



Viewpoint

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- Should the Length of a Marriage Determine the Divorce Settlement?

Welcome to
the Winter
2018 Edition
of Viewpoint



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Winter is often a contemplative season with the New Year providing fresh opportunity to review our own direction of travel.

In selecting the articles for this edition, I have reviewed our readers' request list and picked out two popular topics for inclusion.

In *Snaps, Tunes and Twitter*, we advise on how photos and other content stored electronically often become inaccessible to spouses and other family members after their owner's death and what can be done to remedy this.

Secondly, we advise on the complicated rules regulating paying for care home fees.

Also, looking back to the Chancellor's Autumn budget of November 2017, and the landmark abolition of stamp duty land tax for first-time property buyers up to £300,000, we have included the key need-to-know points.

We are delighted to welcome a new arrival to our team this January. Senior Associate, Hannah Petherick has joined our busy Family team and is based in our Bristol office.

I am also pleased to announce the return of the luxury hamper prize draw. I encourage you all to enter by providing your feedback on *Viewpoint* and how we can continue to improve it. Good luck!



Snaps, Tunes and Twitter - You Can't Take Them with You

Have you got a Will in place? If so, have you planned what to do with your digital assets?

As technology has developed in recent decades, increasingly it is not just physical items such as our house, jewellery or share portfolio that we have to pass on, but also intangible digital assets.

They also have different policies in place regarding what occurs on notification of the death of a client, ranging from the memorialisation of the account after the date of death, to the complete deletion of all content. In terms of who to communicate with regarding the accounts after your death these ISPs need to know who has the relevant authority.

“ If you have a large number of digital assets, a technically-savvy executor could be very important. ”

These can range from those with a financial value, for example, bitcoin and online bank accounts, to those with just social or sentimental value, such as photographs uploaded to the internet or a Facebook account.

You may also have intellectual property, which will mainly consist of the fruits of creative endeavours: novels that you have published or music you have created. In the past this was an issue that affected only a few but with the growth of user-generated content online, such as blogs, this is an area that is affecting increasing numbers of individuals.

The Law Is Falling Behind

The law has not managed to keep up with these developments. The statutory definition of 'personal chattels' (essentially personal possessions) currently does not include digital assets. The consequence of this is that if you die without making a Will, your spouse - who may normally receive your personal possessions - will not be given any rights over your digital assets. This is not the outcome that most would favour.

Internet service platforms (ISPs) such as Google, Facebook and Twitter all have terms of business that we have to automatically agree to when we sign up.

So What Should You Do to Protect Your Digital Assets?

Regardless of whether you have an online presence or not, the way to ensure that all your assets, digital and otherwise, pass to those that matter to you is to make a Will, appoint a suitable executor and make your wishes clear.

You should consider your choice of executor carefully, as they will deal with all of the assets in your estate. If you have a large number of digital assets, a technically-savvy executor could be very important.

We can provide specific advice on how to deal with your digital assets in your Will, and also the steps you should consider taking to manage these assets during your lifetime, to ensure that you have the best protection available to both manage and pass on those of your digital assets which you treasure the most.



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Paying for Your Care Home Fees Have You Considered All Your Options?

With average nursing home fees now costing around £1,000 a week and care homes reaching £700*, the question of paying for care in old age has become an increasingly hot topic.

The government's proposal to introduce changes to funding for those requiring care in their own homes, dubbed the 'dementia tax' by its critics, led to rows and a swift U-turn. So what is the current situation, and what do you need to know if you are approaching old age or are concerned about your future care?

“ Giving away assets to your children may seem like a good idea but you could be charged with 'deprivation of assets'. ”

What Does the Law Say About Care Home Fees?

If you have capital in excess of £23,250 (in England), you will usually be expected to meet the full cost of accommodation and personal care in a residential home. The value of your home may be taken into account in assessing this figure. However,

if your spouse or another close relative is living in the property, the value of the home may be disregarded.

Those with capital of less than £14,250 will not be expected to use this to pay care home fees, but they may be expected to contribute income towards their care.

If I Give Away My Assets, Will the Local Authority Pay My Fees?

Giving away assets to your children or other relatives may seem like a good idea but if the local authority decides that the reason you cannot fund your own care is deliberate, you could be charged with 'deprivation of assets' and you may still be assessed as if

you still owned the assets that you tried to give away.

