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**Adoption – Internet Research Can Never Replace Professional Legal Advice**

No amount of internet research can ever replace professional legal advice. A man found that out when his reliance on flawed web content very nearly cost him the opportunity to complete his family by adopting his stepson.

The man applied for an adoption order two days before his stepson turned 18. On the same day, he gave notice of the application to his local authority. His wife – the boy's mother – and the boy himself supported the application. The boy's natural father at first resisted, but subsequently withdrew his opposition.

The couple, however, had not done a very good job in their internet research. What they did not know was that Section 44(2) and (3) of the Adoption and Children Act 2002 requires proposed adopters to give at least three months' notice to their local authority before lodging an adoption application. That requirement had not been complied with and, as the boy had now reached adulthood, it was too late to make a fresh adoption application.

Ruling on the matter, the High Court noted that an adoption order is not just a piece of paperwork. On the contrary, it has enormous spiritual, social and psychological consequences for all concerned. The reason for the notice period is to give local authorities sufficient time to prepare reports and to assess the suitability of proposed adopters. If the notice period were interpreted as a strict and unyielding requirement, then non-compliance with it would preclude the making of an adoption order.

The man was anxious to have his de facto fatherhood officially recognised. He had brought the boy up, and the boy said that he viewed him as his true father, always referring to him as his dad. The application was of overwhelming importance to the family and it was obvious to the Court that refusing it would have enormous psychological and emotional consequences.

In opening the way for the adoption application to proceed to a full hearing, the Court found in the light of legal authority that the notice period was merely directory and that a judicial discretion to make an adoption order remained. The failure to comply with the notice period was accidental and there was no question of bad faith. The local authority had not been impeded or compromised in the performance of its essential role in the adoption process.

We can advise you on all aspects of family law. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*Andrew v Beatrice and Others [2023] EWFC 114*

**Adverse Possession – Couple Win Legal Title to Disputed Garden Plots**

Even if you do not hold legal title to a plot of land, you may well be entitled to have it transferred into your name if you have been in adverse possession of it for over 10 years and you have reasonably believed throughout that it belongs to you. That is precisely what happened in a guideline Upper Tribunal (UT) case.

The case concerned substantial parts of a couple's garden that they had treated as their own since they purchased their home in 1996. The relevant land fell within the boundaries of their neighbours' property, but the couple applied to transfer legal title to it to themselves under the Land Registration Act 2002.

Following a hearing, the First-tier Tribunal (FTT) found that they had been in adverse possession of the land for the required 10-year period. In dismissing their application, however, it rejected the man's evidence that, from the date on which they purchased the property, he had held a firm belief that the relevant land belonged to them. The FTT ruled that any such belief would, in any event, not have been reasonable.

Upholding the couple's challenge to that outcome, the UT noted the man's evidence that, at the time of the purchase, the relevant land was physically included in their garden by means of a post and rail fence. He further testified that the vendor had informed him that the fence's position was compliant with a boundary agreement he had reached with a previous owner of the neighbours' land.

The reasons given by the FTT for doubting his credibility were flimsy and insufficient to justify a finding that he was lying when he said that he believed he owned the relevant land. Such a conclusion was both irrational, being unsupported by evidence, and unfair. The UT substituted its own findings that he was telling the truth and that his belief that he owned all the land within the fence was reasonable. The ruling meant that the couple were entitled to be registered as legal proprietors of the relevant land.

For advice regarding land disputes, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*Rowlands v Bishop [2023] UKUT 102 (LC)*

**'Humanitarian' Residential Landlord Fails in Novel Banning Order Appeal**

Residential landlords who neglect their legal obligations to the point of criminality can be hit with banning orders that are likely to put them out of business. In a case of importance to property professionals, the Upper Tribunal (UT) for the first time considered an appeal against one such order.

