



CHEESWRIGHTS NOTARIES PUBLIC



SPRING 2009

NEWSLETTER

ISSUE FOUR

In the Eye of the Storm

2009 will see the 230th anniversary of the establishment of the founding of the firm that later became the Cheeswrights notarial practice in the City of London. In 1779, George III was on the throne and the French revolution was ten years away. In the course of its history, the firm has witnessed – and survived – numerous threats to the City of London, financial and otherwise. The firm itself has seen its offices destroyed by



bombs on two occasions, once during the second world war and again during the IRA campaign of the early 1990's. The effect of these crises and events has always been to leave the City of London and the firm

itself stronger, and we expect no different an outcome this time. As far as notaries are concerned, their services are needed in good times and bad. Although the nature of our work varies according to the economic climate, we expect to be kept busy assisting our clients during their current travails with the efficiency and determination which they have come to expect and, with them, we look forward to happier times in the City.

Partner Profile – Jeremy Burgess

Jeremy was educated at Uppingham School and was awarded an open exhibiton to read history at Downing College, Cambridge. He is the son of the late Anthony Burgess, senior partner at Cheeswrights for forty years, who retired in 2000. He has been with the firm since 1985, and has been a full partner since 1993. As an articled clerk, Jeremy spent a year in Madrid and Marbella studying the Spanish language and Spanish law at the offices of Dr. Frühbeck, lawyers, and spent three months at the offices of Messrs. Clavel, Uginet and Converset, notaries of Cluses in the Savoy region of France.

He is honorary secretary of the Society of Scrivener Notaries, and regularly attends meetings of the United Kingdom Notarial Forum, a body comprising representatives from the Society of Scrivener Notaries, the Notaries Society, the Law Society of Scotland and the College of Notaries of Northern Ireland. Notarial bodies from the Isle of Man, the Channel Islands and the Republic of Ireland have observer status.

Jeremy lives in the Test Valley in Hampshire. His wife, Tanya, is a New Zealander, and they and their two children make regular trips to both the North and South Islands of New Zealand.

His interests outside work include cycling trips in the Alps and Pyrenees, triathlons, military history and world cinema.



Jeremy Burgess

German notaries – an overview

Types of notary

All notaries in Germany hold public office. There are three different types of notary depending on the state (*Bundesland*) where they have been appointed – those, such as in Hamburg and Bavaria, who practise exclusively and independently as notaries (*Nurnotare*), those who combine the profession of *Rechtsanwalt* (which equates roughly to the profession of solicitor in England) with that of a notary (*Anwaltsnotare*) and finally the somewhat exceptional case of notaries practising in the state of Baden-Württemberg who enjoy the status of judges or civil servants and are paid a salary by the state (*Amtsnotare* and *Bezirksnotare*). There are currently about 1600 *Nurnotare*, 8000 *Anwaltsnotare* and 600 state-employed notaries in the whole of Germany. The number of notaries is strictly regulated by the public authorities and the *Bundesnotarordnung* of 1961 (“BNotO”, or Federal Law on Notaries). There is a so-called *numerus clausus* or fixed number of positions available. Accordingly, a notary must either retire or die, or a new vacancy must be created by the Minister of Justice, before a candidate notary can fill that position.

Qualification process

Nurnotare and *Anwaltsnotare* must complete a law degree and practical training entitling them to practise as either judges or *Rechtsanwälte*, followed by a period of practical training under the supervision of an experienced notary. In the case of *Nurnotare* the training can typically last for about three years. Owing to the limited number of posts available, competition is fierce and only the top law graduates are selected for training. After the required training is completed, notaries are appointed by the Minister of Justice to practise in a particular district. There remains a requirement, currently subject to challenge at EU level, that all notaries hold German nationality.

Work undertaken

Notaries play a key role in the fields of property and commercial law, as well as the law of family and succession. A contract for the sale of land must be in public notarial form (para. 311b German Civil Code (BGB)), and the same applies to many other transactions including the granting of a mortgage, the incorporation of a private or public limited company, private company share transfers and matrimonial property agreements. Most wills are authenticated by a notary (para. 2231 BGB).

