



THE REPORT

CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY NEWS

NO.38 OCTOBER/NOVEMBER 2005

THE PRESIDENT'S COLUMN



CHARLES FRASER

I would like to start my first report as President by thanking Jeffrey Forrest for his enormous contribution as President over the last year. It has been a privilege to work with him, and I hope that he will be able to continue contributing to the main Committee meetings as well as serving as an officer of the Society for the next year.

I would like to thank the Committee, and you all, for the honour which you have bestowed on me to be your President for the coming year. I am privileged to be the first Young Solicitor to be President of the City of Westminster and Holborn Law Society as well as the youngest to have held that position, both as the combined Society of the old City of Westminster and Holborn Law Societies, and in their previous separate incarnations.

The year ahead promises to be a challenging and interesting one. The Clementi reforms and forthcoming White Paper have already affected, and will continue to affect, how the Law Society regulates the profession, and the future role of the national Law Society in matters concerning solicitors on a day-to-day basis. In turn, this will have an effect on the role of our Society, both as a local Law Society and as a contributor to outside organisations, whether they be the national Law Society, government departments, or other agencies. We need, as does the national Law Society, to decide on which services are of the most importance to our members so as to provide the best value for money. One of the services we provide to our members is our system of sub committees. These sub committees do excellent work in responding to consultations and making representations

regarding legislation that is either being brought in or should be brought in. Recently, the excellent work of the Revenue Committee and in particular the paper prepared by John Owen of Hunters in response to the consultation on "Inheritance Tax and Pensions Simplification" by HM Revenue and Customs – this paper was almost completely adopted by the Law Society as its own position in relation to the Consultation Paper and demonstrates the quality of the paper and the Committee. I would like to take this opportunity to thank John and the Revenue Committee for their hard work. Well done!

We do a huge amount of pro bono work within the boundaries of the City of Westminster and Holborn, and for the most part this goes unnoticed. We need to be proud about the work that we do pro bono, and I would like to encourage all those solicitors who qualify, to enter the Wig and Pen competition. What one person may consider a very modest contribution to pro bono activities may in fact be a prize-winning effort!

Current prize-winning efforts were rewarded at the AGM of CWHLs on 11 October, when Rodney Stubblefield presented the Gamlen Prize to Sophie Albinson and the runner up's prize to Alison Oliver; congratulations to both winners.

I would like to build on the work that Jeffrey has done over the last year in relation to access to justice. It is essential that those who choose to carry out legal aid work are remunerated properly for the work that they do. But access to justice is not simply an issue that relates to clients being able to afford to obtain advice

and go to court where necessary, but also access to suitably qualified solicitors who are capable of dealing with their clients' matters in a responsible and professional way. This means that we need to ensure first, that entry into the profession is limited to those who can demonstrate that they are able to advise their clients and second, that those who are able to provide such a service do not become disillusioned, frustrated, or otherwise put off staying in the profession, so that they do not leave the profession early.

I look forward to working with my fellow office holders and would like to congratulate Michael Gillman on his election to the Presidential team as Junior Vice President.

DIARY 2005

OCTOBER

- 26 Committee meeting
- 27 Lecture: Civil Litigation Update

NOVEMBER

- 9 Lecture: Contract and the Conflict of Laws
- 30 Committee meeting

DECEMBER

- 7 Lecture: Landlord and Tenant Update
- 14 Committee meeting

2006

JANUARY

- 18 Committee meeting

FEBRUARY

- 22 Committee meeting

MARCH

- 7 ANNUAL DINNER
- 22 Committee meeting

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Registered office:
25 Rotherwick Road
London NW11 7DG
Telephone/Fax: 020 8209 1039
www.cwhls.org.uk

Editor

Rosemary Lester
6 Westhorpe Road
Putney
London SW15 1QH

Editorial Board

Timothy Drabble
Andrew Hill
Charles Fraser
Elizabeth Beesley

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The City of Westminster and
Holborn Law Society

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12A Station Field Industrial
Estate, Kidlington
Oxford OX5 1JD
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The deadline for all copy for the
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Copy to be sent to The Editor at:
6 Westhorpe Road, London SW15 1QH
rlester@lesting.fsnet.co.uk

Contributions to be sent by email

President: Charles Fraser, Fraser & Fraser, 39 Hatton Garden, EC1N 8EH
020 7832 1400 charles@lostkin.co.uk

Vice President: Sara Chandler, The College of Law, Legal Advice Centre, 14 Store Street, London WC1E 7DE
020 7291 1290 sara.chandler@lawcol.co.uk

Junior Vice President: Michael Gillman, Bishop & Sewell, 46 Bedford Square, London WC1B 3DP
020 7631 4141 Fax: 020 7636 5369

Hon Treasurer: Timothy Drabble, Okehurst, Billingshurst, West Sussex, RH14 9HS
01403 782535 drabtim@okehurst.co.uk

Hon Secretary: Peter Adams, 5 Osten Mews, Emperors Gate, London SW7 4HW
020 7370 7450 Adamspg@aol.com