The case concerned a woman who had been a landlord for over 30 years and owned 29 rental properties, many of them houses in multiple occupation. She specialised in letting to tenants who might otherwise find it difficult to obtain rented homes, including homeless, vulnerable or marginalised individuals. There was no reason to doubt that her motives in letting property were humanitarian rather than commercial.

However, the local authority had for a number of years been concerned about the quality of her management of her portfolio and had taken progressively more serious enforcement action against her. She ultimately pleaded guilty to eight offences in relation to three of her properties.

All but one of the offences related to contraventions of the Management of Houses in Multiple Occupation (England) Regulations 2006. Two of them concerned an absence of fire doors and most of the others related to individual items of disrepair or poor standards of maintenance or cleanliness. Although, when viewed individually, her offences were not of the most serious type, she was fined a total of £22,000.

After the council launched further proceedings, magistrates imposed a banning order under the Housing and Planning Act 2016. The order forbade her, for a period of five years, from letting housing or engaging in letting agency or property management work. She was given six months in which either to end her existing tenancies or to dispose of tenanted properties. Her appeal against the order was subsequently rejected by the First-tier Tribunal (FTT).

In dismissing her challenge to that outcome, the UT noted that this was the first occasion on which it had considered an appeal against a banning order. It found no error of law in the FTT's assessment of the seriousness of her offending. Also rejected was her argument that the magistrates had no power to ban her from continuing to manage properties which she had previously let and where the tenancies or licences were continuing.

Failing to meet your legal obligations as a residential landlord can prove very costly. To ensure you are satisfying the required standards, talk to our expert team.

**Partner Note**

*Knapp v Bristol City Council [2023] UKUT 118 (LC)*

**Mutual Wills – There is a Big Difference Between Moral and Legal Obligations**

There is a big difference between moral and legal obligations. The High Court made that point in finding that mirror wills signed by a married couple did not impose on either of them a binding obligation not to change their bequests in future, save by their mutual consent.

The couple attended a solicitor's office and made mirror wills whereby each of them left the entirety of his or her estate to the other. The effect of the wills was that, when the second of them died, all that remained of his or her assets would pass in equal shares to their child and the husband's three other children from a previous marriage.

When the husband died, the wife duly inherited his estate. However, shortly before her own death, she made a new will bequeathing all that she owned to her child, cutting out her three stepchildren.

In challenging her final will, the stepchildren argued that the mirror wills were mutual in character. She and their father had bound themselves not to make any further wills without the other's consent. On that basis they contended that, on their father's death, the wife's mirror will was rendered irrevocable.

The solicitor who drafted the mirror wills testified that he had advised the husband that there was no guarantee that the wife would not change her will following his death. He recalled that the wife gave an oral assurance that she would not disinherit the stepchildren. The husband had stated that, after 45 years of marriage, he trusted the wife implicitly and that there was no way she would do such a thing.

In rejecting the stepchildren's case, a judge found that the wife was under a moral obligation not to disinherit them after their father's death. However, she was not subject to a legally binding obligation to that effect. The couple had not entered into a reciprocal agreement, amounting to a contract, that their mirror wills would be irrevocable and remain unaltered, save by mutual consent.

That may have been their common expectation and desire at the time, but that was not enough. Even if it could be said that the wife had promised that she would not alter her bequests, the husband had given no reciprocal promise. The wife was thus free to make a new will after his death.

Dismissing the stepchildren's appeal against that outcome, the Court found no error of law in the judge's decision. He was entitled to find on the evidence that there was no clear agreement between the couple that, in the absence of mutual consent to the contrary, their mirror wills would be set in stone.

We can ensure that your wishes are made clear in an expertly drafted and valid will. Contact us for advice.

**Partner Note**

*McLean and Others v McLean [2023] EWHC 1863 (Ch)*

**Online Traders are Not Beneath the Tax Authorities' Radar**

Some people who trade online do so in the fond hope that the income they generate will fall beneath the tax authorities' radar. A tax tribunal ruling that left one such trader on the verge of bankruptcy showed how very wrong they are.

