



CUMBERLAND ELLIS PEIRS

INCORPORATING BARTH & PARTNERS

SOLICITORS

# NEWSLETTER

## WINTER 2001

FAMILY 

*This article by Deborah Jeff was first published in 'The Times' legal section in November.*

## “Santa, Can I see my children this Christmas”

*When parents separate, the children usually live with one parent and have contact with the other. There are, however, occasions when the children live jointly with both parents, often meaning they spend approximately half of their time living with each. Whatever the arrangements are for the children when a couple separate, a child's contact needs to be carefully arranged so that both parents, and the children, are sure when the next contact will be. This can, but does not have to be, defined in a court order.*

Contact with children over the Christmas period is an issue all too familiar to those working with separated families. Now is the time to be addressing any issues that may arise in case the court needs to intervene to arrange contact for Christmas this year. Thankfully, many parents are able to agree when the parent not living with the children should have them over the Christmas period. If the parents are unable to agree, the options available are:

### 1. Mediation

Mediation requires the co-operation of both parents. An independent mediator will help them explore all possibilities and options to assist them in reaching agreement. Mediation is not limited to one appointment; parents can have as many appointments as they wish with a mediator whilst there remains a realistic possibility of a settlement being reached. Mediation is usually the first route suggested by solicitors to a client when there is a dispute regarding children and can often avoid an application to the court being made. Parents rightly feel they have participated in the decision making process rather than having a court order telling them what contact they can and cannot have with their children. To allow for mediation failing to effect an agreement, it should begin as soon as it becomes apparent that Christmas contact is in dispute.

### 2. Application to the court

This way of resolving the issue of contact is used when mediation is not appropriate or has failed. The application to court is usually made

by the parent not residing with the children but can also be made by the resident parent. The court is invited to make a contact order under the Children Act 1989 ("the Act"), setting out when the parent not residing with the children will see them.

The main consideration of the court in any application about children is their welfare. The Act sets out a checklist of factors the court has to consider. Those factors include the ascertainable wishes and feelings of the children, their needs, the likely effect on the children of any change in circumstances, their age, sex, background, any harm they have suffered (or are likely to suffer) and how capable the parents are of meeting the children's needs.

When an application for contact is made, there is a short first appointment at court within 4 to 6 weeks. This appointment is used to help the parents reach agreement. The children will need to attend too if they are aged 9 or over. If agreement cannot be reached at this appointment, the court will decide what evidence it needs before it makes a decision.

The parents are usually asked to prepare statements. Often the court needs a report from the Children and Family Reporter (previously known as a "Court Welfare Officer") before it can make a decision on contact. Such a report takes a minimum of 12 weeks to prepare and involves the parents, children and often other family members talking (usually separately) to the Child and

Family Reporter to explain their circumstances and what they believe should happen over the dispute. The Child and Family Reporter then prepares a report taking the checklist of factors into account and making a recommendation of what order the court should make. That report is filed at court and a copy given to the parents (or their solicitors). There is then a court hearing, when a judge will make a decision if the case has not settled by agreement at that stage.

There are circumstances when the court process can be speeded up to allow a decision to be made more quickly. The law regards any delay in proceedings relating to children as possibly prejudicing the children's welfare and the court will do all it can to reach a speedy solution on the issue of contact. However, to allow for any evidence and reports needed by the court it is essential that any application for Christmas contact is made to the court by late summer.

Whilst it is not essential to use a solicitor for such application to the court, specially trained and experienced solicitors can often resolve such disputes quickly and efficiently, and if that is not possible, can take a case to court and support the parents by careful legal representation.

*Deborah Jeff*, solicitor, Cumberland Ellis Peirs,  
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## PROPERTY DIVISION - NEW DEVELOPMENTS

*Hazel Wright*, who heads our Family Law Group, published an article in the autumn edition of *Link* (the magazine of the

Association of Women Solicitors). The article is reproduced on our website. Hazel reviews the latest developments in property division on divorce, and assesses the criteria which apply to the fraught business of splitting the assets of husband and wife. The article places the

process within the wider social context, and analyses in detail two of the most important recent cases.

For further information on this subject, or family law matters generally, please contact *Hazel* on [hazelwright@cep-law.co.uk](mailto:hazelwright@cep-law.co.uk)

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A little book *Disorder in the Court* has been brought to our attention. It contains verbatim selections from actual court cases. Here is an example:

**Q:** Doctor, before you performed the autopsy, did you check for a pulse?

**A:** No.

**Q:** Did you check for blood pressure?

**A:** No.

**Q:** Did you check for breathing?

**A:** No.

**Q:** So then, it is possible that the patient was alive when you began the autopsy?

**A:** No.

**Q:** How can you be so sure, Doctor?

**A:** Because his brain was sitting on my desk in a jar.

**Q:** But could the patient have still been alive nevertheless?

**A:** It is possible that he could have been alive and practising law somewhere.

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## COMPANY COMMERCIAL

### FOOD FOR THOUGHT (OR THOUGHT FOR FOOD)



The prolific *James Lamont* of our Company/Commercial team follows up his articles in the Summer newsletter with two further pieces, on terms of business, and protection for consumers who buy at a distance, e.g. over the internet. In these articles James looks at the supply of goods and services from the standpoint of the supplier, and of the very model of a modern consumer, who never meets the supplier. All those who provide the service, or who tap in their order for the weekly groceries, should visit our website for the full text of the articles, or contact **James** on [jameslamont@cep-law.co.uk](mailto:jameslamont@cep-law.co.uk).

