

# Business Assets and Divorce



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Divorce is seldom an easy business, but the problems are compounded when there is a family business involved. The division of the spoils has traditionally been the subject of a great deal of argument, but recent cases have at least clarified the thinking of the highest judges in the land. The leading case, which was decided in the Lords, involved a Mr and Mrs White, who were farmers. The ruling established the principle that there has to be a good reason for the division of assets to be unequal.

Unequal splits of joint business assets can be proper in some circumstances. For example, in a case in which the husband's business did not have sufficient liquidity (ability to generate cash) to finance an equal split, Mr Justice Coleridge awarded the wife a 39 per cent share of the total assets, which included the family home. Because of the financial circumstances of the business, the balance of her settlement was ordered to be paid over a period of years. The judge commented that the "...old taboos against selling the goose that lays the golden eggs have been largely laid to rest...but if it is necessary to sell her, it is essential that her egg-laying abilities are damaged as little as possible in the process."

In a more recent case, a husband who argued that his ex-wife's settlement should be reduced, because she had taken up with a new partner and had a luxurious lifestyle, failed in his attempt. Similarly, a husband's attempts to persuade the court that the settlement required for his daughter should be reduced was rejected when it was considered that she would have to change schools, which was not in her interest. The needs of the child, not the father, are paramount in such cases. One important factor in the division of 'marital assets' generally is the relative contributions of the two parties to the creation of the assets. This need not be direct, as a 'stay-at-home' spouse can be awarded a substantial proportion of the assets if they were instrumental (ie by supporting the 'wealth creator') in the creation of the family's wealth.

Where there are no 'surplus assets', the courts will look first to the housing needs of the parent who looks after the children, with any additional assets being fairly apportioned by reference to the needs of each party and their ability to provide for their needs.

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