word “*fair*”, which is originally derived from the English authorities. However, those
10 authorities are accepted as guidance in our Courts and it seems to me anyway that an
11 order pursuant to Section 21 would not be “*appropriate*” if it was not “*fair*”. Counsel for
12 both parties submitted that fairness is the ultimate test and I accept that. Of course, what
13 is fair in any particular circumstances is a matter of judgment on which there may be
14 different views all of which may be within the range of fairness even when they conflict.
15 Nonetheless, fairness as between the parties is the result which the Court in the exercise
16 of its discretion should seek to achieve and is the yardstick against which any proposed
17 division of assets or financial provision must ultimately be measured. This is now well
18 established in this jurisdiction (see the Court of Appeal in *Wight v Wight* CICA 6 of 2006
19 – 30th November 2007, unreported – approving and adopting the approach generally of
20 the English Courts, while recognising the differences in the details of the respective
21 legislative provisions).

1 33. Secondly, it is also now well established that a marriage is generally to be considered a
2 union of presumed equals and that it is a “*presumption of equal contribution of spouses*
3 *that now forms the basis of the new approach to a fair and equitable division of*
4 *matrimonial property*” (see *Wight v Wight* (ibid) per Forte JA). This principle is now so
5 generally understood, well-known and accepted that I do not think it is necessary for me
6 to rehearse again the history of its development or to refer further to the various cases,
7 both in this jurisdiction and in England, in which the principle has been explained and
8 followed. I endeavoured to explain it and to follow it myself in *SB-H v SSH* (Cause
9 D16/2006 17th April 2009 – unreported), to which I referred counsel at the hearing. It has
10 been said to be a “*principle of universal application*” (see Lord Nicholls in *White v*
11 *White* [2001] AC 596) and it has been consistently followed by our Courts for some time.
12 The principle was generally accepted by the parties in this case, at least insofar as it is
13 applicable to matrimonial property, as I shall discuss later in this Judgment.

14
15 34. Counsel for each of the parties referred me to various passages in the authorities
16 discussing both of these two well established principles in support of their respective
17 submissions. However, fairness and equality/non-discrimination in any case must depend
18 upon the specific facts of that case and circumstances will obviously inevitably vary.
19 Furthermore, these two general principles are clearly impacted by other dicta in the
20 various authorities, the effect, extent and applicability of which in the present case were
21 disputed by the parties and which, with no disrespect on my part, have arguably been
22 considered and/or applied in the authorities with rather less obvious consistency. I shall
23 accordingly consider them during the course of this Judgment.

1 **The Parties' Contributions to the Marriage**

2 35. During their years of cohabitation the parties each contributed to each other's and to their
3 family's support, both domestic and financial. In broad summary, the Husband qualified
4 and then trained as an accountant and worked his way up over time to equity partnership
5 in and is now managing partner of a very successful firm of accountants. Over the years
6 while the parties lived together he bought and then sold equity units in the firm and
7 earned increasing income which was used, not only in maintaining and educating the
8 parties' 3 daughters but also in supporting the Wife and himself and the family as a whole
9 in a progressively high standard of living commensurate with the increasing wealth of the
10 family. His earnings were also used over time to acquire various assets, both real and
11 personal, for the further investment he made in his firm and for other investments and
12 savings generally, all for his, the Wife's and their family's benefit. The Husband also
13 made various significant loans to colleagues, presumably to assist them to purchase units
14 in KPMG on becoming partners themselves, all of which either have been or will be
15 repaid to him with interest.

16
17 36. The Wife contributed to this marital and family success initially by earning herself full
18 time for the first 2 years or so of the marriage. Then, after the parties decided to start a
19 family together, she gave up her intended career in the financial sector. Thereafter she
20 was employed part-time as her income was still needed to help maintain the parties and
21 their children. However, she also worked in looking after their children and their home,
22 and attending to the domestic and organizational needs of the family, including the
23 Husband. She provided emotional support to and encouragement of the Husband in his

1 work and his career development generally as well. All this enabled the Husband to
2 devote the time and energy necessary for him to succeed and progress in his career and to
3 earn an increasingly substantial income for the benefit of them both and their family.
4 Later on in the marriage, when her income was no longer needed, the Wife, while
5 continuing to support the Husband and contribute to their family in the manner which I
6 have outlined, also became more involved in the running of the equestrian centre, which
7 the parties had acquired. The Wife developed this over time herself but it not only
8 fulfilled her own enthusiasm for horses but was also to the benefit of their children who
9 participated fully and enthusiastically in equestrian activities, so it was also to the
10 considerable benefit of the family as a whole. I should also mention that from time to
11 time, particularly in the earlier years of their marriage, the parties were either gifted or
12 lent significant sums of money for family use by both of their respective parents, but
13 particularly by the Wife's parents and family.

14
15 37. With the exception of the equestrian business, and latterly the Husband's own company, Skylane,
16 the parties did not maintain separate bank accounts. Income and savings were pooled and used
17 without distinction by both of the parties for the benefit of both of them and their family
18 generally, and over time, to enable their increasing standard of living, and the making of savings
19 and investments and the acquisition of assets. While looked at in purely financial terms the
20 Husband's contribution clearly was far greater than the Wife's but overall each party contributed
21 fully in their own way to their mutual benefit and to the overall benefit and success of their family
22 as a whole in all senses.

1 Equality

2 38. In a passage in his judgment in White v White [2001] 1AC 596 in the House of Lords

3 Lord Nicholls said:

4
5 *These wide powers enable the courts to make financial provision orders in tune with*
6 *current perceptions of fairness.....Today there is a greater awareness of the value of*
7 *non-financial contributions to the welfare of a family.....There is greater awareness*
8 *of the extent to which one spouse's business success, achieved by much sustained hard*
9 *work over many years, may have been made possible or enhanced by the family*
10 *contribution of the other spouse, a contribution which also required much sustained hard*
11 *work over many years. There is increased recognition that, by being at home and having*
12 *and looking after young children, a wife may lose forever the opportunity to acquire and*
13 *develop her own money-earning qualifications and skills... ”.*
14

15 In my judgment, in the circumstances which I have explained, this is clearly applicable to
16 the present case, which I consider is very much one in which the principle of equality of
17 contribution to the marriage and to the family should apply and in which there should be
18 “no bias in favour of the money-earner and against the home-maker”. In my view, it is
19 fair to say that without the Wife’s work on the domestic side, her earlier willingness to
20 relocate to Orlando for 18 months solely in order to assist the Husband’s partnership
21 prospects, her forgoing of her own potential career so as to enable the parties to have a
22 family together and to enable her to devote her attention to their children to the benefit of
23 their welfare, together with the general support, both physical and emotional, which she
24 provided, it would have been very much harder and probably not possible for the
25 Husband to have progressed as he has in his career and consequently to be able earn
26 what he has. This is not in any way to derogate from the Husband’s own hard work but
27 to explain how and why the success of the marital partnership should be seen as a joint
28 effort on both their parts. In my opinion there is no special reason in the circumstances of

1 this case why the principle of equality should not apply and I consider it appropriate and
2 fair to adopt that approach. I did not understand that to be disputed in principle by the
3 Husband who, in my view, very fairly acknowledged the Wife's contribution in giving
4 his evidence. The question, however, is to which assets should such equality apply and
5 therefore how to reach a fair division between the parties.

6
7 **Matrimonial Property - Discussion**

8 39. As I pointed out in S B-H v. JH (ibid) while there has been much discussion in the
9 authorities of the concepts of matrimonial and non-matrimonial property and the
10 appropriate approach to each category of property, it does seem to me reasonably clear
11 that the wording of Section 21 of the Law, at least for the purposes of sub-sections (b)
12 and (d) of the Section, does require the Court, having first identified all the assets in issue
13 in the case, to determine which of those assets in issue comprise matrimonial property
14 and which do not. As I noted in that case, this approach was adopted by the Judge at first
15 instance in the Wight v Wight (ibid) case (Levers J) and subsequently approved by the
16 Court of Appeal. However, whereas sub-sections (b) and (d) of Section 21 of the Law
17 expressly refer to the Court making orders, if appropriate, for the disposition of
18 matrimonial property, including the matrimonial home (Subsection (b)) and for variation
19 of any settlement of matrimonial property, (Subsection (d)), sub-section (e) refers to
20 orders making financial provision for the children of the marriage and for the other
21 spouse from the property of either spouse (my emphasis). That sub-section is clearly not
22 referring to matrimonial property.

