

NEWSBRIEF

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Recovery vehicle

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SOLICITORS



Tessa McInnes, Madelaine Hanlon, Stuart Thwaites, Philip Harris, Peter Tugwell, Helen Kenyon and Matthew Phipps of the Wright Hassall construction team.

Madelaine strengthens team

Wright Hassall's construction department has gone from strength to strength during the recession – and has brought in a chartered civil engineer to bolster the team.

The firm has appointed Madelaine Hanlon, from BPE Solicitors, where she primarily dealt with contentious construction work.

Reclaiming management time lost in dispute

Disputes are best avoided but, if you find yourself in conflict with another party, even if you don't imagine the matter might end up in court, it is worth keeping track of how much time the dispute is costing you and your business – just in case.

The direct legal costs of a case are easily quantifiable, such as lawyers' and court fees. What is not so easy to assess is how much the case is costing your business in terms of the time spent putting the 'wrong' right, or the time that might better be spent pushing the business forward instead of dealing with the dispute.

But, in certain circumstances, these costs can be recouped since the Court of Appeal accepted in 2007 that damages for lost management time can be recovered over and above the other losses that are being claimed. Examples of the type of management time that have been recovered are:

- staff costs for salvage work after a flood at an aviation and military record archive where otherwise the staff would have been engaged preparing material for publication for profit;
- managerial and supervisory time spent overseeing dredging operations that should have been carried out by the other party in the claim;
- time spent by employees struggling to work with a software system that was not fit for purpose; and

- staff time spent investigating a conspiracy to defraud.

By contrast, the courts have not allowed the time of an employee sent abroad twice to supervise the sale of some bitumen, because there was no true disruption to the business concerned.

To claim for the cost of wasted staff time you must properly establish that the wasted time was actually spent on investigating and/or mitigating the relevant loss as well as significant disruption to the business; in other words that staff have been significantly diverted from their usual activities.

Evidence recorded at the time is far more persuasive than an after-the-event reconstruction. This is clear from a 2007 case where the claim was for 128 hours of management time (at £48 per hour) "dealing with the problems caused by the defendants", but because the claimant had to reconstruct this from records after the event, the judge discounted the claim by 20%.

The best course is to collate and record evidence of wasted staff time as soon as a dispute rears its ugly head (but still hope you never actually need to rely on it).

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Spotlight on law and the over-50s

Wright Future, a new department catering specifically for the needs of older clients at Wright Hassall, recently held an event for around 30 people from the region, including financial advisers, accountants and charity staff.

Claire McGinnity, who leads the Wright Future team, focused on the legal issues surrounding Powers of Attorney and Court of Protection applications, and also examined the use of Trusts and long-term care funding.

Personal injury specialist, Jeanette Whyman, spoke about how older people can seek compensation if they have an accident for which they are blameless and family solicitor Lisa-Marie Darby discussed divorces for older people.

Claire said: "This was the first event the Wright



Claire McGinnity and Charles McKenzie of Wright Hassall.

Future team has hosted and it was a chance to offer a legal perspective on matters affecting older people and also to exchange ideas and information with other professionals.

"We launched Wright Future to bring together all our services for older clients and this event was an example of that - with a number of key matters being covered.

"Our team is excited by the prospect of developing our work with older clients and we believe that our coordinated approach will deliver the right combination of advice to ensure a secure future for them."

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The value of intellectual property

Intellectual property (IP) is a diversity of legal rights in creations of the intellect. Specific properties such as patents, design rights and trade marks may constitute 90% of the value of the world's top 2000 companies. A huge amount of IP owned is not exploited to its fullest capacity or exploited at all.

A recent survey revealed that 75% of European companies consider IP to be critical in the economic downturn. This is certainly borne out by the experience of previous recessions. These have often been productive periods for innovation leading to the creation of new IP. The light bulb was invented by Thomas Edison in the depths of the 1870s depression; DuPont developed synthetic rubber and Nylon in the hard times of the 1930s and Microsoft really took off in the 1970s.

In these examples, although the groundwork was done in difficult times, the products that were generated found a market in the boom years which followed. Revenues from them continued to be generated during the busts which came afterwards.

If business is slow, you may have the time to work on a new invention or a novel brand concept. If it could be of value at all when customers and funding proliferate, now is the time to think about the IP you need to protect it.

