



Outside the Box

AUTUMN
2009



Michael Lightowler
Corporate
Commercial



Warren Hawkings
Wills, Probate,
Tax and Trusts



Albert Barrett
Property



Brian Spencer
Property



Lucy Folley
Corporate
Commercial



David Chapman
Managing Partner
Property



Jane Winfield
Property



Anne Ellis
Property



Sue Dowman
Corporate
Commercial



Wendy Beach
Litigation



Nick Traill
Corporate
Commercial



Michael Callaghan
Litigation

Wortley Byers LLP

Cathedral Place
Brentwood
Essex
CM14 4ES
Tel: 01277 268368
www.wortleybyers.co.uk

Regulated by the Solicitors
Regulation Authority

Wortley Byers Solicitors



Articles:

[The Carbon Reduction Commitment - Page 1](#)

[Business Rates for Non-Domestic Premises: An
Overview - Page 2](#)

[No Will? No choice - Page 2](#)

[Divorce and the Recession - Page 2](#)

[Businesses and the Recession - Page 3](#)

[Additional Inheritance Tax Interest from
29 September 2009 - Page 3](#)

[To Give or not to Give? - Page 4](#)

[The Jackson Review - Preliminary
Report - Page 4](#)

[Stop Press... - Page 4](#)

News:

[One STEP closer - Page 2](#)

[Thorndon Stride 18 October 2009 - Page 2](#)

[2nd 2009 Marathon for Jane - Page 3](#)

[Cardiomyopathy - Page 3](#)

[Brain Boxes Crowned Cranium Kings - Page 4](#)

[And Finally... News about our Clients - Page 4](#)

The Carbon Reduction Commitment ("CRC")

Article by Brian Spencer

01277 268 303

bspencer@wortleybyers.co.uk



If an organisation uses at least one half-hour electricity meter which is settled on what is known as the half-hour market, it should receive an interesting package from the Environment Agency this Autumn. Approximately 20,000 such organisations are going to be asked if they qualify for mandatory entry into the CRC, which is a scheme for trading carbon emissions which goes live in 2010. It is estimated that approximately 5,000 organisations will have to register – as a rule of thumb, this will be because their 2008 electricity bill exceeded £1/2m.

Allowances for emissions will have to be purchased, eventually by auction, and they can be traded. At the beginning, it is likely that the minimum annual cost of the allowances will be £38k. Performance league tables will be compiled and published. CRC is intended to be revenue-neutral, so there will be "revenue recycling" – in other words, bonuses for the good performers and penalties for the carbon profligates.

Unless your organisation is likely to receive one of the

Environment Agency's qualification packs, you may wonder what the CRC has to do with your business. Apart from the near certainty that the qualification thresholds will come down over a period of time, the CRC is going to have an impact on commercial leasing. A significant number of landlords will be participants in the CRC, or at least they will want to make sure that their leases are not offensive to potential future investors who may themselves be caught by the CRC.

The CRC raises many complex and as yet unresolved challenges for the commercial landlord/tenant relationship. If landlords are going to expect tenants to bear some of the CRC burden, new lease wording will need to be agreed. The British Property Federation has released a useful, but inconclusive guide which you can download if you search for "CRC a guide for landlords and tenants" on its website, www.bpf.org.uk



NEWS

One STEP Closer

Associate Poh Shan Chong and solicitor Andrew Spearman recently passed the latest round of exams in their bid to become full members of the Society of Trust and Estate Practitioners (STEP). STEP is widely-recognised as the gold standard for lawyers practising in the areas of wills, probate, trusts, tax and estate administration. There are a few more exams to pass yet, but Poh Shan and Andrew are on track to becoming full members next year.

Thorndon Stride 2009

We are acting as overall sponsor of this year's Thorndon Stride event in aid of Cancer Research UK and its work in combating breast cancer. Our Managing Partner, David Chapman, will be leading our contingent of partners and staff on the day. Friends and family are welcome to attend. The event takes place on Sunday 18 October and involves an 8km walk around Thorndon Country Park starting at 11am (registration for walkers an hour earlier).

