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

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## The real-life message in Coronation Street story

Millions of people were gripped by the tragic storyline in Coronation Street involving popular character Aidan Connor, who took his own life after suffering mental health problems.

His family were still reeling from his death when they received the news that in his will he had left his factory to one of his employees, rather than to his relatives.

It's unclear whether he meant to do that because at the time he made his will, he only owned 18% of the shares in the factory, but by the time he died, he owned it all after his sister Carla had given him her share.

Did he mean to leave all the shares in the factory to the employee? Or just the 18%?

The confusion left the family with the dilemma of whether to challenge the will.

The issue was eventually resolved amicably but not before everyone involved was subjected to unnecessary stress and heartache.

The on-screen drama highlighted problems that can sometimes happen in real life, albeit in a less dramatic way perhaps. People often forget to update



their will when their circumstances change. This can lead to major problems.

The most obvious example is getting married.

When you marry, your existing will is automatically revoked and is no longer

valid. You need to make a new will to ensure your estate is passed on according to your wishes.

You should also check your will if you divorce to make sure you are not leaving assets to your former spouse or their family, unless of course, there are reasons why you want to do that. If you start a new long-term relationship, you may wish to ensure you provide properly for your new partner, especially if you start living together.

Many people assume that cohabitants have the same legal rights as married couples. This is not the case and can lead to bereaved partners suffering financial hardship, and even losing their home.

There are numerous other events that could lead you to update your will, such as having children, inheriting money or property, or building up a business.

In all these cases, updating your will can ensure your loved ones don't face hardship, or have to take legal action once you've gone to receive what they consider as their rightful inheritance.

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## Barclays liable for sexual assaults committed by doctor

Barclays bank has been held liable for sexual assaults committed by a doctor it hired to carry out medical examinations on employees.

The bank required its employees to attend a medical assessment as part of its recruitment process. Between 1968 and 1984, the assessments took place unchaperoned at the doctor's home.

The doctor died in 2009, but in 2013, police had collected enough evidence to have charged him with sexual assault if he had still been alive.

A group litigation order was made on behalf of 126 claimants and the judge

ordered a preliminary trial to determine whether the bank could be held liable for the doctor's assaults.

Barclays argued that the doctor was an independent contractor, while the claimants said he was a direct employee of the bank or was in a role 'akin to employment'.

The judge found that the doctor's actions were committed as a result of activity undertaken on behalf of the bank.

He was working under the bank's control, as an integral part of its business activity. Barclays was likely to be insured against such liability and



have the means to compensate the victims if necessary.

The judge concluded that it was fair and just to find the bank vicariously responsible for the doctor's actions.

The decision was upheld at the Court of Appeal.

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# Poundland shop manager was unfairly dismissed

A Poundland store manager has been awarded £21,000 compensation after she was unfairly dismissed for allegedly stealing a drink.

The manager, Ms Stokes, had worked at the company for eight years. In June 2017, the area sales manager and a senior colleague entered Ms Stokes' office unannounced.

They told her they had reason to believe that she had taken drinks from the damaged stock area. They showed her CCTV footage of her holding a drink.

They only showed her a few seconds of footage, which didn't include her consuming the drink.

Ms Stokes believed the allegations were malicious and could be connected to a performance management meeting



she had held with a supervisor who had been 'underperforming'.

The supervisor had emailed the senior managers saying that he had seen Ms Stokes and another colleague with a couple of drinks and 'put two and two together'.

During the investigation, Ms Stokes said that she recalled finding some out of date drinks on the shop floor but not taking one of the drinks into her office. She asked to see the full CCTV footage of her consuming the drink, but this was not provided.

She was suspended and forbidden from contacting staff. She lodged a grievance with HR saying that the supervisor had acted maliciously, and that the investigation had been unfair.

She was dismissed by letter with the alleged theft given as the reason for her dismissal.

She took the case to the Employment Tribunal where the judge found that the store had followed a flawed investigation process and that there had been no reasonable basis to believe she had been guilty of misconduct.

Ms Stokes was awarded £20,930 plus costs.

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# First-time buyers save £284m because of stamp duty cut

More than 120,000 first-time home buyers have saved a total of £284m because of the cuts to stamp duty introduced last November, according to government figures.

