

In Sickness and in Wealth



Since the case of White in 2000 there has been a plethora of cases where one party has pleaded a “stellar or exceptional contribution” in order to achieve a greater share of the assets after the breakdown of a long marriage.

In May this year the Court of Appeal handed down judgement in the case of *Charman v Charman*, upholding the previous decision which gave Mrs Charman £48 million, or 36 % of the parties’ assets.

The main issues in the case were:

1. Whether a substantial trust fund (of some £68 million) that Mr Charman had set up, should be taken into account when deciding the financial sum Mrs Charman should be awarded following the breakdown of the marriage.
2. The percentage of the assets to which Mrs Charman should be entitled. Mr Charman argued that Mrs Charman should receive £20 million in total out of £131 million, given his special contribution as a highly successful businessman in high-risk insurance.

Background

When the parties married in 1976, neither had any significant assets; their wealth (estimated at £131 million plus a children’s trust of £30 million) was accumulated during their marriage. Part of this included an offshore trust worth approximately £68 million. Mr Charman had argued that the trust should not be considered a

“resource” in the divorce settlement because it was a “dynastic trust” and formed an essential part of his long-term estate planning. The Judge at first instance held that he had failed to produce any evidence of this dynastic plan.

The Court of Appeal confirmed his decision and attributed the assets of the trust to Mr Charman. Mrs Charman had conceded that Mr Charman should receive more than half as a result of his special contribution to the marriage. The Court of Appeal upheld the Judge’s ruling that she should receive £48 million, or 36%.

This decision confirms that the court will take trusts into account in these circumstances on divorce, so that trust assets are regarded as resources available for division between the spouses. It is still possible to argue successfully that there should not be an equal division of assets on divorce as a result of a special contribution. Significantly, the Court went on to endorse statutory reform.

A problem shared is not a problem halved

Two million couples cohabit in this country and more than 1.25 million children are dependent on the co-habiting couple. This trend is likely to continue, and recent research carried out by Bristol and Cardiff universities has reinforced the common misconception regarding ‘common law spouses’. It revealed that most had not appreciated that holding property on a ‘joint tenancy’ meant that each would have an equal share should the relationship break down, regardless of contributions.

Some factors other than financial contributions might be relevant to divining the parties’ true intentions. These include:

- Any advice or discussions at the time of the transfer to joint tenancy which cast light upon their intentions then
- The reasons why the home was acquired in their joint names
- The purpose for which the home was acquired
- The nature of the parties’ relationship

- If they have children for whom they both have responsibility to provide a home
- How the purchase was financed, initially and subsequently
- How the parties arrange their finances, whether separately, together or both
- How they discharged the outgoings on the property and other household expenses

Currently, once beneficial interest has been established, each party would be ‘entitled to that share which the court considers fair, having regard to the whole course of dealing between them in relation to the property’. The House of Lords has expressed concern at the idea that fairness should be the guiding principle, preferring a result which reflects what the parties must, in the light of their conduct, be taken to have intended.

In the meantime, the Law Commission’s recommendations for cohabitation law reform are eagerly awaited.

we keep you informed

Companies Act changes

The Companies Act introduces changes to simplify and improve company law making it easier to understand, especially for small businesses. The areas coming into effect in October 2007 include the provisions in Part 9 of the Act relating to the rights of indirect investors. The law will be fully introduced by October 2008. For a schedule listing implementation dates visit: www.gnn.gov.uk

Minimum wage changes

From October 2007, the national minimum wage is to rise by 17p to £5.52, an increase of around 3%, as recommended by the Low Pay Commission. The adult rate for the minimum wage has risen at a rate above inflation every year until now. The rate for workers aged 18-21 will now rise by 15p to £4.60 an hour, while workers aged 16 and 17 will get a 10p rise to £3.40 an hour.

Patently modernised

UK Intellectual Property Office (UK-IPO) has launched a consultation on new rules to modernise patent litigation. The draft Patent Rules 2007 are the first significant reforms to the system for 11 years, and the most far-reaching for almost three decades. They include proposals to allow electronic filing of patent applications and to make digital libraries available online.

