SHAKESPEARE MARTINEAU

LIFE TIMES

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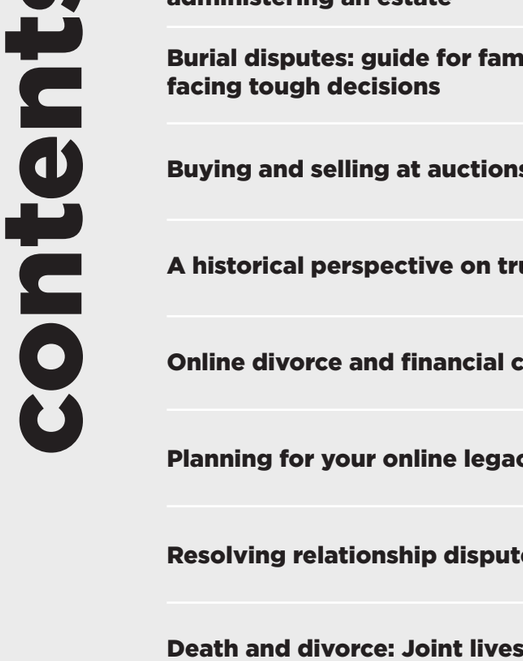

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hello

As we move through the early months of 2025, it's a great time to reflect on plans, set goals, and get affairs in order. With this in mind, we share key legal insights to help you move forward with confidence.

This edition explores essential topics across family law, private client services, and residential conveyancing, offering guidance to support you in making informed decisions.

For those considering finalising a divorce online, we highlight key factors to consider, along with alternative ways to resolve family disputes without going to court.

Burial disputes are rising, often due to evolving family structures like second marriages and blended families. We examine how families can address—or even prevent—these conflicts during an already difficult time.

As digital assets grow—from social media and cryptocurrency to streaming services—they are often overlooked in estate planning. We outline key steps to ensure your digital legacy is protected.

We hope you find this edition insightful and valuable as you plan for the months ahead.

Suzanne Leggott
Partner & Head of Private Wealth

How to protect yourself when administering an estate

Personal representatives (PRs) are required to make numerous decisions when administering estates and, when doing so, must adhere to the duties under the will and in law.

If you're a PR you will likely be met with demands, and sometimes met with claims, by beneficiaries. Disaffected beneficiaries may seek to claim that you may not have administered the estate properly and that, in some way, you acted in violation of your duties; for example, a breach of duty to administer the estate, known as devastavit, or a breach of trust.

Claims for devastavit, breach of trust or fiduciary duties can be defended on the facts in the usual way. It may be that the beneficiaries' claims are unfounded and lack merit, in which case you can deny any alleged breach and loss. However, there may also be other defences available to you, as a PR.

Are there exclusion or exemption clauses in the will?

A will may contain exclusion clauses limiting a PR's liability, such as that the PRs or will trustees that succeed them, are not responsible except in acts of fraud, dishonesty or wilful default.

Many wills contain STEP Standard Provisions which include a limit on liability, except where any loss was caused by their fraud or negligence. However, it is worth noting that a court can interpret exclusion clauses restrictively, and they will not directly protect you, as a personal representative, from claims by third parties, e.g. creditors.

Protecting yourself from claims by creditors or unknown beneficiaries

Although a court will not directly protect you from claims by third parties, Section 27 Trustee Act 1925 Notices are useful in protecting you against claims by creditors, as well as unknown beneficiaries.

Notices have to be advertised for at least two months in the Gazette and a local newspaper(s) to any land in the estate, as well as another appropriate place. Upon expiry of the two months, if no claims have been made, you can look to distribute, and you will get the same protection as if you distributed under a court order.

It's also worth noting the six-month deadline from the date of the grant for any claims to be made under the Inheritance Act. Where notice of a claim is received after the expiry of the two months, but before distribution, you still need to consider the claim.

Distributing an estate when a lease is involved

Under Section 26 of the Trustees Act 1925, if you are liable for rents, covenants or indemnities under the terms of a lease then you have power to convey the property in question and distribute the estate without personal liability under the lease.

However, you must have satisfied all liabilities under the lease which have accrued and claimed up to the date of the conveyance and, if necessary, retain a contingency fund to cover any claims.

Is there a time limit for bringing a claim?

Creditors

Claims by creditors for any so-called devastavit claim (i.e. loss caused by the PR to the value of the estate) are likely to be barred after six years.