What can you do to ensure that your IP is correctly positioned to give you best advantage? You should certainly start by reviewing your current offerings as well as new ideas likely to become exploitable during the next few years. You should also look at your markets in the UK and overseas and all manufacturing and distribution options. The next stage is to audit all existing and

potential IP that would confer protection at all levels and in all territories. At the same time you might want to monitor the activities of your competitors.

Nothing, however, stops you from joining any networks through which knowledge can be shared among compatible organisations. There is no reason why new technology, for example, cannot be exchanged; in some cases, this may help you to understand current R&D in the technical field better and enter into licensing arrangements or even dispose of non-productive IP for a profit.

It is necessary to preserve confidentiality by requesting that third parties enter non-disclosure agreements with you and agree not to circumvent you by bringing a new idea to market first. Confidentiality is also essential in order to retain the capability of patenting a new technical invention – without "novelty" no patent can be granted.

Your aim will be to protect your offerings by developing a portfolio of contingent IP. This is not necessarily a costly exercise; it depends on the nature of your business. Each IP right is a valuable asset in its own right. Collectively, all of your IP enhances the ultimate worth of your company and helps to attract investors and other business partners.

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Repercussions of Harlequins scandal

Wright Hassall believes sports clubs will be in the legal spotlight after the Harlequins "bloodgate" scandal.

The warning comes in the wake of top rugby union boss, Dean Richards, being hit with a global three-year ban for his part in a fake blood injury scandal while director of rugby at Harlequins.

The player involved, Tom Williams, was landed with a four month ban after he used a fake blood capsule to imitate a cut on the inside of his mouth in order to be substituted during a match with Irish side Leinster. Harlequins were also hit with a £259,000 fine.

Stuart Cutting, head of the sports law team at Wright Hassall, said this case could affect the way other governing bodies deal with cheating in the future.

"Is the outcome of this case likely to have an effect on

other sports? It will surely be persuasive should cheating of this nature be evident in other sports," he said. "What is clear is that this decision and the resulting bans are indicative of how sports governing bodies are likely to apply the principles of natural justice and decide what is fair when it comes to cheating."

Another shocking aspect of the case was that Williams had the inside of his lip cut with a scalpel in an attempt to cover up the deception, an act in itself which could have serious legal repercussions. Stuart added: "Whether or not Williams consented to this act it is still an assault in law for which the perpetrator could be prosecuted."

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Legal 'Bible' praise for Wright Hassall

Wright Hassall is celebrating after one of its strongest ever showings in one of the legal sector's 'bibles'.

The Legal 500 recognises departments with the highest standards across the region and wider UK – and Wright Hassall has been highlighted for excellence in several key areas.

The firm's senior partner, Nick Abell, pictured below, has also been recognised as a 'leading individual' in the West Midlands.

The guide ranks high-performing departments in tiers – and the 200-strong firm was in the top regional bracket for its commercial property, commercial litigation and debt recovery work.

The licensing, insolvency and



corporate recovery, employment, family, corporate and commercial departments were among others to be recognised.

Nick said the company had improved consistently over several years and was delighted with the latest rankings.

"In any line of work you always strive to get better and establish a reputation as a leader in what you do," he said.

"We have continued to work hard and tried to further improve our levels of service and so we are all very proud to have so many departments recognised as being among the strongest in the region.

"During the recession it has been more important than ever to maintain the highest of standards and make sure clients are completely satisfied with the work you do for them, so this is testament to everyone."

Longest piece of legislation ever written is fully implemented at last

Over the past two and a half years we have been updating our clients on the rather slow progress of the implementation of the Companies Act 2006. The Act received Royal Assent back in November 2006 and we are glad to report that the final tranche of provisions have, at last, been implemented.

Provisions which came into force on October 1st this year, and which are relevant to private limited companies, include:

- the reduction in the content of the memorandum of association and the migration of certain elements that once were contained in the memorandum to the articles of association;
- the introduction of a new set of model articles of association replacing Table A;
- the ability to entrench provisions in the articles of association, subject to certain safeguards;
- the ability for certain companies to have an unrestricted objects clause;
- the ability for directors of companies to register a service address at Companies House (which can be the registered office address) rather than be required to disclose their residential address;
- the abolition of the requirement for directors



New forms and new model articles, two of the changes under The Companies Act 2006, which has now been fully implemented and not before time. MARK LEWIS looks at the implications.

to have authority to allot new shares in a company; and

- the abolition of the requirement for companies to have an authorised share capital.

