

Homemade Wills

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Summer 2016





Barlow Robbins, Summer Concert Series.

Proceeds raised for Cherry Trees, The Lightbox and Community Foundation for Surrey.



Bergamasca Concert, Loseley House.

Dear Clients and other readers,

Welcome to the Summer edition of our quarterly Review, which provides updates on a number of legal topics which we hope you find of interest.

In our last edition we highlighted the Barlow Robbins Summer Concert Series featuring the Bergamasca baroque trio. I'm delighted to report that, with grateful thanks to those who attended, we raised a fantastic amount of money for three local charities with whom we have built great relationships over the years. It was humbling to be able to facilitate an event bringing together clients, friends and members of the local community for three thoroughly enjoyable evenings of Baroque music. Our continued gratitude goes to Loseley House, The Lightbox and Gate Street Barn for their donation of the venues for the evenings (which meant even more money went directly to the charities) and finally to the immensely talented musicians who form Bergamasca, without whom we wouldn't have had an event – do visit their website if you'd like to find out more or attend one of their future concerts.

Further afield, it's been a strange time over the last few months since our Spring issue, with seemingly each day bringing more significant "news": from the happy

celebrations surrounding the Queen's 90th birthday, to the aftermath of Brexit; from the horrors of more terror attacks in Europe, to the extraordinary drama of the US presidential race; from the ongoing political upheaval closer to home, to the excitement (and controversy) of the Olympics. Whatever happened to a quiet Summer I wonder?

In this edition, we have articles highlighting the perils of homemade Wills, how to avoid costly disputes relating both to inheritance and boundary issues, an update on the thorny subject of term-time holiday absences and a look at some of the likely legal impact on relations with our European neighbours following Brexit.

I hope you enjoy reading this update and if it raises any queries or concerns please do get in touch.

With best wishes,



Helen Archibald
Partner & Chairman

HOMEMADE WILLS

By Rhoderick McGrigor

What do you like most about summer? For me it's home grown strawberries. Although thinking about it, not much comes close to my mum's strawberry jam. Except perhaps picking the strawberries. And for that matter the jam making itself is fun.

Perhaps I should not choose between them, and just say that some things are best homemade. Everyone seems to think that the tea they brew tastes better than anyone else's. And surely no one makes a birthday card for a grandparent better than their own grandchildren?

Of course sometimes things go wrong. Anyone who has tried home brewing beer or wine knows quite how much work must go into sterilising: get it wrong, and the whole batch is ruined.

With homemade there is also the risk that you might not get quite what you expected. I am not blaming my mother, but marmalade on scones with clotted cream isn't quite the same, and in my defence the label just said "July 2015". Don't get me wrong: the marmalade is the best in the world and the strawberry jam is fantastic, and both were labelled with the best intentions. The meaning was just unclear.

It is also a great time of year for treating the car to a hand wash at home, which on a hot day turns into extended splash time for the

whole family. Though sometimes the children end up cleaner than the car.

By now you might well be thinking what you like best about summer is a legal review with no law in it! The trouble is that with homemade Wills, there are so many potential pitfalls and problems we couldn't begin to describe them all. Certainly a tiny mistake can lead to a catastrophic failing: not just ruining the batch, but leaving a bitter taste in the whole family. The wrong jam is one thing, a Will clause that inadvertently leaves an estate to the wrong beneficiary, or is not properly signed and invalid altogether is quite another. Once you have gone it is too late to rectify.

“ With Wills the cost of putting right mistakes or confusion often runs into £10,000s, full blown inheritance disputes can cost £100,000s. ”

Home car maintenance was once common, but if you did fix your own brakes you wouldn't test them on the motorway. Vehicles, like our tax and succession law, are just too complex now, and the consequences of getting it wrong are too serious. Nor is it cheaper in the long run, though it might seem to be in the short term. With Wills the cost of putting right mistakes or confusion often runs into £10,000s, full blown inheritance disputes can cost £100,000s.

We all know it is thoughtfulness and love which make a grandchild's birthday card or mum's jam what they are. The lasting legacies of a homemade Will which is unclear, or turns out to be invalid, or inadvertently revokes a gift that should have been kept, are confusion, hurt and frustration that no one can go back and get it done professionally.

WILL DISPUTES PREVENTION IS BETTER THAN CURE!

By Scott Taylor

Will and inheritance disputes have soared year on year over the last decade and for the families involved these disputes can be time consuming, divisive and inevitably expensive. Despite the emotional impact and cost, we are seeing more cases of family disputes which surround the terms of a relative's Will.

