



We are a group of independent local lawyers established in 2008. We practice individually in different types of law but work closely together to make sure our clients get the best service

We hope you don't mind if we send you the occasional newsletter to bring some things of interest to your attention.

We provide the complete range of legal services, and some specialisms:

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- Education law, Parish and Town councils, Compulsory Purchase, Highways.
- Employment Law
- Landlord and Tenant
- Clinical Negligence
- Mediation Services

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## Owning a house together

What happens when two people who own a house together, who are not married to each other, split up? It probably isn't what you would expect.

Divorce law doesn't apply because they were not married, so you have to look at property law.

Most couples own as joint owners. Joint owners can either be:

"Tenants In Common" which means they each own a specific share of it (10%/90% or 30%/70% or whatever they may decide) and on a death their share is left according to their will, or "Joint Tenants" which means they both own all of it and when one dies the other inherits the whole property, never mind what they may have put in their will.

Couples buying property are asked to make this decision on the options of ownership when they are buying it, and they do not consider what will happen in a split. Ten times more attention is paid to the colour of the carpets.

What happens then if they split up before one of them dies?

When people are asked this question, they usually say it will belong to who continues to pay the mortgage, or they will have some notion that the equity in the house will belong to both of them up to the date they separated, and after that date it will belong to one of them.

Courts have struggled with this problem since the 1970s when unmarried families became more common. At one time they have favoured the liberal approach of giving back to people what they put in, at other times they have applied a strict approach of rigidly applying the law of property and trusts.

In the last four years they have followed both approaches. The latest case, in May 2010, was Kernott v. Jones and that followed strict property rules. The result was that a person who had paid for the property for far longer than the other owner could only recover half the equity.

What does this mean for the public? It means that as soon as an unmarried property owning couple separate they must get legal advice immediately, they cannot safely leave it to be resolved at a later date.



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## The importance of documents

At the risk of stating the obvious, documentary evidence can make or break the outcome of a case. Because of its importance (as I've outlined below), there is also the potential to save on legal costs – read on!

One of the first things your solicitor will request in connection with any dispute will be all documents relevant to the case. It can be the beginning of what can become a very lengthy task.

Your search must include documents that might prove harmful to your case as well as those that support it. This is crucial to enable your solicitor to properly assess and advise you as to the likely outcome and will affect the strategies to be adopted. It can literally determine whether or not you are going to be successful.

What are documents? Well, they are defined as “anything in which information of any description is

recorded”. That includes for example, electronic documents such as email and other electronic communications, word processed documents and databases.

Another reason for the request is that the law requires it. If there are court proceedings the parties will at least be ordered by the court to give what is known as standard disclosure. This means that you are obliged to make a reasonable and proportionate search. There is actually an overriding principle of proportionality that will govern the entire proceedings.

Of course, it is just as important to ensure that the other side have made a proper search and disclosure. When necessary an application can be made to the court in that respect.

The duty to disclose is ongoing throughout the case if something should turn up later.

So, the message is; documentary evidence (or sometimes the lack of it) will be crucial – and the tip is; save solicitor's chargeable time by going through the exercise of making a reasonable search for all relevant documents (good or bad!).

Schedule them in chronological order, if necessary by category. Regardless of all that saving in costs, your solicitor will be delighted!

**David Laws is a specialist in commercial/civil dispute resolution.**

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## Gifts and mortgages to dependents

With property prices having fallen, many young people hope this could present them with an opportunity to access the property market. With the average salary for many being insufficient to help them secure a mortgage, parents are offering their children gifts of money or loans to help them get onto the property ladder. Parents may not have mortgages on their own property, may have some savings or inheritances, these factors giving them greater financial security and the desire to help their children. If money is given as a “gift”, then a gift is literally that and non-repayable. When making a gift, parents do need to consider issues such as what happens if the relationship between them and their child changes, particularly if their child's partner becomes involved with the purchase. Additionally should the parents require care in the future, the gift could be seen

as a way of giving money away to avoid care home fees etc. Tax implications for monetary gifts should also be considered. Alternatively parents may wish to protect the contribution by way of a second mortgage. The terms of the mortgage deed can require a monthly repayment although the main lender may not be happy about this as, it could affect affordability so far as the



borrowers themselves are concerned. Should the funding be secured as a second charge it could attract interest or not, depending on what the parties agree. Monthly repayments could be agreed or repayment to the parents taking place when the property sells or earlier by mutual agreement. The lawyer acting for the person purchasing the property represents them and their primary lender. To avoid any conflict of interest and to enable them to be fully advised of their position and any risk involved parents making the gift should seek independent legal advice.



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## Highways: Your Rights and Obligations

Our essential right to use a highway is the right to travel along it from A to B. We cannot fence it off and incorporate a bit of highway into our garden. We have no right to mow the highway's verge into a nice lawn; but there is a right to hack a way through the vegetation on a highway, if the highway is otherwise obstructed. We have no right to use the highway verge for growing daffodils or sunbathing, but we can use the verge for getting from A to B.

