

HONG KONG / JUDGMENT

LPM v. LKH**[2022] HKFC 214****COURT**

Family Court

DECIDED

7 October 2022

CASE / FILE NUMBER

FCMC844/2019

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bjbj FCMC 844 / 2019

**[2022] HKFC 214 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO. 844 OF 2019**

BETWEEN LPM Petitioner and LKH Respondent

Coram: District Judge K. K. PANG in Chambers (Not open to public) Date of Hearing: 24-26 August
2022 Date of Handing Down Judgment: 7 October 2022**J U D G M E N T** (Ancillary Relief)AUTONUMOUT I refer the petitioner wife as and the respondent husband as . This is the trial on
the parties application for ancillary relief.**Background**

AUTONUMOUT W was born in 1985 and is currently 37 years old. H was born in 1981 and is currently 41 years old. They were married in February 2009. In March 2014, the child of the family (the Daughter) was born. Since April 2017, the parties have been living apart. In August 2017, W filed the Divorce Petition by reason of unreasonable behaviour. By the consent order made by HHJ I Wong on 5 March 2018, it was ordered that H shall pay HK\$2,650 per month to W as interim maintenance for the Daughter. By the consent order made by HHJ I Wong on 14 June 2019, the joint custody of the Daughter was granted to the parties, with care and control to W and reasonable access to H. The Decree Nisi was pronounced on 13 May 2021 AUTONUMOUT By the order made by HHJ C.K. Chan on 27 August 2021, the trial of the parties application for ancillary

relief was fixed at this court on 15 March 2022, with 16 March 2022 reserved. On 4 March 2022, following the outbreak of the fifth wave of the COVID-19 pandemic, the Judiciary announced a general adjournment of all court proceedings between 7 March 2022 and 11 April 2022. By the order made on 14 March 2022, the trial of the parties application for ancillary relief was re-fixed to 24 August 2022, with 25 to 26 August 2022 reserved. The Law AUTONOMOUS The jurisdiction of the court in granting financial relief is governed by sections 4, 6 and 6A of the Matrimonial Proceedings and Property Ordinance, Cap 192 (MPPO).:-

4. Financial provision for party to a marriage in cases of divorce, etc.
 - (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may, subject to the provisions of section 25(1), make any one or more of the following orders, that is to say-
 - (a) an order that either party to the marriage shall make to the other such periodical payments and for such term as may be specified in the order;
 - (b) an order that either party to the marriage shall secure to the other to the satisfaction of the court, such periodical payments and for such term as may be so specified;
 - (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified.
 - (2) Without prejudice to the generality of subsection (1)(c), an order under this section that a party to a marriage shall pay a lump sum to the other party-
 - (a) may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section;
 - (b) may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.
6. Orders for transfer and settlement of property and for variation of settlements in cases of divorce, etc.
 - (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation, or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may, subject to the provisions of sections 10 and 25(1), make any one or more of the following orders, that is to say- (Amended 69 of 1997 s. 23)

- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;
 - (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
 - (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage;
 - (d) an order extinguishing or reducing the interests of either of the parties to the marriage under any such settlement;
 - (e) an order for the sale of such property as may be specified in the order, being property in which or in the proceeds of sale of which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion, and for the use of the proceeds of such sale, and the court may make an order under paragraph (c) notwithstanding that there are no children of the family.
- (2) Subsections (2) to (6) of section 6A apply in relation to orders under subsection (1)(e) as they apply in relation to orders under subsection (1) of that section. 6A. Orders for sale of property
- (1) Where the court makes an order under section 4, 5 or 6 then, on making that order or at any time after the making of that order, the court may make a further order for the sale of such property as may be specified in the order, being property in which or in the proceeds of sale of which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.
- (2) Any order made under subsection (1) may contain such consequential or supplementary provisions as the court thinks fit and, without affecting the generality of the preceding words of this provision, may include-
- (a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates; and
 - (b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order.
- (3) Where an order is made under subsection (1), the court may direct that the order, or such provision of the order as the court may specify, shall not take effect until the occurrence of an event specified by the court or the expiration of a period so specified.

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- (4) Where an order under subsection (1) contains a provision requiring the proceeds of sale of the property to which the order relates to be used to secure periodical payments to a party to the marriage, the order shall cease to have effect on the death or re-marriage of that person.
- (5) Where a party to a marriage has a beneficial interest in any property, or in the proceeds of sale of any property, and some other person who is not a party to the marriage also has a beneficial interest in that property or in those proceeds of sale, then, before deciding whether to make an order under this section in relation to that property, it shall be the duty of the court to give that other person an opportunity to make representations with respect to the order; and any representations made by that other person shall be included among the circumstances to which the court is required to have regard under section 7(1).
- (6) An order shall not be made under subsection (1) in relation to any property where the purported assignment or other alienation of the property together with any agreement so to assign or otherwise alienate the property pursuant to the order would be void by virtue of section 17B of the Housing Ordinance (Cap 283). AUTONUMOUT Section 5 of the MPPO provides that the Family Court may make any one or more of an order for periodical payments, secured periodical payments, lump sum payment, secured lump sum payment for the benefit of the children of the family. AUTONUMOUT Section 7(1) of the MPPO provides that: -
- (1) It shall be the duty of the court in deciding whether to exercise its powers under section 4, 6 or 6A in relation to a party to the marriage and, if so, in what manner, to have regard to the conduct of the parties and all the circumstances of the case including the following matters, that is to say-
- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (c) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (d) the age of each party to the marriage and the duration of the marriage;
 - (e) any physical or mental disability of either of the parties to the marriage;
 - (f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
 - (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.
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- (2) Without prejudice to subsection (3), it shall be the duty of the court in deciding whether to exercise its powers under section 5, in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to
- (a) the financial needs of the child;
 - (b) the income, earning capacity (if any), property and other financial resources of the child;
 - (c) any physical or mental disability of the child;
 - (d) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (e) the manner in which he was being and in which the parties to the marriage expected him to be educated; and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (1), just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him. AUTONUMOUT In LKW v DD, (2010) 13 HKCFAR 537, the Court of Final Appeal set out the steps to be taken by the courts in undertaking a section 7 exercise. They are:
 - (i) The ascertainment of the financial resources of each of the parties calculated as at the date of the hearing, at [71] to [73]; (ii) The assessment of the parties financial needs. If the total resources are not enough to meet the parties needs, the s 7 exercise should stop here and there is no room to apply any sharing principle, at [74] to [79]; (iii) If surplus assets would remain after the parties needs have been catered for, the next step should normally be for the court to apply the sharing principle to the parties total assets, with a yardstick of equal division as part of that principle, which means that the total assets should be divided equally between the parties unless there is good reason for departing from an equal division, at [80] to [82]; (iv) In considering whether good reasons exist for departing from equal division, the answer is to be found in the terms of s 7 and the implicit objective of a fair distribution of the assets, and factors like source of the assets, conduct, financial needs, duration of the marriage, contribution to the family and compensation are all material considerations, at [83] to [130]; and
 - (v) The weight to be given to each of the factors is a matter of discretion for the court, at [131]. Discussion AUTONUMOUT The great bulk of the parties assets comprises of the net equity of three residential flats in Hong Kong (and respectively). W contends that all of them are clearly non-matrimonial in nature. AUTONUMOUT In or around late 2010, W developed a romantic relationship with her former boss, Mr E, a married man, who was unaware that W was married. In early 2011, Mr E started giving her some money on an irregular basis. In June 2011, Mr E gifted W the sum of HK\$9.5M to invest in property. On 18 July 2011, W transferred the sum of HK\$2M to H. The parties are in dispute on whether the said sum of HK\$2M is a loan to H. In July 2022, W invested HK\$3M in a financial product called

