

Law on married and unmarried couples



Discuss the difference between the way the law treats married and unmarried couples. Do you think there should be such differences legally? Does the law on cohabitation, marriage and divorce need reform?

There are several ways in which married couples are treated differently to unmarried couples. Most of the differences occur in respect of money issues and generally become apparent on the death of one of the parties or when the parties separate .

Issues that are handled differently with married couples include capital gains tax , wills , inheritance tax , pensions and issues where children are involved. This includes children from former relationships as well as from their present relationship .

When examining the law surrounding capital gains tax and inheritance tax the law will treat unmarried couples as two separate individuals when dealing with these matters. By treating them this way they are taxed individually. In situations where the couple are married capital gains tax and inheritance tax would be avoided altogether. An unmarried couple would have to pay both if one of the partners dies.

When assessing capital gains tax according to tax legislation all people have an allowance of £8, 000 before they have to pay tax. Married couples get allowed twice this amount per year and can avoid paying such tax by transferring assets to the partner who earns the lowest . Unmarried couples are governed by the allowance and cannot avoid tax in this manner.

Similarly the law on inheritance tax is set at £285, 000 for anyone who is not married. Inheritance tax includes the price of any property that is left to the beneficiary which makes it so that a lot of people will be subject to this tax given the recent huge increase in house prices. With married couples the whole of the estate can pass to the surviving spouse without being subjected to any inheritance tax regardless of the amount inherited .

For those who are not married a will is essential as it would be unlikely for the partner to be able to inherit anything from their deceased partner's estate without a will . Such a will has to specifically name the partner as a personal representative of the deceased in order for the surviving partner to be able to administer the will. In cases where unmarried couples have failed to make a will the partner has occasionally not received any property or money from the estate of the deceased .

By contrast in cases where the couple are married and the parties have not made a will the estate and any other possessions of the deceased will automatically be awarded to the surviving spouse in cases where there are no children from the relationship . If they do have children then a proportion of the inheritance would be reserved for the children.

Problems have also arisen in respect of pensions . The government has attempted to address this issue just recently but as yet the new proposals have not been implemented so it is debatable as to whether unmarried couple would be entitled to the pension or not. In general most employers do not consider cohabiting couples in respect of payments for death in service .

Those who are cohabiting can make it so that their partner does benefit by naming the intended beneficiary in the policy .

Couples who are not married can also face difficulties if one of the parties needs medical treatment. With a married couple the spouse is regarded as the next of kin and can give permission for surgery or treatment if the other party is unable to do so because of their condition. With an unmarried couple the other party is not classed as the next of kin and therefore the hospital have to assume the role of deciding what treatment is in the best interests of the patient. Similarly if one of the parties dies the unmarried partner is not allowed to deal with the funeral arrangements unless there is no surviving next of kin to handle the arrangements. Unmarried partners are not entitled to register the death of their partner unless they were the one that came upon the partner after they died. They would not be able to register the death as the partner of the deceased and would merely be classed as the person authorised to arrange the funeral.

Cohabiting couples can also face problems if the relationship comes to an end and they decide to separate. Some have made preparation for such eventualities by drawing up cohabitation agreements . Within a cohabitation agreement the couple can include how the property and items within the property should be distributed in the event of the couple deciding to split up.

One of the biggest areas of contention usually concerns the house on which the couple have been living. Both married and unmarried couples can reside in the property either as tenants in common or as joint tenants. Where the property is registered in the names of both parties they each will have equal

shares regardless of whether they are married or not. Difficulties arise where the property has only been registered in one name. In some instances the courts will be asked to decide whether the property should belong to the name person only or whether the other party should be entitled to a share. The courts are free to infer joint ownership using the principle of implied or constructive trusts . A constructive trust could be inferred if the actions of the parties would appear to suggest that they expected to have an interest in the property. This assumption can be made from evidence showing direct contribution to the household bills or to repairs in the property . Evidence that money was paid towards the purchase price could lead to the presumption of a resulting trust which would entitle that party to a direct share of the property.

With a married couple the courts will often allow the spouse to remain in the family home regardless of whether the property has been registered in that person's name or not . The Matrimonial Proceedings and Property Act 1979 s37 entitles married partners to remain in the home even if the property was only registered in one of the couple's names.

It is not only mortgaged or owned properties that can cause these problems. Rented accommodation can be problematic especially with local authority housing as the council will often not allow the property to transfer to the partner not named on the agreement if the couple are not married. Married couples are more fortunate and it is more likely that the council would allow the transfer to a spouse . Difficulties with transferring rented properties to unmarried partners have occurred on a number of occasions and also affect same sex couples as well as heterosexuals .

Jointly owned properties can be transferred to either spouse or partner at the order of the courts, and particular regard is likely to be given to the issue of children within the relationship. In some instances the court will order that the property is to be settled, especially where there are children to consider. With a settled property the parent with control of the child would be entitled to remain in the property until that child attains the age of 18 . After this time the property would be ordered to be sold and the profit from the equity to be split.

