

Accidents Can Happen Abroad

Summer is here and many of us will, despite possible disruption to air travel, still be thinking about heading abroad to enjoy an overseas break.

But a word of caution before you set off, being injured in an accident is bad enough, but when it happens in a foreign country with different procedures, different laws and a different language, it can be even more frightening.

The following are some useful tips, in the event you find yourself injured in an accident abroad.

- Report any accident to your holiday representative or tour operator, if you have one.
- Report any road traffic accident to the local police and be sure to note down the registration number of the other vehicle and name of the driver.
- Be sure to take lots of photographs of the accident scene, any damage and your injuries.
- Keep all documentary evidence of your holiday booking as well the brochure and receipts for any expenses incurred as a result of the accident, such as medical fees.
- Immediately contact your travel insurer

If you are injured in a road traffic accident in another EU member state, you can now bring your case against a foreign insurer in your home country, rather than the country where the accident occurred.



Head of Personal Injury Neil Lorimer (centre) receives his award from Paul Shenton (left) and Sean Lock (right).

One final important point to remember is that although you have a period of three years in which to bring a claim under English law, the period is often shorter in other countries. In Spain, for example, the period can be as short as one year!

Neil Lorimer heads the Personal Injury Department at Lanyon Bowdler. Neil was named Personal Injury Lawyer of the Year (Claimant), in the Eclipse Proclaim Personal Injury Awards 2009.

Neil and his team, are extremely experienced in handling claims for compensation where clients have suffered accidents overseas, including in France, Netherlands, USA, Croatia, Falklands, and India amongst others. Neil is a member of the Pan-European Organisation of Personal Injury Lawyers.

If you find yourself, or someone you are travelling with, the victim of an accident abroad in which you were not to blame, make sure you contact Neil, or solicitor Gayle Kinsey who specialises in this area of compensation, as soon as you get home.

Wedding Video Stops Divorce

For an application to be made for ancillary relief (a financial settlement on divorce), there has to have been a valid marriage in the first place. On that simple point a woman's application to file for divorce and claim ancillary relief was refused by the court.

The judge had watched the 'wedding video' of a ceremony carried out in South Africa and concluded that there was no valid marriage. The Court of Appeal upheld the decision.

Not all foreign wedding ceremonies are recognised as valid marriages in the UK.

If you are considering getting married abroad, check the legal position beforehand as the rights of married persons and people whom the law considers to be merely living together are very different.

No Appeal for Unsupported Claim by Cohabitee

A man's attempt to obtain a half-share of his ex-partner's property after they split up failed recently when he could not persuade the Court of Appeal that his decision to have his name removed from the deeds, taken more than 20 years earlier, should be ignored when determining the ownership of the property.

The decision of the County Court judge was that the man should receive nothing in respect of the property, given that he had 'contributed little' to its purchase. On the facts presented, the Court of Appeal ruled that his application for permission to appeal was 'hopeless' and leave to do so was therefore refused.

This is yet another case in which the courts have supported the legal form of

the arrangements made by a cohabiting couple in the absence of truly compelling evidence that some other arrangement should apply.

It is naïve to believe that 'justice will be done' in such circumstances: a living together agreement or other legal agreement regarding the division of assets in the event that a relationship does not last is an inexpensive form of insurance.

New Rights for House Buyers

The new Consumer Code for Home Builders came into force on 1 April 2010 and provides significant new protection for those who buy homes 'off plan'.

The Code requires builders of houses to keep buyers informed of the progress of the construction work. It specifically requires builders to provide 'reliable and realistic' information regarding completion of the construction, the date of legal completion, and the date for handover of the home.

Buyers must also be advised that they have the right to withdraw from the purchase if there is an unreasonable delay in completing the construction of the home and serving the notice to complete. The Code sets out a standard form of wording for use in such circumstances. The buyer may terminate the contract if the builder fails to serve notice to

complete the sale within six months for houses and twelve months for flats, where contracts are exchanged before the building is weatherproof.

