

Dickinson Manser

S O L I C I T O R S

(incorporating Hawkins Greenwood)

commercial success



Although perhaps better known for its private client work, the last three years have seen a huge increase in the amount of company/commercial work undertaken by the Firm.

The Property/Commercial Department headed by Partner Mark Daniels has within

the last twelve months doubled its turnover in pure company/commercial work and necessitated the transfer to the commercial team of Solicitor Katie Dudley.

Mark's work is primarily company/commercial with some commercial property, particularly Landlord and Tenant. In addition to Katie, the team includes Simon Howell, now a Consultant, but one of the most experienced and respected local property lawyers and Paul Wintle, an experienced Solicitor and Notary. Paul's work is mainly

property, but over the last eighteen months has included greater involvement in business sales and purchases.

The team has acted on the sales of a bookmaking chain, a chain of chemist shops, and a substantial scrap yard business. The team has also handled the acquisition of a photographic processing company, several public houses by a major brewery and the restructuring of a manufacturing company. On the commercial property side, the team has handled several high quality residential developments on behalf

of respected local companies and a scheme of sale and lease-back of nine public houses.

Mark attributes this growth in high quality commercial work primarily to the burgeoning reputation of his team in these fields, with most of the work coming from existing clients or by recommendation.

Please contact Mark by telephone or email him at mark.daniels@dickinsonmanser.co.uk for any company/commercial or commercial property issues you may have.

employing a spouse

Ian Duncan Smith's employment of his wife has attracted considerable publicity. Many husbands and wives employ their partner in their business and if the work is done, as Mr Duncan Smith says was the case with him and his wife, then there is no legal or tax problem.

Indeed such arrangements are sensible as the lesser earning spouse can make use of their single person's tax allowance and they may pay tax at a lower rate than their partner who may be a 40% tax payer. However do keep proof of what work was undertaken.

Another area where the Inland Revenue are currently cracking down is where individuals have set up their own limited company in which they and their wife or husband own shares. In many cases only one person works for the company but both are paid dividends. This was a standard tax planning arrangement which many accountants recommended to individuals all over the country for years. The Revenue have now decided to change how they interpret the rules and if the sleeping partner shareholder simply receives a dividend but does not work then all the income may now be attributed to the working half of the couple, often the husband who typ-

ically pays tax at a higher rate. Some couples have received back tax demands for £50,000.

If you have a company structure such as that or operate through a limited company with only one client, in which case you may be caught by rules known as IR35, then it is worth getting some legal advice now on your legal and tax position. Notwithstanding these challenges there remain many ways to reduce tax bills lawfully and we would be happy to provide advice on the most tax efficient way to structure your business.

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patent knowhow and copyright licensing



Does your business use technology? Many companies own registered patents or have confidential technical knowhow which they license to other businesses to manufacture goods.

Often a royalty is paid to the company. Sometimes copyright is licensed instead. There is an existing regulation setting out what legal clauses can go in those kinds of contracts. It is to be replaced next May and many companies with patent and knowhow licences will have to check their licence agreements for compliance with the new rules.

In October the UK Patent Office began consulting on a proposed new regulation which:

(a) Will separate agreements between competitors and non-competitors and allow fewer restrictions where the parties compete. In the current draft potential competitors are treated as competitors. These include those who would on realistic grounds gear up to enter the other party's market.

(b) Will not apply at all where certain market share criteria are exceeded (which will make it very hard to advise or indeed draft enforceable intellectual property licences where the parties have high market shares).

(c) Will no longer have a list of permitted restrictions which are allowed.

(d) Includes software copyright licensing for the first time which will benefit and exempt many such agreements.

The agreement can be "exclusive" for as long as the knowhow remains secret - the current regulation only allows this for ten years.

Many patent owners want to stop the licensee from selling outside the geographical licensed territory granted to that licensee. The current regulation allows an absolute export ban for five years from when products are first put on the market. This will be abolished. Instead for agreements between non-competitors the draft guidelines with the regulation say such a

ban even on passive (i.e. not active) selling may be allowed for up to two years "normally".

For competitors there is a huge change in the restrictions which are permitted which is very much reduced.

Most restrictions on customers, markets and output are banned. For competitors exclusive licences, territorial, field of use and customer restrictions will infringe the rules.

There is a list called "conditions" of provisions which are void but which are not on the hard core list of banned restrictions. This means such restrictions, if included, are invalid but that does not mean the rest of the agreement loses the benefit of the block exemption as would the presence of any hard core restrictions. The conditions include obligations to assign IP rights in improvements and not to challenge whether patents are valid.



competing fairly

Lots more traders are falling foul of UK and EU competition law.

Fines of 10% of turnover can be imposed and from 20th June 2003 the Enterprise Act 2002 will impose a new criminal cartels offence on those engaged in price fixing and bid rigging activities.

Many businesses are checking that their current staff know what the rules are in this field as the company may be liable for actions by employees even if the employees were disobeying company instructions.

In May 2004 major changes to EU Competition law take effect including an abolition to the system whereby agreements may be notified to the European Commission for clearance.

In the light of that it is necessary to make changes to the UK competition laws to reflect the new EU Regulation 1/2003. The OFT issued a consultation in April on those proposed changes.

copyright directive

Implemented in the UK, major new rules on copyright



came into force on 31st

October.

Most businesses copy from newspapers and magazines. Do you realise you may need to buy a licence to do this from bodies such as the Copyright Licensing Agency or the Newspaper Licensing Agency? They carry out regular checks to see if businesses are making illegal copies so it is wise to be properly licensed.

The new regulations bring a European directive on copyright

into force. They are known as the Copyright and Related Rights Regulations 2003.

