

CHAT WITH CHEBSEYS

Issue 5 • July 2010 • the monthly newsletter of Chebsey & Co

In the last edition of Chat with Chebsey I told you that I had some exciting news to announce this month and I am delighted now to be able to do so.

You will note that my picture on the newsletter has moved places. This is because we needed more space for a new address. Yes - we now have another office as a result of our becoming a successor practice to Ashley Perkins in Windsor. We therefore now have an office on the High Street in Windsor. Ashley Perkins concentrates on Residential Property and will continue to work in the Windsor office. This addition therefore strengthens our residential Property department and greatly increases the different types of law we can offer in Windsor.

Why Windsor? Well first of all we already have quite a few clients in that area and we felt that we could serve their needs better if we had an office in that area. Secondly we have been instructed by a large number of clients from a firm of Solicitors in Windsor who went out of business and we see that having an office in Windsor will be of benefit to those clients

The name of the firm will not change and we will continue to be known as Chebsey & Co. Next month we will bring you details of the next project – a new office in Bath!

As you can see we have been very busy. However, we haven't allowed all of this distract us from the business of giving good legal advice and service to our clients. We are therefore delighted to have been awarded the Lexcel Quality Mark for another year. Lexcel is only awarded to those Solicitors who reach a high standard of quality and we were delighted to achieve this last year and to retain it this year.

M. Keith Chebsey

Director and Chairman
July 2010



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Lexcel
Practice Management Standard
Law Society Accredited

 **resolution**
first for family law

Criminal
Defence Service



Community
Legal Service



AIPP
ASSOCIATION OF
INTERNATIONAL
PROPERTY
PROFESSIONALS
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Office News



New office – Windsor

As you will have read above we have added a new office in Windsor. This is as a result of Ashley Perkins & Company becoming part of Chebsey & Co. This came into effect on 1st July.

The contact details of the Windsor office are above or on the contacts page of our website.

Of course the picture to the left is not our new offices, but we couldn't resist the opportunity of including a picture of the castle as the offices are only a matter of about a minute walk away from the castle.

New Office – Bath

Further to the above we will be opening a new office in Bath from 1st August. We are not able to give further details at this stage but will be able to soon so keep an eye out on our website, Facebook, Twitter or LinkedIn pages for up to the minute information.

Lexcel

We have recently had our annual Lexcel audit and are pleased to be able to announce that this has been awarded for another year. Lexcel is a quality mark given by the Law Society and as their website says;

“The Lexcel practice management standard is only awarded to solicitors who meet the highest management and customer care standards. Lexcel accredited practices undergo rigorous independent assessment every year to ensure they meet required standards of excellence in areas such as client care, case management and risk management.”

Commercial

Trading on-line with consumers – Is Your Website ‘Legal’?



The legal regulation of e-commerce in the UK can be a minefield for the unwary. If you do business on-line there is a huge amount of legislation (mainly emanating from the EU but implemented into UK law) that applies to you – all designed to protect consumers who transact online.

The main regulations governing e-commerce in the UK

Needless to say, businesses engaging in e-commerce need to comply with the law governing traditional physical transactions (the Sale of Goods Act 1979, Supply of Goods and Services Act 1982, The Unfair Contract Terms Act 1977, The Unfair Terms and Consumer Contracts Regulations 1999, The Consumer Protection Act 1987 etc.). In addition, businesses must ensure that they comply

with regulations governing the actual on-line trading process. These are mainly as follows:

- The Consumer Protection (Distance Selling) Regulations 2000 as amended by the Consumer Protection (Distance Selling) (Amendment) Regulations 2005 – commonly known as “Distance Selling Regulations”
- The Electronic Commerce (EC Directive) Regulations 2002 (“E-commerce Regulations”)
- The Electronic Signatures Regulations 2002

The Electronic Commerce (EC Directive) Regulations 2002 require a business providing an ‘information society service’ (which can be the marketing or selling of services to consumers and other businesses, online, by interactive T.V. or by phone texting) to provide certain basic minimum information on their website. You should review your website to **ensure** that the required basic

information is provided.

