

COLLASTODAY

FEB | 2010

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IN THE COMMUNITY	MOOTING COMPETITION, RUGBY
NEWS	IOD DINNER, COLLAS DAY UK PROPERTY SERVICE
EVENTS	SPRING SEMINAR SERIES - PROPERTY AND CONSTRUCTION
TALKING POINTS	GUERNSEY PRISON INVESTIGATION, CORPORATE GOVERNANCE CODE, WHOSE ASSETS ARE THEY ANYWAY?, A TAXING ISSUE - WHO PAYS?

solutions in law



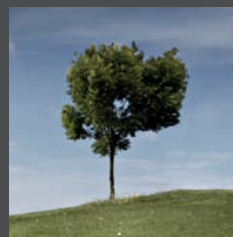
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A team approach is central to the delivery of top quality service. My partners and I are proud that Collas Day's team is forward looking, experienced and galvanised by an appetite to add value for our clients.

The firm has seen many positive developments in recent months, and we are delighted to have opened 2010 welcoming our long standing colleague, Gareth Bell, to the partnership table and Marcus Hinkley to the firm as Head of Fiduciary. In our Dispute Resolution Department Michael Adkins is promoted. This news is good for our clients, good for Guernsey and good for Collas Day.



Please join us in March at our seminar series on property and construction issues. The talks will be of interest to investors, tenants and private individuals.

I hope that you find this issue of Collas to Day stimulating. Any questions, please do call me or any of my colleagues.

A handwritten signature in black ink that reads "Chris Bound". The signature is written in a cursive, slightly slanted style.

Chris Bound
Senior Partner

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Collas Day promotions



▲ **Gareth Bell**, advocate within the Dispute Resolution department, has been appointed as a Partner. Gareth joined the firm in 2005 having practised in the City of London for six years. He has acted on some of the largest and most significant pieces of litigation to come before the Guernsey courts in recent years. He specialises in commercial disputes, trusts, insurance and anti-money laundering matters.

Gareth said, "I am delighted to be joining the partnership. The culture and ambition of the firm is something I have always been proud to be a part of. It's going to be a busy and exciting year for Collas Day and I'm looking forward to being part of the senior team."



▲ **Michael Adkins**, also an experienced litigator, has been promoted to Senior Associate. Michael has been with Collas Day since the start of 2009 when he moved from the Australian Securities and Investments Commission (ASIC), Australia's corporate and financial services regulator. As well as regulatory and financial services work, his practice covers corporate insolvency and restructuring matters.

New Head of Fiduciary

We welcome **Marcus Hinkley** as Head of Fiduciary.

This new post will see Marcus working closely with the Commercial and Dispute Resolution departments to consolidate and coordinate all the fiduciary offerings of the firm.

Marcus joins us from Maples and Calder in Cayman where he specialised in trusts and related matters. Prior to that, also in Cayman, Marcus held the appointment as in-house legal counsel for Citco Trustees being responsible for a large portfolio of private and commercial trusts.

Marcus said "Having spent the last ten years in Cayman and the BVI, I'm well acquainted with the business of an international finance centre and look forward to sharing my experience with Guernsey clients, to developing Collas Day's fiduciary practice and to the challenges this role will bring."



Marcus Hinkley ▲

Double Act

Collas Day has two new Solicitors.

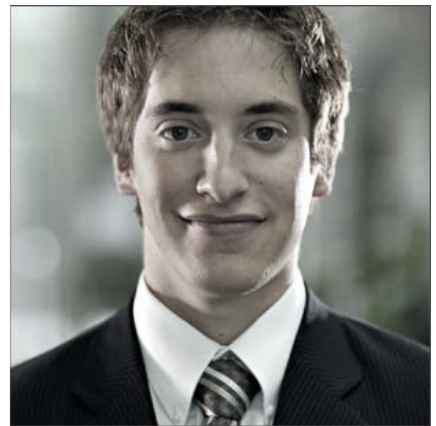
Aimee Curzon and Brandon Doffing have both been called as Solicitors following the completion of training contracts with the firm.