A Will can be disputed in a number of different ways. This includes common allegations that the Will may not have been properly executed, the person making the Will may have lacked testamentary capacity, the person making the Will may have been unduly influenced, allegations the Will may be a forgery, and the Will fails to make

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sufficient financial provision for a person who may have been dependant on the deceased or who may have a significant financial need in the future.

Unfortunately, there is no clause that you can include in your Will which can ensure that there will be no challenge to it following your death. However, there are some straightforward steps you could take to try to head off disputes among your beneficiaries and promote acceptance of your testamentary wishes.

1. Instruct a specialist to prepare your Will

At Barlow Robbins we take time to explore the nature of your family relationships. We advise you as to the potential dangers of benefiting or disinheriting those who may be able to challenge your Will or bring a claim against your estate.

If you do not intend to make provision for someone who may expect to benefit from your estate then we will carefully document your reasons. If a dispute arises in the future it will be more difficult to prove that you may have been unduly influenced, lacked capacity or that your will does not reflect your true wishes.

2. Keep your Will under review

Keeping your Will up to date may avoid disputes which could arise as a result of a change of family or financial circumstances during your lifetime. We recommend that our clients should review their Wills at least every 5 years.

3. Talking to your loved ones

It may be worth considering letting your family and those close to you know what provision (if any) you have made for them in your Will. This could help to eliminate surprises in the future and help promote understanding and appreciation of your wishes.

At Barlow Robbins we have specialist teams who advise on the preparation of Wills as well as the resolution of Will and inheritance disputes across our offices in Guildford, Godalming and Woking. If you do find yourself involved in a Will or inheritance dispute then we have the expertise and experience to advise you on the merits of the claim as well as the prospects of success.



Our solicitors discuss the implications of leaving the European Union

On 23 June 2016, the UK electorate voted to leave the European Union. Although EU law will continue to apply in the United Kingdom throughout the exit negotiation process, many changes in current laws will ensue once Article 50 is finalised.



JUDITH BALL
FAMILY

Two key pieces of Family Law will be affected, the first, Brussels II (revised) Regulation which controls in which State a couple are entitled to seek a divorce which employs a strict rule that the first valid country where proceedings are

issued is where the whole case will be heard. The second, The Maintenance Regulation, governs spousal maintenance and the enforcement of maintenance orders. This means spouses who are owed money can recover it faster and more cheaply than through traditional litigation.

Further, as Brussels II Regulation also applies to disputes over children, there could be significant delays and serious distress for families without the ability to easily transfer cases within the EU. In particular, in the area of child abduction, different tests will need to be applied depending on which statute a particular country has signed up to. This is likely to make this often fraught and distressing area more complex, as ►

well as extending the time it takes to have a child returned.

On a positive note, however, in the longer term, there will be an opportunity for the English Courts to make their own rules on jurisdiction. Many high value divorces frequently involve parties from non-EU nations, such as Russia and the Middle and Far East. The increased control that the English Courts will have over jurisdiction and potentially a greater exposure to the wider world could enable London, as the so-called divorce capital, to go from strength to strength.



DAVID FOSTER
DISPUTE RESOLUTION

No-one knows the full implications of Brexit on Dispute Resolution practice because the shape of legislation will depend upon the deal which the UK negotiates with its current EU members.

Some things are clear: **1.** There will be a good deal of confusion until final arrangements have been worked out. **2.** Contracting on the basis of the entity of the EU which included the UK may cause disputes where the UK's departure leads to different tariffs in cross-border transactions. **3.** The UK's restriction on free movement of goods and people may lead to some parties breaking contracts by arguing that their contracts have been frustrated. **4.** Some areas of law will need considerable legislation especially

where much of the law is European based: competition law is one such example.

Much of the worry over Brexit may prove to be more apparent than real in terms of litigation but it really is a case of watch this space until the deal with the EU is done.



DAVID LUDLOW
EMPLOYMENT

There are more than 35 EU Directives that have resulted in UK employment legislation such as TUPE, the Working Time Regulations and the Agency Worker Regulations. But some Directives have been implemented through primary legislation.

This means that even if the EU Council and the UK Parliament do not agree some Norwegian-style 'Brexit lite' free trade arrangement that entails the continuation of EU employment laws, it will remain part of our body of employment laws in any event, unless that UK legislation is repealed. Examples include redundancy consultation requirements, equal pay and equal treatment laws contained in the Equality Act 2010.

Successive UK governments of different complexion have in fact enthusiastically gold plated much European law. Interestingly English Courts and Employment Tribunals have perhaps been more protective of workers' rights than their European counterparts.

