

**Matrimonial Causes (Guernsey) Law, 1939 – wife’s application in respect of the matrimonial home and maintenance for herself and the children of the marriage – regard to the ‘check-list’ in s.25 of the English Matrimonial Causes Act, 1973 – housing of the parent with care of the children must come first – house to be vested in the wife with the husband entitled to a 50% share in the equity on one of the ‘trigger’ events – detailed order to be drafted by counsel.**

**The Judge of the Royal Court summarised the Applicable Legal principles as follows in paragraphs 8, 9 and 10 of his judgment:-**

8. The Guernsey courts take account of the “*check-list*” set out in Section 25 (as amended) of the English Matrimonial Causes Act, 1973. These principles and the leading English cases are familiar and applied very regularly. The welfare of the children is a “*first consideration*”, which is not the same as a paramount consideration taking precedence over all other matters, but is the first thing on which the court should direct itself. The court should have regard to all the Section 25 factors and, although in the individual circumstances of a case, one or more might prove more important than others, there is no intrinsic reason why one factor should outweigh the others. Under case-law, followed in Guernsey, there are principles of fairness, non-discrimination and equality as a yardstick that apply. In addition, another general principle is that a home for the minor children is normally a main requirement, consistent with their welfare as a first consideration. This case does not, in view of its individual facts, require an investigation of the leading cases. H’s inability to provide the documentation required and his long-standing failure to pay maintenance are factors that should be taken account of in a broad way in considering this case and not disregarded.
9. The Court of Appeal decision in E v E, 2007-8 GLR 133 and 374, caused some surprise and discussion in the Guernsey Family Law Bar. In England it can now be said that a Meshers type order would be unusual unless the Court was satisfied by credible evidence, either that the eventual net proceeds of sale would be sufficient to provide for both parties, or, for some reason that was not necessary or desirable. As indicated, the facts in E v E are distinguishable from the present case and I also share Advocate Fooks’ concern, based on fact, that H will not pay maintenance and the possible vulnerability of the family home to *saisie* proceedings. There may well be E v E type circumstances where a Meshers order would be suitable, but in the majority of cases it appears some sort of alternative order is preferable.
10. In the present case, considering W’s considerable contributions, as well as H’s substantial early contributions, together with the needs of the children and the obligations of the parties, I accept the suggestion put forward on behalf of W in respect of the house. Where, as here, there are dependent children, the housing of the parent with the care of the children must come first. The most important consideration in matrimonial finance/property cases is the need to accommodate the differing individual circumstances of each case. The present set of facts is unusual.