

THE *Brief*

BELLS
solicitors

THE NEWSLETTER OF BELLS SOLICITORS

Introducing Tony Rivers

We are delighted to announce that Tony Rivers has joined the firm in order to head up and expand the firm's Company and Commercial department.

Tony has extensive UK and International experience in both private practice and in industry. Prior to setting up his own practice in 1999, he was a partner in Penningtons, a City firm with branches in the south of England. He has also held appointments as Group Company Secretary and Legal Adviser to multi-national companies in the manufacturing and service sectors. He is an active member of the International Bar Association and Licensing Executives Society.

Tony has in recent years handled a wide variety of business transactions of varying sizes and has lots of experience in Mergers and Acquisitions, Insolvency, Partnership, Business Start-up, Agency & Distribution, and Intellectual Property matters.

In recent years the firm has seen its share of company and commercial work fall as clients have tended to gravitate towards bigger commercial centres such as Guildford and Reading. However, as hourly rates in these areas have risen, sometimes close to London levels, we have seen an increase in demand from local businesses for a more accessible, cost-effective solution to their legal



problems. Tony's expertise will allow us, once more, to provide a full spectrum service to business and private clients alike.

In his spare time Tony enjoys racing his Morgan sports car, in which he has enjoyed considerable success, winning the 2008 and 2009 Silver Wings Trophy, which is awarded to the highest points scorer in an unmodified V6 Morgan Roadster. He currently leads this year's Morgan Roadster class and is third overall in the Morgan Challenge, in which a wide range of modified and unmodified Morgans compete.

The appointment of a new partner at Bells is a rare and special event. As the UK and the south-east in particular come out of recession, the timing could not be better.



Many people relying on inheritance to fund retirement

One in three people in Britain admit they are relying on an inheritance to help fund their retirement.

This is in spite of the fact that many of them have not discussed the issue with their parents, have no idea how much they might be left or even if their parents have made a will.

The research by Friends Provident found that only 14% of adults have discussed inheritance with their families and know how much they are likely to receive. A further 15% have not yet even considered how they will provide funds for their retirement. A total of 44% said they were not concerned about the current recession reducing the value of their retirement savings and investments.



The study shows that many people could face hardship in their old age if they don't start planning their investments as soon as possible because they may not receive the inheritance they expect. Even if they do, the value of that inheritance may be greatly reduced as a result of the economic climate.

They may even find that their parents

have failed to make a will. That means the estate will be divided in ways laid down by law which may not be to the liking of the children and other members of the family. If people are fortunate enough to inherit a large estate, they may find themselves paying back large amounts of it in inheritance tax.

Many of these problems can be avoided if people discuss the issues with their parents and families, and then plan ahead accordingly.

Please contact us if you would like more information about investments, inheritance tax, trusts, wills and probate and similar issues that may affect your future.

Company is entitled to damages from director who set up rival firm

A company is to receive compensation from a former director who set up a rival firm.

The company provided engineering and technical personnel for clients including the United States Defence Department. Its operations director, who was also an employee of the company, was responsible for the management of the business.

While still working for the company, the director set up a rival firm. He didn't tell the company that he had

done so. He also approached some of the company's customers and took confidential documents. The company claimed damages for conspiracy, breach of contract and breach of fiduciary duty – that is, the duty directors have to act in the best interest of the company employing them.

The court held that once he had resigned, the director was entitled to compete against his former company in any way he chose. However, he had been in breach of his duty because while working for his former company,

he had failed to alert them that he was about to set up a rival business. He had also taken documents and approached customers.

The court granted an order for damages to be assessed and also granted an injunction preventing the director from providing rival services until a year after his resignation.

Please contact us if you would like more information.

Firm wins fraud case against project manager

A company has won its case to be paid damages by one of its project managers who had accepted bribes from a contractor to conspire in various dishonest practices such as approving fraudulent time sheets.

The company was engaged in operating and maintaining high voltage electricity systems. The work was overseen by a number of project managers who worked closely with the various contractors needed to carry out the work. One of the project managers then started taking bribes from a contractor to provide it with repeat orders and to approve fraudulent timesheets and expenses.

The court held that the company had proved the allegations and so the project manager was ordered to pay damages to cover the overcharging on labour costs, the cost of wrongly procured goods and other expenses.

The contractor was also held to be partly liable for some of the payments including the costs incurred by the company in carrying out its investigations.

Please contact us if you would like more information.

Small businesses spending £12bn on compliance

Small businesses are spending a total of £12bn a year on complying with various regulations, according to research by the Forum of Private Business (FPB).

The FPB says that a survey of its members shows that employers in small to medium firms are spending an average of 37 hours a month on compliance. Employment law provides the greatest challenge and costs small businesses £2.4bn a year dealing with issues such as dismissals and redundancy, discipline, absence controls and management, parental leave and holidays.