Beneficiaries

If a beneficiary is bringing such a claim it is likely to be barred after 12 years, but they will not be able to claim interest after six years. This doesn't apply if you (as the PR) have concealed the right of action that a claimant beneficiary may have, or where there has been an exercise of a power by fraud.

Where a beneficiary is under a disability, lacks capacity or is a minor, time does not start to run until the end of the period of minority, or until the person who has a disability has passed away (section 28 (1) Limitation Act 1980).

Residuary beneficiaries

For residuary beneficiaries, time starts to run when the administration is complete. There is a distinction between executors (where there is a will) and administrators (in intestate estates).

Where an executor's title to property dates from the testator's death, the title of an administrator is from the date of the grant of letters of administration. Where there is no limitation period under statute, a beneficiary may be prevented from bringing a claim under the doctrine of laches. This can be pleaded where there has been considerable time which has elapsed and the circumstances are such that either the beneficiary complaining has effectively waived any breach, or neglected in pursuing any remedy and it would not be reasonable for a PR to compensate for the breach.

If the beneficiary consents to or acquiesces in a breach of trust then he/she cannot subsequently complain about it. A release may be inferred from conduct.

Demonstrate that you have acted reasonably and honestly

Under s61 of the Trustee Act, if you can satisfy a court that you have acted honestly and reasonably and ought fairly to be excused, not only for a breach of trusts but also for failing to obtain the court's directions on the matter in question, then the court has the power to relieve you from liability in whole or part.

To show that you have acted honestly and reasonably, it is important to show that you have obtained proper advice. A higher standard of care is expected of professional PRs.

Court directions and orders

If you have distributed the estate in accordance with a direction made by the court then, provided that you have brought the relevant facts to the attention of the court, you will not be held liable to a creditor or other claimant.

Directions under Civil Procedure Rule 64 to distribute on a footing are that:

- All reasonable steps have been taken to trace a beneficiary, or the missing beneficiary is dead (known as a Re Benjamin order).
- If you aren't certain how to distribute the estate due to some difficulty or ambiguity with the will, you can apply to the court for it to determine the true construction/ interpretation.
- S57 of the Trustee Act 1925 allows the court to extend a PR's powers generally, or for a specific purpose, on the grounds that it is expedient and in the interests of the beneficiaries to do so.

You may also be authorised by a court to take steps in the administration (pursuant to the court's inherent jurisdiction) or to vary a trust, so far as is necessary, under the Variation of Trusts Act 1958.

If you are a PR facing difficulties with your administrative duties, which may arise out of claims for beneficiaries or issues with the construction of a will, then do get in touch with a member of our team.

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Burial disputes

A guide for families facing tough decisions

Over recent years, we've seen a rise in disputes about funerals and the arrangements for burial or cremation.

This increase has come with changing family dynamics—second marriages, blended families, greater geographic distances, and varying beliefs about burial and cremation have all contributed. Disagreements are common when the deceased's wishes aren't clearly known, especially if they didn't include them within their will.

Here, we'll cover key issues in burial disputes, the law's stance on who can make these decisions, and how families can resolve or even avoid these conflicts.

Who has the final say on burial arrangements?

A common issue in burial disputes is determining who has the legal authority to make decisions about the deceased's body. It's a widely misunderstood area. Legally, there is no right of "ownership" of a body, but the personal representative (either the executor named in a will or the next of kin if there is no will) has the right to arrange burial or cremation. The law does not see the deceased's body as property but emphasises the need for it to be treated with respect and dignity.

If a person dies with a will, their executor has the legal right to handle funeral and burial decisions. However, if they die without a will, the law prioritises certain family members to take on this responsibility, usually in this order: spouse or civil partner, children, parents, and then siblings. In cases where multiple family members hold equal priority, such as parents or children, differing views can lead to disputes.

The role of a will in communicating burial wishes

Many people believe that if they state their funeral or burial preferences in their will, those wishes will automatically be honoured. In reality, this is not always the case. While a will can indicate someone's intentions, these instructions are not legally enforceable. An executor may have the authority to make burial arrangements, but they are not strictly bound to follow any burial instructions in the will. This limitation can be frustrating for families who feel that specific wishes should be respected.

To avoid these issues, it's wise to discuss funeral preferences openly with close family members, particularly those likely to be handling the arrangements. Making sure they understand the importance of following those preferences can often make a difference, even if the instructions are not legally binding.

What are the common causes of burial disputes and possible solutions?

