

Chapter 12: Guidance on answering the self-test questions

Question 1: Bilkiss and Amir divorce. Bilkiss is disabled and requires a specially adapted home and also works from home. The home has a substantial level of equity and Amir is very well paid. The couple have two children, aged 13 and 14 respectively. Bilkiss wishes to remain in the home until the children have left home and requires a large share of the equity in the house to find a suitable home. Bilkiss and Amir agree that Bilkiss can remain in the home until the youngest child is 21 years old or if Bilkiss remarries or cohabits for more than six months. Once the 'trigger' event occurs, the house will be sold and Bilkiss will receive 80% of the sale proceeds. Explain which order will be suitable to achieve this and the advantages and disadvantages of such an order.

The type of order which will be used to achieve this settlement is a Mesher order. The advantages of such an order is that it provides a solution in such a situation where an immediate sale or transfer is not suitable and allows a property to house one party securely. The disadvantages of a Mesher order are that it is often unclear who has the responsibility of maintaining the home, and the house may decrease or increase dramatically in value leaving the parties with either too much capital from the 'pot' or too little to purchase a new home.

Question 2: Bilkiss works part time as she cares for the children. She believes that it will be very difficult for her to find full-time employment, even when the children have left home. Amir wishes to have a clean break. What income orders may be suitable for this situation? How could the court achieve a clean break?

The income orders which may be suitable in Bilkiss' situation are either a periodical payments order with an extendable term or a nominal periodical payments order. Both types of order will allow the court to review the issue of periodical payments according to the parties' financial situation. A clean break may be difficult to achieve in these circumstances. A lump sum order giving Bilkiss sufficient financial security may allow a clean break but only if there are sufficient assets.