The notary has a duty of impartiality (BNotO s.14) and must act as an independent advisor to all parties to

a transaction. He will draw up the relevant contract in accordance with the parties’ instructions, ensuring that all provisions are in full compliance with the law. A public form notarial instrument has an enhanced evidentiary status and is vested with executory force (*Vollstreckbarkeit*), which means that it is equivalent to an enforceable court judgment.

Fees and regulation

Fees are governed by federal law and are therefore the same all over Germany. They depend mainly on the value of the transaction being certified.

On appointment, a notary automatically becomes a member of his regional chamber of notaries. Each regional chamber represents the interests of its members and at the same time acts as their supervisory authority in conjunction with the relevant state government and competent courts.

In case of negligence, a notary is personally liable for damages suffered. Professional indemnity insurance is mandatory for all notaries.

Andrew Claudet



Andrew Claudet

New Notary

Michelle Scott was awarded her post-graduate diploma in notarial practice from the University of Cambridge on 3rd December 2008. She is now practising as a notary, taking the number of notaries at Cheeswrights to nine.



Michelle Scott

Major change for Portuguese notaries

2008 was an important year for the notaries of Portugal – a year in which the Portuguese government put forward plans for a total reform of their status, “liberalising”, i.e. privatising, their role. According to the Portuguese Ministry of Justice, there are only 320 notaries in Portugal, less than in 1990 when there were 386 – this compares unfavourably with other EU countries, for example Belgium where there are 1226 notaries, and even cities, such as Madrid where there are 342.

Notaries in Portugal have until now been civil servants, appointed for life, and not regarded as members of a liberal profession. Under new legislation, the registration of property transactions of any kind at a notary’s office will be optional, and much of the work formally reserved to notaries will be carried out by advocates, other lawyers and even chambers of commerce.

Carla Cristina Soares, the recently elected President of the Portuguese Order of Notaries – which currently lists 414 notary members – is concerned at the likelihood of conflicts of interest if non-notary lawyers take over the work of notaries, less protection for consumers and an increase in property-related disputes.

The Portuguese Government is proposing a transitional period of two years during which public and private

notaries will co-exist: existing notarial practices will be privatised and licences to establish new notarial offices will be granted on the basis of competitive tender. Those notaries who do not wish to change their role may remain as state employees attached to Land Registries.

The Portuguese Government is hoping to move the profession into the digital age with the introduction of electronic filing of documents at land registries, but this change is meeting resistance. In turn, the Order of Notaries has lodged four complaints against its Government before the European Commission alleging discriminatory practices.

Ruth Campbell



Ruth Campbell

Russian Law

Russian law distinguishes various types of commercial company – these include registered partnerships, limited and supplementary liability companies and joint-stock companies. A limited liability company is organised by one or more founders and its share capital is fixed by its charter. The founders have no personal liability in relation to any obligations of the company and their exposure to the company’s losses is limited to their capital contributions. Limited companies are recognised by the abbreviation “OOO” before the name, which stands for “company with limited liability”. The distinguishing feature of a company with supplementary liability is the fact that its founders are subsidiarily – but jointly and severally – liable for the company’s obligations up to a multiple of their investments. The liability for the obligations of a founder who has been declared bankrupt is apportioned among the remaining founders according to their capital contributions. The distinctive shortened form for such company – as transliterated from the Russian – is “ODO”.

In the case of a joint-stock company, its capital is divided into a fixed number of shares; the

shareholders’ liability for the obligations of the company is limited to the value of the shares held by them. The Russian Civil Code distinguishes between an open joint-stock company – “OAO” – which is analogous to an English PLC and a closed joint-stock company – “ZAO” – which is similar to an English private limited company.

Many of the larger Russian corporations are organised in the form of open joint-stock companies, since this allows the greatest flexibility in ownership structure. Whilst some of these corporations were created as private entities from the beginning, most trace their origin to the privatisation of State-owned organisations that took place in the 1990s. The Russian State has a controlling stake in OAO “Gazprom” and OAO “Aeroflot”, whilst OAO “RZD” (Russian railways) is wholly owned by it. In contrast, heavy industry companies such as OAO “Norilskiy Nikel”, OAO “Severstal” and OAO “Surgutneftegaz” are privately owned with, in some cases, senior management holding the majority of their shares.