FundMax from HSBC. On 28 August 2011, W completed the purchase of 37G in her name for the consideration of HK\$3,830,000, out of which HK\$1.75M was paid by mortgage. In or around October 2011, H stopped working. AUTONUMOUT In or around mid-2013, W discovered she was pregnant with the Daughter. W told Mr E about the pregnancy. Under the wrong impression that the Daughter was his child, in September 2013, Mr E offered W another HK\$10M to purchase a larger flat to accommodate W, the child and W's parents that would assist her with the baby care. The parties are in dispute on whether the arrangement that 46F was purchased in H's name was for the purpose of saving double stamp duty and whether H had agreed with W that he would hold 46F as bare trustee for her benefit. The purchase of 46F was completed on 30 December 2013. Mr E directly made full payment of the purchase price of HK\$10.1M. In March 2014, the Daughter was born. In August 2014, H took out a mortgage loan of HK\$2M on 46F. The parties are in dispute on whether it is H's personal liability or the family's liability. In or around September 2014, the parties moved to live in 46F together with W's parents. AUTONUMOUT On 18 May 2015, W sold 37G for HK\$5.5M. On 8 July 2015, W purchased 21G in her name for the consideration of HK\$7,643,000, out of which HK\$3.7M was paid by mortgage loan. W used the sale proceeds of 37G to make payment of the rest of the purchase price of 21G. After completion, 21G was rented out. AUTONUMOUT In or around August 2015, W stopped working. Between November 2016 to 2017, Mr E gifted W various sums totalling at HK\$9.68M. On 13 February 2017, W purchased 51E for the consideration of HK\$8.45M. AUTONUMOUT On 22 April 2017, H left 46F and the parties have been living apart since then. AUTONUMOUT In or around May 2018, Mr E started to make regular payments in the monthly sums of HK\$88,000 for W and HK\$68,000 for the Daughter. In January 2020, Mr E increased the monthly payments to HK\$138,000 for W and HK\$68,000 for the Daughter. On 16 August 2021, Mr E told W that he knew the Daughter was not his child. Thereafter, he stopped all financial support to W. AUTONUMOUT It is not disputed that W have received the following sums from Mr E, not to mention his on and off monthly supports paid to W: - HK\$9.5M in or around June 2011; HK\$10.1M in or around September 2013; HK\$9.68M from late 2016 to 2017. AUTONUMOUT Counsel for the parties have helpfully prepared Joint Lists of Undisputed and Disputed Assets and Liabilities. The parties' disputes are narrowed down to the following: - Should any of the parties' assets be regarded as non-matrimonial property? In particular, how should 37G, 46F, 21G and 51E be regarded? Whether the parties had separate finances during the marriage? The whereabouts of the HK\$2M allegedly advanced by W to H on 18 July 2021? Is W the sole beneficial owner of 46F? Whether the outstanding mortgage loan of 46F, currently HK\$1,563,957.69 is family liability or H's personal liability? Whether H's purported loan of HK\$600,000 is family liability or his personal liability? Whether H's purported outstanding legal costs of HK\$1,908,000 are family liability or his personal liability? Given the above, what is the computation of assets available for distribution? The s.7 MPPO considerations. What order should be made to take care of the parties' needs? How should the assets be divided bearing in mind the principles identified in the Court of Final Appeal's decision in LKW v DD? AUTONUMOUT H is now sensibly prepared not to pursue the disputed items G.4 to G.11 listed in the Joint List of Disputed Assets and Liabilities

prepared by the parties. Identification of Assets The law on non-matrimonial property AUTONUMOUT In LKW v DD, Riberio PJ said: E.5.a Source of assets as a material factor [87] The source of an asset may provide a reason for excluding it from the sharing principle on the basis that it is not an item of matrimonial property. Of course, in many cases, no question of any distinction between matrimonial and non-matrimonial property will arise. But where there are assets which may be capable of being so differentiated, section 7(1)(a) implicitly requires the Court to consider whether any part of such assets ought in fairness to be excluded from the sharing principle. Differentiation might also be seen as a requirement of section 7(1)(f) if the source of a particular asset suggests that it is an independent and unmatched contribution by one of the parties [89] The existing case-law identifies two classes of assets as possible candidates for exclusion on the basis of source. The first involves property acquired during the marriage by one of the parties from a source wholly external to the marriage, such as by gift or inheritance. The second involves assets derived from a business or an investment conducted solely by one party (sometimes called unilateral assets AUTONUMOUT In PW v PPTW [2015] 1 HKFLR 213 (HKCA) (Judgment dated 12 March 2015) the Court of Appeal referring to two different approaches of the English Courts concerning the sharing of non-matrimonial property said:

