

Barlow's Cohabitants and the Law, Fourth Edition

David Josiah-Lake

Reviewed by Brian Sloan*

The 'cohabiting couple family' is the fastest growing family type in England and Wales.¹ Even if Parliament provides for opposite-sex civil partnerships in the aftermath of the Supreme Court's decision in *Steinfeld and Keidan v Secretary of State for the International Development*,² many people will surely continue to live informally as cohabitants and experience the peculiar legal consequences flowing from that decision. This, along with its inherent quality, makes *Barlow's Cohabitants and the Law* immensely useful.³ The last edition of the work was published as far back as 2001, meaning that the new author, the solicitor David Josiah-Lake, faced a mammoth task. Professor Barlow remains an Advisory Editor of the book, which has the objective of 'putting together in one place, as much as it is possible to do so, discussion of the laws affecting unmarried/cohabiting families'.⁴ While it is aimed at those teaching and practising *family* law, potentially suggesting that it is of only limited interest to readers of this journal, there is in fact plenty here for the property lawyer, particularly in respect of areas falling on the edge of or just outside property law as traditionally understood and taught.

Part I of the book deals with the law affecting cohabitants while living together as a unit, and Part II deals with relationship breakdown, although inevitably there is no easy dividing line between these stages. The book opens with a chapter on 'the cohabitation relationship', comprising a discussion of the definition of 'cohabitation' and related concepts, the law's general approach to cohabitants and examples of the difficulties that they might encounter (specifically relating to names, wills and life assurance and pensions), the social background and impetus for reform, and cohabitation contracts. There is a helpful summary of the Cohabitation Rights Bill 2017-19, which perhaps optimistically slips into the present

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¹ Office for National Statistics, 'Families and Households: 2017' (2017), p. 4.

² [2018] UKSC 32.

³ D Josiah-Lake, *Barlow's Cohabitants and the Law*, 4th edn. (Haywards Heath: Bloomsbury Professional, 2018).

⁴ *Ibid*, v.

tense notwithstanding the understandable but painful acknowledgement that ‘history tells us that [the Bill] is unlikely to progress further, not least because there is no appetite for reform in this area and it is not seen as a priority when the current government and Parliament are mired in the wrangling over Brexit’.⁵

Chapter 2 deals fairly comprehensively with the status of children of cohabiting relationships, before chapter 3 addresses housing other than in the context of relationship breakdown (including public and private sector tenancies, owner occupation and homelessness legislation). Tax, pensions and social security (including income tax, tax credits, capital gains tax, inheritance tax, council tax, benefits and pensions) are analysed in chapter 4, where it is asserted that it is in this area that ‘some of the greatest anomalies in the legal treatment of cohabitants become apparent’.⁶ Inevitably the discussion takes the form of an outline, but enough detail is present to prompt the reader to look in more specialised texts when a particular issue arises. Chapter 5 covers inheritance and succession (including fatal accident and Criminal Injuries Compensation Scheme claims), with the discussion of the Inheritance (Provision for Family and Dependents) Act 1975 managing to incorporate recent case law such as *Ilott v The Blue Cross*⁷ and *Thompson v Ragget*.⁸ Chapter 6 analyses the implications of matrimonial and civil partnership proceedings for cohabitants, in light of the fact that *inter alia* ‘what is paid or received as financial provision from a previous relationship may limit or extend the financial resources available in the new cohabiting relationship’.⁹ This reviewer will forgive the problematic reference to ‘unreasonable behaviour’ when discussing divorce,¹⁰ particularly since the book pre-dates the Supreme Court’s decision in *Owens v Owens*.¹¹

Part II of *Barlow’s Cohabitants and the Law* opens with a discussion of domestic abuse and the family home, including statistics and criminal proceedings and emergency accommodation as well as the civil remedies with which property lawyers are more likely to be familiar. The status of children on relationship breakdown is the concern of chapter 8. Chapter 9 then considers financial provision for children, including the apparently under-used

⁵ Ibid, [1.16].

⁶ Ibid, [4.01].

⁷ [2017] UKSC 17.

⁸ [2018] EWHC 688 (Ch).

⁹ *Barlow’s Cohabitants and the Law*, [6.01]

¹⁰ Ibid, [6.03].

¹¹ [2018] UKSC 41.

ability to seek court-based capital provision *inter alia* for the benefit of children of cohabitants under schedule 1 to the Children Act 1989, a potentially important and more palatable alternative to making arguments about constructive trusts of the family home. It is telling, however, that when discussing transfer of tenancies in chapter 10 on the rented family home following relationship breakdown, the author expressly addresses the disadvantages of using the Children Act instead. The book's last substantive chapter, covering the non-rented family home on relationship breakdown and related matters, is comparatively detailed. While a more comprehensive analysis will be within the knowledge or the reach of many property lawyers, the one in this book will be valuable to those not specialising in the precise area.

An appendix to the book contains a table providing a comparative overview of the respective rights of married and civil partnership couples and cohabitants. This may be extremely helpful to students and others seeking to appreciate quickly the (often) advantages still reserved for those in a marriage or civil partnership and the corresponding (often) disadvantages of 'merely' cohabiting.

The largely descriptive nature of this book means that it is unlikely to be one for the bedside table. But that should not detract from the impressiveness of its coverage (in fewer than 350 substantive pages) and clarity of exposition, nor indeed from the sage advice it offers to practitioners tasked with advising cohabitants, often with the aim of reducing the risk of litigation. The reader is very much given the benefit of the author's considerable practical experience and awareness of the realities of life for cohabitants, and (for example) several sub-sections are devoted to legal aid. There are a number of no doubt invaluable 'checklists' for practitioners advising cohabitants in particular situations, including on 'cohabitants purchasing property', 'disputes concerning the rented family home' and 'cohabitant co-ownership disputes'. It is possible that careful attention to this book will reduce the number of reported cases involving cohabitants that ultimately have to be discussed in the pages of this journal. But the book in no sense lets the Government or Parliament 'off the hook' for failing comprehensively to address the difficulties faced by cohabitants in relation to their property.