Collaboration -The Way Forward

We know the cliche - the brutal divorce; the scarred children; the aggressive lawyer. Too often separation and divorce deteriorate into slanging matches and expensive court litigation.

At Adams Harrison we are committed to dealing with family cases in constructive and NOT destructive ways. I have been for many years been a member of Resolution, a National organization of Family Lawyers (over 5000) committed to dealing with family cases in a positive and creative way. We seek to calm fraught parties and settle cases through negotiation rather than litigation.

The problem is that often solicitors acting for the other spouse/partner do not take this approach. Court orders - imposed or negotiated - can be unsatisfactory. I felt there had to be a better way when a Judge recently said to one of my client's "You're unhappy and your spouse is unhappy - that means it must be a fair result!".

With almost 50% of marriages ending in divorce why does it have to be so painful, the outcome unsatisfactory and why do many people feel so bruised and battered after this process? How can parents continue to parent together after separating? How can lawyers help and not hinder the process?

The answer is Collaborative Law. It has been practised for 15 years in the States and Canada and has just hit the UK shores. It involves openness, discussion and face to face negotiation.

In order to collaborate each party needs to choose a collaboratively trained lawyer and must agree:-

1. Not to go to court while collaborating.
2. To give open and honest disclosure about finances and all issues.
3. To participate in discussion and negotiation to find the best solution for the family.

Once you sign the agreement, the work begins!

The process involves a series of four way meetings (parties and lawyers), each meeting preceded and followed by debriefing between the client and their respective lawyers and the lawyers. If required other professionals can be involved e.g. accountants, estate agents counsellors/ psychiatrists. A decision to use a professional is always a joint one and professionals work alongside the 4 way meetings and are sometimes invited to attend.

The collaborative process recognises the emotional stress of marriage breakdown, the pace of the process is set accordingly.

It is the Parties who make the decisions. Your lawyer is with you - informing about the law, helping with the process and spelling out the consequences of decisions for both parties.

Cases are usually resolved after 5 or 6 meetings. It is generally quicker and cheaper than traditional proceedings. No one can guarantee satisfaction from any separation procedure but statistics suggest that collaborating leads to higher satisfaction and lasting agreements. Most importantly couples come out the other side of the process with their integrity intact, feeling that they have made good and fair decisions themselves and, if parents, able to continue to work together for the children. Not only is the process good for clients, it is good for lawyers and allows them to use their expertise creatively and positively and give their swords a rest! If you think you or someone you know can benefit from this process, then please feel free to contact me for more information.

SHOSHANA GOLDHILL
Partner - Family Department and Qualified Collaborative Lawyer

Congratulations

Rebecca Scott qualified as a Solicitor on 1st April. Rebecca first joined in 1997 as a Trainee in the Family Department and returned in 2003 having completed her Law Degree and Legal Practice Course. She will continue to do family and criminal litigation work.

Dennis Wright and Tony Page reached retirement age in March. We are very pleased that both of them have decided to carry on working with us. Tony has over 50 years of experience in solicitor's practices in Haverhill. Dennis is not far behind with over 48 years of experience with Adams & Land and Adams Harrison in Saffron Walden.

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The Hunting Act 2004

After a very troubled passage through Parliament the Government has finally enacted its manifesto pledge to ban hunting with dogs. The Hunting Act 2004 came into force on February 18th 2005. Under the Act it is now illegal to hunt foxes and most other mammals with hounds in the traditional way. This includes hunting on foot as well as on horse.

An offence will only be committed where the Prosecution can prove that the Defendant was engaged in "hunting" or in the pursuit of a wild mammal with one or more dogs. To be guilty of an offence a person must intend to pursue an animal. If a dog sets off in pursuit of an animal that will not necessarily mean that the dog's owner has committed an offence. If a dog takes it into his head to chase and kill a fox, deer or hare with no active encouragement or intent from the owner no offence is committed. Somewhat illogically the Act does not ban the hunting of rats and rabbits. Falconry is also exempt from the provisions of the ban.

The Act creates two additional offences which both come under the heading of "hunting assistance". A person who knowingly permits his land to be used for hunting commits an offence. Also a person who knowingly permits a dog belonging to him to be used for hunting commits an offence. Hare coursing has been made a specific offence and is defined as "a competition in which dogs are by the use of live hares assessed as to the skill in hunting hares".

The Act does not affect the use of dogs used in conventional game shooting activities. It will not be an offence, for example, for a dog to be sent in pursuit of a hare that has been shot and wounded.

The maximum penalty for any offence under the new Act is a fine of £5,000. There is no provision empowering the Court to imprison someone for committing an offence under the Act. However, if a person refuses to pay a fine they could then be sent to prison for non payment. The Court also has the power to order the forfeiture of any dog, vehicle or other object used for hunting or coursing.

