

Newsletter

July 2008



DEVON & SOMERSET
LAW SOCIETY
1808 - 2008



The Federation of European Bars is coming to Torquay
on 16 and 17 October 2008

TOPICS include the Core Duties of a Lawyer and
the Impact of Alternative Business Structures

Gain 12 CPD hours

Make vital contacts

Share experiences

**Networking opportunities continue into the evening
with the DASLS Bicentenary Gala Dinner on
Friday 17 October.**

For more details and to book your place, go to
www.dasls.com and click on 2008 FBE Conference.

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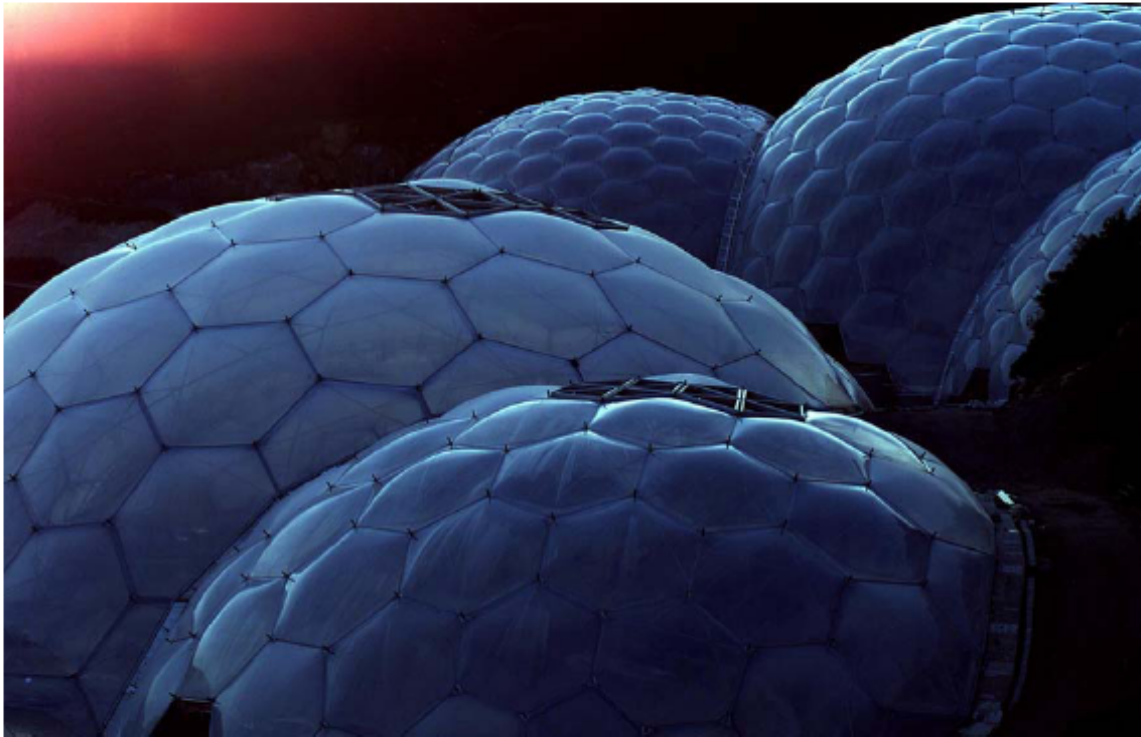
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President's Diary

By Alec McNeill, President



It seems hardly possible that I am into the third month of my term of office.

My first "official" function was to represent the Society on the occasion of the annual Dinner of the Dorset Law

Society where, in the company of Paul Marsh, the incoming Law Society President, I enjoyed a Belgian "themed" meal designed to celebrate the 80th anniversary of the creation of "Asterix". The relevance of this to Dorset Solicitors was not revealed although I do not think it was intended to suggest a link with friends across the Channel!

But the links which DASLS has forged over recent years with those across the Channel and further afield and the twinning arrangements which we have are something we can be justly proud of. Although I know that we have Members who question the need or benefit of international involvement I have no doubt that both DASLS and our profession are strengthened by contact with lawyers from other jurisdictions. It is not simply a question of making business connections but of developing a better understanding of law in its widest sense and how it can or should benefit and protect everybody.

Our Society's close friendship with the Zimbabwe Law Society makes us especially aware of this and the current difficulties in that country were brought home to some of us with a moving message which I received recently by e mail from Zimbabwe and read to your Committee. The situation there and the consequences of the breakdown of law and order are dire:

We are all terrified at what they are going to destroy next ... they are actually ploughing down brick and mortar houses I ask that you all pray for us in the way that you know how... To be frank with you, it's genocide in the making...

This Government has GONE MAD and you need to help us publicize our plight - or how

can we be rescued? It's a reality! The petrol queues are a reality, the pall of smoke all around our city is a reality, the thousands of homeless people sleeping outside in 0° Celsius with no food, water, shelter and bedding are a reality ...

Censorship! - We no longer have SW radio [which told us everything that was happening] because the Government jammed it out of existence – we don't have any reporters, and no one is allowed to photograph ... Even the pro-Government Herald has written that people are shocked, stunned, bewildered and blown mindless by the wanton destruction of many folks' homes, which are supposed to be 'illegal' but for which a huge percentage actually do have licenses.

Please! - do have some compassion and HELP by sending out the articles and personal reports so that something can/may be done.

I am one. I cannot do everything - but I can do something ... And because I cannot do everything, I will not refuse to do the something that I can do. What I can do, I should do. And what I should do, by the grace of God, I will do.

When it again becomes possible for us to provide practical support for our colleagues in Zimbabwe without risking their lives we will seek to do so.

The past few weeks have been a busy period for the Society on the International front. We have been represented at Bilbao, Verona and The Hague [and I thank those Committee members who attended in my stead] and in addition I have been fortunate to have been able to attend the FBE Convention in Istanbul in May and more recently the Third CIS Convention in St Petersburg and promote DASLS. The contrast in the style of the two events was considerable and merits a diary page in its own right; suffice to say that at both events I was able to ensure that DASLS received both due recognition as one of the most influential UK Law Societies and to secure a number of promises of attendance at Torquay in October. In addition we now have a significant list of lawyers across the former USSR available to members if required.

June also saw one of the most important events of our year – the Annual Meeting of the Twin Bars hosted by DASLS and timed to coincide with the Legal Sunday Service. We were delighted at the support shown by old and new friends and were able to entertain lawyers from Belgium, France, Germany, Holland, Italy, Poland and Spain.

I will not detail the many events of the weekend as those members of DASLS who were able to involve themselves know what a success it was; although I am sorry that one or two felt that the highlight of the weekend was the collapse of your President's chair whilst Joshua Rozenberg was delivering the Bicentenary Lecture! It is always difficult to persuade more than a very small proportion of our 1100 or so members to involve themselves in these events but to those many members who for whatever reason found themselves unable to participate in that weekend I can only say that you really did miss out.

