Neutral Citation Number: [2005] IEHC 276

**THE HIGH COURT**

**2004 No: 6M**

**BETWEEN**

**C.**

**APPLICANT**

**v.**

**C.**

**RESPONDENT**

**Judgment of O'Higgins J. dated the 25th day of July, 2005.**

1. By way of special summons dated 27th January, 2004, the applicant instituted proceedings under s. 3 of the Judicial Separation and Family Law Reform Act, 1989 seeking judicial separation pursuant to s. 2(1)(b) and/or 2(1)(f) of the Act and seeking ancillary relief. On the 8th day of April, 2005, the respondent counterclaimed, seeking in turn a decree of judicial separation pursuant to s. 2(1)(a), 2(1)(b) and/or 2(1)(f) of the Act and also seeking custody of the children and for ancillary relief.

**The facts**

2. The applicant and respondent were married to one another on 31st October, 1987. They have four children – J. (born in October 1988), C. (born in May 1990), I. (born November 1991) and O. (born in January 1995).

3. When the parties married they had known each other for a period of about nine years. After the marriage they lived in T. Farm until the year 2003. The farm was adjacent to a manor house and estate which included the business. The manor house was vacant between 1975 and 1986 and occupied sporadically from that time until 2003 although more fully in the later years. From 2001 until the death of the applicant's father in 2003 the applicant's parents lived virtually on a full time basis in the manor house.

4. During the marriage the source of income of the parties was the income from the souvenir shop adjacent to the castle, paid through a company. They had a limited income from T. Farm. In addition there was a small rental income from the applicant's property in Dublin, and for a time, income from a house in Waterford owned by the respondent. The applicant also derived some income from Lloyds of London as an underwriter. This income ceased sometime around 1990/1991 following losses which the applicant states amounted to over Stg.£1,000,000. In addition, he said he owed a sum of £79,000 but settled his debt for a sum of half of that amount. The respondent suggested that in reaching this compromise the applicant relied on a document showing that he had given his remainder interest in the manor house and estate to his wife and family. She also was of the view that the document was used to help compromise a much larger sum than £79,000. However, this document has not been produced in court and the respondent is not maintaining in these proceedings that she has any legal interest in the manor house and estate. The applicant recalls some discussion about some document intended to demonstrate to Lloyds that the property was not in his sole name, but said that the matter did not proceed further. He does not believe that any such document was in fact shown to Lloyds. In addition, there was a small rental income from an apartment in Dublin.

5. In the early 1990's relations between the applicant and his father became strained and subsequently litigation ensued between them. The applicant was excluded from conducting farming on the estate at that time although he continued to work on T. Farm.

6. The strain of the litigation, the losses incurred at Lloyds, the shortage of money and the necessity to borrow money from the bank were all factors that the husband felt impacted on the happiness of the marriage at various times. The nature, extent and costs of various alterations to T. Farm were also a source of friction between the parties. The applicant drank to excess and this exacerbated the difficulties. On the advice of his wife he attended a psychiatrist for his drinking problem in 1997, but only on two occasions. At this time the applicant felt his marriage was under severe pressure although his evidence was that it was under some strain prior to this. The respondent's view of the marriage was quite different. She described the marriage as being a happy one up until the time of its break up in December 2003. Despite the applicant's drink problem, she said that the couple loved one another and were devoted to each other and the children. She denies that there was any friction caused by lack of finances. It is difficult to reconcile her evidence of a happy marriage with the fact that on a least two occasions the Gardaí were called to the house to deal with serious domestic disputes. There was evidence of physical assault after one of those incidents the details of which were given to the court by the respondent. While it is not unusual that there may have been quite different perceptions to the happiness of the marriage, I accept the evidence of the applicant in relation to the facts which he said contributed to putting the marriage under strain. I believe there was a shortage of money and that was a concern for both parties. The fact that in the early 1990's the respondent cashed in an insurance policy to assist in paying debts underline this fact. In 2003, there were discussions between the parties about making joint wills and about putting the property in joint names. The applicant said that the respondent wanted the property put in joint names and was unhappy when he refused to comply with her wishes. The respondent, however claims that the applicant agreed to put his property into their joint names and also agreed joint wills should be drawn up by the parties. She told the court that such discussions were with a view to protecting the assets against the possibility of the applicant unwisely investing the monies abroad, or again becoming a member of Lloyds, where he had incurred substantial loses in the past. This explanation is hard to reconcile with the respondent's own evidence that there was already in existence a marriage settlement by which the applicant's property had been made over to her and the children. If that were true, it would be unnecessary to put the properties into joint names to protect the interests of the children; in fact such actions would be against their interests. In the course of evidence the respondent also said that her motivation was "to be fair" to her husband and to give some property back to him. This assertion does not make any sense in the context of the respondent's expressed anxiety to protect the assets against undesirable investments by him. The evidence of the respondent in this topic is contradictory and unsatisfactory. However I am satisfied that she was not in any way trying to mislead the court, but it is clear that throughout the case, and particularly in her own evidence, she was obviously (and understandably) under very considerable stress. I accept the evidence of the applicant that there was friction between the parties over the desire of the respondent for joint ownership of the estate, and that she was also unhappy over the applicant's refusal to let her see his will.

7. In March, 2003 the applicant's father died. At that time the eldest child was at boarding school in England and two of the three younger children were boarding in a private preparatory school in Ireland. In that year the applicant agreed with the respondent that the youngest child - who was only eight at the time - should go to the preparatory school as a day pupil. For that purpose the respondent rented a town house near the school and some 180 miles from the family home. A further reason for renting the town house was to facilitate extra tuition outside the school for the elder girl, who needed to attain certain academic standards in order to gain entrance to a certain girls' school in England. The result of this agreement was that the applicant saw his wife and children only on weekends during that period. Although he acquiesced in these arrangements, the applicant felt lonely and drank to excess. However, the family went on holiday in August of that year as usual. In September the respondent again rented a house in the village near the preparatory school. Although the eldest daughter had at that time commenced secondary school in England the youngest child was still a day pupil at the preparatory school and did not become a boarder until the following year.

8. After the death of the applicant's father in March, 2003 the parties took up residence in the manor house. There is a dispute as to precisely when they moved into the house, but that dispute is of no consequence in the disposal of this case. A person was retained to carry out some refurbishment of the grounds and a landscape designer was engaged to carry out certain works pertaining to the land and house. There were some differences over the refurbishment of the house. The applicant is also of the view that his wife wanted to adopt a more lavish lifestyle than heretofore, although she denies this.

9. Before, and during the marriage the wife was supportive of her husband's endeavours. She helped in the souvenir shop, she helped with the lambing on the farm, she was involved in commercially growing a few acres of strawberries. She also made improvements and alterations to T. Farm, some of which were not altogether approved of by the applicant. In addition she also put on joint deposit IR£10,000, the proceeds from the sale of the house which she owned prior to the marriage, and, in the early 1990's she gave the applicant the proceeds from a life insurance policy to help pay some of his debts.

