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CITATION

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ZERO TOLERANCE

As the debate over the rights and wrongs of zero hours contracts rattles on, the law has been changed to do away with one particular bone of contention.

Zero hours contracts are used when an employer cannot or does not want to guarantee a fixed number of hours each week and pays the worker only for the work carried out. This means pay may vary greatly from week to week.

Contrary to popular belief, zero hours contracts are not a new phenomenon and approximately 750,000 people are on these types of contracts in the UK.

The law has now changed to ban exclusivity clauses in zero hours contracts, which means that employers can no longer include terms that prevent workers from working elsewhere. That type of clause is now unenforceable.

This has been a talking point for some time and is expected to curb some of the downsides of these types of contracts, enabling workers to take advantage of additional revenue streams. We don't yet know what measures will be put in place to tackle any employers flouting the new provisions, but details are sure to emerge before too long.

[GET IN TOUCH]

For more information on employment contracts please contact Alison Gair on 0118 912 0257 or email alisongair@cliftoningram.co.uk

[COMMERCIAL PROPERTY]

IS YOUR BUILDING IN ORDER?

The commercial property market is seeing an increased level of investment activity against a background of high returns, prompting many property owners to start prepping for sale.

So what are some of the issues you should be aware of prior to putting your property on the market?

Energy Performance Certificate

With certain exceptions every commercial building that is now sold or let must have an Energy Performance Certificate (EPC). You risk a financial penalty for failing to make an EPC available to a prospective buyer or tenant. The certificate is designed to show the energy efficiency of the Building against comparative building bench marks of a similar age and usage.

Value Added Tax

Any purchaser of a building will need to know whether VAT is payable in addition to the price. Adding an extra 20% to the price of a building could have significant implications to a purchase. There are further implications to a purchaser to the extent that Stamp Duty Land Tax is also payable on any VAT paid as part of the Purchase Price. As a Seller of a commercial property it is important to establish at a very early stage of a transaction whether or not there has been a previous option to tax made to HMRC in relation to the property such that it may trigger VAT becoming payable on the Purchase Price. As it can take HMRC some three or four months to check their own records a Seller is well advised to establish this from their own records prior to going to market.

Asbestos

The Control of Asbestos Regulations 2012 imposes obligations on the relevant "duty holder" to ensure that there is an asbestos survey in place for non-domestic premises (with certain exceptions) and to manage any risk arising. Duty holders who fail to comply with the regulations could face large fines and/or imprisonment. It will be fundamental to any purchaser of a building in respect of which the regulations apply to want to make sure that the Seller has an appropriate survey in place.

Fire Risk Assessment

Since 1 October 2006 and the introduction of the Regulatory Reform (Fire Safety) Order for most non domestic premises used or operated by employers, self-employed and the voluntary it is now the responsibility of the "responsible person" to have carried out an assessment of the risks to relevant persons; to identify the general fire precautions needed at the premises; to keep the fire risk assessment under review and provide training to employees on fire risks and safety measures. Failure to comply could lead to criminal prosecution and can result in fines up to £200,000.00.

Capital Allowances

From 1 April 2014 as a consequence of changes made as part of the Finance Bill 2012 it has become mandatory to document whether the buyer or seller of a building will benefit from any unclaimed capital allowances at the time of sale. Any purchaser of a building is likely to want to know details of the seller's capital allowance claims history on every asset within the property; details of the capital allowances history of any prior owner; details of capital contributions made to tenants or received by freeholders and written confirmation of the pooled amount relevant to the property. Failure to deal with the issue could prejudice any tax refund that may be properly due.

As well as the above during a commercial property transaction there will of course also be the need to investigate title, consider the planning history of the site and any relevant planning constraints and the terms of any occupational leases/ tenancies where the building is occupied.

The Commercial Property team at Clifton Ingram would be delighted to assist you in putting your building in order if you are a seller or ensuring the property that you are buying or investing in is in order.

