

# Law in 101 words

## Snippets from *The Reduced Law Dictionary* by Roderick Ramage



### Death in service and TUPE

Typically a pension scheme provides a death in service benefit, a lump sum of one to four times salary and often a pension for surviving dependants. As occupational scheme close, money purchase as well as final salary, the number of stand-alone DIS schemes has increased. By a quirk of translating European law into English (Pensions Act 2004, s255) a stand-alone DIS scheme is not an occupational scheme. Therefore a benefit which, if given in an occupational scheme, is exempt from transfer under TUPE, is not exempt if given under a stand-alone scheme. So beware of the grieving widow with her babe-in-arms.

### Grey squirrels

The Grey Squirrels (Prohibition of Importation and Keeping) Order 1937 made under s10 of the Destructive Imported Animals Act 1931, prohibited the importation and keeping of the grey squirrel. While this Act dealt with musk rats, by s10, it extends the power of the Minister and SoS "with respect to animals of any non indigenous mammalian species that by reason of their destructive habits it is desirable to prohibit or control the importation or keeping of them and to destroy any that may be at large" to make such order at they think fit to extend the provisions of the Act.

### Kelly's draftsman

The *EF&P* ~~PAUTH IN FULL~~ contains the lot: the problem is finding what you want. Kelly, divided in to boilerplate

etc, commercial, private client, land and not for profit sections, contains in each chapter (eg Employment, Leases, Commercial Contracts, Wills, Family) just about everything that a normal solicitor in a normal practice every needs. Sorry, no aviation or marine law contracts or, securitised loans, but documents needed to form and run a private company and to employ (and sack) its staff. If you cannot find it in the *EF&P* look in Kelly. Even better, look in *Kelly* first... But then I would say that.

### Quiet enjoyment

The House of Lords dismissed actions in nuisance and for breach of covenant for quiet enjoyment in *Southwark LBC v Mills*; *Yvonne Elisabeth Baxter v Camden LBC* [1999] 4 All ER 449. It established that tenants cannot require landlords to install soundproofing to prevent ordinary everyday noises in neighbouring premises being heard. The neighbours were not creating a nuisance and so the Councils could not be liable for authorising them to do so. The covenant for quiet enjoyment does not imply a warranty that the premises are fit for any purpose and does not apply to the consequences of pre-existing circumstances.

### Tenancy deposits

Except in the case of a protected tenancy a deposit is not an illegal premium, but in order not to be a penalty it must be reasonable in relation to the potential liability for which it is paid. The Housing Act 2004 s213 requires tenancy deposits

to be held in accordance with a scheme authorised by the statute and for certain prescribed information to be given to the tenant within fourteen days of the date on which the deposit is paid. In relation to a shorthold tenancy, s213(7) provides that no property other than money may be taken as a deposit.

### Unfair tenancy terms

The parties to an assured or assured shorthold agreement are, in the provision of services, are analogous to a person carrying on business and a consumer, if the terms of their agreements are not individually negotiated. The terms should reflect the Guidance on Unfair Terms in Tenancy Agreements issued by the Office of Fair Trading. The guidance illustrates standard clauses in tenancy agreements, which the OFT's considers to be potentially unfair under the Unfair Terms in Consumer Contracts Regulations 1999, SI 1999/2083, and when it is likely to take enforcement action. <sup>so</sup> The courts would decide whether any term is actually unfair.

### Termination of employment by mutual consent

The claimant employee surrendered his keys, cleared his desk, said goodbye to members of staff and then made and lost a claim in an employment tribunal that he had been unfairly dismissed. The tribunal said that there was no dismissal as his employment had been terminated by mutual consent. The Court of Appeal in *Walter Rodney Housing Association Ltd v Yaw Asamaoah-Boakyie* (2001) agreed with EAT, which had held that the employment tribunal was wrong to conclude that surrendering keys etc were enough to constitute an agreement by both parties on all material issues surrounding the termination of an employment contract.

### Pensions deficit crisis

Mrs T's chancellor, Nigel Lawson, started our pensions' crisis. His Finance Act 1986 Sch 12 treated pension scheme surpluses over 5% as excess surplus. Companies had to reduce funding to 105% by contributions holidays or increasing benefits or pay tax on refunds to the company. This stopped employers from building up the (tax free) honeycomb while the going was good, so they had no reserves when the good turned to bad. All Gordon Brown's £6bn pa tax raid did was to bayonet the survivors. For both you can blame the Treasury's blinkered obsession to protect tax revenues at all costs.

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Kelly's Draftsman