

## Special Contributions



**Joshua Viney**

**1 Hare Court**



## The Law

### ***G v G (Financial Provision: Equal Division) [2002] 2 FLR 1143***

#### *Key Quote*

Coleridge J

References to exceptional or 'stellar' contributions opened:

'a forensic Pandora's box'

...

'What is 'contribution' but a species of conduct?... Both concepts are compendious descriptions of the way in which one party conducted him/herself towards the other and/or the family during the marriage. And both carry with them precisely the same undesirable consequences. First, they call for a detailed retrospective at the end of a broken marriage just at a time when parties should be looking forward, not back... But then, the facts having been established, they each call for a value judgment of the worth of each side's behaviour and translation of that worth into actual money. But by what measure and using what criteria?... Is there such a concept as an exceptional/special domestic contribution or can only the wealth creator earn the bonus?... It is much the same as comparing apples with pears and the debate is about as sterile or useful.'

### ***Cowan v Cowan [2001] 2 F.L.R. 192***

#### *Relevant Facts*

- Total net assets were approximately £11.5 million.
- H had run a plastics business developing bin liners.

#### *Successful Special Contributions Argument?*

- Yes

#### *Key Quote*

Mance LJ

'[161] The exercise of special skill and effort raises yet further and different considerations. I start by recording my conviction that there is no sensible basis for restricting consideration to cases of "stellar contribution", as Miss Baron submitted. Ultimately, there is probably one continuous spectrum, extending from the entirely

ordinary to the “stellar”. For convenience, it is useful to speak of any acquisition of wealth that is achieved by more than ordinary skill and effort as “special”, and I would certainly wish to discourage over-refined analysis of the precise extent to which skill and effort may have been “special”. The underlying idea is that a spouse exercising special skill and care has gone beyond what would ordinarily be expected and beyond what the other spouse could ordinarily have hoped to do for himself or herself, had the parties arranged their family lives and activities differently. The first spouse's special skill and effort is special to him or her, and the individual's right to the fruits of an inherent quality of this nature survives as a material consideration despite the partnership or pooling aspect of marriage. For my part, I think that this consideration is a material one to which weight can and should be given in appropriate cases.’

### ***Lambert v Lambert* [2002] EWCA Civ 1685**

#### *Relevant Facts*

- Net assets of £20 million
- Generated from the sale of the husband’s company

#### *Successful Special Contributions Argument?*

- No

#### *Key Quote*

Bodey J

‘[69] I agree that it is not possible to define once and for all, by way of some formulaic label, the precise characteristics of the fortune-maker (or fortune-making) required in the paradigm case such as this, in order that when the proposed distribution of the resources is checked against the "yardstick of equality", the fully contributing homemaker should receive a lesser share of the wealth than the fortune-maker.

[70] However, those characteristics or circumstances clearly have to be of a wholly exceptional nature, such that it would very obviously be inconsistent with the objective of achieving fairness (i.e. it would create an unfair outcome) for them to be ignored.’

**Miller; McFarlane [2006] UKHL 24.**

*Key Quote*

Lord Nicholls

‘[67] On this I echo the powerful observations of Coleridge J in *G v G (Financial Provision: Equal Division)* [2002] EWHC 1339 (Fam); [2002] 2 FLR 1143, 1154-1155, paras 33-34. Parties should not seek to promote a case of 'special contribution' unless the contribution is so marked that to disregard it would be inequitable. A good reason for departing from equality is not to be found in the minutiae of married life.

[68] This approach provides the principled answer in those cases where the earnings of one party, usually the husband, have been altogether exceptional. The question is whether earnings of this character can be regarded as a 'special contribution', and thus as a good reason for departing from equality of division. The answer is that exceptional earnings are to be regarded as a factor pointing away from equality of division when, but only when, it would be inequitable to proceed otherwise. The wholly exceptional nature of the earnings must be, to borrow a phrase more familiar in a different context, obvious and gross. Bodey J encapsulated this neatly when sitting as a judge in the Court of Appeal in *Lambert v Lambert* [2003].

**Charman v Charman (No 4) [2007] 1 F.L.R. 1246**

*Relevant Facts*

- Assets of £131 million
- Generated through H's efforts in the insurance market
- Question of quantum

*Successful Special Contributions Argument?*

- Yes

*Key Quote*

Sir Mark Potter

‘We find it hard to conceive that, where such a special contribution is established, the percentages of division of matrimonial property should be nearer to equality than 55% - 45%. Equally, in the course of Mr Singleton's application to him for permission to appeal, the judge, in referring to percentages in cases of special contribution, observed "I think you need to be careful, after a very long marriage, to give a wife half of what you give the husband". Arbitrary though it is, our instinct is the same, namely that, even in an extreme case and in the absence of some further dramatic feature unrelated to it, fair allowance for special contribution within the

sharing principle would be most unlikely to give rise to percentages of division of matrimonial property further from equality than 66.6% – 33.3%.’

### ***SK v TK [2013] EWHC 834 (Fam)***

#### *Relevant Facts*

- The net assets were calculated to be £18,036,187
- W sought an equal division of the assets and a clean break
- H sought a departure from equality (60:40). One basis for this division was special contribution.

#### *Successful Special Contributions Argument?*

- No

#### *Key Quote*

Moor J

‘[44] Nevertheless, I am quite satisfied that, applying the authorities, this does not amount to a "special contribution" such as to amount to a good reason for departure from equality. It would not be accurate to describe him as a "genius". Equally, whilst the extent of his business success is rare and something to be applauded, it cannot be said to be "exceptional". I did not in any way get the impression that it was something that it would be inequitable for me to disregard.

