

## May 2009

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### **Woman who fell on shop staircase awarded damages**

A shop customer who suffered wrist and head injuries when she fell on a staircase has been awarded £3,625 damages.

The woman was looking at souvenirs when the accident happened. She said the staircase was not marked and she had not noticed it because her attention was diverted by merchandise which covered the banister.

She suffered a fracture to her wrist together with bruising to her head and leg. She was off work for two weeks and was unable to attend the gym for two months while her wrist was in a cast. It's likely that she will continue to suffer minor aching in the wrist when she holds children for long periods.

The shop owner disputed liability but the customer won her case. She was awarded £3,500 for the pain and loss of amenity she suffered, plus a further £125 in interest and for miscellaneous losses.

Anyone who suffers an injury as a result of someone else's negligence is entitled to claim compensation. Please contact Martin Crossley if you would like more information.

### **Farm worker case highlights the need to keep your will up to date**

The problems that can emerge from failing to make a will have been highlighted in a case involving an agricultural labourer who worked without pay for 30 years on the understanding that he would eventually inherit his cousin's farm.

David Thorner spent most of his adult life helping out on a farm in Somerset owned by his cousin Peter Thorner. He agreed not to take any wages on the understanding that he would inherit the land, worth £2m, when his cousin died. He lived on little more than pocket money from his parents in the meantime.

Peter made a will leaving the estate to David. Later he made an alteration to the will relating to a completely different matter but then never returned it to his solicitor. When he died the will could not be found.

In the absence of a will, other members of Peter's family claimed the estate. The case ended up in the High Court which recognised David's remarkable commitment and accepted that his cousin Peter had wanted him to inherit.

David was awarded the farm. The remainder of the estate, valued at over £1m, went to other members of the family.

However, Peter's sisters challenged the ruling and won their case in the Court of Appeal. Lord Justice Lloyd said David Thorner had a strong moral claim to the farm but it would be a dangerous precedent for him to inherit it. "This is another case, where, what appear to have been a man's testamentary intentions have failed because, for whatever reason, he did not take the proper steps to put them into effect".

Mr Thorner refused to accept the Court of Appeal's decision and took the case to the House of Lords, which has now ruled in his favour. It means he will be able to inherit after all.

The case illustrates the problems that can arise if someone fails to make a will or fails to keep it up to date. It might be said that justice was done in the end as Mr Thorner will inherit after all, but he has had to fight a long legal battle to win his case. All that stress could have been avoided if his cousin had simply updated his will.

Anyone who has not made a will or updated it to reflect changes in their circumstances should consider doing so as soon as possible. Please contact Christopher Jackson if you would like more information.

## **Process of buying and selling homes comes under scrutiny**

The provision of Home Information Packs (HIPs) will come under scrutiny by the Office of Fair Trading as part of a market study into the process of buying and selling homes.

The study is being carried out to ensure that consumers are getting a good service. It will examine competition on price and quality between service providers, particularly estate agents.

It will also look at the relationships between estate agents and mortgage brokers, surveyors, solicitors and other professional advisers.

The move has been welcomed by the Law Society which says a review that considers "the lack of transparency around the role, responsibilities and payment of estate agents, is desperately needed".

The study will try to establish whether the existing regulatory framework strikes the right balance between protecting consumers and ensuring that the market remains competitive and innovative.

The Law Society president, Paul Marsh, said: "The Law Society has been asking for a review of this kind for over five years and it is clear that the lack of clarity regarding the legal obligations of estate agents in the market is a problem for all involved.

"There is a clear distinction between advertising properties for sale and the much more complex handling of detailed negotiations between a buyer and a seller.

"An independent review of HIPs has been needed since it was first introduced, we are extremely pleased that at last it is going ahead.

“Solicitors are highly regulated and the system has been reformed recently by the Legal Services Act. It is about time that everyone involved in the property market stepped up to an appropriate level of regulation for the benefit of the consumers and for fair competition.”

The OFT intends to complete its study before the end of this year. We shall keep clients up to date with developments.

In the meantime, anyone wishing to buy or sell a property should get legal advice from a solicitor to protect their interests and ensure everything goes smoothly.

Please contact Ian Armstrong or Christopher Jackson if you would like to know more about Home Information Packs or any aspect of buying and selling a property.

### **Man told he can't use bankruptcy to avoid payments to former wife**

A court has annulled a man's bankruptcy order after the judge heard he had assets of more than a million pounds and simply wanted to avoid paying maintenance to his wife.

During the divorce proceedings the wife had obtained an order for interim maintenance. The husband then successfully issued a petition for his own bankruptcy saying that he was unable to meet his debts.

The wife immediately applied for the order to be annulled because she believed it was simply a device to enable him to avoid paying maintenance. After a long and complicated hearing, the judge questioned the husband's honesty and agreed to annul the order.

The husband then took the case to the Court of Appeal but it too ruled against him after hearing that at the time he petitioned for bankruptcy, he had assets of £1.2m and debts of only £136,000. The court held that with such substantial assets, the onus was on him to prove that he was unable to pay his debts.

He had not been able to do this and so the judge at the original hearing had been right to conclude that the husband was able to pay his debts at the time he was petitioning for bankruptcy. His motive had simply been to defeat his wife's maintenance claim and so the decision to annul the bankruptcy had been correct.

Please contact Patrick Troy or Amanda Worger if you would like more information about this or any aspect of divorce proceedings.

### **Teacher who resigned wins constructive dismissal claim**

A teacher who says he resigned rather than dismiss a person who was deaf has won his claim for constructive dismissal.

The teacher worked as the head of care at a school. When he recruited a woman who was deaf, the owner of the school called him to a meeting. The teacher said the owner instructed him to dismiss the woman because of her disability. The owner denies giving such an instruction.

The teacher then resigned because he was unwilling to dismiss someone for reasons of disability. His complaint of constructive unfair dismissal was upheld by an employment tribunal which found that although the school owner had not explicitly ordered that the deaf employee should be dismissed, the discussions about terminating her employment were as clear an instruction as it was possible to give without using express words.

That view was later upheld by the Employment Appeal Tribunal.

The school then took the case to the Court of Appeal, submitting that there was no evidence that there was an implied instruction to dismiss and so therefore the tribunal findings were perverse and wrong in law.

However, the Appeal Court has upheld the tribunal decision, saying that evidence of oral discussions such as that between the teacher and the owner did not have to satisfy standards of perfection. It only had to be more likely to be true than the evidence offered by the other side after taking all the relevant circumstances into account.

The tribunal had therefore been entitled to find that on the balance of probabilities, the teacher had resigned because he had been instructed to dismiss the disabled employee, even if his evidence recalling the meeting was not an exact account of what was actually said by the owner.

Please contact Justin Birch if you would like more information about employment issues.