Several of these changes are significant and all corporate clients are advised to review their constitutional documents to ensure that:

- (1) they are compliant with the 2006 Act; and
- (2) they take maximum advantage of the changes introduced under the 2006 Act.

The final implementation of the 2006 Act will no doubt be welcomed by everyone involved in administering, advising and dealing with companies. For the past two-and-a-half years we have been working under two regimes – those

parts of the 2006 Act that were in force at the time and the Companies Act 1985 for everything else. Both Acts are somewhat lengthy, indeed the 2006 Act is the largest piece of legislation ever written.

However, the final implementation will also cause considerable change to the general day-to-day running of companies. Among other things, AGMs are no longer a formal requirement and neither is a company secretary. In each case this is subject to the provisions of the articles. Directors now have codified duties and at least one director of each company must be a "natural person". Notices may now be given electronically (although this can be difficult in practice to introduce) and the use of written resolutions has been overhauled. And of course, the forms and documents recognised by directors and company secretaries throughout the country will all be changing to reflect the new sections of the 2006 Act to which they relate.

For further details of all of the changes that have been introduced by the 2006 Act please refer to our website at www.wrighthassall.co.uk or contact Mark Lewis.

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How do you stop copy being copied?

The dust is settling on Rupert Murdoch's announcement that his UK newspapers will begin to charge for online content from next year – but now the arduous task of making it work begins.

Irrespective of the debate about whether people will pay for content which they can get for free, Murdoch and News International are clearly ready to make a fist of it. Therefore, working out the practicalities of making it happen are top of the 'to do' list.

Perhaps the biggest potential problem is copyright – or rather, copyright infringement.

There has always been law to stop the media, and its journalists, from literally copying stories from rival publications. But news itself cannot be copyrighted and this is going to be one of the toughest issues to get past.

Murdoch's stable – *The Times*, *Sunday Times*, *News of the World* and *The Sun* – touch both ends of news spectrum and, in both cases, much of what

is reported is not exclusive.

Number 10 press conferences brief reporters from most national newspapers, while Sir Alex Ferguson's pre-match press conferences or Simon Cowell's are open to all. And as long as reporters don't copy and paste the words building up to quotes (the way a story is expressed) – there's nothing to stop them lifting the general information.

But what happens if, for instance, *The Sun* has an exclusive on its paid-for news site with an A-List celebrity after a high-profile affair?

Does Murdoch – who admitted that he plans to "assert our copyright at every point" – need to ensure he has an army of lawyers at the ready, seeking to squash every copyright infringement as soon as it happens?

I don't think that's the right approach – and I don't think it would work.

For starters, it would be a nightmare to police on the web. Established media sites are unlikely to

be the problem, because they would know how much of a story they can 'get away' with.

But gossip sites, blogs, forums, social network groups, for example, could easily copy the story within minutes and paste it online for all to see. And considering that many of those sites require registration, they will be much harder to identify.

So, for me, the way to stamp out copyright infringement is by heavily investing in the technology behind the paid for sites, and making it almost impossible to copy.

At present *The Sun* has a very basic online tool which means if you are surfing in Internet Explorer, you are blocked from copying text or pictures.

But it's very limited. If you use a different browser, such as Mozilla Firefox, the tool doesn't work. It also takes a few seconds to load, so if you're quick enough, you can get around it.

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Barry homes in on UWSP

Technology may move at a pace but it seems good service remains a constant.

Lawyer Barry Sankey started working for the embryonic University of Warwick Science Park in 1982 when he was an articled clerk.

Twenty seven years later and he is still the retained property lawyer for the science park and has recently joined Wright Hassall.

The Warwick Innovation Centre – one of four UWSP sites – is a

neighbour of Wright Hassall meaning Sankey's work has never been closer.

He said: "I was based in Birmingham when I first started working on the science park project and then moved to Nottingham before returning to the West Midlands to join WH.

"In almost 25 years, this is the nearest I have been based to the science park's buildings! I really feel like we have grown up together."



