

Who's where and what do they do?

Area of Law	Camden	Narellan	Picton	Tahmoor
Conveyancing	Chris Paul Lyn Harrison	Bill McGookin Natalie Cavaleri	Angus Cox Leanne Anderson	Debbie Tinsley
Estate Planning	Chris Paul	Bill McGookin	Angus Cox Jillaine Duve	Kristy Faida
Family Law	Caroline Holt	Bill McGookin	Jillaine Duve	Kristy Faida
Commercial Leases	Chris Paul	Natalie Cavaleri	Angus Cox Leanne Anderson	Angus Cox Leanne Anderson
Leases & Sale and Purchase of Businesses	Chris Paul Caroline Holt	Natalie Cavaleri	Angus Cox Leanne Anderson	Angus Cox Leanne Anderson
Court Matters /Damages	Caroline Holt Geoff Lloyd	Bill McGookin	Jillaine Duve	Kristy Faida
Criminal Law	Geoff Lloyd		Jillaine Duve	Kristy Faida
Debt Recovery	Caroline Holt Geoff Lloyd	Natalie Cavaleri	Jillaine Duve	Kristy Faida
Bankruptcy/Insolvency	Geoff Lloyd	Natalie Cavaleri		
Unfair Dismissal/ Employment Law	Chris Paul Geoff Lloyd	Natalie Cavaleri		
Family Provisions (challenging wills)	All enquiries to Angus Cox & Geoff Lloyd			
Personal Injury	All enquiries to Geoff Lloyd			
Workers Compensation	All enquiries to Geoff Lloyd			
Medical Negligence	All enquiries to Geoff Lloyd			

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More Changes to the Australian Family Law System

As part of the Federal Government's commitment to cutting down on litigation within the family law system, new rules were introduced into the Family Law Act on 1 July 2007 which make it compulsory to attend Family Dispute Resolution (FDR) before court proceedings can commence in parenting matters.

Now courts will not be able to hear an application for a parenting order in a new case, unless the person seeking the order first obtains a certificate from a registered FDR Practitioner. In order to become registered as a 'Practitioner' under the Act certain qualifications, training and experience are necessary and some mediation organisations within the Macarthur region have already begun advertising their services in this field.

After the parties have attended the FDR session/s, the FDR Practitioner will complete a certificate for the court which confirms that attempts to settle have taken place. The certificate will also let the court know if either party refused to attend, was unreasonable in their demands or did not make a genuine attempt to resolve the issues. These are all relevant factors in the court's view.

In certain circumstances - for example in situations involving family violence or where child abuse has occurred - FDR certificates will not be required by the court to start up proceedings.

Come and see us if you would like more information about Family Dispute Resolution and how the rules apply to you and your family.

Jillaine Duve

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Did you Know?

Did you know that it's an offence to loan your car to another person without having first sighted their driver's licence? One of the many road transport regulations provides that, if you are 'in charge' of a car, you must ask to see the driver's licence of any person you allow to drive the vehicle before you let them do so. What is the maximum penalty for this offence? \$2,200.00

Joint Tenants or Tenants in Common? What's the difference?

Most people who buy a house together during a relationship register their property as Joint Tenants. This legal label means that, should either of them pass away, then their 'share' of the property will be transferred to the other person regardless of what the deceased person's Will might say.

On the other hand if you buy a property with someone else as Tenants in Common, then your share of the property (be it 50% or any other figure) is able to be gifted to another person under your Will. People most commonly buy property as Tenants in Common where they are friends or perhaps relatives, but are not in a domestic relationship with each other.

When you buy a property with someone else, you should give some thought to how you wish to register the ownership of the property and it's worth seeking legal advice if you have any questions about it. In particular, you need to be aware of the possible consequences in the event of a breakdown in your business or personal relationship with any co-owner.

Angus Cox

Partner
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Should you think about changing your ownership if you separate?

If you already have property with your partner or spouse as Joint Tenants but have separated, very serious consideration should be given to severing that Joint Tenancy and registering the property as Tenants in Common.

