It has been a busy and exciting Summer of sport with Olympic and Paralympic triumph. This has been equally matched by the period of growth and success in the Tax and Private Client Department.

New joiners

As Head of RadcliffesLeBrasseur’s Tax and Private Client Department, I am delighted to announce that since our last newsletter, two solicitors have joined our department:

Jonathan Shankland joined us in June 2012. Jonathan qualified as a solicitor four years ago and has been involved in a wide range of private client activities with particular expertise in the areas of Personal Injury Trusts, Court of Protection issues and Care Fee Planning and Mitigation.

Lauren Levenberg trained at RadcliffesLeBrasseur and qualified as a solicitor in September 2012. Lauren assists with all aspects of private client work.

I hope you will join me in welcoming Jonathan and Lauren to the department.

New accolades

I am pleased to announce that, for the second year running, I have been included as a prominent figure in the Citywealth Leaders List 2012. I have also been recommended in both Legal Experts and Global Law Experts and included in Who’s Who In The World.

Finally, since our last newsletter, the RadcliffesLeBrasseur Tax and Private Client Team has received another award, this time the Corporate International Magazine award for ‘UK Tax Law Firm of the Year’.

Important changes: Statutory residence test and abolition of ordinary residence

Following a consultation on the Government’s proposal to introduce a statutory test for tax residence and to abolish the concept of ordinary residence for tax purposes, the Government published its responses together with draft legislation on 21 June 2012.

A further consultation which closed on 13 September 2012 sought views from interested parties on a number of additional questions with an aim to refine the policy and clarify the draft legislation. The Government’s response to this will be published by 11 December 2012 alongside their response to 35 other tax policies announced in the 2012 Budget.

There will then be an opportunity to comment on draft clauses before the final legislation is published shortly after the 2013 Budget.

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...Newsflash...Newsflash...Newsflash...

Tax Return paper filing deadline fast approaching

REMINDER: The deadline for filing a paper copy of your 2011/12 Tax Return is midnight on 31st October 2012.
If you wish to discuss your tax affairs, please contact either Michael Zakiewicz by email michael.zakiewicz@rlb-law.com or call 020 7227 7375 or Elena Tzialli by email elena.tzialli@rlb-law.com or call 020 7227 7440.

In this issue

Consider your digital legacy • The pitfalls of hiring domestic help • Moving in together - consider this! You really should make a will • Personal profile - Hetty Maher • Leases: Traps for the unwary
Whilst we are aware that the internet is now a constant part of peoples’ daily lives, would you have thought about iTunes, Facebook, Twitter, YouTube and eBay when making a Will?

According to London University’s Centre for Creative and Social Technology, Britons own £2.3 billion of internet–hosted assets such as books, videos, music and games, and 30 per cent of Britons consider their digital possessions as potential ‘digital inheritance’. However, many individuals overlook their digital identity when making their Wills even though there is a lot to lose from goodwill to valuable digital assets.

Whilst digital assets are not as tangible as property and finances, they can form a valuable part of your estate and in addition may have a sentimental value therefore, it is important for digital legacies to be considered at the time of making a Will. The increasing focus on digital legacies has been highlighted by the recent reports that Hollywood actor, Bruce Willis, is considering legal action against Apple to make sure that he can leave his iTunes catalogue to his children.

As the law has yet to keep up with the constantly changing digital world, digital assets have the potential to be more difficult to deal with than ‘tangible’ assets and have equal potential to cause disputes. There is still no specific process for dealing with online accounts after a person’s death, which means that the terms and conditions of the sites govern what happens to these items on death. Some sites, such as Apple and Kindle, go even further and state that their films, songs and books are not even owned, but simply leased during life and therefore cannot be given away. Whilst the law has yet to evolve to keep up with the constantly changing digital world, and potential lawsuits linger in the background concerning the legal ownership of these possessions, these discussions demonstrate the increasing focus on digital possessions and their monetary value.

53 per cent of Britons store treasured possessions on their computers such as photos, emails and valuable documents, and therefore in addition to the monetary issue concerning our digital identity, there are also practical issues that need to be considered on death. The fact that the majority of the accounts are password protected means that if family members are not privy to this information and access after death is increasingly difficult, with some providers denying access without the deceased’s username and passwords, and leaving families no option but to leave the accounts online and dormant.

