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Top Tier for Sydney Mitchell

In its 250th year and Birmingham Law Society Legal Award winning year, it is fitting that Sydney Mitchell has been recognised as a Top Tier firm in the Legal 500* for the quality of its legal advice. The firm now boasts 14 recommendations in Corporate, Commercial Litigation, Debt Recovery, Personal Injury, Employment, Family, Personal Tax and Trust, Commercial Property and for the first time Health, Clinical Negligence Defendant claims and a top tier position for Contentious Trust and Probate.

One particular success this year is the credit given to the Dispute Resolution team. The team of 10 fee earners has undertaken a variety of complex, high value litigation which has resulted in them moving up into the same tier as much larger national law firms such as Squires Saunders, Mills & Reeve LLP, Gateley and SGH Martineau LLP.

The team is acknowledged in the Legal 500 as being 'commercially aware'; and has many substantial pieces of litigation and has advised on high-value claims

concerning the mis-selling of interest rate swap derivatives. It also mentions that the firm has handled a multimillion-pound claim for breach of warranties under a sale and purchase agreement. Dean Parnell has the acclaim of 'working tirelessly for his clients' and Associate Richard Cooper has a 'wonderful bedside manner'.

Div Singh added: "Our litigators have an excellent reputation and every case is partner led thereby ensuring that sound strategy is adopted on every case



Kamal Majevalia, Richard Cooper, Raj Bains, Sundeep Bilkhu and Dean Parnell

whilst never losing sight of the client's commercial needs. The team has worked on some very high value and complex cases and have achieved some fantastic results for our clients. It is nice to see that the Legal 500 recognise our litigation services as being a viable alternative to much larger firms."



*The Legal 500 is widely acknowledged as the world's largest legal referral guide; firms and individuals are recommended purely on merit.

Winners of the Balloon Race

Balloon race ticket finder Mr. R. Jordan is pictured receiving his Amazon Kindle from Finance Partner, Sarah Archer.

Mr Jordan said: "As an avid reader, I find the Kindle I won in the Sydney Mitchell Balloon Race indispensable. I now have a vast library at my fingertips and as it is eco-friendly, if all readers had one, could

be a big help in the rejuvenation of our forests."

Alison Heath of Positive Print was the lucky purchaser of furthest travelled ticket and chose gift vouchers for her prize. The £50 gift voucher for the ticket pulled out of the hat was won by Trevor Law, Merito Financial Services.



Mr Jordan and Finance Partner, Sarah Archer

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Providing trusted legal advice for generations



Documentation Error Means Landlord's Notice Invalid

Yet another case should serve as a reminder to landlords of the need to ensure that all documentation is precisely worded.

When a notice was issued to a tenant, the landlord mistakenly used the wrong name (the name of a director of the company being substituted in error for the name of the company that was the landlord). The validity of the

notice was subsequently disputed by the tenant.

The Upper Tribunal ruled that the notice was invalid because the statutory requirement to name the landlord had not been met.

This case follows a 2012 decision in which a landlord's failure to give its address on a notice – the address of the landlord's agent being substituted in error – was held to invalidate the notice.



Failing to give notices in the correct form can invalidate them and may lead to significant losses for a landlord.

We can assist you to ensure that all your commercial documentation is in the proper form and has the intended legal effect. Please contact Fahmida Ismail on **0121 698 2200** or email f.ismail@sydnemitchell.co.uk

Betting Shop Manager Triumphs in Unfair Dismissal Claim

A betting shop worker who was summarily dismissed after she was accused of 'pocketing' punters' stakes which should have been refunded has succeeded in her unfair dismissal claim. The Employment Appeal Tribunal (EAT) pinpointed flaws in the disciplinary investigation carried out by her employer and ruled that it was not sufficiently thorough given the seriousness of the allegations (*Miller v William Hill Organisation Limited*).

McCay Miller began working for William Hill in April 2005, initially as a cashier but later as the deputy manager at one of its betting shops. Following a routine audit by William Hill's security team, four bets processed by her over a period of nine days between 24 February and 5 March 2010 were flagged up as irregular. Following an investigation, Miss Miller was summarily dismissed as her employer believed she had failed to return three voided bets and dishonestly kept the winnings from another. Her claim for unfair dismissal was rejected by the Employment Tribunal (ET) on the basis that the internal investigation had been reasonable.

William Hill's enquiries had in part relied upon CCTV footage, which was said to show that sums totalling £68.15 had not been paid to four customers.

However, it had emerged subsequent to the ET hearing that the timing mechanism that synchronised the CCTV with the shop's computer system was faulty. The EAT noted that the late discovery of that discrepancy 'may say something' about the quality of the investigation which preceded Miss Miller's dismissal.

William Hill submitted that Miss Miller's plea that she had repaid the customers' stakes was implausible. However, the EAT observed that managers who carried out the investigation had not viewed the whole of the five-hour CCTV tape but only those parts which they considered relevant.

Reversing the ET's decision and ruling that Miss Miller had been unfairly dismissed, the EAT found that managers had failed to take steps that

could have resulted in her exoneration and that the investigation performed was not as thorough as the gravity of the allegations warranted.

The case was returned to the ET for assessment of Miss Miller's compensation.



