



PUMP COURT  
CHAMBERS

**Adjourning Capital Claims**  
Jennifer Lee

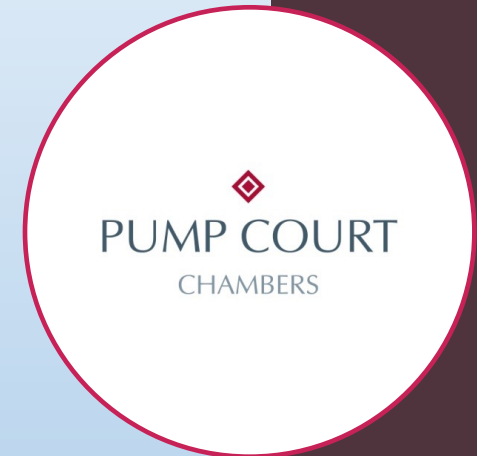


# Adjourning Capital Claims

Finality of litigation is a strong principle for the family courts. It is rare for a party's capital claims to be adjourned.

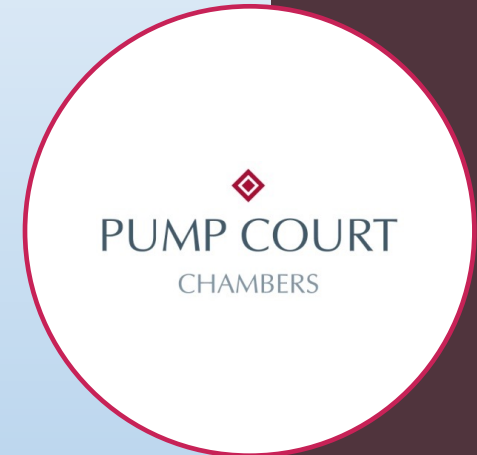
Legal framework:

- The overriding objective requires cases be dealt with '*expeditiously*'; 1.1 FPR 2010.
- S.23/24 MCA states "*or at any time thereafter*"
- S.25A invites the court to consider a clean break, terminating the financial claims which each party has against the other, where possible.



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- There is no *automatic* presumption in favour of clean break orders.
- S.25A Matrimonial Causes Act 1973: *'it shall be the duty of the court to consider whether it would be appropriate so to exercise its powers that the financial obligations of each party towards the other will be terminated as soon after the making of the order as the court considers just and reasonable'*.



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However, there are circumstances when a capital clean break may be inappropriate and unfair.

And remember S.25(2)(a) MCA requires the court to have regard to the financial resources each party are likely to have in the foreseeable future.



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**In what circumstances might you want to adjourn a capital claim?**

- a specific circumstance or foreseeability which would, once it occurs, allow capital to become available
- the Court being satisfied that there are meaningful assets which are owned but have not been disclosed



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Examples of awaiting a specific circumstance:

an expectation of a certain inheritance: *Hardy v Hardy* [1981] 2 FLR 321. Mr Hardy was the son of a famous bookie and racehorse trainer. H worked in the family business. The Court was persuaded H had very substantial expectations of wealth. But H's father was only paying him a minimum wage (which had no bearing to the matrimonial standard of living) and at the time of the financial remedy proceedings had ensured he had only meagre capital assets available.



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Ormrod LJ said the only way Court could be satisfied that W had fair financial provision was to indefinitely adjourn her application for a lump sum - so *'she could use it at an appropriate time when it might result in some reasonable provision'*.

Mrs Hardy revived her lump sum claim after H's father had died.



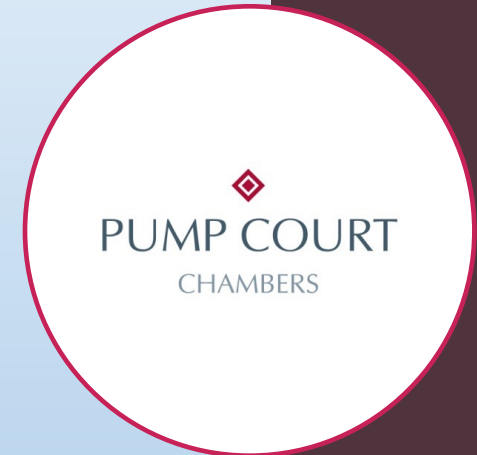
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*MT v MT* [1992] 1 FLR 362 H had certainty of inheritance of at least 1/8<sup>th</sup> of his elderly father's estate. H had no currently available assets. Parties agreed that it was inappropriate to defer a lump sum until the death of H's father and it was impossible to quantify the size of his estate and parties' circumstances in the future. Rather than dismissing claims, the court adjourned W's capital application until her father-in-law's death.