Aimee and Brandon's professional development has matched one another step for step for years having studied the same Law Degree at Southampton University before moving to the College of Law, Guildford to take the Legal Practice Certificate, always remaining in the same class and year group. Coincidence meant they were both hired within a week of each other at Collas Day.

Their training contracts took them both to London to complete seats in UK property firms and now back in Guernsey, Aimee's practice will focus on property while Brandon will specialise in corporate and banking.



Aimee Curzon ▲



Brandon Doffing ▲

Mooting Competition

The Collas Day annual Moot culminated in an exciting final round at the Grammar School Sixth Form Centre in December. Presided over by the firms' partners acting as judges, the students argued their way through a complex misrepresentation case with the hope of winning the coveted trophy.

The programme, now in its second year involves pairs of students tackling real life case notes and applying the material to a mock court situation. Marks are awarded for court etiquette, clarity, body language, legal argument and time-keeping.

Over 50 local students took part in four rounds of mooting. On the night of the final, the scores of the top teams were neck and neck and the winner's spot was declared a draw. The accolade of highest scoring teams was shared between Grammar School students Natalie de la Cour and Isobel Chamberlain and Henry Wallis and Sam Frank from Elizabeth College.

The Moot is set to return in 2010. For further information on the programme, please visit the website www.collasdaymoot.com

or contact:

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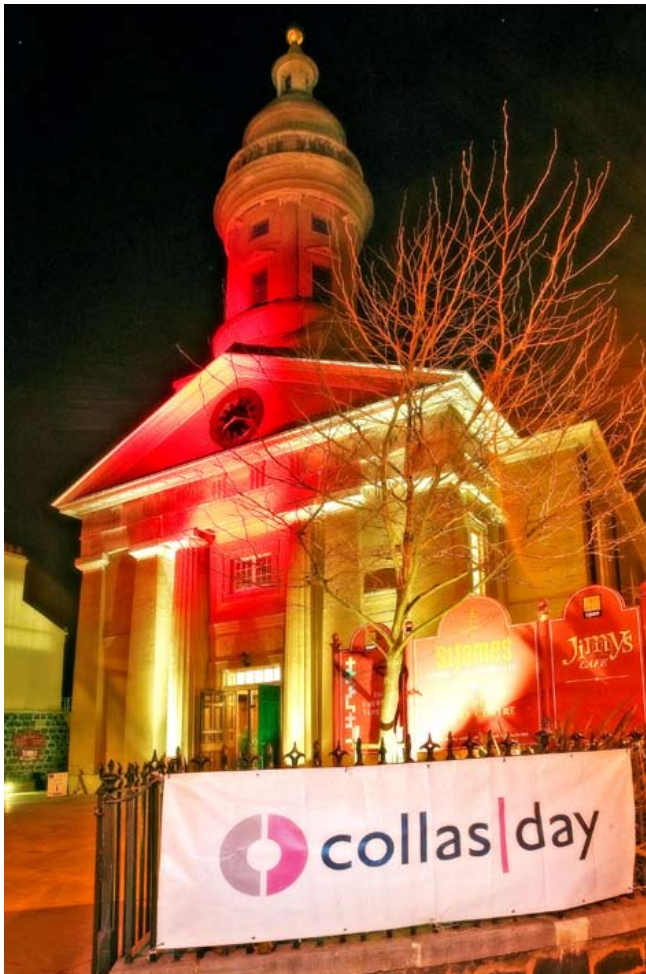
Rugby

Collas Day's annual Rugby event did not disappoint with over 100 of the firm's staff and guests taking to the Garenne stand to watch Guernsey's 1st team take on Guildford.

The delicious buffet lunch and bar ensured that everyone was fully geared up to support the Guernsey side. Playing at home to a full stand of supporters appeared to spur the side on and they achieved a comfortable 36-21 win over the visitors.

A great result and a fitting end to a superb day.





IOD Annual Dinner

Collas Day is once again the headline sponsor for the Institute of Directors' Annual Dinner to be held on 25th February at St James Concert Hall in St Peter Port.

The event was an immediate sell-out and over 200 guests will fill the concert hall to celebrate the success of local IOD students. The guest speaker for the evening is the founder and chairman of private equity firm Terra Firma, Guy Hands.

We're looking forward to another spectacular event!

