



The accidental tourist

With the holiday season coming to an end it is inevitable that some of us will have been injured whilst enjoying ourselves in the sun.

Those unfortunate enough to be involved in an accident face the prospect of seeking medical treatment in an unfamiliar country, with perhaps only a basic knowledge of the language. Whilst many in that situation will wish to claim compensation, some may be put off by the prospect of having to make the claim under a legal system very different to ours. However, the Package Travel, Package Holidays and Package Tours Regulations 1992 allow a claim to be made in this country even if the accident happened abroad.

The Regulations provide that the 'other party' to the



such as excursions, then you are unlikely to be covered by the Regulations.

Although the Regulations allow a claim to be made in this country the court will have regard to local safety standards when deciding whether the hotel, or other supplier of holiday services, acted with reasonable care.

For example, in *Wilson v Best Travel Limited* the claimant fell into a glass door in Kos. The glass complied with local safety standards but not with British standards. The court decided that the tour operator had acted with reasonable care as the glass complied with the local safety standards. The only situations where the 'local safety standards' rule is not followed are where international regulations apply or where the absence of a particular safety feature might cause a reasonable holidaymaker not to take the holiday at all.

If you would like further information on the issues raised in this article please contact Adam Brain on 01926 880721 or via email.

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Join us and join in a great big coffee morning

Wright Hassall will again be taking part in Macmillan's World's Biggest Coffee Morning on September 26 and you are welcome to join us at our offices anytime between 10am and 1pm. The coffee morning is a nationwide annual event which last year raised a staggering £7.5million

Starbucks will be providing the refreshments (including tea and soft drinks) and a selection of cakes will be available from Fatherson Bakery; both companies are kindly donating their products free of charge.

Virgin Vie and Kipper Cards will be selling their products alongside Eden Spa who will be offering nail treatments and head massages at a reduced cost. All the participating companies will donate a percentage of their earnings from the day.

If you would like more information contact Tara King on 01926 884647 or email tara.king@wrighthassall.co.uk.

For more information about the World's Biggest Coffee Morning visit: http://www.macmillan.org.uk/G-et_Involved/National_events/WBCM/WBCM_home.aspx



If you have been unlucky enough to have an accident while on holiday then claiming compensation may not be as difficult as you think says Adam Brain.

holiday contract, such as your tour operator, may be liable for the failures of other suppliers of holiday services. For example, if your accident was the fault of hotel staff abroad you may still be able to make a claim against your tour operator in this country.

Although most holiday claims will be against tour operators the Regulations do also cover schools, local education authorities, social clubs and other similar organisations.

The Regulations only apply where the package involves at least two out of three elements, namely transport, accommodation and any other tourist service accounting for a significant proportion of the package. If you book your flights and accommodation separately, without any other services

When thinking for yourself becomes too difficult

Most people take for granted their ability to manage their own affairs but have you considered what would happen if you or a close relative became unable to do this for yourself? Careful planning can mean the difference between a smooth transition to a nominated person managing your affairs and an expensive, time-consuming application to the Court of Protection during which time your bank account could be frozen whilst the bills mount up.

Since the introduction of the Mental Capacity Act 2005, it is no longer possible to make an Enduring Power of Attorney ("EPA"), appointing another to manage your affairs if you become incapacitated (either mentally or physically). If you have an EPA in place then you are one of the lucky ones – these remain legally valid under the new regime.

If you do not have an EPA in place, what should you do?

Provided you (or the person concerned) has full mental capacity you can consider either or both of the following.



Claire McGinity, a member of Solicitors for the Elderly, discusses the merits of putting in place a lasting power of attorney.

