

**Brexit**  
*A Legal Perspective*

**Top 5 tips  
for selling your home**

**Protecting assets  
in second marriages**

**Creative people  
and their estates**

**BERGAMASCA  
BAROQUE ENSEMBLE**



**Spring 2016**

## MEET THE CONTRIBUTORS



### **BREXIT, A LEGAL PERSPECTIVE**

Mark Lucas

Partner  
Corporate & Commercial  
[marklucas@barlowrobbins.com](mailto:marklucas@barlowrobbins.com)



### **BREXIT, A LEGAL PERSPECTIVE**

David Ludlow

Partner  
Employment  
[davidludlow@barlowrobbins.com](mailto:davidludlow@barlowrobbins.com)



### **BREXIT, A LEGAL PERSPECTIVE**

Judith Ball

Partner  
Family  
[judithball@barlowrobbins.com](mailto:judithball@barlowrobbins.com)



### **BREXIT, A LEGAL PERSPECTIVE**

David Foster

Partner  
Dispute Resolution  
[davidfoster@barlowrobbins.com](mailto:davidfoster@barlowrobbins.com)



### **TOP 5 TIPS FOR SELLING YOUR HOME**

Sarah Slade

Senior Residential Property Executive  
Residential Property  
[sarahslade@barlowrobbins.com](mailto:sarahslade@barlowrobbins.com)



### **TOP 5 TIPS FOR SELLING YOUR HOME**

Sara Abou-Jaoude

Senior Associate  
Residential Property  
[saraabou-jaoude@barlowrobbins.com](mailto:saraabou-jaoude@barlowrobbins.com)



### **PROTECTING ASSETS IN SECOND MARRIAGES**

Mari Maggnussen

Senior Associate  
Collaborative Lawyer and Mediator  
[marimagnussen@barlowrobbins.com](mailto:marimagnussen@barlowrobbins.com)



### **PROTECTING ASSETS IN SECOND MARRIAGES**

Marie-Claire Robson

Associate  
Private Wealth & Tax  
[marie-clairerobson@barlowrobbins.com](mailto:marie-clairerobson@barlowrobbins.com)



### **CREATIVE PEOPLE AND THEIR ESTATES**

Laurie Heizler

Senior Associate  
Intellectual Property, Technology & Media  
[laurieheizler@barlowrobbins.com](mailto:laurieheizler@barlowrobbins.com)

## Dear Clients and other readers,

Welcome to the Spring Review which as usual includes a number of articles on legal topics which we hope are of interest.

This time we have taken the opportunity to include a few comments on the legal implications of the result of the imminent vote on whether Britain should remain within, or should come out of, the EU. Views on that differ widely, but the outcome really will matter to us all. Perhaps not quite 'life or death', but Bill Shankly's famous quote springs to mind. The Liverpool legend of course was asked whether football is a matter of life or death, and replied 'Some people believe football is a matter of life and death, I am very disappointed with that attitude. I can assure you it is much, much more important than that.' However, before we add the great and late Bill to the roll-call of world-class philosophers we should also remember that he was something of a statistician, observing shrewdly that the difference between Everton and the Queen Mary is that Everton regularly carry more passengers.

Joking apart, Brexit would take the UK into an entirely new game for which not all of the rules have been written. Much of the aftermath of a Brexit decision would fall to our children and the generations after them to deal with. I was listening the other day to a group of teenagers who were divided on which

way they would vote, but who made the rather good point that perhaps there was a case to be made that those who are likely to have to live the longest with the consequences should have more votes per head than those on whom the decision is likely to be of shorter impact. They were advocating a voting system where those in their 20s would have seven votes and those in their 80s only one. That looked like evolutionary democracy to me, which might be ahead of its time but showed creative thinking, a skill which we seek to apply to the legal needs of our clients.

Finally, look out for the Barlow Robbins Summer Concert Series, featuring Bergamasca (a Baroque ensemble) in three evening charity performances to be held at Loseley House, the Lightbox in Woking and Gate Street Barn on 16 June, 23 June and 5 July respectively. Please see the inside back cover or [www.barlowrobbins.com/concerts](http://www.barlowrobbins.com/concerts) for more information. We would love to see you there.