If you would like to register in advance (it's cheaper than on the day!) and enter yourself or even a team then please visit the Thorndon Stride charity event website at www.jointhefight.org.uk/events/thorndon8kstride/

If you are unable to attend the event but would like to make a donation then please visit www.donatotobreastcancer.org/wortleybyersllp

Wortley Byers LLP

Cathedral Place
Brentwood
Essex
CM14 4ES
Tel: 01277 268368
www.wortleybyers.co.uk

Regulated by the Solicitors
Regulation Authority

Business Rates for Non-Domestic Premises: An Overview

Article by **John Southan**

01277 268 357

jsouthan@wortleybyers.co.uk



The Valuation Office Agency (VOA) reassesses the rateable value (RV) of premises every 5 years and the next date for review is 1 April 2010.

The RV is assessed on what the VOA calculates to be the expected annual open market rent of each premises on a given date. It uses a date two years before each 5-yearly reassessment date so in 2010 it will use 1 April 2008 as the relevant date.

Occupiers of small premises (with a RV under £15,000, or £21,500 in London) can apply to defer paying 60% of the increased business rates, and instead spread the payments equally over the years 2010/11 and 2011/12 if they qualify.

The Business Rates Supplements Act 2009 allows councils to add 2 pence for every pound of RV onto business rates to fund large infrastructure projects. You may see such increases to your business rates bills in the future.

From 1 April 2008, limits were imposed on the relief from business rates for empty premises. 100% relief can be claimed for unoccupied industrial and warehouse premises for only 6 months and for all others for just 3 months and thereafter full business rates are payable. A one year exemption from Business Rates has been granted to empty small premises (with a RV under £15,000, or £21,500 in London) for the period 1 April 2009 until 31 March 2010.

No Will? No choice

Article by **Andrew Spearman**

01277 268 393

aspearman@wortleybyers.co.uk



A recent increase in a spouse's entitlement where their partner dies without a Will is still no substitute for proper planning.

Many married couples mistakenly believe everything passes automatically to the survivor on death, but this is not necessarily the case. A widow with children will only receive her husband's personal belongings, a legacy of £250,000 and a right to the income from half of whatever remains, the other half passing to the children when they are 18.

This could leave the survivor inadequately provided for and with a trust to administer for themselves and their children under 18. These rules also apply to civil partnerships.

While the increases are long overdue, the order of distribution may not be as you would like, nor may it

be tax-efficient.

By way of example, the sum left to infant children would be held in a trust and could give rise to inheritance tax charges. As the beneficiaries are minors there is no scope for changing this situation. A professionally-drafted Will can prevent this situation occurring and save tax.

A Will can also specify your executors (who will deal with your affairs on death). Gifts to other relatives, friends or charities are also possible if you detail them in a Will.

A Will drawn up by a Solicitor is drawn up by a specialist and need not be expensive.

Divorce and the Recession

Article by **Ros Plumb**

01277 268 349

rplumb@wortleybyers.co.uk



The current economic situation is making difficult decisions within divorce even harder to make.

In divorce proceedings there is a need to consider the amount of the matrimonial assets as well as the income capacity of both parties before assessing a fair division between them.

The current economic climate can cause difficulties for a number of reasons. These include the increased risk of redundancy, the fluctuating property market and the extremely volatile situation regarding shares, investments and pensions.

Job insecurity on the part of the paying spouse means that ongoing maintenance rather than an immediate clean break may be advantageous as it is possible to apply for a downward variation of maintenance should income reduce. On the other hand the recipient of maintenance may prefer a capital sum in lieu of ongoing maintenance in order to avoid any reduction

in maintenance payments.

The matrimonial home at one time was probably the most valuable matrimonial asset before the difficulties in the housing market. The reality at present is that properties are selling for less and taking longer to sell which does not assist parties wishing to move on with their lives.

Share valuations and other equity based investments need re-calculating on an almost daily basis.

Bankruptcy is also becoming increasingly common which can result in the forced sale of the matrimonial home even if there are children.

In view of the above it is important to seek good legal advice to be able to resolve issues in the most amicable and conciliatory way.



NEWS

2nd 2009 Marathon for Jane

Having successfully completed the London Marathon in April Head of Property Partner Jane Winfield is running the Abingdon Marathon on 18 October.

"Despite having an injury in February and not being able to train I did manage to run the London Marathon and loved every minute of it so it seemed obvious to start proper training and run another marathon in October!" says Jane.

"I've entered the ballot for a place in the London Marathon 2010 and am hoping to run for a local hospice so it looks like I have lots more training to do even after the October marathon is (hopefully!) in the bag!"

Cardiomyopathy

Anne Elliss' brother, Andy, and his school friend, Nick Hobbs, will cycle with two friends from San Francisco to San Diego in support of Cardiomyopathy, a charity with a very special significance to them.