[GET IN TOUCH]

For further information please contact Ashley Barnes on 0118 912 0306 or email ashleybarnes@cliftoningram.co.uk

AGREEING YOUR SHARE

Clifton Ingram's Dispute Resolution department has recently seen a rise in the number of disputes arising between company shareholders where the parties have not entered into a shareholders' agreement.

In particular, this is becoming a common issue in companies with two shareholders where each shareholder owns 50% of the issued share capital of the company and both shareholders are the only directors of the company. Such companies are known as "deadlock companies" because if the shareholders cannot resolve the matter in dispute, neither shareholder has a sufficient enough shareholding to wind up the company or to make and push through the decisions required to properly run and operate the company. This has the potential to create huge difficulties for the shareholders and can bring the company to a standstill, devaluing the shares the longer the dispute continues.

Such issues can be avoided if the parties enter into a shareholders' agreement containing well drafted provisions setting out a process to be followed in the event that such a deadlock occurs. Having a shareholders' agreement in place allows shareholders to decide precisely how matters should be resolved from the outset. This is by far easier and cheaper than the costs of engaging lawyers to unlock the stalemate or having to take the matter to court for resolution.

Of course, shareholders' agreements are not only necessary for deadlock companies and resolving disputes is not their only function:

- Shareholders' agreements can be used to provide protection for minority, majority and equal shareholders alike. For example, an agreement can include "drag along rights" which are rights for majority shareholders to accept an offer to buy their shares and to compel the remaining minority shareholders to accept such an offer. The converse of this is the inclusion of "tag along rights" which enable minority shareholders to compel majority shareholders who wish to sell their shares to procure an offer for the minority shares as well.
- A shareholders' agreement can include "pre-emption rights" (i.e. rights of first refusal) for shareholders in the event that any other shareholder wishes to sell their shares. If the existing shareholders do not take up their right to purchase such shares, further provisions in the agreement can prevent a transfer taking place without shareholder approval. Such provisions prevent shares from falling into the wrong hands.
- Shareholders' agreements can also include pre-emption rights in relation to a deceased shareholder's shareholding. Again, such rights enable existing shareholders to control movement of the shares and prevent shares from falling into the wrong hands. At Clifton Ingram, we often work in conjunction with our Wills & Probate department to ensure that our bespoke shareholders' agreements dovetail with our client's Wills, providing comfort and reassurance to all parties involved.
- Unfortunately, it is not uncommon for company shares to be a point in dispute between spouses during the divorce process. A shareholders' agreement can ensure that shares are not transferred to an ex-spouse on divorce and further provision can be made for what happens when two shareholders of the same company are married and subsequently divorce. Without such provisions, a company is left wide open to a plethora of issues.

Needless to say, we would advise anyone setting up a private limited company or investing in a private limited company to enter into a shareholders' agreement.

In an ideal world, a shareholders' agreement will spend most of its life in a filing cabinet and rarely will it need to be consulted. However, they give great comfort and reassurance to shareholders because not only do they provide resolutions in the unfortunate event of a dispute, but they can also set out a clear and concise process for resolving those disputes and provide answers to questions that may otherwise lead to costly litigation.

At Clifton Ingram, all our shareholders' agreements are bespoke documents drafted specifically to our client's needs.

[GET IN TOUCH]

If you are interested in having a shareholders' agreement drawn up or would like to speak to a member of our Corporate Services department, please contact Bill Annan on 0118 912 0227 or email billannan@cliftoningram.co.uk

[WILLS AND TAX PLANNING]

BRUSSELS AND A

Do you, or does someone you know, own property or assets abroad? If so, read on, as the world is changing!

Many people own property abroad, with Spain, France and Portugal being popular locations for holiday homes or retirement properties. Increasingly many individuals own other taxable assets abroad, for example, bank accounts, stocks and shares, shares in private companies, and so on.

This has always caused problems for clients and their solicitors alike in terms of ensuring that assets abroad pass on death as the owners would wish them to. Foreign legislation is often very poorly understood and often, when involving European forced succession rules which prevent you leaving assets to individuals whom you wish to benefit, creating unexpected and unjust outcomes. On August 17th 2015 Regulation (EU No. 650/2012) "The Succession Regulation" will come into force. This is often known by the catchier handle of **"Brussels IV"**.

