

Vendors beware – eBay contracts are binding

It may not be commonly known, but during the Second World War, Australia had a thriving defence aviation industry. One of the planes built during that time was the CA-16 Wirraway. This was a training and fighter aircraft based on a United States model. Seven hundred and fifty five were built, making it Australia's most produced aircraft but not a great number survived.

It is interesting that a piece of Australian military history recently made legal history with a case involving the sale of a Wirraway aircraft on the eBay website. In the case of *Smythe v Thomas* the Plaintiff claimed to have successfully bid an amount of \$150,000 for the Defendant's Wirraway Aircraft on eBay. The Defendant, claiming the aircraft was really worth \$250,000 disputed the sale, despite the fact that he had placed an acceptance on the eBay site of the \$150,000 bid.

The Court found that normal contractual principles applied and that the eBay website sale procedure was a form of auction. As the Judge said "the online auction, whether conducted by eBay or any other organization, provided a means by which products of almost every description can be bought and sold, and utilized as the exceptional breadth of the Internet to expand the horizons of commerce, perhaps just as the invention of the printing press in the 16th century permitted wider publication of items for sale in the town or village square".

While most items bought and sold on eBay are of considerably less value than a vintage aircraft it is worth noting when listing items for sale that a binding contract is created by the normal principles of contract.

Our firm has extensive experience in Commercial Law and also aspects of Aviation Law. Please contact us if you have any questions of a Commercial or Aviation nature.

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Did you Know?

Did you know that if you don't provide your animals with food, drink and shelter, or if you fail to at least provide your animal with clean drinking water during a 24 hour period, you can be charged with an offence under the Prevention of Cruelty to Animals Act which carries with it a penalty of \$5,500 and/or 6 months in prison ?

Power to the people

In Australia we take it for granted that when we buy a vacant block of land we will be able to build a home which will have access to all the essential services such as electricity, water and telephone. While that assumption is true in the majority of cases it does pay to confirm the current status of the essential services.

We have become aware of two recent examples where relying on that assumption has been costly. In the first example the purchaser was buying a vacant block of land in a residential subdivision that had been created some time ago. There were houses on either side of the vacant land and across the road and these had been there for over 10 years. It is fair to say that any purchaser would assume that the vacant land would be able to be connected for electricity. Unfortunately, when the purchasers started building their house they were told by Integral Energy that as the vacant block was an additional block to the original subdivision they would be required to pay \$5,000 for a new transformer.

In the second example involving a property on acreage the cost of the new transformer was a massive \$100,000 and could not be avoided !

People who purchase vacant land should ensure that all of the necessary services such as electricity, water and telephone are available for connection to the property. This is particularly relevant in rural areas.

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NSW Mortgage Duty - Abolished for Individuals

From 1 September 2007, mortgage duty was abolished for owner occupied housing. Mortgage duty will not be charged if it secures a loan for the purpose of an owner occupied home and no other loans. The Borrowers must be natural persons. You will find when receiving loan and mortgage documents that mortgage duty is still anticipated in the disbursements of the lender, however, you will also find that a statutory declaration is included in your documents to be signed, verifying that you are a natural person and that the loan is for an owner occupied home. The abolition of mortgage duty for owner occupied homes will save borrowers \$1,141 on an average home loan.

It is intended from 1 July 2008 that mortgage duty will not be chargeable if the purpose of the loan is for investment purposes. It is anticipated that mortgage duty will be abolished altogether on or after 1 July 2009.

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Over the upcoming Christmas break our offices will be closed from 5 pm Thursday 20 December 2007 until 9 am Monday 7 January 2008.

If you think that you don't need to put anything in writing after a marriage separation, read on

Lawyers are often accused of over-complicating matters, particularly when it comes to 'amicable' settlements between former spouses. However, if you're considering not formalising your property settlement agreement in writing with your former spouse or partner and intend simply working things out informally, you should be aware of the repercussions this could have on any inheritances, compensation payments or other financial windfalls you may receive after you separate. The most famous of these family law cases involved a lottery win of \$5 million !

The parties began a defacto relationship in 1983, got married in 1984 and had a child together in 1985. They separated in January 1995 and were divorced in April 1997. They struggled financially during the marriage and the husband also had some drug problems early on which meant that the wife supported him emotionally and financially during that period. In the years after they separated, their young child lived with each of them at different times.