Alisa Grafton

*Vinum Bonum Laetificat Cor Hominis*¹

There is a tradition of wine connoisseurship at Cheeswrights. The firm's late senior partner, Tony Burgess, acquired a considerable knowledge of the world's wines and among his achievements was that of becoming a member of the Ordre de Chantepleure de Vouvray, a body of Loire wine-growers which claims to find inspiration in the life and works of François Rabelais. There are in fact a number of wines with close notarial links: one example are those of Domaine Moillard at Nuits Saint Georges www.moillard.com, which owed its early success to the encouragement and backing of a Belgian notary – visiting Burgundy by train in the mid nineteenth century, he so appreciated the Domaine's wines that he persuaded the owners to export them to his country where they are apparently enjoyed in large quantities to this day.

This article looks briefly at two estates – Clos du Notaire in Bordeaux and Cantine del Notaio in the Basilicata region of Southern Italy. The Château Clos du Notaire www.clos-du-notaire.fr is situated overlooking the confluence of the Dordogne and Garonne rivers in that part of the Bordeaux region known as Côtes de Bourg. It was given its name in the nineteenth century by Maître Coutin, a notary from the Cognac area and son-in-law of the original owners. In common with other Right Bank estates, the wines are made predominantly from the merlot grape. In good years, the present owner, M. Charbonnier bottles a superior wine with a higher percentage of cabernet sauvignon under the "Notaris" label - both wines are elegant, well-structured, consistently reliable and excellent value for money. For many years, they have been a staple of the wine-list of El Vino's, the well-known lawyers' watering-hole by the Temple.

If the wines of Clos du Notaire show classical finesse, those of Cantine del Notaio www.cantinedelnotaio.it exhibit elements of the

baroque. The owner, Signor Giuratrabocchetti, whose father was a notary, produces from the Aglianico grape on volcanic soils a fugue of full-bodied, complex and potent red wines, marketed under labels of notarial resonance: "L'Atto" (the Instrument), "Il Repertorio" (the Protocol), "La Firma" (the Signature), culminating appropriately with "Il Sigillo" (the Seal); there is also a white wine, "L'Autentico". "Il Sigillo" has been described by one commentator as revealing "intense, clean, pleasing, refined and elegant aromas which start with hints of black cherry, blackberry and plum followed by aromas of black currant, blueberry, violet, vanilla, tobacco, chocolate, mace, clover, pink pepper and menthol... The finish is very persistent with long flavours of blackberry, black cherry and plum."

Hyperbole apart, these are delicious wines deserving of a place in every notary's cellar.

Nigel Ready

¹ Good wine gladdens a man's heart – a motto found on the "Notaris" label of Château Clos du Notaire.



The European Company – Societas Europaea

Since October 2004 it has been possible to set up a European Company, or Societas Europaea (SE), under the provisions of European Council Regulation No. 2157/2001 which was given effect in the United Kingdom by the European Public Limited-Liability Company Regulations 2004. Despite the fact that very few SEs have been registered in the United Kingdom, Cheeswrights are occasionally instructed to authenticate documents executed in the United Kingdom by an SE which are to be produced overseas.

The SE is a corporate entity formed under Community law; this enables the SE to operate throughout the European Economic Area (EEA) under a single legislative regime. Such an entity can be formed by merger, formation of a holding SE, formation of a subsidiary SE or by the conversion of an existing PLC into an SE; once formed it can transfer its registered office between member states. An SE may be registered in any one of the member States of the EEA and the Council Regulation requires member States to treat an SE as if it is a public limited company formed in accordance with the law of the member State in which it is registered.

