

The International Society of Primerus Law Firms

XPRESS e-Newsletter

October 2017

In This Issue

Business

Civil Procedure

Consumer Protection

Cyber Security & Data Privacy

Intellectual Property

Labor & Employment

Oil & Gas

Real Estate & Leasing

Trademarks

Trusts

Paradigm Magazine

Primerus Client

Resource Institute

Resources

Business

AUSTRALIA

New Hope for Companies and Directors: Relief From Insolvent Trading and 'Ipso Facto' Clauses

By **Murray Thornhill, Esq.**

HHG Legal Group

West Perth, Australia

Current insolvent trading laws stigmatise corporate failure. They effectively force directors to sacrifice companies in order to safeguard themselves against prosecution and impede businesses from trading out of difficult financial situations. The result is not only harmful to companies and individual directors in this situation, it impacts at all levels of the supply chain in every industry across the entire economy, and can be a restraint on growth and employment.

Full Article

GERMANY

Cryptocurrencies: How Will Mining be Taxed in Germany

By **Anka Hakert, LL.M.**

WINHELLER Attorneys at Law & Tax Advisors

Frankfurt, Germany

Cryptocurrencies are not only attractive for investors and speculators. Apart from the purchase and sale of Bitcoin, creating their own cryptocurrency through mining is profitable for many entrepreneurs. In this context, numerous tax and accounting questions occur.

[Full Article](#)

NETHERLANDS

Unlawful Pricing Agreements in Distribution Agreements

By [Ynze Kliphuis, LL.M.](#)

[Russell Advocaten B.V.](#)

Amsterdam, Netherlands

Distribution Agreement

A distribution agreement is an agreement between a supplier and a distributor. The distributor buys products or services from the supplier for the purpose of selling them to, for instance, shop owners or consumers. As opposed to agency, this resale is for the account and risk and in the name of the distributor.

[Full Article](#)

UNITED STATES

Did That Email I Just Sent Form a Contract?

By [Matthew T. Crook, Esq.](#)

[James, Potts & Wulfers, Inc.](#)

Tulsa, Oklahoma

We live in a world of electronic commerce. So much communication between commercial parties is now accomplished by means of electronic mail or even text messages in lieu of letters delivered by snail mail which was the standard for so much of the 20th Century. In such an environment, parties often reach agreement regarding business transactions via one of the electronic methods previously mentioned. However, given the legacy of the previous 150 years of business practice and history, most business people do not consider a contract finalized between their company and a counterparty until signatures have been scrawled on a piece of paper by representatives of each party. However, this is no longer strictly true.

[Full Article](#)

Civil Procedure

UNITED STATES

Increasing Scrutiny of Boilerplate Objections

[Donato, Minx, Brown & Pool, P.C.](#)

Houston, Texas

Introduction

The Eastern District Court of Texas joins a growing number of courts criticizing the use of boilerplate language in objections. Specifically, the commonly used "subject to" objections leave uncertain as to what, if any, information has been withheld.[1] When responding to discovery, it is common practice to provide boilerplate objections to each request and include "subject to" language in the objection. This language is "manifestly confusing (at best) and misleading (at worst) and has no basis at all in the Federal Rules of Civil Procedure." [2] The use of "subject to" objections has created an ambiguity which is prohibited under Rule 34 and may result in courts overruling objections.[3]

[Full Article](#)

Consumer Protection

UNITED STATES

New Proposition 65 Regulations

By Lee Smith, Esq.

Coleman & Horowitz, LLP

Fresno, California

Most corporations selling products in California are now familiar with the California Proposition 65 warning signs and labels that are present on products ranging from tools to vitamin supplements and in locations ranging from restaurants and hotels to parking lots and gas stations. Prop 65 is a California initiative that was approved by voters in 1986 and enacted into law as the Safe Drinking Water and Toxic Enforcement Act of 1986. (Health and Safety Code Section 25249.5-25249.13).

[Full Article](#)

Cyber Security & Data Privacy

GERMANY

Companies Should Never Neglect Data Protection!

By Nikola Werry, LL.M.

WINHELLER Attorneys at Law & Tax Advisors

Frankfurt, Germany

Introduction: A Model for Insurance Fraud

The Federal Data Protection Act (Bundesdatenschutzgesetz; "BDSG") contains a range of guidelines for establishing an organization in Germany ensuring compliance with data protection requirements within a company. Particular importance is attached to the company's obligation to implement appropriate technical and organizational measures to guarantee data security and data protection.

[Full Article](#)

Intellectual Property

HONG KONG

Should Parallel Trade be Curbed? A Comparison Between the UK and Hong Kong

ONC Lawyers

Hong Kong, Hong Kong

Introduction

Parallel imports (sometimes referred to grey goods) refer to branded goods that are imported into and sold in a market where prior consent of the owner of the trademark in that market is not obtained. They are genuine, not pirated goods. Some parallel imports are welcomed by consumers as they are cheaper and/or with various options. However, there is no international consensus on whether parallel importation should be banned as parallel imports may cause certain degree of impacts on those legitimate interests of trademark owners or their distributors whilst such goods may benefit the consumers at the same time.

[Full Article](#)

Labor and Employment

GERMANY

Objective Criticism by Employees Doesn't Justify Dismissal in Germany

By [Dr. Eric Uftring](#)

[WINHELLER Attorneys at Law & Tax Advisors](#)

Frankfurt, Germany

Critical or unfriendly remarks made by an employee to his employer are protected by the freedom of opinion. They are no justification for dismissal, as long as the argument is objective. This is what the Higher Labor Court (Landesarbeitsgericht, LAG) of Rhineland-Palatinate ruled on 6 October 2016.