1 40. In this context it was suggested on behalf of the Wife that the categorisation of specific
2 assets into either matrimonial property or non-matrimonial property, given the width of
3 the Court's discretion pursuant to Section 21 of the Law and the principle of overall
4 fairness, may, at least in a case like this, be somewhat artificial and unduly restrictive. It
5 was proposed that, having regard to all of the terms of Section 21 of the Law, a more
6 general approach to all of the assets in issue may be more appropriate and more
7 consistent. In this connection I was referred to CR v CR [2008] 1FLR 323 (to which I
8 shall return later) at paragraph 40 where the judge (Bodey J.) said

9
10 *Attempted forensic distinction between the differing assets in the kitty create issues which*
11 *are in many (though not all) cases sterile. In my view, therefore, whilst the "matrimonial*
12 *property" may nowadays need to be identified, the court should still strive to take as*
13 *broad a view as possible, especially in cases in such as this, where the husband's asset-*
14 *accruing role has not changed in any way since the separation and where the accruals*
15 *have not come from any new source of risk, endeavour or luck".*
16

17 While not unsympathetic to this argument myself, and notwithstanding that "fairness has
18 a broad horizon" (per Lord Nicholls in Miller v Miller/McFarlane v McFarlane (ibid)),
19 it does nonetheless seem to me that the general practice of our courts, as confirmed by the
20 most recent guidance of the Court of Appeal in Wight v Wight (ibid), is to seek to
21 categorise all of the assets in issue as either "matrimonial" or "non-matrimonial" and to
22 adopt a different approach towards each of these two different categories of assets,
23 confining the application of the principle of equality to the matrimonial property. Wight
24 v Wight (ibid) involved consideration, amongst other issues, of whether there had been
25 such a "special contribution" by the husband in that case as to warrant a departure from
26 the general principle of equality but the Court of Appeal clearly accepted and approved of

1 the Judge's approach in categorising the property in issue as matrimonial or non-
2 matrimonial.

3
4 41. So what assets do or should comprise matrimonial property? It is not easy to tell whether
5 the comments of the Court of Appeal in Wight v Wight (ibid) to the effect that post-
6 separation assets and income do not constitute matrimonial property amount to general
7 statements of principle. They were obviously made in the context of that case but they do
8 read as general principles. While I accept of course that the applicability of general
9 principles must anyway always depend on the particular circumstances of the case, the
10 factual circumstances of that case certainly had similarities to the circumstances of the
11 present case. From my analysis of the authorities, the Courts here and in England have
12 indeed, as a matter of principle, usually categorised assets acquired and income earned
13 after the date of separation as non-matrimonial property and therefore not subject to the
14 general principle of equality applicable to matrimonial property. Furthermore, since it is,
15 I think, generally accepted that a line has to be drawn somewhere and, although perhaps not
16 inevitable in all circumstances, that line is usually and most conveniently drawn as at the
17 date of the parties' separation. In Wight v Wight (ibid) the Court of Appeal clearly
18 approved the judge's decision that the cut-off date up to which property would be treated
19 as matrimonial and after which property was considered non-matrimonial was the date of
20 the parties' separation. The rationale for this, as I understand it, is because that is the date
21 conceptually at which the notional "partnership" between the parties terminates and
22 accordingly the date as at which the ascertainment of the assets of the former partnership
23 (the partnership/matrimonial property) to be divided between them falls to be carried out.

1 It is the assets of the partnership as at the date when the partnership of mutual effort and
2 support ends which are divided between the former partners. In the context of a marriage
3 of course it is not always so relatively clear or straightforward but, always subject to the
4 precise circumstances, this has, in my assessment, been the usual approach.

5
6 42. It also seems to me that conceptually the rationale for this general approach to post-
7 separation assets should logically apply also to income earned or other benefits, such as a
8 pension, earned after the date of separation. If the theory is that any asset acquired by
9 one of the partners to the marital partnership after the date on which the partnership ends
10 does not constitute partnership (matrimonial) property because it is the result of that
11 partner's own individual efforts, then one would have thought that consistency would
12 require that income or other benefits earned by that partner after the date of separation
13 should also, for the same reason, be similarly categorised as non-partnership/non-
14 matrimonial property.

15
16 43. However, this theory does not appear to have always been followed. In Wight v Wight
17 (ibid) the treatment of the husband's pension does not seem to me, with respect, to be
18 entirely consistent with such an overall approach. In that case the husband, the senior
19 partner of another successful firm of accountants, had the right to a pension payable by
20 his firm. It was earned after 10 years as a partner. The date of the parties' separation was
21 only 1 year into the period of computation of the pension, the amount of which was
22 dependant upon the husband's income over the 10 year period together with certain other
23 variables. In the court below, the judge, consistent with her approach that post-separation

1 assets were non-matrimonial and therefore not to be shared with the wife, held that the
2 husband's future earnings fell into that category and that the wife was therefore not
3 entitled to a share of the husband's pension either. In the Court of Appeal, however, for
4 reasons which are not explained in the judgments, counsel for the husband conceded that
5 the wife should have an equal share of the husband's pension when payable to him on his
6 future retirement and the Court of Appeal agreed. Since the husband's pension was
7 earned by the husband's earnings over the 10 year period, 9 years of which were post-
8 separation, one would have thought that the judge's treatment of the pension as a non-
9 matrimonial asset in which the wife would not be entitled to share, would be followed.
10 Of course this was a concession by the husband in that case but it is perhaps nonetheless
11 an illustration of the fact that in the end of the day the Court will do what it considers
12 equitable in all the particular circumstances and will not feel too constrained by general
13 principles or conceptual consistency.

14
15 44. Another factor which, in my view, supports the distinction between and the different
16 categorisation of pre-separation and post-separation assets, income and benefits and the
17 use of the date of separation as the defining point, is the fact that the extent and value of
18 such post-separation assets are likely to vary with the length of time between the date of
19 separation and the date of the hearing. In a case like the present, where the Husband has
20 high earnings, the longer that period the more post-separation assets and income there are
21 likely to be, particularly as surplus income is accumulated and used for savings and
22 investment. However, the length of time between the date of separation and the date of
23 the hearing will itself vary and is purely arbitrary. In my opinion arbitrariness is not

1 usually compatible with fairness. Quite apart from the concept of a clean break (which I
2 shall discuss later), there must be some finality and the assets in issue, whether contended
3 to be matrimonial or contended to be the property of one or other party, should not in this
4 context be allowed to accumulate indefinitely. On the other hand it must be accepted that
5 the categorisation and division of assets on divorce is not an exact science.

6
7 45. As I have said, in the present case Counsel for the Husband contended that only the pre-
8 separation assets, that is assets acquired during the period of the parties married life
9 together or brought into the marriage for marital purposes prior to the date of the parties'
10 separation, should be categorised as matrimonial property. It was submitted that not only
11 should the date of separation be the point at which property should be defined as
12 matrimonial or non-matrimonial but also the date at which the value of the matrimonial
13 property should be determined. I was referred to several authorities in this regard
14 including Miller v Miller/McFarlane v McFarlane (ibid), particularly per Lord Mance
15 and H v H [2007] EWHC 459 per Charles J., as well as to Wight v Wight (ibid) itself.
16 Counsel for the Wife on the other hand argued that the usual and accepted practice is to
17 proceed on the basis of the value of the assets in issue, whether matrimonial or non-
18 matrimonial, as at the date of the hearing and that there was no reason in the present case
19 to depart from that practice. He submitted that accordingly the values of the matrimonial
20 property as at 2009 were the values which should be used for these purposes. Clearly the
21 difference between the 2005 values and the 2009 values is in some instances quite
22 significant, reflecting, no doubt at least to some extent, the length of time between the
23 date of separation in 2005 and the date of the hearing in February 2010 (the 2009 values

1 being treated as the values at the date of the hearing). However, as I have already said, I
2 have not endeavoured to ascribe blame for the relatively long time which has elapsed
3 since the parties' separation and I do not consider it appropriate or desirable in this case
4 to embark on a detailed analysis of the steps taken in the proceedings and the, no doubt
5 hotly contested, interpretations thereof of the parties' respective counsel. In my judgment
6 the fairest approach is to adopt the 2009 values for the undisputed matrimonial assets,
7 which values (with the exception of the value of the contents of the former matrimonial
8 home which I have determined above) are all otherwise generally agreed between the
9 parties as set out in the Amended Agreed Schedule, subject to some slight disparity as I
10 have already outlined. I shall therefore proceed upon the basis of the 2009 values.

