



OUTER HOUSE, COURT OF SESSION

[2025] CSOH 24

F44/23

SUPPLEMENTARY OPINION OF LORD STUART

In the cause

THOMAS CORSAN

Pursuer

against

LINDA CORSAN

Defender

Pursuer: Scott KC; Morton Fraser MacRoberts LLP
Defender: Cheyne KC; TC Young LLP

5 February 2025

Preamble

[1] On 17 January 2025 I issued an opinion in this case, in which I set out my assessment of the parties' matrimonial property and the parties' respective arguments regarding the division of the value of that matrimonial property. As requested by counsel at proof, I put the case out by order to be addressed on matters arising therefrom.

[2] Shortly after issuing my opinion dated 17 January 2025, senior counsel for the pursuer drew the court's attention to apparent errors within my opinion. These, and other matters, were discussed at the by order.

[3] One error related to arithmetical calculations in my summing of the matrimonial property held by the defender. The second related to the sum I selected for the value of the defender's interest in the Partnership, an interest the pursuer sought transfer of. I have corrected both in this supplementary opinion. The correction of both did not require a reassessment of the facts of the case. Having made the corrections and reconsidered accordingly, I am satisfied that the orders I am making are justified by the principles set out in section 9 of the Family Law (Scotland) Act 1985 ("the Act" and references in this opinion to sections are references to sections of the Act unless otherwise stated) and are reasonable having regard to the resources of the parties.

[4] At the by order I was also addressed in relation to (1) the parties' agreement that the defender will keep a BMW motor car, with a value of £15,000 and that that sum should be deducted from the capital sum found payable and thereby reflected in the orders made, and (2) certain administrative steps that the parties required to complete in connection with the defender's transfer of her share in the Partnership to the pursuer.

[5] In my opinion dated 17 January 2025 I anonymised the parties and witnesses. On reflection, and particularly with regard to the principles of open justice, there being no requirement in this case to anonymise the opinion, I have removed the anonymisation.

[6] My opinion dated 17 January 2025 is superseded by this opinion.

Introduction

[7] This is an action seeking for divorce and other associated orders. The parties were married on 22 September 1995 and separated on 21 August 2021. 21 August 2021 is the relevant date for the purposes of section 10(3) of the Act. The defender consents to divorce. The parties have two adult sons. They have no children under the age of 16.

[8] The pursuer also seeks transfer of the defender's interest in a partnership ("the Partnership"). The defender does not oppose the transfer. The defender seeks payment of a capital sum. The issues before the court therefore largely relate to financial provision on divorce.

Divorce

[9] The pursuer avers and the defender admits the parties' marriage has broken down irretrievably. The pursuer seeks and the defender consents to divorce. The parties separated on 21 August 2021. The summons in this action was served on the defender on 19 June 2023. In these circumstances, I will grant decree of divorce.

Financial provision on divorce – the legal framework

[10] The legal framework that governs financial provision on divorce is contained in the Family Law (Scotland) Act 1985. Section 8(1) provides that, in an action for divorce, a party to the marriage may apply for one or more of the orders specified in that section, known as an order for financial provision. Where an application is made under section 8(1), section 8(2) provides that a court shall make such order, if any, as is (a) justified by the principles set out in section 9 and (b) reasonable having regard to the resources of the parties.

[11] Insofar as relevant to this action, section 9(1) sets out the following principles:

- a) the net value of the matrimonial property should be shared fairly between the parties to the marriage;

- b) fair account should be taken of any economic advantage derived by either person from contributions by the other, and of any economic disadvantage suffered by either person in the interests of the other person or of the family;
- c) not relevant;
- d) not relevant;
- e) not relevant.

[12] Section 9(2) defines “economic advantage” as advantage gained whether before or during the marriage and includes gains in capital, in income and in earning capacity, and “economic disadvantage” shall be construed accordingly and “contributions” means contributions made whether before or during the marriage and includes indirect and non-financial contributions and, in particular, any such contribution made by looking after the family home or caring for the family. Section 11(2) sets out further matters that the court is to have regard to for the purposes of section 9(1)(b).

[13] Section 10(1) states that in applying the principles set out in section 9, the net value of the matrimonial property shall be taken to be shared fairly between the parties when it is shared equally or in such other proportions as are justified by special circumstances.

