NEWSLETTER Christmas 2010

Adams HARRISON solicitors

OF COURSE I LOVE YOU … BUT

The ground breaking case of Radmacher –v– Granatino finally reached the Supreme Court in October. This, you may recall, was an argument between a husband (French) and his wife (German). Always likely to be a toxic match you might think.

Before they married they signed a pre-nuptial agreement that in event of a divorce neither would claim wealth from the other. Fair enough? No, said the High Court awarding Mr. Granatino an eye-watering £5.6 million. His wife appealed successfully to the Court of Appeal and the Supreme Court has upheld the decision.

So what's the fuss all about? The decision has effectively advanced the status of the pre-nup and given a clear indication that the Courts will be less likely to ignore such agreements in future. This brings us into line with European attitudes and those in the US. The Supreme Court's decision has not changed the law, only Parliament could do that. However, the decision does mean that the Courts will now be more, rather than less, inclined to uphold pre-nuptial agreements.

It is important for couples getting married to get their pre-nups in place in good time. Handing your intended a pre-nup to sign a few days before you walk up the aisle will not work. Also full disclosure of assets remains a requirement of a pre-nup.

The Radmacher case involved hugely wealthy individuals where the sums involved justified a lengthy and costly legal battle ending in the Supreme Court. It does not follow that pre-nups are only for the millionaire set. I was at a wedding recently when the best man explained that the groom had eventually found what he was really looking for … a home owner. I hope the bride had protected her property with a pre-nup!

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HAVE YOU MADE YOUR WILL?

An intestacy arises when someone dies having failed to make a Will. A recent survey revealed that only 37% of those questioned had made a Will.

So why make a Will? The answer is that if you do not your estate will not pass to the people you choose but according to the pecking order set out in the Administration of Estates Act 1925.

The survey suggested that the law as it stands is wrong to disinherit surviving co-habitees simply because they have decided not to marry their partners. Also the survey found that there was significantly less support for second spouses who do currently inherit on intestacy.

It does seem odd that a person who has lived with their partner for many years, should be ignored, whilst a second spouse takes precedence over the children of the deceased by a first marriage.

I think that society and the way in which family relationships have developed over the years means that a change in the law of intestate succession is overdue. In the meantime the obvious solution is to make a Will and clear away the inconsistency and anomalies.

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HELP FOR LOCAL CHARITIES

(Kim Dalby, *left*, of Adams Harrison with Margaret Lee from St. Nicholas Hospice during this year's cheque presentation evening)

St Nicholas Hospice in Bury St Edmunds has received nearly £23,000 in donations this year from clients of local law firms participating in their Wills Week. Clients make donations in place of the legal fees for having their Will drawn up. This year Adams Harrison clients topped the list with donations of over £4000 going to the Hospice.

We thank all of our clients for their support this year. Without you we would not be able to assist local clubs and charities through donations and sponsorships. This Christmas the local charities we are supporting are the John Huntingdon Charity in Sawston, Mencap in Saffron Walden and Food Bank in Haverhill. We hope you all have a Merry Christmas and a Happy New Year.

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EQUALITY LEGISLATION

The Equality Act 2010 came into force on 1 October 2010. The act replaces the previous discrimination legislation in Great Britain concerning sex, race, disability, sexual orientation, religion or belief and age.

The Act is concerned with discrimination or harassment in relation to the following:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity.
- Race
- Religion or belief
- Sex
- Sexual orientation

These are known as "protected characteristics".

Direct discrimination occurs where due to a "protected characteristic" a person is treated less favourably than others would be treated.

Indirect discrimination is concerned with acts, decisions or policies (broadly speaking) which are not intended to treat anyone less favourably, but which disadvantage a group of people with a particular protected characteristic.

The Act provides for the first time:-

(a) protection for people discriminated against because they are perceived to have, or are associated with someone who has, a protected characeristic, e.g. carers

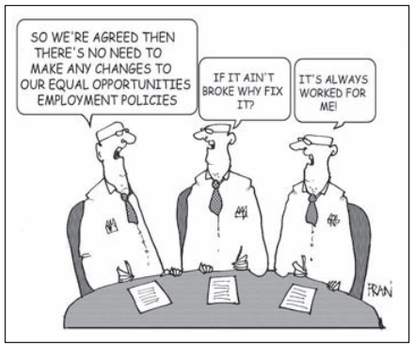
(b) protection for breast feeding mothers

(c) more difficulty for disabled people to be unfairly screened out when applying for jobs, by restricting questions about disability or health.

(d) that pay secrecy clauses are unenforceable

(e) new powers for employment tribunals to make recommendations which benefit the wider workforce

(f) that it is unlawful to instruct, cause, induce or aid someone to discriminate against, harass or victimise another person, or to attempt to do so.



If a successful claim is made the Tribunal can order compensation, make a recommendation (this is now extended to entire workforce and not just the claimant as previously) and/or it can make a declaration as to the rights of the claimant.

