

News and Views



Sarah Cornes re-joins TWM Solicitors

We are delighted to announce that Sarah Cornes has agreed to join the Firm as a Partner in the Family team. Sarah will be based at TWM's office in Wimbledon.

The wheel has turned full circle for Sarah, who spent 17 years at TWM from 1991 to 2008 before successfully establishing and leading the family team at another Surrey firm. Sarah is a mediator and collaborative lawyer, undertaking high net worth financial work. She has an excellent reputation amongst her peers in the professional community, borne out by her current role as Vice President of Kingston Chamber of Commerce.

About re-joining TWM Solicitors, Sarah said: "I'm excited at the prospect of returning to TWM and the family team, which has such a good reputation. To work again with colleagues whom I respect as lawyers, and like as people, is great and I can't wait to get started". Sarah starts at TWM on 6 June.

Gatwick Diamond Business Awards

The commitment of the Firm to Corporate Responsibility has been recognised again, this time by the Gatwick Diamond organisation at its recent annual business awards. TWM was runner-up in the CR category, behind Reigate & Banstead Borough Council.



We reported 12 months ago that the Firm had been awarded the Law Society Lexcel accreditation – a prestigious quality mark showing that we have all of the policies, procedures and expertise to provide clients with a first class service. A year on, and having just been re-appraised, we are delighted that the assessor has concluded that we continue to meet these high standards.

TWM advise Minima Yacht Club on 50 year lease



Eileen Barry, front left, at the cheque presentation

Minima Yacht Club in the centre of Kingston-upon-Thames has successfully negotiated a 50 year lease from Kingston council, advised by TWM. We also represented the Club in helping it to secure associated funding by way of a mortgage from Barclays Bank and by forming a new company structure in which to hold the lease. Commercial property partner, Peter Lambert, and Business Law senior associate, Daniel Jenking, advised Minima Yacht Club.

Following this development, the Club has secured £50,000 of Olympic legacy funding from Sport England for improvements to the clubhouse.

We have been a long-term supporter of Minima Yacht Club, sponsoring its regatta. Partner Eileen Barry, a keen sailor, is the membership secretary of the club.

Time well spent

Daniel Church, a private client solicitor, gives up his time on Saturdays between March and October to help at a Fishing Academy for disaffected children living in Elmbridge. Children from 8-16 years come along and are taught how to fish, giving them a new interest and a chance to get away from whatever stresses might presently exist in their home lives.

Sarah Bostock, a family Solicitor, is a volunteer for SATRO a group that aims to help young people in schools and colleges to discover what the world of work is all about. She is a child mentor, and regularly goes into schools to help run business simulation games with other volunteers on the scheme.

Residential Property Declarations of Trust for Property

In the context of property, a declaration of trust is an agreement between two or more people as to how much each party is entitled to in the event of a sale of the property. Making such a declaration is sensible in the following circumstances:

- an unmarried (or indeed married) couple buying a property where they are contributing different capital sums to the purchase of the property;
- family members who will not legally own the property, but are either giving or loaning sums to a child who is buying a property, either on their own or with someone else;
- a friend or business associate is giving money to someone, either to help them purchase a property, or it has been previously agreed that a debt owing will be repaid on a sale of the property;
- friends, relatives, business partners who are buying a property together;
- owners or prospective owners of a property who are going to make unequal contributions to a mortgage or any repairs or improvements to the property. This can be potentially beneficial for tax reasons;
- one owner inheriting a capital sum and using this to pay off part of the mortgage on the property; and
- one owner paying another owner a sum of money for part of their interest in a property. A declaration of trust should contain provisions and expectations upon all parties protecting their interests when the property is sold, or the mortgage is paid off, or if one party wished to sell their share.

The cost of not having a declaration of trust can be expensive, as was recently the case for former England cricketer, Geoffrey Boycott. He and a female friend Anne Wyatt, bought a property in Poole Harbour and Mr Boycott's understanding at the time of the purchase was that they would each leave their share in the property to each other. He subsequently made a Will to reflect his understanding, but Mrs Wyatt did not and no Declaration of Trust was signed by them.

Mr Boycott sued the firm of solicitors who acted for him and Mrs Wyatt at the time of their purchase for failing to advise him that he may not be automatically entitled to Mrs Wyatt's interest in the property in the event of her death.

He was unsuccessful in his claim meaning that his share in the property was reduced by as much as £1.5million because Mrs Wyatt's heirs were entitled to a share.

There has always been a presumption in case law that unless there is a specific declaration otherwise then both parties are entitled to half of any sale proceeds in the property irrespective of their contributions to the property.

The recent case of *Jones v Kernott* moved away from this presumption so that one party's interest in the property was reduced to 10% because of the reduced contributions they made to the property. However I must strongly recommend that you do not leave this to chance as there is no guarantee what a court will decide in the future so a clear Declaration of Trust is the most important method of protecting personal wealth when purchasing a property.

