



Boyce Kelly Solicitors LLP

LEGAL UPDATE

Autumn 2021

Welcome to our Autumn Newsletter. We hope that you are staying safe and well and that you are enjoying a return to normality of sorts. We continue to keep some safety measures in place to protect staff and clients, but we make sure that these measures do not affect our service to you. We are open and hard at work serving our clients. We can now meet face to face in limited circumstances in both our Carrigart and Letterkenny offices.

We have set out some articles below on current legal issues which we hope are helpful to you. As always, we are here to help and so, if you require any assistance, please do not hesitate to contact us by phone on 0749890190 or email info@boycekelly.ie.

We are delighted to have been listed as a finalist for 'Law Firm Website of the Year' at the Irish Law Awards. We wish all of the finalists the very best of luck.

Kind Regards,

Etain and Catherine Anne.

DIVORCE

DISCLOSING ASSETS

In divorce proceedings, the parties are obliged to disclose what assets they own and what income or inheritance they might have received in the three years preceding their separation. If a party is caught hiding any assets or

being untruthful in disclosure of their wealth, it will prejudice their case and will undermine their integrity. Therefore, in divorce proceedings, full disclosure is required.

The full disclosure rule is required to assist the court in deciding on a fair financial settlement between the parties.



FAMILY LAW

SEPARATION AGREEMENTS - AVOIDING THE COURTS

Going to court can be avoided where the parties agree to enter a separation agreement. Ideally, both parties should be represented by a separate solicitor. Once agreed and signed off, the separation agreement is a legally binding contract and can be enforced by the courts if one party defaults. Such agreement covers all issues rel-

evant to the parties, such as:

- The family home and who stays there in the family home.
- Maintenance of spouse and children
- Custody of children, access arrangements and education costs
- Succession Rights
- Pensions
- Income Tax

Once parties have entered into a Separation Agreement (called a Deed of Separation) they can later obtain a Divorce provided they meet the criteria, but they cannot obtain a Judicial Separation.

HIDDEN ASSETS IN DIVORCE

Once divorce proceedings are finalised and a financial settlement has been determined, it may become apparent that one party had been hiding assets. This does happen, as some people conceal significant assets, with the aim of reducing the award of the court. These findings may be uncovered several years after the divorce.

Where a court determines that a party has deliberately concealed assets in their disclosure of their assets, the court will intervene and make a ruling. Where the element of trust has clearly been broken, the court can make a finding on the balance of probabilities against the non-disclosing party and order a larger portion of their assets to be awarded to the other party. Excuses of a 'simple error' are unlikely to influence a judge. Any prior goodwill with the court will be severed by the offending party and the court, at its discretion, could impose an order of costs against the offending party as well as taking away portion of such undisclosed assets.

In such cases, where one party has successfully hidden assets from the court, but this fact only emerged later, the case can be brought back to court for a judge to make a revised ruling. Leniency cannot be expected in such circumstances.



PERSONAL INJURY

WORKPLACE ACCIDENTS

Where workers are required as part of their job to use industrial machinery, the employer is obliged by law under the Safety, Health, and Welfare at Work Act, 2005 to provide workers with safe and properly maintained machinery.

Where the machinery is dangerous there is an onus on the employer to provide training for the workers using it.

For the employer, proper records of maintenance of the machinery are particularly important especially where there is an injury and/or claim.

Where a court is deciding on claims

for injuries arising from faulty machinery, foreseeable accidents will usually work against employers. In this instance, the court could find that an accident might well have been avoided so there is a high duty of care placed on employers where accidents are caused by faulty machinery.

Employers should adhere strictly to maintenance of machinery and not cut any corners to save on costs.

A court will expect the employer to have acted sensibly and to have taken all reasonable steps to avoid accidents.

Any signs of faults on equipment should be brought to the employer's notice immediately.

If an employee notices a machine not working properly, he/she should immediately report this to the supervisor otherwise he/she may not secure any damages in the event of injury.



EMPLOYMENT LAW

IMPLICATION FOR EMPLOYERS FOR REQUIRING EMPLOYEES TO BE VACCINATED.

Employers are obligated to provide a safe work environment for their workers so there would be concern for employers if any employees did not take the vaccine and be a potential risk to other workers.

However, if the Government do not make the vaccine mandatory there is no law being breached by such refusal but where does that leave the employer?

Any employer who makes a rule that all employees must take the vaccine must consult their solicitor before deciding on such a rule. There may be exceptions for some people not taking the vaccine and perhaps a medical note could assist here.

For new employees, employers are in

a better position in requiring them to have the vaccine, but the legal quantum is with current employees.

So, what should employers do? In the absence of mandatory legislation requiring everybody to take the vac-

cine (a) get advice from your solicitor - this is most important (b) communicate with employees and listen to their concerns (c) where unions are involved, consult them (d) update workplace risk assessment.





ABOUT BOYCE KELLY SOLICITORS LLP

We are a modern, friendly and dynamic practice with a client centred approach – our motto is that ‘we are here to help’ and that is what we strive to do each day for our clients.

Etain Boyce is the managing partner and partner in charge of litigation. She has 17 years of experience as a qualified solicitor, dealing with personal injury* cases, employment law cases, family law and other general court cases. She specialises in helping people who have been genuinely injured getting the compensation that they deserve*. Etains clients say that she is approachable and empathetic towards them but tough in securing the best outcome and that she works tirelessly for her clients. Etain is from and lives in Downings, Co Donegal. She is married to Brian and they have two daughters. She enjoys reading and yoga.

Catherine Anne Kelly is the partner in charge of conveyancing, wills and probate. She qualified as a solicitor in 2008 and since then she has developed a reputation for excellence in conveyancing. She deals with buying and selling houses and sites, transferring farms, rights of way and easement problems, claims for adverse possession, drafting wills and extracting Grants of Probate. Catherine Anne specialises in fixing complicated title problems and her clients say that she is patient, that she listens to her clients and is understanding of their needs, they say she is persistent in solving her clients issues. Her clients are extremely satisfied with the service she provides. Catherine Anne lives in Carrigart, Co Donegal with her husband Pete and her two sons. She enjoys walking and reading.



Etain Boyce
Litigation Partner



Catherine Anne
Conveyancing &
Probate Partner

We handle the following areas of law:

**Personal Injury* / Commercial law /
Employment law* / Property /
Family Law / Wills and Probate /
Conveyancing**

*In contentious business, a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement, nor is it our practice to do so.

Boyce Kelly Solicitors LLP

Main Street, Carrigart, Letterkenny, Co Donegal. 074 989 0190 Eircode: F92 FF6D