Section 10(6) includes a non-exhaustive list of special circumstances that may be taken into account in determining the division of value. However, the existence of special circumstances does not necessarily lead to an unequal division of value. Both parties submit that there are special circumstances that ought to be taken into account in their respective favours.

[14] Section 10(4) defines matrimonial property as

“... all the property belonging to the parties or either of them at the relevant date which was acquired by them (otherwise than by way of gift or succession from a third party) (a) before the marriage for use by them as a family home or as furniture

and plenishings for such home or (b) during the marriage but before the relevant date."

[15] The "relevant date" is defined as the earlier of the date on which the parties ceased to cohabit or the date on which the summons initiating the court action served. As above, it is agreed in this case that the relevant date is 21 August 2021.

[16] Once the value of each item or asset constituting the matrimonial property has been identified and a total value for the matrimonial property calculated, matrimonial debts are deducted to determine a figure for the net value of the matrimonial property. Matrimonial debts are those of either or both of the parties incurred before the marriage if they relate to matrimonial property or are otherwise incurred during the marriage, and which are outstanding at the relevant date.

[17] As referred to above, under section 8(2)(b), any orders made by the court must be reasonable having regard to the resources of the parties. For these purposes, resources means present and foreseeable resources.

[18] Finally, the division of the net value of the parties' matrimonial property is essentially one for the court's discretion in the particular circumstances of each case. Accordingly, decisions taken by courts at first instance in other cases may be of little assistance without a proper understanding of the underlying factual matrix in those other cases.

Assessment of the parties' matrimonial property

[19] There was a considerable degree of agreement between the parties in connection with the content and value of the parties' matrimonial property. The disputes arose in connection with:

- i. Whether the heritable property, CM Fields, was matrimonial property and, if matrimonial property, how it should be valued as part of the matrimonial property.
- ii. Whether, in determining the extent of, or division of, the value of the matrimonial property by either (a) excluding therefrom property inherited or gifted or (b) through the division of the value of the matrimonial property under reference to special circumstances, the pursuer could relevantly deploy arguments in connection with (a) his acquisition of the value of his parents' capital accounts in a pre-existing partnership, (b) the sum of £10,000 paid by the pursuer's father into the business bank account of 1 July 2010, (c) investment funds amounting to £9,835 derived from the pursuer's father and (d) £10,000 paid by the pursuer to the defender's mother being reimbursement of a deposit paid by the defender's mother towards a property purchased in the sole name of the defender.
- iii. The value of the Partnership.
- iv. Whether, in determining the division of the value of the matrimonial property through special circumstances, the defender could relevantly deploy arguments in connection with the defender's pension.
- v. To what extent, if any, fair account should be taken of any economic advantage derived by the pursuer from contributions by the defender, and of any economic disadvantage suffered by defender in the interests of the pursuer or of the family.

[20] Given the narrowness of the issues in dispute for the court's determination, I have decided not to narrate separately the evidence of the parties and their respective witnesses. In preparing this opinion, I have however reviewed my notes of evidence, the affidavits lodged and the productions either referred to in evidence or relevant to the issues in dispute.

What I will do is discuss the evidence relevant to the disputed issues within my consideration of those issues, as set out below. I note, however, that once oral evidence had been completed, there was much less dispute in the evidence than the parties' respective pleadings and affidavits suggested.

CM Fields

[21] In 1993 (pre-marriage) the pursuer was brought into partnership with his parents ("the prior partnership"). The pursuer and his parents entered into a written contract of copartnership (6/34 of process). On 28 November 2009, the pursuer's parents retired, and the pursuer and his parents entered into a written retirement agreement (6/36) of process). Under that agreement the pursuer's parents gifted the pursuer their respective shares in the prior partnership and in the assets of the prior partnership and agreed to convey various heritable properties (including CM Fields and the farm and farmland) to the pursuer. The pursuer continued in the business of farming undertaken by the prior partnership (as a sole trader) until 2015 when the pursuer and defender formed or created the Partnership. There is no written partnership agreement. The Partnership is therefore governed by the provisions of the Partnership Act 1890 ("the 1890 Act"). Accounts were prepared for the pursuer as sole trade/proprietor under the trading name of the prior partnership and then for the Partnership, again trading under the same name.