Deputy Hon Secretary: Jonathan Cornthwaite, Wedlake Bell, 52 Bedford Row, WC1R 4LR
020 7395 3000 jcornthwaite@wedlakebell.co.uk

Editor: Rosemary Lester, 6 Westhorpe Road, Putney, SW15 1QH
020 8788 7023 rlester@lesting.fsnet.co.uk

Administrator: Elizabeth Beesley, 25 Rotherwick Road, NW11 7DG
020 8209 1039 admin@cwhls.org.uk

ACCESS TO JUSTICE IN THE EASTERN CARIBBEAN

SARA CHANDLER



May in Antigua was a revelation for me. Hurricanes had started already this year but thankfully had not hit the island, and the temperatures were not the highest. However, it was over 30 degrees at midday consistently and the sun and warmth combined with gentle breezes suited me! But I was not there on holiday!

The Law Society's International Department works with legal aid projects in the Caribbean with funding from the Foreign and Commonwealth Office to train the legal aid lawyers and assist them to build up their projects. Support was initiated by the British Caribbean Jurists Group, and this year received support from the College of Law, the Inns of Court School of Law and Cardiff Law School. The legal aid project of Antigua and Barbuda hosted a 5 day workshop for legal aid lawyers from eight Eastern Caribbean states. There is a great variety in the capacity of the different islands, for example Trinidad and Tobago have a well established project while St Vincent has a Human Rights Committee run by a small group of young lawyers in private practice who give pro bono advice on Saturday mornings.

I was one of three facilitators and our programme ran from 8.30am to 5.00pm each day. Topics ranged from skills training in advocacy, mediation and negotiation (very hands-on and lots of role play) to management training in the running of not for profit organisations. These were long hours, especially in the heat, but we started the day with an early morning swim and finished with a swim before supper.

The lawyers came from St Lucia, St Kitts and Nevis, Trinidad and Tobago, St Vincent, British Virgin Islands, Dominica and Guyana as well as our hosts from Antigua and Barbuda. During the course of the workshop the participants decided to form an association so that they can exchange information, lend support and generally encourage each other in their endeavours to provide access to justice, especially where they are starting from scratch.

Our Antiguan hosts organised a visit to their offices, housed temporarily in the brand new Ministry of Justice building, where we met with the Minister of Justice and the Permanent Secretary with responsibility for access to justice. Their great concern at present is that

having 119 people in prison in Antigua has led to overcrowded conditions and no separate facilities for young people in detention. Long term plans are in motion for providing additional prison accommodation. The government funds the legal aid project and employs the staff in the five-person project. We saw the queue of people waiting to be seen and the small project needs to expand to meet need. The legal aid project lawyers do refer cases to lawyers in private practice who take them on pro bono, but to meet the need the project needs more lawyers on its staff.

On one evening we were taken by prison minibus on a trip round the island, learning about the history from the early Arawak islanders, through the period of British colonialism and slavery, to the rebellion and freedom struggle of the slaves and the subsequent march to independence. We visited the first village established by free men and women, followed by a drive through rain forest and on to high cliffs to gaze at the sunset over the sea. It was a week to remember and the firm friendships established will hopefully thrive through the association set up to promote access to justice throughout the Eastern Caribbean.

PRO BONO OPPORTUNITIES...

The Mary Ward Legal Centre in Holborn needs qualified solicitors or barristers to volunteer for day or evening advice sessions. Experience in one of the following areas needed: housing, landlord and tenant, employment, consumer, family, civil litigation or welfare benefits – 3 hours per month minimum.

For further information, please ring 020 7831 7079.

Mary Ward Legal Centre, 26-27 Boswell Street, London, WC1N 3JZ.

www.marywardlegal.org.uk

JEFFREY FORREST'S SPEECH TO THE LAW SOCIETY'S CONFERENCE

14 SEPTEMBER 2005

JEFFREY FORREST



London's population today is almost eight million. About eight million *years* ago, the land masses we now recognise as Europe and England - and the great river estuary of what is now London - were formed.

About eight *thousand* years ago, a group of far-sighted hunter gatherers decided that right here, on the swampy marshes of the Thames, would be an excellent place to establish a community - a community that has developed into one of the greatest cities of the world.

About eight *hundred* years ago the powers-that-be decided to move the government and parliament of England from Winchester to where we are today, to Westminster, and - 790 years ago to be precise - and a few miles upstream from here, Magna Carta was signed, promising laws that were good and fair,

that everyone should have access to justice and that money should not be an issue if someone wanted to take a problem to the courts. (I paraphrase from the Latin.)

About *eighty* years ago a young woman named Carrie Morrison became the first female to be admitted as a Solicitor of the Supreme Court. Today, more than half of all those being admitted to our profession are women.

About eight *years* ago, the people voted to be governed from Westminster by a government that has done many things, some good, but which has continued to restrict access to justice and has made many inroads into the freedoms and rights that we have enjoyed as citizens for eight hundred years.

About eight *weeks* ago, four young men, citizens of this country, sought by their dreadful actions to obliterate our way of life. They *succeeded*... in only one thing: to remind us that our freedoms can never be underestimated or taken for granted and that we, as lawyers, are charged with protecting those freedoms.