46. The starting point must be the guidance given in LKW v DD as to how the broad discretion in section 7 of the MPPO should be approached. That guidance does not purport to be comprehensive, as financial provision applications are highly fact specific and the judges dealing with them must ultimately be guided by section 7 and the implicit aim of arriving at a fair financial outcome. (per Kwan JA) AUTONUMOUT The Court of Appeal went on that: 71. But we do not think that it should impact on the resolution of this appeal whether the court should apply the telescoped approach or the two-step approach, as the same relevant factors should be considered in deciding whether and how to apply the sharing principle whichever approach is adopted.
72. Thus, in applying the telescoped approach regarding non-matrimonial property, and in deciding to what extent equal division should be departed from where needs have been satisfied, according to the guidance given by the courts relevant factors may include: the duration of the marriage; the nature and value of the non-matrimonial property; the way the parties organized their financial affairs; their standard of living and the extent to which it has been afforded or enhanced by drawing on the non-matrimonial assets; the way the non-matrimonial property was preserved, enhanced or depleted during the marriage. 73 Similarly, in applying the two-step approach, in deciding whether it is fair and just that the existence of non-matrimonial property should be reflected, as stated in N v F at 14, this depends on questions of duration and mingling . And if it does decide that reflection is fair and just, in considering how much of the pre-marital property should be excluded, the court would be looking at factors such as the historic sum, the extent of mingling, springboard effect and passive economic growth, not dissimilar to some of the relevant factors considered in the telescoped approach. In any event, the fairness of the award in applying the two-step approach is to be tested by the overall percentage technique AUTONUMOUT In

ATV then known as MAM v VNT (CACV 234/2014) (unreported, judgment dated 3 July 2015), the Court of Appeal said : 6.6. In PW v PPTW (CACV 224/2013) (judgement dated 12 March 2015) this Court referred to the two different approaches of the English Courts concerning the sharing of non-matrimonial property. Under the first approach, the Court simply adjusted the percentage from 50% to take into account non-matrimonial property. This is identified in cases such as Charman v Charman (No. 4) [2007] 1 FLR 1246. The second approach shown in cases such as N v F (Financial Orders: Pre-Acquired Wealth) [2011] 2 FLR 533 is to identify the scale of the non-matrimonial property to be excluded, leaving the matrimonial property alone to be divided in accordance with the equal sharing principle. This would require the Court to consider whether the existence of pre-marital property should be reflected at all. This depends on the question of duration and mingling. If the Court decides that the fraction is fair and just, the Court should then decide how much of the pre-marital property should be excluded. 6.8 This Court, however, refrained from deciding which approach is to be preferred. Apart from stating that the first approach is what the Court of Final Appeal had decided in WLK and restated in TCWF v LKKS & Ors [2014] 1 HKLRD 896, this Court said : Since the discretion is unfettered and the factual matrix of each case would be different, the approach of Mostyn J [in N v F] should only be regarded as an illustration of how the discretion could be exercised as opposed to laying down a formula which should be followed mechanically in every case. There may well be factors which are not relevant in the previous cases which have to be considered on the facts and circumstances of another case. [paragraph 70] 6.9 Personally I do not find the argument in the English cases about which is the preferred approach helpful. More importantly the Court of Final Appeal has already given guidelines on how non-matrimonial property should be dealt with under the sharing principle in a short marriage which I will deal with in the following paragraphs. Hence starting point of excluding the matrimonial property from consideration will be contrary to the Court of Final Appeal judgment which this Court must follow AUTONUMOUT It is undisputed that the parties came from a humble background. W was a Form 5 graduate. She used to work as a clerk until she ceased working in 2015. H left school after Form 3. He was an escalator repair worker earning less than HK\$20K per month until he quitted his job in 2011. The most extraordinarily unusual feature of this case is that all of the parties wealth has come from W by way of Mr E. For years, Mr E has gifted W in the total sum of not less than HK\$29.285M. AUTONUMOUT It is also noted that in S v AG (Financial Orders: Lottery Prize) [2011] EWHC 2637 (Fam); [2012] 1 FLR 651, Mostyn J stated that

- [7] Therefore, the law is now reasonably clear. In the application of the sharing principle (as opposed to the needs principle) matrimonial property will normally be divided equally (see para
- [14] (iii) of my judgment in N (Financial Orders: Pre-acquired Wealth)). By contrast, it will be a rare case where the sharing participle will lead to any distribution to the claimant of non-matrimonial property. Of course an award from non-matrimonial property to meet needs is a common place, but as Wilson LJ has pointed out, we await the first decision where the

sharing principle has led to an award from non-matrimonial property in excess of needs. AUTONUMOUT The parties are in hot dispute on whether the parties have had separate finance during the marriage. 37G AUTONUMOUT H said that : - One day after work in 2011, W told him that Mr E gave her HK\$9.5M as bonus. They agreed to split up the money for investments. With the money, they purchased 37G as their first matrimonial home. In or about August or September 2011, he received an anonymous call from an unknown woman who claimed to be W's colleague suggesting that W had an affair at work. He was furious and confronted W. W admitted her affair with Mr E and asked for his forgiveness. W promised that she would end the relationship with Mr E. W gave him HK\$2M and asked him to quit his job. He quitted his job on or around October 2011. In early 2012, W told him that Mr E's woman knew about their affair and Mr E asked her to leave the company. W resigned. To amend their relationship, the parties travelled to many places before W found another job as a merchandiser a few months later. AUTONUMOUT W conversely said : - From engaging the service of estate agents, viewing flats, signing the agreement for sale and purchase dated 21 July 2011 for 37G to the completion of the purchase on 26 August 2011, W did all of them by herself. She did not plan to tell H any of them. At around the same time, feeling her distance from him and suspecting that she might have an affair with someone at work, H stalked W and threatened W with suicide. W was disgusted at his behaviour. After W signed the preliminary sale and purchase agreement for 37G, one day when she was at work, H suddenly called her suggesting that he was coming up to her office to broadcast that she was having an affair at work. To plead him to stay calm, and out of scare, W revealed to H that her boss wife, who saw her as a close friend, gave her HK\$10M as bonus in appreciation of her friendship and satisfactory work performance. H finished the conversation without incident. Afterwards, H demanded money, claiming that he had already quitted his job and would like to have some money for investments and business opportunities. W transferred HK\$2M to H. She did not know how H spent the money. Thereafter, H asked W about how she would spend the remainder of the HK\$10M on a few occasions. W told H that she spent HK\$3M on FundMax. She made it clear to H that any benefits accrued from FundMax would be used for their future child's education and welfare. Though he met her financial adviser of HSBC to understand what FundMax was after W told him about it, H was not involved in her decision to purchase FundMax. W told H that she would use the money to purchase a property. She had already signed the preliminary sale and purchase agreement for 37G, though she did not tell H about that. She asked the estate agent to put up a show with her by showing 37G to H. The show worked. She signed a fake preliminary sale and purchase agreement for 37G, pretending that she bought 37G there and then. AUTONUMOUT It seems to me it is very unlikely that a professional estate agent will be amenable to falsely stage a show with W so much so that she will sign a fake preliminary agreement for sale and purchase of 37G in front of her husband. I also take the view that as W revealed to H that she received a work bonus of HK\$10M, it is more likely than not that at that instant, she understood that she would be required to share with her family the money that she received. The fact that 37G was the parties' matrimonial home speaks volumes. The cold hard facts are that eventually, she transferred HK\$2M to H, she told him about the purchase of FundMax,

