



## **Residential Property - Condition**

The general rule is that a property is sold in the condition it is in at the time of exchange of contracts, and this was confirmed in a recent case.

Fixtures had been stolen from the property between the time the buyer viewed the property, and exchange of contracts. It was held that, in the absence of any fraudulent misrepresentation by the seller or his agent, the buyer bought the property in the condition it was at exchange of contracts.

In the light of this, buyers should consider inspecting the property immediately before exchange of contracts, particularly where it is unoccupied.

## **Driving - causing death**

If a driver causes the death of someone else while driving on a road without a licence, or while disqualified or uninsured, he or she is guilty of an offence, even if the death occurred through no fault or carelessness on the part of the driver.

In a recent case a driver was convicted of the offence of causing death by driving without insurance and without a licence, following the death of someone who had stumbled in front of his car. The conviction was upheld by the Court of Appeal.



## **Employment - the Default Retirement Age**



The Default Retirement Age (DRA) of 65 is to be abolished.

Employers can still retire staff whose 65th birthday falls on or before 30 September 2011. The employer must follow the statutory procedures and give between 6 and 12 months notice. The employee then has the right to request to continue working, in which case the employer has to consider that request, but is under no obligation to agree.

From 6 April 2011, employers will no longer be able to follow this procedure, and there are transitional provisions for the period 6 April to 1 October 2011. Only those employees who are notified before 6 April (and whose retirement date falls before 1 October 2011) can be compulsorily retired using the present DRA procedures.

If the intended retirement date is after 1 October 2011 the procedures will not apply. Employers will have to objectively justify their retention of a contractual retirement age. If they cannot do that, the dismissal will be unfair and also discriminatory (so there is no "cap" on the amount that can be awarded). Objective justification may be difficult, and instead of issuing retirement notifications, employers may have to rely on one of the potentially "fair" reasons for dismissal under the employment legislation (i.e. capability, redundancy, conduct, illegality, or other substantial reason).

Employers should consider whether their business requires a contractual retirement age. If it does they should gather as much information and reasons as possible to justify that decision, preferably after consulting their staff. They may also benefit from legal advice.

## **Capital Gains Tax - Entrepreneur's Relief**

In the November Budget the lifetime limit on business capital gains which can qualify for this relief was increased to £5m. Where the relief applies, gains are taxed at 10%, rather than 28%.

In order to claim the relief for shares in a company, the tax payer must hold at least 5% of the share capital (and voting rights), and be a director or employee for at least 12 months prior to the sale of the shares





## Houses in Multiple Occupation - Further changes

In April 2010, the planning rules were changed, with the creation of a new Use Class relating to small houses in multiple occupation.

Planning consent for a change of use was needed for dwellings occupied by between 3 and 6 unrelated people, who formed two or more households and shared basic amenities, such as a bathroom and kitchen.

This change was reversed from 1 October 2010, so that the use became "permitted development" and did not need planning permission. However, it is open to Planning Authorities to amend the normal rules on permitted development rights, and to make a Direction that this change of use is no longer permitted development.

Anyone considering this type of change of use should obtain advice.

## Stamp Duty Land Tax (SDLT) - Energy Inefficient Properties

It seems the Government is considering using SDLT to encourage property owners to make their homes more energy efficient.

Under the proposals, anyone buying a house rated as low in energy efficiency would have to pay an additional 0.5% SDLT. If the home was subsequently upgraded, they could reclaim twice the amount of the additional sum.

The intention is to encourage owners to upgrade their home before putting it on the market, but concern has been expressed that those who could not afford this might be unable to sell.



## Self-Employed - Expenses



Someone who is self-employed can claim expenses against tax if the expenses are incurred "wholly and exclusively" for the purpose of their trade or profession.

In a major case in 1983, a female barrister tried to claim for the cost of sober clothing to be worn in court. The House of Lords disallowed the claim, on the basis that there was a duality of purpose. Clothing was required as well for warmth and decency, and that must have been one of the purposes of the expenditure.

In a recent case, a self-employed stunt-man wanted to claim for medical expenses. He had suffered an injury in the course of his work, and paid privately for an operation, rather than waiting to have it on the NHS. The Tribunal accepted that he spent the money solely because of the requirements of his work, and that any personal benefit he received was an unavoidable effect, rather than a reason for paying for the operation. The claim was allowed, and similar reasoning was applied to expenses incurred on a chiropractor, massage and dental work.

These rules apply only to the self-employed. The rules for the employed are stricter, and the expenditure must have been "wholly, exclusively and necessarily incurred".

## "Cycle to Work" Schemes

Some employers have set up schemes under which they buy a bicycle for the employee to use, funded by sacrifice of a small part of the employee's salary, and then subsequently sell the second-hand bicycle to the employee for a nominal sum.



Two recent changes have made these schemes less attractive:

Employers now have to account for VAT on the notional "hire charge", and on the transfer to the employee

HMRC has issued guidance on the price they expect the employee to pay when he or she buys the bicycle (if they are to avoid a charge to income tax on a benefit provided by the employer). They say that they would expect the price after one year's use to be at least 25% of the cost (if the bicycle originally cost more than £500).

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