Collas Day UK Property Service

Collas Day is now able to act on behalf of clients in connection with UK property transactions.

The benefits for Guernsey individuals and resident Trusts and Companies are considerable. There is no longer the need to instruct separate legal advisors for your UK properties. Nor will you have to seek to recover VAT charged by our UK counterparts.

Please make an appointment to come in and see us to discuss any proposals you may have. We offer services for all UK freehold, leasehold, commercial and residential property. We have full access to the Land Registry internet portal to obtain and search legal title in England and Wales. We are also able to obtain full conveyancing searches from local authorities, drainage searches and environmental searches, to name but a few, electronically and online.

This service will assist all Guernsey residents that either already own, or are looking to own UK properties by providing a professional, efficient service, with face to face contact on their doorstep.

For further information, please contact:

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Spring Seminar Series - Property and Construction

Following the success of the 2009 seminar series, we are delighted to announce the first in this year's series of events. The seminar series, running throughout March at The Venue, will cover a range of subjects focusing on the construction and property sectors. The seminars will be hosted by a panel made up of Collas Day lawyers, together with local and UK experts.

FULL DETAILS CAN BE FOUND ON OUR WEBSITE, BUT WE'VE OUTLINED THE TOPICS BELOW:

2 MARCH 2010

Commercial Landlord and Tenant

In any type of relationship, there are times when there is a fallout. Landlords and tenants of commercial premises are no different. This seminar looks at the main areas for discourse - dilapidations and repair; rent review and assignments/underlettings focussing on practical advice from both the angle of the landlord and the tenant, so that whatever your position, you are forewarned and best prepared to deal with the issues likely to present to you. Practical advice and appropriate early action can save in the long run, not only in relation to legal costs but also stress and time.

9 MARCH 2010

Construction Projects: Avoiding the Pitfalls

Because of the numbers of parties involved, the specialist nature of the services provided by those parties, the various risks in play, and the consequential complexity of the contractual web, a construction project is, by its very essence, a dispute waiting to happen. This seminar will cover analysis of common issues/disputes arising out of construction projects; and how those disputes can be avoided before they arise, or resolved when they do arise.

16 MARCH 2010

Professional Negligence

In any significant building/construction project there will usually be a number of professionals involved at different stages and whose duties and responsibilities often overlap. This seminar will cover the basic duties owed by a construction professional and the standard of care required; the critical importance of the retainer (the contractual arrangements); the important role of causation in construction negligence claims; developments in relation to concurrent liability and contributory negligence; and an update on recent developments within the field of construction negligence.

23 MARCH 2010

Planning Appeals Regime

The seminar will cover a history/summary of planning appeals under the old regime followed by the position now under the new planning laws and comparison with the old. It will cover provisions of the new law/legal framework, the shift in burden, applications process, the tribunal and its likely attitudes and composition and the potential costs and timeframes. The seminar will discuss whether the chances of success under the new regime are better or worse.

This free seminar series is open to all, and if you'd like to book, please email jane.darvell@collasday.com



Guernsey Prison Investigation

Personal Injury and Clinical Negligence lawyer, David Jeffery, and Advocate Gareth Bell were instructed to advise the Medical Defence Union ("MDU") and the two local General Practitioner members who were involved in the treatment of an inmate who died in custody.

Interestingly, the case was a first of its type in Guernsey and required an appreciation and understanding of the European Convention on Human Rights, 'the right to life', and English common law principles.

How did the case unfold?

The UK Prisons and Probation Ombudsman (PPO) conducted an independent investigation which involved interviewing the G.P.'s in the presence of a clinical reviewer. The interviews were a key part of our information gathering as it was vital we had an immediate understanding of the investigation process and how the investigation might impact on our clients. This was, after all, the first occasion where the PPO had investigated a death in Guernsey prison.

Following the interview process, we made various written representations to the PPO to assist with the preparation of the final PPO report. One crucial representation came in the form of an independent expert report that we commissioned from a UK based G.P expert who had many years experience of working in the prison setting. After carefully considering all of the available evidence, it was his view that the care provided by our clients to the inmate was appropriate and reasonable.

But the build-up to the inquest hearing was not without problems...

