

Jackson's Matrimonial Finance

Ninth edition

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For Christopher and Jamie

— Clive Newton QC

For my parents; my wife; and Barry

— Deepak Nagpal

Preface

Since the publication of the last edition in November 2008, there have been significant developments in the subject matter of this work. There have been three decisions of the Supreme Court: *Agbaje v Agbaje*, the first case under Part III of the Matrimonial and Family Proceedings Act 1984 to reach the highest tribunal in the land; *Granatino v Radmacher* (formerly *Granatino*), the landmark decision in relation to nuptial agreements; and, most recently, *Jones v Kernott*, where the Supreme Court grappled with a topic upon which much ink has been spilled over the years: constructive trusts and the family home. In addition, this edition incorporates the continuing analysis emanating from the Court of Appeal and the High Court as to the proper application of the three principles of needs, compensation and sharing identified in *Miller and McFarlane*. The focus in the reported authorities has largely been in relation to non-matrimonial property.

The developments have occurred not only in judicial decisions. Most notably, the Family Procedure Rules 2010 and the EC Maintenance Regulation came into force in 2011. In light of the advent of the new procedural code and the increasing complexity of matrimonial finance, this edition includes a new chapter entitled 'Procedure', the ambit of which ranges from the salient aspects of the new rules to the implications of *Imerman v Tchenguiz*. Moreover, in recognition of the need for practitioners to have a working knowledge of the different areas of law that frequently arise in matrimonial finance cases, this edition retains chapters, written by specialist contributors, devoted to tax, bankruptcy and the Inheritance (Provision for Family and Dependants) Act 1975.

Finally, the fact that this edition is being published on the 40th anniversary of the publication of the first edition of this work provides an opportune occasion to pay tribute to the original author, the late Joseph Jackson QC, and to the subsequent former editors, His Honour David Davies and His Honour Judge Rodger Hayward Smith QC, to all of whom we owe an enormous debt.

Clive Newton QC & Deepak Nagpal

January 2012

Extract from Preface to First Edition

Divorce has become less about divorce and more about money. The process by which a divorce is obtained has become increasingly less significant. The parties now wage their warfare on the battlefield of finance. The present writer has long thought that, as a general comment, too little attention has been given to matrimonial financial matters. All too often the processes by which financial orders and agreements are reached are hit-and-miss, haphazard affairs. The number of persons involved in matrimonial financial disputes is enormous. In 1971 there may have been something approaching 100,000 divorce petitions. If one considers the adults and the children concerned in these cases, one can soon see that the annual output of individuals involved is certainly more than 300,000, and in addition there were many thousands of applications for matrimonial orders in magistrates' courts. Statistics are available about the husbands and wives who litigate about their matrimonial troubles, but no doubt there was also in the same year a not inconsiderable number of married people who parted without litigation, having in many cases come to private financial arrangements.

This book is about money, about the economics of matrimonial break-down in all its many aspects. It is a new book intended for all those concerned with matrimonial finance and taxation, and in particular it is concerned with the principles applied by the courts in considering these matters. The book deals not only with the making of orders and agreements, but also with the effect of these orders and agreements, for it is still a sad fact that many parties leave court completely unaware as to the precise effect upon them of the order made by the court. The same observation applies in relation to agreements reached between the parties. Both the payer and the payee should be aware as to the real meaning of the order or agreement.

There is insufficient recourse to the accountant who has an important role to perform in this sphere. There is insufficient knowledge of the principles to be applied. It is, for example, still a common fallacy among many lawyers and accountants that the fact that accounts have been disclosed to and accepted by the Revenue is conclusive as against a wife in matrimonial disputes.

The importance of attempting to achieve the 'right' order cannot be overemphasised. It is true that the amount to be awarded is discretionary, and that different minds reasonably differ as to how the discretion should be exercised. Even so, as the late Lord Donovan said in one case [*Irvine v Irvine* (1963) 107 Sol Jo 213, CA], one is moving in a field where it is possible in many cases to

Extract from Preface to First Edition

achieve considerable accuracy. This is because one can accurately estimate the question of living expenses within the ambit of a particular standard of living. One must also bear in mind a small amount might make a material difference to a woman who has to support herself and her children. An error may produce hardship to the payee or to the payer.

Joseph Jackson

January 1972

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