**The end of the marriage**

10. In the early part of 2003 the family had planned a holiday in Antigua for two weeks in the month of December. The necessary arrangements were made, but on the morning of the planned departure the applicant indicated to his family that he would not be going. He gave his reason for not going as being his belief that himself and the respondent would argue about his excessive drinking. In fact his motives were quite different. He gave his wife some spending money and a mobile phone for the purpose of keeping contact from the remote holiday destination. The applicant's decision caused very considerable distress to the family. The eldest child stayed behind to try and persuade his father to go on the holiday. Having failed to do this he then departed to join his mother and sisters, without the father being present.

11. The applicant had a female friend Mrs. M. Any meaningful contact between them had ceased for about 25 years although he met her in 1997 when she visited the area in connection with three-day eventing. At that time she visited T. Farm and she and her husband had dinner with the applicant and respondent. During the autumn of 2003, the applicant renewed contact with this woman. On the very day that the family left on holidays she came by arrangement to the family home to take up life with the applicant. It was when she was away on holidays that the respondent first heard that the applicant had taken up with Mrs. M. and that he intended to live with her. Prior to the return from holiday of the family in late December the applicant and his new partner moved out of the manor house. They spent a short time in England and in early January went to live in T. Farm. Not surprisingly, the circumstances in which the new partner came to live with the applicant were a cause of particular distress for the whole family, and particularly for the respondent, who had no inkling or forewarning of her spouse's intention to abandon her. It would be difficult to disagree with the respondent's assessment of his behaviour as 'underhand and sneaky'.

12. On December 23rd, some twelve days after his new partner had been installed with him in his house, and while the respondent was still in Antigua with the children, the applicant sought legal advice relating to his matrimonial difficulties and these proceedings commenced in January, 2004. In early March, 2004 a joint bank account and joint credit card were cancelled. An income of approximately €1,500 per month which she was accustomed to receiving was also withheld, but I accept that that was not done deliberately by the applicant. I will return to this matter. The respondent was left without money other than the children's allowances until an order of the court of April 2nd, whereby the applicant was ordered to pay a sum of €30,000.

13. Predictably there were unpleasant incidents following the return home of the respondent and the family. It was usual for the applicant to accompany his children back to boarding school in England. In January of 2004, following a drunken phone call from the applicant, the respondent arranged to have his plane ticket changed out of his name. However, this change was afterwards reversed and the father accompanied his children back to school in circumstances of understandable tension. Also in January, 2004 the youngest child was anxious to have the applicant at her birthday party. The applicant visited the child in the manor house and insisted that his wife would not be present in the room at the time of his visit. There was an incident when the applicant was being driven by Mrs. M. and the car encountered the respondent's vehicle on the driveway. The two vehicles could not pass each other and an altercation ensued. In another incident the respondent changed the locks in the manor house to which the applicant formerly had access. There were also allegations that the respondent tried to hinder tourist business. Another unpleasant scene occurred when the respondent tried to gain access to T. Farm house when the applicant's present partner was in the house. I accept the evidence of the applicant that there were on occasions " V signs flying in my direction". The unpleasantness was not confined to one party or the other - clearly there were incidents which were provoked or caused by both parties. It is not necessary to adjudicate on the details of these incidents. They are only of significance in that they show the friction and tension that existed between the parties following the break-up of the marriage. The present position between the parties is not a happy one. The parties are not on speaking terms. The applicant has had no access to his children because they do not wish to see him because of the considerable hurt to them caused by his behaviour. The applicant realises the considerable difficulties involved in trying to re-establish a good relationship between himself and his children and, although he is most anxious to form such a relationship, he realises that it will be a slow and difficult process.

14. An order was made pursuant to s. 47 of the Family Law Act, appointing Dr. James Sheehan to make a report in writing to the court on all aspects of the welfare of the children, specifically concerning future custody and access arrangements. Although not accepting as factually correct all the conclusions in the report, the applicant accepts that custody of the children should be with the respondent and that access should be only as contemplated in the terms of the report furnished. In those circumstances the question of custody and access are not live issues in the present case.

15. There are considerable property assets in this case and they may be conveniently divided into the following categories:

1. Main house and lands
2. The business and its lands
3. Commercial and residential properties
4. T/Farm.
5. Forestry
6. Miscellaneous

16. I propose to deal with these assets in turn and to value the assets under each of the headings.

17. In his original report furnished to the court Mr. Ryan, the applicant's valuer did not provide separate valuations for the castle and

business, the manor house and surrounds, the houses on the estate, or for T. Farm. Instead his approach was to provide an overall value for the estate and T. Farm. He considered that what he termed an integrated planning approach might be required in relation to the whole estate and that it might not be possible to develop the area around the castle and car park in isolation. However, he considered that T. Farm and probably the remote woodlands would be exempt from the "integrated planning approach". He pointed out that such a plan was required in the case of a property which he used as a comparator. He had spoken briefly with a senior council official and he had regard to the report of Mr. O'Neill the planning consultant. Mr. Flack for the respondent, however, considered that even without a integrated plan for the whole estate that development of part of the lands would be possible. The court heard evidence from Mr. O'Neill. He told the court that the benefit of integrated tourist facilities including sports and recreational activities was recognised in the county development plan. He told the court that in a report which he had prepared for the applicant that he did not state or imply that an integrated planning approach to extend to the whole estate would be required to develop portion of the lands. He did not share Mr. Ryan's view that an integrated planning approach would be required for the estate. I prefer the view of Mr. O'Neill a planning expert, to that of Mr. Ryan a valuer on this topic, which essentially is a planning issue. I am not satisfied therefore that an integrated planning approach will be necessary in order to develop any part of the estate. The importance of the issue however is somewhat lessened in that while the views of Mr. Ryan on the integrated planning requirement for the whole estate influenced his approach, he nonetheless did provide a breakdown of valuation for the different parts of the estate. Furthermore the area of potential development (though not the extent of that area) is agreed between the valuers. Moreover the value to be ascribed to each acre of residential development is agreed between the valuers.

18. There are indeed certain factors which affect the development potential of the lands. The fact that at present the lands are in a greenbelt area, that the property is adjacent to a natural heritage area, that it is in a area designated as an area of scenic landscape, that the castle itself is a national monument and that the property contains protected structures are all factors which have to be taken into account, as is the fact that the obtaining of planning permission for development may be a long and arduous process. All these matters impinge on the value of the lands.

