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PROPERTY LAW BULLETIN

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INTRODUCTION

Since the last bulletin there have been a variety of interesting and significant decisions across all areas of property law. An important decision for those dealing with contentious rent reviews is *Epoch Properties Ltd v BHS (Jersey) Ltd*. Although the facts were a little unusual the decision contained a helpful consideration of the principles relevant when the President of the RICS is asked to appoint a surveyor to carry out a rent review. In *Silven Properties Ltd v Royal Bank of Scotland plc* the High Court considered the duties owed by a receiver to a mortgagee when selling a property as compared to the duties owed by the mortgagor in the same situation. A robust decision was given on the interpretation of the rules of service under CPR part 6 in *Akram v Adam*. A series of cases on leasehold enfranchisement (some in the county court) consider some of the finer details of the law. Housing lawyers should note the Court of Appeal's decision in *North British Housing Association Ltd v Matthews* (and other linked cases) in relation to the court's power to adjourn even where ground 8 is relied upon. These and other recent decisions are summarised in the Case Law Update and In Brief sections of the bulletin.

A group of regulations published in November 2004 (SI nos 3096, 3097 and 3098 of 2004) cover various situations arising out of the commencement of various leasehold reform provisions (on 28th February 2005) of the Commonhold and Leasehold Reform Act 2002. The provisions coming into force and the regulations are summarised in the Other Developments section below.

You will find a list of our sources at the end of the bulletin. If you know anyone who would like to receive a copy of this or future bulletins, or if your contact details change, please contact nbryant@thomasmore.co.uk. Mailings are generally by DX or post but can be provided by email in some circumstances. Earlier editions of the bulletin appear on the chambers website at www.thomasmore.co.uk.

CASE LAW UPDATE

BUSINESS TENANCIES

Once new evidence has been admitted on appeal it is unjust not to take it into account whether the appeal is a rehearing or a review

Davy's of London (Wine Merchants) Ltd v City of London Corporation [2004] EWHC 2224 (Ch); [2004] 49 EG 136

This case, previously noted in the October 2004 bulletin, has been further considered in the Chancery Division. The respondents had applied for a new tenancy of business premises under part II Landlord and Tenant Act 1954. There was no dispute that the new tenancy should be for 14 years but the parties disagreed as to whether the tenancy should contain a redevelopment break clause and if so when. The county court had ordered a new tenancy for 14 years with a rolling redevelopment break clause operable after five years on 11 months' notice.

The landlord appealed, seeking a variation to allow exercise of the break clause at an earlier stage. It sought to adduce fresh evidence in relation to the proposed redevelopment. The appeal court gave permission for the fresh evidence and an issue arose as to how it should be approached. Lewison J held that although the judge had applied the correct legal test, his decision was wrong in the light of the new evidence. Once it was decided that new evidence should be admitted, it would be unjust not to take it into account, whether the appeal took the form of a rehearing or a review (applying *Asiansky Television Ltd v Bayer-Rosin* [2001] EWCA Civ 1792). The judge's order would be varied to include a break clause in the new tenancy allowing the landlord to terminate at an earlier date although on the same notice.

CONSTRUCTIVE TRUSTS

Bribes had been derived from claimants' property and so restitutionary remedy was available

Daraydan Holdings Ltd & ors v Solland International Ltd & ors [2004] EWHC 622 (Ch); [2004] 3 WLR 1106

Mr Khalid, the fifth defendant and a former employee of the claimants, had obtained £1.8 million in bribes from the defendants when arranging contracts for the luxurious refurbishment by the first to fourth defendants of properties belonging to the claimants. The first to fourth defendants had then included the amount of the bribes in the contract price charged to the claimants. The proceedings against the first to fourth defendants had settled and the question was whether Mr Khalid was accountable to the claimants and in particular whether the claimants were entitled to an order that he held the payments on constructive trust. The claimants sought restitutionary remedies against Mr Khalid because they wanted to trace the proceeds of the bribes in the hands of recipients.

Lawrence Collins J held that whether Mr Khalid was acting as an employee or representative of the claimants he owed them a fiduciary duty. The first to fourth defendants thought that they would not get the contracts if they did not make the payments to Mr Khalid. The

payments to Mr Khalid were built into the price charged to the claimants. The claimants were entitled to a restitutionary remedy against Mr Khalid because there was a proprietary basis for the claim, the bribes having been derived directly from the claimants' property. The price was increased by the amount of the bribe, and the bribe was paid out of the money paid by the claimants for what they thought was the price. These factors made the claim one for restitution of money extracted from the claimants. In addition, the part of the price representing the bribe was paid as a result of fraudulent misrepresentation by the defendants that the true price was the invoice price, when in fact it had been inflated to include the bribes. Mr Khalid was a party to a conspiracy to defraud the claimants by falsely representing that the true contract price was the figure including the bribe, when in fact the true price was the price without it. It was appropriate to grant the claimants the proprietary remedy which they sought.

EASEMENTS

Question whether right of way gives access to whole of dominant tenement or just to one point of access is question of construction in each case

Perlman v Rayden & anor [2004] EWHC 2192 (Ch); [2004] 43 EG 142 (CS)

The parties owned neighbouring properties. The defendants had a right of way over a roadway belonging to the claimant in connection with the use of their property as a private dwelling house and for the purpose of carrying out repairs and maintenance. The right of way was both vehicular and pedestrian. It was subject to a payment of a contribution to the upkeep of the roadway. The defendants were building an extension and wanted to create a new front door. The claimants argued that the right of way was limited to the original doorway.

Patten J held that as the works were not repair or maintenance the use of the roadway was a trespass if the claimant had not consented. The claimant had consented to some of the works and it would be disproportionate to require the removal of other works. There was no damage to the claimant's property and the use of the roadway had been comparatively slight. Damages were an adequate remedy. The question whether a right of way gave access to every part of the dominant tenement or simply to one point of access was a question of construction in each case (*Petty v Parsons* [1914] 2 Ch 653 applied). There is no rule of construction that the physical circumstances extant at the date of grant are determinative. The right of way extended along the width of the roadway and carried with it an obligation to contribute to the cost of repairs. These factors pointed to the defendants having a right of way exercisable along the whole of the frontage of their property. They were entitled to use the roadway to obtain access to their property at any reasonable point.

