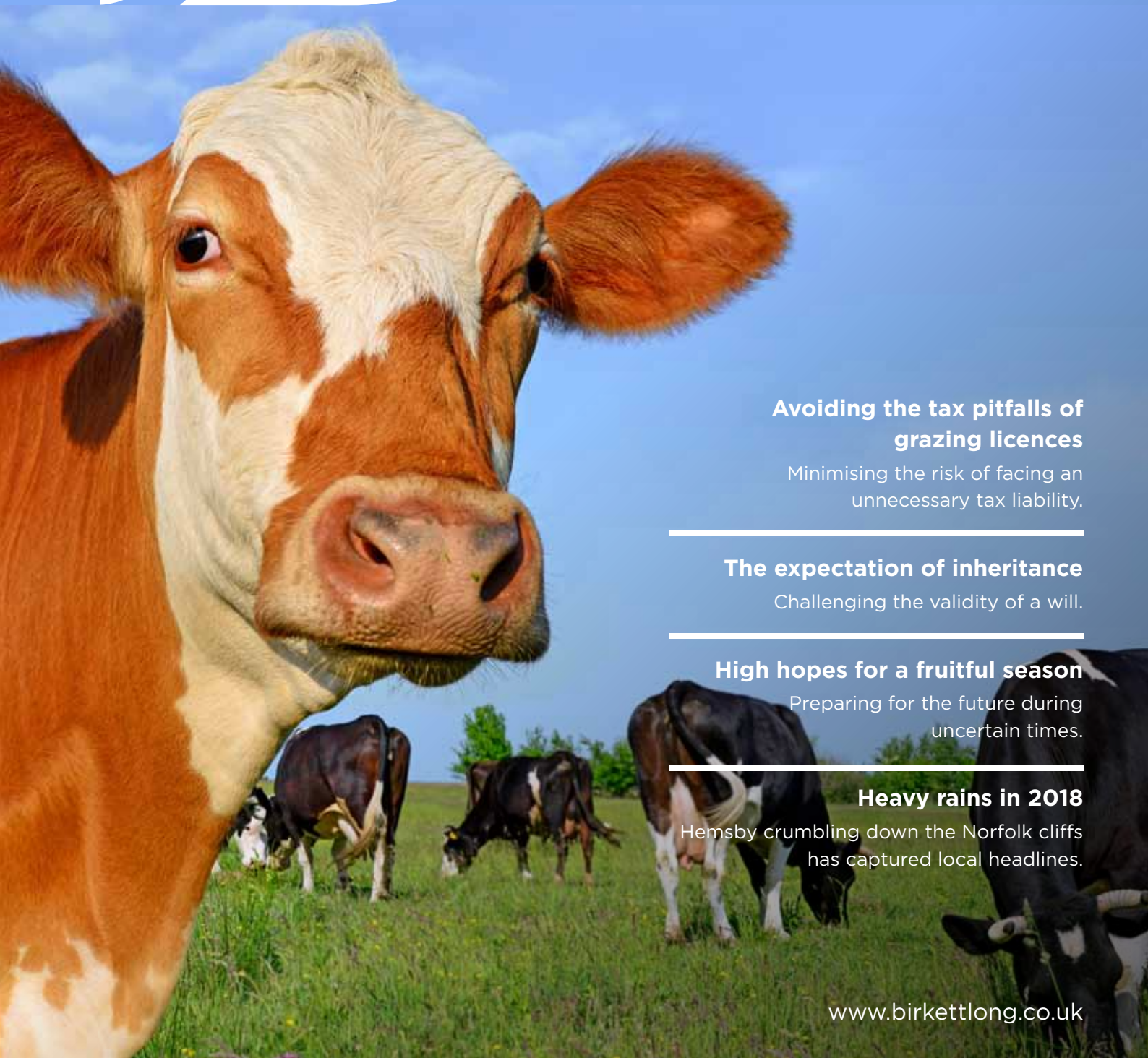
SPRING 2018

Agriculture
and Estates

NEWS AND ADVICE FROM BIRKETT LONG



Avoiding the tax pitfalls of grazing licences

Minimising the risk of facing an unnecessary tax liability.

The expectation of inheritance

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Grazing licences: avoiding the tax pitfalls

Who occupies agricultural land, and what activity is really carried out on the land, are questions that every land owner should ask themselves to minimise the risk of facing an unnecessary tax liability.

For example, the tax consequences of arrangements between owners of grazing land and third parties who graze their animals on that land are not always straightforward. The crucial question for the land owner is whether they are farming the land or whether they are only receiving rent for the use of the land.

Matters are not aided by the unhelpful language often used in legal agreements. References to letting, licences and rents are confusing. However, the language is immaterial because the important issue is the nature of the arrangement and what the parties actually do in practice rather than how it is legally described.

