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Solicitors

Sullivan's Law LLP Solicitors

December 2013

LEGAL SOLUTIONS

Chairman
John Sullivan

Partners
David Sullivan
Paul Sullivan
Catherine O'Hanlon

Director
Kerry McNally

Seasons Greetings!

Hello and welcome to this, the fifth edition of the Sullivan's Law client newsletter: *Legal Solutions*.

The shutters, if we had them, would be down on the afternoon of *Friday 6th December 2013* for what the young people refer to as our "Christmas do" - which will presumably involve turkey, ham and compulsory fun topped off with a silly hat. Best read Kerry McNally's case note *Christmas do'n'tjs* before we go.

Our offices will be closing over the festive period from 1pm on *Friday 20th December 2013* through to *Monday 30th December 2013*.

We will also be closed on *Wednesday 1st January 2014* with normal service being resumed on *Thursday 2nd January 2014*.

On behalf of our Partners and Staff, I should like to take this opportunity to extend to you our every best wish for the festive season and a prosperous 2014!

John Sullivan



Two Turtle Doves... and the Godfather Part III on DVD

In anticipation of the January blues, it is as good a time as any to reflect upon your legal retail rights.

You may find yourself wondering what you can do about that unwanted gift from Aunt Nancy. Can you bring it back, even if you don't have a receipt? Or will you put it in the attic with the Christmas decorations and whatever it was she got you last year?

Unfortunately, there is no definitive answer to this one. Every retailer will have their own returns and refunds policy. Often, this will be printed on the back of that receipt that you can't find, but, chances are, you can find them on their website.

There are, however, a number of consumer rights to let you know where you stand.

No retailer is obliged to give you a refund if you simply don't want the gift. That said, they may give you a refund, or at least a credit note, as a gesture of goodwill. This will only apply if the product has not been used and is still in a good condition. It will not apply to items that are perishable and items that come into contact with the body, such as earrings and make-up.

If a retailer refuses to give a refund, they are legally quite entitled to do so. There are however, a few key exceptions to the rule. If, for example, an item is faulty, of poor quality or not fit for purpose, the retailer must give you a refund.

If you would like to return an item, chances are certain time limits will be imposed. The specific details will depend on the retailer but a time limit of 28 to 30 days is not uncommon. This is often extended to take account of the Christmas period.

If the goods were bought online, there is a seven day "cooling off period" during which you are entitled to return goods and get your money back.

Ideally, you will have the receipt as proof of purchase. If you don't, you may be able to rely on something else, such as a bank statement, or, indeed, a retailer may let you return the item regardless. However, if you don't have a receipt you may be offered a credit note or exchange rather than a straight refund.

So, if you do have any unwanted Christmas gifts lying around, you do have options... other than eBay!

For more information about this article or any other aspect of our personal legal solutions, please contact Catherine O'Hanlon at: cohanlon@sullivanlaw.co.uk



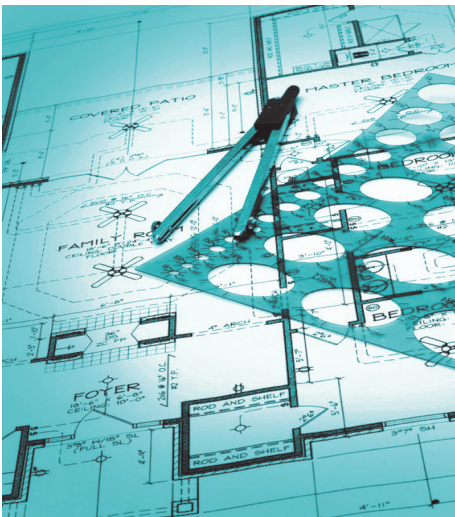
Grand Designs and related matters

If television programmes are anything to go by, we have become increasingly obsessed with watching other people build their own dream homes. This may have produced a glimmer of realisation in your own mind that, if they can do it, so can you.

But as you may have gathered from watching the tears, tantrums and financial turmoil so many have encountered when building their own home, the process requires very careful planning or you could come a cropper.

This careful approach must be followed from the beginning: right from the moment you begin to look for a plot of land. This will underpin everything you do, both practically and financially, so it is vital you get it right.

