

Rural eSpeaking

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CRUICKSHANK PRYDE
BARRISTERS & SOLICITORS

CRUICKSHANK PRYDE

Level 1, 20 Don Street, P.O. Box 857, Invercargill 9840
T: 03 214 4069 | F: 03 214 4760 | office@cplaw.co.nz | www.cplaw.co.nz
Unit 23, Gorge Road Retail Centre, 159 Gorge Road, Queenstown 9300
T: 03 441 2424 | F: 03 441 2426 | adminqt@cplaw.co.nz | www.cplaw.co.nz

BANNERMAN CRUICKSHANK PRYDE

5 Fairfield Street, P.O. Box 185, Gore 9740
T: 03 209 0183 | F: 03 208 9251 | gore@cplaw.co.nz | www.cplaw.co.nz

Welcome to the first edition of *Rural eSpeaking* for 2018. We hope you find the articles interesting and useful for your rural operations.

If you would like to talk further on any aspect of these articles, or indeed any legal matter, please contact us – our details are above.



Having your own terms of sale

Rural businesses are no different from any other producers in the market in the sense that the ultimate fruits of their labours are, at some point, sold to a third party, whether that is to a meat company, a fruit packer or exporter, or a dairy company. Although these contracts have standard Ts and Cs, you should be familiar with the detail in them.

Sometimes, however, the tables are turned and you might want to set your own Ts and Cs. We give you some guidelines on what to include.

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Easements – get them right first time

In the Autumn 2015 issue of *Rural eSpeaking* we pointed out some aspects of rights of way and water easements and the rights attached to them. Expanding on this topic, we discuss another feature of easements that is important and, in many cases, is not properly understood – the permanence of an easement and issues that might arise from that over time. Virtually all easements are granted 'in perpetuity' which means they last forever.

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Having your own terms of sale

Rural businesses are no different from any other producers in the market in the sense that the ultimate fruits of their labours are, at some point, sold to a third party, whether that is to a meat company, a fruit packer or exporter, or a wine or dairy company.

All sales of product are governed by a contract of sale, the terms of which are either set out by statute (see below) or in a supply agreement or a contract to purchase goods or services of some description. Most of these contracts are industry standard-type contracts and, in many cases, the rural producer has little say over what goes in those contracts; most large fruit exporters, winemakers or dairy companies have their standard terms and conditions and won't negotiate individual contracts with individual suppliers.

Important to know standard contract details

Having little say in a purchaser's contract does not, however, mean you don't need to understand what those contracts mean. Just because a contract is 'standard' doesn't mean it is not important to clearly understand its terms; if issues arise you should be aware of the implications if certain events happen.

Having your own terms of sale

As well, in this day and age, sometimes the tables are turned and you might want to set your own terms and conditions. Increasingly, for instance, farmers will sell their stock on farm or they may sell crops such as hay or other feed crops directly to others.

In these scenarios, you should have your own terms of sale. To a certain extent the Contract and Commercial Law Act 2017 (CCLA) governs contracts of sale of goods (this legislation replaced the old Sale of Goods Act 1908). The CCLA sets out rules for:

- » Contract formation and implied terms in a contract for the sale of goods
- » The passing of property and risk in goods, and defects in the seller's title to the goods
- » The delivery, acceptance and rejection of goods
- » The rights of an unpaid seller including the right to a lien, to resell and to stop goods in transit, and
- » Other remedies of a buyer and seller for breach including the principles for the recovery of damages.

There are also implied terms such as:

- » The seller will be able to give good title

- » If the goods are sold by description the goods will correspond to the description
- » The goods are reasonably fit for any purpose that the buyer communicates to the seller
- » The goods are of merchantable quality, and
- » If there is a sale by sample, the bulk of the goods correspond to the sample.

When setting out your terms of sale you will need to think about whether you are happy to rely on the CCLA or whether you want to prescribe your own terms of sale. Many of the provisions of the CCLA can be varied by contract, although some can't.

If you are looking to sell directly from the farm it's important to have clear terms of sale, whether it's to cover payment terms or issues with the quality of what has been sold, or the ability to register a security interest over the goods being sold so you can recover those goods in the event payment is not made.

An understanding of what the CCLA does cover and what it doesn't, and what might be able to be varied to reflect your own circumstances, is critical to protect yourself as a seller.

If you'd like to set up your own terms of sale, we're happy to guide you through the process to ensure the terms achieve your goals. ●

Easements – get them right first time

In the Autumn 2015 issue of *Rural eSpeaking* we pointed out some aspects of rights of way and water easements, and the rights attached to them.

Expanding on this topic, we discuss another feature of easements that is important and, in many cases, is not properly understood – the permanence of an easement and issues that might arise from that over time. Virtually all easements are granted 'in perpetuity' which means they last forever.

When granting an easement over your property, or you're purchasing a property that is subject to easements, you need to consider not only the situation as it is now but also potential issues that might arise over time.

Potential users of an easement

One of the issues that arises out of the permanence of an easement relates to the number or type of users of that easement. For example, if a farmer subdivides his or her land into two with one part of it being sold, but to ensure access there's a right of way over the land that hasn't been sold – what happens when that sold land is further subdivided?