David Rowe, Karen Aston and John Barnes of University of Warwick Science Park with Barry Sankey of Wright Hassall.

BIDs bid for a better environment

Business Improvement Districts (BID) were introduced in the United States in the 1990s and arrived here 10 years later courtesy of the Local Government Act 2003 and the BID Regulations 2004. Loosely speaking, BIDs are concerned with improving the physical environment for businesses in their area.

Depending on the strategy of the particular BID project, the implications of a BID are important for the owners of small to medium size businesses, particularly retail. A BID Company is a company limited by guarantee, which is funded by a levy on businesses, payable to the BID company and collected by the Council. The levy is typically £500-£1000 payable in addition to business rates. The money raised is then spent on projects identified to improve the conditions of operation and, by implication, the profitability of businesses within the District.

Typical projects include enhanced website facilities for businesses; improved CCTV facilities; the introduction of local "champions" to act as coordinators between areas within the district; paying for, or sponsoring, events that attract potential customers to a district; or decorations/cleaning schemes to make shopping areas more attractive. It will also contribute to the salaries of BID company staff.

However, these arrangements can only come into force via a ballot of the levy payers. Two conditions must be satisfied: first, a majority must



All in a good cause: Business Improving Districts seek to enhance the local environment.

vote in favour of the BID proposals; second, the aggregate of the rateable values of each business premises of those voting in favour of the proposals exceeds the aggregate rateable value of those voting against the proposals

The key phrase here is that it is those who vote who count. The concept of the BID Company can be a good one and there are several examples nationally where the BID Company, the Council and, most importantly, the levy payers have been happy with the benefits of the scheme.

By the same token, we are aware of schemes where there has been a low turn out of local businesses voting for the BID with the net result that many are surprised by the levy demands which are regarded as an unwanted and unexpected tax. This in turn has led them to scrutinize the benefits being delivered in return for the levy and question the level and frequency of services being provided.

In the magistrates court or the small claims court there is no defence to a demand to pay a levy, on the basis that services are not being delivered. If the BID Company can prove the ballot has been validly conducted the levy is generally payable.

The simplest remedy is for disgruntled levy payers to get on the Board of the BID Company (all BID members are entitled to a vote and to put themselves forward for election to the board) and seek to influence the delivery of services.

Alternatively they can seek to wind up the BID Company, or read the consultation literature when the BID is renewed (no BID can last longer than five years) and vote against the renewal of the BID.

Wright Hassall has recently provided advice to an association representing businesses on the issue of BID dissatisfaction. For more information please contact David Elliott or Pritpal Singh-Swarn.

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Impressive cast at annual update

Wright Hassall's annual Construction Conference was recently held at the Heritage Motor Centre in Warwickshire. The main theme revolved around costs, budgeting and payment terms.

The impressive line-up of speakers included Liz Bennett of Habilis Health &

Safety Solutions, Andy Appleyard of Tenon, John Riches, of Henry Cooper Consulting, Professor Rudi Klein, Tim Pollard, Director of Sustainability for Wolseley's Sustainable Building Center and, Philip Harris, of Wright Hassall, who looked at some of this year's more interesting case law.



Six of the best ways to protect your assets

Trusts have been used for many decades as a means of protecting family assets. But did you know that they can be formed under a will as well as by a lifetime deed? Here are six ideas showing how family assets can be protected using trusts in a will.

1. UNMARRIED COUPLES: only married couples or civil partners are able to transfer their Inheritance Tax (IHT) exemption, known as the Nil Rate Band, (NRB) which is currently £325,000. Unmarried couples still need to use what is known as a NRB discretionary trust which is set up as part of a will. In this way both partners' NRBs can be used, thus saving £130,000 in IHT (40% of £325,000).

2. BUSINESS OWNERS: anyone who owns a trading business, whether as a sole trader, a limited company or in a partnership, can take advantage of Business Property Relief (normally 100% of the value of the business) thus effectively exempting the business from IHT. However, H M Revenue & Customs (HMRC) will not agree such relief where the value of the business passes under a will to the surviving spouse, as gifts to spouses are exempt from IHT and so no tax is payable. However, if the surviving spouse subsequently sells the business, as often happens, the sale proceeds will be subject to IHT. Yet, by transferring the business into a discretionary trust under a will, HMRC has to decide if BPR still applies.

