



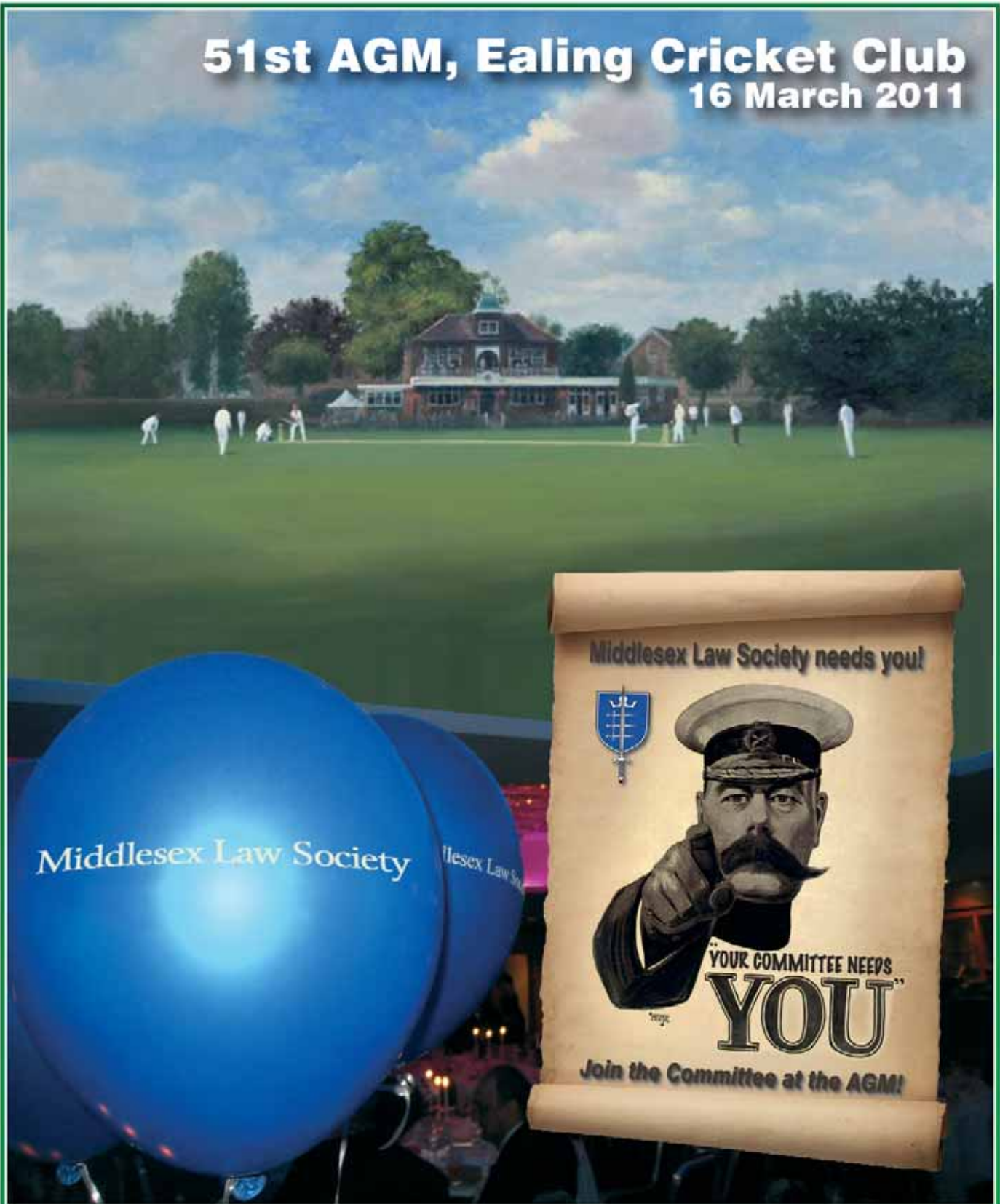
Winter 2010/11

The Bill of

# Middlesex

Official magazine of Middlesex Law Society

**51st AGM, Ealing Cricket Club**  
**16 March 2011**





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FUNCTIONS

- 15 May Indoor 5 a-side Football - 4pm at Beacon Centre, Beaconsfield
18 May Antique Evening in Uxbridge - 6.30pm
4 June Summer Party, Chesham
July Middlesex CC v Gloucester at Uxbridge CC - 2.30pm
11 July Football World Cup Party, Denham
8 October Quiz Night, Ealing Cricket Club
29 October Jack the Ripper Walk, Tower Hill tube station at 6.30pm
12 November Annual Dinner at Holiday Inn, Brentford - 7.30pm

See Newsletter for ongoing events Lunches for specialised interest groups will be ongoing throughout the year. Contact our Administrator or Hon. Social Secretary for details or visit our website.

EDUCATION & TRAINING PROGRAMME 2010-2011

- 6 July Employment Update by P Benjamin - TVU
Sept Employment Tribunal at TVU
Sept SRA Management Course stage 1 - TVU
Sept Family Law & Legal Aid - MU
6 Oct Crime Update by D J Tan Ikram - TVU
2 Nov Conveyancing Update - TBA
16 Nov Criminal Legal Aid Update - MU

Visit our website for details. TVU is Thames Valley University - St Marys Road, Ealing Campus. MU is Middlesex University - Hendon Campus

COMMITTEE MEETINGS

- 2010
19 July
20 September
18 October - Ealing Cricket Club
15 November - Ealing Cricket Club

- 2011
17 January - Ealing Cricket Club
14 February - TVU Law School

AGM 16 March 2011 - Ealing Cricket Club
Parliamentary Liaison Robert Drepaul



What a great dinner dance that was! For all those of you who joined us on 12 November 2010 at The Holiday Inn at Brentford Lock, thank you very much. For those of you who didn't, I'm afraid you missed a tremendous evening with 160 of your local colleagues and their guests. We were honoured to be joined by the President of the Law Society, Linda Lee, fresh from her muddy field in Runnymede.

We decided this year to revert to our traditional dinner dance, rather than dinner and worthy speeches, as we all thought that what we all really needed in this climate was a fun evening. The profession has gone through a difficult couple of years.



President's Page



Not only do we have a continuing recession to deal with, but the profession faces continual changes from Government, the LSC, Tescos, you name it. The MOJ budget has been cut over the next 4 years by 6% per year; ABSs will shortly begin to affect our business; and Lord Justice Jackson's review of Civil Litigation Costs has the potential to deny clients access to civil remedies. Indeed, I suspect that few of us would be able to predict with any accuracy what the profession will look like in 10 years' time, let alone 20.

It is for these reasons that I am so pleased we could all get together for dinner and a great dance with our fabulous 7 piece band. The dance floor was still full at 1am! It is wrong of me to single out members of the Committee for special thanks for putting everything on - but I'm going to anyway. Sri, Renuka, Robert and Caroline have all worked like Trojans, but I would like to single out Sri and Renuka for special thanks. We all wanted a memorable dinner dance, but I don't think any of us had expected that there would have been 160 of us. Here's looking forward to next year.

It is very encouraging and I hope that this will signal a new dawn for the Society. More than ever, the Society is well placed to represent solicitors in Middlesex. To that end, we remain indebted to our excellent Law Society Council Member, Michael Garson, who works tirelessly on our behalfs and who has, I am delighted to report, been appointed Honorary Professor of Law at Thames Valley University. An extremely well deserved honour.

We are currently putting together next year's programme of events and seminars as we go to press. This will include 2 or 3 events with our new friends at West London Accountants and another networking event with our kind sponsors, Lloyds TSB Bank Plc. We will also be staging more of our popular 5-a-side football round-robin competitions at Goals, so please do watch out for those and try and put in a team.

One date for your diaries now though is the AGM on 16th March 2011 at Ealing Cricket Club. I look forward to seeing as many of you as possible there. If anyone is considering standing for the Committee, please let me or our Secretary know as soon as possible.

As this is my final column as President, can I take this opportunity to thank my Officers, Committee and Members for all their support during my very enjoyable Presidential year.

Simon Hobbs
President, Middlesex Law Society 2010/2011
simon.hobbs@kimbells.com

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- Spring Issue 18th February
Summer Issue 17th June
Autumn Issue 16th September
Winter Issue 18th November

Anyone wishing to advertise or submit editorial for publication in the Bill of Middlesex please contact Roger Swift, before copy deadline.