Richard Bland – richard.bland@twmsolicitors.com

Private Client Charitable giving to reduce Inheritance Tax



Much has been made in the press of David Cameron's Big Society initiative to encourage philanthropy, and now the government's apparent u-turn by restricting tax relief on large donations. This has caused confusion, not least as 2 different taxes are involved.

At present only 7% of people who make a Will leave a legacy to charity, even though 75% of people in the UK do give money to charities during their lifetime.

A new campaign called Legacy10 has been launched to raise awareness of leaving a gift to charity when making a Will. If only a further 3% of Wills included a charitable

legacy this might generate an extra £1bn for good causes, many of which have suffered as a result of cut-backs in government funding.

Any gift in your Will to a UK registered charity will be exempt from inheritance tax (IHT). So, if your estate is likely to pay IHT and you leave a legacy of £100 to your chosen charity, it would receive £100, whereas an individual left the same amount might only receive £60 after deduction of 40% IHT.

The government has now introduced a new inheritance tax reduction for estates where the death occurs on or after 6 April 2012. If at least 10% of the otherwise taxable estate (after deducting the tax free allowance and any other reliefs of exemptions) is left to exempt charities, the remainder of the estate will pay IHT at the rate of 36% rather than 40%, so after your death the charities

and individual beneficiaries would all benefit from your generosity.

There is no limit to the charitable relief from IHT - a large estate all left to exempt charities will pay no inheritance tax at all.

Do not confuse this with the cap proposed by the Chancellor on income tax relief available through the gift aid scheme for lifetime gifts. If introduced (and there is a groundswell of opposition by charities as it goes against the Big Society), it will only apply to very large donations, the income tax relief on which will be capped at £50,000 or 25% of income from April 2013. This restriction on income tax relief will have no effect at all on the 100% inheritance tax exemption, which remains available.

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Family **How to maximise the chances of your pre-nuptial agreement being upheld**



In a landmark ruling in October 2010, the Supreme Court upheld a Pre-Nuptial Agreement, stating that in the right case such an agreement can have “decisive or compelling weight.”

However, the fact remains that in England, Pre-Nuptial Agreements are still not binding. This contrasts with many other countries where such agreements, entered into by two adults seeking to protect the wealth they individually bring into the marriage, will be upheld. In this country, we operate a discretionary system to determine the “fair” division of the matrimonial assets if a marriage breaks down. Judges consider a number of factors when deciding what is fair and the existence of a Pre-Nuptial Agreement is only one of those factors. If deemed to be unfair, the Pre-Nuptial Agreement will not be upheld by the Court.

The question is therefore, what can be done to maximise the chances of a Pre-Nuptial Agreement being deemed fair?

- Both parties must have full knowledge of the other’s finances.
- Each party must have taken independent legal advice.
- There must be no undue pressure on either party to sign the agreement.
- The Agreement must be carefully drafted. Consider:
 - Only seeking to protect assets owned prior to, or inherited during, the marriage.
 - Ensuring sufficient provision to cover the other spouse’s reasonable needs in the context of the available assets.
 - Anticipating changes in future circumstances - the birth of children – and factoring in increased provision.
 - Increasing the provision the longer the marriage lasts.
 - Putting in a regular review clause.
- Conclude the Pre-Nuptial Agreement at least a month before the wedding.

If all of the above is followed, there is a good likelihood that your Pre-Nuptial Agreement will be found to have “decisive or compelling weight” and will be upheld.

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Dispute Resolution **Repatriation of Philippine Politician's remains**

Eileen Barry successfully represented the partner and daughter of Philippine politician Ignacio (“Iggy”) Arroyo in proceedings in the High Court Chancery Division arising out of a dispute about the right to repatriate and dispose of the body of the late Congressman. The case attracted a great deal of media interest.

Mr Arroyo died at a London clinic on 26 January. He was domiciled in the Philippines and resident both there and in California. Proceedings were commenced on 3 February when Mr Arroyo’s partner, Grace Ibuna, obtained an emergency injunction restraining funeral directors, Dignity Funerals Ltd, from disposing of the body or delivering it up to any person. The injunction was prompted by the arrival in London of the late Congressman’s estranged wife, Alicia Arroyo, with her lawyer to claim the body.

The combination of the great urgency of repatriating the body to the Philippines for a state funeral and period of public mourning, together with the need to consider the combined effect of the law in California, the Philippines and England meant that a great deal of urgent and complex legal work had to be done at very short notice.

