

Law in 101 words

Snippets from *The Reduced Law Dictionary* by Roderick Ramage

Consideration for contracts

If you agree with another to sell him a car, cut his lawn or defend him in court and to accept some act or promise from him as payment, that act or promise is the consideration. It may be money, or other goods or doing something he was not already obliged to do or refraining from doing something he has power to do or any combination of these. Consideration must be real, but it need not be adequate: the law does not protect you from making a bad bargain. The consideration may be immediate or future, but may not be past.

Effective dismissal

You read dreadful tales of teachers, NHS medics, the police and the like being suspended on full pay for months, even years, while a bureaucratic disciplinary process grinds its slow way to an uncertain conclusion. I used to ask employers whether they wish to please a tribunal chairman (employment judge) or do what's good for the business. Sometimes the best solution is to tell the employee you don't like his tie and frog march him off the premises, with a van blocking his car. The dismissal is unfair and in breach of contract, but the compensation can be a good investment.

Employment, contacts and written statements

Be very clear that the written statement is not the contract. It is the employer's statement of what it believes to be the particulars of the contract. The contract itself results from the usual process of offer and acceptance etc. There is no

statutory obligation for employees to sign the statement, who, if prudent, should sign no more than a receipt for it. An employer who issues a statement which differs from the contract cannot say that it is the contract, unless the employee agrees to alter the latter. In practice sensible people use one document as both statement and contract.

Flexible retirement

Normal pensions schemes may, since A-Day, permit their members, who have reached the early retirement age, to retire from the scheme and start their pensions, even if actuarially reduced, while not retiring from work. It might be a silly decision (getting less now instead of more later), but you are free to make it. Nanny NHS Pension Scheme thinks otherwise. First you must retire for at least 24 hours and then you must not return to work for more than 16 hours a week in the first four weeks from starting your pension; but it does create jobs for the administrators.

Parties to a contract

When analysing a contract always ask "Who is who?". Mr Brocklehurst, who carried on a hosepipe business, owed money to Mr Jones. He sold the business to Mr Boulton, but before the sale Mr Jones had placed an order for piping with the intention exercising a right of set-off. He refused to pay for the pipes so Mr Boulton, who then owned the business, sued for the price. In *Boulton v Jones* 1857, the court held that the offer was made to Mr Brocklehurst, there was

no contract between Boulton and Jones, therefore Mr Jones was not liable for the debt.

References as qualified privilege

Qualified privilege protects a "character", given by an employer in good faith and without malice to a prospective new employer about an employee or former employee, from claims for defamation: *Hodgson v Scarlett* (1818). The parties have a mutuality of interest in the subject matter, but the qualified privilege may be lost if the communication is made to a third party. Therefore the 'to whom it may concern' type of letters (these are properly called testimonials not references) must be very circumspect in what they say. All references should be marked 'private and confidential'; and definitely not put on Face Book.

Rylands v Fletcher (1868)

If you bring and keep anything on your land which causes damage by its escape, you will be liable for the damage it causes. It is an example of strict liability, so fault is irrelevant. You will be liable even if you took all possible care to prevent the escape. You will not be liable, however, unless the damage was foreseeable. This rule applies only to a non-natural user of the land and does not apply to things naturally on the land or where the escape is by an act of God, or the act of a stranger or the claimant. NLJ



Faccenda Chicken

An employee of Faccenda Chicken Ltd left and joined a competing supplier of frozen chickens. He knew who the customers were, their quantities, prices and discounts, the routes taken by the delivery men, the days of the week on which deliveries were made. In short everything that matters to running a business, and to a would-be competitor who wants it for himself. Before Faccenda we would all have said that knowledge such as this is protected by the implied duty of good faith, but no, only trade secrets are so protected, and this was simply part of his skill and knowledge.