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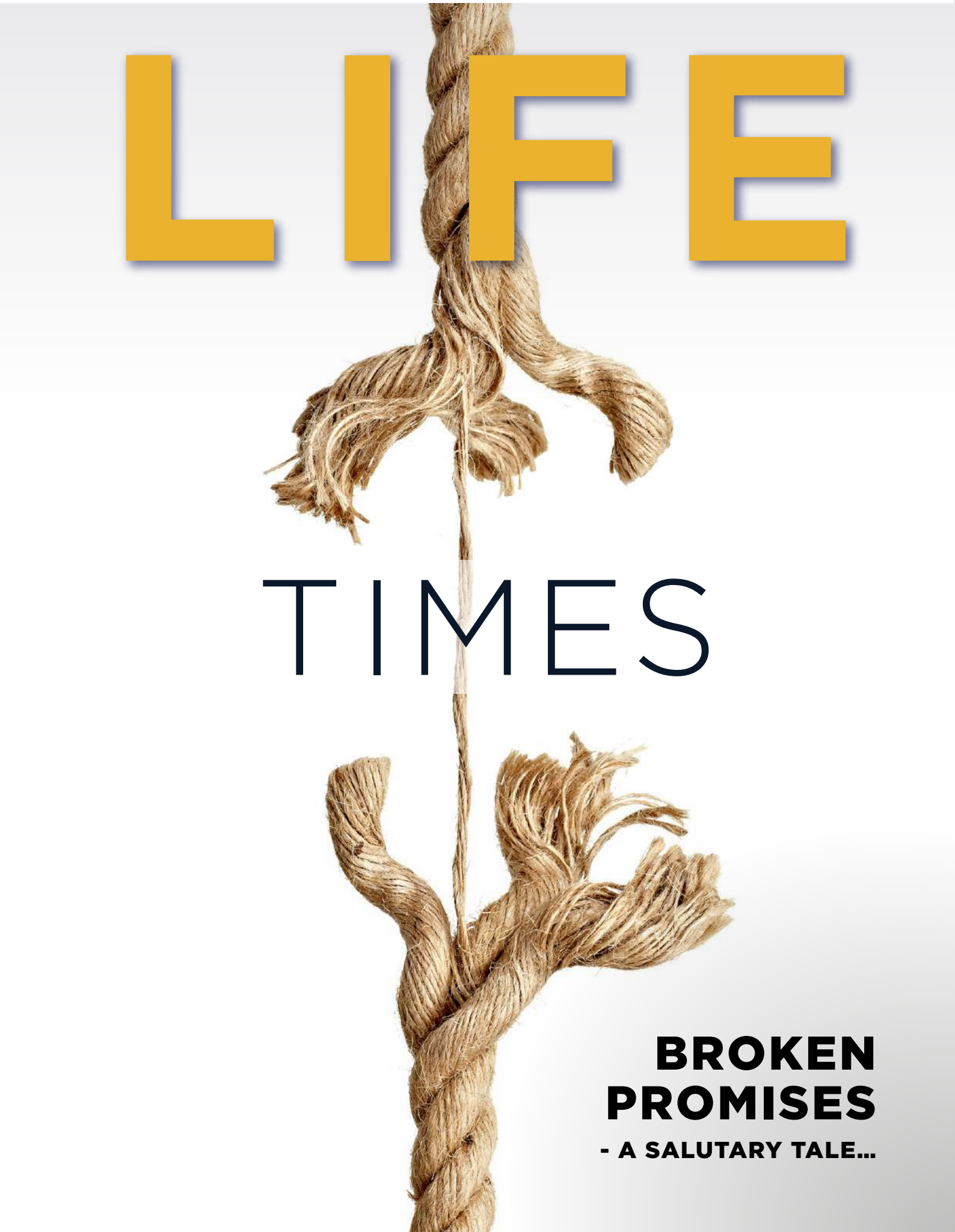
SHAKESPEARE MARTINEAU