[Full Article](#)

HONG KONG

Defamation an Increasing Danger for Business in the Technological Age

[ONC Lawyers](#)

Hong Kong, Hong Kong

This case concerns a dispute between a company and its former employee on whether the employee's email to a client amounted to defamation, thereby causing the company's loss of business with the client and its related companies.

[Full Article](#)

NETHERLANDS

Social Media at Work

By [Jan Dop, LL.M.](#)

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Amsterdam, Netherlands

Are you allowed to check what employees post on Twitter and Instagram? Can you impose rules on your personnel regarding the use of WhatsApp? How do you deal with social media in the workplace?

Almost everyone, young and old, is active on social media. Social media are available everywhere, including in the workplace. This can be rather tricky for employers. After all, how do you deal with employees using their office phone for personal messages? Are you allowed to impose rules on your personnel with regard to contacting clients via LinkedIn? And are you permitted to check your employees' Facebook profiles?

[Full Article](#)

UNITED STATES

It Pays to Eat - The Massachusetts Meal Break Law

By [Adam J. Shafran, Esq.](#)

[Rudolph Friedman LLP](#)

Boston, Massachusetts

In a recent class action law suit brought by employees of a security company, the Massachusetts Superior Court described the legal standard to be applied when determining whether a thirty-minute meal break constitutes compensable working time. In this case brought under the Massachusetts Wage Act, the employer Longwood Security Services Inc.

("Longwood") maintained a company policy pursuant to which its employees/security officers were permitted to take an unpaid thirty-minute meal break, but were required to stay in uniform, not permitted to leave their assigned location without permission, and remained responsible for keeping their radio on and responding to calls during their meal break.

[Full Article](#)

UNITED STATES

Employers Beware! North Carolina Business Court Establishes New Standard for Consideration for Restrictive Covenants

By [Connie Elder Carrigan, Esq.](#)

[Smith Debnam Narron Drake Saintsing & Myers, LLP](#)

Raleigh, North Carolina

Restrictive covenants are valuable tools employers can use to protect their proprietary interests. Covenants *not to compete* and covenants *not to solicit* an employer's clients or employees are the most common forms of restrictive covenants employers use to prevent their former employees from going to work for a competitor or from luring away former co-workers or clients after they depart.

[Full Article](#)

Oil & Gas

UNITED STATES

Your Oil and Gas Royalty Statement

By [Paul Yagelski, Esq.](#)

[Rothman Gordon](#)

Pittsburgh, Pennsylvania

You receive your oil and gas royalty statement. What is the basic information that you should be receiving? For the information that you do receive, how do you verify its accuracy? In terms of what should be on your oil and gas royalty statement, Pennsylvania law requires that certain, specific information be included. Pennsylvania's Oil and Gas Lease Act, 58 P.S. § 33.1 et seq., provides that the following information must be included on your royalty statement:

[Full Article](#)

Real Estate & Leasing

NETHERLANDS

No Lease Agreement - But Still Security of Tenure!?

By [Ynze Kliphuis, LL.M.](#)

[Russell Advocaten B.V.](#)

Amsterdam, Netherlands

Lessees of residential and retail property enjoy security of tenure. Security of tenure is also regularly invoked by parties that have not entered into a lease agreement. Is that possible?

Lease agreement or not

Lessees enjoy security of tenure either on the basis of tenancy law or on the basis of a lease agreement. Sometimes companies or private individuals enter into agreements that entitle them to also use someone else's property but provide, or appear to provide, more options

for termination than lease agreements. Think, for instance, of loan agreements, contracts for use, or operating agreements. Also, mixed agreements may be entered into that refer to both, a lease and another type of agreement. The issue, then, is whether security of tenure is applicable or the termination arrangements of the other agreement.

[Full Article](#)

Trademarks

PERU

Registering Trademarks in Peru

By [Raul Villavicencio, Esq.](#)

[Llona & Bustamante Abogados](#)

Lima, Peru

Registering a trademark in Peru not only gives any person or company the opportunity to protect their trademarks in the Peruvian market, but also gives them an important and useful advantage to manage and protect their trademarks in the Andean Community territory.

In Peru, the Distinctive Signs Agency of the National Institute for the Defense of Competition and Protection of Intellectual Property ("INDECOP"), is the governmental entity responsible to protect the Intellectual Property Rights.

[Full Article](#)

Trusts

AUSTRALIA

ATO Provides Clarification on Fixed Trusts

By [Selwyn Black, Esq.](#) & [Nicholas Huang, Esq.](#)

[Carroll & O'Dea Lawyers](#)

Sydney, Australia

1. Whether a trust qualifies as a fixed trust is important for tax reasons including the ability of the trust to:

- use tax losses; and
- pass on franking credits to beneficiaries.

2. In order to qualify as a fixed trust, the beneficiaries must have fixed entitlements to all of the income and capital of the trust. This means the beneficiaries must have a vested and indefeasible interest in the income and capital of the trust, under the terms of the trust instrument (see subsection 272-5(1) and 272-65 of Schedule 2F to the *Income Tax Assessment Act 1936*).

[Full Article](#)



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Resources

Legal Articles

Compendiums:

- [A Survey of the Law of Legal Malpractice - A Professional Liability Practice Group Compendium - September 2015](#)
- [A Survey of The Law of Non-Contractual Indemnity and Contribution - Products Liability Practice Group Compendium - April 2015](#)
- [Compendium of Principles of Law Regarding Bad Faith in the Fifty States and D.C. - 2013 Edition](#)
- [A State by State Update of Tort Reform - 2013 Edition](#)
- [Principles of Law Regarding Establishment and Operation of a Business in Various Countries Compendium - International Transactional Services Practice Group - March 2012](#)
- [Doing Business in the Asia Pacific Region](#)

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