Health and safety administration costs £1.2bn and small firms also find themselves bogged down in tax administration, building and property regulations, and equality and diversity.

The costs seem enormous when quoted in this way and it's not surprising that many firms will try to save money by dealing with these issues in-house. However, it is usually more cost-effective and safer to get good legal advice to ensure that compliance matters are dealt with quickly and correctly, leaving you free to concentrate on running your business.

This can save money in the long term and reduce the risk of creating problems unnecessarily – particularly in the area of employment law where failure to follow the correct procedures can lead to costly tribunal claims.

Please contact us if you would like more information about compliance with the various regulations affecting business.



More firms are taking legal action to recover debts

UK companies are stepping up their approach to dealing with bad debts and are now much quicker to take legal action than they were in the past.

Research by the business information provider, Creditsafe, shows that one in four businesses intend to take legal action over the coming year to enforce the recovery of outstanding debts. The tougher approach comes as six out of 10 businesses believe they will have to contend with an increase in defaulted payments for the rest of this year.

The survey also revealed that one in five businesses intend to introduce more

stringent penalties for late payment. In some cases, this will involve charging interest at 100%.

The survey confirms that companies are no longer prepared to tolerate late payments. Whereas in the past, legal enforcement used to be seen as a last resort, now businesses are prepared to take action at the first sign of trouble.

In these circumstances, it is the firms who are the most proactive who are the ones most likely to recover money owed to them. Firms who sit back and wait are the ones most likely to lose out.

In most cases, the matter can be resolved without having to go to court. A solicitor's letter outlining the action that may be taken if the overdue amount is not paid is often enough to ensure that the debt is settled promptly. It is also possible to charge interest on late payments which in some cases can more than pay for the cost involved in recovering the debt.

Please contact us if you would like more information about recovering debts and ensuring prompt payments.



Pre-nuptial agreements are given extra weight by Appeal Court ruling

Couples wishing to draw up legally binding pre-nuptial agreements have received a welcome boost from a landmark ruling by the Court of Appeal.

It means courts will have to give agreements far more weight in future and it may eventually pave the way for them to become legally binding.

The case involved the wealthy German heiress Katrin Radmacher and her former husband, Nicolas Granatino, who is French. When they married they drew up a pre-nup saying that he would not make a claim on her money if they ended up divorcing. That pre-nup would have been enforceable in their native Germany and France but they married in England, where the legal position has been less certain.

British courts will take pre-nups into account but they are still not legally binding under UK law. This has led to some debate as to their value, especially last year after the High Court decided that it would be unfair to hold Mr Granatino to the pre-nup agreement and awarded him £5.8m from Miss Radmacher's fortune.

However, that ruling has now been overturned by the Court of Appeal which has cut the payment to £1m – a figure Miss Radmacher was prepared to accept. In giving his judgment after the hearing, Lord Justice Thorpe said it was becoming "increasingly unrealistic" for courts to disregard pre-nups. He believed that a "carefully fashioned contract" could provide a valuable alternative to the "stress, anxiety and expense" of



'A valuable alternative to the stress of going to court'

going to court. He said judges "should give due weight to the marital property regime into which the parties freely entered".

The uncertainty about pre-nups will remain until parliament clarifies the law but this ruling by the Court of Appeal means they are far more likely to be enforced than they were in the past. It has major implications, not just for the wealthy but for millions of ordinary couples as well, as Lord Justice Thorpe was keen to point out.

Woman has no rights over house she helped her brother to buy

A woman who helped her brother buy a house has been told she has no claim on the property and cannot force it to be sold to enable her to get her money back.

The house was bought in the brother's sole name in 1999. The sister said she contributed a substantial sum of money towards the purchase on the basis of an express agreement that he would hold the property on trust for her.

She said she didn't register an interest in the property at the time because she had complete trust in her brother and believed that he would reimburse her.

The property was then let out for about five years with the sister acting as her brother's agent. However, in 2004, the brother decided to move into the house with his wife. The relationship between sister and brother then broke down.

The sister sought an order for the sale of the property so she could get her money back.

She told the court she would not have made such a substantial contribution towards the purchase price if she had not thought she was acquiring

an interest in the property. However, the court has ruled against her. It held that, on the balance of probabilities, the money she had contributed was no more than an unsecured loan for which she had expected a substantial commercial return, to be earned from letting the property.

If it was not a loan, it was difficult to see why the property had not been purchased in both names. The sister's claim for a beneficial interest in the property was therefore dismissed.

The case highlights the need for people to draw up the appropriate legal documents when making substantial investments of this kind.

Casual verbal arrangements can become blurred and lead to disagreements several years down the line – even among close family members as in this case.

Please contact us if you would like more information about this or any aspect of buying and selling property.