Burial disputes can be complicated by various family tensions. For example, conflicts are often seen in cases of remarriage, where the deceased's current spouse and children from a prior relationship may disagree about the burial site or type of service. Cultural and religious beliefs can also play a significant role. Some family members may want to adhere to particular rituals, while others may have different preferences.

When families can't agree, they sometimes turn to the court. In cases where there's a stalemate, a court can be asked to grant someone limited authority to make arrangements. Courts aim to support the respectful and timely burial of the deceased and generally prefer decisions that align with the deceased's wishes, family ties, and logistical feasibility.

Who "owns" ashes?

When a body is cremated, disputes sometimes arise over the ashes. The law on this is still evolving, but there's a strong argument that ashes can be treated as property. Since cremation is a transformative process, it may mean that ashes, unlike an unaltered body, can be subject to ownership. By law, the person who arranged the cremation has the right to collect the ashes, and the crematorium must follow their instructions about their disposal.

However, if the ashes are left unclaimed, crematoriums have the right to scatter them in designated areas. To avoid disagreements, family members are encouraged to make clear who will be responsible for ashes and, if possible, to state any wishes about how they should be handled.

How to avoid burial disputes

Taking some practical steps can help avoid the conflicts that lead to burial disputes:

- **Include burial wishes in a will.** Including burial preferences in a will or a separate document helps convey your wishes to family members, even if they aren't legally binding.
- **Choose an executor carefully.** If burial wishes are important, consider appointing an executor who is likely to honour these preferences. This person will be responsible for handling funeral and burial arrangements.
- **Talk openly about burial plans.** Open conversations about your funeral and burial preferences can reduce misunderstandings later. These discussions, while sometimes difficult, often help families avoid emotionally charged conflicts.
- **Respect cultural and religious traditions.** For families with specific cultural or religious customs, clarifying these in advance can help set expectations and reduce conflicts.

If you're facing a burial dispute

If a burial dispute arises, attempt to resolve it through open communication and a willingness to compromise. In some situations, mediation may be a useful way to discuss burial preferences in a neutral setting and reach a fair solution. If these approaches do not resolve the conflict, legal help may be necessary. With burial issues it is important to try and resolve matters or take legal action quickly as once a burial has taken place a court is unlikely to order that the body is exhumed. A solicitor experienced in burial and probate law can guide you through the court process or offer alternative solutions to avoid lengthy and painful litigation.

While the law tries to uphold the dignity of the deceased, every family's situation is unique. By taking proactive steps and discussing plans openly, families can help prevent disagreements and allow the deceased's final wishes to be respected.

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Buying and selling at auctions

common misconceptions

Buying or selling property at auction is an increasingly popular method in the UK, offering a faster and often more transparent alternative to traditional real estate transactions. However, myths and misunderstandings persist.

We've put together everything you need to know about navigating property auctions successfully.

What is a property auction?

A property auction is a public sale where properties are sold to the highest bidder. Auctions can be held in person, online, or through hybrid methods. Buyers and sellers can both benefit from a transparent process, with clear timelines for contract exchange and completion.

Buyers FAQs

1. What is an auction legal pack?

The auction legal pack contains essential documents such as the title deeds, searches, terms of sale, tenancy agreements (if applicable), and any warranties. Buyers should have their solicitor review this pack thoroughly before the auction to identify potential risks or obligations. This is the key message for people buying at auction as contracts exchange at auction which means you are legally obligated to purchase the property.

2. Can I view a property before the auction?

Yes. Most auction houses arrange viewing dates, which you should attend to inspect the property and gauge its condition.

3. Do I need a deposit on the day?

Yes, buyers must pay a 10% deposit immediately after a successful bid. Ensure you have cleared funds for this purpose, as failure to provide the deposit will nullify the sale and could incur penalties.

4. Can I finance my purchase with a mortgage?

Yes, but you need an agreement in principle before the auction. Mortgage financing for auction properties can be challenging due to the short timeframes, so it is advised to consult a lender familiar with auction transactions before bidding.

5. Can I change my mind after a winning bid?

No. Once the auctioneer's hammer falls, the sale is legally binding, and withdrawing will forfeit your deposit.

6. When can I move in or complete the purchase?

Completion typically occurs 20 working days after the auction. At this stage, you pay the remaining balance, and the property's ownership transfers to you.

7. Are auctions only for investors?

No. Auctions are suitable for first-time buyers, families, and businesses, depending on their needs and budget.