As President of the City of Westminster and Holborn Law Society, within whose boundaries we are meeting today, may I welcome you all to the Law Society's National Conference - and may I, in particular, welcome all of our fellow lawyers who have joined us from the Commonwealth.

We are at a moment of great change and today we have less than eight *hours* for our meetings and deliberations. I hope our time together will be friendly and fruitful.

ELIZABETH FINN TRUST

If you could turn to your own family, you would. But if you can't, you can turn to the Elizabeth Finn Trust. The Trust spends a total of £2,000,000 each year to help approximately 1,900 British and Irish people in the UK and abroad to get back on their feet when financial hardship has struck. The Trust also provides high quality residential and nursing care to over 500 older people in its eleven award winning Care Homes and ten almshouse cottages.

The Elizabeth Finn family includes people of any age from a wide variety of backgrounds and occupations, including solicitors, barristers, judges, legal secretaries and other legal professionals. The Trust can provide a one-off grant or a small weekly allowance to help ease money worries, and a friendly voice at the end of the phone when needed.

Each potential beneficiary is visited by one of the Trust's volunteers to assess the person's or family's needs and how

best to help. Beneficiaries are visited at least once a year to ensure that we have a good understanding of their situation and any future needs.

The Elizabeth Finn Trust makes a real difference - simply knowing there is an organisation that cares about them and is willing to help them through tough times, turns around people's lives.

For more information about this charity, please visit our website www.elizabethfinntrust.org.uk or ring **Freephone 0800 413 220**.

REPORT OF COUNCIL MEETING

21 AND 22 SEPTEMBER 2005

CHARLES FRASER



The first Council meeting for the new Council year started with a meeting in committee in order to discuss the representative functions to be provided by the Law Society after the anticipated legislation expected to come into effect in 2008. The advantage of meeting in committee is that some of the formalities and constraints of the formal Council meeting are removed. This can enable a better discussion as opposed to a debate on an issue. The discussion was in relation to how the Consultation Paper which is to go to the profession should be worded, so as to obtain from the profession a response that will enable the Council to determine which are services that the profession wishes the Law Society to provide, but also is willing to pay for. For example, many might think that it is important for the Law Society to have a well-stocked, up to date library; however practitioners may not be willing to pay the cost of running it as part of their practising certificate fee, when that part of it becomes voluntary.

During the formal part of the meeting, Council decided to merge the functions of the Main Board and Finance and Resources Board to provide a single Corporate Governance Board, which will hopefully have cost savings and that Board will be in a better position to exercise the functions currently exercised by the two separate Boards. Council also approved amendments to the Law Society's General Regulations 2005, establishing a new consumer complaints board, and regulation board which will replace the standards and compliance boards that we currently have. The good news for those who wish to apply for High Court qualifications and obtain higher rights of audience, were that amendments were made to the regulations to allow for applications to be received by the Society until 31 December 2006, which extended the earlier cessation date for both the accreditation and exemption routes of 31 October 2005.

Other issues that were discussed were the approval of a revised freedom of information code and the recruitment of a Remuneration Committee Chair. Following a Council Member motion, an additional meeting to be held in November was agreed, principally designed to debate the Government's White Paper in relation to the Clementi reforms, but it will also be an opportunity to debate any other issues prior to the December Council meeting. Since steps are being taken to separate the representational and the regulatory functions of the Law Society, still within the overall auspices of the Law Society, the Council decided that it no longer needed lay membership of Council to be continued after January 2006. The majority of Council felt that it was incongruous for a body that was to be more of a representational nature to have lay membership.

As stated above, the next meeting is in November and will be held at the offices of Clifford Chance.

NEW MEMBERS

Bircham Dyson Bell: Miss G K Perks
Hallinan Blackburn
Gittings & Nott: Kevin Lowry Mullins
Vizards Tweedie: Mrs C M Green, T A Lumsden,
A E Millson and Mrs E L Wilkins
Witham Weld: Miss Sabian Khan
Fulbright & Jaworski: S F Vogel

ASSOCIATE MEMBERSHIP -

Vivien Stern: Ms V C Stern

TRAINEES:

Knights Solicitors: Miss L H Jennings
Witham Weld: Miss E J Towner

EUROPE – AN ALPHABETICAL GUIDE FOR BEGINNERS

The Society is planning a visit to the European institutions in Brussels on 21 and 22 November. Jeffrey Forrest has prepared the following partial, random and prejudiced “cut out and keep” guide, to help clear your confusion - or to add to it.

A is for **Accession**. Applicants for membership of the EU have to sign an accession treaty. Ten new States did so in Athens in April 2003, becoming members from May 2004. A is also for **Acquis Communautaire**, effectively all the EU Member States’ shared rights and obligations. The “acquis” includes all EU laws, treaties and declarations, as well as EU international agreements on EU affairs and judgments of the European Court of Justice.