It quickly became apparent that our local laws that govern the admissibility of hearsay evidence had the potential effect of ruling out the vast majority of evidence collated by the PPO as inadmissible. This was because the standard PPO investigation procedure is geared towards investigating deaths in UK prisons, which are subject to UK laws.

However, Counsel for all parties agreed that the most efficient manner in which to move forward would be to adopt a more relaxed approach to the admissibility of evidence. As with all inquests, its function is inquisitorial, not adversarial. The acting Coroner must not frame his verdict in a fashion that suggests any civil or criminal wrongdoing.

Importantly, the Coroner recognised within his narrative verdict that the propensity of medical evidence in the case confirmed that the two examinations conducted by our clients fell within reasonable and accepted primary care practice. Additionally, the investigation process provided an interesting insight into how our local prison service operates and how it compares with UK prisons.

For more information on this case, or any other Personal Injury/Clinical Negligence matter, please contact:

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A Taxing Issue - Who Pays?

The Law of Unintended Consequences also known as the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007, which came into force on 1 January 2008, has thrown up some issues. It abolished the concept of taxation based on rateable value and introduced a new method of taxation, assessable per square metre of property. But is the landlord or the tenant liable to pay for this new tax? The legislation says the landlord is liable.

That is half the story because older lease agreements often contain an obligation on the tenant to pay and discharge all rates and taxes in connection with the leased property, but specifically excusing the tenant paying back to the landlord "tax on rateable value". Can that now be read as the new tax on real property? If not, the position agreed in the lease has been reversed.

It cannot have been the intention of the States when passing the legislation that previously struck deals between landlords and tenants be reversed. Much will depend on the wording of the lease. A quick review of the document might be worth its weight in gold to either party.

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A New Corporate Governance Code for Guernsey: Do we need one?

The Guernsey Financial Services Commission has released yet more bed time reading in the form of a consultation paper on Corporate Governance. With effect from 1 January 2011 all companies in the regulated finance sector in Guernsey will be expected to comply with the Code which sets out the revised template for sound corporate governance.

The Code addresses governance under eight broad topics including Directors, Business Conduct and Ethics, Risk Management, Shareholder and Stakeholder Relations and more.

The consultation paper contains both the Outcomes and Best Practice Provisions. The Guidance section will be the subject of

a second consultation later in the year and will apparently reflect the specific needs of different types of financial services companies (such as investment companies or banking entities).

It seems that companies will be required to submit a "comply or explain" report to the GFSC stating their compliance with all levels of the Code in the preceding calendar year.

Questions have been asked as to whether Guernsey in fact needs its own code given the amount of effort put into producing the numerous codes of corporate governance in the UK and their eventual consignment to governance history. There is also concern that yet another layer of cost is added with

no commensurate benefit and as a result the code may further erode the competitive edge of Guernsey's finance industry. On the other hand, it is now recognised that the world is a changing place and increased financial regulation is inevitable. One might argue that, to be effective, regulation needs to be coupled with appropriate measures that influence and challenge conduct in the boardroom. Watch this space.

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Whose Assets are they anyway?

The debate is raging on Guernsey, as the legal community and general public have been split by proposed reforms which would effectively abolish Guernsey's 'forced heirship' laws of inheritance and replace them with testamentary freedom. The States of Guernsey recently voted in favour of these proposals with a significant majority.

To traditionalists the reforms are seen as an unnecessary dilution of Guernsey's laws of succession, which are firmly rooted in Norman customary law, and a further unwanted 'anglicisation' of the judicial system in general. Some even go so far as

to see them as an attack on the Island's independence, society and deeply held traditions.

However, to others the reforms are long overdue and the current system of forced heirship is viewed as outdated, dictatorial and unrepresentative of the modern family and society. At Collas Day we are client-driven and many of our own clients have expressed frustration (and even bemusement) at not being allowed to distribute the assets they have worked so hard for as they would wish.

While the debate continues to rage, for the vast majority these proposals will be welcomed. However, for those concerned that they have recently updated their Wills after the introduction of the 2006 law, it has been proposed that the effect of any Wills drawn up prior to the introduction of any legislation introducing testamentary freedom will be preserved.

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