Contracting online

Where your business forms contracts with consumers certain information **must** be clearly provided (in addition to the information listed in the previous section). This information should be set out on your website and customers must have the opportunity to read it before placing any order for goods and services. There are additional requirements including the ability for the customer to print off a copy of the terms & conditions applicable to the transaction and the requirement to confirm the receipt of any orders immediately.

E-mail shots and electronic marketing

The Regulations cover a wide range of electronic forms of communication, including websites, mails and text messages, which may be free of charge but whose essential purpose is advertising. If your business uses such advertising or promotions you need to ensure that each commercial communication complies with the regulations and that you are complying with the Data Protection Act 1998 (as amended). The easiest way to ensure that a commercial communication sent by e-mail or text message is clearly identifiable is to mark it as such in the header. The other required information may then be set out in the main body of the communication.

Consumer Protection from Unfair Trading Regulations 2008 deal with unfair trading practices and impose a general duty not to trade unfairly and for traders to act honestly and fairly towards their customers. This means that information supplied must be honest and not misleading in any way and sales techniques must not be aggressive.

Breaches of most regulations can involve investigations by Trading Standards Officers who have the power to prosecute offences. Penalties can be severe.

Consumer Credit (Advertisements) Regulations 2004 apply to most businesses offering credit for goods or services via a website or generally. They govern the specific wording of the advertisement or 'offer' which relates to interest rates and interest charged. Breach of these regulations is a criminal offence.

Applicable law

Generally UK based businesses need only to comply with UK laws irrespective of where their customers are based. However, this rule is subject to a number of exceptions. Notably, the rule does not apply to some consumer contracts. These consumer contracts will be governed by the rules contained in 'Brussels Regulation' and 'Rome Convention' which are beyond the scope of this article.

As the extent to which the consumer contracts exception would apply is still not very clear; businesses wishing to sell on-line to consumers of other EU countries are recommended by DTI to comply with that consumers' country's laws. Nevertheless, this rule may lead to an UK based business having advantages over their EU counterparts when selling on-line to businesses of the other EU country, for example, to businesses based in German where they are subject to more stringent laws regulating on-line trading and marketing.

Although the Regulations have been in force for a number of years, not every business involved in on-line trading and other information society service is compliant with the requirements. Lack of compliance could result in the non-compliant business being subject to enforcement actions through the courts, potentially resulting in the websites being closed down. Businesses are therefore urged to carry out a thorough check of their websites to ensure compliance. For assistance in this process and website compliance checks contact:

For further information on these or other issues relating to Commercial Law contact Sue Bean (smb@chebsey.com) or Tom Crown (thc@chebsey.com) on 01494 670440.



According to a press release made by The Government Equalities Office (GEO), the first wave of implementation of the Equality Act will be introduced from October this year, as planned. The first provisions to be introduced aim to make it easier for businesses to comply with discrimination law.

The Equality Act brings together nine separate pieces of legislation into one single Act simplifying the law and reducing the burden on business by making it easier for them to comply with discrimination law. This will pave the way for the implementation of landmark provisions to protect disabled people from discrimination and tackle the gender pay gap.

For further information on these or other issues relating to Employment Law contact Laura Poole on (lcp@chebsey.com) on 01494 670440

Wills, Trusts, Probate, Taxation



The Perpetuities and Accumulations Act 2009.

By Brian Wade, Solicitor and Accredited Member of Solicitors for the Elderly.

What on earth is this all about? Well, it's a new Act of Parliament which arrived onto the Statute Book virtually un-noticed, amongst all the excitement of the recent General Election and its consequences.

If you have a Will or a lifetime Trust which says the Trustees may accumulate income ie. "roll up" income and add it to capital, instead of the income being distributed, then this new legislation affects you.