**1 Main house and lands**
19. Although his report contained no separate valuation of the manor house and estate lands Mr. Ryan provided such valuations in the course of his evidence. He valued the house and lands at €4.6m and Mr. Flack on behalf of the respondent valued them at €8m. He valued the house at €2.4 million. The breakdown of the valuations by the respective valuers is as follows:-

| Property | Applicant's Value in millions (€) | Respondent's Value in millions (€) |
|---|---|---|
| House plus lands | 2.400 | 4.000 |
| Home and walled garden | 0.000 | 0.300 |
| Front gate lodge | 0.000 | 0.350 |
| Back gate lodge | 0.000 | 0.200 |
| Estate mangers house | 0.000 | 0.450 |
| Amenity woodlands (85.5 Acres) Forestry (8 acres) | 0.130 | 0.130 |
| Smith's field | 1.000 | 1.500 |
| Grasslands (115 - 20 = 95 acres) | 0.822 | 0.750 |
| Totals | 4.352 | 7.680 |

20. Mr. Ryan provided no properties for the purpose of comparison with the exception of one estate near Cork city which was also used to illustrate another point concerning planning. That property was comprised of a house and one hundred and forty six acres and either eighty or ninety of which were zoned for residential use and sold for twenty five million euro. The house was smaller than the manor house in the present case but with the addition of wings containing self contained apartments was approximately of the same size of the manor house. Mr. Ryan ascribed a value of three million of the total price to that house. Mr. Ryan thought the person who bought the property and the lands "was in essence forced to buy the house". Mr. Ryan considered this a point of similarity as he thought that in the present case also the house would be purchased as part of the overall business and estate. There are substantial differences between the property in this case and the property in Cork which was mentioned by Mr. Ryan. The area zoned for development was much larger than in the present case and in any case there is no evidence of what proportion of the total price was attributable to the house in the figure given by Mr. Ryan being merely his estimate. The comparison is not of assistance in valuing the manor house in the present case.

21. Mr. Ryan considered the manor house as an entity that would be bought by someone in connection with the business and probably used for commercial purposes and valued it accordingly. He agreed however that it could be sold as a separate entity. His view was that the proximity to a large and busy tourist attraction with about 300,000 visitors per annum was a factor which might adversely effect the price to be obtained for the property. He also told the court that the potential for development in a portion of the estate was a factor that could adversely effect the value of the house itself. Moreover it is his view that the fact that there are planning issues in the vicinity of the house which are likely to take some years to resolve is another factor which should be taken into account by a person purchasing the house. He pointed out that though the house itself is some distance from the commercial undertaking the natural curtilage of the house is in close proximity to the business. I accept all those observations of Mr. Ryan to be of relevance.

22. A further difficulty arises in Mr. Ryan's evidence in that his valuation was in respect of the house and 10 acres and Mr. Flack's valuation was in relation to the house and 20 acres. However other documentation agreed between the parties suggests consensus that the area valued was in the case of both valuers agreed at 20 acres. In any case the matter is of great significance. The valuations found by the court are for the house and twenty acres.

23. In support of his valuation of €4..2 million for the house and 20 acres, Mr. Flack, valuer for the respondent gave a number of comparators. They were:

1. A house on 150 acres which was bought for €3m. However this house was in bad condition and the court was told there was subsequent expenditure rumoured to be at €20m spent on it.

2. A house on 160 acres was under offer for €3.1 million. This house was further from the city and airport than the house

in this case.

3. A house in County Clare on 70 acres which sold for €3.325m.

4. A house in Cork city on 25 acres which sold for €1.825. However this is a suburban house and is not a useful comparator.

5. A golf club and club house on 110 acres with a turnover of €1.3 million which sold in the region of €12 million.

6. A renovated Georgian house on 423 acres which was sold for €10 million.

24. The first three of those comparators are of particular assistance. However the factors mentioned by Mr. Ryan would all have a tendency to diminish the value of the house. In particular I consider that the proximity of the house to such a busy tourist attraction with such a great number of visitors is very likely to make the house less desirable for a prospective purchaser. Having considered all the evidence carefully in my view, a value of €3 million is appropriate for the house and the 20 acres surrounding it together with the lake.

25. Mr. Ryan, valuer for the applicant, did not ascribe any value to four properties which he considered part of the estate, on the basis that it would be bad estate management to sell them. However the valuation of a property is not dependent on the desirability of it being sold on this point I prefer the view of the respondent. He was also of the view that they form an integral part of the estate and were incorporated in his value as a whole and considered that the estate would have the same value without these properties. The respondent however attributed a separate value to each of these properties and the total of the properties was €1.3 million. It is proper that the properties in question should be taken into account in ascertaining the assets of the parties for the purposes of this case. I am not convinced that the value of the estate would be the same in the absence of these properties. I accept the evidence of the respondent's valuer that the properties in question have separate values and I accept the valuation of Mr. Flack in each case.

**Amenity forestry**
26. There is no difference between the valuers about the worth of the amenity woodlands and the forestry which have an agreed value of €130,000.

**Smith's field**
27. There is no dispute between the valuers that a land with a development potential exists in this part of the land and that the value of the development land is agreed to be €100,000 per acre. The applicant's valuer however considers that only ten of the seventeen acres of the field in question could be properly developed as the remaining seven acres should be retained as a buffer between the development area and the driveway to the house to protect the privacy of the house owner. Mr. Flack for the respondent told the court that there was a sufficient buffer zone already there and his evidence was supported by the evidence of Mr. O'Neill the planning consultant. I accept the contention that there already exists sufficient buffer between the road and the proposed development and accordingly I consider that development potential should be ascribed to all seventeen acres. From that sum, Mr. Flack deducted a sum of €170,000 (rounded up to €200,000) in recognition of the fact that he had already included a sum of €10,000 per acre for those seventeen acres in valuing them as agricultural land. In my view, however, the deduction made should be double that sum, because I accept the evidence of Mr. Ryan on behalf of the applicant that the value of agricultural land should be €20,000 per acre rather than the €10,000 proposed by Mr. Flack (for reasons with which I will deal later). Accordingly a deduction should be made from the €1.7 million in twice the amount proposed by Mr. Flack. The appropriate deduction is for seventeen acres at €20,000 per acre, that is a sum of €340,000 which will be rounded up to €350,000. Accordingly Smiths' field is valued at €1.350 million.

**The grasslands**
28. Mr. Ryan ascribes a value to the farmland of €0.822 million. It is not quite clear how that figure was arrived at other than by a process of deduction from the entire sum. He did however refer to a valuation of €10,000 per acre. However, I cannot accept the valuation €10,000 per acre from in respect of the farmlands in the estate because he valued the farmland of T. Farm at €20,000. No evidence has been given as to why the farmland in the estate should have a lesser value. There is some confusion about the extent of the farmland. A map which was produced to the court on behalf of the respondent made reference to the house and 40 acres. On the other hand the evidence of Mr. Flack was that "I took the main house and about 20 acres into account". He also said that there were 115 acres of grasslands "but I had taken 20 out to go around the house". On that basis it seems probable that the correct figure is 95 acres. I propose therefore to ascribe a value to the farmland based on €20,000 per acre for ninety five acres rather than the €10,000 per acre contended for by Mr. Flack. The figure for the grasslands is accordingly (95 x €20,000) which is €1.9 million. Thus the total value of the house and land is as follows:-

| | |
|---|---|
| House and 20 acres | €3.000 million |
| Properties on estate | €1.300 million |
| Forestry and amenity | €0.130 million |
| Smith' field | €1.350 million |
| Farmland (95 x €20,000) | €1.900 million |
| Total | €7.680 million (say €7.7 million) |