If the business is subsequently sold, the trust holds the sale proceeds which can then be lent to the surviving spouse, interest free, thus keeping the value outside the surviving spouse's estate.

If, for any reason, relief is not granted (which might apply if the business had been converted into an investment company), then within two years of the date of death the trust can be terminated in favour of the surviving spouse and spouse exemption obtained. The same principle applies to farmers owning agricultural



Nil Rate Bands, Business Property Relief . . . Inheritance Tax can seem extremely confusing. CHARLES MCKENZIE looks at a number of ways to protect your assets.

land which can benefit from the similar 100% Agricultural Property Relief.

3. RESIDENTIAL CARE HOME FEES: residential care home fees are effectively a 100% tax on what an individual owns, unless the individual's capital is below a low limit. Capital is defined as the market value of his or her assets which is what local authorities take into account when assessing whether or not an individual qualifies for funding to help with care home fees. However, if he or she merely has a life interest under a trust in the property, the value of the property will be excluded from the assessment.

If a couple own a house jointly, then on the first death the house passes to the survivor whose capital will now include the whole value of that house. If the first spouse to die leaves his half share in the house in trust for the survivor for life, then that half share will not be counted as part of the survivor's capital and will be protected from care home fees. The survivor's half share in the house will still form part of his capital but the value of that share may well be less than 50% of the whole.

4. CHILDREN FROM A PREVIOUS MARRIAGE: the only way of ensuring that the children of a previous marriage inherit the assets of a parent who has remarried and left his estate to their second spouse, is by leaving under his will his assets (including his share

of the matrimonial home) in trust for his second spouse's life. When she dies those assets can then be passed to his children under the terms of the trust.

5. CONCERNS ABOUT THE AGE OF INHERITANCE FOR CHILDREN: it is always difficult to gauge when a child is deemed sufficiently mature to inherit a substantial sum of money. Concerns include financial commonsense, the influence of partners and friends, risky business ventures and the stability of marriages.

One solution is to leave the estate, on the death of the second parent, into a life interest trust in equal shares for the children with flexible powers for the trustees to transfer capital to them at times chosen by the trustees not the children. A letter of wishes can accompany the will to set out the times and occasions when the trustees should transfer capital to the children. Unlike discretionary trusts, life interest trusts under a will do not attract 10-yearly charges.

6. OBTAINING MORE THAN TWO NRBs WHERE A WIDOWED SPOUSE REMARRIES: a surviving spouse can only receive a maximum of two NRBs. However, where a person remarries after his or her first spouse dies, it is possible, using a traditional NRB trust on his death, to use his first spouse's NRB but still retain the NRBs of himself and his second spouse (available on his second spouse's death). A claim needs to be made on the death of the first spouse whose previous spouse is deceased; the drafting of such NRB trusts needs careful consideration. In this way three NRBs can be obtained. If both spouses have been previously widowed, it is possible to obtain four NRBs.

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The right to die debate continues

Who can fail to be moved by the bravery of those who battle with incurable degenerative illness, or have been rendered tetraplegic by serious accidents? Their wish to die, and die with dignity can be understood, but compassion conflicts with misgivings about assisted suicide. Should the State interfere? The recent cases of Daniel James and Debbie Purdy made the law reports as well as the headlines.

Although suicide was decriminalised by the Suicide Act 1961, assisting it remains a crime, although prosecution can only take place with the consent of the Director of Public Prosecutions.

In 2000 the European Convention on Human Rights became directly enforceable by the English Courts. Article 8(1) gives the right to respect for private life, and article 8(2) prevents interference by the State with that right.

Question – isn't the right to die with assistance protected by article 8(1) and isn't the State's interference, in the form of the DPP's decision to prosecute or not, contrary to article 8(2)?

Diane Pretty, who suffered from motor neurone disease, wanted the option to end her life, but was likely to need the assistance of her husband to do so. During the course of her attempt to seek immunity from

prosecution for him, the DPP refused, the House of Lords said "no" and, in 2002, the European Court of Human Rights said "no". However, the latter said that her right to respect for her private life included personal autonomy and, in a roundabout way, said that preventing someone helping her to die was something that the Court was "not prepared to exclude" from constituting an interference with her article 8 rights. She died, naturally, within a few months of that decision having stated that "the law has taken all my rights away".