How wide is a highway? In the city, a highway is as wide as it always has been. In the countryside, a highway is as wide as it needs to be. Let me explain:

Urban highways usually run between two fences or walls or buildings. The lateral boundaries are visible and fixed. The law says that a highway exists either because the landowner gave it to the public to use or because the public took it from the landowner and used it. If the given or taken highway runs between

two walls, its width is clear. But out in the countryside, many highways have no walls or fences. A footpath across a farmer's field may have sugar beet either side, or sheep or cattle, but rare is the rural footpath that is completely fenced in. 250 years ago, the A11 to London was one mile wide, where it crossed the Brecks. They didn't know it was the A11 in those days, but the drovers and itinerant traders journeying from Norwich to London and back knew that they had the right to go from A to B (or in this case, N to L) and, if the beaten track across the Brecks was too muddy to use, the people just drove their livestock around the mud and so the road got wider and wider.

The A11 is a lot narrower now. Some people think it is too narrow. But the riparian landowners were allowed to fence off their land from the increasingly-narrow "A11" only when the road was surfaced in a way that made it passable all year round. There was - and is - a rule of law that says, 'if you enclose a highway by fencing it off from your land, you will become liable for highway maintenance'. The benefit

of keeping passing drovers off your fields was balanced by an obligation to provide a road surface that the drovers could use in most weathers. Nowadays, of course, the County Council and the Government's Highways Agency do the maintenance for us - on all main roads and on most minor ones.

150 years ago, local people were responsible for the maintenance of minor highways. They had to appoint a Surveyor of Highways who had the right to call the men of the village (the fit and able ones anyway) out to help with the work. This was not universally popular and people eventually began to pay proper workmen to do the job instead.

The permitted traffic on any highway is governed by its physical width, by local Road Traffic Regulation Orders and by its classification. There is no right to drive your Land Rover down a footpath. There is no right to ride your bicycle on a motorway. What you can do is cycle on a bridleway, but only if you give way to the horses.

The other thing you can do on a public highway is hold a demonstration. Within reason, you can demonstrate for anything or against anything, but beware if the 'demo' gets out of control. In that circumstance, the Police have the right to use the highway as a temporary prison. 'Kettling' is a lawful use of the highway - but only if it is done by the Police.

**Nicholas Hancox is a specialist in Highways Law, advising clients with highway problems nationwide.**



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## The case of the anxious mother

“Oh, she’s an anxious mother”. How many parents have had to face that all too common accusation when they showed concerns over the health of their children? But sometimes the parent’s view is the correct one, not the doctor’s. A 14 year old girl called Morwenna started to develop symptoms of a cough and wheeze. Steadily her condition deteriorated, and her mother repeatedly called out the doctor. Then she actually collapsed and could not walk. But her parents were still reassured that all was well.

The doctors were wrong: Morwenna was suffering from pneumonia and because of the delay in treatment she suffered irreversible brain damage.

The case came to court in January. The judge listened to recordings of some of Morwenna’s mother’s calls for help and said that she was not being hysterical or “over the top”. He concluded that the doctors were negligent and should compensate Morwenna.

I handled a similar case some years ago when a young girl was given the wrong treatment for an eye condition, as a result of which her immune system was compromised and her body shut down causing her to die in agony. Her mother had begged the doctors to change the treatment, but she too was dubbed as being over anxious and her concerns were ignored.

It is always better to prevent medical accidents than to deal with the aftermath. It is often true that parents



know their own children better than anyone. If you are in a situation where you feel that not enough is being done – or the wrong treatment is being given, do not be afraid to make your views clear. If needs be put it down in writing or demand a second opinion – so that there is no room for doubt as to your concerns.

If things do go wrong with medical treatment, I can help with medical claims. I will give you free preliminary advice and I take most cases on a no win no fee basis. For more information contact me on 01692 650829 or rbarr@scomo.com. Website: [www.richardbarrlaw.co.uk](http://www.richardbarrlaw.co.uk)



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## Falling foul of employment legislation

The recent media storm over the discriminatory remarks of Messrs Keys and Gray of Sky TV has died down, but the case serves to illustrate the potential claims employees may have when dismissed.

An employer must have good grounds for terminating an employee’s contract. There are procedures to be followed – performance management perhaps in the case of a struggling employee, with the opportunity to improve; consultation with a potentially redundant employee, with consideration of alternative work. If the outcome is dismissal, the employee will be given notice and will either work out his notice period or be paid in lieu. An employee can only be dismissed without notice if he is guilty of gross misconduct. Most employers have a disciplinary policy that gives examples of gross misconduct, for example theft, insubordination, inappropriate behaviour in the workplace. Usually

the employer needs to conduct an investigation and then hold a disciplinary hearing at which the employee must be given the opportunity to state his case. Rarely will a straight red card (instant dismissal without investigation) be justified.

An employer who fails to conduct a proper investigation or dismisses an employee for something that no reasonable employer would treat as gross misconduct may face a claim for unfair dismissal. If successful, the employee will be awarded compensation by reference to his loss of earnings. The maximum award for unfair dismissal is £68,400 for dismissals after 1 February 2011.

An employee will have a claim for wrongful dismissal if his employer does not pay him his notice pay (assuming he was not dismissed for gross misconduct). By law an employee is entitled to one week’s notice in the first two years of employment then an additional week for each complete year’s service, up to a maximum of twelve weeks. An employer can fix its own notice periods, which

must not be shorter than the statutory entitlement. Occasionally notice periods can be lengthy, particularly in the case of a fixed-term contract (think football managers signing four-year deals). There is no ceiling on the amount of compensation.

Eye-popping sums may have been bandied about in the case of Messrs Keys and Gray, but the same principles apply to every potential claim for unfair dismissal or wrongful dismissal. For further advice contact Sally Davenport at Working Law Solicitors.



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