BOUNDARY DISPUTES: A RECOMMENDED APPROACH

By Lauren Brown & Simon Fulford

Boundary disputes happen more often than is desirable. They must be treated with caution as grievances tend to linger and fester and neighbours obviously have to co-exist for as long as they live in the adjoining properties. Acrimonious disputes can drastically affect the quality of your life and every effort should therefore be

made to avoid them altogether or, in default of that, to resolve them as speedily and as amicably as possible.

Disputes can often become costly as parties become fixed on their particular point of view meaning that they are more likely to pursue a dispute which can become very expensive if court proceedings ensue.



STEP 1 PAPERWORK:
Look at your purchase paperwork regarding the area of concern and if necessary talk to your solicitor who acted for you when you bought.

STEP 2 DOCUMENT:
If the problem is ongoing, keep detailed diary records and photographic evidence of what is occurring.

STEP 3 TALK TO YOUR NEIGHBOURS:
If they agree with you then the problem may be capable of early resolution subject only to lawyers documenting the agreed terms.

STEP 4 CONTACT US:
If your neighbour is not happy to discuss the matter or does not agree with your point of view then speak to one of our lawyers who specialises in the resolution of property disputes.

STEP 5 REVIEW CASE:
Once we are instructed we shall review the papers and advise. Invariably it is helpful to have a site inspection in order to be able fully to assess and evaluate the strengths and weaknesses of your case.

STEP 6 GATHER EVIDENCE:
We may require you to gather further evidence concerning the situation. This can involve, for example, reviewing historical family photograph albums and/or obtaining satellite or aerial photographs.

STEP 7 LAWYERS LETTER:
We shall prepare an initial letter to the neighbour either on a formal or an informal basis depending on the court rules. This often generates a positive response in which case the dispute is resolved subject only to recording what has been agreed in a binding boundary or other form of settlement agreement.

STEP 8 FURTHER ACTION:
If the response received from the neighbour is not satisfactory then it is likely that we will have to take further steps.

STEP 9 MEDIATION:
It may be, at that stage, that we suggest a meeting without prejudice, with lawyers present on both sides or, alternatively, a mediation. The latter involves referral of the dispute to a trained "problem solver" and is frequently the most cost effective route to a solution. A mediated settlement will be recorded in a binding mediation agreement.

STEP 10 COURT PROCEEDINGS:
If the mediation is unsuccessful, it does not mean that we cannot continue to attempt to resolve the matter but it makes it more likely that it is necessary to issue proceedings. The dispute will then continue on a formal basis subject to the court rules.

For further advice on boundary disputes,
PLEASE CALL US ON 01483 543210

TERM-TIME TRUANTS

By Ben Collingwood & Erin Lyon

In a recent High Court case it was held that a father who took his daughter out of school for an unauthorised term-time holiday did not have to pay a fine of £120 which the Isle of Wight Council sought to enforce against him.

Mr Platt took his daughter to Disney World, causing her to miss seven days of lessons during April 2015. The school had previously refused to give permission for the holiday. The government regulations state that head teachers may only authorise term-time absence if there are "exceptional circumstances." A holiday is not deemed to be an exceptional circumstance.

As a result of the unauthorised absence, the Local Authority issued Mr Platt with a £60 fine under the Education Act 1996, which doubled when Mr Platt refused to pay the fine within 21 days. The fine went unpaid and the Local Authority prosecuted Mr Platt for failing to ensure his daughter's regular attendance at school, under section 444 of the Education Act 1996. Under that provision "if a child of compulsory school age who is a registered pupil at school fails to attend regularly at the school, [her] parent is guilty of an offence."

This case hinged on the meaning of "regular" attendance. The court found that, as Mr Platt's daughter had an excellent attendance record overall (prior to the trip she had 100% attendance), the Local Authority failed to demonstrate that Mr Platt had not ensured his daughter's "regular" attendance. The court concluded, in deciding whether a child

had "regular" attendance, the attendance of the child should be viewed in a wider context rather than solely in relation to the period of unauthorised absence.

The statutory requirement on parents to ensure that their children regularly attend school is not necessarily a bar on taking them on holiday during term-time.

In my experience, as a Foundation Governor and parent at a West Sussex maintained school, parents are either inclined to take term-time holidays or they are not. I doubt whether this decision will cause swathes of the latter to change their conviction that attendance at school, where that is possible, is to be preferred. Whereas by the former this case should be treated with caution and not seen as a green light for term-time holidays. The decision related to the isolated absence of a child with an otherwise perfect attendance record.

The threshold of "regular" attendance remains unclear. More frequent, or annual, term-time holidays are likely to be viewed differently.

It should be noted that the local authority has applied for permission to appeal.



Source: Guardian

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