1. Lasting Power of Attorney ("LPAs") – these replace EPAs. LPAs are lengthier documents. There are two forms, one relating to property and affairs and another relating to personal welfare. A certificate provider must sign the form, confirming that the person making the LPA has sufficient mental capacity and also that no-one has induced the person to sign. This is quite an onerous task and one which a solicitor or other suitably qualified professional can undertake. An LPA must be registered with the Office of the Public Guardian (OPG) before it can be used (even if the person remains mentally capable). The OPG currently has a backlog of LPAs to register and registration can take up to three months. It is

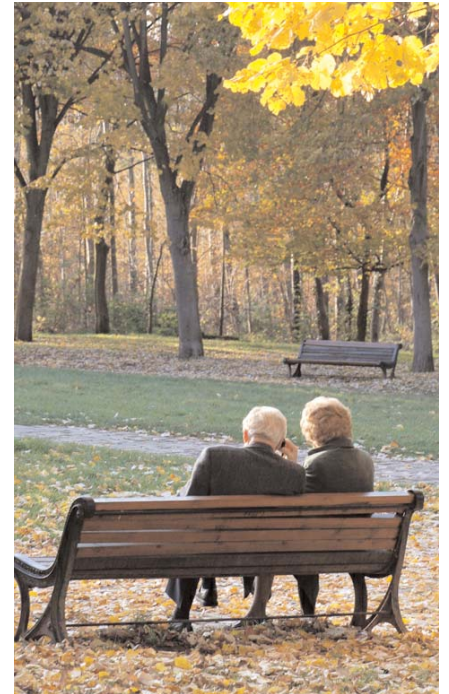
therefore advisable to register the LPA with the OPG as soon as it has been made. The OPG charges a registration fee of £150 per document.

2. Ordinary Power of Attorney – these are simple to prepare and you can authorise one or more persons to manage your financial and property affairs. The authority can be restricted to a certain period of time or to a particular transaction such as the sale of a property. An Ordinary Power of Attorney can be used as soon as it has been signed (it does not need to be registered with the OPG). However, if the person making the Power of Attorney becomes mentally incapable, the Attorney's authority to act ceases. Ordinary Powers are therefore particularly useful when somebody needs to act on another's behalf as a matter of urgency.

If you have concerns for another person who can no longer manage their affairs, what can you do?

If the person concerned has lost or begun to lose their mental capacity, it is unlikely that person will be able to make any type of power of attorney. This is why it is important to seek legal advice at the first sign of a problem. If there is any doubt about capacity a doctor's opinion should be sought. If the doctor confirms that the person has the ability to make a power of attorney then the power of attorney can be put in place, often with the doctor acting as a witness, or in the case of a Lasting Power of Attorney, providing the certificate. Expect the doctor to charge fees for these services.

If it is clear that the person does not have sufficient capacity, then a family member, or, if there is none, solicitor or other professional adviser, may make an application to the Court of Protection to be appointed that person's Deputy. Deputyship has replaced Receivership under the administration of the OPG (which has recently changed its name from the Public Guardianship Office). An application for deputyship involves completing several lengthy forms detailing the assets and income of the incapable person, the reasons why someone ought to be appointed as Deputy and any interested parties who ought to be notified of the application. A further doctor's



report (on a prescribed form) must be obtained and the proposed Deputy must declare their fitness to act and disclose certain personal information. On top of all this is the court application fee of £400 and the application hasn't been issued yet!

Once the application is issued, the proposed Deputy must serve notice on any interested parties and the person who lacks capacity. The Deputy then completes further court forms to confirm that this has been done. It is currently taking the court up to six months to process deputyship applications. Procedures are in place to process urgent applications more quickly but these will not be available to most applicants.

The moral is therefore, to act quickly and take professional advice if you anticipate a relative is struggling to manage their own affairs or, better still, put in place a Lasting Power of Attorney as a precautionary measure.

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Good looking offers that turn ugly

There is much in the news lately about cosmetic surgery and particularly the comparative cost should the surgery be undertaken abroad. One website is offering price comparisons for the same operation in different countries. So, for example, the cost of a facelift in the UK is priced at £4,200 to £5,800 whereas in the Czech Republic, it would cost £1,576. The question, of course, is whether the operation is exactly the same, carried out to the same standards, irrespective of the country in which it is undertaken.

Cosmetic surgery is an invasive procedure (meaning, in this case, the skin is cut) carried out usually under general anaesthetic. It will therefore carry the usual risks associated with surgery and anaesthetic, such as infection.