With best wishes,



**Bernd Ratzke**  
Managing Partner Client Services



# BREXIT A LEGAL PERSPECTIVE

**On 23 June 2016, the UK population will hold an in-or-out referendum on the UK's future EU involvement**

From a legal perspective, should the UK decide to leave the EU, for better or worse there would be a need to revise many existing laws, especially where UK legislation is tied to EU law.

**MARK LUCAS –**  
CORPORATE & COMMERCIAL

Brexit will create uncertainty to how contracts are interpreted, particularly commercial contracts. The UK government will need to legislate very quickly so that UK businesses have certainty over the following issues:

- Which laws apply to a contract - currently, if the parties to a cross-border contract have not expressly chosen a governing law, the law that applies is determined by two EU laws known as Rome I and Rome II. The UK will have to decide whether to continue to allow that regime to apply or not.
- Will any change in law apply retrospectively – i.e. how do you interpret a contract entered into pre Brexit after Brexit? Where “English

law” is chosen or is referred to in a contract, what exactly will that mean post-Brexit? English law as it was amended by EU law pre-Brexit? English law as it sits post-Brexit?

Whatever the outcome of the vote, Brexit would take some time to arrange. In the run-up to any leaving date all businesses will need to take advice on their existing contracts and arrange contracts which are to continue after the leaving date such that they include effective choice-of-law provisions.

**DAVID LUDLOW – EMPLOYMENT**

There has been a lot of speculation as to whether Brexit would result in wholesale, or wide ranging changes to UK Employment Law.

The answer is probably not. It should be ►

remembered that many of the established employment laws do not derive from EU law at all and are purely of domestic origin.

For example, unfair dismissal rights have their origin in the relatively early industrial relations legislation and so have equal

**“...many of the established employment laws do not derive from EU law at all and are purely of domestic origin.”**

pay, disability discrimination legislation, ‘Living wage’ and maternity leave rights.

On the other hand a number of other discrimination laws, rights in relation to consultation on large scale redundancies, TUPE, family leave rights, Working Time Legislation and Agency workers’ rights to name but a few are employment laws that do derive from EU law and are therefore likely to be impacted.

**JUDITH BALL – FAMILY**

For separating couples an exit from the EU could well impact proceedings.

Firstly, it may become much harder for Europeans to satisfy the criteria for jurisdiction in this country. London is often billed as the divorce capital of the world and is frequently seen as a more generous jurisdiction (to the financially weaker party) than a number of European countries.

The second significant impact is likely to be on the enforcement of maintenance orders. For example, at present a maintenance order made in France can be enforced here without further investigation. Post Brexit this ability is likely to be lost.

And finally we could lose the capability of easily transferring cases concerning the control or welfare of children within the EU if it is deemed to be in the child's best interests to do so.

**DAVID FOSTER – DISPUTE RESOLUTION**

Paramount for dispute resolution lawyers is that England and Wales remains the jurisdiction of choice internationally, our Courts having acquired a strong reputation of fairness and impartiality. If Brexit were to increase Parliamentary control, the UK could be perceived internationally as even more stable, especially if the UK Government puts more money into even better court systems. Brexit might therefore have a positive impact for litigation lawyers.

The truth is that no one knows the legal effect of Brexit because we do not know the shape of any trading deals that will be concluded. Separate trade deals with individual member states of the EU will probably need unanimous approval by all the member states of the EU, which will mean politics will affect where matters finally settle.



# 5 TOP TIPS FOR SELLING YOUR HOME

By Sarah Slade & Sara Abou-Jaoude

**W**ith Spring in full bloom, many people will be placing their property on the market with a view to selling. Sellers often do not know where to begin and an unprepared approach can add time and cost to what could be a relatively straightforward process. Here are our top five tips for anyone who is planning on putting their property on the market.



**TIP 1** PREPARATION:  
Show your property to potential viewers in the best possible light and maximise its kerb appeal.

If you are considering making alterations to your town apartment to increase its "show home" potential, discuss any plans in advance with your lawyer as your lease may impose restrictions on what you can or cannot do. For example; wooden flooring or significantly changing the colour of your front door may be prohibited.

**TIP 2** GETTING ORGANISED:  
It would be helpful to provide your lawyer with any title deeds in your possession and any papers from when you purchased the property. Your lawyer can then get a head start in preparing the contract pack and can pre-empt any enquiries likely to be raised by a buyer's lawyer. You can also make a start on the protocol forms which will prompt you to collate documents such as planning permissions, building regulations consents, FENSA certificates for windows and NICEIC certificates for electrical works, all of which will be of interest to a buyer.

