

Summary of the law of financial settlements on divorce

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What is the law on working out a financial settlement on separation and divorce?
Is a summary available?

The law in England and Wales on what is the appropriate financial settlement on a separation and divorce is complex, frequently changing and is not set down in any one place. It is originally based on legislation of 1973 but is mostly now judge-made law, particularly following two fundamental decisions of the House of Lords in 2000 and in 2006.

Summarising can lead to misunderstandings, differences as to interpretation and various opinions on outcome. Nevertheless I believe strongly that the law should be clear, comprehensible, publicly acceptable and workable by most people in most situations.

I refer to my fact sheet on how the law and lawyers go about working out financial settlements. This document is only an incredibly brief summary. It cannot alone provide the full information needed to understand the law and particularly to help work at a settlement. It might however help some individuals and some couples. It might be a helpful starting point.

In very general terms I believe the law is as follows:

- The intention is to produce a fair outcome
- A primary consideration of a fair outcome is to help along the road towards independent financial living post separation
- It is beneficial to have a clean break wherever possible, which involves a termination of ongoing financial responsibilities between the couple either immediately or as soon as possible
- Fairness is found in three strands namely needs, compensation and sharing
- The majority of divorce settlements are solely on the basis of the needs of the couple, with in practice the first consideration being the needs of any children, often for accommodation with the primary residential parent
- Sharing is based on marriage as a matrimonial partnership with each having entitlements to the matrimonial assets. It applies to both income and capital.
- Compensation is designed to help spouses who have made financial commitments and sacrifices for the marriage, for instance giving up a career to raise children and look after the home
- The resources of a couple are increasingly divided into matrimonial assets and non matrimonial assets.
- Matrimonial assets are those acquired by the couple during the period of the relationship. It often includes the family home. It will often exclude pre relationship assets, inheritances and gifts, post separation assets deriving from new initiatives or enterprises after the separation, and business assets which are the enterprise of only one spouse.

- Matrimonial assets are often shared equally, irrespective of the length of the relationship, and provided needs are catered for.
- Non matrimonial assets are not automatically shared but will be brought into account with longer relationships. The non matrimonial assets are considered throughout longer marriages as increasingly merging into the matrimonial assets, eroding away in time to become part of the overall matrimonial acquired assets. Therefore the longer the marriage, the more likely that non matrimonial assets will be shared although not necessarily equally.
- The conduct and behaviour of one party will only be taken into account if it is exceptional and inequitable to disregard
- The contribution of one party will only be taken into account as a reason to depart from equal sharing if it is exceptional
- The law looks at the true reality of financial ownership, and ignores devices of personal wealth held behind trusts, companies and in other ways

As stated, this is only a very brief summary. Refer to my facts sheets for more information. Always take specialist legal advice.

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