On American Independence Day we held our well publicised River Dart Cruise. Despite the atrocious weather those who braved the evening had a great time and all thanks to Tony and Charlotte for the hard work they put into organising the event.

On the business front we have now commenced our Strategic Business Review in order to update the DASLS Business Plan for the coming years and the first "brainstorming" day has produced some interesting possibilities which I hope I shall be able to report further on.

Members need no reminding that this is our Bicentenary Year and all should be aware that as a part of the celebrations the Society will in October be both hosting the FBE Convention and holding a Gala Dinner in Torquay.

The Convention is open to all European and UK lawyers whether or not members of the FBE or DASLS and we expect the event to be well attended particularly as the content chosen is both topical and relevant to all lawyers.

The Gala Dinner is intended to be something just a little "special" and a Guest Speaker will be Tim Smit of the Eden Project. Other

details will be revealed later.

Both a timetable and a booking form are now available on line and there is a direct link from www.dasls.com. I would ask you to do more than just think about it! Please go on line **now** and book your place. You will find that the event is competitively priced for DASLS members and there is also the ability to "mix and match" so that you can take part in all or just some of the events.

Legal Sector Alliance

The Legal Sector Alliance is an inclusive movement of law firms and organisations committed to working collaboratively to take action on climate change by reducing their carbon footprint and adopting environmentally sustainable practices.

Their website www.legalsectoralliance.com contains many resources for those seeking to reduce the impact that their working habits have on the environment.

Law Society Excellence Awards 2008

Following the impressive representation of firms and individuals from the South-West in last year's Law Society Excellence Awards, you may like to consider applying for one of this year's awards.

There are a number of categories, including awards for excellence in:

Practice Standards
Pioneering Legal Services
Social Responsibility

There are also awards for:

Legal Executive of the Year
Junior Lawyer of the Year
Solicitor of the Year

For the full list of categories and for an entry form, visit www.lawsociety.org.uk/awards.

The closing date for entries is
Friday 12 September 2008

Winners will receive their prizes at a celebratory black tie dinner in London in October.

Welcome!

We are delighted to welcome the following new members:

Mr Anjam Arif,
Alletsons, Bridgwater
Miss Charlotte Beadel,
J & S P Pope, Exeter
Mr Michael Bonning,
Michelmores, Exeter
Mrs Susannah Bower,
Michelmores, Exeter
Miss Amy Cater,
Michelmores, Exeter
Mr Benjamin Davies,
Alletsons, Bridgwater
Mrs Karen Eagle,
Michelmores, Exeter
Mr Guy Earnshaw,
Roger Richards, Paignton
Mr Martin Follett,
Michelmores, Exeter
Mrs Laura Ford,
Michelmores, Exeter
Miss Jennifer Greenshields,
Michelmores, Exeter
Miss Lucinda Haywood,
Teignmouth
Mrs Chloe Howard-Smith,
Michelmores, Exeter
Ms Rachel Howlett,
Cartridges, Exeter
Miss Kristina Kerr,
Every's, Honiton
Miss Helen Laidlow,
Michelmores, Exeter
Miss Elizabeth Lamer,
Recompense Ltd., Totnes

Mr Mark Lister,
Gowmans, Paignton
Ms Claire Lovis,
Hooper & Wollen, Torquay
Mr Rehman Noormohamed,
Michelmores, Exeter
Miss Mairead O'Donnell,
Battens, Yeovil
Mrs Zoe Porter,
Michelmores, Exeter
Mr Geoffrey Pratt,
Ottery St Mary
Mrs Johanna Probert,
Michelmores, Exeter
Mr David Sheppard,
Stones, Taunton
Mr Shivaji Shiva,
Michelmores, Exeter
Miss Nyna Solanki,
Trowers & Hamblins, Exeter
Miss Julie Tiao,
Charlesworth Nicholl & Co.,
Crediton
Miss Karen Trickey,
Michelmores, Exeter
Miss Sally Van den Berg,
Gowmans, Paignton
Mrs Emma Wilson,
Michelmores, Exeter



News from the Law Society Council

At its **May** meeting, the Council considered the future development of the Society's international activity opening new markets, promoting the brand and qualification of solicitor around the world and promoting the advantages of English law for international commercial work. The debate was set against the background of a shifting global economy and increased competition in the legal services market but also the great international strength of the English legal profession and jurisdiction.

It was agreed that driving business to our jurisdiction in this way did not only benefit commercial firms, but that there was a significant trickle-down effect. Examples were also given of opportunities for private client firms serving foreign markets in niche

areas. The importance of engagement on human rights issues and capacity building for lawyers in other jurisdictions was also stressed.

The debate will inform the development of work to benefit all solicitors qualified in England and Wales to establish the brand of solicitor as the pre-eminent global legal qualification and to attract legal work to this jurisdiction.

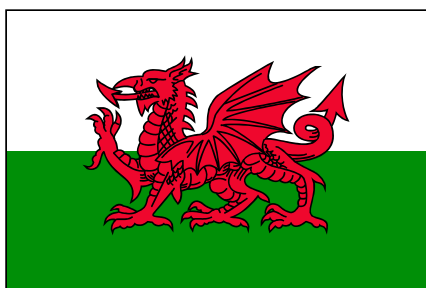
At its **June** meeting, the Council focused on the diverging jurisdiction in Wales. The Counsel General to the Welsh Assembly Government, Carwyn Jones AM, addressed the meeting explaining his role and the law-making process in Wales. Crucially, the new Assembly Measures can amend and repeal

Acts of Parliament.

Professor Laura McAllister of Liverpool University gave an outline of the progress and future of devolution in Wales from a political perspective. Two practitioners from 'Top 100' firms in Wales joined Professor McAllister for a question and answer session chaired by Carolyn Kirby.

There were several questions on a wide range of topics and the following were some of the matters discussed:

- Wales is now a single court circuit and an office of the Administrative Court is to open in Cardiff in April 2009 to administer and hear Welsh cases in Wales. There are devolved tribunals in Wales including Mental Health and Special Educational Needs and appeals from these will be affected by provisions under the Tribunals, Courts and Enforcement Act 2007
- There are no effective digests of new Welsh laws and access to Welsh legislation is a concern
- The view was expressed that on a Global / European level harmonisation of laws was the goal whereas it appears in England and Wales different laws are being made to govern the same matters
- The current devolution settlement gives the National Assembly power to make primary laws on a small number of topics within the broader areas of policy which have been devolved. Law-making powers can be extended through a complicated process which requires the approval of Westminster. This will change if full law-making powers are pursued: devolution is an on-going process.



