



Inheritance Tax... some good news!



The new Chancellor, in his first pre-Budget report, introduced the concept of transferable Inheritance Tax (IHT) Nil Rate Bands for married couples and civil partners. This simplified the existing law and will enable all couples to take full advantage of up to two times the IHT Nil Rate Band without necessarily having to set up Trusts following the death of one half of the couple. The new rules are particularly beneficial for those who have been widowed for some time.

Example: June has been a widow since 1980. On her husband's death she inherited the

whole of his estate.

On June's subsequent death her Executor can now claim two times the prevailing Nil Rate Band at that time.

On current figures this means no IHT is payable on the first £600,000 of June's estate. This is because two times the current Nil Rate Band of £300,000 can be claimed. (This example assumes that no lifetime gifts have been made.)

The new law contains, as you might expect, a lot of detail. The legislation, together with the explanatory notes, extends over 12 pages with a number of complicated formulas designed to cover every eventuality.

If we have already drafted a Will for you that contains an IHT Nil Rate Band Trust, you almost certainly do not need to change it. Our Wills are written on flexible terms and enable decisions regarding implementing the Trust, or simply advancing the assets outright to the surviving spouse, to be taken by the Executors within the 24-month period following the first death.

There may, at that time, be other reasons for implementing the Trust, such as protecting assets – half the house, for instance – from having to be used to pay for nursing home fees by the survivor.

The members of our Tax, Trusts and Estates team in Brighton,

Hassocks and Henfield have met to discuss the impact of the new law and are happy to talk with you if you have any concerns. They can also provide you with an illustration of how the new law affects your potential liability to IHT. To find out more, contact the team on 01273 324041.

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Adrian Bell

Notaries: What do they do then?

Nicholas J. Evans explains

A Notary is a qualified lawyer and a member of the oldest branch of the legal profession in the United Kingdom. Notaries are appointed by the Archbishop of Canterbury and regulated by its Court of Faculties. The profession's history goes back to early Roman law. Roman officials were generally known as 'scribae'. They spent their time taking



copies, translating official documents and drafting deeds, Wills and conveyances. At a later stage with the invention of shorthand, this led to the description of the scribae as 'notaries,' which is the origin of the modern title. The appointment of notaries passed from the Roman authorities to the Pope and following the Reformation in England to the

Archbishop of Canterbury.

The role of a Notary is a public one. The importance of this is that, whereas a solicitor has a client, a Notary has an overriding duty to the transaction as a whole and can in certain circumstances act for both parties. Another important difference is that a Notary acts as a public official and uses an individual seal and signature, which personally identifies the Notary. My Notarial seal is registered with the Foreign and Commonwealth Office and with many foreign embassies and Consulates. The process of notarising a document frequently involves the document having to be legalised by the Foreign and Commonwealth Office and various foreign embassies.

Nowadays, Notaries deal almost



exclusively with foreign documents. The documents themselves are varied and the form and style of the notarisation required differs according to the country they are going to. I frequently deal with Powers of Attorney for the purchase of property abroad, including Florida, France, Spain and now some of the Balkan countries and new E.U. countries such as Bulgaria and Romania. I am frequently asked to certify copies of documents for the Home Office or foreign embassies. Letters of invitation or sponsorship to India or South America are also quite common and all of these documents have to be dealt with individually using high levels of verification. Many of these documents are not in English and therefore require translation.

The work is interesting and varied and although there are some specialist ecclesiastical notaries (who work in the Church of

England) and Scrivener notaries (who work largely in the City of London on large commercial and shipping matters) most notaries are general notaries. The vast majority are also practising solicitors. If you want to know more about the history of the profession, the education and training of notaries and how to find a Notary, then the best place to look is the website of the Notaries Society at www.notariessociety.org.uk

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Nick Evans

Commercial Property Statute Update

No one likes financial surprises that they haven't budgeted for – and Landlords and tenants of commercial Leases are no exception. In order to avoid those unhappy surprises they must be aware of all obligations imposed upon them. It is important, therefore, to be familiar with the many statutory obligations that apply to commercial premises, which may not be expressly set out in the lease itself. There have recently been a number of developments with regard to provisions that affect commercial premises generally. Some of the main developments include:

The Control of Asbestos at Work Regulations 2002 require both landlord and tenant to manage the risk from asbestos within the property by ensuring that a suitable and sufficient assessment is carried out as to whether asbestos is liable to be present in the property and of the condi-

tion of any asbestos present. The results of such assessment must be recorded and steps planned out to manage the risk of asbestos found and this must be reviewed and revised at regular intervals.

The Regulatory Reform (Fire Safety) Order 2005 requires all responsible persons to carry out a fire safety risk assessment including any necessary remedial work. Failure to have this in place could invalidate an insurance policy. If an employer is in control of premises occupied by his or her staff that will trigger the need for an assessment. All tenants must have an assessment and any Landlord who retains control of the common parts (who will usually recover the costs via the service charge). The assessment must be a satisfactory one and the Government recommends an expert do it professionally. There are criminal sanctions

for failing to carry out such assessment.

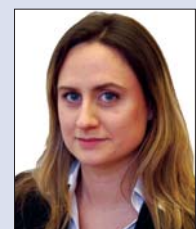
The Hazardous Waste (England & Wales) Regulations 2005. It is an offence to remove hazardous waste from premises unless the Environment Agency is notified or the premises are exempt when waste is disposed of in a licensed site. Waste is defined widely and includes much IT equipment as well as batteries, fridges and fluorescent tubes.