When a dismissal for a disciplinary infraction is contemplated, it is crucial that the investigation into the employee's conduct is thorough and handled

fairly. For advice on any issue relating to employee misconduct, contact Norman Rea on **0121 746 3300** or email n.rea@sydnemitchell.co.uk

Divorce – Equal Division of Assets Not Always the Right Solution

There are no hard and fast rules over the division of assets in divorce cases. In particular, an equal partition of assets is not always appropriate, as was illustrated by the Court of Appeal's upholding of a judge's decision to award 70 per cent of a former couple's capital assets to the wife owing to her lesser earning capacity and child-rearing role.

The husband argued that his ex-wife's award had left him facing the prospect of having to work more than 40 hours a week in order to meet his commitments to her and to provide an adequate income for himself. He argued that this would have a serious impact on his level of contact with their three-year-old daughter.

He had been ordered to pay his ex-wife £1,070 in monthly maintenance and she had been awarded the lion's share of the capital amassed during the couple's 10-year marriage, including a portfolio of five residential properties that were heavily mortgaged. The husband argued that the award had left him with only £1,430 per month to live on and

that this was insufficient to meet his income needs.

However, in dismissing the husband's appeal and ruling that the unequal division of capital assets was justified in the circumstances, the Court noted that the husband had earned a salary of £75,000 a year before cutting down on his hours to spend more time with his daughter and that the flat where he lived was affordable and adequate for his needs.

The ex-wife, who has care of the couple's daughter, earned much less, had debts and needed £250,000 to buy a suitable home of her own. Her modest income meant that she could

only raise a £100,000 mortgage. The divorce judge had not ignored the husband's needs and was entitled to find that he had a substantially higher earning capacity than his ex-wife and that the long hours he would have to work would not impede his contact with his daughter.



There is no substitute for good quality legal advice at all stages of a marriage break-up. Our family law department is able to provide expert

representation in all areas of family law. Contact Mauro Vinti on **0121 746 3300** or email m.vinti@sydney Mitchell.co.uk

Bus Cleaner Compensated for Consequences of Accident at Work

When a woman who worked as a cleaner for a bus company in Maidstone, Kent, impaled her foot on a metal splinter at work, she could not have expected that the incident would leave her near to death and her leg needing to be amputated.

The injury happened in the engineering depot when she alighted from a bus that she had just finished cleaning. The bay had not been properly swept and, not noticing a pile of metal debris, she stepped onto the spike, which pierced her shoe.

As a result of her wound, the woman contracted the flesh-eating disease necrotising fasciitis, which led to her being admitted to hospital as an

emergency patient and the subsequent amputation of her left leg. She was said to be 'hours from death'.

The woman brought a personal injury claim against her former employer and was awarded a substantial sum in damages. The court found that the company had failed to keep the workplace clean and had not carried out a suitable risk assessment of the danger posed to employees

by accumulated debris from the engineering work.



If you have been injured in an accident at work, we can help you obtain appropriate compensation. Please contact Jonathan Simpson on **0121 698**

2200 or email pi@sydney Mitchell.co.uk



Termination of Residential Tenancies - Tenancy Deposits

Most Landlords of residential property will take a tenancy deposit at the start of an assured shorthold tenancy (AST).

Since April 2007 tenancy deposits taken at the start of an AST have to be protected in a tenancy deposit scheme (TDS). TDSs provide dispute resolution schemes that both parties have to use if there is a dispute as to whether the Tenant is entitled to have all or part of the deposit returned.

A Landlord has to protect the deposit in a TDS within 30 days of when he receives it. He also has to give the Tenant and any person who paid the deposit on the Tenant's behalf prescribed information in writing about the AST, the parties to the AST, and the TDS within 30 days of receiving the deposit.

This is mandatory if a deposit is taken – the Landlord and the Tenant cannot lawfully opt out.

A Landlord who has not protected a tenancy deposit or given the prescribed information to the appropriate persons cannot rely on a section 21 Housing Act 1988 notice to recover possession of the property.

What would be the position if an AST originally granted before April 2007 continued after its original period and a tenancy deposit was taken?

The June 2013 Court of Appeal case of Superstrike Limited –v- Rodrigues answered this question.

In Superstrike, the AST started on 8th January 2007 and was for a fixed term of one year less one day at a rent of £606.66 per month. Mr Rodrigues paid one month's rent as a deposit in January 2007. Mr Rodrigues stayed on after 7th January 2008 and carried on paying rent. Superstrike did not put the deposit into a TDS in 2008 or beyond. On 22nd June 2011 Superstrike served a Section 21 Notice requiring possession.

The Court of Appeal decided that in January 2008 when Mr Rodrigues stayed on and continued paying rent, a statutory tenancy arose. At that point Superstrike should have put the deposit into a TDS because tenancies that started after April 2007 where deposits were taken were caught by the TDS legislation. The Court of Appeal said that Superstrike could not get possession on the section 21 notice they served in June 2011.

“AST terminations can be complex and Landlords should take legal advice first. Cases like this mean a Landlord's notice may not be a good notice. It is still wise to take tenancy deposits, but Landlords must protect them correctly and give out the correct information.”

Louisa Jakeman



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