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| |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | | |  |  | | --- | --- | | |  | | --- | | August 2015 Newsletter  ---  *"Leg Pull?"*  *Clive Mills*  The legal profession in Australia has generally been governed by separate State-based regulatory bodies, all of whom historically imposed their own rules and regulations in relation to the legal profession.   In New South Wales, the Legal Services Commissioner and the Law Society of New South Wales have administered the rules and regulations and ensure that lawyers are competent and maintain high ethical and professional standards in the provision of legal services.   Thanks to the considerable efforts of a number of Australian lawyers, attempts to make the laws, rules and regulations relating to the legal profession and lawyers throughout Australia uniform have made some progress in recent times in that the *Legal Profession Uniform Law* commenced on 1st July 2015 and now applies to 70% of lawyers in Australia as it regulates the conduct of lawyers in New South Wales and Victoria.   Most other States and Territories, with the exception of Western Australia, have indicated that they are likely to adopt the Legal Profession Uniform Law in the not too distant future.   The new uniform scheme is designed to, and should, provide consumers of legal services with a regulatory scheme which is characterised by *consistency* in the law applying to the Australian legal profession and *accessibility* to competent legal services.   The old *NSW Legal Profession Act*, the *NSW Legal Profession Regulations* and the *NSW Professional Conduct*and *Practice Rules 2013* (“*Solicitors’ Rules”*) all came to an end on 30th June 2015.   The *Legal Profession Uniform Law 2015* (“*LPUL*”) has replaced the old legislation with associated legislation such as:-   * the*Legal Profession Uniform General Rules 2015* which will cover many of the items previously listed in *NSW Legal Profession Regulations*; and      * the *Legal Profession Uniform Law Australian Solicitors’ Conduct Rules* which will incorporate many of the rules previously used.   A further intention of the new legislation is to:   * enhance the protection of clients of law practices and protection of the public generally; and      * empower clients of law practices to make informed choices about the services they access and the costs involved.   Members of the public should not be concerned about radical change occurring as there will be a significant degree of continuity from the previous regime.   The advent of all new legislation, particularly where the name of a new piece of legislation comprises more than three or four words, usually gives rise, in time, to the adoption of a generally accepted acronym.    At this early stage, no such acronym has yet emerged.   Leading contenders, however, are (*“LPUL”)* and *(“LEGPUL”)*.   The latter may prove to be easy to remember notwithstanding that the thought of someone *“having their leg pulled”* is most definitely not what the authors of the new regulatory legislative framework intend.                   https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/a860ff05-1370-412e-9f01-7b1fbdb5a7e8.jpg     *Care arrangements for your children following separation* *Jacqueline Minors*  It can be difficult to determine what care arrangements should be put in place for your child after a separation. Understandably, you want to ensure that the separation affects your child as little as possible and that your child can maintain a strong relationship with both parents without any detriment to them.  It can be difficult to achieve a balance of stability for your child whilst finding the most effective way to divide your child’s time between a new arrangement usually involving two separate households.  Either way, your decision must be made in consideration of your child’s needs and what will create the most stability for your child into the future.  But how do you achieve this?  The *Family Law Act* (“the Act”) states that the primary consideration must always be what is in *the best interests of the child*. The Act further sets out some matters that must be considered when determining what is in the best interests of a child. They include the following:- Primary Considerations:-     1. The need to protect a child from physical or psychological harm; and        2.  The benefit of a child having a meaningful relationship with both parents.  The need to protect a child from physical or psychological harm is the overriding consideration in circumstances where these two considerations are conflicting. Additional Considerations:-   1. The nature of the relationship between the child and each parent as well as other relevant persons;        2.  The views of your child (dependent upon the child's age and maturity);        3.  The likely effect of any changes in the child's circumstances;        4.  Capacity of each parent to provide for the needs of the child; and        5.  The practical difficulty and expense of spending time with the child.   What is outlined above is not a complete list of the considerations set out in the Act, but provides a good basis upon which to start.  If you are having difficulty determining the care arrangements for your child following separation, we would be pleased to assist you and welcome your enquiries on (02) 9906 8188. | | | |  | | --- | | https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/dcbf210f-3f21-4bbb-9a10-4a383dd243f2.jpg  "*Two Small Steps for Women, But One Giant Leap for Womankind"*  *Ashley Rihak*  Two exciting moments in legal history are the sealing of the Magna Carta in 1215, and the introduction of the first piece of legislation dealing with married women’s property rights in 1870. The Magna Carta is considered an icon of the concept of the rule of law, and married women’s property legislation (collectively, ‘the MWP Acts’) was introduced in both the United Kingdom and Australia to give married women legal rights in relation to property.    