he met her financial adviser of HSBC, he viewed 37G with her and witnessed her signing the preliminary agreement for sale and purchase of 37G. Despite W's arguments to the contrary, all of the above, in my view, support H's case that H has directly participated in the splitting up of the HK\$9.5M for investments including the purchase of 37G. After having carefully considered all evidence, I take the view that W's case in relation to the purchase of 37G is implausible. As a corollary, I am prepared to accept H's case that W paid him the money and asked him to quit his job. I do not accept that the HK\$2M is a loan to him. 46F

AUTONUMOUT He said that when the parties found out W was pregnant, they looked for a bigger flat for the matrimonial home. 37G has only 2 bedrooms and the parties decided to purchase a matrimonial home with 3 bedrooms under his name. He took care of the home renovation before they moved in 46F. AUTONUMOUT I take notice of W's case that : - In early 2012, Mr E felt that people in the office was aware of their love affair, he suggested that she should resign. Accordingly, she resigned. She did not want to stay home with H. Therefore, she looked for a job. She worked again in or around late 2012. In 2011, 2012 and 2013, she intermittently asked for divorce. Since 2011, the parties had sex only at most once every 2 months. In early or mid-2013, H demanded sex from her on a few occasions that she refused. Of those times, He became furious and damaged many household items. In about 2012, she learnt from a common friend that H regularly bluffed to people about his finance. In mid-2013, she told Mr E that she was pregnant and asked him to stop seeing her. In September 2013, around the time of her birthday, Mr E and W had dinner together. At the dinner, Mr E said he would give her money to buy a property so that she could have a comfortable living place with the baby and her parents who could help her take care of the baby. She decided to acquire 46F by herself. She sourced 46F from her agent by herself. She asked H to borrow his name for the purchase so that she could save from the double stamp duty, to which he readily agreed. AUTONUMOUT There is the presumption that the beneficial owner is the same as the paper ownership: *Stack v Dowden* [2007] UKHL 17, [2007] 2 All ER 929, [2007] 1 FLR 1858, HL per Baroness Hale of Richmond (at 56). W is obliged to produce credible evidence in order to succeed in her case. I take notice that the trust arrangement is not evidenced in writing. In the picture painted by W, the parties were in terrible terms. I take the view that it is unbelievable that in the circumstance, W would have put her trust in H to the extent that she asked him to hold as a bare trustee for her 100% beneficial interest in 46F that was purchased for the consideration of HK\$10.1M. After having carefully considered the evidence, I take the view that W fails in discharging her burden of proof. I prefer H's case that there is no agreement that H holds 46F as bare trustee for W's benefit. AUTONUMOUT The parties are in dispute on whether the parties have agreed that the mortgage loan of HK\$2M on 46F is H's personal liability. AUTONUMOUT W said : - Soon after acquisition of 46F, H begged her to let him take out a mortgage loan of HK\$2M on 46F to get some cash to do business or make investments. H said he wanted to open a coffee shop or a restaurant with friend. To avoid drama and his usual threats, she acceded to his requests. It was firmly agreed between them that he was personally responsible for the repayment of the mortgage loan. H agreed to pay the Government rent and rates and management fees of 46F as a return of W's favour. H bought an Audemas

Piguet watch for HK\$360,000 and a Porsche Cayenne for HK\$1.1M. She did not know if he invested in any coffee shop or restaurant business or any other investment, though he said he looked for various locations, and he mentioned that a friend invited him to invest in Accumulator. Since he obtained the mortgage loan on 46F, H has been paying the monthly mortgage repayment and the Government rent, rates and management fees of 46F.

AUTONUMOUT H said that the mortgage loan of HK\$2M was taken out with W's agreement for personal expenses, his expenses on the family, investments and business opportunities. After the mortgage in 2014, he bought the Audemas Piguet watch and the Porsche Cayenne that was a family car, and was paid by a down payment of HK\$110,000 and monthly instalments of HK\$18,209 per month. He said he lost a substantial amount of money through some bad investment decisions. He denied that he had agreed to be personally responsible for the repayment of the mortgage loan of 46F. AUTONUMOUT I take the view in the above that W gave H HK\$2M for personal expenses, his expenses on the family, investments and business opportunities in 2011. It is probable that he would ask and W would agree H to have another HK\$2M for the same purposes by way of taking out a mortgage loan on 46F in 2014. However, it seems unlikely that having had no personal income since he quitted his job, he would agree to be personally responsible for the repayment of the mortgage loan. I take the view that that the mortgage loan on 46F is more likely than not a family liability. W does not take issue with H's spending on luxury watch and posh vehicle, or his loss of money in investments. In any event, I take the view that it would be wrong to seek to add it back, as there is no credible evidence that he had spent or overspent to reduce W's claim. As it is stated in *MAP v MFP (Financial Remedies: Add-Back)* [2015] EWHC 627 (Fam) [89]-[91], a spouse had, as it were, to take his or her partner as he or she found them. 21G

