



# Additional Paternity Leave



Written by Stephen Oliver

The introduction of additional paternity leave on 3rd April 2011 will give fathers more time with newborn or adopted children by allowing couples to trade statutory entitlements to take leave from work.

The new scheme being introduced by the government will allow a father to take advantage of the mother's unused period of maternity leave. This right is in addition to the existing right of up to 2 weeks paid paternity leave which can be taken at any time from birth to 56 days after birth.

The advent of the rules have been heralded by some as the advancement of family friendly working practices which will allow fathers more time to bond with their new child, but on the other hand have been derided as yet another financial and bureaucratic burden on small businesses which they can ill afford in the present economic climate.

Additional paternity leave is for a minimum period of 2 weeks and a maximum period of 26 weeks. The leave can only be taken in a window that starts 20 weeks after, and ends 12 months after the child is born or placed for adoption.

A father will be entitled to be paid statutory paternity pay (currently £124 per week) for the period which the mother would have been entitled to statutory maternity pay had she not returned to work. By way of example, if a mother takes maternity leave six weeks before the baby is born and returns to work 26 weeks after birth, the father will be entitled to 26 weeks additional paternity leave of which 7 weeks will be paid (the total statutory maternity pay period being 39 weeks).

As ever, the legislation sets out complex rules on when the entitlement arises, when it ends, the giving of notice by the employee and what happens if the employee changes his mind about taking leave.

There is no doubt the new rules will impact significantly on businesses and the new rights will present challenges in terms of management and administration. 

# The Bribery Act 2010 Update



Written by Neil Gibbs

In the last issue of the firm's newsletter I reported that the Ministry of Justice had advised that the guidelines for the implementation of the

Bribery Act were due to be issued in January.

On 31 January the Ministry of Justice confirmed that the regulations would be delayed and the implementation of the Act due in April 2011 would also be delayed.

The present position is that the implementation of the Act will be pushed back until guidance has been published and distributed to businesses to allow them to prepare for the new regime.

It is now planned that the Act will come into effect three months after the relevant guidance has been published although as yet the Ministry of Justice has not committed to a precise date.

It seems clear that the delay arises from a two month consultation in September 2010 which prompted significant feedback. This consultation arose from concerns that the Act had been rushed through Parliament during the final days of the former Labour Government.

A Ministry of Justice spokesman is reported to have confirmed that they are working on the guidance to make it "practical and comprehensive for business".

The changes which will be introduced by the Act include making companies liable for operations carried out by a third party on their behalf as well as creating new general offences of bribing and receiving bribes linked to "improper performance".

Continued on page 3...



Written by Mike Hayward

# It's Snow Joke!

Snowy car roof or abandoning your car? Think again!

Rule 229 of the Highway Code stipulates that drivers must remove all snow that might fall from their cars into the path of other road users and Construction and Use Regulations state the driver of a motor vehicle must ensure that they have a full view of the road and all glass be free from obstruction. There is no specific offence for having snow on your roof but the police are taking this more seriously by imposing on the spot fines and possible penalty points on your licence. If you have an accident and there is evidence to show that your view was obscured by snow, you could face proceedings for failing to drive with due care and attention. Insurance companies reported a 40% increase in December 2010 for weather related claims - don't give them reason not to pay out if your vision is found

to have been affected by snow. Brush it off before you travel.

In addition to this, some police forces are towing away abandoned vehicles. The towing fee and any storage costs will be passed onto the motorist. Abandoned vehicles can impede emergency vehicles so if you have to leave your car, try to move it off the road as far as you can. Leave contact details on the windscreen and return to remove it as soon as possible. Some thieves are also taking advantage of unattended cars.

**Other things to remember in snowy conditions:**

- Clean your lights
- Demist all windows
- Ensure your number plate is legible

Drive safe this winter!



Written by Keith Jones

# Good Will Hunting

Entitlement to inheritance does not end with the will itself. The recent case of Gill v. Woodall shows that the Courts are as alive as ever to the reasons why a will should not always be taken at face value.

It is a long established principle of the English legal system that when we die we should be free to distribute our wealth to whomever we wish. We might take this for granted but we should not: other legal systems enforce the expectations of family members over the final wishes of the deceased.

However, the rights of a "disappointed beneficiary" are not completely excluded. The Inheritance Act 1975 recognises those who may have an expectation to receive an inheritance. If someone depends upon the deceased during his or her lifetime, the court may order the Estate of the deceased to make a financial provision for this person under dependency laws.

