

## Divorce and Fluctuating Asset Values

Financial agreements on divorce can take a wide variety of forms and in a time of economic uncertainty how you choose to divide your assets demands careful thought. Agreements based on current circumstances may be inappropriate if circumstances change and reviews of lump sum cash settlements are rarely allowed. The courts will only allow an appeal of an order out of time in respect of capital sums if specific conditions are met; these do not include a change in financial circumstances arising from fluctuations in the economy.

The much-publicised Myerson divorce case, in which a businessman failed in his attempt to reduce the divorce settlement agreed with his wife, after his shareholdings had plummeted in value, illustrated that divorcing couples with assets that may be subject to wide fluctuations in value should think particularly carefully about who gets what.

A more recent case, which was described as the 'flipside' of the Myerson decision, concerned a woman who agreed a cash settlement with her ex-husband in 2007, under which he retained shares in a company that was valued at £800,000. Within months of the settlement, he had sold the company for nearly £4 million.



The ex-wife was given permission to seek a renegotiation of the settlement. Her argument was that her ex-husband had failed to keep the courts informed of the improvement in the company's fortunes when the financial settlement was agreed. However, Lord Justice Thorpe ruled that none of the legal requirements that would allow

the ex-wife to reopen negotiations over the division of assets had been met in this case.

The current economic situation is likely to make the courts more sympathetic to the idea that a divorcing couple should share the risk of holding assets that are subject to rapid changes in value (such as a business or shares). This may lead to a couple having shared interests long after they are divorced. It may also be more difficult to achieve a 'clean break', as neither party may be willing to give up an interest in the 'copper-bottomed' assets. If a couple does agree that one of them should have less risky assets whilst the other keeps the interest in the riskier ones, then the variation in risk is likely to be reflected in the respective proportions of the total assets retained by each.

**Contact us for advice on any matrimonial issue.**

## Failure to Keep Will Up to Date Costs Family

The importance of having an up-to-date will is highlighted by the events following the death of a wealthy Scotsman. His personal circumstances had changed but his will had not.

The man separated from his wife in 2005 and each signed an agreement that they would make no financial claim on the other. However, the

couple never divorced and he did not alter his will, under which his entire estate passed to his wife.

When he died suddenly in 2008, aged 49, his family sought to challenge his will, but their application to have it declared void was thrown out by the court.

## Will Stands Despite Family Challenge

It is often the case that families consider they are entitled to inherit the estate of a relative, but in most cases people are free to distribute their assets as they see fit.

In a recent court case in Bristol, the niece and nephew of an elderly man claimed that his will – which left the bulk of his estate to two brothers, with whom he had been friends for years, and the rest of his estate to charity – was a forgery.

The man had suffered a stroke in 2001 and was visited regularly by

the brothers until he died of natural causes in 2007, aged 90. The court heard evidence that he had not seen his niece or nephew for many years, but the brothers were frequent visitors. The man's accountant testified that she had been told that he intended to give his estate to the brothers and both the witnesses to his will testified that he had asked them to witness his signature.

Faced with such solid evidence, the court concluded that the will was valid and rejected the claim of the niece and nephew.

Had the man used a firm of solicitors to make the new will and arranged for a copy to be retained by them, the case would almost certainly never have come to court in the first place. In this case, the winding-up of the estate was delayed for a long time by the challenge to the will.

**Contact us if you would like to discuss making or changing a will. We can also help make sure that your estate is administered efficiently and without unnecessary delay.**

## Does Right of Access Mean Right to Park?



A case dealing with the parking rights relating to three adjoined houses (all part of a development of older agricultural buildings) has been decided by the Court of Appeal. It has implications for developers of similar properties, such as barn conversions.

The case produced (in the judge's words) a "snowstorm of incidents and issues" relating to the right of the owners of one of the houses to

park on land adjacent to the properties and in spaces in the lane serving them. The Court concluded that for the right to park to be implied by a right of vehicular access, the ability to park must be 'reasonably necessary' for the exercise or enjoyment of the land being accessed. It is not sufficient that the right to park is desirable. Parking must be necessary to make proper use of the accessed land. In other words, there is no automatic right to park if there is a right of vehicular access to a piece of land.

In her conclusion, Lady Justice Arden said, "There is a common misunderstanding that an Englishman's home is his castle in the sense that he can build walls, put up gates and do other acts on his land whenever he chooses, and

without regard for his neighbours... While it is often true that a person can do what he wants on his own land, it is not always so. The law expects neighbours to show some give and take towards each other... Parties to other boundary disputes and their advisers should also, at all times, have this point firmly at the forefront of their minds, and seek to resolve their disputes accordingly, and without resort to complex and expensive litigation."

**If you are considering buying land where there may be issues over access, parking or use of adjoining land, it is important to make sure that your legal rights are clear in the relevant documentation. Contact us for advice on property purchases and sales.**

## Past Exposure to Noise Warrants Compensation

Although the UK now has strict regulations governing exposure to noise, the exposure which causes a hearing loss may occur many years before the loss becomes noticeable. A recent case has opened the door for claims concerning hearing loss shown to have been caused by exposure to noise many years ago to be brought to court.

