

Stamp Duty Refunds on Purchases of Irrigation Properties

(Squeezing the Pips from the Stamp Duty Lemon)

Have you (or a client of yours) acquired an irrigation property since July 1998? If so, did you (or your client) receive an exemption from stamp duty on the water rights component of the purchase price? If no exemption was obtained, it would be worth your while contacting us to discuss whether a claim for a refund of duty is available.

Recently we have obtained refunds of stamp duty totalling about \$0.25 million in circumstances where duty was paid on the value of water rights. We have applications for further refunds in the pipeline totalling over \$2 million and anticipate that these will be granted.

In general, those acquiring irrigation properties with surface water allocations since July 1998 where duty was paid on the full purchase price (ie including the value of the water rights) stand a very good chance of being able to recover the stamp duty on the water rights component of the purchase – and this could, in some cases, be more than half the stamp duty paid on the purchase.

Examples of situations where we have been successful in duty refund applications are:

1. Purchases of farms with surface water irrigation entitlements.
2. In limited cases, purchases of farms with groundwater irrigation entitlements.
3. Purchases of farms in Irrigation Areas such as Coleambally, pre privatisation.
4. Purchases of farms in such Irrigation Areas, post privatisation.

In cases 3 and 4 above, a full duty refund is not available, but significant refunds may still be obtained.

Should you (or your clients) fall within any of the above categories (remembering that the contract must be dated after 1 July 1998), you may care to contact Paul Frederick of this firm for an obligation fee assessment of whether you are likely to be successful in claiming a refund of stamp duty.



KEMP STRANG

MAY 2002

In this issue

Stamp Duty Refunds
on Purchases of
Irrigation Properties

We look at
circumstances in which
you may be able to
apply for a stamp duty
refund.

Liability for
Escaping Animals

Livestock owners may
be liable for damage
caused by animals
escaping from their
properties.

GST - and Sales of
Rural Properties

How GST affects sales
of rural properties that
include sales of farms
stores and/or livestock
and/or non fixed
plant.

Easements and
Licences to Use
Neighbouring Land

The need for formal
arrangements to use
neighbouring land.

Contact Details:

Paul Frederick
Level 14, 55 Hunter Street
Sydney NSW 2000
GPO Box 475
Sydney NSW 2001
DX 605 Sydney
Tel: +61 2 9225 2500
Fax: +61 2 9225 2599
www.kempstrang.com.au

Rural Newsletter

Liability for Escaping Animals

A person who keeps livestock on his land may be liable for damage caused by an animal that escapes from his land. Whether or not he is liable for that damage will depend on whether he was negligent in allowing the animal to escape. The extent of his liability, if he has been negligent, will depend upon whether the conduct of the party who suffered the damage could be said to have contributed to the loss.

A person keeping animals owes a duty of care to people whom he may reasonably foresee might suffer damage if one or more of the animals escape. It is obvious, therefore, that a person owes a duty of care to users of a highway onto which his animal may stray.

If that person breaches his duty of care and allows an animal to escape from his property, and the animal causes damage, for example by obstructing a roadway and causing an accident, then he may be required to compensate the owner of the vehicle for any damage he suffers. If death or a serious injury occurs, criminal charges may lie.

A person will breach his duty of care if he fails to take "reasonable care" to prevent his animal escaping. What is reasonable will depend on the particular facts of each case. Some relevant factors will be:

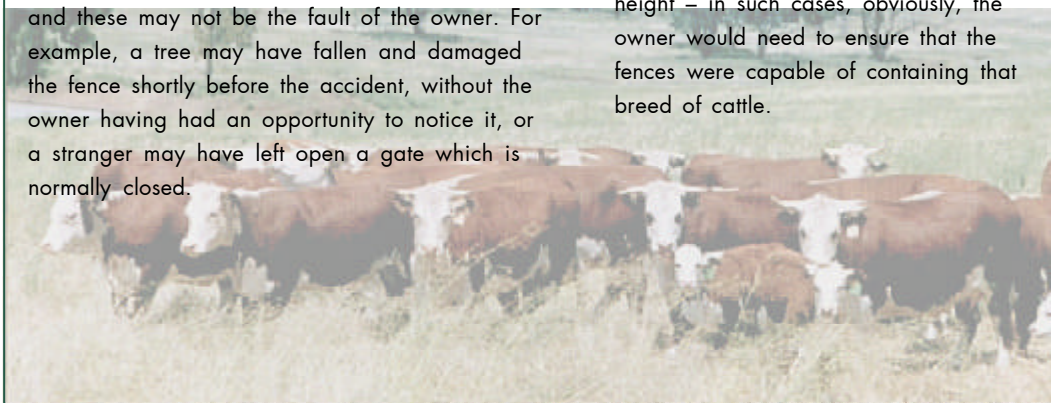
1. Whether the standard of fencing on the particular property is consistent with usually accepted standards;
2. The nature of the animals held on the property, and any known propensities those animals may have to escape; and
3. The type of road which runs near the property and the amount of traffic on it.