The first £300,000 of the price of a property is now exempt from tax for people entering the housing market for the first time.

It means that the new stamp duty cost for first-time buyers is:

- properties up £300k, no stamp duty
- properties between £300k and £500k – 5% on the part above £300k
- properties over £500k – no entitlement to relief.

The government claims that over the next five years, its housing policies will help over 1 million people getting on to the housing ladder.

It says that in addition to government-backed schemes such as the Help to Buy equity loan and Help to Buy ISA, those



hoping to make their money go further can open a Lifetime ISA – to either save for a first home, or for later in life.

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# Father not entitled to have his son returned from Spain

A father has failed in his bid to have his son returned to the UK from Spain.

The case involved a couple who met in the UK but then moved to Spain shortly afterwards. The father was British, and the mother was Spanish.

Their son was born in Spain in 2016. When he was nine months old, the couple moved to England for a few months.

They then returned to Spain but separated shortly afterwards following the father's adultery. He went back to England, but the mother refused to return their son to the UK.



The father claimed the mother was wrongfully retaining their son in Spain, but the High Court ruled against him on the basis that the boy should be considered habitually resident in Spain.

It said that a young child would usually have the same habitual residence as his or her carer. The mother was his primary carer and he had spent the first nine months of his life in Spain among his maternal family.

He had very substantial connections and roots to his family in Spain. Prior to coming to the UK, he was habitually resident in Spain.

The court was not satisfied that he had acquired residence in the UK when the family left Spain in June 2017.

It followed that there was no wrongful retention of the child in Spain on or after January 2018 and that the English court did not have jurisdiction in relation to any issue concerning him or his upbringing.

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# Couples resorting to blame to get quick divorce

There has been a huge rise in the number of couples citing "unreasonable behaviour" as grounds for obtaining a quick divorce.

Researchers at Oxford University found that the number of divorces granted to wives because of unreasonable behaviour rose from 17% in 1971 to 51% in 2016. The increase was even sharper for husbands, rising from 2% to 36% over the same period.

Under current law there are five reasons for being granted a divorce by the courts:

- Adultery
- Unreasonable behaviour
- Desertion
- The couple have lived apart for more than two years and both agree to the divorce
- The couple have lived apart for at least five years, even if the husband or wife disagrees.

John Haskey, who led the research, said



that when the Divorce Reform Act took effect in 1971, it was assumed that most divorces would use separation as grounds for the divorce, either with the agreement of both partners after two years or without agreement after five years.

However, that is not how it turned out. The figures show that 63% of divorce proceedings brought by the wife use one of the three fault clauses, while 48% of husband led divorces do so. The increasing use of the fault approach

suggests people are not prepared to wait two or five years if they can find an alternative. Mr Haskey said this could be for a variety of reasons including the need for wives to access finance.

The figures are released amid growing calls for divorce laws to be reformed to remove the need for blame.

Baroness Butler-Sloss has put forward a private member's bill in parliament proposing a system of no-fault divorce, which would enable couples to end their marriage without having to apportion blame to avoid having to wait two or five years.

Ministers have indicated that the bill may receive government support.

We shall keep clients informed of developments.

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## Man leaves millions to Oxfam under 'common tragedy'

A wealthy businessman has left millions to the charity Oxfam after inserting a common tragedy clause into his will.

Richard Cousins died along with his two sons, his fiancé and her daughter when their plane crashed in Australia on New Year's Eve.

Mr Cousins, who was the chief executive of the Compass Group, had made provision in his will for what should happen if all his immediate family died in a single event.

His brothers would each receive £1m but the bulk of his fortune, estimated at £41m, would go to Oxfam. Many people include a common tragedy clause,

sometimes referred to as a catch all provision, when drawing up their will. It means their estate will go exactly where they choose if their family is involved in a single tragic event.

If there is no such clause, the estate will be divided in a way set down by law. This means it will pass to your nearest surviving relative or relatives, even if you may be estranged from them or they are people you hardly know.

The only way to ensure your assets are passed on exactly as you want is to make a will and keep it up to date. It appears that Mr Cousins had received good advice and drawn up a will that covered all eventualities.

