

Dickinson Manser expands Private Client team



Over the last number of years, there has been a huge increase in the volume of Private Client work undertaken by the firm. The demand for specialist advice is

catered for by the Private Client team who provide advice in relation to:
- Wills, Probate, administration of estates, elderly client work including Enduring Powers of Attorney, Court of Protection work, trust administration and taxation.

As a result of the growth in these areas of law, the recruitment of specialist lawyers has been necessary so Anne Shire (formerly of McQueen Yeoman – Parkstone) and Paula Weir have become recent additions to the existing team.

breakfast seminar

Dickinson Manser, in association with Lloyds TSB Corporate Banking, Cowling & West Chartered Surveyors and Mazars Accountants, organised and presented a breakfast seminar entitled "The Rough Guide to Commercial Property" at the Salterns Harbourside Hotel on Thursday 24th February 2005.

The seminar gave sound practical advice about the commercial property market and gave the opportunity for attendees to raise any questions they may have had with the speakers.

Cowling & West gave the first presentation, including an overview of the local property market in the office, industrial, retail and investment property sectors and an examination of general trends across the market.

Lloyds TSB Corporate Banking reviewed the current economic climate, and specifically, the effect of interest rates on the commercial property market.

This was followed by a general insight into predicted future changes.

Mazars outlined the existing tax regimes that affect commercial property and, recent and planned amendments. They gave advice on the most effective tax structures and tax planning issues for commercial property investors.

Dickinson Manser explained how recent changes in legislation have affected commercial property, and in particular commercial leases. These included; information on managing asbestos, disability discrimination, Stamp Duty Land Tax, the Land Registration Act and the Landlord and Tenant Act 1954.

The event was attended by about 50 delegates and was judged to be a huge success.

Inheritance Tax planning has become increasingly important, primarily as a result of soaring property prices. Many clients find themselves worried about the impact of Inheritance Tax on their estates. In many cases our Inheritance Tax planning specialists have ensured that this tax burden is substantially mitigated.

The elderly and vulnerable are in need of greater support with their financial and personal affairs. The team offers home and hospital visits to ensure their expert advice is accessible to all.

The Private Client team has until recently been headed by Gary Pick. With his forthcoming Presidency of the Bournemouth and District Law Society, the Firm's Senior Partner Gary Cox will take over these duties. Gary Pick looks forward to resuming his role at the end of his presidential year.

Please contact Gary Cox initially for any Private Client issues you may have.

Photograph shows Gary Pick (centre front) & his team.

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charging for Freedom of Information

Since 1st January 2005, public organizations and government bodies have had to provide information on request under the Freedom of Information Act. According to the Department for Constitutional Affairs (DCA), there will be no charge for search and collation time for most requests under the Act. The rules say that public bodies can only refuse to answer a request on the grounds of cost if it would cost more than £450, which equates to about two and a half days of searching time. For central government, the limit is £600, roughly three and a half days searching time.

To calculate costs, authorities can take into account whether the information is held, locating and retrieving it, extracting the information and editing. They cannot take into account the costs of considering whether information is exempt under the Act.

If a request would cost less than the appropriate limit, and there is no other basis on which it may be refused or otherwise dealt with, authorities must answer the request. The maximum fee that can be charged in these cases is limited to the specified costs of postage, printing and photo-copying, but the DCA recommends that where the cost of communicating the information to the applicant is low, these charges should be waived. The authority may charge a fee for requests that would cost more than the appropriate limit to answer, and where the costs would be particularly high, the authorities should discuss with the applicant whether he would prefer to modify the request to reduce the cost. If the applicant does not agree with the proposed fee, he then has a right of appeal to the Information Commissioner.

The right to access information needs to be balanced by the need of public authorities to carry out their core duties. For this reason, the Act also allows for public authorities to refuse certain requests for information on the grounds of cost where these would be particularly expensive, even if the applicant is willing to pay for the information.

"This Government has maintained that there should be no financial barrier to people who want information about decisions taken about their children's schools, their hospitals, their police forces, and the other areas which affect their life," said Information Rights Minister Baroness Ashton. "The fees introduced today are designed to be easy for public bodies to operate, and to enable people to obtain most information for just the costs of printing, photocopying and postage."

