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Legally Speaking - Judge & Priestley's Quarterly Legal Update for Commercial Clients

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Welcome to J & P's latest newsletter, specially designed to keep you up to date with all the latest legal developments affecting you and your business.

Got something on your mind? ... give us a call or email us.

For more than 125 years we have been providing clients with expert and professional legal advice. We understand the value of a personal and friendly service.

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A REPUTATION TO BE PROUD OF: JUDGE AND PRIESTLEY CELEBRATE 125 YEARS

Bromley law firm Judge & Priestley celebrated 125 years at the Law Society in London on Thursday 15 May, with over 100 clients from local banks, property developers, accountants, estate agents, the legal profession and other organisations.

Mr Steven Taylor, Managing Partner, welcomed guests to the dinner, commenting "We are proud to be celebrating our 125 years and of our heritage.

"Today the firm has continued to expand and thrive with 130 employees and 10 Partners. We look forward to the future and we will continue to offer our clients a professional and expert service."

There still remains a strong historical link, as Steven Taylor the Managing Partner, is the son of Peter Taylor, who was a former Partner and who was with the firm from 1951 until his retirement in 1991.

In 1889 Eugene Judge and Frederick Priestley, the founders of Judge & Priestley, commenced partnership together. Eugene Judge showed a strong interest in litigation and in particular was an expert in debt collection and this clearly influenced the future of the firm.

There have been four generations of the Judge family, with Michael Judge, the



Steven Taylor, Managing Partner front left with Mark Oakley, Partner front right together with the Partners and Senior Management Team

last to retire in 2001 after 41 years. The first office opened in London in 1889 and during the Second World War, the office moved to the Bromley area.

Later the firm had several offices in and around Bromley and South East London.

These were consolidated when the firm moved to its current office in West Street which was built to specification in 1981.

The firm has continued to grow, and this has been particularly the case for debt recovery work. The firm's private and commercial client departments also continue to thrive and Judge & Priestley advises and supports clients across a wide variety of services.

For further information please contact **Nita Newsome** on 0208 290 7425 or email nnewsome@judge-priestley.co.uk

Minority shareholder fails to prove prejudicial treatment

Minority shareholders have legal rights protecting them from unfair prejudicial conduct by majority shareholders.

However, there has to be evidence of unlawful behaviour as opposed to the majority shareholders simply conducting business in a way contrary to the wishes of the minority.

A recent case before the High Court involved a businessman who was a minority shareholder in an aviation company. He claimed that he had

bought his shares after being assured that he would become the company's sole supplier of aircraft. However, he then found that the company continued to buy aircraft from other suppliers.

He took legal action saying this amounted to unfair prejudice to his interests and was contrary to company law. However, the court was not satisfied that an exclusive arrangement had been agreed as the minority shareholder alleged. It was more likely that he had bought shares in the hope that he would

then be able to secure an exclusive deal. There was no evidence to suggest that such an arrangement had been promised or agreed.

In any case, whatever prejudice he might have suffered was not unfair as the other shareholders had offered him the opportunity to realise his shares at a fair price.

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Employment law changes now coming into force

Several new employment regulations affecting businesses and their employees came into force in April and May.

This is a brief summary of the main points:

ACAS and Tribunal claims

Employees wishing to bring claims before the Employment Tribunal must first contact ACAS, which will offer a conciliation service. The measure, effective from 6 May, is designed to help the claimants and employers reach an agreement without having to go to a tribunal.

Penalties for employers

Employers may now face new financial penalties if they breach a worker's



employment rights. The maximum penalty is £5,000. However, the money is only payable if the Employment Tribunal considers that there has been an aggravating feature in the infringement.

There is a 50% discount for employers who pay the penalty promptly.

Statutory Sick Pay

Statutory Sick Pay is now set at £87.55 a week. The lower rate of Statutory Maternity Pay increases to £138.18 a week.

Redundancy and Unfair Dismissal

The statutory week's pay for redundancy and related purposes is limited at £464. The statutory guarantee payment relating to lay-offs or short-time working is £25 a day.