[22] CM Fields was purchased in 2002 for £7,000 by the pursuer and his parents, as trustees and partners of the prior partnership (6/38 of process) and entered into the fixed assets on the balance sheet of the prior partnership for the year ending November 2002 at that value (6/26 of process). I note at this point that the earliest accounts lodged for the prior partnership are for the year ending November 2001 and the fixed assets of the prior

partnership are stated at £16,130 as “improvements to property”. As noted above, as part of the retiral arrangements the pursuer and his parents, as trustees and partners of the prior partnership, disposed CM Fields to the pursuer as an individual. Other than a modest addition of £352 in the year ending 2003, between 2002 and the relevant date the value of CM Fields is consistently stated within the fixed assets on the balance sheet in the accounts for the prior partnership, the pursuer operating as a sole trader and the Partnership.

[23] On the above factual matrix, the pursuer’s interest in the prior partnership was acquired prior to the parties’ marriage and was therefore not matrimonial property. Title to CM Fields was taken as trustees and partners of and for the prior partnership. In 2009 the pursuer’s parents retired and gifted their respective shares in and in the assets of the prior partnership to the pursuer. As part of that process, title to CM Fields was transferred to the pursuer as an individual. That transfer merely followed the intention to gift the parents’ interest in the prior partnership to the pursuer, as an individual. I agree with senior counsel for the pursuer that at this stage CM Fields did not form any part of the parties’ matrimonial property. However, a question arises at the point the Partnership was formed. Section 20 of the 1890 Act provides that:

“All property and rights and interest in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.”

[24] This includes any capital initially contributed by the partners at the start of the partnership, or any property contributed by a partnership into the partnership. As noted above the value of CM Fields has been consistently stated within the fixed assets of the various balance sheets for the prior partnership, the pursuer as a sole trade/proprietor and the Partnership. Particularly, it is included in the Partnership’s first year accounts (2015)

and is stated in the pursuer's opening capital account. It is therefore partnership property of the Partnership. There is no dispute between the parties that the parties' respective interests in the Partnership are matrimonial property.

The gift of the pursuer's parent's interest in the prior partnership

[25] The pursuer argues that the circumstances of the gift of the pursuer's parent's interest in the prior partnership are relevant in the identification and/or division of the value of the matrimonial property. As discussed above, on their retirement from the prior partnership the pursuer's parents gifted to the pursuer the sums standing in their respective capital accounts, the total of which was £88,522. The pursuer argues that, as a gift, this sum is not matrimonial property and should be excluded from his capital account, which failing, the circumstances in which the pursuer acquired the value amount to special circumstances and should be taken into account in determining the division of the value of the matrimonial property.

[26] Insofar as the pursuer's argument that the sum of £88,522 is not matrimonial property, I reject that argument. The point in time at which matrimonial property is assessed is the relevant date. At the relevant date in this case the Partnership had been formed. As set out above, the opening balance in the pursuer's capital account for the Partnership includes the £88,522. It is therefore property of the Partnership and therefore matrimonial property.

[27] The question then arises whether the circumstances of receipt by the pursuer of his parents' interests in the prior partnership are such as to justify their being taken into account in the pursuer's favour in determining the division of the value of the matrimonial property. As noted above, the existence of special circumstances does not necessarily lead to an

unequal division of value. In my judgement, the circumstances do not justify being taken into account in determining the division of the value of the matrimonial property.

[28] It is not disputed that the defender gave up her employment with CB in September 1996, shortly after the parties' marriage and when she became pregnant with the parties' first child. There appeared to be some dispute in the evidence of the parties regarding the motivation for the defender stopping her employment. The defender avers that the pursuer requested that she give up work and devote herself to the family and the farming business. The pursuer's position being that the defender gave up her employment because she did not enjoy it. Likewise, there appeared to be, at least initially, some dispute about the defender's contributions to the family and family business. However, review of my contemporaneous notes of the evidence records that whilst the pursuer might have initially sought to mis-emphasise the defender's motivations for giving up her employment and underplay, at least in relation to some aspects, the defender's contributions to the family and family business, latterly the pursuer appeared to modify his position. The pursuer accepted that the defender could have continued with her career and the parties could have lived together outwith the farming business, i.e. with the pursuer giving up farming, but that the parties discussed and agreed that they would both dedicate their collective efforts to making their life at the farm and make the farming lifestyle work for them and their family. Further, as I noted the pursuer's final position in oral evidence, he accepted that the defender made a full contribution to their farming and family life. The pursuer acknowledged that the defender agreed to become a farmer's wife, like the pursuer's mother and his grandmother. The extent of that contribution can be seen from the defender's affidavit and supplemented by her oral evidence, both of which, having seen and heard the parties give evidence, I accept.

