

Mrs Heather Laphorne



We are pleased to announce that our Head Cashier, Heather Laphorne has successfully passed all required topics within the Associate Examination and is now an Associate Member of the Institute of Legal Cashiers and Administrators. She also won the Wilfred Owen

Award 2004 for the full Associate Examination and was presented with her award at the ILCA's Annual Luncheon held at the Middle Temple, London, on 8th September.

Heather has more than 20 years experience as a Legal Cashier and joined us in January 2000. On her appointment to Head Cashier in October 2000 she decided to embark on the Associate Examinations. This was no mean feat as it meant studying in the evenings and weekends (as well as being a wife and mother!) in order to pass four separate topics by correspondence course. She had a different tutor for each topic and each course comprised a number of assignments

followed by an examination. The first topic Heather studied was the Accounts Paper which she successfully passed in June 2001, followed by the Company Secretarial Paper, passed in November 2001. She then went on to study for the Management Information Paper, which she completed in November 2002.

Finally she studied for the Legal Practice and Procedures Paper for which a new syllabus had been drawn up following recent changes in the Law. This proved to be the most challenging as it entailed learning many aspects of the Law. However, she found the course interesting and thinks it will be of great benefit to her in her role as Cashier.

STOP PRESS

We are delighted to announce that as of 29 November 2004, Dickinson Manser will be acquiring the Conveyancing and Probate teams of McQueen Yeoman Solicitors. At the same time we are also expanding Dickinson Manser's reach by re-launching the McQueen Yeoman office in Broadstone under the Dickinson Manser name.

We are sure all of our clients will be pleased to see this extension of our services and we look forward to welcoming our new colleagues and clients at the Broadstone premises.

Alexandra Park Bowls Club

For the last two years Dickinson Manser have sponsored the first team of Alexandra Park Bowls Club whose home green is at Alexandra Park, Parkstone, south of Ashley Road and within a few hundred yards of the Grasshopper Public House.

The Club has been in existence for many years and enjoys success in Division 1 of the Bournemouth & District League and the Premier Division of the Dorset League. These are the highest leagues in Dorset and contrary to the generally held belief that bowls is for those who are too old to play golf, the truth is that in the higher leagues, with a few exceptions,

players tend to be in the thirty to fifty age bracket.

The Partners of Dickinson Manser, Gary Pick and Richard Cake are active members of Alexandra Park Bowls Club, as was Barry Sheppard prior to his recent departure to Australia.

A relatively small club "Alex Park" suffers somewhat from the call of Dorset County teams resulting in occasionally less than successful seasons although they have maintained their Division 1 status in Bournemouth for the last 6 years winning the Division 1 title in 1999. Somewhat more successful has been the Dorset League which is played on a Monday evening and

generally free of County Commitments. In this League Alex Park have won the Premiership Trophy on numerous occasions including last year. Both Leagues have been won under the Captaincy of Gary Pick and Barry Sheppard and the current Bournemouth League side is captained by Richard Cake.

Dickinson Manser's commitment to support Alex Park has been much appreciated by all the participants in the Club and has proved a good source of communication between the Firm and the individual players.

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fireworks!



New laws to crackdown on 'fire-work jobs' came into force on 7th August. These changes aim to improve safety and crack down on anti-social behaviour, ahead of this year's firework season.

It is now illegal:

- to let fireworks off between 11pm and 7am; and
- for retailers to sell fireworks that are louder than 120 decibels.

The start of the curfew will be later for some occasions during the year when fireworks are normally used for traditional or cultural events.

These are Diwali Night, the Chinese New Year and New Year's Eve, when the curfew will not start until 1am. On 5th November the curfew will begin at midnight.

employment contracts

compulsory

From October, there will be penalties of 2 – 4 weeks' pay for not giving employees written particulars of their employment or an employment contract, and an obligation on employers of all sizes to tell staff about disciplinary procedures.

Now would be a good time to get proper contracts with your employees drawn up. There can either be a written employment contract or a letter of engagement. A large number of UK employers do not give their employees written contracts or even a letter setting out the terms of employment. Until now there was no specific financial penalty, so the new rule should ensure more employers comply. In any event, having such documents ensures both employee and employer are clear as to where they stand on matters such as pay, entitlement to holiday and sick leave.

The changes also include a new licensing system for those supplying fireworks all year round, whether retail or wholesale, and improved controls on the import of fireworks. Both of these measures will come into force on 1st January 2005.

Consumer Minister Gerry Sutcliffe said: "Fireworks can be fun, but can also cause misery for communities, especially to vulnerable people such as the elderly, and animals. Introducing a curfew and a noise limit, balances the law to ensure that people can still enjoy fireworks whilst cracking down on their anti-social use. People who break the curfew could receive a fine of up to £5000 and/or six months imprisonment".

