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**OUR RECOGNITIONS**

CLIFTON INGRAM: KEEPING YOU POSTED WITH NEWS OF THE LAW | SPRING 11

# CITATION

[ SOCIAL NOT-WORKING ]

## TWEET ME RIGHT

Employers should be aware that there have been a number of recent cases involving employees using social media.

In February, the Press Complaints Commission ("PCC") ruled in favour of the Daily Mail and the Independent on Sunday newspapers, who had published work-related postings from the Twitter account of Sarah Baskerville, an employee of the Department of Transport. Ms Baskerville posted tweets referring to working whilst hungover, and others describing a care leader as "mental". Ms Baskerville complained that her tweets were private and were only meant to be seen by her 700 followers. She also argued that she had a clear disclaimer that the views expressed by her were personal and not representative of her employer. Her complaint to the PCC was that she should have a reasonable expectation of privacy and that the reporting of her tweets by the newspapers was misleading.

The PCC disagreed, saying that the potential audience for Ms Baskerville's tweets was much wider than her followers. Each message could be forwarded by others ('retweeted'). Also, Twitter is publicly accessible and Ms Baskerville had not taken any steps to restrict



access to her tweets and was not publishing the material anonymously. Therefore, the PCC ruled that the articles did not constitute a breach of privacy.

In another example, Ged Coyne, a member of Manchester City's ground staff, allegedly used his Facebook account to make derogatory and abusive postings about Manchester United. Manchester City acted quickly and demanded that the page be taken down. They have also issued their staff with a booklet setting out what is and is not acceptable in relation to postings on social media sites and reminding staff that individual postings can reflect on the Club as a whole.

These are timely reminders that businesses

should ensure that they have a policy on social media in the workplace. The policy should, for example, cover how employees use social media during work time, how they use it to portray the business and confidentiality issues. It should also include an obligation on employees to comply with pre-existing company policies such as those covering sexual harassment and bullying.

The other thing to bear in mind is, of course, that when employees use social media during working hours, productivity will decrease.

### [ GET INTOUCH ]

For more information on this and any other employment issues, please contact Alison Gair on 0118 912 0300

# DIRECTOR'S CUT

In a recent case we were acting for a specialist company which was owned by two individuals who each had one share. In 2006 they had pooled their resources, one with the technical skills and the other with some customers. They were the only directors, but failed to give themselves contracts of employment or put in place a shareholders' agreement.

So far a familiar tale. At the beginning of such a venture the excitement of what you are setting up, the trust each has of the other, the cost of doing things properly, and the time demands to get the business going, can so easily mean that the company starts out in life without proper legal foundations. So it was with this company.

“ The case highlighted the importance of putting in place essential agreements, particularly a shareholder's agreement. ”

The two directors fell out after an exceptionally profitable year, and the one who had brought in his customers (and had been paid for them) left and set up a rival business.

The Articles of the company didn't require him to sell his share, and there was no direct way to force him to do so. He was only willing to sell at an exorbitant price. That left the remaining director with the prospect of building up the company for the ultimate benefit of both shareholders. In the end a deal was struck over the sale of the outgoing director's share after the company claimed back the money it had

paid him for his customers, because he took the customers with him when he left.

The case highlighted the importance of putting in place essential agreements, particularly a shareholders' agreement. The company's main customer almost refused to deal with it whilst the outgoing director remained a shareholder, even though he had no further say in the management of the company. The remaining director's hands were severely tied over the running of the company – he couldn't close

it down, or put it into liquidation, or set up a parallel business without the outgoing director claiming unfair prejudice. Further, the outgoing director required the accounts to be audited, at the company's cost, each year, which was a major unnecessary expense.

## [ GET IN TOUCH ]

To ensure your company is free of such deadlock please contact [billannan@cliftoningram.co.uk](mailto:billannan@cliftoningram.co.uk)

or [jonathandavis@cliftoningram.co.uk](mailto:jonathandavis@cliftoningram.co.uk) in our Dispute Resolution department.



# HOMETIME

Purchasing a house can be confusing and intimidating. Below we answer some of the most frequently raised questions we encounter with residential purchases.



I have not bought a property before. Do I qualify for the first time buyer stamp duty exemption?

A: Stamp Duty Land Tax (SDLT) is generally payable on all transactions with a value in excess of £125,000. However, in order to qualify for the first time buyers relief you have to:

- a) Be buying a property for £250,000 or less.
- b) Intend to occupy the property as your only or main residence.
- c) Not link the transaction with any other transactions and
- d) You, and any person you are buying jointly with, must never have owned a residential property in the UK or anywhere in the world, either alone or jointly with others.

You will see from the criteria above that many people who think they are first time buyers will not actually be able to qualify for the exemption.