11
12 **Post-Separation Assets - Discussion**

13 46. Notwithstanding the general approach outlined above, the Courts have generally
14 recognized that if assets acquired or accruing post-separation have derived from income
15 earned or savings made which constitute matrimonial property, or otherwise by utilizing
16 matrimonial property or simply represent the effect of inflation or interest earned on
17 matrimonial property, such post-separation assets may be considered matrimonial
18 property and subject to the principle of equality. In Rossi v Rossi [2006] EWCH 1482
19 (Fam.) the Deputy Judge said:

20
21 *“Thus it has always been the case that, where a party has by virtue of his own*
22 *industry created further assets after separation, such sole unmatched contribution*
23 *should be recognised and reflected by the Court in its award. On the other hand,*
24 *if a matrimonial asset has simply increased in value during the period of*
25 *separation as a result of passive inflationary economic growth (such as the*
26 *increase in the value of a house) then it would seem obvious that such growth is*
27 *an accrual to the original matrimonial property....*

1 ...Assets acquired or created by one party after (or during a period of) separation
2 may qualify as non-matrimonial property if it can be said that the property in
3 question was acquired or created by a party by virtue of his personal industry and
4 not by use (other than incidental use) of an asset which has been created during
5 the marriage and in respect of which the other party can validly assert an
6 unascertained share. Obviously, passive economic growth on matrimonial
7 property that arises after separation will not qualify as non-matrimonial
8 property....
9

10 ...If the post-separation asset is a bonus or other earned income then it is obvious
11 that if the payment relates to a period when the parties were cohabiting then the
12 earner cannot claim it to be non-matrimonial. Even if the payment relates to a
13 period immediately following separation I would myself say that it is too close to
14 the marriage to justify categorisation as non-matrimonial. Moreover, I entirely
15 agree with Coleridge J [in N. v N. (Financial provision: Sale of Company)
16 [2001] 2 FLR 69] when he points out that during the period of separation the
17 domestic party carries on making her non-financial contribution but cannot
18 attribute a value thereto which justifies adjustment in her favour. Although there
19 is an element of arbitrariness here I myself would not allow a post-separation
20 bonus to be classed as non-matrimonial property unless it related to a period
21 which commenced at least 12 months after the separation.
22

23 By this process the court should, without great difficulty, be able to separate the
24 matrimonial and non-matrimonial property. The matrimonial property will in all
25 likelihood be divided equally, although there may be deviation from equal
26 division (a) if the marriage is short and (b) part of the matrimonial property is
27 "non-business partnership, non-family assets" (or if the matrimonial property is
28 represented by autonomous funds accumulated by dual earners).
29

30 The non-matrimonial property is not quarantined and excluded from the court's
31 dispositive powers. It represents an unmatched contribution by the party who
32 brings it to the marriage. The court will decide whether it should be shared and if
33 so in what proportions. In so deciding it will have regard to the reality that the
34 longer the marriage the more likely non-matrimonial property will become
35 merged or entangled with matrimonial property. By contrast, in a short marriage
36 case non-matrimonial assets are not likely to be shared unless needs require this.
37

38 In deciding whether a non-matrimonial post-separation accrual should be shared
39 and, if so in what proportions, the court will consider, among other things,
40 whether the applicant has proceeded diligently with her claim; whether the party
41 who has the benefit of the accrual has treated the other party fairly during the
42 period of separation; and whether the money making party has the prospect of
43 making further gains or earnings after the division of the assets and, if so,
44 whether the other party will be sharing in such future income or gains and if so in
45 what proportions, for what period, and by what means".
46

1 In Wight v Wight (ibid) Zacca P. said:

2 *“It is accepted that assets acquired after separation but which are attributable to*
3 *earnings during the marriage, are deemed matrimonial property. Levers J in fact*
4 *made such an award in her assessment of what she considered to be matrimonial*
5 *property”.*
6

7 But he went on to say:

8 *“In my view the earnings of the husband after separation are not to be regarded*
9 *as matrimonial property and the wife is not entitled to a share of his future*
10 *earnings. The sum awarded to the wife is sufficient to meet her needs and to*
11 *allow her to live in the lifestyle she was accustomed to during her marriage. She*
12 *is also able to work if she wishes to. The relevant child, Claire, is in boarding*
13 *school and the husband has undertaken the responsibility of all the education*
14 *expenses”.*
15

16 However, in subsequently discussing the principle of equality, Zacca P. also said:

17 *“The substantial future earnings of the husband could be taken into account in*
18 *arriving at equality and fairness”.*
19

20 It seems to me that in these passages the President of the Court of Appeal was accepting
21 that post-separation assets attributable to earnings during the marriage are to be
22 considered matrimonial property but that generally speaking a husband’s post-separation
23 earnings are not to be categorised as matrimonial property. However in the final citation
24 above he acknowledges that, notwithstanding, this the future earnings of a husband may
25 be taken into account in the final analysis in measuring the proposed division against the
26 yardstick of fairness. That, of course, is a different issue from the question whether the
27 earning of a husband post-separation are to be categorised as matrimonial or non-
28 matrimonial property, which the President was addressing in the second citation above.
29
30

31 **Post-Separation Assets – the Wife’s Argument**

32 47. The basis on which the Wife contends that the post-separation assets identified by the
33 parties in the Amended Agreement Schedule should be categorised as matrimonial assets
34 or, if not, that she should nonetheless share in the value of those assets, is principally
35 twofold. First, she argues that all or most of the post-separation assets either derive from
36 or are intermingled with matrimonial assets and thus should be deemed matrimonial
37 assets anyway and, secondly, that in any event the ability of the Husband to acquire those

1 assets derives from and represents the product of the parties joint contributions
2 throughout the marriage and should be analyzed and treated in a similar way as the
3 undisputed matrimonial property. In the alternative she argues that, even if the post-
4 separation assets are not to be categorised as matrimonial property, in fairness, having
5 regard to the same factors and applying the same theory she should share in the value of
6 those assets. I consider each of these arguments below.

7
8 48. It is not possible on the evidence available to me (and would any way probably involve
9 an inappropriate lengthy and detailed forensic investigation) to determine to what extent
10 the specific post-separation assets listed on the Agreed Amended Schedule as being the
11 Husband's derived from pre-separation matrimonial earnings, savings or interest as the
12 Wife contended rather than wholly from income earned and savings made by the
13 Husband through his sole efforts post-separation as the Husband contended. According
14 to the Amended Agreed Schedule one of the assets, a fixed deposit in the Husband's
15 name with a value of \$881,002, was "acquired" by him in January 2006, some 10 months
16 after the date of the parties' separation. The Husband's house at Canal Point, valued at
17 \$973,356, a fixed deposit valued at \$2,215,171 and a savings account valued at \$779,130
18 are all said to have been acquired by him during September 2006, some 18 months after
19 the date of separation. Other post-separation assets listed as the Husband's, including a
20 brokerage account with a value of \$1,942,687, date from the year 2007 and the
21 significant outstanding loan as well as the parcel of land in Little Cayman jointly owned
22 by the Husband and his new partner were both acquired during the course of last year,
23 2009. It was alleged on behalf of the Wife that there was nonetheless a co-mingling of

1 matrimonial and alleged non-matrimonial monies (it was described as “mudding of the
2 waters”) and it was argued that it is to be inferred that at least a significant proportion of
3 the Husband’s post-separation assets derived from matrimonial assets or represent
4 accruals from matrimonial savings or income and should therefore be deemed to be
5 matrimonial property. However, equally, over the 5 year period since the parties’
6 separation, the Husband has clearly earned substantial sums, well in excess of the cost of
7 maintaining himself, the Wife and their children on a generous basis and it is, in my
8 opinion not unreasonable to infer that the Husband’s considerable surplus income was a
9 significant of his investment in the post-separation assets which he is said to have
10 acquired.