**2. The business and its lands**
30. The evidence in regard to this is somewhat difficult. Mr. Ryan's initial valuation was nine million euro. However he was relying on his professional judgment and said there were no comparative properties. He agreed however to add a sum of three million euro to this figure in respect of good will. He assessed the amount for good will on the basis of the profits generated by the business. In addition, he added a sum of one million euro in respect of development potential of the enterprise giving a total of thirteen million euro. The respondent's valuation was €17.5 million based on a valuation of the business at €15 million and a sum of €2.5 million for development potential. Mr. Flack based his valuation by way of comparison between a golf club which had been sold for a sum of €12 million. This golf club had been developed 12 to 15 years ago and had a bar attached to it with a turnover and property. However the valuer conceded that the comparison was like "chalk and cheese". The common denominator was that they were both businesses which generated profit. Mr. Flack told the court that the golf course was generating a profit of about €500,000. No separate sum was added for the goodwill element of the business, but an unspecified amount for goodwill was incorporated into the overall valuation. Mr. Flack told the court that if he had the choice between the golf club and the instant property he would pay more for the business in this case than the golf club as it had more potential. However this is a highly subjective judgment, and the valuer candidly agreed he would have been happier with his valuation if he had been in a position of information concerning the operating profit from the

enterprise in this case. He said that "more than in most areas of valuation it is a hugely subjective judgment". In circumstances where the comparison used by Mr. Flack was so different from the property in this case and given the other qualification which he put on his valuation, it would seem to me to be preferable to rely on the more conservative valuation of Mr. Ryan. Accordingly, before addition of a sum for development potential - I find the value of the business and its lands to be 12 million euro.

31. The respondent's valuer considered a sum of €2.5 million in respect of the development potential in the area around the castle was appropriate. This is based on a estimate that five retail units might be built in the area in question. This indeed might happen, but in the absence of expert planning evidence to substantiate that as a probability I do not consider it appropriate to value the potential on the basis of five units being built. I do accept that there is likely to be some development potential and prefer the more conservative estimate of Mr. Ryan that there are likely to be two units even though this evidence also is unsupported by expert planning evidence. I therefore ascribe a value of €1 million to the development potential for the area in question and the total value of the castle and business is €13 million.

**3. Commercial and residential properties**
32. There are commercial and residential properties in the area with an agreed value of €2.76 million. The properties in question are:

| | | |
|---|---|---|
| 1 | Garda Station | €380,000.00 |
| 2 | Bank | €180,000.00 |
| 3 | Restaurant | €150,000.00 |
| 4 | Restaurant | €210,000.00 |
| 5 | The Library | €050,000.00 |
| 6 | The Square Ms. Connell<br>Another €100,000 if it is sold to Blarney Woollen Mills | €350,000.00 |
| 7 | School | €350,000.00 |
| 8 | Village Green | Nil |
| 9 | Blacksmiths cottage | €250,000.00 |
| 10 | Six house with protected tenancies<br>6 x €35,000<br>2 houses (employees) yearly tenancies | €210,000.00<br><br>€350,000.00 |
| 11 | Lodge | €300,000.00 |
| | Total | €2,780,000.00<br>€2.76 million was agreed between the parties |

**4. T. Farm**
33. This property was acquired by the applicant in 1986, prior to this marriage. The main reason for the transfer was the legitimate avoidance of the payment of stamp duty. It would have been acquired by him whether or not he got married.

34. The applicant's valuer assessed the value of this property as being €5.5 million and the respondent's value was €3.5 million. However the value of the house and six acres around it was agreed to be €1.5 million. The main difference between the valuations was attributable to the difference in valuation to be ascribed to the agricultural land. Mr. Flack valued the agricultural land at €10,000 per acre and Mr. Ryan valued it at €20,000 per acre. Mr. Ryan provided 3 comparators all of which were in respect of agricultural land in proximity to Cork. In the first, three hundred and forty acres achieved a price of €17,000 per acre about eighteen months ago, in the second, one hundred and seventy three acres achieved a price of €19,000 per acre about a year ago and in the third, one hundred and twenty five acres were sold for €22,800 per acre very recently. Mr. Flack gave evidence of a sum of €9,000 per acre being achieved in North Cork. I accept the value per acre at €20,000 given by Mr. Ryan. I consider his comparators more useful in that they are all in respect of lands near Cork city. The forestry value of T. Farm is agreed at €85,000. The extent of the grassland is 185 acres to which Mr. Flack ascribes a value of €1.85 million at €10,000 per acre. For the reasons I have already mentioned I consider that price per acre should be doubled giving a figure for the farmland of €3.70 million. The value of the house as being €1.5 million together with the €3.7m for the grasslands amounts to a figure of €5.2 million. An additional sum of €85,000 must be added being the agreed value in respect of the forestry land. Accordingly the total value of T. Farm to include house grasslands and forestry is €5.285 million.

**5. Forestry**
35. The value of certain forestry lands has been agreed between the parties at €1.285m.

**6. Miscellaneous**
36. A sum of €75,000 was agreed between the parties under this heading.

37. The total value of the property therefore with the exception of a property in Ranelagh which will be dealt elsewhere is as follows:

| | | € millions |
|---|---|---|
| 1. | Main house and lands | 7.7000 |
| 2. | Business and its lands | 13.000 |
| 3. | Commercial and residential property | 02.760 |
| 4. | T. Farm | 05.285 |
| 5. | Forestry | 01.285 |
| 6. | Miscellaneous | 00.075 |
| | Total | 30.105 |

38. This total is before the costs of disposal costs, capital acquisition and other liabilities to be incurred on disposal. On the basis of a property valuation of €26.762, Mr. Browne the accountant for the applicant calculated the net value of the properties after disposal costs and capital gains tax as being €21,371,000. He told the court that it would be correct to add or subtract a sum of €770,000 to the net figures for every one million difference in the gross property valuations. The valuation of the property found by the court i.e. €30.105 is approximately €3.25 million more than the valuation figure provided by Mr. Browne. It is appropriate therefore to add €770,000 x 3.25 that gives a sum of €2.5 million in round terms. It is appropriate therefore to add that sum to the net figure of €21,371,000 being Mr. Brown's net figure for valuation. The total value of the property is therefore €23.871.

