

Fight Breaks out over Deathbed Will & Marriage!



by Shirah Real

The combination of a deathbed marriage, a millionaire and a new Will was always likely to end in a court battle, and so it proved recently when a family challenged their late father's Will, which left everything to his new wife, who had been his partner for more than 30 years, but only his wife for a month. The couple were married at his home shortly before he died in 2008. His three daughters, who are now

contesting his Will, were not present at the wedding. Under the new Will, the man's wife, who was instrumental in helping him build up a successful business in Kent, was bequeathed his entire estate. His solicitor testified that his instructions regarding the new Will had been clear. The man's family claimed that his widow used undue influence over him at a time when he was weak in order to persuade him to write a new Will in her favour. The man's widow claimed that the couple had a long-standing agreement that they would marry if either of them developed a terminal condition. This case is yet another example of how easy it is

for acrimonious disputes to develop in families when arrangements are left to be dealt with by 'understandings' or are made at the last minute – or worse still, as in this case, both.

It is sensible to execute your Will and make arrangements for the administration of your estate in a timely manner and in a way that diminishes the scope for any dispute.

If you would like a free of charge Will review or further information please contact Shirah Real on 01276 681217 or e-mail: shirah.real@brooks-partners.co.uk or Nikki Miller at nikki@brooks-partners.co.uk

I hear you knocking, drilling, sawing

By Michael Brooks

Noisy neighbours can be the bane of one's existence, so it is no real surprise that a lesbian couple finally lost patience with their adjoining next-door neighbours after they had workmen carrying out extensive building work on their property for a period of five years. The work was scheduled to take one year, but the project overran, causing serious disturbance to the neighbours as well as damage to their property. The couple also claimed that they had suffered harassment, with the defendants

behaving aggressively toward them, leaving them abusive notes and refusing to take any steps to rectify the damage to their property or ameliorate the nuisance. One of the couple developed symptoms of stress to the extent that she could no longer work. The women brought claims for nuisance and trespass and one brought a claim for personal injury and loss of earnings. In court, the women were awarded damages for loss of amenity and enjoyment and for nuisance. Although it was agreed that harassment had occurred, the judge excluded

an award for damages for personal injury because it could not be shown that the woman's psychological injury was a reasonably foreseeable result of the behaviour of the defendants. The woman appealed and **the case reached the Court of Appeal.**

The Court held that there was no need for the harm to be reasonably foreseeable to create a valid claim. It was sufficient that the behaviour constituted deliberate harassment and caused injury. The Court awarded damages for personal injury of more than £140,000.

In the past weeks I have seen a lot of publicity on the subject of unregulated Will Writers and also on the subject of "supermarket conveyancing". Instructing an unregulated Will Writer, who might work independently or as part of a larger organisation, might seem attractive with cost in mind but please be careful!

Proceeding in this way could, in practice, cause serious difficulty for your family or dependents at a later date (after you have gone to another place!).

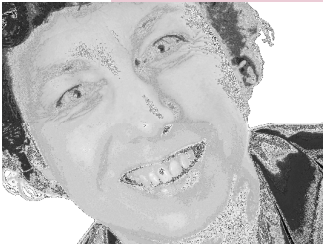
It has to be borne in mind that Will Writers are unregulated ie they do not have any Regulatory Authority and it follows that they might also be "uninsured"

Wills, as we have seen on many occasions over the years at Brooks & Partners, when they have not reflected the true wishes of the deceased, are hugely important and specialist legal advice should be taken at all times if the Will is to achieve your desired object of providing for family and dependents. Sadly the above will only become apparent AFTER YOUR DEATH!

Supermarket conveyancing is about to appear more regularly in the high streets up and down the country. Quite how this might be done is not entirely clear at present but there are a number of suggestions as in the case of Wills great care has to be taken. I am happy to say that at Brooks & Partners the conveyancing team are all fully trained and qualified and therefore able, in just about any property area, to offer specialist legal advice, with the availability of face to face meetings (in the office or at your home if you wish). The idea of having a conveyancer who might be online and therefore faceless or located many miles away) simply does not, in our view work to the best advantage of a client.

By Michael Brooks

Kate Middleton on
Employment



the Brief

Minimum Wage Whilst Asleep? Do Wake Up!

By Kate Middleton

The EAT has upheld a ruling that, on the facts of a recent case, a pub manager who slept at the premises overnight was not entitled to the national minimum wage during sleeping hours. The tribunal maintained

that she had no responsibilities to undertake during the night and her position had to be contrasted with that of a night watchman or night sleeper in a residential home who do have responsibilities during such times.

Kate Middleton runs an employment surgery and can offer advice on all aspects of employment law: for further information contact Kate on 01276 681217 or e-mail: kate.middleton@brooks-partners.co.uk

Divorced Man Can Keep £1 Million in Pre-marital Assets

by Deborah Prance



Deborah Prance on
A recent divorce case

A divorced man has won the right to retain £1 million of his pre-marital assets before a 50/50 division of the remainder of the couple's joint assets is made. The assets were valued at around £9.5 million, after provision had been made for the children's future education costs.

When the couple married in 1993, the husband (known as 'H') had assets worth £2.1 million, estimated to be worth £4.2 million today. During proceedings, H asked for the settlement to leave him with some £1.4 million more than his former wife ('W') who claimed an equal share of the joint assets. She said that even with a 50 per cent share, she would barely be able to meet her reasonable needs.

W gave various reasons to the court as to why she thought it would be unfair for H's pre-marital property to be excluded, including the fact that the property was brought to the marriage a long time ago and had, since then, been mingled with the

rest of the family wealth. She also felt that H had deliberately given up a highly remunerative job in banking in 2007, to become a school teacher, in order to reduce the amount of any settlement.

The judge disagreed with W's arguments, however, pointing out that when H left his job in banking, he was able to sell his shares in the bank for considerably more than they would have been worth now, following the global financial crisis. The judge said that he could not fault a man for leaving a job after 28 years in order to take up a new career that he clearly loved. He also stated that there was no evidence to show that H would have any greater earning potential in the financial sector and pointed out that at 55 years old, and in view of the poor state of the financial sector compared with when H left it, it was by no means certain that he would be able to find employment in the

financial sector, even if he wanted to.

In conclusion, the judge ordered that £240,000 be paid into an account for the daughter's education, reflecting amounts that had been set aside for the son since 1999. The judge said that it would be 'wrong and unfair for none of H's pre-marital wealth to be excluded from the sharing principle'. On the other hand, the judge went on to say that the marriage was long and the pre-marital monies were 'well and truly mingled' with marital funds, which signified an acceptance by H that the money would be shared with W.

The judge therefore ordered that £1 million should be excluded from the settlement, the rest of the assets being divided equally between the two parties. If you wish to discuss any aspect of divorce or separation please contact Deborah on 01276 681217 or e-mail: deborah.prance@brooks-partners.co.uk

The Latest winner of our client feedback questionnaire prize draw is Mr R Sparkes who said that Shirah Real's communication and understand was most helpful and she provided a prompt service. Thank you, your vouchers are on their way.

Don't forget to return your feedback sheet to be included in the draw!!

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- Family matters
- Litigation
- Professional Negligence
- Employment issues
- Commercial & Residential Property

We are running an Autumn offer for a free 30 minute advice meeting on Family matters and Dispute Resolution. Remember—we are happy to provide M & S vouchers to clients who recommend friends, family and colleagues.

**Brooks
& Partners**

SOLICITORS

Frimley office:

Lyons House, 2 Station Road
Frimley, Surrey GU16 7JA

Telephone: 01276 681217

law@brooks-partners.co.uk

www.brooks-partners.co.uk