DO I HAVE TO SHARE MY PRE-ACQUIRED OR INHERITED WEALTH?

When it comes to dividing the finances on divorce, there is a fundamental difference between how the Family Court treats assets that are 'the product of marital endeavour' such as assets generated during the marriage and classed as 'matrimonial property', and 'non-matrimonial' property, namely assets which are not the product of the marital endeavour, for example pre-acquired and inherited wealth.

The reason this is so important is because the Court will apply the sharing principle to the division of matrimonial property with a starting point being an equal division of those assets between the parties. In contrast as confirmed by the Court of Appeal in *Hart v Hart [2017] EWCA Civ 1306,* the sharing principle applies with limited or no force to non-matrimonial assets.

This different approach to matrimonial and non-matrimonial assets means in some cases it may be impossible for non-matrimonial to be ring-fenced. However the extent which this will be appropriate will depend on the facts of each case and will be heavily dependent on two particular factors; the needs of the parties and the way non-matrimonial assets have been dealt with by the parties during the marriage.

As to needs, the Court will always have regard to the parties' needs and in particular their need for re-housing. Needs are the overriding factor and therefore the Court can 'invade' non-matrimonial assets to ensure needs are met. It would be rare for the Court to share non-matrimonial assets in circumstances other than to meet the other parties' financial needs.

The other circumstance as set out above when the Court will look to divide non-matrimonial assets is when these have been 'mingled' with the existing matrimonial pot and have therefore lost their 'non-matrimonial', **caveat**. An example of this could be when inherited funds are mixed with joint funds rather than being kept separate. Another example could be if a pre-acquired property becomes the family home. Depending on the circumstances of the case situations like these can lead to arguments from one side that 'mingled' property should be subject to being shared equally between the parties', and the posing arguments that there should still be some degree of ring-fencing.

In a recent case *WX v HX [2021] EWHC 241 (Fam),* the husband argued that his management of the wife's portfolio of non-matrimonial assets over a number of years had resulted in the underlying trust assets becoming 'matrimonialised'. In this case the trust assets had been preserved with only the income being used by the wife for her and the children's personal expenses and for paying tax arising on the trust. The Court found that the husband's management was not sufficient to 'matrimonialise' the assets and the wife was permitted to ring-fence her extensive wealth. It is notable that in this case the parties' needs were met from the matrimonial pot.

Arguments that non-matrimonial assets have taken on a different character by virtue of the way in which the parties' have treated the property over the course of the marriage could

be complex and difficult to manage. It would be advisable in order to protect non-matrimonial assets as far as possible, to enter into a pre-nuptial agreement before getting married. Alternatively non-matrimonial assets should be kept entirely separate from the marriage although as set out above a caveat to this is that the Court always have recourse to non-matrimonial assets to meet the other spouse's needs.

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