LIFE TIMES



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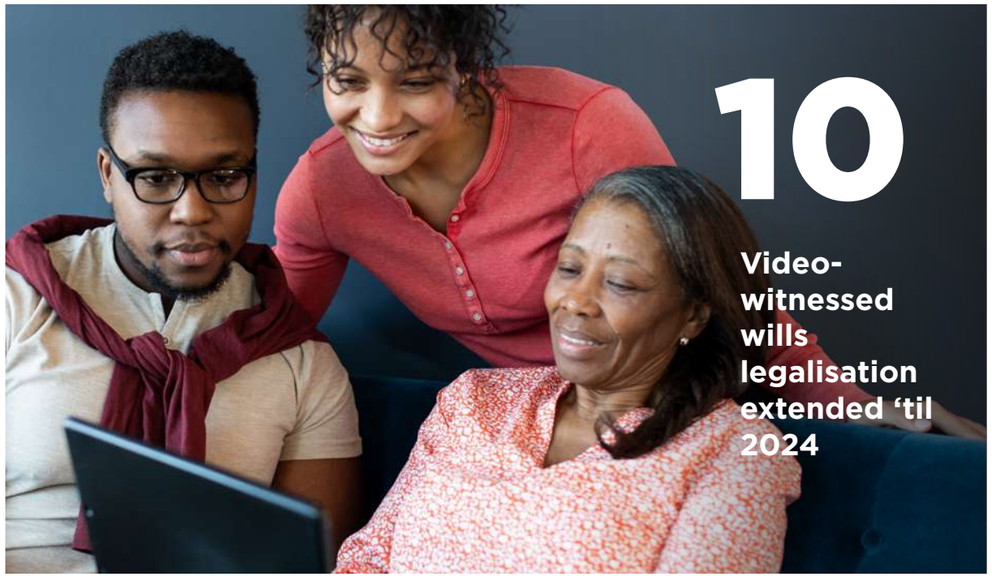

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Video-witnessed wills legalisation extended ‘til 2024

hello

A very happy new year and welcome to the first edition of Life Times, our private wealth and family magazine, for 2022.

We start the year in an optimistic mood with the lifting of most of the restrictions we have been living under for the last few months. And we hope for a kinder and calmer 2022 with more opportunities to meet our clients face to face and continue to build on those personal relationships which are so key to all of us.

We are expecting a busy year for all our teams with tax changes likely to be part of the 2022/2023 budget speech expected at the end of February 2022, and with the current economic climate we are anticipating a tough budget.

April also sees the introduction of the long awaited and long overdue no fault divorce legislation finally becoming law.

As always we are here to guide you through these ever changing times and look forward to advising and working with you.

No-fault divorce preparation should start now

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With the landmark Divorce, Dissolution and Separation Act 2020 coming into force in April, lawyers have had a traditionally busy start to the year seeing a steep rise in enquiries following the festive break.

However what makes this year different to others is that on 6 April, the long awaited long-awaited 'no-fault' divorce will become law, bringing in significant changes to the way couples apply for a legal separation.

What is the change in law?

This change in law has been a long time coming and is set to bring the ending of a marriage into the 21st century, enabling couples to divorce without having to apportion blame.

Until this new legislation, couples needed to be separated for at least two years or be able to prove their spouse was at fault. Apportioning blame when parties don't want to can heap enormous stress and strain onto an already often emotionally charged situation, especially when children are involved. It can also be extremely damaging to ongoing relationships between ex partners. It also helps couples who cannot wait the two years to divorce on grounds of separation or the five years it can take if they don't have the consent of the other party.

This new legislation now provides another option for couples and brings the UK in line with other countries around the world who have had a much more progressive attitude to divorce. It is hoped too that the opportunity to separate and divorce on a no fault basis will end some of the stigma that families can feel around this difficult time.