The "RED ALERT" Service

The **Red Alert** telephone line was originally created as a dedicated service to local Law Societies, administered centrally by The Law Society of England & Wales. In recent years the **Red Alert** line has been brought under the remit of the Fraud & Confidential Intelligence Bureau of the Solicitors Regulation Authority. The Fraud & Confidential Intelligence Bureau has been operating for over 10 years and is primarily a central information and intelligence gathering unit, designed to liaise between all areas of the Solicitors Regulation Authority, Legal Complaints Service and The Law Society, external agencies and local Law Societies, and make preliminary investigations.

The **Red Alert** line is available to **all** members of the profession and their staff to report concerns about a fellow solicitor, member of staff or generally about a legal practice. Any report is treated with strict confidentiality and can be unsubstantiated concerns or issues supported with hard evidence. Please give as much specific information as is available. It is preferable to receive any information at the earliest feasible time to enable the Solicitors Regulation Authority to deal with any problems, where possible, before the development of more serious consequences.

Some examples of circumstances to be reported are:

- Financial difficulties incl: Client or Office Account cheques bouncing, Judgement debts against a solicitor, Bankruptcy, IVA, PVA
- Suspected dishonesty or fraud incl: Mortgage fraud, Money-laundering, Matters warranting a SOCA disclosure regarding a solicitor or employee
- Abandonment or sudden closure of a solicitor's office or practice
- Repossession of practice premises
- Persistent failure to respond to correspondence or answer calls



- Failure to account for monies, e.g. a deposit after exchange or failure to redeem a mortgage
- Arrest/charge/conviction for criminal offences
- Sudden departure of employees, especially if they have no job to go to
- Persistent inadequate

service

- Practising uncertificated or in breach of a condition on a Practising Certificate
- Concerns over the administration/operation of the Legal Aid Scheme by a solicitor
- Failure to supervise an office
- Practising from an office not registered with the Solicitors Regulation Authority
- Press investigations into a solicitor and or a firm
- An individual or firm purporting to be a solicitor (holding out) when not qualified to do so.

This list is by no means exhaustive and any concern or doubt can be discussed confidentially.

Under certain circumstances it may be possible to give feedback following a report either via the **Red Alert** line or directly to a Fraud Intelligence Officer. Feedback may be forwarded via The Law Society's Regional Managers, the local Law Society Presidents, Secretaries, and Administrators or made directly to the person who initially made the report. However it must be appreciated that this will not necessarily be possible due to the nature and confidentiality of information considered by the Fraud & Confidential Intelligence Bureau.

The **Red Alert** line can be reached on either **0845 850 0999** or **01926 439673**, or via e-mail to redalert@sra.org.uk if preferred.

Individual Fraud Intelligence Officers can be reached via the Fraud & Confidential Intelligence Bureau on **01926 439662**.



DASLS Challenge Cup



The Challenge Cup events are continuing to be popular and well supported.

The current league table is shown below. Each firm will move up the league by entering as many different events as they choose over the year and gaining points. Points, of course, mean prizes and the "DASLS Challenge Cup" will be awarded to the league leaders at the dinner in February 2009 after the final event has been completed.

A wide range of events are being considered and suggestions are always welcome. Please email charlotte@dasls.com with any ideas of sports or games that could be included, along with any possible venues.

There will be no event in August but September's event will be an evening of beach sports. Further details will be available soon.

If you have missed the opening rounds, then don't worry. Firms can enter teams at any point during the year, and you still have a chance of Challenge Cup victory!

June's event was Tag Rugby, which was held on a beautiful summer's evening at King George V Playing Field, Exeter.

All the teams played well, but after a tense final match against Rundle Walker, Kitson Hutchings were victorious and walked away with the much-coveted 5 points.

Our grateful thanks are due to the two referees, District Judge Stephen Arnold and Andrew Burke of Slee Blackwell.

DASLS is now on Facebook!

With thanks to the technical know-how of Charlotte and Rebecca in the DASLS office, Devon & Somerset Law Society now have a Facebook group. Information about the Society's services and events will be posted on there, as well as photos from past events.



A sunny evening of tag rugby.

Photo by Claire Revell, Everys

Position	Team	Points
= 1	Ford Simey	5
= 1	Kitson Hutchings	5
= 2	Rundle Walker	3
= 2	Veitch Penny	3
= 3	Hooper & Wollen	1
= 3	Stones	1
= 4	Charlesworth Nicholl	0
= 4	Everys	0
= 4	Over Taylor Biggs	0
= 4	Trowers and Hamblins	0

Notes from the Solicitors Regulation Authority

Board meeting: 26 June 2008

This is a summary of the public decisions taken at the last SRA Board meeting. The papers are available on the website www.sra.org.uk/about/board.page.

Legal Services Act - Rules

The Board agreed various rules and regulations to give effect to the provisions of the Legal Services Act 2007. These covered the areas of the introduction of legal disciplinary practices (LDPs), changes to the Solicitors' Code of Conduct, amendments to the Solicitors' Accounts Rules 1998, character and suitability requirements for LDP managers, draft recognised bodies regulations, draft practising regulations and amendments to the Solicitors' Financial Services (Scope) Rules. These were approved for recommendation to the Law Society Council. This was necessary as the Law Society Council has not delegated rule-making powers to the SRA as yet.

Qualified Lawyers Transfer Regulations guidance

The Board considered responses to its consultation on revised guidance supporting the regulations which allow foreign lawyers to be admitted as solicitors in England and Wales – the Qualified Lawyers Transfer Regulations (QLTR). It thanked all those who responded and contributed to the consultation, as a result of which significant changes had been made. The Board agreed the guidance, which takes effect from 1 September 2008, confirming that all transferees will have at least one year's experience of the law of England and Wales (though not necessarily in England and Wales) before they are admitted as solicitors, agreed new guidance for use when considering requests for exemption from the Qualified Lawyers Transfer Test (QLTT), and imposed, with immediate effect, a temporary hold on organisations that can set and mark the QLTT (pending the introduction of further safeguards to secure standards).

Delegations and authorisations

The Board considered a paper which set out an approach to delegation and authorisation and which sought the Board's authority to apply that approach progressively to all delegations and authorisations currently in

place. As a first step the paper proposed certain delegations and authorisations in the Legal Directorate. The Board agreed the approach proposed.

Publication policy

The Board considered a paper asking it to clarify its policy on publication of referrals to the Solicitors Disciplinary Tribunal, practising certificate conditions, and interventions. The paper recommended adding an additional paragraph to the existing publication policy to clarify the public interest test required, as well as reviewing the operation of the policy at the end of the year. The Board remitted the issue to the Compliance Committee meeting on 3 July.

Higher rights of audience consultation

The Board noted a consultation paper on the development of a competence-based accreditation scheme and the standards required for such a scheme. The consultation was due to end on 25 July and responses would be analysed by the Education and Training Committee.