[29] As set out above, the pursuer received the £88,522 in 2009 and contributed it to the opening capital of the Partnership in 2015. That was a choice by the pursuer. He could have chosen not to form the Partnership or not contribute the £88,522 towards the opening capital of the Partnership. Further, review of the accounts prepared on behalf of the pursuer as a sole trader and the Partnership shows that the value received appears to have been almost immediately invested in plant and machinery. The pursuer's accounts for the year ending November 2010 (6/18 of process) state that the pursuer made additions to plant and machinery of £88,533. Cash at bank fell from £58,955 in the year ending 2009 account to £nil in the year ending 2010 accounts and that, along with plant and machinery depreciation, bank overdraft and the reduction in creditors, accounts for the material shift in the business's financial position. Further, examination of the pursuer's and, thereafter, the Partnership accounts for the years ending 2010 to 2021 show that plant and machinery alone was depreciated by £97,188. This highlights three further relevant considerations. First, it demonstrates that the nature of the farming business, which the defender had admittedly committed herself to, is such that there is a constant turnover of not just livestock but also of other items necessarily required to operate the farming business. In this case, the entire value of the purchased plant and machinery appears to have been depreciated over the period that the pursuer and defender were fully committed to the family and farming business. Second, and again acknowledging the nature of the farming business operated by the parties, the relevant funds, through the purchase of the plant and machinery and the plant and machineries' use within the overall farming business over some 12 years suggests that the funds became wholly intermixed with the parties' matrimonial property and the generation of the parties' wealth derived from their combined efforts during the course of their marriage. Third, the annual valuation of depreciation is a cost applied to the profit and

loss account, thereby reducing profits available from the business to which the defender had committed herself, firstly entirely as the pursuer's wife and latterly as a partner of the Partnership. These considerations, in my judgement militate strongly against dividing this element of the value of the matrimonial property more favourably in the pursuer's favour.

£10,000 paid by pursuer's father

[30] The £10,000 was paid by the pursuer's father into the business bank account on 1 July 2010 (6/47 of process). It was provided to facilitate the purchase of a mower for the farming business (6/48 of process and pursuer's affidavit). Given that the mower was purchased for the farm, I assume that its value is (or was if subsequently disposed) stated in the assets in the relevant financial accounts. As in relation to the sum of £88,522 the pursuer submits that the £10,000 is not matrimonial property, which failing the circumstances of its receipt justify it being taken into account in the pursuer's favour in determining the division of the value of the matrimonial property. For the same reasons as stated in relation the sum of £88,522, in my judgement, the £10,000 is matrimonial property and does not justify being taken into account in the pursuer's favour in determining the division of the value of the matrimonial property.

Investment funds from pursuer's father

[31] The pursuer explains in his affidavit the source of the £9,635, which is stated as capital introduced in the year ending 2016 accounts. The pursuer's father had what was essentially a "cash back" investment account that paid 1% plus interest on purchases. When the pursuer's father died, the pursuer inherited the balance of the account, namely £9,635. The pursuer argues that this sum is not matrimonial property, which failing the

circumstances of its receipt justify it being taken into account in the pursuer's favour in determining the division of the value of the matrimonial property. In my judgement the sum is matrimonial property; it was introduced into the Partnership, became partnership property and thus matrimonial property. However, unlike the sums of £88,522 and £10,000, which were used to purchase plant and machinery for prospective use within the farming business as discussed above, the sum of £9,635 is a sum generated from retrospective purchases, the dates of which are not known, and were not "converted" into other assets utilised within the farming business as discussed above. In these circumstances, in my judgement, it would be reasonable and appropriate to take the source of these funds into account in the pursuer's favour in the division of the value of the matrimonial property. I will do this by excluding the sum of £9,635 from the value of the matrimonial property held by the pursuer.