Social networking sites cause different issues on death. Some sites such as MySpace and Facebook allow family members to close down profiles or grant the option of using the profile as a memorial. Including instructions about how you would want your accounts dealt with on death will guide your family and executors, and prevent them from needing to make emotional decisions such as whether they should close such accounts or keep them as a memorial.

Other points to consider are whether you wish to maintain a degree of privacy on death, and only wish for certain people to access accounts as some may contain personal information and correspondence. In your Will therefore you could clearly set out who is permitted to access your accounts.

As the hours we spend online increases in line with our digital assets, it is becoming ever-more important to leave instructions in your Will in order to reduce or completely avoid, the problems of associated with the access of information on death of such accounts, and prevent the value of these assets being lost.

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More and more families are engaging domestic help such as carers, nannies and cleaners due to the requirement to work long hours. However, what many families do not realise is that individuals engaged to undertake domestic help may well be deemed to be employees, particularly if the individuals are not engaged from an agency.

If they are deemed to be employees, not only are there a number of obligations on the families engaging the individuals as an employer, but also the employees will have a number of employment rights including the right not to be unfairly dismissed.

Tax
You may be required to deduct tax and National Insurance and pay employer National Insurance. Whether you are required to deduct tax will depend upon average weekly earnings of the employee.

If the employee is paid more than £144 a week, then the employer will have to deduct tax and National Insurance and pay employer’s National Insurance. If the employee earns between £107 - £144 a week, and this is their only job and they do not receive other taxable income, whilst there is no tax and National Insurance contributions due, you will nevertheless be required to complete a record sheet setting out how much you pay them.

If you pay less than £107 a week and they do not have another job or taxable income, you do not have to do anything. If the individual has another job or taxable income, then you will have to deduct tax and National Insurance and pay employer’s National Insurance.

Employment Rights
Anyone that is employed by you will have employment rights, irrespective of whether they are part-time or temporary or on a fixed-term contract. This will mean that after two years’ service (from 6 April 2012), they will have the right to claim unfair dismissal if their employment is terminated without having a fair reason and where a fair process has not been followed. You will also be required to issue your employee with a contract of employment, preferably prior to them commencing work but, by the latest, 8 weeks of their start date. Employees are also entitled to a range of “family friendly rights” including maternity pay and leave.

National Minimum Wage
You should also ensure that the individual receives the National Minimum Wage which is currently £6.08 but which will increase to £6.19 from 1 October 2012 for over 21s.

Annual Leave
Employees are also entitled to paid annual leave. The current statutory entitlement is 28 days which is inclusive of public and bank holidays.

Redundancy
If the employee is employed for 2 years or more and you then decide that you no longer require their employment and they will not be replaced, you will need to pay a statutory redundancy payment based on their age and length of service.

Employing Someone Illegally
Finally, you will need to ensure that you do not employ anyone illegally.
If you are going to recruit somebody from outside the UK, you will need to make sure that they are entitled to work in the UK before they commence working for you. If you fail to undertake the appropriate checks, you may be liable to pay a fine (known as a civil penalty).
If you knowingly employ an illegal migrant worker, you may face criminal prosecution which could result in an unlimited fine and/or a maximum two year prison sentence.

Engaging domestic help may help ease the burden of the hectic lifestyle that we have become accustomed to but, in doing so, you need to watch that you do not fall foul of the various regulations that protect employees.

If you have any questions, then please do not hesitate to contact:

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“move with caution” considerations for cohabitees

Few would disagree that all too often decisions are made in happy times without sufficient (or indeed often any) thought being given to the impact of that decision in unhappy times. Nowhere is this more prevalent than in the decisions made by a couple contemplating cohabitation.

After all, the choice to cohabit with a partner is almost always going to be made at a time when everything is rosy and a couple want to take the next step in their relationship. However, to avoid costly problems down the line, it is imperative that in taking this step couples tread with caution. It is simply a reality that many relationships between cohabitants will break down and unfortunately, in such circumstances, the law is widely acknowledged to be confusing, complex and very much in need of reform. This article takes a look at some of the most common cohabiting scenarios and how to best protect against problems that may arise if and when cohabitation ceases.