Work and Families Act

The act is designed to increase choice and flexibility while establishing a package of rights and responsibilities for employers and employees. From 1st April 2007, maternity and adoption pay extended from six to nine months and eligible employees who care for an adult now have the right to request flexible working. For further information visit: www.dti.gov.uk

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Taxation Update

Taxation of contractors providing services through limited companies

A new tax regime, designed to increase Her Majesty's Revenue and Customs' (HMRC) ability to collect full income tax and National Insurance Contributions (NIC's) from individual contractors providing services through limited companies, came into force in August 2007.

Many personal service companies (PSC's) were set up in the 1990's to take advantage of the tax regime which allowed income to be extracted in the form of dividends and salaries at a level which did not attract PAYE or NIC's. Personal expenses were also recoverable through the company.

HMRC responded in 2001 by introducing Inland Revenue Guidance Note 35 (IR35) which effectively stated that if the PSC was purely acting as an intermediary between the employer and the individual contractor providing the services that it would have to deduct PAYE and NIC's before making any payment to the individual. In reality, HMRC was ignoring the PSC and treating the individual as an employee of the end user of his services.

However, contractors still managed to avoid paying PAYE and NIC's by arguing that IR35 did not apply to them.

In response HMRC has decided to extend contractors' liability to pay income tax and NIC's to cover situations where the contractor uses a Managed Service Company Provider (MSCP) to help set up or run the contractor's company.

It is important to understand that these new provisions, which are intended to be backdated to 6 April 2007, will be in addition to IR35.

Furthermore, it is proposed that MSCP's, staffing companies, and any end users of the contractor's services can become liable for the contractor's unpaid tax.

The clear message for contractors operating through limited companies is to ensure that they can demonstrate to HMRC that they genuinely run the company on their own using occasional professional advice. Otherwise they will be at risk of paying income tax and NIC's.

For further information or advice please contact Glyn Evans on **01934 637911** or email **evans@powellslaw.com**.

PS. As a result of a very recent decision in the House of Lords (which HMRC lost!) further amending legislation is to be introduced to prevent husbands and wives who operate their business through a limited company from allocating income between them in the form of dividends and shares in the most tax efficient manner. In the future this may be treated as tax avoidance with the effect that income paid to the wife either as salary or dividends may be treated as the income of the husband for tax purposes and taxed at a higher rate.

Mum's the word

A pregnant pause for the Press

The delivery of the glad tidings of pregnancy is a matter for the expectant mother, not a national newspaper. This is the finding of the Press Complaints Commission (PCC) in a complaint against *The Sun* by singer Charlotte Church.

The PCC had previously made it clear that 'as a matter of common sense, newspapers and magazines should not reveal news of an individual's pregnancy without consent before the 12-week scan, unless the information is known to such an extent that it would be perverse not to refer to it. This is because of the possibility of complications or miscarriage... and because it should be down to the individual when to share the news with her family and friends in the early phase of a pregnancy'.

The Sun breached clause 3 of the Editor's Code of Practice by its publication reporting on the speculation of Charlotte Church's pregnancy. The code provides that: 'Everyone is entitled to respect for his or her private and family life, home health and correspondence, including digital communications. Editors will be expected to justify intrusions into any individual's private life without consent'. According to the PCC, 'the newspaper had simply tried to circumvent the privacy provisions of the code by presenting the story as speculation. This was not acceptable within the spirit of the code'.

Privacy law in the UK may be in its infancy, but this at least is a clear decision providing absolute guidance. Each decision that is made builds a body of relevant law to assist the courts, claimants and the media alike.

Staff Focus

Jay Oberoi



Born in London, Jay qualified as a Family Solicitor there 9 years ago and speaks Hindi and Punjabi fluently, with a good understanding of Urdu. She specialises in Children matters, both Private Law proceedings involving Residence and Contact disputes as well as Care Proceedings.

Jay moved to the West Country 5 years ago and enjoys the pace and quality of life. In her spare time she likes going to the cinema, eating out and walking her dog on the beach and the surrounding countryside.

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