"There are many instances in which mature couples, perhaps each contemplating a second marriage, wish to regulate the future enjoyment of their assets and perhaps to protect the interests of the children of their earlier marriages upon dissolution of a second marriage.

"They may not unreasonably seek that clarity before making the commitment to a second marriage."

The Court of Appeal ruling will influence future divorce settlements with the presumption being that pre-nups should be enforced unless there are compelling reasons to doubt their validity. Such doubts might arise if one party signed without getting proper legal advice or if someone failed to disclose all their assets when the contract was being drawn up.

The ruling means that people drawing up pre-nuptial agreements can feel more confident that their wishes will be followed. This is of particular value to older couples who may be far from rich but may still have built up considerable assets such as a home or small business which they may want to protect for their own benefit and that of their children from a previous marriage.

Please contact us if you would like more information about pre-nuptial agreements.

The way we were



Bells prided themselves on their use of cutting-edge technology which, in 1987, involved a large computer in an air-conditioned basement, looking rather like an over-sized washing machine or tumble dryer.

Pictured here are the former senior partners of Bells (Allan Fuddy, left) and Mike O'Dell (Potter & Kempson, right) standing next to their pride and joy. The photograph of this leviathan has caused some amusement here in the office, with its reel-to-reel tape drives and less computing power than the average modern car. Nevertheless, it did show a commendable desire to use technology, which we have built upon over the years.

We recently received a mysterious brown envelope from a former client who now lives in the south of France. Upon opening it we discovered a fascinating array of photographs and press releases dating from the merger, in 1987, of Potter & Kempson and Bells. Our client had been the PR consultant for the merger and found this material during a clear out of his barn.

was designed to create one of the largest law firms in the south of England.

Bells was predominantly a Kingston firm, known for its commercial work, whilst Potter & Kempson was a traditional private client firm based here at 11 South Street in Farnham. In the event, the merger was short lived, with Bells becoming Carter Bells in Kingston and Bells Potter & Kempson (subsequently Bells) continuing in Farnham.

As the press releases recall, the merger

For those interested in such matters, the machine was subsequently replaced in 1988 by an IBM computer with a 33 MHz 486 processor, 16 Mb of RAM and a 400 Mb hard disk, which was quite an advanced specification back then. The cost? £9,699.00. Some things, it seems, are getting cheaper.

We wonder what the staff in 20 years time will make of us!

Directors breached their duties when buying property

The difficulties that can arise when directors are involved with different companies at the same time was illustrated in a recent case before the Court of Appeal.

The case involved a woman and two men who were directors at a finance company. The two men also owned another separate business.

During the course of their work for the finance company the two men came across an attractive investment property which they bought on their own behalf for their other business. The woman objected because she

believed the benefit of the purchase should have gone to the finance company. The business relationship broke down and she took legal action to force the two other directors to buy her shares in the company at a fair price. The judge ruled against her saying that the property investment lay outside the finance company's scope of business and so therefore she had not been prejudiced.

However, that ruling has now been overturned by the Court of Appeal. It held that the two men had come across the investment opportunity during the course of their work for the finance company

and therefore the finance company should have been offered the chance to take advantage of it. That had not happened and the men had therefore breached their fiduciary duties – that is, their obligation to act in the best interests of the company they are representing.

The case has now been referred back to the lower court to determine how much compensation should be awarded.

Please contact us if you would like more information about this or any aspect of company law.

PROPERTY

- ESTATE AGENCY
- RESIDENTIAL CONVEYANCING
- LANDLORD AND TENANT
- BUSINESS LEASES
- PROPERTY DEVELOPMENT
- RE-MORTGAGES
- COMMERCIAL PROPERTY

LITIGATION

- COMMERCIAL DISPUTES
- PARTNERSHIP DISPUTES
- PROPERTY DISPUTES
- DEBT COLLECTION
- CONSUMER PROBLEMS
- ACCIDENT COMPENSATION

COMPANY/COMMERCIAL

- SHARE PURCHASES/SALES
- TERMS & CONDITIONS
- ASSET PURCHASES/SALES
- COMMERCIAL AGREEMENTS
- COMPANY PROCEDURES

FINANCIAL PLANNING

- SAVINGS AND INVESTMENT
- RETIREMENT PLANNING
- MORTGAGES AND LIFE ASSURANCE
- TAX AND ESTATE PLANNING

FAMILY

- DIVORCE / SEPARATION
- CHILDREN ISSUES
- FINANCIAL SETTLEMENTS
- COHABITATION

PRIVATE CLIENT

- WILLS AND PROBATE
- TRUST LAW
- TAXATION
- TRUST ADMINISTRATION

EMPLOYMENT

- COMPROMISE AGREEMENTS
- REDUNDANCY
- UNFAIR DISMISSAL
- CONTRACT DRAFTING
- RESTRICTIVE COVENANTS

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