

ENGLAND AND WALES / JUDGMENT

T v T

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Neutral Citation Number: [2025] EWFC 395 (B) IN THE FAMILY COURT SITTING AT SWINDON
Case No: 1707317887423798 Swindon Combined Court Islington Street Swindon Wiltshire SN1
2HG Date: 4 November 2025 Before : District Judge Humphreys

- ----- Between : T
- and - T Claimant Defendant
- -----
- ----- Mr Edward Boydell KC and Ms Annie Ward (instructed by
Trethowans) for the Applicant The Right Honourable Michael Tomlinson KC (instructed by
Sampson Coward LLP) for the Respondent Hearing dates: 21-23 July 2025
- -----

Judgment

This judgment was handed down remotely at a hearing on 4 November 2025.
This judgment was delivered in private and may be published in anonymised form.

Background

1. This is my judgment following a three day hearing in connection with preliminary issues which have arisen in the course of financial remedy proceedings between the parties. The applicant in those proceedings is the husband. The respondent in those proceedings is the wife.
2. The husband is a farmer who farms in partnership with his father, who for simplicity I will refer to as RT. The partnership trades as “F Farm”. There is no written partnership deed. The wife and the husband live in F Farmhouse and have done so since October 2018. Their relationship started in 1995. They separated albeit while still living under the same roof in August 2020, so a long seamless relationship including cohabitation of some 25 years. They have had two children who are both now independent. 3. In summary, the preliminary issues relate to the status of the farmhouse, land and buildings and the extent to which those are partnership assets and thus assets in which the husband may have an interest for the purposes of the financial remedy proceedings.

4. Although, for the purposes of the preliminary issues hearing, there was some confusion as to which of the parties was applicant or respondent, I will regard the husband as applicant and the wife as respondent. The issue
5. The identification and listing of a preliminary issue arose at the financial dispute resolution hearing on 7 August 2024 before District Judge Hatvany when the parties agreed the following recital: "And upon it being recorded that the respondent asserts that F Farm, the Farmhouse at F Farm, the deadstock and livestock and the motor vehicles and machinery of F Farm are partnership property and asserts that the applicant has a 75% interest in the partnership property, and that this assertion needs to be particularised by points of claim before appropriate future directions can be made."
6. Provision was made for the parties to apply if they sought to join a party and directions were given for the wife to serve Points of Claim and for the husband to respond. The parties duly served Points of Claim, Points of Defence and witness statements and disclosure as provided for in the directions. No application was made to join RT as a party.
7. The case came before Her Honour Judge Wright at a directions hearing on 6th January 2025 when she defined the preliminary issue to be determined as follows: The issue to be decided is a preliminary issue in this action. It is which of the assets used in the partnership are partnership property to which H has an entitlement as a partner and which assets therefore fall into his personal assets for the purposes of the financial division in this action?'
8. The issue is potentially very significant. The Farmhouse, land and buildings are recorded in RT's capital account at an historic cost of £1.846 million and have been so since at least 2008. They have never been revalued. But, it is agreed between the parties that, with improvements over the years and inflation of land and property prices, their value will have substantially increased. In evidence, the husband gave an estimate of value in the region of £8-9 million and perhaps more. Plainly, if the husband owns or has a beneficial interest in 75% of those assets and that such would constitute marital assets, a very substantial sum will need to be taken into account in connection with the financial remedy proceedings between the husband and the wife. Equally, the position is very different and somewhat stark for the wife if, notwithstanding a long marriage and living in the Farmhouse as a matrimonial home since October 2018, it is determined not to be a marital asset to be shared or reckoned with. As the wife rather eloquently put it in evidence, she risks being homeless. Representation
9. The husband is represented by Mr Boydell KC and Ms Annie Ward of Counsel. The wife is represented by the Right Honourable Michael Tomlinson KC. I am grateful to them for their professional and courteous assistance and their helpful Case Summaries. Costs
10. Both parties have already spent or owe a considerable amount of money on legal costs in connection with this preliminary issue. I will hear submissions in due course as to the cost consequences of my decision but both parties have filed statements of cost. The husband has filed two N260s, one in the total sum of £107,792.12 and the other in the total sum of £64,385.24. It is not immediately apparent to me the distinction between the two, but

perhaps one relates to the entirety of the costs incurred in the financial remedy proceedings to date and the other limited to the preliminary issue. The wife on the other hand has filed just one form N260 in the total sum of £75,736.50. Chronology