The Rule against **Perpetuities** and the Rule against excessive **Accumulations** both seek to address the extent to which one generation should be able to restrict the freedom of later generations of owners to deal with property as they please.

The old Rules go back to the 1800's and before. The Rule against **Perpetuities** sets a time limit (known as "the perpetuity period") within which future dealings with property or money (such as gifts to a particular child or grandchild), must occur. Breaching this Rule will result in the settlor's wishes being ineffective to a greater or lesser extent.

The Rule against excessive **accumulations** places restrictions on the period of time during which income may be accumulated. There may be good reasons why you don't want the beneficiary to have the income yet, e.g. because he/she is very young, or a spend-thrift, or getting divorced. If so, your Will or lifetime Settlement needs to comply with the new Rules.

The **key change** made by the Act relating to the Rule against **perpetuities** ends the uncertainty involved in determining the perpetuity period ie. the time within which the trustees must take action regarding property or money. It affects all estates or trusts where the assets are held in trust. It reduces the difficulties faced by trustees in administering trust property and assets.

The **key changes** relating to the Rule against excessive **accumulations** are;

- to abolish the old rule against excessive accumulations for all non-charitable trusts
- for charitable trusts, two accumulation periods are available : either 21 years, or the life of the settlor

So, your Will or lifetime Settlement must comply with the new Rules. If your Will contains a discretionary trust for the Inheritance Tax Nil Rate Band, or a trust for your young children or grand-children, you should consult your solicitor to check whether any change is required.

Finally, discretionary trusts in Wills were often included to ensure that two Inheritance Tax Nil Rate Bands were available, but since it is now possible to transfer one un-used Nil Rate Band to a surviving spouse, the use of such trusts in Wills has become largely obsolete. But there may be other reasons why you wish to keep the discretionary trust – young or spendthrift children/grandchildren, impending divorce in the family, preservation of assets when going into a nursing/residential care home.....just ask us to advise!

If you would like to discuss the content of your Wills then please contact Julie Tompkins (jat@chebsey.com) or Brian Wade (baw@chebsey.com) at our Beaconsfield office (01494 670440), Johanna Knott (jlknott@chebsey.com) at our Croyley Green office (01923 775651) and Malcolm Tanner (mjt@chebsey.com) or Helen MacDiarmid (hlm@chebsey.com) at our Burnham office (01628 660077).

Crime and Road Traffic Defence



Points don't make prizes

By Graham Tolfts

To many people the Courts, Police Stations and Criminal Justice System in general seem far removed from them and their everyday lives. One area of the law which can affect any law abiding citizen is that relating to road traffic. With the proliferation of speed cameras it is all too easy these days to accumulate (or tot up) 12 penalty points within a three year period and become a "totter". Should this happen then the Courts will customarily impose a 6 month period of disqualification, being the minimum period by law. This minimum period increases if the client has been disqualified previously within the last three years either under the totting up provisions or in certain other ways. The draconian nature of the system means that people are often awarded 3 penalty points in situations where they are only a few miles per hour over the speed limit. In the absence of a legal argument to avoid it, the Courts must impose at least 3 penalty points when dealing with a speeding case. Therefore 4 occurrences of speeding in a 3 year period could have drastic consequences for a driver, his business and family.

A Solicitor with expertise in road traffic law can often ride to the rescue of a client to avoid the loss of his licence by formulating an argument that a driving disqualification would result in "exceptional hardship". The meaning of "exceptional hardship" has been the subject of much consideration by the Courts. The loss of your job or even your home is not usually considered to be sufficient to amount to "exceptional hardship" given that many people would suffer this fate if they lost their driving licence. Of course each case is decided on its own merits, but in my experience what often carries most sway with the Courts is evidence that innocent third parties, reliant on the client and his licence, will suffer hardship as a result of the disqualification. This can include the employees of the client's business or dependant relatives for example.