Congressman Arroyo had married twice. He believed his first marriage to have been annulled. He had separated from his second wife (Mrs Arroyo) in 2005 and proceedings to annul that marriage had commenced in 2006. From 2006 until his death, he had lived with Ms Ibuna. He left two daughters by his first wife (Bernardina Arroyo-Tantoco and Bianca Arroyo) and one by Mrs Arroyo. He made a will in California appointing Bernardina as his executrix and an advance healthcare directive nominating Ms Ibuna as his agent to make healthcare decisions for him if he was unable to do so and authorising her to direct disposition of his remains.

When he died, Ms Ibuna started to make arrangements to transport his body to the Philippines. Mrs Arroyo arrived in the UK and gave contradictory instructions to the funeral directors holding the body on the basis that she was his widow. Ms Ibuna and Bernardina applied to the High Court for a grant of limited letters of administration to take possession of the body and arrange a funeral in the Philippines in accordance with wishes that Congressman Arroyo had expressed during his lifetime. Mrs Arroyo issued her own proceedings in the Philippines to obtain possession of the body (and planned different funeral arrangements).

Mr Justice Peter Smith granted Ms Ibuna and Bernardina joint letters of administration after a 1 day hearing on 20 February in which witnesses from the Philippines, including an expert on Philippine law, gave their evidence by video link. Mrs Arroyo was ordered to pay the legal costs of the Claimants and of Dignity Funerals Ltd.

This case illustrates how the court approaches the question of entitlement to possession of a deceased’s body where the deceased was domiciled outside England and Wales. There is no right of ownership to a dead body, but the deceased’s personal representatives have a duty to dispose of the body and are entitled to possession of it for that purpose. The right to a grant of representation where the deceased was domiciled outside England and Wales is set out in the Non-Contentious Probate Rules 1987.

While Bernardina had a prima facie right to possession of the body under these rules as her father’s executrix (because the expert evidence showed that the Californian will would be recognised in the Philippines where Congressman Arroyo died domiciled), the court also exercised its power under section 116 of the Senior Courts Act 1981 to appoint Ms Ibuna as joint administrator. The High Court has a separate power under section 116 to appoint, as administrator, a person other than someone entitled by the 1987 rules, if this appears to the court to be necessary or expedient because of any special circumstances. The Judge held that there were special circumstances allowing this because Congressman Arroyo’s advance healthcare directive made it clear that he wanted Ms Ibuna to deal with the disposition of his body and Bernardina accepted this. The expert evidence on Philippine law showed that the deceased’s wishes about his funeral took precedence over the wishes of Mrs Arroyo, who would otherwise have first claim to make the arrangements as his surviving spouse (subject to the annulment of Congressman Arroyo’s first marriage being confirmed).

The decision also confirmed that a deceased’s personal representatives are entitled to have regard to the deceased’s wishes, but are not bound by them.

(Ibuna and another v Arroyo and another [2012] EWHC 428 (Ch).)

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Employment **Compulsory Retirement**

The decision of The Supreme Court in the case of Seldon -v- Clarkson Wright & Jakes may in some respects appear outdated, it belonging to the era before the abolition of the default retirement age. However, in reality it is extremely appropriate to today. Mr Seldon was a partner in Clarkson Wright & Jakes, a firm of solicitors. Under the terms of that firm's partnership agreement he was obliged to retire at 65. He was called upon to do so, but objected claiming that to do so amounted to age discrimination. The case turned upon the basis upon which he could be required to retire.

Partners in firms were excluded from the statutory regulation of compulsory retirement. As such, the circumstances in which Mr Seldon could be required to retire are relevant to the position of all employees in the new age in which there is no default retirement age.

The Supreme Court held that it was possible to require an individual to retire provided that such requirement could be justified. In reviewing European law on the subject, the Court distilled circumstances that would justify retirement to 2, being:

Intergenerational fairness - covering issues such as work place planning, career aspirations for younger staff, a mix of youth and experience; and dignity of older workers - avoiding the need to dismiss older employees on performance.

In the Seldon case the firm had referred to 3 reasons for imposing the compulsory retirement namely,

- allowing junior staff the opportunity of partnership within

a reasonable time - which would require the vacation of posts by senior partners;

- facilitating work force planning by knowing when vacancies were to be expected; and
- limiting the need to expel under-performing partners, thus contributing to congenial and supportive culture within the firm.

The Supreme Court accepted that these criteria were therefore lawful, the first 2 falling within intergenerational fairness and the last within the dignity justification.

An issue remains as to whether 65 is an appropriate age for retirement. This will need to be looked at by employers and perhaps tied more to the particular circumstances of the employer itself or the pension arrangements of the staff. Save in the most extraordinary cases (deep sea divers or other work requiring extreme levels of fitness), a retirement age of less than 65 will be unlawful.