It involved a number of textile companies in the East Midlands, which were sued by an employee who had

developed noise-induced hearing loss after working in garment factories between 1971 and 1989. In this case, the argument was made successfully that where there was a risk that the employee could be adversely affected and this should have been ascertained and acted on by the employer, the claim can be brought under the Factories Act 1961, regardless of the specific regulations relating to noise. The 1961 Act provided that an employer had a duty to safeguard employees by providing, as far as reasonably practicable, a safe working environment.

## Friends Fall Out When Agreements Not Formal



Doing business with friends can be fraught with danger, as a recent case illustrates.

It involved two men, one of whom was building a house for himself and his fiancée. He wanted to have some complex electrical devices built into the house and entered into discussions with his friend (who is a builder), who advised him that the work required would cost in the region of £15,000.

The details had been agreed by the end of 2001 and there was a costed

schedule of works at that point. As is not at all unusual, as time passed the house owner changed the specification and added extra items to it. It is clear that as this was occurring, neither of the two men put the changes that had been authorised and their cost implications into proper written form, with the predictable result that at the end of the project, the bill presented was for more than £15,000 and a dispute arose.

The homeowner refused to pay the extra amount and the matter ended up in court. The hearing took three days, the cost of which must have been similar to the value of the original contract. In court, it was accepted that some of the changes warranted extra payment as 'variations' or 'extras'. Additionally, there was no complaint about the quality of the workmanship: the dispute was over the cost and the cost alone.

In essence, the claimant's case was that it was a design and build contract with reasonable

remuneration for labour and materials supplied. The defendant's case was that it was a fixed price contract for £15,000 and that almost all of the extras should have been accommodated within that price.

The court ruled that the contract was not a fixed price contract and awarded the claimant a modest extra sum.

The essential point is that the case only arose because, being friends, the two men did not agree things formally as they went along, each assuming that their view of the circumstances was also held by the other. When this turned out to be incorrect, a falling-out was predictable.

The moral of the story is that if you value your friendships, it is doubly important to make sure that you have all the necessary paperwork in place if you do decide to do business with friends. It is a mistake to rely on your friendship to prevent a disagreement.

## Judge Uses Discretion in Contact Proceedings Case

When considering any question relating to the upbringing of a child, the courts take into account all the child's circumstances and always attempt to ascertain what would be in their best interests. In a recent case involving a 14-year-old girl, the right of the judge to use his discretion to decide who should be the girl's guardian was confirmed.

The girl had been involved in contact proceedings for over ten years and the same Children and Family Court Advisory Support Service (CAFCASS) officer had been her appointed guardian since the beginning of the proceedings. The judge concluded that the best outcome for the girl would be achieved by not disrupting a relationship that was working effectively and ruled that the CAFCASS officer should continue to be

her guardian, rather than appointing the National Youth Advocacy Service (NYAS).

NYAS provides trained and supported independent visitors to children who are eligible and for whom it is in their best interests. NYAS is often involved in cases such as this and the judge invited it to prepare a report and to decide if it felt it should intervene and act as guardian instead of CAFCASS. NYAS declined, because unless it was formally appointed as her guardian, it had no access to public funding and could not therefore prepare the report.

The girl's father appealed the decision that CAFCASS not NYAS should be his daughter's guardian. However, the judge in the Court of

Appeal refused to make an order transferring guardianship to NYAS as there was no evidence to suggest that this was a more appropriate solution. In fact, changing the girl's guardian would disrupt her routine and would mean that she had to develop a new relationship with a different guardian. This could only be viewed as having a detrimental effect as it would cause the girl unnecessary stress. Her relationship with the CAFCASS officer had been working successfully for over ten years and the judge saw no reason to fix something that was not broken. The appeal was therefore dismissed.

Although NYAS would normally be appointed as guardian, given the circumstances in this case the judge was entitled to decide that this was not in the girl's best interests.

## Unexpected Behaviour Means Harm Not Foreseeable

The decision in a recent case will come as a relief to dog owners.

It involved a dog named Hector, a two-year-old Great Dane. Hector had been mistreated as a puppy, which occasionally led him to bark at the sight of strangers. Otherwise, he was a gentle dog.



In 2004, Hector had been let off his lead by his owner, who thought that no one else was in the vicinity. Unfortunately, a runner was passing and Hector unexpectedly jumped up at him. As Hector weighs more than 12 stone, this knocked the runner over and he broke his ankle as a result. He sued Hector's owner for being negligent in his handling of the dog and was awarded damages by the court. In

the view of the court, Hector's owner had taken insufficient care to ensure there was no one else in the immediate area before letting him off the lead.

The owner appealed, arguing that he would have kept Hector on his lead had he known there was anyone else nearby and that since Hector had no prior history of jumping up at people, his handling of the dog was reasonable in the circumstances.

The decision in the Court of Appeal turned on the question of what the appropriate standard of care is in such circumstances. The key issue is that to find a person negligent, it is necessary for the court to be satisfied that a reasonable person would consider that, as a result of his actions or omissions, there was a possibility of injury resulting which was sufficiently probable to be anticipated.

The Court of Appeal concluded that a reasonable person would not have anticipated that physical injury to another person would occur in the circumstances.

Whilst the decision will be welcomed by dog owners, it is nevertheless worth bearing in mind that had the circumstances been different, Hector's owner could have found himself having to meet a substantial claim.



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