8. What additional fees should I be aware of?

Besides the purchase price, buyers often pay auctioneer fees, administrative costs, and possibly survey fees. These are outlined in the auction terms.

Sellers FAQs

1. Why sell at auction?

Selling at auction guarantees a swift and transparent sale, often within 4–6 weeks. It's ideal for unique properties, homes needing renovation, or situations requiring fast transactions.

2. What costs are involved in selling at auction?

Sellers typically pay an entry fee and a percentage of the final sale price as commission. Discuss this with the auction house to understand the costs upfront.

3. What price can I expect?

While properties can achieve higher-than-expected prices in competitive bidding, sellers should set a realistic reserve price should it not go the way they hope.

4. How do I prepare my property for auction?

Provide accurate documentation, complete necessary repairs if possible, and stage the property for viewings to attract serious bidders.

Common misconceptions

"Auctions are only for distressed properties."

Not true. Properties at auction range from high-value homes to commercial premises, vacant land, and investment opportunities.

"Buying at auction is risky."

While there is an element of risk, thorough due diligence (including legal pack reviews and surveys) minimises any potential issues.

"Auctions always result in a bargain."

While competitive bidding may lead to bargains, some properties sell for more than their market value if demand is high.

"Sellers lose control over the final price."

Sellers can set a reserve price, ensuring the property won't sell below an acceptable amount.

Buying or selling property at auction in the UK is a streamlined, transparent process, offering opportunities for both investors and homeowners. By understanding the process, dispelling misconceptions, and seeking professional advice, you can confidently participate in auctions.

For further assistance, contact Esme Barker or Jennie Whieldon to help guide you through your auction journey.

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A historical perspective on trusts

Did you know?

The law of trusts has long been regarded as one of the more archaic areas of legal practice—a reputation that is not entirely unwarranted. While modern legislation has shaped aspects of trust law, its foundations remain deeply rooted in judicial decisions from the 18th and 19th centuries and even earlier. This rich continuity and historical depth contribute to the enduring fascination with trusts in legal scholarship and practice.

Medieval origins and early development

The origins of the trust can be traced back to the Middle Ages, when property owners frequently transferred legal ownership of their assets to trusted individuals. These individuals, often friends or confidants, were tasked with holding and managing the property on behalf of the original owner and their family, with the expectation that it would eventually be returned or passed on to designated heirs.

This arrangement provided several advantages, chief among them the circumvention of feudal death duties. Upon the legal owner's death, such duties were triggered if they held the property directly. However, if ownership was vested in another party at the time of death, no such liabilities arose. Additionally, in cases where the original owner was absent for extended periods—such as during military campaigns—the entrusted individual could assert legal rights over the property, as the common law courts recognised them as the legitimate owner.

The role of equity and the Court of Chancery

The inherent risk in this system became evident when a supposed "trusted" friend proved untrustworthy. The common law courts, which recognised only legal ownership, often failed to provide recourse for the original owner. Faced with this injustice, petitioners turned to the Royal Court. By the reign of Richard II (1367–1400), the Lord Chancellor—head of the Chancery, the administrative arm of the medieval government—had begun to enforce obligations of trust, compelling trustees to act in good faith. This marked the emergence of what we now recognise as trust law, rooted in principles of equity rather than rigid common law doctrines.

Over time, the Lord Chancellor's interventions evolved into the Court of Chancery, a specialised judicial body dedicated to addressing matters of equity, including the enforcement of trusts. This court played a crucial role in shaping trust law as we understand it today.

Challenges and adaptation

The financial advantages conferred by trusts did not go unnoticed by the Crown. In 1535, Henry VIII sought to curtail their use through the Statute of Uses, which aimed to abolish the separation of legal and beneficial ownership. However, through judicial interpretation and the use of legal fictions, the courts effectively circumvented the statute, allowing trust law to persist and even flourish in the 17th and 18th centuries.

By the early 19th century, however, the Court of Chancery had become notorious for its procedural inefficiencies and delays. Charles Dickens famously satirised these issues in Bleak House, highlighting the frustrations of litigants trapped in endless legal wrangling. In response, sweeping legal reforms in the 1870s led to the abolition of the Court of Chancery, transferring jurisdiction over trusts to the common law courts. Despite this structural shift, the distinction between legal and equitable principles has remained intact, ensuring the continued evolution of trust law.