Chief Executive's report

The Chief Executive reported on various operational matters within the SRA, including continuing improvements in the performance of the Ethics Guidance Service. The Board noted that the Legal Services Complaints Commissioner had found that the SRA's performance against last year's complaints handling plan had improved to the extent that five out of six targets had been met and one missed only narrowly.

Volunteer Wanted

The Army Benevolent Fund, Devon, is looking for a volunteer to research and apply to Trusts on the charity's behalf.

This would only require one to two days work per year.

Anyone who is interested should contact Peter Rostron at The Old Rectory, Oakford, Devon EX16 9DH (Tel: 01398 351486).

Obituary: Christopher Scoffham

Christopher (Chris) Scoffham, Solicitor and Partner with Peter Peter & Wright Solicitors, died suddenly but peacefully at his home on 19 June 2008 at the age of 63.

Chris was admitted as a Solicitor in 1970 and joined the Bude Office of Peter Peter & Son in 1974 where he later became a Partner. He remained with the firm and its successor practice of Peter Peter & Wright for 34 years and in recent years he has been based at the Holsworthy office.

An experienced and versatile practitioner, he will be sadly missed by all who knew him.

He is survived by his wife Sarah and his children Tom, Charlie and Katie

The Funeral took place on 4 July at St Marwennes Church, Marhamchurch when such a large number of friends and colleagues were in attendance that many were unable to find seats.

Donations in memory of Chris may be made to Cancer Research UK and Cornwall Air Ambulance.



Solicitors Support Network

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Mediation and Fish Eagles: East Africa Revisited

By Jeremy Ferguson, DASLS Committee Member

Having attended the Commonwealth Law Conference I received a number of contacts which might keep me travelling for quite a while. Following great expressions of interest from Uganda and Kenya I chanced to meet Sarah Poland of the International Lawyers Project in London in October last and she asked me whether I would be prepared to join a course organised under the International Lawyers Project covering a number of subjects including ADR in Tanzania in 2008 and I happily agreed.



auspices of the Court rather in the manner that we did at Exeter. Following the discussions I undertook some rapid mediation training and when that was concluded retired to bed for most of the rest of the day!

I stayed in Kenya over Sunday the 4th during which I made a visit to their National Wildlife Park which seemed to be singularly lacking in animals!

Having realised that I was going to be in East Africa I contacted Justice Ben Odoki the Chief Justice of Uganda and the Kenya Law Society and said that I was going to be in the area and asked if they would like me to call and do so mediation training. The answers came back in the enthusiastic affirmative and once we knew the date for the Tanzanian week presentation I was able to arrange to go to Africa the preceding week to visit both Kenya and Uganda before going to Dar es Salaam for the joint presentation.

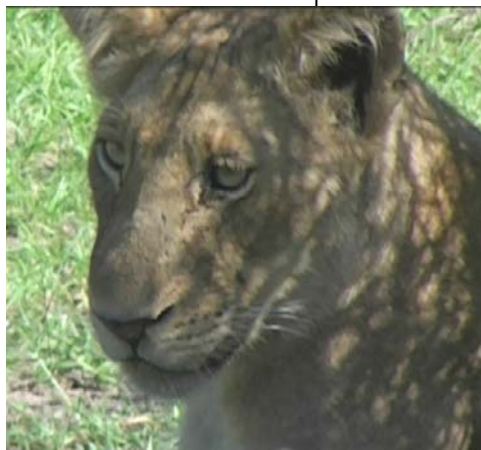
I arrived at Nairobi on May 3rd at 6.30am local time. Having been driven to the hotel I found that the presentation had been combined with another discussion and rather than doing training I found myself involved in an extremely detailed discussion as to whether a DASLS type mediation scheme would suit the Kenya justice system. It very soon transpired that our scheme with a small claims element was absolutely ideal to clear backlogs and provide on-the-job training for trainee Mediators and I was asked by the Judge of the Kenya Supreme Court who chaired the meeting to make an urgent application to the World Bank for funds to cover the cost of my return into Kenya and undertaking in-depth training. Apparently there is quite a lot of World Bank money available for such projects. I am in discussions now with the Kenya Law Society about applying for funding. In any event the discussions were very fruitful, as it was revealed that Uganda has a model statutory instrument which Kenya are thinking of adopting which would enable a non statutory body to provide mediation services under the

I then found myself on the 5th of May on the move again to Uganda. The main airport for Uganda is Entebbe which of course has other connotations in the English mind. A forty five minute taxi run to Kampala showed that Uganda certainly in its semi urban areas is very similar to most of Africa but there was slightly less apparent tension about the place. The following day I embarked on a two day course with the Uganda Law Society. The class was certainly very enthusiastic and proved, on the second day, to be well up to speed in small claims mediations, undertaking a mock mediation very effectively.

The next day I set off on a three day "safari" going to a National Park on the Congo border where I saw lion, buffalo, rhino (at close quarters and on foot) elephant etc. and then embarked on a trip up the Nile towards the Murchison Falls. During that trip there were the usual suspects, hippo, buffalo, crocodiles and plenty of birds and I got a short but really quite good tracking shot of a Fish Eagle flying past our boat at waist height and then alighting on a tree just behind the vessel. It was a thrilling moment for me because I have always been a great fan of Fish Eagles and this time I really got him in my sights and have the video to prove it. We then arrived at a landing rock

eight hundred yards short of the Murchison Falls and I disembarked and with a guide scrambled up the cliff in temperatures of about forty degrees and very high humidity. Much to my surprise I made it without mishap and I was able again to take some very good shots of the Falls from the cliff side. The following day on our return to Kampala I was taken to a chimpanzee reserve which in fact is simply a piece of completely untouched forest and scrub and set on a walking tour which lasted about three hours in again very high humidity and considerable heat. We saw a number of chimps and again, much to my surprise, I managed to get some reasonable shots of them. They were about one hundred and fifty feet up in the canopy but drew our attention to them by screaming at us and throwing down jackfruits which are the size of Association footballs and weigh ten kilograms each. It was really quite alarming! After all that excitement our return to Kampala was really pretty uneventful except for a puncture and I then flew back to Nairobi, changed planes and flew to Dar es Salaam arriving there on Sunday 11th May. I met the other members of the ADR section of the presentation in the British Council Offices in Dar. They had reorganised the room completely so as to create a sort of interactive venue and on Monday the 12th the team, who were from Clifford Chance, conducted a full days training on negotiation. I only had a small role to play and was mainly operating my video camera to provide a record.

