4 PAPER BUILDINGS

Oxfordshire Financial Remedies Seminar

1.5 CPD – BTM/CHLS

11th July 2013

CHAIR

Jonathan Cohen QC MCI Arb

TOPICS & SPEAKERS:

Prest and Petrodel Practicalities

Jonathan Cohen QC MCI Arb

"The forbidden territories of imputed intention and fairness" – Where we are since Jones v Kernott

Stephen Lyon

"It was mine before"...how the courts treat pre-acquired assets.

Harry Gates and Kate Van Rol

4 Paper Buildings

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Section 1

4 Paper Buildings: About Us

4 Paper Buildings, Temple
London, EC4Y 7EX
T 020 7427 5200
E clerks@4pb.com
W 4pb.com

About Us

4PB has a distinguished history as a leading set of specialist family law barristers providing practical, expert legal advice, and including effective and assured advocacy, in all practice areas of family law. Our size, practice range, reputation and expertise are unrivalled and mark us out as unique amongst our competitors.

What the market says:

Chambers has won a large number of prestigious awards, including leading legal publisher, Jordan's 'Family Law Chambers of the Year Award' in 2011. Our work has been recognised by leading legal directories like the Legal 500 and Chambers & Partners as representing excellence, with 25 members recommended in all areas of family law.

Chambers & Partners 2012, for child law matters, says we are 'the best lawyers in London', as well as being 'the most experienced, specialist international set of chambers in the country, if not the world'. Our barristers are seen as 'able to handle high-net worth ancillary relief [claims] in divorces'.

Those accolades follow on from Chambers UK 2011, which described us as 'first port of call for highly complex, public and private children('s case) disputes' and 'simply the best in the business' for children law work, with 'the biggest names in the field', whilst also having 'considerable expertise in high-net worth matrimonial finance disputes'.

What we do:

We specialise in family law, and any relevant area of law that relates to family matters. Our barristers deal with all aspects of the law connected with relationship breakdown, including separation, divorce, civil partnerships, and their financial consequences, such as matrimonial finance, ancillary relief, family financial settlements, such as money and property.

We are also known for our work in child law, such as Children Act proceedings, and in children-related conflicts and disputes, such as child care, residence and contact issues, the international movement of children, and visitation rights to/for children living abroad.

Many of the most serious, sensitive and significant family cases are undertaken by members of 4PB, from all sections of society, and instructions are received from clients ranging from government departments and local authorities, to individuals, ranging from celebrities, to parents trying to prevent children from being taken into care.

Causes we support

A kidspace provides a child centred support service for children who are experiencing family breakdown. They run workshops specifically designed for children aged 7 – 16 and use creative and innovative activities in their workshops to encourage children to express their feelings.

akidspace
Supporting children through family breakdown

The London Legal Support Trust

Each year a team of walkers from chambers enters the London Legal Walk to raise money for the London Legal Support Trust, the Free Representation Unit and the Bar Pro Bono Unit.

These agencies do a fantastic job in preventing homelessness, resolving debt problems, gaining care for the elderly and disabled and

fighting exploitation.

This year the 4PB team raised just over £2000.

Inside Chambers

We are well located in attractive premises in an historic building in the Inner Temple. The Royal Courts of Justice, the Principal Registry of the Family Division and other London courts are easily accessible.

Communication is central to our ethos. Clerks can connect solicitors and counsel anywhere in the world by telephone. Conference facilities can be made available at short notice to clients needing urgent face to face advice. Telephone and Skype conferences are also available.

Chambers has a well-integrated and extensive network of legal information resources, both electronic and in traditional law library form, with online access to both all major legal databases and to the outstanding facilities offered by the Inns of Court.

The Clerking and Administrative Team

Michael Reeves leads a dynamic, dedicated, and well-organised clerking team. As the interface between client and barrister, our clerks always seek to provide a quick response to any query.

Chambers 2012 particularly praises our 'high level of client service', singling out our 'excellent clerking team, always providing a great service even with difficult timeframes.'

Clare Bello, our excellent practice manager, is responsible for the administration, financial management, premises and facilities, IT and aspects of marketing.

BarMark as a sign of excellence

We were one of the first sets in the country to receive the Bar Council's quality assurance mark, BarMark, as a seal of excellence, which we continue to demonstrate in both administration and advocacy in our work as specialist family lawyers.

Memberships

Our barristers play a leading role in the development of our profession, and family law generally, through their membership of various specialist associations, including both the Family Law Bar Association and the Association of Lawyers for Children.

Members are also active in the Employment Law Bar Association and the Employment Lawyers' Association.

They are also active in the Commonwealth Legal Association, International Bar Association, and the International Academy of Matrimonial Lawyers.

Several members are also actively involved in the Bar Council either as elected members or as co-opted specialist advisers.

Publications and Continuing Professional Development

Our barristers write regularly for the legal, specialist, local authority and mainstream http://www.4pb.com/media, and provide insightful, practical, and relevant lectures of topical interest to solicitors, both in private practice or in-house, regional Resolution committees and family law groups.

Chambers has also established its own annual lecture series providing essential legal and procedural updates, as well as networking opportunities to meet our barristers on a more informal basis.

Equality and Diversity

Chambers is committed to equality of opportunity and to compliance with the Bar Standards Board's Equality and Diversity Code. Everyone who comes into contact with Chambers are treated on merit and are not discriminated against on the grounds of their ethnic or national origin, nationality, citizenship, age, sex, sexual orientation, marital status, disability, religion or political persuasion. To view a copy of our Equality and Diversity Policy please click here.

Complaints and Discipline

Barristers and staff at 4PB always strive to maintain the highest standards of service. However, there may be occasions when a client is disappointed with our service. We take any cause for dissatisfaction seriously and it is our policy to investigate fully any complaint in accordance with BSB requirements. We aim to learn from any mistakes so as to improve our service in the future. To download our Complaints Policy, please click here.

Section 2

Prest and Petrodel Practicalities

Jonathan Cohen QC

PREST and PETRODEL PRACTICALITIES

1. Will the veil be pierced?
   Evasion: "when a person is under an **existing** legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing company under his control" the veil may be pierced. Piercing will be unlikely in other scenarios. Other JSCs may go further than Lords Sumption and Neuberger.

2. Is the Company a sham? This requires both control of the Company by H and impropriety, that is misuse of the Company as a device or facade to conceal their wrongdoing.

3. Beneficial ownership
   (i) Is the Company engaging with the process? If not, then implication more easily drawn that it is seeking to protect H.
   (ii) Who provided the consideration for the purchase/ownership of the Company assets? Resulting trust? Tracing?
   (iii) Are the assets in the nature of the Company's business?
   (iv) Who enjoys and has the practical use of the assets?
   (v) If a matrimonial home is held in the Company, it will be easier to prove beneficial interest of the Company.
   (vi) If the asset is acquired for value in the ordinary course of business trading no presumption is likely to arise and the Company's assets will remain intact.

Jonathan Cohen QC
4PB

Section 3

"The forbidden territories of imputed intention and fairness."