The fact that you have separated probably means that you wouldn't wish the property to be automatically transferred should you happen to pass away before you can work out your property settlement. This is especially so in circumstances where your former spouse or partner is in a new relationship.

The inexpensive process of severing a Joint Tenancy is one that we can attend to quickly and, most importantly, you don't need to obtain the consent of the other owner in order to do so.

When you consider that some family law property settlements take many months or even years to resolve - and that some settlements will require the sale of the property - changing the legal status of your ownership and updating your Will are really important issues to deal with to protect your interests.

Contact our team if you would like more advice about changing your ownership status and updating your Will or any similar issues.

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Congratulations to Belinda Dunkley and husband Sean on the safe arrival of a baby son. Belinda is a Licensed Conveyancer at our Tahmoor office.

The Engagement is off - who gets the ring?

Occasionally parties who are engaged have a falling out and the engagement is called off. The parties have often exchanged engagement rings of considerable value and the question arises from time to time as to what should happen to the ring.

The Supreme Court recently had to deal with a matter where the male (Andrew) sought recovery from the female (Vicki) of the \$15,250 engagement ring he had provided to her or, if the ring was unable to be returned to him, he sought recovery of its full value.

The parties agreed the engagement had been called off but Vicki claimed that Andrew had, by his conduct, allowed her to keep the ring. She had then told her father to throw the ring out and it was placed in the garbage.

The court disagreed that Andrew had allowed Vicki to keep the ring and found that the ring was what is known as a "conditional gift" and is not an absolute gift unless the marriage takes place.

The court went on to say that unless there is justification e.g. acts of violence by one party against the other, normally the party that calls off the engagement is required to return the ring. When Andrew said to Vicki that she could have the ring, it was an attempt by him to restore their relationship.

In this case, as the ring had been thrown out, Vicki was obliged to pay Andrew an amount of \$15,250.

Fortunately most engagements do not result in such a sad outcome, but if you require advice on any aspect of getting engaged, married or separated we have an expert team of Family Law Lawyers with specialist accreditation who can assist you.

Geoff Lloyd

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What is a 'Gentleman's Agreement'? When is it used and why?

A 'Gentleman's Agreement' is simply an informal verbal arrangement confirming an agreement between two or more parties - usually because they trust each other to do 'the right thing' and often because they know one another and believe each has similar interests and hopes at heart.

They sometimes involve a handshake but are really a relic of a bygone era where a man's word was his bond and when times were less complicated than they are today. It is not wise to rely on such informality, particularly where financial consequences are involved. They are vague, uncertain and often unenforceable and can destroy many friendships.

When entering into any agreement for sale or purchase of a business, leases, or any financial transaction or venture where

you risk liability or loss, you need to think about the risks you are taking and how you can prevent any possible loss from becoming a burden on your future.

By way of example, we recently received instructions from a client who had sold his business without preparation of a sale of business agreement and there was no documented information in relation to the assets of the business. Our client is now being sued for misleading and deceptive conduct in relation to the assets, as the purchaser claims he was not aware that some assets were owned by a third party.

To resolve this matter will now be an expensive process and this could have been avoided had a written Agreement for Sale of Business been prepared and the full circumstances properly documented.

Similar problems can arise if you lend money, either to a person or a company, without any written agreement.

You will not have secured the return of your money or any claim for interest. By having proper documentation prepared you can enjoy the benefits of security and some form of protection and it makes the chances of recovery much better.

Don't fall into the trap of being too casual. It destroys more friendships than it saves.

Natalie Cavaleri

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Granny flats

Thinking about extending your house to accommodate a relative?

It is common for families to build an extension to their home or upgrade a garage to provide accommodation for a family member. Often a parent will sell their existing home and pay the proceeds towards these improvements on the understanding they can live there, rent free, for the rest of their lives with the child's family.

In practice this arrangement sometimes leads to disputes between families because the terms weren't clear or there is a change in circumstances. Costly litigation in the Supreme Court may result.

