

“My Space” Website – should this be really called “Everyone’s Space”

Regular users of blog sites such as MySpace and Facebook should be very careful about the photos and other content they upload to their web pages and the use that can be made of that content by other people. Recently, one of our lawyers was involved in a family law parenting dispute at Court representing the father of the 2 year old child at the centre of the dispute. The mother had made the mistake of uploading some very graphic content to her MySpace site bragging about her drinking and sexual exploits and her drug use, all during periods when the child was in her care.

Our client had printed out the pages and these were attached to his Affidavit which was presented at Court. At the beginning of the proceedings, the mother had informed the Court that she sought full-time care (formerly referred to as “custody” or “residency”) of the child but, once presented with the Affidavit showing her graphic MySpace pages, she withdrew her initial claims and eventually agreed to a fortnightly shared care arrangement.

Our client regarded this as a success given that he is now able to spend equal time with his young child. The MySpace pages also highlighted some fairly serious issues in the mother’s life and so we were able to insist on regular drug testing as part of the Court Orders. Be very careful about what you upload to these very public sites!

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Picton Para-Legal now Licensed Conveyancer

Congratulations to Leanne Anderson of our Picton Office who has passed her final exams and been admitted as a Licensed Conveyancer.

Leanne has completed 4 long years of part-time study, whilst working full time and looking after her home, husband and children.

Leanne will use her newly obtained qualifications to continue her excellent client service. Please join with us to congratulate Leanne when you next call at Picton.

Changes to Motor Accidents Compensation Scheme

Most people would be aware that there is a scheme providing for Compensation to persons injured in motor vehicle accidents in NSW. It has traditionally been a requirement of the scheme that there must be a driver at fault other than the person injured to enable them to claim Compensation.

From the 1st October, 2007 there have been changes to this requirement.

The first change introduces the Lifetime Care And Support Scheme for catastrophically injured people. A Government authority has been established which will provide treatment, rehabilitation and attendant care services to people severely injured in motor vehicle accidents in NSW regardless of the person at fault in the accident. To be eligible for the scheme the injuries suffered include spinal cord injury, moderate to severe brain injury, multiple amputation, severe burns or loss of sight. The scheme had previously provided for children under the age of 16 from 1st October, 2006 and was extended to everybody on the 1st October last year.

It is important to note that the scheme does not provide benefits such as loss of wages or general damages, and it is necessary still to prove “fault” to recover these amounts.

The second change to the scheme provides for Compensation in what are referred to as “blameless accidents”. This is intended to cover situations such as a motor vehicle accident arising from an unexpected medical emergency, an unexpected mechanical failure, or a stray animal. It is important to note that generally speaking the driver of the vehicle in such an accident may not be able to recover compensation. The provisions are unclear in this regard and it is more likely to be applicable to the passengers of such a driver.

Our firm is able to assist clients who wish to make a claim for injuries received in a motor vehicle accident.

Please contact Geoff Lloyd at our Camden office if you require any further information in this regard.

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What’s in a business name?

Many people know of the Slip Inn in Sydney as the hotel where Prince Frederik of Denmark met his future wife Mary around the time of the Sydney Olympics. The Slip Inn is described on its website as “one of Sydney’s original city destinations and.....a stylish and exciting, multi purpose venue”. Most people also would be aware that it is possible to register a business name and the registration of the name gives the owner certain rights. However, a recent matter involving the Slip Inn indicates that a business name is not always as exclusive a right as it may seem.

Traders who wished to open a hotel trading under the Slip Inn name in Brisbane were able to register the business name Slip



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CMC welcomes the return of Belinda Dunkley to our Picton office

Inn in the State of Queensland. Currently in Australia each State has its own system of business name registration.

However, unknown to them, the owner of the Slip Inn in Sydney not only owned the business name in New South Wales but had successfully registered Slip Inn as a trademark. By so doing, he had obtained Australiawide use of the name in the context of not only hotel services but also night club services, clothing and compact discs. When the owner of the trademark discovered that the owners of the hotel in Brisbane were using his trademark without his authority he was able to suggest to them that they immediately stop using all the trademarks relating to Slip Inn, deliver to him all the goods, stationery and brochures bearing the Slip Inn trademark, remove any promotional banners and cancel any advertisements bearing the name and to give to him income they had received from the use of the name Slip Inn. The owners of the Brisbane hotel, no doubt after obtaining legal advice, decided to comply with the requests made of them. They have since renamed their hotel the Step Inn.