There are a number of things that need to be considered when assessing a plot of land, with the following five factors being amongst the most important:



Value: the value of a plot is based on the value of the building that will be built upon it. The value of the proposed property can be assessed by comparing it to similar houses that have recently been sold in the area. This is an important exercise to complete as this will allow you to establish the plot's true value.

Potential: you need to know the plot's potential as this will dictate the type of dwelling that should be built there.

It would not make economic sense to build a small bungalow on a vast piece of land – the plot would be under-developed and would not have met its potential. Similarly, there is no point building a six bedroom house if the asking price in the local area is similar to that of a four bedroom house.

Profit-margin: consider the value of the plot, the cost of building the property and the estimated selling price. If the maths says you will not make a profit, it isn't financially worth it.

Planning permission: check planning permission in the local area to see if your build would be permitted. There is little point in buying a plot of land if you will not be allowed to develop it.

Practicality: lastly, consider whether or not it would be practical to build a house on the plot of land.

- Is it a good location?
- Is there drainage, electricity and water?
- Is it accessible?
- Are there local amenities that would be attractive to buyers?

All these finer details must be taken into account, as this will determine whether your self-build is actually feasible.

If you have any property related questions, speak to David Sullivan on (028) 9077 4500.

Meeting unmet legal need

The Ulster Law Clinic continues to provide hope in the face of Legal Aid cuts.

Barely a day now passes without some element of the media picking up on the seismic changes taking place in the availability of public funding for litigation in the various UK jurisdictions. Whilst each jurisdiction is taking its own approach, as one might expect in this devolved era, there is a clear common theme: the manner in which the state previously fulfilled its duty, to provide effective access to justice, grounded in the European Convention of Human Rights, by making financial support available through generalised legal aid funds into which legal practitioners could dip on their clients' behalf, is coming to an end.

In the (near) future, the amounts available for such litigation will be smaller; the circumstances in which public funding will be available will be narrower; and the prerequisites that practitioners will require to exhibit before they will be eligible to avail of those public funds for their clients will be more complex and detailed.

This may have profound long term consequences for the professions, as all practitioners are aware, but they will have even greater consequences for members of the public who will find themselves unrepresented in legal disputes of consequence to them. Those members of the public who find themselves in that situation are classed as having 'unmet legal need'.

In the Ulster Law Clinic students enrolled on Ulster Law School's LLM in Clinical Legal Education grapple with this phenomenon in a very real practical way as part of their academic studies.

Students advise, and where appropriate, represent clients in social security and employment cases that are referred to the Clinic.

And so, this year for example, students have had success in ESA, and DLA appeals, and have dealt with complex employment cases offering detailed advice.

While the Clinic can never hope to replicate the volume of work undertaken by existing advice sector agencies, the 'real time – real life' experience of addressing 'unmet legal need' will acquaint the next generation of lawyers with the realities of advocacy, client handling, problem solving, professional ethics as well as wider issues of social justice.

For more information about this article, or any aspect of the work of the Ulster Law Clinic, please contact: Ciarán White, Clinic Director, on: (028) 9536 7249 or by e-mail at: lawclinic@ulster.ac.uk Website: www.ulster.ac.uk/lawclinic

The World's most expensive Divorces

Divorce can be an expensive business, especially if there is no pre-nuptial agreement in place. Many have found this out the hard way, none more so than John Cleese whose three divorces have cost him some £15 million. Unsurprisingly, he chose to enter into a pre-nup before marrying his fourth wife. But if you think that's bad, it is mere peanuts compared to the five most expensive divorce cases of all time:

#5. Steve and Elaine Wynn at \$750 million: taking the title for fifth most expensive divorce of all time is Steve and Elaine Wynn. The divorce cost Steve half the stock of his casino and hotel company, Wynn Resorts.

#4. Adnan and Soraya Khashoggi at \$874 million: coming in fourth is Saudi entrepreneur and arms dealer Adnan Khashoggi who filed for divorce in 1974. Soraya battled for five years to obtain a cash settlement from her ex-husband. They went on to hold the record for most expensive divorce for the following two decades.

