

# INTERNATIONAL LAW NEWS

## NEW ADDITION TO COHEN MOHR

Cohen Mohr LLP is pleased to announce that Lewis J. Saret has joined the firm as Of Counsel specializing in taxation counseling. Mr. Saret counsels clients regarding federal taxation matters, with particular emphasis on estate and business succession planning.

For more information, contact Lewis J. Saret at [lsaret@cohenmohr.com](mailto:lsaret@cohenmohr.com).

## NEW GROUP AT ULMER & BERNE TO OFFER ADVICE TO MIDDLE MARKET BUSINESS

CEOs of middle market businesses want the same kind of sophisticated and strategic legal counsel that CEOs at large corporations routinely receive from their general counsel.

Recognizing this underserved area, Leonard D. Young, Of Counsel for Ulmer & Berne, created the new General Counsel Services Group.

"If you think about it, the breadth of legal issues facing middle market businesses are no less complicated than those faced by large companies," Young says. "However, because large companies have a general counsel as part of their senior management team, those complicated legal issues are usually addressed and solved in a quick, efficient and cost-effective manner."

Ulmer & Berne's retainer-based General Counsel Services Group offers this service to middle market businesses by acting as a legal advisor, available for counsel and practical legal direction, whether the issues are joint ventures, a distributor's agreement or reviewing the employment terms for a new CFO.

Robert Dirienzo, president of Lafarge Road Marking Inc. of Parsippany, N.J., has taken advantage of Ulmer & Berne's new service: "We had separate law firms for everything you can imagine. After speaking with Leonard, I recognized the need to integrate the business. Now I have one firm that's responsible for everything, and the service is superior to what I was receiving before and much more cost effective."

Young, who has more than 25 years of corporate law experience, including serving as general counsel for Ferro Corp. (a multi-billion dollar, international chemical and industrial coatings manufacturer), will head the group. He will be joined by a team of attorneys who have worked in-house at major corporations like Bristol-Myers and Lubrizol.

For more information, contact Leonard Young at [lyoung@ulmer.com](mailto:lyoung@ulmer.com).

## HOWARD KENNEDY EXPANDS PROPERTY FINANCE DEPARTMENT

London-based law firm Howard Kennedy announces the appointment of Derek Collinson as a partner in the Property Finance Department. Derek, who will join the firm in December, is currently a partner at Manches whom he joined on merger with Carter Faber in 1991.

Howard Kennedy has a well-established and respected property finance practice that works along side the firm's substantial 17 partner-strong Property Department. The Property Finance Department acts for major UK banks, building societies, financial institutions, private syndicates and borrowers. Clients include Royal Bank of Scotland Plc, HBOS, Bank of Ireland, Woolwich Plc, Irish Nationwide Building Society and West Bromwich Building Society.

For more information, contact Jason Lewis at [j.lewis@howardkennedy.com](mailto:j.lewis@howardkennedy.com).

## PORTUGUESE FIRM LAWYER APPOINTED SECRETARY OF STATE

Following the firm's recent country elections, Joao Mota Campos, one of the partners of Paula Alexandre de Pina's Lisbon office, was appointed Secretary of State for Justice. The appointment came during the LAW regional meeting held in Goa, which Joao was attending. He had to shorten his stay in India and book an early flight back to Lisbon just in time to attend the ceremony of installment of the new government.

For more information, contact Joao Mota Campos at [pmcm.jlmc@mail.telepac.pt](mailto:pmcm.jlmc@mail.telepac.pt).

## LAW NEW MEMBER

Lawyers Associated Worldwide is pleased to announce the addition of a new member firm:

**Watson, Bennett, Colligan, Johnson & Schechter**

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12 Fountain Plaza

Buffalo, New York 14202

Phone: 716-852-3540

Fax: 716-852-3546

Web Site: [www.watsonbennett.com](http://www.watsonbennett.com)

Email: [info@watsonbennett.com](mailto:info@watsonbennett.com)

Primary Contact: David Colligan

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Denmark	Romania
England	Singapore
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France	Sweden
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[www.lawyersworldwide.com](http://www.lawyersworldwide.com)

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Henry Donner ([hdonner@jacobydonner.com](mailto:hdonner@jacobydonner.com)) of Jacoby Donner in Philadelphia, Pennsylvania, USA.

