Script

CELEBRATING 250 YEARS 1763 – 2013

SYDNEY MITCHELL SOLICITORS

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Celebration time for Sydney Mitchell

Maria Watt Foundation

This year Sydney Mitchell celebrates winning the Birmingham Law Society Legal Awards, Legal Executive of the Year and our 250th year in business.

To mark these momentous events we have decided to make this a year of fund-raising year, aiming to raise £10,000 during 2013 by holding a variety of events including a charity quiz, a balloon launch, charity ball, a 250 mile bike race plus many more. More details about our fundraising events, please see page six.

Our chosen charities for 2013 are the Tiny Babies Appeal for Birmingham Women's Hospital raising funds for specialist neonatal equipment and the Maria Watt Foundation raising funds for teenagers and children with cancer.

Sydney Mitchell won Law Firm of the Year for the third time in the 5-15 partner category

and Michael Vale won Chartered Legal Executive of the Year in the Birmingham Law Society Legal Awards for 2013. The firm previously won this award in 2008 and 2011.

Sydney Mitchell specialist teams include employment, commercial property, company and commercial services, litigation, insolvency. Private client teams include family law, residential property, dispute resolution and wills and probate, tax and trusts and personal injury.

Picture: Emma Jesson; Baroness Helena Kennedy QC; Karen Moores, Partner, Sydney Mitchell; Divinder Singh, Senior Partner Sydney Mitchell; Tony Rollason of Landmark.

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Non-competition clause reasonable

A company director who lured customers away from his former employer after he had resigned from his post has been ordered to pay £50,000 in damages for breach of a non-solicitation clause in his employment contract.

The defendant was employed as business development director of Safetynet Security Ltd. (Safetynet), a medium-sized company providing security guards and door supervisors to pubs and clubs, until his resignation in April 2012. The day after he resigned by email, a rival security company – Freedom Security Solutions Ltd. (Freedom) – was incorporated. Within 12 days of the defendant's departure, five of Safetynet's customers had terminated their relationships with the company.

The High Court ruled that a non-solicitation clause in the defendant's employment contract – which restrained him from approaching Safetynet's customers for six months following the termination of his employment – was "reasonable and wholly enforceable".

Finding the defendant in breach of the non-solicitation clause, the judge ruled that he was "the controlling mind/de facto director" of Freedom. He rejected the defendant's plea that Safetynet had been in repudiatory breach of his employment contract prior to his resignation.

The defendant and Freedom were ruled jointly liable to pay Safetynet £50,000 in damages as compensation for the loss of revenue the company suffered due to the solicitation of its customers.

If a former employee of your business is approaching your customers in breach of his or her contract, or you wish to ensure such a situation does not occur, contact Dean Parnell on 0121 698 2200 or by email to d.parnell@sydneymitchell.co.uk

Uninsured drivers and "proportionate damages"

Most people know that when someone is injured in an accident caused by an uninsured driver, compensation is still available.

However, when an insured person has given an uninsured person permission to use their vehicle, what is the position?

The law states that in such circumstances, the insurer can seek to recover any sums it has to pay out from any person who "caused or permitted the use of the vehicle which gave rise to the liability".

Following a recent case, the position appears to be that the insurer can claim what is "proportionate... on the basis of the circumstances of the case".

The practical effect of the judgment is that the position is far from clear: what "proportionate in the circumstances" might mean is debatable. What is certain is that the ruling creates ambiguity in this area, which will remain unresolved until there are more decisions that clarify the position, or until the law itself is amended to add clarity.

If you have been involved in an accident and would like advice on compensation, please contact Jonathan Simpson on 0121 698 2200 or email to pi@sydneymitchell.co.uk

Landlord and Tenant advice in 1763

Mr and Mrs Andrews, property owners in Warwick, need help with collecting rent from a tenant farmer. The farmer has left the property and taken all of his belongings with him. He also has a few cows on a field owned by Mr and Mrs Andrews.

Under the Distress for Rent Act 1737 it is possible to send in a bailiff to the current home of the former tenant farmer and seize his belongings and for them to be sold to pay the rent that is owed. Mr and Mrs Andrews are also entitled to seize the cows.

