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

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Have you recorded all your internet passwords in your will?

There's a growing trend for people to record their internet passwords and login details when drawing up their wills, according to new research.

A survey by the cloud computing company Rackspace found that many people have built up valuable collections of music and videos online and they want to be able to pass these on to their loved ones, just as they would with other property and assets.

They also fear that their accounts on bank websites or social media outlets might be hacked into by spammers and online thieves. By recording their internet details in their wills, they can enable their families to take over the



online accounts and either manage them or close them down, depending on what is appropriate.

If you already have a will it's a relatively straightforward procedure to add a codicil referring to computer and online matters. Of course, while "digital inheritance" is likely to become more of an issue as the internet becomes an ever growing part of our lives, there are also more established reasons for making a will.

A will enables you to lay down exactly how your estate should be divided. If you don't make a will, your estate will be drawn up in a way determined by law, which means some of it may go to people you would not have chosen and may not even like.

People should also make sure they keep their wills up to date as their circumstances change, particularly through marriage or cohabiting.

Cohabiting couples are particularly at risk if they don't have wills in place. A surviving partner may find they have no right to continue living in the family home if it is in the deceased partner's name. The house and much of the estate may go to the deceased's family rather than the surviving partner. The best way to avoid these difficulties is to make a will and keep it up to date.

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When divorcing couples try to 'hide' their property

People involved in divorce proceedings sometimes try to 'hide' property by transferring it to someone else so they don't have to share it with their partner.

The courts, however, are prepared to set aside dubious transfers if it's shown that they are simply an attempt to prevent a fair divorce settlement being reached.

Such a case arose recently in which a husband used a company he owned to buy one of his properties worth up to £800,000.

He then transferred the company to a third party so it appeared he had no further interest in it.

The wife took the matter to court, alleging that the transfer of the company was a sham because the

husband retained the beneficial ownership.

The judge held that the property would make a significant difference to the wife's financial claims and should be added to the matrimonial pot when considering how much support she should receive for herself and her children.

That decision has now been upheld by the Court of Appeal, which said the transfer was manifestly an attempt by the husband to prevent the wife from getting her fair share of a valuable asset.

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Covenant restricts homeowner's right to build

When buying a home it's important to check if there are any legal provisions restricting what you can do with the property.

Failure to do so could prevent you carrying out alterations or developing the land, as happened in a recent case in the High Court.

It involved a house owner who bought a property on a small residential estate which was overseen by a management company. There was a covenant relating to the property stating that it was not to be used for any purpose other than

"as a private dwelling-house in single family occupation". The house owner decided to build another house on his property but the management company objected. It claimed that the covenant prevented further development. The owner argued that the covenant only related to the house itself. However, the court found against him. It held that the covenant related to the property as a whole and so prevented a second house being built.

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Welcome to J & P's latest newsletter, specially designed to keep you up to date with all the latest legal developments affecting you and your family.

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Salesman wins constructive dismissal claim

A salesman who resigned because his firm provided a poor service to his customers has won his claim of constructive dismissal.

The salesman worked for a firm that supplied office equipment and electrical goods.

He found that his customers were sometimes supplied with faulty goods, had orders diverted or were inconvenienced by late deliveries. These errors led to the salesman earning less commission.

His earnings were further reduced when the company removed one of his major accounts. The salesman resigned and claimed constructive dismissal on the basis that there had been a breach of the implied terms of trust and confidence

between him and the company. The case reached the Employment Appeal Tribunal which found in favour of the salesman.

It rejected the company's argument that the problems with deliveries were the fault of other suppliers and so beyond its control. The Tribunal also rejected the company's submission that there were sound business reasons for removing one of the salesman's major accounts.

It held that the sub-standard service and the removal of the account reduced the salesman's earning and amounted to a fundamental breach of the implied terms.

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Protect your future with Lasting Powers of Attorney - you don't have to be ill to use them

Better health care means that people are now living longer and more active lives.

However, the increased life expectancy has brought with it an increase in the number of dementia cases.

The Alzheimer's Society says that one million people in the UK could be affected by some form of dementia by 2021.

It is impossible to predict our future health but we can take steps now to protect our interests if we suffer from dementia or lose our mental capacity for any other reason in the future.

Lasting Powers of Attorney (LPAs) enable you to nominate someone such as a family member or trusted associate to make decisions on your behalf if you ever lose the ability to do so yourself.

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 medical treatment you receive.

Although many people see LPAs as a good way of guarding against future incapacity, they are often used in other circumstances when there is no illness involved.

For example, you may wish to grant someone you trust the authority to handle some of your affairs because you

may be abroad for long periods, or busy with other commitments. LPAs can be very useful in these situations.

LPAs should be drawn up with the help of a solicitor to ensure that they accurately express your wishes and protect your interests.

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Mother wins fight to keep her children in England

A mother has succeeded in keeping her children with her in England, even though she had promised their father that she would return with them to Australia.

The case involved a British woman and her Australian partner. They had two children aged eight and two who were born in Australia.

The couple began to have difficulties in their relationship and they agreed to come to England for a year. The father later returned to Australia.

The mother remained in England with

the children on the understanding that she would return with them to Australia a few months later. However, she had no intention of returning and failed to do so. The father began proceedings in England under the Hague Convention. The court found in his favour.

The judge found that although the children were living in England at the time, that was only a temporary arrangement and their habitual residence was in Australia. The mother should therefore return them to Australia.

However, that decision has been

overturned by the Court of Appeal. It held that the judge had failed to bear in mind that habitual residence could be acquired even though the move had originally been considered as temporary.

