

Trustees & Divorce: Navigating Stormy Waters - Key Cases Mentioned

Alex Carruthers

Hashem v Al Shayif

<https://www.bailii.org/ew/cases/EWHC/Fam/2008/2380.html>

A very useful case on divorces and trusts. Refers to the balancing act to be performed when deciding how to use the power to vary trusts

*I also referred to the case in which I was involved – **Mubarik** where the English court varied a Jersey trust.*

<https://www.bailii.org/ew/cases/EWHC/Fam/2007/220.html>

*It should be noted that the Jersey court subsequently refused to enforce the variation order but made an order in the same terms for different reasons (under *Saunders v Vautier* type jurisdiction).*

Bajul Shah & Alina Gerasimenko

DR v GR [2013] EWHC 1196 9 (Fam)

<https://www.bailii.org/ew/cases/EWHC/Fam/2013/1196.html>

*Useful case as (i) refers to companies being susceptible to variation applications as nuptial settlements whether or not it is owned by a trust of which the spouses are formal beneficiaries and (ii) discusses joinder of trustees (cf. *TM v AH*).*

Chai v Peng & Others [2017] EWHC 792 (Fam) particularly [125]

<https://www.bailii.org/ew/cases/EWHC/Fam/2017/792.html>

Mammoth judgment following final hearing of financial remedies, referred to due to Bodey J's obiter comments as regards what is being "settled" in the nuptial settlement, i.e. use or ownership, and the effect this has on available remedies.

TM v AH [2016] EWHC 572 (Fam)

<https://www.bailii.org/ew/cases/EWHC/Fam/2016/572.html>

*Short judgment of Moor J considering the question of joinder of the trustees of two foreign trusts in the matter of W's application to vary said trusts on the basis they were nuptial settlements. Moor J expressly disagreed with Mostyn J in *DR v GR* that notification of trustees was sufficient; he considered that Art.6 of ECHR required trustees to be joined before the court varied trusts of which they were trustees.*