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Care funding in the future

"Greater certainty, fairness and peace of mind" – or is it?

In the April Budget earlier this year, Health Secretary Jeremy Hunt made proposals to place a cap on the amount the elderly have to pay toward their care of £72,000. However when looking more closely at the recently proposed changes things are not all they appear to be at first glance.

Critics say that this will only help approximately 10% of those who require care and therefore the vast majority of people may still be funding all of their own care costs. Health Secretary, Jeremy Hunt has made proposals to put a cap on the amount the elderly have to pay towards their care of £72,000. However when looking further into the recently proposed changes, things are not all that they appear to be at first glance.

The facts:

- The average weekly care home fee cost is £564
- One in 10 people pay more than £100,000 for care
- The average stay in care is 4 years
- Every year between 30,000 to 40,000 individuals sell their homes to pay for care

An overview of the proposals is detailed below. These were due to be implemented in April 2017 but the launch date has now been brought forward and will supposedly come into effect in April 2016:

- It is proposed to cap the amount anyone will have to pay for care in their lifetime at a maximum of £72,000. This cap relates purely to provision of care rather than the cost of accommodation and food which is understood will be subject to a separate annual cap of £12,500.
- It is thought that when applying these caps, the Local Authority will calculate the spend at the rate the Local Authority would pay for that care rather than the actual cost to the individual. An increase on the "upper capital limit" for the means testing of residential care will rise from £23,250 to £118,000. The "protected limit" will increase to £17,500. In effect, this means that anybody with less than £118,000 but more than £17,500 will still contribute towards their weekly cost of care at a rate of £4.00 for every £1,000 they have over the £17,500 limit.
- Deferred payment arrangements will mean that an individual's home will not have to be sold immediately in order to fund a person's care. This system is already in existence and is widely used by local authorities. This simply defers the payment of care fees and the resident builds up a debt in relation to the care costs. The local authority will secure this debt by taking a charge over a property. This means that when the property is ultimately sold the local authority will recoup monies due to them. One could say that this is a step backwards in so far as assistance with funding is concerned. Presently these deferred payment arrangements are interest free until 56 days after the person receiving care has died. The new proposals state a new intention to make these arrangements subject to an interest charge immediately the debt begins to accrue.
- Special rules have been created for circumstances where the person requiring care turns 18 or is pre-retirement age when the care is provided.

