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Birmingham Law Society
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SYDNEY MITCHELL
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NEW APPOINTMENTS FOR SYDNEY MITCHELL



John Irving



Mauro Vinti



Georgina Walsh

Sydney Mitchell is delighted to announce three new appointments.

John Irving joins the firm's Birmingham City Centre office from London based Staal & Staal and specialises in the drafting of contracts for a wide range of commercial and industrial applications as well as advising on the provisions of existing agreements.

John has a real understanding of the expectations of commercial clients having spent almost twenty years in house with major companies. He has acted for clients across a broad commercial spectrum and especially in the motor industry, service industries, the leisure industry both in the UK and Europe, as well as retailers and websites.

Mauro Vinti has been appointed as partner. Mauro joined the firm in 1999 as a trainee solicitor, and specialises in family law. Based at the firm's Shirley office, he has extensive knowledge in all aspects of relationship breakdown, particularly high net worth financial claims involving disputed valuations and complex pension assets exceeding £500,000 and businesses with a turnover exceeding £100million.

Georgina Walsh joined the firm's Shirley office as a consultant from local firm Harris Cooper Walsh. Georgina is well known in the area, and specialises in all types of commercial property transactions as well as residential conveyancing transactions, ranging from matrimonial transfers to lease extensions and plot development sales.

SEPARATION WITHOUT LITIGATION, A NEW ALTERNATIVE TO FAMILY LAW.

When a relationship breaks down it is never easy and the separation process can be a very stressful one. It is because of this a new alternative has been sought. Working alongside separating couples Collaborative Law is a non-confrontational alternative to litigation, helping to resolve all aspects of the separation, including the division of the assets and income and the future care of any children in a harmonious way.

West Midlands Law firm Sydney Mitchell is now offering this service to their clients who are looking at an amicable separation. Judi Wood, associate family lawyer at the firm has been fully trained in offering this solution to what sometimes can be a very harrowing time for couples and families.

"Collaborative Law gives the opportunity for a couple to work together in a series of direct, open and honest discussions. Arranging the terms of their separation without the need for court intervention" says Judi.

"Initially the couple and their individual lawyers get together to set out their objectives on what they want to achieve and they will also sign an agreement which states that no court proceedings will occur throughout the process."

"Each party involved has a lawyer who is fully trained in Collaborative Law. Meetings then take place with the couple and their lawyers where they discuss the separation in order to agree a solution."

"The benefit of such a process is that it keeps you in control of the proceedings throughout the separation and reduces the chance of having to take the matter to court, helping to avoid any nasty confrontation that may arise through court proceedings."



For more information on Collaborative Law or any other family issues, contact Judi Wood on 0121 700 1400 or visit www.sydneymitchell.co.uk

CHILD MAINTENANCE RULE CHANGES

In spite of reforms introduced in 2003, the Child Support Agency (CSA) was heavily criticised for failing to meet its objectives. With nearly £4 billion worth of unpaid child maintenance estimated to be outstanding, clearly something had to be done. To this end, in July 2008 the Child Maintenance and Enforcement Commission (CMEC) – a statutory non-departmental public body – was established to take on the work of the CSA.

Also in July 2008, the Child Maintenance and Other Payments Act (CMOPA) removed the obligation for new claimants who are on benefits to use the CSA. Unsurprisingly, statistics based on the first quarterly figures since this change was made show that the number of new cases being brought to the CSA has declined.

In October 2008, the obligation for existing CSA clients claiming benefits to continue to use the Agency was removed. All parents can now choose the child maintenance arrangements that best suit their individual circumstances. This could be a private arrangement or the statutory maintenance arrangements. A new Child Maintenance Options service (see www.cmoptions.org) has been established to provide information and support to help parents reach a decision.

Since October 2008, the benefit disregard level has been increased. Parents who are claiming benefits who have primary responsibility for the day-to-day care of a child can now keep up to £20 per week of any child maintenance receipts before their benefits are affected. The Government's stated intention is that from April 2010, child maintenance will be fully disregarded when calculating out-of-work benefits.