The hunting ban has not been universally welcomed by the forces of law and order. The police have significant enforcement powers and may arrest a person reasonably suspected of having committed a hunting offence or coursing offence. There is no power of arrest in respect of the hunting assistance offences unless the police have first obtained a Summons.

The Hunting Act 2004 is, without question, one of the most politically divisive and contentious pieces of domestic legislation to arrive on the statute books in recent memory. An attempt to legally undermine the Government's recourse to the Parliament Act 1949 was defeated in the High Court earlier this year. People in the countryside have made their feelings very clear and the government, police and criminal courts can look forward to some interesting times ahead once enforcement of the Act gets under way.

TOM HARRISON
Senior Partner

FREEDOM OF INFORMATION ACT 2000

The Freedom of Information Act 2000 came into force on 1st January 2005. This means that public bodies including all local authorities and the police can no longer keep secrets from us. The Act is effectively an extension of the Data Protection Act 1988 and ensures greater access to information held by Government agencies.

The Act gives two related rights:-

* The right to be told whether information exists.

* The right to receive the information.

A request for information should be made in writing (except for environmental information which need not be in writing) and must be answered within 20 working days. There are a number of exemptions under the Act including disclosure of certain commercial interests and where the disclosure would amount to a breach of confidence.

I have already used the new provisions to startling effect. My understanding is that some authorities destroyed large amounts of information before the Act came into force. The Mayor of London, for one, had admitted to this. Hmmm.....

TOM HARRISON
Senior Partner

Family Department

The family department at Adams Harrison has a wealth of experience and expertise. It is headed by Shoshana Goldhill in our Saffron Walden office. She hails from the United States, qualified as a Solicitor in 1986 and has always specialised in family law. She recently trained as a collaborative lawyer. Paul Cammiss is the firm's managing partner and practises from our Haverhill office. He is a local lad living in Haverhill since he was 2 years old. He qualified in 1973 joined the firm as a trainee and became a partner in 1974. He practises both family and criminal litigation. Roy Withers also based at our Haverhill office has been in the profession for 43 years. He has undertaken all aspects of litigation, more recently specialising in family law. Our newest recruit is Rebecca Scott who has just qualified as a Solicitor and practises primarily from our Saffron Walden office.

THE DISABILITY DISCRIMINATION ACT 1995 - AN UPDATE

Although the Disability Discrimination Act 1995 (DDA) has been in force in part since 1996, it only fully took effect six months ago and there are still uncertainties about is precise meaning and impact.

The Act requires that providers of goods, facilities and services take reasonable steps to avoid discriminating against disabled people. This includes the need to make "a reasonable adjustment" to premises. The Act raises a number of questions:

What is "a reasonable adjustment"?

The test is subjective. A major retail chain will be required to do more than a local sole proprietor. The depth of the service providers funds and the relative benefit to its disabled customers are both relevant.

Who enforces the Act?

It is not for the local authority to enforce the DDA. It appears to be down to the individual who feels discriminated against to seek damages or an injunction in the county court.

Other questions in relation to premises include:

* Who pays for DDA improvements - the landlord or the tenant?
* Can a landlord force a tenant to carry out DDA alterations?

The Act answers none of these questions and many of the issues will not be covered by existing leases.

Whilst we rightly live in more accessible communities there is considerable uncertainty about the impact of the DDA. If DDA issues arise it is important to take appropriate advice, particularly on landlord and tenant and other property issues.

RHODRI REES
Rhodri Rees is the Commercial Property Partner at Adams Harrison

CRICKET LOVELY CRICKET

As the new cricket season swings into action players in the region will be preparing to compete in the Adams Harrison Midweek League.

We are now in our third year as sponsors for the Midweek League having succeeded AXA Insurance in 2002. The League has expanded to 20 teams from all over the Haverhill Region including many surrounding villages.

With the national side ranked second in the world and facing the Australians in the battle for the ashes this summer we are delighted to have the opportunity to foster cricket at local grass roots level.

Any local team wishing to join the league for the 2006 season should contact Adams Harrison Midweek League Secretary Colin Godsmark at 65 Mortlock Gardens, Abington Cambs CB1 6BD.

TOM HARRISON
Senior Partner

FARMERS BEWARE!

In a recent case (Wilson -v- McDonald 2004) a farmer was ordered to pay damages (well actually his insurers had to cough up) when his cattle strayed onto the highway. It was rough on the poor farmer because a gate had been left open by an unknown rambler. The Court took the view that the farmer had failed to carry out a proper risk assessment, even though there had been no similar incidents in the previous 36 years. Moral for farmers: always carry out a risk assessment.

TOM HARRISON
Senior Partner

THE BUDGET

Gordon Brown's March Budget was a pretty drab affair inevitably designed to titillate the electorate whilst actually giving nothing much away.