HIGHWAYS

Landowner only has to show lack of intention to dedicate for part of 20 year period to prevent dedication as a highway; lack of intention does not have to come to notice of users

R (on the application of Godmanchester Town Council) v Secretary of State for Environment, Food and Rural Affairs; *R (on the application of Drain) v Secretary of State for Environment, Food and Rural Affairs* [2004] EWHC 1217 (Admin); [2004] 4 All ER 342

Applications were made for modification orders adding public footpaths to the definitive map. Statements of rights of way and modification orders were made. The owners of the land objected and so the orders were submitted to the Secretary of State for confirmation. An inspector was appointed and a public local inquiry was held.

s.31(1) Highways Act 1980 provides that where a way over any land has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to be dedicated as a highway unless there is “*sufficient evidence that there was no intention during that period to dedicate it*”. The way will not be deemed to be dedicated where it is of such a character that public use of it could not give rise at common law to any presumption of dedication. The inspector found sufficient evidence of an intention not to dedicate and did not confirm the orders.

On a challenge by the claimants to the inspector’s decisions, the court considered what was meant by sufficient evidence of a lack of intention to dedicate. It held that there was no requirement that evidence of a lack of intention to dedicate had to be brought to the notice of the users or be likely to come to their attention. The statutory presumption of dedication was rebuttable by sufficient evidence to negative the intention to dedicate for part of the 20-year period, subject to the de minimis principle. A landowner was not required to prove the lack of an intention to dedicate throughout the 20-year period. The inspector had directed herself correctly and had found sufficient evidence of a lack of intention to dedicate. The claims were dismissed.

HUMAN RIGHTS

Article 8 has to be seen in the context of competing rights including the rights of other landowners and the community as a whole

Lough & ors v First Secretary of State [2004] EWCA Civ 905; [2004] 1 WLR 2557

A developer wanted to demolish existing buildings and redevelop to provide for a 20 storey building with 28 dwellings and shops and restaurants on the ground floor on a site very close to the Tate Modern in London. The planning application was initially refused on the basis that it breached the authority's unitary development plan through loss of amenity to adjacent residents. The developer won an appeal to a planning inspector. A local residents' association brought a challenge by way of judicial review which failed at first instance.

The Court of Appeal dismissed the appeal brought by the residents, holding that the purpose and scope of article 8 requires respect for the home, but creates no absolute right to amenities currently enjoyed. The role of article 8 has to be seen in the context of competing rights including the rights of other landowners and of the community as a whole. Article 8 refers to the rights and freedoms of others, and article 1 of the First Protocol refers to a person's entitlement to the peaceful enjoyment of his possessions. These provisions acknowledge a landowner's right to make beneficial use of his land, subject amongst other things to appropriate planning control. The Convention should inform the decision maker's approach to material considerations, and inherent in this was the concept of proportionality and the need to strike a balance. In the circumstances the inspector had struck a balance in accordance with the requirements of article 8 and there was nothing arbitrary in his procedure. There was justification for the development together with acknowledgement of the landowner's right to make use of his land.

LEASEHOLD ENFRANCHISEMENT

Purpose of s.45 counternotice is to define basic issues; ambiguity in user restriction should generally be construed against landlord

Bishopsgate Foundation v Curtis [2004] 46 EG 152; Judge Roger Cooke

The tenant Mr Curtis wanted to enfranchise his tenancy by claiming a new and extended lease under the Leasehold Reform, Housing and Urban Development Act 1993. He had a long sub-underlease of premises on the third floor of 8-10 Nile Street, London N1, which expired on 10th June 2053. Mr Curtis had served a s.42 notice on 6th January 2003 and on

18th March the landlord, Bishopsgate, gave a counternotice stating that it did not admit the claim for a new lease because the lease was a business lease and the premises did not qualify as a separate flat. Bishopsgate then applied under s.46 of the 1993 Act for a declaration that on the relevant date Mr Curtis had no right to claim a new lease. There were restrictive covenants in the head lease and the sub-underlease restricting the use respectively to “live/work units...” and to “live/work artists/design/crafts studios”. Nile Street was made up of old industrial and commercial buildings and in around 1994, a group of artists who wanted studios and ancillary residential use approached the landlord and purchased the lease. Mr Curtis was a later purchaser and had acquired the premises primarily as his home. He made it clear in correspondence with the landlord in 2001 that he used 90% of the floor space for living and 10% for working as a Technology Analyst (i.e. not as an artist or craftsman).

Judge Roger Cooke dismissed the landlord’s claim and held that Mr Curtis was entitled to a new extended lease. He held that if a landlord gives a counternotice and starts proceedings under section 46, it is to be treated as making that application on the grounds set out in the counternotice (for which there is no machinery for amendment) and not on any other grounds. He expressly gave no decision on the meaning of s.49. However he stated that the whole purpose of a counternotice is to define the basic issues and give the tenant the opportunity to consider its position before proceedings start. The section requires the reasons to be stated but not that they be elaborated or that particulars be given. The landlord was entitled to raise the arguments that it sought to raise, which broadly arose out of the notice given.

The user covenants should be read as permitting either residential or working user or the two together and accordingly there was no breach by the tenant either of the head lease covenant or the sub-underlease covenant. When one is construing a user clause, and the more so a user clause as in the present case prohibiting all except the specified user, there is a strong argument for saying that it is the landlord who is putting the clause forward. If there were no clause, the tenant could use the property for any purpose at all. If there was ambiguity in the restriction it should be construed against the landlord. The definition of a separate flat set out in s.101 of the 1993 Act was satisfied. If Mr Curtis was using the premises in breach of covenant, the rule that a person cannot benefit from a breach of contract did not apply to the 1993 Act. The circumstances when a qualifying tenant cannot make a claim are fully and exhaustively set out in the statute and the common law rule was not among them. Breach of covenant is a common enough concept in a landlord and tenant statute and where the draftsman needs to refer to it he does so.

Potential for improvement is not to be excluded from valuation of unimproved house

Fattal & anor v Keepers and Governors of the Possessions, Revenues and Goods of the Free Grammar School of John Lyon [2004] EWCA Civ 1530; [2004] 50 EG 85 (CS); [2nd December 2004] TLR

The appellants were the tenants of premises under leases acquired in 1993. They had carried out extensive works before moving into the premises in 1997. On 31st August 2000 they served notice on the respondent landlord of their desire to purchase the freehold of the property pursuant to Part I Leasehold Reform Act 1967. The parties were unable to agree the price and in particular were in dispute as to whether the valuation should take account of the development potential of the premises. S.9(1A) 1967 Act provided that the price payable should be the amount which the premises would realise if sold on the open market by a willing seller. There were six assumptions to be taken into account, including (d), that the price should be diminished by the extent to which the value of the premises had been increased by any improvement carried out by the tenant or his predecessors in title at their own expense. The appellants appealed from the decision of the Lands Tribunal, which had held that the comparison should be between the value of the improved property and the value of the unimproved property with the potential of improvement.

