



Thomas Horton LLP

SOLICITORS

Summer 2011

WELCOME

A warm welcome to another edition of our Newsletter. We hope that you will find it interesting.

Thomas Horton LLP are proud to serve the personal and business legal needs of Worcestershire, and further afield.

Research shows that clients want and need a responsive, technically accurate and personal service from their legal advisors. We really do care for, and about, every one of our clients. The valued foundations of our practice are our long term relationships with our clients, and with other professional advisors.

For Individuals: Conveyancing, Wills, Trusts and Probate, Family, Childcare and Divorce, Criminal Defence, Employment Law, and Disputes.

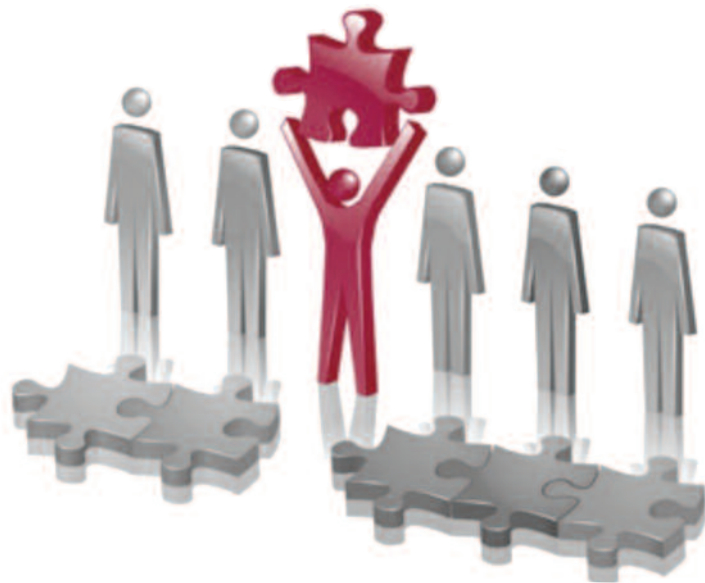
For Business: Commercial and Agricultural Property, Corporate and Commercial Law, Charities, Employment Law, and Litigation.

Thomas Horton LLP is proud to be listed

in the "Legal 500" (top 500 law firms), and to be "Lexcel" accredited (quality assurance).

For more information about our services,

and to read what our clients say about us, visit www.thomashorton.co.uk and for a free initial consultation call us on 01527 871641.



NEW RIGHTS FOR AGENCY WORKERS



Employers and agency workers need to take heed; the Government has announced that the new Agency Workers Directive will come into force in the UK on 1 October 2011 without any changes.

The regulations give agency workers entitlement to the same basic employment and working conditions as if they had been recruited directly, if and when they complete a qualifying period of 12 weeks in the same job.

The effect will be to provide equal treatment for temporary agency workers, compared with permanent workers, in terms of basic working and employment conditions (including pay, holidays, working time, rest periods and maternity leave) once they have

worked for the qualifying period of 12 weeks.

Other benefits that agency workers will gain from the first day of their assignment include:

- information about vacancies so that they have the same opportunity as other workers to find permanent employment;
- equal access to on-site facilities, such as child care and transport services; and
- Improved rights to protect the health and safety of new and expectant mothers, including the right to reasonable time off work to attend antenatal appointments and adjustments to working conditions and working hours.

So if you employ agency workers, or are an agency worker, and you feel you need more information, call us.

Offices at: **Bromsgrove** • **Worcester** • **Barnt Green**



WILL EXECUTED IN ERROR CANNOT BE RECTIFIED BY HIGH COURT

In an unfortunate recent case, the High Court concluded it couldn't use the Administration of Justice Act 1982 to correct an obvious error made in executing a will. Under that Act a "clerical error" can be corrected.

The court was asked to consider "mirror" wills



executed by an elderly couple, in which each bequeathed their entire estate to the other and then, on the second death, the whole to a man they had cared for since he was 15 years old and whom they regarded as their son.

The problem was that despite witnesses being present, each signed the other's will by mistake, and the error went unremarked until they had both died.

The court ruled that despite the fact

that this was obviously a mistake, the wills could not be rectified as they had not been executed validly in the first place.

The judgement means that the estate will pass, under the intestacy laws, to the couple's natural children, who were not close to their parents, and who had been excluded under the wills.

