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Legally Speaking - Judge & Priestley's Quarterly Legal Update for Private Clients

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Chancellor cuts stamp duty for first time buyers

Chancellor Philip Hammond has abolished stamp duty for most first time home buyers in England and Wales.

In his autumn budget, he announced that the first £300,000 of the price of a property will be exempt from tax for people entering the housing market for the first time. The change came into effect immediately.

He said the change means 95% of first time buyers will now pay no stamp duty at all, providing them with a saving of up to £5,000, depending on the purchase price.

Mr Hammond also promised that the government would deliver 300,000 new homes a year, and pledged an investment of £44 billion to get more housing projects started.

The government had already announced that it would spend £10 billion to provide 135,000 new homes through the Help to Buy Equity Loan scheme.

More than 130,000 properties have already been sold through the scheme, which helps people buy a new build home with only a 5% deposit.

The new funding means that Help to Buy Equity Loan could help another 135,000 people by 2021. This would bring the total number of households across England that would be supported through the scheme to around 360,000.

Four out of five home purchases using the equity loan scheme have been made by first-time buyers, helping the total number of first-time buyers to increase by 70% between 2010 and 2016.



The equity loan scheme launched in April 2013 and funding has been committed until 2021. It works by the government providing an equity loan of up to 20% which is repaid when the home is sold, or after 25 years, whichever comes first.

No interest or repayments are due during the first 5 years of the loan.

The Help to Buy Equity Loan can be used to purchase a new build property up to the value of £600,000, with a maximum equity loan of £120,000 (20%). In London, applicants can claim an equity loan up to 40% of the purchase price.

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Company wrong to sack bus driver for running red light

A bus driver with an "exemplary record" who was sacked for going through traffic lights when they were on red has won his unfair dismissal claim.

The Employment Tribunal heard that Abdul Jabber had worked for National Express West Midlands for 37 years and had an unblemished record throughout that time.

He was sacked in October 2015 after a CCTV camera caught him driving through a red light.

He took legal action saying the dismissal was an excessive reaction to one mistake, especially as he had worked for the company for so long without any other issues.



The tribunal found in his favour and said he was entitled to compensation.

Judge Glyn Lloyd said: "The claimant is a bus driver of exemplary record.

"He has worked for the company without any disciplinary taint for some 37 years. He has been free of any accident or driving penalty for some

32 years. What he did was - and we accept it was - a five-second momentary lapse of concentration on his part by a driver who sits in the cab facing the unpredictable environment of busy city roads eight to ten hours each day.

"Considering the totality of the evidence, we find that his summary dismissal in those circumstances was disproportionate."

The amount of compensation will be set at another tribunal unless the two sides can reach an agreement out of court.

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Employment tribunal fees now being refunded

People who have paid fees to bring a claim to the Employment Tribunal can now start applying to get their money back.

The refund scheme was introduced by the government after the Supreme Court ruled the charges for bringing a claim were unlawful.

The fee system was introduced in 2013, with employees having to pay up to £1,200.

Following a challenge by the union Unison, the Supreme Court ruled that the fees were discriminatory, unlawful and unconstitutional.

The government has tested the refund process by contacting up to 1,000 people who had paid to bring claims.

Now, anyone who feels they are eligible for a refund can make an application. Further details are available at

<https://www.gov.uk/employment-tribunals/refund-tribunal-fees>.

As well as being refunded their original fee, successful applicants will also be paid interest of 0.5%, calculated from the date of the original payment up until the refund date.

In a statement on the issue of fees, the Ministry of Justice said: "The Supreme Court judgment noted that 'fees paid by litigants can, in principle, reasonably be considered to be a justifiable way of making resources available for the justice system and so securing access to justice'.

"The court ruled, however, that we hadn't set the fee at the right level to deliver that outcome."



The (MoJ) says it is also working with trade unions that have supported large multiple claims potentially involving hundreds of claimants.

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Court clears up confusion caused by a homemade will

Many people are tempted to make DIY wills to save money but it can often lead to confusion and extra cost for grieving families, as in a recent case before the High Court.