– Where we are since Jones v Kernott

Stephen Lyon

"The forbidden territories of imputed intention and fairness[1]"

Where we are since *Jones v Kernott.*

1. A reminder of the lie of the land before Jones v Kernott.

   (a) In *Lloyds Bank v Rossett [1991] AC 107,* the seminal speech of Lord Bridge of Harwich had made it clear that in all cases where cohabitants disputed beneficial ownership, and whether in a sole name or joint names case, a two stage enquiry had to be undertaken:

      (i) Was there an intention that beneficial ownership should be shared?

      (ii) If so, what is the nature and extent of those respective shares?

In joint names cases the answer to the first question is obvious – yes, and the difficulty usually arises because no express declaration of trust has been made and recorded on the TR1. Where silent the presumption remains that beneficial ownership follows legal ownership, and the burden remains on the Claimant to show otherwise. An express declaration of trust, in the absence of fraud duress and common mistake, remains good for all time.

In sole name cases, the search is for a common intention and the test to be applied arising out of *Rossett* now seems harsh: Lord bridge was of the view that there must be evidence of express discussions usually at the time of purchase or *exceptionally* at a later date[2] evidencing a common intention to share the beneficial ownership, and "*however imperfectly remembered*".

[1] Per Lord Neuberger in *Stack v Dowden*

[2] As will be seen later, Chadwick J (as he then was) took a different view as to timing in James v Thomas [2007] EWCA Civ 1212

In the absence of express discussions, a common intention could *per Rossett* be inferred from conduct, but – and this is crucial – Lord Bridge was extremely doubtful that anything other than a ***direct*** contribution to the purchase price would suffice evidentially. That could take the form of a deposit or subsequent payments towards the mortgage.

Additionally in all cases the Claimant had to (and still has) to show detrimental reliance. At that stage a wider consideration of conduct is permissible and could include indirect contributions over the whole course of dealing in order to ascertain proportions. The require to show detriment remains an important ingredient nothwithstanding the significant changes in the law since *Rosett.*

2. *Oxley v Hiscock [2005] Fam 211* was a sole name case, but where the Claimant had made a financial contribution towards the purchase. Accordingly stage 1 of *Rossett w*as easily cleared. The importance of that decision lies in the Judgement of Chadwick LJ, when he considered stage 2. He observed that the court's decision was fairly straightforward where there was evidence of what was said and done at the time of acquisition. But what if there is evidence that there were no discussions as to shares, or the evidence is inconclusive? The question, his Lordship observed, *"still requires an answer".* That answer – according to his Lordship at least – was

   "It must now be accepted that (at least in this court and below) the answer is that ***each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property."*** (my emphasis).

3. It is the words highlighted in bold which really set the cat amongst the pigeons in the legal world. It too was the genesis of the controversial infer/impute concept that, at will be seen below, has caused such disquiet since the decision in *Jones.*

4. The decision is Stack v Dowden [2007] 2 AC 432.

The facts

Mr Stack and Ms Dowden had been cohabiting since 1975 and had four children. They purchase a property as a family home in their joint names in 1993. As so often is the case there was no express declaration of trust. The purchase price was £190k. It was funded by means of a joint mortgage of £65k, £67k from the sale of their previous home and £58k from a savings account in Ms D's name, and the beneficial ownership of which was in dispute. In 2002 the parties separated and Ms D severed the joint tenancy.

At first instance it was found that Mr S had carried out improvement works to the property and that the savings were joint. A declaration was made that the beneficial interest was held in equal shares. Ms D appealed, seeking a declaration as to 2/3 1/3 ownership in her favour. She was successful. Heavy reliance was placed on the fact that the parties led entirely separate financial lives.

Clearly stage 1 of *Rossett w*as easily overcome. Baroness Hale cited with approval the passage in the Judgement of Chadwick LJ in *Oxley,* set out above. She sought too to elaborate on what he said, and how the stage 2 test should be approached judicially. She confirmed that the starting point is that the beneficial interests follow the legal interest. Accordingly where a conveyance is made into joint names, the presumption is that the beneficial interest is owned jointly ie equally. Having stressed (as did the rest of their Lordships) that proper completion of the new TR1 which came into use in April 1998 should resolve the majority of disputes, since it makes express provision for the insertion of the terms of ownership, sadly her Ladyship immediately went on to cause confusion, in considering the stage 2 exercise:

"Context is everything" said her Ladyship. Each case turns on its own facts, and financial contributions are not to be considered the be all and end all. At paragraph 69 of her speech she set out a non - exhaustive list of considerations:

- The purpose for which the home was acquired;
- How the property was financed both initially **and subsequently;** (my emphasis);
- how the parties arranged their finances;
- whether they had children;
- who pays for what other than the mortgage, although a detailed arithmetical calculation was to be avoided.

It can readily be seen that the slow creep towards "a fair outcome" (cf the court's approach if the parties were married) was beginning to take place.

What was important also in the speech of Baroness Hale was what she had to say about the limits on the courts' powers when inferring or imputing the parties' intentions with regard to ownership. In considering the concept of "fairness" as introduced by Chadwick LJ in *Oxley* her Ladyship was a t pains to stress that:

"the search is still for the result which reflects what the parties must, in the light of their conduct, be taken to have intended. Second, therefore, it does not enable the court to abandon that search in favour of a result ***which the court itself considers fair.*** *For the court to impose its own view of what is fair upon the situation which the parties find themselves would be to return to the days before Pettit v Pettit [1070] AC 777 without even the fig leaf of s17 of the 1882 Act"* (my emphasis).

As will be seen below it is the *volt face* of the Supreme Court on this crucial point which is at the heart of the controversy over the decision *Jones*.

The speech of Lord Neuberger, a property man to his fingertips is worthy of consideration also . He remained hugely sceptical both about notions of inferring/imputing common intention and as to Chadwick LJ's nebulous concept of fairness which Baroness Hale had so readily embraced. Helpfully he sought to explain the difference between an inferred or imputed intention:

"*An inferred intention is one which is objectively deduced to be the subjective actual intention of the parties, in the light of their actions and statements. An imputed intention is one which is attributed to the parties, even though no such actual intention can be deduced from their actions and statements, and even though they had no such intention. Imputation involves concluding what the parties would have intended, whereas inference involves concluding what they did intend".*

He then went on to observe that to impute an intention "would be wrong in principle" and would involve judges in areas which were "difficult subjective and uncertain".

Later his Lordship went on to express unhappiness at the search for fairness which he said "is not the appropriate yardstick." He complained that fairness inevitably involved imputing intention (which he had rejected as being impermissible), and that looking at a couple's "whole course of dealing" in relation to the property concerned was vague and imprecise. He strongly preferred what he called "actions, discussions and statements" which relate to agreements regarding ownership.

The decision in *Stack* is also important for two other reasons: firstly there was agreement that Lord Bridge's insistence in a sole names case that anything less than direct contributions to the purchase price would suffice was too prescriptive in the modern era, although those views are strictly *obiter* as their Lordships were not concerned with a sole names case. Secondly in the course of argument the concept of the "ambulatory" constructive trust is given birth. It is discussed in the speech of Baroness Hale, and suggests that, certainly in a joint names case (*quaere a sole names case)* the parties' intentions although clear at the time of purchase may change

over time, although at any given time their interests and intentions must be the same. As will be discussed below, this concept too has done much to cause unease amongst practitioners.

