Lanyon Bowdler
SOLICITORS

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Your quarterly bulletin on legal news and views from Lanyon Bowdler

Legal UPDATE

Court Backs French Pre-Nup

Although pre-nuptial agreements are persuasive rather than binding under English law, a recent ruling of the High Court on a French 'pre-nup' illustrates clearly the current approach of the courts.

It involved a very wealthy French couple who married in France in 1994, having entered into a pre-nuptial agreement. They moved to London in 2007, at which time they were already discussing separation. They separated in February 2008 and informed their children the following July. The wife then commenced divorce proceedings in the UK.

The couple's decree nisi was granted in 2010, but has not yet been made absolute. The husband contested the commencement of divorce proceedings in the UK, arguing, unsuccessfully, that the divorce should be conducted under French law.

Unusually, the value of the family assets was not in dispute, so when the financial settlement came to be dealt with, it was only the split of the assets that needed to be decided. The family assets amounted to approximately £15 million.

The wife claimed that their assets should be shared equally, with a maintenance agreement for £40,000 per year for each of their three

children. The husband argued that the assets should be split according to the terms of the pre-nuptial agreement, with a smaller maintenance payment.

The Court ruled that the pre-nuptial agreement should bear weight and that the assets should be divided so as to give the wife a fund sufficient to provide maintenance of £100,000 per annum for life (£2.2 million), together with the assets she had introduced to the marriage and an additional sum (mainly for the purchase of a suitable property) of approximately £4 million.

Contact us for advice on any family law matter.

Landlords Lazy Over Cost Control

According to a recent 'Which?' report, landlords are lazy when it comes to making sure that costs such as insurance premiums and the like, that are passed on to their tenants, represent good value for money.

Which? reports that tenants who have taken responsibility for arranging their own insurances have achieved savings of up to 60 per cent.

If you believe that costs passed on to you by your landlord are too high, you may be able to challenge them. If straightforward negotiation fails, options such as going to the Leasehold Valuation Tribunal to set the service charges or forming a tenants' management group may be available. We can advise you on your options.

Government to Outlaw Squatting in Residential Premises

The Ministry of Justice has now published its response to the recent consultation on proposals to criminalise squatting. The consultation paper, entitled 'Options for dealing with squatting', received over 2,000 responses. As a first step, the Government is proposing to make squatting in residential properties a criminal offence.

The offence would be committed where a person:

- was in the building as a trespasser having entered as such;
- knew or ought to have known that he or she was a trespasser; and
- was living or intending to live in the building.

Section 7 of the Criminal Law Act 1977 already makes it a criminal offence for a trespasser to fail to leave residential premises when required to do so by or on behalf of a 'displaced residential occupier' or a 'protected intending occupier'. While this allows those who are effectively made homeless by squatters to take action, it does not protect landlords or owners of second homes.

At present, the Government is not planning to criminalise squatting in commercial premises.

The legislation will not apply in situations where the property has previously been occupied legitimately, such as where

tenants fall behind with their rent payments.

If you are having problems with unauthorised use of your property, contact us for advice.

Positive Action Needed to Protect Rights

A landowner who failed to take sufficient action to protect a portion of his land found that the Court of Appeal backed his neighbour's claim to register the title to the land.

The land concerned was outside a hedge, which acted as the effective boundary between his land and the neighbour's land. The neighbour claimed the right to register the strip of land up to the hedge in his own name under the law of 'adverse possession'. The landowner had put in some fence posts along the actual boundary and started to erect a fence, but this was not completed. He claimed that this was sufficient to show that he had retaken possession of the land.

Had this argument been successful, the landowner would have interrupted the ten years of continuous unopposed occupation necessary to make an application to register title to land by adverse possession.

However, the Court ruled that the landowner's action was not adequate to interrupt the adverse possession by the neighbour.

Contact us for advice on protecting your legal rights over your land.

Lotto Win Not Part of Family Assets

A court ruling that a spouse's lottery winnings were not 'matrimonial property' so were not subject to the usual rule of equal division between the spouses when the marriage broke up received much publicity recently.

The normal rule is that matrimonial property (assets built up during the marriage) is divided equally on divorce. Non-matrimonial property (normally assets brought into the marriage or inherited by one party during the marriage) is not subject to the equality principle.

Although this case has been seized upon by some commentators to mean that if you win the lotto you can part from your spouse or civil partner and be sure of retaining your winnings, the reality is not so clear-cut.

The case was decided by Mr Justice Mostyn. Neither party was legally represented, neither spoke English and the precedent case law stemmed from Australia.

In 1999, the wife and a friend won £1 million in a lottery and this they divided equally. She apparently did not tell her husband about her good fortune, but did use the money to buy them a house.

The couple's marriage appears to have been in difficulty for some years before divorce proceedings were commenced, and they were divorced in 2006.

The court hearing was to determine the financial settlement between them. Both have low-paying jobs and the husband is nearing retirement. On the basis of needs, the judge ordered the wife to pay her ex-husband £85,000.