The Court of Appeal dismissed the appeal. There was no legitimate basis for implying that s.9(1A)(d) 1967 Act required the potential for improvement to be excluded from the valuation of an unimproved house. Assumption (d) required the calculation of the amount of the increase in value resulting from the improvements. That meant that there had to be a valuation of the property in the state it would have been in on the valuation date had it not been improved. Both valuers before the LT had agreed that a valuation of an unimproved premises would include the value of any potential for improvement. Consequently the increase in value arising from an actual improvement had to be calculated as an excess over the unimproved valuation, including the value of the potential, even though the potential was merged in or absorbed by the actual improvement. The LT was not required to disregard the existence of planning permission to carry out the works. An improvement was a physical concept and it was the increase in value resulting from the physical works that had to be subtracted; planning permission did not form part of those works.

Common parts are to be disregarded when assessing whether 25% of premises are non-residential under s.4 LRHUDA 1993

Indiana Investments Ltd v Taylor [2004] 50 EG 86; Judge Roger Cooke

In a claim for collective enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993, there was a dispute as to whether the non-residential part of the premises exceeded 25%. If it did then no enfranchisement was possible. s.4 1993 Act was the

relevant section, and s.4(1) provided that collective enfranchisement did not apply if “(a) any part or parts of the premises is or are neither- (i) occupied, or intended to be occupied, for residential purposes, nor (ii) comprised in any common parts of the premises; and (b) the internal floor area of that part or of those parts (taken together) exceeds 25 per cent of the internal floor area of the premises (taken as a whole).” S.4(2) was not relevant to the present case. S.4(3) provided that “For the purpose of determining the internal floor area of a building or of any part of a building, the floor or floors of the building or part shall be taken to extend (without interruption) throughout the whole of the interior of the building or part, except that the area of any common parts of the building or part shall be disregarded.”

Judge Cooke held that what was intended to be done was to arrive at the ratio that business bears to residential. For this purpose common parts that were neither business nor residential were treated as irrelevant in two ways. First, they were not part of the definition of either business or residential, and so not part of the part that was compared with the whole. In addition they were not comprised in the whole which was compared with the part. The common parts were left out of both sides of the calculation so that what was compared was business as against aggregate of business and residential.

The onus to prove that the building was not within the Act fell on the landlord. S.3 gave a general right and s.4 provided an exception: it must be for the landlord to prove the exception. The building was unusual and there were a number of disputed areas. The non-residential part of the building was 24.1126% of the aggregate. The claimant succeeded by less than 1% in establishing its claim to enfranchise.

LEASES

Measure of damages for breach of collateral undertaking is loss within the reasonable contemplation of the parties

Salford City Council v Torkington & anor [2004] EWCA Civ 1636; [2004] 51 EG 89 (CS)

The respondents had taken an assignment of a lease of shop premises in 1981. The business was run-down and little of the term of the lease remained. The council assured the respondents over a period of time that the other local shop would not be trading as a grocers or an off-licence although it subsequently did both. The respondents had taken a six year lease in 1982 although the other shop had opened as a grocery. The council later granted 99 year leases of two other shops. The respondents' business deteriorated as a result of the competition and in 1988 they ceased trading and later abandoned the premises. The council subsequently claimed forfeiture of the lease and arrears of rent. The respondents counterclaimed for breach of collateral undertakings which they said had led

them to take the assignment and then the six year lease. The judge held that but for the council's breaches, the appellants would have traded profitably until 1994 and then sold the business profitably. The council appealed the basis of assessment of damages.

The Court of Appeal allowed the appeal, holding that the damages that could be recoverable were those that were within the reasonable contemplation of the parties. The cut-off point for any claim for loss of profits was the point at which it was reasonable for the respondents to decide to cease trading and dispose of the business, being fully aware of the council's breach of warranty. The reality was that from mid-1987 the respondents had contemplated disposing of their business rather than continuing it. They should not have been compensated for the loss of future trade that they had no intention of carrying on.

MORTGAGES

Receiver owes no duty as agent for mortgagor to take steps to increase sale value of property and is free to sell property as it is

Silven Properties Ltd & anor v Royal Bank of Scotland plc & ors [2003] EWCA Civ 1409; [2004] 4 All ER 484

The claimants mortgaged properties to the bank to secure indebtedness. The bank appointed receivers of the mortgaged properties and the bank and the receivers sold all of the properties. The mortgages provided that the receivers should be the agents of the claimants. The claimants then claimed damages against the bank as mortgagee and against the receivers alleging that in breach of duty they sold the properties at an undervalue. The claims were dismissed but permission to appeal was given in relation to six properties. The claimants conceded that the properties were sold at the best price reasonably obtainable in the condition that they were in at the time of sale. Their argument was that the receivers were under a duty before selling to pursue planning applications or conclude negotiations for leases so as to obtain a better price. The only issue on appeal was whether the judge was right to say that there was no duty to delay the sale for the reasons suggested by the claimants and that the receivers were entitled, whether it was reasonable or not, to sell the properties without delay as they were. It was important to consider whether the receivers as agents for the mortgagors owed the same duties to the mortgagors as did the mortgagees, or whether their responsibilities and duties were different.

Lightman J, giving the judgment of the court, considered the relative duties of mortgagees and receivers. A mortgagee has no duty to exercise his powers to sell. Once he takes possession he has a duty to take reasonable care of the property secured. However the power to sell is conferred on the mortgagee for his own benefit and he has an unfettered discretion to sell when he likes to achieve repayment of the debt which he is owed. It does not matter that the time may be unpropitious and that by waiting a better price could be obtained. There is no duty of care in respect of the timing of a sale. The mortgagee is entitled to sell the property as it is. He is under no obligation to improve it or increase its value although he can do so should he wish to. When and if the mortgagee does exercise the power of sale, he comes under a duty in equity (not tort) to the mortgagor to take reasonable precautions to obtain the fair or true market value for the mortgaged property at the date of sale. There can accordingly be no duty on the mortgagee to postpone a sale to pursue an application for planning permission or the grant of a lease.

