

Business owners – how special are you?

Who has what when a couple divorce is, inevitably, a source of debate and dispute. In 'big money' cases divorce lawyers are increasingly looking to the Courts for guidance on how assets should be divided.

In the recent case of *Charman v Charman* the Court was faced with the issue of "how business assets built up by one spouse alone during a marriage should be treated".

Charman v Charman involved the biggest divorce settlement ever awarded by a Court in England. The matrimonial assets in the case were worth approximately £131 million and were built up during the course of the parties' 27-year marriage through the skill and business acumen of insurance millionaire John Charman.

Mrs Charman, 53, had sought capital from the court of at least 45% of the matrimonial assets, a sum of £59 million. She did so relying on the prevailing argument of fairness and that her contribution throughout the marriage had allowed Mr Charman to make his fortune.

Mr Charman, 54, had offered to pay his wife a sum to bring her asset share to £20 million. He stated that he should have a greater share of the matrimonial assets as the business assets in the marriage should be treated differently to family assets and moreover, he had made a special contribution to the generation of wealth in the family. He argued that his wife had failed to support him throughout the marriage in his business endeavours.



Going solo: how should business assets be split when a couple divorce?

In the High Court, the Judge started from the yardstick of equality. This is applied in most cases particularly where the marriage is lengthy. He then awarded Mrs Charman £48 million which represented 37% of all the assets. His decision to depart from an equal share was based on the reasons that:

(a) the wealth created by the husband was categorised as wholly exceptional so that in this case a departure from equality was fair;

(b) Mrs Charman could receive cash whereas Mr Charman would continue to operate in the high risk insurance industry and;

(c) a wife such as Mrs Charman who fulfils the customary role of mother and home-maker was entitled to make a life of her own whilst the husband is at work.

Mr Charman was given permission to appeal and is asking the Court to reduce his wife's settlement to £20 million. His appeal was heard in

the Court of Appeal on 5th March and we are currently awaiting the Judgment.

It is hoped the courts will seize the opportunity to provide comprehensive guidance to the extent to which there should be a departure from equality to reflect one party's contribution to wealth generated through a marriage. Mr Justice Coleridge himself suggested a tariff of percentage bands. Could this be a workable option?

The Court's final decision, and a clear guide on how businesses should be treated on a divorce, would help business owners and their advisors know where they stand. The Court is unlikely to depart from general principles of equality; however, we would all like to know how special a business contribution needs to be before the Court takes it into account.

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INSIDE

- HIPs on horizon
- New rules for granting power of attorney
- Valid claims only – who is entitled to compensation?

Watch out for HIPs – you won't be able to move without them

They are moving ever closer . . . or are they?

The controversial, Government-inspired Home Information Packs (HIPs) were set to become a reality on June 1st but, with the pending change of Prime Minister, they could be put on hold. If they do go ahead it means before a property can be put on the market it must have a HIP.

What's in a HIP?

The required contents for a HIP have changed in recent months. Currently, a basic HIP needs to contain the following items:

1. Index
2. Energy performance certificate. This will be prepared by a trained inspector.
3. Evidence of title to your property –

normally official copies and title plan from the Land Registry. In the case of leasehold property – lease.

4. Sale statement – containing information relating to the seller and the property being sold.
5. Local and water searches – these only have to be applied for, not actually received.

The above information is sufficient to put a house on the market. The second phase of the HIP can be prepared while the house is being marketed. This will add more detailed information to the basic HIP and will include supplying the detailed property information, warranties, additional searches and completion of all the legal enquiries.

If the property is a flat then additional information will be needed for the second phase including copies of the following items:

- Any rules and regulations imposed by the landlord or management company
- Up-to-date insurance policy
- Last three years' accounts and last receipt for service charge
- Ground rent receipt

The only way to avoid a HIP is to make sure a property is put on the market (i.e. agents instructed, sales particulars prepared and placed in the Estate Agents' window) by 31 May 2007.