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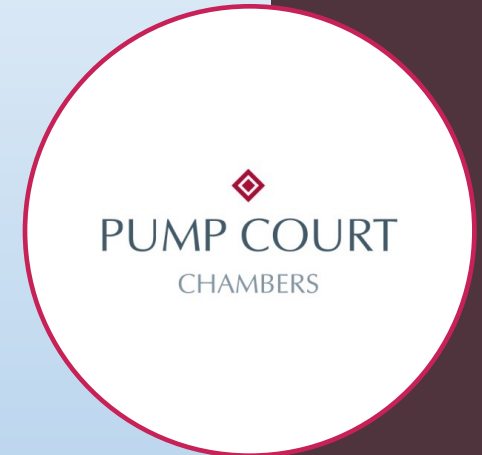
- **Davies v Davies** [1986] 1 FLR 497 – the (very) likely sale of a failing farm business;
- **Morris v Morris** [1977] 7 Fam Law 244 – an Army retirement gratuity that would be received
- **Joy v Joy-Marancho & Other (No 3)** [2016] 1 FLR 815 – a trust’s position was found to be ‘*an elaborate charade*’ that one day would re-establish H’s access to trust assets



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## Obvious themes:

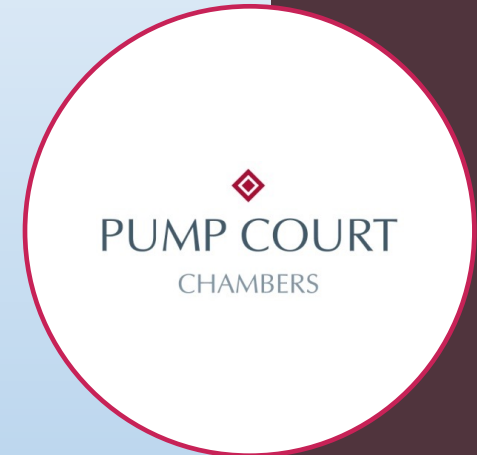
- Poor/dishonest conduct by (usually) Husbands often either not disclosing assets or trying to time proceedings to reduce award
- Wives with real needs
- Realistic expectation of future capital receipts



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## Targeting an application

- ❖ Remember you do not have to issue an application for all forms of financial remedies
- ❖ Avoid blindly ticking every box on Form A
- ❖ Consider whether to target specific applications only
- ❖ Are there reasons to hope that the value of the assets may improve? *pandemic, cladding issues etc. or hidden assets may be found*

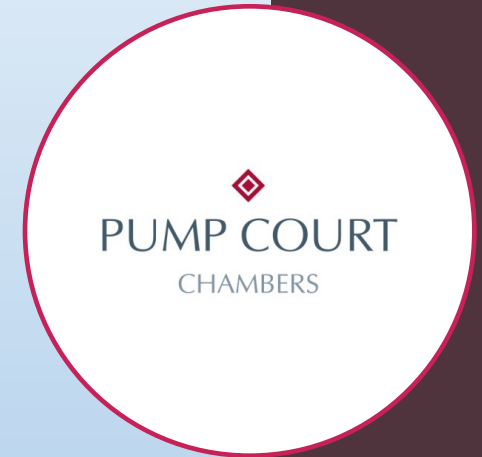


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**What is the relevant test for adjourning a capital claim?**

The court has the power to make only one lump sum order even if by instalments. On a S.23 application the court has the following options:

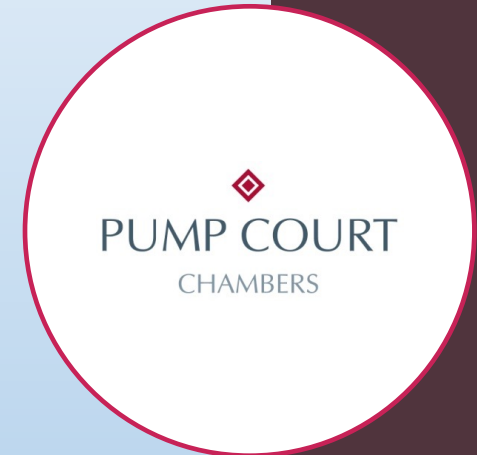
- (i) make an order for a lump sum or lump sums
- (ii) direct a lump sum by instalments
- (iii) dismiss the application, or
- (iv) defer the application



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In *D v D Lump Sum: Adjournment of Application* [2001] 1 FLR 633 after reviewing the authorities, Connell J proposed a two-stage test:

- (1) Can justice be done only if there is an adjournment?
- (2) Is there a real possibility of capital becoming available from a specific source in the near future?



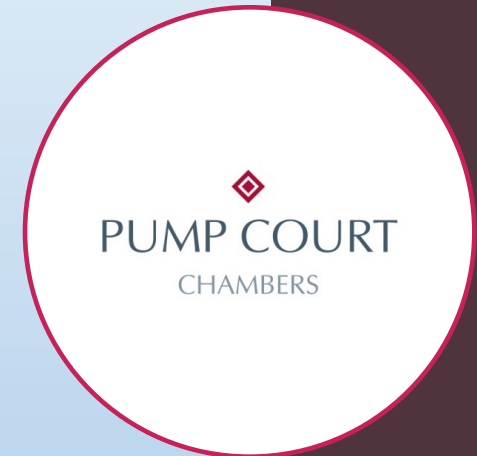
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- Older cases emphasized that there should be a real possibility of capital becoming available in the foreseeable future but more recently the relevant test seems to have softened.
- **Quan v Bray** [2019] 1 FLR 1114: Mostyn J adjourned W's capital claim without a time-limitation. The court found it was foreseeable that at some stage in the future the H will have accumulated sufficient sums to allow a fair capital clean break.



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***AW v AH*** [2020] EWFC 22: Roberts J considered there was a *'reasonable probability that he [H] may' 'restore a measure of financial equilibrium in the future'*. H had been very wealthy and the parties had a high standard of living during the marriage. But he had been made bankrupt in 2011. The court found *'significant deficiencies'* in H's disclosure.



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Roberts J held that: *'despite the imperative to achieve a clean break between parties involved in this type of litigation insofar as it possible following divorce, this is not a case where I can achieve a fair outcome other than by adjourning this wife's claims for lump sum and property adjustment orders.'* *'I am as confident as I can be... that [H] will do whatever he can to re-establish his financial base although I have no expectation that he will secure in future a return to the scale of wealth he has previously enjoyed'*



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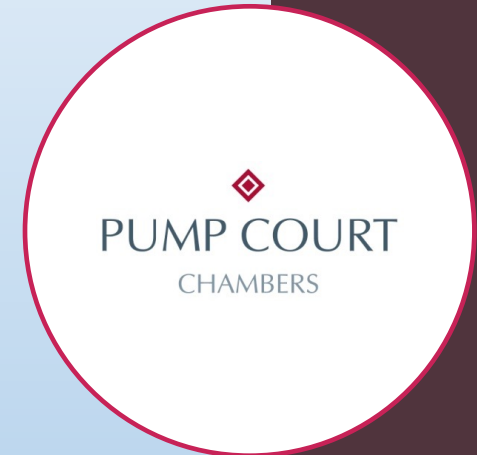


# Adjourning Capital Claims

## Length of adjournment

There is no limit on the length of adjournment. There is no '*normal*' time frame. It depends on the facts and, when the resource to allow proper distribution is likely to be available.

