



# The Law Reform Commission

## Cohabitation: Models for Legal Reform A legal practitioner's perspective

**Muriel Walls**

*1 December 2006*

McCann FitzGerald

# Who Cohabits?

- the casual cohabitants who drift into living with their new love
- living together as a forerunner to marriage
- the battle scarred separated and divorced persons
- those who lived together because they could not marry (pre-divorce)
- those who believe that they are married after a foreign divorce
- same sex couples who cannot marry
- friends and siblings

# Frank and Susan

- present law: credit for direct or indirect financial contributions only
- Susan and Frank come within the definition “couples who live together in an intimate relationship”
- “family home” means a “dwelling house in which a married couple ordinarily reside”

# Jack and Mary

- present law: apply for a declaration of a greater interest in the home
- factors which determine the “living together”
- co-ownership agreements
- agree and record how the beneficial interest is to be held

# Kevin and Orla

- agreements should be encouraged
- compliance with certain formalities
- stamp duty
- gift tax (€478,155)

# Jim and Tracey

- stamp duty and taxes
- economic dependency
- in loco parentis
- apply within 2 years of breakdown of the relationship



## Damien and Anne

- Damien's situation is very precarious
- economic dependency
- physical or mental disability
- Anne is a widow
- Anne's children

# John and Sarah

- domestic violence legislation
- barring order – only a short term solution
- property requirement removed in respect of a barring order
- residency requirement (3 months out of previous 12)
- none in respect of safety orders for cohabitants



# Ken and Barry

- rights of next of kin
- doctor should confer
- Enduring Power of Attorney
- rights on intestacy
- joint tenants – right of survivorship
- application within 6 months
- application can be made if inadequate or no provision has been made



## Ken and Barry *cont'd*

- cohabitants placed above siblings for extraction of grant
- pension schemes
- tax threshold as parents/children - €478,155
- The Civil Liability (Amendment) Act 1996

# Lilly and Paul

- not validly married under Irish law then no state widow's pension
- is a qualifying cohabitant even though still married
- application for provision from Paul's estate
- wife (if any) would have to be notified of the application
- interests of surviving children of Paul

# Privacy – “in camera” rule

## Newspaper headlines

- “FORMER LOVERS IN BITTER DISPUTE OVER HOME”
- “PR GIRL SUES EX BOYFRIEND FOR HALF THE VALUE OF LOVE NEST”
- “€80,000 FOR LESBIAN IN HOME ROW WITH EX”
- The Commission recommend the “in camera” rule is extended to hearings involving cohabitants

# Conclusion

The Commission's proposals are twofold

- a contract model
- a redress model

Same sex marriage and Civil Partnership is another issue – the debate continues





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