The Home Office is also working to ensure that the police and community support officers will soon be able to hand out fixed penalty notices to under 18s who have fireworks in public places or break the curfew.

Any reader bothered by noise at work or at home can contact us for legal advice to see if they have any legal remedies to prevent the disturbance.

standard contract terms

Do you have standard terms and conditions for your business which you can quickly email to a new supplier, consultant or customer?

Such terms can substantially improve your legal position and are always worth having ready to dispatch, particularly if the other company presents you with their terms, which are highly likely to favour them.

The following list of issues relating to standard terms may be useful:

- Do you have standard terms and conditions for sale of goods (or licensing of software)?
- Do you have standard terms and conditions of purchase?
- Do your standard terms include the following:
 - (a) a clause about intellectual property rights
 - (b) a confidentiality provision
 - (c) a retention of title clause (for sale of goods contracts in the supplier's terms)
 - (d) a "no third party rights" clause (new laws in force in 1999 gave persons named or benefiting from a contract, even if not parties to it, rights to sue under it unless their rights are excluded, so not surprisingly most companies have excluded those rights since 1999)
 - (e) a choice of law and jurisdiction clause where goods are sold abroad
 - (f) a clause saying that they are the entire agreement between the parties and no prior statements or representations are valid
 - (g) all the basic commercial terms needed e.g. what is supplied and when and by whom
 - (h) warranties about quality where appropriate
 - (i) limitation and exclusion of liability clauses which are enforceable under unfair terms legislation - legal advice may be needed on this
 - (j) include a statement that the exclusion clause does not exclude or limit liability for death or personal injury caused by negligence (if not, the clause may be void under unfair terms law)
 - (k) a statement that delivery dates are not binding (buyers of course, conversely, will want a clause saying that time is of the essence)
 - (l) state how the terms will be varied, such as only by agreement in writing.

Contract us if you want standard terms to be drawn up for you or for us to do an up to date legal check of your current terms.

ruined holiday?



Hopefully, most readers will have returned from summer holidays refreshed and relaxed after having a very enjoyable time.

However, some people find holidays were not as they were described or they fell sick, or suffered an accident abroad. Some people do not even get the holidays they paid for. ABTA has recently set up a new initiative to crack down on holiday fraud. However, it was marred by the man put in charge of it being investigated for fraud himself. His assets, home

and Porsche have been frozen. Sometimes, group actions arising from food poisoning need to be brought to recover compensation after an outbreak and it can make sense to band together with other holiday makers and use one set of lawyers to bring claims which individually may be too low in value to be worth pursuing but together may be worthwhile. The Package Travel Regulations 1992 have had the greatest impact on this area and in one case Gerard Hone v Going Places the court said it was for the holidaymaker to prove fault on the part of the tour operator supplier in order to succeed in their claim. Always keep as much evidence as possible, including photographs and videos whilst abroad and obtain names and addresses of witnesses.

merger fees under review

Mergers can sometimes be at risk of being examined by the Competition Commission. The Fair Trading Act provides that this may happen when either the value of the assets bought is £70m or over or where there is a high market share (25%).

Not surprisingly, lots of buyers of businesses get their mergers approved in advance by the Office of Fair Trading and make that a condition of the acquisition. This ensures there is no risk after the transaction that they could be required to divest themselves of the assets or company which they have just acquired. This process is expensive, as a fee has to be paid to the OFT. Fees currently range from £5,000-£15,000 depending on the turnover of the enterprise being acquired, and are payable to the Office of Fair Trading. Proposals on possible changes to

the system of charging firms for the cost of investigating merger cases were published in a consultation document in August by the DTI. The charging system was introduced in 1990 on the basis that the amount recovered should broadly equate to the administration costs of the competition authorities. However, fee levels have not been increased since their introduction and income now falls significantly below costs. This shortfall is currently being met by the taxpayer.

The Government wants to review the fee system and is inviting views from business and any other interested parties on a range of options, including:

- whether to move to full cost recovery and if so how; and
- a range of possible fee structures.

compensation for unfair dismissal

On 15th July, the House of Lords, the highest court in the UK, held that in unfair dismissal cases employment tribunals do not have power to award financial compensation for non-financial "loss" (such as for injury to feelings resulting from stress). This only applies in unfair dismissal cases.

There is specific provision by Act of Parliament for tribunals to be able to award compensation for injury to feelings in discrimination cases. Yet many individuals think the emotional hurt they feel is the worst part of some termination of employment situations.

