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CITATION

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GIVE WORKERS A BREAK

The recent employment law case of Grange v Abellio London Ltd was about workers' entitlement to take at least 20 minutes' rest after six hours' work. It looked at when an employer will, and will not, be said to have denied a worker that right.

Mr Grange's working day was eight and a half hours long. Although that was said to include a half-hour lunch break, the demands of Mr Grange's job made it difficult for him to take that break. Then things changed.

His working day went from eight and a half hours to eight hours – the idea being that he should work through without a break and finish half an hour earlier. He went on to lodge a grievance; he had been forced to work without a meal break, he said, and that had affected his health.

An unsuccessful tribunal claim followed. The employer said they had not denied Mr Grange his entitlement to breaks because, for there to be a refusal, Mr Grange needed to have first tried to exercise his right. He needed to have asked to take his breaks.

The Employment Appeal Tribunal thought otherwise. An employer can be said to have refused a worker's right to a break even where no request had been made. Having working arrangements that don't allow the worker to take their rest breaks could be such a situation. Workers can't be forced to take their breaks, but they must be able to take them if they choose to and employers have a proactive role in making sure that's the case.

It may be worth reviewing your working arrangements – particularly perhaps in the context of those workers who don't ordinarily take breaks. Remember that you won't be able to get out of trouble by arguing that they hadn't asked for them.

[GET IN TOUCH]

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[PROPERTY]

BEWARE THE

Conveyancing solicitors and their insurers have been alarmed to read a judgement in a recent legal case, Dreamvar (UK) Limited v Mishcon de Reya, where Mishcon de Reya, a very reputable London firm of solicitors, was found liable to pay more than £1million for breach of trust, after its client was duped in to buying a London property from a tenant fraudulently posing as the owner.

The brief background is that Mishcon de Reya acted for Dreamvar in the purchase of a property from an imposter purporting to be the registered owner of the property. The seller was represented by a firm of solicitors and on completion, Mishcon de Reya, on behalf of the buyer, transferred the purchase monies to the seller's solicitors in the usual way who in turn passed the money on to their client, the imposter. By the time the fraud was discovered, the fraudster had disappeared with the money. Dreamvar did not become the registered owner of the property and had paid £1million for nothing.

What has concerned conveyancers and their insurers is that the Court found that Mishcon de Reya had not acted negligently but determined that there was an implied duty in Mishcon de Reya's retainer that they would only release the purchase monies on a genuine completion of the purchase and hence Mishcon de Reya had acted in breach of trust. Persuasive in the judgement was the feeling by the Judge that someone had to pay to compensate Dreamvar and Mishcon de Reya's insurance pockets were deeper than those of the seller's solicitors, even though the "seller's" solicitors were criticised for not carrying out their verification of ID duties well enough.

The case is being appealed because of course solicitors will verify their own clients' ID but how can they be held responsible if someone other than their client is a fraudster? It seems that now conveyancing solicitors are put in the impossible position of having to be not only lawyers but also fraud detectors and experts in identity.

However, there are often warning signs for fraudulent property transactions with some of the main red flags for caution being:

- Unoccupied properties
- Seller living abroad
- A mortgage free property
- Relatively high value properties
- An impatient seller who wishes to push the transaction through at an unseemly speed
- A seller who doesn't seem to know much about the property

If you are buying a property, be alert to these risk indicators and let us know if something just doesn't feel right. It is a truism that if something doesn't feel right, it often isn't!

[GET IN TOUCH]

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FAKE SELLER

[COMMERCIAL]

TRADERS BEWARE

WHY ARE TERMS AND CONDITIONS SO IMPORTANT?

In an attempt to save on costs, there is a temptation for companies to draft their own terms and conditions, but this can mean businesses are trading on unsatisfactory terms and leaving themselves at risk. Sadly, business owners often only realise that the cost of ensuring that they are trading on watertight terms pales into insignificance compared to the cost of litigating over inadequate terms once it is too late.