11
12 49. An argument was made on behalf the Wife concerning in particular the treatment of the
13 Husband’s drawings account at KPMG, which, it is not disputed, comprises matrimonial
14 property and is listed as such on the Agreed Amended Schedule. The agreed value of that
15 asset as at 2005, apparently being the amount in the KPMG trial balance attributable to
16 the Husband at that time, is \$1,473,239. However, the agreed amount in the Husband’s
17 drawings account as at 2009 is only \$21,635. It was contended for the Wife that not only
18 would interest have accrued on the amount of \$1,473,239 since 2005 but that in the
19 period from 2005 to 2009 the money in the drawings account has been variously spent,
20 reinvested or generally changed in specie by the Husband for his own benefit and that
21 significant proportions have been transferred to accounts shown as the post-separation
22 assets of the Husband on the Agreed Amended Schedule. It was argued on her behalf
23 that, if the position is taken that the undisputed matrimonial assets should be valued as at

1 2009, as the Wife herself contends and as I have now accepted, the original 2005 balance
2 of the drawings account, namely \$1,473,239, plus notional interest, should be added back
3 to the overall value of the undisputed matrimonial property as at 2009. However, in the
4 circumstances of this case and in light of my approach as set out below, while that may
5 be evidence of a degree of co-mingling of matrimonial property and alleged non-
6 matrimonial property, I do not accept that argument . Counsel for the Wife accepted that
7 a detailed forensic analysis and tracing exercise would be difficult and, as I have said, I
8 consider that it would also be inappropriate in this case. The Wife herself has urged the
9 Court to adopt the 2009 values and I have been persuaded by her counsel of that. It is
10 generally accepted that the Court must adopt a relatively broad brush approach in
11 exercising its discretion in a case such as this. A detailed investigation and analysis of
12 individual financial transactions is of doubtful utility and disproportionate in the overall
13 context. Although it is reasonably clear that some monies from the drawings account
14 were, for example, transferred to the account of the Husband's company, Skylane, it
15 should be remembered too that the Husband has, since the date of separation,
16 commendably in my view, been voluntarily paying the sum of \$14,000 per month to the
17 Wife, as well as meeting the not inconsiderable cost of her travel, credit card account and
18 the maintenance and insurance of the former matrimonial home where she lives. The
19 Wife herself assessed the cost of this additional financial support at not less than \$32,000
20 per annum which, together with the regular monthly payment, means the Husband has
21 been and is paying a total of approximately \$16,667 per month (\$200,000 per annum) to
22 or for the benefit of the Wife. The Husband has also been meeting the costs of their 3
23 daughters' education, and their general maintenance. Given that the elder 2 daughters are

1 or have been attending university in the United States and the younger daughter is being
2 educated privately that cost will have been significant. While I accept that there may
3 have been a degree of intermingling of matrimonial and non-matrimonial earnings,
4 savings and interest, which I shall take into account, I do not accept that it can be fairly
5 said that all of the post-separation assets constitute matrimonial property on the basis of
6 this particular argument of the Wife in the overall circumstances.

7
8 50. Considerably more of the hearing before me was devoted to the Wife's second argument
9 outlined above. Counsel submitted on her behalf that this was a long marriage (the parties
10 had been married almost 23 years when they finally separated) in which both parties had
11 contributed equally to the marriage and the family such that it is accepted by the Husband
12 that the undisputed matrimonial property should be divided between them equally.
13 However, it was contended in this regard that it was as a result of the Wife's own initial
14 financial contribution, then her sacrifice of her own potential professional career and
15 thereafter her hard work through her part-time employment, her domestic and family
16 contributions, and her physical and emotional support of the Husband, that the foundation
17 of his career had been laid and then built on so that he had been enabled to successfully
18 progress on to partnership and to reach the position which he has and to make the
19 earnings which he has and still does make. Counsel accepted that since the parties'
20 separation in 2005 the Wife has obviously no longer contributed such support to such an
21 extent as before the separation, although she had continued to be mainly responsible for
22 the care of their daughters at least in the years immediately following the separation.
23 However, it was contended strongly that it was the part the Wife had played during the

1 period the parties were together, over many years, when her hard work had been as much
2 responsible as the Husband's own hard work for his ability to establish and develop his
3 career which was the basis of his continuing financial success and his present earning
4 power. To deny her an equal share of the fruits of their joint labours at this stage and on
5 into her old age would be discriminatory and contrary to the principles of fairness and
6 equality. I was referred in this regard to the comments in the earlier part of the passage
7 which I have already cited: from CR v CR (ibid):

8
9 *"The key point is that the assets accruing to the husband post-separation (and the*
10 *mortgage reduction) were only able so to accrue to him by reason of the wife's sustained*
11 *commitment to the family and the domestic infrastructure whilst he was making his way*
12 *up the ladder of his chosen career....*

13
14 *Without the wife's support, the husband would not have had that important role and*
15 *status within the group by virtue of which he came by those assets for which he seeks a*
16 *differential and favourable treatment. In other words this was a financial continuum, the*
17 *ground-work for which was laid and the seeds sown during the parties' married life*
18 *together, through how they chose their respective roles..."*

19
20
21 It was said that this is equally applicable to the present case and that there is here too a
22 financial continuum stretching on through the parties married life together, through the
23 separation to the present and on into the future. The argument was that it would be unfair
24 and inequitable to draw an artificial line at the date of separation beyond which the Wife
25 could no longer continue to benefit from the essential part she had played from the very
26 start of the Husband's career in enabling and enhancing his success. She should not be
27 deprived of participating in the financial consequences of her role in contributing to the
28 establishment and development of the very earning power from which the Husband
29 continues to benefit. It was submitted that the assets which he has acquired since the date
30 of the parties' separation and, indeed, the income he has earned since then, are part of the

1 financial continuum starting at least from the time when the parties agreed to have a
2 family, that the Wife would forego her career and become the child-carer and home-
3 maker to enable the Husband to focus on his career in the anticipation of partnership and
4 financial success in the future to the financial benefit of both of them. They both worked
5 hard to achieve this goal and they should both to continue to benefit from their success.

6 The post-separation assets accordingly constitute matrimonial assets in which, in fairness,
7 the Wife should participate equally in the same way as she should share equally in the
8 pre-separation assets which is undisputedly matrimonial property

9
10 **Post-Separation Assets – the Husband’s Arguments**

11 51. Counsel for the Husband strongly opposed the Wife’s arguments. She argued that assets
12 acquired and income earned after the date of the parties’ separation were not to be
13 considered matrimonial property, or at least only to the extent that such assets were
14 acquired very shortly after the date of separation when, in the absence of evidence to the
15 contrary it might be inferred that they had probably been acquired with or accrued from
16 property or income which was clearly matrimonial. Counsel submitted that none of the
17 assets agreed by the parties to have been acquired post-separation fell into that category.
18 She argued that they were the product of the Husband’s own hard work and his sole
19 efforts without any support or contribution from the Wife and it would be unfair to him to
20 allow the Wife to share in their value. Counsel also contended that to allow the Wife to
21 share equally in the assets acquired or income earned by the Husband post-separation was
22 contrary to authority in this jurisdiction, namely Wight v Wight (ibid) and she drew
23 attention to the passages in the Judgment of Zacca P which, she submitted, amount to

1 statements of general principle to be followed. Furthermore, the Husband is expressly
2 seeking a "clean break" and, it was submitted, that is appropriate and desirable in this
3 case and the Court should encourage and enable that. The clean break should naturally,
4 consistently and conceptually take effect from the date of the parties' separation as at
5 least since then any support of or contribution by the Wife to the Husband's continuing
6 financial success in his work and his earnings and his consequent acquisitions had ceased
7 from then and that was, at the latest, 5 years ago.