Email: rogerswift@benhampublishing.com
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# Council Member's Report

**The Wikileaks story concerning publication of secret and embarrassing information that governments had been in some way classified as 'secret' dominated headlines in the closing days of 2010.**

Leaving aside questions of illegality where information is stolen or disseminated in breach of contractual or legislated obligations the story raises interesting questions as to the role of confidentiality in the affairs of private as well as public bodies. So for example within a membership organisation such as the Law Society the question arises because members want and are entitled to know what is going on at the earliest opportunity. This issue is relevant to the limited reports I have been able to publish concerning the Law Society Council Meetings for November and December of last year where a large part of the time has been spent in closed and confidential sessions discussing material that will be published at a later date. There is no doubt however that 'space' is needed for private discussion and also consideration of information released in confidence. This enables free exchange of alternative ideas for discussion and the development of policy responses sensitive to the views of the audiences to which they will be exposed.

To mitigate this the Chief Executive's report gives a thorough overview of the work being carried out and many of the topics mentioned in it are the subject of papers and the more detailed discussion carried out in closed session. This report is published on the Middlesex Law Society website ([www.middlesex-law.co.uk](http://www.middlesex-law.co.uk)). The Law Society is actively dealing with a range of issues of concern to our local practices, including representation for legal aid solicitors in relation to LSC contract renewals and for conveyancers concerning actions taken by lenders. On a wider front, proposals are being developed in response to the challenge of the government Green Paper on the future of legal aid and on issues such as prison reform as well as promoting Law Society policy to regulate Will writers.

In November and December the Council considered in closed sessions the business plan and budget for 2011, and this includes approval of the SRA budget. It was a matter of particular regret that the entirety of my own report as chair of the Regulatory Affairs Board was made to Council in Part 2 covering draft responses to consultations on OFR, referral fees, regulation of will writers, education and training, PII, publication of complaints and authorisation proposals by the CLC and Ilex. We have resolved to remedy this information gap in future by publishing an edited synopsis of the topics discussed in closed session.

In the closing months of 2010 there were a number of important consultations and other papers launched by the SRA. Part 2 of the Architecture of Change poses a number of questions in relation to the final draft for the new SRA Code. This is planned to replace the 2007 Code of Conduct from this October. The SRA plans to be open for applications from bodies who wish to be licensed to carry out ABS activities from late summer. At the same time, the SRA are consulting on radical proposals for change to the standard professional indemnity insurance with plans to apply the new rules in stages in 2011 and 2012 and over the same two year period, plans a radical overhaul of the education and training system.

On 30 November SRA published its first and somewhat tentative attempt at a cost benefit analysis in relation to OFR and ABS policy. This reports that so far only preliminary high level work has been carried out and promises that further analysis and detail is to be provided at later stages in the reform programme as development work advances. At this stage SRA report that there is little that can be stated definitively. This is unsatisfactory in many respects. It means that the project is advancing at a time when it has not been possible to identify measurable benefits from the proposed changes. Further there is no accurate measure of costs or assessment of impact upon the profession and different types of firms in differing sectors.

The Law Society response to the consultation on the final draft of the SRA Code is due to be finalised shortly. All firms and practitioners are encouraged to read the final Code and consider their own response to the changes in the rules. These will guide the future conduct of business by existing and new firms. More importantly they will form the basis upon which SRA will in future monitor, supervise and enforce regulation. The risk assessment centre that SRA will need in order to guide its enforcement policies, is in the course of being constructed and will be continuously developed. Even when the new system of regulating the profession is brought into force, there will no doubt be many further modifications and perhaps changes of direction too.

The SRA proposals for Professional Indemnity Insurance are radical, and in many respects unwelcome - particularly in relation to the conveyancing market. It is proposed that institutions will no longer benefit from indemnity under the standard compulsory insurance and this will be a matter for private arrangement for all firms. Effectively, this dismantles the traditional basis upon which solicitors work carries a guarantee of financial protection up to a minimum sum in respect of all and any clients and in respect of any kind of work. The particular problem has been brought about with the increase of claims upon insurers in the main from lenders in a recession hit property market. This has happened on previous occasions when money lending institutions have found that they suffer losses. The state of the law is such that lenders may, in some circumstances, be able to pursue the amount of their lending loss, and do so, even where there has been contributory negligence on their part. The basis on which solicitors undertake services to lenders is in need of review and should restrict the potential for claims to be launched in cases that revolve around technical defects in title rather than any dishonest breach of trust.

The SRA's solution would fragment the universal cover and potentially proliferate litigation and disputes around the perimeters and definitions of work that is covered and work that is not covered. The suggested policy will influence the behaviour of clients and steer certain firms into a position of competitive advantage. That does not appear to be a proper basis upon which to approach the problem and is a matter that will be of serious concern to many practitioners. A response and alternative proposals are under development.

A matter on which information can be publicised and should receive as much publicity as possible is the new **Conveyancing Quality Scheme**. This is now open to entry and to be successful, as many firms as possible who specialise in this type of work need to join the scheme. Initially and as a primary focus the scheme will carefully scrutinise applications for membership and thereafter will focus on the quality of services provided by firms. This means that after initial training, which all members and their staff will have to undergo, members will come under some monitoring of performance. This will be through methods yet to be detailed eg benchmarking. This is an attempt to raise standards, and assist those who have not addressed the challenges of recent developments. In recent months the community of conveyancing firms has been affected by reduction of lenders' panels and also the cost of indemnity insurance. In the medium to longer term, it is the aim of the scheme to address both these difficulties and

improve the position of every member firm on the basis of a collective improvement in performance.

Questions or requests for further information are welcome and as soon as there is anything more to publish readers can rest assured it will be.

It may also be possible to deliver future versions of my council member newsletters in email format so if you send me your email address I will endeavour to arrange that.

Happy New Year

Michael Garson  
Council Member for Central & South Middlesex  
January 2011  
[michael.garson@kaganmoss.co.uk](mailto:michael.garson@kaganmoss.co.uk)

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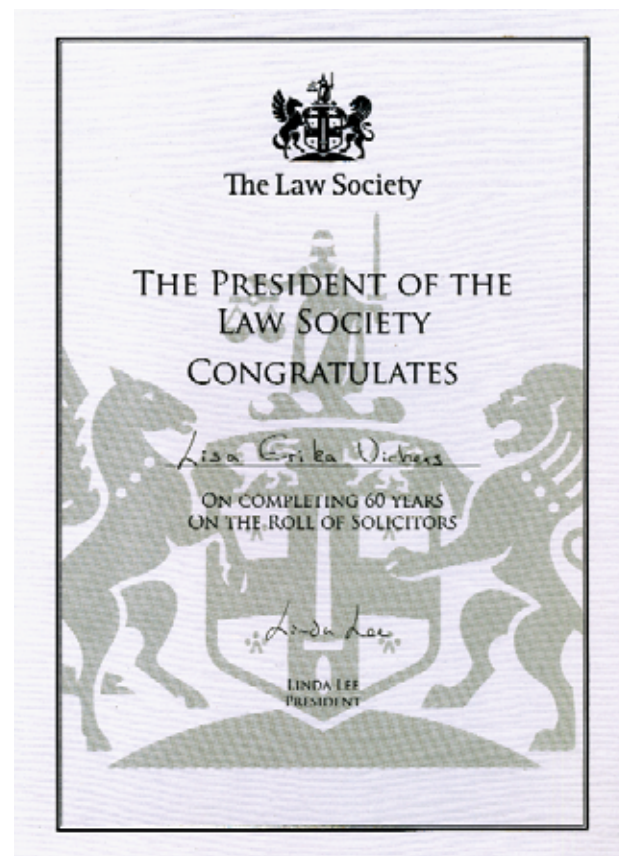
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# TESTING TESTING: HAIR ALCOHOL TESTS IN THE FAMILY COURTS



Jacqui Gilliatt is a family law barrister with over 18 years' experience practising from 4 Brick Court in Temple, London. Jacqui regularly accepts instructions in all children cases (public and private) including child abduction and international relocation, divorce and nullity, and domestic violence. Jacqui is the General Editor of the Family Law Week Blog and has her own Bloody Relations blog.

I should say at the outset of this article that I was Counsel instructed by Trimega Laboratories as intervenors in the recently reported decision of *Moylan J LB Richmond v B* [2010] EWCA 2903 Fam - <http://www.familylawweek.co.uk/site.aspx?i=d71271>. This is one reason why I have become interested in the science behind hair testing and the place of the test results in the family court process.

Hair tests for alcohol are relatively new – but they have a 10 year history and are based on extensive research. Much of this research has been pioneered by the renowned international expert Professor Pragst, an adviser to Trimega Laboratories and board member of the industry's self-regulatory body: the Society of Hair Testing <http://www.sohat.org>.