It involved a man who left three houses, one in London, one in Cardiff and one in Montenegro, to the Serbian Orthodox Church.

However, the will failed to state which branch of the church was to benefit.

There were several possibilities including the church headquarters in Serbia, a branch in Montenegro, and a church in London.



The High Court was called upon to make sense of the words the man had used when making the will.

Although he had been born in Montenegro, and still had family and property there, his connections with England and Wales at the time of his death were far more important.

His other charitable gift was to a British charity and he chose English law to

govern his succession. In considering what his intention was in using the phrase "the Serbian Orthodox Church," his strong connections to England and Wales and the fact that he had a particular affiliation with the Serbian Orthodox Church in London could be taken into account.

Therefore, the gift to "the Serbian Orthodox Church" was to the branch with which he was most closely connected, namely the Serbian Orthodox Church in London.

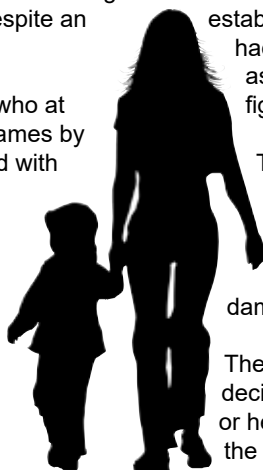
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Mother may change son's name despite father's concern

A mother has been allowed to change her son's middle name despite an objection from his father.

The case involved a boy who at birth was given two forenames by the parents and registered with both.

He was most commonly known by his first name but the father used both and said that he favoured the middle name, which is not being published to protect the boy's identity.



The middle name was a normal well-established name, but the mother felt it had bad connotations because of its association with a notorious public figure.

The judge, in private proceedings, made an order granting the mother permission to change the boy's middle name on the basis that continuing to use it would damage his emotional welfare.

The Family Court has upheld that decision. It said that a child's age, his or her degree of understanding and the growing importance of forenames

in terms of identity were all crucial factors to be considered. The judge took all those factors into account as part of his welfare evaluation.

It was doubtful that the order achieved the intended goal, namely to protect the child on a day-to-day basis. However, what the mother wanted was to ensure that the middle name did not routinely appear on documents, for example school reports, and thereby avoid any innocent usage.

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Judge wants 'living wills' to become compulsory

One of Britain's leading judges has called for living wills to be made compulsory to prevent disputes about the kind of medical treatment offered to patients who are unconscious or unable to make their feelings known.

A living will, also known as an advance decision, enables you to write down how you wish to be cared for if you fall ill at some point in the future. This could involve the medicine you are prepared to accept or even whether you want to refuse treatment in certain circumstances.

Mr Justice Francis said living wills would help to prevent disputes and reduce stress for patients and their families. He made the comments while presiding over a case involving an elderly patient suffering from a condition that has left him in a minimal conscious state.

The man's family disagreed with hospital staff over the kind of treatment he should be given. The Royal Wolverhampton NHS Trust applied to the Court of Protection, which adjudicates on issues involving vulnerable people, for a ruling to resolve the issue.

At the hearing, Mr Justice Francis said: "It should be compulsory that we all have to make living wills because these cases would be resolved much more easily. We all ought to be encouraged to tackle these issues.

"If there was some sort of campaign to educate people about these sort of



things, I think people would actually do something about it."

Living wills are often drawn up at the same time as Lasting Powers of Attorney (LPA).

These are legal documents that allow you to nominate someone you trust to be your representative or 'attorney' to make decisions on your behalf if you ever lose mental capacity at some time in the future.

They are overseen by the Office of the Public Guardian and the Court of Protection to ensure they can't be abused.

The property and finance LPA allows you to appoint someone to look after your financial affairs, and the personal welfare LPA lets you grant an attorney authority over such matters as health care and the kind of treatment you

receive. If you don't have an LPA, your family may have to go through complicated court procedures to be granted authority to manage your affairs.

If your family disagree with the kind of treatment you're being given by hospital staff, as in this case, they or the NHS may have to apply to the Court of Protection to resolve the matter.

That can create extra stress and expense for your loved ones at a time when they are already worried about you.

