

IS YOUR WILL WATER TIGHT?

Most people think that their property is theirs and they can leave it to whomsoever they wish. Sadly, this is not necessarily the case. Thanks to the Inheritance (Provision for Family and Dependents) Act 1975.

The 1975 Act enables a family member or dependent of a deceased person to claim a share or increased share of the deceased's estate. The Court has power under the Act to make "reasonable financial provision" if the Will has not done this. The Act sets out the matters which the Court should take into consideration in dealing with such a claim.



The majority of claims under the 1975 Act are brought either by surviving spouses or children although claims by partners (cohabitants) have become more popular in recent years.

A BAD DEAL IN THE CROWN COURT

We learned recently of a sorry tale of injustice involving a client of ours. He had been the victim of the theft by a former employee of over £15,000. The employee was duly convicted by a jury at the Crown Court where the Judge made what is known as a Confiscation Order requiring the employee to repay the money she had stolen or face another 9 months in prison. The Judge had already given her 12 months for the original offence of theft.

Where the claim is by a surviving spouse the Court will be required to consider what provision the Claimant might reasonably have expected to receive if on the day on which the deceased died the marriage, instead of being terminated by death, had been terminated by divorce. There have been a number of recent divorce cases involving wealthy parties which have left the law in a state of some uncertainty (White -v- White, Miller -v- Miller and Charman -v- Charman). It is sometimes argued that "reasonable provision" in the context of the 1975 Act means half of the deceased's estate. This is a dangerous assumption and cannot be safely relied on.

The Act also applies to intestate estates where the deceased did not make a Will. It is open to a member of the deceased's family to challenge the statutory intestate's succession rules if he or she thinks they do not provide reasonable financial provision. The various cases that have come before the Courts emphasize the importance of careful planning when the Will is prepared.

MELANIE PRATLETT —
Partner, Wills Estates and Trusts

The employee duly paid up and there you might think the story would have ended happily for our client. Tragically the Judge did not make an order that the Defendant compensate our client and the Court is now refusing to pay the money over to him.

The State has developed some pretty novel ways of parting us from our hard-earned money but this is, we think, a first.

We are hoping to take this case to the High Court on judicial review. Watch this space.

TOM HARRISON — Senior Partner

Welcome

Welcome to our latest Newsletter. We hope that you will find it informative and of interest.

We recently managed to get all of the partners of Adams Harrison and a photographer together at the same time and so below is a picture of them to enable you to put faces to names.



From left to right: Shoshana Goldhill — Family Partner; Melanie Pratlett — Wills, Estates and Trusts Partner; Rhodri Rees — Business, Commercial and Residential Property Partner; Jenny Carpenter — Civil and Criminal Litigation Partner; Paul Cammiss — Managing Partner; Tom Harrison — Senior Partner.

Contents

Is your will water tight?	1
A bad deal in the Crown Court	1
Who regulates solicitors?	2
HIPs— What on earth is going on?	2
Equality	2
Partnership debts: Are you liable?	3
Kindly extinguish your cigarette	3
Last chance for enduring powers of attorney	4

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WHO REGULATES SOLICITORS?

Since January 2007 the regulation of Solicitors in England and Wales has been the responsibility of the Solicitors Regulation Authority (SRA). This body will be accountable to the new Legal Services Board which oversees the regulation of all legal services.

The SRA is made up of a Governing Board of 16 people of whom 9 are Solicitors and 7 are lay members. Further information about the Board members can be found at www.sra.org.uk.



The SRA is responsible for protecting consumers by setting and enforcing standards for Solicitors. This includes:-

- * Setting standards of professional behaviour.
- * Monitoring Solicitors to make sure they comply with the SRA's standard.
- * Taking action against Solicitors who breach those standards including, if appropriate, referring them to the Solicitors Disciplinary

Tribunal which has power to strike a Solicitor off.

- * Providing an information service to the public about suitably qualified Solicitors.
- * Setting standards for the education and training of Solicitors who want to work in England and Wales.

It is important that clients using our services have complete confidence in what we do and how we do it. We welcome the establishment of the SRA as we believe it is in the interests of both us and our clients that we as a profession are properly regulated and answerable.

Complaints against Solicitors will still be handled by the Solicitors Complaints Service (SCS) which is an independent complaints handling body. Unlike the SRA the SCS is part of the Law Society but operates independently.

Never before has the public been so empowered to call to account Solicitors who fall below the standards required of them. We have no problem with this and hope that the SRA and SCS are effective in maintaining the highest professional standards.