There are two main tests available to test hair for alcohol. Each test identifies chemicals which are only found in hair when ethanol has been present in the body – generally this will only happen when alcohol itself has been ingested. The two markers which can be tested for are Ethyl Glucuronide (EtG) and Fatty Acid Ethyl Esters (FAEEs). EtG is water soluble, incorporated into the hair through sweat. Over time it may be washed out of hair so it has a relatively limited shelf life. FAEEs are fat-loving and are much less sensitive to hair treatments and washing.

In order to provide the court with the best information the ideal is to commission tests for both EtG and FAEEs and this practice was specifically approved by Moylan J. By doing this you ensure the greatest possible degree of accuracy because the relative strengths of each test compensate for the possible shortcomings of the other.

In the particular case in which all this was considered by Moylan J, a situation arose which may be all too familiar to family lawyers. The mother had a long-standing alcohol dependency. She claimed to have given up drink altogether. Hair tests were regularly commissioned and one particular test, said to relate to one particular month, came back from the tester and was reported to indicate that she had been drinking in that month. The tester had

adopted a practice - commonly used in relation to drug testing - of using one centimetre segments of hair to represent one month in time and dividing the cut-off by three. They interpreted the result as indicative of alcohol use. This had the all too predictable effect of causing the local authority to lose confidence in the mother's veracity and reliability and as a result they would not agree that she could care for her children.

Had the tests been reported by the tester in accordance with Society of Hair Testing guidelines, they would have had to say that the results did not provide evidence of drinking.

What became clear from the case is that we lawyers have tended to interpret the tests in a very black-and-white way and to assume that the tests can reliably tell us exactly how much someone is drinking rather than that someone is drinking excessively. The Judge emphasised the need to instruct test providers in the same way as any other expert i.e. by following the Practice Direction.

The Judge's other conclusions were in summary:-

- Hair tests should be seen as one part of the overall evidential picture;
- Where hair tests are undertaken, tests for both FAEE and EtG should be done;
- The tests can only support findings that the results are consistent with/indicative of excessive drinking – below cut-off they can be said to be consistent with either abstinence or social drinking and they cannot show how much someone may have been drinking;
- Tests involving 1cm samples should not be used as they cannot be said to produce reliable evidence of excessive drinking.

It is difficult to gauge how many cases may have been affected by the incorrect interpretation of hair tests but family lawyers should review any case in which segmenting has been used or unlikely results are received and consider whether to ask for re-testing and/or FAEE testing, particularly where the test results seem to be out of sync with the overall evidential picture and the client is insistent that no alcohol has been drunk.

Further reading: [www.trimegalabs.com](http://www.trimegalabs.com)



# Middlesex Organisations:

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#### THE FIRST SUMMER

In the middle of the glittering Victorian era Ealing Cricket Club became a reality when the first cricket match was played on the 6th May 1871. In this period, rich in the influence of politics, the church and the army, the Rt. Hon. S. H. Walpole, M.P., consented to be President, Revd. E. S. Carter, Revd. J. S. Hilliard, Revd. L. Clarke and Revd. J. Summer-Hayes were founder members, and Capt. G. Tyrell was elected Vice-president. The village of Ealing, where you could rent a six-bedroomed house with boudoir for £50 p.a., buy two dozen eggs from the farm for 1/-, fifteen cabbages for 1/3d.; and rates were 9d, in the £ – could now boast it's own cricket club.

Twelve matches were played in the first season, ten won, At the end of the year the Club had a credit balance of £20, 150 members, and took the decision to move from the Royal India Asylum land to a six-acre wheatfield on the farm of a Mr. Johnson – the present site of the Club – on a nine-year lease.

The first summer concluded with a dinner at the Railway Hotel – “forty members appeared in every way satisfied with the recherché repast prepared by Mr. Moon, of the Broadway, and placed before them by Mr. Brown the proprietor”.

In proposing the toast of the Club, the President said that, “the real object was to promote what he might call the innocent amusements of the youth of the land and he did not think they could better secure the object than by bringing all classes together – from the highest to the lowest – in one common institution like the present”. Whilst no modern-day Ealing President would risk similar phrasing, there can be no doubt that Mr. Walpole's sentiment in 1871 remains the true philosophy of Ealing C.C. today i.e. cricket for all.

#### FROM 1872 ONWARDS

As Ealing grew fast, so did Ealing Cricket Club. An area 70 x 35 yards was levelled and prepared on the new ground, a pavilion was built at the north end of the ground at a cost of £130. Ealing Village C.C., amalgamated with the Club in 1874.

The reputation of the Club as a leading cricket side was immortalized in 1875 when M.C.C. visited Ealing and were dismissed for a total of seven runs, the smallest total ever made by an M.C.C. team. Notwithstanding, the fixture has been a regular feature of Ealing's calendar ever since.

The game of cricket was growing rapidly and the Club now attracted many leading players. Whilst the club game was generously set with the star names of the first-class game, the meaningful origins and inspiration of the game were still reflected in matches such as that played on the Common in 1877 between the Drapers XI and the Grocers and Cheesemongers XI.

#### THE TURN OF THE CENTURY

A condition of the renewal of the ground lease in 1897 was the building of a more permanent pavilion and at the same time the Club were told that the lease would not be renewed in 1915. A ground purchase fund was therefore set up by Club Treasurer, Arthur Bradbury. Raised from Generous donations and annual fetes, a sum of £3,000 was offered prior to public auction in 1914. This proved insufficient but the freehold of the present ground was eventually purchased at £4,500, the balance being raised by a mortgage paid off in 1931.

The new and present pavilion was opened in 1900 and Dr. W. G. Grace came that year with the London County side. The year before, he scored a century at Ealing – “fielded at point and missed two easy chances”. In 1902 he came yet again, an obvious error of judgment by the almighty, for he was bowled C. P. Coode for 0. In 1908 he scored 66 in the same fixture and the “Middlesex County Times” reported, “increasing years and weight prevented him running several of his hits” – a tradition maintained by many since.

#### THE WAR YEARS

The outbreak of the First World War put an end to Club activities. A number of members were killed on active service and their names are recorded on the memorial plaque in the Pavilion. The Club was closed until 1919, perhaps symbolically, for England and Ealing would never be the same again. A golden era in the life of the Club was over. For, whatever the laudable intentions of the founders, the first forty years had inevitably been cricket for professional gentlemen and gentlemen of leisure. But they had built a Club that was capable of change with a capacity to draw its personality from the rapidly changing nature of Ealing and its population. So when life started anew in 1919 and the Club took up the new challenge!

In 1923 the eastern portion of the ground was leased to the Glengarry Lawn Tennis Club, but the tenancy ceased in 1930 whereupon the land was sold. The houses in Park View Road are built on this site. Electric lighting was installed in the Pavilion in September 1929. By the end of the twenties the Club was again playing more than seventy matches each season, membership stood at 175, and annual turnover was nearing £700. The present score box was built in 1937 and by 1938 membership rose to 228.

For the second time in its history the Club was quickly in action after the Second World War. When K. Hinge became Captain in 1954 he recognised that the changing character of Ealing as a great London suburb made it essential that the Club should begin to develop more of its own young players – a policy that was to pay off handsomely and to give the Club a great new strength.



Photograph taken by Robert Dreppaul.

**John Poore Tribute Dinner**  
2 April 2011

**Summer Ball**  
2 July 2011

For tickets contact  
**Louise Chippendale**  
cricket@ealing.co.uk

The late Mervin Mansell is recognized for his commitment to the policy of a strong Colts section with a Memorial Plaque in the front of the Pavilion and annual cricket match. The current club captain David Holt and over 8 first team players are former Club Colts. The success of the club is such that current membership stands at over 550 with over 400 colts including about 100 girls from across the Borough from Southall to Acton.

#### THE FUTURE

Ealing CC reputation currently stands as high as it had ever stood. This is an achievement largely of young players who developed their cricket under the influence of the ‘Ealing personality’, by virtue of the traditions that had evolved from an ever-changing body of people that had honoured, preserved and advanced the original concept of The Ealing Cricket Club. Champions of the Middlesex Premier league for the last six seasons and finalist in the National Cup this season, missing put by 5 runs due to the weather.

The Club is Wisden's Club of the Year for 2010. The Club on whose ground Spofforth, Grace, Jessop, Hendren, Hobbs, Compton, Hutton, May and Trueman had played. The Club that has the unique vitality to mould and influence in part the lives of its members as they in turn mould and influence their Club's contribution to the community. For it is not a Club that happens to be sited within the boundaries of Ealing, it is a Club that is an integral part of the life of Ealing.