On the second day I had my mediation module, ably assisted again by the Clifford Chance team who were very good at picking up on hints and running with them, and there was so much enthusiasm that after the end of the normal curriculum very nearly the entire audience stayed behind to undergo an hour's extremely concentrated teaching illustrated by examples of mediations I have undertaken. By the end it was completely clear to me that they were not only thoroughly intelligent but also very highly motivated and I was later to learn that a couple of the lawyers had decided to set up a mediation practice immediately. We then attended a reception at the High Commissioner's



residence on the edge of Dar. It was a splendid affair and we were much encouraged by the attendance of some very senior judiciary. I had been asked by Sarah Poland to use my camera to record the events which I did for the rest of the week. I found plenty of time to talk to the lawyers who had been such an enthusiastic audience on the first and second days. The formal lectures finished with presentations of shirts emblazoned with the Tanganyikan Law Society's name, some African woodcarving and expressions of mutual goodwill but not before Sarah had been asked to attend a further meeting with other members of the Law Society who were not able to get to Dar. We shall be going out there probably the second week in February and making a presentation at the Law Society Annual General Meeting.

At the end of the training in Dar I had a day to spare before flying home so I took myself off to Zanzibar and undertook a walking tour of Stone Town, which is the principal town, with a very knowledgeable and pleasant guide.

On each occasion that I spoke I made it absolutely plain that the good wishes of DASLS were presented to the local Law Societies and expressions of mutual friendship were received. All of the African Law Societies were extraordinarily grateful for our support and Tanzania in particular made it very plain that they would want an ongoing mediation training pattern to be established so that somebody from DASLS could go out on an annual basis for further training and updating of those of their members who had taken the bait and were then training or trained as Mediators. The judiciary were extremely welcoming so I think the DASLS footprint in East Africa is assured.

Finally I learnt that one of the more active members in Tanzania had decided some months previously to explore the possibility of creating a mediation centre in Dar es Salaam and the tuition that I gave her was exactly what she had been hoping for. She has asked me personally to go back to Dar when we are in Arusha next February (it is only a short plane hop) to undertake intensive training for her and her staff and I am delighted to be able to do so.

I cannot say that my trip was a holiday because it certainly was not and I was conscious of working quite hard at times but I think it was thoroughly worthwhile and I am very glad of having had the opportunity to do it.

Recent Amendment to Solicitors' Accounts Rules

Overview

The Solicitors' Accounts (Residual Client Account Balances) Amendment Rules 2008 amend the Solicitors' Accounts Rules 1998 (SAR) with effect from 14 July 2008. The amendments introduce specific obligations for the prompt return of surplus client funds and reporting to clients if funds are retained. They also permit solicitors to deal with the withdrawal of smaller residual client balances themselves, without recourse to the SRA.

Returning surplus client money

A new rule 15(3) SAR will impose a specific obligation to return client money promptly as soon as there is no longer any proper reason to retain the funds. "Promptly" is not defined but should be given its natural meaning in the particular circumstances - see new note (x) to rule 15. Rule 15(3) does not apply to the return of surplus funds whilst a matter is ongoing - see new note (xi).

Reporting to clients

A new rule 15(4) SAR will require a solicitor to inform a client promptly of the amount of any funds retained at the end of a matter, and the reason for that retention. This rule also introduces an obligation to report in writing to the client on at least an annual basis if funds continue to be retained, with an explanation for the ongoing retention.

Left over balances

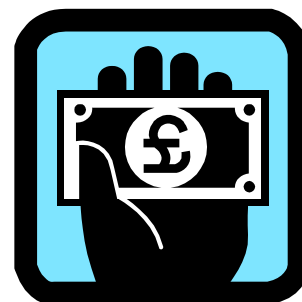
Under an amended rule 22 SAR, solicitors will have the option to withdraw from client account left over balances of £50 or less

without prior SRA authorisation, subject to paying the balances to a charity and complying with the other safeguards set out in a new rule 22(2A). Prior SRA authorisation will still be required for amounts exceeding £50, or for amounts not to be paid to a charity because, for example, they represent costs - see notes (viii) and (viii a) to rule 22.

Procedures and systems

Paragraph 2.1 of the Guidelines for Accounting Procedures and Systems at Appendix 3 SAR states that policies and systems should be established to ensure that the firm complies fully with the rules. Solicitors wishing to deal with left over balances of £50 or less, without prior SRA authorisation, will need to set up appropriate internal procedures and systems to ensure compliance with the new provisions of rule 22.

New paragraphs 4.6 and 4.7 of the Guidelines state that policies and systems should be established for the timely closure of files and prompt accounting for surplus balances, and for reporting to clients when funds are retained.



Letters to the Editor ...

...are always welcome.

Please write to Tony Spiers at Suite 5, Renslade House, Bonhay Road,
Exeter, EX4 3AY
(DX 8361 Exeter)

or email mail@dasls.com

The Public Law Outline – Guidance for Devon and Cornwall

Preamble

The Public Law Outline (“PLO”) together with the President’s Practice Directions on Case-Management and Experts are now in effect for all cases commenced on or after 1 April 2008. A new allocation order and associated practice direction on allocation are in the course of preparation. All of these documents have or will have nationwide application but leave open the potential for local provision to recognise the great diversity of local conditions. The provisions set out below are published following consultations between the relevant Designated Family Judges and other members of the full-time judiciary and are intended to afford guidance to the court and court users in Devon and Cornwall. It is guidance only, not intended to be prescriptive nor to interfere with the proper exercise of judicial discretion. Whilst the operation of the PLO is not optional it is important that non-compliance with any of its requirements should not be seen as a reason for proceedings to be delayed or not issued. In a case of emergency a pragmatic view will be taken by the court as to the completion of forms, preliminary steps, etc.

Allocation

referred to the Designated Family Judge or his deputy who will liaise with the Family Division Liaison Judge as necessary

Allocation within the County Court

When a public law case is either issued in the County Court or transferred there, the file should, within 48 hours, be shown to the Designated Family Judge or his deputy for a decision as to whether the case is suitable for allocation for case-management and/or final hearing to a specific District Judge authorised to hear such cases.

Standard Directions

For some time standard directions have conventionally been given in both public and private law matters, the focus being upon minimising the necessity of receiving live evidence from professional (expert) witnesses and also refining arrangements for the efficient listing of substantive hearings. It is intended to continue this practice. The standard directions have been redrawn to avoid conflict with the PLO and are reproduced below. It is stressed that they do not amount to a local protocol and unless there is a specific judicial direction applying them they will have no effect in an individual case. For the avoidance of doubt a direction that the Devon and Cornwall standard directions will apply will amount to a sufficient direction to incorporate them within a court order.