The enduring legacy of trusts

Today, the trust remains a highly flexible and adaptable legal instrument, serving its original purpose of facilitating the management and protection of assets. Whether used for estate planning, wealth preservation, or charitable giving, trusts continue to provide individuals with a mechanism to safeguard their property and provide for future generations. While its medieval roots may lend it an air of antiquity, trust law remains a dynamic and essential component of modern legal practice.

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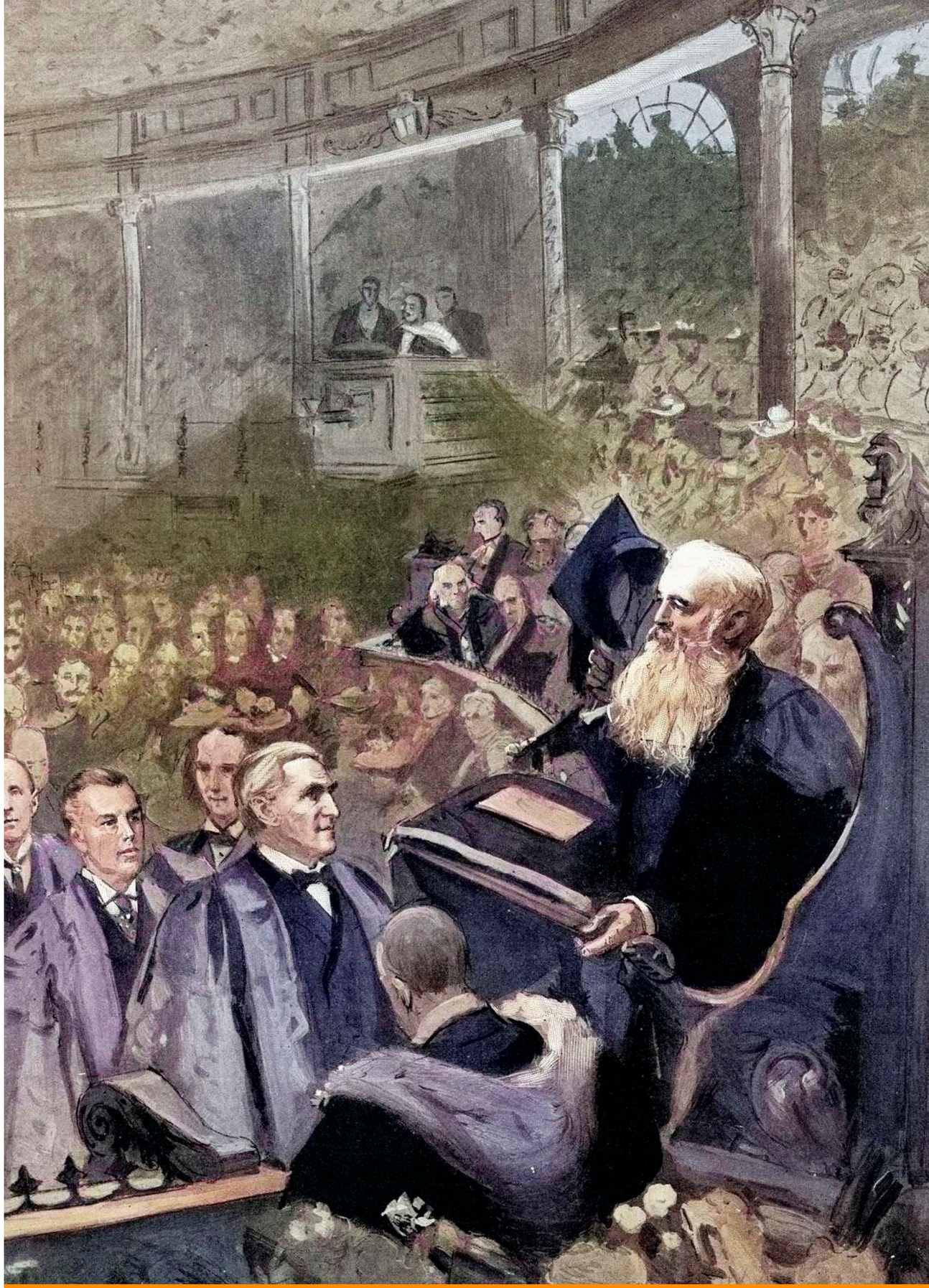

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Parties beware

Online divorce and financial claims

Online divorce services in the UK have made it easier and more affordable for couples to formalise the end of their marriage, however while these services offer convenience, they can also create a false sense of security regarding financial claims.