Moving in or buying together?

Very often one party to a relationship will already own a home in their sole name and cohabitation begins when the non-owning partner is invited to move into that property. The owning partner may continue to pay the mortgage whilst the non-owning partner contributes by, for example, paying the bills. If the relationship breaks down a number of years later the non-owning partner is left in a position whereby they have contributed, albeit indirectly, to a property which will remain in the other’s sole name. This creates unfairness because, had they utilised that money towards a property in their own name, they would be in a far better financial position.

Another common scenario is where a couple choose to purchase a property together in which to cohabit. Very often the capital contributions made towards the property will have been unequal (perhaps from the start, perhaps when further capital is invested to improve the property at a later date or perhaps where one party meets the mortgage repayments alone). If care is not taken at the time of purchase to correctly record the manner in which a property is intended to be held then real problems can ensue when the cohabitation breaks down. A property registered in the parties sole name will be presumed to be held 100% by that person and a property registered in joint names will be presumed to be held in equal shares. This may not reflect the reality and/or intention at all.

Redressing the balance

So, how does the law address these problems? If the couple had married, rather than cohabited, the home would form part of the matrimonial pot on divorce.

It would be divided fairly in accordance with the Matrimonial Causes Act regardless of the legal owner of the property. Not so on cohabitation. Instead the legal remedy is based in the law of trusts.

In short, where the property is held in one partner’s sole name, the non-owning partner would have to prove one of the following in order to acquire a share in that property:
1. That they contributed to the purchase of the property
2. That they agreed with their partner that they would have a share in the property and acted in reliance upon that agreement;
3. That they were promised a share in the property and acted in reliance upon that promise

The same principles apply if the property is held in joint names but one party seeks to prove that it is not held in equal shares.

The problem is that establishing the above can be a very stressful, time consuming and costly exercise. Take for example the recent case of Kernott v Jones [2011] UKSC 53. This case started in 2007 and ended up going all the way to the Supreme Court who gave judgment at the end of last year. It was a modest asset case in which the parties were disputing the ownership of a property worth approximately £245,000. The property in question was purchased in the joint names of Mr Kernott and Ms Jones for £30,000 in 1985. They cohabited there for approximately 8 years during which time they also had two children. When the relationship broke down it was agreed that Ms Jones would stay in the property. Not long after, Mr Kernott was given the proceeds from the parties’ joint endowment policy in order that he may use those proceeds to purchase his own property.

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Over the next 13 years both parties were solely responsible for their respective properties and met all the necessary mortgage payments and other outgoings with no assistance from the other. Then in 2007 Mr Kernott sought to claim his share in the original property as he remained recorded as a joint owner on the title. Despite Ms Jones having met the mortgage repayments entirely on her own for some 13 years, legally the presumption was that Mr Kernott’s share in the property was 50% because the parties had never recorded their shares differently. It is a sad reality that the legal fees that were incurred during the four-year legal battle that ensued would most likely have exceeded the value of the property at the centre of the wrangle. The Supreme Court eventually ruled that 10% was a fair share for Mr Kernott in the circumstances of that case. Whilst the result is widely appreciated as a fair one, the fact remains that this was a case that had to travel all the way to Supreme Court for resolution. Furthermore, although the decision was unanimous, the judges did not agree on how that decision was arrived at. As such, more than anything it is a case that has very much highlighted the difficulties and complexities with the current law and the importance of protecting against litigation of this nature.

Protecting against the problems

Protecting against the problems highlighted above is often very simple and of relatively little cost. The ownership of a property can be regulated by the couple entering into an express Declaration of Trust which records their intentions. The declaration should be entered into at the time of purchase where a couple are making unequal contributions towards the purchase price of a property and/or where a couple are going to be making unequal contributions to the mortgage. Further declarations can be entered into at any time during the ownership to record any change in circumstances.