By this time the Dignitas Clinic in Switzerland was in the news for facilitating suicide. Daniel James, left permanently tetraplegic after a rugby accident, attempted to end his life on several occasions before, accompanied by his reluctant parents, he went to the Dignitas Clinic. Aged 23, he attended the clinic on 12 September 2008 where a doctor helped him to take his own life. His parents were with him.

On 9 December 2008 the DPP said that his parents would not be prosecuted. Applying the Code for Prosecutors, while there was sufficient evidence for a realistic prospect of conviction, such a prosecution would not be in the public interest (the Full Code Test).

Debbie Purdy suffering from multiple sclerosis, wanted to travel to the Dignitas Clinic to end her life

there but was concerned that her husband might be prosecuted for helping her. The case of Pretty held that no immunity would be granted, but she sought a judicial review as to whether the DPP had acted unlawfully in failing to give guidance as to the circumstances in which individuals might or might not face prosecution for assisting suicide. The House of Lords said that the case involved article 8 rights (reversing Pretty), which were interfered with and that the Full Code Test gave no such guidance, and it ought to. The DPP has said that he will produce such guidelines – which are still to be published at the time of writing.

Should the law be changed? The court in Purdy said it couldn't do this – that was up to Parliament – but as judgment in that case was being prepared, an amendment to the Coroners and Justice Bill failed which would have removed (subject to safeguards) such assistance from the scope of assisting suicide.

The outcome of the Purdy case was hailed as a victory – and yet it is still the case that someone assisting a suicide could face a 14-year prison sentence. The waters are still muddy – we will await any clarification with interest.

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Proposed changes to law on British citizenship

The Borders, Citizenship and Immigration Act 2009 received Royal Assent this summer. The main thrust of the Act is to introduce the concept of earning points towards being granted citizenship.

Current requirements to naturalise as a British citizen

At present, foreign nationals working in the UK can generally gain permanent residence after five years and naturalise as British citizens after six years. There are certain other requirements including not spending too many days outside the UK during the six year period and passing the Life in the UK test or the English for Speakers of Other Languages (ESOL) test. The spouse or civil partner of a British citizen can generally gain permanent residence after two years in the UK and citizenship after three years.

Reforms under the New Act

The main reform is the system of gaining citizenship through earning points which replaces naturalisation by virtue of time spent in the UK. The new arrangements are due to come into effect in July 2011.

The work route

Under the proposals foreign nationals working in

the UK and their family members will, after five years, move from "temporary residence" into "probationary citizenship" which can last from one to five years. The speed with which individuals will achieve citizenship will depend on the number of points earned during this period.

Because the Government would prefer migrant workers who qualify to stay in the UK permanently to take full British citizenship, they have structured the new arrangements so that it will take longer to qualify for "permanent residence" (minimum eight years) compared to British citizenship (minimum six years).

The family route

Family members of British citizens and permanent residents will move from temporary residence into probationary citizenship after 2 years. Again, the period spent in probationary citizenship will be a minimum of 1 year en route to citizenship and a minimum of 3 years to gain permanent residence.

The points system

Initially 20 points will be required to move from "temporary residence" to "probationary citizenship" but this may be increased at a future date. For those

qualifying via the employment route, these points would initially be scored by meeting the Immigration Rules (being self-sufficient and still in work) - 10 points and by passing the Life in the UK test or ESOL test - 10 points.

It will be mandatory to pass either the Life in the UK or the ESOL test to achieve probationary citizenship.

Achieving full citizenship

It is proposed that it will be necessary to pass a further, more challenging Life in the UK test or ESOL test to achieve full British citizenship. In addition "Active Citizens" may have full citizenship accelerated by undertaking activities such as being a school governor or participating in trade union or party political activities.

A full version of this article can be found on our website: www.wrighthassall.co.uk. Please contact Marian Dixon for more information.

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Comeback for all nighters?

The public perception that corporate/commercial lawyers keeps a pillow under their desks for those all night completion meetings is slowly being put to bed, with virtual completions now common place. Increasingly, people involved in corporate/commercial transactions can be scattered around the country or even internationally and so the benefits in terms of time, cost and convenience of completing "virtually" through email/fax and telephone are obvious.

