

Law in 101 words

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

Affirmative and negative affirmation procedures

Statutory Instruments required to be laid before Parliament come into operation on the date stated without further procedure: Statutory Instruments Act 1946 s4. If an Act provides for an instrument to be subject to annulment (the negative affirmation procedure) it may be annulled as a result of a resolution of either House of Parliament within forty days: *ibid* s5. The affirmative resolution procedure requires that a draft of the instrument is laid before Parliament and is approved by a resolution. The European Communities Act 1972 Sch 2 para 2 provides that an instrument not subject to approval is subject to annulment.

Drafting documents

The draftsman must ascertain his client's intention and the law. Conventionally a document starts with its brief description, date and the names of the parties, recites any background facts which are necessary and then continues with the operative clauses, moving from general to the detail, sometimes putting the latter into schedules. He must include everything that is necessary and nothing that is not necessary.

"It is not enough to produce something which a person reading in good faith can understand; it is necessary to produce something which a person reading in bad faith cannot misunderstand." (Stephen J in *Re Castioni* (1891))

Final, conclusive and binding

According to *Shell Egypt v Dana Gas* (2009), QBD, the words "final, conclusive and binding" in an arbitration clause were not to be sufficient to show that the parties had intended to exclude the right of a party to appeal to the High Court on a question of law under the Arbitration Act 1996, s 69. The exclusion of the statutory right must be clear, but need not mention the section. The failure to include an express

exclusion clause in the agreement, prompts the suspicion that either none was intended originally or one part's intention was formed only after the event.

Knife crime

You commit an offence subject to imprisonment (up to twelve months on a summary conviction up to four years on indictment), a fine or both, if, without good reason or lawful authority, you have with you in a public place an article with a blade or which is sharply pointed: Criminal Justice Act 1988 s139. This does not apply to a folding pocket knife if its cutting edge does not exceed three inches, and it is a defence to prove that you have the article with you for use at work, for religious reasons or as part of any national costume.

More nearly equal

An employer's contributions to a money purchase pension scheme do not discriminate between ages, if they are at the same rate for workers of all ages. The employer may pay different rates according to the age of the members, if the aim is to equalise pensions for comparable periods of service (impossible to achieve) or to make pensions more nearly equal: Employment Equality (Age) Regulations 2006, SI 2006/1031, schedule 2 paras 10 and 31.

Obviously 99 is more nearly equal to 100 than 98. Unfortunately for equality it is equally obvious that 2 is more nearly equal to 100 than 1.

Secretary of state

Halsbury's Laws says: "The term 'minister of the Crown' may be used to denote the holder of an office in Her Majesty's government in the United Kingdom ... It includes, therefore, Secretaries of State, Ministers of State, Parliamentary Under Secretaries of State, and Parliamentary Secretaries." The Interpretation Act 1978, s5, Sch 1 defines 'Secretary of State' as "one of Her Majesty's Principal Secretaries of State", which in any Act is the Secretary of State exercising the relevant functions. This convenient shorthand permits the legislature to be precise and accurate while keeping the legislated in ignorance of what they need to know.

Taxation of damages

Damages and out of court settlements should put you in the position you would have been in and so are not necessarily tax-free. There is no head of tax in respect of, eg, defamation or personal injury, and therefore damages for such matters are not taxable. However damages for, eg, loss of trading profits or earnings from work, are taxable because the benefit itself would have been taxable. The normal rule, as illustrated in *British Transport Commission v Gourley* (1955) is that the damages are not reduced by the amount of any taxation because they are taxable in the claimant's hands. **NLJ**

Roderick Ramage is a solicitor in private practice at www.law-office.co.uk

Carlill v Carbolic Smoke Ball Co, CA [1893]

This case established that an offer can be made to the world at large, in this case by an advertisement in a newspaper, and, being made in this way, did not require notice of acceptance. The advertiser's statement that £1,000 had been deposited to show its sincerity was evidence of its intention to create legal relations. The offer was £100 to any purchaser of a smoke ball who, after using it as instructed, contracted flu. The consideration was the use of the smoke ball. Mrs Carlill did contract flu and won her case. In 1942, age 96, she died of influenza.