The value of the Partnership

[32] Both parties instructed skilled witnesses to value the Partnership, Mr Robb for the pursuer and Mr Rowand for the defender. Both Mr Robb and Mr Rowand are accountants, both have considerable experience in the valuation exercises they undertook, and both are eminently qualified to offer the valuation opinion evidence they did to assist the court.

Mr Robb valued the Partnership at £345,395 at the relevant date (after addition of £1,500 due to an addition error in a separate valuation incorporated by Mr Robb into his own calculations). Mr Rowand valued the Partnership at £374,391 at the relevant date (after deduction of £1,221 arising in connection with assets sold, unknown to Mr Rowand, prior to the relevant date). The difference between the two valuations arises from the difference in treatment of the value of CM Fields, or more particularly the uplift in value from the value

as stated in the relevant Partnership accounts to the agreed market value at the relevant date, namely an uplift of £49,000.

[33] Mr Robb excluded two thirds of the uplift as emanating from the pursuer's parents.

Mr Robb stated that:

“[CM Fields] was acquired by the partnership of [the pursuer] and his parents. The uplift in value relating to the two thirds ownership share transferred from [the pursuer's] parents has been excluded from the revaluation of the partnership property.”

Whilst I am prepared to accept that Mr Robb's calculations are correct from an accounting perspective, for the reasons set out above, I consider them to proceed on a misstatement of the law. In my judgement, Mr Rowand's calculations are consistent with a correct interpretation of the law and, accordingly, the relevant date value of the Partnership is £374,391. Subject to senior counsel for the pursuer's arguments in relation to special circumstances relating to the Partnership capital, both counsel appeared to proceed on the basis that as the Partnership is governed by the 1890 Act, it is, accordingly, appropriate for the parties to be allocated one half of the value of the partnership.

[34] In terms of current date values, Mr Robb calculates a valuation of £262,129, whereas Mr Rowand calculates a value of £291,894. The difference between the values is again the difference associated with the different treatment of the two thirds of the uplift in the value of CM Fields. Again, for the reasons set out above, I consider Mr Rowand's value of £291,894 to be correct as a matter of law.

£10,000 reimbursement paid by pursuer

[35] When the parties' eldest son was in his second year at university the parties decided to purchase a property for him to live in. By my calculations, given their son's birth date, I

calculate that the purchase would have been around 2014/2015, but the date is not material. To fund the purchase of the property the defender re-mortgaged a pre-marriage property owned by her, which is not matrimonial property. The parties also borrowed the sum of £10,000 from the defender's mother to assist with the purchase. The property was taken in the sole name of the defender. It is matrimonial property. At the relevant date, the property has an agreed value of £50,000 and associated borrowing of £23,486. In December 2015, the pursuer received a sum of money by way of inheritance following his father's death. From that sum the defender's mother was reimbursed. The pursuer argues that the source of funds justifies it being taken into account in the pursuer's favour in determining the division of the value of the matrimonial property. Whilst I accept that the pursuer has contributed inherited funds towards the property, in my judgement, it does not constitute a special circumstance that justifies being taken into account in the pursuer's favour in determining the division of the value of the matrimonial property. The property was purchased for the parties' son whilst at university. That, in my judgement, is for a particularly matrimonial purpose. The evidence suggests that the parties could not afford the property absent a loan from the defender's mother but that this changed when the pursuer obtain his inheritance, at which point the defender's mother was repaid. The value of the property is matrimonial property. The pursuer will share in the uplift of any value. Post divorce the defender, as sole owner of the property, will bear the cost of repaying the outstanding borrowings.