**Non property assets**
39. A very helpful summary of what were called the non-property assets and liabilities (but which included an agreed valuation of €293,000 after capital gains tax and costs of sale of one property item, namely an apartment in Dublin) was furnished to the court. The total figure for all non-property items set off against all liabilities was calculated by Mr. Peelo to show a total surplus of €625,000. This differed slightly from the figures furnished by Mr. Brown, but the differences were attributable to the different dates in respect of which information was obtained and the question as to whether a small insurance policy with a value of approximately €12,000 should be excluded on the basis that the policy was on the lives of the children. It is accepted that the figures of Mr. Peelo are more up to date in terms of the time in which the information was obtained and therefore should be accepted. The remaining difference as to whether or not the insurance policy should be included in the assets is not of any significance in the case. For the purposes of this case, I will accept the non-property assets together with the apartment in Dublin as being €625,000 the sum given by Mr. Peelo. However a difference of view is taken as whether €235,000 of a company debt owned by the parties should be deducted from that sum. The view of Mr. Peelo is that it is merely a notional debt and only falls to be paid in the unlikely circumstances of the company ceasing to trade. Mr. Brown however considers that it should be deducted because it is the normal practice in family law cases to include liabilities even if they are unlikely to be sold. The practice for valuations in family law cases is for the assets to be valued and having deducted a sum for disposal costs to include legal costs, capital gains and capital acquisition tax where appropriate arriving at a net valuation for the purposes of ascertaining what it is constitutes proper provision in the case. It is true that such practice involves a degree of artificiality because in the facts of any given case it is understood that certain properties, in respect of which such deductions are made the assets are not likely to be sold. The convention however is that the properties are to be valued on the basis of the net proceeds of sale and the valuations are not dependent on the likelihood of the sale but has the advantage of providing a net value on the properties that are likely to be sold as well as a consistency of approach between professional valuers. Such a practice also has the benefit that it gives the court the information that may be useful to it should it adopt an approach to the sale of properties other than that envisaged by the parties. In my view it is appropriate to deduct the sum of €235,000 from the total sum for the purposes of this case, leaving a sum of €390,000 as the non-property assets in this case. (The possible tax liabilities and disposal costs of these are insignificant in the context of this case). This sum should be added to the value of the net property assets of €23.871 to give a total value of assets of €24.261.

**The statutory considerations**
40. Under the provisions of the Act, in arriving at a decision in relation to proper provision the Court is required to take into account a number of specific factors as set out in the legislation. It is well established law that there is no hierarchy in these factors and that the importance of each factor may vary substantially from case to case. I propose to deal with the matters seriatim.

*(a) The income, earning capacity, property and other financial resources which each of the spouses concerned has or is likely to have in the foreseeable future.*

The income of the parties is agreed between the accountants to be a sum of €725,000 after the payment of tax. It is agreed that this net figure is produced by the main revenue source of the parties that is the tourist attraction. Income from other sources was agreed to be set off against loses accruing to the farm. For the purposes of this case therefore it is reasonable and appropriate to take the income of the parties as being approximately €725,000 net of tax or any other deductions.

The property is solely owned by the applicant. Apart from her share in the company which gives her an income of about €1,500 per month all the income is generated by the assets of the applicant. The earning capacity of the parties is dealt with under the next heading. The property and other assets as determined above amount to €24.26 million, although much of which it is undesirable or infeasible to sell. In any case the business which is the main asset will be the source of income to support the family in the future.

*(b) The financial needs, obligations and responsibilities which each of the spouses has or is likely to have in the foreseeable future (whether in the case of the remarriage of the spouse or otherwise).*

The financial needs and obligations of the applicant consist in having to provide for the respondent in these proceedings and to provide for the educational and other needs of his family including provision for the sporting, cultural and holiday requirements as well as food and clothing. He is entitled to continue to enjoy the comfortable lifestyle that he has experienced heretofore and there are sufficient assets to allow him to do so. The probability is that he will continue to manage his business as before and it is unlikely that he will act as a solicitor in the future. There are some modest developments that should be carried out to make up for relative neglect in the recent past and this expenditure would cost in the region of one or two million euro. However, although, desirable, these developments can be postponed if necessary. The court was also told of greater development possibilities the exact nature which is not quite certain and which are dependent on financial planning and other consideration. Any such development is likely to require considerable capital expenditure. There is no evidence before the court on which to predict the future financial situation of the applicant but it is safe to act on the basis that the present level of profit is likely to at least be maintained in the future and indeed nobody suggested otherwise.

The respondent is dependant on the applicant for financial support. She has no other income or financial resources of any significance. She is however a qualified solicitor and as such has an earning capacity. It is not suggested however in this case that she should return to the workplace. She herself gave no evidence on that topic. I will revert to this.

The applicants financial expenditure as set out in his affidavit of means dated the 22nd April, 2005, is in the region of €200,000. In addition it is envisaged by both parties that he will continue to discharge the educational expenses for all the children into the future. Those expenses are likely to be considerable. The affidavit of means discloses that the school fees before taking into account extra curricular school expenses are €125,000. The extra curricular school expenses are given as €14,140. In addition the maintenance of the estate and its future development which

is envisaged will require considerable capital investment.

The requirements of the respondent are much more difficult to obtain. Unfortunately her affidavit of means dated 23rd March 2004 is of no assistance to the court as the respondent herself rightly conceded that it was not an actual or helpful guide as to her genuine requirements. The expenditure contained in the schedule (which curiously is not mentioned in the body of the affidavit itself) is approximately €860,000 not including certain utilities. The respondent was under understandable strain at the time she swore this affidavit.

It would appear that the expenditure incurred by the respondent in a twelve month period from April 2004 not including expenditure and professional fees and excluding utilities which are at present being discharged by the applicant in the region of €350,000. The applicant however gave evidence to the court as to what she considered would be adequate to meet her needs which I will deal with later.

*(c) The standard of living enjoyed by the family concerned before the proceedings were instituted or before the spouses separated as the case may be.*

The parties enjoyed a very comfortable standard of living before the institution of proceedings although at times there were financial difficulties necessitating borrowing from the bank. They lacked for nothing in a material sense and were able to afford a very comfortable lifestyle and enjoy material prosperity and physical comfort. They had a number of holidays each year. Because of the assets available in this case, it will be possible for the parties and their children to enjoy a comparable standard of living in the future.

*(d) The age of each of the spouses and the length of time during which the spouses lived together.*

The applicant is 50. The respondent is 49. The parties lived together from their marriage in October 1987 until December 2003 a period of 16 years. They had known each other for a period of 9 years before that.

*(e) Any mental of physical disability of either of the spouses.*

The applicant has a problem in relation to the excessive consumption of alcohol. The respondent considers that he is an alcoholic and has told the court that there is a history of alcoholism in the family. The applicant himself however says that he has been told that although he has a drinking problem that he is not an alcoholic. Whether the problem amounts to alcoholism or not is in any event is not so import as is the fact that the problem with drinking is a surrounding circumstance in this case.

*(f) The contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family including any contribution made by each of them to the income, earning capacity, property and financial resources of the other spouse and any contribution made by either of them by looking after the home or caring for the family.*

The applicant is and has been since the marriage the sole financial provider for the family. He has and will continue to make financial provision for his wife and children and to pay for their ongoing educational requirements. The respondent was a practising solicitor prior to the marriage. After the marriage however she did not work as a solicitor apart from a short period prior to the birth of the eldest child when she did part time work, and devoted herself to her husband and her family. Her home is likely to be the family home of the children because of the breakdown in relations between the applicant and his children. Although the children are all at boarding school the respondent will be looking after them during the school holidays. Moreover she will have various commitments relating to their education involving matters such as attending parent/teacher meetings, school plays and other such activities. This will involve a considerable amount of travel because three of the children are at present at school in England and it is anticipated that the fourth one will also go to England for her secondary education.