The facts in this case were highly unusual and it may well be that a different conclusion would be reached in different circumstances.

For advice on all aspects of family law, contact us.

Conduct Determines Legal Ownership

When a property is owned by two people as joint tenants (where the title to the property is owned by each of them, so that if one dies, the other inherits the property by survivorship), each of them is considered to be the legal owner of the property.

A man and woman bought a house in 1992 as joint tenants. They separated in 2001, leaving the man in occupation. The woman and her daughter moved out.

The man issued a notice severing the joint tenancy and sent copy notices to his ex-partner. The effect of this would be to change the ownership to a 'tenancy in common', whereby each of them would own a 50 per cent share of the house. However, the copy notices were never received by his ex-partner. Later, the man began to suffer from mental incapacity and his daughter was appointed his deputy, to look after his affairs. His ex-partner applied to the Court of Protection for permission to sell the house so that his share could be used to pay for his long-term care, but before this could take place, the man died and his deputy was then appointed the personal representative over his estate.

The question then arose as to whether or not the joint tenancy had been severed. If not, the house would not form part of the man's estate, but would pass to his ex-partner by survivorship. The personal representative argued that the tenancy had been severed, by virtue of the mutual conduct of the man and his ex-partner. The court disagreed, but concluded that the joint tenancy had been severed by his ex-partner's application to sell the house and to divide the net proceeds.

What this case shows is that where people demonstrate a clear intention to sever a joint tenancy (as will normally be the desired outcome on divorce or separation) but the formalities are not completed, the court will look at their conduct overall to determine the correct position.

For advice on all matters relating to property ownership or relationship breakdown, contact us.

Unreasonable Behaviour Leads to Access Limitation

The normal presumption of the family court is that a child will benefit from contact with both of its parents. However, when a judge heard evidence of numerous examples of unreasonable behaviour by a girl's father, the court ruled that he should not contact his daughter, her mother or her child minder and could only see the child if her mother permitted it.

The judge believed that the girl's mother was capable of assessing whether or not contact with the father would be beneficial to the child. The father, on the other hand, was described as obsessive and considered to be untrustworthy as regards any

assurances he might give regarding his future behaviour. As he had repeatedly threatened legal action, he was also banned from bringing any further legal proceedings with regard to the child for a period of two years.

In addition, the court ruled that the mother was required to keep the father reasonably well informed about the girl's upbringing and wellbeing.

The decision of the lower court was upheld by the Court of Appeal.

If you expect separation or divorce to lead to problems over care for and access to your children, our family law experts can help you.

Information Failure Costs Landlord

If you are the owner of a 'buy to let' property, a recent case highlights the dangers that may result from failing to comply with the regulations relating to tenants' deposits on assured shorthold tenancies.

Most landlords will be aware of their obligations to tenants with regard to the protection of their deposits and the provision of information regarding the chosen tenancy deposit scheme, although some recent decisions may have led one to believe that a fairly relaxed attitude would be taken by the courts regarding failures to comply with the rules.

Recently, however, a landlord who failed to provide a tenant with information on the deposit protection scheme in use was made to pay the penalty of three times the deposit, despite the fact that by the time the case came to court the tenancy had ended and the deposit had been returned to the tenant.

Failure to Comply With Procedure Invalidates Will

One of the basic rules for creating a valid will is that it must be signed by the testator and the signature must be witnessed by two people. Failure to follow this or a number of other simple rules can lead to a will being successfully challenged in court.

Recently, the daughters of a Sikh man who left the large majority of his estate of nearly £900,000 to his sons won their legal battle to have their father's will declared invalid.

The man had three sons and three daughters. The daughters contested his will, which awarded all but £40,000 of his estate to his sons.

The daughters disputed that their father's signature had been witnessed correctly. His neighbour gave evidence that although he had signed the will as a witness when the testator signed it, the other witness was not present at the time.

The court agreed that as the witnesses were not both present to attest to the man's signature when the will was signed, it was not valid and the man's estate should therefore be distributed according to the laws of intestacy.

We can help you make sure your will does not fail due to procedural error.

Intention Sufficient Basis for Rectification of Will

When a woman updated her will in 2003, she had no way of knowing that a simple change to a precedent document could cause problems for her executors several years later. There was no intention to change one of the main provisions of the will, which was that if her spouse failed to survive her for 28 days, the family home should pass to her daughter.

Under the terms of the original will, the property would be put in trust, with her husband having the right to live in it for life. It would then pass to her daughter on her husband's death. However, the new precedent left the gift conditional on her husband surviving her by 28 days. When he did not do so, the error in the new document became clear as the gift to the daughter 'failed' and the house then fell into the 'residue' of the estate.

Since this was clearly not the woman's intention when she updated her will, the family went to court to have it rectified. Despite the fact that the claim was not brought until some months after probate was granted, so was technically 'out of time', the court permitted rectification.

If a manifest error has been made in drafting a will, the fact that it has not been corrected before the person making it has died does not necessarily mean that the error cannot be put right.

Contact us for advice on any will or probate matter.

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