A remarkable case underlining the need

to get things right and use a qualified, competent solicitor. For two reasons, first to get it right in the first place, but second, if it does go wrong, the solicitors' professional indemnity insurance stands there to rectify the error where the Courts can't. Which isn't the case with DIY wills.

Contact us for more information.

EXPERT WITNESSES NO LONGER IMMUNE

The new Supreme Court has overturned the long-established principle that an expert witness is immune from being sued over evidence given in court. The decision was reached in relation to a personal injury case, but applies to all areas of litigation. The Supreme Court held, by a majority decision, that the immunity from suit for breach of duty enjoyed by expert witnesses taking part in legal proceedings should be abolished.

The case related to a clinical psychologist being sued by her client due to alleged negligence in signing, without amendment or comment, a medical report when called upon to produce a joint expert report in conjunction with a

consultant psychiatrist appointed by the insurance company which was disputing the alleged seriousness of his injuries. As the report contradicted the psychiatrists own findings, and also questioned the client's honesty, the client contended the psychiatrist's negligence had damaged the client's case.

Lord Phillips stated that expert witnesses have a duty to give their evidence honestly and to assist the court on matters relevant to their area of expertise, and that it would be wrong to perpetuate the immunity enjoyed by expert witnesses just because of the mere conjecture they would be reluctant to perform their duty to the court if they were not immune from suit for breach of duty.

GOVERNMENT SEEKS VIEWS ON EMPLOYMENT LAW

As part of its comprehensive review of employment legislation, the Government has published a consultation document, 'Resolving Workplace Disputes'.

This seeks views on measures designed to improve the Employment Tribunal (ET) system and to encourage and facilitate the early resolution of workplace disputes.

The proposals include:

- Increasing the

qualifying period for employees to be eligible to bring a claim for unfair dismissal from one to two years;

- Requiring all claims to be lodged with the Advisory, Conciliation and Arbitration Service in the first instance in order to allow pre-claim conciliation to be offered;
- Extending the jurisdictions where an Employment Judge can sit alone to include claims of unfair dismissal, introducing the use of legal officers to deal with certain case management functions and taking witness statements as read, rather than having them read out by the witnesses themselves; and
- Tackling weak and vexatious

claims by providing ETs with a range of more flexible and robust case management powers, so that weaker cases can be dealt with in a way that does not mean disproportionate costs for employers. If you want to contribute, either as an employer or employee, the consultation can be found on the website of the Department for Business, Innovation and Skills (BIS) at:

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<http://www.bis.gov.uk/assets/biscore/employment-matters/docs/r/11-511-resolving-workplace-disputes-consultation>



RIGHTS CREATED LIMITED BY ACTUAL USE OF LAND

If a person repeatedly uses land they do not own over a long period of time, they may acquire a legal right (known as an easement) to use the land, by what is known as “presumed grant”. Recently, the Court of Appeal had to consider the extent of the rights created by easements. They decided the rights created in law are limited to the repeated uses made of the land in fact.

The case, *Dewan & Ors v Lewis*, arose because of a dispute over the right of way over a private road, which had been used by a farmer for 20 years and more to access his farmland. The critical point was that although the use of the road by the farmer

for pedestrian and vehicular access had been permitted for more than 20 years – thus establishing the general right of easement – the use for driving cattle had not, because at no time during that period had the farmer used the land to drive cattle. Since the right to drive cattle was more burdensome on the owners of the adjacent properties than pedestrian or vehicular access, the Court of Appeal ruled that the right of easement did not include the right to drive cattle along the road. One of the judges said: “where a right is acquired by user, the extent of the right must be measured by the extent of the user. Such a right is a restriction on the rights of the

owner of the land. The justification for the restriction on the rights of the owner is that by acquiescence over a long period, he has lost the right to object to it.”

Evidently though, the Court of Appeal concluded that acquiring an easement doesn't thereby give anyone the right to drive a coach and horses through the extent of it! Unless that's what they were doing all along.

PRICE COMPARISONS IN ADVERTISING: MIND HOW YOU GO

We may soon see some changes to the use of price comparisons in adverts as a result of a recent European Court of Justice ruling, which whilst it was broadly in favour of objective price comparisons, nevertheless felt compelled to clarify certain things. The case involved a dispute between Lidl, and Leclerc supermarkets in France.

The ECJ's ruled that:

Firstly, price comparison in advertisements where the products being compared differ is permissible where the products display ‘a sufficient degree of interchangeability’;

Secondly, such an advertisement would be misleading if a significant proportion of consumers could be mistaken into believing that the prices of the products compared is representative of the general price difference between the competitors;

Thirdly, it must be possible to identify the goods in question on the basis of information contained in the advertisement.