Many individuals mistakenly believe that finalising their divorce online automatically resolves all financial matters between them and their ex-spouse. This misconception can lead to serious financial and legal issues down the line.

If you're considering or have already completed an online divorce, here's what you need to know to protect your financial interests.

Does a divorce automatically end financial claims?

No. In the UK, obtaining a divorce does not automatically sever financial ties between you and your ex-spouse. Without a legally binding financial agreement, often referred to as a "financial order" or "consent order," financial claims remain open indefinitely.

This means your ex-spouse could make financial claims against you in the future, even many years after the divorce, if no financial order has been secured.

What is a financial order?

A financial order is a legal document approved by the court that sets out how financial matters between divorcing couples are resolved. It covers areas such as:

- Division of property, savings, and investments
- Pension sharing
- Spousal maintenance
- Child maintenance (to some extent)

A financial order provides certainty and ensures that neither party can make further claims against the other in the future.

Without a financial order, agreements may not be legally binding, risking future disputes.

How to protect your financial interests during divorce

Get legal advice early

Before starting the divorce process, consult a family law expert to understand your financial rights and responsibilities.

Obtain a financial order

Whether you agree amicably or need help, ensure a financial order is submitted to the court. If both parties agree, a consent order is usually straightforward and cost-effective.

Use mediation or arbitration if needed

If disputes arise, ADR can help resolve issues efficiently and cost-effectively. Courts now expect parties to attempt this before litigation.

Beware of DIY solutions

While DIY and online services may appear cheaper, they often lack the comprehensive advice needed to protect your financial future.

FAQs

1. Can I apply for a financial order after my divorce is finalised?

Yes, you can apply for a financial order even after the divorce is complete, provided neither party has remarried. However, it is always better to resolve financial matters during the divorce process to avoid complications down the line.

2. Is a financial order necessary for child maintenance?

Child maintenance is usually managed separately through the Child Maintenance Service (CMS). However, financial orders can include provisions for additional child-related expenses, such as school fees, medical costs, or lump-sum payments, providing greater financial security and clarity for both parents.

3. What happens if my ex-spouse makes a financial claim years later?

Without a financial order, your ex-spouse can apply for financial provision even years after the divorce. In Wyatt v Vince (2015), an ex-wife was able to make a successful financial claim nearly two decades later because no order had been secured. This case underscores the importance of obtaining a financial order to protect your future assets and prevent unexpected claims.

4. Do we need to go to court for a financial order?

If you and your ex-spouse agree on the division of finances, you can submit a consent order to the court for approval without attending a hearing. Only contested cases require a court hearing.

5. Can I include pensions in a financial order?

Yes, pensions are often one of the largest marital assets and can be divided through a pension sharing order as part of the financial order.

6. What if my ex-spouse refuses to agree to a financial settlement?

If no agreement is reached, you can apply for a financial remedy order, and a judge will determine a fair division of assets. Online divorce services can be convenient but shouldn't replace tailored legal advice. Understanding financial matters is key to long-term security, so always seek legal guidance and secure a financial order to protect your interests. For expert advice and support, contact our experienced family law team today.

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The curse of digital assets:

Planning for your online legacy

Don't let your digital legacy become a ghost in the machine: modern estate planning for your online assets

As technology continues to play a central role in our daily lives, many of us are unknowingly accumulating a treasure trove of digital assets such as social media profiles, cryptocurrency, and online subscriptions, that are often overlooked in estate planning.

Failing to account for these digital possessions can result in a legacy haunted by inaccessible accounts, lost wealth, and legal nightmares. To avoid this curse, it's crucial to incorporate your digital assets into your estate plan.

What are digital assets?

Digital assets come in many forms including:

- Social media accounts such as Facebook, Instagram and LinkedIn
- Email accounts and online documents such as Google Drive and Dropbox
- Cryptocurrency holdings such as Bitcoin, Ethereum and NFTs
- Online subscriptions and memberships such as Netflix, Spotify and Amazon
- Online banking and investment accounts
- Domain names or personal websites

While some of these may seem inconsequential, others, such as cryptocurrency or online investment accounts, can represent significant financial value. Social media accounts may also hold sentimental value, containing years of photos, messages, and memories. Without proper planning, these digital assets could become inaccessible or lost forever.

The challenges of managing digital assets after death

For example:

- Social media platforms often have no clear process for transferring accounts upon death. Some, like Facebook, allow for "memorialising" an account, but without instructions, precious memories may become lost.
- Cryptocurrency wallets are protected by complex encryption. If your heirs do not have access to the private keys, your digital currency may be lost forever.
- Email and online banking accounts may be shut down, preventing access to important records or financial information.