Thousands of people set up LPAs every year to ensure that their interests and wishes will be respected if the worst comes to the worst at some point in the future.

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Some rich fathers 'are paying too little in child support'

A leading judge has called for reforms to prevent rich fathers manipulating their finances to reduce the amount they pay towards their children's upbringing.

The call follows a change in the law in 2012 that means maintenance payments are based only on actual income. This means that if a parent wants to pay as little as possible, they can structure their finances so they are wealthy in terms of property or other assets but poor in terms of income.

The issue was highlighted in a case where a multi-millionaire only had to pay £7 a week to support his 16-year-old son because, although he had £5m in assets, he only had a modest salary.

Giving judgment in the case, Mr Justice Mostyn said: "For reasons which I cannot fathom the "assets"



ground of variation has been removed from this latest regime.

"Therefore, it is possible, as in this case, for a father to live on his capital, which may be very substantial indeed, and to pay no child support at all."

He called on the government to change the law back to prevent any abuses. Otherwise, courts may start awarding higher lump sums to the wives of estranged husbands who refuse to pay reasonable support.

In a ruling on a second case he said: "If the ground is not reinstated then I foresee more cases seeking singular awards of capital, such as the one which I have determined, coming before the family court. And the family court taking an ever more expansive view of what does constitute singular expenditure."

Many legal experts agree that the courts are likely to use their discretion to award higher lump sums in cases where one partner manipulates their assets to avoid or reduce child support payments.

So far, the government has given no indication that it intends to revert to the previous system.

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Divorce figures rise to highest level since 2009

The divorce rate has risen to its highest level since 2009, according to the latest figures from the Office for National Statistics.

It's thought that financial concerns could be one of the main reasons for the rise.

There were 106,959 divorces of opposite-sex couples in 2016, an increase of 5.8% compared with 2015.

This amounted to 8.9 divorces per 1,000 married men and women aged 16 and over.

Despite this, divorce rates in 2016 were more than 20% lower than the recent peak in 2003 and 2004.

The divorce rate was highest among men aged 45 to 49 and women aged 30 to 39. More than six out of 10 divorces were petitioned by the wife, with unreasonable behaviour being the most common reason given.



Nicola Haines, from the ONS, said it was important to view the figures in a wider context.

She said: "Although the number of divorces of opposite-sex couples in England and Wales increased by 5.8% in 2016 compared with 2015, the number remains 30% lower than the most recent peak in 2003.

"This is the second year that divorces among same-sex couples have been

possible since the introduction of marriages of same-sex couples in March 2014. Our latest marriage figures show that of the 4,850 marriages formed between same-sex couples in 2014, 56% were female couples.

"In 2016, there were 112 divorces among same-sex couples, with female couples accounting for 78% of these."

Chris Sherwood, chief executive of the relationship support charity Relate, said: "It is unclear as to why there was a slight increase in divorces in 2016 and as to whether this rise will continue or not.

"We know that money worries are one of the top strains on relationships and it may be that rising levels of household debt and stagnating pay growth could be contributing factors."

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Sisters win dispute with widow over their father's will

Three sisters have won a dispute with their father's widow over the validity of his will, which he made shortly before he died.

The case involved a man who lived in Grenada with his second wife. In 2014, he visited England to see his three daughters from his previous marriage. While he was there he executed a will leaving property in the UK and Grenada to the daughters.

After he died, they discovered that his widow had applied for letters of administration of his estate in Grenada on the basis that he had died

without making a will. They took legal action to revoke the grant of letters of administration, and for them to be granted probate, which would enable them to administer their father's estate in accordance with his will.

The widow claimed her husband had not executed the will, which did not reflect the discussions he had with her. The case was eventually settled in the English High Court, which ruled in favour of the daughters.

It held that the evidence showed the will had been duly executed, that the deceased had testamentary capacity

and that he knew and approved of the contents of the 2014 will. He had left his widow some land but not as much money as she had expected.

The terms of the will were entirely rational. It made less provision for his widow than she might have hoped for but that was a decision made by the deceased.

The 2014 will was accordingly admitted to probate.

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