8
9 52. In his evidence the Husband said that since the date of separation, and particularly since
10 he became managing partner of KPMG in October 2007, he has been working harder
11 than he ever has. He accepted that in the earlier years following the separation the Wife
12 continued to make some domestic contribution through her continuing care of the
13 children, who were obviously younger then. However, clearly the Wife's physical and
14 emotional support of the Husband himself had ceased by the date of separation, and,
15 having regard to the particular circumstances of the breakdown of the marriage, probably
16 some time before that. He now has the support of another partner in whose business has
17 invested and with whom he has jointly acquired assets. The need for the Wife to devote
18 time to the care of the children diminished over time since the date of separation as the
19 older 2 daughters in turn went away to university and the eldest has now graduated. The
20 youngest daughter also spends her time with both parties. The Wife will have been able
21 to spend an increasing proportion of her time pursuing her own interest at or in
22 connection with the equestrian centre. In my opinion it must be the case that any support
23 and contribution by the Wife of the Husband's continuing financial success through her

1 child-caring role has materially reduced since their separation and has largely ceased
2 altogether over the 5 years since.

3
4 53. The Husband's counsel also argued that the Husband's own conduct since the parties'
5 separation should be taken into account overall. He has voluntarily continued to provide
6 generous financial support to the Wife as well as meeting all the educational and other
7 maintenance costs of the 3 children. The Wife has, with the financial assistance of the
8 Husband continued over the 5 years since the separation to live in the former matrimonial
9 home and to enjoy the equestrian centre. She has had her credit card and travel expenses
10 met by him as well as receiving the monthly payment of \$14,000. The standard of living
11 which she enjoyed pre-separation has not materially diminished post-separation while her
12 child-caring contribution has reduced and now largely ceased.

13
14 54. However, in my view the Wife's argument that there is in effect a financial continuum
15 which did not suddenly cease at the date of separation is also a legitimate and persuasive
16 argument, particularly in the context of a relatively long marriage like this, during which,
17 it is accepted, the parties together built up the family wealth from nothing. Although the
18 Husband has clearly worked hard since the date of separation and has acquired further
19 assets, I accept that his position as an equity partner and now managing partner of KPMG
20 and his ability to earn as he has since the parties separation and continues to do is at least
21 in part attributable to the Wife's support and contribution, as already outlined, over all the
22 years they were together and that it would therefore be unrealistic and unfair to ignore
23 that entirely. Nonetheless, while the Wife's support and contribution during the period

1 they were together may justifiably be said, I think, to be in part the *fons et origo* of the
2 Husband's continuing financial success, there must in my view come a time after the
3 parties have finally separated beyond which it is no longer realistic, appropriate or fair to
4 the Husband to continue to give effect to that recognition in financial terms. The force of
5 the argument that the Wife has contributed to the Husband's success both past, present
6 and future must, I think, diminish with the passage of time; it cannot continue to be
7 acknowledged, at least financially, indefinitely.

8
9 **The Husband's Retirement Provision - Discussion**

10 55. As was common in professional partnerships previously, until October 2006 KPMG was
11 governed by partnership agreements providing for a buy-in/buy-out type of arrangement
12 whereby on retirement a retiring equity partner's units in the firm (each of which
13 represented the right to a proportion of the profits) were required to be re-purchased by
14 the remaining partners. Equally new partners had to purchase units from existing
15 partners, in each case at a price based upon the profitability of the firm in the year or
16 years immediately preceding the retirement or admission to partnership. Between 1991
17 and 1999 the Husband purchased units in the firm from other partners. Between 1999 and
18 2005 the Husband sold units to incoming partners. As a result the Husband's overall
19 equity share in the partnership ranged from his greatest share of 40% in 1999 to 25% by
20 February 2006. Nonetheless, as a result of the overall growth in profitability of the firm
21 his actual earnings continual to increase.

1 56. On 1 October 2006, some 19 months after the date of the parties' separation, the partners
2 of the firm entered into a new partnership agreement ("the 2006 Partnership
3 Agreement"). This provides that a partner's remuneration is to consist of a base salary
4 together with a profit share made up of a number of different elements, not only seniority,
5 but also performance and leadership factors. The 2006 Partnership Agreement includes a
6 provision for payment on retirement to the 4 equity partners of the previous partnership,
7 including the Husband. The relevant provision states:

8 *"On the retirement or death of, the retiring partner or his estate shall be*
9 *entitled to receive from the Firm four annual payments to be made in each*
10 *November following the first full partnership year after his retirement or death in*
11 *an amount equal to one half of his total remuneration received in the last full*
12 *partnership year preceding his death or retirement".*
13

14
15 57. It is, of course, not possible at present to quantify the value of the Husband's Retirement
16 Provision payable pursuant to the 2006 Partnership Agreement since obviously it is not
17 known what his total remuneration will be in the last full partnership year preceding his
18 retirement. It is not even known when he will retire. The 2006 Partnership Agreement
19 provides that a partner shall retire at the end of the partnership year in which he reaches
20 his 60th birthday. In the Husband's case that will be in 9 years time. However there is also
21 a provision that a partner who has reached retirement age will nonetheless be able to
22 continue as a partner from year to year after that provided that each year 75% of the
23 remaining partners vote to extend his partnership term. The Husband said in evidence that
24 he has no plans for early retirement and that at this stage he has no idea when he will
25 retire. However, the parties agreed that, based on the most recently disclosed financial
26 records of the firm, if the Husband had retired in 2009 pursuant to the provisions of the
27 2006 Partnership Agreement, he would have been entitled to 4 annual payments of

1 US\$1,525,057, being a total over 4 years of US\$6,084,230. According to the Amended
2 Agreed Schedule if he had retired pursuant to the provisions of the 2006 Partnership
3 Agreement at the date of the parties' separation in 2005 the Retirement Provision would
4 have had a value of \$2,354,857.
5

6 58. It was argued on behalf of the Wife that the Husband's Retirement Provision was a
7 matrimonial asset since the Husband's right to a payment on retirement as an equity
8 partner had been established by the partners of the firm during the period when the
9 parties were still living together. It was one of the financial consequences of his progress
10 in his career to which the parties had both contributed Specifically it was contended that
11 the retirement provision of the 2006 Partnership Agreement is simply the successors to
12 the rights on retirement of the four equity partners, including the Husband, under the
13 previous partnership agreement. The Husband would not have acquired such rights
14 pursuant to the 2006 Partnership Agreement if he had not already been an equity partner
15 with pre-existing retirement rights under the previous partnership agreement to which he
16 became a party at the time when he and the Wife were living and working together as a
17 married couple. It was said that the Retirement Provision therefore had its origins during
18 the marriage and is analogous to the undisputed matrimonial assets which, it is accepted,
19 should be divided equally between the parties. The Wife proposed that there should be
20 an assignment to her of one half of the value of the Retirement Provision payable as at
21 the date of the Husband's retirement whenever that may be. She accepted that there is an
22 element of risk for her in this since the value of the Retirement Provision will follow the
23 fortunes of the firm and thus the Husband's remuneration could go down as well as up.

1 However, it was suggested that as the Husband obviously has the same risk, this was the
2 fairest to them both and the most appropriate way to deal with this asset, rather than
3 attempting some arbitrary assessment of its future value now.
4

5 59. The Husband's primary position was that the Retirement Provision does not constitute
6 matrimonial property and should not be treated as such because the right to it arises under
7 the 2006 Partnership Agreement, which was entered into some 18 months after the date
8 of the parties' separation. For the same reasons for which it was contended that the Wife
9 should not share in the post-matrimonial assets so also it was argued for the Husband that
10 she should not share in the Retirement Provision, the value of which is entirely dependent
11 on his earnings at a time which will be at least 9 years from now and possibly even later
12 than that. It will accordingly be entirely depended on his sole unsupported efforts many
13 years after the parties' separation. However, by way of compromise, the Husband was
14 prepared to assign to the Wife one half of the Retirement Provision but at the value
15 ascribed to it as at the date of separation in 2005, which the parties agreed in the
16 Amended Agreed Schedule would have been \$2,354,857. Alternatively he suggested that
17 rather than make the Wife wait until his retirement for payment, he would be willing to
18 pay the one half share at that value to the Wife now, thereby enabling her to apply the
19 money towards her own pension or retirement provision if she wished. These proposals
20 were not acceptable to the Wife.
21

22 60. Clearly the value of the Retirement Provision is not related to the Husband's earnings
23 during the subsistence of the marriage but will be dependent on his income in a

