BUSINESS TIPS AND TRAPS

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Dear Clients,

We present to you our latest newsletter that you may find useful.

Kind Regards,

Fox & Staniland Lawyers

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For more information you can visit our website and view our Blog.

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Employment Law

Can You Be Held Responsible for Cybercrime by One of Your Own Employees?

A large supermarket chain in the United Kingdom employed a senior internal IT auditor, who was responsible for dealing with large amounts of highly sensitive data relating to both employees and customers. This included the names, addresses, genders, dates of birth, alongside bank and salary details of the employees.

The IT auditor operated a sideline business of his own from the head office's mail room in which he distributed "weight slimming" white powder to customers on eBay. This sideline business was discovered by his employer, the supermarket chain, which swiftly acted to close the operation. The employer formally warned the IT auditor that further misconduct would result in the termination of his employment. This caused the IT auditor to hold a grudge against the employer. His anger grew over time.

Presumably in an act of revenge, the IT auditor posted the personal details of over 100,000 employees of the supermarket on a publicly available file sharing website.

He then anonymously tipped off several national newspapers about the data breach. The newspapers did not publish the story, but instead informed the employer. The police then traced the matter back to the IT auditor who was charged with fraud. He was found guilty and sentenced to 8 years in prison.

Then, a number of other employees of the business, whose details had been released, sued the owner of the business for the misuse of private information. They claimed the owner of the business was responsible for the protection of the information. The Court found in favour of the employees!

This illustrates that employers can be found responsible for the actions of their employees, even for things they would never have approved of! Having an effective privacy policy and providing clear boundaries to employees can both formally and informally avoid the troubles experienced in this case.

Shareholder Disputes

Without a Shareholder Agreement You Could Lose Everything!

In a recent case, two entrepreneurs purchased a company with a multi-million-dollar annual turnover. They contributed equally to the purchase price and costs. They had equal numbers of shares in the company. Their solicitor advised them that they should have a "shareholders agreement" and they agreed.

The business traded successfully until the two entrepreneurs had a serious disagreement about the management of the business. One of the entrepreneurs claimed to be doing more work than was required of him in the shareholders agreement. The other shareholder rejected this and said that he was doing everything required of him. Tensions grew between them. Their communications became virtually non-existent. They both concluded that they could never work together.

The entrepreneurs asked their solicitor what should happen to their shares in the company now that they decided to go their separate ways. The solicitor said that the first step was for them to read the shareholder agreement because he knew that it included clauses covering the exit of a shareholder. However, when the entrepreneurs read the shareholder agreement they discovered that it had not been signed. The effect of this was that the document was not binding on them. The matter seemed to be headed for court which would have resulted in significant costs. Luckily, the two entrepreneurs agreed to sign the agreement retrospectively, meaning it would function as if they signed it on the day it was completed. The shareholder agreement specified how the shares of the departing shareholder would be valued and the conditions under which they had to be sold.

This case demonstrates the importance of shareholders agreements. They can provide some certainty and avoid costly, drawn out disputes. It also shows the importance of signing documents once they are prepared.

Franchise Law

Could Your Business Be Ruined by a Bright Idea of Your Franchisor?

In 2014 a national pizza restaurant chain (consisting of a franchisor and many franchisees) was experiencing declining sales and was looking for new ways to expand its business. It trialled a new "value strategy" in the ACT in which pizza prices were permanently reduced by as much as 40%. This was done to increase sales and profitability in the long run. This trial produced promising results, and was rolled out to all the other franchisees nationwide.

Numerous franchisees saw their businesses collapse and many others incurred substantial losses as the pizzas were sold at a loss. Franchisees who tried to lift their prices could not as their franchise agreements stated that the franchisor has the power to set the maximum prices. As losses mounted, a group of 190 franchisees took the franchisor to Court to recover their losses. They argued that the franchisor had been negligent in its design of the value strategy.

The Court found that the franchisor had not been negligent, as the franchisor had researched the price cutting strategy by trialling it in the ACT before the national rollout. Furthermore, when looking at the franchise agreement, the Court found that it included conditions which made it clear that profit was not guaranteed to the franchisees. It also found that the franchise agreement gave the franchisor the exclusive power to change pricing and products from time to time.

As the value strategy was created to generate increasing profits in the long run, it was found the franchisor did act properly and was not negligent even though it had driven a number of its own franchisees broke.

Entering into a franchise agreement can be a risky undertaking. You should always seek to determine the rights and obligations of each party before entering into one. Understanding the inner workings of the agreement before it is signed is crucial to minimising the risks of lengthy disputes or costly losses.

Business Liability

New "Chain of Responsibility" Laws Have Come Into Effect. Does This Expose Your Business to Liability?

Is your business involved with goods or materials that are transported by heavy vehicles? If so, the new Chain of Responsibility (CoR) laws will affect you!

The "Chain of Responsibility" is a federal policy which places a "duty of care" on parties involved anywhere along the "supply chain". You are part of the supply chain if you have any control or responsibility over any transport task. The new law extends that to include not just driving but also consigning, packing, loading or even receiving goods. It means that liability arising from the operation of heavy vehicles now goes far beyond the owner operators of the vehicles.

The new laws change four key areas:

Standard of Legal Duty

If you or your company get charged under the new CoR laws you might be able to defend yourself if you can prove that you took "all reasonably practicable steps" to prevent a contravention of the Heavy Vehicle National Law.

Vehicle Standards

If you are a party to the supply chain then under the new laws you are required to exercise whatever control or influence you have to ensure vehicles transporting goods in that supply chain are well maintained and road worthy.

Executive Liability

If you are an executive of a company involved in a supply chain then you are required to exercise "due diligence" to check for compliance with the CoR. Under the new laws, not only is a director considered an executive, but any person that takes part in the management of the company.

Shared Responsibility

The new laws make it clear that each party has a shared responsibility to ensure that each link in the supply chain is compliant with the CoR. As a result of this, parties cannot avoid potential liability by delegating their responsibilities in the CoR to others.

The CoR is a complex framework which has severe penalties if breached, with maximum penalties of $3,000,000 for corporations and $300,000 plus up to 5 years imprisonment for individuals.

In light of these new changes we recommend that you work out whether you or your business is part of a supply chain for the purpose of the CoR and check whether your business complies with the new laws!

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This newsletter is for the benefit of our clients. It is not intended to be a definitive analysis of the law. Professional advice should be sought before any course of action is pursued.

Areas of Practice:

Business Law	**Leasing**
Property Law	**Family Law**
Commercial Litigation	**Deceased Estates**
Estate Planning	**Criminal Law**
Contract Disputes	**Wills**

Building and Engineering Disputes