What should couples do?

In the coming months, it is important that couples who have been waiting to separate on a no-fault basis begin plans and discussions.

Open discussions are crucial. While it's unlikely that the process of choosing to go through a no-fault divorce will be any faster, couples should start talking about when they are going to do it and think about making the application together so there are no surprises or disagreements further down the line.

And while this new legislation is very welcome, there are still improvements to be made to the divorce process in terms of equality. For example, adultery cannot be cited as grounds for divorce in same-sex marriages, as adultery is only recognised between two people of the opposite sex.

Currently, the accepted grounds for divorce in same-sex couples are:

- Unreasonable behaviour
- Two years desertion
- Parties been separated for two (consent required) or five years (no consent required)

Allocating blame is unfair and often results in more conflict. It can also lead to increasing legal fees as people look to contest the divorce and the reasons for it.

While this long-awaited and important change to the law is welcome news for many couples, there is still a long way to go in improving the process to ensure it is fair for all.

To discuss any issue of separation or divorce contact Helen Bowns or another member of the family team in your local office.

Music Royalties

– ensuring the music plays on

The right to receive royalties from music, as for many other types of intellectual property rights, can be inherited as part of a person's estate.

When a musician dies, the beneficiaries of their estate either named in their will or, if they do not have one, the beneficiaries determined by the rules of intestacy, will be able to receive the royalties throughout the period of copyright. This right currently lasts 70 years from the creator's date of death.

As copyright has such a long term it is possible that rights to receive royalties can pass down through several generations. Where the intellectual property is of significant value, this can be directed to structures such as trusts during a creator's lifetime or on their death to ensure that it is carefully managed by appropriate trustees for the benefit of a person's whole family. Alternatively, a person with valuable intellectual property might consider appointing a literary executor with particular expertise in the relevant area, separately to the other executors of their estate.

People tend to focus on tangible and financial possessions when making their wills and can accidentally overlook valuable intellectual property such as copyrights, trademarks, designs, Artist's Resale Rights or patents. This intangible property is often forgotten or not clearly and fully dealt with as part of someone's estate planning.

If you have any intellectual property of significant value, it is important to get advice on the proper drafting of your will to ensure that all facets of the piece of original work or creation will be passed in line with your wishes on your death.

For example, although an item such as a painting may hold some value, it can be the case that the greater value is the intellectual property surrounding the painting. As such, intellectual property rights should be clearly defined and included in any gift of personal items where it is the owner's intention that they pass with the physical item itself.

There can be several different intellectual property rights associated with a particular creation which can make dealing with these assets complicated. For example, copyright in a sound recording (lasting 50 years from when the sound recording was made if unpublished or 70 years from being made public within that period) exists separately from the works and performances included in that sound recording.

Having a properly drafted will that deals with your intellectual property can not only give peace of mind to the creator but also help prevent disputes after a person's death as to the scope of any gifts in which intellectual property exists.

Another issue that can arise in respect of intellectual property is that people often do not keep good records of their creations, especially in an era where creations are stored or created in the digital space. Therefore it is a good idea to keep a record of all works you have created and lists of any relevant experts or contacts who your executors will need to deal with after your death in respect of the works you have created.

Focussing attention on who will inherit your royalties can ensure your family can continue to benefit long after you have died.

Copyright lasts 70 years from the creator's date of death.

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Can I keep my engagement and wedding rings?

When a couple goes through a divorce, the process of separating out the assets in the marriage can cover the basics, like the family home, savings, and pensions.

But when it comes to household contents, also known as ‘chattels’ this is an area that is best dealt with directly between the parties as costs can quickly escalate when this issue is negotiated through solicitors. However, when high value jewellery is involved, these items can cause conflict.

Wedding and engagement rings in particular can hold both monetary and emotional value, and the giver of those rings may believe that they are entitled to half the value, or even to have them returned.