Because of the interaction between State and Federal Laws it is vital to obtain appropriate legal advice if you are considering starting any business venture. Our firm has extensive experience in advising on business structures, including business names, trademarks and other areas of what is known as intellectual property.

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Suffering Mortgage Stress?

We have learned of a little known State Government scheme that can provide an interest free loan of \$15,000.00 for temporary assistance to people facing foreclosure by their lender. There are very strict guidelines, that include:

- Temporary difficulties in making home loan repayments due to an unavoidable change in circumstances (e.g. unemployment, accident, illness or some crisis)
- It is a loan, repayable within one (1) year
- It is a last resort, to help those in danger of losing their home. You must show you have tried all other avenues, including negotiating with your lender.
- Other eligibility details:
 - home loan less than \$300,000
 - value of your home less than \$500,000
 - gross household income less than \$70,000 pa
 - home loan repayments more than 36% of gross household income
 - you must show you have been making repayments of at least 27% of gross household income,
 - must be living in the mortgaged home.

Applications can be made to the Department of Housing on 1800 806 653 or email them mas@housing.nsw.gov.au , or contact

us for help. You will nearly always be better dealing with debt problems sooner rather than later.

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Estate Planning in second marriages/relationships

Considerable thought needs to go into estate planning when people are in a second marriage or relationship. This is especially so if one or both partners has children of a prior marriage or relationship. Wills in these situations are much more likely to be challenged by disgruntled potential beneficiaries. There is more likely to be disagreement about managing a person's financial affairs or making decisions about health care or medical matters, particularly since there are often strained relationships between children and their parent's new partner.

The Law provides that any Will you make prior to your marriage is revoked unless expressed to have been made in contemplation of that marriage. If you do not make a new Will after marriage, all of your assets could potentially end up with your new spouse and then their children. It is essential to make a new Will after marriage.

Partners may enter into a second marriage or relationship with differing asset levels or with children of varying ages or financial needs. Each situation is unique and the standard "leave everything to each other" Will may not be fair to the children. When a second relationship is in its early stages a Will may need to leave the bulk of your estate to your children and only a part to your new partner. As the relationship lasts the test of time and your assets intermingle the Will may need to be amended to provide a greater share to your partner. A Will should be an evolving document that you adapt to your needs as your circumstances change.

These and other issues can be discussed with your Solicitor when making a Will, Power of Attorney or Appointment of an Enduring Guardian.

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We are happy to welcome back Belinda

Dunkley, Licensed Conveyancer, who has returned to work at Caldwell Martin Cox after the safe arrival of her baby son and 7 months of maternity leave. Belinda will be working 3 days per week at our Picton office, assisting Angus Cox with leases and business work.

Privacy laws in Australia

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Many people believe that there is a general law protecting their privacy in this country. However, the legislation in Australia, which is covered by both State and Federal Government Acts, relates mainly to Government bodies, certain large businesses and businesses in the financial services area. This means that there are many areas of daily life which are not protected by any specific privacy law e.g. it is not of itself illegal to take a photograph of a person in the street unless that person is a child or some other person protected by Law. The cases to date where prosecutions have been taken for persons taking photographs e.g. in change rooms or of topless bathers at the beach have been based on breaches of areas of the Law such as acts of indecency or harassment.

There have been cases in some of the lower level Courts in Australia where the general protection of a person's privacy has been upheld. One case in Queensland was decided in favour of the former Mayor of the Noosa Council who obtained damages because of the harassing conduct of a former business colleague. Another case in Victoria allowed damages in part because of the publication by the ABC of details identifying the victim of a rape. Under Australian law, because these cases were decided in the lower level courts they are not what are known as "binding precedents" on New South Wales Courts. This means that similar facts in New South Wales would not necessarily lead to the same results in this state.

