

Families and Money

“Where informal (or no) arrangements are made over property ownership or finances, disagreements are often the result,” says Head of Trusts Martyn Wrightson.



Martyn Wrightson

Recently, a dispute about ownership of a property arose between a brother and sister. The brother had lived with their mother until her death and at that point had succeeded to the secure tenancy of her council house. Using the ‘right to buy’ legislation, he applied to buy the house. To finance this, he obtained a mortgage and borrowed £5,000 from his sister on the basis that she would be entitled to the repayment of her loan and half the sales proceeds (net of her loan and the mortgage) if the property were sold. She was also paid 5 per cent interest on the loan – a rate below market rates at the time.



The two later fell out and the sister agreed that if her loan

were repaid immediately, she would have no further claim regarding the property. This was done.

However, several years later, the property was sold for £385,000 and the sister made a strong claim that she was entitled to half.

Luckily for the brother, the court ruled that the sister’s express agreement regarding the repayment of the loan meant that her claim to have an interest in the property was void.

“The main lesson to be learned from this case,” says Martyn, “is that doing things on a casual basis is fraught with danger. Had the appropriate documentation been executed at the time of the transactions, there would have been nothing to argue about. If you are entering into an agreement about an asset as valuable as property, it makes sense to get this properly documented at the time it is made.”

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A biannual update for Burnetts’ private clients - January 2009



Learning about Superbugs

The Rise and Fall of the Superbugs was the focus of the Medical Law team’s annual seminar.

More than 50 delegates from the healthcare and voluntary sectors attended the seminar at Rheged, Penrith in November.

Dr David Telford, Consultant Microbiologist from the University Hospitals of Morecambe Bay NHS Trust (UHMB) guided the audience through the rise of superbugs like MRSA and C. Difficile, then explained how these bacteria can be controlled and risks to patients minimised. The UHMB Trust has one of the lowest MRSA infection rates in England.

Solicitor Ruth Keenleyside explained the legal complexities of clinical negligence cases relating to hospital acquired infections. Lynne Hall, also a Burnetts solicitor, then shared the shocking experiences of one client who successfully brought a claim.

Vicki Jagger, Head of Medical Law said, *“Dr Telford was a fascinating speaker who made the science of the superbug understandable. One point he made very clear was that, as patients, we should all feel empowered to challenge healthcare workers who do not wash their hands before treating us. Hospital acquired infections can have tragic results, but basic practises like hand-washing and ward cleanliness can dramatically reduce incidences.”*

If you have suffered as a result of treatment from a healthcare professional, contact Burnetts’ medical law team.



Inside

- Holiday Home Heartache
- FREE Help for Farmers
- Premium Bond Update

County’s most recommended

Burnetts is the most recommended law firm in Cumbria in the latest edition of a prestigious guide to legal advisers.

Burnetts is recommended in 11 different fields of law in the 2008 edition of The Legal 500, a well-respected annual guide to UK law firms and it is the only firm in Cumbria to be recommended for its expertise in planning, construction, public sector, clinical negligence and family law.



Visit www.legal500.com for full details.



Free Deeds Audit for Farmers

Burnetts’ agricultural department is offering a FREE deeds audit for farm businesses to help farm owners identify title defects and potential problems.

Head of Agriculture Richard Miller said, *“The majority of agricultural property is still unregistered so it is important that any potential defects are identified and dealt with accordingly. If problems are identified during the process of a sale or the securing of borrowing against property, problems and delays could arise and jeopardise completion of the transaction. There is also the risk of boundary or right of way disputes arising with neighbours where the respective title deeds are non-decisive on these issues.”*

Earlier this year, the Court of Appeal heard a case concerning a boundary dispute between the owners of a farmhouse and the proprietors of adjoining fields. The house and land had, at one time, been owned jointly under one title, but had subsequently been segregated. In this case, the field owner was successful in her claim for a particular parcel of land which the owners of the farmhouse genuinely believed to be theirs.

Richard said, *“There were anomalies between the property description and the plans when the original*

conveyance took place. Had everything been properly checked at the time, the owners would have been saved a stressful and costly court battle.”