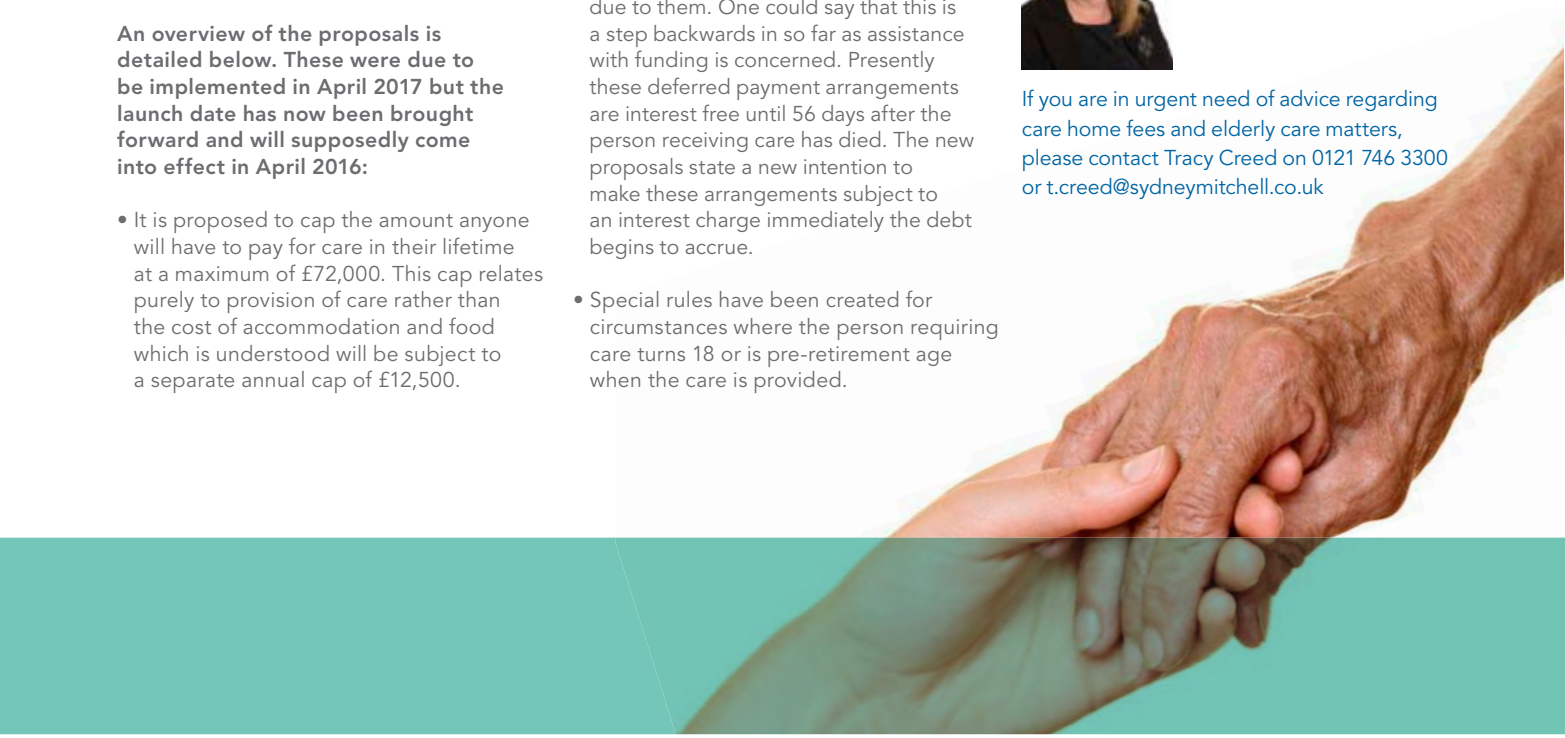
The government has confirmed that they intend to fund these changes by capping the inheritance tax nil rate band threshold at £325,000 until 2018/19.

With these changes due to take place in April 2016 it has never been more important for individuals (or their family or attorneys) to take appropriate advice so that they have the information they need when making choices now that will affect their future.

Many clients are anxious about care funding and planning ahead and we are here to provide support and advice for your future needs or at time of crisis.

We are running a series of care funding advice seminars in the autumn; please contact us for future dates.

If you are in urgent need of advice regarding care home fees and elderly care matters, please contact Tracy Creed on 0121 746 3300 or t.creed@sydneymitchell.co.uk



Fraudulent trading knows no boundaries

Trading with the intent to defraud creditors is an offence under the Insolvency Act 1986 (Section 213). Proceedings can be brought against the directors (including "shadow directors" – people who run the company but are not formally directors) of an insolvent company by the liquidator. Conviction of a director for "fraudulent trading", as it is termed, can lead to an order that the director makes a contribution to the company's assets in such amount as the court decides.

Recently, a prosecution for fraudulent trading was defended by the directors of a holding company. The company was incorporated in Switzerland and owned a UK subsidiary which became insolvent. The directors opposed the proceedings, arguing that the Act was limited in scope and could not have effect outside the UK.

However, the liquidators were successful in persuading the court that references in the Act to "any business" and "any person" mean that the Act is not subject to national boundaries.

If you continue to run a company which you know, or have reason to believe, cannot pay its debts, you should take advice as soon as possible. A conviction for fraudulent trading can lead to financial penalties and being banned from holding the office of director for a period of years.

Contact Kam Majevadia on 0121 698 2200 or by email to k.majevadia@sydneymitchell.co.uk for advice on your individual circumstances.

Who could practice Law in 1763

Fact in 1763 - only male solicitors provided legal advice. In 1763 women were not allowed to practice law!

Conveyancing advice in 1763

Miss Dashwood (a single lady) has been given some money by her father Sir George Dashwood and she thinks it would be quite a nice idea to purchase a property in Stratford-upon-Avon. Her father is Sir John Dashwood and Miss Dashwood is soon to be married.