The new regulation recognises that many individuals own assets across many countries in Europe and, on death, conflicts of law can arise and a great deal of time and expense can be spent in trying to sort out the rules and regulations of which country should apply to the distribution of an estate. Frequently, different sets of rules will apply depending upon whether the assets are fixed (for example a flat or a house) or not fixed (for example bank accounts, stock and shares).

From 17 August 2015 those European countries which have opted in to Brussels IV will be able to apply the law of the country of "habitual residence" to the administration of a deceased person's estate. . Furthermore, it will be open for an individual to choose (in his Will) the "applicable law" which will apply to his estate. Such an individual could choose

ASSETS ABROAD

in his Will that the law of his country of nationality (for example England and Wales) should apply even though, perhaps, he is resident abroad. This is likely to be very important for British individuals who own assets abroad, especially if they also live there.

All EU countries have opted in to Brussels IV with the exception of the United Kingdom, the Republic of Ireland and Denmark.

The refusal of the United Kingdom to become involved in Brussels IV is based on one part of the regulation which provides that gifts made by individuals during their lifetime would be "clawed back"; the Government felt this would have given rise to a very significant impact on the ability of UK individuals to give their assets (during their lifetime) to whoever they choose. In Europe, where many local laws provide that an individual must leave part or all of his estate to certain close relatives, making lifetime gifts is a method of trying to circumvent these rules and hence clawback is appropriate but it would have sat very uncomfortably with the principle of complete freedom which applies in England and Wales.

Nonetheless, it appears that nationals of United Kingdom, the Republic of Ireland and Denmark will still be able to choose an applicable law in their Wills and (if that is not done) have the law of their "habitual residence" applied to the administration and distribution of their assets within the EU.

There is however some significant doubt as to whether this will actually be the effect of Brussels IV so far as British citizens are concerned. First, the legislation is very loosely worded and open to a number of different interpretations. It is extremely unlikely that this is going to be resolved other than by an application to the European Court of Justice in an appropriate case which may not arise for several years.

Second, the principle of renvoi is revoked by the new legislation. The renvoi principle provides for circumstances where the law of one country tries to "throw back" the administration and distribution of the estate on to the law of another country. However, because of the uncertainty of the drafting of the legislation it is not clear whether this will apply in England and so simply relying on the habitual residence test is unlikely to be satisfactory for many individuals who own assets abroad and choosing an applicable law in their Will is likely to be the preferred option.

Action

Those individuals who own assets in the European Union should review their Wills urgently to see whether, at the very least, they should be revised to incorporate a choice of applicable law.

[GET IN TOUCH]

For further information please contact Peter McGeown, Partner in charge of our Tax Planning Wills and Probate Department on E: petermcgeown@cliftoningram.co.uk or T: 0118 978 0099

[DIVORCE AND FINANCE]

CUTTING THE FINANCIAL TIES

The recent Supreme Court case of Wyatt v Vince has raised much debate about the importance of dealing with finances arising from marriage at the time of divorce.

Because of the very broad discretion of the courts in matrimonial cases, failure to do so could lead to former spouses, many years later, making an application to the Court for a financial order. In this case Kathleen Wyatt is seeking money from her multi-millionaire ex-husband Dale Vince, more than 30 years after the couple split and 23 years since they formally divorced in 1992.

The brief facts of the case are that during their remarkably brief married life, the couple led a 'travellers lifestyle' and it was only after their separation that Mr Vince amassed a £60m fortune as the sole shareholder of green energy company Ecotricity. As the couple had no assets at the time they split, no "financial order" was made as part of the divorce. Ms Wyatt now claims she is entitled to £1.9m–£550,000 plus a £1.35m living allowance.