In November 2008, the CMEC took over responsibility for the work of the CSA.

During 2009/2010, new enforcement powers will be introduced under the CMOPA to ensure that parents meet their child maintenance responsibilities. These will include allowing the CMEC to seize the passport and/or driving licence of parents who fail to pay, without the need to involve the courts as is currently the case. Work and Pensions Secretary James Purnell says that the Government is keen to support parents in these tough times, but for those who choose not to



support their own children, "we will not stand by and do nothing. If a parent refuses to pay up then we will stop them travelling abroad or even using their car." The Commission will also be able to seize money from bank accounts, where a parent has failed in their financial obligations toward their child, without having to go through the courts. Furthermore, the CMEC will also be able to apply for a curfew or to recover money from a dead person's estate.

If the timetable goes according to plan, in 2011 a new 'gross income' scheme will be established. This is intended to reduce the time taken to calculate child maintenance by basing the amount a parent pays on gross income as per the latest available tax information held by HM Revenue and Customs. At this stage, parents still using the statutory scheme will be encouraged either to make their own arrangements or to move to the gross income scheme.



It is hoped that by 2013/2014, a single system of child maintenance will be in operation. If you would like advice on child maintenance or any other family issue, please contact Judi Wood on 0121 700 1400 or by email j.wood@sydneymitchell.co.uk..

TRUSTS STILL HAVE A ROLE IN SAVING TAX AND PRESERVING FAMILY WEALTH

Since the changes in inheritance tax brought about by the Finance Act 2006, trusts have been the subject of much debate. Many claimed that the changes would spell the end of trusts but our view is that trusts still have much to offer, particularly in relation to succession planning and the saving of inheritance tax ("IHT").

WHAT IS A TRUST?

A trust arises where assets are transferred by one party to other individuals ("the trustees") to hold for the benefit of others ("the beneficiaries"). A trust can be set up during your lifetime or in your Will.

WHY SET UP A TRUST IN MY LIFETIME?

There are various types of trust and we can advise on which is the most appropriate to your circumstances. One or more of the following may apply to you:

- **Succession planning** - you may wish to pass shares in a family company to your children, but feel they lack business experience or that the shares will be at risk. A trust allows you to take advantage of reliefs for "qualifying" business assets and benefit your children, whilst retaining control as a trustee.
- **Estate and tax planning** – you may wish to pass monies or property down to children or grandchildren, but consider that they are not yet ready to hold the assets in their own right. By using a trust, you can provide for them and begin the process of passing assets out of your estate for IHT purposes, but retain control as a trustee.
- **Pension planning** - you may wish to provide for lump sum pension death benefits to be paid into what is commonly called a "By-Pass Trust". This can minimise IHT whilst still allowing your spouse or other family members to benefit.

- **If compensation is received** as a result of an injury suffered, means tested benefits can be preserved by placing these monies into a special Personal Injury Trust.

WHY SET UP A TRUST IN MY WILL?

Even with the recent changes to IHT, there are still good reasons for including a trust in your Will, such as:

- providing for a person during his or her lifetime, but ultimately benefiting someone else when that first person dies or remarries – e.g. preserving assets for children on a second marriage;
- making provisions for minor or disabled beneficiaries;
- making use of available reliefs for business or agricultural property.

EXISTING TRUSTS

Talk to us if:

- you have an existing trust that hasn't been reviewed since the changes to the IHT regime or which you would like to consider bringing it to an end, or
- you are a trustee requiring advice on your duties and responsibilities or a beneficiary requiring advice on your position.



If any of these are of interest, we would be pleased to advise you further. Please contact Sarah Mochan on 0121 746 3300 or Derek Cook on 0121 698 2200.

CYCLIST RIDING WITHOUT HELMET AWARDED FULL COMPENSATION

A cyclist who had chosen not to wear a safety helmet and who was injured in a collision with a motorcycle has been awarded the full amount of compensation in the High Court. However, the judge warned other cyclists that compensation may be reduced if not wearing a helmet is considered to be a factor in the seriousness of an injury.