5. The decision in Jones v Kernott.

The facts

The parties met in 1980 and bought a property in joint names in 1985. There was no express declaration of trust either in the TR1 or otherwise. They had two children together and separated in 1993. A joint insurance policy was surrendered and split equally enabling Mr K to put down a deposit on as new home. For the next 12 years Ms J financed every aspect of the property including the mortgage and all the outgoings. In 2006 Mr K sought to realise his asserted half share. Having reviewed the whole course of dealing Ms S was awarded 90% and Mr K 10%.

Quite obviously had there been an express declaration of trust as to shares when purchased that would have remained good for all time, however unfair that might have been to Ms J in the light of their subsequent dealings. However there was not, and although stage 1 of *Rossett w*as easily answered, the lack of an express declaration of trust enabled the Supreme Court to develop further and elaborate upon inferred/imputed intention and the nebulous concept of fairness.

It is to be noted that Lord Neuberger was not a member of the Supreme Court at that Appeal!

Lord Walker and Baroness Hale gave a joint speech. They stressed that the starting point remains "equity follows the law". However that presumption can be displaced either by evidence that at the time of purchase they had a different common intention or at a later

date they formed a common intention with regard to beneficial ownership different to that which they intended at the time of purchase, (ie the "ambulatory constructive trust".

They went on to observe that common intention is to be "deduced objectively from their conduct". The importance of their speeches lies in the approach the court is to take where it is not possible to establish by inference (remember Lord Neuberger's definition above) either what they had intended at the time of purchase or at a later date. In such cases, Chadwick LJ's observations in *Oxley* should be given full force it is said, and the court should survey their entire course of dealing in relation to the property and decide what ***the court*** considers fair – ie precisely the opposite of what baroness Hale had said in *Stack,* and a course which Lord Neuberger had so strongly deprecated.

Lord Kerr was at pains to stress that the infer route was a route of last resort, and that Judge's should robustly examine the evidence in an effort to infer actual intention from conduct. He debated the inherent and ironical unfairness in imputing an intention which neither party had ever had in seeking to achieve what was fair, but observed that

..imputing intention has entered the lexicon of this area of law and it is probably impossible to discard it now".

6. Why does any of this matter?

7. Firstly it is a seminal lesson in "how to decide the outcome you want and then change the law to fit it". Quite what Lord Neuberger would have made of it all is not clear, although one can hazard a guess. Although all of their Lordships reached the same decision, Baroness Hale, Lord Walker and Lord Collins did so by the inferred route, whereas Lord's Kerr and Wilson inferred. That perhaps says it all. Lord Collins sought to play down the distinction between infer and impute by observing that "what is one person's inference will be another person's imputation". It is difficult, with respect, to see

how that can possibly be, since one involves a finding of *subjective actual* intention and the latter does not.

8. The Court confirms that the common intention constructive trust is the legal vehicle through which the courts should operate in "family" cases. Having confirmed the concept of the ambulatory constructive trust and the concept of imputing intention it seems overwhelmingly likely that unhappy former cohabitants will chance their arms even where there is precious little evidence to support their case – quite the reverse of the exhortation of their Lordships that litigation was to be avoided.

9. Its importance is this: for years we have been told that equity follows the law. On the face of it that remains the position. In a joint names case that should mean that in the absence of an express declaration of trust to the contrary, the presumption is that they are also joint beneficial owners. The position remains that the presumption can of course be displaced, but no longer can it only displaced by ***evidence*** of a common intention to hold otherwise**.** Whilst the Supreme Court stresses that Judges should search long and hard for express discussions/conduct or infer intention form a critical analysis of the evidence, the Judicial task does not now apparently end there. One would have thought that if the court cannot find or infer actual intention to hold the beneficial interest differently from the legal title, the court should say that the Claimant has failed to prove his or her case. But no, the court is now enabled almost of its own motion, and absent evidence to rebut the presumption that equity follows the law by imputing fairness.

10. Such an approach bears more than a passing comparison with the court's obligation to achieve a fair outcome between married couples where of course Judges are not bound by trusts but by the criteria in s25(2) of the MCA. It is difficult to escape the conclusion that the Supreme Court is creating a different *quasi matrimonial* regime in "family cohabitation" cases. Arguably it may lead to non-married Claimants being better off. We

are reminded by Lord Nicholls in *Miller; McFarlane* of the sharing principle which applies to the marital acquest and that the matrimonial home is to be treated as having a central place in a marriage, entitling both parties to a share irrespective of when it was bought or how it was funded. In practice most courts have tended to interpret that as saying that it should be shared equally subject to need. Manifestly the same cannot be said of a family home owned by cohabitants. Furthermore in a cohabitation case, should an assessment of what is fair now involve a consideration of need (as it would if the parties were married), particularly given that one of the factors on Baroness Hale's shopping list of considerations was the purpose for which the property was bought. What if the purpose of the purchase was to provide a home for the parties and the children and the Claimant is their primary carer?

11. Does the decision in *Jones* have implications in single names cases?

The burden of proof remains on a Claimant to show a common intention that he/she was intended to have any share *at all*. The stage 2 test in *Rossett* holds good, although the strict requirement for a direct contribution to the purchase price in order to infer a common intention constructive trust can no longer be said to be the exclusive requirement. It appears to be the case that the court cannot *impute* an intention at stage 1, and a Claimant will therefore have to demonstrate either express discussions (however imperfectly remembered) or the court will have to infer an intention from less clear discussions and/or conduct. No guidance was given as to what sort of conduct could be considered in order to infer a common intention. How far the courts will be prepared to depart from Lord Bridge's rigid approach remains unclear. However there appears to be no reason why in a single names case the court cannot impute a fair outcome at stage 2.

12. What also remains untested is how – if at all – the concept of the ambulatory constructive trust can or should be applied to a single names case in the context of imputing/inferring:

13. In *James v Thomas [2007] EWCA Civ 1212 Chadwick J* (as he then was) confirmed that in a sole names case where there was no dispute as to sole ownership at the time of purchase a constructive trust could arise at a later date but that

"in the absence of an express post acquisition agreement, a court will be slow to infer from conduct alone that the parties intended to vary existing beneficial interests established at the time of acquisition".

On the face of that observation in a sole names case the bar is set higher but seems difficult to justify a distinction which could lead to unfairness to a Claimant in a sole name case.

14. And…. in both cases, where does the decision in *Jones* leave the requirement for writing under the Law reform (Miscellaneous Provisions) Act?

15. <u>Do these principles apply in "non family" cases?</u>

The short answer is No. In *Laskar v Laskar [2008] 2 FLR 589,* a decision which was made post *Stack* but pre *Jones,* the transaction involved was in relation to a jointly owned commercial property, albeit that the legal owners were mother and daughter. Lord Neuberger (for it was he) said he "very much doubted" that the approach set out in *Stack* would apply in a case were the purpose of the purchase was not to provide the parties with a family home, but as an investment. In such cases, the old principles of resulting trust still apply.