B is for **Berlaymont**, the modernist HQ of the EU Commission in Brussels, long vacated for renovation and asbestos removal and not reoccupied until 2004. And for **Baffling Pig**, a mnemonic for those EU States adopting the Euro in January 2002: Belgium, Austria, Finland, France, Luxembourg, Ireland, Netherlands, Germany – and the three more controversial entrants (Portugal, Italy and Greece).

C is for the **Council of Europe**, not to be confused with the European Council, or the EU Council of Ministers! The Council of Europe is based in Strasbourg, alongside – but wholly separate and different from – the EU Parliament. It was established in 1949 and currently has 44 European Member States. The Council of Europe established the European Convention on Human Rights in Rome in 1950. C is also for CAP, the **Common Agricultural Policy**. And C is for the EU **Constitution**, decided upon by all 25 Member States in 2004, subject to ratification by national parliaments or through referenda. The Constitution is intended to consolidate and extend previous EU treaties but it

was famously rejected by the French referendum and its future is uncertain.

D is for **Directives**. Since the Single European Act in 1987, which embarked on the creation of a single market in Europe, most European legislation has taken the form of Directives. Directives are first passed at EU level but must then be enacted into Member States’ own national law within a specified time. If a State refuses to adopt a Directive, it may become binding on that State anyway.

E is for the **European Union (EU)** and for the **European Council (EC)**, comprising the EU Member States’ elected heads of state or government, plus the President of the **European Commission**. (The Commission is effectively the civil service of the EU, responsible for drafting EU legislation.)

E is also for the **European Court of Justice**, in Luxembourg. The ECJ adjudicates under EU treaties and is the final interpreter of EU legal issues under EU treaties. The courts of Member States can refer cases to the ECJ for such interpretation. And E is for ECHR, the **European Court of Human Rights**, established by the Council of Europe and based in Strasbourg, which considers individuals’ complaints against States’ infringements of the **European Convention on Human Rights**, derived from the Universal Declaration of Human Rights.

F is for the **Four Freedoms**, established by the Treaty of Rome: The free movement of goods, services, capital and people, within the EU. These principles were extended under the “internal market” rules introduced by the Single European Act, signed in 1986.

G is for the **G8**, a group of the world’s richest and most powerful countries, which meets regularly to discuss currency issues and other topics. G8 comprises USA, UK, Canada, Japan, Germany, France, Italy and Russia.

H is for the 1969 **Hague Summit**, when the EU resolved to negotiate enlargement, leading to the accession of the United Kingdom, Ireland, Denmark and Norway. The Hague Summit also initiated the extension of EU foreign policy and the steps towards Economic and Monetary Union.

I is for the **International Court of Justice** in the Hague, the United Nations’ main judicial body. I is also for the **International Criminal Court**, established by the UN in 2002 and whose jurisdiction remains unrecognized by the USA.

J is for **Jurisconsult**, the EU Parliament’s legal adviser. J is also for **Justice and Home Affairs** – one of the famous ‘pillars’ of the 1992 Maastricht Treaty.

K is for the **Kyoto Protocol**, the 1997 UN climate summit, which agreed to reduce atmospheric emissions by 5% a year, to counter global warming. The EU accepted a target reduction of 8% a year by 2008-12.

L is for the **League of Nations**, the predecessor of the United Nations between the two World Wars.

M is for **Member States**. There are currently 25 EU member States. M is also for the 1992 **Maastricht Treaty**, since when the EEC has been known as the EC. John Major’s government kept the UK out of the Social Protocol, agreed at Maastricht, but it was subsequently ratified by Tony Blair’s government. The “Maastricht Criteria” are supposed to govern when a State may join the single currency. The UK imposed additional requirements on itself, Gordon Brown’s “convergence criteria”.

N is for **NON!**, famously uttered by General de Gaulle in response to the UK’s application for EU membership in 1967. However, after De Gaulle’s political defeat in 1969, the UK had another chance and joined in 1973, ratified by a referendum in 1975, in

which 67.2% of Britons voted for continued membership of the EEC (as it then was).

O is for **Official Languages** of the EU, of which there are currently 20. **O** is also for **Opt-out**, more popular with the UK than the EU, which prefers consistency. Unlike a derogation, which is a temporary time-limited exemption, an opt-out may or may not be permanent.

P is for **Presidency of the European Council**, held on a revolving 6 monthly basis by Member States. Currently held by the UK, it passes in 2006 to Austria and then to Finland. **P** is also for **Parliament**. The EU Parliament sits in Brussels and Strasbourg, currently with 732 elected MEPs representing all EU member states.

Q is for **Qualified Majority Voting**. The Council of the EU makes decisions by voting on most issues. Each country has a number of votes, relative to the size of its population. Thus France, Germany, Italy and the UK all have 29 votes and smaller countries have proportionately fewer. There must be a “qualified majority”

in favour of a proposal for it to be adopted by the Council, i.e. at least 232 of the total 321. In addition, a majority of States (in some cases at least two thirds) must be in favour.

R is for **Rome, Treaty of**, 1957, the founding statute of the European Economic Community, as from January 1958. The original six signatories were Belgium, France, Germany, Italy, Luxembourg and Netherlands.