In September 1996, the husband won \$5m in a lottery and the wife made an application at Court for a share of that windfall. The husband initially claimed to have bought the winning ticket for his mother, but that claim was rejected by the Judge who heard the case. The Judge decided that, during the marriage, the wife made considerable financial and non-financial contributions in difficult circumstances, and ended up awarding her \$750,000 of the lottery win. This made up about 15% of the total amount and was a considerable amount of money out of the husband's pocket. In addition, both parties spent a great deal of time and money battling this case, all of which could have been saved had the husband thought to formalise their property settlement back when they separated.

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Injured at work? You may be entitled to a lump sum benefit

If a person is injured at work they are entitled to obtain Workers Compensation benefits for the injuries. These benefits include payment of wages for time lost from work due to the injury and payment of medical expenses regarded as reasonably necessary for treatment of the injury.

In some cases a worker may also be entitled to receive a lump sum for what is known as permanent impairment. There are basically two systems in existence in New South Wales and the way in which the benefit is calculated depends upon the date of the injury. The general procedure is that either the injured worker visits, or increasingly now the insurance company sends the worker to, a medical specialist approved by Workcover. This specialist then provides a medical report which sets out, in the

case of people injured since 2002, a figure for what is known as "a whole person impairment". In some cases where the whole person impairment is greater than 10%, the injured worker is also entitled to an additional amount for pain and suffering.

It is important to note that these sums are paid in addition to amounts recoverable for loss of wages and medical expenses. Further, payment of these amounts does not prevent a worker from continuing to claim loss of wages and medical expenses if applicable to their claim. To qualify for such an entitlement a worker must have a permanent impairment and the doctors must agree that the medical condition is stabilised - that is, the condition is as good as it is going to get and there is little prospect of any further treatment being provided which will improve the condition. It is a further requirement that any worker who wishes to receive this sum must sign what is known as a Complying Agreement and receive legal advice in relation to such Agreement. The workers compensation insurance company is required to pay the workers legal costs, so if you or someone you know receives a letter from the insurance company rest assured that it will not cost them anything at all for legal advice in this area.

Should you have any further questions regarding this please contact Geoff Lloyd at our Camden office

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Talent recognised

In a recent appearance at Camden Local Court, one of our solicitors, Jillaine Duve, achieved an excellent result for a client. We must keep the details confidential but the significance of the result is perhaps best represented by the fact that 3 solicitors, from local firms that are in competition with our own, each commented that Jillaine's representation was "a great job", "achieved a great result" and was "very well done". These are rare accolades from competitors and peers. Our client's hugs at court and her words "Gee I knew you were good but not THAT good" suggest that she too was impressed and over the moon at the result.



One of our other solicitors, Kristy Faida, recently appeared at Picton Local Court, and her submissions resulted in our client receiving the minimum available penalty even though he had a history of committing this same type of offence on 2 prior occasions. Don't take risks with your court representation. Our solicitors are good at what they do and they care about their results.

Don't feel like attending Jury service?... Think again

Spring 2007

It is an offence to fail to attend Court for jury service and the maximum penalty for this offence in NSW is \$2,200. Your legal obligation requires you to attend for the whole of the sittings to which you have been allocated. Because members of jury panels are usually allocated to Court sittings which may last for several weeks, it is your duty to contact the Court by telephone on each occasion that you are asked to. If you do not attend, you will receive a Penalty Notice in the mail from the Sheriff's Office and the only defence that you have to this charge is that you had a 'reasonable excuse' for not attending. Of course, this is quite difficult to prove, but can include such things as serious medical conditions.

Serving on a jury is not only an important civic duty, but failing to attend when you are supposed to also carries with it a heavy financial penalty.

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Challenging Wills

There has been an increase in litigation over entitlements in deceased estates for 2 reasons:-

1. the increased value in real estate these days; and
2. the rise in family break downs.

Not everyone can challenge the terms of a Will. You have to be:-

1. a spouse (or defacto spouse) of the deceased;
2. a child of the deceased;
3. a former spouse (or defacto spouse); or
4. a person who was wholly or partly dependant on the deceased and who is a grandchild of the deceased or was a member of the deceased's household.

A person who does not fall within these categories cannot challenge entitlements of a deceased estate.