The defender's pension

[36] The court was assisted by the skilled evidence of Ms Terras. Ms Terras is an actuary and is very experienced in giving advice in litigation cases. I accept her evidence in relation to the calculations she provided in connection with the defender's pension to assist the court

(see 7/2 and 7/3 of process). The defender joined the relevant pension scheme on 21 June 1982 and left on 15 May 1997 (the date of the parties' marriage is 22 September 1995). The defender was thus an active member of the scheme until 15 May 1997 and thereafter a deferred member. The CETV value of the defender's pension at the relevant date was £148,374.54. As is agreed between the parties, applying the appropriate regulations provides a value attributable to the period of the marriage of £98,166. The defender argues that special circumstances apply in respect of the defender's pension and that these justify being taken into account in the defender's favour in determining the division of the value of the matrimonial property. The defender argues that only the proportion of the CETV derived from post marriage contributions, namely £16,386, should be included for the purpose of the court's division of the value of the matrimonial property, the remainder (£81,780) being excluded by special circumstances. The argument deployed by the defender is not uncommon and, as was appropriately acknowledged by senior counsel for the pursuer, whether to give effect to the argument is a matter for the court in the relevant circumstance. In my judgement, the general principle underlying the 1985 Act is the fair sharing of the value of the property acquired by the spouses' efforts or income during the marriage. I am satisfied that part of the CETV of the defender's pension can properly be traced to the defender's pre-marriage contributions and as such justifies the defender retaining that element. Accordingly, I include only £16,386 in my calculations for division of the value of the matrimonial property.

Economic advantage and disadvantage

[37] As set out above, section 9(1)(b) provides that fair account should be taken of any economic advantage derived by either person from contributions by the other, and of any

economic disadvantage suffered by either person in the interests of the other person or of the family. In this case counsel for the defender sought to argue only that the defender has suffered a relevant economic disadvantage through (1) the loss of opportunity to earn a salary (or at least one commensurate with that she might have earned if she had not married the pursuer) and (2) the loss of opportunity to accumulate a pension. Counsel for the defender also submitted that the fact that the defender will have to leave the farmhouse where she currently resides will compound her economic disadvantage. Counsel for the defender led skilled evidence from an employment consultant, Ms Anderson, and Ms Terras in support of her case. Counsel for the pursuer also led evidence from an employment consultant, Mr Carter.

[38] Senior counsel for the pursuer submitted that the correct approach to the court's assessment of economic disadvantage can be found in Lady Smith's opinion in the case of *Coyle v Coyle* 2004 Fam LR 2. In *Coyle* Lady Smith eschewed a compensatory approach to the application of economic disadvantage. Under section 9(1)(b) the court is directed to take "fair account" of any economic disadvantage, along with any other of the other principles as are relevant in the circumstances of the particular case, in the overall task of a fair sharing of the parties' matrimonial property. I agree with the distinction Lady Smith draws. However, as Lady Smith herself recognised, it is necessary to have an understanding of a party's economic position both at divorce having been married and had they not been married. These two economic positions will provide the court with the material to make a comparative or relative assessment inherent in the concept of disadvantage (or advantage). Although it does not arise in this case given it is only the defender who raises the principle under section 9(1)(b) and only in relation to economic disadvantage, under section 11(2)(a) the court is directed to have regard to the extent to which any economic advantage or

disadvantage sustained by one party has been balanced by the economic advantages or disadvantages sustained by the other party. Thereafter, under section 11(2)(b), the court is to have regard to the extent to which any resulting imbalance has or will be corrected by the sharing of the value of the matrimonial property or otherwise.

Loss of opportunity to earn a salary

[39] There are, in my judgement, two relevant periods to consider. The first is the period of the marriage. In relation to this period, the two vocational experts provided various employment scenarios to assess the defender's likely cumulative earnings over the period 1996 to 2023, some 27 years. Ms Anderson for the defender provided four scenarios. The first assumed the defender would remain in full time employment progressing to the position of bank manager. Under that scenario the defender would have had cumulative earnings of £544,618 net. Ms Anderson's second scenario assumed full time earnings as a personal customer advisor. Under that scenario cumulative earnings were £436,288. Ms Anderson's third scenario assumed part-time earnings post maternity, returning to full time earnings as a personal customer advisor. That scenario would have cumulative earnings of £369,331. I do not consider the fourth scenario relevant. Mr Carter considered it was likely that a post maternity period of part-time earnings would apply, and that the defender would likely make a one-step promotion to the position of supervisor or line manager. Under Mr Carter's scenario cumulative earnings would be £435,638. Comparing the various scenarios, Ms Anderson's scenario 3 and Mr Carter's scenario both anticipate post maternity part-time earnings. The difference thereafter appears to be Mr Carter's assumption that the defender will make a one-step promotion. Ms Anderson does not provide an equivalent scenario. Senior counsel for the pursuer was critical of

Ms Anderson's relevant experience and invited me to prefer the evidence of Mr Carter. I do not accept that the criticism was justified in the circumstances of this case. Much of the tasks of the vocational consultants in this case was the collation of relevant data. To the extent that the skilled witnesses did engage in a more nuanced exercise of applying experience, it seemed to me that Mr Carter's assessment was more favourable to the defender.