AUTONUMOUT After the parties moved in 46F, 37G was rented out in or around November 2014. The parties sold 37G for HK\$5.5M in May 2015. In February 2017, 21G was purchased for HK\$7,643,000, paid with a mortgage loan of HK\$3.7M on the property. AUTONUMOUT W said : - In or around the first quarter of 2015, she saw the real estate market was doing well but 37G was appreciating rather slowly. After some enquiries with her estate agent, she decided to sell 37G and reinvested in another property; H only came to know about the dealing because her estate agent once came to 46F at night time for the signing of the provisional agreement for sale and purchase ; H was not involved in her above decision making at all. AUTONUMOUT After completion, 21G was rented out. It is not in dispute that H was involved in overseeing the leasing of 21G, engaging estate agents, maintaining the property, taking rents and paying the management fees. 51E AUTONUMOUT W said : - She stopped working in 2015 because she wanted to become a full time mother. Although H stayed at home, he was never the primary carer of the Daughter. In around September 2016, she told Mr E that her elder sister would give birth to a son in November 2016. Mr E knew her elder sister as they went dinner together on a few occasions. Mr E knew that W was in a very close relationship with her. Mr E asked W to purchase a property in the same estate of 46F under W's name to be W's sister's family's place of residence so that the Daughter could grow up with a kid companion. Mr E told W that he had cash flow problem so she would need to purchase with a mortgage on the new property. She chose 51E by herself. H was not

involved in the decision making at all. Soon after that, she signed the preliminary sale and purchase agreement for 51E. She could not obtain a bank mortgage from HSBC, despite that Mr E agreed to be the guarantor, as she did not have the required income proof. With no other choice, she told H about the purchase of 51E. She demanded him to take out a mortgage on 46F to finance her purchase of 51E but he refused. She got furious and immediately reminded him that 46F was all along her property. She was very displeased at his unwillingness to do what she asked him to do. Serious arguments between the parties broke out. She strongly felt that he was very unreliable and she should get him off her assets as soon as possible. It was one of the reasons why she decided to have a divorce. In or around late October or early November 2016, she was requested by the conveyancing solicitor to make payment for the further deposit of 51E. She was not told the exact sum to be paid. She wrote a cheque of HK\$530,750. On 10 November 2016, she attended the conveyancing solicitor's office to deliver the cheque for the further deposit. H offered to go with her. Upon arrival of the solicitor's office, she came to know that the further deposit was HK\$595,000. She was also told that she needed to pay HK\$633,750 for stamp duty. W did not bring the cheque book with her. At that moment, H actively and gladly took out his cheque book that he carried with him all the time. He offered to settle the remaining balance, pretending that he was the breadwinner in front of people. The formal agreement for sale and purchase was executed on 14 November 2016. As the parties were always separated in their finances and that she strongly did not wish to have H involved in her assets, she repaid HK\$700,000 to him on 7 December 2016. Despite that H knew that 51E was meant to be W's elder sister's family's place of residence, not long before the completion date, he asked W to rent out 51E for rental income. She rejected that idea immediately and reminded him that he had no place in how she would make use of her properties. After that, even more so W wanted to get rid of H in her life. The purchase was completed on 13 February 2017. W paid the balance of the purchase price with HK\$4,111,320 sourced from Mr E and the mortgage loan of HK\$3,500,000 on 51E. She obtained the mortgage loan after she got the income proof from a friend. In the end, W's sister's husband did not want to live in 51E. He preferred to live in his own property in Wanchai that was close to his work place in Causeway Bay. Subsequently, 51E was rented out. In summary, Mr E contributed HK\$9,685,000 for the purchase of 51E, including: - HK\$1,480,000 on 10 November 2016 HK\$2M on 16 January 2017; HK\$2,305,000 on 9 February 2017; HK\$650,000 on 1 March 2017, 10 April 2017, 4 May 2017, 31 May 2017, 7 July 2017 and 28 July 2017 respectively, totally HK\$3.9M. AUTONUMOUT H said: - W discussed with him and suggested to buy one more property. They looked for properties in Providence Bay and Beverly Hill. They ended up with the purchase of 51E; It was not true that 51E was designated to be W's elder's sister's place of resident. The parties joint decision was to purchase 51E for investment and so, it was let out for rental income after completion; H did not request the repayment of the said HK\$700,000. Nonetheless, W returned the sum of HK\$700,000 to his SCB account that was used solely for family expenses. AUTONUMOUT It is just common sense that the solicitor ought to have specified the sum payable when he requested payment from W. I am incredulous to W's assertion that the solicitor did not disclose the exact sum payable. It is also unbelievable that having had much

experience in property investment, she did not ascertain how much the further deposit was before she went to the solicitor's office. At any rate, the exact sum of the further deposit must have been stipulated under the terms of the preliminary agreement for sale and purchase. The fact that she did not have enough money ready at the material time must mean that she expected that H would chip in. After having carefully considered the evidence, I accept that it is more likely than not that H has directly participated in the purchase of 51E as he said in the above. AUTONUMOUT In 2016, W paid HK\$1,237,000 to H. W said that it was a superstitious feng shui practice, to avoid misfortune and bad luck, performed in accordance with the advice of a feng shui master, and H should forthwith return the money to her. W said that upon repeated requests for the return of the feng shui money, H repaid the respective sums of HK\$400,000 and HK\$500,000 totally HK\$900,000 to her on 22 May 2017. H argues that W's case in the above is unbelievable, taking into consideration she could have paid the money to anybody close to her, it is inexplicable why she did not pay the feng shui money to her sister, who was presumably in a very close relationship with her. H said he was trying to make amends to W and was hoping a reconciliation so he transferred the respective sums of HK\$400,000 and HK\$500,000 to W at her request on 22 May 2017. I take notice that H does not proffer any credible explanation of why W paid him the odd figure of HK\$1,237,000 at the material time. I take the view that it is probable that the said HK\$1,237,000 is feng shui money. AUTONUMOUT I take notice that: - Despite that W said during the entire course of marriage, she did not pay any amount to H for him to spend and she was very careful not to intermingle with H financially, taking the evidence in the round, it is clear that after he quitted working, H was wholly dependent on W financially; I take the view in the above that W gave H \$2M for personal expenses, his expenses on the family, investments and business opportunities in 2011; I take the view in the above that W agreed the taking out of the mortgage loan of HK\$2M on 46F for H's personal expenses, his expenses on the family, investments and business opportunities in 2014; What is more, H has directly participated in the purchase of 37G, 46F, 21G and 51E; 46F was and still is registered in H's name; 37G and 46F was the 1st and 2nd matrimonial home respectively; H was responsible for overseeing the leasing and management of 21G, and 37G after the parties moved into 46F; All of the above militate against W's case that the parties had separate finance during the marriage. AUTONUMOUT After having carefully considered the evidence, I do not accept W's case that the parties have had separate finance during the marriage. I take the view that during the course of the marriage, there have been substantial mixing and intermingling of the parties' finances with matrimonial activities. AUTONUMOUT On the opposite position, W argues that for 51E, it is clearly non-matrimonial, taking into consideration: - It was purchased at the time around the parties' separation; The purchase money was given by Mr E around and after the parties' separation; The purchase of 51E was the triggering event for the parties' divorce. AUTONUMOUT In the premises that I take the view in the above that H has directly participated in the purchase of 51E, I do not accept W's argument in the above. AUTONUMOUT Despite W's exerted effort to try to convince the court of her case, after having carefully considered the evidence, I take the view that 46F, 21G and 51E should be included in the computation of assets available for