[45] I realise that the quantum of the fortune amassed by a businessman is only one feature. I am certainly not intending to lay down a rule that it is impossible to make a "special contribution" if the assets are below £20 million. It is however a factor that the Husband's business success has not been so great as to generate truly vast wealth. He has been very successful. Whilst he is to be applauded for that, it is quite impossible to say that his contribution in this regard gets close to justifying a greater share of the wealth than that of the wife who contributed herself in an equally valuable way to the best of her ability.’

### ***Cooper-Hohn v Cooper-Hohn [2014] EWHC 4122 (Fam)***

#### *Relevant Facts*

- All wealth generated during the marriage
- \$1.35bn - \$1.6bn of assets

- \$4.5bn through charitable foundation
- W seeking 50/50
- H offering 25/75 on account of special contribution + post-separation accrual

*Successful Special Contributions Argument?*

- Yes

*Key Quote*

Roberts J

‘[282] ... But I then ask myself, as I am required to, was this husband's contribution 'exceptional' and deserving of some special treatment in this case? I am not prepared to embark in this judgment upon the definition or boundaries of what might constitute an exceptional contribution. But I ask myself these questions in the light of all the evidence I have heard and read:

- i. Can it properly be said that he is the generating force behind the fortune rather than the product itself?
- ii. Does the scale of the wealth depend upon his innovative vision as well as on his ability to develop those visions?
- iii. Has he generated truly vast wealth such that his business success can properly be viewed as exceptional?
- iv. Does he have a special skill and effort which is special to him and which survives as a material consideration despite the partnership or pooling aspect of the marriage?
- v. Would it, in all the circumstances, be inequitable for me to disregard that contribution?

[283] To each of these questions, my answer is 'yes'. Is it necessary for the purposes of 'special contribution' for me to find that the husband possessed the quality of 'genius'? Mr Pointer relied to an extent upon the fact that Mr Marks' case on his client's behalf relied simply on the extent of the wealth created to establish the special nature of the contribution he made. There are various definitions of the word 'genius' but all seem to suggest that, in order to qualify for this sobriquet, a person must have some exceptional natural capacity or intellectual or creative power or other natural ability which finds reflection in the exercise of an exceptional skill in a particular area of activity. Applying that definition to this husband, I take the view that he qualifies as a financial genius in his particular field of financial investment. If he does not, who could? In these circumstances, I find that, on any view, there has been a special contribution made by the husband in this case and that such contribution should and will be reflected in a departure from equality in terms of the overall award which I propose to make.’

## Three Issues

### 1. Quantum

- The question of what is exceptional wealth remains. It was not answered or even guided by *Cooper-Hohn* as that was an incredibly exceptional case.

- Is it possible to answer that question?
- If there is an answer it will be fluid and will naturally increase/decrease

- Moor J in *SK v TK* stated:

‘the Husband's business success has not been so great as to generate truly vast wealth’.

Went on to state that he didn't want to create a rule that there must be more than £20 million assets, however he has narrowed our perception. Inevitably this will focus on the manner in which the assets were generated.

- The concept of a threshold has been consistently rejected
  - Benefits of an anchoring figure?

### 2. Genius

- The question of what is a special skill / genius remains. The current approach is effectively ‘I know one when I see one’. Is this good enough?

- Again, is this possible to answer? Undoubtedly a less fluid question than above.
- Often a question of perception. This will naturally be influenced by the scale and the history of the party's achievements.

### 3. Gender Bias/ Undermining Marriage?

- Wilson LJ in *Charman*

‘[80] The notion of a special contribution to the welfare of the family will not successfully have been purged of inherent gender discrimination unless it is accepted that such a contribution can, in principle, take a number of forms; that it can be non-financial as well as financial; and that it can thus be made by a party whose role has been exclusively that of a home-maker. Nevertheless in practice, and for a self-evident reason, the claim to have made a special contribution seems so far to have arisen only in cases of substantial wealth generated by a party's success in business during the marriage.’

- Roberts J in *Cooper-Hohn*

‘[273] It is really the third point which goes to the heart of the case which is being advanced on behalf of the wife. Given the extent of her involvement with the Foundation (which I have already described earlier in this judgment); her obvious devotion to and prioritisation of the family's needs – a family of four children which included triplets; her role as homemaker and co-ordinator of all the children's social and other needs; what more, asks Mr Pointer, could she have done? What more should she be expected to have done in order to qualify for equal treatment with the husband in terms of financial outcome? As he rightly reminds me, she was not simply a ‘working’ wife; she was a wife who was fully engaged in fulfilling her role in the joint objective which had underpinned the marriage from its very inception. Her role in the Foundation demanded of her the skills and qualities which would have been needed in any CEO at the top of an organisation. Until the time came when the ‘job’ grew too big for any one individual, she performed that role without remuneration and entirely for the benefit of the beneficiaries of its grants and programmes. I thought it slightly churlish on the husband's part to say, as he did, that he did not seek to control the amount of time which she spent at work and she more or less devised her own working programme around the needs of the home and the children. I am quite satisfied that there was not a spare moment of this wife's waking day when she was not actively engaged either in discharging her role in the home or working for the Foundation. I heard, and accept, her evidence that her day would often start in the early hours to coincide with calls which needed to be made in different time zones. She was frequently still working in her study at home after midnight when the children no longer needed her attention.’