

Biography

Edward T. Hart is an assistant university librarian at the Lawton Chiles Legal Information Center at the Levin College of Law, University of Florida. His duties include supervision of acquisitions and serials, collection development, and reference. He holds a JD from the New England School of Law and an MLIS from Simmons College. From November 2004 until completing his thesis in August 2006, he was a distance learner in the European Union LLM programme at the University of Northumbria.

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From Our Own Correspondent.... Personal Reflections on Working in a Caribbean Tax Haven

Abstract: Jessica Sambrook tells about her experiences of not only working in the idyllic Cayman Islands but also having to avoid the forces of nature. She describes the sources of legal information in the Islands and provides an interesting historical view of how their legislation has developed from English law.

Keywords: law firm librarians; international law firms; Cayman Islands

Life in the Cayman Islands

I knew very little about the Cayman Islands before taking the plunge to move here at the end of 2006. Palm trees, glorious beaches and sunsets are the images which initially spring to mind, as well as rum and pirates, courtesy of a certain Hollywood movie. Grand Cayman, the largest of the Islands, has all these in abundance, including pirates who take pride of place at the annual Pirates Week celebrations in November. It is also a very western Island with supermarkets stocking buffalo mozzarella alongside plantains and callaloo. Large selections of restaurants serve all styles of cuisine. Sushi is very popular and there is also the obligatory Irish pub where you can

devour Irish stew on a hot and sticky summer day! All of this is not surprising when you consider that nearly half of the population is non-Caymanian and the presence of huge conglomerates on the Island attract people to work in the financial industry, primarily from the US, UK, Canada and Australasia to fuel the economy of one of the world's largest financial centres.

Hurricanes

Whilst there are many upsides to living on a Caribbean Island, the threat of a hurricane cannot be ignored. This year I experienced my first hurricane season, which runs from June to November. Hurricane Ivan devastated Grand



Figure 1: Georgetown Harbour

Cayman in 2004 and having heard numerous first-hand accounts from those who were on the Island, it is not something I have any desire to experience. In August, a major storm began forming and over the next few days this developed into Hurricane Dean, a Category 5 hurricane. The storm was projected to be heading directly for the Islands. Mass panic set in with supermarkets overrun with people buying water and canned goods. Properties were boarded up in anticipation and the airport was deluged with people trying to flee the Island. I was lucky enough to be flying out on a charter and, watching the developments on TV in my Miami hotel room, I was relieved to see it passing south of the Islands. As it turned out, Hurricane Dean was over 100 miles away but even so we returned to find the garden in ruins, trees uprooted and some waterfront properties flooded. Unfortunately Mexico and other Caribbean Islands did not get off so lightly.

My job

I work in the Information Services Department of Maples and Calder, the largest law firm on the Island. In essence, the responsibilities and tasks undertaken are the same as in any City law firm IS dept. Aside from the specific Cayman and BVI resources, the vast majority of textbooks, law reports and databases are English focused. Copies of *Palmer's*, *Gore-Brown* and *Tolley's Company Law* are just as sought after and well thumbed. Where we may differ from other libraries is in our archive of older textbooks and previous editions, which can be as well used as the current editions, due to our Laws being heavily based on previous versions of English Statutes. We are a team of seven and offer information services to all the Maples and Calder offices, which include Dublin, London, Hong Kong, British Virgin Islands, Dubai, Jersey and Luxembourg. We are always busy!

Legislation

The Cayman Islands has over 200 statutes currently in force and these are referred to as laws. Amending laws are issued and consolidations of these laws are known as revisions. The core of the local legislation concerns the financial and business sector but there are also distinctly Caribbean laws such as the Coconut Disease Law and the Aerial Spraying Protection law. In the development stage is a Bill of Rights, which will be the Islands' first local enactment covering human rights issues. A number of international treaties in this area have been extended to Cayman via the UK and the enactment of a local law will help to enforce the protections set out in these treaties.

The Companies Law was first enacted in 1961 and a number of revisions have followed, the most current being the 2007 Revision. This Law is largely based on the Companies Act 1948 and, in the absence of any discussion within Cayman case law, English cases are often used to argue a point about the interpretation of certain sections of this Law. For this reason, it is can be very important to establish the origin of the wording of a section of law and this can make for some interesting research.

In addition to the laws enacted by the Cayman Islands Government, there is legislation that has been extended to the Cayman Islands. Ever since the British Crown claimed sovereignty over the Islands, it has been the custom that English legislation does not apply unless expressed to apply. The 'Extent and Application' section of a UK statute will list those overseas territories that the legislation extends to or will make provision for any parts of that Act or Orders made under that Act to be extended at a future date. There are few Acts that are applicable to the Cayman Islands. The Copyright Act 1956 with modifications still applies, even though it is no longer in force in England and Wales.¹ It is more common for statutory instruments to be extended. For example, the Export Control Act 2002 does not apply in its entirety to the Cayman Islands but certain SIs made under this Act do apply² and these extend some sections of this Act to the Islands. UN Sanctions are also extended by way of specific Overseas Territories Orders.

Treaties can also be extended, as was the Kyoto Protocol in March this year. This raised some interesting questions as to how this would be enforced in practice and what is required from the Cayman Islands and Cayman incorporated companies. As I understand it, the Cayman Islands does not have any obligations to reduce its Co2 emissions as it is not an Annex I country and the UK's obligation is based on reducing its emissions from facilities within the UK and does not, as yet, include its overseas territories.

