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### STOP PRESS

Employment Law Seminar  
21 September 2011.

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Jan Hoppe  
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“ My reason for introducing this edition is to remind you that GRM is one of the founding members of IGAL, an international grouping of lawyers and accountants which has 107 member firms located in 41 countries throughout the world, with 170 offices worldwide.

The advantage of this for our clients is that we are able to access the services of trusted professional colleagues around the globe to help provide advice on issues relating to overseas trade and investment and even matters which may relate to the needs of private individuals in international jurisdictions. Should you have any requirements of this kind, please do contact me and I will be pleased to advise you.

In the meantime, I hope you find these articles of interest

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## TAKE CARE WHEN DEALING WITH BREAK RIGHTS

### What to look out for when exercising a break clause in a lease

The existence of break clause in a lease is a valuable option for tenants in these difficult economic times. However, as recent case law indicates, it is essential for tenants to exercise the utmost caution in the service of the break notice. In 1997 the House of Lords ruled that a break notice is not invalidated by a minor error if that error would not affect the understanding of the "reasonable recipient" of that notice, but since then a number of cases have hinged on the effects of such errors.

In 2010, in *Hotgroup plc v Royal Bank of Scotland*, the tenant failed to serve a copy of the notice on the leaseholder owner, as was specified in the break clause. The tenant argued that there was no time limit stated for the service of a copy of the notice but the court held that a copy should have been served prior to the last day the notice should have been served on the landlord. The break right was therefore lost.

Another 2010 case - *Hexstone Holdings* - reinforced the requirement for the notice to be served by and on the correct parties. In this case the notice was invalidly given as the tenant – a company - had intended to change its name. It served the notice using the new name, whereas the change of name never actually took place making the notice invalid.

Most recently, in *MW Trustees Ltd v Telular Corporation*, the tenant served the break notice on its previous landlord and was advised by them of the mistake. The tenant then emailed the correct landlord's property agent attaching a copy of the break notice and asking for advice on how to proceed. The property agent stated that they accepted the letter and confirmed they were happy for the tenant to break, but asked for the letter to be readdressed to them. That replacement letter was prepared but either not sent or lost in the post. Later, the landlords decided that they would try and challenge the validity of the break, saying it had not been correctly served. The Court ruled that the break notice was effective as the new landlord had waived its right to challenge the notice by stating in the email exchange that they accepted the break.

If you benefit from a break option in your lease or are a landlord receiving a break notice, we will be happy to carefully examine the clause, advise on compliance with any pre-conditions and ensure validity.

## CAUTION: COPYRIGHTED IMAGES ABOUT!

### Common misconceptions about ownership of images downloaded from the web

Who owns the copyright of the images you use on your website and promotional materials? It is a question that many business owners or managers would not be able to answer, and probably have not even thought about.

Many businesses mistakenly think that because an image can be accessed for free on the internet that no permission or payment is required for its use. Yet not only is this not the case, but increasingly advanced technology makes it easy for copyright-holders to track the use of their images. As a result increasing numbers of businesses are receiving correspondence threatening legal proceedings for copyright infringement or demanding payment in recompense.

Underlying this are two issues: first that many assume that the designers they use will have secured permission to use them and second that if there is a problem, liability for copyright infringement lies with the design company rather than themselves.

Avoiding such a situation is simple and involves taking a few simple precautions. Organizations should introduce a policy prohibiting employees from downloading and using images directly from the internet. Even when these are for internal use only, they are still infringing copyright.



You should also check the source of all images used on promotional materials and your website with your designers, where necessary seeking proof that they have addressed all potential copyright issues. Obviously where you produce a considerable amount of material using images this should be written into the terms and conditions of business that you will supply to the designers you use.



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## WHEN UNMARRIED PARTNERSHIPS BREAK DOWN

### What's yours is mine and what's mine is my own?

Social Media – Facebook and Twitter - have long spoken of the common law wife or husband and before that the same character featured in tabloid journalism as ranking alongside the real persona of a spouse - be it a husband or wife.

Family lawyers have long tried to explain that the status of the two is poles apart. Never was that made more clear than in the recent Supreme Court finding of *Kernott v. Jones* - a decision which, in the words of the judge, LJ Wall, provides "... a cautionary tale which all unmarried couples ... should study".

Mr Kernott and Ms Jones were an unmarried couple who purchased a home together in their joint names in 1985 and lived there with their children until the parties separated in 1993. It was accepted between them that at the time of separation their respective interests were equal. Ms Jones remained at home paying outgoings including the mortgage and supporting the children.

The Southend County Court, in first instance, decided in April 2008 that Ms Jones' interest in the property was 90%. The first appellate court agreed. The Court examined the decisions in *Oxley v. Hiscock* and *Stack v. Dowden*. The latter clearly stated that where there is sole legal ownership there is sole beneficial ownership, where there is joint legal ownership there is joint beneficial ownership and the onus is on the person seeking to show that the beneficial ownership is different from the legal ownership.



LJ Wall expressly stated that "This is not a case under the Matrimonial Causes Act 1973 and the government has not implemented the law commission proposals relating to unmarried couples. This Court must resolve this appeal under the law relating to trusts as explained in *Oxley v. Hiscock* and *Stack v. Dowden*."

The Court had to decide whether it could infer from the parties' conduct since separation a joint intention that, over time, the 50-50 split would be varied so that the property was held 90/10. The Court said no. There has to be something to displace the parties' interest and the passage of time is insufficient to do so even if one party has paid all the outgoings and the other had purchased and was accommodated elsewhere. LJ Wall repeated that this is a cautionary tale.