distribution. Given the above what is the computation of assets available for distribution? AUTONUMOUT The parties have prepared a Joint Agreed Schedule of Assets: - Assets 21G (Net equity) 4,504,944.07 51E (Net equity) 8,129,949.99 Cash in bank 26,923.50 Insurance policies 426,466.90 Valuable personal items 45,000 237,343.80 Liabilities Credit Card cash instalment (593,229) 12,777,399.26 Assets 46F (Net equity) 11,516,042.31 Cash in bank 512.02 6,000 Liabilities (disputed) 11,522,554.33 Total Undisputed Assets & Liabilities 24,299,953.59 AUTONUMOUT After having carefully considered the evidence, I accept that the current outstanding mortgage loan on 46F should be regarded as the family liability instead of H s personal liability. AUTONUMOUT I accept that there is no current value of H s interest in the insurance policies that he holds for his brother. AUTONUMOUT In view of that H is unable to produce any credible evidence in support of the said loan of HK\$600,000, I accept W s argument that I should not take into account the same. AUTONUMOUT Notwithstanding that I shall reserve comment on W s remarks that it appears that the own legal cost allegedly already incurred by H are unreasonably costly, I accept W s argument that I should not take into account H s alleged outstanding legal fees inasmuch as: -

- (1) It is usual that a party s own legal costs are not counted as expenses or liabilities in the computation of assets available for distribution;
 - (2) I see no reason why I should depart from the above usual practice in the present case;
 - (3) By the same token, W does not take into account her legal costs. AUTONUMOUT The above sum of HK\$24,299,953.59 includes the parties post separation mortgage repayment. W s and H s post separation contributions by way of mortgage repayment are HK\$878,007.4 and HK\$242,950.92 respectively. W proposes to deduct the parties post-separation mortgage repayment of HK\$1,120,958.32 from the computation of assets available for distribution. Despite that the parties difference in the contribution to post separation mortgage repayment might be a reason to depart from the yardstick of equality, in the meantime I regard that taking the first step, the whole of the net value of the about properties should be included in the computation of assets available for distribution AUTONUMOUT In summary, the net assets available for distribution are HK\$24,299,953.59.
- s. 7 considerations W s income and resources AUTONUMOUT W is working as an Online Marketing Executive taking home HK\$17,000 per month. She is living with her current boyfriend and the Daughter. W and her current boyfriend are financially independent. W receives rental income of HK\$19,500 and HK\$17,000 per month from 51E and 21G respectively. W s total income is HK\$53,500 per month. AUTONUMOUT There is no evidence showing that W has any hidden assets. AUTONUMOUT I accept that it is unlikely that Mr E will provide any further financial support to W after he sensed that the Daughter is not related to him in blood. W s needs AUTONUMOUT According to her 3rd Form E dated 8 July 2022, W s general expenses, personal expenses and child expenses were HK\$65,158, HK\$12,050 and HK\$25,630 respectively, totally HK\$102,838. The Daughter s school fees have been increased by \$5,000 per month since September 2022 and therefore, the child expenses are HK\$30,630. It is both parties proposal that 46F will be sold. After the sale of 46F, she will

obtain a lump sum payment that can be used to repay her bank loans. By such time, she will no longer be required to make the monthly HSBC instalment loan repayment of HK\$12,300. Leaving out the child expenses of HK\$30,630, W will have a monthly deficit of HK\$11,408 (HK\$102,838 - 53,500 - 12,300 - 25,630) per month. AUTONUMOUT H has failed to pay interim maintenance of HK\$2,650 per month in accordance with the order dated 5 March 2018, much to W's chagrin. W requests the court to set aside enough provision from the family assets for the Daughter's future needs lest he persists with his defiance if the court makes a periodical payments order for the maintenance of the Daughter. In view of the parties limited income, I accept that it is in the Daughter's best interest for the court to set aside enough provision from the family assets in favour of her. AUTONUMOUT W has produced a table that shows the education related expenses of the Daughter for the period from Year 3 to the time when she finishes high school education at Year 12 are as much as HK\$3,934,200. In view of that the Daughter is studying at a local international school, I accept that she might continue her study in international school and W's estimate at her school fees is not unreasonable, but the rest shown in the table are mere conjecture. It is difficult if not impossible to put any figure on the Daughter's future expenses. I bear in mind that the parties' needs should be generously interpreted and with flexibility in the light of all the relevant circumstances : LKW v DD 79 Doing the best I can, I consider that I can use the current monthly child expenses of HK\$30,630 per month as a yardstick. On top of it, I think it is just to add it up to HK\$48,000 per month to take into account of the Daughter's housing needs and her fair share of the general expenses of the household. I also add a lump sum of HK\$1M as a supplement to the Daughter's extra costs for university education. The Daughter is aged 8. I presume that she finishes university education and is financially independent at aged 22. I shall make provision for $\text{HK\$48,000 per month} \times 13 \text{ years} + \text{HK\$1M} = \text{HK\$8,776,000}$. Taking an overview of the parties' living standard during the marriage, I regard that HK\$8,776,000 is a respectable amount for child support and a justifiable estimate of the costs of raising the Daughter. Taking into consideration W's long track record of financial prudence, I accept that I can trust W with the said provision. H's income and resources AUTONUMOUT After he left 46F in April 2017, H had worked as a porter at the Yau Ma Tei Fruit Market earning HK\$15,000 per month for 3 months until he broke his leg and needed surgery and physiotherapy. H has been employed as a private driving earning HK\$21,667 per month since 2018. AUTONUMOUT There is no evidence showing that H has any hidden assets. H's needs AUTONUMOUT According to his 3rd Form E dated 13 June 2022, H's general expenses, personal expenses and child expenses were HK\$11,138, HK\$12,570 and HK\$100 respectively, totally HK\$23,808. H accepts that he has never paid the interim maintenance of HK\$2,650 per month so that such sum should be deducted from his personal expenses. After having carefully considered the evidence, I accept W's objection to H's insurance premium of HK\$1,321 per month under general expenses and the insurance premium of HK\$2,040 per month under personal expenses on the ground that there is no documentary evidence produced in support of such payments. It is both parties' proposal that 46F will be sold. After the sale of 46F, he will no longer be required to pay the monthly mortgage repayment of HK\$7,070. By such time, his monthly expenses will be HK\$10,727