On his relevant tax returns, the man declared his modest income as a security guard but made no mention of his profits from online trading. That prompted HM Revenue and Customs (HMRC) to conduct an in-depth inquiry into his financial dealings. He was issued with back tax demands totalling £19,607, together with £9,341 in inaccuracy penalties.

Challenging those bills, he asserted that he had no income from online trading during the four relevant tax years and that he was being harassed by HMRC. He accepted that he had eBay and PayPal accounts, but contended that they had been hacked, resulting in many transactions that he had not authorised. Other transactions were personal in nature and did not amount to trading.

Ruling on the matter, the First-tier Tribunal (FTT) found that those explanations were not credible. HMRC had obtained his bank records, which showed numerous entries indicative of trading, including payments to suppliers and delivery firms. Deposits via PayPal amounted to a six-figure sum in a single year and his eBay account included hundreds of customer ratings for his online store.

The FTT found that his failure to declare his self-employed trading income on his tax returns was deliberate, although not concealed. He was thus liable to maximum penalties of 70 per cent of the potential lost revenue. In the event, HMRC had agreed to reduce the penalties substantially to take account of assistance he had provided during the inquiry.

In dismissing his appeal, the FTT noted that HMRC's approach was, if anything, generous to him. The tax assessments were justified and not excessive. Although he was suffering from a medical condition and on the edge of bankruptcy, there were no special circumstances that would justify a further reduction in the penalties.

It is important to source specialist legal advice if a dispute with HMRC arises. Our expert team can assist.

**Partner Note**

*Milasenco v The Commissioners for His Majesty's Revenue and Customs [2023] UKFTT 620 (TC)*

**Outdoor Advertising, Light Pollution and a Legal Battle Over a Bus Shelter**

Light pollution generated by hi-tech digital advertising displays can be a source of bitter complaint. However, such concerns were insufficient to persuade the High Court to overturn permission granted for the inclusion of one such display in a proposed new bus shelter.

A householder launched judicial review proceedings against the backdrop of a local authority's multi-million-pound plans to replace its aging bus stop infrastructure and an outdoor advertising provider's proposal to install digital liquid crystal displays at 158 existing advertising sites in the area, including 110 bus shelters.

The focus of his complaint was the proposed inclusion of such a display in a new bus shelter to be built a few metres from his home. The shelter formerly featured back-illuminated, double-sided posters in paper form, but its replacement would be fitted with one of the new state-of-the-art displays.

There was no need to obtain planning permission for the replacement shelter in that the proposed works fell within the ambit of the Town and Country Planning (General Permitted Development) (England) Order 2015. The provider, however, required advertising consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

A planning officer's report considered that the display, together with smaller screens suitable for public information, would be acceptable in terms of design and that their size, positioning and brightness would result in a neutral impact on the immediate area. The council granted advertising consent subject to a number of conditions, including a restriction on the brightness level of the display's night-time illumination.

Challenging that decision, the householder argued that he and his neighbours had a legitimate expectation that they would be consulted before consent was granted. There was, he argued, a failure to consider a local planning policy which required advertising positively to contribute to an area's character and appearance. He said that there had been no assessment of the impact of the display, particularly in terms of light pollution, at the specific bus shelter.

Dismissing his case, however, the Court found that the council had, in substance, taken the policy into account. The focus of the Regulations was in any event on amenity and public safety: improving the public realm and positively enhancing the setting of advertising were only relevant in that context.

Although the planning officer's report referred to advertising providing an income stream to the council, the Court rejected arguments that immaterial considerations had been taken into account. The council had used best practice to determine as a matter of planning judgment the degree of illumination it would approve at the specific bus shelter. There was nothing exceptional about the provider's application and the council had given no clear, unambiguous and unqualified undertaking that it would be the subject of public consultation.