The first time buyers relief will only apply until 24th March 2012



I have been told that I have to pay a deposit when I exchange contracts. How much will I have to pay?

A. Traditionally, a deposit of 10% of the purchase price is payable on exchange. It is possible to negotiate with the seller for a lesser deposit to be paid, and often 5% is agreed instead.

For many people who are buying and selling a property at the same time, all their money is tied up in their existing property and in those circumstances, it is usually agreed that any deposit received on the sale transaction is used as the deposit on the purchase transaction.



I am buying a property with a value which just falls into the new stamp duty tax band. Can I split the purchase price

between the price for the property and for fixtures and fittings to avoid paying the stamp duty at the higher rate?

A: The quick answer to this question is 'no you cannot'. Any split of the purchase price between the property and fixtures and fittings in order to avoid a higher rate of SDLT is a fraud upon HM Revenue & Customs.

However, if an inventory of fixtures and fittings and accurate valuations of fixtures and fittings can be provided giving a realistic value of those fixtures and fittings, then some apportionment may be possible.



I have never bought a property before, how long will it take before I can move in?

A: It is difficult to predict exactly how long a transaction will take because every matter is different. Generally speaking, most take between two and three

months from start to finish. The timescale will very much depend on whether you are involved in a chain of transactions. If you are, you will only be able to proceed as quickly as the slowest person in the chain which is often very frustrating!

The timings will also depend upon whether you need a mortgage because you will need a mortgage offer before contracts can be exchanged and some mortgage lenders are slow at issuing their offers.

Without a chain or mortgage delays your transaction could be much faster.

To ensure there is no delay for you we ensure that we return telephone calls promptly and aim to deal with all correspondence within 24 hours. You can therefore be confident that Clifton Ingram will deal with your transaction promptly and efficiently.



Do I need to have a survey?

A: A property purchase is likely to be one of the most expensive purchases you are likely to make and the buying of a property in England and Wales is always based on the legal presumption of 'caveat emptor/buyer beware'. This means that it is up to you as the buyer to carry out as many searches and enquiries about the property as possible before you commit yourself to the purchase.

At Clifton Ingram we will carry out all appropriate searches and make enquiries as to the title of the property on your behalf.

However, we will not be able to give you any advice on the structural condition of the property and it is therefore our

# TRUTHS

advice that you should carry out the most detailed survey you can afford.

A full structural survey is the most comprehensive report but a Home Buyers is also a useful and manageable report. We can suggest the names of various surveyors.

Please bear in mind if you are obtaining a mortgage on the property, any survey carried out by your mortgage lender will simply be a valuation for the lender to make sure that the property will be good security for the lender. It will not necessarily show any problems with the property or matters which require attention.

**Q** Part of the purchase price for the property is being provided by my parents. Is this important?

**A:** Yes. The first point you must clarify is to establish whether the parent contribution is  
a) a loan, or  
b) the purchase by your parents of a share in the property, or  
c) a gift

If it is (a) or (b) you will have to notify your lenders if you are obtaining a loan from them and seek their consent - and if it is (a) and the loan is being secured then your parents will need to obtain independent legal advice.

If a contribution is being made by your parents, then unless it is a gift it would be sensible to enter into a declaration of trust setting out your respective shares in the property. At Clifton Ingram we can deal with this on your behalf.

**Q** I am buying a property jointly with my partner and we are investing separate amounts into the property. Should we own the property jointly?

**A:** There are two ways in which a property can be jointly owned and we will give you full advice as to the different methods of ownership and how best to protect your interest if you are not making equal contributions.

## [ GET IN TOUCH ]

For information regarding Residential Property, please contact Tina Crow, [tinacrow@cliftoningram.co.uk](mailto:tinacrow@cliftoningram.co.uk)

For information regarding Commercial Property, please contact Chris Baggs, [chrisbaggs@cliftoningram.co.uk](mailto:chrisbaggs@cliftoningram.co.uk)

## WE INVITE YOU TO JOIN US AT OUR WILLS & INHERITANCE TAX SEMINAR

In these harsh economic times, protecting your family and preserving your assets through careful planning becomes even more important.

### Topics

- Wills and inheritance tax
- Inheritance disputes
- Long term planning and Powers of Attorney
- Tax planning and asset protection
- Open forum: Question & Answer

### Date

Thursday 12th May 2011

### Time

Morning session: 10.30 am - 12.30 pm and  
Afternoon Session: 2.00 pm - 4.00 pm.  
Refreshments will be served

### Venue

St. Anne's Manor, London Road,  
Wokingham, RG40 1ST.

### RSVP

This popular seminar fills very quickly.  
Please contact us to reserve your place.

