



## Press Summary

28 June 2023

Unger and another (in substitution for Hasan) (Appellants) v UI-Hasan and another (Respondents)

[2023] UKSC 22

*On appeal from: [2021] EWHC 1791*

Justices:

Lord Hodge (Deputy President), Lord Hamblen, Lord Leggatt, Lord Burrows, Lord Stephens

### Background to the Appeal

Nafisa Hasan (“the wife”) and Mahmud UI-Hasan (“the husband”) married in 1981. In 2012 in Pakistan the husband obtained a divorce. The wife applied to the courts in England and Wales for financial relief under section 12(1) of the Matrimonial and Family Proceedings Act 1984 (“the 1984 Act”) on the basis that the divorce was an overseas divorce recognised as valid in England and Wales. On her application under the 1984 Act, the court in England and Wales was empowered to make any of the orders which it could make under the Matrimonial Causes Act 1973 (“the 1973 Act”) if a decree of divorce had been granted in England and Wales.

The husband died before the final determination of the wife’s application. Nonetheless, the wife wished to pursue her claim for financial relief against the husband’s estate. In the High Court, Mostyn J considered that he was bound by the prior decision of the Court of Appeal in *Sugden v Sugden* [1957] P 120, but would otherwise have held that the wife could continue her claim against the estate of the deceased husband on the basis that the wife’s unadjudicated claim for financial relief was a cause of action vested in her and subsisting against the husband’s estate under section 1(1) of the Law Reform (Miscellaneous Provisions) Act 1934 (“the 1934 Act”). He considered that the Court of Appeal authority was incorrect but was binding on him so that he was compelled to and did dismiss the wife’s claim against the estate of the husband.

Mostyn J granted a “leapfrog” certificate enabling an application to be made for leave to appeal directly from the High Court to the Supreme Court and this court granted that application.

Before this appeal was heard, the wife died. The appellants before this court are the personal representatives of the wife's estate and the second respondent is the executor of the husband's estate.

There were two issues before the Supreme Court.

The first was whether the rights under the 1984 Act read with the 1973 Act, were personal rights which could only be adjudicated between living parties so that, on the death of the husband, the wife could not pursue her claim for financial relief against the husband's estate.

The second was whether a claim for financial relief under the 1984 Act is a cause of action which survives against the estate of a deceased spouse under section 1(1) of the 1934 Act.

## Judgment

The Supreme Court unanimously dismissed the appeal.

Lord Stephens gives the lead judgment, with which Lord Hodge, Lord Hamblen and Lord Burrows agree. Lord Stephens concluded that the true construction of the 1984 Act read with the 1973 Act is that, when a party to an application under Part III of the 1984 Act dies, further proceedings cannot be taken [102]. To allow proceedings to continue after the death of a party to the marriage would require a major reform to the law, which is for Parliament [101].

Lord Leggatt gives a concurring judgment, with which Lord Hodge, Lord Hamblen and Lord Burrows agree. Lord Leggatt added observations about the defect in the law which Mostyn J's judgment had exposed [104].

## Reasons for the Judgment

The Court noted the principles surrounding matrimonial property and family relationships have changed [7]. It is no longer correct to question whether the rights created by matrimonial legislation are rightly called rights [8].

Applying the principles in *Barder v Caluori* [1988] AC 20 [23 – 26] to this appeal, the question is whether, where one of the parties to an application under the 1984 Act for financial relief has died, further proceedings can be taken. In answering this question, one must first identify the nature of the further proceedings – here, a continuation of the claim for financial relief. Second, one must determine whether on the true construction of the relevant statutory provisions the right to apply for financial relief can only be adjudicated between living parties [30 – 32].

If the relevant statutory provisions create personal rights and obligations between living parties only, there is no need to go on to consider whether the claim for financial relief is a cause of action within s1(1) of the 1934 Act [33].

To arrive at the true construction of the statutory provisions enabling the wife to apply for financial relief, it is appropriate to consider the legal context and judicial decisions prior to the enactment of the 1984 and 1973 Acts [38].

It is clear from judicial decisions that matrimonial legislation was understood as creating personal rights and obligations which end on the death of a party to the marriage [39 – 64].

The orthodox understanding that financial provision on divorce only enables orders to be made as between living parties to a former marriage is also supported by the provisions which Parliament enacted in the Inheritance (Provision for Family and Dependents) Act 1975 (the "1975 Act"). The Law Commission reports which lead to the 1975 Act support this conclusion [65 – 74]. This statutory construction also avoids the duplication which would otherwise occur by creating two different routes to secure financial relief following the death of a spouse [75]. Further, a textual analysis of the 1984 and 1973 Acts supports this view [78 – 94]. *Barder v Caluori* created a limited exception to the general rule [95 – 100].

As on their true construction the statutory provisions in the 1984 and 1973 Acts create personal rights and obligations which can only be adjudicated between living parties, the first issue is determined in favour of the respondents and the appeal is dismissed.

The second issue as to whether a claim for financial relief under the 1984 Act is a cause of action which survives against the estate of a deceased spouse under s1(1) of the 1934 Act does not arise for determination [103]. However, if on their true construction, the statutory provisions in the 1984 and 1973 Acts had created rights and obligations which did not end on the death of the husband, then a claim for financial relief would be a cause of action within the meaning of the 1934 Act [35] [40].

*References in square brackets are to paragraphs in the judgment*

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)