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## LOSE YOUR HOUSE WITHOUT LEAVING IT!

### *A Brief Legal Analysis of Internet Gambling*

By Sean Zaboroski, Aylesworth Thompson Phelan O'Brien in Toronto, Ontario, Canada

**A**s cash-strapped governments take notice of the growth and profitability of on-line gaming, will Internet casinos be able to operate in an environment of expanding anti-gambling legislation and enforcement?

Patrons of on-line casinos only need a computer, Internet access and a credit card to begin gambling in privacy, convenience and comfort. These

competitive advantages and the growing popularity of cyber casinos are giving traditional casinos "a run for their money."

In most countries, legislators are legitimately concerned by the realistic belief that on-line gambling will overwhelm traditional "bricks and mortar" casinos (otherwise known as governments' "cash cows"). Therefore, governments are left with two choices:

1. Find a way to share in the revenues of Internet casinos; or
2. Legislate to clearly prohibit on-line gambling and enforce the law.

In response to anti-gambling legislation, most Internet casino operators choose to locate "off-shore" in jurisdictions where Internet gambling licenses are legally available for purchase (i.e., "gambling havens"). Antigua, the Barbados and the Bahamas are seemingly the most popular of these havens. By locating their Internet servers in such



Sean Zaboroski

locations, these operators take the legal stance that online gambling is not in contravention of the "law."

So, are such operations and their gambling customers breaking the "law," and if so can these "laws" be effectively enforced?

#### DEFENSE OF CYBER CASINOS

Two basic defenses have emerged out of this interesting question:

1. Internet gambling is "expressly legal" in the gambling haven jurisdiction where the Internet server is located.

Under this argument, it is asserted that Internet casinos are legal because the governments of the gambling havens have expressly enacted laws that provide for Internet gambling, and have ensured that gaming operators operate in accordance with applicable regulations and acquire requisite licensing. This defense fails to recognize

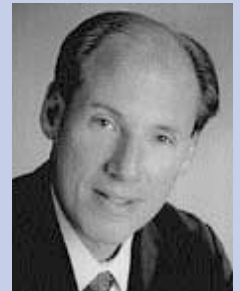
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By Henry Donner of Jacoby Donner in Philadelphia, Pennsylvania, USA

## Editor's Note

Welcome to the second "LAW News Briefs" publication.

In our second edition, we are privileged to have **Sean Zaboroski** of Aylesworth Thompson Phelan



O'Brien in Toronto **Henry Donner** provide us with an overview of internet gambling; **Andrea Nicholls** of Howard Kennedy in London looking at age discrimination in the United Kingdom; and **Michael Grossman** of Cohen Grossman & Rosenson in Chicago showing us international estate planning issues. We also have "news" from several firms.

I also would like to take this time to welcome our newest member firm, **Watson, Bennett, Colligan, Johnson & Schechter** in Buffalo, New York.

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# Why Age Is No Longer a Sacking Offence

## *Employers Need to Address Age Discrimination*

By Andrea Nicholls of Howard Kennedy in London, England, U.K.

**D**iscrimination on the grounds of age is legal in the United Kingdom but for how long? A Private Member's Bill to make age discrimination unlawful is due to have its second reading next month.



Andrea Nicholls

Irrespective of whether it is passed, employers need to address the issue of age discrimination. Whilst the Government has until December 2006 to implement the EC Framework Directive outlawing age discrimination, the reality is that age discrimination is likely to be unlawful much sooner and will give employees discrimination rights akin to those given by sex and race legislation.