16. <u>Is *Jones* being applied?</u>

Yes, in general terms it is. There are, as yet no seminal cases or attempts at Judicial exculpatory from the Neuberger camp, but they will surely come. In those which have been reported it is clear that judges are trying to follow the road map laid out in Jones ie. to look hard and robustly for evidence from which to infer common intention. And only if that fails seek to infer. They also show that the concept of the "ambulatory constructive trust" is alive and kicking. Recent cases include:

- *Geary v Rankine* [2012] EWCA Civ 555. This was a sole name case. The parties cohabited between 190 and 2009. The facts were unusual since they were both in a relationship and business partners. Mr R had bought a guest house in his sole name in 1996 out of cash savings. It was mortgage free. At the time of purchase neither intended to make it their home or to run it, and a manager was hired for that purpose. However following difficulties Mr R moved in and began to run it himself. Sometime later Ms G moved in but the parties retained what had been their London home. Ms G assisted in the running of the guest house. At first instance Ms G failed in establishing a common intention that she should have a beneficial interest at all, and the court found no evidence of detrimental reliance by her. On Appeal she argued that whatever the initial position, there had been a common change of intention later. The complicating factor was of course a mix of business and – certainly on Ms G's case, a home. Lewison LJ stressed that in a case where a change of intention is relied upon, it must be an intention common to *both parties*. He found no such intention and said that it was impermissible to leap from an intention that the parties should run a business together to a common intention that the business from which it was run was jointly owned, notwithstanding that its purchase had been funded entirely by one party. The

Judgement is useful for confirming that where the parties are business partners as well as domestic partners, principles of resulting trust are more appropriate.

- In *Aspen v Elvy* [2012] EWHC 1387 (ch) the parties cohabited for 10 years and had children. They lived on a farm consisting of a number of outhouses, derelict buildings and the farmhouse which the claimant had purchased in his sole name. The Respondent ran a modest business from some of the outbuildings until separation. 10 years after separation the claimant transferred all but the farmhouse itself to the Respondent and then two years later sold the farmhouse, moving into a static caravan on site. The Claimant subsequently assisted the Respondent to renovate the outbuildings, paying her some £19,000 for that purpose. He then sought to assert a beneficial interest. HHJ Behrens sitting as a Deputy, found no common intention at the time of purchase observing that there was no evidence of any financial contribution from respondent. He stated that the mere fact of cohabitation was insufficient to evidence any such common intention. He went on to find that when the Claimant went on to transfer almost the entire estate it was an absoluter transfer. However he went on to infer a change of common intention relying heavily on the significant amount of money the Claimant subsequently advanced to the Respondent for renovations. He had essentially given her all that he had save for the caravan and the court inferred a common intention from the parties whole course of dealing. The Claimant was awarded 25% in an exercise which the Judge described as *"somewhat arbitrary but it's the best I can do with the available material"*.

17. The facts of both the above are, to say the least, unusual. They perhaps show that ultimately, and as always, each case turns very much on its own facts.

18. How can Practitioners avoid these pitfalls?

Are you a conveyance or a litigator?

Conveyancers need to be much more mindful of the issues when advising clients Above all COMPLETE THE TR1 PROPERLY!! That may sound crass but it is amazing how many do not. They need to get into a litigation mindset when approached to deal with the conveyancing on a proposed purchase.

If it appears in a proposed sole purchase that a third party (eg a boyfriend or girlfriend) is providing purchase monies or maybe assisting in the later payment of a sole mortgage, ASK QUESTIONS. Probe as to intention. If necessary see the third party.

If there have been no express discussions between parties who seek to purchase in joint names INSTIGATE THEM. Advise clearly as to the differences between ownership as joint tenants and tenants in common. If necessary send a proposed co-puchaser of for independent legal advice.

Advise that whatever their decision as to beneficial ownership at the time of purchase, that that can change over time and that agreed changes should be recorded in writing.

Follow up advice given with a detailed letter setting out in full what your instructions are with regard to beneficial ownership and why – the first port of call when litigation commences is to call for the conveyancing file which can – indeed should – if the job is being done properly provide important, and sometimes conclusive information about intentions at the time of purchase. It never ceases to amaze how many times the file sheds no light whatsoever on the issue. Bluntly, if in a joint names case, there is nothing on the face of the TR1 to show how the beneficial interest is to be held, someone has not done their job properly.

In a change of intention case, things are of course more difficult. Focus on Baroness Hale's shopping list and look for corroborative evidence. Those cases which are easily lost are those where a party simply makes a bald (and contradicted) assertion, backed up by no credible independent evidence.

Stephen Lyon

4 Paper Buildings

11th July 2013

Section 4

"It was mine before"...

How the courts treats pre-acquired assets.

Harry Gates & Kate Van Rol

"IT WAS MINE BEFORE..."

HOW THE COURTS TREAT PRE-ACQUIRED ASSETS

OR:

"All that I am I give to you,

And I all that I have I share with you"

INTRODUCTION:

1. Pre-acquired wealth excites strong opinions, whether you happen to have some or not, and depending on which end of the political spectrum you occupy. The excerpt from the Church of England marriage service quoted above will hardly be reflective of the experience of practitioners in this area.

2. This paper proposes to set out the background to the development of this aspect of the law, and to see if any coherent set of principles can be said to apply to claims involving a pre-acquired element, both as to the quantification of those assets and their subsequent distribution. The law as set out below is accurate as at 11 July 2013.

3. As a single issue, pre-acquired capital can be said to trespass on many of the most controversial features of the jurisprudence.

4. Inevitably, this invites focus on those cases where the assets can be said to exceed needs; per Lord Nicholls in ***White v White*** [2000] 2 FLR 981, at 994: "*this factor can be expected to carry little weight, if any, in a case where the claimant's financial needs cannot be met without recourse to this property*".

5. The corollary is that claims in which pre-acquired wealth is a relevant feature are also generally those in which the sharing principle is or may be engaged.

6. Moreover, if practitioners are concerned to restrict or enhance their client's 'share', working out whether the claim does or does not extend to non-matrimonial property (and if so to what extent) may be of central importance. Following Potter P in ***Charman (No.4)*** [2007] 1 FLR 1246, the sharing principle applies

"*to all the parties' property but to the extent that their property in non-matrimonial there is likely to be better reason for departure from equality".*[3]

7. No better example of the importance of the distinction can be found than ***K v L*** (Non-matrimonial: Special Contribution) [2011] 2 FLR 980.

- 21 yr marriage / 3 children
- FMH worth £250,000 and parties lived modestly
- At trial W had (inherited) shares held offshore worth £700k at the date of marriage, £28m at separation and £57m at trial
- Bodey J awards H £5m at first instance
- H's appeal to CoA fails

[3] Paragraph 66

MATRIMONIAL v NON-MATRIMONIAL PROPERTY

8. What is the origin of the distinction?

9. There is no community of property in English law. We assume separate property.

10. The starting-point is the familiar passage in ***White*** per Lord Nicholls at 994 in referring to:

> *"the view, widely but not universally held, that property owned by one spouse before the marriage, and inherited property whenever acquired, stand on a different footing from what may be loosely called matrimonial property. According to this view, on a breakdown of the marriage these two classes of property should not necessarily be treated in the same way. Property acquired before marriage and inherited property acquired during marriage come from a source wholly external to the marriage. In fairness, where this property still exists, the spouse to whom it was given should be allowed to keep it. Conversely, the other spouse has a weaker claim to such property than he or she may have regarding matrimonial property*".