Surgeons in the UK must have undertaken extensive training and be registered with the GMC in order to practice. Every country has its own methods of training and registering doctors and therefore, it cannot be assumed that the doctor carrying out the surgery abroad will be trained to the standard set in the UK.



Having cosmetic surgery abroad is often substantially cheaper than in the UK. If things go wrong, however, taking action could be very expensive. Jeanette Whyman reports.

The television and magazines are littered with stories of unfortunate patients whose cosmetic operations have 'gone wrong'. If this happens, what right of redress might there be?

The websites offering surgery abroad appear to be introductory websites only which means that they are unlikely to carry any liability. They encourage the prospective patient to contact the cosmetic surgery provider directly and are very careful to make clear they carry no responsibility for the service offered by the providers. The contract is between the patient and the surgeon or hospital directly and it is upon this that an action would rest.

Even if the doctor undertaking the surgery

was trained in England, if the surgery does not go as well as had been hoped, there would be no claim through the English courts. If the operation was conducted abroad by a doctor employed by the foreign hospital or clinic, then any action must be undertaken in that country.



The relative cheapness of the procedures is very attractive as can be seen from the example given above. However, it must be borne in mind that if all does not go according to plan, the costs of rectifying the damage could far outweigh any initial savings made.

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Lucas civil partnership break-up may provide legal guidelines

Matt Lucas, of Little Britain fame, has recently separated from his civil partner, Kevin McGee, only 18 months after "marrying" him in a high profile civil partnership ceremony.

The couple met in a nightclub in 2002 and became engaged in 2006 having decided to enter into a civil partnership after laws permitting same sex unions came into force in December 2005. The ceremony itself was followed by an extravagant pantomime-themed event at which the two grooms and array of celebrity guests wore fancy dress.

The couple shared a home in North-West London worth £1.5 million and it is estimated that Lucas has a personal fortune of between £10 and £20 million. Speculation is therefore now rife as to the financial implications of the dissolution given that it is not believed that they entered into a pre-civil partnership agreement which could have protected Lucas's burgeoning wealth.



Family lawyers are watching with interest how the break up of the civil partnership between Matt Lucas and Kevin McGee will be resolved in the courts. Lisa-Marie Darby reports.

It is intended that the dissolution of a civil partnership should be treated in the same way as a divorce, in which case the starting point for negotiations will be an equal split of all the assets. That said, if the matter does go before a Judge, he or she will also consider what is reasonable in the circumstances given the difference in the parties respective contributions prior to and during their relationship. There may well be an issue as to

whether McGee, who works in television, is entitled to maintenance payments given that he is now used to a much higher standard of living than he would be able to afford on his salary.

It certainly appears that Lucas is taking matters seriously having now employed Mishcon de Reya, the same law firm that were instructed by the Princess of Wales during her divorce from Prince Charles and more recently, Heather Mills in her battle with Sir Paul McCartney.

Whilst Lucas and McGee have stated that they wish their split to resolve itself amicably and we of course hope that this is possible, if it is not, many family lawyers will welcome the guidance that will be provided by the judiciary as to how such cases should be dealt with.

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Baffling terminology explained

■ **What does intestacy mean and what are swear fees? John Rouse cuts through the legal terminology to offer you an explanation.**

The legal profession is often more guilty than most of using professional jargon. We use terms such as "probate" and "intestacy" whilst not explaining what they mean. So here are a few handy definitions to help you through the legalese.

PROBATE. This is commonly used as a generic term for the procedure in winding up a person's estate after their death.

GRANT OF PROBATE. This a Court Order which authorises the executor of the estate to deal with the administration. Banks, building societies and financial institutions often require a copy of the grant of probate to be produced to be able to close accounts, cash in or sell investments. A grant of letters of administration is obtained when the deceased does not leave a will.

PERSONAL REPRESENTATIVES. A collective term for the people charged with administering the estate. Where there is a will the personal representatives are called "executors" and where there is no will they are called "administrators".

LAWS OF INTESTACY. If somebody dies without leaving a will, statute sets out a list of who will benefit from the estate. This is commonly called "the laws of intestacy". If someone dies without leaving a will they are deemed to die "intestate".

