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for life



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Welcome to the first edition of Legal Insight for 2015.

Putting my “selfie” on Facebook was a mistake!

If you took the image, then you own the copyright. It follows then if others use your photo then you can demand that they cease unauthorised use of your images. Fortunately most social media sites take a dim view of copyright infringement – which is usually relatively easy to prove. These sites will take down photos that others are using if you request they do so.

But if you did not take the image, then you will have to demand the owner of the photo to take down the photo. If that fails, then you will need to rely on arguments such as breach of your confidentiality, or breach of privacy or defamation. These actions are not simple and will most likely be costly. Even then you may not succeed.

Furthermore, it might be more than just the image that is online. In some forms of sharing there is information embedded in the image known as EXIF. This shows time, date and in some case the GPS co-ordinates of where the image was taken. You may have been identified!

The simplest solutions to the unwanted uploaded “selfie” are:

- Don't do it!
- Only take harmless and vanilla selfies.
- Don't let others take selfies of you. (Do you know what the person behind you is doing at the same time they take a photo? Do you know who will get to see it?) Once shared it is out of your control.
- Even the ABC has warned tourists not to take ‘selfies’ with a crocodile in the background – I wonder why?

Did you know...

If you work in the city, our Melbourne office is ideally positioned to meet your legal needs. For a convenient lunch time appointment or consultation, give us a call.

If you would like to receive an electronic version of Legal Insight, please:

- send an email to office@hutchinsonlegal.com.au
- call Tristan Tottenham of our office on **9870 9870**
- write to us at PO Box 450, Ringwood 3134

Words to the Wise

“Forgiveness says you are given another chance to make a new beginning.”

Desmond Tutu

Can my Enduring Financial Attorney sell my property?

This is a question which takes centre stage in many different ways, particularly in these times of increasing dementia and increasing costs of residential care.

Consider this scenario:

1. Joan has lived in her home for all of her married life, is widowed, and has recently been diagnosed with dementia. She has been assessed as being unable to live at home and as needing full time residential care.
2. She appointed her niece Heather as her Enduring Financial Attorney and Enduring Guardian at a time when she had full legal capacity. She has not seen her son and daughter in recent years;
3. She has an old Will, which appoints her son as Executor, and which leaves her home to him and her residuary estate to her daughter.

Heather has done all the right things, has arranged an Aged Care Assessment for her Aunt, has found a suitable aged care residential facility and has received detailed financial advice.

If you would like to learn more about this situation, you can read the full article on <http://www.hutchinsonlegal.com.au/financial-poa-property>



Commercial Surrogacy Agreements

Where to after baby Gammy?

The recent news about baby Gammy has shone a spotlight on the entire surrogacy industry and the legalities that surround it.

The law in relation to surrogacy in Australia is complex. In fact we do not have any uniform laws in this area and those laws that do impinge on surrogacy vary from state to state. The law in Victoria is clear and bars residents from entering into a Commercial Surrogacy Agreement in Australia. A Commercial Surrogacy Agreement is a contract whereby the surrogate has a child for the potential parents in exchange for a fee.

However, the Victorian ban on Commercial Surrogacy doesn't specifically restrict parties from entering into similar agreements overseas. We now are aware that a number of Australian families have travelled to countries where Commercial Surrogacy Agreements are allowed such as the United States (some states), India, Thailand and Russia.

In 2013, Mr and Mrs Farnell entered into a Commercial Surrogacy Agreement (via an agency) with Pattaramon, a woman in Thailand. As it transpired, the surrogate gave birth to twin children, Pipah and Gammy. Pipah was healthy and normal but Gammy was born with Down Syndrome along with other serious medical conditions. It was

alleged that upon notification of Gammy's condition and illness the Farnells accepted Pipah but refused to take Gammy. They returned to Perth and got on with their lives.

Pattaramon was left with a critically sick child and no means to support him. All this came to light some months ago and thankfully the public donated money which will assist in raising and caring for baby Gammy.

As a direct result of the publicity surrounding this case, Thailand recently passed legislation banning surrogacy except when it involves family members. The penalty for breaching such legislation could lead to up to 10 years imprisonment.

This change in the law has now placed further restrictions of families entering into commercial surrogacy agreements overseas. The changes to the laws in Australia are being considered but not yet in Victoria. This incident is just one highlight of the many issues with surrogacy in Australia. In any event, entering into agreements in foreign jurisdictions are always likely to be complex. If you or someone you know is considering entering into a surrogacy agreement, we recommend you seek legal advice.

If you need any further information then call Simon Clinch, Family Lawyer at Hutchinson Legal on 9870 9870.

Caveat Venditor

(Let the seller beware)

If you have sold, or considered selling a business, did you really understand (or even read) the Authority that you are expected to sign with the Business Broker?

When you are selling your business it is usual to use the services of a Business Broker. You are then asked to sign an Authority (known as an Exclusive Selling Authority). The Authority comprises a number of terms and conditions, but more often than not you are told it is a standard form Authority which everyone signs. Don't believe it! Talk to us first. Our recent review of such a "standard form" Authority revealed a number of onerous conditions that should be challenged.

If you would like to find out what some of these conditions are, you can read the full article on our website at <http://hutchinsonlegal.com.au/caveat-venditor>



TRIVIA NIGHT – 2015

If you know how many TimTams there are in a standard pack, then you were probably a part of the interactive night on February 26th that was filled with interesting people and facts.

Thank you to the clients and friends who came along and made this night such a success.



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FastFACTS

1849

The year Cadbury Brothers produced their first bar of chocolate

\$2,830

per capita estimated to be spent on healthcare in 2015 in Australia

500

people in Australia now are aged 100 or more

11%

(or thereabouts) of the world's gold is in Australia

Visit us at hutchinsonlegal.com.au

Clients should not act only on the basis of material contained in this newsletter because the contents are of a general nature only and may be liable to misinterpretation in particular circumstances. Changes to legislation can occur quickly. Do not act on any of the contents of this newsletter without first obtaining specific advice from a lawyer.