



City of Sydney Law Society



5 September 2005

Seminars

Obtain your CLE points NOW in areas relevant to your practice, keep up to date on Legislation, problem areas and possible solutions, Court of Appeal trends from senior and pre-eminent practitioners.

The CSLS offers CLE as a service to its members at very modest cost recovery prices.
Refreshments provided and opportunities to meet like minded professionals.

Seminars cost \$44 for CSLS members, \$55 for Law Society of NSW members, \$66 for non-members (unless specified otherwise).

[Register here](#) to attend any seminar or event, a tax invoice will be sent to you.

Or contact Marianne on ph 9453 3511, fax 9453 3522, email cls@optusnet.com.au.

Venue for all seminars: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt St. Sydney (b/w Park & Bathurst)

SEPTEMBER '05

How to handle a Tax Audit 21 action steps for Solicitors and their Clients

*****Places are still available - can you afford to miss this seminar?*****

When: Wed 7 September, 5:30pm to 7:00 pm

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney

Speaker: MICHAEL INGLIS, Tax Barrister, Blackstone Chambers

The traditional tax audit is dead. The ATO Compliance Program is now underpinned by research and facts (such as property records). Find out about the Compliance Program for the ATO 2004/2005 & 2005/2006 and legal **issues that arise when the ATO and Federal Police arrive on a client's door step:**

- Criminal offenses/Taxation Offences under eg. the Tax Administration Act
- Privilege against self incrimination and compulsory examinations
- Legal Professional Privilege and waiver
- Search warrants, power to seize and unannounced attendance

.....and much more.....

Chair: Nea Goodman, CSLS Treasurer

Small Firms Forum

When: Mon 12 September, 5:30pm to 7:00 pm

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney

Cost: Members \$11, Non-members \$22. Limited places, registration essential.

Join us for the second meeting of the Small Firms Forum. Topics discussed will include Marketing of Small Firms.

Chair: Anthony Restuccia, CSLS Vice-President

Building Construction Industry Security of Payments Act, 1999

When: Tue 13 September, 5:30pm to 7:00 pm

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney

Speaker: **KERRIE LEOTTA**, Barrister, Member Building Division CTTT

- Impact on payment provisions of construction contracts
- Statutory warranties
- Mandatory provisions
- Compulsory insurance under the Home Building Act 1987
- The role of experts in building cases
- Review of Skanska Constructions, latest cases.

AND

- Enforcing the right to receive progress payments by making of claims
- Responding to payment claims by the service of a payment schedule
- Adjudication of disputes in relation to payment claims
- Enforcing payment of adjudicated amounts
- Challenging adjudications.

Chair: Victor Berger, CSLS President

Merits or otherwise of Incorporated Legal Practice

When: Wed 14 September, 5:30pm to 7:00 pm

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney

Speaker: **CHRIS SHREWSBURY**, Regulatory Systems Advisor, Law Society of NSW

Chair: Anthony Restuccia, CSLS Vice-President

Rewriting the Motor Accident Compensation Act

When: Tue 20 September, 5:30pm to 7:00 pm

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney

Speakers:

ANDREW STONE, Barrister, Sir James Martin Chambers

RICHARD BUCKLEY, Motor Accident Assessor

A number of *radical changes* are proposed for motor accident legislation. These issues are canvassed and include:

- The revised lodgement regime for CARS and MAS
- Full disclosure of all materials
- No fault for kids
- No fault long term care

Chair: Nea Goodman, CSLS Treasurer

State Tax Update

When: Tue 27 September, 5:30pm to 7:00 pm

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney

Speaker: **DARREN NICHOLLS**, Technical Education Unit, Office of State Revenue

Don't miss this briefing on the State Tax amendments, including:

- Abolition of vendor duty
- Duties concession - refinancing of mortgages
- Other recent Duties amendments
- Land Tax 2006
- Land tax - principal place of residence exemption

Chair: Nea Goodman, CSLS Treasurer

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Newsletter

President: Victor Berger yberger@legalmdbb.com.au

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Presidents Message

The CSLS series of CLE on matters fundamental to practice at minimal cost to members has been well received. Members wishing CLE on a matter fundamental to legal practice which has not yet been arranged, or which they suggest should be updated and re-run, should contact the President by email (see above). CSLS considers providing CLE on matters fundamental to practice as a benefit of membership.

