



Winter Newsletter / How The Law Affects You

Welcome to our first 2021 newsletter – *How the Law affects You (HLAY)*. Our TBC lawyers and collaboration partners offer a plethora of expertise and advice. Please read below about doing business in the UK and India, about Commercial contracts, Insurance, Commonhold, and more:

If there is a dispute how will your commercial contract be interpreted?

I had hoped to say that contrary to my expectations Brexit had happened and we would all work to get the best out of it. I had been advising clients who export or intended to export to the EU to establish a company in the EU to deal with import and export and dropped that advice when the UK/EU Trade and Cooperation Agreement came into force of 30 December 2020. However, it now seems that the advice is that if you are an exporter to the EU, you are best advised to incorporate a company within the EU. We have already done most of the work believing that it would be necessary in view of what seemed the likely No Deal Brexit outcome. But now even though there is a trade agreement with the EU, Brexit has left exporters with VAT issues, charges on moving goods and more bureaucracy. The Cabinet Office has issued guidance available at www.gov.uk/transition to assist British exporters to the EU. I still go with the advice that if you are an exporter to the EU that you need to set up a company within the EU to avoid these additional costs that have become self-evident.

If there is a dispute how will your commercial contract be interpreted?

In Wood v Capita the Supreme Court decided that both commercial common-sense and the natural meaning of the words, even if they are contradictory, matter when construing a contract where the meaning is in dispute and that has to be considered in the wider factual matrix of the contract and the circumstances. While the precise words of the contract remain important, they do not override the common-sense commercial consideration and that applies even in the context of complex commercial contracts where a drafting ambiguity can threaten to undermine the wider commercial structure.

It is imperative that you are advised if you are going to enter into a contract with anyone, and that also applies of course to your own trading conditions. What a court will do is to check each suggested interpretation against the provisions of the contract and its commercial consequences. Don't let that happen to you. Let us draft you a contract that is clear and tailored to your needs that will not leave you in a dispute in the courts which can cost you many thousands of pounds. Get it right first time.



Insurance

Rob Thacker of Sona Insurance is a TBC Collaboration Partner whose approach is to be thorough in the sense that he seeks to find out everything related to the cover that you want, then trawls the market place for the best deal and sits down to have a discussion to decide with you what is most appropriate to your requirements.

You can read Rob's blog on general insurance matters on our website [here](#).

Rob may well be able to help you formulate your claim under your business interruption policy.

Can you claim from your insurer for Business Interruption due to the pandemic?

If your policy covers business interruption, you can claim for damage caused by the pandemic. This is a recent decision of the Supreme Court. The Financial Conduct Authority brought a test case, *The Financial Conduct Authority v Arch and Others* and won. The FCA press release states that the judgment in a case, “decisively removes many of the road blocks to claims by policy holders and that it will be working with insurers to ensure that they now move quickly to pay claims that the judgment says should be paid, making interim payments wherever possible”.

This applies to all businesses, not only those authorised and regulated by the FCA.

Insurers will be carrying out their own reviews of policies and should be in touch with you but you have to make a claim first so if you have a question either before or after your insurer sets out your position, speak to us.

Commonhold

TBC partner Pankaj Patel has over 30 years' experience in the commercial property law sector. Read his blog on Commonhold, a possible replacement for leasehold, [here](#).

The importance of public relations

Public Relations is a powerful tool for an SME to raise its profile and build relationships. It can help prove the viability of a product or service, build a business model, and attract investment.

Read more about the importance of public relations to your business [in this blog](#) by Sabine Raabe from our Collaboration Partner Insight PR & Media.

India

There has been a recent agreement between the UK and India about mutual trade. A particularly interesting avenue might be for UK engineers and high-tech companies who are looking for fresh markets.

Our Collaboration Partner Harinder Lamba of L H Blenheim specialises in taking companies to India and making sure that they are linked to compatible and reliable organisations. Read more in his blog [here](#).

Companies and Directors stressed by solvency issues

Nimesh Patel is a Licensed Insolvency Practitioner, whose company RE 10 Restructuring and Advisory has major experience in dealing with these issues. His blog about the Finance Act 2020 is [here](#). Don't hesitate to contact us if your business is under financial stress. Insolvency can often be avoided by taking early action to deal with the stresses and professional help is only a phone call away.

Tips for SMEs - why GDPR matters

SMEs are equally subject to privacy laws as their larger counterparts, and just as vulnerable to legal and regulatory risks should they get it wrong. Michael Brunker discusses the 'basics' of GDPR from a SME perspective in this [blog article](#).

Trade Marks and Designs in the UK

The article about Trade Marks in a previous newsletter set out what would happen if there was a No Deal Brexit, but with the UK-EU Trade and Cooperation Agreement the steps you will need to take are set out [in this blog](#) by Rosemary Cardas from Keltie LLP with whom we work.

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The Brooke Consultancy
145 City Road
London, EC1V 1AZ

[Complete our online form](#)



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