11. I set out below a chronology of some of the relevant dates and events: 1973 - RT joins his father (the husband's grandfather) as joint lifetime tenant of F Farm (the property then being owned by Duke of XX); 1973 - RT and his father run F Farm under the partnership name F Farms; 1993 - RT's father passes away leaving RT as sole tenant of F Farm; 21.12.1995 - RT and his mother G purchase F Farm in their joint names; 20.02.1966 - the wife is born; 27.02.1969 - the husband is born; 1995 - The parties start to live together; 26.04.1997 - The parties marry; 14.05.1998 - The parties' son C is born; 2000 - G passes away and leaves her share in F Farm to RT, who is then sole owner; 09.01.2000 - The parties' son H is born 2003 - The parties jointly purchase 34 F Street in a local village in their joint names; 2007 - The husband joins RT as a partner of F Farms. There is no written partnership agreement; 8 October 2018 - The parties sell 34 F Street and use some of the proceeds to improve the farmhouse, which they move into; September/October 2019 - RT seeks advice regarding CGT and changes his will; August 2020 - The parties separate; 31.03.2021 - Decree Nisi; 21.05.2021 - Exchange of Voluntary Forms E/disclosure including partnership accounts for 2019 and 2020; October 2021 - disclosure to the wife of two year's tax returns and partnership accounts for 2021; 21.03.2022 - Decree Absolute; 11.04.2022 - Letter of Claim from the wife to RT threatening claim against him on the basis that he owns F Farm and that she has a claim based on proprietary estoppel or unjust enrichment; 12.09.22 - Further letter to RT's solicitors regarding the wife's claim; 25.01.2023 - Settlement Agreement and Release in relation to dispute between the wife and RT; 26.01.2023 - £150,000 received by the wife per the Settlement Agreement and Release 11.08.2023 - further disclosure provided to the wife of tax returns and accounts between October 2021 and August 2023; 13.02.2024 - the husband's Form A; 18.04.2024 - the wife's's Form E; 19.04.2024 - the husband's Form E; 27.06.2024 - the wife's's Replies to the husband's Questionnaire; 01.07.2024 - the husband's Replies to the wife's Questionnaire; 07.08.2024 - Financial Dispute Resolution Hearing and Order of District Judge Hatvany; 12.09.2024 - the wife's Points of Claim; 17.10.2024 - the husband's Reply; 06.01.2025 - Order of Her Honour Judge Wright; 04.02.2025 - the wife's N265 and List of Documents; 07.02.2025 - the husband's N265 and List of Documents. Legal Framework and authorities 12. I was referred to the Partnership Act 1890, particularly sections 20 and 24, two chapters in Lindley & Banks on Partnership (chapters 17 and 18) and a number of authorities. A bundle of authorities comprising 243 pages was provided. I need refer only to a few of the many paragraphs of Lindley relied by the parties: "18-03 it is up to the partners to agree between themselves what assets are to be treated as partnership property. In the absence of an express agreement, the relevant factors will generally be: (1) the circumstances of the acquisition, with particular reference to the source from which it was financed, (2) the purpose of the acquisition, and (3) the manner in which the asset has subsequently been dealt with." And with reference to section 20 of the Partnership Act 1890: "18-04 Although these statutory rules will assist in determining what is and what is not