It may be the case that there are circumstances surrounding a driving offence which, whilst not amounting to a defence, allow a solicitor to argue against the imposition of penalty points or a mandatory disqualification in the first place. It is always worth seeking the advice of a solicitor to check whether this is the case with your own particular matter. In cases of drink driving the Courts are bound to impose at least a one year disqualification unless a legal argument is employed successfully to avoid this. Common "special reasons" arguments include situations where a drink driver's drink was laced with alcohol without their knowledge. There are limits to the levels of alcohol you may have in your system, having driven, and still be permitted to use such an argument. With very high levels of alcohol in your system the Courts take the view that you should have known you were unfit to drive anyway. A rather optimistic approach you may think given the effect alcohol has on everyone's judgement!

In certain situations solicitors are also able to save their client's driving licences by arguing the "shortness of distance" driven should be taken into consideration by the Court or if there was an emergency situation. Much expertise is needed to successfully deploy such an argument as there are many factors for the Courts to weigh up when deciding whether to let somebody keep their licence having been convicted of drink driving.

The important thing to remember is that there is help available when a motoring case does appear on your horizon. It may well be possible for us to ensure you keep your licence and we will always be able to minimise any penalty the Court decides to impose on you.

For further information on these or other issues relating to Crime and Road Traffic Defence contact Caroline Dunne cad@chebsey.com or Graham Tolfts (gst@chebsey.com) on 01628 600850.

Family and Divorce



Resolution part 2

The Family Team is now delighted to announce that Manjit Bains has now obtained the Accredited by Resolution as a Specialist Family Lawyer in the area of Domestic Abuse – so well done Manjit.

Manjit works out of our Burnham office and has a wealth of experience in dealing with all family matters but with particular emphasis on cases involving children.

For further information on these or other issues relating to family and Matrimonial Law contact Jeff Thomas (jmt@chebsey.com) on 01494 670440 or Manjit Bains (mkb@chebsey.com), Jo Sommer (jms@chebsey.com), Jackie Smith (jas@chebsey.com) on 01628 660077 or Niki Christopher (ncc@chebsey.com) on 01923 775651

Spain

VAT



A couple of editions ago we informed you that the rate of VAT (IVA) would be going up in Spain in July and this has now happened.

The basic rate, which applies to things like bread, milk, newspapers and medicine is unchanged and remains at 4%.

The middle rate, which applies to things like general foodstuff, hotels, restaurants, transport and the sale of new property used to be 7% and has now increased to 8%

The general rate, which applies to items such as alcohol, tobacco and CDs increases from 16% to 18%

Timeshare

Maintenance fees on Timeshares have been on a steady sharp rise for the last couple of years. This has now reached the stage where people who previously could afford the maintenance can now no longer afford it. We are therefore contacted on a daily basis by owners looking for a solution. Many of those people have the timeshare companies telling them that they will pursue them in their home country for the maintenance if they do not pay.

As many of these owners have found out to their cost there is also a whole industry associated with the sale of Timeshares which often results in an up front fee being paid but no sale being made.

Not surprisingly the threat of being taken to court in either the UK or in the country where the Timeshare is located is very daunting for many people. For the



last few months we have been working on a solution which can assist people in these circumstances. We believe that we may have found that solution and are about to try a test case to make sure that it works before launching the product.

Therefore if you have a Timeshare which you no longer wish to own, you can no longer afford the maintenance and you wish to get rid of it please contact us to discuss whether we can assist. We have actually come up with two separate solutions which should cover the majority of circumstances but we would still need to check your circumstances before taking on your case as the solutions may not be right for you.

Reform of Spanish Labour Laws

As part of the Spanish Government's measures to kick start the economy they have introduced a reform of the Labour Laws. This was introduced after the Government failed to reach an agreement with the major Trade Unions over the direction of the new Labour Laws and was ratified on 22nd June. Spain's two main unions have called for a General Strike on 29th September as a result of the new labour Laws.

The main change under the new law is the reduction in cost of getting removing existing staff. Spain has some of the highest employee rights in terms of severance pay with up to 45 days per year worked. The new labour Laws intend to cut this down to in some cases 33 days.