Will or no will, this opens the door to a variety of aspiring beneficiaries, though that door will remain closed to anyone who does not match strict criteria or fails to act within given timeframes. Such individuals are advised to act quickly.

What about the will itself? Of paramount importance is what the deceased intended to do with their property. One would assume that the will reflects those intentions; but that is not always the case...

Courts will set aside a will if persuaded that: the deceased was not mentally capable of making it; the deceased was influenced unreasonably when making it; the deceased did not understand the wording and effect of it; or the will itself is a forgery.

In the Gill case, suspicions were raised when a daughter was cut out of her mother's multi-million pound estate in favour of the RSPCA. Those suspicions were justified by witness and medical evidence which led the Court to conclude that the will was invalid. Why? Because the mother was married to an eccentric bully who coerced her into making the will; the mother suffered from a psychiatric disease; and the mother did not understand the contents of the will, and probably did not approve it.

Whatever we might say, this case demonstrates that the Courts are prepared to intervene and to construe a will differently, if necessary.

A note of caution prevails: a successful challenge of a will only reactivates any preceding will or it will result in the Estate being distributed as if there had been no will at all; and consideration will need to be given as to whether or not that is in fact a desirable consequence.



Written by John Leadbeater

# Who's Up for a Prenup?

The status of Prenuptial Agreements (Prenups) has been thrust back into the limelight by a long awaited decision of the Supreme Court in the case of Radmacher and Granatino.

This case involved a French husband (Granatino) and a German wife (Radmacher) who married in London and entered into a Prenuptial Agreement before their marriage at the insistence of the wife, a wealthy heiress, and her family which provided that neither party was to acquire any benefit from the property of the other during the marriage or on a subsequent termination.

The parties separated in 2006 by which time they also had two young daughters. At the time of the divorce the husband had changed his career from a high earning banker to a researcher at Oxford University earning significantly less than before.

A Prenuptial Agreement is an agreement made between two prospective parties to a marriage in which they set out what should happen to their assets and finances in the event of a subsequent separation and/or divorce. The current position in English law is that on a divorce, either party to the marriage is entitled to bring against the other claims of a financial nature. Those claims can only ever be determined by

Order of the Court. In certain circumstances financial claims can be settled by agreement. The terms can then be drawn up in the form of a Consent Order and passed to a Judge to approve.

The fact that there may be an agreement entered into either before marriage, or post marriage (such as a Separation Agreement) as to what should happen financially has long been a factor that a Court on a subsequent divorce could have regard to. It would not however be determinative but one of a number of factors that the Court would take into account (known as Section 25 factors).

This was an important case as it dealt with the issue as to what weight should be given to an agreement freely entered into between husband and wife before marriage. The decision here was that the Court should give effect to a Nuptial Agreement (the Court referring to Nuptial Agreements in the whole rather than pre- or post-nuptial as before), if that agreement is freely entered into by each party with a full appreciation of its

implications, unless in all the circumstances prevailing it would not be fair to hold the parties to their original agreement.

This decision, whilst elevating the status and weight to be given to such agreements, does not raise the agreement to a status of being a binding and final agreement of the matter. The Court retains the power to determine what the appropriate financial relief should be at the conclusion of the marriage in accordance with the Section 25 factors mentioned earlier, whatever the parties may separately have agreed. The agreement must be also fair, although the agreement and what it contains is capable of altering what otherwise would be considered fair.

In this case, the Court found that it was right to hold the parties to the bargain that they had made, but it may not always be so. The longer the period between the agreement and the separation or divorce, the more likely it is that the parties circumstances will have altered and the more likely it becomes that the Court would find that an agreement made some years before is no longer fair.



This decision also puts the onus on the party that is seeking to avoid the consequences of an agreement that they have entered into to show that it would not be fair to hold them to it.

This case has afforded prenuptial agreements greater weight in the balancing exercise that Courts have to undergo before determining a resolution of the financial claims on a divorce. There is likely to continue to be considerable litigation regarding such agreements. However, given the approach of the Court in this case, if a prospective party to a marriage has assets that they wish to preserve and protect it is clearly better to have such an agreement in place than not.

For further information on divorce and family legal matters, please contact John Egan and John Leadbeater on 01908 202150 or 01234 270600.

Continued from page 1

## The Bribery Act 2010 Update...

The Act requires that companies have in place adequate procedures to prevent such offences. One of the key issues is what amounts to "adequate procedures" generally.

