

Law & Life

Brought to you by Parfitt Cresswell (Windsor & Fulham), Keene Marsland, Jevons Riley & Pope, Max Barford & Co

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Time to relax and take stock as the holiday season arrives

It's been a busy first half of the year, and it's time for a welcome holiday. Still, the second part of the year promises to be just as busy and fulfilling

THE SUMMER holidays have arrived and many of us are looking forward to taking a break. I'm off to Florida in August, a very welcome break from a hugely busy and very satisfying first half of the year.

So much has happened since the last newsletter. I've been back to an All Party Parliamentary Group at the House of Lords, where one issue raised was funding care for the elderly and the establishment of the universal Deferred Payment Agreement scheme. This scheme means people should not be forced to sell their home to pay for care home fees, which has to be a good thing. However, few people have taken up the Agreements and questions were raised as to whether the scheme had been promoted sufficiently.

Another issue was that inheritance tax planning could result in a person not being eligible to use the scheme. If you believe you may need to use a Deferred Payment Agreement, you need to make sure you are not excluding yourself from eligibility if you own your home jointly, and factor this into your



A bit of horseplay: some of the Parfitt Cresswell team relax at the Windsor horse show

inheritance tax and estate planning when making a will.

As for next month, we're releasing our latest book and video for children whose parents have separated. It's called "Hey, we're part of this too!", and takes children through the separation process in an age-sensitive way. It aims to reassure the child that the separation is never their fault and explains some of the steps Mum and Dad may take to go forward in their

new lives. We all need the unconditional love and care of our parents, and children of separated parents are happier when they continue to have that love from both parents. If you would like a copy, contact me to join our pre-order list.

Our next newsletter will be in September. Until then I'll leave you with a photo of us at the Windsor horse show — it was a great day. Enjoy your summer hols. ■

Teresa Payne

FAMILY LAW: FINANCIAL SETTLEMENTS ON DIVORCE

Why a divorce settlement is not always a clear cut affair

Most people assume that a financial settlement will view both parties equally. But this is not always the case

IN THE minds of most people, the terms of settlement of a divorce are reached by taking into account the practical aspects of life, especially when it comes to the financial element of the settlement. The court will usually look at what each party needs to sustain a reasonable standard of living, taking into account things such as whether there are any children and so on, and make their judgment accordingly. The courts will usually assume that both parties are equal in terms of how they cope with the effects of the divorce.

However, a recent — and unusual — divorce case would appear



to suggest that a person's frame of mind and ability to cope may actually be taken into account when a court considers a divorce, and may have an impact on the financial settlement.

In this case, the order dealing with the finances of a divorcing couple awarded the wife almost all of the couple's assets. The courts were also willing to leave a French property of reasonable value, in which the wife would ultimately have a one-third interest, out of the settlement. The husband took the case to the Court of Appeal and tried to overturn the financial settlement.

The interesting aspect of this

case is that the husband was judged to be in a better position than his wife both emotionally and financially to deal with the divorce. He had potential to borrow a significant sum under a mortgage and so it was considered that he could purchase himself another home without hardship. The judge observed that the husband was "apparently much more resistant to the impact of marital breakdown".

The court were prepared to take into consideration the fact that the wife was emotionally fragile, and this was one of the factors which the court took into account when refusing the husband's application to review the financial settlement.

This case is an important reminder that divorce has a financial and emotional impact, and obtaining legal advice on divorce may help to maximise the chance of success in any financial settlement.

For more information please call the Parfitt Cresswell Family Team today on 01753 271640 or email us at family@parfittcresswell.com ■

PROPERTY: BUSINESS COLLATERAL

Take care when your home is used as security for a loan

A house is a place to live in, but a property can also be used as collateral, and it is here you need to take care

WHEN THE Small Business Enterprise and Employment Act 2015 was introduced, the Government described it as a "wide ranging Act which paves the way for businesses to get improved access to finance". However, harsh commercial reality dictates that setting up a business often requires financing from a bank, and the bank will usually want to take a mortgage over the assets of the borrower. And often the only asset the borrower can offer as security for the loan is the matrimonial home.

A problem can arise in these circumstances because, typically, a husband and wife own their matrimonial home together. If the business is unsuccessful, a home repossession by the bank could leave the wife (and children, if any) without a home. For this reason, the law recognises that the wife may have felt she had little choice but to agree to mortgage her home.

The courts considered cases on this subject in 2001, and laid down requirements to try to protect all parties, in particular insisting that

the wife is given full details of the financial transaction and has to take her own independent legal advice (as opposed to relying on the advice received by her husband).

