

Quan v Bray to unsettle trust planning, charity law and family law

31 JANUARY 2017

Claire Blakemore

PARTNER | UK

CATEGORY:

[BLOG](#)



Judgments of the Family Courts are often dismissed as the preserve of warring couples or parents in dispute and seen as having little relevance to other spheres of life. However the Court of Appeal is today considering legal issues concerning Trusts and Settlements that could have pivotal impact on a whole spectrum of legal advice in the wealth planning sector including Trusts Law, Charities Law and Matrimonial Law.

In *Quan v Bray* the parties 'worked tirelessly' to run a charity to benefit and save Chinese tigers. The trust assets were worth approximately £25 million and the parties had almost no other assets. The wife argued that the trust assets of property (including a matrimonial home in which they lived rent free), land in South Africa and cash constituted a nuptial settlement or resources available to meet her needs. The husband argued that the parties had not and could not, benefit from the trust and its sole purpose was for the benefit for the Chinese tigers.

Sir Paul Coleridge hearing this case in 2015 acknowledged that it was possible for a trust to become nuptialized and therefore capable of variation if there was a flow of benefit to the parties during the marriage from the trust. However in this case the trust was not nuptial.

Sir Paul's approach is not universal among the judiciary. Sir Peter Singer in *Joy v Joy-Morancho* is clear that a trust cannot be nuptial unless it is nuptial from the outset.

Hopefully the Court of Appeal's judgment in this case will give clear guidance on the issue of creation and treatment of nuptial settlements. Family practitioners, trust lawyers and charities lawyers all need clarity so that they can give clear advice in the establishment and management of trusts as part of legitimate succession or wealth planning. The application of principles arising from the treatment of legitimate trusts are potentially far reaching (even to the corners of the Indian jungle) and it is important to highlight again the value of considering family law issues at all stages of trust planning and management

You can read my article which considers some of the issues highlighted by this case in 2014, and I look forward to writing Part 2 when the Court of Appeal hands down judgment.

Authors

Claire Blakemore

PARTNER | LONDON

Divorce and family

 +44 20 7597 6025

 claire.blakemore@withersworldwide.com