Whilst Miss Dashwood can own property, as soon as she is married the property will be handed over to her husband as in marriage she and her husband are treated as one person and that person is the husband. (Sir William Blackstone)

To register or not to register?

This question is brought to mind by two recently reported trademark cases and the "real-life" predicaments and enquiries of our clients. The issues arising could be relevant to many other businesses.

Generally, if a business is looking to establish a new brand name, it will be advisable for it to seek the protection of any goodwill arising from its investment by registration of a trade mark.

Roughly speaking, a registered mark allows the holder to sue those who infringe the mark by using the same mark for like or similar goods or services or by using a similar mark where there is a likelihood of confusion or in any case where unfair advantage is taken of the reputation of the registered mark. The registration also acts as a notice and deterrent against infringement and makes it easier to profit from the mark by licensing it to others.

It is sometimes said that marks are registered on a "first come, first served" basis, but it is not always quite that straightforward as the cases show.

In Fayus Inc v Flying Trade Group, the defendant launched a range of exotic African foodstuffs under the name Ola – Ola, blissfully unaware (it said), of a US company which had been selling similar products here for years. The defendant had taken the step of registering a UK trade mark. However, neither that nor the other arguments put forward that Ola Ola is an African term and has no meaning in English and hence no goodwill could arise, carried much weight with the judge. In a preliminary finding, he indicated the view that there was a strong case that the defendant was guilty of "passing off" and also that its trade mark registration could be found to be invalid.

In order to prove "passing off" the claimant would need to establish both that it has a reputation in the Ola Ola mark and that a significant proportion of the public had been confused into believing that products of the defendants were theirs. One of the advantages of the holder of a registered mark in such circumstance would be that it would not need to prove the confusion element. However, a registered mark cannot be relied upon as protection against an earlier user of an unregistered mark who does have a reputation and who can demonstrate confusion.

In IG Communications v OHIM, Citibank, who has a number of registered "Citigate" Community trademarks, successfully opposed the registration of a trade mark for "Citigate" by an unrelated business.

The lesson of these two cases is that before investing significantly in developing or registering a new brand name, it is worth investigating carefully whether somebody else has already had the same idea. If this is the case, they may take a dim view of your use of the mark and be in a position to exact damages from you whether they have registered it or not.

If you need advice about registering or protecting your brand or are faced with accusations of infringing another's rights in their brand, please get in touch with Julian Milan on 0121 698 2200 or email to j.milan@sydneymitchell.co.uk

Family Advice in 1763

Sir Joshua George has two daughters; one is already married and the other is now 15. He has found a husband for her and wants to discuss the dowry to be paid.

In accordance with the Marriage Act of 1763 the minimum age to marry has now increased to 16. However, he can certainly enter into negotiations with the proposed groom's father about the dowry to be paid and try to keep it as low as possible! He must also ask whether his daughter consents to the marriage because times are changing and women have the right of refusal now.

Events

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Celebrating winning Birmingham Legal Awards and 250 Years in business

Our chosen charities for 2013 are the Tiny Babies Appeal for Birmingham Women's Hospital raising funds for specialist neonatal equipment and the Maria Watt Foundation raising funds for teenagers and children with cancer.

Movers & Shakers event – 11 June

For our city clients and regular networking Movers & Shakers contacts.

12.30 pm – 2.30 pm - Purnell's Bistro, Ginger's Bar, 11 Newhall Street, Birmingham. For more details contact l.heyworth@sydneymitchell.co.uk

Solihull Drinks Party and Balloon Launch – 19 June

For our Sheldon and Solihull clients and contacts.

5pm – 7pm - Drinks and canapés at Hogarths Hotel and Restaurant.

All guests will have the chance to sponsor a balloon; the buyer and finder of the balloon that travels the furthest and has its ticket returned to us win a prize. For more details contact l.heyworth@sydneymitchell.co.uk

Charity Ball – 18 October

For everyone – a charity event to be held at National Motorcycle Museum 7.30pm.

Ticket price £35 (with Earlybird discount).

Live entertainment, raffle and auction - to book your place or table contact k.shakesheff@sydneymitchell.co.uk

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Providing trusted legal advice for generations

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