In law, the giving of a ring is presumed to be a gift, and therefore it does not have to be returned. There may be an argument if an engagement is broken off, that the ring was given on the condition that it should be returned if the marriage did not take place. However, even though unfair, the recipient is not obliged to return it.

However, if the ring is of very significant value, this figure may be taken into account as part of the overall settlement.

So, whether you have just the one or several rings from previous marriages, chances are they are yours to keep!

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Video-witnessed wills legalisation extended ‘til 2024

Vulnerable people across England and Wales will continue to be able to have their wills witnessed via video-link up until 2024, under legislation announced on January 11 to extend measures brought in during the pandemic.

The change will extend until 2024 this ability for those who are forced to isolate either with COVID-19 or from another vulnerability. This will reassure all those who need to use this provision that their final wishes are legally recognised as witnesses previously had to be physically present.

To protect people against undue influence and fraud, two witnesses are still required and virtual witnessing is only recognised if the quality of the sound and video is sufficient to see and hear what is happening.

The extension will last until 31 January 2024 while the Law Commission considers potential reforms to the law around wills, including whether to make these changes permanent.

The use of video technology should remain a last resort and people must continue to arrange physical witnessing of wills where it is safe to do so. Wills witnessed through windows are already considered legitimate in case law provided they have clear sight of the person signing it.

What are the potential reforms being considered?

The Law Society takes the view that the most effective reform of the law would be to give judges powers to recognise the deceased’s intentions even where their will may not have been witnessed, in line with the Wills Act.

The forthcoming Law Commission report on wills reform will hopefully expand on this and other issues to improve will making in England and Wales.

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Setting up a charity

a legacy for those with inherited and earned wealth alike

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The recently published CAF UK Giving Report 2021 revealed that although the number of people giving to charities decreased in the last year, those that did were more generous. And there was a particular increase in the size of charitable donations amongst older adults.

As people with significant personal wealth get older and start to think about their legacies, as well as taking care of their own families, it appears that many look to provide assistance to those less well-off.

One of the ways that those with substantial wealth look to do this is through the setting up of a charity, either via their will on death, or during their lifetime.

Why set up a charity?

While a person may decide to leave individual gifts to charities under their wills or make regular gifts during their lifetime, those with more substantial wealth may instead choose to set up a grant-making charity. This creates an ongoing legacy and ensures funds are managed to provide financial assistance to causes particularly close to their hearts for years to come.

Setting up a charity can have a number of tax advantages too, both for the individual and the charity. Most of the income and capital gains of a charity are tax-free and charities can also claim back the income tax that has been deducted from donations through the Gift Aid scheme.

From an estate planning point of view, gifts to UK charities on a person's death can be appealing as they are free of Inheritance Tax. On top of this, if 10% of a person's assets on their death are left to charities, the rest of the estate can qualify for a reduced rate of Inheritance Tax. This can, in certain circumstances, reduce the overall Inheritance Tax payable on a person's death.

Setting up a structure to give back to worthy cases can be fairly straightforward through the creation of a charitable trust. However, those considering this should take advice on the most suitable structure given their circumstances, the kind of activities the charitable trust will be undertaking, and the assets the charity will hold.

The small print

It is important to remember that most charities other than the very smallest will need to be registered with the Charity Commission in order to be recognised by HMRC and gain the tax advantages that come with charitable status. Those setting up a charity need to be aware of the requirements and conditions of registration from the outset, when preparing their governing document and deciding on their objectives.

Although running a charity can be very rewarding, it is important that the administration and reporting requirements are fully complied with and the charity is properly managed.

If this is route you would like to explore to ensure that your wealth is put into action for those less fortunate, the team can advise and assist with the setup and ongoing running of a charity and ensure that all taxation and reporting requirements are fully met with, allowing those that run the charity to get on with the work of benefitting worthy organisations and individuals.

Why might Canada's new inheritance laws be good news for your estate planning?