#3. Bernie and Slavica Ecclestone at \$1.2 billion: in third place is Formula 1 CEO Bernie Ecclestone who divorced his wife Slavica in 2009. The former Armani model walked away with \$1.2 billion.

#2. Rupert and Anna Murdoch at \$1.7 billion: in at second is media mogul Rupert Murdoch who divorced his second wife, Anna, in 1999. Just 17 days later, Rupert married his third wife Wendi Deng, whom he is currently divorcing!

Chances and changes: is your Will up to date?

#1. Alec and Jocelyn Wildenstein at \$3.8 billion: taking the top spot is Alec and Jocelyn Wildenstein. The New York socialite – known mostly for her love of cosmetic surgery – divorced her husband in 1999. Along with a \$2.5 billion settlement, art dealer Alec was ordered to pay his ex-wife \$100 million every year for 13 years.

Stop Press! Potentially even overtaking the Wildensteins is Continental Resources CEO Harold Hamm, who is currently separating from his second wife Sue Hamm. Experts are uncertain as to whether a pre-nuptial was signed before the wedding. If not, legal experts believe Harold Hamm's 68% stake at Continental could be divided, an asset presently worth \$11.2 billion.

For more information about this article or any aspect of our personal legal services, please call Catherine O'Hanlon on (028) 9077 4500.

This November, we took part in Will Aid (www.willaid.org.uk). Under the scheme, law firms donate their professional fees for preparing your Will to a range of worthy causes. Since 2007, we have raised in the region of £5,000 for: ActionAid, Age UK, British Red Cross, Christian Aid, NSPCC, Save the Children, Trocaire and others.

Well done to Sullivans Law Pupil Solicitors Joanne Moore and Oonagh McVeigh for making Will Aid in 2013 another success!

As Aristotle once said, life is full of chances and changes. And while we are no longer in Ancient Greek times, there are now the great milestones of contemporary living, many of which we will encounter along the way.



Whether it is buying a house, having children, getting married, getting divorced or the death of someone close, it is all part of life's rich tapestry.

And while you are working your way through the ups and downs the world throws at us, you need to remember that significant changes such as those described above have an impact upon your Last Will and Testament. This means that even if you have already created a Will, you cannot just forget about it. Instead, you need to update it when there is a notable event in your life.

However, you cannot amend the document after it has been signed and witnessed. Instead, you need to create an official alteration called a codicil. This adds or revokes certain stipulations and is suitable for small changes such as a change of address or updating your legal name. There is no limit to the number of codicils you can have, although these must be signed and witnessed in exactly the same way as a Will must be, or the codicil will be deemed invalid.

If the event in question is a major change or there are multiple small changes you would like to make, it is best to make a new Will. This will apply if you are getting married or entering into a civil partnership, you are getting divorced or you have a child. The new document must include a clause that states any previous Wills or codicils are revoked. The old Will should then be destroyed.

For more information about this article or any aspect of Wills, Probate & Trusts get in touch with: David Sullivan at:

dsullivan@sullivanslaw.co.uk

What do workplace pensions mean for your business?

The rules surrounding pensions are currently undergoing a radical overhaul and within the next few years all employers will be legally obliged to provide a workplace pension.

So if you are an employer, you need to keep a close eye on developments and deadlines, no matter how many people are on your payroll

The initiative is called *automatic enrolment* and is being rolled out over a period of six years. It means that all employers must offer a workplace pension scheme to employees who are:

- Aged between 22 and state pension age
- Earn at least £9,440 a year
- Work in the UK

Employers must also make an employer's contribution to the pension scheme, which is based upon each individual's gross earnings.

If you already have a pension scheme in place, you need to check whether it complies with the automatic enrolment scheme.

The date from which you must provide pensions for employees is called a staging date and depends upon the number of people you have on your payroll. Companies with 120,000 or more employees have been obliged to adhere to the scheme since October 2012.

Smaller businesses have been given more time to prepare for the change, with some having until 1 February 2018 to comply. It is important to check your staging date as this will ensure you can start to plan well in advance.

Before the staging date you will need to write to each member of staff, informing them of the way in which automatic enrolment will affect them.

The idea is that employees do not have to do anything as the scheme is automatic. They can however, opt out if they want to.