When an animal escapes onto a roadway, there may be any number of reasons why it escaped and these may not be the fault of the owner. For example, a tree may have fallen and damaged the fence shortly before the accident, without the owner having had an opportunity to notice it, or a stranger may have left open a gate which is normally closed.

An owner should, however, be alert to the potential for stock to escape and take appropriate action to prevent it occurring.

Some interesting points from decided cases are mentioned below:

- An owner of livestock or of a property on which livestock are agisted cannot delegate completely the responsibility for maintaining his fences. Even if the owner engages someone to maintain the fences, he bears the ultimate responsibility to ensure that they are maintained. (In such cases, however, the owner may have a claim against the person with whom he contracted to maintain the fences.)
- In some circumstances it is not necessary for animals to be kept fenced in. Whether or not it is necessary will depend on the particular locality. In some cases, warning signs on the road alerting drivers to the possibility of wandering stock will be sufficient.
- Where an owner is aware of damage to a fence but fails promptly to repair it, he will generally be responsible for damage caused if stock escapes.
- Santa Gertrudis cattle are known for their ability to jump fences, and have been known to jump fences of up to 5 feet in height – in such cases, obviously, the owner would need to ensure that the fences were capable of containing that breed of cattle.



GST – Sales of Rural Properties

Sales of rural properties may be GST free but, if you are a vendor, be careful if you are also selling, under your Contract for Sale of the farm, farm stores and/or livestock and/or non fixed plant. Unless the sale can be structured to be the sale of a going concern (ie a walk-in – walk-out sale), the sale of such items will produce a GST liability for you as vendor. If you do not want to be out of pocket for the amount of the GST you should, in the Contract for Sale, require the purchaser to reimburse you for the amount of the GST or, alternatively, increase your price to take account of your ultimate liability to pay the tax.

Legal Briefs

A defence counsel was cross-examining a coroner:

Barrister: Sir, do I understand you that before you signed the death certificate you didn't take the man's pulse?

Coroner: That's right, counsel.

Barrister: Did you listen for a heart beat?

Coroner: No counsel.

Barrister: Did you verify whether or not he was breathing:

Coroner: No.

Barrister: So when you signed the death certificate you had not taken any steps to make sure the man was dead, had you?

Coroner: (with a sigh): Well, let me put it this way. The man's brain was sitting in a jar on my desk, but for all I know he could be out there somewhere practising law.

Acknowledgement: "The Jokes On ... Lawyers"



Easements and Licences to Use Neighbouring Land

Do you, at any time, need to use another person's land? For access? Or to install pumps to enable you to pump water from a watercourse? Or to convey water to your land from a watercourse?

If so, and if you do not have a legally binding arrangement in place, you should seek to secure your rights by having an easement, or similar right such as a formal licence with a right to caveat, granted to you by your neighbour.

Sometimes the timing of such a request will be important – perhaps you could raise the matter when a favour is being sought from you; or perhaps you may have to pay a sum of money to secure the right. Whatever the situation, if the continued use of your neighbour's land is important to you, you should seek to secure it as soon as possible. Once an agreement has been reached, you need only to advise us of the terms of the agreement to enable an appropriate document to be prepared for lodging on the title to your neighbour's land. Your right to use the land will then be secure and will not be able to be withdrawn without your consent.

Should you be unable to secure the easement or licence you need through negotiation and agreement there are

other avenues available to you. The first of these (if you are an irrigator and need to secure access for a pump site or to convey water across intervening lands) is by way of an application to the Ministerial Corporation under the *Water Act*. Often the matter is settled with the neighbouring landholder while the application is being processed but, if it is not, the application will be heard by the local Land Board. As a general rule, applications do result in formal access being granted, although conditions will attach to the grant. This avenue is only likely to be available for about another 12 months – until Part 2 of the *Water Act* is replaced by the *Water Administration Act*.

The second avenue available is an application for an easement under the *Conveyancing Act* – however, for water related matters, the legal costs of such an application are likely to significantly exceed those involved in an application under the *Water Act*.

Points of Interest

Viticulture

Are you preparing to move into viticulture – or already involved in it? We have experience in the area and can assist with your legal requirements relating to joint ventures, acquisition and securing of irrigation rights, establishment of shared water schemes, lot sales, grape sales contracts and so on.

Native Title

In *Wilson v Anderson* the Full Federal Court found that the grant of a Western Lands Lease did not necessarily extinguish native title - it said that the critical issue was whether the rights granted to the lessee under the lease were inconsistent with any native title rights. In September last year the High Court heard an application for special leave to appeal from the decision of the Federal Court and judgment has been reserved.