Robert Smith was severely injured when he was knocked off his bicycle as the motorcyclist tried to overtake him. The Court found the motorcyclist liable as he had been travelling at over the 30mph speed limit and there was insufficient

room for the manoeuvre. The motorcyclist's insurers argued that Mr Smith's compensation payment should be reduced by 25 per cent because he had contributed to his injuries through not wearing a helmet.

However, there is no legal obligation for a cyclist to wear a protective helmet. The Highway Code only recommends that one is worn. On this point, the court found that it was possible for cyclists to place themselves at a greater risk by not wearing a helmet.

In this case, however, the insurers failed to provide evidence that Mr Smith would have suffered less severe injuries if he had been wearing a helmet.

It was found that he had hit the ground at a speed at which a helmet would probably not have made any difference to the injuries he sustained. As a result, Mr Smith was awarded the full (undisclosed) amount in compensation. Whether or not cyclists should be obliged to wear protective headgear remains a controversial issue. Medical opinion is still unclear on whether helmet use will always reduce or eliminate injuries.

If you have been injured in a bicycle accident or any other road traffic accident, caused by the negligence of another road user, contact one of our Personal Injury specialists to discuss a compensation claim - email pi@sydneymitchell.co.uk or telephone 0121 698 2200.

CREDIT CRUNCH – DIVORCE SETTLEMENTS IN THE SPOTLIGHT

A case currently being heard in the Court of Appeal could affect the financial arrangements of many divorced couples.

It involves investor Brian Myerson, who divorced his wife in 2008 at the peak of the recent boom. The settlement reached with his ex-wife involved giving her a lump sum of £9.5 million and a property in South Africa worth £1.5 million. Although he has mortgages and other liabilities of £2.5 million, this

still left Mr Myerson with a considerable fortune, his investment company being then valued at more than £15 million. At the time, the settlement left Mr Myerson with 57 per cent of the couple's total assets. Then came the credit crunch.

Mr Myerson's shareholding in his company is now valued at less than £2 million, meaning he has a negative net worth in the region of £500,000. £2.5 million of the original sum due to Mrs Myerson is still unpaid. Mr Myerson went to the Court of Appeal in a bid to have the 2008 settlement overturned. It was decided on 1st April 2009 that My Myerson's application should fail. Lord Justice Thorpe said that

the "natural process of price fluctuation, however dramatic" did not satisfy the legal test for a change in a settlement.

Says Mauro Vinti, "The Court of Appeal has clearly endorsed long established principles governing applications to vary or set aside settlements. This decision will act as a deterrent to divorcees hoping to



use the recession to renegotiate their financial settlements." For further information or advice, please contact Mauro on 0121 746 3300 or email m.vinti@sydneymitchell.co.uk

A CURRENT TENANT IS A GOOD TENANT

A recent report by commercial property agents King Sturge (KS) may concentrate the minds of commercial landlords, who may be faced with a substantial reduction in income if they have to find new tenants in the event that existing ones terminate their leases.

KS has reported that commercial rents have fallen by 0.4 per cent in the last year and predicts that in 2009 rents will fall by a

further 5.6 per cent, in 2010 by 4.7 per cent and in 2011 by 2.1 per cent.

More worryingly, KS also predicts that there will be no upward movement in rents until 2013 and that landlords will have to resort to a variety of 'sweeteners' to obtain replacement tenants or to retain those they have.

In the present market, a landlord may feel that a bird in the hand (even one that is less than ideal) is worth two or more in the bush and it is to be

expected that negotiations over rents and lease terms will become more difficult, particularly where the property being let is retail premises.

We can assist you in negotiating new leases and lease reviews.



For more information on this or any other commercial property advice, please contact Simon Jobson on 0121 746 3300 or email s.jobson@sydneymitchell.co.uk