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Superbug horror continues

There has been much in the press lately about infections contracted by patients whilst in hospital. Although incidences are coming down it is frightening to think that going in to hospital could result in contraction of a 'superbug'.

The hospital acquired infections attracting press interest presently are 'MRSA' and 'C.Diff' – these are quite different infections although both can have devastating consequences.

MRSA is a bug which can live on the skin and in the lining of the nose and mouth without any ill effect and does so, on about one third of healthy people. It becomes a problem when it enters the body via a cut or abrasion. This can cause an infection at the site and can spread into the body causing, for example, blood poisoning. It has to be treated with special types of antibiotics, as it is resistant to



Jeanette Whyman looks at the spread of the hospital 'superbug' and how successful claims can be made against negligent hospitals or workers.

Methicillin, which is the basis of many usual antibiotics.

C Diff is a bug which can live in the gut without causing any ill effect and does so in about one in 33 healthy people. It becomes a problem when poorly

patients are treated with antibiotics (for example, following surgery to prevent infection) and C Diff then takes hold as other 'friendly' bacteria has been killed off by the antibiotics. It causes diarrhoea and inflammation of the bowel. It too can be treated with special antibiotics together with the introduction of good bacteria into the gut.

Both bugs are not air borne but spread through direct contact with the infection and can be carried unknowingly by many people. To prevent the spread of



infection, basic hygiene is of the utmost importance which means anyone, but particularly those in a hospital environment (visitors, workers, patients), must wash their hands thoroughly before and after any physical contact. Washing and cleaning of all equipment is also crucial to prevent infection.

If it can be clearly shown that such an infection was contracted in hospital by poor hygiene practices, a claim against a hospital or care provider would succeed.

For more details, contact Jeanette Whyman on 01926 883019 or via email.

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Appoint your attorney before it is too complicated

If you want to give someone else authority to deal with your financial affairs you can make an Enduring Power of Attorney (EPA) . . . but not for much longer.

Following the Mental Capacity Act 2005, the law is changing and from October 2007 EPAs will be replaced by Lasting Powers of Attorney (LPA).

Current proposals suggest that an LPA will be a significantly more complicated document. It will be necessary to register the LPA at the Court (for which a fee is payable) before the LPA can be used for your financial affairs, even if you are mentally capable. As a result the procedure is not only likely to be more complicated but also more expensive!



Making someone else responsible for your will, in the event of failing health, is about to become more complicated. John Rouse reports.

Therefore anyone considering making a Power of Attorney should act now and make an EPA before October 2007.

What is Power of Attorney?

Power of Attorney is a document where you appoint one or more people to deal with your affairs. Your attorney can then help manage your affairs if you become mentally or physically incapable or are unable to act due to absence (eg on holiday or working abroad).

Who can I appoint as my attorney?

You can appoint your spouse, your children, other relatives or friends. Alternatively you can appoint a professional person such as your solicitor or accountant. You can also appoint more than one person. Your attorney will have significant powers over your financial affairs so you should have complete trust in the person you propose to appoint as attorney.

What happens if I don't make a Power of Attorney?

If you become mentally incapable it will be necessary for a relative, friend or your solicitor to obtain a receivership order at the Court of Protection. Your Receiver will then have to liaise with the Court about the management of your affairs. In practice receivership through the Court of Protection is a drawn out, bureaucratic and ultimately expensive procedure.

What powers does my attorney have?

Your attorney has power to deal with your financial affairs. You can place restrictions on your attorney, for example, limiting the EPA to certain property; or state that the EPA can only be used if you become mentally incapable; or state that your attorney cannot deal with your home without your spouse's consent.

What happens if I become mentally incapable?

If you become mentally incapable your attorney should register the EPA at the Court of Protection and give you notice of their intention to do so.

Will my EPA still be valid after October 2007?

Any EPAs made before October 2007 will still be valid and can still be used. However it will not be possible to make any new EPAs after that date.

For more information contact John Rouse on 01926 880743 or via email.

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Putting off making a will? Don't. Sensible planning to reduce your Inheritance Tax liability is underpinned by a tax efficient will along with prudent investment in tax-friendly products, possibly IHT insurance and using your IHT gift exemptions.