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## CHRISTMAS HOLIDAYS



**The offices of Cumberland Ellis Peirs will be closed on the following days:**

Monday, 24th December

Tuesday, 25th December

Wednesday, 26th December

Monday, 31st December

Tuesday, 1st January 2002

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## PROPERTY

### VAT & PROPERTY

Hardly a subject, you might think, to set the world alight. It must be said this is a view shared by the Property Department at CEP!

Unfortunately the topic is important in the context of commercial property, sometimes involving considerable sums of money. The difficulty is that it is not always obvious when VAT is to be paid. Naturally we know the principles, and warn clients when VAT is likely to be relevant and when specialist advice in this complex area should be sought. The issue has cropped up recently on more than one occasion, where we have recognised the danger signals at the outset. We have thus ensured that

relevant advice has been taken and VAT charged where necessary.

Always conscious of the need to learn and to refresh our knowledge, however, we recently hosted an evening seminar on the subject. The speaker was Denis Smith, a VAT expert formerly of Customs & Excise but now of our accountants Moore Stephens. We took the opportunity to invite a number of our property contacts to join us. We welcomed a number of familiar faces as well as some new ones amongst our guests, and they joined us for refreshments afterwards. The evening was well received by all. We went away either with new knowledge

(sometimes rather alarming knowledge at that!) or with lots of useful reminders.

Denis produced some notes to be distributed at the end. We sent them also to invitees who had been unable to join us. If you would like a copy, please contact **Timothy Bartlett** or your usual contact at CEP. We would be delighted to send the notes to you.

The motto in any commercial property transaction must always be: "Think VAT!", and the Property Department at CEP takes it firmly to heart.

# SQUATTERS RIGHTS

*Adverse possession, or 'squatters rights' to use its more popular name, has always been a controversial issue. It allows a 'squatter' to be registered as the freehold owner of land which has, until then, been held by somebody else, if he has occupied the land and used it as if he is the owner for 12 years or more<sup>1</sup>. The idea behind it is to prevent land from being tied up, and therefore remaining useless because its ownership is either lost or forgotten. The Land Registration Bill<sup>2</sup>, currently winding its way through the corridors of Westminster, will introduce significant changes to this regime.*



The Bill proposes to change the system for asserting rights over an estate in registered land by means of an adverse possession claim<sup>3</sup>. It is no longer possible to simply be awarded title to the land upon being able to show adverse possession for 12 years.

In order to claim adverse possession over land which is registered a squatter will have to comply with the following procedure<sup>4</sup>:

1. An application must be made to the Registry, provided that the squatter has been in adverse possession of the property for at least 10 years on the date of the application<sup>5</sup>.
2. The Registrar then notifies various parties of the application. These include, but are not limited to, the proprietor of the estate in respect of which the application has been made.
3. Anyone who receives such notice then has a certain time limit within which to object to the claim.
4. If no objection is made then the claimant is entitled to be registered as the new proprietor of the property.

5. However if an objection is made then the claimant is only entitled to be registered as the proprietor if he satisfies one of several conditions. One of the conditions allows registration when it would be 'unconscionable' not to, and another is a catch-all 'for some other reason' provision. It is thought that in practice the Land Registry will be quite strict on the application of these provisions making it far more difficult for a squatter to claim adverse possession of a property.
6. If, after a claim is rejected, the squatter remains in possession of the land continuously from the date the application is made until two years from the date of rejection of the application, then he is entitled to make a further application<sup>6</sup>. The Registrar will then enter the squatter on the Register as the proprietor without the squatter having to fulfil any further conditions.

Thus proprietors of land which is registered now have the chance to prevent their land being taken from them pursuant to a claim for adverse possession by initially resisting the claim when it is made, then having the squatter removed. This is an improvement over the old regime under which it was quite likely that by the time the proprietor heard of the claim it was already too late to do anything about it.

It makes sense to introduce these changes. They still provide a mechanism whereby land which has been rendered useless due to lost or forgotten ownership can be revived and become useful. However the new system respects the principle of certainty of ownership which the Register embodies.

In relation to unregistered land, the law on adverse possession remains unchanged. There is very little unregistered land left and any which is left is not likely to have changed ownership for a very long time. Keeping the existing regime provides added incentive for the proprietors of unregistered land to register it.

We shall have to see how the regime works out in practice, and indeed the final form of the changes once the Bill passes through the Commons and becomes law. In their current form, the changes are a sensible adjustment to a necessary mechanism in land law.

**Raj Korja** on [rajeshkorja@cep-law.co.uk](mailto:rajeshkorja@cep-law.co.uk)

*Raj's article on other provisions in the Land Registration Bill continues on our website.*

<sup>1</sup> Sections 15 to 17 of the Limitation Act 1980.