11. And then later in ***Miller/McFarlane*** [2006] 1 FLR 1186 (Lord Nicholls again), with greater force:

> *"The statute requires the court to have regard to all the circumstances of the case. One of the circumstances is that there is a real difference, a difference of source, between: (1) property acquired during the marriage otherwise than by inheritance or gift, sometimes called the marital acquest but more usually the matrimonial property; and (2) other property. The former is the financial product of the parties' common endeavour, the latter is not. The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose. As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been.*
>
> ***[23]*** *The matter stands differently regarding property ('non-matrimonial property') the parties bring with them into the marriage or acquire by inheritance or gift during the marriage. Then the duration of the marriage will be highly relevant.*

12. The distinction has firmly taken root in the jurisprudence and in a raft of cases decided since. Of course s.25 of the MCA 1973 is entirely silent on the question of non-

matrimonial property, meaning that account has been taken of it as either 'a circumstance of the case', or else as a species of (unmatched) contribution, but NB not as a 'stellar contribution' in the specific meaning of that phrase[4].

IDENTIFYING THE NON-MATRIMONIAL PROPERTY

13. Examples of non-matrimonial property to look out for might include (non-exhaustively);

    a. Real and other property brought into the marriage by one spouse;
    b. Gifts and inheritances;
    c. Lottery wins;
    d. Businesses brought into the marriage;
    e. Assets defined by / within pre-nuptial agreements for this purpose.

14. And it may also include the 'passive economic growth' on the non-matrimonial property[5] achieved over the course of the marriage, although the court will not invariably allow for this.[6]

15. But it does not follow that simply because the asset with which you are concerned falls within one of the categories above that it will be immune from attack.

---

[4] Again, see ***K v L***. But NB no reason in principle why non-matrimonial and stellar contribution arguments can't run in tandem, subject to overall fairness?

[5] E.g. ***Jones v Jones*** [2011] 1 FLR 1723

[6] ***N v F*** [2011] 2 FLR 533

RELEVANT FACTORS IN THE ASSESSMENT AND IDENTIFICATION OF NON-MATRIMONIAL PROPERTY

16. In ***Robson*** [2011] 1 FLR 1171, Ward LJ summarised the approach to be taken thus (authors' emphasis in **bold**) :

> ***[43]*** *How then does the court approach the 'big money' case where the wealth is inherited? At the risk of over-simplification, I would proffer this guidance:*
>
> *(1) Concentrate on s 25 of the Matrimonial Causes Act 1973 as amended because this imposes a duty on the court to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18; and then requires that regard must be had to the specific matters listed in s 25(2).* ***Confusion will be avoided if resort is had to the precise language of the statute, not any judicial gloss placed upon the words****, for example by the introduction of 'reasonable requirements' nor, dare I say it, upon need always having to be 'generously interpreted'.*
>
> *(2) The statute* ***does not list those factors in any hierarchical order or in order of importance****. The weight to be given to each factor depends on the particular facts and circumstances of each case, but where it is relevant that factor (or circumstance of the case) must be placed in the scales and given its due weight.*
>
> *(3) In that way flexibility is built into the exercise of discretion and flexibility is necessary to find the right answer to suit the circumstances of the case.*
>
> *(4) Like every exercise of judicial discretion, the objective must be to reach a just result and justice is attained when the result is fair as between the parties.*
>
> *(5) Need, compensation and sharing will always inform and will usually guide the search for fairness.*
>
> *(6)* ***Since inherited wealth forms part of the property and financial resources which a party has, it must be taken into account*** *pursuant to subs 2(a).*
>
> *(7)* ***But so must the other relevant factors****. The fact that wealth is inherited and not earned justifies it being treated differently from wealth accruing as the so-called 'marital acquest' from the joint efforts (often by one in the work place and the other at home).* ***It is not only the source of the wealth which is relevant but the nature of the inheritance****. Thus the ancestral castle may (note that I say 'may' not 'must') deserve different treatment from a farm inherited from the party's father who had acquired it in his lifetime, just as a valuable heirloom intended to be retained in specie is of a different character from an inherited portfolio of stocks and shares.* ***The nature and source of the asset may well be a good reason for departing from equality within the sharing principle****.*
>
> *(8)* ***The duration of the marriage and the duration of the time the wealth had been enjoyed by the parties will also be relevant****. So too their* ***standard of living*** *and* ***the extent to which it has been afforded by and enhanced by drawing down on the added wealth****. The way the property was preserved, enhanced or depleted are factors to take into*

account. Where property is acquired before the marriage or when inherited property is acquired during the marriage, thus coming from a source external to the marriage, then it may be said that the spouse to whom it is given should in fairness be allowed to keep it. On the other hand, the more and the longer that wealth has been enjoyed, the less fair it is that it should be ringfenced and excluded from distribution in such a way as to render it unavailable to meet the claimant's financial needs generated by the relationship.

(9) It does not add much to exhort judges to be 'cautious' and not to invade the inherited property 'unnecessarily' for the circumstances of the case may often starkly call for such an approach. ***The fact is that no formula and no resort to percentages will provide the right answer.*** *Weighing the various factors and striking the balance of fairness is, after all, an art not a science.*

17. In the subsequent case of ***Y v Y*** [2012] EWHC 2063, a case in which the Husband had previously inherited a considerable amount more than the £27m with which the court was concerned at trial, Baron J approved the following factors as being relevant to the question whether or not to share in the Husband's inherited wealth:

(i) the nature of the assets (eg land/property, art, antiques, jewellery on the one hand, and cash or realisable securities on the other);

(ii) whether the inherited assets have been preserved in specie or converted into different assets, realised or even spent;

(iii) how long they have been "in the family";

(iv) the established or accepted intentions of both the previous holders of the assets and the spouse who has inherited them;

(v) whether they have been "mingled" (for example by being put into joint names of the spouses, or by being mixed with assets generated during the marriage);

(vi) the length of the marriage and therefore the period over which they have been "enjoyed" by the other spouse;

(vii) whether the other spouse has directly contributed to the improvement or preservation of the inherited wealth.

18. The approach from case to case is highly fact-specific.

19. Moreover, there will be limits to the court's indulgence even where valuable assets have been retained in specie for generations, per Munby J in ***P v P*** [2005] 1 FLR 576:

> *"There is inherited property and inherited property. Sometimes, as in White v White [2001] 1 AC 596, [2000] 2 FLR 981 itself, the fact that certain property was inherited will count for little: see the observations of Lord Nicholls of Birkenhead at 611 and 995 respectively and of Lord Cooke of Thorndon at 615 and 998 respectively. On other occasions the fact may be of the greatest significance. Fairness may require quite a different approach if the inheritance is a pecuniary legacy that accrues during the marriage than if the inheritance is a landed estate that has been within one spouse's family for generations and has been brought into the marriage with an expectation that it will be retained in specie for future generations.*
>
> *That said, the reluctance to realise landed property must be kept within limits. After all, there is, sentiment apart, little economic difference between a spouse's inherited wealth tied up in the long-established family company and a spouse's inherited wealth tied up in the long-held family estates".*

20. 'Money is money'. It is suggested that there can be little objective justification for the courts treating dynastic wealth differently to comparable riches accrued over the mere course of a marriage[7].