TOM HARRISON — Senior Partner

EQUALITY

New Regulations (Equality Act (Sexual Orientation) Regulations 2007) are due to come into force on 30th April 2007 that will prohibit discrimination on grounds of sexual orientation in the provision of goods and services, the management or disposal of premises, the provision of education and the performance of public functions. Regulations have been in place for some time making discrimination in the work place on the ground of sexual orientation unlawful. However, these regulations will encompass most areas of daily activity and access to services.

There are exceptions to the Regulations, to include organisations that are not run purely for profit, e.g. charities or religious societies. In such circumstances discrimination will be permitted provided it can be shown to be for compliance with a religious doctrine. Baroness Andrews said, when introducing the Bill, that opinion was divided on how the regulations should balance the competing rights of individuals to hold a religious belief against the rights of lesbian, gay and bisexual people to live free from discrimination. She has said that nobody will be required to act in a way that contravenes their core religious beliefs.

JENNIFER CARPENTER — Partner

HIPS (HOME INFORMATION PACKS) — WHAT ON EARTH IS GOING ON?

The Government's embarrassment continues to grow with yet another climb down over the introduction of home information packs. By making the home condition reports voluntary rather than compulsory the Government has reduced the original intended impact of HIPS. The Government rather lamely threatens that if the market does not embrace HCRs (Home Condition Reports) voluntarily then they will be made compulsory eventually.

HIPS are due to be introduced in June 2007 and will be required to include mandatory energy performance certificates (EPCs) but not mandatory HCRs. EPCs will grade properties energy efficiency and it is intended that these will be measured by an inspector. No one really knows at this stage how much HIPS will cost although the view seems to be that around £300 to £400 is the likely figure.

The view of most informed observers is currently that HIPS will bring very little tangible benefit to either sellers or purchasers but will undoubtedly end up costing them several hundred pounds.

Where would we be without Government and regulations?
Italy, I suppose.

JULIA FENNELL — Solicitor

PARTNERSHIP DEBTS: ARE YOU LIABLE?

The Partnership Act of 1890 must have been a very well enacted piece of legislation. The reason I say that is that it is still the statutory basis upon which the Law of Partnership is constructed 117 years after it arrived on the statute books.

A question that sometimes arises is whether a particular person is held out as a partner in a firm and thereby makes him or herself liable for the debts of the partnership. An employee is not liable for the firm's debts whereas a partner most certainly is.

This issue was considered by the Court of Appeal recently in the case of *M.Young Legal Associates Limited -v- Zahid and Others* (2006). The Court had to decide whether a salaried partner in a firm with no entitlement to a share in the profits could be held to be a true partner. The Court decided that he could although there are some sharper minds than mine

who think the Court of Appeal was wrong! For what it is worth here are the four main principals governing this sometimes vexed issue:

1. Whether the putative partner shares profits is an important factor but not necessarily conclusive.
2. The fact that the firm is actually called "a Partnership" is not necessarily a decisive factor.
3. There must be a "business" rather than a mere pastime or hobby.
4. There must be a business activity that is a joint one and operated for joint profit.

There are various different types of business structure of which partnership is only one. Anyone intending to operate in business with another or others should consider the benefits of a formal Partnership Agreement rather than rely upon the provisions of the 1890 Partnership Act.

RHODRI REES — Partner

KINDLY EXTINGUISH YOUR CIGARETTE

On the 1st July 2007 it will become illegal to smoke in enclosed public places and work places in England and Wales. This will include offices, factories, shops, restaurants, bars, pubs, clubs and on public transport.

For those of you used to puffing merrily away wherever you happen to find yourselves life will never be quite the same again. As with most legislation nowadays there is a certain amount of ambiguity in the regulations (*The Smoke Free (Premises and Enforcement) Regulations 2006*). The ban will apply to all substantially enclosed public places although it is not entirely clear yet exactly what "substantially enclosed" means. The Government is to issue further guidance intended to clarify ambiguity on matters such as whether it will be permitted to smoke in hotel rooms.



IS THIS THE SMOKING AREA?

I am sure the more cunning smokers among you will find a way to continue your habit. The rest of us will just be shouting "put that fag out!"

TOM HARRISON — Senior Partner

COMPROMISE AGREEMENTS

Our employment lawyers have extensive experience advising employees and employers about settling employment claims. If the terms of an employee's departure have been agreed then matters can be settled by the employee and employer entering into a compromise agreement.

