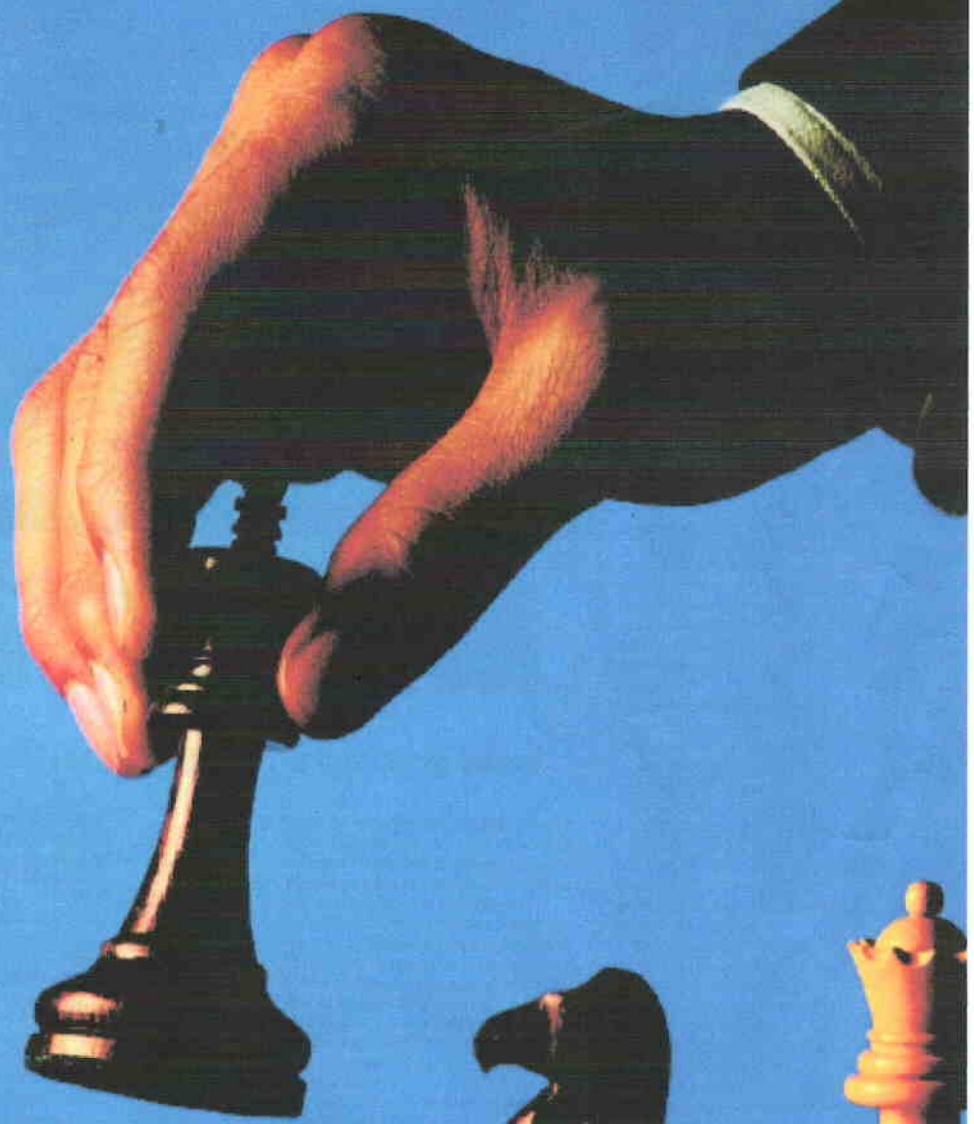


SCOTTISH LEGAL REVIEW

THE SCOTSMAN
IN ASSOCIATION
WITH
CHAMBERS
AND PARTNERS
THE
LEGAL
500
THURSDAY, 12 NOVEMBER 2009

MAKING MOVES

HOW SCOTLAND'S TOP LAW
FIRMS STAYED AHEAD OF THE
GAME IN THE LAST 12 MONTHS





BREAK POINT Many separating couples are seeking mediation, which negates the need for court action *By Sarah*

IT'S A SPLIT DECISION

For better or worse, divorce costs keep people together, writes *Garth Wood*

IF THERE has been any silver lining to the clouds that have gathered over the global economy over the last year, it might lie in the fact that it has caused some couples to conclude that life could be a lot bleaker outside of marriage. Scotland's leading family lawyers are more or less united on the fact that couples in difficult relationships are by and large aware of the fact that divorcing in the middle of a recession brings some unique problems.