If you would like to show your support for Cardiomyopathy and this rather challenging task, please follow the link below to their Just Giving website, through which you can make donations if you so wish. Their target is £5,000, but with your generosity they hope to improve on this figure.

www.justgiving.com/nickandandy/

Wortley Byers LLP

Cathedral Place
Brentwood
Essex
CM14 4ES
Tel: 01277 268368
www.wortleybyers.co.uk

Regulated by the Solicitors
Regulation Authority

Businesses and the Recession

Article by Sue Dowman

01277 268 355

sdowman@wortleybyers.co.uk



Protecting supplies and cashflow

If you run a business supplying goods or services to customers then you are likely to be part of a supply chain.

If a supplier's business is having financial problems and as a result supply has become interrupted, you will need to consider whether it is possible to terminate the supply agreement and seek another source of supply. You may also wish to consider delaying payment until the point of actual delivery to avoid paying for goods which you never receive.

Sometimes a supplier or one of its assets may be so integral to your business that to simply terminate and seek an alternative will not be possible. In this case, you may wish to consider whether 'step-in rights' should be included in your supply agreement. These will allow you to literally step in and take over to keep things moving, avoiding a total breakdown. If the integral factor is an asset, you may wish to consider including provisions in your agreement that the other party may only offer third party security over that asset with your consent.

You should also consider provisions to protect your interests should a business go into administration including negotiating a payment upfront. Other options are available such as 'retention of title' clauses, letters of credit or guarantees from appropriate third parties or the individual directors of a customer company.

Protection long term

It may be attractive to offer 'deals' or sell off assets cheaply to raise cash but directors should consider their duties.

Directors are required to promote the success of their company and can be held accountable for debts in situations where a company has gone into insolvent liquidation but the directors continued to trade knowing that the company was unable to pay its debts. Transactions where assets are sold cheaply or at an 'undervalue' can be set aside and returned to the business or the 'proper' price demanded. You should also be careful not to offer 'preferences' to current creditors.

Borrowing

Borrowing is an integral process in business, ensuring continual cash flow. You may find that income has slowed and you cannot keep up with loan repayments.

Drastic action such as foreclosure is not in the interests of lenders and they will potentially negotiate. A bank may agree to suspend temporarily its right to foreclose and may then renegotiate the terms of your loan. A subsequent restructuring may include extending the repayment date or decreasing the monthly repayments which will ease the immediate burden.

It is always good practice to seek professional advice as soon as it becomes apparent that your business is in financial difficulties.

Acquiring assets of another company from an administrator

The main benefit of acquiring the assets of an insolvent company from an insolvency practitioner is that you can obtain a business or its assets at a much lower price.

Purchasers should be aware of the potential pitfalls. The seller will avoid giving warranties so you will be buying on a 'sold as seen' basis. In these circumstances there will be very limited or no rights to claim against the seller as with a normal sale and as the proceeds will need to be distributed to creditors immediately, monies will not be retained to settle potential claims.

When buying single assets, information will be scarce and the onus will be on the buyer to investigate the title as fully as possible. Physical inspection may prove difficult if you cannot gain access to the premises.

You will also need to consider when acquiring all the assets as a going concern that legal responsibility for employees will pass to the buyer. You will therefore need to take advice to ascertain if the purchase will initiate a transfer and what your level of liability and future responsibility will be, together with what employment law procedures you need to follow.

Additional Inheritance Tax Interest

Article by Warren Hawkings

01277 268 345

whawkings@wortleybyers.co.uk



Interest has always been charged on any Inheritance Tax unpaid six months after the date of death.

Such interest has been at a relatively low level at just above, or just below, Bank Base Rate. This allows Executors to sell assets such as the family house without feeling unduly pressurised.

However, as from 29 September 2009 an additional

rate of interest is being introduced on unpaid Inheritance Tax. This will be fixed at a rate of 2.5% above Base Rate. The new rate will, therefore, start at 3% per annum. This is in addition to the 40% tax payable.

Just another sign of the times!



NEWS

Brain Boxes Crowned Cranium Kings

It's not all hard work at Wortley Byers. Sometimes we like to mould animals out of clay or draw the Eiffel Tower blindfolded. These activities (among many others) were some of the challenges our staff recently performed – all in aid of charity.

Property partner Anne Elliss and trainee solicitor Miz Choudhury organised a staff tournament based on the popular board game Cranium. Funds raised from the participation fee were matched by the partners and proceeds were donated to this year's Thorndon Stride, in aid of Cancer Research UK.