Consider any arrangements you may have entered into since you have bought the property which may have an impact on its saleability. For example; do you allow someone to exercise and graze their horses on your land? Or do you allow your neighbour to use your parking space? Do not wait until you have found a buyer to discuss such matters with your lawyer who can assist you in formalising these.

**TIP 3** CONSIDER ANY TAX IMPLICATIONS:

On the sale of your main residence you do not normally pay Capital Gains Tax ("CGT"), however if you are selling a second property then CGT may be payable and could amount to thousands of pounds. It is also worth considering how selling your property can have an effect on the provisions of your existing Will and any Inheritance Tax planning.

**TIP 4** ESTATE AGENTS:  
Whilst a motivated estate agent with a good reputation and knowledge of the local area is a must, it is vital that they should understand the property that you are selling. If you are selling a country home, your estate agent should understand the practical issues associated with this - such as shooting or manorial rights - to ensure that your property is marketed in the best possible way. If you are selling an apartment it would help the agents to understand the service charge arrangements and any amenities available.

**TIP 5** YOUR LAWYER:  
Your lawyer should understand the property which might involve a site visit. This will enable them to address any matters effectively and pragmatically. At Barlow Robbins your sale will not be seen as a conveyancing process as we understand that every property is different and each client has their own unique requirements and objectives.

For further advice on selling your property, PLEASE CALL US ON 01483 543210

# PROTECTING ASSETS IN SECOND MARRIAGES

## PRE-NUPTIAL AGREEMENTS & WILLS

By Marie-Claire Robson & Mari Maggnussen

**In 2011 34% of marriages failed where one or both of the couple had been previously married. Couples looking to enter into a further marriage or civil partnership should consider how best to protect assets on divorce and dissolution to avoid conflict at later stages.**

Pre-Nuptial Agreements are not necessarily required for all who are entering into marriage or a civil partnership. However, they are suited to those who are entering into second (or further) marriages and who have their own wealth and/or wish to protect assets for their children from an earlier relationship. If, for instance, one party has acquired a property through a previous matrimonial settlement or inheritance, it would be sensible to agree in advance what will happen to that property in the event of a divorce.

A Pre-Nuptial Agreement is not legally binding on matrimonial courts. However, recent case law has strengthened ►

the enforceability of Pre-Nuptial Agreements and the Law Commission has recommended that Pre-Nuptial Agreements should become legally binding, provided certain safeguards are incorporated. One of those safeguards is that the (financial) needs of both spouses must be provided for in the event of the breakdown of the relationship. Couples with substantial assets may also want to protect those assets for the benefit of their respective children.

It is important to realise that remarriage will automatically revoke an existing Will. Therefore it is crucial to make a new Will either shortly before you get married, which is expressed to be in contemplation of that marriage, or as soon as possible after your marriage. If you die without a Will in place the intestacy provisions dictate who will benefit from your estate and in what proportions. These provisions are often undesirable and particularly so in the case of second marriages whereby children from a previous marriage may not inherit as much as you would wish them to.

For couples who have children from previous marriages it is possible to include a form of trust in your Will which would have the effect of balancing the need to provide for your current spouse whilst protecting your children's inheritance. This is done through providing your spouse with the right to the use and enjoyment of your assets for their lifetime but on

their death those assets will pass outright to your children. This example is just one of many ways in which a Will can be an indispensable tool in protecting your assets when entering a second marriage and ensuring that your wealth passes in accordance with your wishes.

In summary, therefore, it should be said that Pre-Nuptial Agreements are almost as good as legally binding agreements, provided that they are fundamentally fair. However, the existence of such an Agreement is only one of the facts that a court would look at if called

**“It is important to realise that remarriage will automatically revoke an existing Will.”**

upon to decide how to deal with the parties' finances. Most importantly, the existence of an Agreement must not prejudice the welfare and financial stability of any children, whether from a previous relationship or from the current relationship. In tandem with a Pre-Nuptial Agreement, the parties should each make a Will setting out how they would like their estate dealt with on death.