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Examples of such changes would be if one party leaves the property and is going to cease contributing to the mortgage and/or outgoings for a time (as was the case with Mr Kernott and Ms Jones) or if one party makes a post purchase contribution towards the property such as paying for improvements or repairs or paying down the mortgage.

It is also possible to provide for what will happen upon the breakdown of a relationship with a cohabitation agreement (often called a “living together agreement”). Not only can this record how a couple intends a property to be held, it has the added benefit of being able to deal with other potential problems all in one document. For example, a couple can provide for whether they wish the property to be immediately sold if the relationship breaks down or if they are prepared for one party to remain in the property for a time. Dealing with these types of issues at the outset provides couples with certainty and limits the stress of a relationship breakdown a great deal by ensuring that financial matters are clearly recorded. The agreement can be reviewed if there is a change in circumstances such as the birth of a child or one party losing their job and being unable to contribute towards the property.

The most important thing to appreciate is that the rights of a cohabitee are a fraction of the rights of a spouse. The issues raised above are only the tip of the iceberg. For example, it is not possible to claim maintenance on the breakdown of cohabitation (save in relation to children if there are any). As such, if one partner puts their career on hold in order to bring up a couple’s children then on the breakdown of a long relationship they will be left with a significantly reduced earning capacity and no claim against the partner who carried on moving up the career ladder. Many people also simply do not realise that the position upon the death of one partner could create very real hardship. If there is no Will in place a person’s property falls to their nearest blood relatives and not to their cohabitee. If the property was in the sole name of the deceased partner, this could leave the surviving cohabitee out on the street. It is therefore particularly important for people opting to cohabit that both make sure they have Wills in place.

With so many considerations, it is very important that anyone considering cohabiting seeks legal advice to ensure protection and fairness if and when that cohabitation ceases.
“I don’t need a Will, my spouse gets everything anyway”
“I don’t need a Will because I’m not worth anything”

These are two very common misconceptions. Many people think that Wills are only necessary for people with a great deal of wealth, but this is not the case. There are certain laws governing how a person’s estate is divided if they die ‘intestate’ (i.e. without a Will), which might not be what you would expect or intend. The intestacy rules determine who inherits your assets. The intestacy rules do not allow for you or your family to choose who receives your estate, which is distributed in accordance with the strict legal rules.

According to statistics, one in three people die intestate in the UK every year.

What happens if you are married or in a civil partnership without children?
If you die intestate, and are married or in a civil partnership without children, your spouse or civil partner will receive £450,000 of your estate. The remainder of your estate is split in half with one half going to your spouse and the other half to your parents. If your parents have died, their half share passes to your siblings. Assets that are owned jointly as joint tenants are outside the scope of the intestacy rules and will pass automatically to the surviving joint owner.

What happens if you are married or in a civil partnership with children?
If you have children, £250,000 will pass to your spouse or civil partner. The remainder is then divided in half with one half being placed in trust for your spouse or civil partner and the other half being divided between your children. The trust for your spouse or civil partner provides that they are entitled to the income only from the assets in trust.

Whilst the above figures may sound quite high for your spouse or civil partner, it may be a poor reflection of the total value of your estate and your spouse or civil partner could miss out on necessary funds.

What happens if you are not married or in a civil partnership?
If you die without a Will, any unmarried partner would receive nothing under the intestacy rules. Your estate will pass to any children you have. If you have no children your estate will pass to your parents then siblings. If there are no close relatives, then your entire estate could pass to the crown.

What happens if you are not married or in a civil partnership?
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Ensure your Will is up to date
You may think you have a valid Will but below are two situations when your estate is still subject to the intestacy rules:

- If your Will does not dispose of some assets, (for example, because a named residuary beneficiary has predeceased you), then there will be a partial intestacy. That part of your estate not disposed of will be distributed in accordance with the intestacy rules.
- Your marriage or civil partnership automatically revokes a pre-existing Will. If you die without having made a new Will following your marriage or civil partnership then your estate will be subject to the intestacy rules.

Both the examples above show how important it is to review your Will regularly, particularly if your circumstances change.