INLAND REVENUE ACCOUNT. When applying for a grant of probate it is necessary to provide details of the assets and information regarding the estate to HM Revenue & Customs. What type of form is used will depend on the complexity of the estate. For complex estates the form is known as an Inland Revenue Accounts.

PROBATE COURT FEE. This is a fee payable to the Court to obtain a grant of probate.

SWEAR FEES. As part of the procedure in obtaining a grant of probate or a grant of letters of administration it is necessary for the personal representatives to submit written evidence to the Probate Court. This is done by making a written statement known as an oath which the executors are required to swear before an independent solicitor or commissioner for oaths. A fee for this service, often £5 or £7 per executor, is usually charged.

PROBATE COURT OR PROBATE REGISTRY. A grant of probate or grant of letters of administration is issued by the Court. This Court is known as the Probate Court or Probate Registry. When applying for a grant of probate or grant of letters of administration using a solicitor, it is not necessary to attend the Court and the application can be made by correspondence.

TAXABLE ESTATE. This refers to an estate which is sufficiently large to produce a liability to inheritance tax. Prior to this the tax payable on death was often known as death or estate duty.

ESTATE ACCOUNTS. When the administration of the estate has been completed, the personal representatives will produce a final set of accounts setting out the assets and liabilities, any expenses, details of any income received and details of how the estate will be distributed.

STATUTORY NOTICES. Personal representatives are advised to advertise the death of the deceased in the local newspaper and the London Gazette to advertise for any creditors to come forward. Once two months have elapsed from the date of the notices, the executors can distribute the funds to the beneficiaries without liability to the creditors if they do not prove their debt in time. Otherwise the personal representatives can be held responsible to pay the deceased's creditors even if they have distributed the estate assets.

NEXT OF KIN. A term often used by medical practitioners to refer to the person who should be notified in the event of illness or death. Similar to the term "common law husband or wife", although it is widely used, the law does not recognise this person as a legal entity. "Next of kin" is sometimes referred to as the person entitled to an estate under the laws of intestacy, however a "next of kin" has no legal standing as far as the law governing the administration of a person's estate is concerned after that person has died.

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It's not all bad news . . .

The credit crunch is a very hot topic and everyone has their view on how bad it will get and how long it will last. What is more, the rising costs of food, utilities and higher mortgage rates will continue to impact on housing affordability. Despite the argument that falling prices are good news for first time buyers, they risk being excluded from the market by the big deposits now being demanded by lenders.

Credit scoring and creditworthiness are playing a much more important role in the lending decision. Those buyers with a good credit rating and who can provide a 20% deposit are in the strongest position. Others will need to look elsewhere for their deposit, more often than not, the Bank of Mum and Dad!

But is there any good news? In 1992, stamp duty was suspended for eight months in view of a stagnant housing market on property deals up to £250,000. The policy helped and, by the middle of the year,

transactions had nearly doubled. Pressure is now mounting on Alistair Darling to put a similar arrangement in place and this may take place in the autumn.

In May the Housing Minister, Caroline Flint, announced new support for first time buyers. The scheme, previously only open to key workers such as nurses, teachers, social tenants and priority buyers, is open to all first time buyers with a household income of £60,000 a year or less. The Home Buy Programme allows buyers to purchase from 15% to 50% of a property value with a shared equity mortgage which can be used in conjunction with any conventional mortgage, alongside a deposit and repaid in part or in full at any time. Caroline Flint also announced on 2nd July immediate measures to assist first time buyers: £270 million has been allocated to The Housing Corporation to deliver 3800 homes for social rent and

1500 homes for low cost home ownership over three years. She also announced a new National Clearing House to be set up with a £200 million commitment from the government. This will enable builders to approach the Housing Corporation to purchase their unsold stock, to be used for either social or affordable housing.

But is now a good time to buy? Those first time buyers in a solid financial position are certainly in a good position to bargain and obtain large discounts for a quick deal. The National Housing Federation claims that house prices will recover in 2010 and may even rise by over 9% in 2012 and 2013. This is because of a general concern that new homes being built will not meet demand so, as soon as there is a recovery in the economy, prices will start to increase again.

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