This article draws out two parallels between these foundational legal documents: their progress in empowering women in a legal context, and the conflicting motives and political turmoil found in their origins.  ***Legal Rights of Women***    Why would we consider the Magna Carta in the context of the legal rights of women? The text of the Magna Carta actually contains some unusual gems with respect to the rights of women, or more specifically the rights of widows. The Magna Carta provided in clause 7 that a widow could not be forced to remarry, so long as she preferred to remain single.[[1]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn1" \o ")Clause 8 further provided that a widow was entitled to an inheritance upon the death of her husband.[[2]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn2" \o ") Miller does note that these provisions were not really intended to benefit all women, but instead women of the aristocratic class.[[3]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn3" \o ") It is still interesting, however, to observe these provisions concerning women’s rights in such an early document as the Magna Carta.   The MWP Acts which appeared over 600 years after the first sealing of the Magna Carta also made some substantial advances towards equality of women in the legal context. The first of these laws introduced in Australia were the *Married Women’s Property Act 1870*(Vic) and the *Married Women’s Property Act 1879* (NSW). These followed the introduction of the first piece of such legislation in the United Kingdom, namely the*Married Women’s Property Act 1870*(UK) (‘the UK Act’). It is these first pieces of married women’s property legislation that this article will consider.   In the time before the MWP Acts were introduced, the legal position with respect to ownership of property by married women was that a married woman had no property rights at all. From a legal perspective a married woman and her husband were viewed as a single entity.[[4]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn4" \o ") A married woman could not, for example, enter contracts, or sue or be sued, as she had no separate legal personality.[[5]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn5" \o ") The legal principles creating this position were known as ‘coverture’.[[6]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn6" \o ") The MWP Acts introduced a number of important property rights for married women, including: an entitlement to their own wages and earnings,[[7]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn7" \o ") an entitlement to own and deal with real estate as if she were a single woman,[[8]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn8" \o ") and an entitlement to inherit, receive, deal with and bequeath any personal property which the MWP Acts entitled her to own separately from her husband.[[9]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn9" \o ") Coming from the previous position of a married woman lacking all legal personality, the achievement of these legal rights for married women is quite significant.  ***Troubled Histories***  The Magna Carta is considered an enduring symbol of social change and of equality before the law, however it is also known for the turbulent history which gave rise to it. The motivations for the creation of the Magna Carta were the crushing taxes imposed by the notorious King John, and his subsequent diplomatic and military failures ( possibly the strongest argument ever for the Republican cause). [[10]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn10" \o ") The first version of the Magna Carta was created during an ‘open rebellion’[[11]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn11" \o ") and was then followed by bitter civil war, despite the intention that it should prevent such an outcome.[[12]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn12" \o ") The Magna Carta also underwent decades of revisions and reissues, with the final version that became part of English law only being completed in 1297.[[13]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn13" \o ") It is somewhat remarkable in light of this history that the Magna Carta was ultimately successful, and came to be such a beacon for the concept of legal equality, not only in English law based jurisdiction but throughout the world.   Likewise the first MWP Acts were introduced with mixed motives, and suffered from some problems in seriously addressing the social issues at which they were purportedly aimed. The UK Act was a compromise between the interests of groups who genuinely sought greater gender equality and conservative politicians who claimed that such legislation could cause discord and distrust between otherwise content spouses.[[14]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn14" \o ") One reason for the implementation of these first Acts was not equality at all, but the prevention of fraud.[[15]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn15" \o ") Legislators were concerned that a single woman might accrue substantial debts and then marry to effectively escape her creditors.[[16]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn16" \o ") The Acts were also problematic as while they provided for some property rights for married women, they did not extinguish the notions of coverture and of a husband and wife being a single entity.[[17]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftn17" \o ")  ***Conclusion***  Thus we can see two parallels between the Magna Carta and the first MWP Acts. Both achieved more substantial legal rights for women, with the Magna Carta providing for the greater autonomy of widows and the MWP Acts allowing married women to own and dispose of their own property. Further, both of these foundational documents grew out of turbulent pasts, and have come to be known for a lasting social impact which was not necessarily the intention of the original drafters.    [[1]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref1" \o ") Nick Miller, ‘Magna Carta: Nine Facts You May Not Know’, *Sydney Morning Herald*(online), 16 June 2015 <<http://www.smh.com.au/world/magna-carta-nine-facts-you-may-not-know-20150615-ghnuzs.html>>; Nicholas Cowdery, ‘Magna Carta: 800 Years Young’ (2015) (June) *Law Society of New South Wales Journal* 26, 30.  [[2]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref2" \o ") Miller, above n 1; Cowdery, above n 1, 30.  [[3]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref3" \o ") Miller, above n 1.  [[4]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref4" \o ") Andrew James Cowie, ‘A History of Married Women’s Real Property Rights’ (2009) Article 6 *Australian Journal of Gender and Law* 1, 3.  [[5]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref5" \o ") Ibid 4.  [[6]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref6" \o ") Ibid 3.  [[7]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref7" \o ") *Married Women’s Property Act 1870*(Vic) s 5.  [[8]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref8" \o ") *Married Women’s Property Act 1870*(Vic) s 2.  [[9]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref9" \o ") *Married Women’s Property Act 1870*(Vic) ss 10, 12; *Married Women’s Property Act 1879*(NSW) s 7.  [[10]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref10" \o ") Marc Morris, ‘King John: the Most Evil Monarch in Britain’s history’, *The Telegraph*(online), 13 June 2015 <<http://www.telegraph.co.uk/culture/11671441/King-John-the-most-evil-monarch-in-Britains-history.html>>.  [[11]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref11" \o ") Ibid.  [[12]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref12" \o ") Cowdery, above n 1, 29.  [[13]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref13" \o ") Ibid 30.  [[14]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref14" \o ") Cowie, above n 4, 6.  [[15]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref15" \o ") Mary Beth Combs, ‘A Measure of Legal Independence: the 1870 Married Women’s Property Act and the Portfolio Allocations of British Wives’ (2005) 65(4) *The Journal of Economic History*1028, 1029.  [[16]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref16" \o ") Ibid 1029.  [[17]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=5c773c7645" \l "_ftnref17" \o ") Cowie, above n 4, 6; See, eg, *Married Women’s Property Act 1870* (Vic) s 4. | | | |  | | --- | | https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/a85d1e89-5902-40c7-a8a0-13d6d1cca31b.jpg  *Australian Law Through the Eyes of an English Law Student*  *Faye Edwards* (Intern - Liverpool University Student)  Australian law has developed from the traditions of the English common law with often the term, “legal history” meaning, “English legal history.” In 1924, when the Australian Law Schools agreed to establish a Master of Law degree, the history of English law was a required subject.  Legal historian, David Neal, has challenged the view of the foundations of the Australian legal system and has sought to demonstrate that Australian law always has been different and distinct from the English Legal System. However, upon my first glance of the Australian legal system, it would appear to have been heavily influenced by the English legal system. Both legal systems rely on a source of Legislation from a) common law, (the judgments from the courts creating the basis of legal principles) and b) statutes.  However, one of the key distinctions between the two systems is that the Australian legal system has created a written, codified Constitution of the Commonwealth of Australian, something in which the English legal system is yet to create, despite its great length of development by comparison.  This codified constitution, which may suggest Australian law is independent to that of English law, had to be agreed by the British Parliament before the colonies could unite as a nation. It wasn’t until 1986, that an Australian Act removed all remaining legal ties between the British and Australian governments, and hence, English precedents were, for the first time, no longer authority and Australian law reports became the major source of judicial authority.  Having spent four weeks in the office of Clive Mills & Associates, a Family, Property and Commercial law firm based in the heart of Sydney, I see very few differences between the two legal systems. In theory, much of the law relied upon in Australia mirrors that of the law relied upon in the English Legal System. The most noticeable difference, is how this law is used in day to day practice. I was lucky enough to attend the Federal Circuit Court in Sydney during my internship and was surprised by the pleasant, and informal, language used between the acting solicitor and the Judge. In comparison, court etiquette in English courts involves the use of formal, archaic language which your everyday person would struggle to understand. I found that the relatively relaxed atmosphere of the Federal Circuit Court provides great advantages to clients, in that, each client can present themselves in a way which feels comfortable to them and represents a true reflection of their character. In turn, this provides the Judge with a greater knowledge of what is, and what is not, in the best interests of each party and/or any children involved. I fear that the strict and rigid rules in place in English courts are causing clients to feel more anxious and nervous over how they may come across in court, causing them to be at a disadvantage before the case is even disputed.  A more relaxed atmosphere and pleasant informal language between lawyers in court is something which I hope the English courts may adopt in the near future, in turn, giving clients more confidence in their ability to discuss the matter at hand whilst providing the best resolution for each client in a manner that is as unnerving and natural as possible. | | | |