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LEGAL REVIEW

Your quarterly bulletin on legal news & views from Allan Janes Solicitors

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ALLAN JANES WELCOMES SNEH VASWANI

We are pleased to welcome **Sneh Vaswani** to our **Commercial and Property Department** as an Assistant Solicitor specialising in commercial property, and also dealing with residential property matters.

During her training with us, Sneh gained a wealth of experience working on various matters, including the acquisition of a business centre valued at £6.7 million comprising 9 tenant-occupied office buildings, and the property aspects of the sale of a business worth £8.3 million.

Work which Sneh advises on includes:

- Sales and purchases of residential and commercial properties;
- Grant of new leases;
- Commercial lease renewals;
- Lease assignments;
- Lease surrenders;
- Licences; and
- Mortgages and re-financing.

Sneh enjoys working for Allan Janes' diverse range of clients and has acted for private investors, companies, pension funds, small businesses and corporate occupiers.

Sneh Vaswani
Assistant Solicitor

Sneh takes pride in giving her clients clear and pragmatic advice to help them achieve their goals in a cost effective and efficient manner in line with their needs and her work has been widely praised by her clients.

Having lived in the Caribbean, India and England, Sneh has a passion for travelling and learning about different cultures and new languages. She also has a keen interest in continually expanding her knowledge and is currently studying for a Masters Degree in Business.

Ethiopian student realises education goals through Allan Janes donation

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WE WERE DELIGHTED TO PUT ONE OF OUR UNUSED LAPTOPS TO GOOD USE WHEN WE RECENTLY SENT IT TO SAMUEL IN ETHIOPIA.

Samuel met our Partner, Peter Collier, on Peter's recent tour of Tigre in the north-western highlands.

Samuel attends school in Axum, one of the ancient capitals of Ethiopia, and hopes to continue his studies at university and eventually to qualify as a civil engineer.

Will wishes rescinded by Court

One powerful reason why you should always seek legal advice before making your will is to ensure you meet your responsibilities to those who depend on you financially. In one case on point, the High Court effectively rewrote the will of a wealthy landowner who cut his long-term partner out of his £1.5 million estate.

The couple had been living together as man and wife for over 40 years. When he was in hospital shortly before his death, aged 94, he had told her not to worry as she would be well looked after. However, he left her nothing in his final will – he had made about ten others previously – and instead bequeathed his entire estate to two of his tenants who had been kind to him during his final years.

In a letter of wishes attached to the will, he expressed a determination that neither his partner nor her four children should inherit any part of his fortune. He stated, incorrectly, that she had her own resources and was financially comfortable. In fact, she had been left with modest savings of about £2,500 and was otherwise entirely dependent on benefits. In those circumstances, her lawyers launched proceedings under the Inheritance (Provision for Family and Dependants) Act 1975, seeking reasonable provision from his estate.

In upholding her claim, the Court noted the duration of the relationship and the care that the woman had given to her partner as his health declined. She had worked without pay on his farm and in his business, and assisted in caring for his mother before she died. In those circumstances, the terms of his will failed to match up to the moral and legal responsibilities that he owed her as a dependant.

The Court ordered that a cottage worth £225,000 should be transferred to the woman from the estate. She was also awarded almost £190,000 in cash to cover the costs of refurbishing the cottage and other expenses. The Court noted that the tenants, as the man's chosen beneficiaries, would still inherit the lion's share of his estate.

If you have been deprived of benefiting from the estate of someone on whom you were dependent, contact us regarding the possibility of making a claim.

Son's casual employment proves expensive for Dad

One area in which problems may not be anticipated is when a family member's status as a 'genuine' employee is disputed by HM Revenue and Customs (HMRC).

For any expenditure to be deductible for tax purposes, it must be 'wholly and exclusively' made for business purposes. In the case of a claim by an employee for a deduction, such expenditure must also be made 'necessarily'.

In a recent case, HMRC took a taxpayer to task over payments to his son, who was a university student. Specifically, HMRC claimed that £7,400 paid to him was not 'incurred wholly and exclusively for the purpose of the Appellant's trade and deductible against his self-employment income'.

When an HMRC enquiry was opened into deductions totalling more than £23,000 in the taxpayer's accounts, he was eventually able to satisfy them with regard to all the sums claimed except those payments made to his son. In point was the fact that the taxpayer did not actually record the 'wages' paid. HMRC took as their starting point the fact that the taxpayer was unable to prove that the payments had been made at all.

The taxpayer made protests, but the way his evidence was given probably did not help his case. The First-tier Tribunal concluded that the absence of evidence that the payments had been made on the basis of time records or some other methodology made it impossible to conclude that they were made wholly for business purposes. They were not, therefore, 'directly and solely referable' to the carrying on of the taxpayer's trade.

Casual arrangements such as these are fraught with potential problems. Not only can tax issues arise, but there may also be questions over failure to pay National Insurance Contributions or the National Minimum Wage, make pension contributions, hold appropriate insurance and so on. We can help you make sure you get it right first time.

One reasonable condition is sufficient for landlord

When a tenant wishes to assign a lease, it is usual for the landlord's consent to be required, and that consent can be withheld if there are sufficiently good grounds for so doing.

In a recent case, a landlord was asked by a tenant to agree to the assignment of leases on flats in London's Docklands. The landlord imposed several conditions on the assignments. The conditions were that the tenant should cover the landlord's legal fees for the assignment and the cost of carrying out inspections of the flats, and that the landlord should be provided with a bank reference to give comfort as regards the financial capabilities of the new tenants.