S is for **Schengen**, the 1985 EU treaty (ratified by Mrs Thatcher) that introduced common travel areas without internal borders (not ratified by Mrs Thatcher!) and **Subsidiarity**, the principle that any decision ought to be made at its most local level.

T is for **Twelve**, the number of EU states until 1995 and the number of stars on the EU flag.

U is for the **Universal Declaration of Human Rights**, proclaimed in Paris in 1948 by the General Assembly of the United Nations.

V is for **VAT**. All EU Member States are required to impose VAT at a rate between 15% and 25% on products

and services, with few exceptions (derogations).

W is for **Working Time**: A maximum 48 hour working week (with some derogations) was adopted for the EU as a whole in 1993 under provisions of the 1987 Single European Act.

X is for **Xenophobia**, not dissimilar to Europhobia, but more generalised.

Y is for **Yugoslavia**, the former Balkan federal republic that encompassed Slovenia, Croatia, Serbia, Montenegro, Bosnia, and Macedonia.

Z is for Schengen **Zone** countries, currently including some Non-EU States but excluding some EU States, specifically UK, Ireland and Denmark.

AT THE TIME OF GOING TO PRESS, THERE WERE STILL A FEW PLACES AVAILABLE FOR THE CWHLS VISIT TO BRUSSELS, FROM 20 TO 22 NOVEMBER 2005. FOR MORE INFORMATION, PLEASE CONTACT MORAG GOLDFINCH, AT THE LAW SOCIETY'S REGIONAL OFFICE (020 7316 5554) OR EMAIL morag.goldfinch@lawsociety.org.uk

SOLICITORS BENEVOLENT ASSOCIATION

Have you bought your Christmas Cards yet? SBA Christmas Cards are still available! Leaflets and sample cards can be obtained from the SBA office, telephone 020 8675 6440. The leaflet may be viewed on the SBA website: www.sba.org.uk.

The CCA Group continue to cover all printing and despatch costs and this year they have agreed to pay the Association 9p royalty for every card sold (8p has been paid in previous years). All monies made go towards helping necessitous solicitors and their dependents.

Next year's Legal Charities Garden Party will be held on Wednesday, 14 June – do make a note of the date now. This is another way to support the S B A.

Do inform the Association if you know about any potential beneficiaries who may be in need of assistance.

REVENUE COMMITTEE

JEREMY DE SOUZA



HMRC's rearguard action on SDLT administration collapsed at the end of August. A sampling exercise revealed that the OCR machine had indeed rejected a significant percentage of correctly completed returns. As a result, there has been a climb down on the "policy" of charging a penalty where the SDLT8 has not been returned within the original 30 day filing period.

Even worse for HMRC was the discovery that, while FA 2003 permitted interest to be charged, no S.I. had been laid adding the tax to the section prescribing the rate of interest. It is all having to be refunded!

SDLT INTERPRETATION

We have still not received a formal answer to the appointment out of trust problems raised by us in March. While it has been said that no problem arises where new trustees are appointed of a fund containing mortgaged property and that there may be no problem in relation to failed PETs, HMRC still seem to be of the view that appointments out of trust are vulnerable in principle.

In the absence of clarification on these issues, members may wish to consider making returns on the traditional basis (i.e. on SDLT 60) and sending the equivalent of a "white space" marker letter to Worthing on the basis of the new procedure on p.9 of Practitioners' Newsletter No. 9.

STATUTORY RENT REVIEWS

At the end of August, it became apparent from an article in a professional journal by Andrew Campbell (a former Farrer & Co articulated clerk) that HMRC considered that the fixing of an interim rent under LTA 1954, s.24A constituted a "variation" of the continuing lease and, hence, the "grant" of a notional new lease to the extent of the additional rent. The underlying thinking is understood to be that HMRC do not accept that statutory provisions either must or (indeed) can by implication be read into the express contractual terms of a lease.

Then, at the beginning of September, HMRC told Gerald Moran and me that the statutory rent review procedures under AHA 1986 and ATA 1995 also

gave rise to similar events, and, indeed, that this was so even if such a review took place during the initial fixed term of years and reference to the relevant section had been incorporated in the lease.

This is being pursued further.

If HMRC hold to their initial view, and that the date upon which an agricultural rent review is determined is that upon which a notional new lease arises (seemingly alongside the original rent reserved under the actual lease), additional questions arise and HMRC have given us the following answers to them:

- For how long is the "new" lease deemed to be for? The unexpired term or one year, whichever is the longer.
- When that "term" expires, does the net present value calculation have to be redone to allow for the increased length of the lease? Yes.
- If the original lease was granted after November 2003 and the landlord is the same, does the "new" one come within the provisions of Schedule 17A, para 5, which backdates its five year rental calculator date to the original lease? Not normally.
- If the original lease predated December 2003 and the landlord has stayed the same, is the second "new" lease (for the increase under the next rent review) merged with the first "new" lease under the same para 5? Again, not normally.
- If the landlord has died, does each "new" lease have to be recalculated separately when the term is stretched? Yes.
- If the lease was granted after November 2003, five years has passed and the tolerance threshold for rent increases (para 14) has been breached, how does the apparent priority of para 14 over para 13 affect the above? HMRC say that para 14 cannot apply to a para 13 rent increase.
- Are protected AHA tenancies and farm business tenancies capable of coming within the partnership membership changes exemption in Schedule 15, para 15?
 - For CGT and IHT purposes they have always been treated as continuing assets. It had, furthermore, been understood from HMRC that they

would be for this SDLT purpose, but qualify for exemption on a basis which seemed inconsistent with the para 13 hypothesis outlined above.