A spokesman for Oxfam told the BBC: "We are extremely grateful for this generous bequest of which we have only recently been notified.

"We are working with the family and our board of trustees to identify how the money will be used."

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## Court corrects error in family trust to restore tax benefit

The High Court has corrected an error in a trust to make it effective and ensure that it provides the intended tax benefits.

The case involved the family of a woman who during her lifetime made three settlements of shares.

The beneficiaries were her three children, their heirs and four charities. There were four trustees of each settlement: the mother, the father and two others. A clause in each settlement made each sibling the prime

beneficiary of one of the settlements. In 1999, the mother amended the settlements to give the siblings certain tax advantages.

However, only three of the four trustees signed the deed outlining the amendments.

By some error, the mother was not identified as a trustee and was not required to sign.

The deed was therefore ineffective, and the error was not noticed until

after the mother's death. Supported by the trustees, the three children sought to correct the situation.

The court granted their application.

It held that it was clear that all four trustees, including the mother, had intended to exercise their power to amend the trust and so the changes made should be considered effective.

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# All you need to know about Statutory Wills

Nimalee Bastian-Carter, Associate Solicitor, outlines all you need to know about Statutory Wills and the role of the Court of Protection when an individual loses the capacity to make informed decisions for themselves.

## What is a Statutory Will?

In order for a person, known as the 'testator' to make a valid Will, they must have a clear understanding of the act of making a Will, an idea of the extent of their estate and regard to the people that they should provide for from their estate.

If a testator is unable to understand the above, they are said to lack 'testamentary capacity' and an Attorney or Deputy will have to apply on their behalf to the Court of Protection to execute a Will on their behalf. The testator is known as 'P'. Medical evidence must be obtained

to confirm that 'P' lacks the requisite testamentary capacity to make a Will before an application to the Court can be made.

## Why is a Statutory Will necessary?

An application may be made to the Court of Protection because it is considered necessary for 'P' to amend an existing Will due to a change in their circumstances or to make a new Will.

A Statutory Will is needed to ensure that 'P's wishes can be carried out upon death and to ensure their estate is distributed fairly.

It is always necessary to consider what is in 'P's best interests i.e. what they would have done if they could make a Will themselves, what their personal beliefs and values are and consideration must

also be given to their past behaviour and decisions.

A Statutory Will can also help with tax planning but this should not be the primary reason for making a Statutory Will on 'P's behalf.

## How is a Statutory Will made?

The making of a Statutory Will can be complex and is not a quick process. A number of forms and supporting documents have to be submitted to the Court of Protection and a fee is payable. This will include details of 'P's income and expenditure - both present and future, a family tree and details of taxes which may arise on their death.

The Official Solicitor is appointed to represent 'P' and to ensure all parties act in 'P's best interests. Interested parties can be those materially affected if there is an amendment to an existing Will or those who may be entitled on intestacy which is if a valid Will does not exist at the time of the death, the estate is distributed in accordance with the intestacy rules. Once the contents of the Will have been agreed by all the parties concerned, the Will is signed on behalf of 'P', witnessed by two independent witnesses and then sent to the Court of Protection to be sealed by a Judge.

Upon 'P's death, the estate will be administered and distributed by the Executor(s) in accordance with their Will.

## Next steps

If you would like to discuss making a Statutory Will on behalf of someone, please do not hesitate to contact Nimalee Bastian-Carter on 020 8290 7787 or email [nbastian-carter@judge-priestley.co.uk](mailto:nbastian-carter@judge-priestley.co.uk).

## New law to help protect people in care

A new law to protect the interests of vulnerable people in care is expected to be in place early next year.

The Mental Capacity (Amendment) Bill will replace the current system known as 'Deprivation of Liberty Safeguards' (DoLs).

This is an assessment currently carried out on people who do not have the mental capacity to make their own decisions about their care.

The government has now developed a new system, known as 'Liberty Protection Safeguards'.

The reforms seek to introduce a simpler process that involves families

more and is less burdensome on people, carers, relatives and local authorities.

It's claimed the reforms will save local authorities an estimated £200m or more a year.

Many people dread losing the capacity to make decisions for themselves as they get older.

One of the best ways to protect yourself in the future is to set up a lasting power of attorney (LPA) now while you are still fit and active.

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