For further information relating to Spain contact Diego Rubio (drm@chebsey.com) or Peter Esders (pje@chebsey.com) on 01494 670 440

Past events / Charity / Sponsorship



Compass Ride

You will remember from the last edition of Chat with Chebseys that John Chatterton –Ross, from our Road Traffic Defence Department was going to be replicating a ride he did 25 years ago for charity by will be riding his trusty Honda to all four compass points of the UK. We are pleased to report that the ride was successful.

John Chatterton-Ross from our Burnham office completed the round Britain motorcycle ride raising money for the Asia Injury Prevention foundation. Taking in 2183 miles he started at the farthest east – Lowestoft – then on to Dunnet Head, farthest north. Dunnet is further north than John O’Groats, the better known extreme point of this island for long distance travellers. Ardnamurchan Point in the east was the most difficult place to reach as the last forty miles are on very challenging narrow single track road. The final point was the Lizard in Cornwall, again somewhere much nicer to visit than the better known Lands End.

AIP Foundation – amongst other things – supplies motorcycle helmets including children’s sizes at affordable prices for riders and passengers living in middle and low income countries. Many of those manufactured for children are distributed free as a result of fund raising. John has exceeded his target of 1500 US dollars – about £1000 but is happy to receive further donations. <http://www.asiainjury.org/main/home.html>

There is still time to help John raise money for this worthy cause through his first giving site <http://www.firstgiving.com/johnchattertonross> The directors of Chebsey & Co have helped John to reach his target by donating £100 to this worthy cause

Croxley Revels

Chebsey & Co were delighted to be sponsors of the Croxley Revels, which is an annual event run by the Croxley Green Society. The Croxley Green office was keen to get involved in this event as a way of supporting the local community and giving something back to the area.

This year the event took place on 19th June and more than 80 stalls from local societies, organisations, clubs, companies and schools were at the event. Reports suggest that attendance at the event was higher than it has been for many years with around 10,000 people over the day.

Our stand was right at the heart of the event and was manned by members of our staff who were on hand to talk about legal issues and also to sell raffle tickets to raise money for the Peace Hospice. We also had, as sponsors of the events, a banner in the main arena.

£91.50 was raised by the staff in aid of the Peace Hospice by selling raffle tickets to win one of three different hampers



The World Cup

Yes, even Chat with Chebseys is not immune from the World Cup – despite the event actually being over. Whilst unfortunately England didn’t progress very far our Spanish Legal department were delighted that Spain reached the final for the first time in their history and were even more delighted when they won their first World Cup.

Another winner on the day was Wendy Cleave who won our office World Cup charity sweepstake. The sweepstake raised £60 for charity and Wendy elected for the money to go to Macmillan Cancer Support.

You may have also seen that Paul the Octopus, who resides in Aquarium Sea Life in Oberhausen, Germany has successfully predicting the winners of the



various matches that Germany were playing throughout the competition and also the final. The irony of an octopus predicting

Spain to win when the Spaniards eat a lot of Octopus was probably lost on Paul, or maybe he was just trying get in the Spaniards good books by predicting them to win. If that is the case it certainly seems to have worked as the President of Spain, Jose Luis Zapatero has offered him state protection after some Germans threatened him for not predicting that Germany would beat Spain in the semi finals. Madrid Zoo has put in a transfer request to bring Paul to Spain although at the time of writing Oberhausen said that he was not for sale.

Something fun



The Scarlet Solicitor

We seek him here, we seek him there

This month we have the introduction of a new regular feature – The Scarlet Solicitor. Solicitors are bound by confidentiality rules which protect their clients, but the Scarlet Solicitor has taken this one step further. In the tradition of the Scarlet Pimpernel novel by Baroness Orczy they don't even like revealing their own identity - even the Directors of Chebsey & Co don't know the identity of the mysterious lawyer.