For expert guidance relating to light pollution disputes, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*R on the Application of Whiteside v London Borough of Croydon [2023] EWHC 1806 (Admin)*

**Overseas Divorce – Supreme Court Identifies Unjust Defect in Matrimonial Law**

A woman's financial claims against her ex-husband following their overseas divorce did not survive his death. In reaching that conclusion, the Supreme Court noted that the case had exposed a defect in the law that can only be remedied by Parliament.

After the breakdown of the couple's long marriage, the husband obtained a divorce in Pakistan. The divorce was recognised as valid in this country and the wife applied to the English courts for financial relief under Section 12(1) of the Matrimonial and Family Proceedings Act 1984. If successful, she would have been entitled to the same financial relief as if the divorce had been granted in England.

The wife's claim had reached an advanced stage but had not been finally determined when the husband, a wealthy man, died aged 81 in Pakistan. A judge subsequently ruled that he was bound by authority to find that her claim died with him and could not proceed against his estate. Given the judge's view that he had been required to reach an unjust decision, the wife was granted permission to appeal directly to the Supreme Court, bypassing the Court of Appeal. She subsequently died, but the appeal was continued on behalf of her estate.

Dismissing the appeal, the Supreme Court found that, on their true construction, the 1984 Act and the Matrimonial Causes Act 1973 create purely personal rights and obligations. The power of an English court to order financial relief after an overseas divorce can only be exercised as between living parties to a former marriage. The Court noted that any other conclusion would require major legal reform involving radical change to principles established by a long line of judicial authority.

As the husband was not domiciled in England and Wales when he died, it was not open to the wife to seek reasonable provision from his estate under the Inheritance (Provision for Family and Dependants) Act 1975. Given that she was also barred from proceeding with her claim under the 1984 Act, she was left with no possibility of obtaining financial relief. It was not, however, open to the Court to cut the Gordian knot presented by the existing legislation and only Parliament was competent to make the policy decisions required to reform the law.

If you are dealing with divorce proceedings, we can ensure you are expertly advised and represented.

**Partner Note**

*Unger and Another v Ul-Hasan (Deceased) and Another [2023] UKSC 22*

**Terminally Ill Woman's Marriage Triggers High Court Inheritance Dispute**

It is quite common for people to get married in the knowledge that they only have a short while to live. However, as a High Court ruling underlined, such a step is often fraught with legal difficulty in terms of inheritance and should never be taken without legal advice.

The case concerned a woman who was fully aware that she was terminally ill. Her assets in England and abroad were worth about £10 million. She was being cared for in a hospice when, a few days prior to her death, she made a will with the help of a priest and a man who was described on her admission papers as her close friend and next of kin. She executed the document without having received professional legal advice from a solicitor.

By the will, she left around one sixth of her estate to the friend, bequeathing most of the balance to her sister and members of her family. However, on the same day that she signed the document, she and the friend were married in a religious ceremony. That was followed soon afterwards by a civil ceremony at which her sister served as a witness. Three days later, she died.

The friend subsequently launched proceedings, asserting that the marriage had the effect of revoking the will and that she therefore died intestate. As her husband and next of kin, he asserted that he was thus entitled to inherit the entirety of her estate. His claim was resisted by the sister, but he applied for summary judgment on the basis that her defence had no real prospect of succeeding.

Ruling on the matter, the Court noted the general rule contained in Section 18 of the Wills Act 1837 that, when a couple get married, any previous wills either of them have made are automatically revoked. That provision does not require them to have any intention to revoke their wills or even to be aware of the rule's existence.

In rejecting the friend's application, however, the Court found that the sister had a real prospect of establishing that the woman made her will in anticipation of her forthcoming marriage. If it could be shown that she intended her will to survive her nuptials, an exception to the general rule would apply. Some, but not all, other aspects of the sister's defence were also viable and the Court found that the matter could only be resolved fairly following a full trial on the merits.

For advice on inheritance disputes, contact our expert team.

**Partner Note**

*Lattimer v Karamanoli [2023] EWHC 1524 (Ch)*

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