Simply because a person may be entitled to challenge, does not automatically give them any entitlements to the Estate. The Court must be satisfied that an Order in their favour should be made and must have regard to:

- a. contribution (both of a financial nature and a non-financial nature) to the deceased's assets or welfare;
- b. character and conduct of applicant;
- c. circumstances existing before and after the death of the deceased; and
- d. any other matter the Court considers relevant.

By and large, orders are made having regard to the size of the Estate and the financial needs of the competing parties. It is certainly not a popularity contest.

Quite often, the costs of the Court proceedings will be ordered to be paid by the estate. However, the Judge has the power to order the claimant to pay their own costs and on rare occasions to also pay the costs of the estate.

Bringing proceedings, or even defending proceedings, is not something to be entered into lightly. Supreme Court proceedings are expensive and emotionally draining. You need to obtain

the right advice from the outset. Angus Cox is a Law Society Accredited Specialist in Wills and Estates and can give you proper guidance in this area of the law.

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Protecting your Logo

Many business people spend significant time and money creating their perfect logo. They brand their business cards, uniforms, stationery, motor vehicles, promotional leaflets and website with their logo, and make the assumption that – since they thought of the logo – it is unique to their business and belongs to them.

In reality the money and time spent can all be wasted if some other business has a similar logo that has been protected by registering it as a Trademark.

There have been many well reported instances of companies dreaming up a logo and allocating substantial resources to marketing it – only to find out that a competitor has beaten them to registering it.

If that happens, you may be required to scrap all marketing material bearing the logo. You can imagine how devastating this would be to you and your business.

We recommend that before you invest in a new logo, you come and see us to get some advice on whether someone else is already using that logo and how you might best protect your logo from others using it in the future.

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Franchising - what is it? Who can help you?

We specialise in the area of franchising at a reasonable cost.

A new client to the firm had recently spent over \$40,000, a phenomenal sum, in engaging a service that claimed to be "Specialist in Franchising". They were not lawyers. For this money the client had been given pro-forma documents that did not suit their specific needs. They were extremely unhappy and came to us for assistance. For a fraction of what they had already spent we were able to give them documents and services that were tailored to their needs.

Chris Paul and Natalie Cavaleri have a wealth of experience in the business sector. Don't be fooled into thinking that lawyers are the most expensive option. They can often save you money. Ring the firm specialising in business needs – Caldwell Martin Cox.

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Who's where and what do they do?

Area of Law	Camden	Narellan	Picton	Tahmoor
Conveyancing	Chris Paul Caroline Holt	Bill McGookin Natalie Cavaleri	Angus Cox Leanne Anderson	
Estate Planning	Chris Paul Caroline Holt	Bill McGookin Natalie Cavaleri	Angus Cox Jillaine Duve	Kristy Faida
Family Law	Caroline Holt	Bill McGookin	Jillaine Duve	Kristy Faida
Commercial Leases	Chris Paul Caroline Holt	Natalie Cavaleri	Angus Cox Leanne Anderson	Angus Cox via the Picton Office
Leases, Sale and Purchase of Businesses	Chris Paul	Natalie Cavaleri	Angus Cox Leanne Anderson	
Court Matters /Damages	Caroline Holt Geoff Lloyd	Caroline Holt Geoff Lloyd Via the Camden Office	Jillaine Duve	Kristy Faida
Criminal Law	Caroline Holt Geoff Lloyd		Jillaine Duve	Kristy Faida
Debt Recovery	Geoff Lloyd	Natalie Cavaleri	Jillaine Duve	Kristy Faida
Bankruptcy/Insolvency	Geoff Lloyd	Natalie Cavaleri		
Unfair Dismissal/ Employment Law	Chris Paul Geoff Lloyd	Natalie Cavaleri		
Family Provisions (challenging wills)	All enquiries to Angus Cox & Geoff Lloyd			
Personal Injury	All enquiries to Geoff Lloyd			
Workers Compensation	All enquiries to Geoff Lloyd			
Medical Negligence	All enquiries to Geoff Lloyd			

Our services include:

- wills and estate planning
- family law
- property law and conveyancing
- retail/commercial leases
- business law
- criminal law
- civil litigation
- employment law
- mediation and dispute resolution

Electronic Newsletters

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On receipt of your reply, we will delete your name from the "hard copy" mail list, and send you future newsletters by e-mail.



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