### IMPLICATIONS OF THE BILL

At the moment, employers can openly advertise for employees in certain age ranges or, for example, for "mature candi-

dates." Many employers also select employees on the basis of "will they fit in?" Once age discrimination is on the statute book, not only will it be unlawful to advertise positions for specific age groups but also to select employees on a "will they fit in?" basis. Therefore, a 50-year-old applying for a position of telesales among a group of twentysomethings, for example, may have a claim for age discrimination if he or she does not get the job. However, where there is a genuine occupational requirement for younger employees, for example in the case of life-guards or fire fighters, this may be a defence.

The Bill will necessitate a review of human resources policies and procedures, and businesses will have to amend their equal opportunity policies and demonstrate that they actively promote a non-ageist environment by providing training. Comments such as "you old biddy" or "where's your Zimmer frame?" could result in age harassment claims. As with sex and race discrimination, the employment tribunal will allow evidence from which it can draw an inference. It will not necessarily expect to have evidence of overt age discrimination.

The cost of dismissing older employees is certain to rise. Unfair dismissal claims now

have a ceiling of £52,600 but if an older employee can demonstrate that the reason for dismissal was connected with age, the potential claim will be unlimited. The senior executive in the City "let go" at 55 may be able to claim ten years' worth of damages if he can satisfy the tribunal that he would not be able to get a comparable job. It will be interesting to see whether outlawing selection on the ground of age will open up employment. If it does, then dismissals of older employees may not in practice carry such a high price.

### RECENT CASES

Employment tribunals have already been forced to make decisions on age discrimination. In 1997, James Nash, a warehouse manager, was dismissed after 25 years' service. Aged 69, Nash was beyond the normal retirement age and therefore barred from bringing a claim for unfair dismissal. He used the sex discrimination legislation to allege indirect discrimination. He said that the provision barring employees from bringing claims over the normal retirement age affected more men than women because more men than women worked up to retirement. As this had a disproportionate impact on

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## LOSE YOUR HOUSE WITHOUT LEAVING IT! *(Continued from page 1)*

that in most jurisdictions, the lack of violation of foreign laws is not determinative of domestic laws. Therefore, domestic governments are not barred from declaring illegal acts that are expressly legal in gambling havens.

This argument is also used to assert that the wager or instruction to wager is transmitted out of the domestic jurisdiction and into the gaming haven's jurisdiction. Therefore, employees of the gaming operator perform the actual "act of gambling." Because gambling is legal in the gambling haven, the casino does not commit an illegal act. Again, the defense is weak as it fails to recognize that transmission over the Internet involves a continual stream of

two-way data transfers. Also, the defense relies on the assumption that providing instructions or "assisting gambling" and having pre-funded "gambling accounts" is not illegal in the domestic jurisdiction.

### 2. The "gambling action" takes place entirely in a gambling haven (or in cyberspace).

Under this argument, it is asserted that the act of gambling on-line is analogous to physically visiting and gambling in a jurisdiction where gambling is legal (e.g., Las Vegas). This argument fails to recognize that it is difficult to establish that the gambler is

"actually visiting" another jurisdiction. For example, it has well been established that communicating via telephone does not place either communicator in the other's jurisdiction; logically Internet communications are no different.

### CONCLUSION

Even though these defenses have weaknesses, Internet casinos continue to thrive. Anti-Internet gambling legislation is either unfocused or is not designed to keep pace with the rapid change in technology. Finding a way to share in the profits and creating a "legitimate" Internet gambling industry may be the best solution for all. ♦

# International Estate Planning

## Tax Effects of Transfers by U.S. Citizens to Non-U.S. Citizen Spouses

By Michael Grossman of Cohen Grossman & Rosenson in Chicago, Illinois, USA

### Why Age Is No Longer a Sacking Offence

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males, he succeeded. His was followed by subsequent cases. Most recently, in February of this year, the employment tribunal has held that the difference between men and women reaching retirement age was not sufficient to maintain a disproportionate impact on one sex as compared to the other. It also held that the Government should be required to make representations as to its "objective justification" of the provision barring employees beyond the normal retirement age from bringing claims. It seems, therefore, that this loophole may be closed.