Email: [joannereader@cliftoningram.co.uk](mailto:joannereader@cliftoningram.co.uk)

Phone: 0118 978 0099

Address: 22 - 24 Broad Street,  
Wokingham, Berks, RG40 1BA

# WILL YOU OR WON'T YOU?

In essence, a Will is the tool that allows you to pass on your possessions to benefit others after your death.

The only certain way to ensure that your spouse, partner or relative, etc, inherits what you intend is by making a Will. If you die without having made a Will, the Intestacy Rules apply in an arbitrary manner; particularly if there are no children. This may lead to your spouse having to share your estate with relatives (e.g. brothers and sisters, aunts and uncles) whom you may never have intended to benefit.

At present, the Intestacy Rules do not recognise cohabitants.

Therefore, if you live with your partner and die without having made a Will, your partner will not automatically inherit any of your estate. The estate will instead pass to your surviving family (i.e. children, parents, brothers and sisters) and your partner will have to make a claim on the estate claiming financial dependence, if appropriate.

If you have children together with your partner then they will automatically inherit the estate, and both your partner and your children will have to get separate legal representation in order to fight for a share of the estate. This is expensive and obviously a situation that should be avoided. A simple Will is all that is needed to ensure that your partner and your children are provided for:

Homemade Wills should be treated with caution and should only be used in the most straight-forward of circumstances. Some homemade Wills can be disastrous. As practitioners we have seen many examples of where things have gone very wrong. For example, people omit to cover the position if the main beneficiary does not survive or refer to assets that are not owned on death. Instead, have your Will drafted by a properly qualified professional – in particular, look to a member of the

Society of Trust and Estate Practitioners (STEP), whose members are specialists in this field and can give expert advice. Our Tax Planning Wills and Probate department has 8 STEP members.

By making a Will you can:

- appoint Executors of your choosing to deal with your estate.
- provide for specific funeral arrangements.
- safeguard your minor children's interests (i.e. children under 18 years of age) by appointing legal guardians to care for them if both parents have died, e.g. in an accident.
- pass on personal items such as jewellery, paintings and heirlooms.
- benefit good causes by leaving a legacy or share of your estate to charity, free of inheritance tax.
- make provision for complex family arrangements, for example to include children from previous marriages.
  - protect assets using trusts against the possibility future generations should suffer financial or matrimonial difficulties, or if the beneficiaries are not mature and responsible enough to manage large sums of money themselves.
  - direct your business interests (such as shares in a family company or a farm) to those intended, e.g. a son or daughter who has come in to the business.

Making a Will need not be expensive. Most Solicitors and STEP members charge a reasonable fee for a straight-forward Will. Where the Will achieves valuable tax savings this will normally be reflected in the fee, but the tax savings in making a thoroughly considered Will could be substantial.

## [ GET INTOUCH ]

For any questions regarding Wills, please contact Peter McGeown ([petermcgeown@cliftoningram.co.uk](mailto:petermcgeown@cliftoningram.co.uk)).



[ INDUSTRY RECOGNITION ]

# OUR RECOGNITIONS

## LEGAL 500

The Legal 500 is the largest and most in-depth survey of the UK legal market. Their team of researchers independently review the performance of more than 800 law firms and we have again been recognised in this listing of top legal firms.

## CHAMBERS UK

The Chambers Guide lists the top lawyers and provides independent rankings for the legal profession in all the main areas of practice. We have been recognised in this well respected legal directory.

## GOOD LAWYERS GUIDE

The Good Lawyers Guide is an independent guide to solicitors and lawyers in England and Wales. Client reviews have mentioned several of our firm's staff including Jonathan Davis, Carlton Rae, Tina Crow, Ian Graham, Marilyn Young and James Dyson.

# STAFF RECOGNITION

Clifton Ingram is proud to sponsor the prizes for the annual Wokingham Half Marathon. The event took place on 13th February in the cold and the wet.

A massive pat on the back to our valiant runners, Sally (Eat my Nikes) Newton, Ray (No Nonsense Jogging) Joshi and Helen (Speedy Gonzales) Goodchild who all completed the

course without injury.

Helen (Speedy Gonzales) was true to name taking a mere 1 hour 49 mins 50 secs to complete the course. Nike eating Sally Newton followed on with 2 hours 48 secs, and Ray Jogging Joshi jogged past the line at 2

hours, 8 mins and 28 secs.

Our runners' sponsorship generated the sum of £930 - an impressive achievement! All monies were donated to Cancer Research. Well done!



Daisy Randall our Reading office apprentice, has achieved the level of Sergeant with the Royal County of Berkshire Army Cadet Force.

Daisy, when not making herself indispensable in the office, passed the Senior Cadet Instructors Course qualifying her to teach younger cadets. Daisy has been preparing for the course for 6 months.

**Congratulations to all our winning staff!**



Helen (Speedy Gonzales) Goodchild



Ray (No Nonsense Jogging) Joshi

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