With the increasing popularity of lifestyle or farm park subdivisions a right of way easement that might have originally served

only one user could end up serving maybe eight or 10 users depending on its original width. While that in itself may not be a problem – there are more people to share the costs of maintenance and so on – the more users of the right of way means the greater the possibility that the original owner faces competition for the use of that right of way.

Changing use of land with an easement

What happens if the use changes on one of the parcels of land that has the right to use the right of way? For example, on the east coast of the North Island is the well-documented 'wall of wood' planted on what used to be pastoral farmland. It could be that a right of way easement, rather than serving a farm with the only use being stock trucks and other similar farm type use, could end up having heavy logging machinery and, at harvest time, very significant use by logging trucks.

The implied terms for vehicular rights of way in the Fifth Schedule to the Property Law Act 2007 includes the right:

"To go, pass and repass at **all times, by day and by night** and is exercisable with or without vehicles, machinery, **and equipment of any kind**"

Looking at your own situation, what can you do about this? There are only very limited options to vary easements:

- » They can be varied by agreement of all of the parties who have the use of them, or
- » Application could be made under ss316-317 of the Property Law Act 2007.

Varying an easement

The courts generally adopt a fairly conservative approach to any attempt to vary the terms of an existing easement under ss316-317. Application can be made, however, on the following grounds:

1. The easement ought to be modified or extinguished because of a *change* since its creation in all or any of the following:
 - » The nature or extent of the use being made of the benefited land, the burdened land, or both
 - » The character of the neighbourhood and/or
 - » Any other circumstance the court considers relevant, or
2. The continuation in force of the easement or covenant in its existing form would impede the reasonable use of the burdened land in a different way or, to a different extent, from that which could reasonably have been foreseen by the original parties to the easement or covenant at the time of its creation, or
3. Every person entitled who is of full age and capacity:

- » Has agreed that the easement or covenant should be modified or extinguished (wholly or in part), or
 - » May reasonably be considered, by their actions or omissions, to have abandoned or waived the right to the easement, or
4. The proposed modification or extinguishment will not substantially injure any person entitled.

The court process is expensive and any outcome is uncertain. Therefore when creating such easements thought should be given to future-proof (as much as possible) the land that is going to be subject to the easement. The rights and obligations attached to easements are those set out in the document creating the easement and these can replace, modify and vary the implied terms of the Land Transfer Act 1952 and the Property Law Act. Typical restrictions that can be included in easement instruments might be:

1. A limit on a number of users
2. A limit on the type of vehicle, and
3. Limits on the times of day that the rights might be exercised.

As you can see, creating and changing an easement is complex and can be very expensive. If you're creating an easement over your rural land, do talk with us early on so we can help you get them right – first time. ●

Over the Fence

Minimum wage rates rise on 1 April

Each year the government reviews the minimum wage.

On 1 April 2018 the adult minimum wage will increase from \$15.75/hour to \$16.50/hour. The starting out and training minimum wages will increase from \$12.60/hour to \$13.20/hour.

We recommend you review all wage and salary structures to ensure your employees are paid at least the minimum wage at all times for hours worked.

It is well known that work required on the farm fluctuates throughout the year. You must ensure that your employees are receiving at least the applicable minimum wage rate for any hours worked at all times. This is the case even when your employees are paid a salary.

This may mean an employee's pay needs to be topped up at certain times of the year to ensure they are paid at least the applicable minimum wage for the hours worked.

We also remind you that keeping and maintaining accurate time and wage records is vitally important, and a legal requirement of employers. ●

Stock movements

Gypsy Day approaching and *Mycoplasma bovis*

First detected in New Zealand in July 2017, *Mycoplasma bovis* (*M.bovis*) has become an issue for our agricultural sector.

Gypsy Day is fast approaching for our dairy farmers which sees increased stock movements around New Zealand. If you are buying cows, we recommend that you have

the protection of a written agreement. This agreement can provide warranties and provisions around the rejection of animals.

Such protections are not available, obviously, when moving your own stock to another property you also own or on which you sharemilk. We recommend you check for Restricted Place Notices and Notices of Directions when moving stock/farms.

M.bovis is covered in more detail in our Autumn issue of *Fineprint* due to be published in early April.

In the meantime, if you have any queries around moving cows and/or would like to discuss a written agreement when buying cows, please contact us. ●

New milk cooling regulations

A reminder that the new milk cooling regulations for farm dairies will take effect on

1 June 2018. All farms must be compliant with the new regulations by this date. ●

Employment Relations Amendment Bill 2018: Changes afoot

The Employment Relations Amendment Bill 2018 was tabled in Parliament on 31 January 2018.

Some of the proposed amendments to our employment laws include changes to the 90-day trial periods, restoration of specific times for meal and rest breaks, restoration of some collective bargaining rights and the restoration of reinstatement as the primary remedy in personal grievance cases.

The Bill will now go through consultation through the select committee process. We will keep you up to date with further developments in future editions of *Rural eSpeaking*. ●