The ECJ held that it is up to the national courts to determine each case on its merits.

If you are planning, as a business, to use price comparisons in your advertising, you may think it prudent to seek legal advice.

Court gives green light to developers

To attempt to frustrate a possible development, it is not unknown for local residents to apply to register the proposed development site as a village green. If they are successful, the landowner must not interfere with the recreational rights of the residents, and the developer is hog-tied.



The High Court, however, in deciding which one of two conflicting Acts of Parliament should prevail over the other, has recently sided with those planning developments where the land has been appropriated by a local authority, and then sold to the developer.

Land at Merton Green, Monmouthshire had been appropriated for planning purposes by Monmouth County Council, and the land sold to Barratts along with planning permission for residential development. The Merton Green Action Group subsequently successfully applied for the land to be registered as a village green under the Commons Act 2006.

However, the Town and Country Planning Act 1990 provides that land which has been appropriated by a local authority for planning purposes may be used by any

person (eg the developer) in any manner in accordance with the planning permission.

Until this case, it had never been decided which of these two statutory provisions should prevail.

The court found that the Town and Country Planning Act 1990 should prevail over the provisions of the Commons Act 2006. This meant that Barratts could go ahead with their development.

The conclusions are:

For local residents: get land registered as a village green before it is appropriated by the local authority for planning purposes.

And if you are a local authority (or developer): get the land appropriated for planning purposes before it gets registered as a village green.

The implication is, if you feel the need for legal advice, please call us sooner rather than later.

SO, SPELLING IS NOT THAT IMPORTANT. YOU COULD BE RIGHT.

In a very interesting recent case, the Court of Appeal held that absolutely accurate spelling of a firm's name on a contract was not fundamental.

In the case the appellant firm of chartered surveyors (K) appealed against a decision that the respondent (H) was not liable in respect of a contract which he had entered into as agent for an investment company (M).

H had commissioned K to prepare a valuation appraisal in respect of a development site. In doing so, H acted as agent for M, a company called Morecambe Investment Company Limited. K wrote a

letter to M setting out the basis upon which it would undertake the valuation but erroneously referred to M's name as 'Morecombe Investments Limited'. H signed above the rubric 'For and on behalf of Morecombe Investments Limited' and added the words 'As Agent'. In other documents, K misspelt M's name as 'Morecambe Investment Limited'.

When the appraisal fee was not paid, K claimed against H. The judge found that H had not deliberately misstated the name of his principal and was not liable to pay the valuation fee.

The issue was whether an agent who misrepresented the name of

his principal in the course of making a contract with a third party, in circumstances where the principal's correct name was capable of being established, attracted: (i) liability for breach of warranty of authority; and (ii) personal liability.

Held:

(1) H had made it very clear that he was acting only as agent of the entity that was negotiating to purchase the site and there had been no reason not to believe that. The warranty that he had given was as to the fact of his agency, not as to the precise accuracy of the names which he attributed to his principal. Neither the misspelling of Morecambe nor the rendering of Investment in the plural were of any great moment.

(2) K had made no attempt to show that H did not have the authority which he warranted or that he had not been acting as agent. There was no basis upon which H could be held under a personal liability to K.

Because of these findings the appeal was dismissed.

So, instead of just focusing on a narrow legal point, it appears the Court took the wider view and decided in favour of the agent and against the Chartered Surveyor.

You might think that its better not to risk prejudicing an important transaction by being careless, and you'd be right. Far better to consult your lawyer.



CHOICE ON THE BUSES? : WAIT AND SEE

Ever wonder why there aren't more buses? Well the Competition Commission is looking at ways to open up more bus markets across the country after concluding that too many operators face little or no competition in local areas.

In a summary of its findings report on the local bus market in the UK it concludes that although there are 1,245 bus companies in England, Scotland and Wales, usually the largest operator has consistently faced little or no competition.

Many passengers dependent on bus services in those areas can expect less frequent services and in some cases higher fares than where there is more competition.

Buses provide an essential, if unsung, daily service for millions of people in the UK, carrying twice the number of passengers as do trains.

Many passengers are dependent on the bus and do not have a realistic or desirable alternative, such as getting into a car or a train,

if fares rise or services deteriorate.

Let's all hope it leads to more and better services.



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