The directive harmonises basic rights of copyright and electronic transmission - digital broadcasting and "on-demand" services and limits the permitted exceptions to those rights and provides legal protection for "technological measures used to safeguard rights and identify and manage copyright material".

conveyancing pitfalls

It is wise to take advice from expert property lawyers when buying or selling a house or taking a new lease of commercial premises.

Areas to watch include:-

(a) Disputes with neighbours - you have an obligation to answer honestly any questions about this which you are asked by the buyer's solicitors

(b) Information arising from searches - is the property built on disused mines? Are there environmental law issues arising? Was planning permission obtained when extensions were built in the past?

(c) Are there any restrictive covenants about how the property may be used?

(d) Are the boundaries to the property clear? Who maintains fences?

(e) Most important of all is it legally established who owns the property?

Some buyers of second homes in Spain have recently been told that because of a land dispute they do not own the properties they purchased.

This illustrates the dangers of buying in other countries where property laws may not be as clear as in the UK.

In some countries land will be inherited by all relatives equally. It is not unusual in buying an Italian holiday home to find 20 family members own the property.

It is always best to take legal advice.

confidential information and legal advice

Discussions with your solicitor are strictly confidential. Solicitors may not even name their clients without permission. Money laundering legislation is however causing some problems.

Under the Proceeds of Crime Act solicitors have an obligation to notify a body set up under money laundering legislation if they believe their client may be handling illegal money, even without telling the client they are doing so.

Divorce lawyers have had the most problems with the legislation as they now have a duty to report their clients if they discover either spouse is evading tax.

In a case P v P (Times Law Report

14th October 2003) the court examined the new rules and held that under the Act if a legal adviser knew of or suspected involvement in an arrangement which facilitated the acquisition, retention, use or control of criminal property then an authorised disclosure must be made. They could in some cases tell their client they were doing so but only after they made the notification.

This duty to notify does not apply where the solicitor is advising the client on the criminal act itself of which a report otherwise would be made.

A vast number of disclosures under the Act have already been made by many solicitors and accountants all over the country.



The Act applies as much to business transactions as any other. Solicitors need to be careful not to commit the offence of "tipping off" by notifying the client they are going to make a disclosure in advance which might give the client the chance to hide the money laundered property or money. Advisers who do not make the disclosures could go to jail and be struck off.

The conflict with professional confidentiality is already causing difficulties.

selling food and drink

Many regulations apply to the food and drink sector which can be nightmare for small businesses.

We can advise on the relevant legal areas to be covered. You may need to ensure that ingredients and weights are displayed and many products are covered by specific rules depending on the product concerned.

The Price Marking (Food and Drink Services) Order 2003 comes into force on 2nd March 2004 and has just been published.



This Order requires prices of food and drink to be indicated at premises where food and drink is offered for consumption on the premises. If you run a cafe or restaurant you may need to comply with the new order.

Article 3 defines the premises to which the Order applies with exceptions for certain

premises such as members' clubs and staff canteens.

The Order also requires prices to be indicated at premises selling take-away food. There are detailed provisions as to the prices and charges that must be indicated and how the prices should be shown. Contact us for advice.

passing on the HIV virus



In 1888 the English courts said a husband was not liable for injury to his wife when he gave her gonorrhoea.

Over 100 years later in a case called Dica the English courts changed the law. A man who infected two lovers with the HIV virus, knowing that he carried the virus but without telling them was held guilty of grievous bodily harm. He had insisted on having unprotected sex with the women.

The principle in the case might also be extended so that anyone with other sexually transmitted diseases or a contagious disease such as tuberculosis or even a bad case of flu who passes it on to someone else could be prosecuted for the bodily harm that they cause. However in cases such as flu it would be very difficult to prove who had infected who so such cases are unlikely.

The case may also change medical consent cases. It has been difficult to prosecute doctors who sexually abuse patients with unnecessary breast examinations as the patient had "consented" to the act, as the courts said had the wife in the 1888 decision (Clarence). As consent was now not to be implied more prosecutions may flow.

If you have suffered similar such bodily injury it may be worth taking legal advice to see if you can recover damages.



NHS treatment abroad

The courts looked at whether a person in need of a hip replacement operation could take the treatment abroad and be reimbursed by the NHS.

The patient was told she would have to wait a year on the NHS, this was then revised to four months but she chose to have

the operation done within weeks in France.

The court said that the NHS had not been guilty of undue delay here so the claim could not be brought but in other cases where there was undue delay such a claim might succeed. If you think you may be able to go abroad for medical treatment speak to us to check the legal position before you incur any medical costs abroad.

rights to embryos



The test case concerned two women whose only chance to have children was to use embryos they had had stored for future use, fertilised with their partners' sperm. They were unmarried.

One had since had treatment which rendered her infertile in the future, except if the embryo was used. However both relationships broke up and the partners refused consent to the use by the women of the embryos, even though the women were prepared to forego any future financial support from the men.

The case may go to the Court of Appeal.

The Diane Blood decision earlier had held a widow could go abroad to have fertility treatment with her dead husband's sperm. He had consented to her having the treatment in advance.

modernising competition law

In October, the European Commission issued a large number of new draft documents for comment relating to competition law and its modernisation programme which comes into force on 1st May 2004.

They include drafts on co-operation between the Commission and the courts of member states, informal guidance letters, notices on complaints, a draft notice on the concept of trade, a draft on co-operation within the network of competition authorities, a draft on regulation of proceedings under Articles 81 and 82, and a draft on the application of Article 81.3.

This area of the law often catches companies out. It prohibits restrictive agreements (cartels, bid rigging which are also criminal offences under the Enterprise Act 2002) and abuses of a dominant market position.

Now is a good time to consider how the new rules might affect your business and what you can lawfully do to protect yourself from competition from abroad.