From a notarial perspective, we at Cheeswrights are mainly concerned with how an SE is structured and governed and consequently how it executes deeds and other documents. Under the Council Regulation, an SE may choose in its statutes whether to have a one-tier system with a single administrative organ or a two-tier system consisting of a supervisory organ and a management organ. In the second case a Continental style division of function between the two organs applies; accordingly, the management organ is responsible for managing the SE and the supervisory organ oversees the work of the management organ but is not itself able to manage the SE. The statutes of an SE may, however, list transactions which require the



authorisation of the supervisory organ; such a provision would give that body significant influence over the management of the SE. The Regulation also makes provision for a degree of employee

participation in the management of an SE. The recognition of this two-tier structure by our domestic law, whilst existing in many Continental systems, is unique to SEs and may lead to a demand from companies regulated by our Companies Act for domestic law to be altered so as to allow the two-tier option.

As regards the execution of deeds and other documents by United Kingdom registered SEs, regulation 78 (3) of the 2004 Regulations applies the provisions contained in sections 44 and 46 of the Companies Act 2006 (CA2006) to SEs. Accordingly, in a one-tier system, the members of the administrative organ and, in a two-tier system, the members of the management organ will have the same powers as directors under CA2006 to execute deeds and other documents. The relevant provisions of CA2006 are set out in more detail in our Winter 2007 and Spring 2008 newsletters which can be viewed on our website www.cheeswrights.co.uk. In the case of deeds and other documents executed in the United Kingdom by an SE registered in another member State, reference will need to be made to that State's domestic law to determine the manner in which the SE will be bound.

Edward Gardiner



Edward Gardiner

Notaries in Film – a brief survey by Iain Rogers

A Hollywood blockbuster is probably just about the last place one would expect to come across a notary, but in Tim Burton's 1999 film **Sleepy Hollow**, set primarily in a Dutch farming community in the State of New York at the end of the eighteenth century, Michael Gough (perhaps most famous as Pennyworth in *Batman* (1989), *Batman Returns* (1992), *Batman Forever* (1995) and *Batman and Robin* (1997) although in total he has appeared in over 100 films) plays a wizened notary of disreputable appearance by the name of Hardenbrook. The film is nominally based on a short story by Washington Irvine, although no notary appears in the original story and much of the plot of the film has been invented around the basic premise of Irvine's work. The story is that a young policeman named Ichabod Crane (played by Johnny Depp) is sent from the City of New York, where his modern and scientific methods of crime investigation have proved irksome to the Burgomaster (Christopher Lee), to the rural settlement known as Sleepy Hollow where there have been reports of a headless horseman committing a series of freakish murders. The senior citizens of Sleepy Hollow who greet Ichabod Crane on his arrival include Baltus von Tassel and his wife (played by Michael Gambon and Miranda Richardson respectively), Reverend Steenwyck (Jeffrey Jones), Magistrate Philipse (Richard Griffiths) and Notary Hardenbrook. That a Dutch expatriate community should have a notary amongst its respected citizens should come as no surprise. The Dutch legal system, based on principles derived from Roman Law, confers an important role on notaries and Dutch settlers in the Americas took their law (and their lawyers) with them. In time, Dutch legal procedures would become supplanted by the law and legal methods of the dominant English settlers, a process traced by Australian historian Donna Merwick in "Death of a Notary".¹ Notary Hardenbrook's role in the apparent conspiracy amongst the elders of Sleepy Hollow is hard to determine precisely, although it is clear enough that he has been involved in the conspiracy, and his final dramatic act is to hang himself in his suitably file-filled and deranged office. The notary whose history Donna

Merwick traces, Adriaen Janse van Ipendam, was also a Dutch settler in the State of New York. Janse too hanged himself. Merwick states that this happened on 12th March 1686 in circumstances that she was unable to determine. But there was nothing as exciting as the events of Tim Burton's film in Janse's life story to bring about such a sad end.

There are two recent Hollywood blockbusters worthy of passing mention in a notarial context. In **Two Weeks Notice**, a rom-com vehicle for Hugh Grant and Sandra Bullock, Bullock plays the part of Lucy Kelson, a lawyer and local activist who ends up working for her arch enemy, the Wade Corporation, having been recruited by George Wade (Hugh Grant). In one entirely throwaway moment, Kelson hands a pile of papers to her assistant Tony (Jason Antoon) with the words: "These leases need to be notarised." "I'm on it!" comes the response and he races off down the corridor. Quite who or where the notary is remains a mystery. It is entirely possible that the assistant is supposed to be the notary, since having in-house junior staff appointed as notaries is normal practice in American companies. The dismissiveness of the instruction and the complete absence of any sort of formality are striking to a notary trained in a different tradition.