Unlike a mortgagee, a receiver has no right to remain passive but must be active in the protection and preservation of the charged property over which he is appointed. The character and incidents of the agency of a receiver who is appointed by a mortgagee to act for a mortgagor are in some ways unusual and so general agency principles are of limited assistance. The receiver has a fiduciary duty of care to the bank, the claimants, and all (if any) others interested in the equity of redemption. The receiver's agency is primarily a device to protect the mortgagee. His primary duty is to bring about a situation where the secured debt is paid, and so as a matter of principle the receiver, like the mortgagee, must be entitled to sell the property as it is and without awaiting or effecting any increase in value or improvement in the property. This accords with the repeated statements in the authorities that the duties in respect of the exercise of the power of sale by mortgagees and receivers are the same and with the holding in a series of decisions at first instance that receivers are not obliged before sale to spend money on repairs. The receivers were free to sell the properties as they were. The claimants' appeal was dismissed. The House of Lords subsequently dismissed a petition by the first claimant for permission to appeal.

Grant of tenancy was transaction at undervalue and so was set aside under s.423 Insolvency Act 1986 to enable bank to repossess property

Barclays Bank plc v Bean & ors [2004] 41 EG 152

The first and second defendants Mr and Mrs Bean purchased Salton Farm in 1990. They granted an all moneys charge over the farm to Barclays Bank on 31st October 1990. On 15th December 2000 the bank demanded repayment of £439,221 then owing by the Beans. Repayment was not made and the bank began possession proceedings in 2003, seeking

payment of the sums owing, possession of the farm, and an order setting aside a transaction under s.423 Insolvency Act 1986.

Judge Langan, sitting as a deputy judge of the High Court, found that the bank was entitled to an order for possession and to a money judgment. The outstanding question was whether the bank was entitled to physical possession of the farm or only to receipt of rents under a subsisting tenancy. The third defendant was a company established by the Beans and to which they had granted a 20 year lease of the farm from 1st November 2000. The tenancy agreement was binding on the bank and so the bank sought to have it set aside on the basis that it was a transaction at an undervalue within s.423(1) Insolvency Act 1986. Mr and Mrs Bean accepted that their purpose in entering into the tenancy agreement was to put the unencumbered freehold interest in the farm beyond the reach of the bank.

Pursuant to the tenancy agreement the company had to pay base rent and further rent. The major issue was whether the obligation of the tenant to pay the base rent would survive after a statutory rent review. If it did not, the parties agreed that the transaction would have been at an undervalue. If it did survive, the parties agreed that the transaction would not have been at an undervalue. The judge found that the obligation did not survive. The arbitrator must fix a single figure that will replace both the base rent and the further rent that was previously payable. The basic rent was “rent” within s.205(1)(xxiii) Law of Property Act 1925. The commercial reality was that the base rent and the further rent payable under the tenancy were recompense for the totality of what the company obtained. Within the statutory framework (s.13 Agricultural Tenancies Act 1995) it was simply not possible for the arbitrator to leave the tenant under a continuing obligation to pay an additional periodic sum as rent. To do so would be to allow the agreement of the parties to displace the statutory formula. The tenancy agreement should be set aside as being a transaction at an undervalue.

s.436 Insolvency Act 1986: “enter into a transaction” can be read as “participate in an arrangement”; two or more linked transactions can be regarded as one

Secretary of State for Environment, Food and Rural Affairs v Feakins & anor [2004] EWHC 2735 Ch; [2004] 49 EG 135 (CS)

Mr Feakins owned a farm that was subject to a charge in favour of a mortgagee. The farm business was carried on by a limited company, which held an agricultural tenancy of the farmland and buildings. In 2000 judgment had been given against Mr Feakin in the sum of £650,654 in favour of the Intervention Board for Agricultural Produce (the IBAP), and a charging order was granted over the farm to secure the debt. The claimant Secretary of State was the successor to the IBAP. In 2001 a case of foot and mouth was diagnosed at the

farm and the claimant carried out eradication measures. Mr Feakin then sold the farm to his new wife, the second defendant, subject to the tenancy, for £405,000. It was intended that the sale revenue would exceed the charge held by IBAP and that the mortgagee would take the proceeds of sale under its charge. The company would then surrender its tenancy to Mr Feakin's wife, who could sell with vacant possession. The sale to Mrs Feakin's wife was completed and she then entered into a contract to sell the farm for £1.03 million.

The Secretary of State sought to have the sale from Mr Feakin to his wife set aside on the basis that it was a transaction at an undervalue within the meaning of s.423 Insolvency Act 1986, entered into for the purpose of placing Mr Feakin's assets beyond the reach of a person making a claim against him. The Secretary of State also claimed that the agricultural tenancy had become a sham by the time of the sale to Mr Feakin's wife. Mr and Mrs Feakin counterclaimed, largely in trespass, for matters relating to the foot and mouth measures.

The claim was allowed and the counterclaims allowed in part. A legal relationship that did not initially constitute a sham could become so if the parties had agreed to abandon that relationship but to maintain to the outside world the appearance of its continued existence. In the case of a tenancy, abandonment could only be established by showing that an express or implied surrender had taken place. There had been no implied surrender here. The words "*enter into a transaction*" in s.436 IA 1986 could be read as "*participate in an arrangement*". The arrangement in the present case, whereby the asset was transferred at an undervalue, was one between the defendants. Mr Feakin would introduce Mrs Feakin as a potential purchaser subject to the tenancy, but he would make a commitment in advance to procure a surrender of the tenancy if the mortgagee took the bait. Mrs Feakin's ability to purchase was dependent on the existence of that prior commitment as the finance for the purchase was premised on a subsequent sale with vacant possession. There was no difficulty in saying that Mr Feakin had participated in the arrangement since his ability to commit to and to procure a surrender was essential. Mr Feakin had participated in an arrangement whereby his assets were transferred to his wife at an undervalue with the relevant purpose. It was possible to regard two or more linked transactions as one.

PLANNING

Unlawfulness of occupation was capable of being material consideration but was of limited relevance; special circumstances outweighed environmental concerns

South Bucks District Council & anor v Porter [2004] UKHL 33; [2004] 4 All ER 775

Mrs Porter was a 62-year old Romany gipsy who had bought green belt land in 1985 and had lived there since then in a mobile home in breach of planning controls. Various enforcement notices had been upheld and in 1998 she had been refused retrospective planning permission. On an appeal against a second planning application the inspector considered whether there were any special circumstances which should allow the development. The inspector held that Mrs Porter's status as a gipsy, the lack of an alternative site, and her chronic ill-health were very special circumstances which were sufficient to override green belt policies. He allowed her appeal subject to a condition making the planning permission personal to her. The local authority appealed and lost at first instance but won in the Court of Appeal.

