

Latest News

Zoe Sloan has been promoted to Senior Solicitor. Zoe deals with all aspects of family law including cohabitation and pre-nuptial agreements. Zoe is based at our Ipswich office and is a member of Resolution.

Ian Pattinson has taken on the role of press officer for Resolution for the Cambridge area. Ian specialises in family law, particularly high net worth financial cases. Ian is a committee member of Resolution, an organisation of 5,000 lawyers who believe in a constructive and non-confrontational approach to family law matters. As the regional Resolution press officer, Ian will provide the media with comment on emerging family law issues.

Legal Update

The risks of cohabitation – a cautionary tale

The case of *Kernott v Jones* was recently dealt with by the Court of Appeal. This was a second appeal in a case about equitable interests in a property. The couple, who were not married, bought a house together in 1985. They subsequently separated in 1993. Mr K moved out and in 1996 bought another property in his sole name. Mrs J remained living at the property and raised their son. She paid the mortgage in full for 17 years. He made little or no ongoing contribution. In 2007 Mr K applied to court to cover his share in the property. The principal issue at trial and on the first and second appeals was whether and, if so, to what extent, the unequal shares had been varied after their separation.

There was no dispute at Court that at the time of their separation they each owned half of the property. At the time of separation, Mrs J assumed sole responsibility for the mortgage and outgoings. The first and second judge said Mr K. was only entitled to 10% of the value of the property. However, the Court of Appeal ordered that he was entitled to 50% of the value of the property, despite having made no contribution for 17 years.

The purchase of residential property is one of the most important transactions an individual makes in their lifetime and thought must be given at the time it is bought – particularly if the co-owners are unmarried - as to what their interests are in the property both at the time of purchase and also in the unhappy event that the relationship fails.

We strongly advise people who are planning to live together to take advice at the outset of their relationship and consider entering into a Cohabitation Agreement. If not the Court may impose an unwelcome settlement.

Those who reside together and are not married should also ensure that their wills reflect their wishes and to ensure inheritance should something happen to either partner. This is often overlooked, and in a recent survey carried out for Barnado's, over half of UK adults have yet to write a will. This figure rises to 74% of those who are cohabiting.

Varying maintenance 25 years after divorce *Vaughan v Vaughan [2010]*

The former wife of a barrister has succeeded in the Court of Appeal in her argument that she should be entitled to continuing maintenance payments.

The parties were divorced in 1985 after 18 years of marriage and an order for maintenance was made in favour of the wife. A court ruled last year that these payments should cease but the wife appealed on the basis that this was unfair and would cause her undue financial hardship. She received a lump sum award to capitalise her maintenance claims.

Effects of post-nuptial agreement *C v T [2009]*

In a recent case a post-nuptial agreement was upheld by the court on a number of grounds. The facts were that after a marriage of 24 years the husband and wife separated. They entered into a post-nuptial agreement providing for the husband to have no claim over the wife's inherited assets only over their joint property. The husband was subsequently convicted of offences of sexual abuse and sentenced to a term of imprisonment.

In financial proceedings, the husband asked the Court to make an award in his favour based on his needs. The wife relied on the post-nuptial agreement, her contribution to the marriage, the source of the wealth and also the husband's conduct.

The Court made no financial order in favour of the Husband concluding that he had appreciated the terms of the post-nuptial agreement and there was nothing in the agreement which made it unfair and on the evidence before the court it would have been inequitable to award him more.

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A wife who signed a joint mortgage whilst husband had an affair will not have home repossessed. *Howett v First Plus Financial Group Plc [2010]*

A wife who signed a joint remortgage with her husband has been told she does not have to make repayments because he was having an affair. The wife in this case was persuaded by the husband to take out a new bigger mortgage to cover debts. Shortly after the wife found out about his affair and the parties separated.

They subsequently divorced and she bought out his interest in the property. The husband was in the meantime declared bankrupt. The wife could not afford the new mortgage payments and an order for possession was made. However on appeal it was ruled that the husband's concealment of his affair impacted on his wife's consent and the mortgage was invalid towards the wife. The mortgage company can still apply for possession of the house because the husband remains responsible for the joint mortgage but if the house is sold, the wife will get half of proceeds.

Emotional wellbeing

A recent report suggests that those couples who share the household chores equally are far less likely to divorce than those who neglect the housework! The research indicated that the likelihood of divorce is highest in marriages where the wife worked outside of the home but was also responsible for the housework and childcare. Where couples shared these tasks this reduced the likelihood of divorce significantly.

Child maintenance disregard

Since April 2010, child maintenance can be fully disregarded when calculating all out-of-work benefits. This will enable parents with day-to-day care of children to keep every penny of their child maintenance payments without it affecting their eligibility for income related benefits. This changes the current system where parents in receipt of income related benefits can only keep £20 of child maintenance paid before it affects their entitlement to benefits.

It is expected that the full disregard will provide a greater incentive to parents to set up arrangements and to encourage payments.

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The family team at Birketts LLP are highly experienced professionals in all aspects of family law and if you wish to speak to a Birketts family law expert about any of the issues raised in this article then please contact our Cambridge office on 01223 326600, Ipswich office on 01473 232300 or our Norwich office on 01603 232300 and ask to speak to a member of the Family Department.

The content of these articles are for general information only. As always, specific professional advice should be taken on each individual matter.