partnership property when the intentions of the partners are not readily apparent, they cannot be applied in the face of a contrary agreement, whether express or implied. 18-08 The court will not, however, find an implied agreement to bring assets in as partnership property where that would not accord with the subjective intentions of the partners, irrespective of any objective appearances. Moreover, in *Wild v Wild* it was held that property can only become a partnership asset with the prior agreement or subsequent acceptance/ratification of all partners, and not as a unilateral act of the partner introducing it. 18-51 Lord Lindley observed that: "... it by no means follows that property used by all the partners for partnership purposes is partnership property. For example, the house and land in and upon which the partnership business is carried on often belongs to one of the partners only, either subject to a lease to the firm, or without any lease at all." 13. In relation to the various authorities to which I was referred, *Ham v Bell* [2016] EWHC 1791 Ch, the decision of HHJ McCahill QC in Bristol, concerned a farming partnership and a dispute between a son and his parents. One of the issues in that case has a familiar ring namely "the central issue which I have to decide is whether the farm, comprising the farmhouse, buildings and land, as at 30 September 1997, undoubtedly assets of the old partnership, became assets of the new partnership at its commencement on 1 October 1997, because of their appearance in the accounts of the new partnership for the years 1998 to 2003". 14. At paragraph 51 HHJ McCahill QC said this "the accounts of a partnership may provide evidence as to whether there was an express agreement to make land a partnership asset. If one partner says there was such an express agreement and the other denies it, the accounts may help the court to decide his recollection is more reliable. That was the submission of Mr Jourdan. who went on to contend that farmers and other business people do not always look carefully at accounts or appreciate what the entries in them mean and mistakes can be made. He then drew my attention to the observations of the Editors of *The Encyclopedia of Forms and Precedents* Volume 2(1)(Partnership) who stated at 126: "Practitioners should be wary of relying on the accounts as evidence of the intention of the parties, however, as often such an inclusion is made at the behest of the partnership accountants who include the item solely in order to get tax relief and without addressing the consequent ownership issues, let alone advising the partners to seek legal advice on them. Experience indicates that this is a particular problem with agricultural partnerships". 15. And at paragraph 52 "Accounts, therefore, are no more than evidence and if they do not reflect what was agreed they fall to be disregarded. There are a number of cases where the court has held that the accounting treatment of an asset did not reflect what had been agreed between the partners". 16. The judge referred to Lindley at 17.02 and at paragraph 65 said: "I am satisfied that [the accountant] merely continued preparing the accounts after the commencement of the new partnership in the same way as he had always prepared them beforehand, but without giving any proper thought to the question whether the farm was or not to be an asset to the new partnership or whether it was merely an asset owned solely by [the parents] which they were going to allow the new partnership to use free of charge". 17. And at paragraph 66, "I am fortified in this conclusion because if [the accountants] had thought that there was an agreement to make the farm an asset of the new partnership and so to transfer to [the son]

an interest in the farm, they would have been bound to advise on the capital gains tax implications”.

18. Wild v Wild [2018] EWHC 2197 Ch was another generational farming partnership case. HHJ Eyre QC, as he then was, at paragraph 35 said this: “as a matter of principle one partner cannot unilaterally cause his or her property to become a partnership asset without either the prior agreement of the other partner or partners or subsequent acceptance or ratification on their part Not only does this follow as a matter of principle it is also consistent with the authorities.” 19. And at paragraph 38 “the fact that a particular item of property is used by a partnership for the purposes of the partnership's business does not necessarily give rise to an inference that the parties agreed that the item was to be a partnership asset nor is the implication of such a term normally necessary to give business efficacy to a partnership agreement ... this is particularly so in the case of land used by a farm farming partnership”. And at paragraph 40 “... “the effect is that if no partner actually intended the property in question to be a partnership asset the court will not impose requirement that it be treated as such an asset”. 20. And at paragraph 46: “...it is not necessary to imply that the farm on which crops grow or animals are grazed is an asset of the partnership. Such a partnership can work perfectly well on the basis of the landowning partners making the land available to the partnership for the use of a partnership business as long as it continues and that could happen perfectly well and naturally without any change in the ownership of a farm”. 21. In Wild, as here, the farm was shown in the accounts under the heading ‘fixed assets’ but at paragraph 49 the Judge comments: “The fact that a particular asset is included in partnership accounts as property of the partnership in question is not of itself determinative of the issue of whether the asset is actually partnership property. The inclusion of an asset in partnership accounts as partnership property is evidence that it is partnership property and is likely to be very powerful and persuasive evidence but it is not conclusive of that question (my emphasis)”. 22. Having reviewed the evidence HHJ Eyre QC held that it was not open to him “to infer an agreement or to imply a term that the farm was brought into the partnership” and he found that the farm was not partnership property. 23. Geary v Rankine [2012] 2 FLR 1409 is also relied on by Mr Boydell. At paragraph 15 of Lord Justice Lewison’s judgment: “The mere fact that there is a partnership in profits produced by a particular asset does not indicate that the asset itself is partnership property. It is a common place that one partner may own the property in which a partnership business is carried on. If the asset is acquired from the profits generated by the partnership, that is a different proposition, but in this case the asset was acquired with Mr Rankine's own money before any question of partnership in the guest house business could have arisen”. 24. Geary v Rankine is also authority, along the lines of Jones v Kernott and Stack v Dowden, for the proposition that the party who seeks to challenge the legal title to property has the burden of proof. “The starting point was the legal title which was in the man's name and, therefore, the woman had the burden of establishing a common intention constructive trust. The burden was more difficult to discharge where, as here, the property was bought as an investment rather than a home.