This can be avoided by making a legally binding deed of agreement regarding the extension and setting out what is to happen if the person no longer wants to live there or the house is sold etc. This can be of great importance if your child suffers a risk of bankruptcy or if their marriage breaks down.

If you are thinking about extending or building to accommodate someone, please call Caroline Holt at our Camden office. Caroline is very experienced in dealing with 'granny flat' matters and can advise you on the types of issues that need to be considered and also assist you to draw up the agreement so that you and your assets are fully protected.

Caroline Holt

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Are you a creditor of a company?

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Companies going into liquidation (voluntary or forced) are on the increase.

Liquidation of a company is virtually the equivalent of a bankruptcy of an individual person and results in the assets of the company being sold and the proceeds distributed amongst the creditors. It almost always means that the unsecured creditors do not get paid in full and may recover nothing at all.

We have commenced actions for many clients against companies by way of issuing a Creditor's Statutory Demand. If the company fails to respond, we can then commence a Winding-Up Application in the Supreme Court.

If the company then pays the debt in full prior to the hearing of the Winding-Up Application, the proceedings would be dismissed. However should the company subsequently go into liquidation (voluntarily or on the petition of another creditor) the payment could be identified by the Liquidator as a "preferential payment" and may have to be repaid to the Liquidator.

These are complex issues and expert advice at the start can inform you of all options and risks that you need to be aware of.

Are you considering selling your business?...

...and if you are, what representations are you making to the public and/or to a prospective purchaser about your business?

Representations can be made in the form of brochures, an information sheet including indications of past or future performance, financial statements, informal conversations, emails and material provided during a 'due diligence' check. There may also be disclosures made under the sale contract for certain contractual warranties.

When providing information to a purchaser you need to be careful not to provide misleading or deceptive information. You need to be able to show that any information provided to the purchaser is credible and able to be supported by fact or at least qualified by outlining the basis on which the representation is made.

In order to claim a representation made by the vendor is misleading the purchaser must show that the information was relied upon, that it was intended to induce or encourage the purchaser to buy the business and that it was inaccurate.

If you are considering selling your business it is best that you speak to your solicitor and your accountant to ensure that you do not end up unintentionally providing misleading information to a potential purchaser. Natalie or Chris can help in this regard.

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Are you being bullied into a family law property settlement?

The dynamics of many domestic relationships mean that one party may exert more power or control in the relationship, may have access to more money, may restrict the other person's access to financial information and may generally just bully the other person.

When such circumstances exist it can be very hard for one person to be able to negotiate a fair settlement on their own behalf.

We recently acted for a woman in just such a relationship and achieved a very good result for her in the final property settlement.

The long term marriage had been punctuated by episodes of violence by her husband and after she finally decided to separate from him, he offered to give her what worked out to be about 25% of the overall property pool.

Initially our client was so scared of her ex-husband that she was willing to sign anything just to get out of the marriage. Fortunately she listened to sensible advice from one of our solicitors and we were able to negotiate a much better settlement for her, which resulted in her receiving her proper entitlement of 50% of the assets.

In the end the original settlement "offer" from the husband of \$80,000 was increased to nearly \$140,000, just through sensible negotiation. We didn't need to take the matter to court and the whole settlement took just a few months. She wasn't asking for the world - just a fair settlement which has now enabled her to put down a significant deposit on a new home of her own.

Our experienced and caring team of Family Lawyers at Caldwell Martin Cox are committed to helping people achieve fair outcomes through amicable settlement if at all possible.

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BUYING A PROPERTY?

Here are 5 quick tips for you to keep in mind

1. Visit the area to check out the proximity of schools, nightlife, transport, shopping centres, etc. These can have an effect on your lifestyle, both now and in the future.
2. Contact local agents to research recent sale values in the area.
3. Always obtain building and pest reports on any property in which you are seriously interested.
4. Before you buy get in touch with your potential neighbours to ascertain suitability and see if they are aware of any underlying disputes or problems.
5. Don't be put off by bad weather. It's a good time to check the potential property for leaks and poor drainage.