1 partnership year which will probably be about 14 years after the date of the parties'
2 separation in 2005 and may possibly be even longer after the separation than that. In my
3 view, notwithstanding the concession made and approved by the Court of Appeal in
4 Wight v Wight (ibid), there is some force in the Husband's argument and I do not think
5 it can be fairly said that the entirety of the Husband's Retirement Provision was acquired
6 or earned during the subsistence of the parties' married life together. In my opinion it is
7 not easily categorised as matrimonial property. Nonetheless I do also find some merit in
8 the Wife's arguments in all the circumstances. The predecessor provisions of the
9 Retirement Provision clearly had their origins in the earlier partnership agreement dating
10 from a time when the parties were still living together and during which time the Wife's
11 contribution is acknowledged. It was during the period of co-habitation that the Husband
12 became an equity partner and the Retirement Provision applies only to the 4 equity
13 partners under the previous partnership agreement. There is some force in the argument
14 that the relevant retirement provisions of the earlier partnership agreement were to an
15 extent simply converted or developed into the relevant retirement provisions of the 2006
16 Partnership Agreement. It seems to me that it can be fairly said that the Husband's right
17 to the Retirement Provision, although not to any particular amount, is also the product of
18 the parties' joint efforts over the years prior to their separation or alternatively that it
19 derives partly from an undisputed matrimonial asset, namely the Husband's retirement
20 rights under the earlier partnership agreement. Overall I consider that it would be
21 consistent, appropriate and fair to treat the Retirement Benefit generally in a similar way
22 conceptually as the other post-separation assets, as I have concluded below, taking into
23 account their specific factual differences, including in this instance the length of time

1 before the Retirement Provision will probably be payable and the basis on which the
2 amount thereof is to be calculated.

3
4 **The Husband's post separation earnings - Discussion**

5 61. Although I was referred to authorities in which consideration was given to compensating
6 a wife for her loss of future participation in her husband's future substantial earnings by
7 way of payment of additional capital, the main emphasis of the Wife's argument in the
8 present case was that she should receive a periodic payment of approximately \$22,000
9 per month (\$264,000 per annum) based on her needs, having regard in particular to the
10 standard of living she had enjoyed and is largely continuing to enjoy as a result of the
11 financial support provided to her by the Husband since the parties' separation. On the face
12 of it for the Wife to share in the Husband's post-separation earnings or to be compensated
13 for not doing so would also arguably be inconsistent with the judgment of the Court of
14 Appeal in Wight v Wight (ibid) that pure earnings after separation do not qualify as
15 matrimonial property (see also reference to H v H [2007] EWHC 459 (Fam.) as well as
16 Wight v Wight (ibid) per Zacca P. at page 14), although I have already pointed out that
17 the treatment of the husband's pension in that case does not appear to follow this
18 approach and it is not entirely clear to me to what extent the statement of Zacca P. was
19 solely made in light of the particular circumstances of that case, albeit they were similar
20 to the circumstances of the present case, as opposed to amounting to a statement of
21 general principle. It is also not clear from the report to what extent consideration was
22 given in that case to the requirement in Section 19 of the Law to consider the parties'
23 respective actual and potential earning power or of the power to make financial provision

1 from the property of either spouse pursuant to subsection (e) of section 21. It was
2 apparently argued by Leading Counsel on behalf of the wife in Wight v Wight (ibid) that
3 as a result of the substantial level of the husband's likely future earnings there was a case
4 for the wife to receive more than 50% of the matrimonial assets by way of compensation
5 for her loss of future participation in those earnings. The Court of Appeal concluded that
6 the substantial share of the matrimonial property to be transferred to the wife was
7 sufficient to meet her needs.

8
9 62. On the other hand it may validly be argued in my view that it is not consistent with
10 equality and fairness that the Wife should have to have recourse to her share of the capital
11 in order to maintain her standard of living whereas the Husband, in light of his very
12 substantial continuing earnings, would not need to do so. This argument was considered
13 by Baroness Hale in Miller v Miller/McFarlane v McFarlane (ibid) as follows:

14
15 *"There is obviously a relationship between capital sharing and future income*
16 *provision. If capital has been equally shared and is enough to provide for need*
17 *and compensate for disadvantage then there should be no continuing financial*
18 *provision. In McFarlane's case there has been an equal division of property but*
19 *this largely consisted of homes which can be characterised as family assets. This*
20 *was not enough to provide for needs or compensate for disadvantage. The main*
21 *family asset is the husband's very substantial earning power, generated over a*
22 *lengthy marriage in which the couple deliberately chose that the wife should*
23 *devote herself to home and family and the husband to work and career. The wife*
24 *is undoubtedly entitled to generous income provision for herself and for the sake*
25 *of their children, including sums which enable her to provide for her own old age*
26 *and insure the husband's life. She is also entitled to a share in the very large*
27 *surplus, on the principles both of sharing the fruits of the matrimonial partnership*
28 *and of compensation for the comparable position which she might have been in*
29 *had she not compromised her own career for the sake of them all. The fact that*
30 *she might have wanted to do this is neither here nor there. Most bread winners*
31 *want to go on bread winning. The fact that they enjoy their work does not*
32 *disentitle them to a proper share in the fruits of their labours."*

1 That passage was referred to in the judgment of the Court of Appeal in Wight v Wight
2 (ibid) and immediately after citing it Zacca P said; in a passage I have already cited:

3 *“In my view the Court should strive for equality. The substantial future earnings*
4 *of the husband could be taken into account in arriving at equality and fairness.*
5 *However the circumstances of the particular case under consideration may be*
6 *such as to allow the Court to depart from equality if there is good reason to do*
7 *so”.*

8 And he went on to consider the principle of special contribution, which does not arise in
9 the present case.

10
11 63. With regard to the comment of Baroness Hale in Miller v Miller/McFarlane v
12 McFarlane (ibid) above to the effect that if capital has been equally shared and is enough
13 to provide for need and compensate for disadvantage then there should be no continuing
14 financial provision, I think it fair to note that if, as the parties have agreed, on a division
15 of the undisputed matrimonial assets the Wife would receive the former matrimonial
16 home and contents together with all the assets of the equestrian centre, all those assets
17 together represent a significant proportion of the share of undisputed matrimonial
18 property which the Wife would retain or receive. While she would not be in the same
19 position as the wife in McFarlane’s case, nonetheless I consider it would be
20 unreasonable and unfair to expect the Wife to have to realize either or both the former
21 matrimonial home or the equestrian centre in order to assist in maintaining herself in the
22 lifestyle to which she has become accustomed during the marriage and which she
23 currently continues to enjoy. The fact of the matter is that in this case, like McFarlane’s
24 case, one of the principle assets, if not the main asset, is the Husband’s very substantial
25 earning power generated over the course of a lengthy marriage.

1 64. In CR v CR (ibid) the Judge considered this issue in detail. In that case one of the main
2 issues for determination was, in the words of the Judge:

3 *“Whether there should be additional “compensation” for the wife’s forfeited*
4 *earning capacity (or for her inability to continue to share in the husband’s*
5 *ongoing earning capacity) either by way of an augmented lump sum paid in one*
6 *go or by installments, or by way of an open ended order for periodical payments,*
7 *or else by way of a “term” order.”*
8

9 In considering whether the wife in that case should be compensated for her inability to
10 share in the husband’s future earning capacity the Judge said:

11 *“My conclusion is that it would not be fair here to ignore the big income*
12 *imbalance. Some recognition is required of the fact that the wife’s half share of*
13 *the overall resources is “all” she will have to provide for her reasonable needs in*
14 *the context of the overall resources; whereas the husband will have the same*
15 *share of the assets plus the likelihood of a very large ongoing income, much*
16 *greater than his generously assessed reasonable requirements”.*
17

18 The Judge went on eventually to award the wife a further lump sum to compensate her
19 for her future inability to share in the husband’s future earnings rather than an ongoing
20 periodical payment because he considered it desirable that there should, in that case, be a
21 clean break between the parties. I was urged by counsel for the Wife not to adopt that
22 approach but to award her the open-ended periodical payment which she seeks.
23

24 65. In the present case the Husband’s average earnings over the past 2 years have been
25 US\$3,044,028 per annum. He gave evidence, which I accept, that this figure is likely to
26 decrease by as much as 30% this year and probably next year too due to a reduction in the
27 firm’s profits consequent upon a slowdown in business and an increase in the cost of
28 doing business. The consequence of a 30% decrease in his earnings would be to lower his
29 average annual income to around US\$2,130,800. This is nevertheless clearly