The maximum compensation for unfair dismissal is £76,574. However, in most cases, 52 weeks' gross pay will apply if that is lower.

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Farmer granted permission to build in beauty spot

Local protesters and the National Trust have failed to prevent a farm development in an area of outstanding natural beauty even though the local authority made mistakes when granting permission.

The beauty spot was on a farm near a heritage coast, a conservation area, a Grade 1 listed building and a trout stream. The farmer applied for permission to erect a livestock building and place a caravan at the site as part of a calf rearing business.

The National Trust raised concerns that allowing temporary accommodation could lead to permanent dwellings being built. They were also worried about the impact on the character and appearance of the site.

The Areas of Outstanding Natural Beauty (AONB) partnership expressed further concerns about the impact of lighting.

The Planning Committee ruled that there wouldn't be significant harm to the site and the surrounding area.

It said the farmer's plans were an acceptable form of agricultural development. Campaigners applied for a judicial review. They said that there was no need for a temporary



dwelling as there was already a cottage near the site. They were also concerned that the local authority had failed to consider the impact of light pollution and the effect on the historic environment.

The High Court refused the application for judicial review. It held that the local authority had considered issues such as light pollution and the need for a dwelling, and had made decisions that were not irrational or unreasonable.

It was true that the authority had failed to inform the National Trust of a committee meeting, thereby denying it the opportunity to make representations. However, that failure would not have had any impact on the outcome.

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Insurers win dispute over commission payments

An insurance company has won a legal dispute with a trade union over commission payments on the sale of its services to new customers.

The case involved Unite the Union and Liverpool Victoria Banking Services.

They had an agreement whereby Unite allowed Victoria access to its members in order to market and sell services to them. In return, Victoria would pay Unite a commission on the sales it made to those union members.

The dispute arose when Victoria began its own marketing campaign to the



Contract Law

general public. It gained several new customers, including some members of Unite who had not previously bought its services. Unite claimed it was entitled to commission on these customers, even though they had not been gained through the in-house marketing system as laid out in the agreement.

Victoria refused to pay, arguing that the new customers had come through its own marketing campaign, which was

totally independent of the in-house agreement with Unite. The fact that some of the new customers were members of the Unite union was just a coincidence.

Unite took action but the court ruled in favour of Victoria.

It held that Unite members that came through Victoria's general marketing campaign did not fall under the agreement so no commission was due.

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How to avoid the pitfalls when starting a business

Many people dream of setting up a new business and being their own boss. For those who succeed it can be a hugely rewarding experience that changes their lives forever.

For those who fail, however, it can prove costly and demoralising.

You can improve your chances of success by doing your homework before starting work or investing any money.

Test your great idea

You may think you have a great idea for a new business but are you sure other firms haven't had exactly the same idea?

Check out the competition before you start. It may be that there are several firms already offering the same product or service.

If that's so, you may have to modify your idea to make it stand out in the market place. However, be wary of trying to compete on price alone, as that may prevent you making the profits needed to enable your business to grow and become established.

It's also important to tread carefully if you find that no other business offers the service you want to provide.

It may be that you've spotted a gap in the market, but it might also be that there is no demand for your new idea.



Again, you need to do your research to make sure that you will be able to find customers.

Check out the costs

It's not unusual for people to underestimate the money required when setting up a new business. For example, you will need to consider the cost of equipment, premises and staff. There may also be marketing costs.

Do you already have a list of potential customers, or will you have to pay for advertising?

Make sure you don't put everything in place for your new venture and then find you have no money left to

promote it. There may also be unexpected costs you haven't considered. For example, you may want to import products from abroad to sell, but have you factored in such things as import VAT or customs duty?

Patents and copyright

Does your new venture involve selling or using existing products and designs? If so, you need to make sure you are not breaching other people's intellectual property rights over trademarks, patents and designs.

Remember that design rights apply to companies all over the world, not just those based in the UK.