The purchase of property is perhaps the single most important transaction in a lifetime. Parties need proper and sound legal advice, sometimes independently of each other, on the terms of a separate trust deed which they should have drawn up to record their respective interests. This will act as a reminder of precisely what they each signed up to at the start, acting as a clear record of the situation which can be used as reference in the occurrence of any separation and at any time thereafter.

If no such deed was executed parties need immediate advice at the point of separation as to where they then are and what may happen in the future depending on their plans. Ms Jones should have clarified matters at the point of separation in the latter part of 1993 rather than hearing the very learned judgment of the Supreme Court in May 2011 some 18 years later.

For further information about the issues in this article or any others relating to family and matrimonial issues, please contact Jacqueline Fitzgerald, Head of Family Department at [j.fitzgerald@grm.co.uk](mailto:j.fitzgerald@grm.co.uk).



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## MILESTONES

### Peace of mind planning for each stage of your life

As you move through life, each milestone, including leaving home, finding a partner, having children, retirement, and perhaps starting a business comes with a range of implications in terms of your legal and financial affairs.

As legal advisers with many years' experience in helping people deal with life's issues, we know that a key part of making successful life transitions is to take advice as your position alters and then make appropriate changes so that your financial and legal affairs are always aligned with your current circumstances.

Taking this approach not only gives you the peace of mind that comes with knowing that you are in control of your affairs, but you will then be in the best position possible to plan for the future and to cope with any challenges or difficulties that you may encounter as your life unfolds.

We have highlighted what we believe are life's most commonly experienced milestones below. Further information about what you need to be thinking about at each stage and the related services we can offer is available on our website.

If, having considered this information, you would like to talk to us about how we might assist you with your life planning we would be pleased to invite you to our offices for an initial, no cost, Milestones review.

Leaving home

Settling down  
with a partner

Having Children

Relationship  
breakdown

Starting a  
business

Becoming a  
Grandparent

Retirement

Moving abroad

For an appointment or to find out more about any of our services for individuals please contact Ian Bowyer at [i.bowyer@grm.co.uk](mailto:i.bowyer@grm.co.uk), Philip Carter at [p.carter@grm.co.uk](mailto:p.carter@grm.co.uk) or Jacqueline Fitzgerald, Head of Family Department at [j.fitzgerald@grm.co.uk](mailto:j.fitzgerald@grm.co.uk).

## PROPERTY AND THE EQUALITY ACT 2010

### Are some more equal than others?

The Equality Act 2010, despite its deceptively simple title, is a potential minefield for the unwary. It brings together the existing discrimination legislation and then adds some. This has implications for all areas of life, but in respect of property, there are three fundamental "requirements" to assist disabled people in properties of which property owners and landlords need to be aware. These are:

1. The requirement to take steps to alter any criteria or practice in order to prevent a disabled person suffering a disadvantage.
2. If reasonable, to alter any physical feature to prevent a disabled person suffering disadvantage.
3. Where reasonable, to provide any auxiliary aid to prevent a disabled person suffering a disadvantage.

It is important to note that these requirements do not alter the basis of the contract; they operate as principles within the particular obligations of the contract. Thus, if a landlord lets property to a tenant on a full repairing and insuring basis, it is unlikely that that landlord will be required to take up any of the requirements as the responsibility will have passed to the tenant. However in so far as they do affect the relationship, the requirements will apply, for example a landlord might have to send rent demands in braille to a blind tenant.

In managing or disposing of a property it is unlawful to discriminate against any person by making conditions less favourable to that person. If a landlord is letting premises then he has a positive duty to observe the first and third requirements above. A new area is that of "common parts" of a property that is being managed. The Managing Agent or Landlord as the case may be have a positive duty to "make reasonable adjustments" to cater for the second requirement above.

So, if a disabled person lives on the top floor of a building and it is possible to install a lift, does the manager of the common parts have to install one? Possibly; but there is a very serious sting on the tail; the disabled person requesting the alteration has to pay for it.



### New appointments



**Se-Jeung Kim**  
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We are pleased to announce that a member of the Korean Bar and of the Korean Patent Attorney Association has joined our Corporate and Commercial law team. **Se-Jeung** ("S-J") gained her LL.M in Professional Legal Practice (with distinction) in London at the College of Law of England and Wales following completion of the International Lawyers programme.

Prior to relocating to the UK in 2008, S-J was a practising Civil Attorney and Patent Attorney in Seoul where she dealt with a wide variety of legal issues for Korean businesses. During her time in the UK she has also worked as an in-house legal adviser for an international trading business. Her appointment extends our thriving inward investment practice which offers a broad spectrum of commercial and private client services to overseas businesses wanting to enter the UK, and UK businesses wanting to develop overseas.



**Caroline Ko**  
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We welcome **Caroline Ko** as an assistant solicitor within our commercial property team. Caroline has a BA (Hons) in History from Sheffield University and undertook her common professional law exams at the College of Law in London. She qualified as a solicitor in 2003 at Mishcon de Reya where she remained until 2008. She has extensive experience in commercial property and experience in acting for both institutional clients and entrepreneurs.

### Success for Caterina



**Caterina Iodice**  
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We are delighted to announce that **Caterina Iodice**, previously an Assistant Solicitor in our Company/Commercial team has been made an Associate of the firm. Her promotion follows her recent achievement of the International Bar Association's (IBA) International Practice Diploma leading to the prestigious IBA Fellowship. The International Practice Diploma is a continuing legal education programme designed specifically to meet the needs of international legal practitioners. Caterina's success is even more noteworthy in that she achieved the Fellowship in far less time than that allocated by the IBA.