The aim of this legislation is to simplify and standardise the law relating to discrimination. It is however the biggest piece of discrimination legislation crated in this country.

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SAWSTON FUN RUN

On Sunday 9th May our team of staff and their families joined over 1,000 runners and walkers to raise money for local charities in the Sawston Fun Run (see photo above).

We are one of the co-sponsors for this event which has raised over £319,000 since it began in 1986 and is organised by the Sawston Rotary Club.

Sue Lawton - Practice Manager

LIFE AFTER HOME INFORMATION PACKS

On 21st May 2010 the legislation that requires a seller to provide a Home Information Pack when marketing a residential property was suspended.

However, on the same date a new regulation came into force – The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2010.

These new regulations include an obligation on a seller, notwithstanding the suspension of Home Information Packs, to commission an Energy Performance Certificate before marketing a property for sale. It is not necessary for an Energy Performance Certificate to be in place when a property is marketed, provided a seller has:

- instructed an Energy Assessor to provide an EPC, and
- paid the Energy Assessor or given an undertaking to pay.

A seller must also make reasonable efforts to obtain an EPC within 28 days of the property being marketed and this must be given to the eventual buyer/tenant free of charge.

Although the asset rating graph from the EPC must be shown on any sales particulars, it is the seller's responsibility to have this document in place to show to prospective purchasers/tenants.

Under the old Regulations for Home Information Packs, an EPC had a shelf life of three years. Under the new Regulations, it is valid for 10 years.

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PERSONAL INJURY LOTTERY

The debate continues to rage over whether or not there is in this country a "compensation culture". The debate was recently further fuelled by Lord Young of Graffham at the Conservative Party Conference who suggested that some personal injury advertising offers "a free lottery ticket where you win as you enter".

To some extent I am inclined to agree with his noble lordship. When I first came into the law Solicitors rarely advertised themselves at all. We were not permitted to accept referral fees for work and conditional fee agreements (no win no fee) had never been heard of. In those days we simply waited for clients to instruct us on personal injury claims and if we felt the claim was justified we got on with it.

Over the last few years a huge claims farming industry has grown up to which large numbers of solicitors now subscribe obtaining their personal injury work effectively by buying it for what is known as a referral fee.

Neither I nor my firm has ever paid anyone to send us work. I will never pay a referral fee for so long as I breathe. If I am to provide my services as a lawyer to my clients I would rather it was because they wished to instruct me than because they have been flogged to me on the open market by some claims referral agency.

I think it is important in an enlightened and civilised society that its members are not discouraged or dissuaded from pursuing legitimate claims for compensation where they have suffered injuries through the negligence or unlawful act of someone else. We have courts and judges to strike down bogus or unsustainable claims: that is what judges are for. They are also there to compensate innocent victims whether they be victims of road traffic accidents, accidents at work or clinical negligence. Invariably defendants are insured and provided with specialist lawyers to defend them against unjustified claims. The law places the onus on the Claimant to prove the claim rather on the Defendant to disprove it.

A recent survey by National Accident Helpline revealed that 57% of those surveyed believe that there is a "social stigma" attached to making a claim for compensation. That is a pity but it is clearly a consequence of the perceived "compensation culture". If there is such a culture then it is largely the product of the excessive level of advertising particularly on TV and radio combined with the previous Government's insistence that the ban on solicitors paying referrals fees should be removed. I along with many other personal injury lawyers of my generation would argue strongly for the reintroduction of a ban on referral fees. I am not sure that I could support a ban on advertising however odious I might think it is. After all we live in a free country and people should be left to make their own decisions.

Lord Young has also argued that current health and safety regulations are too onerous and should be relaxed. Having acted for clients who have suffered serious and permanent disabilities as a result of inadequate safety measures I would not be inclined to relax the standards that the State currently imposes on employers. There will always be injuries in the workplace but anything that serves to reduce such incidents should be retained and, indeed, strengthened if appropriate.

Doctors are no more infallible than any other profession. They carry a heavy burden of responsibility every day of their working lives. The cost of medical negligence claims is far too high and we all have a vested interest in bringing it down. The best way to do that is not by preventing victims from pursuing their compensation claims but by doing everything reasonably possible to prevent clinical "accidents" occurring in the first place.

Lawyers have an obligation to act responsibly and honestly in advancing their clients claims. We need have no fear of a compensation culture provided the law continues to act firmly and fairly to ensure that justice is done. In the meantime I will continue to offer the services of myself and my firm only to those clients who choose to instruct us because they believe that we can get the job done as well if not better than a firm of Solicitors that can only survive by buying in its clients.

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PLANNING UPDATE

The world is full of acronyms but perhaps none more so than in planning. There are LDFs, DPDs, AAPs, SPDs, S106 Agreements and many more. Some like RSS have gone. There is, however, a new one on the horizon though which clients ought to be aware of and that is CIL.