Several teams battled over lunchtime heats for a coveted place in the Cranium grand final. Victory went to the team Dead Ringers, who consisted of wills and probate partner Warren Hawkings, wills and probate solicitor Andrew Spearman and litigation solicitor Christopher Everett.

The event was enjoyed by all and who knows where this could lead – an inter-departmental charity Ker-Plunk competition? Watch this space.

Wortley Byers LLP
Cathedral Place
Brentwood
Essex
CM14 4ES
Tel: 01277 268368
www.wortleybyers.co.uk

Regulated by the Solicitors
Regulation Authority

To Give or not to Give?

Article by **Poh Shan Chong**

01277 268 347

pchong@wortleybyers.co.uk



If you are thinking of making a substantial gift to save tax or to avoid care home charges make sure you seek professional legal advice to avoid any unforeseen traps.

Home owners often think that transferring the family home to others, such as children, will absolve all involved of inheritance tax liabilities and put the home out of the reach of a local authority. This is rarely the case.

Transferring the legal ownership of your home to your children, whilst you still live in it but they do not, may ease the estate administration on death but will usually make no difference to your inheritance tax

liability due to anti-avoidance provisions.

Similarly, gifting the home in this way could also fall foul of care charge anti-avoidance laws where a local authority can still include a former house in means-testing calculations when making an assessment.

Other types of substantial gifts, such as business interests, might attract tax reliefs. It might also be possible to transfer assets into some form of trust or to consider creating a lasting power of attorney if the burden of dealing with a particular asset is getting too much.

The Jackson Review - Preliminary Report

Article by **Michael Callaghan**

01277 268 362

mcallaghan@wortleybyers.co.uk



Following the commencement of the Civil Procedure Rules in 1998, costs have remained a concern to anyone conducting or contemplating litigation.

A thorough review of civil litigation costs is ongoing at the moment headed by Lord Justice Jackson. He released his Preliminary Report in June 2009. In that Report, the key questions and issues raised were in what circumstances the losing party should be required to pay the costs of the successful party, the issue of fixed costs, costs capping and costs

management. He also asked how and in what circumstances should the amount of any costs payable by the losing party be reduced or restricted.

The full report is expected in December. It will be in the national Press at that time. We will file a further report on this and how it affects the conduct of litigation in a further edition.

Stop Press...

The new Companies Act 2006 comes fully into force today! Amongst other things, it is now possible for directors to register a service address with Companies House in place of their home address. If you would like to take advantage of this, please contact Miz Choudhury on 01277 268343.

And Finally... News About Our Clients

Not content with successfully completing the London Marathon, Jane Bennett of Bennetts Funerals has set herself (along with five other team members), a new and more demanding challenge in October of trekking to Everest Base Camp in Nepal (approximate altitude 5,500m).

Having become aware of the plight of so many Nepalese and their lack of fresh water supplies, Jane and her enthusiastic team have decided to make their trip more worthwhile by raising money for WaterAid. If they are successful in raising £3000, they can specify to the WaterAid charity that all of these funds go towards a specific project in Nepal.

If you would like to make a donation to WaterAid, please do so on www.justgiving.com/BaseCampers. We wish Jane and her team the best of luck.



We were proud to sponsor Wilbert Verheyen, Steve Wilson, Carol Mayers, Andrew Cunis, Stephen Lynch and Paul Knowles, all of Océ, in their attempt to complete the Oxfam Trailwalker on the 18-19 July. Oxfam Trailwalker is regarded as one of the world's toughest team challenges. Teams have to complete a gruelling 100 kilometres endurance walk (or run) across the South Downs within 30 hours. The Oxfam Trailwalker is an annual event run by the Gurkha Welfare Trust (GWT) and Oxfam. Money raised is split equally between GWT and Oxfam and used to fund their work tackling poverty and suffering.

The Océ Footprint Team completed the walk in a very impressive 19 hours. If you would like to join Océ in supporting this cause, please follow this link: <http://original.justgiving.com/stevewilson6>.

This newsletter has been prepared for general interest and it is important to obtain professional advice on specific issues. We believe the information contained in it to be correct at time of print. While all possible care is taken in the preparation of this newsletter, no responsibility for loss occasioned by any person acting or refraining from acting as a result of the material contained herein can be accepted by the firm, the authors or the publishers.

Click [here](#) to unsubscribe from the Wortley Byers newsletter

© Wortley Byers LLP 2009