A further issue that is different for married couples to unmarried couples is that with a married couple the wife is usually entitled to financial support for both her and her children . An unmarried person is less likely to be granted financial support. Most unmarried couples find it difficult to prove that they were a couple. When making awards to unmarried couples the courts will look for evidence that the couple were acting in a manner that could be regarded as a marriage . It is the responsibility of the couple to provide the necessary proof to demonstrate that they regarded themselves as though they were married. Failure to provide this proof can lead to the courts rejecting any application with regards to the family home or financial support of any kind .

Difficulties can also arise in respect of children from the relationship in situations where the parents are not married. With a married couple both parents will have automatic parental responsibility for any children born inside the marriage . Unmarried couples are treated differently with the father of the child only being granted parental responsibility if he attends with the natural mother to register the birth or if he applies to the courts for

parental responsibility in cases where the mother refuses to allow him to have parental parental responsibility.

Registering the child's birth is also different depending on whether the couple are married or not. Under s9 of the Registration of Births and Deaths Regulations 1987 the birth must be registered by a qualified informant. Married couples are both classed as qualified informants . In an unmarried couple situation only the mother is a qualified informant and the father can only appear on the child's birth certificate if the natural mother agrees to him being included. An unmarried father would only be entitled to register either by a statutory declaration made by the natural mother or through a court order .

The government has attempted to address the unfairness in the present system for same sex cohabiting couples through the introduction of the Civil Partnership Act 2004. The introduction of this Act only affects those that have undergone a civil ceremony to have their relationship formally recognised. For those that have had a civil ceremony legislation protects their rights with regard to property and finances in much the same way as with married couples.

At present the government has still got to ratify the Relationships (Civil Registration) Bill. This commenced its journey through Parliament in 2002 but as yet has not been made law. Once the Act is passed cohabiting couples will have similar protection to married couples despite there having been no formal ceremony undertaken. There have been many objections to this Bill, the most important of these being the assertion that allowing the Bill to be

passed would undermine the whole notion of marriage. Many believe that if the Bill becomes law there will no longer be a need for anyone to get married as they can acquire the same rights as married couples by relying on the Bill.

The Bill if introduced would entitle cohabiting couples to register their relationship in a similar way to marriage which would give them rights in respect of inheritance, housing problems, pensions, social security payments and immigration as well as other areas. Under the Bill if the couple decide to separate then the registered partnership could be dissolved twelve months after dissolution has been applied for.

The Solicitor's Family Law Association has backed the proposal for new laws on cohabiting couples. They believe that the existing law is too ambiguous and does not adequately meet the needs of those who have chosen not to marry but to cohabit. Concern has been raised that the proposed Bill would effectively amend social security legislation and place registered partners in the same position financially as married couples.

The Law Commission in their paper in July 2007 entitled ' Cohabitation: The Financial Consequences of Relationship Breakdown' examined couples living together outside of marriage to decide whether any remedies could be suggested to make things more equal for couples when they separate or one of the parties dies. They felt that financial provision should be made under the Children Act 1989 where there are children from the relationship. They also felt that in circumstances where the cohabitant dies intestate the surviving partner should have automatic rights to inherit. At present cohabitants can only benefit from the estate under the Inheritance (Provision

for Family and Dependents) Act 1975 which will grant them a discretionary award on the basis of the needs of the surviving partner.

Argument has surrounded providing further protection through legislation for cohabiting heterosexual couples on the basis that it would be unfair to give them the same rights as married couples and not have the same hurdles for them to overcome in the event of the relationship breaking down. At present married couples wishing to end their relationship have to go through the formal process of divorce which can be extremely costly. Cohabiting couples can just go their separate ways without the need to make the separation formal. Under the Civil Partnership Act 2004 same sex couples have to undergo the equivalent of a divorce in order to dissolve the relationship.

It is difficult to reach a firm conclusion as to whether the law in this area required revising as the argument that a cohabiting couple should marry if they want to protect their rights seems to be a very valid proposition.

Couples who choose to cohabit often do so because of the ease at which the relationship can be brought to an end in the event of things going wrong in the relationship. Simplifying the law on divorce and reducing the amount it costs to obtain a divorce might encourage more cohabiting couples to get married. The removal of tax benefits such as the MIRAS scheme has also meant that many couples that might previously have married to gaining such benefits no longer feel the need to.

The recent changes in the law in respect of parental responsibility have also done little to promote marriage as a positive element. Previously parental responsibility could only be obtained through an order of the court. Since

December 2003 the father of the child gains automatic parental responsibility if they are named as the father on the birth certificate at the time that the baby is registered.

It could be argued that not protecting the rights of unmarried couples is tantamount to forcing them to enter into a marriage in order to receive the benefits attached to married couples. However, the counter argument from those opposed to cohabitation is that the ceremony is only a formality and that if the couple intend to stay together regardless then it should not matter if they are made to undergo a formal marriage ceremony.

The conclusion that can be drawn from the above is that there is a great deal of unfairness in the way that cohabiting couples are treated as opposed to married couples. By providing legislation to protect their rights in a similar manner to the rights of married couples would undermine the whole purpose of marriage and make it more tempting for couples to opt for cohabitation as opposed to marriage as it is easier and less costly to get out of a cohabiting relationship than a married one. Simplification in divorce proceedings and a less costly way of handling divorce might give cohabiting couples the necessary incentive to undergo a formal marriage ceremony.

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