

Law in 101 words

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

Abducted child

A mother's removal of her small child to her homeland, because of the conduct of her alcoholic and heroin addicted partner, the father, is a breach of Art 3 of the Convention on the Civil Aspects of International Child Abduction, unless she could satisfy the grounds for defence under Art 13(b). The SC, in *Re S (a child)* (2012), restored the order of the High Court, which held that the mother had made a good prima facie case, that she was the victim of significant abuse at the hands of the father and a defence under Art 13(b) had been established.

Aggravated burglary

Burglary is entering a building with the intention of (inter alia) stealing, and carries a maximum penalty of 10 years or 14 if in a dwelling (Theft Act 1968, s9). By s10 it is aggravated burglary if you commit burglary and have with you a firearm, weapon of offence or explosive, and the maximum penalty is life. In *R v Wiggins* (2012), W was found outside property with goods matching that stolen from it and a weapon. His s10 conviction was quashed. There was no evidence that he entered the property, and you must have the weapon with you on entry.

Beach as a green

West Beach, Newhaven, was not capable of being registered as a village green under the Commons Act 2006, merely because it is not green and also for much of the day it is wholly covered with water. Its registration was quashed by the Queen's Bench Division in *Newhaven Port and Properties v East Sussex CC* (2012) because registration was incompatible with the

statutory power for which the land was owned. Local inhabitants had used West Beach for lawful sport and pastime as of right, but it was actually port land and the landowner had no power to consent to that use.

Defamation

Defamation is a form of tort. A defamatory statement is one which is made to a third party and disparages a person's good name or the esteem in which he is held. If it is in writing it is a libel and damage is presumed, but if it is oral it is a slander, which is generally not actionable without proof of special damage. The main defences to a claim for defamation are justification (ie, that the words are true), fair comment on a matter of public interest and absolute and qualified privilege. See also the Defamation Acts 1952 and 1996.

Predetermination

The Localism Act 2011, s25 provides that, where, as a result of an allegation of bias or predetermination, or otherwise, there is an issue about the validity of a decision of a relevant authority, and it is relevant whether the decision-maker had a closed mind when making the decision. The decision-maker is not to be taken to have had a closed mind when making the decision just because he had previously done anything that directly or indirectly indicated what view he took, or would or might take, in relation to a matter, and the matter was relevant to the present decision.

Sheltered accommodation

In *Basey v Oxford CC* (2012), Oxford appealed against a social entitlement tribunal's finding that Basey's housing

benefit included an amount for the heating and cleaning of the common parts of a property, staffed 24 hours a day to provide care, support and supervision, in which he and three others with severe learning difficulties had bedrooms of their own. The weekly amount in issue was £19.50. Oxford argued that he was not in sheltered accommodation for the purposes of SI 2006/213. The CA dismissed the appeal. Parliament deliberately left the "sheltered accommodation": it can include property with communal and common parts.

Tax & the compensation cap

Compensation for unfair dismissal and other termination payments up to £30,000 are usually tax free, and any compensation in excess is taxed. Therefore employment tribunals often gross up the excess over £30,000 to ensure that the claimant receives the intended net amount. The cap on compensation awards for unfair dismissal is (2012/13) £72,300. In *Hardie Grant v Aspen* (2011) the ET has awarded the maximum capped compensation and then grossed it up. The amount payable was £87,000. The EAT said that this is wrong. The ET should first assess the net loss, gross it up and only then apply the cap.

Transferred malice

The defendant and another had engaged by mutual agreement in a shoot-out, in the course of which a shot by the other accidentally killed a passer-by. Both the defendant and the other were convicted of murder. The CA allowed the defendant's appeal against conviction, but in *R v Gnago* (2011), the Supreme Court accepted the Crown's argument that the conviction should stand. The defendant shared with the other a common purpose to shoot and be shot at and was guilty of aiding and abetting the attempted murder of himself. Both parties were guilty of murder under the doctrine of transferred malice. **NLJ**

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