Considering the two skilled witnesses' evidence on the issue of cumulative earnings, in my judgement, it is reasonable to conclude that the defender was likely, had she maintained her employment, to have had net cumulative earnings, broadly, in the region of £400,000 net.

[40] Standing the decisions I have made above regarding (i) the pursuer's arguments in relation to special circumstances on a division of the value of the matrimonial property, (ii) that the defender will receive 50% of the value of the partnership and (iii) the pursuer will purchase the defender's interest in the Partnership, this gives a combined value of around £200,000, suggestive of a financial disadvantage of £200,000 (£400,000 less £200,000).

However, in addition, I accept Mrs Scott's submission that had the defender remained in full-time employment, even assuming a post maternity period of part-time work, there would have been additional costs that the defender and the family would also have incurred; travel, work clothing, a nanny are possible examples. These additional costs would have been incurred over the 27 years. Assuming the financial disadvantage of £200,000 is spread over the 27 years, this gives an annual amount of around £7,500. Again, broadly, it is likely that a significant proportion of that £7,500 might be taken up with the sort of additional costs to be incurred had the defender stayed in employment, as discussed above.

In these circumstances, I am unable to reliably conclude that in relation to the first of the two periods, namely the period of the marriage, the defender has suffered a material economic disadvantage.

[41] The second relevant period is the post marriage period looking to the future. In relation to this period, in my judgement, the evidence of the two skilled witnesses do support, with sufficient reliability, that the defender has suffered a loss in earning capacity during the period of the marriage. Both Ms Anderson and Mr Carter assess the defender's likely current earning capacity at around £20,000 net. Both Ms Anderson and Mr Carter assess the defender's likely current earning capacity had she remained in employment, including a post maternity period of part-time employment, at around £24,000 net. Accordingly, in my judgement, the evidence supports a loss of the defender's earning capacity of around £4,000 net a year. The defender is currently 59 years old. Ms Terras gave evidence that most people work to the statutory retirement age. That evidence was not challenged, and, in any event, there is no contrary evidence. Capitalised, this gives a figure to retirement in the region of £30,000 to £35,000.

Loss of opportunity to accumulate a pension

[42] As referred to above, the defender led evidence from a consulting actuary, Ms Terras. Ms Terras also gave evidence in connection with the defender's case that she had suffered a loss of opportunity to accumulate a pension. Ms Terras's assessment was, broadly, to follow the earnings scenarios set out by Ms Anderson. Counsel for the pursuer challenged Ms Terras in relation to a number of assumptions that underpinned Ms Terras's calculations. The first related to the rate at which benefits were accrued as a fraction of pensionable final salary. Ms Terras had used 1/60th and had described this as relevant to more senior roles. Ms Terras accepted that for more junior roles a 1/80th rate might be more appropriate. That might be so but Ms Terras, who is the skilled witness in the case, selected 1/60th in light of her experience and there is no evidence to suggest that she is wrong. The second related to

Ms Terras's assumption of continuous employment. Although Ms Terras, in her oral evidence, acknowledged the assumption, in fact, Ms Terras's calculations incorporate an adjustment of 0.83 for contingencies other than retirement (including, for example being out of employment) in the assessment of future loss. Further, the scenarios used by both Ms Anderson and Mr Carter, which I have accepted as the most likely, assume a period of post maternity part-time employment. The third related to Ms Terras's assumption of 8% employer pension contribution. Ms Terras confirmed that this was correct and explained that in her experience 8% was likely to be accurate. On the basis of Ms Anderson's employment scenario 3, Ms Terras assessed a total loss in connection with an opportunity to accumulate pension of £197,744. I note here that Mr Carter's relevant likely employment scenario provides for a greater deficit than Ms Anderson's and, accordingly, Ms Terras's pension loss based on Ms Anderson's scenario 3 might underestimate the pension loss associated with Mr Carter's likely employment scenario. The matter was not explored in evidence.

