

Law in 101 words

Snippets from The Reduced Law Dictionary by Roderick Ramage

Christmas tree and limitations

Mr McGhie's chronic back pain began when he moved a Christmas tree in 1995. Then in 1998 he moved at his request from an office to an outdoor job and soon suffered a back injury at work, for which he started proceedings in 2003. The limitation period is three years, but the judge excluded it under the discretionary power in the Limitation Act 1980, s 33. In *McGhie v British Telecommunications* [2005], the CA held that the judge had failed to apply the tests of balance of prejudice, proportionality and strength of the claim. It was not proper to exercise the discretion.

Definition of beer

For taxation (not drinking), "beer" includes ale, porter, stout and any other description of beer, and any liquor which is made or sold as a description of beer or as a substitute for beer and which [is] of a strength exceeding 0.5% but does not include black beer the worts whereof before fermentation were of a specific gravity of 1,200 degrees or more and "black beer" means beer of the description called or similar to black beer, mum, spruce beer or Berlin white beer, and any other preparation (whether fermented or not) of a similar character: Alcoholic Liquor Duties Act 1979.

From 1 January

"From 1 January..." is ambiguous as the time could be inclusive or exclusive of that date and can mean either "after 31 December..." or "after 1 January...". According to *Browne v Black* [1912], one month after the delivery of a bill excludes that date. "From and after 1 January..." probably does not resolve the ambiguity. A better alternative is "a period of 28 day starting on". Alternatively you could define, eg "Option Period" as "the period after 31 December 2005 and before 1 April 2005" and stipulate: "...the Buyer shall give notice in the Option Period".

Mock v Pensions Ombudsman [2000]

When, in 1962, Mr Mock resigned from the Royal Ordnance he was aged 40. In 1996, aged 74, his application for a Civil Service pension was rejected as was his complaint in 1998 to the Pensions Ombudsman. He appealed. By the Superannuation Act 1859, s 10, it was not lawful to grant a pension to any person under 60 years, but the 1834 Act s 12 stipulated that the pension was to be calculated on the amount of his salary immediately before the commencement of his pension. Deferred pensions came only with the Social Security Act 1973. Mr Justice Neuberger dismissed his appeal.

Notice period as holiday

Mr Briffa's employment was terminated with one week's notice, four days of which he was to take as accrued holiday. The tribunal awarded him almost £250 as pay for accrued holiday, representing twice the length of holiday under regulation 15 of the Working Time Regulations 1998. In *Industrial & Commercial Maintenance v Briffa* [2008], EAT ruled that this regulation could be varied by a relevant agreement, which could include a contract of employment. The provision of Mr Briffa's contract about the notice period was such an agreement, so EAT said he was

not entitled to compensation in lieu of accrued holiday.

Photographing policemen

By s 58 of the Terrorism Act 2000 "record" includes a photographic record. A person commits an offence if he makes a record of or possesses information of a kind likely to be useful to a person committing or preparing an act of terrorism, liable on indictment to imprisonment for a term not exceeding 10 years, on summary conviction not exceeding six months or, in both cases, a fine not exceeding the statutory maximum or to both. You must have a reasonable excuse for, eg photographing a policeman or a railways station if you are to have a defence under subsection (3).

Self-employed

Employment requires two parties, one who employs and the other who is employed. It is a relationship of master and servant, although nowadays few people like to use those words. A so-called self-employed person is not employed by anyone, in the sense of the law of master and servant. In particular he is cannot be employed by himself. He is an independent contractor who, in any work he does for another person, is employed by that person, in the same sense that one might employ a hammer to drive in a nail, but he is not employed as that person's servant. NLU

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

Twelve cars went a-rallying

Motor racing and speed trials are prohibited under the Road Traffic Act 1988, s 12, but promoting or participating in other competitions is by s 13 an offence, unless authorised or conducted in accordance with the Motor Vehicle (Competitions and Trials) Regulations 1969. Regulation 5 permits events:

- in which the total number of competing vehicles does not exceed 12;
- in which there are no minimum mileage, performance tests or timing, but competitors may be required to finish at the same place at the same time;
- to judge good road behaviour and compliance with the Highway Code; and
- for the service training of the armed forces.