(HK\$23,808 - 2,650 - 1,321 - 2,040 - 7,070) per month. H's income is sufficient to support his current monthly expenses. AUTONUMOUT Since 2018, H has been living in his parents' 350sq. ft. public housing unit. He sleeps on the sofa in the living room. In the longer term, I accept that he needs to have his own living place. Standard of living enjoyed by the family during the marriage AUTONUMOUT It is obvious that the parties have lived a comfortable standard of living. The parties have lived in self-own flats. They have received rental income from investment properties. It is not disputed that over the years, they have bought luxury items such as watches, branded clothes, Hermes and Chanel bags, and several vehicles including Subaru, BMW, Mercedes Benz C250, Mercedes Benz E250, Honda Odyssey SUV, and Porsche Cayenne, they regularly dined out, they travelled to Taiwan, Bangkok, Phuket, Singapore, LA, London, Paris, Rome, Japan, Macau, sometimes they flew on business class. The age of each party and the duration of the marriage AUTONUMOUT W is 37 years old and H is aged 41. I take the view that in the present case, the period after the separation of the parties should not be counted towards the duration of the marriage. The parties were married for some 8 years when they were separated in 2017. Contributions to the welfare of the family AUTONUMOUT As to W's heavy reliance down to the fact that all of the wealth of the parties came from Mr E via her, H refers the court to Holman J's summary of the guidance on the consideration of special contribution in *Gray v Work* [2018] Fam 35 at [15]. The Judgment of Holman J 15 Holman J accepted, by reference to *McFarlane v McFarlane*; *Miller v Miller* [2006] 2 AC 618 and *Charman v Charman* (No 4) [2007] 1 FLR 1246, that a special contribution made by one party can have an impact on the court's exercise of its distributive powers. From these cases he drew the following propositions [2015] EWHC 834 at [140]: From the passages that I have quoted from *Miller* and *Charman*, I extract the following: __ (i) The characteristics or circumstances which would result in a departure from equality have to be of a wholly exceptional nature such that it would very obviously be inconsistent with the objective of achieving fairness for them to be ignored: per Bodey J in *Lambert v Lambert* [2003] Fam 103 but quoted with obvious approbation by Lord Nicholls of Birkenhead in *Miller v Miller* [2006] 2 AC 618, para 68. __ (ii) 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: Lord Nicholls of Birkenhead in the *Miller* case, at para 68. __ (iii) Only if there is such a disparity in their respective contributions to the welfare of the family that it would be inequitable to disregard it should this be taken into account in determining their shares: Baroness Hale of Richmond, in the *Miller* case, at para 146. __ (iv) It is extremely important to avoid discrimination against the homemaker: the Court of Appeal in *Charman v Charman* (No 4) [2007] 1 FLR 1246, paras 79, 80. __ (v) A special contribution requires a contribution by one unmatched by the other: (the Court of Appeal in the *Charman* case, at para 79. __ (vi) The amount of the wealth alone may be so extraordinary as to make it easy for the party who generated it to claim an exceptional and individual quality which deserves special treatment. Often, however, he or she will need independently to establish such a quality, whether by genius in business or some other field: the Court of Appeal in the *Charman* case, at para 80. A windfall is not enough. __ (vii) There is no identified threshold for such a claim to succeed: the Court of Appeal in *Charman*, at

para 88. AUTONUMOUT I take notice that the English Court of Appeal said: - 102 In our view, Holman J accurately summarises the guidance from the McFarlane and Charman cases at para 140 of his judgment [2015] EWHC 834 save that we would delete his sub-paragraph (v). The focus is on disparity of contribution and whether there is a sufficient disparity to make it inequitable to disregard. It is not on whether a contribution is unmatched . The latter can lead, as reflected in the husband's submissions in this case, to the contention that, if one party has made an exceptional contribution, the court must consider whether the other party has made an equal, matching, contribution. 103 We also agree with Holman J that the use of the word genius is unhelpful. It is sufficient for the court to determine whether the contribution is wholly exceptional. As referred to above, this requires the court to look both at the nature of the contribution and to determine whether it derives from an exceptional and individual quality. AUTONUMOUT This is a wholly exceptional case that the source of all wealth of the parties came from Mr E by way of W. I accept that W has made special financial contribution to the family assets. The fact H was financially dependent on W after 2011 shows it is to her credit that W was prepared to share with H the money that she received from Mr E. Additionally, she worked until 2015. After that, she became a full time mother. I recognize to W s credit the difference in the parties contribution to the post separation mortgage repayment as well as H s nil contribution to the Daughter s expenses after the separation of the parties. AUTONUMOUT I recognize H s contribution as a home maker. I take the view in the above that with the income brought in by W, it was the parties joint decision that it would be in the best interest of the family for W to be the breadwinner and H was to stay home to make investments and look for business opportunities with the amount of cash that they were receiving. H was responsible for home renovation of 46F, overseeing the leasing and management of the parties investment properties and even the property of W s parents. It is not disputed that he drove W to and back from work every day. He was the family driver. He went with W to prenatal check-ups when she was expecting. There is credible evidence that H has taken part in the care and control of the Daughter. Upon reading the various Social Investigation Reports and Psychological Report prepared pursuant to court orders in the children proceedings, I take notice that W criticized H before the social welfare officer that H was overly strict on the Daughter when she was small. After having seen and heard him at the witness box, I accept that he worked at the household duties, though he probably did not work as hard as he wishes the court to believe. Having carefully considered the evidence, I reject the W s contention that H has only negligible contributions both financially and otherwise to the welfare of the family. AUTONUMOUT Broadly speaking, I accept that each party has made valid contribution to the welfare of the family. The sharing principle and departure from equal division AUTONUMOUT In his open proposal lodged with the court for the trial fixed in March 2022, H asked for 40% of the then net equity of 46F, 21G and 51E (March 2022 valuation) i.e. $40\% \times \text{HK\$}24,610,838.35 = \text{HK\$}9,844,335.34$. In the morning of the trial on 24 August 2022, H revised his open proposal. Lastly, he reduced the asking lump sum payment to HK\$7,245,000 i.e. about 30% of the net equity and in addition, he agreed to pay W \$5,000 per month for the Daughter. AUTONUMOUT W submits that in circumstance that justifies so doing, a Need-based award