The House of Lords allowed the appeal of the defendants who included Mrs Porter. The inspector had explained fully in the decision letter that Mrs Porter was a woman aged 62 in serious ill-health with a rooted fear of being put into permanent housing and no alternative site to go to. Moving her would imperil her medical treatment and would probably make her condition worse. The inspector had granted a limited personal planning permission, taking the view that her very special circumstances clearly outweighed the environmental harm. Not everyone would have reached the same decision but his reasoning had been clear and ample. The unlawfulness of the development could militate against the retrospective grant of planning permission. The unlawfulness of Mrs Porter's occupation was capable of being a material consideration. However none of the factors summarised as special circumstances related to the length of her residence and so the unlawfulness of her prior occupation of the site had limited if any relevance.

PROCEDURE

County Court: service by first-class post is good service; Article 6 ECHR does not entitle a defendant to a trial where he has no arguable defence

Akram v Adam [2004] EWCA Civ 1601; [2004] 50 EG 84 (CS)

Mr Akram, the appellant, was a protected tenant of a room in a house. The rest of the house was occupied by the respondent Mr Adam. Mr Adam brought possession proceedings on the ground that he would provide suitable alternative accommodation for Mr Akram in the form of a self-contained flat. The claim form and particulars, with notification of the hearing date, were sent by first-class post to the appellant at the house as permitted by CPR

6.2(1)(b). Mr Akram did not receive them and an order for possession was made in his absence. He later applied to set aside the order and the district judge set aside the order for possession, finding that it was well known that Mr Akram had had problems with the postal service, that at the time of service he had been at his sister's address, and that Mr Adam knew of his absence. Mr Adam's appeal was allowed on the grounds that service by first-class post constituted good service, and that Mr Akram had no defence to the proceedings. Mr Akram appealed.

The Court of Appeal dismissed the appeal. The claim had been posted to Mr Akram at his regular address and had not been returned undelivered. On the ordinary interpretation of the CPR the judgment could be set aside only as a matter of discretion pursuant to CPR 13.3. The appeal judge had not erred in exercising his discretion. Mr Akram's suggested defence had no merit and in the circumstances it would have been pointless to set aside the judgment against him. There had been no breach of Article 6 ECHR. The rules on service in the CPR, which permitted service by post to an individual at his usual or last-known residence unless it was known before a default judgment had been entered that service had been ineffective, provided for an accessible, fair and efficient method of administering justice. The court had power to set aside a judgment if a defendant could show that he had a real prospect of successfully defending a claim. Mr Akram did not have an arguable defence and Article 6 did not therefore entitle him to a trial.

Lands Tribunal: Application for judicial review of LT's decision to grant or refuse permission to appeal should only be granted in exceptional circumstances

R (on the application of Sinclair Gardens Investments (Kensington) Ltd v Lands Tribunal [2004] EWHC 1910 (Admin); [2004] 47 EG 166; [2nd November 2004] TLR

The claimant, Sinclair, brought an application for judicial review of a decision of Lands Tribunal refusing leave to appeal against a decision of the LVT dated 3rd June 2003. Sinclair was landlord of a house in SW5 which was converted into six flats. In 2002 the lessees of two of the flats challenged the service charges for 1999 to 2002 and the budget for 2003. Their applications under s.19(2A) Landlord & Tenant Act 1985 (as amended) were heard by the LVT, which subsequently disallowed various of Sinclair's costs including the costs of some damp-proofing works. Sinclair applied for leave to appeal first from the LVT and then from the LT. Both refused leave. Sinclair then applied for judicial review, asserting that it had no alternative remedy.

Sullivan J accepted Sinclair's submission that the LT's refusal of permission to appeal was not a "decision" for the purposes of s.3(4) Lands Tribunal Act 1949 (which gives a right of appeal to the Court of Appeal). If there could be an appeal from refusal of leave to appeal where no

right of appeal was expressly given then the provision requiring leave would be an absurdity and of no effect. Parliament clearly intended that s.31A(6) 1985 Act should place a brake on a proliferation of appeals from decisions of LVTs relating to service charges. That brake would be made abortive if there was a right to appeal under s.3(4) 1949 Act to the Court of Appeal against a refusal of permission to appeal by the LT.

There was no doubt that the Administrative Court had the power judicially to review decisions of the LT to refuse or grant permission to appeal under s.31A(6). However the court should not grant an application for judicial review unless there were exceptional circumstances of the kind described in *R (Sivasubramaniam) v Wandsworth County Court* [2003] 1 WLR 475. The 1985 Act as amended and the amended rules have set up a coherent statutory scheme for dealing with disputes relating to service charges. In seeking to avoid expensive litigation the scheme is proportionate to the subject matter in dispute. To permit Sinclair to bypass the statutory scheme by pursuing its application for judicial review would, on the face of it, defeat the object of the exercise. This was not to say that different considerations might arise to permission to appeal by other tribunals under different statutory provisions (the court had considered in particular the situation of the Immigration Appeal Tribunal). The challenge to the LT's decision was no more than an attempt to reargue the grounds that were placed before the tribunal. There were no exceptional circumstances and so the claim must be dismissed. (Note: s.19(2A) and s.31A(6) have now both been repealed by CLRA 2002.)

PROPERTY MISDESCRIPTION

Magistrates were entitled to look at extraneous evidence such as advance information to see whether accused had been misled or prejudiced by contents of informations laid against it

Dacre Son & Hartley Ltd v North Yorkshire County Council [2004] 45 EG 124 (CS)

H had dealt with Dacre Son & Hartley Ltd (DSH) when attempting to buy a property in North Yorkshire. DSH had arranged for H to view a property and H had made an offer but had then pulled out on receiving reports that the property had a serious damp problem. DSH also had copies of the reports but told H on two subsequent occasions (on one of which H had recorded the conversation) that there was no damp problem. H complained to North Yorkshire County Council, which laid a number of informations against DSH alleging offences of making false or misleading statements contrary to s.1(1) Property Misdescriptions Act 1991.

At the trial DSH made a submission of no case to answer at the close of the prosecution case. The magistrates rejected the submission and convicted DSH but stated a case for appeal on various grounds. The Divisional Court (Thomas LJ and Fulford J) held as follows: (1) that where a challenge was made to the validity of the prosecution case the magistrates were entitled to take into account the evidence that had been heard up to that point and of details supplied to the accused as advance information before the hearing; (2) that the informations complied with r.100 Magistrates' Court Rules in that the accused was sufficiently informed of the case to be met; and (3) that there was sufficient evidence to convict.

