

Whatever the circumstances surrounding your breakup, the legal principles to be applied in reaching a fair division of the matrimonial assets on divorce remain the same.

1 What is matrimonial property?

“Matrimonial property” is defined as all the assets belonging to the parties (whether jointly or solely) at the “relevant date” (see below) which were acquired during the marriage but before the relevant date.

Matrimonial property will also include any property acquired before the date of the marriage if it was acquired for use as the family home or as furniture for such a home.

However, any assets which have been acquired by way of gift or inheritance from a third party are specifically excluded and do not constitute matrimonial property and therefore would not be taken into account as part of the settlement negotiations.

2 What is the relevant date?

The relevant date is the earlier of:

- a) The date that the parties ceased to cohabit. That is when the parties ceased living together as husband and wife. It does not have to be the date they stopped living in the same house. Many couples will have separated yet continue to live under the same roof for a period, for a variety of reasons;
- b) The date of service of the summons in the action for divorce/dissolution of the civil partnership.

3 Valuation of matrimonial property

The matrimonial assets and liabilities first need to be identified and then valued at the relevant date, so it is important to establish and agree on that date as soon as possible. Thereafter, each party can take steps to obtain valuations for those assets and debts.

There is one fairly narrow exception to that rule which applies to the valuation of assets which may be transferred by order of the Court, in which case a different date may apply. The most notable type of property is the family home. For these items of property, the appropriate valuation date will be:

- a) Where the parties agree on a date, that date;
- b) Where there is no such agreement, the date of the making of the court order transferring the property; or
- c) Such other date as the court may determine.

4 What if my assets have changed form during the marriage?

Although any assets gifted or inherited during the marriage are not classed as matrimonial property, if such an asset is subsequently converted into a new asset during the marriage, then the new asset is deemed to become matrimonial property.

An example is where a wife receives a legacy under a will of a painting. The painting itself is not matrimonial property, so would not be taken into account when dividing the assets. However, if the wife sold the painting, during the period of marriage and used it to buy a new dining room table, then the dining table would constitute matrimonial property.

However, there is scope within the legislation which would allow the Court to take into account the source of funds which were used to acquire the new asset. On the basis that the dining room table was not acquired from the income or efforts of the parties during the period of marriage, then the wife can seek to have the value of the dining table excluded, or certainty diluted.

5 What about assets which existed before the marriage?

Some assets, such as pensions and life insurance policies require to be treated slightly differently. That is to take into account the fact that they may have commenced before the marriage however, have been contributed to during the marriage.

The value of the pension fund up until the date of marriage would not be treated as matrimonial property and would be excluded. However the value of the pension which has accrued from the date of the marriage until the relevant date will be considered as matrimonial property. The same applies to any life insurance policy or endowment policy.

6 Will I be liable for my spouse's debts?

Unfortunately, the answer is yes. As with assets, any debt which has been accrued during the period of the marriage but before the relevant date will be considered matrimonial debt, regardless of whose name it is in.

If however the debt has not been used to benefit the marriage/family (for example, gambling debts), then an argument can be advanced for an unequal split of the matrimonial property, on the basis that it would be financially disadvantaged if they were to share in the liability for that debt.

6 Is matrimonial property always divided 50:50?

Under the legislation, the starting point is that the net value of the matrimonial property (value of assets less debts) should be shared "fairly" between the parties. The court also has to take into account the following principles:

- (i) Any economic advantage/disadvantage gained/suffered by the spouses during the marriage;
- (ii) Whether one spouse will be left with the “economic burden” of caring for children of the marriage under the age of 16;
- (iii) Whether one spouse needs additional ongoing financial support to help them “get back on their feet” immediately after separating; and
- (iv) Whether one spouse will suffer “serious financial hardship” after the date of divorce.

Usually the property will be divided fairly when it is shared equally between the parties. However, it is possible for a person to seek an unequal share of the property.

In determining that, in addition to considering the above principles, the court also has a duty to look at any special circumstances which will justify such a departure from an equal sharing of the matrimonial property.

Special circumstances can include the following:

- (i) The terms of any agreement between the parties dealing specifically with the ownership or division of matrimonial property, for example a Pre-Nuptial Agreement;
- (ii) The source of funds used to acquire any of the matrimonial property where those funds were not derived from the income or efforts of the parties during the marriage;
- (iii) The nature of the matrimonial property itself, the use made of it and the extent to which it is reasonable to expect it to be realised or divided or used as security.

Even if special circumstances prevail, the Court has a wide discretion and does not have to depart from the principle of equal division. Ultimately, the Court will require to decide what is fair based on the circumstances of each particular case.



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