The Presidents from Walpole to Poore, the devoted, industrious and far-sighted Administrators, Secretaries, Treasurers and Committees have all ensured that Ealing can and will always have its own cricket club – that in the late Mr. Johnson's wheat field “the different classes of society – from the highest to the lowest”, with the common bond of a love of cricket, could always find a home. Now on the dawn of the second decade of the Second Millenium, the current Committee's vision is to provide Ealing with a second wheatfield from which the enduring values of cricket can be sown once again. The Club recently adopted a new constitution to bring the club in line with current Club Mark requirements and legislation. The Club is considering changing to a charitable status to help finance this vision. A toast to Ealing Cricket Club, a club for all seasons!



*Adapted from an article written by Sam Kelso, first published in Ealing CC Centenary Year 1970; edited and updated by Robert Dreppaul, January 2011.*






# Notices


**Get Well Soon, Alured!**  
from the  
Middlesex  
Law Society  
Committee  
and Members

Our thoughts are with  
our Past President,  
Maria Crowley at this  
difficult time.



from the  
Middlesex Law Society  
Committee and Members




Middlesex Law Society  
**5-a-side Football Competition**  
Goals, Hayes 16 April 2011  
(sponsored by 5 Brick Court Chambers)  
Contact Alan Williams to enter your team  
creativewit@tiscali.co.uk



Middlesex  
Law Society  
The Committee extends  
their sincere thanks to  
**Peter Hesom**  
for eight years as the  
Middlesex Law Society's  
Administrator



Middlesex Law Society




**Annual  
General  
Meeting**

**16th March 2011, 6.30 pm**  
**Ealing Cricket Club**  
Corfton Road, London W5 2HS

Guest Speaker:  
**Mark Stobbs**  
Director of Legal Policy, The Law Society  
on 'Alternative Business Structures'

Please contact the Secretary, Maurice Guyer  
email: mguyer@vickers-solicitors.co.uk



## Surrey law firm, Harold Bell & Co. increases client service and controls costs with LOASys Document Automation

Harold Bell & Co. has served Ewell and surrounding communities from the same location for over 50 years. Harold Bell established the firm in 1958 and was succeeded by his son Malcolm Bell who remains the firm's senior partner running the practice with partner Tracy Poolman, a Notary Public.

A traditional local "family" law firm, acting for clients primarily in matters of conveyancing (residential and commercial), estate planning, wills and probate, matrimonial dissolution and mediation, and general litigation. However the firm also advises on partnership and employment matters

The firm prides itself that most of its business comes by recommendation and that it now acts, in some cases, for the grandchildren of clients of its founder.

Being commercially aware, the firm is also innovative. In early 2008 the firm, seeking efficiency and productivity, had been keen on digital dictation and Malcolm attended Legal IT in Islington to source such a product. Seeing several systems there he was surprised to see one that incorporated voice recognition and document creation. Following a demonstration he quickly made the important step to acquire the Legal Office Automation System - LOASys.

All fee earners in the firm use integrated digital dictation, speech recognition, document (including forms, eMail etc) management and document assembly for all work types. The installation is enterprise wide where workload can be monitored every day and allocated to appropriate staff. The system allows fee earners to be self supporting and work from home when necessary.

Malcolm comments "We were looking for digital dictation, believing Voice Recognition was not up to much. How wrong we were. A chance discovery of LOASys at a trade fair has changed our lives. No more tapes and lugging files, no more instructions to 'ignore' part of the tape. 95% voice recognition from day one. Easy, correction only, transcribing at the same full rate dictation speeds. Far faster turnaround and many more 'add-ons' to make life easier. A Brilliant system, from very nice people".

LOASys offers

- Lower overheads - the entire system costs £5 per fee earner per day.
- Increased turnover with the same resources
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- Limited cost escalation and therefore competitive pricing for great service
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For more information please contact LOASys on 020 7501 8516 or sales@loasys.co.uk

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## Taking a hands on approach to managing your pension

**Throughout 2010 headlines were dominated by concerns over the sustainability of the global economic recovery, coupled with the fear of the “double dip” and the spectre of a European sovereign debt crisis. A co-ordinated global response to these challenges is proving to be a mirage. As the Fed engages in a second bout of Quantitative Easing, China, India, Sweden and Australia have all raised their interest rates. The Coalition Government here in the UK is tightening fiscal policy, as trumpeted in the recent Comprehensive Spending Review, whilst oblique hints coming from the Monetary Policy Committee of the Bank of England suggest that there might be further Quantitative Easing in 2011.**

Whilst we acknowledge that many pertinent issues such as low growth and persistently high unemployment may subsist for some time, we would caution investors against an unhealthy obsession with the headlines. Rather investors should remember that financial markets constantly build momentum and over-react. In the words of P J O'Rourke, 'there's a whiff of the lynch mob or the lemming migration about any overlarge concentration of like-thinking individuals, no matter how virtuous their cause'. For those who can see past the currently unsettling backdrop, we feel that there is much to be positive about and many different opportunities:

Stock-markets have continued to rise. The FTSE has rallied some 64% since its low of 3,512 in March 2009 to its current level of 5850 at the time of writing. The British economy grew twice as quickly as expected during the three months from July to September 2010, defying expectations of a sharp slowdown showing the economy growing at its fastest rate for a decade; “double speed, rather than double dip” is the current quip. Global growth is currently being led by the “BRIC” powerhouses (Brazil, Russia, India and China), with their buoyant economies, growing middle classes and abundance of raw materials, as these countries become wealthy they are consuming goods and services produced in the west which is creating opportunities for the corporate sector. However investors should be wary that the long term impact of quantitative easing is still unknown. The worry is that new money being injected into the economy combined with low interest rates will cause inflation. This poses a significant problem for those investors who hold a large amount of assets in cash and fixed interest investments which perform poorly in an inflationary environment. Given the current improvement in markets conditions equities can once again offer a hedge against inflation.

Increasingly investors are asking how to benefit from the signs of recovery and growth and hedge against inflation. At Killik & Co, we strongly believe that the investor's best response to this uncertainty is to define financial goals and create an asset allocation strategy suitable for their risk profile. Strategic asset allocation sounds dry and technical but investment selection, market timing and careful monitoring can make a significant impact on investment returns. Therefore after seeking the necessary advice and guidance we believe that investors should take a “hands on” approach to their investments.

So how does this impact pension investments? Although the long-awaited Comprehensive Spending Review revealed a considerable number of changes in regard to pensions, we believe that even in an environment where pension rules and regulations keep on changing, a pension remains a key savings tool for the majority of individuals. In the context of an investor who wishes to treat their pension and the tax efficiencies of pension saving as one part of an overall coherent investment strategy for all their wealth, the Self Invested Personal Pension (SIPP) offers the most flexibility. SIPPs were introduced in Nigel Lawson's final budget of 1989 and remain true to the spirit of his original objective: “to make it easier for people in personal pension schemes to manage their own investments”.

These legislative changes have coincided with political and economic imperatives that have significantly altered how the general public views pensions. Most significantly, the final salary pension scheme, where the risks of the scheme rest with the employer, has become an out-dated model: fewer employers are prepared to take on the funding risks. Meanwhile there have been numerous examples of pension schemes that have turned out not to have the funds to meet their liabilities. Whether this has been caused by investment under-performance or changing actuarial assumptions, particularly driven by increased life expectancy, the effect has been to undermine the sense of security that membership of a company pension scheme used to bring. The natural consequence has been an increasing desire of individuals to take responsibility for their own pensions.

A SIPP naturally meets this appetite and has become the perfect solution for an environment where savers are opting to take full control of their pension. Therefore clients are increasingly choosing a SIPP because it offers the ultimate flexibility in building a bespoke portfolio that is best positioned to meet their individual growth expectations within their risk profile. This flexibility highlights the limitations of the average personal pension where a limited asset range often means clients end up taking too little or too much risk.