- But it has now been agreed that, while they are indeed exempt, this is because, for the purposes of Schedule 15, they will never become leases for more than five years.

Technical Newsletter No. 1 was issued subsequently. Although it only addresses the extension of business and residential tenancies (for which different statutory provisions apply), it confirms the parallel "leases" within a single "tenancy" hypothesis inherent in the above analysis of agricultural tenancies. This is a strange concept, but has been met before in the political sphere, i.e. China's solution to the taking back of Hong Kong: "one nation, two systems".

OTHER SDLT FARMING ISSUES

Although HMRC have not abandoned their thesis that land provided to a farming partnership by a partner-owner on a *Harrison-Broadley v. Smith* basis is deemed to be a partnership asset for the purposes of this tax, they do seem inclined to accept that:

- the retirement of such a partner will not give rise to an extraction charge if all the partners are "connected" within the usual s.839 test;
- the death of such a partner will not give rise to an extraction charge because it takes effect immediately after death and not only is he not then alive but also his PRs are not "connected" under s.839; and
- if (other) land has been injected into the partnership within the three years preceding death, the new capital withdrawal charge [para 17A] will not apply because the partner in question is no longer alive.
- But what the situation is for the surviving partner on the death of the penultimate to die where there is the usual option to buy out the PRs remains unclear.

On the other hand, it seems that if, under the terms of a new farm business tenancy, the tenant is obliged to hand his "historic" SIPE over to the landlord, a SDLT event is likely to be claimed, but

may be neutered by an application for relief under s.90, PROVIDED that this is filed within 30 days of the effective date.

VAT TOGCS

A further Consultation has been launched on these, following the ECJ's judgment in *Zita Modes*, and the Committee have filed a response, which is available on the Society's website, addressing three issues:

- the desirability of removing the need for HMRC consent for the vendor to retain his VAT records in every case;
- problems likely to arise from the retention of the *same type of business* condition for partial disposals; and
- whether the sale of a single let building from a portfolio is, as a

matter of law, capable of coming within the concept.

DEVOLUTION: A JURISDICTION CLASH

Under the Scotland Act 1998, the Scottish Parliament has only limited powers of taxation. A MSP has recently introduced a Bill to impose a plastic bag tax. This is clearly not an environmental measure and, as a fiscal one, will only be *intra vires* if in relation to "local" taxation. The only "local" criteria appear to be that the local authority is to be designated as both the collection agent for the tax and the disbursement agent for the sums raised. It remains to be seen if Whitehall will challenge the validity of the measure if it is passed.

CONFUSION IN LUXEMBOURG

Advocate General Léger, the Commission and the British Government (the taxpayer, *FCE Bank*, being incorporated in the UK) all believe that a branch in one Member State of a company incorporated in a second Member State is not a separate "person" for VAT. Italy and Portugal equate it to a subsidiary, which clearly would be a separate person. But, in formulating its questions to the ECJ in C-210/04, the highest Court in Italy used the word "subsidiary" to refer to the former (i.e. to a branch). And, although M Léger clearly feels that the ECJ was entitled to correct this error in terminology, he was obliged (by recent precedent) to say that the exact status of a litigant is a matter for the National Court!

PENSIONS AND INHERITANCE TAX

JOHN OWEN



On 21 July 2005, HMRC published a Discussion Paper about possible amendment of the IHT legislation in relation to pensions, to reflect the changes in the pensions rules themselves which will come into effect on 6 April 2006, known as "A-day". These changes will include allowing family SIPPs to be created which may own UK or overseas residential property or chattels for the first time. On the pension contributor's death the right to benefit from the fund may pass to his spouse, dependant children or, in certain circumstances, other nominated recipients who are members of the same family SIPP. This opens up the possibility, widely referred to in the financial press, of such assets being acquired by pension funds as much as a vehicle for contributors to save IHT as to provide genuine pension benefits.

The Society's submissions propose no changes to the IHT position where the contributor has not assigned the death benefit in circumstances where sums become payable as of right to his estate on his death. They propose only minor changes to the IHT position where a

contributor assigns the death benefit, or defers buying an annuity, when he is in ill-health. On the other hand, the Society accepts that it is appropriate to target abuse of the pensions wrapper for IHT saving and that an IHT liability might be imposed in certain limited circumstances on the transmission on death of family SIPPs in particular to discourage this.