I take this opportunity to thank Fran Moffit, Justice Joseph Campbell and Greg Burton for presenting CLE for the Society since the last newsletter, and look forward to their future collaboration with CSLS on topical matters.

The excellent inaugural Small Firms Forum held on 8th August, 2005, was well attended. A number of issues were discussed including "Are the Law Cover risk seminars value for money?" The trend away from board general small practices to narrower, more confined practices, the pressure of heavy insurance, the marketing of small firms. Marketing will be discussed at the next meeting.

The Small Firms Forum meeting decided that the forum should continue on a regular basis - the second Tuesday of every month. The next meeting will be held on 12

September, see details in the seminar section above.

I also take this opportunity of publicly thanking the Treasurer, Nea Goodman, and the Vice-President, Rusty (Anthony) Restuccia for their tireless efforts and substantial energies in initiating and chairing CLE.

It is that time of the year again - **2005-2006 memberships are now due**. A tax invoice has been posted to all members. If you require a duplicate copy, please contact the Secretariat on csls@optusnet.com.au.

Finally, I am pleased to announce that our annual dinner is now being organised - watch this space for details for a great night out!

Victor Berger
President

E-dealing in NZ

In the last edition, comment was made as to the proposal for Electronic Dealings with the Land Titles Office in NSW. It has come to my attention that Electronic Registration was introduced in 2002 by Land Information New Zealand in the form of *Landonline*. Electronic registration revolutionised property law practice in New Zealand - it became possible to lodge discharges, transfers and mortgages electronically and update the Register instantaneously.

In April 2005, the New Zealand Land Society and Land Information New Zealand produced "e-dealing Workflow Guidance for Solicitors" and "e-dealing Workflow Guidance - sample checklists" for vendors, purchasers, mortgages and discharge - and "e-dealing high level flow diagrams" for multi and single party e-dealing processes which visually depict both the solicitor's and para legal areas of responsibility - thus covering all facets of transactions. The document highlights the changes that e-dealing users may need to make in their practices to maximise the benefits of using e-dealings. A copy can be downloaded at www.lawyers.org.nz/memedeaalingguidance.asp

s.198D Legal Profession Act - does it extend to costs in the Court Appeal?

s.198D provides that maximum costs are fixed for claims for personal injury damages up to \$100,000, at 20% of the amount recovered, or \$10,000 whichever is the greater. A question has arisen as to whether this cap applies to the costs of an appeal.

Newcastle City Council v McShane (No.2) [2005] NSWCA 250. In this case, the matter was listed for directions before the President of the Court of Appeal on Friday 5th August, and submissions sought from the Attorney General, The Law Society, The Bar Association and the Plaintiff Lawyers Association. Judgement is awaited with interest!

Cost Liens: Solicitors Rules: Whether solicitor's undertaking satisfactorily secured payment of former solicitor's costs and disbursements: see Bechara t/as Bechara v Atie [2005] NSWCA 268 (26.7.05: Ipp, Tobias, McColl)

A solicitor whose retainer has been terminated by a client may retain the client's property pursuant to a possessory lien until all costs claimed to be owed by the client for the solicitor's services have been paid or payment satisfactorily secured. A solicitor's possessory lien cannot be satisfied by a solicitor's undertaking, without more to pay what was due upon agreement or assessment. The Judgment contains interesting discussion of the legislative framework, the Solicitors Rules and the difference between a "possessory lien" and a "fruits of action" lien.

