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Execution certificates (Do they still do that in Canada?) Real estate clients are astounded when we tell them we're searching for execution certificates and horrified when we find one. Fortunately, no humans have been harmed in conducting this exercise. Not many, anyway.

When a plaintiff wins a lawsuit for money damages he will seek ways to realize the judgment. The most common step is to file a *writ of execution* with the Sheriff. If the defendant (now known as a judgment debtor) owns any land, the land can be sold to satisfy the debt. The writ of execution takes precedence over any new interest in the land. Consequently, when acting for a purchaser or mortgagee, any careful lawyer will search for writs. If one is discovered, steps must be taken to remove or get around the writ.

Pension Valuations Clients are often shocked to learn that pension plans are part of the accounting in a matrimonial break-up. They are even more shocked to discover that the pension plan is generally the most valuable asset on the table when it comes time to split the family property. It is not at all uncommon to see pension plan value at \$200,000.00 to \$400,000.00. After the breakup of many long-term traditional marriages, it is quite normal to see the wife walk away with title to the home, free and clear, while the husband gets to "keep" his pension.

Many pensions in the private sector are "defined contribution" or "money purchase" plans. Valuing such plans is fairly cut and dried and the values are generally more modest. However, the bulk of most public sector plans are "defined benefit" plans and the valuation of these is generally a battle of experts. There are at least three distinct actuarial approaches. Each of the three approaches has several variations and the outcome of each is further clouded by questions of probable retirement date, tax discounting and (sometimes) mortality. Not

surprisingly, the law is pretty muddy and case law is all over the map.

The Supreme Court recently had an opportunity to provide some clarity and predictability. Lawyers and commentators were mightily disappointed with the judgment in *Best v Best*—not only did the court upset the well reasoned decision of the Ontario Court of Appeal, but gave reasons which were ambiguous and case-specific. Unfortunately, a run at the Supreme Court of Canada costs almost as much as the pension, not to mention the terrible burden in emotions and time. We may wait a long time before the Supreme Court gets another chance to get it right.

Common Law, Civil Law: What's the difference? By Victor Ndhokubwayo, student-at-law.

Civil law originated in France, initially as a disorganized body of law, and was later codified under Napoleon the Great. Civil law holds sway in most of the French speaking countries, and in Latin America. Conversely, common law developed in England as a corpus of court decisions, commonly known as case law, and is, by and large, practiced in all commonwealth countries and the United States.

As a codified body of law, civil is deductive: that is, it attempts to apply a general codified principle to a particular civil case. This approach leaves very little room for interpretation from the judge and almost no room at all for adjusting the law to social changes. Conversely, common law is inductive, that is to say, a common law judge starts his reasoning from a particular case toward a general principle found in previous case law, commonly known as precedents.

Unlike civil law, common law is flexible to adopt to social changes. This is because common law judges in addition to searching for adequate precedents, frequently rely heavily on the jury, whose members are from the general public. In theory, common law reflects more accurately what, all things considered,

the law of the land should be at a specific time. The downside to the common law flexibility is that a very small number of judges, not democratically elected, can distort the law according to their whims.

The whole of Canada, except the province of Quebec (and that only in matters pertaining to property and civil rights) applies common law in matters public and private. (Victor is a student-at-law with Bowley, Cuffari. He holds degrees in both common and civil law.)

Our New Offices We have new digs, and we're very proud of them. With pleasant surroundings, room to grow, and all the techie stuff, we are able to give better and faster service. Clients now have designated parking. Best of all, this was all accomplished without a change of address.

We are grateful for our new office and wish to share it. If your community group needs space for a board meeting or workshop, let us know. Any client between jobs who needs a desk, computer, and fax machine for a few days should call us.

The New Family Court: Viva la revolucion?

Family practice has been revolutionized. The matrimonial jurisdiction of the Superior Court has been bundled with the old provincial Family Court into a new unified Family Court of Superior Court of Justice. Case management and totally new forms, rules and procedures were intended to make the court simpler, more predictable, and less threatening.

Has this hugely ambitious project been a success? Not yet. The system is slowly sinking under the weight of paper. The uniqueness of each family situation is lost in prescribed forms. Rules intended to hurry along the dawdlers have become impediments to anyone who wants to keep a file moving. Ground rules and interpretations change every day. The promised end to the "war of affidavits" has not been seen, and the guerilla lawyers who have always infested family court now have even more jungle to play in. Court filing costs are higher and legal fees are being driven up by

virtue of the extra hoops through which lawyers are forced to jump. So much for simplification.

The good news (?) is that the Rules Committee will be announcing new Simplified Rules to replace the new Simplified Rules. Maybe this time they'll get it right, but in the meantime, be nice to your spouse.

Minor variances Under zoning and land use law, one may only use land as permitted by the local planning by-laws and the Official Plan. Generally, these laws are reasonable and apply for the general well-being of the community. Occasionally, however, a sledgehammer is used to kill a fly. In such cases, applications must be made for minor variances. Generally, if it can be shown that there are special circumstances and that a strict application of the law would produce an undue hardship, the Committee of Adjustments will give relief, subject to a right of appeal by neighboring landowners.

Rhonda has another baby boy! Rhonda, our freelancer, is on a maternity sabbatical. Rhonda and David are the proud parents of Matthew Alan Loye, born June 27, a new brother for Christopher.

More seminars I continue to give talks on Trusts, Estates and Will Planning. After the most recent presentation to the electrical workers, the next seminar is scheduled October 24. This is a public presentation and some space is still available.

Quebec registrations Quebec has a new, computerized personal property registration system, much like Ontario's PPSR. Failure to register leases and conditional sales contracts in time can be fatal to your rights as secured party, and all old securities must be registered on or before September 18, 2000 in order to maintain priority. If this might affect you, speak to your Quebec counsel or ask us for a referral.

Do not be overcome by evil, but overcome evil with good.
Saint Paul

This newsletter is for the general interest and information of clients and friends of the firm. It is not legal advice. If you have specific legal issues, you need specific legal advice.