21. An interesting question arises in relation to 'mingling', where the focus has conventionally been on whether the inherited assets have been utilised to joint ends or

[7] See also ***Y v Y*** supra, where Baron J described the likely future sale of the Husband's inherited estates as 'sad' for him (as it no doubt will be)

amalgamated with other funds so as to take on a matrimonial quality. But what happens where, for matters of (say) administrative convenience, a family depletes unarguably matrimonial capital for its daily expenditure safe in the knowledge that there are plentiful non-matrimonial assets left in reserve?

22. On the authorities, the non-inheriting spouse is vulnerable to the argument that the non-matrimonial property has been kept separate. One solution would be to take into account the standard of living during the marriage as an addition to the ***Y v Y*** factors[8].

The FMH

23. Different considerations apply in respect of the FMH, which per Lord Nicholls in ***Miller***, is unlikely to qualify as non-matrimonial:

> "*The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose".*[9]

24. Does it make any difference if the property has been retained in the sole name of the contributing spouse? Probably not, per Wilson LJ (as he then was) in ***K v L*** , identifying the situation where:

> *"The contributor of non-matrimonial property has chosen to invest it in the purchase of a matrimonial home which, although vested in his or her sole name, has – as in most cases one would expect – come over time to be treated by the parties as a central item of matrimonial property."*[10]

---

[8] Indeed there would appear to be some support for this proposition from Ward LJ in ***Robson***

[9] Paragraph 22

[10] Paragraph 18

25. So the FMH has proven to be something of a special case in this respect, usually 'mingled' by virtue of its status as the parties' home, even if no formal steps have been taken by the contributing spouse to share out the legal ownership[11].

26. While that may not sound controversial in the context of a lengthy first marriage, is there potential for unfairness in much shorter second or third marriages where, say, one spouse 'contributes' the FMH as a home for the parties, while the other retains in specie other property not needed for their occupation?

27. See the decision of Munby J (as he then was) in ***P v P*** (supra), a farming case in which the entirety of the assets had been contributed by the Husband. In determining the Wife's claim, no distinction was made by the court between the inherited farmland and the farmhouse.

28. But just because the FMH may *now* be characterised as matrimonial, that does not necessarily mean it falls to be divided equally if initially provided from a non-matrimonial source; see ***Y v Y***. See also Mostyn J in ***S v AG*** **(Financial Orders: Lottery Prize)** [2011] EWHC 2637 (Fam):

> *"Sometimes one party brings assets in which become, 'part of the economic life of [the] marriage… utilised, converted, sustained and enjoyed during the contribution period' (ibid at para 190). This is the concept of mingling referred to by me in N v F (Financial Orders: Pre-acquired Wealth) at para [9] [...].*
>
> *But even if there has been much mingling, the original non-matrimonial source of the money often demands reflection in the award. Thus in S v S (Non-Matrimonial Property: Conduct) [2006] EWHC 2793 (Fam), [2007] 1 FLR 1496 Burton J divided the matrimonial property 60/40 to reflect this factor".*

[11] Again see ***Y v Y*** in which Baron J described the inherited FMH as the "*heart of the parties' relationship and family life*"

Pensions

29. Anecdotal evidence suggests that courts appear to be significantly more reluctant to permit the non-contributing spouse to share in the other's pre-marital pension pot; e.g: ***GS v L*** (Financial Remedies: Pre-acquired assets: Needs) [2013] 1 FLR 300, where King J made a needs-based award in favour of the wife, holding:

> ***"****There is no doubt that the husband came into the marriage with substantial assets, which assets are capable of being the subject of forceful arguments in favour of their being excluded as non-matrimonial property. In my judgment however, for the reasons set out in my consideration of the s 25 factors set out below, those assets are (with the exception of the pension) required in order to satisfy both the immediate and long-term needs of the wife and children (and indeed the husband). It is, therefore, on the facts of this case inappropriate and unnecessary to get into the vexed question of whether the London flat is a matrimonial home and if so whether it has become matrimonial property, or how growth on any of the assets should be assessed.*
>
> ***"****So far as the pension is concerned, it can and should, in my judgment, properly be excluded from the division of the assets, a position effectively, although not absolutely, conceded by the wife. The pension cannot be drawn down for many years and was accrued in its entirety before the marriage; the fund cannot be used to provide for the wife's needs in either the short or medium term. Given the benefit of the capital with which she will leave the marriage and a working life of 25 years ahead of her, fairness in my judgment requires that the husband should retain his pension fund absolutely."*

30. Why this should be so is not clear as a matter of logic. While the case turned on its own facts, it is not obvious why pre-acquired liquid assets were made available to meet the wife's long-term needs but not pre-acquired pension assets.[12]

Assessment of Need

31. Can the assessment of need be informed by the presence in the case of substantial non-matrimonial property? The answer, following ***K v L,*** would appear to be that it can, the

[12] Although it is conceded as a matter of practicality it is obviously far easier to quarantine pension assets given (i) that their value upon marriage can be easily quantified and (ii) thereafter they are unlikely to be mingled.

husband's needs-based award of £5m being vastly in excess of the standard of living which operated throughout the marriage.

QUANTIFICATION OF NON-MATRIMONIAL PROPERTY

32. So having identified relevant non-matrimonial property, is it necessary to quantify precisely the matrimonial and non-matrimonial assets in existence at the date of trial?

33. Different judges have evolved different approaches so that two conflicting schools of thought have developed:

    a. The 'two-stage' approach; and
    b. The broad-brush 'fairness' approach

34. In essence the two-stage approach holds that the court should (i) identify the matrimonial and non-matrimonial assets before (ii) dividing them up, usually equally as to the former and only so far as is fair in respect of the latter. The result can then be cross-checked against overall fairness as a safety precaution. The fairness approach is simply to weigh the s.25 factors before exercising discretion.

35. Proponents of the two-stage approach <u>in the right case</u> have included:

    a. Wilson LJ (as he then was) in ***<u>Jones v Jones</u>***, in which the Court of Appeal preferred that approach on the facts of that case in circumstances where the central valuation of the key asset (an oil and gas company) had been crystallised by a sale. Having made allowance for passive economic growth on the

underlying value of the company, the Wife ended up with half of the matrimonial property but none of the non-matrimonial (overall a third);

b. Mostyn J in ***FZ v SZ*** [2011] 1 FLR 64, in which he praised the rigour of the two-stage approach and derided the '*palm tree justice*' meted out by the 'fairness' brigade. And subsequently in ***S v AG*** (supra) he held that

> "*the law is now reasonably clear*[13]*. In the application of the sharing principle (as opposed to the needs principle) matrimonial property will normally be divided equally (see para [14](iii) of my judgment in N v F (Financial Orders: Pre-acquired Wealth)). By contrast, it will be a rare case where the sharing participle will lead to any distribution to the claimant of non-matrimonial property. Of course an award from non-matrimonial property to meet needs is a common place, but as Wilson LJ has pointed out, we await the first decision where the sharing principle has led to an award from non-matrimonial property in excess of needs.*"[14]

36. But the criticism of this approach has been sustained and vigorous from some quarters (notably from Moylan J), both intellectual and practical. First, it is said that the drive to isolate and exclude the non-matrimonial property amounts to putting an impermissible gloss on s.25 since it elevates consideration of 'contributions' above all other factors – something which plainly troubled Ward LJ in ***Robson.***[15]

37. Moreover, the 2-stage exercise places a premium on obtaining reliable and robust valuations – fine in ***Jones*** where the company valuation had been crystallised by a sale, but how is this to work otherwise? Moylan J refused to be drawn down this path in ***SK v WL*** [2011] 1 FLR 1472 (in which Mostyn QC appeared as counsel), in which he referred

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[13] NB this decision predates ***Robson*** in the Court of Appeal

[14] c.f. dicta of Moylan J in ***AR v AR*** [2012] 2 FLR 1: "*the sharing principle can apply to non-matrimonial property if such an approach is justified by the facts of the case*" [80]

[15] And see also ***Z v A*** [2012] EWHC 1434, a Part 3 MFPA 1984 claim in which Coleridge J approved counsel's exhortations to simply hear the evidence, weigh the relevant factors and 'do what is right'

to the parties' valuation evidence as "*guesswork, though of course intelligent guesswork*" and declined to enter *"a dim world peopled by the indeterminate spirits of fictitious or unborn sales"*.