The first question a land owner needs to consider is whether they are granting exclusive possession, for example, if the land owner's animals are going to remain on the land then exclusive possession is not being granted – a licence is probably being created rather than a tenancy. However, if the land is going to be solely occupied by a third party's animals then a tenancy may be created and from that it would follow that only the tenant is occupying the land.

Who occupies the land is important for Income Tax purposes – farming activities are determined by occupation of the land, and flowing from this determination is the treatment adopted for Capital Gains Tax and Inheritance Tax purposes. If the grazier is in occupation of the land then the land owner is likely to find that Capital Gains Tax reliefs (such as Entrepreneur's Relief and Rollover Relief) are no longer available on the grazing land. In addition that land will no longer count towards determining whether the farmhouse qualifies for Agricultural Property Relief for Inheritance Tax.

It is important, therefore, that land owners scrutinise the arrangement to determine who is actually occupying the land and for what purpose to avoid incurring unnecessary tax liabilities in the future and destroying potentially valuable tax reliefs.

There are a variety of claims that can be made against a deceased's estate, such as a challenge to the validity of their last will, or a claim for reasonable financial provision under the Inheritance (Provision for Family and Dependants) Act 1975.

Proprietary estoppel – the expectation of inheritance

One of the most common claims made against an agricultural estate is that of proprietary estoppel.

Essentially, this is where an individual claims that land or property should have passed to him or her as the deceased promised it would pass to them on their death, and the claimant relied on that promise to their detriment. Typically, such claims are brought by children who have worked at family farms for little or

High hopes for a fruitful season

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2018 brings uncertainty for the agricultural industry. The Government's Agricultural Bill is progressing laboriously through the legislative system, which will shape the agricultural industry for generations to come. The end result, and the impact of Brexit, remains a mystery despite the leaving date being less than a year away.

For farmers, the arrival of spring and its warmer weather is the beginning of one of their busiest periods and with it comes high hopes for a fruitful season. We can only hope that whilst the sun shines in the sky, it does so in Parliament while they consider the importance of allowing farmers to be profitable, productive and progressive.

It is certainly a testing time for everyone and we can all only try and prepare for the future. The Agriculture and Estates Team, during the winter months, has also been preparing for the future by working to develop and expand the knowledge of the team. Emma Coke passed her fellowship exams with the Agricultural Law Association and Katie Gibson-Green passed her final examination to become a full Professional Member of the Society of Trust and Estate Practitioners. Both these qualifications are arduous but give great depth and specialism in the agricultural legal world, enabling complicated and detailed advice to be given competently which is imperative in our industry, particularly in view of the inevitable future developments.

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no payment, on the expectation that the farm would pass to them on the death of their parents.

The recent decision of James v James [2018] highlighted the need for claimants to demonstrate that a particular promise had been made or an act taken that created the expectation of inheritance in order to be successful in bringing such a claim. In this case the deceased made a will excluding his only son, Sam, with whom he had operated a farming partnership during his lifetime. Unusually, Sam had been paid for this work.

In addition to challenging the validity of his father's will for lack of capacity, Sam claimed by virtue of proprietary estoppel that he was entitled to the land that was passed to his mother and sister in the will.

In determining the claim, Judge Matthews found that there was no evidence with a sufficient degree of clarity to demonstrate that an assurance had been made by the deceased. A statement of the deceased's current intentions does not amount to an assurance which a person can rely upon to claim an interest in land. Further, as Sam had never thought about pursuing other means of employment and was paid for his work, Judge Matthews found that he had not suffered any detriment, as he would not have done anything differently had his father made clear he would not pass the farm to him.

Proprietary estoppel claims are complicated to bring or defend. Therefore it is vital that you receive expert legal advice if you believe you may have such a claim, or need to defend one, which is why here at Birkett Long we have a specialist inheritance disputes team who would be happy to assist you.

Call the team on 01206 217307 for a no obligation conversation about your situation.

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Coastal Erosion

Since my article in the Agricultural Law Association Bulletin, most eyes have been on Brexit, however, the heavy rains of 2018 have delayed matters in the fields, with April seeing record rainfall levels.

But it is coastal erosion that has grabbed attention, with pictures of Hemsby crumbling down the Norfolk cliffs capturing local headlines. This prompts a brief return to the law and the plight facing coastal property owners.

The aptly named case of Leakey v National Trust [1980] confirmed that landowners do owe a limited duty of care to their neighbours, even in relation to naturally occurring hazards; but it is the Environment Agency's (EA) position that is of most note here.

The EA does not have a duty to repair the many miles of our nation's sea walls, only a permissive power. Funding limitations have caused the exercise of that power to be severely restricted and that has caused much frustration in the farming community. But one must have some sympathy for the EA given the coastline of Essex alone is approximately the same length as that of Holland.

Nonetheless, the EA is carrying out sea defence works in populated areas, and working closely with local groups such as the Essex Coastal Organisation, with a view to delivering prompt and cost effective sea wall repairs at an early stage in others. We recommend that you liaise with the EA at the earliest possible opportunity to discuss possible funding.

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