In a recent case, circumstances were slightly different in that a mother agreed to mortgage her home as security for her son's business debts, but the principles are largely the same. The bank's attempt to repossess the property was unsuccessful because the bank could not demonstrate that they had taken sufficient steps to notify the mother of the seriousness of the transaction, and had failed to inform her of the need to obtain her own independent legal advice.

So if a solicitor or lender acting for your spouse sends you a letter requesting your signature to any documentation, remember that it is very important you obtain your own legal advice. ■



The Law & Life Recipe

Rotini with Swiss Chard

INGREDIENTS

- 8 ounces rotini pasta (or other pasta like fusilli)
- 3 garlic cloves, minced
- 2 tablespoons olive oil, divided
- 2 cups chopped tomatoes
- 1 pound Swiss chard, chopped
- (with thick center veins removed)
- Salt and pepper to taste
- 1 tablespoon lemon juice
- ¼ cup crumbled feta cheese (or Parmigiano-Reggiano)

METHOD

- Cook rotini to al dente stage as per instructions.
- Drain and keep warm.
- Meanwhile sauté garlic in one tablespoon of oil over medium heat in a very large skillet for one minute.
- Add the tomatoes and cook for three minutes.
- Stir in the Swiss chard, using an additional tablespoon of oil. Place the lid on top and steam for about five minutes or until the Swiss chard is tender-crisp.
- Mix the rotini, salt, pepper and lemon juice into the chard mixture, folding gently.
- Spoon onto serving platter; sprinkle with feta cheese
- Makes four main dish servings, or about 10 side servings.

Win an iPad mini with the Law & Life Brain Teaser

*Try your hand — and your mind — at the Law & Life Sudoku challenge
This month's prize for the first correct entry — an iPad mini!*

		1			8			6
9	7	8	6		2			1
			3			8	4	
	9		2			7	8	
8				3				9
	4	5	8		1		2	
6	2				3			
3			7		6	9	1	2
5				2		3		

How to Enter

The objective in Sudoku is to place a number from 1 to 9 in each square so that:

- Each horizontal row contains each number exactly once
- Each vertical column contains each number exactly once
- Each small group of 9 squares contains each number exactly once

This month's prize is an iPad mini. Send your completed entry to:

*Parfitt Cresswell, 17-21 Victoria Street,
Windsor, Berkshire SL4 1HE*

Please mark the envelope "Brain Teaser" and include your name, address, telephone number, and email address. Closing date: 11 Sept 2015

The winner of the April competition was Georgina Allman. Congratulations!

When a simple solution is not always the best solution

Homemade wills are seen by many to be a simple way to have their wishes known. But it may not always turn out that way, as a tragic case reveals

RONALD BUTCHER died alone, probably in March 2013, although his body was not found until May. With Mr Butcher's effects, a homemade will, dated 5 January 2013, was found. In this will he named his builder, Mr Sharp, as the sole executor and beneficiary of his estate. Mr Sharp had known Mr Butcher for about six years prior to his death and had carried out building jobs for him.

The will was challenged by a cousin, who had not spoken to Mr Butcher since 2012, and a Mrs Hutchins (whose family were close to Mr Butcher and indeed called him "Uncle Ron"), who asked the court to confirm that an earlier will of Mr Butcher, dated 4 December 2011, be put forward to probate. In that will, Mrs Hutchins was named



as an executor and one of the beneficiaries.

The estate was worth arguing about, because it was valued at just under £500,000. There was a suggestion that Mr Butcher's signature had been forged

on the 2013 will, but this allegation was dropped on the basis of expert handwriting evidence. There was also no suggestion that Mr Sharp had attempted to force Mr Butcher to prepare the 2013 will in his favour, and on the basis that the 2013 homemade will was short and straightforward, the court found in Mr Sharp's favour.

There is often room for argument in relation to the affairs of someone who has died. This case highlights the possibility that a homemade will may be more open to challenge, and may result in the

deceased's true final wishes not being taken into account.

If someone prepares his will through a firm of solicitors, the solicitor will almost certainly create clear attendance notes and letters recording the circumstances of preparation of the will. This will provide compelling evidence that the person knew and approved the contents of their will and had signed it properly. This makes a professionally drawn-up will much more difficult to challenge.

For this reason, the best policy is to use a professional adviser who can help you consider whether there is anyone who may have a claim against your estate, and can help ensure that your will, however unpalatable to your family, accurately reflects your wishes. It is also important to ensure that you keep the terms of your will up to date. ■

Quote Corner



"You only live once, but if you do it right, once is enough"

Mae West



Law & Life Services

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