2018: Gambling and Gulls

We all remember the great events in our lives and certain milestones in the calendar cause us to reflect on those monumental events.

For myself the birth of my daughter at the end of summer 2005, the Minstrel winning the 1977 Epsom Derby under the Piggott machine gun ride in June 1977 and, of course, Ireland smashing England at Croke Park on a cold February in 2007.

Just before Christmas I was preparing for a case (I do work...sometimes) and happened upon a judgment from the Supreme Court concerning a professional gambler who played the card game Punto Banco Baccarat (which apparently is a game of pure chance) and who had won over £7 million at a London casino.

The casino had refused to pay the Claimant his winnings on the grounds that he had played in a manner which had altered the odds unfairly. Surprise! The Claimant bought an action for the recovery of the sums which he had won. He lost at every stage of the court process including in the Supreme Court.

What was of particular interest in the judgment was the reference to dishonesty and the change in the dishonesty test in the UK. I see no reason why such a change will not apply to Jersey.

In his judgment, Lord Hughes (supported by all the other brilliant legal minds sitting) said this: "*Dishonesty is by no means confined to the criminal law. Civil actions may also frequently raise the question whether an action was honest or dishonest. The liability of an accessory to a breach of trust is, for example, not strict, as the liability of the trustee is, but (absent an exoneration clause) is fault based. Negligence is not sufficient. Nothing less than dishonest assistance will suffice. Successive cases at the highest level have decided that the test of dishonestly is objective*".

Lord Hughes went on to say that: "*there can be no logical or principled basis for the meaning of dishonesty (as distinct from standards of proof by which it must be established) to differ according to whether it arises in a civil action or a criminal prosecution. Dishonesty is a simple, if occasionally imprecise, English word. It would be an affront to the law if its meaning differed according to the kind of proceedings in which it arose.*"

Ah, the clarity.

The reason why this case jumped out at me other than the fact that it reminds us how good these judges can be (and of course a gambler not recovering his money is always of interest) was the fact that I had been involved in a case in Jersey some years before (we received that judgment just before Christmas) which received much publicity concerning, amongst other things, the obligations on trust officers when interacting with clients.

One of the issues in that case centred around the role of the honest trust administrator and the consequences that can befall such a person.

This Supreme Court judgment means that we no longer distinguish between the criminal and the civil and one wonders what impact this might have on the “honest trust officer” test.

From a legal point of view speaking of great moments I had hoped that States of Jersey would have adopted the much needed proposal that the jurisdiction of Petty Debts Court be widened from £10,000 to £30,000.

This issue has been hanging around like a bad smell for many years.

At the time of writing this piece…no news. What possibly can be the cause for the delay?

It really is about time that the States grappled with this issue. The £10,000 small claims jurisdiction is simply not appropriate in the modern day and age. In a time when people continue to moan about legal costs, our government needs to grab this by the horns and move it forward as soon as possible.

Whilst we are, of course, all worried about Gulliver the seagull, his destiny should not take precedent over other important government works.

Perhaps 2018 will be the year when the States are remembered for dealing with some of these important issues which affect our everyday lives, rather than simply chasing seagulls around the bay!