Additionally, the review seems to be linked to ensuring the continued recovery of the economy and the ability of UK businesses to compete overseas where anti-bribery rules are not as severe or not yet contemplated.

As soon as detailed guidance is issued we will seek to update the advice. It is though clear that companies can start to take preliminary steps to comply with the Act. They can consider what procedures they already have in place and the areas of the world where they conduct business and identify areas of high risk. Once these have been identified, appropriate procedures and guidance can be proposed and issued to staff members.


## 4



# SO in India

**Stephen Oliver**, Head of Department for Company and Commercial matters, has recently returned from Aurangabad in Maharashtra, India, where he was invited to give a speech at a major business conference for Indian delegates.

The talk, at the 2011 Global Maharashtra Conference and Trade Fair, focused on the legal aspects of joint ventures and business in both the UK and India. Stephen, who was the only UK-based speaker at the Conference, said that the event was a great experience; **"This Conference is working hard to enable Maharashtra to emerge as a global industrial state, which will in turn support India's ongoing economic growth. I hope that my advice helps business owners in Maharashtra to set up and operate their businesses for the benefit of their employees and the country as a whole"**.

Mr Mansingh Pawaar, President of the Maharashtra Chamber of Commerce who organised the event, stated that; "We appreciate Stephen sharing his time, talent and expertise with us. His insightful presentation, remarks and the additional references provided were very informative and timely. The event in a true sense has provided a global platform at the doorsteps of entrepreneurs." 

**If you would like any further information on commercial legal services, for both the UK and abroad, please contact Stephen Oliver at Woodfines on 01223 411 421.**

## Firm News...



### Retirements

Before Christmas, Woodfines said goodbye to four longstanding employees leaving to enjoy their retirements. Bernard Mulhall worked for Woodfines for 7 years as an Archivist and is credited for the outstanding filing of our files and Mary Roberts was Mike Cox's secretary for over 20 years and will be missed by many clients. Ange Darlow came to Woodfines during its early days 27 years ago in our accounts department and her knowledge and experience will be sorely missed, whilst Sue Little worked in our Residential Conveyancing department at the Sandy office for 10 years. We wish them all long and very happy retirements.

### Claire Riches



Woodfines would like to welcome **Claire Riches** to our **Commercial Property department**. Claire comes to Woodfines from the inhouse legal team at Kent County Council, and will be based at our Milton Keynes office.

### Don't be part of the 70% who don't have a will!

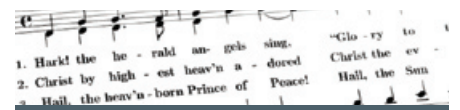
If you have seen the BBC2 series "Can't Take It With You", you will know that just 30% of people in the UK have a will. You will also know that if you die without leaving a will, you could potentially cause turmoil and expense for your loved ones. For example, if you are not married, have remarried and have children from a previous marriage or have step-children. Woodfines recommends that we prepare a will on your behalf to avoid these problems. Contact any of our offices to speak to a member of our Wills Team for more information. If you have not seen the programme then we recommend that you pay a visit to the BBC iPlayer immediately!

### A Note to All Private Car Users

There is an important change in the law which came into force on 4th February 2011 which creates a new offence making it unlawful to be the registered keeper of a vehicle which does not have insurance cover. There are exceptions but contravening this will ordinarily give rise to an offer of a fixed penalty (£100 reduced to £50 if paid within 21 days).

The important thing to remember is that if you are a registered keeper of a vehicle there must be insurance cover except where the vehicle has been sold, transferred, stolen, SORN'd (off-road) or the vehicle has been off road since 1st February 1998. This includes classic cars and those kept in garages.

We trust this is of some interest for your private car situation and avoids any expensive mishaps. It is always advisable to be doubly sure you have insurance cover since the penalties for uninsured use on the road are steep.



### Carol Singing – Bedford

Members of Woodfines' Bedford office took to Bedford Train Station before Christmas to sing festive carols in support of the Bedford Hospitals Charity. The singers raised £500, which will be one of the first donations for the hospital's new appeal, which requires £600,000 for a new gamma camera for speedier and better diagnosis of diseases.

### Upcoming Events / Seminars

#### Friday 25th March:

**Woodfines Transport Conference,**  
Cambridge

For members of the transport and road logistics industry, with presentations from the Eastern Traffic Commissioner, VOSA and Woodfines' expert Transport and Regulatory Team.

For more information and booking, please contact Nicola on [nadcock@woodfines.co.uk](mailto:nadcock@woodfines.co.uk)

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