Conditions apply to the free deeds audit offer. Visit the agricultural pages at www.burnetts.co.uk for more information.



Burnetts nurturing local talent

Burnetts has been offering training contracts to would-be solicitors for decades, but this year the firm has a record number of trainees.

The reason for the increase is twofold. Firstly, Burnetts’ student placement scheme has been very successful in showing school and university students what we have to offer. Secondly, the firm is supporting good people who want to develop their careers.

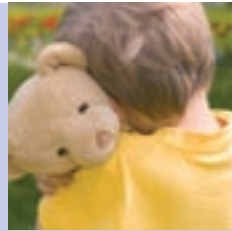
Managing Partner, Tom Leach runs Burnetts’ trainee solicitor scheme.

He said, *“I started the student placement scheme back in 2000 when I noticed that only a small proportion of our job applicants were local. At the same time, I saw an article in the paper about four students going off to Oxbridge. One of them was doing law. I could see these people going out of the County to study and never coming back.”*

I wanted to make sure good people knew there was something to come back for. Plus, being part of the placement scheme means new recruits can hit the ground running.”



Recognition for children law expert



A family law solicitor at Burnetts has become one of only 13 solicitors in Cumbria accredited to represent children in family law proceedings.

Amy Fallows has earned membership of the Solicitors Regulation Authority's Children Panel Accreditation scheme.

In order to become an accredited member, Amy had to complete a detailed assessment to demonstrate her experience and attend specialist training courses. She was also assessed during a thorough interview. As a member of the accreditation scheme, Amy can now act for children through guardians appointed by the family court, as well as parents and grandparents.

Amy is Chair of North Cumbria Resolution and Co-ordinator of the Cumbria Childcare Forum. She joined Burnetts in 2002 from Osbornes Solicitors in Camden Town and became a Partner in January 2007. In August last year, Amy was accredited by Resolution, an organisation of solicitors who are committed to promoting a non-confrontational approach to family law matters.

Simon Mortimer, another Partner in the family law team, has been part of the accreditation scheme for over 20 years.

Burnetts' family law team, one of the largest in Cumbria, advises clients on divorce and separation as well as issues affecting children like contact or residence.

Amy and Simon can be contacted on 01228 552222. For further information about family law problems visit www.burnetts.co.uk



"Children who are subject to care or adoption proceedings can be vulnerable so it's essential that their representatives are expert and experienced."

Amy Fallows

Ernie gets the push!

It really is all-change in the financial world. Investments considered safe and reliable a year ago are no longer viewed with the same certainty.

At difficult times like these products from National Savings & Investments (NS&I), such as Premium Bonds, often enjoy a surge of popularity, but Burnetts' Independent Financial Adviser Tony Irving is warning clients against moving money to NS&I.

He said, "NS&I has just announced that half a million Premium Bond prizes will be disappearing so the chances of winning have been greatly reduced. They are also offering pretty poor interest rates on their savings accounts. Anyone relying on an income from their savings will be disappointed."

Instead Tony is advising clients to consider guaranteed funds, some of which protect capital as well as providing an income.

To find out more about alternatives to NS&I, call Tony on 01228 552222.



Home not so sweet...



If you are lucky enough to have a holiday home, you may be dreaming of the time you can spend all your days at your second home. Unfortunately, a recent ruling means that owners of holiday homes on park sites aren't protected against soaring service charges.

The case concerned bungalows at a holiday park in Cornwall. The planning permission under which they had been built prohibited permanent occupation of the bungalows, which were stipulated as being for holiday purposes only. The bungalow owners also contracted with the park owner landlord 'not to use the...bungalow for any purpose other than that of a holiday bungalow', but it was widely recognised that this restriction was not adhered to by many home owners.

The bungalow owners were required to contribute to the costs of maintaining the site etc. by payment of service charges. A dispute arose because some of the owners claimed that the service charges were excessive, citing the Landlord and Tenant Act, which provides that only reasonable service charges can be recovered from tenants of 'a dwelling'. The Act defines a dwelling as 'a building or part of a building intended to be occupied as a separate dwelling...'