Apart from devoting herself to the welfare of the children following her marriage, it is common case that she was supportive and helpful to her husband in all his endeavours both in relation to the business of a shop which was associated with the business of the estate and also in relation to the farming activities which he carried on. It cannot be said however that such assistance contributed significantly to his income or indeed his earning capacity.

The respondent also put into a joint account IR£10,000 from the proceeds of the sale of a house which she had owned prior to the marriage. She also encashed an insurance policy worth approximately IR£10,000 to help the applicant deal with some debts. She had a car which was traded in by the respondent in order to buy a new car. The respondent also told the court that she introduced the applicant to a bank manager from whom the applicant was able to borrow some money. She also helped him in the disposal of some property by introducing him to the auctioneer. In the overall picture however these matters are not of great significance. The applicant acquired the T. Farm in 1986, that is prior to the marriage. The transfer of the farm to him at that time was to avoid death duties although the precise timing may have been in some way connected with his forthcoming marriage. The applicant's property has been acquired through inheritance and it cannot be said that the respondent contributed to its acquisition. Neither, in my view, can her help in respect of his business activities in particular the shop and his farming activities be said to have contributed to his income or earning capacity in any real sense. In so saying I do not wish in any way to diminish her huge contribution to the marriage as a devoted mother and as a supportive wife and homemaker. The nature of his business in managing the estate and farm enabled the applicant to be around the home more than in the case of many people with a similar income and this is a factor to be taken into account also in assessing the extent to which the presence of the respondent as principal homemaker enabled the applicant to generate the income. In the particular circumstances of this case it does not seem to me that her presence in the home was a factor to which great significance can be attached. The applicant's ability to earn an income was not dependent in any significant way on the respondent assuming the role that she did.

*(g) The effect on the earning capacity of each of the spouses of the marital responsibilities assumed by each during the period when they lived together, and in particular the degree to which the future earning capacity of the spouse is*

*impaired by reason of that spouse having relinquished or forgone the opportunity of remunerative activity in order to look after the home or car for the family.*

Shortly after her marriage the respondent ceased practice as a solicitor in order to devote her energies to her marriage and her family. She has been absent from the workforce for a period of approximately seventeen years. In my view there is no reason why she should not resume practice as a solicitor should she wish to do so. However her earning capacity would be diminished by virtue of her relatively long absence from the workplace. The respondent has not indicated to the court that she has any desire to return to the workplace as a solicitor. Given the extent of the assets in this case there is no financial necessity for her to do so. The applicant too is a solicitor. However he abandoned that career prior to the marriage and it is highly unlikely that he will return to practice. The issue of having relinquished or forgone remunerative activity to look after the home and family does not arise in the case of the applicant.

*(h) Any income or benefits to which either of the spouses is entitled by or under statute.*

No evidence has been given to the court of any income or benefits to which either party is entitled under statute. No doubt the respondent receives the appropriate childrens allowances but these are not a significant factor in the context of this case.

*(i) The conduct of each of the spouses if that conduct is such that in the opinion of the court it would in all the circumstances of the case be unjust to disregard it.*

The respondent submits that the applicant has damaged his children to the extent that it is common case that they do not wish to see him. It is submitted that his desire to retain the manor house with the consequence that the family would have to move is evidence of his rejection of them and evidence of a lack of preparedness on his part to make good the damage caused to them. It was submitted that the purpose of section (i) in the context of this case, was to make good "something that Mr. C. is not prepared to make good, in circumstances where he is the person who caused the damage". In my view such a reading of the section is unduly strained.

Section (i) obliges the court to take account of the conduct of the parties where it would be unjust to do so, which is a different concept than that of reparation for damage done. Furthermore, although there is no doubt that Mr.C's actions caused huge upset not only to his wife, but to his children also. I do not accept that his wish not to transfer the property to the respondent manifests a lack of preparedness to try and undo some of the damage done. In my view the totality of the evidence shows that Mr. C. was very devoted to his children and was involved in their lives. He understands that his actions have caused enormous pain and he is anxious to reconcile with them. His desire to retain his property is not evidence that he is not prepared to try to improve relations between himself and his children.

Section (i) has been the subject of scrutiny in the Supreme Court in the case of *T. v. T*. [2002] 3 I.R. 334. The following passage appears at p. 370 in the judgment of Keane C.J:

> "Finally, there is the question as to when it would be "unjust" within the meaning of s. 20(2)(i) to disregard the conduct of each of the spouses.

In *Wachtel v. Wachtel* [1973] Fam. 72, Denning M.R. said at p. 90 that:-

'There will no doubt be a residue of cases where the conduct of one of the parties is ... 'both obvious and gross', so much so that to order one party to support another whose conduct falls into this category is repugnant to anyone's sense of justice. In such a case the court remains free to decline to afford financial support or to reduce the support which it would otherwise have ordered. But, short of cases falling into this category, the court should not reduce its order for financial provision merely because of what was formerly regarded as guilt or blame. To do so would be to impose a fine for supposed misbehaviour in the course of an unhappy married life ... in the financial adjustments consequent upon the dissolution of a marriage which has irretrievably broken down, the imposition of financial penalties ought seldom to find a place.'

The Master of the Rolls was speaking at a time when there was no statutory equivalent in England to s. 20(2)(i). The law was altered in 1984 so as to require the court to have regard to the conduct of each of the parties where it would be, in the opinion of the court, "inequitable" to disregard it. It would appear, according to the statement of the law in *Bromley on Family Law* (7th ed.) at p. 841 that there has been no change in the practice as a result.

I would agree with the view expressed in *Wachtel v. Wachtel* [1973] Fam. 72, that the court should not reduce the financial provision which it would otherwise make to one of the parties save in cases where the misconduct has been, as the Master of the Rolls put it, "obvious and gross". The same approach should logically be adopted to a proposed increase in the level of financial support because of the suggested misconduct."

In T. v. T. the court overturned the decision of the trial judge to invoke s.(i) of the Act in circumstances where one of the parties had a number of affairs in the course of the marriage.

In this case the conduct relied on by the respondent in support of her contention that it would unjust to disregard it, is specifically confined to the conduct surrounding the break-up of the marriage and the behaviour after that time in the conduct up to making of the order of the court dated the 15th day of July, 2004. The court was told explicitly that no reliance was been made on any behaviour prior to December, 2003.

The ending of a marriage because of the infidelity of one of the parties is always likely to be hurtful and upsetting. It is likely to give rise to an understandable sense of anger and betrayal. The hurt is likely to be the greater in cases such as the present one where the respondent considered that the marriage was a happy one, and felt that a loving, committed relationship existed. The circumstances, in which having despatched the family on holiday to Antigua, the applicant installed his present partner in the family home was described by the respondent in terms on which I have already commented. It is hardly surprising that those actions had a serious effect on the respondent and the children. It is hardly surprising that the respondent shows in court feelings of anger and hurt and that relations, not only between the parties but between the father and children are very strained. However, having

regard to the guidance provided by the Supreme Court in the case of T. v. T. in my view the actions of the husband at the time of his infidelity do not come within the parameters of the type of conduct – "obvious and gross" which would justify the implication of section (20)(2)(i) of the Act.

