



# PUMP COURT

## CHAMBERS

### **When the wife becomes the widow: Financial remedy and Inheritance Act claims**

**EDWARD BOYDELL**





**In the Family Court sitting at Westminster**  
**Between**

**Case No. 1**

CATHERINE TUDOR

**Petitioner**

and

HENRY TUDOR

**Respondent**

# When the wife becomes the widow

## The Facts

26 year marriage.

1 daughter, Mary, now 19 years old. She is in her first year at university. She is considering taking a law conversion course afterwards.

Catherine (W) is 54 and earns c£6,000 pa as a part-time Spanish teacher. She is Spanish by birth.

Henry (H) is 45. He is the CEO of a family headhunting company (Tudor & York Ltd.). He inherited his majority shareholding from his father.

H has been living with AB (35) since separation over two years ago.

H has a degenerative condition caused by a car accident which took place shortly after separation. His life expectancy is reduced by c10 years. He has mobility issues. His working life is also shortened.

H has a son, Hal, 9 years old who has spina bifida.

## When the wife becomes the widow

### Asset schedule

<b>FMH</b>	<b>£500,000</b>
less costs of sale	-£15,000
<b>net equity</b>	<b>£485,000</b>
<b>W's Aragon house</b>	<b>£90,000 (1/2 of €200,000)</b>
<b>Proceeds of PI claim</b>	<b>£150,000</b>
<b>Liquid assets</b>	<b><u>£725,000</u></b>
<b>Shares in T&amp;Y</b>	<b>£1,000,000</b>
less CGT (ER)	-£100,000
<b>net value</b>	<b>£900,000</b>
<b>Fidelity pension</b>	<b>£400,000</b>
<b>TOTAL</b>	<b><u>£2,025,000</u></b>

## When the wife becomes the widow

### Competing arguments

- ❖ W agrees an immediate sale of the FMH and seeks 75% of the FMH on a needs basis for herself and Mary, as H is already housed with AB
- ❖ W seeks a lump sum of £75,000 – being half of H's PI award. This was partly argued on a "*sharing*" and partly on a "*needs*" basis
- ❖ W seeks an order transferring 40% of H's shares in T&Y to her. She offers to assign the voting rights to H. She submits that the transfer would be subject to holdover relief
- ❖ W seeks a PSO order for 50% by capital value
- ❖ W seeks spousal PPs for life of £35,000 pa and £10,000 pa for Mary until the end of her tertiary education. She also seeks an order for H to pay all Mary's tertiary education costs
- ❖ W asserts the Aragon property is non-matrimonial

## When the wife becomes the widow

- ❖ H asserts that this is a case for sharing the matrimonial assets equally but that both his shares in T&Y and his PI award are non-matrimonial
- ❖ H also seeks an immediate sale of the FMH and equal division of the net equity
- ❖ H offers an equal division of the pension benefits
- ❖ H submits there be PPs at the rate of £20,000 pa for two years – until Mary finishes tertiary education. He offers £5,000 pa for Mary and will meet her education costs
- ❖ H argues his disabilities require extra capital resources and that his earnings will reduce in future.

## When the wife becomes the widow

H submits that a deferred clean break is appropriate as:

- ❖ W should increase her earnings to c£12,000 pa
- ❖ W's housing needs can be met by her half share of the FMH
- ❖ After cessation of the PPs W will have her earnings, her share of the net equity in the Aragon property and can draw down from the shared pension
- ❖ H's earnings are likely to be limited in future and he will look to pass his shares in T&Y to the next generation, including Mary if she decides not to pursue a legal career
- ❖ He requires his half share of the FMH to allow him to buy an adapted property and other capital items needed owing to his disabilities
- ❖ AB's capital is irrelevant



# When the wife becomes the widow

## How will the court approach H's disability?

### Law: MCA 1973 S25:

- ❖ S25 (1): *"It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24, 24A, 24B or 24E above and, if so, in what manner, to have regard to all the circumstances of the case...."*
- ❖ S25 (2) (a) *"the income, earning capacity, property **and other financial resources** which each of the parties to the marriage has or is likely to have in the foreseeable future...."*
- ❖ S25 (2) (b) *"the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;"*
- ❖ S25 (2) (d) *"the age of each party to the marriage and the duration of the marriage;"*
- ❖ S25 (2) (e) *"any physical or mental disability of either of the parties to the marriage;"*



## When the wife becomes the widow

The approach as to H's PI award:

***Wagstaff v Wagstaff*** [1992] 1 FCR 305 CA (distinguishing ***Daubney v Daubney*** [1976] Fam 267) Butler-Sloss LJ:

- ❖ H's damages are part of his resources under S25 (2) (a). See also ***Pritchard v JH Cobden & Anor*** [1988] Fam 22
- ❖ Damages for pain, suffering and loss of amenity should be taken into account
- ❖ Each case must be considered on its facts
- ❖ Capital awarded in the PI claim might be needed to meet a need identified under S25 (2) (b)
- ❖ The injured party's "*disability and consequential needs (are) very important*" and although they take priority must be balanced with the other party's needs to achieve fairness

## When the wife becomes the widow

Butler-Sloss in **Wagstaff**:

*"I do not understand Scarman LJ [in **Daubney**] as saying that no part of damages awarded under the head of pain, suffering and loss of amenity should be charged by the other spouse but, if he did, then I respectfully disagree. The reasons for the availability of the capital in the hands of one spouse, together with the size of the award, are relevant factors in all the circumstances of s 25. But the capital sum awarded is not sacrosanct, nor any part of it secured against the application of the other spouse....*

*In general, the reasons for the availability of the capital by way of damages must temper the extent of, and in some instances may exclude the sharing of, such capital with the other spouse. It is important to stress yet again that each case must be considered on its own facts."*

## When the wife becomes the widow

### Mesher orders:

In ***Mansfield v Mansfield*** [2011] CA Thorpe, Jackson and Black LJJ allowed an appeal and imposed a *Mesher* rather than an outright lump sum order to meet both the needs of W and the children for housing and then H, whose PI award was the main part of the assets.

