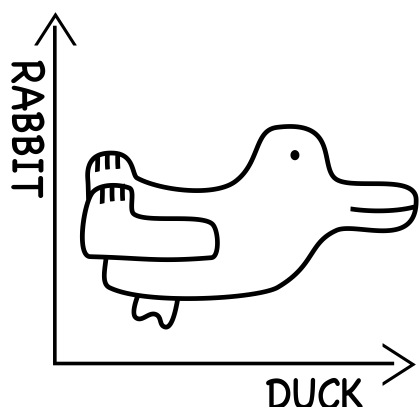




Authored by: Yoshi Montgomery – ThoughtLeaders4

ThoughtLeaders4's second flagship High Net Worth (HNW) Divorce Conference was held recently at One Moorgate Place, London. This is a glamorous Grade II listed building in the centre of London which was founded in 1893 and is home to the Institute of Chartered Accountants in England and Wales. On November 24th, One Moorgate Place opened its doors to 80 delegates, 29 speakers and two expert co-chairs who presented on a wide range of topics pertaining to HNW divorce ranging from anonymity in court reporting to unusual assets and how to identify them.

Lying and Deception presented by Professor Richard Wiseman



The first speaker was Professor Richard Wiseman from the University of Hertfordshire. Professor Wiseman holds the only Professorship in the Public Understanding of Psychology in Britain and has researched, written and presented extensively about the psychology of lying. Through optical illusions, magic (the Professor used to be a professional magician) and humour, the Professor demonstrated that lying in highly contextualised and that we commonly fool ourselves into believing we can accurately detect lies. The takeaway from this presentation is that we should rely on evidence and not gut instinct to determine if someone is lying.

Panel Discussion: Anonymity vs. Open Courts



Next came the first panel of the day which addressed the topic of anonymity vs. open courts. The panel consisted of Adam Speker KC, Barrister for 5RB, Alexander Chandler KC, Barrister for 1KBW and Helen Morris, Partner at Kingsley Napley. Anonymity vs. open courts refers to whether or not privacy is awarded to a couple during and after a high profile divorce. The couple may already be public figures or they may become persons of public interest due to the extraordinary nature of their divorce.

The panel noted that there have so far been three key dates in the debate of anonymity vs. open courts.

Prior to 2009, the law related to this matter was well understood and divorcing couples were overwhelmingly awarded privacy except for in a few extraordinary cases. For example, the high profile divorce of Paul McCartney and Heather Mills which was of public interest due to Paul McCartney's celebrity, the acrimonious nature of the divorce proceedings and the £24 million settlement.

In April 2009, the law was amended so as to provide the media with the presumptive right to attend Family Court and High Court hearings. There are some exclusions however, such as in adoption proceedings and financial dispute resolution appointments. Furthermore, parties can also object to the media reporting on their case in order to protect children and vulnerable adults. The panel argued that there has not been clear guidance about what can and cannot be published and this has led to each judge interpreting and applying the law differently.

In the past 12 months, Mr Justice Mostyn, stated that he finds the standard practice of anonymising judgements 'unlawful'.

The panel concluded that there is uncertainty on how to approach this topic and this is less than ideal for legal practitioners who are seeking to advise their clients on this matter. Secondly, the panel speculated that perhaps the public would be more accepting of open courts if the reporting of personal

information was limited. Embarrassing information should not be published if it is merely salacious and does not strictly relate to the judgement.

Panel Discussion: Offshore Vehicles



The next panel of the day featured Hannes Arnold, Senior Partner at Gasser Partner (Liechtenstein), Jonathan Arr, Partner at Macfarlanes and David Whittaker, Partner at Mishcon de Reya. The panel identified a number of offshore vehicles that one may come across in a divorce including beneficiary trusts and purpose trusts. The panel also discussed the definition, rights and obligations of settlors, trustees and beneficiaries.

Parties who are interested in this topic may wish to register for Thought Leaders 4 Trusts Under Attack conference scheduled for March 2023.

Panel Discussion: Strategies for Asset Protection, Detection and Recovery

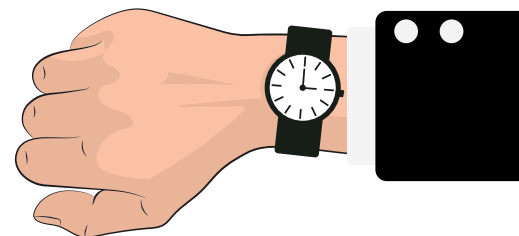


The final panel before lunch was presented by Hannah Davie, Partner at Grant Thornton, Robert Brodrick, Chairman at Payne Hicks Beach, Amy Radnor, Partner at Farrer & Co, and Prof Jonathan Harris KC (Hon.), Barrister at Serle Court.

This was one of many discussions which highlighted how social media posts can be used as evidence in HNW divorce proceedings.

Hannah Davie in particular gave an anecdote of one husband who claimed that he had no assets and was only the discretionary beneficiary of a trust therefore having no real claim to it. He did not use social media. Conversely, his new partner was a prolific user of Instagram where she regularly posted photos of the couple in luxury cars, taking helicopter rides and staying at luxury hotels. Although this is a promising start to an investigation, the panel advised that social media is not the be all and end of an investigation. This segwayed nicely into the following panel which discussed a range of extraordinary assets and where to find them.