What About a Nil Rate Band Discretionary Trust?

Until recently, a common way to reduce the estate on the first death was for both spouses to create Wills containing nil rate band discretionary trusts (NRBDT), ie a trust

up to the value of the amount that can pass free of inheritance tax on the first death, currently £325,000. Funds in these types of trust cannot be claimed by the local authority for care home fees, but they can be paid to the surviving spouse if needed.

However since the introduction of the Residence Nil Rate Band (RNRB) in April 2017, extra care is needed when creating such trusts. The RNRB may provide for an additional £100,000 free of inheritance tax on death if you are leaving property or the proceeds of property to direct descendants.

You should take specialist advice if you are trying to save care home fees, to ensure that this tax break is not missed and to ensure that you do not fall foul of the deprivation of assets legislation.

*Report by analyst LaingBuisson May 2017



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Abolition of Stamp Duty Land Tax up to £300,000



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Our quick facts guide to the new Stamp Duty Land Tax (SDLT) relief.

- Before the Autumn budget of 2017, a first-time buyer of a property worth £300,000 would have paid £5,000 in SDLT.
- Now, first-time buyers purchasing residential property in the UK, Wales and Northern Ireland will pay no SDLT on properties valued up to £300,000.
- First-time buyers of properties priced between £300,001 and £500,000 will pay SDLT at a rate of 5% on the purchase price in excess of £300,000.
- Purchasers of property over £500,000 will claim no SDLT relief.
- To qualify for this relief, the first-time buyer should not have held any interest in a residential property in the UK or anywhere else in the world before and they must intend to occupy the property as their main residence.
- The government has stated that the new relief will save 80% of first-time buyers from paying SDLT. These reforms accompany the government's ambitious housing plans to build 300,000 new homes a year.

Should the Length of a Marriage Determine the Divorce Settlement?

Should the length of a marriage play a part in deciding what each spouse should receive on divorce? To what extent should other factors be taken into account, like the contribution each person has made to the joint finances?

The legal starting point is that there should be equality on divorce. This is known as the 'sharing principle.'

However, one of the factors that can lead a court to move away from the sharing principle is the length of the marriage, as in a recent case.

Sharp v Sharp

This career-focussed couple were both in their 40s and were married in June 2009. They had no children. Their marriage ended in December 2013.

“ Whilst the duration of the marriage is a factor, it is not the only factor to be assessed. ”

The wife was a trader and the husband was employed by an international IT company. Their basic salaries were similar, at around £100,000 each. However, in addition, the wife received discretionary annual bonuses which had totalled £10.5million during the marriage.

There was no agreement that the couple should maintain separate finances but there had never been a joint bank account or any joint investments. The husband was not aware of the details of the wife's bonuses and the wife fully funded the couple's holidays, the purchase of two of their houses, and bought three Aston Martin cars for her husband.

What Does the Law Say?

The Court must consider a number of factors when deciding the division of assets. This includes the age of the parties, the length of the marriage and the contributions from both parties, financial and otherwise, including raising children. Whilst the duration of the marriage is a factor, it is not the only factor to be assessed.

The Court's Initial Decision

In Mr and Mrs Sharp's case, their total assets were £6.9 million, and the husband sought a total financial package worth £3million.

At the first Court hearing, the Judge found no sufficient reason to depart from the sharing principle and awarded the husband £2.725 million.

However, the wife appealed on the basis that this was a short, dual career childless marriage, and that the couple structured their finances in a particular way

The Court of Appeal awarded the husband £2million.

What Does This Mean if You Are Divorcing?

Whilst the sharing principle is the starting point, this case demonstrated that there can be circumstances where there is good reason to depart from it.

It is therefore extremely important to obtain independent legal advice upon separation. This does not mean that you have to issue Court proceedings. Advice can be obtained during the mediation process.

Our matrimonial team are members of Resolution, a body which promotes a non-confrontational approach to family problems. We have strong expertise in assisting clients in resolving financial matters upon separation.



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Find Out More About Our Services

Please contact Michelle Rose if you would like to receive a copy of the below:

- *Lasting Powers of Attorney - losing mental capacity could happen to anyone, at any time*
- *Family Matters - guidance on matrimonial and family issues*
- *Five Good Reasons to Review Your Will*
- *Ten Good Reasons Why You Should Choose VVV to Prepare Your Will*
- *Private Wealth Planning for You and Your Family*

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