In 2013 Mr Vince successfully applied to the Court of Appeal to have her claim struck out on the basis that it stood little chance of success. Ms Wyatt appealed that decision and the case went to the Supreme Court. The Supreme Court unanimously allowed her appeal.

The rules that govern the Family Court only allow for a case to be struck out if it has no reasonable grounds or it is an abuse of process. Much to the surprise of many divorce lawyers, and the fear of some wealthy divorced business people, the Supreme Court held that, although her application would face formidable difficulties, there was the chance of "comparatively modest success" for Ms Wyatt such that her application did not amount to an abuse of process.

The Court was however careful to say that whilst she might be entitled to claim something an award of the size she was seeking was "out of the question". That is not to say she will not get anything. In this particular case, had she pursued her financial claims at the point of separation, there would likely have been a capital clean break at that point and thus with no opportunity for a second bite of the cherry. That, together with the extraordinary delay, is likely to reduce, or significantly limit, the size of her claim. The expectation is that she will rely on her much greater contribution to the upbringing of the couple's children (one son, who went to live with his father in 2001 and a daughter from an earlier relationship of Ms Wyatt but who was brought up by Mr Vince as a child of the family), over many years, with irregular and limited contributions from Mr Vince, in straitened financial circumstances; even as Mr Vince amassed his millions. Reference was made to an earlier case where the wife caring for 3 children received no support from a bankrupt husband but subsequently, when he inherited money, was able to take a share of that based upon her contribution in bringing up their children on her own.

Lawyers up and down the country will be eagerly awaiting the final outcome of this case. In the event of a large lump sum being ordered in Mrs Wyatt's favour this could lead to a flood of applications being made to the Court by former spouses. Having said that, it should not be forgotten that each case will be decided on a case by case basis and before any application is made good legal advice will need to be sought as to the prospects of making a claim. Not many cases will have the same extreme facts as this one.

This landmark case is a cautionary warning for everyone no matter what their financial circumstances are to ensure that a financial order is made at the time of divorce or as soon as possible after it so as to avoid former partners making opportunistic claims, possibly years later for a share of wealth that has been earned after divorce, and in some cases (as here) for a payback, when the good times fall in, for putting up with all the bad times. Even if their claims have little intrinsic merit there is a "hassle factor" as Mr Vince found out; he has had to pay £125,000 of his ex-Wife's legal fees.

If you are going through a divorce, it is in your interest to agree a financial settlement expeditiously and as amicably as possible, especially if you are young and/or you have potentially lucrative careers ahead. It's never too late even if you are divorced and do not have a financial order in place then you should urgently review your situation and seek legal advice. Remember; whatever the outcome, for Mr Vince, he will still be a rich man at the end of it; for others a delayed outcome could have far more catastrophic financial implications.

You should also ensure that all official documents are stored in a safe and secure place – especially those which are as vitally important as a clean break order. In the case of Wyatt and Vince, so much time had passed that both court and solicitors documents relating to their divorce had been destroyed and neither party had kept copies of what had, or had not, been agreed.

[GET IN TOUCH]

For more information on Divorce and Family matters please contact Anne Deller on 0118 978 0099 or Kate Grant on 0118 957 3425.

STAMP DUTY WINNERS AND LOSERS

Last year the Government announced a reform of what had been called "one of the worst-designed taxes in Britain"—Stamp Duty. Although the changes meant there were still losers as well as winners, the vast majority of residential property purchases now benefit from lower tax.

The old Stamp Duty system

There was a simple problem in the past. If you bought a house costing £249,999 you paid £2,499.99 in tax. If your house cost £250,001 you paid £7,500.00 in tax. That's £5,000 more for a house that cost just an additional £2.

Stamp Duty was charged at successively higher percentage rates on the entire cost of the property. For this reason it was often criticised as a "slab tax".

Another problem was that the tax bands hadn't changed in years, so as house prices increased a lot of 'average priced' homes in the market fell into a much higher tax brackets.