However, the enforceability of completing transactions in such a way has recently been called into question. The case of *Re Mercury Tax Group and another v HMRC* has led to discussions about the effectiveness under English law of the use of pre-signed signature pages and virtual closings where signature pages are sent/transmitted by email or fax.

The facts of this case involved the parties to a (lawful) tax avoidance scheme creating documents, purportedly executed as deeds, by inserting signed pages from earlier drafts into a final version. It was found that simply attaching signature pages of previous versions of documents was not sufficient, as the valid execution of a deed requires that the signature and the attestation clause form part of the same document.

This ruling sparked fears that the all-night completion meeting would, once again, populate the diaries of lawyers across the country. However, much like the hype surrounding Y2K, it has been greatly exaggerated. A recent guidance note, - *Guidance on the execution of documents at 'virtual' signings and closings* - has set out clear guidelines on how virtual signings can still be carried out effectively.

The Guidance sets out three potential options, the essence of which is as follows. The options are non-exhaustive.

Option 1: final versions of the contract are emailed or faxed, each signatory prints and signs the signature page



Can a deal be completed via email?

CLAIRE CRAM looks at a recent case in which virtual closings have been called into question.

only and final versions of the full document, plus the signature pages, are then circulated after completion.

Option 2: absent signatories email signed signature pages once the document is finalised and give authority for these to be attached to the final approved version of the document.

Option 3: absent signatories email signed signature pages before the document is finalised and give authority for these to be attached to the final approved version of the document.

There is a multi-step procedure which accompanies each option, aimed at building a strong, evidential trail to demonstrate which document the parties have agreed to execute and due authority for signatures to be appended. For the full detail of these options, together with more information about what is suitable for different contractual arrangements, please use the following link to the Guidance:

<http://www.citysolicitors.org.uk/FileServer.aspx?oID=571&ID=0>.

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Diary dates

5 November
Employment Update –
9.00am-11.00am Free

12 November – Seminar
Winning by Making
Better Decisions Faster
3.45-6.00pm Free

18 November – Seminar
How To Protect Your
Sporting Organisation –
9.30-3.00pm
£75 +VAT (£50 if booked
before Nov 6)

19 November
Mock Tribunal –
9.00am-12.30pm
£95 + VAT including lunch

9 December
Agriculture: Christmas
Talk
4.30-6.00pm Free

Funding the recovery

Warwickshire accountants met recently to discuss how the regional recovery from the recession will be funded. Around 40 members from the Warwickshire branch of the Institute for Chartered Accountants met at Wright Hassall for the group's autumn breakfast seminar, where guest speakers from funding providers outlined their plans for the coming year.

The speakers – Ben Bolt, of Catapult Venture Managers, Cliff Meek, of Venture Finance and Andy Povey, of Investbx – highlighted new ways of financing.

Finance expert checks in

Tim Goodman has joined Wright Hassall as a consultant in the corporate department. Tim, who moves from London-based investment bank Ambrian Capital, specialises in corporate finance and financial services regulatory work.

Interest rate rise for late IHT payments

When someone dies, inheritance tax does not have to be paid until six months after the end of the month in which death occurred. For example, if a person died on 17th August 2009, there will be no interest charged on IHT until 1st March 2010.

When bank base rates were reduced to 0.5% earlier this year, HM Revenue & Customs' method of calculating interest on late payments of IHT meant that the rate was zero. HMRC has recently changed the way the rate is set, which is now currently

2.5% above base rate (i.e. 3% at present) for late payments of IHT and, at the same time, it has fixed the interest it pays on refunded, overpaid IHT at 1% below base rate, with a minimum rate of 0.5%.

Given the current state of the property market, it is not unusual for it to take more than six months to sell a house in an estate to produce the funds to pay IHT. In taxable estates, where the main asset is the house and there is little in the way of liquid assets, this can cause problems. Although any

IHT due can be paid by equal, annual installments over 10 years, those payments made after the six-month grace period are subject to interest until all the IHT has been paid.

Therefore if the estate is taxable, and the house is the main asset, careful planning is needed to ensure that these interest payments are minimised.

HMRC estimates that it will collect £2.2 billion in IHT on about 12,000 taxable estates in the current tax year (2009/10).