If contracts are exchanged at an advanced stage of construction, the buyer has the right to terminate the contract if the builder fails to serve notice to complete the sale within two months for houses or four months for flats.

The Code can be found at <http://www.consumercode-forhomebuilders.com/>.



HMRC to Name and Shame Tax Dodgers

Taxpayers who evade more than £25,000 of tax will now be 'named and shamed' by HM Revenue and Customs (HMRC) where the evasion affects a period after 1 April 2010. It is expected to be 2011 before the first tax evaders will be publicly exposed on the HMRC website.

HMRC are hoping that the threat of reputational damage will prove to be a powerful weapon in the fight against tax-dodging.

If your tax affairs are under investigation or you have past under-declarations of tax that you wish to disclose to HMRC, we can advise you.

Canoe Fraudsters Must Repay Nearly £600,000

Following her conviction for fraud and money laundering, after faking her husband's death in 2002, Anne Darwin has agreed to pay more than £591,000 under the Proceeds of Crime Act 2002.

Mrs Darwin's husband, John, was thought to have drowned whilst canoeing near the couple's Teesside home. In reality, he had used a false passport to leave the UK and settle in

Panama. He later attempted to pass himself off to police as an amnesia victim. The scam unravelled quickly, however, when a photo taken of the couple in Panama appeared on the Internet and the story was widely reported in the press.

In similar proceedings, the Serious Organised Crime Agency has seized the assets of a housing benefit claimant who was the landlord of more than 40 properties, and nearly £1/4

million from a Kent man arrested in possession of £84,000 in cash as well as cannabis, amphetamines and a firearm.

Under UK law, the state has the right to seek to seize the assets of criminals that are the 'proceeds of crime'. The burden of proof for such seizures is the civil ('balance of probabilities'), not the criminal ('beyond a reasonable doubt') burden.

Law of Covenants Set to Change

If you are considering buying a property, the existence of a covenant or easement relating to it is an important consideration.

Nearly two thirds of freehold titles are subject to an easement (which gives someone other than the owner a right over the land) and nearly four fifths of properties have some form of restrictive covenant attaching to them.

The Law Commission has been looking into the problems caused by restrictive covenants and easements and in 2008 produced a report highlighting several ways in which the law is deficient. The upshot of this process is that new legislation has been proposed, which should see the light of day within the next year or so.

The Law Commission's proposed solution involves replacing the existing law on covenants with 'land obligations', which can be an obligation to do something or refrain from doing something on the land.

The main aspects of the proposals are:

- The obligation would have to be specifically labelled as a land obligation in the document under which it is created and would have to be created in a prescribed form. This would make the obligation sufficiently specific to render the likelihood of a dispute over its meaning or the land concerned unlikely;
- An obligation which creates a legal interest in the land would have to be registered;
- New obligations which pass from owner to owner could not normally be created where title to land is registered; and
- Damages for breach of the obligations could be by way of legal remedies (payment of a sum in damages) or equitable ones, such as an injunction.

There are, in addition, a number of more technical proposals.



Disputes over land rights are common and so measures aimed at reducing the likelihood of difficulties arising will be welcomed by all those engaged in property transactions.

The consultation paper, 'Easements, Covenants and Profits à Prendre' can be found at <http://www.lawcom.gov.uk/docs/cp186.pdf>.

Foreign Divorces – Better Protection for Spouses

The principle that British persons divorced abroad can look to the courts in England and Wales to ensure that their 'reasonable needs' are met in the divorce settlement has been firmly established following a recent case involving a divorced couple who both hold joint British and Nigerian nationality.

The couple had met in England in 1967 but spent most of their 38-year marriage living in Nigeria, where their divorce was heard. They became British Citizens in 1972. In 1975, the husband had bought a house in London, where the couple's children lived in the care of a nanny. The couple separated in 1999 and the wife went to live with the children in England. Divorce proceedings were begun in Nigeria in 2003. These were completed in 2005 and the judge awarded the ex-wife a life interest in a house in Lagos and a lump sum of £21,000.