If an employer fails to comply with the scheme, the Pensions Regulator may take enforcement action and issue a notice and/or a penalty. Therefore it is vital you know what your duties are or the consequences could be costly.

For more information about this article or any aspect of our Employment & Equality Law solutions, please contact Kerry McNally @kmsullivanslaw





Fortwilliam Chambers
531 Antrim Road
Belfast BT15 3BS
Northern Ireland

Telephone: +44 (0) 28 9077 4500
Fax: + 44 (0) 28 9077 6363
DX 4505NR Belfast 15
www.sullivanslaw.co.uk

 @sullivanslaw

 /sullivanslaw

 /companies/sullivans

Data protection and your business

If your business holds or uses personal information about staff, clients, customers or anybody else you come into contact with during the course of your business activities, you need to comply with the Data Protection Act 1998.

The Data Protection Act ("DPA") is a law which regulates the use of personal data, which encompasses any type of personal information. If you think your business does retain or utilise personal data, it is very likely that the DPA will apply. It is important to check this, as there are a number of responsibilities that must be fulfilled under the Act.

Primarily, you must notify the Information Commissioner that you are processing personal data, which will then be put on a public register. The way you process and use personal data must be done in accordance with the eight principles of Data Protection. These require personal data to be:

- (1) Processed fairly and lawfully;
- (2) Obtained for specified and lawful purposes;
- (3) Adequate and relevant to the purpose for which they are processed;
- (4) Accurate and up to date;
- (5) Not kept for longer than is necessary;
- (6) Processed in accordance with an individual's rights;
- (7) Protected from unauthorised or unlawful processing and accidental loss or destruction;
- (8) Not transferred to a country or territory outside the European Economic Area unless there is adequate protection in place.

There are further conditions if the personal data is deemed to be sensitive. This might include, for example, information regarding health, ethnic origin, criminal offences or political opinions.

If a subject access request is made, you must respond within 40 days. A subject access request is when someone asks you to reveal any personal information that you hold about them. You must provide a copy of that information, as this is one of the main rights of the DPA.

For more information about this article or any aspect of our business legal solutions, please contact Paul Sullivan at: psullivan@sullivanslaw.co.uk



Case note: Christmas do[n't]s

This time last year, I wrote a case note for the [Sullivans Blawg \(bitly/SullivansBlawg\)](http://bitly/SullivansBlawg). Whilst the names may change, my advice remains the same...

It is that time of year again, when work Christmas parties are in full swing and everyone is enjoying themselves. That said, this case summary is a stark reminder of what can happen at these parties and the repercussions for those involved.

Gimson v Display By Design Ltd (2012)

Employee dismissed for punching a colleague after Christmas party: Mr Gimson, who was employed as an operative, was walking home with a group of colleagues after their work Christmas party in December 2011. Whilst walking, Mr Gimson had a disagreement with one colleague and then punched another colleague, in the face, causing him serious injury. As a result, Mr Gimson was summarily dismissed for gross misconduct.

Mr Gimson claimed that he was unfairly dismissed and argued that the incident was not misconduct because it happened outside the course of employment and was therefore outside the employment relationship. Mr Gimson also argued that he had received an inconsistent sanction because his other colleagues involved in the incident were treated more favourably.

The Tribunal disagreed with Mr Gimson and found that the employer had reasonably concluded that the events after the work Christmas party were sufficiently closely connected to work as it was a result of the work Christmas party that Mr Gimson was walking home with his colleagues.

The Tribunal also disagreed that Mr Gimson had suffered from inconsistent treatment as the colleague whom he had punched was not disciplined as the investigation found that he had done nothing to provoke Mr Gimson.

The colleague whom Mr Gimson had the disagreement with, was apologetic for his actions and was given a final written warning however Mr Gimson became involved in a disagreement, punched a colleague and he showed no remorse for his actions therefore his dismissal was deemed to be fair in the circumstances.

Accordingly, employers may wish to remind their employees in advance of their party that, whilst the party is intended for employees to enjoy themselves, they should bear in mind that the work related social events policy applies.

For more information about this article or any other aspect of our Employment & Equality Law solutions, please contact Kerry McNally @kmsullivanslaw