The critical issue was whether the way in which the information had been framed created real unfairness in that the appellant was misled or otherwise prejudiced. The magistrates were entitled to look at extraneous evidence to see whether such unfairness had arisen. Here DSH could have been in no doubt, having received the advance information, of the case that the council intended to put forward. The informations had set out the requisite matters and all of the elements of the offence. It was not necessary to name the individual who had made the misleading statement as it was the appellant as a business and not the individual that was accused. As s.1(1) created a strict liability offence, a conviction was inevitable once the magistrates had accepted H's evidence.

RENT REVIEW

Principles relevant to involvement of President of RICS in appointing surveyor for rent review

Epoch Properties Ltd v British Home Stores (Jersey) Ltd & anor [2004] JCA 156; [2004] 48 EG 134

The lease in dispute between the parties provided for periodic rent reviews. The premises were a variety store. Under the rent review provisions the basic rent was to be increased to the open market rent. If the parties could not agree the open market rent they could refer it to a surveyor, who in default of agreement should be appointed by the president of the RICS. By clause 1(1) of the lease the surveyor was to be an independent chartered surveyor of recognised standing experienced in the valuation and letting of premises so far as practicable of similar character to the demised premises within the Island of Jersey then the Channel Islands or nationally. This was read to mean that surveyors with relevant experience in Jersey were always to be appointed in preference to those without such experience. Only if there was no surveyor with relevant experience in Jersey could someone outside it be appointed. BHS, the tenant, wanted a mainland surveyor, whereas Epoch, the landlord, wanted a Jersey based surveyor. The president of the RICS appointed Mr Finn, who was well qualified in the letting and valuation of variety stores but not in Jersey or the Channel Islands. Epoch objected. The Royal Court dismissed Epoch's application for a

declaration that the appointment of Mr Finn was invalid, and Epoch appealed to the Court of Appeal.

The Hon. Michael Beloff QC, president of the Court of Appeal: Channel Islands, gave judgment for the court. It was held that when deciding whether the president had departed to a material extent from his instructions in relation to subjective characteristics, the court should apply a test analogous to *Wednesbury* unreasonableness. Epoch had not suggested that Mr Finn was not a chartered surveyor or not independent or not of recognised standing. The president had concluded that the premises were a variety store and that in view of this there was unlikely to be anyone who had the relevant experience in the valuation and letting of comparable premises within Jersey or Guernsey. Accordingly an appointment had been made in favour of a UK expert who was experienced in the valuation of variety stores. This was not *Wednesbury* unreasonable.

The following principles were distilled from the facts. When the issue arises as to whether the president has made a valid appointment, he is not a necessary party to any proceedings. He can be joined where appropriate. If he is a party, either because he chooses to intervene or because he is made a party, he is potentially liable for costs. An appointment made by the president will be valid only if it accords with the provisions of the lease that confer the power to appoint upon him. He is not otherwise concerned with the lease. The president's contract to make an appointment is with the party to the lease that applies to him to make an appointment. At most, the president owes a duty of care to the other party. If the other party does not take issue prior to the appointment with the first party's description of the premises (here as a variety store), so leading the president to rely on that description, the president would not be in breach of duty in making the appointment on that basis. If the parties are known to be in issue as to the correct categorisation of the premises, the president could prudently decline to make an appointment until common ground has been reached. He is under no duty to make an appointment just because a lease has provided him with the power so to do.

CASE LAW IN BRIEF

ASBOs

Regina (Stanley & ors) v Commissioner of the Police of the Metropolis & anor [22nd October 2004] TLR QBD

Publicity is necessary for an anti-social behaviour order to operate. That publicity was unlikely to be effective unless it included photographs, names, and at least partial addresses. The publicity was not unlawful and did not breach the Article 8 ECHR rights to those subject to the orders. As to the other content of the material, if residents had been exposed to significant criminal behaviour over the years and orders had been obtained by reference to that behaviour and to bring it to an end, there was no reason why publicity material should not say so.

Adverse possession

Topplan Estates Ltd v Townley [15th November 2004] TLR CA

There could in general be no obligation in law on a squatter to draw the true landowner's attention to the fact that time was running against him in relation to the squatter's occupation of the land. The events took place prior to the Land Registration Act 2002 which did not apply.

Building contracts

Birse Construction Ltd v Eastern Telegraph Co Ltd [2004] EWHC 2512 (TCC) Judge Humphrey Lloyd QC; [2004] 47 EG 164 (CS)

The normal measure of damages for defective works is the cost of reinstatement, but where that measure was out of all proportion with the claimant's loss some other measure should be used. A claimant was not to be too readily deprived of the ordinary measure of compensation, but a different measure should be used where there had been a modest effect on the utility of the works and where it would be reasonable to assess the loss on the basis of diminution in value. If works had not been done at all then either an appropriate contractual reduction in the price or a comparable award of damages should be made. If particular items truly affected the general appearance, comfort and amenity of the building, any reasonable owner with resources would have rectified them. The defendant (here counterclaiming for damages) had not done so. The cost of remedying the defects would be unreasonable and out of proportion to the defendant's loss, which appeared to be minimal in financial and economic terms. The defendant was awarded nominal damages of £2.

Commons

R (on the application of Ashbrook) v Secretary of State for the Environment, Food and Rural Affairs [2004] EWHC 2387 (Admin); [2005] 1 All ER 166; [3rd November 2004] TLR

The Secretary of State is entitled to give consent to the erection of a building or fence impeding access to land subject to rights of common without causing a public local inquiry to be held. S.194(1) Law of Property Act 1925 provides that the Secretary of State shall "**if necessary, hold...inquiries**". It would be absurd if every application which fell within s.194 had to be considered by a public local inquiry, however minor the works. The Open Society for Green Spaces had argued unsuccessfully that the effect of the reference in s.194 to the provisions of the Commons Act 1876 was that the Secretary of State could not give consent without a public local inquiry.

Covenants

University of East London Higher Education Corporation v Barking & Dagenham London Borough Council & ors [3rd January 2005] TLR Ch Div

Where a public body held dominant and servient land for two different statutory purposes (housing and education), the general rule that common ownership of the land would operate so as to extinguish restrictive covenants affecting the land did not apply.