could be a fair final award, relying on *WLK v TMC* (2010) 13 HKCFAR 618 where Riberio PJ said at [84]: I do not agree with the Judge's suggestion that the sharing principle is capable of being displaced by such considerations [i.e., the shortness of the marriage and there was virtually no marital acquest, see 83], even where there are substantial assets surplus to the parties' needs. The better approach is to regard the sharing principle as always applicable when there are assets surplus to needs but accepting that, as part and parcel of that principle, an equal division should indeed be departed from if good reason exists for so doing. The shortness of a marriage, the absence of marital acquest and similar matters can all be considered as possible reasons for such a departure. The circumstances of a particular case may lead the court to decide, for example, that equal division should be departed from to the extent of restricting the award to a sum sufficient to meet one of the parties' needs. But that is not to say that the sharing principle has been displaced. AUTONUMOUT W submits that, it is fair to award H a Needs based award giving the special circumstance of this case. Taking into consideration H's current monthly income is enough to meet his current monthly expenses, W proposes the court to make the order that: - 46F (currently under H's name) is sold in the open market; Out of the net proceeds of the sale of 46F, H is paid a lump sum of HK\$4.5M to satisfy H's housing needs; The balance of the net proceeds of the sale of 46F is paid to W; W keeps 21G and 51E (current under her name); and W is responsible for the Daughter's future expenses. AUTONUMOUT Together with the argument that Mr E's gift obviously cannot be regarded as the financial product of the parties' common endeavour, W draws the court's attention to *Miller; McFarlane* [2006] 2 AC 618 (HL) at 22 per Lord Nicholls. This does not mean that, when exercising his discretion, a judge in this country must treat all property in the same way. The statute requires the court to have regard to all the circumstances of the case. One of the circumstances is that there is a real difference, a difference of source, between (1) property acquired during the marriage otherwise than by inheritance or gift, sometimes called the marital acquest but more usually the matrimonial property, and (2) other property. The former is the financial product of the parties' common endeavour, the latter is not. The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose. As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been. AUTONUMOUT H conversely argues that source is not the only determinative factor, and the court is required to consider other relevant factors such as the question of duration of the marriage and mingling: see *ATV* then known as *MAM v VNT* (at 6.6). AUTONUMOUT Despite W's argument to the contrary, I take notice that the assets available to distribution is enough to meet the parties' respective needs. With that said, I agree with H that it would be appropriate to approach this case on the sharing principle. The next step will be for the court to apply the sharing principle to the parties' total assets, with a yardstick of equal division as part of that principle. This means that the total assets should be divided equally between the parties unless there is good reason for departing from an equal division. AUTONUMOUT About the question of whether there are good reasons exist for departing from equal division, applying the principle laid

down by LKW v DD, the answer is to be found in the terms of section 7(1) and the implicit objective of a fair distribution of the assets. AUTONUMOUT 37G and 46F were the parties 1st and 2nd matrimonial homes respectively. H puts much stress on that the matrimonial home takes a central place in the marriage and has a particular identity in ancillary relief proceedings so much so that the guiding principle being the entitlement of each party to a share of the matrimonial property is the same no matter that long or short the marriage may have been. In this respect, the following passage in LKW v DD at [98] per Riberio PJ is on point: It should be noted that these refinements are not generally applicable to the matrimonial home and other assets which have been intended for and devoted to family use. Lord Nicholls pointed this out in Miller/ McFarlane as follows: The parties matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been. Baroness Hale agreed, describing the matrimonial home as a prime example of a capital family asset. AUTONUMOUT Having largely dealt with the section 7(1) considerations when discussing the different issues as set out above, I have no doubt that there is good reason for departing from equal division. I accept that in calculating any final ancillary award to W, the court should acknowledge her special financial contribution in the acquisition of the family assets and the relative shortness of the marriage. I find that W's financial contribution to the family assets is exceptional and notwithstanding that H has also made valid contribution to the welfare of the family, the disparity in the parties contributions makes it inequitable to disregard W's special contribution. I accept that the extraordinarily features of this case points to a significant departure from equal sharing. Weighing the various factors and striking the balance of fairness, in broad terms, I regard that W should retain 60% of the net assets available for distribution and H should have the remaining 40%. I have set aside HK\$8,776,000 for the future needs of the Daughter. This means that W will have $(HK\$24,299,935.59 - HK\$8,776,000) = HK\$15,523,935.59 \times 60\% = HK\$9,314,361.35$ and H will have HK\$6,209,574.23 respectively. AUTONUMOUT The respective awards should be sufficient to meet the parties respective needs, including but not limited to H's housing needs. AUTONUMOUT It is common ground that between the parties, this matter should be dealt with on a clean break basis and this is clearly the sensible way to proceed. Needless to say, there is no full and final settlement of a child's future needs. Costs AUTONUMOUT It seems to me that neither party is wholly successful no matter in terms of the arguments that they run for their respective cases or the outcome of their respective claims. I make the order nisi that there is no order as to costs of the ancillary relief proceedings, including reserved costs. The order nisi becomes absolute 14 days after the order is made unless a party has applied to the court for varying the order. Disposal AUTONUMOUT I take notice that there are different ways to carry out the above Judgment. For example, there may be an order for the sale of 46F and either 21G or 51E in order to meet the provision for the daughter and the lump sum payable to H. Or, upon W giving her personal undertaking to the court and to H that she is responsible for the Daughter's future expenses until she is 18 or

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97-2003 Document MSWordDoc Word.Document.8

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