[43] Drawing the two strands of the defender's loss of earning capacity and loss of opportunity to accumulate pension together, gives a figure, based on the evidence of Ms Anderson, Mr Carter, and Ms Terras, of around £230,000. As noted above, the court does not take a compensatory approach to the application of economic disadvantage. Rather the court is directed to take "fair account" of any economic disadvantage, along with any other of the other principles as are relevant in the circumstances of the particular case, in the overall task of a fair sharing of the parties' matrimonial property.

[44] Applying that approach, I consider it fair and reasonable in the overall task of a fair sharing of the parties' matrimonial property and having regard to sections 11(2)(a) and (b), to make a discrete award under section 9(1)(b) of £115,000 in favour of the defender.

Transfer of defender's interest in the Partnership to the pursuer

[45] The pursuer seeks transfer of the defender's interest in the partnership. That was not opposed by the defender. The current value of the defender's one-half interest in the Partnership is £145,947. I will make the appropriate order for transfer in return for that value.

Division of matrimonial property in light of arguments advanced

[46] I set out in Appendix 1 a table of matrimonial property, its value, and its division in light of my conclusions above.

Conclusions and orders

[47] To summarise that which is set out in the table. I assess the value of the parties' net matrimonial property £642,650, after excluding the pursuer's inherited investment account of £9,635. One half thereof is £321,325. The defender holds £257,064. In order for the defender to receive one half of the value of the parties' net matrimonial property, the pursuer would be required to pay to the defender the sum of £64,262. Thereafter, for transfer of the defender's interest in the Partnership as sought by the pursuer, the pursuer would require to pay to the defender the sum of £145,947. In terms of section 9(1)(b) and having regard to sections 11(2)(a) and (b), I make a further discrete award of £115,000 in favour of the defender. That brings out a capital sum that would fall due by the pursuer to the defender of £325,209, which I consider justified by the principles set out in section 9 and reasonable having regard to the resources of the parties.

[48] As above, at the by order hearing, following discussions, the parties agreed that ownership of a BMW motor car should be transferred to the defender, with a corresponding

reduction in the capital sum to be paid by the pursuer of £15,000, taking the capital sum payable by the pursuer to the defender to £310,209. In connection with the order for transfer of the defender's interest in the Partnership, a scheme for payment of the capital sum was also agreed, reflecting and accommodating certain administrative steps to be completed. Three matters were to be recorded in the minute of proceedings.

Appendix 1
Table of matrimonial property and its division

Matrimonial property		Pursuer	Defender
Assets			
The Partnership	£374,391	£187,196	£187,196
Account ending 6950	£722	£361	£361
L Plantation		£160,000	
Account ending 4306		£2,046	
SL pension		£27,525	
Aviva pension		£16,843	
Nationwide account		£575	
NS&I ISA		£192	
Property in Ayr			£50,000
Defender's CB pension			£16,386
Car			£1,000
Premium Bonds			£5,425
Account ending 4872			£7,600
NS&I ISA			£886
RL account			£2,348
NAB shares			£2,353
Fidelity ISA			£2,829
Account ending 4856			£4,166
Caravan		£2,000	
Contents of farmhouse			
Total assets		<hr/> £396,738	£280,550
Minus investment account (special circumstances)		£9,635	
Total assets after special circumstances		<hr/> £387,103	£280,550
Liabilities			
Barclaycard		£1,516	
Mortgage			£23,486
Total liabilities		£1,516	£23,486
Net matrimonial property held by party		£385,587	£257,064
Total net matrimonial property		<hr/> £642,650	
One half thereof		£321,325	
Sum to meet one half of net matrimonial property		£64,262	
Purchase of defender's interest in partnership		£145,947	
Sub total		<hr/> £210,209	
Section 9(1)(b) award in favour of defender		<hr/> £115,000	

Capital sum due	£325,209
Agreed deduction from capital sum for BMW car	£15,000
Resulting capital sum due by pursuer to defender	£310,209