The difficulty in making a claim for this kind of loss is the same in many legal areas. It is possible to claim damages for a ruined holiday, but except in rare cases such as that where you were buying a pleasurable time and the contract was in part for enjoyment, in other cases where this is not the case it is not possible to claim for hurt feelings and, instead, all you can claim is provable financial losses for which you can produce receipts.

Of course, for personal injury matters where pain results, compensation can be obtained but most contractual or other legal actions will limit compensation to 'provable losses' so keep all receipts.

what to wear to work?

Do you impose a dress code on staff? Autumn may be a good time to consider what is appropriate attire for the office or factory and what is not.

It is much easier to take action against an employee who is wearing clothes which might put customers off if there are clear rules about the matter. Clothing can be a bit of a legal minefield, so if you are unsure about where you stand, take legal advice.

In Department for Work and Pensions v Thompson, the employment tribunal said there was no discrimination against an administrative assistant. He had been required to wear a collar and tie to work where women members of staff did not have similar or equivalent requirements. Instead, the tribunal said that the correct question is whether, if there is a requirement that staff dress in a professional way, the level of smartness required "applying contemporary standards of conventional dresswear" could only be achieved by a man wearing a collar and tie. It could in this case, and requiring a collar and tie was acceptable. This will make things easier for employers who might otherwise have had to compare male and female dress requirements item by item to ensure they were equal.

new data protection guidance on privacy

Practical guidelines on how people can protect their personal privacy have been published by the Information Commissioner's Office. They have been accredited by the Plain English Campaign and follow the format of a "lively comic book" to provide people with essential information about their rights under the Data Protection Act 1998.

The book, called "How to manage your personal information under the Data Protection Act", covers issues such as:

- What is personal information?
- How to access your personal information?
- Who can hold this information?
- What can happen if information is wrong or used for a wrong purpose?
- How to change incorrect information? and
- How to deal with junk mail and telesales?

We can advise you on your obligations under the Act and how to ensure documents and mailings and employment contracts, as well as the wording on your web site, are data protection compliant.

B2B telemarketing guidance published

How to comply with new rules on business-to-business telemarketing have been published by the Information Commissioner's Office (ICO).

New regulations came into force on 25 June 2004, which allow businesses to register their phone numbers on a national "do-not-call list". The Corporate Telephone Preference Service 'the CTPS' requires telemarketers to screen their contact databases against the CTPS and to suppress any calls to companies that are registered. An exemption applies to own customer lists.

The ICO's guidance warns that marketers must put systems in

place to comply with these rules but does accept that mistakes are likely to occur. The ICO has said that as long as companies have acted in good faith and responded to any complaints or opt-out requests, it is unlikely to take formal enforcement action.

Do you receive unwanted telesales calls at work? Now you can easily register so as not to receive them. Thirty-one thousand companies registered almost as soon as the new system got up and running in June. Or, if you use telemarketing, you may need advice on how the new rules affect you. If so contact us for advice.

medical treatment

Most people will have to deal with a dying relative at some stage in their lives or have to consider themselves when and how they would want to be kept alive.

Some make "living wills" expressing their intentions if relatives are left with decisions about whether to prolong their life. In July, a patient who was terminally ill with a degenerative brain condition won a High Court ruling that he could be given drink, kept alive, even when dying. General Medical Council guidelines saying to the contrary were held to be unlawful.

The judge said that a patient who was competent or who had left instructions could insist that doctors continued to provide artificial nutrition and hydration.

This man has a condition which will gradually get worse and eventually he will lose the ability to swallow, at which time he will have to be fed by a tube. The judge said the man

would be aware to the end of how he felt and he had decided in advance he did not want to die of thirst over a 2 or 3 week period. He did not want a decision to be taken by doctors that his life is no longer worth living.



The GMC guidelines of 2002 had said that doctors take the decision about whether to withhold or withdraw life prolonging treatment, not the patient. Para 81, which has now been held unlawful, had said that doctors could withdraw artificial nutrition or hydration if it would just increase suffering or be too burdensome in relation to the

possible benefits. The judge said that where doctors disagreed with a patient they should try to find a doctor whose views accorded with the patient's. The judge did say that if no instructions had been left, then the position would be different when the patient lapsed into a final coma and lacked all awareness of what was happening, at which point artificial feeding could be withdrawn. The judge also confirmed that most of the GMC guidelines were extremely good and would provide much comfort to relatives and patients, apart from para 81 which was unlawful. In cases of doubt, court orders would have to be sought.

Anyone with a sick or aged relative should try to ensure that their affairs are in order, that they have a will and that they consider issues such as when they would like to be kept alive and perhaps also consider setting up a power of attorney for when they are too sick to manage their own affairs.