The judgment should be welcomed by employers who wish to retain some control on the retirement of staff as the justifications approved by the Supreme Court can be used by employers seeking to compel retirement. It is not, however, a return to open compulsory retirement. It will be necessary to have a formal policy drawn up in advance identifying the reasons for compulsory retirement, why retirement is a proportionate means of achieving those aims and why a given retirement age (be it 65 or some other) is appropriate.

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Commercial Property **Break options in commercial leases**

In the current climate, tenants are exercising options to terminate leases early, but it is not always straightforward as the following examples show.

- A landlord client of the Firm had recently purchased a freehold property. The tenant mistakenly served a break notice on the previous landlord and was locked into the lease for another 5 years.
- A tenant client served his own break notice, but worded incorrectly. Also, he did not serve it correctly and the landlord denied receiving it. We negotiated an agreement to overcome these problems. However, under the lease, the break only operated if the property was handed back in an acceptable condition. Working against the clock, we guided our client through the necessary (and expensive) works.

Expense becomes much more of an issue if the Court becomes involved. Some recent Court decisions offer some stark warnings:

- The tenant had been paying his rent late. The lease required him to pay interest. The break option was conditional on the tenant paying all sums due under

the lease. The break notice was invalid because he had not paid the interest, even though the landlord had not demanded payment;

- The tenant sent the break notice on the letterhead of one of its group companies, but not the company that was the tenant. The notice was judged invalid;
- The break clause required the tenant to give vacant possession on the final day. His workmen were still doing repairs required by a schedule of dilapidations, although this would not make the break notice invalid. Because the workmen were there, the property was not vacant, and the break notice failed; and
- If the lease requires payment of rent due up to the break date, can the tenant simply pay the rent calculated to that date? Unfortunately not. If rent is payable quarterly, the final quarter's rent due must be paid in full, and the landlord does not have to refund the excess.

There are a number of lessons here, uppermost is that it pays to seek advice early.

Michael Jones – michael.jones@twmsolicitors.com

Lee Frawley's Paralympic Dream



In Issue 7, we told you about Lee Frawley's aim to compete in the Dressage events at the Paralympic Games in August, representing the US Virgin Islands (the place of her birth).

We are delighted to report that following recent competitions and some administrative toing and froing, her place has been confirmed. You can follow her progress on Facebook at [LeeFrawley2012](#) and at [www.leeFrawley.com](#).

Epsom and Ewell Business Awards 2012



We are delighted once again to be a part of the Epsom and Ewell Business Awards. Following the success of last year, we would recommend that businesses in the area take a look at the categories available to enter. Clare Lower, Director at the Gourmet Trotter Company, who won the innovation award in 2011 sponsored by TWM, said *"As a young business in the area, the Epsom and Ewell Business Awards gave us an opportunity to raise the profile of our product, a gourmet picnic hamper, to the local market in a cost-effective way. I would recommend it to any company with a limited marketing budget which is looking for local publicity over a period of time"*.

For further information, visit [www.epsombusinessawards.co.uk](#)



Recognition for Peter Stevens

Head of Business Law, Peter Stevens, has been listed as a notable practitioner in Corporate/M&A for the UK, and also for France and Germany in the recently-published Chambers Global Directory 2012.

The directory says: "Peter Stevens is head of business law at Surrey lawyers TWM Solicitors LLP and an active member of both the French Chamber of Commerce in Great Britain and the British-German Jurists Association. He is proficient in both French and German, and oversees the Firm's eight-strong team of French speakers".

Dawson Mason & Carr

As reported in the last issue of News & Views, Dawson Mason & Carr have now become part of TWM, with Mark Carr, Michael Dawson and Joanne Cayne working alongside the Guildford residential property team. Clients and contacts of Dawson Mason & Carr will continue to receive the same high standards of service that they are used to, now with the benefits of being part of a larger firm with a wider variety of legal services.

News and Views is TWM Solicitors' quarterly newsletter for clients and contacts. The articles included in this publication are necessarily brief and, because the law may change subsequently, it is essential that legal advice is obtained prior to proceeding.

TWM Solicitors is a full service law firm. It is the second largest firm based in Surrey and its approach centres on achieving success for its clients.

If we can help with a legal issue, please do not hesitate to contact one of our team:

Cranleigh - Richard Bland 01483 273515
Epsom - John Sandford-Pike 01372 729555
Guildford - Adrian O'Loughlin 01483 752700
Leatherhead - Mark Stevenson 01372 374148
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For further information about TWM Solicitors, please visit our web site: [www.twmsolicitors.com](#)
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New Associate for Commercial Property

We are delighted that Grant Samuel has joined as an Associate in the Commercial Property team in Reigate. He specialises in development work, disposals,

acquisitions and lettings. Grant is fluent in both French and Spanish and is a qualified legal translator. Grant enjoys tennis, cricket and golf. He is looking forward to settling in Reigate, a town well known to him as a former pupil of Reigate Grammar School.