Successive governments have long had their ways of trying to extract their pound of flesh from the gains landowners can make in securing development permissions starting from Development Land Tax now long since confined to history. In fact, with the market as it is, the difficulty in raising capital, the obligation on land owners to contribute towards local infrastructure, the cost of laying on services and the potential clean up costs, the profits are not what they once were.

CIL (or Community Infrastructure Levy) is yet another expense. The levy, if a local planning authority want to charge it, will be based on the £ per square metre of net additional increase in the gross internal area of a building. It will be payable upon implementation of the planning permission.

The good news is that we are a little way off but the advice is – if you are thinking of developing land, whether by adding space to your house or a large scale operation you may be better off getting your application in now.

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ROUND UP OF LATEST NEWS FOR BUSINESSES

MINIMUM WAGE RATES

The new minimum wage rates from 1st October 2010 are:-

- For 16-17 year olds £2.64 per hour
- For 18-20 year olds £4.92 per hour
- For over 21 year olds £5.93 per hour

Also a special minimum rate of £2.90 per hour for apprentices under 19 or over 19 but in their first year of apprenticeship.

PATERNITY LEAVE

New regulations will enable fathers to take up to 26 weeks "additional paternity leave" to care for a child under the age of 12 months. Father must apply to his employee at least 8 weeks before the intended start of leave. Can't see much take up on this. All those nappies. Ugh!

LIABILITY FOR WORK EQUIPMENT

Employees are liable for injuries to employees caused by defective equipment (Provision and Use of Work Equipment Regulations 1998). However, the Supreme Court (House of Lords as was) has recently held that Northants County Council was not liable for injuries caused by a defective wooden ramp supplied by a third party over which the Council had no control (Smith –v– Northants CC) (2009).

HOLIDAY PAY

The European Court of Justice has ruled that workers on sick leave are entitled to paid holiday under the Working Time Directive and to payments in lieu for untaken holiday on termination of employment (HMRC –v– Stringer (2009). Regrettably the Court failed to say whether leave could be carried over from year to year, or whether the period of leave was four weeks or four weeks plus public holidays or whether the payments in lieu applied to contractual as well as statutory leave. Not good.

BRIBERY ACT 2010

The outgoing government's final gift to a grateful nation still fuming over the MPs expenses scandal. The Act comes into force in April 2011 and Section 7 will make employers liable for the acts of an employee even though unaware that the employee was bribing someone. Businesses will have a defence if they can show they had adequate procedures in place to prevent persons associated with them from committing acts of bribery. The Government's guidance on procedures is still to be published.

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FARMERS CORNER

Let's raise a glass to Mr. T. Gwilim a Welsh sheep farmer who has just defeated the Government in the Court of Appeal.

Mr. Gwilim claimed compensation because his production had been adversely affected by "agri-environmental commitments". I won't bore you with the arcane details of the Common Agricultural Policy's single payment scheme. No one actually understands them any way.

The important thing is Mr. Gwilim won his case. Scraping a living from farming sheep on the Welsh hillsides can be a tough job, so here's to you Mr. Gwilim.

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DEATH BY A THOUSAND CUTS

You can hardly turn on your TV or radio or open a newspaper without being assailed with talk about spending cuts. So I'll keep this brief.

The Ministry of Justice budget will be cut over 4 years by 6% from £8.9 billion to £7.3 billion. This will be achieved by closing Courts throughout the country and other economies including an expected £350 million cut in legal aid.

Given that the legal aid budget has remained static for the past 6 years slashing the budget will undoubtedly result in a significant reduction in access to justice. Inevitably it will be the most vulnerable in society who stand to lose.

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USE A SOLICITOR TO MAKE YOUR WILL

The Legal Services Board is currently conducting an investigation into the problems experienced by consumers wishing to make their Wills. The Board is inviting Solicitors to provide examples of the following problems caused by un-regulated Will-writers.

- Poor quality drafted Wills eg Wills that are either not valid or do not correctly reflect the Testator's wishes.
- Dishonest practices: these include "hard" selling techniques, such as "cold calling" members of the public, charging significantly more than the advertised price, refusing to leave the clients' home until receiving payment.
- Storage problems: failing to locate Wills, storing Wills inappropriately, excessive on-going charging for storage of Wills.
- Executorships: charging large up front fees for the promise of a later discount, Will writers having themselves or their companies as executors without explaining this to the consumer and the problems of naming an unregulated Will-writer as executor.
- Lack of information: failing to provide full and frank information about the services provided and the charges for those services.
- Fraudulent activity: e.g. the recent jailing of directors of the firm 'Willmakers of Distinction'
- Estate Administration – including problems caused by the activities of unregulated Will-writers.

Many Solicitors have clients who have used Will-writers and regretted doing so. We certainly have. If you have any concerns having used a Will-writer not regulated i.e. by the Solicitors Regulation Authority please contact me for advice on 01799 523441 or by e-mail m.pratlett@adams-harrison.co.uk

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WISHING A MERRY CHRISTMAS AND A HAPPY NEW YEAR TO YOU ALL

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