



DE COTTA MCKENNA & SANTAFÉ English Lawyers and Spanish Abogados

Co-habitation – the myth of a common law marriage by Sandra Wrightson, Barrister Overseas & Partner at De Cotta McKenna y Santafé

In England now 39 % of women between the ages of 25 and 29 and 44 % of men between the ages of 30 and 34 are co-habiting. These are the bare statistics but with increases in the number of people choosing to live together and not to marry the legal problems if there is a separation are sadly increasing. Spanish lawyers will often advise couples to register their partnership as a *pareja de hecho* – couple by fact – so that they can benefit from legal and tax advantages.

In England no such concept exists and a couple who have been living together for many years may need to rely on the traditional law of trusts to prove they have rights to property or assets. There is no such thing as a common law marriage! For example a man or woman may be the legal title holder to property but their partner may have contributed to the upkeep and mortgage for many years. If they then split up how does the partner prove their contribution and get any equity they need out of the property? Family lawyers in England are now being advised to await a Supreme Court decision to be made in May when an appeal in a case called *Kernott v Jones* will be heard.

This is because previous cases based on trust principles have led to uncertainty as to the interpretation of “common intention” when a couple live in a property together and are not married. Put simply was there an intention to enter into a form of joint enterprise and ownership in respect of the property? The Supreme Court is expected to give guidance on the future interpretation of the law which will allow lawyers to advise their clients who may have a claim to all or part of a property that is not legally registered in their name.

As English lawyers working in Spain we see a number of people who are in this situation with property registered in Spain. Spanish and English lawyers need to work together to see if a solution can be found in this type of case as the English legal concept of trusts is not always recognised in this country. If you are living together it is sensible to ensure that you do know what the position would be if you separated and prevention is always better than cure!

“The same trust principles would be applied to a same sex couple who have not entered into a Civil Partnership.”

Finally on a happier note one other statistic - the number of divorces in England is at a 29 year low.

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