When considering the investment strategy within the SIPP, clients should have a flexible approach which adapts according to their life stage. For a client in the early stages of retirement planning, it could be argued that the investment strategy within a SIPP should be viewed differently from the rest of their overall investment portfolio. Due to the long term nature of the investment, volatility should be of less concern and the focus should be upon creating high growth. Therefore, rather than being worried about diversity of investments across the traditional asset classes investors should focus on the sectors in which they have highest conviction and are most likely to meet growth expectation. Clearly as clients approach retirement their investment strategy needs to change. Traditionally on reaching retirement and starting to draw from their pension fund, most investors have the option to and therefore often choose to take 25% of the fund as a tax free lump sum and then buy a lifetime annuity with the remainder. In this case clients should be positioning their portfolio so that the value of the pension peaks when benefits are drawn from the pension. Alternatively a client may choose to enter Unsecured Pension (Income Drawdown). This option can provide an income whilst also allowing the client to remain invested and in control of their retirement portfolio. However the risk remains that the income being taken combined with poor performance could drain the fund; consequently a client needs to consider the “critical yield”. The Critical Yield is the average annual growth required for a pension fund in drawdown to provide an equivalent income as an annuity. It is at this point that the client needs to utilise the flexibility of the SIPP to stabilise their pension pot through diversity of asset class whilst also maintaining an investment strategy

that is designed to deliver growth above the critical yield. We would recommend that investors look beyond the traditional asset classes – cash, equity, bonds and property and consider diversifying incorporating a range of uncorrelated alternative investments to help provide more consistent and predictable growth.

Although the tax efficiency and flexibility of a SIPP are highly attractive, it is important to bear in mind that ultimate value depends critically on how the SIPP's investments perform and in considering a SIPP fundamental investment principles should apply. At Killik & Co we offer a SIPP with the widest range of permitted personal pension investments including UK and Foreign Equities, Bonds, Funds, Commodities, ETFs as well as an extensive range of alternative assets. Every client is assigned their own dedicated Broker so that long term relationships can be developed and the client has a single point of contact. With an understanding of the client's need, a Broker can use their market knowledge and investment experience to deliver a bespoke advised or managed service which is most suitable for their requirements. We offer an accessible and unintimidating service and no minimum portfolio size required. If you would like further information please contact us on **020 7483 2131**.

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Michael Berry  
Michael.Berry@killik.com

Web: [www.killik.com](http://www.killik.com)

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Middlesex Law Society

# 51st Annual Dinner and Dance

at the Holiday Inn, Brentford Lock  
12th November 2010





# Turn your support staff into fee earners

**Local firm Bonnetts sponsored legal secretary Lisa Kennelly on distance learning courses last year which gave her a thorough grounding in her chosen area of legal practice. The courses were taught by ILEX Tutorial College (ITC) and examined by ILEX.**

The courses lead to a recognised paralegal qualification, but also double up as the first year of the legal executive training programme, so they are an ideal starting point for anyone who wants to gain knowledge to be more effective in a support role, but who may also wish to see if they have a taste for legal study.

Lisa, who started working with Bonnetts as a receptionist, commented:



Lisa.

*"I left school at 16 and was undecided as to what I wanted to do or what direction I was going to take. When I started as a receptionist in a law firm I didn't know what conveyancing was or what probate meant. I progressed to a secretarial role and worked for various fee earners in different areas until I settled in the conveyancing department.*

*I was encouraged by the partners to start to undertake more of an assistant role and as a result, I decided to start the legal executive training. I had the full support of the partners and fee earners of Bonnetts Solicitors and this gave me the confidence to undertake the course.*

*I have found the first year's training (leading to the ILEX Level 3 Certificate in Law and Practice) to be a very enjoyable experience. It has given me an understanding of land law, how to apply it in practice, as well as professional skills such as client care.*

*It has been a very hard year, studying and working full time but I feel that I have gained a great deal of knowledge as well as confidence.*

*The land law course, as well as the other courses, covered a lot more complicated material than I anticipated. It included easements, rights to occupy, how property can be held, the different registered estates etc. The conveyancing course has taught me how to progress a file from taking instructions through to completion and registration of title.*

*I now have the confidence and knowledge to assist fee earners within the conveyancing department and work well with the supervision that I am given from my supervisor. Most importantly, I know enough to realise when I need to ask for help."*

Lisa studied for an ILEX Level 3 Certificate in Law and Practice in Conveyancing. There are a further seven Certificates to choose from, leading to competence in supervised fee earning in:

- Civil Litigation with Tort
- Civil Litigation with Contract
- Criminal Litigation
- Elderly Client Practice
- Employment Law Practice
- Family Practice
- Probate Practice

Each qualification includes an introductory unit, a law unit, its linked legal practice unit and two professional skills units – client care and legal research.

Lisa's supervisor, Claire Benneyworth, commented:

*"Lisa had been a secretary for about two years, during which time it became clear that she had the potential to progress her career in the legal profession.*

*Upon reviewing the courses that were available, we decided that the ILEX qualifications provided the best opportunity to develop her career from a secretary into a fee earning role.*

*The investment required was considered to be appropriate, with the knowledge that, by learning through a recognised body such as ILEX she would obtain the proper training to become a competent fee earner in a relatively short period of time.*

*I was very surprised at the content of the studies for the first year. The broad introductory course expanded her knowledge base considerably, and her selected courses in land law and conveyancing were very wide reaching and included some difficult topics. Hand in hand with the increase in her knowledge has been the increase in her confidence in her work. I believe this is partly due to the fact that the subjects are examined, rather than just marked on course work, so that she really has learned the material and is able to apply it.*

*Lisa's positivity and excellent progress has had an impact upon all the staff within the firm and will hopefully give others the confidence to wish to move from a purely secretarial position to that of generating fee income. This is obviously a valuable benefit to any firm."*

## Home-grow your own qualified lawyers

The courses that Lisa studied led to her achieving a paralegal qualification – the ILEX Level 3 Certificate in Law and Practice (Conveyancing). They also formed the first year of the academic element of the legal executive lawyer qualification.

**"Lisa has been developed from a likeable, committed administrator into a competent assistant at a cost of just over £1,000. I am confident that Lisa knows what she is doing and can now assist fee earners with the progress of standard conveyancing files with minimal supervision."**

Claire Benneyworth, Partner, Bonnetts Solicitors



Claire

*Lisa commented: "I am now undertaking my second year of the four years of ILEX study. At the same time I am clocking up the qualifying employment needed so that I will become a fully qualified lawyer capable of running my own files and assisting my firm to grow in these uncertain times."*

## Convert your law graduate paralegals

The legal executive route is also available to law graduate paralegals who can top up their law degree with legal practice knowledge and professional skills through the ILEX Graduate Fast-track Diploma. Paralegal work being undertaken by law graduates can count towards their qualifying employment. The cost of converting a law graduate to a legal executive at today's rates is less than £2,000.

In the second year of studying the objective is to achieve a broader base of knowledge, as appropriate for a prospective lawyer, but the distillation of essential skills for one practice area into the first year means that the ILEX student becomes extremely useful to his/her employer in the shortest possible time.

Claire added *"Lisa has now embarked on her second year studies and, I believe, is committed to undertaking the ILEX course through to qualified lawyer. She does this with the support of all at Bonnetts Solicitors. In any event, the knowledge, experience and confidence that this first year has given her is immeasurable, even if she had not decided to continue with her studies."*

The third and fourth years of study deliver higher-level knowledge in the selected areas of law and legal practice, as well as professional skills, appropriate for running files independently and supervising others, or running a department.

At current rates it costs around £6,000 over four years to sponsor an employee through the academic element of the legal executive qualification. Fellowship of ILEX is granted to those who also achieve five years' qualifying employment, three of which can be attained during the period of academic study. Fellows of ILEX have been eligible to be partners in law firms since April 2009.

## Select the qualification to turn your support staff into fledgling fee earners for £1,900

We offer eight qualifications for support staff to gain competence in fee earning. Each one includes our introductory unit, a law unit, its linked practice unit and two professional skills units – client care and legal research. Success in the five units leads to an ILEX Level 3 Certificate in Law and Practice.

Practice area	Type of work that can be done under supervision once Certificate achieved
Contract and Civil Litigation	Progress straight-forward low value contract claims including debt recovery
Tort and Civil Litigation	Progress straight-forward fast-track personal injury claims; assist in more complex cases
Land Law and Conveyancing	Conduct purchase and sale of domestic freehold registered land under supervision
Criminal Law and Litigation	Advise clients charged with summary offences
Succession and Elderly Client Practice	Advise on rights on intestacy; draft wills in uncomplicated/low value estates; draft/register POAs; apply to court of protection
Employment Law and Practice	Advise on discrimination, maternity/paternity rights, unfair dismissal and redundancy. Complete Tribunal forms
Family Law and Practice	Advise on separation and divorce including contact and residence of children and distribution of assets; draft and file divorce petition
Succession and Probate Practice	Advise on rights on intestacy; take instructions/draft wills in uncomplicated low value estates; advise on IHT threshold and exemptions; administer uncomplicated estates



To find out more about how we can help your business to grow in difficult economic times contact Jenny Pelling, Business Director on 01234 844326. For general course enquiries call our Customer Service Team on 01234 844300. ILEX Tutorial College, College House, Manor Drive, Kempston, Bedford MK42 7AB. [www.ilex-tutorial.ac.uk](http://www.ilex-tutorial.ac.uk)





# Business and Human Rights: Making it happen in 2011

The year 2011 has come and it already looks like a promising year for the development of business and human rights standards. This year also signals the end of the mandate of John Ruggie, the United Nations Special Representative of the Secretary General on human rights and transnational corporations and other business enterprises. In June, he is expected to present his final recommendations to the United Nations Human Rights Council, the result of 5 years of work and worldwide consultations with various stakeholders. The recommendations will include a set of Guiding Principles for the operationalization of the "Protect, Respect and Remedy" framework the Human Rights Council endorsed at his behest in 2008.