<sup>2</sup> Go to <http://www.parliament.uk/hophome.htm> to obtain a copy of the Bill.

<sup>3</sup> See sections 95 to 97 and Schedule 6, of the Bill. The changes do not apply to adverse possession claims against a chargee because such chargee will not be able to obtain title under adverse possession provisions itself as part of these changes.

<sup>4</sup> Set out in Schedule 6 to the Bill. The procedures will be fleshed out by means of statutory instruments.

<sup>5</sup> It is possible for the squatter to make a claim if he has been evicted in the last 6 months but not if this was pursuant to a judgement for possession.

<sup>6</sup> Provided that the owner has not obtained or is not in the process of obtaining a judgement for possession against the squatter.

## PRIVATE CLIENT

### *Do you know what a Living Will is?*

**Susan Pape** and **William Hammon** have written a clear and sympathetic explanation of the process by which a person, anticipating future illness or incapacity, may stipulate what level of treatment (if any) they would want to receive, at a time when they were no longer capable of making a

decision. This is obviously a difficult area as it is unlawful to assist death. The article provides clear guidelines for the drawing up of Living Wills. For the full text of the article please contact:

**Susan Pape** on **020 7674 0515** or visit our website

## SPORT

### *SON OF BOSMAN*

After the Bosman case, footballers became free agents at the end of their contracts. The European Commission decided that Bosman did not go far enough, and, after long and heated argument, the regulations surrounding transfers have been comprehensively revised. For further details read the articles by **James Lamont** and **Raj Korja** on our website.

Since the last issue we have been joined by three new members of staff.

**William Hammon** and **Andrea London** started their Training Contracts with us on the 17th September. William is working in the Private Client Department for his first six-month seat. He has played hockey for England under-18s, has had junior England rugby trials, and plays golf off a handicap of 9, and a variety of other sports. For relaxation, he plays the piano.

Andrea will be training for one year only as she has already completed her first year elsewhere. She is an advanced scuba diver, and has a passion for acrylic and oil painting, and motorcycling.

**Hayley Botwright** has joined the Litigation Department's secretarial team, and works with Tom Murphy and Michael Jaques.

We also wish to extend a warm welcome to another young man. **Adam** and **Lucy Edwards** are the proud parents of their first-born, Bertrand (Bert), who irreversibly changed their lives on the 5th September (whether they think so or not). We wish to congratulate all three, and also **Gary** and **Nicky Bunce** on the birth of their second son James.

We are delighted to welcome back to the fold two of our leading lights of recent years. **Susie Fritsche** has rejoined Neil Turner in Commercial Property Litigation after some months of maternity leave, and **Mia West** (daughter-in-law of Anthony) has come back to the Private Client Department on a part-time basis.

On the debit side, we have sadly lost from our Private Client Department **Rod Smith**, who has moved on to pastures new.

Warm congratulations are due to **Gary Bunce** and **Anna Berry**, who qualified as solicitors in September. They are both in our Property Department.

We are also happy to announce that **Fran Kelly**, who works with Hazel Wright in the Family Law Group, has been admitted as a Fellow of the Institute of Legal Executives.

**Katie Adkin**, who is administrator to the Company Commercial Department, has been appointed from a large number of candidates to become our Office Administrator as from the 1st January. This is a new post which will require organisational and interpersonal skills, and we are sure Katie will rise to the challenge.

On the 20th September, the firm entertained 22 guests on its biennial **Golf Day**. The venue was West Surrey Golf Club near Milford, just outside Godalming. The course which was in superb condition contains a number of challenging holes, but there are also some stunning views over the adjacent countryside. Undoubtedly the day's Victor Ludorum was young Toby Offen, the elder son of our very own Sue Pape (it was Sue who had done most of the organising of the event.) We at CEP enjoyed the day hugely, and hope our guests did too.

We have recently had two fund-raising coffee mornings in aid of Macmillan

Cancer Relief and Children in Need. Katie, Anna and Andrea dispensed cakes made by the bakers on the staff and cups of liquid, the names of which are unrecognisable to anyone over 50, but which tasted delicious. In addition, about half the staff and partners contributed a photograph of themselves as a baby, for public display (and ridicule), for a "guess-who" competition. A sample photo is shown below (no clues given – Ed.)



As we went to press, the first night of our annual Art Exhibition was a resounding success. People were much impressed by the exhibits shown by Anthony Lysyca, Magdalen Drummond and Bunshri Chandaria. Canapés and wine were available and much appreciated by the attendees. Many thanks to Barry Jameson and his team for another successful event.

### IN WISHING OUR READERS A HAPPY CHRISTMAS, WE ALSO HOPE FOR PEACE IN THE NEW YEAR.

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The views and recommendations in this publication are those of Cumberland Ellis Peirs and have been obtained from a variety of sources. While we believe that our sources are reliable, we cannot guarantee that the information in this publication is accurate and it may be condensed or incomplete. No responsibility can be accepted for the accuracy of the information in this newsletter and no action should be taken in reliance on it without advice.

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