English Statutes enacted pre-settlement may also apply in the Cayman Islands but how this is determined is debatable and these points are considered in detail in Elizabeth Davies' 'Legal System of the Cayman Islands'.³ English legislation will not apply if local legislation already exists unless

the English Act expressly applies.⁴ The Cayman Islands Interpretation Law s.40 cites the common law rule regarding the application of English Law to its colonies, that all such laws enacted prior to the reign of George II [1727] “esteemed, introduced, used, accepted as laws in the Islands shall continue to be laws in the Islands” unless repealed or amended by the law of the Islands. Other factors to consider is the ‘well established law’ that settlers from the UK “carry with them only so much of the English Law as is applicable in their own situation”⁵ and the precise date of settlement.⁶ In practice, the Court would have to decide the applicability by looking at any previous judgments on the applicability of that Act to the Cayman Islands or any other Commonwealth territory and also consider how suitable that Act is to the Cayman Islands. Although this debate is not likely to crop up very often, there are certain Acts still in force which arguably could still be used as an authority on a point of law.

Resources

The *Cayman Islands Law Reports* are the only series of law reports that purely cover Cayman Islands judgments. This series runs from 1952 and is not available electronically. Some other established law reports series, such as the *Commonwealth Law Reports* and the *International Trusts and Estates Law Reports*, also contain some Cayman judgments.

The Cayman Islands Grand Court Rules 1995 are largely based on the UK Civil Procedure Rules.

All new legislation is published in the *Cayman Islands Gazette*, which is issued fortnightly. This is available online from 2003. Prior to that, copies of the more popular laws are available on The Cayman Islands Monetary Authority website. The most recent consolidated index of all laws and subsidiary legislation in force was gazetted on the 9th July 2007.⁷

The Registrar of Companies does not have a website. CORIS (Cayman Online Registry Information Services) is



Figure 2: Sunset from Jessica’s balcony

a subscription database, which includes basic company details such as the incorporation date, the registered agent and the status and is available to authorised users. It is also possible to gather some information from the Registrar of Companies for a fee.

Business

The Cayman Islands has over 70,000 registered companies, 300 banks and trusts and 7,000 registered mutual funds.⁸ It is estimated that the Islands are home to \$1.4 trillion in assets and has 3.35% of total global transactions.⁹ The Cayman Islands is generally the jurisdiction of choice for offshore hedge funds, with an estimated 80% of the world’s hedge funds domiciled here, and it is also a world leader in structured finance transactions.



Figure 3: Stingray Sandbar

The Cayman Islands has been portrayed as a jurisdiction where money laundering is rife, most famously in John Grisham's *The Firm*. In reality, the Cayman Islands is chosen as a place to form a company for its tax neutrality - as the Cayman Islands government put it in a recent press release, to avoid additional layers of taxation over and above that of the home country which is where "capital flows ultimately end up and are then taxed".¹⁰ The Cayman Islands has a rigorous anti-money laundering regime,¹¹ on a par with or stricter than that in onshore jurisdictions and companies involved in financial business are required to undertake detailed KYC checks on all new clients. In addition, the Cayman Islands signed a Tax Information Exchange Agreement with the US a few years ago that covers both criminal and civil tax matters.

And finally...

The Cayman Islands has a lot to offer from both a personal and professional perspective. The work here is challenging, with a number of jurisdictions to deal with. The weather is a definite plus and everywhere is close (it takes me five minutes to get to work rather than the one hour commute in London). There are plenty of sporting and cultural activities to keep you occupied. However, it is imperative that you get off the Island every few months before 'Island fever' sets in. Luckily for me there are plenty of new countries to explore on my doorstep and direct flights to Miami and New York for a spot of retail therapy!

Biography

Jessica Sambrook has been in the legal information profession for eight years, initially working at Southampton Solent University and then at SJ Berwin. Jessica has been at Maples & Calder since November 2006.

Footnotes

¹See Copyright (Cayman Islands) Order 1965, SI 1965/2010.

²Export of Goods, Transfer of Technology and Provision of Technical Assistance (Overseas Territories) Order 2004, SI 2004/3101, Trade in Goods (Control) (Overseas Territories) Order 2004, SI 2004/3102 and Trade in Controlled Goods (Embargoed Destinations) (Overseas Territories) Order 2004, SI 2004/3103.

³Chapter 4. The Application of Pre-Settlement Westminster Legislation, *The Legal System of the Cayman Islands*, E. W. Davies, 1989, Law Reports International.

⁴Colonial Laws Validity Act, 1963, s.3.

⁵Davies op cit. p. 89

⁶Although the Treaty of Madrid in 1670 formally recognised the UK's sovereignty, the Islands may not be considered as having settlers till as late as 1734. Davies p. 103

⁷*Consolidated Index of Laws and Subsidiary Legislation as at 31st May 2007*. Supplement No. 12 published with Gazette No. 14 of 2007, published on 9th July 2007.

⁸Economics and Statistics Office Statistical Compendium 2005.

⁹Cayman slips as financial centre. *Cayman Compass*. 17th October 2007.

¹⁰*The Facts about Company Formation in the Cayman Islands*. May 2007. Cayman Islands Government.

¹¹Laws include The Proceeds of Criminal Conduct Law 1996 (subsequently revised in 2007) and the Money Laundering Regulations 2000 (subsequently amended in 2006).

Addendum

A new trial online resource has just become available which currently has the full text of reported Cayman judgments available and will eventually be a source for all the laws in force. The url is as follows: <http://staging.caymanjudicial-legalinfo.ky/judgments/defulat.aspx>