John Ruggie's framework is based on the argument that international human rights standards are not binding on corporations as such, but that, nevertheless, states and in particular the states of incorporation of multinational companies, are under an international obligation to ensure corporations do not violate fundamental human rights when operating domestically or abroad, in areas ranging from child labour to the protection of indigenous peoples' rights (*Protect*). Additionally, corporations themselves must respect human rights, despite not being under an internationally-based duty to do so, which means acting with due diligence to avoid infringing on the rights of others, and addressing harms that do occur (*Respect*). Finally, both states and companies must ensure that effective grievance mechanisms, both judicial and non-judicial, are available for victims of abuses (*Remedy*).

The question of whether international human rights law applies to corporations has been debated for many years and John Ruggie has taken the view, which is not without controversy, that while corporations are not directly subjected to international law, they still have a responsibility in human rights matters, albeit

only of a non-legal nature. This position, which is now widely, if not unanimously, accepted makes the area of business and human rights challenging for lawyers who are concerned with defending their clients' legal interests. "If no international law applies, surely our clients cannot be held responsible of an international law violation" seems to be a legitimate conclusion to derive. This conclusion was adopted by the 2nd U.S. Circuit Court of Appeals in September 2010, when it held in *Kiobel v. Royal Dutch Shell* that the *Alien Tort Statute* (which allows claims against foreigners before US Courts for violations of the Law of Nations) could not be used in claims against the defendant since corporations are not subjects of international law. This decision was a serious blow against those dedicated to improving corporations' human rights impact, especially since it came after a number of claims had been entertained against companies before US Courts, on the basis of this very statute.

However, it is important to realize that in this area what is happening outside the courtrooms remains almost as important as decisions taken within. Just a few weeks prior to the *Kiobel* judgment, the British press reported that some of the shareholders of the British mining company Vedanta Resources (among them the Church of England and the Norwegian Government Pension Fund) sold their shares in the company because of concerns in relation to the treatment by Vedanta of the indigenous Dongria Kondh's sacred lands in the Indian state of Orissa. There is no international treaty on the protection of indigenous peoples' rights, just a non-binding Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly in 2007. No judgement held Vedanta responsible for human rights violations as such. Yet, because they overlooked the contents of the Declaration, which for instance provides for the free, prior and informed consent of indigenous peoples to any project that involves the use of their lands, their public image has suffered greatly. International human rights law therefore remains relevant, even outside a judicial context.

To address these challenges, Middlesex University has created an MA programme in Human Rights and Business. The course has been running since September 2010 and covers areas of law such as international human rights law and the law of the WTO, and explores the relevance of these areas to multinational corporations — especially those corporations operating in emerging economies. The programme is tailored for busy professionals with significant online content and class contact restricted to two days a month (Friday-Saturday). Modules can also be taken separately for CPD points, with candidates able to choose from a range of two-day delivery that includes the following subjects: Public International Law; International Human Rights Law; Transnational Corporations and the Law; The Millennium Development Goals; World Trade Law and the International Labour Organisation.

Dr Nadia Bernaz  
Middlesex University  
Programme Leader – MA Human Rights and Business  
n.bernaz@mdx.ac.uk



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Your course will be based at our Hendon campus in North London. Class sizes are small and you will receive personalised support, with tutorials in state-of-the-art lecture theatres and seminar rooms. The Sheppard Library includes an exclusive law library with a dedicated Law librarian, late opening hours and free Wi-Fi, complemented by access to substantial e-learning resources including all the major electronic journals in the University's online learning environment.

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# Council Member Michael Garson awarded Honorary Professorship by Thames Valley University

**Council Member**  
Michael Garson has been awarded an Honorary Professorship by Thames Valley University to acknowledge his major contribution to the legal community in particular the University's Professional Development Centre. His citation was read by Past President of the Middlesex Law Society, Professor Malcolm Davies in the presence of the Vice Chancellor, Professor Peter John and distinguished guests.



Professor Michael Garson.

Karon Monaghan QC and Linda Goldman were also awarded Honorary Doctorates at the Annual Michael Molyneux Law School Dinner which took place on the 18th November at the University's reputed Pillars restaurant.

Two of Thames Valley University's top Legal Practice students, Maverick Gutarra and Montgomery Htike were also awarded prizes at the dinner. Both received distinctions in their LPC studies. A third student, Selina Jinah, who also obtained a distinction has recently started her training contract with M2M solicitors in Harrow.

**Student Mentoring Scheme**  
The Legal Practice Course team at Thames Valley University runs a short work experience and solicitors mentoring scheme for their students. They are looking for new firms to join the scheme. There are no onerous guidelines for mentors and there is no reporting to be done. They simply ask for your firm to allow a student to visit your office for a minimum of two days, at mutually convenient times.

If your firm is willing to participate in the mentoring scheme, please e-mail Jane Stevens [jane.stevens@tvu.ac.uk](mailto:jane.stevens@tvu.ac.uk)



Robert Dreypaul presenting award to Maverick Gutarra.

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# FILM AND THE LAW No 10: Women that changed the World

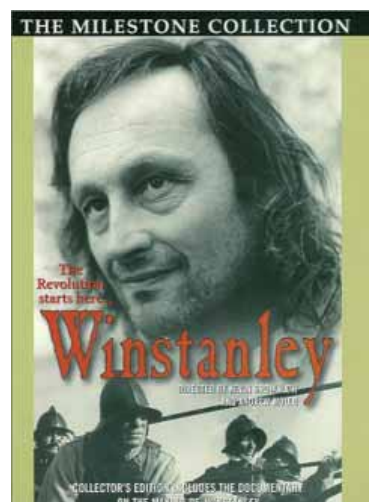
Readers of this column will be aware that the film **Victim (1961)** led to a change in the law with regard to gay relationships and **Cathy Come Home (1966)** was instrumental in taking homeless families off the streets.

The recent release **Made in Dagenham (2010)**, whilst not leading to a change in the law per se, does in fact document how the pivotal **Equal Pay Act (1970)** became law. The Act was not initiated by reasoned debate in Parliament, rather the driving force behind this radical change in our daily lives was a group of working women who were outraged when they discovered that men were getting paid more money than themselves for the same or equivalent work.

*The Cinema of the Oppressed* does not figure much on our flickering screen. Film after all, is entertainment. I go to the cinema to be taken out of myself, people are want to say and Sam Goldwyn put it even more succinctly, *If I want to send a message, I go to Western Union*. That being said, two virtually unknown British films stand out as excellent examples of the genre.

**Winstanley (1975)** tells the story of a group of disenfranchised rural folk who after the Civil War in 1648 gave a literal interpretation to the word commonwealth, and set up a community on St George's Hill, Weybridge. They welcomed everyone. *Each to his own needs*, was the slogan. Amazingly this prescient counter culture movement lasted three years despite constant harassment from the local gentry. Its mentor Gerard Winstanley mysteriously disappeared into the mists of time only to be re-discovered in the 1970's, when hippy communes suddenly sprang up and became *de rigeur*.

There is a turn-off on the Dorchester-London road that leads to the Tolpuddle museum. Well worth a visit. The film **Comrades (1986)** re-tells the story of how 6 farm-workers from a tiny Dorset village in 1820 were deported to Australia for daring to set up a Trade Union, and having the audacity to ask for 9 shillings per week. Unlike **Winstanley**, there was a happy ending in



Gerard Winstanley the "gentle revolutionary".



By Vincent McGrath  
www.filmnite.co.uk  
filmnite@tiscali.co.uk  
020 8579 5330  
07877 551442



The Dagenham women persuade Labour minister Barbara Castle to enact the Equal Pay Act (1970).

that the **Tolpuddle Martyrs** as they became known, were eventually pardoned thanks to popular support and all lived to a ripe old age in their newly adopted home of Canada.