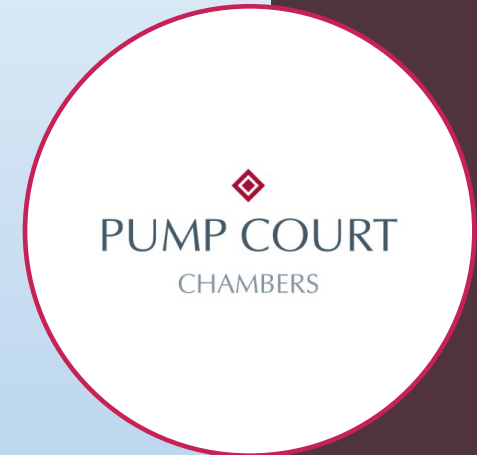
Munby J (as he then was) reviewed this in **C v C** (**Ancillary Relief: Trust Fund**) [2010] 1 FLR 337: '*One of the principles to emerge from these cases is that an adjournment should be directed only if the property in question is likely to become available "in the near future" or "within the next few years"'*



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## Examples of timing:

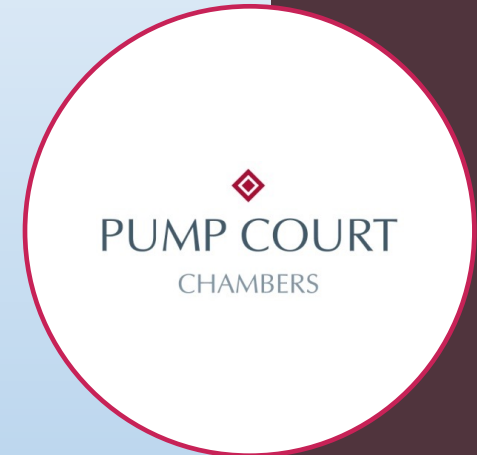
- *Davies v Davies* [1986] 1 FLR 497 was “fairly soon”
- *D v D [Lump sum: adjournment of application]* [2001] 1 FLR 633 was 2 years
- *Morris v Morris* (1977) 7 Fam Law 244 was 2-3 years
- *Roberts v Roberts* [1986] 1 WLR 437 - the maximum was said to be 4-5 years



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... but more recently –

- **AW v AH** [2020] EWFC 22 was 7 years – (when W turned 70)
- Despite in **Ranson v Ranson** [1988] 1 FLR 292 the Court of Appeal saying a period of 7 years was “*far too long*”.
- **Quan v Bray** [2019] 1 FLR 1114 – there was no limitation of time



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In Quan H had been guilty of *'brazen non-disclosure'*.

Mostyn J found his evidence had been *'dishonest, manipulative, arrogant, menacing and contemptuous of the court's authority'*.

This explains why there needed to be an indefinite adjournment of W's capital claim



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**Joy v Joy [2019] EWHC 2152** (same litigants as in Joy v Joy-Morancho) – W’s capital claim was adjourned for a second time, now until 2022, but her claim will be dismissed if no capital application is made by then.

Cohen J ordered H provide disclosure to help W assess the merits of reviving her claim.

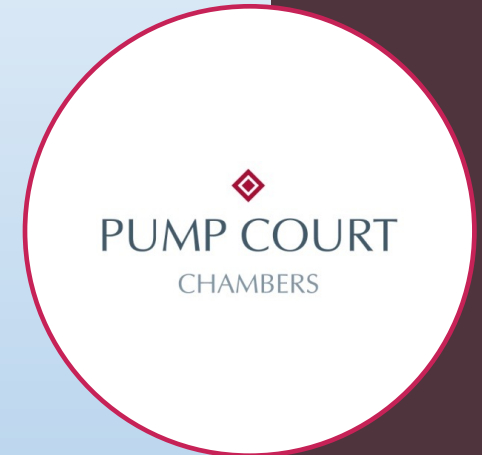


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## When to revive a capital claim?

Seeking an explicit direction for future disclosure is sensible – such as directed by Cohen J in *Joy* [2019] – to help inform the decision of when to strike.

However there is no automatic right of pre-action disclosure when deciding whether to issue the belated lump sum application.



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