The tenant went to court arguing that the conditions were unreasonably excessive. The lower court agreed that the legal fees requested were extreme and held that the landlord's refusal to grant consent to assign was therefore unreasonable. The landlord appealed the decision.

The Court of Appeal took the view that the conditions were 'freestanding'. Just because one of the conditions was not reasonable did not mean that the others were 'infected'. Each stood alone and the tenant's failure to meet the reasonable conditions was sufficient reason for the landlord to decline to assign the leases.

The decision will come as a relief to landlords who seek to impose multiple conditions on the assignment of leases.

Planning law – take advice before you act

The planning system is very far from straightforward and sensible landowners seek legal advice before tackling it. The point was underlined by one case in which a farmer ended up with a part-built barn and at risk of enforcement action if he completed the development.

The farmer argued that the barn was reasonably necessary for his agricultural unit and proposed using it for storing potatoes and as a maternity unit for his 45 ewes during the winter months. He began construction work after applying to the local authority for prior approval for the development on the basis that it was automatically permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

After approval was given, the decision was challenged by way of judicial review by a neighbouring homeowner who argued that the barn did not fall

within the ambit of the GPDO because it was less than 400 metres from his and other homes, including a listed cottage, and was to be used for accommodating livestock. In quashing the council's decision, the High Court accepted that it had exceeded its powers by granting prior approval when the barn's status under the GPDO was in doubt.

The Court noted that the farmer had been within his rights to start building the barn after the council failed to reach a decision on his application for prior approval within 28 days. If he goes on to complete the development, however, he will be at risk of the council taking action to enforce its removal. It remains open to him to seek planning consent for the development.

Alternatively – on the assumption that his agricultural unit measures five hectares or more – he could still take advantage of the GPDO by abandoning his plans to use the barn for accommodating livestock and by moving it so that it is more than 400 metres away from his neighbour's home and other dwellings.

It is never truer than in property development that haste makes waste. We can help you avoid unpleasant surprises like this by making sure that legal issues are considered in advance.

Inheritance tax – 'Hope value' relevant to property valuations

When valuing a property for Inheritance Tax (IHT) purposes, is it legitimate to take into account its potential for enlargement or improvement – so-called 'hope value'? In a guideline ruling, the Upper Tribunal (UT) has answered that question in the affirmative.

The case concerned a maisonette in an attractive residential area. The property was in need of updating and had potential for extension. After its owner died, HM Revenue and Customs valued the deceased's 88.4 per cent share in the freehold at £1,829,880. The son of the deceased appealed on the basis that the correct valuation was £1,113,840 and the matter was referred to the UT.

The UT noted that Section 160 of the Inheritance Tax Act 1984 required that the property be valued on the basis of what it might reasonably be expected to fetch if sold on the open market. If the market was prepared to pay a price which included the prospect of an enlarged floor space, then it was right to take that into account.

The property – which had in fact been sold amidst a galloping property market for more than £2.5 million less than two years after the owner died – had been marketed as having great potential. It was clearly ripe for major reconfiguration and extension of the type that the purchasers subsequently carried out. After considering expert valuation evidence and other issues in the case, the UT found that the correct valuation for IHT purposes was £1,782,144.

High street store Will invalid, rules Court

The dangers inherent in adopting a casual approach to one's will were starkly illustrated in a case in which the High Court was called upon to consider the validity of three 'templated' wills following the death of an elderly woman.

The woman had three children and two brothers. One of her sons became her principal carer and lived with her whilst one of her brothers managed her finances.

In 2011, the social services team of the local council began an investigation as a result of concerns over possible neglect and financial abuse by her brother. These resulted in an application to the Court of Protection by the council, in 2012, to be appointed the woman's deputy in respect of her financial and property affairs.

Before the matter could be fully resolved, the woman died. Her son, who was unaware that his mother had made any wills and assumed that she had died intestate, applied for and obtained letters of administration over her estate.

These were opposed by the woman's brother, who produced the wills for consideration by the High Court. The first, dated 2008, was of the kind sold at stationers. This left the bulk of her estate to her brother and appointed him as her executor. He also submitted similar wills dated 2011 and 2012. He sought to have one of these accepted as valid by the Court.

The Court ruled that the 2011 and 2012 wills were not validly executed. The 2008 will was challenged on the basis that the woman lacked testamentary capacity when it was created and did not evidence 'knowledge and approval' of its contents.

Considerable evidence was given that the woman had been confused. She had, for example, put a dress on the wrong way round and had also asked why a long-dead relative had not called her. However, the judge considered that 'merely showing that a testator suffered from confusion or some level of dementia is insufficient to render that person incapable of making a will'. The challenge on the ground of testamentary capacity therefore failed.

Crucial to the claim that the 2008 will was executed without knowledge and approval of its contents was independent evidence given by a third party that the woman had repeatedly told her she wanted all her children to have a share of her estate.

The judge found that the will was therefore executed without knowledge and approval and was not therefore valid.

If you have concerns about the validity of a will or a relative's ability to create a valid will, contact us for advice. If you wish to ensure that a will you make can withstand a legal challenge, we can help.

Council tax to bite on empty property

In 2017, 205,293 dwellings in England were left empty for six months or more. With the housing shortage never far from the news agenda, steps to bring unoccupied houses back into use are being taken by the Government.

Under the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Bill, houses which are empty for more than two years will pay twice the usual rate of council tax.

There are, however, exemptions where there are legitimate reasons for properties being unoccupied, such as when the property is genuinely on the market for sale or rent or the owner is in residential care.

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