Alasdair Loudon, head of family law at Turcan Connell, says: "There is a real concern among separating couples as to whether it would be possible in the current climate to realise the assets of the marriage, such as the house. If you can't turn the house into liquid capital, then it is very difficult to get a fair distribution of marital assets."

There is also the fact it is generally more expensive for each of the partners to live separately than to live together, so the difficulties of affording two separate existences have given many couples pause for thought. However, Loudon says that one of the ironies of this situation is that a number of couples in this position appear to have concluded after six months or so of battling along together that anything was better than the status quo and have opted to divorce whatever the recession might bring.

One inequity apparent in the current

situation comes where one of the partners is running a business in their own name in which the other partner has no shares. With the business likely to be deemed marital property, and subject to division, the date of valuation of the business is the date of separation.

By the time of the divorce, when the division takes place, the business might well have dropped substantially in value. Now if both parties had held shares in the business, Loudon points out, that drop would affect both equally. However, where just the one holds shares, he or she has to render the full value of the business at the date of separation to the other partner, irrespective of the current fall, often greatly to their financial disadvantage.

"Obviously this is not equitable. However, there has been no court judgment on the fairness or unfairness of this yet, and we are waiting on court decisions at this moment," says Loudon. When judgments are given on this area, they will be a source of great interest to family law practitioners across Scotland.

Rachael Kelsey, director of Sheehan Kelsey Oswald, says: "There has been a real and very welcome increase in the number of couples seeking mediation, which produces some very good outcomes indeed."

One of the real advantages of a mediated settlement is that couples only have

Mediation produces some very good outcomes indeed

to meet the fees of the mediator, rather than each having to pay their own solicitor. "It does not cost anything like the same amount as a lawyer-driven negotiated resolution," Kelsey says.

Andrew Gibb, head of the family law team at Balfour and Manson, says that he has come across a surprising number of instances where couples have lived together for ages, and have divorced very shortly after finally deciding to take the plunge and marry. He says: "One couple said that their relationship was difficult anyway and they had hoped that marriage might help them settle down – a somewhat dubious idea."

FAMILY
1 Sheehan Kelsey Oswald
1 Turcan Connell
2 Balfour & Manson
2 Bonar Mackenzie
2 Brodies
2 Drummond Miller
2 Lindsays
2 Morton Fraser
2 Mowat Hall Dick
2 Patience & Buchan
2 Simpson & Marwick
3 Harper Macleod
3 HBJ Gateley Wareing

CHAMBERS

FAMILY
1 Morton Fraser
1 Turcan Connell
2 Balfour & Manson
2 Brodies
2 Sheehan Kelsey Oswald
3 Anderson Strathern
3 Drummond Miller
3 HBJ Gateley Wareing
3 Maclay Murray & Spens
3 Mowat Hall Dick
3 Patience & Buchan
3 Simpson & Marwick
3 Tods Murray

LEGAL 500

BRIEFING



MICHAEL AULREY
DIRECTOR, LEGAL SERVICES, B&M



FAMILY lawyers have had to go back to basics this year. Valuation issues have been hugely important, with recent changes in the valuation of public sector pensions, and many private sector schemes changing how they value funds. The uncomfortable bedding in of the changes in the 2006 Act (which changed when to value some assets) have also had a huge impact.

There have been a number of cases this year which dealt with post-credit crunch decreases in value, and there are many more wending their way to court. We have also had to brush the metaphorical dust off our old bankruptcy and diligence textbooks – many of us have done more diligence and disaster planning this year than in the last decade put together.

But there have also been positive developments this year – as well as stretching us as lawyers, straitened economic circumstances have encouraged clients to be more creative and adventurous. It's been a wonderful year for mediation, with many more couples having experienced the chance to sort things out themselves at their own pace, in confidence and at considerably lower cost.

There has undoubtedly been a resurgence in old-fashioned family law in 2009. When there is no magic wand, and compromises are required, the family lawyer who knows her stuff and has developed a close relationship with the client has made a huge difference to the outcome. This has been a hard year for our clients but a great year for us as lawyers – we have been challenged to deliver lasting results quickly and economically. We've met the challenge and are well placed for 2010.