Updates to the Intestacy Provisions
Towards the end of 2011, the Law Commission published two draft Bills to amend the law of intestacy in England and Wales, in particular to give some cohabitants the right to claim their deceased partner’s estate. The Commission’s research found that the current law on intestacy and family provision claims on death is “outdated, confusing or places unnecessary obstacles in the way of those with a valid claim to share in a deceased person’s assets.” We will be keeping a close eye on the Bills and will update you as matters progress.

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Key points
So in summary, you should make a Will because:

- The intestacy rules do not allow you to choose who receives your assets;
- The intestacy rules do not provide for your spouse or civil partner to inherit the whole of your estate;
- In your Will you can provide for more complex family relationships, such as stepchildren;
- You can provide for gifts to other relatives, friends or charities;
- You can ensure that your Will is tax efficient for Inheritance Tax purposes;
- If you are unmarried you can provide for your partner who may otherwise be forced to make a claim against your estate for reasonable financial provision; and
- If you have children, you can appoint a Guardian to care for them.

Preparing a Will is an important step to take in securing the future for your loved ones and is something you should not delay.

Should you require any further information on the intestacy rules, or on putting a Will in place, then please do contact Elena Tzialli on 020 7227 7440 or elena.tzialli@rlb-law.com.

Hetty Maher TEP
About: Hetty Maher is a solicitor in the Private Client department at RadcliffesLeBrasseur. Hetty is four years qualified and trained at a leading regional firm in the South East, Cripps Harries Hall. Hetty joined RadcliffesLeBrasseur in October 2011 and deals with all aspects of private client work. She has recently completed her “STEP” diploma in Trusts and Estates, a benchmark qualification recognised by the industry, for which she was awarded a distinction.

What is the most common motivation for clients coming to you in the Private Client department?
The majority of our clients come to us seeking advice on the best way to protect their wealth and ensure that as much of it as possible is passed through to their families on death in a tax efficient manner.

What attracted you to Private Client work in particular?
The level of interaction you have with a client, and the opportunity to form relationships that last many years as opposed to a one-off transaction. The nature of the work is interesting and diverse; which means that there are so many different aspects from will drafting to tax planning and estate administration. As the work is constantly changing there are always opportunities to learn more as a practitioner.

What is the most rewarding part of your job?
The most rewarding part of my job is translating complex elements of the law for my clients so that they feel confident and informed in their decision-making and understand how it applies to their lives.

Snapshot
Education: Nottingham University
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Favourite book: Anything by Margaret Atwood.
Favourite film: The Shawshank Redemption.
Favourite holiday: Touring around the California’s Sonoma wine region.
leases: traps for the unwary

If you own a leasehold house or flat you will find that the lease, which forms part of your title, imposes obligations and restrictions on you as well as on your landlord. These may limit what you can do to or with your home whilst you own it. In particular you should be aware of the following:-

• Flooring - a modern preference is for exposing original floorboards or laying new wood flooring, ceramic tiles or lino equivalent. Many flat leases (especially in purpose-built blocks) will require that flats are carpeted throughout (in some cases excepting bathroom and kitchen) or that hard floors may only be used with the consent of the landlord and subject to the landlord’s approval of the specification for soundproofing.

• Alterations - some leases will prohibit any alterations and others may specify some element of landlord’s consent to alterations, for example to the interior arrangement or installations. In certain cases you may be required to pay a premium for consent.

• Satellite dishes – unless your block provides communal satellite or cable facilities the lease may severely limit the possibility of erecting an exterior antenna for such a service.

• Sales and lettings – again, your lease may require that you obtain your landlord’s permission before letting the property and in some cases the landlord may need to approve references for a buyer and to consent to a sale, although the landlord would be unlikely to be able to withhold that consent. In some cases you may be required to offer the flat to the landlord before you sell on the open market.

If you have any proposals to carry out works to your flat or to let or sell, you should firstly ensure that you check the requirements of the lease to avoid breaching the terms of the lease and being subject to enforcement action by the landlord. If in any doubt, seek legal advice.

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We would be delighted to hear from you with any comments or feedback you may have in response to this newsletter. If you have received this newsletter in hard copy and would prefer to receive a copy by e-mail in the future, or vice versa, or you have any other comments or feedback then please contact:
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