Investment money

How will you finance your new business? Many people use savings or redundancy money. Some may re-mortgage their homes or get a bank loan. Be careful if you decide to borrow from friends or family.

Make sure you draw up a written agreement so that everyone is clear on how and when the money will be paid back. This can avoid disputes in future, which can be particularly uncomfortable if they involve people close to you.

What kind of business will you be?

Before starting off, you will need to consider what is the best structure for your business. Should you be a sole trader, or would a partnership or a limited company suit your purposes better?

There are other alternatives, all of which have different advantages to offer depending on your needs.

The differences can be subtle, yet very significant so it would be sensible to get legal advice before making a decision.

Failure over legal detail invalidates break clause

A business tenant has failed to apply a break clause in its lease because the notice document didn't follow the letter of the law correctly.

The tenant had a 25-year lease and wanted to activate the break clause.

The clause stated that any notice exercising the right to break "must be expressed" as being given under the Landlord and Tenant Act 1954 s.24(2).

The tenant complied with all aspects of the clause including serving notice within the appropriate time period before terminating the lease.

However, it didn't specifically state its intention under s.24(2). The landlord rejected the notice, saying it wasn't valid.

The case went to court and the judge ruled that the notice was valid even



though the tenant hadn't complied with the clause. However, the Court of Appeal overturned the ruling stating that notice had to be given in the way stated in the break clause.

The clause was emphatic and used the word 'must'. While the tenant had complied with all other aspects of the clause, it had failed to give notice under s.24(2). The notice was therefore invalid.

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Cross-border debts will be 'easier to recover'

The European Parliament has voted to bring in new measures that will make it easier for companies to recover debts across national borders.

Up to one million small to medium-sized enterprises (SME) in Europe fail to recover cross-border debts. The average amount of debt written off by these companies is €600. This means that €600m is lost to cross-border debts every year.

Due to the relatively small figure that the average SME is owed, they often find it more trouble than it's worth to pursue complex lawsuits in foreign countries.



The European Account Preservation Order will help them by preventing debtors from removing or dissipating their assets



while procedures to obtain and enforce a judgment are ongoing. The Order is enforceable across Europe and should make it easier to recover cross-border debt. The Commission's proposal must now be adopted by Member States in the Council, which is expected to happen over the summer.

Meanwhile, a recent survey by Coface UK found that late payments now lead to more credit insurance claims than

insolvency. In the first three quarters of 2013, 60% of claims were made because of a customer's protracted default, with 40% because of customer insolvency.

That is in contrast to 33% for protracted default and 67% for insolvency the previous year.

When faced with late payers, firms would be well advised to seek legal advice as soon as possible.

A letter from a solicitor is often enough to ensure payment. If debtors still refuse to pay, there are several more measures that can be applied up to and including court action.

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Coach firm wins competition claim against airport

A coach firm has won a competition claim against an airport which abused its dominant position in the market for its own financial gain.

The coach firm had operated a transport service between the airport and London Victoria for 30 years. When the contract ran out, the airport operator conducted a 'tender' process.

The firm claimed that in a meeting four months earlier, the airport operator hadn't mentioned the intention to hold a tender. However, it did give the impression that the firm was no longer part of its plans. The airport operator gave the contract to a rival coach company. The contract gave the new

company a seven-year exclusive deal for all current routes and first refusal to operate any future routes. The airport received a percentage of the revenue from the new company.

The coach firm brought an action against the airport operator saying it had discriminated against it and had abused its dominant position in the market in contravention of the Competition Act 1998. The airport operator said it was reasonable to offer exclusivity to the new company as there was limited space at the airport bus station.

However, the court ruled that as the airport received a percentage of the new company's revenue, it had a commercial

and economic interest in the state of competition in that market.

The long term contract distorted the market, making other companies unable to compete. The airport hadn't granted the new firm exclusivity in order to prevent congestion at the bus stop.

It had been to protect the firm from competition and therefore maximise the airport operator's own revenue. There was no justification to restrict the competition in this way.

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