To avoid these post-mortem complications, it's essential to include digital asset management in your estate plan.

How to incorporate digital assets into your estate plan

1.

Take an inventory of your digital assets

Start by making a comprehensive list of all your digital assets. Include login credentials, usernames, passwords, and security questions where applicable. Keep this list secure by using a password manager or storing it in a safe, accessible location.

2.

Appoint a digital executor

Much like an executor for your traditional estate, a digital executor is someone you trust to manage your digital assets after your death. While not legally recognised in all jurisdictions, appointing a digital executor can help ensure that someone has the authority and understanding to manage your online presence.

3.

Incorporate digital assets into your will

In your will, specify how your digital assets should be managed and distributed. Provide detailed instructions on what should happen to each account—whether certain accounts should be deleted, memorialised, or passed on to specific individuals. Be mindful of privacy policies and terms of service agreements that might limit what can be done with these accounts after your death.

4.

Secure your cryptocurrency

Cryptocurrency is notoriously difficult to access without the right information. Make sure that your heirs or executor have access to your digital wallets, including private keys and recovery phrases. Consider using a cold wallet (an offline storage device) for added security but do ensure someone knows how to access it should the need to arise.

5.

Consider legal tools for digital asset management

Some jurisdictions allow for specific legal tools, such as a "digital asset trust," to manage your digital estate. A trust can help you assign a trustee to manage your digital assets, ensuring they are distributed according to your wishes. Trusts can also offer protection from privacy policies that restrict access to certain accounts.

Some jurisdictions allow for specific legal tools, such as a "digital asset trust," to manage your digital estate. A trust can help you assign a trustee to manage your digital assets, ensuring they are distributed according to your wishes. Trusts can also offer protection from privacy policies that restrict access to certain accounts.

The importance of regular updates

Digital assets change frequently from new platforms emerging, passwords getting updated, and new forms of digital wealth, like NFTs, entering the market. To ensure that your estate plan remains current, regularly review and update your digital asset inventory. Make sure that any new accounts or assets are accounted for and inform your executor of any changes.

Protecting your digital legacy

Just as you would protect your financial assets, safeguarding your digital legacy is essential. Proper estate planning ensures that your loved ones have access to important digital information and that your wishes are carried out for your online presence. Whether it's passing on valuable cryptocurrency or preserving cherished social media memories, addressing digital assets in your estate plan will help you avoid the "curse" of digital assets left unaccounted for. Take the time now to plan for your online afterlife so your digital presence doesn't haunt your heirs for years to come.

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A guide to arbitration:

Resolving relationship disputes outside of court

Navigating the end of a relationship can be challenging, and resolving disputes through the courts often adds stress, cost, and delays. Many couples about to embark on divorce and financial remedy proceedings are blissfully unaware that there are others forms of dispute resolution to help them resolve issues, such as who is to keep the family home or how pensions are to be divided. Arbitration offers a private, efficient, and flexible way to address these issues without stepping into a courtroom.

With increasing backlogs in family courts, more couples are exploring alternative methods like arbitration to achieve quicker resolutions without sacrificing fairness. Here is a detailed guide to understanding arbitration and its benefits.

What is arbitration?

Arbitration in the UK is a form of alternative dispute resolution (ADR) where a neutral third party, known as an arbitrator, is appointed to decide on matters arising from the breakdown of a marriage or civil partnership. Unlike court proceedings, arbitration is private, and the arbitrator's decision is legally binding.

Who is arbitration suitable for?

Arbitration is ideal for couples in the UK who want to avoid the costs and delays of court proceedings, require a binding decision but value privacy and control over the process and have specific issues, such as financial arrangements, that need resolving.

What issues can be resolved through arbitration?

Arbitration can cover a wide range of family law disputes, including:

- Specific child-related matters, such as residency, schooling, or financial support
- Financial settlements, including property division, pensions, and investments
- Spousal maintenance

Arbitration can provide tailored solutions to meet a child's unique needs, offering greater flexibility than courts. However, the welfare of the child remains paramount, and the arbitrator will proceed only if arbitration is considered appropriate for the case.

What cannot be arbitrated?

In the UK, arbitration cannot decide cases involving public law child protection issues (e.g., where social services are involved). Matters relating to the validity of a marriage or a divorce itself are also outside the scope of arbitration.