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In England and Wales, marriage revokes a will unless it was made in contemplation of the marriage, which is not front and centre of many couples forthcoming wedding preparations!

Some people may say 'So what? And for many people it doesn't matter, they are happy for the intestacy rules to kick in.... which is currently that a marriage trumps a will.

But is this really want you want to happen? Is it a good thing?

Not only does it mean that your well thought out estate planning goes out of the window, but depending on the value of your estate your spouse may get everything or certainly the biggest share upon your death.

But what if they remarry after your death and your estate then gets left to a stranger? What happens if your adult children from a previous relationship get nothing, which was never your intention? These are very real concerns and situations that clients and beneficiaries of clients have encountered.

How can Canada help?

From January 2022, laws introduced in Ontario now mean that marriage no longer automatically revokes a will, except in certain circumstances. Also separated spouses are no longer entitled to the benefits under the will and if no will, they don't get a share of the estate.

This is good news for those who have spent their hard earned money on some good estate planning and on a more serious note, those who have concerns about predatory marriages which we discussed in the last edition of Life Times.

So while this is now law in Canada, the same provisions are being considered to be brought in here by the Law Commission, so it may not be long before there is a change coming!

Until then, make a will after marriage to ensure your wishes are fully upheld!

And for those disappointed beneficiaries who are concerned about what they receive under the intestacy rules or a will, contact Debra Burton in the contentious probate team who will be happy to help.

THE LATEST IN OUR WEBINAR SERIES

Are you a farmer, land owner, landed estate owner and an agent?

Join us online

Thursday 3 March 2022
09:30 - 10:00

Pre and post-nuptial agreements can be very valuable, especially to those who are concerned with the protection or retention of family wealth within a divorce, such as is often the case with agricultural clients.

Such agreements can often be viewed as pessimistic, however, with the divorce rate increasing, they are rightly being recognised as realistic and protective, to not only an individual but to a family should the worst happen.

If family members do not marry but live together then cohabitation agreements can be equally useful in protecting property on a relationship breakdown.

In this webinar we will discuss:

- **When to enter into an agreement**
- **What they can include**
- **The differences between a post-nup and pre-nup agreement**
- **When they will not apply**
- **What can happen without a pre or post-nup in place**

If you wish to put your questions forward in advance, please email these to **events@shma.co.uk**

Meet the team

Getting to know Verity Kirby...

What is your role at Shakespeare Martineau and how long have you been here?

I joined as a solicitor in March 2012, so I will shortly be celebrating my ten year anniversary with the firm! I am currently a legal director and head up our Birmingham private client team. I advise entrepreneurs, individuals and their families as they plan for the future to ensure that their family, friends and loved ones are looked after.

What do you find exciting about your area of expertise?

No one day is ever the same - a vast amount of my time is spent helping individuals and their families. As a people person I always find it interesting and exciting to learn about their personal circumstances and those of their family. Whilst we often help clients through a difficult time, it is always so comforting to be able to help them through this.

I am also excited to combine my love of languages and different cultures, having studied English and German Law. The make-up of people's assets is now so different as they often own property or other assets in different countries – it is always interesting to see how the law there interacts with their position here in the UK.

What keeps you awake at night?

Sadly as a terribly light sleeper – lots! Thank goodness for a podcast or an audio book to help me back off to sleep.

What are the biggest challenges for your clients right now?

It is always a difficult compromise to ensure that clients can carry out their wishes while also undertaking an element of tax planning. Sometimes, the two do not go hand in hand and there is a balance to be struck – but this is where we can help. It is also imperative that clients regularly review their wills to ensure that they are still effective forward planning as the legislation in our area changes regularly.

Moving forward, it will also be to navigate the changes in technology – the ever evolving digital age with digital assets such as bitcoin and the like. The pandemic also highlighted the challenges we face in ensuring that private client advice can move forward in a digital age, while also protecting the underlying interests of the client. Private client law is making some progress though, as we mention in our earlier article on video witnessing. But for now, when it comes to the signing of wills and lasting powers of attorney, a wet, physical signature is still required.