38. And given the renewed emphasis on the need for expert evidence to be '*necessary*' (arising from FPR 2010 r.25.1), there would appear to be further disincentive to travel down this path.

39. But if Moylan J's alternative is largely based on 'feel' – i.e. simply to impose a departure from equality to reflect the presence of non-matrimonial property, applying s.25 – the charge against him is that his approach is impossibly unpredictable, although perhaps no more so than Mostyn J's: per Wilson LJ in ***Jones***:

> *"Criticism can easily be levelled at both approaches. In different ways they are both highly arbitrary. Application of the sharing principle is inherently arbitrary*[16]*; such is, I suggest, a fact which we should accept and by which we should cease to be disconcerted".*

40. And given that on either approach, fairness is the goal (by reference to s.25) is there much difference between the two in terms of outcome? Doesn't the two-stage approach simply provide a distinct starting-point?

41. Coleridge J sympathised with both practices in the recent case of ***R v R*** [2013] 1 FLR 120, in which he praised the '*logic*' of the two-stage approach before ending with some cautionary words about the potential for disproportionate academic debate to the detriment of a sensible resolution of the issues:

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[16] "arbitrary" per OED = adjective (i) based on random choice or personal whim, rather than any reason or system (ii) (of power or a ruling body) unrestrained and autocratic in the use of authority

"*the extra evidence and calculations called for when trying to pin down precise values for 'sharing' and, for example, the extent of pre-acquired assets leads to many extra layers of complication, forensic debate and expensive evidence on the part of both legal teams. At the end of the day, the result in this case has been mostly driven by needs and practicalities*"

42. So is the law indeed '*reasonably clear*'?

Harry Gates
Kate Van Rol

4 Paper Buildings

Section 5

Chair & Speakers Profiles

4 Paper Buildings, Temple
London, EC4Y 7EX
T 020 7427 5200
E clerks@4pb.com
W 4pb.com

Jonathan Cohen QC

Jonathan has for many years been recommended as a leading silk in both finance and children cases. "He earns the respect of judges with his measured and strategic approach"

Experience

Year of Call: 1974
Year of Silk: 1997

Education

BA (Kent)

Appointments

Recorder
Deputy High Court Judge (Family Division)
President of the Mental Health Review Tribunal

Profile

Jonathan has been Head of Chambers 2003-2012. He acts in difficult financial cases and is praised for his measured, strategic and commercial approach. His children practice encompasses both public and private law cases. He acts also in professional negligence cases arising out of family work. He sits as a Judge in both children and money cases and acts in and conducts out of court discussions and settlement meetings. His very wide experience is called upon by clients from all over the country.

Professional Memberships

Fellow of International Academy of Matrimonial Lawyers
Family Law Bar Association
Professional Negligence Bar Association
Member of the Chartered Institute of Arbitrators

Directories

Jonathan Cohen QCis a "wonderful" family law practitioner and a deputy High Court judge in the family division. Highly adept at children cases, he is further noted for his matrimonial finance practice, and is an expert in high-value ancillary relief cases.
Recommended as a Leading Family Silk in Chambers & Partners 2013

Jonathan Cohen QC has ‘a calm, reassuring manner that endears him to court and clients alike’.
Legal 500 - 2012
Recommended as a leading Silk in the areas of Children and Family (divorce and ancillary relief) Law

Jonathan Cohen QC is one of the set's few matrimonial finance specialists. He also handles children work, and solicitors go to him "for those cases where you really need the judge to listen to the strength and simplicity of your main points."
Recommended as a Leading Family Silk in Chambers & Partners 2012

Head of chambers Jonathan Cohen QC is a highly experienced silk with a mixed finance and children practice. He earns the respect of judges with his measured and strategic approach.
Recommended as a Leading Family Silk in Chambers & Partners 2011

Jonathan Cohen QC is 'highly intelligent, numerate and commercial'
Recommended in Legal 500 2011 as a Leading Family Silk in the areas of Children Law (including public and private law) and Family Law (including divorce and ancillary relief).

Jonathan Cohen QC is popular, he is "a thorough and effective financial specialist".
Recommended as a Leading Family Silk in Chambers & Partners 2010

Recommended in Legal 500 2010 as a Leading Family Silk in the areas of Children Law (including public and private law) and Family Law (including divorce and ancillary relief).

Jonathan Cohen QC is part of a sizeable contingent of members at the set who receive briefs in both financial and children-related matters. Commentators note that he "doesn't have the aggression of some barristers," deciding instead to deploy a "steady and clear" style of advocacy: "When he speaks people listen."
Recommended as a Leading Family Silk in the areas of Children and Matrimonial Finance in Chambers & Partners 2009.

The 'formidable' Jonathan Cohen QC
Recommended in the Legal 500 2009 as a Leading Family Silk in the areas of Children Law (including public and private law) and Family (including divorce and ancillary relief).

As head of chambers, Jonathan Cohen QC epitomises the set in being best known for his work with children but also having a respected practice in matrimonial finances. "A very civilised man who relates well to prickly clients," in the courtroom he is "a good and convincing advocate who is excellent at persuading judges of the rightness of his cause."
Recommended as a Leading Family Silk in the areas of Children and Matrimonial Finance in Chambers & Partners 2008 Jonathan Cohen QC is also recommended in The Legal 500 2008 as a Leading Family Silk.

Practice areas

- Financial Remedies
- Private Law
- Public Law
- International

Dispute resolution

- Collaborative Lawyer
- Mediation
- Early Neutral Evaluator
- Arbitration

Direct Access

- Direct Access

Cases

D v D (2012)
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[2009] 2 FLR 1574 : [2009] 3 FCR 650 : [2009] Fam Law 1019 : (2009) 106(31) LSG 18 : (2009) 153(30) SJLB 28 : [2009] EWCA Civ 791

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[1985] FLR 1167

4 Paper Buildings, Temple
London, EC4Y 7EX
T 020 7427 5200
E clerks@4pb.com
W 4pb.com

Stephen Lyon

Experience
Year of Call: 1987

Qualifications
Stephen has recently been admintted to the Chartered Institute of Arbitrators.