Don't let the chancellor take any more of your money than is necessary. Call 01926 886688 and make an appointment with Wright Hassall today.

Nil rate band discretionary trust scheme is still valid

When trying to reduce potential inheritance tax on married couples estates, it is sensible to make wills which utilise both spouses' nil rate band exemption of £300,000.

The recent case of Phizackerley has prompted sensational headlines regarding the nil rate band scheme. As a result, many national newspapers have suggested that this case nullifies the nil rate band discretionary trust scheme. However closer examination of the case and its outcome suggests that the headlines may be over hyped.

The main issues coming from the case are:

- The nil rate band discretionary trust scheme is still a valid and prudent scheme recognised and accepted by the Inland Revenue.

- When implementing a nil rate band discretionary trust on the first death it is important to take appropriate advice and make sure the arrangement is set up properly.

- Provided the nil rate trust is set up properly, the nil rate band discretionary trust scheme will work and be acceptable to H M Revenue and Customs.

- On the facts of the case, if the nil rate trust had been implemented in a particular way, the scheme would have worked and the tax saving would have been successful!

One interesting point to note is the court's finding that where one spouse has worked and the other acted as housewife/househusband, and the house is in joint names, the "working spouse" has effectively given half the house to the homemaker. This is a rather unusual decision as it does seem to contradict matrimonial law which considers the homemaker as making an equal contribution to the marriage by virtue of looking after the family home and raising the children.

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Tide turns against compensation culture

Over the past few years we have become accustomed to hearing about the 'compensation culture' and how Britain is following the United States in becoming an ever more litigious society. But do the facts really match the perception?

That perception resulted, in part, from the emergence of unregulated claims management companies whose business models required a huge number of claims being processed which inevitably led



Genuine claimants have nothing to worry about but changes in the law mean that fraudulent claims will be easier to detect. Adam Brain reports.

to trivial, and even fraudulent, claims being made. Although claims management companies still exist the major players in that market have disappeared.

Following the demise of the major claims management companies there are signs that the tide is turning against compensation claims.

Figures from the Government's compensation recovery unit show there was a fall in new claims of almost 11% between 2004/05 and 2005/06.

Further, in the recent case of *Patel v Ali*, Mr Ali admitted that he was to blame for a road accident but was adamant that there were only three people in the other vehicle despite the fact that four people made claims. The Judge decided that all the claims were tainted by fraud and dismissed the entire case – the genuine claimants therefore lost out because of their actions.

In addition, the Compensation Act 2006 includes a provision that when considering a claim, a court may have regard to whether particular steps, which may have been taken to prevent mishaps, might prevent a desirable activity from taking place or might discourage people from organising such activities, for example, in relation to school trips.

Finally, the Compensation Act 2006 also includes provisions for the regulation of claims management companies and, since 23rd April 2007, it has become an offence to provide claims management services without authorisation or exemption under the new regulatory framework.

Genuine claimants have nothing to fear from the changes but those with less meritorious claims may now find things much more difficult, which can only be good for society as a whole.

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Wright Hassall plan to reveal a few home truths to clients

Wright Hassall has organised a seminar for clients on June 21 at their new premises in Olympus Avenue.

The seminar, entitled Home Truths, will include discussion on conveyancing, wills, family law and personal injury.

It is scheduled to start at 4.30pm, if you would like to attend do give Caroline Venuto a call on 01926 886688 or email caroline.venuto@wrightthassall.co.uk

A move in the right direction

Wright Hassall has now been at Olympus Avenue for more than two months and it certainly feels like home.

The feedback from clients has been positive and, from a staffing point of view, it is great to work in a modern office equipped for 21st century business.

The open plan environment took some adjusting to but we are already finding that communication between departments has improved enormously. No more wandering through several buildings to discover that the person you need to see is in a meeting or has just left!

If you haven't had the chance to visit our new premises yet then please give us a call and we'd be delighted to show you round.

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