The search was to ascertain the parties actual shared intentions whether expressed or inferred from conduct.” In this case, the burden of proof rests with the wife. 25. In his closing submissions. Mr Tomlinson relied on paragraph 17-06 of Lindley “The failure properly to distinguish between a firm’s capital and its assets can also lead to confusion with regard to the partners’ ownership of capital profits, particularly following the admission of a new partner. If (as will usually be the case) the assets appear in the partnership accounts at their written down book value, there will be a hidden fund of capital profits, commonly referred to as an “asset surplus”, which is not reflected in the partners’ capital accounts. That fund when realised, e.g. on a dissolution, ought, in the current editor’s view, properly to be shared between the partners in their normal profit sharing ratios, in the absence of some contrary agreement (my emphasis). 26. That was a reference to *Robinson v Ashton* a 19th century case (1875) LR 20 Eq.25, a decision of Sir George Jessel MR. The head note of that decision says this: “On the formation of a partnership it was agreed that the business should be carried on at a mill belonging to R, one of the partners; and R was credited in the books of the partnership with the value of the mill. From time to time sums were expended in making additions to and improvements in the mill; and in the yearly balance-sheets the mill was entered at the original value, increased by the amount so expended, but less a certain amount for depreciation; and the partners were allowed interest on the sums from time to time standing to their capital accounts:- Held, that in the absence of any special agreement (my emphasis) the mill was an asset of the partnership, and that on a sale of the business, under which the purchase-money of the mill was largely in excess of its value in the books, the difference was profit divisible in the proportions in which the profits of the business were divisible at the time of the sale”.

27. Mr Tomlinson also relied on *Popat v Shonchhatra* [1997] 1WLR 1367 in the Court of Appeal. The relevant part of the headnote: “A distinction was to be made between the capital of a partnership and its assets; that, on acquisition, the leasehold premises, fixtures and fittings and the goodwill of the business became partnership property and, at least so long as the partnership was a going concern, neither partner had any right, without the consent of the other (my emphasis), to have the whole or a share of any particular asset vested in him; that, subject to any agreement between the partners (my emphasis), they were on dissolution of the partnership entitled to share in its capital in proportions corresponding to their respective contributions to the cost of acquiring the lease or premises, fixtures and fittings and the goodwill, but they were entitled to share equal in the assets of the partnership and that, accordingly, the judge should have directed an equal division of any post-dissolution revenue profits of the partnership and, pursuant to section 24(1) of the Partnership Act 1890, of the post- dissolution capital profits including the profits held by the defendant on the sale of the property, subject to a discretion to make an allowance in respect of the defendant's work in carrying on the partnership business in the post-dissolution; and that the freehold property was held in trust for the partners in equal shares “. 28. Having regard to the authorities, it is clear that the key issue for me is to ascertain, if possible, the partners’ agreement, intention and understanding. As Mr Boydell submitted, it is the subjective

