

# The law in 101 words

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

### **Duke of Westminster's case (old law)**

The Duke changed his servants' employment terms and instead of wages gave them annuities under seven year deeds of covenant, which he was entitled to deduct from his income. The HL held (1935), per Lord Tomlin: "Every man is entitled, if he can, to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax."

### **Fraudulent and wrongful trading**

Insolvency Act 1986 ss 213 (fraudulent) and 214 (wrongful). Both apply in the winding up of a company and a court order can make individuals personally liable to contribute to the company's assets. Fraudulent trading applies to any person who was party to the conduct of the company's business with intent to defraud creditors or any other person. Wrongful trading applies to a director, who knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation and failed to take steps necessary to minimise the potential loss to the company's creditors.

### **Home education**

Ms M's child, age six, was autistic and was being educated at home. The local authority prepared a statement of special educational needs pursuant to the Education Act 1996, s323. Ms M objected to the LA's conclusion that her son be educated at school. Her appeal was rejected by the tribunal and administrative court, but was allowed by the CA in *R v Hounslow LBC* (2009). It was not enough for the LA to ask whether a school could meet

a child's educational needs, but it must ask whether an education at school was both suitable and proper in the circumstances.

### **Purposeful construction**

The application of TUPE to "a person employed by the transfer or ... immediately before the transfer" had been the subject of much litigation.

**“Every man is entitled to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be”**

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 1981 TUPE to include persons dismissed because of the transfer, now done by the 2006 TUPE. However *Litster*, no longer needed for "immediately before", also gave us purposeful construction.

### **Statutory maximum fine**

Everywhere you look you come across "on summary conviction, to a fine not exceeding the statutory maximum",

but it took me over half an hour of LexisNexis frustration to find it. The smart thing, I can now tell you, is to begin with the Interpretation Act 1978 s5 and the words and expressions defined in Sch 1. It tells you that "Statutory maximum", with reference to a fine or penalty on summary conviction for an offence, in relation to England and Wales, means the prescribed sum within the meaning of s32 of the Magistrates' Courts Act 1980. In other words £5,000.

### **Mobile phones and the church tower**

A parishioner objected to a petition for a faculty to install a mobile phone base station and antennae in the church tower. The Chancellor concluded that some of the material to be transmitted through the antennae was not consistent with the Christian use of the church and dismissed the petition. In *re St Peter and St Paul's Church, Chingford* (2008) the Arches Court of Canterbury allowed an appeal to it against the Chancellor's decision. A balance must be struck between the public benefit (better reception for mobiles) and the risk of unlawful communications being transmitted against which blocking techniques were available.



### **Tenantable condition**

A covenant by the tenant to keep the property in tenantable repair might require him to put it in better condition than it was in at the start of the lease. "Tenantable repair" is the state which is reasonably fit for occupation by a tenant of the kind likely to take the premises, having regard to their age, character and location: *Anstruther-Gough-Calthorpe v McOscar* (1924). In practice the parties might be better advised to evidence the current condition of the premises in a photographic or verbal schedule of condition and for the tenant to covenant to maintain that state of condition.

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