How does arbitration work in the UK?

- Choose a family solicitor that has experience in arbitration – Both parties should appoint specialist family lawyers who are experienced in this process. At Shakespeare Martineau we have family lawyers familiar with the process.
- Choose an arbitrator – With the help of your solicitors both parties agree on a qualified arbitrator, typically a family law expert or retired judge. Arbitrators in the UK are often members of organisations such as the Institute of Family Law Arbitrators (IFLA).
- Sign an arbitration agreement – This agreement confirms that both parties commit to arbitration and accept the arbitrator's decision as legally binding.
- Present your case – Parties, through their legal team, provide evidence and submissions during arbitration. The process is more flexible than court proceedings, allowing for tailored timelines and processes.
- Arbitrator's decision – Known as an "award," the decision is enforceable through the UK courts under the Arbitration Act 1996 if necessary.

What are the benefits of arbitration?

Privacy: Unlike court proceedings, which are sometimes public, arbitration is entirely confidential.

Speed: Cases can often be resolved within weeks or months, compared to lengthy court delays.

Cost-effective: It is generally more affordable than contested court proceedings, as it avoids prolonged litigation.

Flexibility: Parties can choose their arbitrator, tailor the process, and schedule hearings at their convenience.

Binding decision: The arbitrator's award is legally enforceable, providing certainty and closure.

How does arbitration compare to mediation?

While both are ADR methods, arbitration and mediation differ significantly:

- Arbitration involves a binding decision made by an arbitrator.
- Mediation is a facilitated negotiation process, where as a mediator helps parties reach a mutual agreement. If mediation fails, arbitration or court proceedings may follow.

How do I get started with arbitration?

- Consult a member of our family law team to assess whether arbitration is appropriate for your case.
- Agree with your ex-partner to pursue arbitration.
- Select a qualified arbitrator through a recognised body, such as the Institute of Family Law Arbitrators (IFLA).
- Begin the arbitration process by signing the necessary agreements and preparing for hearings.

Arbitration is a practical and effective way to resolve disputes in family law, offering speed, privacy, and flexibility compared to traditional litigation. If you're facing a separation or divorce and want to explore your options, contact our family law experts today.

Death and divorce:

Joint lives maintenance

When a marriage ends in divorce, financial arrangements can become complex—especially when one party is entitled to joint lives maintenance. But what happens to these payments if the paying spouse passes away? We explore the legal and financial implications of death on spousal maintenance, highlighting key considerations and potential solutions to protect both parties' interests.

What is joint lives maintenance?

What this means is that the monthly maintenance would be paid with no specific end date and would only come to an end once one person had died, but it would automatically end if the recipient party remarried. Therefore, it was often the case that the person in receipt of the maintenance would never remarry.

Sonia Bachu and Debra Burton explore what this means when one of them dies.

If the first to die was the recipient of the maintenance, for example, the ex-wife, then the ex-husband would have no ongoing liability. On the other hand, if he were the first to die, complexities could arise.

If the ex-wife would suffer financial hardship as a result of the ex-husband's death, she may have a claim upon the deceased ex-husband's estate.

It is common to find a specific clause within a matrimonial Financial Order restricting either party from making claims against the other's estate after death, however, if there is a joint lives maintenance order in place, then this is one of the rare occasions where that does not necessarily apply.

In this event, the receiver would be advised to pursue a claim under the Inheritance (Provision for Family and Dependents) Act 1975 – "the Inheritance Act". The Inheritance Act provides that certain categories of people, including former spouses who have not remarried, can apply to the court for "reasonable financial provision" from the deceased's estate.

However, just because the receiver is eligible to bring an Inheritance Act claim, this doesn't mean they will automatically get something from the estate. Usually there will be competing claims, possibly from a widow, whose claims the court are likely to prefer over an ex-spouse. The court will also be conscious that joint lives maintenance was only supposed to last until the death of one of the parties, and that the estate's resources are limited.

When assessing what someone is likely to receive from an Inheritance Act claim, the court will consider a host of things, including the size of the estate, other beneficiaries, and the assets and resources of the ex-partner.

When a joint lives maintenance order exists, the provider's estate is large and the receiver dependent, then the provider would be well advised to obtain an insurance policy to protect the periodical payments so that in the event of their death, the insurance policy would pay out a lump sum and prevent a claim being made against their estate.

For those who have a joint lives maintenance order in place, it's important to take specialist legal advice.

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