Stamp Duty Rates pre-4 December 2014

HOUSE PRICE	STAMP DUTY PERCENTAGE
Up to £125,000	0%
£125,001 to £250,000	1% of entire purchase price
£250,001 to £500,00	3% of entire purchase price
£500,001 to £1,000,000	4% of entire purchase price
£1,000,001 to £2,000,000	5% of entire purchase price
Over £2,000,000	7% of entire purchase price

The new Stamp Duty system

Under the new rules buyers only pay the rate of tax that applies to the amount of the purchase price that falls within the particular tax band - like income tax. Thus although the percentage rates appear higher in some cases, the overall charge will usually be lower.

For example, under the old system if you bought a house worth £275,000, you would have paid 3% on the entire price or £8,250 of tax. Under the new system, you'd pay nothing on the first £125,000, then 2% on the next £125,000 and 5% on the final £25,000 – or £3,750 of tax. So you'd save £4,500 under the new rules.

Generally, only people who buy homes worth more than £937,000 (about 2% of households) will pay more in tax.

You can find a Stamp Duty calculator on the Residential Property page of Clifton Ingram's website.

Stamp Duty Rates post- 4 December 2014

HOUSE PRICE	STAMP DUTY PERCENTAGE
Up to £125,000	0%
£125,001 to £250,000	2% on the property value that falls in this band
£250,001 to £925,000	5% on the property value that falls in this band
£925,001 to £1,500,000	10% on the property value that falls in this band
£1,500,001 and over	12% on the property value that falls in this band

[GET IN TOUCH]

For more information about Residential Property contact Tina Crow on 0118 912 0259 or tinacrow@cliftoningram.co.uk

DON'T FEED THE TROLLS

Trolls no longer live in caves or under bridges; they are alive and unfortunately breeding quite well on the Internet.

In Internet slang, a 'Troll' is a person who sows discord on the Internet by starting arguments or upsetting people, by posting inflammatory, extraneous, or off-topic messages in an online community (such as a newsgroup, forum, chat room, or blog) with the deliberate intent of provoking readers into an emotional response or of otherwise disrupting normal on-topic discussion.

The Government brought in new laws in 2014 in the Criminal Justice and Courts Bill which meant convicted Trolls could face up to two years in jail. Since then, convictions for 'Trolling' crimes have increased hugely, with five a day found guilty of offences.

There are three main ways that Trolls are prosecuted at the moment.

1. In England and Wales, the Malicious Communications Act 1988 covers threats or grossly offensive or indecent messages that are intended to cause "distress or anxiety". Sean Duffy was jailed under the act for 18 weeks in 2011 after he made "grossly offensive" comments about children who had killed themselves.
2. The Communications Act 2003 which applies across the United Kingdom. It overlaps with the 1988 Act as it applies to comments that are "grossly offensive" or of an "indecent, obscene or menacing character" and sent by means of a public electronic communications network that the sender knows to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another. It was used to jail a man who posted offensive messages aimed at the families of Jade Goody.
3. The Protection from Harassment Act 1997, which deals with stalking both on and offline. It applies in England and Wales, while Scotland and Northern Ireland have similar legislation. It can be pursued in both civil and criminal courts.

The police are often reluctant to get directly involved in online stalking, but there has been a rise in the police issuing warnings—known as a Police Information Notice—to suspected Trolls.

Where untrue comments are not sent exclusively to you but are made about you and posted to other individuals then there is also the option of bringing a civil action for defamation (libel). However this is normally only resorted to when the comments could cause a significant financial loss.

So what should you do if you become a victim of a Troll?

1. As soon as you become aware of the negative comment, begin to collect evidence (such as a screen capture) as this may be useful in any subsequent legal action.
2. Don't feed the Trolls – refuse to give them the attention they crave.
3. Report the abuse. Platforms like Twitter and Facebook have functions where you can block people, and report tweets as abuse.

If your Troll seems to be getting the upper hand then seek legal help before it starts getting you down.

[GET IN TOUCH]
For more information about defamation or internet trolling please contact Carl Rae on 0118 912 0209 or email carltonrae@cliftoningram.co.uk

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