Introduction

The new allocation order and associated practice direction are likely to lay emphasis on the need to utilise to the maximum the resources of the Family Proceedings Courts (“FPCs”), the expectation being that they will deal with significant volumes of Family Law Act 1996 work, Children Act private law work and Children Act public law work. The aim is to free up the time of the County Court to enable it to handle a greater volume of what previously would have been seen as High Court business, also to enhance the experience and expertise of the FPCs. Within Devon and Cornwall, the resources of the FPCs are finite both in terms of the number of the family magistracy and more particularly in terms of the numbers of available legal advisors and courtrooms. Whilst it is, therefore, appropriate to carry out allocation with a view to some level of growth in family business conducted in the FPCs, local conditions make it difficult and currently unrealistic to contemplate very substantial change to the currently existing allocation of work between the family courts. Therefore, some level of prioritisation of the work which is retained by or transferred to the FPCs needs to be applied. The guidance that follows is designed to reflect the need for that prioritisation and is based on the following premises:

That most Family Law Act 1996 work which does not involve application for occupation orders is suitable for resolution in the FPC.
That most Children Act private law work is suitable for resolution in the FPC.
That some Children Act public law work is suitable for resolution in the FPC but the dynamics of such work often make it difficult to forecast such issues as time-estimate and complexity until well into the procedural life of the case.

Guidance

Cases which in principle should be retained by or transferred to the FPC
All Family Law Act applications other than those including an application for an occupation order and those where the mental health of one or both of the parties forms a significant consideration within the application as a whole.

All Children Act private law applications save:
ones seeking permission to permanently remove a child from the jurisdiction
ones where the circumstances are such as to require active consideration of the appointment of a guardian for the child
ones where the child is an applicant
ones where a party or the child is suffering from serious mental disorder
ones where the level of capacity of a party to be involved in the proceedings is in doubt
ones where a child may be required to give evidence
ones where there are serious issues of drug or alcohol misuse
ones which require consideration of transfer to the High Court
ones where an issue arises as to medical treatment of a child
ones where there is likely to be contested expert evidence

Applications under section 31 of the Children Act for a supervision order in respect of all children involved in the application

Applications to discharge a care or supervision order made at the instance of the Local Authority

Applications for contact with a child or children in care where the sole issue is the quantum of that contact

Applications for care orders where the facts are not complex and expert evidence is not expected to play a significant part in the proceedings save:

cases estimated to take not less than 3 days to hear
cases involving a party under a disability
cases involving serious allegations of physical or sexual abuse or the misuse of drugs or alcohol

Cases which in principle should be retained by or transferred to the County Court

All applications for secure accommodation orders

All public law proceedings save those described in a. above

Cases which should be transferred to the High Court

These cases will involve matters of exceptional complexity or public interest and any doubt about whether transfer is desirable should be

Professional Witness Direction

No professional witness, save for the social worker in the case and the children’s guardian, shall give oral evidence at any hearing within these proceedings without permission of the court.

Any party who takes issue with the content of a report from a professional witness other than the social worker in the case or the children’s guardian shall, no later than 10 working days following receipt by him of such report, raise written questions of such professional, copying such questions to every other party and the court. Unless the court directs otherwise, the professional concerned shall respond in writing to the questions within 15 working days of receipt, copying such responses to the other parties and the court. Any such responses shall contain a statement of truth.

Any application by a party for permission to call a professional shall be made no later than 30 working days after receipt by that party of the professional’s report. Such application shall be in writing, supported by a written argument no longer than one side of A4 and copied to all other parties.

Time-estimate Direction

No later than the IRH, or on any other occasion on which it is contemplated that the court will be asked to fix a substantive hearing within the proceedings with a time estimate of not less than 2 hours, each party shall provide to the court a written time-estimate for the final hearing or other hearing, as the case may be, together with a short written explanation of the time estimated.

Such time-estimate shall assume that no professional witness save the social worker in the case and the children’s guardian will give oral evidence at the hearing.

No hearing in excess of 3 days will be fixed without the authority of the Designated Family Judge for the Care Centre concerned or his deputy.

Witness Timetable Direction

Where any party to proceedings is legally represented, it shall be the responsibility of the solicitor for that party, not less than 28 days before the commencement of any hearing at which oral evidence will be called, to file with the court and copy to the other parties a witness timetable completed as to the party that the solicitor represents. Such timetable shall identify the witnesses whom that party requires to be called and the length of time estimated for their examination of each of those witnesses.

No later than 14 days before such a hearing the local authority shall collate the separate witness timetables and lodge with the court a composite timetable identifying which witnesses are required and for how long and when, within the hearing, they will be called.

Non-compliance by any party with paragraph 1 above may attract sanctions and an assumption that that party does not require any witnesses to attend the hearing concerned.

The court may adjust the witness timetable so as to dispense with the attendance of certain witnesses or curtail the examination of them. Moreover, the court is unlikely to approve a timetable which does not group professional witnesses other than the social worker in the case and the children’s guardian on the first day of hearing.

His Honour Judge David Tyzack QC – DFJ for Plymouth and Exeter
His Honour Judge Nick Vincent – DFJ for Torquay

Business & Outreach in the School of Law

By Julia Paci, Business & Outreach Co-ordinator, School of Law, University of Exeter

The University of Exeter has had an excellent twelve months; receiving the Times Higher University of the Year award 2007/08 and recently ranking 13th in the Times league table of universities. The University has raised its profile significantly amongst the business community with the opening of the new Phase 2 of the Innovation Centre. We have also welcomed more students than ever before, with many attending the University's Cornwall Campus near Falmouth, including students in the new Department of Law. The University is now looking to the future with a major investment project in campus facilities by the end of the next decade.



range of links.

A recent pilot project with Plymouth Magistrates Court helped students gain a range of skills by training as Advisors. The Community Advice and Support Service help defendants who have been charged with offences at the lower end of the scale to access appropriate services in the community.

Alice Meilton, BA Law & Society was one of the students who participated in the project. She explains, "Being given this opportunity to work on this project has given me valuable work experience. I now have more confidence in my ability to work in a professional environment, and now have many contacts within the criminal justice system that I wouldn't have been able to gain otherwise."

Giving Exeter students the opportunities to participate in pro bono work has become a vital element of the student experience in the School of Law. We encourage our students to involve themselves in practical work experience to complement their study programmes.

I now fill the role of Business & Outreach Co-ordinator and will be responsible for managing the business-facing opportunities for the School as well as developing outreach projects for law students. I will be keeping the Devon and Somerset Law Society regularly updated on new initiatives and welcomes members to contact her to discuss ideas.

This is an exciting chance for the School of Law to initiate some new ways of working. There are several projects and events I shall be managing over the summer, including making the website more dynamic with lots of information for students about employability. I shall be seeking sponsors to help develop a variety of web pages on different career-related themes. There will also be information for businesses about how they can get involved with the School. My intention is to make it an easy and mutually

beneficially process. This is very important because in order to continue to expand the range of pro bono opportunities we can offer students, we need the support of the legal community.

The School of Law at the University of Exeter is looking to widen the participation of legal firms and other commercial organisations in its work.