Housing

Regina (Bibi) v Camden London Borough Council [25th October 2004] TLR QBD

Where a joint residence order is proposed in family proceedings, details of the precise housing expected should be provided. If it was doubtful that a local authority would easily provide housing which might complement the order then the Family Court should invite representations from the local authority.

Feld v Barnet London Borough Council; Abbas Ali Pour v Westminster City Council [26th October 2004] TLR CA

Housing authorities had to carry out large numbers of housing reviews. After a review there was often a fresh decision which was made the subject of a second review. Where a second review was requested, the officer who had undertaken the first could properly conduct the second provided that a fair-minded and informed observer could properly conclude that there was no possibility of apparent bias (i.e., that there was not a real possibility of bias in all the circumstances).

Regina (Griffin) v Southwark London Borough Council [3rd January 2005] TLR QBD

A local authority had an obligation to consider a second homelessness application made by the same applicant unless it was based on exactly the same facts as the first one.

Nutting v Southern Housing Group Ltd [5th January 2005] TLR Ch Div

For just over two years before the death of Mr Roberts, an assured tenant, Mr Nutting was in a homosexual relationship with him. When he died Mr Nutting applied to succeed to the assured tenancy as a spouse. The test was whether the relationship he had had with Mr Roberts was an emotional one of mutual life-time commitment which had been presented to the outside world openly and unequivocally. Mr Nutting had failed to demonstrate that his relationship with Mr Roberts displayed a sufficient commitment to permanence to meet the test.

Hall v Wandsworth London Borough Council; Carter v same [7th January 2005] TLR CA

Where a local government officer was minded to find against an applicant who was asserting priority housing need, despite an error in the decision making process, the applicant should be given notice of the grounds on which the officer intended to find against him, an opportunity to make written representations, and, if requested, an opportunity to make oral representations.

North British Housing Association Ltd v Matthews; Same v Snaith; Same v Masood; London & Quadrant Housing Trust v Morgan [11th January 2005] TLR CA

In possession proceedings the court had power to adjourn a hearing date for the purpose of enabling a tenant to reduce his rent arrears below the level which was the basis for the claim for possession. Such a power might be exercised in exceptional circumstances. The fact that the arrears were attributable to maladministration by the housing benefit authority from

whom the tenant claimed benefit was not an exceptional circumstance. This made the application of the statutory scheme under ground 8 of part 1 of schedule 2 Housing Act 1988 potentially draconian. A judge could correct a judgment at any time before the court order was sealed or otherwise perfected. Where a judge having heard from the landlord stated that the arrears were proved, but then heard from the tenant who claimed that he had a defence, it was not too late for the judge to grant an adjournment.

Moat Housing Group-South Ltd v Harris & anor [13th January 2005] TLR CA

When the court was considering whether to grant a stay of an order for possession pending an appeal, one of the factors to be considered was the presence of children, and the potential prejudice to each of the parties.

Human rights

First Secretary of State & ors v Chichester District Council [14th October 2004] TLR CA

Gypsies occupying a private gypsy-owned site on land near Chichester had the right under Article 8 ECHR to respect for their homes even though they had been created in breach of planning laws. It was open to a planning inspector to decide that an attempt by the local authority to remove the gypsies was unjustified and disproportionate on the basis that the council had failed to meet national planning policy objectives established by the First Secretary of State.

Regina (Clays Lane Housing Cooperative) v The Housing Corporation [27th December 2004] TLR CA

When the Housing Corporation decided to direct a registered social landlord to transfer its land to another social landlord, a question arose whether this was a proportionate interference with the landlord's right to peaceful enjoyment of his possessions under Article 1 Protocol 1 ECHR. The test was not only whether there was a compelling case in the public interest for the deprivation but also whether the deprivation was reasonably necessary.

Leasehold enfranchisement

Blacker v Wimbledon and Putney Commons Conservators [2004] 51 EG 90; Judge Williams

Enfranchisement under the Leasehold Reform Act 1967 is not prevented by s.35 Wimbledon and Putney Commons Act 1871. The restriction in the 1871 Act applied to voluntary disposals and so was not inconsistent with the 1967 Act, which both permitted and obliged the conservators to sell the house to the claimant.

7 Strathray Gardens Ltd v Pointstar Shipping & Finance Ltd & anor [10th January 2005] TLR CA

Where a landlord failed to include in a counter-notice served in response to the tenants' collective enfranchisement notice a statement that no estate management scheme affected the property, this did not make the counter-notice invalid. The requirement to make such a statement was contained in para 4 of the Leasehold Reform (Collective Enfranchisement) (Counter-notices) (England) Regulations 2002 SI 3208.

Leases

Dyment v Boyden & ors [2nd December 2004] TLR CA

Where a landlord executed a lease and delivered it in escrow, but the tenant did not execute the counterpart until later, the doctrine of relation-back did not apply so as to bind the tenant from the date of the landlord's delivery in escrow.

BP Oil UK Ltd & ors v Lloyds TSB Bank plc [12th January 2005] TLR CA

Three companies were given an option, as lessees of a property, to require the lessor to take a reassignment of the lease. A notice of the exercise of the option could not be validly served by two of the companies after one of them had ceased to be a lessee. However the two remaining lessee companies could execute a reassignment of the lease to the names of the three companies and serve a valid notice to exercise the option.

Mortgages

West Bromwich Building Society v Wilkinson & anor [5th October 2004] TLR CA

Where there is no express covenant in a mortgage to repay the whole sum advanced, a shortfall on sale of the repossessed property is recoverable under an implied covenant in the legal charge to repay the whole sum. The combined effect of ss.5, 8 and 20 of the Limitation Act 1980 was that the society's claim for the shortfall was statute barred on the basis that the cause of action to recover the whole of the advance, whether by way of covenant or simple contract, arose on the default in payment of instalments after July 1989. The limitation period was twelve years from the last instalment payment and proceedings were not issued for the shortfall until November 2002.

In re Ross (deceased) [24th November 2004] TLR Ch Div

The testator had devised the lease of his apartment, which was subject to a mortgage, to his financee. The mortgage was backed by an endowment insurance policy. S.35 Administration of Estates Act provided that the persons claiming through the deceased would be liable for the payment of the mortgage unless a contrary intention was signified by the will or any other document. The existence of the endowment policy was evidence of intention on the part of the testator that the beneficiary should take the property free of mortgage.