Standard IT contracts for public sector procurement

The Government has published two new sets of standard IT contract terms. The new contracts a) for the procurement of IT goods and supplies and b) IT services, aim to simplify tendering. They were produced by the Office of Government Commerce. "These new contract terms will simplify the IT tendering process and deliver significant time

and money savings for suppliers and public sector buyers," said OGC Chief Executive, John Oughton. "The publication of these new terms shows that the Government continues to listen to the IT industry and is determined to simplify procedures and reduce duplication and bureaucracy in IT contracting."

The OGC has also published new guidance to support the use of the standard set of terms and conditions. Contact us for information about the contracts or for advice on your own customised contract terms.

consumer credit agreements to be completed on-line

Since 31st December 2004, it has been possible for consumers to form consumer credit agreements on line. They have a 14-day 'cooling off' period in which they can cancel the agreement. Lenders must send hard copy letters when any charges for missed payments are imposed or the agreement is cancelled. The announcement follows the implementation of the EU Distance Marketing of Consumer Financial Services Directive, which covers the sale of pensions, mortgages and other products on-line, by telephone, fax or mail. The Directive sets common standards for the information that must be supplied to consumers of financial services prior to a contract being concluded at a distance.

Many businesses fall foul of consumer credit law every year. It is necessary to have a licence in order to offer credit to consumers. Although the Government is currently revising consumer credit law, the basic principles remain the same – a need to register and follow proper procedures. Contact us if you want to check if your financing arrangements to customers fall within the legislation.

court fees up

Court fees rose earlier this year by more than inflation. The new fees are in the The Civil Proceedings Fees Order 2004. www.legislation.hmsso.gov.uk/si/2004/20043121.htm. The fees for starting a legal action are now:

- Claim does not exceed £50,000 - £400
- exceeds £50,000 but does not exceed £100,000 - £700
- exceeds £100,000 but does not exceed £150,000 - £900
- exceeds £150,000 but does not exceed £200,000 - £1,100
- exceeds £200,000 but does not exceed £250,000 - £1,300
- exceeds £250,000 but does not exceed £300,000 - £1,500
- exceeds £300,000 or is not limited - £1,700

If you need any advice on litigation or mediation of disputes, please contact us for further information.

source code loss excluded from insurance policy

Readers should always ensure they know what liabilities their insurance covers. The courts have had to examine what is caught by an insurance policy in a computer case. In this case a company lost important software when a computer virus struck and it had a burglary. It could not recover under its insurance policy the High Court said. Exclusions in the insurance policy applied to the claim.

Tektrol Limited is a provider of energy saving control devices for industrial motors. The product depended on computer source code for the software. It had two computers to keep the code on to protect itself and had a hard copy in a pilot case too at a remote site operated by an independent company, Compwise Systems; and it was

also stored on the laptop of its Managing Director, Mr Shlaimoun. In December 2001 Mr Shlaimoun opened a Christmas ecard and this led to a mass-mailing computer virus. The virus wiped the source code from his laptop. He thought the remote site storage would be keeping a copy safe so he loaded the backup source code onto his laptop. However a few weeks later burglars stole the two computers and the hard copy of the source code. When it was found the remote site computer had a virus. Every single copy of the source code had been lost. This was terribly bad luck all round.

Tektrol claimed on its insurance policy for the business interruption caused by the losses.

However, the policy excluded lots of things including consequential losses resulting from the erasure, loss, distortion or corruption of information on computer systems. It also excluded consequential loss for theft. And the Honourable Mr Justice Langley found that the exclusions applied to Tektrol's claim.

"In my judgment," he wrote, "whether as a matter of 'instinct' or on the basis of an increased risk of loss, in the context of this policy both the virus and the burglary are properly to be described as causes of the consequential loss (business interruption) claimed by Tektrol."

Let us know if you would like us to check your contract terms' liabilities and exclusions in conjunction with your insurance policy.

pre-owned assets and IHT

Many existing legitimate inheritance avoidance schemes/plans may be threatened by changes to the law in the Finance Act - the rules on "pre-owned assets". If someone gains some "benefit" (from 6 April 2005) from an asset previously given away such as to a family member then a new annual income tax charge applies. There were some earlier rules known as gifts made "with a reservation of benefit" but the Inland Revenue thought they could easily be avoided. However under the new rules there are some exemptions. If an annual "benefit" is less than £5,000 it is not taxable. Anyone who has give away significant assets,

including just cash, since 17th March 1986 should consider their position before April. There are various options for action:

- Do nothing and pay the new tax charge each year from 2005/06.
- Choose that the asset is treated as if it is still part of the estate. IHT is then payable on the value of the asset at death (instead of the charge).
- Undo or alter the original planning arrangements before April. This will bring the asset back into the estate for IHT purposes, but there may be scope for other IHT tax planning at the same time. Anyone needing advice on this should contact us before April.

new credit rules

Another set of consumer credit rules have come into force. The Regulations clarify what information should be included in different types of advertisement to enable consumers to compare products more effectively. For example, if an advert is aimed at non-status consumers it must show a typical APR.

