

Law in 101 words

Snippets from *The Reduced Law Dictionary* by Roderick Ramage

Bank holidays

Christmas and Good Friday are bank holidays in Scotland, but not in England and Wales and Northern Ireland, where they are customary holidays. Bank holidays in England and Wales are Easter Monday, last Monday in May, last Monday in August, 26th December if not a Sunday, and 27th December if 25th or 26th December is a Sunday; Scotland is similar but with 2nd January and 30th November and 1st not last Monday in May; Northern Ireland too is similar, but they also have 17th March; HMQ may proclaim a day to be a bank holiday: Banking and Financial Dealings Act 1971.

Disability discrimination & incapacity benefit

In *Sheffield Forgemasters Ltd v Fox, Telindus Ltd v Brading* (2008), in which two employees succeeded in claims for unfair dismissal and disability discrimination, and the employers appealed, EAT held that a compensatory award for loss of earnings could be made in respect of a period when a claimant had been in receipt of incapacity benefit. One of the respondents had worked one day per week and did voluntary work five days per week whilst the other had not worked but had been actively seeking work. Receipt of incapacity benefit did not automatically mean that a claimant was incapable of working.

Hague-Visby rules

In *Jindal Iron and Steel and others v Islamic Solidarity Shipping* [2005] the claimants, the sellers and buyers of goods carried the defendant, claimed damages to the cargo caused by rough handling. The defence, that voyage charterparty transferred responsibility for loading, stowage and discharge from the shipowner to the charterers and consignees, was challenged on the grounds that the Hague-Visby rules provided to the contrary and that any agreement relieving the carrier from liability was null and void. The House of Lords held that the principle was long established

that such a transfer of responsibility was not invalidated by the rules.

Money purchase pensions in the CA

No pension lawyer understands the CA decision in *Aon v KPMG* [2005]. The scheme was not money purchase, because the pension you get involved a calculation using actuarial tables. Excuse me, but every time a member takes his money purchase "pot" to buy an annuity, the insurance company uses actuarial factors to calculate his pension. Normally this is done on retirement, but in *KPMG* it was done with each year's contributions. So? The experienced pension lawyer sitting as judge in *Bridge Trustees v Yates* [2008] had to do contortions to distinguish her case from *KPMG* and still get the right answer.

Seat belts

Lord Denning suggested that damages for injured passengers not wearing seat belts could be reduced by 25%, but nil if the seat belt made no difference or 15% if the protection was partial: *Froom v Butcher* [1976]. In *Gleeson v Court* [2007], Gleeson did not wear a seatbelt, because the seats were occupied and he travelled in the boot. He also knew that the driver had drunk too much. His damages were reduced by 30%. In *Palmer v Kitley* [2008], the front seat passenger's damages were reduced by only 15% because the seat belt might not have reduced her injuries significantly.

Paid to sleep

A night sleeper in a care home attended work from 10pm to 8am, when he was permitted to sleep, and was paid one amount for being present and another for time when he was awake and working. In *Burrow Down Support Services Ltd v Rossiter* [2008], the EAT held that Mr Rossiter was engaged in time work and entitled to the minimum wage for each hour of the shift. Regulation 15(1A) of the National Minimum Wage Regulations 1999, did not permit the employer to pay him the national minimum wage for only the time he was actually required to be awake.

Terminal dilapidations protocol

The Property Litigation Association has published its *Pre-action Protocol: Terminal Dilapidations Claims for Damages* at www.pla.org.uk. It is a guide to best practice for terminal dilapidations claims. It provides a format for schedules of dilapidations, addresses the cap on damages arising from s 18 of the Landlord and Tenant Act 1927 and requires the tenant to provide valuation evidence. Because of the amount of detail required in the schedule, which sets out the breaches of the tenant's repairing obligations, it is most likely to be used in higher value, mainly commercial lettings. Other landlords and tenants must make do with something simpler.

War damage & leases

Damage to a block of flats caused by enemy action did not extend to Mr Johnstone's flat. However services, which the landlord had covenanted to provide, including heating, lighting and the lift, were cut off. In *Johnstone v Swan Estates* [1942] it was held that the flat was unfit for occupation and Mr Johnstone's option to determine his lease could be exercised on the ground of unfitness for occupation caused by war damage. Moreover, the option to determine was independent of the landlord's obligation to repair so the Landlord and Tenant (War Damage) Act 1939, s 1 did not prevent its exercise.

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