The increase in the stamp duty threshold for domestic property to £120,000 will not affect most residential properties bearing in mind that the average cost of a house has increased from £60,000 in 1997 to £158,000 in 2005. The threshold for non-domestic property remains at £150,000.

The most radical change (which came from the previous budget) is the Chancellor's plan to tax properties occupied by occupiers who previously owned them - the Pre-Owned Assets Tax. This introduces a curious form of income tax on the use or occupation of assets which have been previously owned by the tax payer, but which the tax payer had previously transferred in to a trust whilst retaining their use or occupation.

The tax applies from 6th April 2005 and affects those who have put their homes into a lifetime trust whilst remaining in occupation. Such a lifetime trust would have been created as an Inheritance Tax Planning device.

The new tax is to a certain extent a voluntary tax since one can elect to opt out of it. The drawback however is that such an election will result in the loss of the inheritance tax advantages for which the trust was initially set up.

For Inheritance Tax, the nil rate band increases to £275,000 for this tax year, £285,000 for the 2006 - 7 tax year and £300,000 for the 2007 - 8 tax year. Inheritance Tax is payable at 40% above the nil rate band.

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Have you been flashed?

Speed cameras are now a fact of life throughout Britain's roads.

However careful a driver you are it is very easy to lose concentration or to lose track of the limit that applies to an unfamiliar stretch of road and to see suddenly the flash of a speed camera recording you over the speed limit.

What does this mean?

The vehicle owner will receive a letter from the Speed Enforcement Centre requiring information as to the identity of the driver. If the owner fails to do so he is then liable to be prosecuted for an offence and will be liable to a fine of up to £1,000 and will have 3 penalty points endorsed on his licence.

There have been cases where the vehicle owner has been totally unable to identify the driver. He may avoid a conviction but Magistrates are understandably very cautious about accepting evidence that a driver cannot be identified.

Where the owner knows the driver and completes the documentation the speed recorded by the camera is the key factor. If it is not significantly over the actual limit the driver will be given the opportunity to pay a fixed penalty ticket of £60. He must pay within 28 days and produce his driving licence which then has 3 penalty points recorded on it.

If the speed is excessive then the probability is that the driver will not be given the opportunity of a fixed penalty ticket but will receive a summons to attend at the Magistrates Court. If the driver then pleads guilty to the offence, the Magistrates Court will then consider a level of fine up to a maximum of £1,000.

The level of penalty points that apply to the offence is between 3 and 6 points. The higher the speed the higher the amount of penalty points imposed.

The Magistrates can instead consider imposing a short period of disqualification from driving. As a rule of thumb possible disqualification arises if the speed is more than 30 mph over the limit and a disqualification in these sort of cases is usually between 14 days and 2 months depending on the actual level of speed.

It is, therefore, clearly better to go for the fixed penalty if the option is given to you.

What are the effects of the penalty points imposed on your licence? The law says that if you receive 12 penalty points in a period of 3 years through endorsements ("totting up") then you must be disqualified from driving for a period of at least 6 months unless the Courts find it would cause you exceptional hardship if you are disqualified.

Do not fall into the trap of assuming that you will be able to persuade the Magistrates that it will cause you exceptional hardship. Even if there are job implications they may not exercise leniency and use their discretion not to disqualify.

It is much more serious if you then find yourself before a Court again within that 3 year period. Even if the Magistrates have exercised discretion not to disqualify you once their powers to avoid disqualification on a second occasion are very limited indeed and disqualification is almost inevitable.

If you are 30 mph over the limit, although it may sound strange, sometimes a short disqualification can do you a favour. If your speed was such that the Magistrates are considering a short disqualification then the alternative would probably be 6 points on your licence. You may be better off becoming chauffeur driven for two or three weeks through a short disqualification rather than carry 6 points for a high speeding offence on your licence and run the risk of acquiring extra points in the next 3 years to make you liable to totting up. If you are disqualified then you would not receive penalty points.

If, having been disqualified under the totting up provision in the last three years you then find yourself before the Courts again for totting up you will be subject to disqualification for a minimum period of 12 months rather than the 6 months which applies on the first occasion.

There is one other rule about endorsements which is not known to a lot of people. If within 2 years of passing your test you find yourself having 6 points endorsed on your licence then the DVLA at Swansea must revoke your licence. You are not disqualified from driving but you go back to being a provisional licence holder and then have to take your test again including the written part of the test.

Finally I should add that not all motoring offences carry endorsement. The most common ones which carry endorsement are speeding offences, failing to observe traffic signs (e.g. going through a red traffic light), driving without insurance, careless driving or defective tyre and brake offences.

Straightforward parking offences e.g. parking on double yellow lines, or offences of not wearing a seat belt, do not carry endorsement.

PAUL CAMMISS
Managing Partner

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