CONTRACTS FOR SALE OF LAND
are available from CSLS at discounted prices.
Contact Kristan at L Rundle & Co on 9299 1828.
Email kmorris@lrundle.com.au

Support your Regional Law Society

Law Reform - Uniform Succession Law - Issues Paper No. 26 (2005)

Uniform Succession Law is a joint project conducted by the National Committee for Uniform Succession Laws with all States and Territories under the direction of the Queensland Law Reform Commission. The terms of reference cover: the law of wills, family provision, administration of estates of deceased persons and intestacy. The Issues Paper covers General Principles of Distribution, Rights of Spouse or Partner to the Shared Home, Issue and Parents of the Intestate, Distribution when no relatives are entitled, accounting for benefits received upon/before death, indigenous people etc. The Issues Paper can be downloaded at www.lawlink.nsw.gov.au/lrc .

Unauthorised Photographs on the Internet & Ancillary Privacy Issues

A discussion paper (60 pages) issued by the Standing Committee of Attorney Generals in August 2005 calls for submissions by 14 October 2005 (to legalpolicysubmissions@justice.vic.gov.au). The discussion paper raises interesting questions:

- *should the taking of unauthorised images of children be restricted, giving consideration to the competing interests of privacy versus freedom to take photographs in public places*
- *should the use or publication of unauthorised photographs/images taken in public places be regulated*
- *should consent be required for photographs used for particular purposes*
- *in the event that an offence to deal with unauthorised photographs on the internet is considered necessary, which features should it contain*
- *should there be some enforceable civil right in relation to the use of your image? If so, on what basis.*

By way of background: websites have been found containing photos of teenage Melbourne school boys involved in a variety of sporting activities, eg rowing and playing football; another website contained hundreds of images of children apparently taken covertly at South Bank Parklands and other recreation sites in Queensland. The images were not sexually explicit but could be perceived as containing characteristics of sexual gratification.

E-communication and the Legal Profession in Europe

The Council of the Bars and Law Societies of Europe (CCBE) is hosting a conference in Madrid on 15 December 2005 covering: Current EU developments in e-communication in the legal profession in Europe; communication between lawyers and the Courts - the Austrian, Spanish and French experience; European e-projects; European e-government and the impact on the legal profession; an internet service offering case law across European jurisdictions: the Caselex project; issues re digital signature and authentication, data protection and confidentiality. Contact for registration and further information: vanhaelen@ccbe.org

Trivia

The New Zealand Lawyers Society was established in the UK in March 1993 to promote

the interests of NZ law and lawyers in England. Currently it has about 300-400 members. It holds four functions a year. The Society tries to assist NZ lawyers to find employment and fields enquiries by English people about legal problems they have in NZ and vice versa. More information <http://nzls.co.uk> .

Thinking about Admission in the UK?

The Law Society of England & Wales determines eligibility to be admitted as a solicitor in England on the basis of qualifications and experience. If the UK LS considers a person eligible and issues a certificate of eligibility, then it is possible to sit the Professional Conduct and Accounts Examination head of the Qualified Lawyers Transfer Test (QLTT). Interestingly the QLTT covers four subjects:

- Property
- Litigation (Civil or Criminal)
- Professional Conduct and Accounts (including the financial services and money laundering rules - process of money laundering, primary offences created by legislation, key requirements imposed upon solicitors by the money laundering regulations, recognition of circumstances in which solicitors might be assisting in money laundering)
- Principles of Common Law

Syllabus, reading list, regulations can be downloaded at www.college-of-law.co.uk/21819.html . Currently a registration fee of UK£240 allows participants to sit the paper. However, there are also Tuition and Revision fees ranging from UK£295-495 depending on whether the course is Distance Learning, Evening or Weekend. One of the UK providers is the College of Law, Braboeuf Manor, St Catherine's, Guildford, England. Email info@lawcol.co.uk . These tests can also be undertaken in Sydney.

For further information, see "The Qualified Lawyers Transfer Regulations 1990" on the UK Law Society homepage. Interestingly after a time, it would then be possible under the "Establishment of Lawyers Directive 98/5/EC" to become a Registered European Lawyer. See www.lawsociety.org.uk at "Becoming a Solicitor - Qualifying from outside England and Wales."

CSLS Meetings

Meetings are generally held on the third Tuesday of the month. Members are invited to attend and raise issues for discussion. Contact the secretariat for meeting locations.

The CSLS gratefully acknowledges the support of the Commonwealth Bank