Similarly, adverts that claim more favourable terms, eg: "cheaper loans" or "lowest rates ever", must include a typical APR. The new rules also require the typical APR shown to be of greater prominence than any other financial information in the advert. At least 66% of the credit agreements granted must be at or below the typical APR.

commonhold

Commonhold is the new form of land tenure which is particularly useful for those who would otherwise hold their flats in a block as leasehold. The Department of Constitutional Affairs has issued some "Guidance on the drafting of a Commonhold Community Statement including Specimen Local Rules" as this is such a complex area. If you need any advice on property law contact us. In particular some local businesses take on leases of their commercial premises without legal advice which is not wise. You need to know the obligations you are taking on. In addition if you run a business with a partner or are both shareholders in a company you should have a written agreement between you which will include matters such as dealing with the property of the business.

export of data from the EU

The 8th principle in the Data Protection Act 1998 says that personal data should not be exported outside the EU/EEA unless strict criteria are met. One way to satisfy the legal requirements is if the person exporting the data and the recipient of it sign a model or standard agreement which the EU issued a few years ago.

However the agreement is very strict and not always popular with those handling data abroad. On 27th December the EU issued an alternative contract/set of clauses which are more user friendly and which are more likely to be acceptable to those in business. The new clauses can be used from 1st April 2005.

no protection for credit cards abroad



For years the law has been uncertain as to whether a consumer will get their money back from a credit card company if goods bought abroad using a credit card, are not

acceptable or not supplied.

Now the Court has held that there is no protection. If you buy in the UK using a credit card, clause 75 of the Consumer Protection Act ensures that you are protected. It has now been held that this protection does not apply when you buy abroad. At the end of December the Office of Fair Trading, which is not pleased with the ruling, said it will appeal against the High Court ruling that consumer safeguards on credit card purchases made in the UK do not generally extend to cover purchases made abroad, whether in person or on-line.

The credit card issuer and the supplier are jointly liable if the consumer has a valid claim for misrepresentation and/or breach of contract by the supplier – provided the cash price of an item is over

£100 and less than £30,000, and the credit limit is no more than £25,000. However there has always been a question mark over whether this protection applies to goods purchased overseas and in July the OFT asked the High Court to issue a definitive declaration that it did.

If you buy defective goods and want to know what your legal rights are, please contact us for further information.

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fine of £39,500 for using unlicensed software

The Business Software Alliance announced in December that it had settled a copyright infringement claim against a software firm for £39,500. London Bridge Software Holdings PLC had been making unlicensed use of software.

According to the software industry association, information about the company's illegal use of software, including Macromedia products, was given to the BSA over its web site. BSA gives financial rewards to those who report illegal software use of about 10% of the value of any software recovered, with a ceiling of £10,000.

"It is easy for companies to let software licensing slip down the list of priorities, especially if they are experiencing periods of rapid growth," said Siobhan Carroll, Regional Manager Northern Europe at BSA. "Hopefully this settlement will encourage other companies to urgently deploy effective software asset management procedures in order to ensure compliance."

patented developments

The EU draft software patent directive has been delayed yet again. In addition the UK has rejected patenting for software but endorsed the directive when it set out its position on the draft measure at the end of last year. The Directive seeks to harmonise European rules on the patentability of computer-implemented inventions – devices like mobile phones, intelligent household appliances, engine control devices, machine tools and computer program-related inventions. However now is a good time to examine whether any of your inventions could

be protected by a patent, particularly those which do not relate to computer software which traditionally has not been capable of patent protection "as such", except where part of an overall device.

There have been two important recent patent cases in the House of Lords - Sabaf v Menghetti and Kirin-Amgen v Hoechst Marion Roussel which have looked at what makes a patent valid or not and what is caught by claims in a patent – very fundamental issues.

If you need any advice on protection for your inventions, contact us.