Owing to this patchwork of State and Federal legislation, and the varying case law, it is imperative if you have concerns in this area to obtain appropriate legal advice. Geoff Lloyd of our Camden Office has a special interest in this area and is able to assist clients with enquiries of this nature.

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Document your family dealings

There are many situations where parents will provide financial help to their children. This can be in the form of small or large gifts or loans of money. It can be in the form of gifts of land or property. Sometimes it can be by way of a greatly reduced sale price for land or a home, or by allowing the building of a second home on their property. Whatever form the assistance takes it is always given in good faith and with the best of intentions. Due to the family nature of these arrangements most people don't want to make them too formal or to properly document them.

Often the informality of these arrangements leads to unexpected expense, uncertainty and argument in later years. Sometimes this is prompted by the separation, divorce, death, financial difficulty or bankruptcy of a party to the transaction. Sometimes it is prompted by the introduction of a new spouse or partner.

Time and time again, we are asked to give advice and assistance after a family financial dealing has gone wrong. Usually the transaction occurred many years ago, and of course it was never documented. Disputes can arise as to whether monies were

gifted or lent; whether they were interest free or not; and whether they were repayable and if so in what circumstances and time frames.

These questions are often answered differently by each party. They each have different recollections and often they never discussed or even considered what would happen if circumstances changed or if relationships soured. The answers would be simple if the arrangement had been put in writing in the first place. Without writing there is often costly and uncertain litigation in the Family Court, District Court or Supreme Court.

We urge all of our clients to seek proper legal advice - whether they are parents (or grandparents) wanting to "help" the younger generation, or whether they are the ones receiving the benefit. Ensure that the arrangements are properly documented and that you consider what should happen if things go wrong and life and relationships do not go as you expect they will. This simple and inexpensive exercise may save a fortune in the future, not to mention avoiding the angst and uncertainty of a Court case.

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Thinking about buying or selling a property at auction?

Buying and selling property by auction is becoming more popular every day. It can be daunting for a buyer or a seller to be at an auction, without the benefit of legal assistance.

For a flat fee we will:

- review an auction contract prior to the auction.
- negotiate changes to the contract prior to auction
- attend the auction with you to provide advice (limited to local area only)
- ensure the contracts are properly exchanged
- ensure the contract addresses all of the issues that have been agreed on by the parties.

Please call us to discuss this unique service offered by Caldwell Martin Cox. We believe it is great value to protect your biggest financial deal.

Natalie Cavaleri

We are sorry to advise that our enthusiastic Solicitor, Natalie Cavaleri, has left Caldwell Martin Cox. Natalie has decided to take a break from Law for the time being and to concentrate on her family's business interests. We thank Natalie for her years of hard work and we wish her all the best for the future.

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Who's where and what do they do?

Area of Law	Camden	Narellan	Picton	Tahmoor
Conveyancing	Chris Paul Lyn Harrison	Bill McGookin	Angus Cox Leanne Anderson Belinda Dunkley	
Estate Planning	Chris Paul Caroline Holt	Bill McGookin	Angus Cox Jillaine Duve	Kristy Faida
Family Law	Caroline Holt	Bill McGookin	Jillaine Duve	Kristy Faida
Commercial Leases	Chris Paul		Angus Cox Belinda Dunkley	
Leases, Sale and Purchase of Businesses	Chris Paul Caroline Holt		Angus Cox Belinda Dunkley	
Court Matters /Damages	Caroline Holt Geoff Lloyd		Jillaine Duve	Kristy Faida
Criminal Law	Caroline Holt Geoff Lloyd		Jillaine Duve	Kristy Faida
Debt Recovery	Geoff Lloyd		Jillaine Duve	Kristy Faida
Bankruptcy/Insolvency	Geoff Lloyd			
Unfair Dismissal/ Employment Law	All enquiries to Chris Paul or Geoff Lloyd			
Family Provisions (challenging wills)	All enquiries to Angus Cox			
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

If you would like to receive our newsletter by e-mail, please:-

Send an e-mail message to help@cmcox.com.au with the words "Newsletter" in the subject line, and provide your name and details in the message or subscribe from the Reading Room on our website www.cmcox.com.au

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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