Thorpe LJ:

*“So it seems to me that the exceptional factor in this case, namely the origin of the family capital or the vast majority of the family capital, makes it particularly suitable for the application of a **Mesher** order. Accordingly, I would quantify the extent of the husband's reversionary interest, or residual interest, at one third of the capital awarded to the wife, but particularly expressed in the bricks and mortar in which the money is invested.”*

## When the wife becomes the widow

### How will the court approach H's reduced life expectancy?

***M v M*** [1994] 2 FCR 174 CA Balcombe LJ and Sir Francis Purchas.

#### Facts:

- ❖ Parties separated in 1990 after 13 year marriage
- ❖ Two children aged 14 and 13 at time of hearing
- ❖ W had cancer and a life expectancy of 5 to 10 years
- ❖ The assets of the marriage had come from H
- ❖ H was living with his new partner in her house
- ❖ H was a GP earning c£54,000 pa
- ❖ W was reliant on state benefits

## When the wife becomes the widow

CA upheld order of HHJ on appeal from the DJ that:

- ❖ Lifetime spousal PPs appropriate on the facts given W's illness
- ❖ Court correct to order one year deferred sale of FMH rather than an immediate forced sale
- ❖ Correct to divide net equity of FMH 75%:25% in W's favour to allow her to house herself and children
- ❖ A charge in favour of H exercisable on W's death of 75% of W's capital from the FMH recognized both W's fair share in the matrimonial assets and H and the children's future needs for housing, and was not plainly wrong

Also see **M v M** [2015] HHJ Wildblood for the need to balance W's entitlement to a fair share at the end of a marriage with her shortened life expectancy and consequential needs

## When the wife becomes the widow

### The judgment:

- ❖ The FMH be sold forthwith and the net proceeds divided as to 60% to W and 40% to H
- ❖ H should pay a lump sum of £50,000 to W (from which her outstanding legal costs of £30,000 would be paid)
- ❖ H should pay W PPs during their joint lives at the rate of £30,000 pa reducing to £0.05 on her 67<sup>th</sup> birthday (when H would be 58)
- ❖ She found that the shares in T&Y were non-matrimonial but were in any event the source of the income stream

## When the wife becomes the widow

- ❖ The judge found that although H's interest in T&Y was worth £1m gross there was little liquidity in the company but that it was an income stream of £80,000 net pa
- ❖ DJ specifically stated that she was not making any order as to H's shares in T&Y on the basis that if he sold them W might apply to capitalise her maintenance
- ❖ There be a pension sharing order to balance their pension benefits by capital value
- ❖ DJ found that the Spanish property was a non-matrimonial asset
- ❖ DJ ordered H to pay Mary's future education costs whilst she completes her first degree



## When the wife becomes the widow

**Sadly H dies after receipt of the judgment but before it is sealed and before DA. What happens to the application?**

The MCA provides remedies only upon divorce and not death. Such awards only take effect on DA:

**MCA 1973 S23 (5)** *“where an order is made under subsection (1)(a), (b) or (c) above on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.”*

## When the wife becomes the widow

- ❖ A decree cannot be sought after the death of a party:  
***Stanhope v Stanhope*** (1886) 11 PD 103 once death has ended a marriage, it cannot be dissolved through the courts
- ❖ There is no jurisdiction to hear an application for ancillary relief after the death of one of the parties: ***D'Este v D'Este*** [1973] Fam 55
- ❖ As Scott Baker J said in ***Amey v Amey*** [1992] 1 FCR 289:  
*“I cannot any longer exercise a discretion under s 25 of the Matrimonial Causes Act 1973 for the wife is dead.”*

## When the wife becomes the widow

**What if H had died after decree absolute and after the judgment had been delivered to the parties but not sealed?**

The order would have been enforceable: ***McMinn v McMinn***  
(Ancillary Relief: Death of a party to proceedings) [2002]  
EWHC 1194 (Fam)

Black J: *“it is clear that it is not a necessary prerequisite for an order either that the order has been formally typed up, stamped and/or issued by the court or that every last detail of the arrangements should have been resolved by the court”.*  
*“In summary, therefore, s 23(5) apart, I consider that the district judge made an order for ancillary relief on [date]”*

## When the wife becomes the widow

### Costs:

- ❖ When a party dies before decree absolute one of the more concerning issues for the surviving party is that the costs of both sides to that point are essentially wasted
- ❖ If the death happens before DA then there is no possibility of enforcing anything but past costs orders
- ❖ Conversely, if DA has been pronounced and judgment given then the court could determine costs applications even after the death of a party: **McMinn**: Black J:

*"I do not consider that the absence of provision as to costs in the district judge's written judgment prevented it from being an order, particularly given that he made provision for a means by which any costs issue that there might be could be resolved"*

## **When the wife becomes the widow**

**What happens if Henry dies after judgment and decree absolute?**

Catherine instructs Helen Brander of Pump Court Chambers....