A further example of the apparent disregard in Hollywood for proper notarial practice is **Big Fish** (directed by Tim Burton). The reference on this occasion is visual rather than verbal, when Ed Bloom (played in this part of the film by Ewan McGregor) is handed a quitclaim deed² by a character known as Jenny (Helena Bonham-Carter). For reasons that are rather too complicated to set out here Ed Bloom has been trying to persuade Jenny to sign over to him the rights to her land. After he turns down her romantic advances (Ed Bloom is a married man), she signs the deed and hands it to him. On screen the document quite clearly has a section to be completed by a notary setting out the acknowledgment of the transferor. It reads: 'On this the 29th day of June 1928 before me, Clement Bartholomew, the undersigned notary public personally appeared Jennifer Hill...proved to me on the basis of satisfactory evidence to be the person who executed the within instrument...' and the notary's ink stamp appears on the document, but there is no notary in the room and no notary's signature on the document. This off-hand disregard for formality is admittedly only mildly irritating, but occasionally one wishes for notaries to be portrayed in a better light on the big screen.

¹ Cornell University Press, 1999 – ISBN 0-8014-3608-7; see for example page 150: 'The court seems to be adopting new ways of looking at contracts regarding land, at least mortgages, and new ways of making use of a notary... He produced a bond payable by the English officer John Baker. It was "written by a notary public in the form of a mortgage"... But the magistrates denied his request, arguing that the mortgage was invalid... Because it was written only by a notary, "much mischief may be concealed." They have never declared anything like that before.'

² a type of land transfer

And so I looked to foreign films in the hope of finding some better examples.

A Russian film, the title of which translates as **Dacha for Sale**, and which to my knowledge has not been screened extensively outside of Russia (there is no entry for this film on www.imdb.com), has a brief but important part for a notary (played by Valery Garkalin in a delightfully weasel-like performance) who forges land transfer documents for Moscow criminals fraudulently selling a dacha (actually owned by a young Armenian poet named Suren, played by Sergey Pogosyan) to two «new» owners: Fyodor Stepanych, a retired soldier from Russia's Far East (Aleksandr Pankratov-Cherny) and Masha, a synchronised swimming trainer (Tatiana Yakovenko). They all arrive at the dacha for New Year and Suren doesn't have the heart to throw out the two newcomers. None of them meet the New Year in quite the fashion that they had imagined, but Suren and Masha fall for each other and the story seems to end happily for all of the principal characters.

Notaries and conspiracies seem to go together, at least in films. Paul Verhoeven's recent film **Black Book** enjoyed some international popularity, despite being partly in Dutch and partly in German. It is a story of the war in the Netherlands, of the resistance movement and of a plot hatched by Dutch and Germans in collaboration to rob and murder affluent Jews. In an early scene in the film, the character initially known as Rachel Stein (played by Carice van Houten) goes to Wim Smaal (Dolf de Vries), a notary in Amsterdam for money and jewels when she wants to escape the German invaders. The notary uses an unconventional method of identifying Rachel. In a locket around her neck she has pictures of her parents cut from a larger family photograph. The notary produces the photograph from which the pictures were cut and when they fit and she correctly identifies her younger brother in the photograph he is satisfied. The notary becomes involved in the actions of the Dutch resistance, but eventually is accused by Rachel (who by this stage has changed her name to Ellis de Vries) of colluding with a corrupt SS officer named Franken (Waldemar Kobus) to murder rich Jews, and of betraying her family and all of his Jewish clients for financial gain. Whilst the notary and his wife are waiting to be collected by the Canadian army amidst the celebrations (and reprisals) in Amsterdam following the defeat of the Germans, he is shot by an unidentified assassin. Clearly he knew too much, but as all good notaries do, he has kept a careful record of every transaction and it is this notebook, the **Black Book** that gives the film its title, that finally gives the characters who have survived the war the information that they need to piece together the events that caused so many deaths. And it serves to justify the actions of Notary Smaal, who was, it turns out, a good man and a good notary.

