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Welcome to the Ortolan Legal Newsletter

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The virtual in-house solution... Ortolan Legal Limited

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Ortolan Legal Limited — all about us...

Ortolan Legal Limited is a radically different law firm which aims to provide pragmatic and commercially focused legal advice. Employing only experienced remotely based lawyers, overheads are kept to a minimum and pricing can be on a fixed, retainer, capped or hourly basis. We don't charge administrative costs, so clients can budget effectively. Dealing with ad hoc work or retainer work, we can assist where there is no in-house legal function and also provide holiday cover or supplement existing legal teams. Our work covers non-contentious company commercial and employment law, contracts, tendering, purchase, supply, distribution, franchising agreements and pre-litigation reviews. We also provide general 'Legal Health Checks' and a 'Legal Hotline' offering legal support for a set number of hours each month.

For more information please call Claudia Gerrard on 0844 561 1638.

100 day money back guarantee: advertisement was misleading

The Advertising Standards Authority (ASA) has ruled that an advertisement for ASDA clothes was misleading. The advert stated that ASDA would refund the purchase cost of George clothes, ASDA's own brand, if the buyer returned the goods within 100 days from the date of purchase.

As the ASA held, this suggested that a purchaser had no rights after the 100 days had elapsed. This was contrary to the Sale of Goods legislation which potentially allows a claim for breach of contract, such as faulty goods, at any time within a six year period. ASA also found ASDA guilty of "exaggeration".

The ruling highlights that a supplier or seller of goods cannot exclude liability for faulty goods in a consumer contract and must avoid any suggestion that liability is being excluded. Therefore, it is always important to state that any rights given to a consumer are in addition to, and not instead of, the consumer's statutory rights.

Default retirement age: consultation commences

On 29 July 2010, a 3 month consultation period began, the purpose of which is to consider whether the default retirement age of 65 (DRA) should be scrapped. Presently, employers can retire staff compulsorily at 65 without financial or discriminatory repercussions. Under the proposals, however, compulsory retirement at 65 will be unlawful, from 1 October 2011, unless there is objective justification for the retirement. The transitional period for phasing out the existing DRA is between April 2011 and October 2011. Government guidance on DRA is expected in due course, but there are significant implications for employers, both financially and in terms of age discrimination claims.

Number of employment tribunal claims rise...

The Annual Statistics Report has been published by the Tribunals Service and concludes that there was an increase of 56% in the number of claims lodged with employment tribunals in 2009 - 2010, compared to the period 2008 - 2009.

The total number of lodged claims in 2009 – 2010 was 236,100, with an increase of some 17% in redundancy, breach of contract and unfair dismissal claims. Discrimination claims, other than on the grounds of sex, also rose sharply, most notably age discrimination which saw a 37% increase on the 2008 – 2009 figures.

Although challenged by some critics, the increase in claims may have much to do with recessionary factors and, as such, the number of lodged claims is unlikely to decrease in the period 2010 - 2011.

And finally.. Key cases in British law: Jackson v Horizon Holidays

Parts of this 1975 case have all but been superseded by legislation but, at the time, made history for the new approach to damages for breach of contract. Mr Jackson booked a family holiday to Sri Lanka but was very unhappy with the holiday. Upon his return, he sued the tour operator, Horizon Holidays, and was awarded damages of some £1,100, which was slightly less than the cost of the holiday.

The case was appealed on the grounds that Mr Jackson had entered into the contract, not his family. On that basis, damages should only relate to his distress and inconvenience and not the family's. The Court of Appeal decided against this. The Court held that damages could be awarded for upset, disappointment, frustration, inconvenience and mental distress, tortious heads of loss. Privity of contract did not apply and Mr Johnson could sue for damages or loss suffered not only by himself but also by others who were affected by the same breach of contract.

The Contract (Rights of Third Parties) Act has now superseded this issue and specifically allows a person to claim under a contract, even when they aren't party to it. There are many, however, who remain of the opinion that the case was wrongly decided and should be regarded solely on the basis of its individual facts.

FEEDBACK FORUM

Your ideas are greatly appreciated...

We will be holding Breakfast Seminars throughout the year discussing a range of topical subjects. If you would like to attend a Breakfast Seminar or have an idea for future topics to be discussed or would like to simply talk to our team, please contact Claudia Gerrard by [email](mailto:cgerrard@ortolangroup.com) or on 0844 561 1638.

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