The judge had been swayed too much by the fact that the father had always intended that the children should return to Australia. However, the father's intention did not over-ride the fact that the family's habitual residence had been established in England.

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Could friends provide the key to buying a new home?

With mortgages still hard to come by, many people are getting together with friends as a way of buying their first home.

It can be a good way of taking the first step on the property ladder as long as everyone understands what is involved and there is a legally binding agreement that is fair to everyone.

It's quite usual for friends to be informal about their relationship, but circumstances change and so it is wise to decide in advance what should happen if someone wants to move or sell their share of the house in future.

One approach is to draw up a co-ownership contract which sets out the



nature of the agreement and how things should be handled if circumstances change.

For example, joint buyers may want to consider what happens if one of them loses their job and can no longer pay their share of the mortgage.

There are other points to consider such as what happens if one person needs to sell their share? How should that share be valued? How much notice should the seller have to give before leaving? How much say should the remaining parties have over who is allowed to buy the share?

There are also questions as to how mortgage payments should be paid. Does each part-owner pay individually or

should there be a joint bank account? Most of these points are quite straightforward but it is far better to deal with them at the outset rather than wait until issues arise a few years down the line.

By that time, the nature of the friendship may have changed and problems may be more difficult to resolve.

Many people have successfully bought homes with friends so it can be a good way to get on the property ladder, but it's important to get legal advice and ensure each person's interests are properly protected.

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Homeowner must pay after cutting neighbour's trees

A householder who cut down several trees on a farm that bordered his house has been ordered to pay £2,500 compensation. That figure could rise if the farmer decides to pursue the matter further in the civil courts.

Norwich Crown Court heard that the householder cut down 11 trees and damaged several more because he thought they were interfering with his television reception.

The farmer warned him to stop cutting down the trees on at least two occasions but he persisted. The court found the householder guilty of criminal damage.

He was ordered to do 80 hours community service and pay compensation.

Judge Alistair Darroch said: "It's a great pity you chose to defend this action. You had absolutely no defence and no business to cut down the trees."

It is always preferable to settle neighbour disputes amicably but when that proves impossible and matters get out of hand, the law enables you to take action to protect your rights and your property, as this case shows.

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Terraced houses show biggest price increase over 10-year period

The cost of a terraced house has risen more than any other kind of home over the last 10 years, according to research by the Halifax.

It's thought the reason is because the recession has made larger properties too expensive for many buyers.

The Halifax figures show that over the last decade, the price of the average terraced property rose by 68.4% to £151,332. Over the same period, the cost of the average home rose by 52.8% to £177,740.

It means that a terraced home is now 45% cheaper than the average detached home, which costs £273,173.

Terraced houses have also increased their share of the market, accounting for 34% of all sales compared with 31%

10 years ago. Over the same period, detached houses saw a reduction in sales from 21% to 14%.

A spokesman for the Halifax said: "Although all property types have recorded significant price increases overall during the past decade, terraced homes have seen the biggest growth.

"Demand for such properties is likely to have been supported by their relatively favourable levels of affordability over the period.

"The rapid house price rises during much of the 2000s priced many potential home movers out of the upper end of the UK housing market."

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How cohabiting couples can arrange 'marriage-like' legal protection

Cohabiting couples are being urged to take action to ensure they have the same kind of legal protection as married couples.

The call comes from the Law Society following a Government decision not to give cohabitants the same legal rights as spouses.

The issue is important because many cohabiting couples don't realise they may have few legal rights if their relationship breaks down. Women may find themselves without a home and without any maintenance payments; men may find it difficult to retain contact with their children.

Even if the relationship remains stable, cohabitants may find they have no automatic right to inherit their partner's estate, which could end up passing to family members.

The Law Society is advising unmarried couples to see a solicitor about drafting a cohabitation agreement. This would



state how the couple want their assets to be divided in the event of a break-up. Hopefully, the couple's relationship will continue but if it doesn't, it will be helpful to have difficult issues resolved in advance rather than have to discuss them when emotions may be running high.

A properly drawn-up agreement may even be more secure than some rights

associated with marriage. Law Society president John Wotton said: "Unlike pre-nuptial agreements for married couples, cohabitation agreements are recognised by the courts in England & Wales as being legally binding. It is not yet established that pre-nuptial agreements for married couples are binding in the courts.

"In light of the Government's decision not to give live-in couples the same rights as married couples, there is perhaps a greater need for cohabiting couples to make these agreements."

The Society is also urging cohabitants to make a will and ensure that it is kept up to date. This will ensure their estate is passed on exactly according to their wishes rather than in ways laid down by law.

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Woman successfully challenges her father's will

A woman has successfully challenged the will of her Sikh father after he left nearly all of his estate to his sons.

The father had come to England from India with virtually nothing but had amassed an estate valued at £870,000 by the time he died in 2009.

According to his will, the bulk of the estate was to be shared between his three sons. Two of his daughters were to receive £20,000 each and his third daughter was to receive nothing. One of the daughters who received £20,000 challenged the will on the basis that it was invalid because the two witnesses were not both present when it had been signed by her father.

During the High Court hearing, one of the witnesses gave evidence supporting the daughter's claim, saying he was

adamant that the other witness had not been present when the will was signed. The brothers submitted that their father had wanted to comply with Sikh tradition, which meant the sons should inherit most of the estate while the daughters were given wedding dowries. The judge held that there was "the strongest evidence" that the legal requirements had not been met. He therefore declared the will invalid.

This means the estate has to be divided equally between all six children in accordance with the laws of intestacy that apply when a person dies without making a will. The judge accepted that this might frustrate the father's wishes but that was the effect of the law.

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