1 considerably more than necessary to meet his own needs, which at one point in his
2 evidence he assessed at approximately \$150,000 per annum, (although he subsequently
3 revised that figure upwards to a considerable extent), not including the costs which he
4 incurs in respect of the support of the 2 younger daughters and the costs he has been
5 incurring to date in respect of the Wife. On the assumption that on divorce the Wife
6 would assume responsibility herself for the costs which the Husband is currently meeting
7 she assessed her likely expenditure at approximately \$22,000 per month. The Husband
8 was critical of some of the detail of the Wife's estimated costs although it did not seem to
9 me that I should be analyzing the minutiae of the Wife's domestic budget having regard
10 to the overall financial resources available in this case and the standard of living which
11 both parties have enjoyed. The Wife was also cross-examined about various bank
12 statements which seemed to indicate that from time to time she has been able to save
13 money out of the sum of \$14,000 per month currently paid to her by the Husband,
14 suggesting that the payment is therefore more than she needs. Her evidence was that she
15 is not extravagant and that if on occasion she could manage to do so she would endeavour
16 to try make some relatively small (in the context) saving. I did not, attach any great
17 significance to this and I did not gain the impression overall that the Wife was excessive
18 in her estimate of her costs and expenditure.

19
20 66. The Husband also argued that the Wife does, or at least could, potentially receive
21 significant income from the business of the equestrian centre. The Wife produced
22 financial statements for the equestrian centre which indicated that the average profit over
23 the past 2 years approximately was in the range of \$2,000 per month. However, she was

1 adamant that she in fact takes no profit from the business herself and that any surplus
2 income is reinvested in the business. She said that the equestrian centre is run on a "hand
3 to mouth" basis. She was extensively cross-examined about this and while there was in
4 my mind a slight concern that there may be some blurring on the Wife's part between use
5 of profit from the business for her personal purposes as opposed to use for business
6 purposes, I do not think it likely that this happens on a significant scale. I am prepared to
7 accept that the Wife makes no or very little money herself from the equestrian centre and
8 that it is run, as she said, on a "break even" basis. The Wife also rejected the Husband's
9 suggestion that the business of the equestrian centre could be expanded and thereby
10 become more profitable and a significant source of income for her. Her evidence was that
11 she has no interest in doing this and that it would in her opinion be counter-productive.
12 She said that she is very concerned to maintain the present high standard of riding
13 instruction which she provides at the centre and she is convinced further expansion would
14 jeopardize that. She wishes to keep the riding school relatively small and personal and to
15 provide high quality individual instruction, easily manageable by her. She also said that
16 the equestrian centre is suffering at present as a result of the absence of the parties' eldest
17 daughter who is the school's best riding instructor. The Wife pointed out too that there is
18 now a competitor business in Grand Cayman also providing riding instruction which she
19 fears may impact her business. In the particular circumstances of this case I do not
20 consider it fair or reasonable to expect the Wife, who is now 49 years old and has not
21 been employed other than in managing the equestrian centre for many years, to become a
22 significant income earner herself to any material extent, whether through expansion of
23 the equestrian centre or through other employment. Her evidence was that the equestrian

1 centre is little more than a hobby for her and not a money-making venture. While it
2 seems to me to have become rather more than just a hobby, I accept her evidence that it is
3 not operated so as to maximize profits and I do consider that it would be reasonable and
4 fair to proceed on the basis that the Wife should be expected to turn it into much more
5 than it presently is. Even if she did so and was willing and able to significantly increase
6 its profitability, there is clearly always going to be a very large disparity between any
7 potential earning ability which she might have as a result and the actual earning power of
8 the Husband. While often some reduction in the quality of the parties' respective previous
9 standard of living is to be expected on divorce, the financial resources available in this
10 particular case are fortunately sufficiently large to avoid that.

11
12 67. It was submitted by counsel for the Husband that the Wife's share of the matrimonial
13 assets will be more than sufficient for her needs. It was suggested for the Husband that
14 the parties' standard of living during the marriage is not a factor to be taken into account
15 pursuant to Section 19 of the Law, unlike the English legislation, though I note that the
16 principle of a clean break is not mentioned in our legislation either. In my view to ignore
17 the standard of living enjoyed by both parties during the marriage in a case like this
18 where there is clearly sufficient capital and income to allow that to continue without
19 hardship or unfairness to either party is not an equitable approach having regard to the
20 history of the marriage and the circumstances generally. Section 19 of the Law requires
21 the Court to have regard *inter alia* to the needs of both parties and in the circumstances of
22 the present case I do not think it appropriate to focus simply on the Wife's day to day
23 needs in order to survive and to ignore the Husband's assets and earning potential. The

1 section also expressly requires the Court to also have regard the parties' financial and
2 other resources and their actual and potential earning power.
3

4 68. It was also argued for the Husband that in the present case an order for a periodic
5 payment to the Wife would be inconsistent with the concept of a "clean break". As I have
6 already mentioned, unlike the relevant English legislation, there is no reference in the
7 Law to the desirability of a clean break as a factor to be taken into account. Nonetheless
8 it is generally considered that a clean break is desirable if it can be achieved in the
9 particular circumstances in fairness to the parties. In the present case the Husband
10 expressly seeks a clean break and contends that it can and should be achieved given that
11 the Wife will, he says, be comfortably provided for without a periodic payment and thus
12 without the need for any continuing financial relationship. In my view the question
13 whether the financial arrangements on divorce pursuant to Section 21 of the Law should
14 be structured so as to enable a clean break must depend on the circumstances of the
15 particular case and subject to the overall objective of fairness to both parties.. It is no
16 doubt a consideration to have regard to in the overall determination of what is appropriate
17 but it does not seem to me that it should be treated as if a conclusive factor. I have
18 naturally given consideration to the desirability of a clean break in this case. However,
19 while sympathetic to the Husband's understandable desire to cut his financial ties with
20 the Wife, I do not think that this is a case in which payment to her of an inevitably
21 somewhat arbitrary additional capital sum would be the most appropriate way to meet the
22 Wife's fair income needs overall. In this regard I should also say that it is not my
23 understanding that the continuing financial relationship between the parties over the past

1 5 years as a result of what has amounted to a periodic payment by the Husband to the
2 Wife each month, as well as his payment of her other expenses, has been particularly
3 problematic. While a clean break may be generally considered desirable it is not
4 inevitable and as I have said must, in my view, be subject to what is appropriate in the
5 particular circumstances and having regard to the overall objective of fairness. Sub-
6 section (f) of Section 21 of the Law itself expressly contemplates the possibility of a
7 periodic payment to a spouse on divorce. In my view, if the most appropriate way to meet
8 the fair financial requirements of a spouse in the particular circumstances is to award a
9 periodic payment then that may outweigh the desirability of a clean break.

10
11 **Conclusions**

12 69. (i) As I have explained above, the Husband accepted that the pre-separation assets,
13 categorised in the Amended Agreed Schedule as matrimonial property should be treated
14 as such and therefore divided equally between the parties. I agree. In my opinion it is
15 right in the circumstances of this case that this undisputed matrimonial property or its
16 value should be divided equally between the Husband and the Wife. As previously
17 explained, I accept and adopt the 2009 values for these assets as shown on the Amended
18 Agreed Schedule. On this basis these assets have a total value for these purposes of
19 approximately \$9,567,697. On an equal division, each party will therefore be entitled to
20 retain or receive out of this undisputed matrimonial property assets to the value of
21 approximately \$4,783,849. As mentioned, the parties are agreed that the Wife should
22 receive the former matrimonial home and its contents (the contents having a notional
23 value of \$29,000). She should also, in my judgment, receive the property, both real and

1 personal, of the equestrian centre, the business and assets of which should become hers
2 alone. The parties were confident that they would otherwise be able to agree which of
3 them should receive which of such assets once this judgment was known. The 2009
4 values as shown on the Amended Agreed Schedule should be used for this purpose unless
5 the parties otherwise agree a different value in respect of any particular asset.