What would you like to achieve in 2022?

On a personal level – we've recently set up a new netball team, playing in the Birmingham league – after a successful unbeaten start to the season we are aiming for promotion. As a local Brummie – we hope that England can follow suit winning Gold at the Commonwealth Games in the summer!

"No one day is ever the same - a vast amount of my time is spent helping individuals and their families. As a people person I always find it interesting and exciting to learn about their personal circumstances and those of their family."

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Broken promises

– a salutary tale

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It is some time ago now but the case of Davies v Davies (2014) demonstrates perfectly this very issue. The case concerns the award of £1.3million to the daughter whose parents reneged on their promise to give her a share of the family farming business (combined value £3.8m).

The legal term for this type of case is “proprietary estoppel”. It deals with that the legal principle that the law will step in and correct the position where a person is in a detrimental position, having”relied” on a promise made to them.

The most common example is in connection with farming businesses where the owner (usually the older generation) “promises” a worker (usually son, daughter, nephew) that “all this will be yours”, in return for years of hard work, for relatively low pay, or rent free accommodation.

The case of Davies v Davies was just one such case. It involved Mr and Mrs Davies, who owned a couple of farms in Wales, specialising in pedigree milking cows and their relationship with their daughter Eirian, who spent much of her life working on the farms, for little reward, relying on her parents promises that a share of the farm would, one day, be hers. Mr and Mrs Davies’s two other daughters were not involved in the farming business.

As ever, the case turned on the facts, and in this instance there was a sufficient amount of evidence to support the claim of the daughter Eirian.

She had worked for her parents for approximately 25 years, with only short term breaks, during periods when family arguments had made her leave the farm and pursue alternative employment.

It was held that Eirian had relied on repeated assurances by her parents over the years about the farm, being told she should not “kill the goose that lays the golden egg” by her mother when she enquired about money; being under the impression that her parents had counter-signed the partnership agreement bringing her into the farm; being assured that one of the farms would be hers, rent free, for life, if she returned to the farm after a disagreement, being told that she was going to left part of the farm and shares in the farming business in her parent’s will.

Matters came to a head when there was a physical fight with her father, at which point Eirian left the farm and commenced proceedings against her parents, claiming a share in the farming business arising out of her detrimental reliance on the representations made by her parents.

In many cases, it is hard to pursue a successful claim for proprietary estoppel, but in this case, the parents reassurances over substantial periods of time made it inequitable for the parents to refuse to honour their promises.

The lesson to us all

To avoid such a heart breaking situation where family members can feel excluded or mistreated when promises are not upheld, the first step that must be taken is to have a comprehensive will. This can then on death ensure that the family member who relied on promises made during life can see those promises come good.

Prior to death a partnership agreement or family charter can recognise and document the contribution of each family member and clearly define their benefit.

This is equally true for farming families, estate owners and family businesses particularly when one child works in the business and another does not.

SHAKESPEARE MARTINEAU

Working with organisations of all sizes, the firm delivers a broad range of specialist legal services and has particular expertise across areas including but not limited to: energy, education, banking & finance, healthcare, investment funds, manufacturing, agriculture, family business, Islamic finance, later living, social housing and real estate. Shakespeare Martineau also provides services for families and private clients.

The firm's purpose is clear;

to unlock potential, and its ambitions are unlimited; aiming to become one of the most admired top 30 law firms by 2025.

Shakespeare Martineau has been listed in Best Companies 2021 for top 20 law firms, top 100 Midlands and top 75 large London businesses.

With more than 900 people, Shakespeare Martineau has offices in Birmingham, Glasgow, Leicester, Lincoln, London, Milton Keynes, Nottingham, Sheffield, Solihull and Stratford-upon-Avon.

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