

Law in 101 words

Snippets from *The Reduced Law Dictionary* by Roderick Ramage

Augmenting the enemy's warlike force

Foreign Enlistment Act 1870, s 10 (extract).

If any person within the dominions of Her Majesty, and without the license of Her Majesty—

By adding to the number of the guns...or is knowingly concerned in increasing or augmenting the warlike force of any ship which at the time of her being within the dominions of Her Majesty was a ship in the military or naval service of any foreign state at war with any friendly state—

Such person shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments.



Dropped kerbs

If someone parks across your driveway without your permission and if you live in a special enforcement area (Traffic Management Act 2004 s84 and schedule 10) and if there is a dropped kerb to assist vehicles entering or leaving your driveway and if none of the exceptions apply (emergency services, local deliveries, etc), you could report it to your local traffic authority for the prohibition against such parking to be enforced under s1 of the Road Traffic Regulation Act 1984: Traffic Management Act 2004 s 86. Alternatively, assuming that the Mikado's penal code is a defence, you could let his tyres down.

Expanding the scope of discrimination

The EAT said that Mr English, who had suffered homophobic taunts at work, could not claim protection under the

Employment Equality (Sexual Orientation) Regulations 2003, because he was actually heterosexual and his tormentors did not perceive him to be gay. The origin of their taunts was that he had been to boarding school and lived in Brighton. In *English v Thomas Sanderson* [2008], the CA reversed this decision. What mattered is not the victim's sexual orientation, but that he was the victim of homophobic taunting which created an intolerable working environment. This principle applies also to age and the other discriminations.

Harassment by corporations

After Ms Ferguson moved her account from British Gas to another supplier, BG sent her bills which she considered were unjustified and, despite her letters and telephone calls, continued to send her letters threatening to cut off her gas supply, start legal proceedings and report her to credit agencies. She claimed that its conduct was unlawful harassment contrary to the Protection Against Harassment Act 1997. In *Ferguson v BG* (2009), the CA held that it was arguably strong enough to satisfy the test of gravity, there was no defence of accidental harassment and the defendant ought to have known about it.

Having regards to

In *Tesco Stores Ltd v Teignbridge DC* [2009], Tesco, amongst other points, took advantage of the requirement in s 70 of the Town and Country Planning Act 1990 for "the authority [in dealing with an application for planning application] [to] have regard to the provisions of the development plan" to obtain an order for judicial review quashing planning permission granted to Sainsbury's, but it cannot be assumed that the directors of Tesco, in applying for planning permission itself, would have regard to a nearby owner managed grocery shop in accordance with s 172(1)(d),(e) of the Companies Act 2006, except to take its business.

Limited partner or employee

You can be a director and shareholder of a company and an employee, but an LLP is different. Section 4(4) of the Limited Partnership Act 2000 distinguishes employees from partners. Mr Kovats signed a deed of accession to join TDF Management LLP as its chief investment manager, but, after difficulties about his performance, he was required to retire. He claimed unfair dismissal, but the employment tribunal held that it had no jurisdiction; and he appealed unsuccessfully to the EAT (2009). Even if he was not a partner under s 4(4), the employment tribunal still has to apply the usual tests of employment.

Opting out of auto-enrolment

From 2012 my employer must to enrol me into its pension scheme, and, if in the next 14 days I get through the hoops, I may opt out. Simplification (if that's what they still call it) says that I may opt out only with the correct form, prevents my employer from giving me the form, which I must obtain from the pension scheme, but I have to give it to the employer, who then deals with the scheme. Then, even though I stay with the same employer, I will have to leap these hoops every three years, maybe a dozen times.

Withholding consent

Under the Landlord and Tenant Act 1927, s 19, any provision against assigning, underletting, or parting with premises without consent is subject to a proviso that consent may not be unreasonably withheld. Landlords may prefer a bare provision against assignment, underletting or parting with possession without any reference to consent. The landlord may not refuse consent to achieve a collateral purpose unconnected with the terms of the tenancy: *Bromley Park Estates v Moss* [1982] 2 All ER 890. He may do so if the proposed assignee intends to breach the user covenant: *Ashworth Frazer Ltd v Gloucester City Council* [2001] UKHL 59.

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