Panel Discussion: Fantastic Assets and Where to Find Them



Co-Chair for the event, Jane Keir, joked that the title of this panel was a play on the movie Fantastic Beasts and Where to Find Them because quite often it seems that a large invisibility cloak is deployed to conceal them. This panel consisted of Carmel King, Director at Grant Thornton, Natasha Stourton, Partner at Withers, Christopher Pocock KC, Barrister at 1KBW, Alex Cooke, Chief Executive Officer at Schneider Financial Solutions and Kelan McHugh, Barrister at 1KBW. Together, the panel covered a range of tangible and intangible chattel and some identification techniques.

The panel stated that legal practitioners must be alive to the fact that what counts as an asset can be broad and unusual. Traditional forms of chattel include jewellery, cars and yachts.

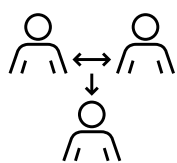
Thinking slightly outside the box, we can add cigars, designer handbags and musical instruments to our list of assets. Thinking even more unorthodoxly, we can add Non-Fungible Tokens (NFTs) and shoe collections to the list.

Christopher Pocock KC, shared an anecdote of a wife who was certain that her husband had a Rolex watch which should be counted as an asset based on an Instagram photo he shared. Mr Pocock viewed the photo but was initially convinced that the watch in question was a fake as it was too gaudy to be an authentic Rolex. However, further investigation revealed that the watch in question was in fact an authentic Rolex watch worth \$600 000. What's more, this was the most sought after Rolex design at the time.

The takeaway from this discussion is that most of these forms of chattel do not have a registration of ownership but that social media can be a good starting point to discovering these assets.

Legal practitioners also need to be alive to the wide array of unusual items which can be considered assets.

Third Parties Disrupting Proceedings



This panel addressed the issue of whether the Family Court can enter what is essentially a private dispute between a

spouse and a third party. The panellists were Barrister at 1KBW, Giles Richardson KC, Barrister at Serle Court and Mark Harper, Partner at Hughes Fowler Carruthers.

The panel stated that yes, absolutely the Family Court can intervene in a private matter between a spouse and a third party in order to quantify assets before distributing them. This is especially prudent considering that it could take years for assets to first be established in a civil case before a divorce case could proceed.

The takeaway from this panel was to tread carefully in these matters because if a client wrongly joins a third party to a case, the client may be liable for the third party's legal costs. Additionally, there are some third parties who are all too happy to join proceedings with the specific intention of causing disruption.

Panel Discussion: Coercive Control in the Family Court



This discussion acknowledged that current financial law is behind the curve when it comes to recognising coercive control and that in some instances, the court's handling

of these cases can be a form of revictimization. The panel comprised of Dr. Charlotte Proudman, Barrister at Goldsmith Chambers, Sandra Paul, Partner at Kingsley Napley and Geoffrey Kingscote KC, Barrister at 1 Hare Court.

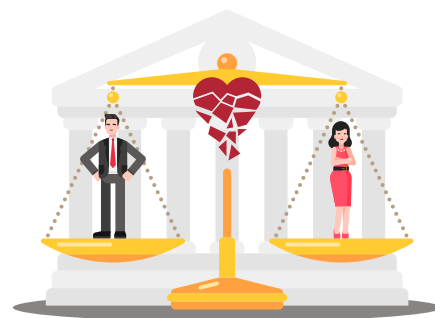
As ever, courts are limited to their jurisdictions and under current financial law, misconduct is not relevant to financial cases. At present, any party wishing to include misconduct in a financial case must demonstrate that the misconduct had a negative financial consequence. Otherwise, misconduct cannot be a standalone argument in a financial matter.

To illustrate the shortcomings of current financial laws, Dr. Proudman cited the case of *Griffiths v Griffiths* in which Elizabeth Griffiths was found to be the victim of physical and sexual abuse but was still ordered to pay her former husband's contact costs.

In this case, Elizabeth Griffiths and her child were both the victims of domestic abuse by her former husband who claimed to have mental health problems. Despite this, he was still granted contact with their child- contact that Elizabeth Griffiths was ordered

to finance. In this instance, Elizabeth Griffith was physically and sexually victimised by her former husband and then financially revictimized by the court.

Panel Discussion: No Fault Divorce



The hot topic of the year in Family Law has been no fault divorce. To discuss this new frontier in divorce, a panel of mediators and legal practitioners was assembled. The panellists were Julia Burns, Mediator at Dove in the Room, James Freeman, Partner and Head of Family at Charles Russell Speechlys, Rachel Chisholm, Barrister and Mediator at The Mediation Space and Jennifer Dickson, Partner at Withers.

From February of this year, couples no longer needed to assign blame to one party in order to file for a divorce. This brings the UK in line with Australia, the USA, New Zealand and Canada which have had no fault divorces since the 1970s and 80s.

No fault divorce does away with the need for couples to cobble together examples of unreasonable behaviour in order to qualify for a divorce under the previous legislation.

This would certainly have been a source of additional consternation for an already unhappy couple.

It is hoped that this new approach to divorce will remove some unnecessary acrimony from the divorce process. Indeed, the takeaway from this panel is that in divorce, we typically ask people to make rational and levelheaded decisions at a time when they are hurting and in crisis. The panel are optimistic that through a mix of no-fault divorce, therapeutic techniques and mediation, divorce can be a smoother, less adversarial process.