The main areas in which you can get involved are:

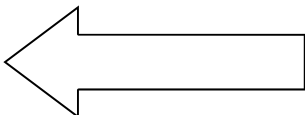
- Championing of one of our pro bono projects
- Sponsorship of an essay prize in a core Law module
- Supporting academic research
- Delivering skills sessions and workshops on campus
- Sponsoring events, outreach work and web-based projects
- Developing international links with us

If your firm would like to forge closer links with the School of Law through sponsorship or other forms of support, please contact us. We are happy to discuss any of the options or your own ideas with you in more detail. We would also be delighted to hear from any University of Exeter School of Law alumni who would like to get in touch.

The School of Law's website is www.law.ex.ac.uk, where you will find more information about the work we do and regular news updates.

Julia Paci can be contacted on 01392 263372 or J.C.Paci@exeter.ac.uk

In order for the School of Law to contribute further to the overall strategic aims of the University, to effectively engage with communities and collaborate closely with partners, the post of Business & Outreach Co-ordinator has been established to develop the School's links with the legal profession. Our key goal is to increase our network of contacts with national and regional businesses, the public sector and community organisations. By doing this, we will open up more opportunities for students to participate in outreach projects and benefit from a wider



Printed on the left is guidance on the new Public Law Outline issued by the Designated Family Judges for Devon and Cornwall, His Honour Judge David Tyzack QC and His Honour Judge Nick Vincent.

An Overview of Statutory Wills

By Tony Spiers, Honorary Secretary

Have you ever been consulted by a client who says that he believes that the valid will of a living relation, friend or parent does not deal fairly with him or another but he fears nothing can be done about it because the testator has lost mental capacity?

Background

Maybe the will was made when the client and testator were estranged, during a fit of pique or at a time when the testator was living with a partner from whom he or she has since parted. Perhaps the will does not accord with the testator's current circumstances or your client feels that there was a strong moral obligation on the testator which he failed to fulfil before incapacity overtook him.

The client will have, if the testator dies with the existing will, at best, a right to make application under the Inheritance (Provision for Family and Dependants) Act 1975. A financially comfortable adult, unless a spouse, civil partner, co-habitee or dependent of the testator, is unlikely to enjoy much success with an application under the Act.

It is possible that the client can negotiate with his/her sibling, cousin or other beneficiaries under the will, when the time comes, but that is a hardly a comfortable position and your client may not be well served by your advice if that is all you suggest.

A similar situation arises where there is no will and your client has been looking after a neighbour or friend for years but now mental incapacity has supervened and, on intestacy, the whole estate will go to distant family members who have so far taken no interest in their relative. Or even to the Crown as bona vacantia.

An answer

But there is a way to deal with the situation if the circumstances are propitious.

The Court of Protection has had power, since 1970, to make wills for those who are incapable of making one for themselves.

The new Mental Capacity Act 2005 (the Act) simply says at Section 16 that if a person (in the Act, and here, called "P") lacks capacity in relation to a matter or thing concerning his property and affairs, the Court has power to

make a decision or decisions on P's behalf. Section 18 confirms that this extends to the execution of a will for P. Schedule 2 of the Act provides that such a will may contain any provision which could have made in a will executed by P, if he had the capacity to make it. It also dis-applies S9 of the Wills Act 1837 to any will executed for P by order of the Court.

Jurisdiction is limited in that a statutory will has no effect:-

- a) in so far as it disposes of immovable property which is outside England and Wales and
- b) in so far as it relates to any other property or matter, if, when the will is executed, P's domicile is outside England and Wales and, under the law of P's domicile, any question of his testamentary capacity falls to be determined in accordance with the law of a place outside England and Wales.

Who can apply

The possibilities are wide: of course a Deputy can apply, but so too can others, including anyone for whom P might be expected to provide by a will if he had capacity to do so. Applications to the new Court sometimes require permission and the Act and the Court of Protection Rules should be consulted to see if this is needed.

Procedure

The application form and annexes may be downloaded from the Public Guardian Office website.

Named as a respondent to any application must be any beneficiary under an existing will or codicil who is likely to be adversely or materially affected by what is proposed. Also named must be any prospective beneficiary under P's intestacy where there is no existing will.

The Court will consider whether P should be joined as a party and if so whether the Official Solicitor or some other person should be appointed as a litigation friend.

Evidence

Information is to be provided in the form of a witness statement (attaching documents as exhibits).

What has been described as a "character sketch of P's life, affections and antipathies" should be provided in the witness statement.

The proposed statutory will (or codicil) and any existing will or codicil must be exhibited and P's testamentary history and pattern of testation recited: any power of appointment enjoyed by P should be identified and detailed.

A family tree is necessary, identifying living members with ages and, if relevant their location. Entitlement on P's intestacy should be indicated if relevant.

Details of assets and liabilities must be given, identifying sources of any significant assets. Property assets not in England and Wales should be listed. The tax implications of the proposed will should be stated.

P's income and expenditure must be shown and the resources of potential beneficiaries given so far as known. Any person who might be eligible to make a claim under the Inheritance (Provision for Family and Dependants) Act 1975 should be identified and details of their relationship to P and (if known) their financial circumstances given.

An up to date medical report on P's present condition, life expectancy, accommodation and nursing needs, present and future, and up to date medical evidence of testamentary incapacity is required.

Some of the information may be known to the Court, perhaps because of documents lodged earlier and in that case it is not required again.

The Court's Approach

The leading case on the Court's approach to applications for statutory wills under the Mental Health Acts 1959 and 1983 (which were the predecessors of the Act) was *Re D (J)* [1982] Ch 237 decided by Megarry VC.

He set out the propositions for the exercise of the Court's discretion when it is being asked to make a will for P who has previously had testamentary capacity.

There are 5 of these:

1) P should be assumed to have a brief lucid interval when the will is made,

2) During that interval P has full knowledge of the past and understands that once the will is made he will return to his actual mental state,

3) P is to be considered, not a hypothetical person

4) P has advice from competent solicitors and

5) A "broad-brush" approach by P to claims on his bounty is adopted.

The Statutory Will

If the Court makes an order for a statutory will, it will settle the form of the will which is to be executed in accordance with the requirements set out in Paragraph 3(2) of Schedule 2 to the Act. Once done, the original is sealed by the Court and returned to the applicant.

Costs

On a successful application the costs involved will be borne by P.

Execution of the Statutory Will

S 9 of the Wills Act 1837 requires personal signature by a testator of his will or his physical presence when someone else signs it for him and he must understand what he is doing.

The Act dispenses with these formalities when a Statutory Will is to be made and the Order authorises the making of a will for P when he is neither physically present nor mentally capable of understanding what is happening. But the will is expressed in the first person and the authorised person signs using P's name and his own in the presence of two witnesses. It is, in all senses, P's will, despite his physical and mental absence from the process.

