

Latest News

Solari & Stock Lawyers are proud to announce that we have entered into a Strategic Alliance Agreement with Sun & Hold Law Firm in Shanghai, China.

Sun & Hold is one of the 10 largest law firms in Shanghai, with over 130 licensed lawyers who practice in virtually every area of Corporate, Civil and Criminal Law.

Solari & Stock are excited by this Agreement and relationship with Sun & Hold as it provides a unique opportunity for clients of Solari & Stock to have direct access to one of the leading law firms in Shanghai; one of the fastest growing markets for Australian businesses.

If you or any of your clients or business associates require assistance in dealing with Chinese Law or require representation in China, please contact Michael Solari of our office.



Michael Solari

Australia's Biggest Morning Tea

Solari & Stock have once again decided to support Cancer Council's Australia's Biggest Morning Tea and host a morning tea in the office to show our support for everyone affected by cancer.

For over 20 years, Australia's Biggest Morning Tea has helped fund world class research, prevention programs and support services for cancer patients and their families. This year is no different and Cancer Council needs funding to continue to invest in research, prevention and support to help beat cancer.

Can you help us reach our goal of \$1,000?

Donations can be made via our Solari & Stock's own fundraising page <http://nsw.cancercouncilfundraising.org.au/solariandstock>

Donations of \$2 or more are tax deductible. We thank you in advance.



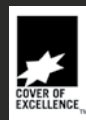
These articles are for the benefit of our clients and business associates. The document is not intended to be a definitive analysis of legislation or professional advice. You should take advice before any course of action is pursued.

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SOLARI & STOCK
LAWYERS

NEWSLETTER • MAY 2015

Need Help After a Family Breakup?

FREE FAMILY LAW INFORMATION SESSION

Riccarda Stock, a Law Society Accredited Specialist in Family Law, will share her 24 years experience and knowledge covering areas such as dividing assets, including superannuation and self managed super funds, protection from debt, children's arrangements, legal costs and how to minimise these and much more.

In addition you will receive a COMPLIMENTARY VOUCHER FOR ½ HOUR FREE CONSULTATION with one of our Family Law lawyers, completely obligation free.

DATE	Wednesday, 20 May 2015
TIME	6.30pm
WHERE	Level 2, 12 Central Road, Miranda NSW
	<i>Drinks & nibbles will be provided</i>
RSVP	9540 4111 or admin@solariandstock.com.au

Seats are limited so make sure you RSVP early!

Thinking of Purchasing a Property? Be Well-Informed!

FREE CONVEYANCING & PROPERTY LAW SEMINAR

Join Johnathan Neofytou, Senior Associate at Solari & Stock Lawyers, for our free seminar as he identifies and explains:

- 10 critical issues you need to know when purchasing a property.
- The potential pitfalls that can arise in a purchase.
- How to avoid the drastic consequences that can arise if things go wrong.

DATE	Wednesday, 26 August 2015
TIME	6.30pm
WHERE	Level 2, 12 Central Road, Miranda NSW
	<i>Drinks & nibbles will be provided</i>
RSVP	9540 4111 or admin@solariandstock.com.au

Searching for Love in Family Law

Love is a concept that is not frequently discussed in the Family Law system in Australia. Lawyers, judges and policymakers alike tend not to talk about it because they see love as an emotion that is whimsical, subjective and incapable of scrutiny by the Family Law Courts. Law, in contrast to love, is meant to be rational, objective and capable of reasoned, scientific decision-making.

The suppression of the concept of love in Family Law can be seen clearly in the laws surrounding divorce in Australia. Pursuant to the Family Law Act, there is only one ground for divorce in Australia and

this is an irretrievable breakdown of marriage. This is demonstrated by the parties living separately and apart (in different households or under the one roof) for 12 months (a nice rational number), and there being no reasonable likelihood of reconciliation (here we see the concept of reason). Perhaps fortunately, judges do not have to consider whether the parties are no longer in love with one another, or what love is in the first place. This may seem completely appropriate, or perhaps unusual given the central role that love now seems to play in modern relationships.

(continued on page 2)

Our team of experienced lawyers can provide you with expert legal advice for all your legal needs including:

- Property Law & Conveyancing
- Leases
- Mortgages
- Sale & Purchase of Businesses
- Business & Commercial Law
- Employment Law

- Franchising
- Building Contracts & Disputes
- Environmental & Local Government Law
- Family Law & De Facto Law
- Litigation – all Courts
- Debt Recovery

- Wills, Estate Planning & Powers of Attorney
- Deceased Estates & Disputes
- Criminal Law
- Defamation
- Registered Clubs & Liquor Licensing

In parenting matters, the paramount consideration of the Court is what is in the best interests of the child. To work this out, the Court primarily looks at the benefit of the child having a meaningful relationship with both parents, and the need to protect the child from physical or psychological harm (with greater weight to be given to child protection issues). Additionally, the Court may look at other things such as the views of the child and the capacity of each of the parents to care for that child. However, it is highly unlikely for the Court to assess directly the love between a parent and a child, or at least express this consideration in these words. Judges, like many people starting out in new relationships, seem reluctant to use the 'L word' in public.

Given how prominent love seems to be in our understanding of modern life – the love for a significant other, or the love for a child, parent or grandparent, for example – some academics have started to question this suppression of love in Family Law. This questioning has arisen as part of a broader movement that argues that the law, rather than being scientific and objective, is actually political, subjective and driven by moral beliefs and emotions such as love. While these academics do not necessarily argue that we should reform Family Law to consider directly concepts of love (as how can we truly assess one's love for another?), they do argue that we should at least recognise the presence of love in Family Law, even if it is not directly talked about.