Not only is it important to get it right from the outset, established businesses must take steps to regularly monitor and review their terms and conditions to ensure they comply with ever-evolving rules and regulations.

1. Certainty

Carefully drafted terms and conditions will clearly set out the position of all parties and remove any ambiguity as to what is expected from each party. If questions are raised, having a set of comprehensive terms in writing enables you to point to the answer and avoid costly disputes.

2. Legal Protection

As a business owner, you will be sure what commercial and practical terms you want when you contract with other parties, but without professional advice it is easy to overlook important legal provisions such as limiting liability and the passing of title and risk. Without such clauses you are not sufficiently protecting your business.

3. Compliance with the Law

The law is constantly being updated and it is essential to keep on top of your terms and conditions to ensure that they are compliant.

4. Incorporation of Terms

Terms and conditions will only be effective if they have been properly incorporated into the contract. Do not make the mistake of having watertight terms which do not apply to the contractual relationship with your clients.

As well as drafting your terms and conditions, we will advise you on the practical steps you can take to give you the best chances of successfully incorporating them into your contracts.

[GET IN TOUCH]

If you would like to speak to a member of our Corporate Services Team about having new terms and conditions drawn up or if you would like us to review your existing terms to ensure they are fully compliant with the increasing plethora of legislation please contact

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THE RESIDENCE NIL RATE BAND AND TRUSTS

Recently a leading national newspaper reported that changes to inheritance tax (the introduction of the residence nil rate band 'RNRB' on 6th April 2017) should cause people to review their Wills urgently, as, if not, they could potentially miss out on the benefit offered by the new RNRB. The report referred specifically to Wills incorporating trusts.

The article has, understandably, caused concern amongst the public. However, the introduction of the RNRB does not necessarily mean that you need to change your Will. Presently, the first £325,000 of an estate passes free of tax, meaning that no inheritance tax is payable up to this limit (depending on any lifetime gifting). This is called the 'nil rate band'. Gifts to spouses pass tax free. Where the first spouse to die leaves their entire estate to the surviving spouse, on the survivor's death, the unused nil rate band of the first spouse can be transferred and applied to the survivor's estate. Thus, on current figures, up to £650,000 can pass without incurring an inheritance tax liability on the second spouse's death (again depending on any lifetime gifting). This is known as the transferable nil rate band.

The new RNRB means that an additional sum can be free of tax. The amount of RNRB available will increase over time, but will be a maximum of £100,000 for the tax year 2017-18 for each spouse.

However, the RNRB will only apply where someone dies on or after 6th April 2017 owning a home (or a share of a home) and the home (or share of it) is inherited by their direct descendant(s).

The newspaper article raised concerns that, if a Will includes a trust, then, if the home (or share of it) passes to the trust, and not a direct descendant, the tax advantage will be lost.

Whilst this is technically correct in principle, it is far from the end of the story. The Trustees have the power to terminate the trust (or part of it) and decide which of the Beneficiaries named by the deceased may benefit from the trust fund and how. This might be the surviving spouse or perhaps the children. If this is done within two years of death, the distribution of the trust fund is treated as if it were written into the Will itself, i.e. that the gift was made by the deceased. Importantly, this can all be done without the consent of the beneficiaries. One of the problems wrongly highlighted by the newspaper article was that, if the trust has potential beneficiaries under 18 years of age, nothing can be done, but this is not the case.

To summarise, the introduction of the RNRB does not automatically mean that it is no longer appropriate or desirable to include trusts in Wills. Neither do these tax changes mean that such a Will must be changed as a matter of urgency.

We would recommend, however, that people review their Wills on a regular basis, particularly when there are changes to their own personal circumstances, to see whether it is appropriate to make any amendments.

Of course this article just gives a broad overview of the inheritance tax rules and should not be relied upon as specific advice.