The Health Act 2006 introduced the concept of 'smoke free premises'. Any premises which are open to the public are now smoke free premises and landlords and tenants have a duty to put up no smoking signs or risk a fine in the Magistrates' Court.

The Construction (Design & Management) Regulations 2007 apply to all 'construction work,' which includes alterations, repair and main-

tenance of the building, site preparation, putting up pre-fabricated structures and installation of equipment. The regulations set out duties regarding the management of health and safety and must be considered alongside the Workplace (Health Safety & Welfare) Regulations 1992.

If you require advice on any of the above or any commercial property matter please contact Clare Osborn on 01273 385005
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Clare Osborn

Personal Injury: a solicitor's perspective

By Michael Hartley

As you may have read in our previous newsletter, Griffith Smith Farrington Webb has a department dedicated specifically to helping people with injury claims arising generally from accidents and clinical negligence. These accidents may include slipping and tripping accidents, accidents at work or road traffic accidents; or they may be the result of clinical negligence on the part of health professionals, such as doctors, dentists, midwives and so on.

The majority of the cases that we deal with tend to follow fairly similar patterns and procedures and, where necessary, are dealt with in the local county courts. However, once in a while, claims come along that are of a much more unusual nature. These claims might deal with less well-travelled areas of the law or issues of a particularly complex legal nature or they may deal with issues that are in a developing area of the law or involve important issues of public policy.

In some, unusual cases, following an appeal by one party or another, the matter may come before the Court of Appeal to be decided. In a very few instances, the case will reach the rarefied atmosphere of the highest court in the land, namely the House of Lords.

If he or she is lucky, a lawyer may get to bring a case to the House of Lords perhaps just once in their legal career and many never, in fact, get the opportunity to do so. As luck would have it, in recent months, in the manner of the proverbial London buses, I have had the good fortune to have not one but two of these more unusual



cases come along at once. Both of these cases have required the attention of the Law Lords to decide them.

In November I had a case before the Court of Appeal and another before their Lordships in the House of Lords itself. Both were dealing with issues where we were trying to change the law as it stands and set new legal precedent.



The first case, before the Court of Appeal, and recently reported in the Argus, is a very interesting case revolving around the issue of whether or not, and in what circumstances, the police

should be liable in damages to members of the public where they have failed to carry out their duties.

The second case is an abuse case against a local authority in the North of England and revolves around the length of time a Claimant has to bring court proceedings, known as the 'limitation period'.

This case was heard in early November by the House of Lords, along with four other cases all involving abuse or sexual assault and all involving similar issues of limitation. These cases included the famous 'Lottery Rapist' case that has been widely reported in the national newspapers and on radio and television.

In the same week, at the end of January, we received judgment in both cases and are proud to report that we have been successful in both instances. In the House of Lords abuse case, judgment was handed down in the House itself and it has been described in the press as a 'landmark ruling'. One of the

Law Lords stated in the actual judgment that it was 'ushering in a new era' in this area of the law. In the Court of appeal case, the police are now seeking permission to appeal to the House of Lords in that case as well and, given the very important public policy issues involved, there must be a realistic chance that they will get that permission.

If you have any queries or require any advice relating to injury you may have suffered as a result of an accident or what you believe to be medical negligence, please call me on 01273 384070 or my colleague, Victoria Wilkinson, on 384075.

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Michael Hartley

Family Collaborative Law has arrived in Brighton!

Imagine two lawyers representing a separating couple who contract with their clients not to go to Court or argue with each other but instead to pursue, together, a negotiating style giving the parties responsibility for their own settlement. Now imagine a process designed to encourage an agreement, forged together, that brings a sense of dignity to the participants, and which just might allow a relationship to end with less acrimony.

Sounds far-fetched? It is now reality. Collaborative Law has arrived.

Bright Pod has been formed by lawyers qualified to practice Collaborative Law, all of whom practice in Brighton & Hove. The lawyers work from different practices, ensuring independence, but will represent the interests of either party in a collaborative process.

Collaborative Law was originally developed in the United States



by lawyers who were frustrated with the adversarial approach of their peers but recognised that, for many people, mediation did not provide a sufficient framework of support and advice for the participants.

In order to collaborate each party needs to appoint a qualified Collaborative Lawyer. The lawyers will meet with their clients in the normal way and then, almost immediately, meet their opposite number to discuss the process, timing and needs of the couple. The meeting is followed by a series of four-way (round table) meetings between

the couple and their respective lawyers where every aspect of the divorce/separation is discussed and agreed.

Collaborative Lawyers commit themselves to the resolution of disputes by agreeing that should there be a breakdown in any negotiations both lawyers will play no further role. By taking this position the lawyers are liberated from their usual role and are free to help their clients negotiate.

The traditional negotiating style is positional, with both parties asking for more than they are likely to receive in the hope of achiev-

ing what they have both been advised they should receive. However, Collaborative Lawyers aim to put their energy and legal fees into negotiations and settlement not adversarial trial preparation. If the parties have the confidence in both lawyers to approach the negotiations with realism they will save time and money and are more likely to end up with a settlement that they want.

Jo O'Sullivan is an experienced Collaborative Law solicitor in Brighton and would be happy to talk about the process with you.

Call her direct on 01273 384 039 or email: j.sullivan@gsfwsolicitors.co.uk



Jo O'Sullivan

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