Education
LLB (Hons) (Nottingham)

Languages
German

Appointments
MCIArb

Profile
Stephen has a wide range of expertise in all areas of family law, from leading child care cases to complex ancillary relief disputes. Although family law is Stephen's specialist area of practice, his background includes extensive experience in both civil law and criminal law, which gives him highly developed skills as an advocate.

Stephen’s principal specialism is ancillary relief, in which he has built up a successful practice built upon a reputation for incisive analysis and, where appropriate, robust advocacy. His civil expertise lends itself well to “big money” cases in which he is able to demonstrate a rigorous and structured approach to complex financial issues.

Stephen has been described by the legal press as “approachable and dependable”. He is in great demand by leading family solicitors both in London and the regions and as a consequence enjoys a nationwide reputation as a leading family lawyer. Stephen places great importance on an open and friendly relationship with both solicitors and lay clients, and is a firm believer in providing a service which is practical, realistic, and tailored to meet the needs of individual clients.

Stephen is an active participant in the continuing education of solicitors, by way of lectures and seminars.

Professional Memberships
Family Law Bar Association
Affiliate Member of Resolution
Chartered Institute of Arbitrators

Practice areas
- Financial Remedies
- Private Law

Dispute resolution

- Collaborative Lawyer
- Arbitration

Direct Access

- Direct Access

Cases

O v P (2011)
[2011] EWHC 2425 (Fam)

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4 Paper Buildings, Temple
London, EC4Y 7EX
T 020 7427 5200
E clerks@4pb.com
W 4pb.com

Harry Gates

Harry’s practice encompasses all aspects of family law, but with an emphasis on financial remedies and private law children disputes.

Experience
Year of Call: 2001

Education
BA (Hons) LLB (Hons)
Newcastle University
City University
Qualified Collaborative Lawyer

Languages
French, Spanish

Profile
Harry is equally comfortable with both money and children work and can therefore offer a comprehensive service if required. Harry has extensive experience across the spectrum of financial disputes, including those brought under Schedule 1 or TLATA 1996,claims with an international element, and those involving trusts or company assets. Harry is also regularly instructed in all types of private law children disputes, including leave to remove cases.

Harry is a trained collaborative lawyer, FLBA member and frequent lecturer to practitioners.

Professional Memberships
Family Law Bar Association
South Eastern Circuit
Lincoln's Inn
Affiliate Member of Resolution

Practice areas
- Financial Remedies
- Private Law
- International

Dispute resolution
- Collaborative Lawyer

Direct Access
- Direct Access

4 Paper Buildings, Temple
London, EC4Y 7EX
T 020 7427 5200
E clerks@4pb.com
W 4pb.com

Kate Van Rol

Kate is a superb advocate with an incisive mind and is extremely tenacious in court. Her preparation is second to none and clients always comment on how confident they feel with her representation.
Nicola Walker - Irwin Mitchell

Experience
Year of Call: 2002

Education
LLB (Hons) University of Newcastle
College of Law, London
Qualified Collaborative Lawyer

Profile
Kate is a specialist family practitioner with a particular interest in matrimonial finance disputes. The mercurial nature of family law is what attracted Kate to practice in this area and she is committed to keeping up with its numerous developments. Kate is dedicated to providing a proficient and friendly service to both her professional and lay clients. Her approach to cases and clients together with her advocacy skills has resulted in her practice continually expanding.

Professional Memberships
Family Law Bar Association
Lincoln's Inn
Affiliate Member of Resolution

Practice areas
- Financial Remedies
- Private Law

Dispute resolution
- Collaborative Lawyer

Direct Access
- Direct Access

Section 6

Members of Chambers

4 Paper Buildings, Temple
London, EC4Y 7EX
T 020 7427 5200
E clerks@4pb.com
W 4pb.com

Barristers

4 Paper Buildings has an ‘unrivalled collection of senior and junior barristers in the field. Predominantly known for its children work, but also has some ’really excellent people for matrimonial finance cases’. Legal 500 2011

Barristers

Alex Verdan QC
Call: 1987 | Silk: 2006
Head of Chambers

Jonathan Cohen QC
Call: 1974 | Silk: 1997

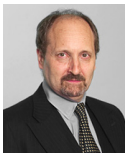
Baroness Scotland QC
Call: 1977 | Silk: 1991

Henry Setright QC
Call: 1979 | Silk: 2001

Marcus Scott-Manderson QC
Call: 1980 | Silk: 2006

Kate Branigan QC
Call: 1985 | Silk: 2006

Jo Delahunty QC
Call: 1986 | Silk: 2006



Michael Sternberg QC
Call: 1975 | Silk: 2008

Catherine Wood QC
Call: 1985 | Silk: 2011

Rex Howling QC
Call: 1991 | Silk: 2011

Teertha Gupta QC
Call: 1990 | Silk: 2012

David Williams QC
Call: 1990 | Silk: 2013

Harry Turcan
Call: 1965

Amanda Barrington-Smyth
Call: 1972

Robin Barda
Call: 1975

Jane Rayson
Call: 1982

Mark Johnstone
Call: 1984

Elizabeth Coleman
Call: 1985

Alistair G Perkins
Call: 1986

Christopher Hames
Call: 1987

Stephen Lyon
Call: 1987

Jane Probyn
Call: 1988

James Shaw
Call: 1988

Mark Jarman
Call: 1989

Sally Bradley
Call: 1989

Barbara Mills
Call: 1990

Joy Brereton
Call: 1990

Joanne Brown
Call: 1990

Sam King
Call: 1990

Alison Grief
Call: 1990

David Bedingfield
Call: 1991

John Tughan
Call: 1991

Cyrus Larizadeh
Call: 1992

Charles Hale
Call: 1992

Michael Simon
Call: 1992

Justin Ageros
Call: 1993

Rob Littlewood
Call: 1993

Paul Hepher
Call: 1994

Cliona Papazian
Call: 1994

Judith Murray
Call: 1994

Ruth Kirby
Call: 1994

Sarah Lewis
Call: 1995

Nicholas Fairbank
Call: 1996

James Copley
Call: 1997

Justine Johnston
Call: 1997

Oliver Jones
Call: 1998

Lucy Cheetham
Call: 1999

Hassan Khan
Call: 1999

Cleo Perry
Call: 2000

Harry Gates
Call: 2001

Rebecca Foulkes
Call: 2001

Katie Wood
Call: 2001

Rhiannon Lloyd
Call: 2002

Kate Van Rol
Call: 2002

Ceri White
Call: 2002

Matthew Persson
Call: 2003

Dorothea Gartland
Call: 2004

Samantha Woodham
Call: 2006

Laura Morley
Call: 2006

Nicola Wallace
Call: 2006

Michael Gration
Call: 2007

Jacqueline Renton
Call: 2007

Andrew Powell
Call: 2008

Henry Clayton
Call: 2007

Jasper Baird-Murray
Call: 2008

Sophie Connors
Call: 2009

Michael Edwards
Call: 2010

Harry Nosworthy
Call: 2010

Rachel Chisholm
Call: 2010

Julia Townend
Call: 2011

Door Tenants

Paul Hopkins QC
Call: 1989 | Silk: 2009
Door Tenant

Professor Marilyn Freeman
Call: 1986
Door Tenant

Susan Baldock
Call: 1988
Door Tenant

Elizabeth Couch
Call: 2003
Door Tenant

Belle Turner
Call: 2003
Door Tenant