NEWS IN BRIEF 2008

Ruth Campbell has become Renter Warden of the Worshipful Company of Scriveners www.scriveners.org.uk. She is set to become Master of the Company in 2010. **Edward Gardiner** is the Company's Notarial Deputy.

Nigel Ready and **Edward Gardiner** represented the Society of Scrivener Notaries www.scrivener-notaries.org.uk at meetings of the Federation of European Notarial Associations (FANE) held in Rome and Warsaw.

Nigel Ready addressed the annual conference of the Intellectual Property Administrators Group held in October.

Luis Hyde qualified as a scrivener notary in October (see his article on page 8).

Edward Gardiner attended the 4th International Forum on eNotarisation and eApostilles held during June in New Orleans. The Forum (www.nationalnotary.org/intlforum) is organised jointly by the American National Notary Association, the Hague Conference on Private International Law and the International Union of Notaries to examine the international ramifications of authenticating and legalising electronic documents.

Iain Rogers held a series of educational seminars in Hong Kong and Hungary at the end of September. The Hong Kong seminars were given to students preparing for the notarial examinations held in November and to experienced notaries who wanted to brush up their skills. The seminars in Hungary were followed by the opening ceremony of the Central European Notarial Congress in Szeged, which included an organ recital at the magnificent cathedral.



At the offices of Dr. István Mándoki in Kecskemét, Hungary



Szeged Cathedral

Luis Hyde-Vaamonde obtains his freedom

In October 2008 I was admitted as a freeman of the Worshipful Company of Scriveners and completed the last step to becoming a scrivener notary. In doing so I follow in the footsteps of all the notaries at Cheeswrights before me in joining the livery company which has historically been responsible for the appointment and regulation of notaries practising in the City of London and its surrounds (i.e. within a 3 mile radius of the City).

The Company was formed in the fourteenth century by writers of legal documents operating in the City. Desiring better regulation of their craft these 'writers of the court letter' petitioned the Mayor of London who in 1373 passed ordinances governing the appointment and monitoring of such practitioners. Notaries appear as members of the Company from 1392 onwards.

For over 600 years the Scriveners' Company had exclusive jurisdiction over notaries wishing to practise within the City.

Although this state of affairs was brought to an end by the Access to Justice Act 1999, the Company retains the role of setting particular standards of education and training for applicants wishing to qualify as scrivener notaries.

The current regulations of the Company provide that an applicant must first qualify as a general notary and be in possession of an approved master's degree or, as in my case, take an examination in foreign law relevant to notarial practice. In addition, there is an examination in advanced notarial practice and then further examinations in two foreign languages. There then follows a two year practical training period to be completed although, as in my case, this may be reduced where the candidate has been in the employ of a full-time scrivener notary. The final step is to be formally admitted as a freeman of the Company.

As you can see, qualifying as a scrivener notary is certainly not something that can be

accomplished in a hurry! However, I feel that the process, coupled with the support I receive at Cheeswrights, has better prepared me to assist clients with the myriad documents they bring to us for use all over the world.

Luis Hyde-Vaamonde



Luis Hyde-Vaamonde

Competition – architectural curiosities of the City of London

A cheerful demon is the subject of our competition for this issue. He is actually visible (just) from the entrance to our Leadenhall Street offices. Three bottles of "Le Clos du Notaire" to the first client who can identify the building on which he is perched.

Emails to kharper@cheeswrights.co.uk



Issue Three's mystery monument competition featured the bow of a ship on a listed building in EC3. Spencer Poulton, Sales Director of Kall Kwik Digital Business Centre in Cornhill, identified it after painstaking research. Not only did he identify the listed building – Holland House on Bury Street – but also he established the reason for it being there. Holland House was built for Anthony George Kroller and his wife Helene Müller, who made their money from their trading and shipping company, Wm H Müller & Co. Dr H P Berlage designed the building.

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