When we look for love in some important Family Law cases, it can be seen that the concept of love seems to simmer underneath the reasoning of the Court on occasions. In the matter of *Re Kevin* [2003], for example, a case that considered the defining characteristics of modern marriage, the Family Law Court rejected the ideas that procreation and sexual activity were essential to marriage. The Court instead stated that there has been a considerable shift in the community towards defining marriage 'in terms of companionship'. While the word love is not mentioned in the case, interdisciplinary legal scholar Renata Grossi argues that the concept of love could be readily implied in the Court's interpretation of marriage, 'given the strength of the love rhetoric that exists in other discourses of marriage'.

The concept of love also features prominently in the debate regarding same-sex marriage in Australia. Advocates for same-sex marriage have argued that if love is central to modern marriage, in comparison to say, a union for the purposes of having children, then why should not all those in loving relationships with a significant other be permitted to marry under the *Marriage Act*?

Of course, as solicitors, it is not necessarily our role to overhaul the Family Law system so that the Court properly addresses emotions such as love in Family Law matters. It is most likely the case that this should not be done anyway. Nevertheless, there is a value in being sensitive to the emotions that clients bring to Family Law matters, and address how these emotions may or may not be dealt with by the Family Law system.

Authored by Tristan Harley, Solicitor.

For further information, contact Fiona Kirkman (Family Law Accredited Specialist) of our Family Law Team.



Fiona Kirkman

Dismissing Employees for Poor Performance

Many people are of the view there is a legal requirement that you have to give employees three written warnings before you are able to terminate them, commonly known as the 'three strikes and you're out' rule.

There is no one hard and fast rule that needs to be followed when dealing with the termination of employees based on poor performance. The process needs to be fair and reasonable in the circumstances of each particular case. Whether or not a person undertakes a three written warnings process, it is up to the Court to determine whether the dismissal is harsh, unjust or unreasonable.

It is a question of undertaking the whole process in a fair and reasonable manner. Examples of the steps an employer can undertake which may assist in avoiding a successful claim by an employee for unfair dismissal are as follows:

1. Taking the following steps in relation to poor performance with the employee:
 - Identifying and noting each specific incidence of poor performance.
 - Meeting with the employee (and any support person if requested by the employee) and identifying the specific issues.
 - Advising the employee that the conduct or performance is not acceptable and that it will be monitored over a specified period of time.
 - Warning the employee that the matter is serious and if performance is not improved, action may follow including possible termination of employment.
 - Providing a written statement to the employee setting out the performance issues discussed and the remedial action the employee is expected to take.
 - Monitoring the employee's ongoing performance. The employee must be given an opportunity to improve their performance. This is a critical factor in any assessment of whether or not a dismissal is harsh, unjust or unreasonable in the context of an unfair dismissal claim.
2. If you feel the employment relationship is no longer tenable then you can terminate their employment.
3. Variables which may impact on the process to be followed in a particular case may include:
 - The seriousness of the performance issues and the consequence of the performance issues to both the employee and the employer.
 - The nature of the business.
 - The tasks performed by the employee within the business.
 - The length of time the employee has been employed.

It is important not to rush the process. The time allowed to an employee to improve performance is often a critical factor in assessing whether or not a dismissal is harsh, unjust or unreasonable.

For further information, contact Michael Solari of our Commercial & Property Team.



Swimming Pool Update

The commencement date of the requirement for all properties with a pool, being sold and/or leased (including those in strata complexes with a pool) to have a valid Swimming Pool Compliance Certificate has **once again been pushed back by the NSW State Government**.

The requirement to have a Swimming Pool Compliance Certificate attached to a contract for sale of land or tenancy agreement is now **not required until 29 April 2016**.



Estate Planning – Misconceptions & Actions to be Taken

Estate Planning is important to everyone, irrespective of their age or financial position.

Everyone should think about, or implement, an Estate Plan which takes into account the individual's personal circumstances including family arrangements, businesses, assets and liabilities, superannuation and how the estate is to be administered upon death.

In addition to leaving assets to chosen beneficiaries, other goals can be achieved by implementing an estate plan, including:

1. Expressing wishes in respect of guardianship arrangements for any children under 18 years of age. We note that it is only a wish and the Family Court does have an overriding power to appoint someone as a guardian.
2. Establishing a Testamentary Trust in the Will to cover issues such as:
 - Minimising the taxation payable by beneficiaries on any income generated through the inheritance.
 - Protecting assets for beneficiaries who might be at risk of losing their inheritance. For example, they may be bad money managers, have gambling or other issues, or may be involved in a business where they have an exposure to risk.

A Will does not necessarily cover everything as some things fall outside the scope of the Will, such as:

1. Any assets held by the deceased person jointly with any other persons as joint tenants.
2. Superannuation – depending on the options given to the Trustee of the super fund.
3. Life insurance policies with nominated beneficiaries.

Unfortunately, regardless of how well an Estate Plan is prepared, there is a prospect that certain persons (such as dependants or spouses) can make an application to the Court for further provisions

to be made for them from an estate. However, steps can be taken to minimise the likelihood of any such claim being successful by, for example, leaving details as to why certain individuals have been excluded from a Will or have had their inheritance reduced.

We recommend that clients review their Will or Estate Plan on a regular basis to ensure that it still suits their circumstances and goals.

Various events, however, make it imperative for an individual to revise their Will or Estate Plan including:

1. Marriage: Marriage revokes a Will unless it is made specifically in contemplation of that particular marriage.
2. Divorce: Divorce does not automatically revoke a Will.
3. The sale of any significant asset.
4. Changes in financial position – Good or bad.
5. The addition of beneficiaries, such as a new child or grandchild.

For further information, please contact our Michael Marney or Michael Solari of our Wills & Estates Team.



Michael Marney