The Society's submissions propose that a liability to IHT on transmission of pension funds on death should be imposed only in relation to residential property or chattels passing to a nominated beneficiary other than the contributor's spouse or dependant children, or the spouse and dependant children of a nominated beneficiary, in cases where it can be shown, or is to be presumed, that the contributor made the arrangements in order to benefit others and not himself.

HMRC's Discussion Paper suggested that IHT might be imposed on family SIPPs by treating the transmission of the fund as a lifetime gift by the contributor. The Society does not consider that this approach could be made to work

satisfactorily, and its submissions propose instead that the deceased contributor, and subsequently his nominated successor, should be treated as having an interest in possession in the fund on which a liability to IHT would then arise in the limited circumstances outlined above, and that the fund manager should be responsible for submitting an IHT return in relation to the relevant death and for paying the tax from the fund, with power to mortgage land where necessary to do so. Any IHT exemption available in other circumstances would apply equally in such cases.

The Society considers that its proposals would be simpler in operation and should not deter those whose aim is the provision of genuine pension arrangements but would discourage the use of a pension wrapper mainly in order to save tax.

The Consultation on Inheritance Tax and Pension Simplification (http://www.hmrc.gov.uk/consult_new/discussion-paper-inh-tax.pdf) and the full text of CWHLs' response is on the Society's website – www.cwhls.org.uk.

FILE MANAGEMENT

Working in a disorganised, chaotic manner is creating just the right environment for error. This statement is well rehearsed; however, all too many solicitors fail to adhere to the most basic principles of file management. There has to be a common approach to file management across the whole firm. This ensures a degree of familiarity on the part of any fee earner looking after a colleague's file in his or her absence, and will enable that person quickly to identify what the current position is with regard to the file. Some of the more basic issues to be addressed in a file management policy are as follows:

- The file must be complete to date. Obvious in itself, but a source of problems. All emails need to be printed off and placed on the relevant file as soon as they have been received. All correspondence must be filed in date order. Drafts of all relevant documents must also be kept on the file and in date order.
- Do not keep deeds (including wills) on a current file. They need to be stored separately in a secure place for safe keeping. Leaving them in a file heightens the risk of them being misplaced, lost, or inadvertently destroyed when that file goes to archiving and subsequently for destruction.
- Keep files to a manageable size. Do not overfill files. A good way to manage size is to discard unnecessary communications as and when they come to hand. For example, it is common to see the same letter in triplicate on a file in the form of email, fax and original letter. Check to see if it is really necessary to keep all three. If there is more than one file per transaction this should be marked on the file i.e. one of three.
- Crucial information should be recorded on a file in such a manner as to make it immediately identifiable. For example, many firms mark limitation dates clearly

on the front of a file. Further to this, many firms mark the front of a file with details of any undertakings which have been given or received in relation to the file.

- There should be a readily ascertainable audit trail of financial transactions kept on a separate clip. This will enable all financial transactions to be easily identified.
- If a firm, team or department uses standard checklists, these should be kept in the same place on every file, and **MUST** be kept up to date by the fee earner.

Remember that where administration is involved, standardisation makes for simplification.

This column was prepared by AFP Consulting, a Division of Alexander Forbes Risk Services UK Limited, which is authorised and regulated by the Financial Services Authority.

TEMPLE GIFT FOUNDATION VON MOLTKE SCHOLARSHIPS FOR YOUNG LEGAL PROFESSIONALS

MARK SHELDON

THE VON MOLTKE SCHOLARSHIPS

Many young solicitors in the City have the chance to spend time working in Germany for their firms, or for associated German firms.

For those who don't, but who would like the opportunity to spend a short spell (3 to 4 months) working in a legal environment in Germany, there are the **von Moltke Scholarships**. These are awarded annually by the Temple Gift Foundation and are open to young (don't ask for a definition – just go for it) solicitors and barristers. A working knowledge of German is needed – though it is possible that some assistance can be offered to successful candidates whose German language skills are a bit rusty.

This year's placements, commencing in Spring 2006, may include law firms, the Ministry of Justice, the Courts, and legal departments of banks, businesses and charitable organisations. Contact information is given below.

THE TEMPLE GIFT FOUNDATION

This was established in Germany as a sign of reconciliation and friendship towards Great Britain in connection with the destruction of the Temple Church and large swathes of the surrounding area of Legal London by the German air force in May 1941. The launch of the Foundation in May 2001 was marked by an immensely moving Anglo-German service of choral evensong at the Temple Church, the sermon being preached by the Bishop of London.

VON MOLTKE

Helmuth James Count von Moltke was a brave man of great principle. A German lawyer, he was called to the English Bar by Inner Temple in 1938. After pupillage he returned to Germany and worked as a public international lawyer advising the German High Command. Time after time he stood against planned illegality: the murder of the British Ambassador to Switzerland; the execution of prisoners from countries already defeated by Germany who had taken up arms with still combatant

countries; the improper treatment of Soviet prisoners of war; decrees against the Jews. In 1945 he was arrested, tried and sentenced to death by a Nazi People's Court for his role in the German resistance movement – and executed.

It seems fitting that the Temple Gift scholarships should commemorate this remarkable man.