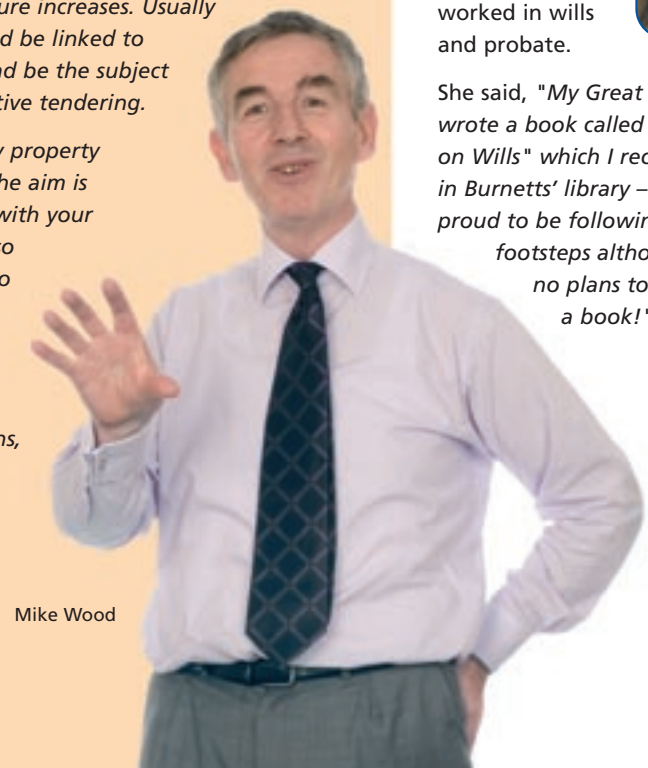
The question that needed to be settled was whether a home can be counted as a dwelling, if it is a place in which a person cannot permanently reside. Unfortunately for the bungalow owners, the Lands Tribunal could not agree that the protection offered by

the Landlord and Tenant Act was intended to apply to premises such as the bungalows in this case.

Head of Conveyancing Mike Wood said, "When a property is on a private development with shared facilities including apartments and holiday homes, there will always be issues of service charges to consider.

Ideally, the buyer and the service charge provider should agree in advance the services, the current estimated cost of these and the level of future increases. Usually these should be linked to inflation and be the subject of competitive tendering.

As with any property purchase, the aim is to sign up with your eyes open so there are no nasty or expensive surprises. If you have any concerns, consult a property lawyer."



Mike Wood

Sarah & Emma join firm

Two new solicitors boost our private client practice.

Emma Williams has joined the Wills and Trusts team while Sarah Dodds joins Dispute Resolution.

Both Sarah and Emma joined Burnetts in September 2006 following completion of their Legal Practice Course. They completed a two year training contract with the firm before qualifying as solicitors late in 2008.

Sarah is from Hexham, Northumberland, but now lives in Carlisle. During her training she specialised in litigation, working in the firm's medical law, personal injury and employment departments. She is a regular contributor to CN Group's Learning publication.



Emma, from Penrith, follows her great grandfather into law. Like Emma, he also worked in wills and probate.



She said, "My Great Grandad wrote a book called "Williams on Wills" which I recently found in Burnetts' library – I'm very proud to be following in his footsteps although I've no plans to write a book!"

National accreditation for personal injury

Burnetts has won recognition in a national scheme to help injured people seeking legal advice.

The firm has been accredited by the Association of Personal Injury Lawyers (APIL) which assesses legal practices according to their expertise and experience, and provides a quality 'kitemark' to those who meet the strict criteria.

Burnetts' team specializes in securing damages for those who have suffered catastrophic injuries.

Burnetts' Head of Personal Injury Nick Gutteridge was awarded Senior Litigator status by APIL earlier this year. He was delighted the firm had now gained corporate accreditation. "It is crucial that injured people receive properly qualified advice and we are very proud to have been recognised for our expertise and professionalism," he said.

APIL is a not-for-profit organisation, whose members are dedicated to campaigning for improvements in the law to help people who are injured or become ill through no fault of their own.

More information on APIL can be found at www.apil.org.uk