[GET IN TOUCH]

For further information and for advice tailored to your personal circumstances, please contact

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[PROPERTY]

WHY DOES MY SOLICITOR MONEY LAU

In the bad (or, depending on your point of view, good) old days, it was quite difficult to steal someone's land from them and sell it to someone else. In the 1850's, the government of the day had the bright idea that it could make the buying and selling of land as easy as buying or selling goods, and in 1862 created the Land Registry which, with various re-vamps from time to time, holds sway today under the last Act of Parliament, the Land Registration Act 2002, when the government had the even brighter idea of dispensing with title documents and relying on the Land Registry's computer.

Now, you might think that you own your home because you bought it from the previous owners – but you'd be wrong. You only own it because the Chief Land Registrar says so (in the "proprietorship register") – and, if he doesn't say so, you don't. All you need to do in order to prove you are entitled to sell it is to tell the buyer to look at the register. All I need to do, in order to sell it while you are away on holiday and pocket the cash, is to persuade some gullible solicitor that I am you and, worse still, from your point of view, he succeeds in duping some innocent buyers into buying it, they get registered and – you've guessed it – they own it (not you) because the Chief Land Registrar says so.

TREAT ME AS IF I WERE A NDERER?

There is one quite useful trick – which doesn't cost a penny – which is to Google "Land Registry" and, in the search box type "Property Alert", pan down to "Track Changes to the Register" and click on the "sign up to get property alerts" link, and then create a new account following the instructions on screen. You will then get an e-mail from the Registry and a link to activate your account. If you know your "Title Number", you can then add your property to the account you have created. The Land Registry will then send you an e-mail if there is any activity relating to your title. It won't stop anything untoward from happening, but it will give you a fighting chance of intervening before it does.

There is another precaution you can take, which costs you a £40 Land Registry fee if you live at the property (or it's free if you don't live there e.g. a property you rent out), which is to register a "restriction" on your title. The restriction says that no transaction purporting to have been signed by you is to be registered unless a "conveyancer" (solicitor or licensed conveyancer) certifies that they are satisfied that it was signed by you. That isn't absolutely bullet-proof either, because the gullible solicitor I succeeded in duping might be unwise enough to do just that – which brings me to the point: why your (non-gullible) solicitor treats you like a money launderer. If you are, he will end up carrying the can for it when the real you gets back from holiday!

[GET IN TOUCH]

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[FAMILY LAW]

MEAL TICKET FOR LIFE

Last month saw the issue of spousal maintenance in the headlines again.

Mr and Mrs Mills were married for 13 years and had one child. At the end of the marriage, in 2002, Mrs Mills got nearly all the liquid assets of £230,000 and maintenance for life of £1,100 per month.

Mrs Mills was an estate agent and wanted to climb the property market, but in the process kept increasing her borrowing until the inevitable happened and she borrowed more than she could afford. She now has no capital and is living in rented accommodation working only 2 days a week as a beautician. She also has health problems. Whilst the court was critical of the way in which she lost her capital there has been no suggestion that she is wanton in her expenditure.

Mr Mills by contrast is a sensible business man. He prospered and remarried and had another child. He owns a property and was said to be able to draw up to £200k pa from his business. Mr Mills wanted to stop paying maintenance - a clean break. Mrs Mills wanted more financial support.

The court ordered that Mrs Mills' maintenance was to increase to £1,441 per month. No doubt Mr Mills can afford it but it does appear to fly in the face of the current trend away from an expectation for life time support. Every case turns on its facts and the full law report has yet to be published. However it is another example of the levels of uncertainty around this issue.

It is this uncertainty that Baroness Deech's Divorce (Financial Provision) Bill seeks to address by limiting spousal maintenance claims to 5 years. However even that is subject to extension if the receiving party is likely to suffer serious financial hardship. What that means is of course open to interpretation. As always what is "fair" is not always easy to judge and, a bit like beauty, is "in the eye of the beholder".

[GET IN TOUCH]

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