intention of the partners that is crucial. Evidence 29. I heard from a number of witnesses and had a bundle of some 338 pages and a supplementary bundle of another 105 pages. The wife went first. Her evidence in chief comprised her Form E, her Replies to the husband's questionnaire, the Points of Claim, her witness statement dated 23 May 2025 and her further statement dated 6 June 2025 in response to the husband's statement. The wife was cross examined at some length by Mr Boydell KC. In my judgment, the wife tried to be an honest witness who did not descend to allege that the husband and RT's position is a sham or dishonest. Her position though changed during the course of her evidence in that, rather than affirm the position which was set out in the recital to the Order of 7 August 2024, her Points of Claim and her written evidence, she fairly conceded that she did not know what were the partnership assets; she was not aware of any discussions between RT and the husband on partnership issues and did not understand accounts or tax issues. 'I don't know' was her stock answer as also was that she was leaving the court to determine the issue. When asked if her case is now that the farmhouse is in the partnership she said 'I don't know'. The wife did not know how or when the farmhouse might have been transferred to the partnership. 30. The wife was aware of RT's Will and the discussions he had with solicitors in 2019. The wife could not provide any evidence of the 'actings' referred to in her Points of Claim that would support her contention in the preliminary issue that the farm was a partnership asset to be shared in accordance with the partner's profit shares. It was unclear what caused the wife to change her mind the day before the FDR. 31. The husband's evidence in chief comprised his Form E dated 19 April 2024, his Replies to the wife's questionnaire dated 1 July 2024, his Points of Defence dated 17 October 2024, his statement dated 23 May 2025 and his further statement in response dated 5 June

2025. In my assessment, the husband was an honest witness; down to earth; a farmer not an accountant. The husband was in no doubt as to the understanding, agreement and intentions of RT and himself. He stood his ground, despite able cross examination by Mr Tomlinson. "I am a farmer not an accountant". The husband knew and accepted that he had introduced no capital into the partnership. He distinguished capital assets from non-capital assets. "It's always been Dad's farm. He would always retain ownership" and he recalled his father saying "You will never have the farm". The husband confirmed that the farm had never been transferred to the partnership. He appreciated that, if it had been, that would have triggered a revaluation and uplift and a potential CGT issue. His position is that the farm is a capital asset of the partnership. RT owns 100% and always has. 32. NR is RT's daughter and the husband's sister. NR had provided a short statement dated 23 May 2025. She has been employed by F Farm as secretary and bookkeeper since January 2023. NR was a straightforward consistent witness, albeit not entirely independent being part of the T farming family. NR knew of the arrangements and agreement between RT and the husband when the husband went into partnership in 2007. She sets that out at paragraph 6 of her witness statement. NR went with RT and the husband to the solicitors in 2019 to discuss revisions to RT's Will, details of which NR was entirely aware. In her evidence she agreed with Mr Boydell that it made no sense and was plainly not intended that on RT's

passing she would only receive a 35% share of 25% of the farm, if it be the case that the farm was in fact owned by the partnership in the partners profit sharing ratios. She did not believe that her father was mistaken or confused about the ownership of the farm and the argument that he could be mistaken or confused demonstrated a fundamental misunderstanding of the nature and character of generational farmers. 33. SA, a partner of YZ & Co, gave evidence. He is the partnership's accountant and had been so since 2010 when he took over from the then Senior Partner YZ on his retirement. His statement is also dated 23 May 2025. He confirmed in evidence that RT owns F Farm and all his dealings with RT and the husband and their partnership business have been on the basis that RT owned the farm and continued to do so. It was the profits of the business that was shared between the partners, initially on the basis of differing percentages but ultimately 50/50 and that was the basis upon which he prepared the accounts. He explained that the accounts were prepared as they had been in the past in accordance with instructions and information received and on the basis of standard accounting practice and historic cost accountancy. SA was clear that if, at any time, the farm would be revalued to a current true or fair value, that would simply lead to a commensurate increase in RT's capital account to reflect any increased value. Such an increase would not be a shareable profit. That the farm was shown as a tangible asset in the accounts was done this way for consistency with previous accounts. 34. RT's evidence in chief was comprised in his witness statement dated 23 May 2025 and accompanying exhibits. His position is summarised at paragraph 9 of this statement: "In 2007 my son joined me as a partner of FF. I made it quite clear to him that I would be retaining ownership of the farm, the farm house and farm buildings. We initially agreed the profits from FF would be divided as to 50:50, but then later, with him undertaking more of the farming work, we agreed the profits would be divided as to 75% to him and 25% to me. My son joining FF did not alter my ownership of the farm and I remained the sole owner". 35. Hard of hearing, but RT gave clear and concise evidence and was in no doubt as to the position and in particular the partners' agreement, intention and understanding. The land, farmhouse and buildings were owned by him and he and the husband knew the position. RT is a traditional farmer who left the paperwork to his accountants and, when he sought some advice as to potential changes to their arrangements and his Will in 2019, balked at the thought of a potential trigger or liability for CGT. Mr Tomlinson bravely cross examined RT to the effect that RT was confused or mistaken as to the position. Although RT suggested that there had been a 'piece of paper' setting out the arrangements when he first discussed them with the husband and which he gave to the husband, something that the husband did not deal with in his evidence and no such note has ever been produced, and could not entirely explain the history of the note prepared in the course of the current proceedings (page 77 of the supplementary bundle), he was not moved on the key issue of the ownership of the land, farmhouse and buildings and I accept his evidence. Discussion 36. The wife's case as set out in her points of claim is this:

3. The partnership has partnership assets of approximately 980 acres of land together with buildings, plant and machinery, vehicles, fixtures and fittings, stock, livestock and dead stock, and with debtors and creditors - including the sums due and owing being variable from time to time.
4. ...It is believed that RT brought the farm and all the assets in paragraph 3 into the partnership and which have been treated as partnership property by both partners thereafter. In any event, the partners in fact subsequently ratified and accepted that the assets were partnership assets by their actings (my emphasis).
6. The applicant's and RT's shares in the partnership are 75% and 25% respectively.
7. The respondent's case is that the assets in paragraph three above are partnership property within the meaning of that term is used in the Partnership Act 1890 and owned by the partners in accordance with their partnership split/share. 37. The wife's evidence was not consistent with that case. Further, she had no evidence in relation to 'actings' and in her points of claim simply relied on the accounts showing the assets as tangible assets of the partnership, which respectfully was a misreading or misunderstanding of the accounts as a whole. 38. The wife's case further morphed during the hearing such that, in his submissions, Mr Tomlinson based his case on the hidden profit and the authorities to which I have already referred. This was not based on any evidence or pleading. 39. The 2008 accounts are an important document (page 99 of the bundle), being the first set of accounts after the start of the partnership. Although the land and buildings are included in the accounts as tangible assets at cost (£1,846,744), the entire value of these assets are reflected and shown as held by RT in his capital account. The value of the other farm assets are shared equally by way of apportionment between the partners into their current accounts. This reflects the parties' agreement, intention and understanding. That accounting treatment is maintained consistently thereafter and accords with the husband's and RT's evidence.
40. While it was not strictly necessary for these assets to be shown in the accounts, I accept that the accountant was simply continuing how the accounts had been presented in the past for consistency, as had been the case in *Ham v Bell*. The accounts were prepared in accordance with the standard accounting historic cost basis. There are advantages and disadvantages of preparing accounts on such a basis, but this was and remains a standard and reasonable basis for such accounts to be prepared as opposed to fair value accounting. 41. RT and the husband are typical generational farmers. They are not paper people and rely on accountants to deal with their accounts and tax returns and would barely give them a detailed look. But they know who owns what. 42. I had the clearest possible evidence from the husband, RT, NR and the accountant. The only witness who at one time contended differently is the wife, but at trial she did not know; she had no evidence to support her position or to gainsay the others and she did not know and was content for the court to determine the position. 43. As I have already found, the wife's position and evidence at trial was inconsistent. But, it goes further than that because the wife had originally been arguing that, because the farmhouse was owned by RT, she had a claim for unjust enrichment and