A properly formulated compromise agreement will be binding on the parties and will mean that the employee cannot bring any complaints or claims against the employer once the agreement has been signed. It is a necessary requirement of a compromise agreement that the employee receives legal advice as to the effect of the agreement. The Employment Appeals Tribunal has been strict at maintaining technical rules to ensure that Section 203 of the Employment Rights Act 1996 is fully adhered to when a compromise agreement is entered. This section specifies certain content of the agreement and formality to be followed. In cases where this has not been followed to the letter the employee has not been precluded from bringing a claim.

We would urge employers to instruct us to draft compromise agreements for them so as to ensure that all the formalities are followed. Otherwise, even though you may think you are genuinely compromising the employee's right to bring any claims, you are not, because the agreement is not properly constructed.

JENNIFER CARPENTER — Partner

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LAST CHANCE FOR ENDURING POWERS OF ATTORNEY

Enduring Powers of Attorney ('EPA') are simple documents by which an individual can delegate the management of his or her financial affairs to others. Such authority continues even after the donor has lost mental capacity due to an accident, a stroke or senile dementia.

EPAs were to be replaced in April by the new 'Lasting Powers of Attorney' ('LPA') to be brought in under the provisions of the Mental Capacity Act 2005. Implementation has already been postponed to October 2007 due to teething difficulties.

The primary intention of LPAs is to try to reduce instances of misuse or abuse. But do they?

LPAs can delegate powers to others in relation to financial affairs (the 'financial LPA') as well as healthcare and medical welfare decisions (the 'Welfare LPA'). Different attorneys can be appointed under each type of LPA. However, they are lengthier, more complex to put in place and likely to cost more. The LPA needs to be in a prescribed form and contain a statement by the donor that he has read the prescribed information about the LPA, and understand its effect. It must also contain a statement by the attorneys that they have read prescribed guidance and understand their duties and obligations. A 'Certificate of capacity' must be signed by a 'person of prescribed description' who the donor has known for at least 2 years, confirming that the donor understood the purpose of the LPA and the authority granted by it at the time of signing, and that no fraud or undue pressure was brought to bear on the donor. Finally,

the LPA must be registered with the Public Guardian. Attorneys will have no authority to act under an LPA until it has been registered. The donor can stipulate who needs to be given notice or whether any one should receive notification. An unscrupulous attorney could manipulate the situation so that no one be given notice and the LPA could be open to abuse or misuse.

All existing EPAs, and any made before October 2007, will continue to be effective. The donor can ask the attorney(s) to deal with his or her finances while the donor still has the mental capacity. Once mental incapacity arises the EPA needs to be registered by giving notice to the donor and at least 3 next of kin as prescribed. Those receiving the notice may object to the registration.

Those who already have an EPA, should consider whether it is wide enough to cover future changes of circumstances. For example, if a husband has merely appointed his wife as his sole attorney, consider whether another attorney should be appointed to cover the possibility of his wife predeceasing him or becoming incapable of acting as his attorney. After the 30th September, it will not be possible to make amendments to existing EPAs and legal guidance should be sought about an 'upgraded' Enduring Power of Attorney before the more complex LPAs come in. You only have to the 30th September 2007 to do this!

Make sure you do not miss out.

MELANIE PRATLETT —
Partner, Wills Estates and Trusts

PARDON ME ... I BURPED!!!

A driver was stopped by the police and provided a breath specimen that showed he was over the legal limit. He pleaded guilty but stated that the intoximeter machine at the police station had given an inflated reading because he had burped at the time of providing the specimen. The High Court Judge, on appeal, accepted that this was a special reason in law not to disqualify him from driving!

PET OWNERS BEWARE

You may recall reading about Jemima the pig in our Autumn/Winter 2006 newsletter. We successfully defended Jemima's owner when she was prosecuted by the RSPCA for allegedly causing unnecessary suffering to the animal. New laws were introduced on 1st April 2007 that give the RSPCA more powers than ever before, particularly in relation to the taking of pets and animals from their owners in cases where the RSPCA believe there has been neglect or abuse. The Animal Welfare Act 2006 creates a new offence of failing to meet the needs of your animal "to the extent required by good practice". This gives the RSPCA powers to dictate to the owner of an animal such matters as diet and environment for the animal. If the RSPCA don't consider that you are caring for your animal well enough, or in accordance with "good practice" then they can serve you with an Improvement Notice. Contravention of the Improvement Notice will be an offence.

We have experience in representing those prosecuted by the RSPCA and the Crown Prosecution Service for alleged offences in relation to their animals. Contact us if we can assist you.

JENNIFER CARPENTER — Partner