In June 1999, the Government introduced a voluntary code entitled "Age Diversity in Employment: A Code of Practice." Studies on behalf of the Department for Work and Pensions have found that this code has had little impact on opening up employment opportunities for older employees. Only eight percent of employers considered that they would make changes to their practices as a result of the code.

#### CONCLUSION

Research carried out for the Campaign Against Age Discrimination in Employment (CAADE) reveals that people over 45 in the UK are 25% more likely to be unemployed, or economically inactive, than younger workers. With 50% of the adult population over the age of 45 and government census figures predicting that the population over the age of 45 will rise significantly until 2020, legislation appears to be the only way to tackle age discrimination effectively. ♦

The increase in recent years of marriages

entered into between U.S. citizens and non-U.S. citizens, as well as the frequency with which these spouses choose to reside in the U.S., has forced many U.S.



Michael Grossman

estate planning attorneys to become intimately familiar with the intricacies of U.S. estate and gift tax law as it relates to the taxation of assets transferred between U.S. citizens and their non-citizen spouses. This article will focus on transfers from U.S. citizens to their non-citizen spouses.

#### GIFTS TO NON-U.S. CITIZEN SPOUSES

U.S. citizen spouses can make unlimited gifts of any amount to one another during their lifetime with no gift tax consequences. However, if the spouse of a U.S. citizen is not a citizen of the United States (even if the spouse resides in the United States as a resident alien), the U.S. citizen spouse is only permitted to make gifts to the non-U.S. citizen spouse of \$110,000 a year with no gift tax consequences (the \$110,000 amount is adjusted for inflation each year).

#### TRANSFERS AT DEATH TO NON-U.S. CITIZEN SPOUSES

Outright transfers (and transfers into certain qualified trusts) at death of any amount between U.S. citizen spouses will qualify for the unlimited marital deduction. Thus, U.S. citizen spouses can leave any amount outright (and in certain qualified trusts) to their spouses with no estate tax consequences to the first spouse to die. However, if the spouse of a U.S. citizen is not a citizen of the United States at the death of the U.S. citizen, and elects not to become a

U.S. citizen within one year of the death of his or her spouse, no marital deduction will be allowed to the U.S. citizen spouse at death unless the property passes to a qualified domestic trust (known as a "QDOT") for the benefit of the surviving non-U.S. citizen spouse. Thus, a U.S. citizen cannot make an outright transfer at death to his non-U.S. citizen spouse and have such transfer qualify for the unlimited marital deduction.

#### RESIDENT ALIENS vs. NONRESIDENT ALIENS

With transfers from U.S. citizens to their non-citizen spouses, the estate and gift tax laws are generally the same whether the non-U.S. citizen spouse is a resident alien or a non-resident alien of the U.S. Nonetheless, because status as a resident alien or a non-resident alien is relevant in other situations not covered here (i.e., for estate tax purposes, a resident alien is taxed on his or her worldwide assets, while a non-resident alien is taxed only on U.S. situs property), a brief discussion of the subject is warranted. While the procedures to become a foreign-born U.S. citizen have always been clear from the U.S. Constitution and the Immigration and Nationality Act, it is less clear whether an alien is a resident or a non-resident of the United States. For U.S. estate and gift tax purposes, a resident alien is someone who is "domiciled" in the U.S. A person acquires a domicile in the U.S. by living there, even for a brief period, with no definite present intent of leaving. Residence without the requisite intention to remain indefinitely will not suffice. The "intention" requirement is fact based, and often very subjective.

#### CONCLUSION

Estate planning for U.S. citizens and their non-citizen spouses is becoming a common area for planners. As a result, it is important to have at least a general understanding of its U.S. estate and gift tax consequences. ♦