estoppel in relation to the money invested into the farmhouse by the wife and the husband on the sale of their property. That claim was compromised by RT whereby the wife received £150,000. The wife's Form E dated 28 April 2024 stated unequivocally "Mr RT owns the farmhouse and majority of land". The wife did not raise any issues regarding ownership in her Questionnaire. The parties agreed ES2 excluded any asset in relation to the farmhouse, land and buildings. Her letter of claim dated 11 April 2022 addressed to RT states "You are the owner of F Farm...with a farmhouse and some 980 acres of arable land... you knew all along that the farm and farmhouse had not been transferred to your son and that you remained the owner". Further, the settlement agreement entered into between the wife and RT said that the wife "currently resides rent-free in [RT's] farmhouse...[the wife] will be required to vacate the Farmhouse upon the divorce and financial remedy proceedings with the husband being finalised". 44. On the other hand, the evidence of RT and the husband, supported by NR and SA was entirely consistent. It was also supported by a number of 'actings', namely evidence regarding RT's Will and discussions RT and the family had with solicitors in 2019 when RT was seeking advice about his Will and considering gifting a percentage of the farmhouse (pages 266-271 in the bundle), a gift which he did not pursue potentially due to a reference to a potential charge to CGT. Why would RT have sought advice if the farmhouse had already been transferred to the partnership and why would he have changed his Will to leave the husband 65% of the farm if the husband already owned (beneficially through the partnership) 75% on the wife's pleaded case. 45. Further, when RT transferred 12 acres of land to the husband for the husband's motor cross track in 2002, that transfer was properly documented and registered at The Land Registry. No such thing ever happened in relation to the farmhouse, remaining land and buildings at the start of or during the partnership, because as the accounts demonstrate there was no such transfer. One only has to consider that, as the partners' profit sharing percentages varied over the years, to realise that ownership of the capital assets would not fairly fluctuate on same basis. 46. The wife's position is confused; perhaps grasping at straws and perhaps opportunistic. In fairness, however, the wife did not come across that way in her evidence and I have some sympathy with her position that she risks becoming 'homeless'. But that of course will be considered in the Financial Remedy proceedings, especially when the parties' resources and needs are taken into account. Issue Estoppel/Agreement 47. I was not addressed at any length regarding issue estoppel, a matter pleaded in the husband's Points of Defence and relied upon by Mr Boydell. The Settlement Agreement plainly prevented the wife from applying to join RT as a party. The husband was not a party to that agreement. Having pursued and benefited to the tune of £150,000 from a claim against RT based upon his undisputed ownership of the farmhouse, whilst I am inclined to find that this might give rise to an issue estoppel and that the wife should not be permitted to resile from this position, I do not need to determine whether or not the settlement agreement gives rise to an issue estoppel. However, on any basis, given that the wife settled her claim with RT, receiving substantial compensation on the basis of one position, changing her position entirely for the purposes of this preliminary issue, goes to the wife's credibility and the issue of her burden of proof. Findings 48. I find that there was a clear agreement, intention and understanding

between the husband and RT that the farmhouse, land and buildings were not partnership assets. This was plainly understood and agreed by RT and the husband. It was also clearly and plainly understood by the wife from her original case as set out in her Form E and her claim against RT which post-dated her receiving copies of partnership accounts. The wife had no evidence to suggest otherwise and has failed to discharge the burden of proof. My decision on the facts and evidence is in line with the decisions and analysis in *Ham v Bell*, *Wild v Wild* and *Geary v Rankine*. 49. The mere fact that assets are described in partnership accounts or tax returns as tangible or fixed assets does not change my conclusion that they are not partnership assets that fall to be apportioned between RT and the husband. That they are expressly identified in the accounts as falling within RT's capital account is clear. Equally clear are the accounts of September 2008 where what constituted the then assets of the partnership were expressly shared equally between the partners and recorded in their current accounts. 50. I reject Mr Tomlinson's submission that, due to the inflationary effect of land and property prices, there is a hidden profit or surplus which somehow becomes a partnership asset. It is misconceived, not supported by any evidence and was never pleaded. SA was clear that such an increase would not be a shareable profit but would solely lead to an increase in RT's capital account. The authorities upon which Mr Tomlinson relies on to support this submission all contained caveats, which I emphasised in my analysis of the authorities and which Mr Tomlinson unsuccessfully sought to address by submitting that RT was mistaken or confused in his understanding. 51. The farmhouse is not used by the partnership. The land and buildings are assets used by the partnership but are not partnership assets. To answer the preliminary issue therefore, which of the assets used in the partnership are partnership property to which H has an entitlement as a partner and which assets therefore fall into his personal assets for the purposes of the financial division in this action, the answer is those reflected in the husband's current and capital account in the partnership accounts. Effectively, therefore, the husband has a share of all the assets, save the land, farmhouse and buildings, which (other than the farmhouse) although are assets used by the partnership are not partnership assets as they are solely owned by RT. For the avoidance of doubt, the structure of the fertilizer barn, but not the land it sits on, is a partnership asset having been bought with partnership funds. 52. The parties are invited to agree an Order that reflects my decision and directions going forward. I will deal with any consequential matters when this judgment is handed down. 19

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