Outcome

A Statutory Will may avoid an inappropriate application of the intestacy rules or later unhappy differences, perhaps even litigation over an inappropriate will. In some situations it may be possible to give effect to moral obligations to which P had not been able to respond because of his mental incapacity.

This article was first published in the Independent Lawyer in May 2008

River Dart Boat Trip: Friday July 4th



Over fifty members and guests enjoyed an evening seeing the sights of the Dart Valley on the Dart Explorer, despite the inclement weather.

All thoughts of the rain were swiftly removed by the upbeat, summery jazz music provided by Robin Reece and his band and the delicious buffet supper.

The Society's grateful thanks are due to Stewart Title and Quay West Wines for their generous sponsorship.

Photos by Tony Steiner and Charlotte Lythgoe, DASLS



Law Society Helplines

Pastoral Care Helpline
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new service launched in June 2008

Do you need help with personal, financial, professional or employment problems? If you don't know where to turn for help, call us and we will refer you to the most suitable helpline for your circumstances. Lines are open from 0900 to 1700, Monday to Friday.

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Advice for solicitors, men as well as women, on their rights in relation to childcare issues.

Heard it on the Grapevine

By Andrew Ford, Quay West Wines

Grape Varieties

There are hundreds of grape varieties worldwide, although only a few of these have any real economic importance. Wine grapes for wine production are varieties of the species *Vitis Vinifera*. Different varieties also have varying degrees of susceptibility to diseases and frost.

Wine lovers are primarily interested in the produce of these *vinifera* varieties. The wines will differ in appearance, smell, taste, and in the balance of alcohol and acidity. Some varieties for example lose a great deal of their acidity as the fruits become riper and their sugar content increases. Certain grape varieties can also be recognized by their distinctive aroma, such as Muscat or Gewürztraminer.

Nevertheless, grape variety alone is not the deciding factor. The properties of the soil in which the vine is planted, the local climate, yield size, and methods of production all mean that the character of wines made from a particular variety can vary considerably.

The Soil

In general soils suitable for viticulture are those that are not particularly fertile or deep as grapes really like to grow in adverse conditions. The depth of the soil determines the spread of the root systems. Soil is made up of a number of constituents in varying proportions, including silica, clay and limestone. The chemical composition of various micro-elements play a part in the development of the final product.

Terroir

The same variety of vine planted in different locations can produce wines that differ greatly in terms of both structure and aroma: this is the *terroir effect*. A *terroir* is a defined area in which the physical and chemical conditions of the natural environment, the geographical location, and the climate give rise to specific and identifiable products. Consequently, the term denotes the interaction of a number of factors, including soil, vineyard aspect, climate, vine and grower, together with the luck of the year.

WINE OFFER

Devon & Somerset Law Society in association with Quay West Wines are pleased to offer Society members 12 bottle mixed cases of wines at the following reduced price of £49.99 for summer drinking. Each case contains the following

2 x 75cl Chilean Sauvignon Blanc
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2 x 75cl Italian Pinot Grigio
(Typically light, fruity and zesty)

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(Fruity, fresh citrus flavours)

2 x 75cl Argentinian Chardonnay
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1 x 75cl Italian Blush Pinot Grigio
(Subtle berry fruit flavours)

1 x 75cl Italian Sparkling Blush Pinot Grigio
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If there is ever a particular wine you are looking for we will do our best to source it for you.

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Housing Law Update (Tiverton)

Tuesday 23rd September 2008
10.00am – 4.45pm: 5 Hours CPD
Steve Povey (*Shelter Training*)

Agricultural Law Update

Wednesday 24th September 2008
2.00 - 5.15pm: 3 Hours CPD
Nigel Davis

Jurisdiction of a District Judge and How to Impress a Judge

Wednesday 24th September 2008
6.00 – 7.30pm: 1.5 Hours CPD
District Judge Andrew Moon

Family Finance Update (Yeovil)

Thursday 25th September 2008
2.00pm – 5.15pm: 3 hours CPD
Susan Jacklin QC, *St John's Chambers, Bristol*

Avoiding Misrepresentation and Negligence Claims in Conveyancing

Tuesday 30th September 2008
9.45am – 1.00pm: 3 hours CPD
Richard Snape

Residential Conveyancing Update

Tuesday 30th September 2008
2.00pm – 5.15pm: 3 hours CPD
Richard Snape

Avoiding Misrepresentation and Negligence Claims in Conveyancing (Barnstaple)

Wednesday 1st October 2008
9.45am – 1.00pm: 3 hours CPD
Richard Snape

Residential Conveyancing Update (Barnstaple)

Wednesday 1st October 2008
2.00pm – 5.15pm: 3 hours CPD
Richard Snape

Licensing and Gambling Update (Tiverton)

Thursday 2nd October 2008
2.00pm – 5.15pm: 3 hours CPD
Rob Newman (*Kitson Hutchings, Torquay*)
and Barrie Davis (*Gambling Commission*)

Employment Law Update

Tuesday 7th October 2008
2.00pm – 5.15pm: 3 hours CPD
Debbie Grennan, *Rougemont Chambers, Exeter*

Using Compliance to Enhance Profitability and Client Relationships (Tiverton)

Wednesday 8th October 2008
2.00pm – 5.15pm: 3 hours CPD
Heather Stewart, *Otterburn Legal Consulting, West Yorkshire*

Mental Capacity Act and Lasting Powers of Attorney

Thursday 9th October 2008
9.45am – 1.00pm: 3 hours CPD
John Thurston

Finance Act 2008 Update and the Effect on Tax Planning for the Average Client

Thursday 9th October 2008
2.00pm – 5.15pm: 3 hours CPD
John Thurston

Public Law Update

Tuesday 14th October 2008
6.00 – 8.15pm: 2 Hours CPD
HHJ Stephen Wildblood QC

Family Finance Update (Barnstaple)

Tuesday 21st October 2008
2.00pm – 5.15pm: 3 hours CPD
Susan Jacklin QC, *St John's Chambers, Bristol*

Negotiation Skills

Wednesday 22nd October 2008
2.30pm – 6.00pm: 3 hours CPD
Adrian Spooner

TBA (Tiverton)

Thursday 23rd October 2008
9.45am – 1.00pm: 3 hours CPD
Dominic Regan

TBA (Tiverton)

Thursday 23rd October 2008
2.00pm – 5.15pm: 3 hours CPD
Dominic Regan

Money Laundering

Thursday 23rd October 2008
9.45am – 1.00pm: 3 hours CPD
Trevor Hellowell

Delivering Effective Client Care

Thursday 23rd October 2008
2.00pm – 5.15pm: 3 hours CPD
Trevor Hellowell

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