**Norma Rae (1979)** and **Bread & Roses (2000)** bear a striking resemblance to **Made in Dagenham** in that they both involve women fighting for their rights in the workplace. Sally Field deservedly got an Oscar for her role as the feisty textile worker in a 1970's North Carolina town, who fought the good fight for trade union representation, whilst our very own Ken Loach entered the lion's den of LA to tell the story of how big time lawyers (yes lawyers can you believe?) still exploit Latino (mainly women) cleaners.

Indie director John Sayles in **Matewan (1987)** tells it how it was. A stranger comes into town. Goody or Baddy? In fact he turns out to be a goody – a union rep no less. But the mere mention of the word *union*, strikes fear in the hearts of the tough coal miners, who our hero has come to organise. The film, based on the true story of a 1920's strike in Virginia, ends in a bloody shoot-out, but in terms of the miner's lives it is just the beginning of their struggle for a living wage.

Whilst there are no shoot-outs in **Made in Dagenham** the story is essentially the same. Working people fighting for their rights. Made with backing from the Film Council which sadly is about to disappear due to government cuts, it is a film that deserved to be made. Those strident women from Dagenham were not only responsible for this country's Equal Pay Act but also after 1970 many other countries rightly followed suit. How refreshing to see a film that celebrates the power of ordinary people.



The 6 Tolpuddle martyrs awaiting deportation to Australia.



Sally Hawkins as the the union rep.

One suspects that lawyers of every ilk will find this film not only entertaining but also of interest in the way it traces the origin of this legal cornerstone. A Source of the Nile moment, no less. In fact hark! Do I not hear the dulcet tones of the bells of Saint Chancery Lane ringing out, C...P...D?

No not really. That would surely be asking too much.

But if you are stuck for a present for your loved one who just may hack out a living at the coalface of Employment Law or any other kind of law for that matter, then I suspect **Made in Dagenham** will be a present that won't find its way to the nearest charity shop come Eastertide.

A very important film that needs to be seen by lawyers of a curious disposition, and also lawyers of other dispositions as well. A must for all Law Schools.

Altogether now,  
*Women of the world unite.  
You alone know what is right.  
People ought to feel this way.  
That's the joy of Equal Pay.*

## STOP PRESS

Sadly the death has been announced of the diminutive but courageous **JAYABEN DESAI**, the lioness of the 1970's Grunwick strike. The image of her confronting the might of the police, with a handbag in one hand and a placard in the other became a defining icon of the decade. But no film has yet been made about her struggle on behalf of exploited migrant workers. One can only speculate as to why.



Jayaben Desai

FILM NITE started up again on 11th January 2011 at the exclusive celebrity watering hole SOHOHOUSE. The opening two sessions were given by Hollywood expert John Wischmeyer on the uncrowned king of tinsel town **FRANK CAPRA** – famous for films about the little man fighting for what is right and decent. Capra is probably best known for his festive regular, **It's a Wonderful Life (1946)**, and his search for *Shangri-La* saga, **Lost Horizon (1937)**. Whilst sometimes derided for his sentimental social comedies John Wischmeyer demonstrated through the use of carefully selected extracts that there is a great deal more depth and complexity in Capra's films than meets the eye. Other Capra films of note are **Mr Smith goes to Washington (1939)** and of course **It Happened one Night (1934)** when Clark Gable takes off his shirt in the presence of Claudette Colbert. Shock! Horror! NO VEST!

The rest of the term is given over to presentations/discussions on four recent releases, a free champagne reception at Sohoouse, and various meals and drinks. All in all a very pleasant way to learn about the second most interesting subject in the world.

Probably the best film class in town if not the world.



Oscar winner Sally Field stands defiant.



Maya learns about union action from Sam.



The eviction of union members.

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# Jack the Ripper Whitechapel Tour by Ealing Law and Criminology Students and the Young Middlesex Law Society Members

29 October 2010

Halloween night was spent on the dark and misty streets of Whitechapel this year with law and criminology students tracing the footprints of Jack the Ripper. Twenty students followed Professor Malcolm Davies and professional Ripper tour guide Fiona Lucas around the passageways of modern London, to hear details of each of the gruesome murders and a list of the police suspects.

Jack (as the press dubbed him) committed horrific murders by mutilating at least 5, probably more, female prostitutes in the backstreets and cobble-stoned streets of east London in the autumn of 1888. No one was ever charged and convicted of these crimes although there was a long string of suspects, some plausible and others less so such as Prince Albert, the artist Walter Sickert and Lewis Carroll.

Unlike modern police investigations there were no forensic tests available such as DNA, blood groupings or fingerprints. The killer mailed a piece of liver taken from one victim to the head of the vigilante committee that had been set up to capture Jack; but nothing was learnt from this gory piece of evidence.

Because of the nature of the butchery of the victims it was assumed the killer had surgical knowledge of an understanding of the skills of butchery and was adroit in cutting out internal organs in dark corners and in short periods of time.

At the time various groups were accused of being involved; these included the Jewish immigrants who had taken over the district at that time; and, the freemasons.



The trip stimulated lively discussions among the students.

What was the forensic technology available at the time? How robust or inaccurate were the eye witness accounts? What constituted 'evidence' in the Nineteenth Century? How did the police go about their work, and how were they organised? What was the effect of the press in reporting or creating fear even moral panic at the Ripper's exploits? Who were the likely suspects and how could any person carry out such depraved acts. And, finally, the key question: where to find a wine bar which was not heaving with City office workers and bankers at 9pm on a Friday night?

Students of crime, law and gory details should look at the following website for more details - <http://www.casebook.org/>

Professor Malcolm Davies  
Ealing Law School

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Brasseries which offer a more informal atmosphere with a contemporary hot and cold buffet. For a light snack, the Champagne and Seafood bars offer a more relaxed environment.

To make your journey to the Stadium easier, all Club Wembley members have use of the complimentary train service which will bring you into Wembley Stadium station. Tickets are available for London Marylebone, Beaconsfield, Bicester North, Warwick Parkway and Birmingham Moor Street.

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To find out more about Club Wembley, please contact Mr Chris Crouch on 0208 795 9521 or email: [chris.crouch@wembleystadium.com](mailto:chris.crouch@wembleystadium.com).

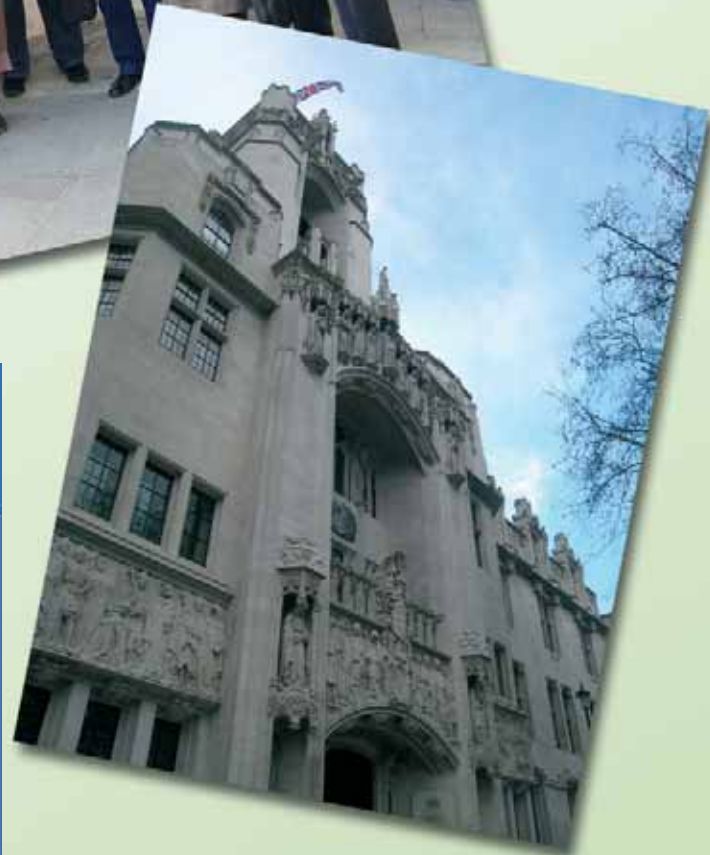
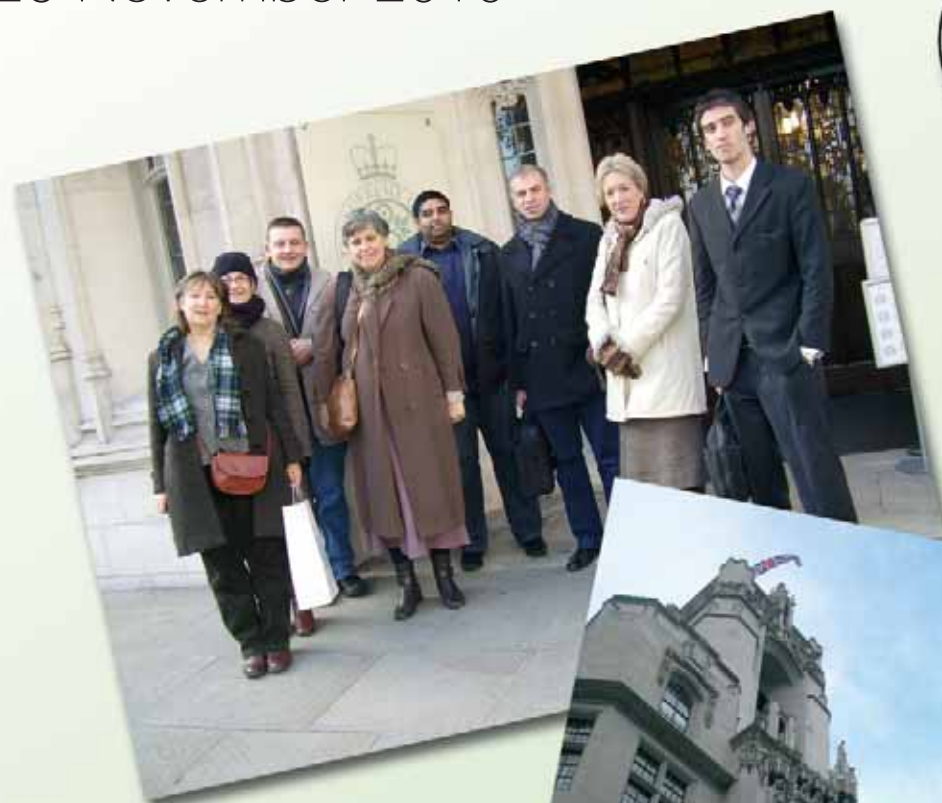
\* Excluding the FIFA World Cup Finals tournament; the UEFA European Championship Finals tournament; the Olympic Games; any association football match staged at the Stadium where The FA or the Football League is not the owner.