The ex-wife applied to the High Court in London for permission to bring an application for relief under Part III of the Matrimonial and Family Proceedings Act 1984, which is aimed at addressing cases of hardship and serious injustice

that can occur if a foreign court fails, for whatever reason, to make an order regarding assets held in England or Wales. The Court awarded her 65 per cent of the proceeds of sale of the house in London – approximately £275,000 – in order to enable her to live and maintain herself in England. This decision has now been upheld by the Supreme Court. She was, however, ordered to relinquish her interest in the property in Lagos.

In many foreign countries, financial settlements for ex-spouses on divorce are less generous than in the UK, so this decision means, in practice, that there is greater protection than before for spouses divorced abroad who have substantial connections here. The amount of financial provision awarded will depend on all the circumstances of the individual case.

Where the arrangements on divorce or separation involve courts outside the UK, matters can be complex. Contact us for expert advice on all aspects of relationship breakdown.

Failure to Enforce Right Leads to its Loss

A recent case shows how important it can be to make sure that an easement, once granted, does not lapse through disuse.

It involved neighbours, one of whom had been granted an easement in 1980 permitting access to a pathway that ran along a strip of land owned by the other. The easement replaced an earlier right of way which had been expressly granted.

By 1999, the strip of land was being used for car parking and the owner had removed most of the pathway and resurfaced the area. The other neighbour did not object to the works.

Later, both properties were sold and the new owners of the land which had the benefit of the easement sought an injunction to have their access reinstated and to prevent car parking.

The argument failed because the previous owner of the property had done nothing to prevent the owner of the affected land from breaching the terms of the easement over a long period of time. As a result, the easement, although contained in the deeds to the property, was no longer enforceable.

The case was won on the argument that the neighbour who had benefited from the easement had stood by and allowed the landowner to prevent them from exercising their right of easement.

It would therefore be unfair (under a legal principle called 'estoppel') for a later owner to rely on a right which their predecessor in title had not exercised, because the landowner had been induced by that conduct to conclude that the right would not be enforced.



Where the facts support it, an easement, even one specifically granted, may be considered to have lapsed. We can advise you on any property-related issue.



Shrewsbury Office: Chapter House North, Abbey Lawn, Abbey Foregate, Shrewsbury, SY2 5DE
Tel: 01743 280280 Fax: 01743 282340 DX: 144320

Ludlow Office: 12 The Business Quarter, Eco Park Road, Ludlow, SY8 1FD
Tel: 01584 872333 Fax: 01584 876459 DX: 26883 Ludlow 1

Oswestry Office: 39 - 41 Church Street, Oswestry SY11 2SZ
Tel: 01691 652241 Fax: 01691 6670074 DX: 26603 Oswestry

Oswestry Residential Property Office: 35 Church Street, Oswestry SY11 2SZ
Tel: 01691 656777 Fax: 01691 670471 DX: 26603

Telford Office: Brodie House, Central Square, Telford Town Centre, TF3 4DR
Tel: 01952 291222 Fax: 01952 292585 DX: 28071

Wellington Office: 49 Church Street, Wellington, Telford, TF1 1DA
Tel: 01952 244721 Fax: 01952 222418 DX: 23101

Email: info@lblaw.co.uk www.lblaw.co.uk

You can now follow us on Twitter: www.twitter.com/lanyonbowdler. Keep up to date and have your say by visiting our blog at: <http://blog.lblaw.co.uk>

Lanyon Bowdler is a trading name of Lanyon Bowdler LLP which is a limited liability partnership incorporated in England and Wales, registered number OC351948 and VAT No: 158 9631 23. It is regulated in the UK by the Solicitors Regulation Authority. Registered office: 49 Church Street, Wellington, Telford TF1 1DA. The word 'partner' refers to a member of the LLP.

The information contained in this newsletter is intended for general guidance only. It provides useful information in a concise form and is not a substitute for obtaining legal advice. If you would like advice specific to your circumstances, please contact us.