## CREATIVE PEOPLE AND THEIR ESTATES

By Laurie Heizler

A deceased creative may have left a very valuable literary or artistic estate containing all the intellectual property rights to their work, as well as such physical property as manuscripts, artworks and memorabilia which relate to them and to their output.

The specific estate may have been created by means of a Will providing for literary or artistic executors to administer and exploit the works in question. Copyright royalties from marketing print runs of books and reproductions of artworks can be very big business indeed. For artworks of most kinds, the Artist's Resale Right provides for royalties when an original work is re-sold by a current owner through an auction house or commercial gallery, providing a valuable income stream for the heirs of prolific popular artists long after their deaths.

Like everyone else, creative people are well-advised to make a Will. They can appoint anyone as executor of their creative estates. Well-known organizations may however be retained to take on this role; by way of example, the Society of Authors manages the estates of Philip Larkin and George Bernard Shaw, and Curtis Brown represents Sir Winston Churchill and David Niven.

Challenges recently faced by some sizeable estates have been the extension of the

duration of copyright from 50 to 70 years and the task of preserving the estate's income even where copyright has expired. Stephen Joyce's solution was to threaten to destroy intimate letters of James Joyce which had not come into the public domain when copyright in all of his grandfather's writings came back into copyright in 1995 and then expired again finally in 2011. Otherwise, once out of copyright, works can be reproduced freely by anyone. The art world seems to be particularly rife with legal argument with disputes following the respective deaths of Henry Moore (1986), Andy Warhol (1987) and Francis Bacon (1992).

**“...once out of copyright, works can be reproduced freely by anyone.”**

Warhol made no provision in life for the management of his work afterwards. This and the value of his estate probably made lawsuits inevitable. If you are also a creative genius, don't make the same mistake!

### CREATIVES WHO DIED INTESTATE

**Barry White** - Left children, wives and girlfriends fighting over his fortune when he died.

**James Brown** - Had a Will, however, it had not been updated.

**Pablo Picasso** - Because Picasso died intestate and left no Will, it took 6 years to settle his estate at a **cost of £20 million**. His assets were eventually divided up among six heirs.

BARLOW  
ROBBINS  
SOLICITORS

THE BARLOW ROBBINS  
SUMMER CONCERT SERIES  
FEATURING

IN AID OF  
LOCAL CHARITIES

# BERGAMASCA BAROQUE ENSEMBLE

*An evening of enchanting music on a fascinating collection of early instruments.*

THURS  
**16 JUNE**  
7.30PM

**GUILDFORD**  
LOSELEY HOUSE  
Guildford,  
Surrey GU3 1HS  
**COMMUNITY  
FOUNDATION**

THURS  
**23 JUNE**  
7.30PM

**WOKING**  
THE LIGHTBOX  
Chobham Road,  
Woking GU21 4AA  
**THE LIGHTBOX**

TUES  
**05 JULY**  
7.30PM

**GUILDFORD**  
GATE STREET BARN  
Gate St, Bramley,  
Guildford, GU5 0LR  
**CHERRY TREES**

**TICKETS:** £15/Concessions £10\* (includes interval drinks) via Barlow Robbins. For further details call **01483 464218** or book online at [www.barlowrobbins.com/concerts](http://www.barlowrobbins.com/concerts) All proceeds will go to charity.

\*Persons under 16 years of age, Students with valid NUS Card and Senior Citizens. Proof of age/status may be required on the day.

**BARLOW  
ROBBINS**  
SOLICITORS

GUILDFORD  
The Oriel  
Sydenham Road  
Guildford, Surrey GU1 3SR  
**T: +44 (0)1483 543210**  
**F: +44 (0)1483 464260**  
**E: [info@barlowrobbins.com](mailto:info@barlowrobbins.com)**

WOKING  
Concord House  
165 Church Street East  
Woking, Surrey GU21 6HJ  
**T: +44 (0)1483 748500**  
**F: +44 (0)1483 729933**  
**E: [woking@barlowrobbins.com](mailto:woking@barlowrobbins.com)**

GODALMING  
Church House  
30 Church Street  
Godalming, Surrey GU7 1EP  
**T: +44 (0)1483 417121**  
**F: +44 (0)1483 426836**  
**E: [godalming@barlowrobbins.com](mailto:godalming@barlowrobbins.com)**