Planning

South Cambridgeshire District Council v Persons Unknown [11th November 2004] TLR CA

An injunction can be granted to restrain persons unknown from perpetrating identified breaches of planning control at an identified site. It was ordered that service of the claim form and the injunction was to be effected by placing copies in clear plastic envelopes and nailing them to stakes or gateposts, or other prominent locations on the site.

T-Mobile (UK) Ltd & ors v First Secretary of State [16th November 2004] TLR CA

Where government policy relating to the planning aspects of telecommunications was clearly set out in planning policy guidelines, an inspector erred where he departed from that policy without stating the exceptional circumstances for so doing. The grounds relied on by the inspector related to the perception of health risks but this was a departure from the policy which had not been justified.

Regina (Wall) v Brighton & Hove City Council [16th November 2004] TLR QBD

It was unlawful for a local authority to issue a decision notice that did not include its summary reasons for granting planning permission. The court should exercise its discretion to remedy that illegality by quashing the notice unless there was some good reason for not doing so.

Procedure

Lodgepower Ltd v Taylor & ors [3rd November 2004] TLR CA

Service of a notice on the former agent of a former landlord of an agricultural holding did not count as valid service on the landlord for the purposes of s.93 Agricultural Holdings Act 1986. The defendant landlord was not therefore liable to make repairs to the claimant tenant's land and buildings.

Mid Bedfordshire District Council v Brown & ors [3rd January 2005] TLR CA

The court had a vital role in upholding the principle that court orders were to be obeyed. This was to be taken into account when balancing competing factors to be taken into account on an application for a final injunction to remove Gypsies from agricultural land owned by them when they had moved there in breach of planning controls and an interim injunction. There was a real risk that suspending the interim injunction would be perceived as condoning the breach. This would diminish respect for court orders, undermine the authority of the court, and subvert the rule of law. These public interest considerations far outweighed factors favouring suspension of the injunction.

Proprietary estoppel

Wormall v Wormall [1st December 2004] TLR CA

A father allowed his daughter to use farm property to run her business. When the farm had to be sold to meet an ancillary relief order in divorce proceedings he did not have to pay her compensation to satisfy a proprietary estoppel. It was reasonable for the daughter to have the expectation that she could be in the farm property so long as it continued to be the family farm. The relocation of her business had always been on the cards. The Court of Appeal ordered declaratory relief that the daughter should vacate the farm property on the date the sale of it had been completed.

OTHER DEVELOPMENTS

COMMONHOLD AND LEASEHOLD REFORM ACT 2002: COMMENCEMENT

The Commonhold and Leasehold Reform Act 2002 (Commencement No.5 and Saving and Transitional Provision) Order 2004 SI 3056 brings into force various provisions in the CLRA 2002 relating to leasehold reform (part 2 of the Act). Article 3 of the Order provides that the following provisions will come into force on 28th February 2005:

- (i) Provisions amending s.18(1) and sch 6 Leasehold Reform, Housing and Urban Development Act 1993. The main effect of the amendments is that the price to be paid for the freehold by qualifying tenants will reflect the value of the interests held by all the landlords in the property concerned at the date on which notice of the claim to exercise the right to collective enfranchisement is given under s.13 LRHUDA 1993. Article 4(1) of the order contains transitional provisions.
- (ii) S.164, which gives long leaseholders the right in some circumstances to insure their houses otherwise than with an insurer nominated or approved by the landlord.
- (iii) S.166, which requires landlords to notify long leaseholders that rent is due.
- (iv) S.167, which prevents the landlord of a long leaseholder from exercising a right of re-entry or forfeiture on account of the leaseholder's failure to pay rent, service or administration charges where the unpaid amount and the period for which any part of it has been payable do not exceed the amount and period prescribed by regulations.
- (v) Ss.168 and 169, which prevent the landlord of a long leaseholder from serving a notice to forfeit in respect of a breach of covenant in the lease unless the leaseholder admits the breach or a court or tribunal has finally determined that the breach has occurred.
- (vi) S.170, which changes the conditions that must be satisfied before the landlord of a long leaseholder can exercise a right of re-entry or forfeiture for failure to pay service charges.

NOTICES TO LONG LEASEHOLDERS

The Landlord and Tenant (Notice of Rent) (England) Regulations 2004 SI 3096 and the Leasehold Houses (Notice of Insurance Cover) (England) Regulations 2004 SI 3097 relate, respectively, to ss.166 and 164 CLRA 2002 (referred to above and coming into force on 28th February 2005).

The Notice of Rent Regulations set out the prescribed form of notice under s.166(5) of the Act. Regulation 2 also supplements s.166(2) as to the information which is to be contained in the notice. The Regulations provide that a notice under subsection (1) of section 166 of the 2002 Act shall be in the form set out in the Schedule to the Regulations. Interestingly there is no provision equivalent to that in Regulation 4 of the Notice of Insurance Cover Regulations that the notice may be in a form substantially to the same effect.

The Notice of Insurance Cover Regulations prescribe further information to be included in a notice of cover to a landlord under s.164. By Regulation 4 the notice may be in the form set out in the Schedule to the Regulations or a form substantially to the same effect.

APPLICATIONS TO THE LVT UNDER S.168 CLRA 2002

S.168 CLRA 2002 (coming into force 28th February 2005 – see above) provides that a landlord under a long lease of a dwelling may not serve a s.146 LPA 1925 notice to forfeit unless the tenant has admitted a breach, or a court, arbitral tribunal or LVT has determined that a breach has occurred. The provision allowing an application to the LVT for a determination is s.168(4). The Leasehold Valuation Tribunals (Procedure) (Amendment) (England) Regulations 2004 SI 3098 make amendments by regulations 3, 4(b), 7 and 8 which add applications under section 168(4) of the 2002 Act to the applications to which the Procedure Regulations apply. These regulations also require the applicant to include with his application a statement giving particulars of the alleged breach of covenant or condition, and a copy of the lease concerned. Various other unrelated procedural amendments are made by these Regulations.

Sources

The following sources have been used in the compilation of this bulletin: The Law Reports (AC, QBD, Ch Div) parts 9 to 12 covering September to December 2004; 2004 4 All ER parts 4 to 12, 2005 1 All ER parts 1 to 3 covering 14th October 2004 to 19th January 2005; 2004 WLR parts 36 to 46 and 2005 WLR parts 1 and 2 covering 2nd October 2004 to 21st January 2005; 2004 Estates Gazette editions 41 to 51 covering 3rd October 2004 to 31st December 2004; Times Law Reports 5th October 2004 to 18th January 2005; recent legislation and draft legislation.

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