In addition to relying on the circumstances of the marriage break-up as conduct such as would make it unjust for the court to ignore it, the respondent relies on the conduct of the applicant after the break-up. There were understandable tensions between the parties and a number of incidents, some of which have already been referred to and others which are the subject matter of correspondence between the solicitors. It is unnecessary to give the details of those unpleasant incidents. However I am quite satisfied that none of them are of such a nature to warrant the application of this section of the Act.

The respondent also complains bitterly about the financial arrangements following the break-up of the marriage and relies on the applicant's conduct in regard to such matters as being conduct such as to warrant the invocation of the provision of this subsection of the Act.

The respondent claims that in March, 2004 the applicant "cut her off without a penny". It appears that the applicant had complained about the respondent's expenditure of money. On the 10th day of March on his instructions, she was denied access to the joint account held by the parties. This caused very considerable distress to the respondent and she had a number of cheques dishonoured. She was left in difficulties when returning the children to school in England and she described not having enough money to get a taxi to the school of one of the children. She had to go into a bank in England to try and contact the applicant's bank in Ireland with a view to getting to release monies to her. The respondent had at that time a credit card but was unable to use it because she was in excess of the credit limit permitted. Eventually the applicant put four hundred pounds sterling credit on the credit card to enable her to deal with that particular crisis. She also told the court that she had to borrow money from a taxi driver. I have no doubt that the matters described were embarrassing and distressing for the respondent. However, I do not accept that the applicant deliberately sought to embarrass the respondent by the withdrawal of financial support or to "cut her off without a penny" as she alleged. On the contrary, it is clear that the applicant was anxious to have the appropriate financial arrangements put in place. On 12th March, just two days after the joint bank account being closed to the respondent the solicitor for the applicant wrote to the respondent a letter in which he sought "a response as a matter of urgency with a view to concluding appropriate arrangements pending a resolution of all issues". This was followed up by a notice of motion of March 22nd in which the applicant sought an order "regulating the maintenance and financial arrangements between the parties pending the trial of the action herein". It is to be noted too that in providing the four hundred pounds sterling through the respondents credit card account involved an expenditure of €6,000 by the applicant, such was the extent to which the respondent had exceeded the permissible level on her credit card. I am not convinced that in his financial dealings with the respondent after the break-up of the marriage the applicant was trying to humiliate or embarrass the respondent. Therefore the financial dealings of the applicant with the respondent during the period in question do not amount to such conduct that it would be unjust to disregard it in all the circumstances of the case.

*(j) The accommodation needs of either of the spouses*

The children, all of whom are at boarding school will continue to live with the respondent at times they are not away at school. This is likely to last into the future as the youngest child is aged 10 years at present. The children lived in the farm until April, 2003 and the respondent is anxious to remain there and in particular considers it important for the children to continue living there. It is clear that she needs accommodation of a nature that will be suitable for her growing family. Moreover there is no financial reason to why such needs could not be met in the future. The applicant is now residing on the farm with his new partner. It is his intention to continue managing the business. Unfortunately, because of the breakdown in relations it is unlikely that the children will be staying with him in the near future, although things may change somewhat should a reconciliation between father and children take place. A considerable amount of evidence was devoted to the question of residence and I will return to this issue.

*(k) The value to each of the spouses of any benefit (for example, a benefit under a pension scheme) which by reason of the decree of judicial separation concerned that spouse will forfeit the opportunity or possibility of acquiring.*

The court has heard no evidence of benefits under pension schemes to which this provision is applicable.

*(l) The rights of any person other than the spouse but including to whom either spouse is remarried.*

Apart from the children of the marriage whose interest have to be protected there is no evidence of any other person whose rights have to be taken into account.

**Decision**

41. The respondent is most anxious to remain on in the manor house and she told the court that that is the wish of the children also. She told the court that living on the farm was always regarded as a temporary arrangement and that the children grew up in the expectation of living in the manor house. She told the court that the children "disconnected completely" from the farm and believes that continuity of residence in the manor house would be essential for the stability and well being of the family. She told the court that after moving into the main house in 2003, the children chose their bedrooms in the house and the rooms were decorated in accordance with their wishes.

42. Any difficulties concerning a possible tax clawback if the manor house was not in use for business purposes could be overcome were the family home to be partly used as a bed and breakfast business and the respondent told the court that she has studied the feasibility of such a venture.

43. The respondent considers that it is quite feasible for the parties to live in proximity one in the manor house and the other in the farm. The court has been informed that there has been no incidents between the parties since October 2004. Moreover, it is possible for the resident of the T. Farm to avoid contact with the resident of the manor house. There is no need to share the driveway that is common to both houses because of the existence of a back driveway providing access to the farm alone. The respondent denies that there is any animosity between herself and members of the estate staff which might cause difficulties were the parties to continue living in proximity. The respondent also believes that the applicant deliberately sought to bring about a situation where the court

would find that the parties should not live side by side. With this in mind she said that the applicant orchestrated the unpleasant incidents between the parties - an allegation which I have no hesitation in rejecting as being highly unlikely.

44. The applicant however considers that it is not desirable that the parties continue to live in proximity and points out that relations between the parties are very strained – and they are not on speaking terms. On the last occasion when they met there was an unpleasant incident. He wishes to remain either in the manor house or on the farm, although the latter option is more probable. He envisages the possibility that in the context of estate development, the manor house might be incorporated into the business aspect of the estate and be used other than as a private residence.

45. I appreciate the concerns expressed by the respondent on behalf of her children and I understand her wish to continue to live in the manor house. However I do not think it sensible that the parties should live in proximity unless there were coercive reasons why they should do so. Notwithstanding, the fact that there is a separate back avenue giving access to the farm I think that there is considerable potential for unpleasantness and tension between the parties should they live in proximity because of the acrimony that exists between them and the fact that there have been unpleasant incidents since the breakdown of the marriage. The last time the parties met in September, 2004 there was a scene over the applicant's alleged refusal to hand over the zapper which activated the electronically controlled gate by which he normally gained access. Because of his refusal, she was forced to use the front gate she was equipped with a security camera which she said was used to observe her comings and goings. In my view if the respondent remained in the manor house while the applicant continued to manage the business it is almost inevitable that issues would arise - which would cause further unpleasantness - not because the issues might be difficult to resolve - but because of the strong antipathy of the respondent towards the applicant which was quite apparent in her evidence. Moreover should the parties continue to live in proximity I consider it to be likely that members of the staff might become embroiled in the dispute.

46. I am not convinced that it is essential for the wellbeing of the children that they continue to live in the manor house. It has only been their family home for a period of approximately two years. Whether the family moved into the house on the 10th April, 2003, or later on in the summer, as the applicant maintains, is not of any significance in this regard. It must be remembered too the children are all at boarding school and therefore away from home for very a large part of the year. Even during the school vacations they are likely to be away from the home during part of that time on holidays. The court has evidence they "disconnected completely" from the farm even though that was where their family home for by far the greater portion of their lives I am not convinced that they lack the flexibility to cope with matters if their residence is to be changed. Moreover there is no evidence in the lengthy medical report to suggest that remaining in the house is of major significance to them. In my view the evidence of the respondent in that regard was partially coloured by her own very understandable sense of hurt. Her evidence too in relation to the lack of difficulties with the staff does not represent the reality of the situation. I have to have regard also to the fact that of the sixteen years of her marriage, only two have been spent in the manor house.

