

# Law in 101 words

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

### Apportionment of holiday pay

Mr Jenkins' employment ended with some holiday entitlement not taken. His employer, purporting to apply the Apportionment Act 1870, divided his annual pay by 365 and multiplying it by the 14.5 days' holiday not taken. He complained that the portion of his salary had been calculated with reference to a seven-day week while the period of his holiday entitlement had been calculated with reference to a five-day week. In *Jenkins v IACR Rothamsted* [2001], the EAT agreed. Nothing in the Act required like to be compared with unlike. The daily rate of pay had to be multiplied by 20.5.

### Bonus and maternity pay

Don't go on maternity leave at bonus time. In *Lewen v Dender* [2000], the ECJ said that where a bonus is a reward for work done, the employer may reduce it proportionately for an employee's absence on maternity leave, but (proving that the ECJ is reality detached) if it is to encourage employees in active service to work hard in the future, she would get nothing. In *Hoyland v Aldi* [2005] the EAT distinguished between discretionary and contractual schemes and found that Aldi scheme was contractual and could be apportioned. If it were discretionary she would have got it in full.

### Directors v shareholders

Directors, not shareholders, have the power of management (Table A reg 70 and the new Model Articles, eg private, reg 3). A majority shareholder with under 75% of a company's shares, who is one of several directors, has no day to day power, except, with another shareholder, to requisition a general meeting to remove the other directors. It takes a couple of months or more to regain control. *Morgan v Morgan Insurance* [1993] was about costs, but came about because of just such a situation. One solution is to provide that directors'

votes reflect any votes they can cast as shareholders.

### EU constitution

As I type, I await with baited breath the result of the Irish referendum. Whatever the result, thank you Ireland and shame on the cowardly leaders of rest of Europe. Given the chance, I might even have voted for the Lisbon Treaty, but more likely not as long the Eurobullies rely on sophistry to deny the plain truth. The fact that they have changed some words and the format does not alter the substance. What is called a treaty is nevertheless a constitution. Says who? Giscard d'Estang, the principal author of the constitution voted out by the French and the Dutch.

### Penal taxation

At age 75 you must give your pension fund to an insurance company for a meagre (in case you live to be 110) annuity, so your money will be lost if you die early. If you don't buy an annuity, your pension fund will suffer penal tax on your death, typically, assuming a fund of £100,000:

- inheritance tax 40%, £40,000, leaving £60,000;
- scheme sanction charge 15% on the £60,000, £9,000, leaving £51,000;
- recipient's tax (40% and 15% of £60,000), totalling £33,000, leaving £18,000.

This is tax at 82%. It's old Labour taking revenge on anyone who dares to make independent arrangements.

### Seconding motions

It is commonly assumed that a motion or an amended motion must be proposed and seconded before being put to a vote. There may be organisations whose constitutions require this, but in general no proposer or seconder is necessary. The first point in *re Horbury Bridge Coal Co* [1879] 11 ChD 109 was that, on a show of hands, the number of shares held by each voting member was irrelevant. On the second point, James LJ said: "In my opinion if the chairman puts the question without it having been either proposed or seconded by anyone, that would be perfectly good."

### TescoLaw

In July 2007 the Solicitors' Code of Practice came into force and laid down that a solicitor's core duties are:

- (i) justice and the rule of law;
- (ii) integrity;
- (iii) independence;
- (iv) best interests of clients;
- (v) standards of work; and
- (vi) public confidence.

By and large we know all that without needing some bureaucrat to tell us. More pertinent is whether TescoLaw and other outside investors in solicitors will pay any attention. Of course they will emblazon the core duties in their publicity blurb, but in reality their directors will continue to perform their company law duty to maximise profits.

NLJ



## HR management

"Nature has given women so much power that the law has very wisely given them little." (Samuel Johnson)

A cocksure employee, who thought he knew the answers, explained to his boss why he was reading his magazine in the back office of a prestigious bank and, with confident bravado, suggested that we call today his new start. She, his boss, barely four feet ten without her heels, smiled sweetly at him and replied: "Let's call this your last day." He, six feet one and burly, trembled (metaphorically) in his shoes and slunk out.

No wonder so many women succeed in HR.