FURTHER INFORMATION

Selection for the von Moltke scholarships is made on the basis of interviews conducted in London. The London administration of the scholarships is organised by the Pegasus Scholarship Trust at Inner Temple. Further information about the scholarships can be obtained from:

Clare Heaton
Pegasus Scholarship Trust
Treasury Building
Inner Temple
London EC4Y 7HL
Tel: 020-7707 8210
e-mail: cheaton@innertemple.org.uk

THE GAMLEN LAW PRIZE

This year the Society awarded the Gamlen Law Prize to Sophie Albinson: she was nominated by BPP and is a trainee at Farrer & Co. The runner up was Alison Oliver, who was nominated by the College of Law: she is a trainee at Lockharts.

This Prize is awarded to the most promising student on the Legal Practice Course within the area of the City of Westminster and Holborn. Each course provider nominates a suitable candidate for consideration by the Society for award of the Prize.

The Prize was presented at the Society's AGM by Rodney Stubblefield, one of the Gamlen Trustees. The Prize was established in memory of the Gamlen Family and more especially St. John Gamlen, who was the last of five generations of Solicitors, and was a meticulous and sparing draftsman. In nominating a candidate, the course provider must, *inter alia*, have regard to the candidate's ability to reduce a complicated subject into simple and lucid language, able to be understood by a lay client.

The Rules of the Wig and Pen Prize, which is awarded for Pro Bono work, will be published in the December edition of The Report.



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A list of the Society's Chairmen of Sub Committees will appear in the next edition of The Report.

GREATER LONDON REGIONAL OFFICE CPD TRAINING AUTUMN 2005 NOVEMBER COURSES

Disability Equality in Action – The Disability Discrimination Act: 10 November 2005
 Panel Speakers: Eversheds
 The Law Society, Chancery Lane – 4.00 p.m. to 7.00 p.m. (3 CPD hours)
 £99 + VAT

Disability Equality in Action – The Disability Discrimination Act: 28 November 2005
 Panel Speakers: Eversheds
 The Law Society, Chancery Lane – 4.00 p.m. to 7.00 p.m. (3 CPD hours)
 £99 + VAT

New Pensions Legislation: ‘Practical and Proactive Advice for your Clients – Business and Professional’ –
 28 November 2005
 Speaker: Keith Hubbard-Brown FCA, CFP (Certified Financial Planner)
 The Law Society, Chancery Lane – 4.00 p.m. to 7.00 p.m. (3 CPD hours)
 £90.00 + VAT

Leading the successful firm: What Partners can do and how to do it – 14 November
 Speakers: Panel
 The Law Society, Chancery Lane – 5.00 p.m. to 7.00 p.m. (1.5 CPD hours)
 £40 + VAT

FOR FURTHER INFORMATION PLEASE CONTACT:

Mercy Cefaz, London Regional Office, The Law Society, 113 Chancery Lane, London WC2A 1PL
 Tel: 020 7316 5554 Fax: 020 7320 5971 Email: mercy.cefaz@lawsociety.org.uk

CWHLS LECTURES

CIVIL LITIGATION UPDATE –

H H Judge Paul Collins
 27 October

Judge Paul Collins, the Senior Circuit Judge at the Central London Civil Justice Centre and the Designated Civil Judge for the London Group of County Courts, will deliver a topical Civil Litigation Update. His lecture will include the following points -

- Principles applied by judges in enforcing procedural rules with particular reference to whether judges have any regard to trying to achieve consistency of approach amongst themselves

- Cost capping. Is this likely to be widely adopted as a method of curbing the cost of litigation?

- The approach of judges to awarding costs sanctions in cases of refusal to mediate since the decision in Halsey

If there are particular issues that attendees would like addressed, please will they indicate these when applying for tickets.

CONTRACT AND THE CONFLICT OF LAWS – Shantanu Majumdar of Lamb Chambers

9 November

In this lecture, Shantanu Majumdar will discuss recent and topical issues of forum

and choice of law in international contractual disputes.

LANDLORD AND TENANT UPDATE – Katharine Holland of Landmark Chambers 7 December

Katherine Holland will deliver a topical Landlord and Tenant Update. She will include a review of the most significant landlord and tenant cases during the course of the preceding twelve months.

These lectures will be held at the offices of Lawrence Graham, 190 Strand, WC2. They begin at 6.15 pm with a drink available from 6.00 pm. One hour of CPD is available (ref: JC/CWHLS) – please give your roll number when attending.

TO: Mrs E J Beesley, CWHLS, 25 Rotherwick Road, London NW11 7DG DX 33801 Golders Green
 Please send tickets for the following lectures: £20 per ticket for members and £30 per ticket for non members

| | Member | Non member |
|-----------------------------------|--------|------------|
| CIVIL LITIGATION UPDATE | _____ | _____ |
| CONTRACT AND THE CONFLICT OF LAWS | _____ | _____ |
| LANDLORD AND TENANT UPDATE | _____ | _____ |

I enclose a cheque for £ _____ payable to the City of Westminster and Holborn Law Society

Name _____ Name of Firm _____

Address _____

DX _____

Signature _____ Date _____