47. The applicant has a strong claim to the house. Firstly he is the sole owner. Secondly he has had family connections with it for a very long time. Thirdly the respondent did not contribute either directly or indirectly to its acquisition as the house was inherited. (It is convenient to point out here that the farm also was acquired without the assistance of the respondent. It was his property prior to the marriage. The applicant would have acquired the farm whether or not he married the respondent, although the actual timing of his acquisition may have been connected with the timing of his marriage.) In my view too it is desirable that the option is kept of using the manor house as part of a development plan. The court has heard evidence of the possibility of a clawback by the revenue authorities of a sum of money in the event of the manor house being used as a family home rather than for business purposes. A figure of approximately €2.3 million has been mentioned. However it is clear that in the event of such a clawback the sum is likely to be very considerably less and a sum in the region of €400,000 is more realistic. Neither the potential liability in that amount nor the proposal to cater for guests to avoid such liability are factors of significance in arriving at a conclusion concerning the ownership of the house. Having carefully considered all the evidence I consider that it would be punitive and unfair to order the transfer of the manor house to the respondent in this case. There is no reason why she would live on the T. Farm because the children are "completely disconnected" from it and the respondent herself has expressed no desire to live there. On the other hand the applicant may choose that option either in the context of the development of the manor house or as part of the business or otherwise. He may also choose to sell it to satisfy the requirements of this case. As I cannot accede to the ardent desire of the respondent to remain in the manor house it remains for the court to allocate a sum of money which will enable the respondent to purchase a suitable alternative dwelling house in keeping with the standard of living she has enjoyed in her married life. In that regard a number of comparators were furnished to the court. As is not unusual such comparators are of but limited assistance. One of the comparators was a very distinguished house in Clare which sold for €3.325 million. Another example was a house on 160 acres in Skibereen where an offer of €3.1 million had been made. That house is further from the city and airport than the present house, on the other hand it has a large acreage going with it. The farmhouse itself with an agreed value of €1,500,000.00 was submitted by the respondent as a suitable comparator. But by the same token however it could be claimed that a suitable comparator would be the manor house and whatever value is put on that. In my view having carefully considered all the evidence concerning valuation a sum of €3m would be the appropriate figure to buy a suitable house for the respondent yet to such sum must be added the costs of acquisition and includes stamp duty and legal fees. The evidence is that such would add approximately 10% to the cost of the house and accordingly in respect of alternative accommodation I think the appropriate sum is €3m plus 10% - that is a sum of €3,300,000.

48. The law provides very specific statutory guidance as to the factors to be taken into account by the court in deciding what constitutes proper provision in any given case. The widely different circumstances from one cast to another however make it desirable that there be considerable discretion vested in the court of trial. This has been recognised by the Supreme Court in the of *T. v. T.* [2002] 3 I.R. 334 where that point was emphasised in the judgment of Keane C.J. where he said at p. 365:

> ". . . It is obvious that the circumstances of individual cases will vary so widely that, ultimately, where the parties are unable to agree, the trial judge must be regarded as having a relatively broad discretion in reaching what he or she considers a just resolution in all the circumstances".

49. At p. 414 of the same judgment Fennelly J. stated:

> "The Oireachtas, in choosing the approach it enshrined in s. 20, made a considered decision to confer upon the court a duty of a particularly broad discretionary character. . . "

50. There is no hierarchy in the statutory requirements to which the court must have regard and as Denham J. said at p. 381 of the judgment:

> "The relevance and weight of each of the factors will depend on the circumstances of each case."

51. Neither is there any requirement that in ample resources cases the court should use the one third of assets as a method of

ascertaining what constitutes proper provision in any given case.

52. Denham J. said at pp. 384 to 385 in the judgment of *T. v. T*. [2002] 3 I.R. 334:

> "The concept of one third as a check on fairness may well be useful in some cases, however, it may have no application in many cases. It may not be applicable to a family with inadequate assets. It may not be relevant to a family of adequate means if, for example, such a sum could only be achieved by a sale of assets which would destroy a business, or the future income of a party or parties, or if it related to property brought solely by one party to the marriage, or any other relevant circumstance."

53. In the present case the property assets of the parties were inherited and brought to the marriage by the applicant. The concept of one third as a check on fairness is not in my view useful in the present case. In the present case the decision that has been reached on the basis that proper provision for the respondent requires the purchase of a suitable home and a suitable and proper level of maintenance, having regard to what is proper provision for the applicant as well. In default of an accurate calculation of the real value in capital terms of the maintenance figure awarded by the court it is not possible to give an accurate figure in percentage terms of the total assets which is represented by the order of the court. If that figure approximates to one third of the assets it is not the basis on which this decision is made. In the circumstances of this case it is my view that the provision of appropriate maintenance together with provision of a lump sum to purchase suitable accommodation is the best way to ensure proper provision for both of the spouses and the children. It appears to me that such an approach is the best way to ensure the future of the business - which is the parties main source of income - while at the same time being fair to both the applicant and the respondent. It also takes into account the fact that the properties were inherited by the applicant and bought into the marriage by him.

54. The respondent told the court that she thought that a sum of €240,000 for herself and €120,000 a year for the children would enable her to have the same standard of living as heretofore. That sum would not only include travel for the children's education it "would cover everything for the five of us, including travelling, holidays, clothes, groceries, dogs, cats, ponies and everything". It would however exclude school fees. The court has not been told how the respondent arrived at these figures. The sum of €240,000 is almost exactly one third of the income of the applicant. Mr. Peelo told the court that such an annual sum would be more valuable than a lump sum of €4.5 million. However the value of €240,000 per annum in lump sum terms was not provided although Mr. Peelo stated that the actuarial valuation would be in the order of 16 to 20 times the annual sum. In all the circumstances of the case the sum of €240,000 per annum after tax seems to me to be fair and appropriate to make proper provision for the respondent in the present case. The figure in respect of the children is more problematic. I have no doubt there are many extra expenses incurred. In my view a sum of €20,000 per annum is appropriate for maintenance in respect of the children. This sum is to cover all expenses including extra curricular school costs, but not the school fees.

55. Accordingly the court will make an order for judicial separation on the grounds of 21(f) of the Judicial Separation and Family Law Act, 1995. The respondent is to leave the family home. The applicant is to provide her with a sum of €3,300,000 for the purpose of obtaining alternative accommodation. The applicant is to provide the respondent with such sum of money as will after the deduction of tax amount to €240,000 per annum index linked.

56. In addition the applicant is to pay €20,000 tax free in respect of each child while they continue to be dependants. He will also continue to discharge the school fees for the children.

57. In my view it is also appropriate that the respondent transfer to the applicant her interest in the company. I will discuss the terms of the order with counsel and in particular the manner in which the maintenance is to be secured.