6
7 (ii) The real issues in this case of course relate to post-separation assets acquired by
8 the Husband, his post-separation earnings and his Retirement Provision. For the reasons I
9 have endeavoured to explain, it seems to me that in principle and to be consistent these
10 issues should logically and conceptually be approached in the same way having regard, of
11 course, to the specific factual differences applicable to each. As far as the post-separation
12 assets acquired by the Husband are concerned, I have outlined the parties' respective
13 arguments and commented on them already. These assets, as specified in the Amended
14 Agreed Schedule (including the Wife's bank accounts) have an agreed total value of
15 \$7,752,561. Having regard to all of the circumstances including, but not confined to, the
16 length of the marriage, the Wife's contribution in the respects outlined and the equity of
17 her continuing to share to an extent in the product of the parties' joint endeavours,
18 together with a degree of uncertainty on my part as to the extent to which all of such
19 assets are properly to be considered non-matrimonial, as well as the length of time since
20 the date of the parties' separation, and the extent to which such assets may represent the
21 product of the Husband's sole efforts, in my judgment it would be appropriate and fair to
22 deem 30% of such post-separation assets or of their value to be matrimonial property,
23 which should be divided equally between the parties. Accordingly post-separation assets

1 with a total value of \$2,325,768.30 are deemed to be matrimonial property and the parties
2 should therefore each retain or receive assets from those listed on the Amended Agreed
3 Schedule as Assets Acquired After 30th September 2005 to the value of \$1,162,884.15.
4 This is, of course in addition to their respective shares of the undisputed matrimonial
5 property dealt with at sub-paragraph (i) above. In my view, the Wife should retain the 6
6 bank accounts with a total value of \$ 68,067 which represent her post-separation assets as
7 shown on the Amended Agreed Schedule and that should be taken into account in the
8 division of the post-separation assets in the proportions I have directed.

9
10 As a result of this decision post-separation assets with a total value of \$5,426,792.70 are
11 deemed to be non-matrimonial and the property of the Husband. On the assumption that
12 the Husband were to retain that property in addition to his share of the pre-separation and
13 post-separation matrimonial property, he would retain or receive property with a total
14 value of approximately \$11,373,526. The Wife would receive or retain her share of the
15 pre-separation and post-separation matrimonial property to a total value of approximately
16 \$5,946,733. Clearly this is a significant disparity and I must consider in the exercise of
17 my discretion, whether, having regard to the overall yardstick of equity and fairness to
18 both parties in all the circumstances this is an appropriate result. I have endeavoured to
19 balance on the one hand, the nature and consequences of the Wife's contribution over a
20 relatively lengthy marriage and the extent to which it can be fairly said that she has
21 played a part in the Husband's financial ability to acquire his non-matrimonial property
22 over the past 5 years such that it should be recognized in financial terms against, on the
23 other hand, the Husband's own efforts since the parties' separation in acquiring non-

1 in acquiring non-matrimonial property of that value, the length of time since the date of
2 separation and the dates relative thereto on which the non-matrimonial property was
3 acquired by the Husband, as well as the Husband's relatively generous continuing
4 support of the Wife to date. In my opinion on balance, it would be fair and appropriate
5 for the Husband to make a further lump sum payment to the Wife of \$1,000,000 out of
6 his own non-matrimonial property. I think that a payment of such an amount to the Wife
7 by the Husband out of his own property strikes the right balance between the parties in
8 light of all the circumstance I have outlined and discussed above. The effect of such a
9 payment would be that the Wife would retain or receive overall assets or property to a
10 total value of approximately \$6,946,733 and the Husband would retain or receive overall
11 assets or property to a total value of approximately \$10,373,525. I am satisfied that this is
12 a fair result.

13
14 (iii) With regard to the Husband's Retirement Provision, this, as I have already
15 pointed out, will not mature and the value will not be known until the time of his eventual
16 retirement, which is likely to be at least 9 years from now, some 14 years from the date of
17 the parties' separation, and possibly even later than that. In the further exercise of my
18 discretion and again having regard to all of the circumstances already outlined, I consider
19 that it would be appropriate for the Wife to have a 20% share of the eventual amount of
20 the Retirement Provision. I also think it fair that the Wife should, like the Husband, share
21 the risk consequent on the amount of the Retirement Provision being dependent on the
22 future fortunes of the Husband's firm. For that reason, I do not think it appropriate to
23 endeavour to assess the value of the Retirement Provision to the Wife if paid at this stage.

1 In my judgment the most equitable approach is for the Husband to now grant an
2 assignment, effective at the date of his retirement, to the Wife of 20% of the value of the
3 Retirement Provision as provided for by and determined in accordance with the 2006
4 Partnership Agreement and payable to her in proportionate installments at the same times
5 as the Retirement Provision installments are payable to the Husband. If the parties wish
6 to agree some other arrangement, that is, of course, always open to them.

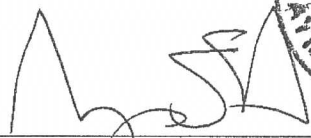
7 (iv) With regard to the Husband's future earnings and the Wife's application for a
8 periodic payment of \$22,000 per month, there is, as I have already discussed, clearly a
9 very wide disparity between the parties' respective actual and potential earning power.
10 The Wife earns little or nothing and, should in my view be treated as having no
11 significant actual or potential earning power at any time in the foreseeable future. Even
12 on the basis of the reduction in his profit share which the Husband anticipates, he will
13 probably continue to earn in the region of US\$2m (\$1,690,000) per annum or
14 approximately \$136,000 per month. Although in light of my decisions above with regard
15 to the pre-separation and post-separation matrimonial property the Wife will retain or
16 receive substantial capital, the Husband will retain and receive substantially more than
17 her and in addition he will continue to have a considerable income. I remain sympathetic
18 to the argument that there is an inherent unfairness, following a marriage like this and in
19 financial circumstances such as these, about a situation in which the Wife, having no
20 earnings of her own, would have to live off her share of capital, whereas the Husband,
21 having the significant future earning power which he has, would not have to do so. In my
22 opinion, the most appropriate and fairest way to address this would be for the Husband to
23 make monthly payments to the Wife by way of income to her so as to enable her to live

1 more or less in the manner to which she has been accustomed for some time without the
2 need for recourse to her share of the capital. In view of the level of the Husband's income
3 a reasonable periodic payment would not materially affect his own ability to live to the
4 standard to which he too has become accustomed. I have assumed that the Husband will
5 continue to pay for the education and maintenance of the 2 younger daughters as he has
6 agreed, although the level of that obligation will reduce over time and eventually expire,
7 possibly within the next 5 years or so. I also assume that on divorce the Husband will
8 cease to make the direct payments in respect of the Wife's credit cards and travel
9 expenses and in respect of the insurance and maintenance of the former matrimonial
10 home. On that basis it seems to me that a monthly payment to the Wife of \$18,000 per
11 month (\$216,000 per annum) would be an appropriate sum to enable the Wife to live to
12 the standard which she has and does, without having to depend to an unfair extent on her
13 share of capital to meet her living costs. Such a monthly payment seems to me equitable
14 in light of the disparity between the parties' respective earning power. Subject to any
15 material change in the parties' circumstances such periodic payments should continue for
16 an indefinite period. I appreciate that this (and indeed my judgment in relation to the
17 Retirement Provision) does not allow for a clean break financially between the parties but
18 weighing all the factors I nonetheless consider that this is the most appropriate solution
19 and fairest to both parties. I do not think that an attempt to compensate the Wife with
20 respect to an inability to participate in the Husband's future earnings by way of an
21 additional lump sum or by way of a limited periodic payment is the most appropriate
22 approach in this case.

1 70. I have ultimately sought to measure the division of assets, including the assignment of a
2 portion of the Husband's Retirement Provision and the provision of a periodic allowance
3 as set out above against the yardstick of fairness and I am satisfied on balance that,
4 having regard to all the circumstances and in the exercise of my discretion, my
5 conclusions meet this test. I shall therefore make orders accordingly and grant the parties
6 general liberty to apply insofar as there may be any outstanding issues with regard to the
7 form and content of the formal order. My inclination is to make no further order as to the
8 costs of and incidental to this matter and to leave matters pertaining to the parties'
9 respective costs and contribution thereto as they currently lie. However, if either party
10 feels particularly strongly about that and agreement cannot be reached I shall hear further
11 argument on costs.

12
13
14
15
16
17
18
19
20
21
22

Dated: 30th March 2010


Hon. Mr. Justice Angus Foster, Q.C.
Judge of the Grand Court

