

# The law in 101 words

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

### Driving test car

The Motor Cars (Driving Instruction) Regulations 2005, r 8 requires you to provide for your driving test a right hand drive four wheeled passenger car with a rigid roof, which has an adjustable driving seat with a head restraint and seat belt, a forward-facing front passenger seat, rear view mirrors for both the front passenger and the driver and is otherwise be suitable. Unless you are disabled, the car must also have a means whereby you may, independently of the use of the accelerator or the brakes, gradually vary the proportion of the engine's power which is transmitted to the road wheels.

### Filing in time

A company limited by shares or by guarantee with a share capital must, within one month of making an allotment of shares, deliver to the registrar a return of allotments: Companies Act 2006, s 555. If the company makes default, an offence is committed by every officer of the company who is in default is liable on summary conviction to a fine not exceeding the statutory maximum (£5,000) or a daily default fine not exceeding one-tenth on the statutory maximum: *ibid* s 557. In one, doubtless exceptional, case the court allowed registration 24 years out of time: *re Wilkinson Sword Co Ltd* [1913].

### Judicious breaches of trust

"The main duty of a trustee is to commit judicious breaches of trust".

This proposition was attributed to Selwyn LJ by Lindley MR in the course of argument in *Perrins v Bellamy* [1889], in which trustees, who, erroneously assuming that they had a power of sale, sold the leaseholds thus diminishing the income of a tenant for life, were entitled to be relieved from personal liability for the breach of trust, having acted honestly and reasonably. In *Walker v Stones* [2000], Nourse LJ declined to apply this dictum where a solicitor-trustee's perception of the interests of the beneficiaries was wholly unreasonable.

### Liquidated damages in employment

The Tullett company, knowing the difficulty and expense of recruiting someone with Mr El-Hajjali's specialist skills, stipulated in its contract with him that, if he failed to take up the agreed employment, he would pay a sum equal to 50% of his net annual salary and 50% per cent of the signing payment that the company had contracted to pay. Mr El-Hajjali changed his mind and did not take up the employment. Tullett was unable to fill the vacancy and sued for damages. In *Tullett v El-Hajjali* [2008] the QBD held that the payments were liquidated damages and not a penalty.

### No visible means of subsistence

Do not forget to take cash or a credit card with you. You may be liable to a fine not exceeding level 1 on the standard scale, if found wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, without any visible means of subsistence, not giving a good account of yourself and having failed to apply for or refused accommodation at a reasonably accessible place of shelter: Vagrancy Act 1824, s4; Vagrancy Act 1835; and Criminal Justice Act 2003.

### Purposeful construction

The application of TUPE to "a person employed by the transferor ... immediately before the transfer" had been the subject of much litigation. Was the day before immediately before? Could two weeks before be immediately before? An employer, to accommodate the prospective transferee's wishes about which employees should be transferred, dismissed some employees before the transfer date. In *Litster v Forth Dry Dock and Engineering Co Ltd* [1989] the HL construed the TUPE 1981 to include persons dismissed because of the transfer, now done by the TUPE 2006. However *Litster*, no longer needed for "immediately before", also gave us purposeful construction.

### Rich and poor and auto-enrolment

Apart from the natural rebel, who won't join for the sole reason that the government tells him to, this government scheme is designed to rob both rich and poor. The rich, with enhanced protection of their pension under the Finance Act 2004, will suffer penal taxation, when auto-enrolled, unless they act promptly to opt out. The poor, who would otherwise benefit from the social security system, will be penalised, if their pension schemes, be they only paltry, take them out of means tested benefits, while and their improvident neighbours, who opted out and did not save, enjoy those benefits in full. NLJ

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## Stop on red

The Traffic Signs Regulations and General Directions 2002 tell us, in reg 33, the size, colour and sequence of illumination of light signals for the control of traffic and, in reg 36, their significance, of which the key passage is: "the red signal shall convey the prohibition that vehicular traffic shall not proceed beyond the stop line," with exceptions for the emergency services. The key point for the defence lawyer to remember is that the stop line can be several cars' length before the junction, so if you are in that space, you may proceed even if the light turns red.