# Middlesex Law Society visits the Supreme Court

26 November 2010



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Middlesex  
Law Society

The next visit to  
the Supreme Court  
on the 18 November 2011

Contact Susan Scott Hunt  
s.scott-hunt@mdx.ac.uk

# Commercial Contaminated Land

The Olympic Stadium is now taking shape and looks set to be a spectacular centre-point for the 2012 Olympics in Great Britain. However, the development of the site has not been quite as straightforward as it could have been when compared with the impressive progress that the Olympic Village is making. At the opening stages of the development, construction could have been halted before it even began, and the reason for this? Contamination issues associated with the land on which the site was to be built.

Since the introduction of the Environmental Protection Act 1990 (now embodied in the Environment Act 1995) Local Authorities have been given responsibility for identifying and forcing the clean-up of land that has been deemed to be 'contaminated'. Local Authorities have been actively seeking sites to be 'cleaned-up', serving remediation notices where necessary and ensuring that any contamination within the land does not impose any health and safety risks.

The responsibility for the clean-up rests with the owner of the land and as a result the Law Society issued a warning card relating to environmental issues and how they should be considered in a conveyancing transaction.

Desktop Environmental searches have long been included as a standard 'usual and necessary' search conducted by the conveyancing profession when acting on the purchase of a property. These searches are accepted as industry standard and the nature of risk highlighted can range from minor (but potentially costly to remedy) to something that could affect the quiet enjoyment of the property or land. Where a search identifies a potential contamination issue the purchaser has three options:

1. To withdraw from the purchase of the property on the basis that potential remediation costs of the land will outweigh the value of the property



2. To purchase the property, making an allowance for any estimated clean up costs further down the line
3. To purchase the property with the benefit of a commercial contaminated land insurance policy.

The first option of withdrawing from the purchase when option 3 is available clearly seems quite dramatic and doesn't allow client satisfaction unless it's as a result of a major issue identified with the land that would create very high remediation costs or delay in completing building or development works.

The second option is likely to be less desirable to the prospective owner as it takes a risk that remediation will be required or enforced - which has to be costed into the purchase.

The advantages of proceeding with option 3, an insured solution, are two-fold. The purchaser is able to proceed with the transaction but also does not need to make allowances for any financial restraints posed by the threat of enforcement action (other than those incurred in complying with any planning conditions set). A contaminated land insurance policy has, historically, provided cover for both remediation costs incurred in complying with an enforcement notice served by the Local Authority and any diminution in value of the site as a result of such an enforcement notice being served. New policies on the market now also provide cover for third party property damage and/or third party bodily injury as a result of the identified contamination, where required.

Previously, purchasing contaminated land insurance was both a time consuming and an expensive option, with cover only being offered on a bespoke basis for commercial properties. However, a new breed of commercial contaminated land insurance has recently been brought to the market and is now available on a scheme basis with cover available online for lower value commercial risks up to £1m. In making commercial contaminated land policies as accessible as those already used for residential transactions, commercial property transactions can now benefit from increased cover and reduced premiums as another area of the conveyancing market takes advantage of the electronic superhighway to provide workable market solutions.

As is often the case with conveyancing transactions, be they residential or commercial, there remains a place for bespoke policies for transactions that don't fit "standard criteria", and there are always underwriters available to discuss whether the individual cases fall within the scheme or not, but now the market has a choice to opt for a cost efficient time efficient solution to this sometimes difficult issue

Commercial Contaminated Land insurance is now available through Conveyancing Liability Solutions as part of the Commercial ConveySure® suite of defective title and legal indemnity products. CLS is the Landmark Information Group approved insurance provider. To find out more please contact our legally qualified underwriters: [underwriters@cls.co.uk](mailto:underwriters@cls.co.uk) or 01732 897530 or go online at [www.cls.co.uk](http://www.cls.co.uk)





# Comparative Perspective on Chancel Repair Liability: Successor vs. Non-Successor Cover

Chancel Repair Liability insurance, is a well established feature and an essential element of the conveyancing transaction process offering security to purchasers (and their lenders) of property within the UK.

It offers an effective answer and secure way of managing the threat of a parochial church council (PCC) serving a demand for the cost of, or contribution towards the repair of its church chancel.

Chancel Repair Liability insurance does not remedy the need to repair the church's chancel; it offers financial compensation to meet the costs which are levied against a client. Unlike general insurance, the premium for chancel repair liability is paid only once.

Many conveyancers often wonder what attributes are the most important in choosing the right cover and in identifying and qualifying Successor vs. Non-Successor for their clients.

## Next time when you are choosing Chancel Repair Liability, what should you look for?

Cover should include:

- Policies automatically provide cover in perpetuity
- Costs of any demand for payment in lieu of a chancel repair liability
- Diminution in market value
- Defence costs
- Settlement costs
- Other agreed costs and expenses

The above is provided as standard at companies such as CCS Insurance. It is also important to remember that the availability of the policy is not reliant on the results of a screening search. CCS Insurance does not believe they assist you, or your client, in determining whether a chancel repair liability exists in relation to a specific property.

## Successor vs. Non-Successor?

There are two main types of Chancel Repair Liability insurance: Successor and Non-Successor.

**Successor policies** – provides cover for purchasers, their successors in title and respective lenders. It is automatically transferred to successors in title and lasts for the life of the property.

**Non-Successor policies** – provides cover for purchasers and their lenders only – this policy will not cover successors in title or their lenders.

Other areas that conveyancers need to carefully consider is where some providers offer Chancel Repair Liability policies for a particular term, i.e., 25 years. There is a view that when a client wants to sell the property, or at the end of the term, the policy will need upgrading and this may not have been explained to the client. There is potential for this to exist with Non-Successor cover.

## Conclusion

Conveyancers can protect their clients' and their Personal Indemnity insurance more comprehensively if they purchase Successor cover.

This will automatically cover successors in title. This means there is no concern that the policy will expire with successors in title or mortgagees left uninsured.

Successor cover may also prove to be a valuable tool when a client decides to sell their property. Should a Non-Successor policy be chosen, there is potential for the risk to be levied against the new purchaser, resulting in the client experiencing difficulty in selling their property.

From a Conveyancers perspective, a Successor policy offers extra security in terms of your firm's professional liability – there are no gaps which could create a position whereby a client could claim to have suffered any loss.

For more information, please contact CCS Insurance on 020 7256 3836 or visit [www.ccs-insurance.co.uk](http://www.ccs-insurance.co.uk)

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