Some say that that the Scarlet Solicitor protects his identity so that they can better serve their clients. All we know is that it might actually be because they are too embarrassed to admit who they really are. This month The Scarlet Solicitor talks about their family's new found love of "Rock Choir":

Rock Away those World Cup Blues?

Thankfully England's uncomfortable time in the world cup lime-light was fleeting. With luck, and the passage of time, we may be able to count on some nations forgetting we were ever there... "2010, no, I think we missed that one, didn't we...?" At least the French should back us up in this minor deception, as long as the favour is returned in true entente cordiale fashion.

For those of us that did fall foul of a television which was broadcasting the England games, the memories may take longer to fade but there is simply no need to wallow in despair.

In search of some light relief I was recently persuaded to attend a Rock Choir event (see www.rockchoir.com). I naturally declined point blank at the invitation but was of course taken along notwithstanding my own free will.

What is it? This fledgling community concept has just launched its first album featuring genuine amateur talent that has shared No.1 slots with the likes of Kylie and Eminem (please refer to children for explanation of the relevance of this comment). With Rock Choirs in Watford, Amersham, Gerrards Cross, Wycombe, Maidenhead, Reading & Bath amongst the rest of the UK, it would appear that this concept has something of a phenomenon on its hands.

I was pleasantly surprised. What I found was a fresh and exciting community concept that is offering people a very rewarding alternate to a night at the gym. It may all be a bit X-factor, but there is no competitive element at these events and no spot lighting of the stars. Admission is open to all notwithstanding abilities and the only pre-requisite is an occasional loss of inhibition.

What do you get? There is plenty to be cynical about, but such is life. What is seems to be is a worthwhile opportunity to take part in group event which may, dare we say it, be a bit of good old fashioned fun.

The Scarlet Solicitor ❁

Staff profile



Sue Bean Head of the Civil Litigation Department.

Hailing from Nottinghamshire, Sue originally qualified as a Marine Biologist and has a Masters degree in Plant Physiology from De Montfort University.

In a former life, she ran several successful businesses including a travel company and a riding school. She believes this has given her a valuable insight from a practical standpoint of many of the issues that concern small and medium sized companies. Sue deals with every type of dispute, including neighbour disputes, actions for civil harassment, debt recovery, actions for breach of contract, building/contractor disputes, and director and shareholder disputes, both in the County Court and in the High Court. She also deals with employment matters and personal injury claims.

Sue has substantial High Court litigation experience, dealing with claims of up to £10 million. She has also been successful in negotiating a number of personal injury settlements in excess of £500,000.

Sue has four children who together make up the band "Bound by Time". She devotes a good deal of her spare time to promoting their music, managing the band and being their roadie. www.myspace.com/boundbytime When she does have a moment to herself, Sue enjoys horse riding and reading, but not at the same time.

Q. Why did you become a Solicitor?

A. I am not a Solicitor I am a Barrister! I followed a similar training path and do essentially the same work. I entered the law as a mature student after a career in the sciences and running various businesses. I chose to study law because I had been taken advantage of in business by a professional and wanted to get some redress.

Q. What is your favourite lawyer joke?

A. I have two;

1. Lawyer: "Now that you have been acquitted, will you tell me the truth? Did you steal the car?"
Client: "After hearing your amazing argument in court this morning, I really don't think I did !."

or

2. Lawyer: What gear were you in at the moment of the impact?
Defendant: Gucci suit and Reeboks.

Q. What gets you up in the morning?

A. My alarm clock or my 12 year old who seems only to need 6 hours sleep.

Q. What is your passion?

A. Giving clear, timely and accurate advice to my clients and trying to steer them away from the courts, towards negotiated settlement!

Q. Which famous person, dead or alive, would you most like to spend a day with?

A. Queen Elizabeth I - I've been revising a lot of history with my daughter lately and I've found her degree of power and control fascinating - I could learn a lot!

Q. Tell us an interesting fact about yourself.

A. I once won a North Wales grass track car racing trophy and I competed against Mark Phillips at a one day event and beat him!



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