

# Law in 101 words

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

### Prohibited degrees

A marriage between a person and that person's adoptive child, adoptive parent, child, former adoptive child, former adoptive parent, grandparent, grandchild, parent, parent's sibling, sibling, or sibling's child is void. A marriage to the child of a former spouse or civil partner, the former spouse or civil partner of a parent or grandparent, the grandchild of former spouse or civil partner is void, unless both parties have attained age 21 and the younger party has not at any time before attaining age 18 been a child of the family in relation to the other party. Marriage Act 1949, s1, Sch 1.

### Smell a nuisance

In *Barr and others v Biffa Waste, CA* (2012), residents in the vicinity of a waste tip issued proceedings against the operator for nuisance by smell. The defence that the environmental legislation modified the common law rights in nuisance was rejected on appeal. The common law right could be cut down only by an express or implied statutory authority to commit a nuisance. A more offensive type of waste had been introduced. Far from there being an express or implied authority, the present problem was not anticipated by the tipping permit, which did not authorise the new type of smell emission.

### Trial by battle

On a private appeal against an acquittal for murder, in *Ashford v Thornton* (1818), Thornton, who was accused of murdering the appellant's sister, claimed the right to trial by battle. The appellant argued that the evidence against Thornton was

overwhelming so he was ineligible for wage battle, but the court disagreed. The appellant declined the offer of battle and Thornton was freed. The Appeal of Murder etc Act 1819 abolished various appeals and enacted by s2 "nor shall issue be joined nor trial be had by battle in any writ of right; any law, custom, or usage to the contrary notwithstanding."

### Verbal and oral

To say "verbally" instead of "orally" is policespeak, which does not encourage lawyers to be clear what they mean. Year 1 students starting contract in term 1, class 2 (class 1 is offer, acceptance etc) learn that contracts are made by conduct or verbally, and, if verbally, in writing or orally. They are then exposed to police practices and remember the police "verbals" and forget their contract law. "Verb" means the part of speech that denotes action, but "verbal" keeps to its Latin origin (verbum meaning a word). Its use to mean oral leads to uncertainty in legal documents and speech.

### Ancient lights

By the Prescription Act 1832 s3, the right to light to a dwelling house is absolute, if it has been enjoyed without interruption for 20 years, but by s4, even after 20 years' enjoyment, it can be lost if there is a year's interruption. Section 2 of the Rights of Light Act 1959 enables the owner of the servant land in lieu of obstruction to register a notice accompanied by a certificate from the Upper Tribunal, which may be temporary or definitive. Time runs from the original registration, even when accompanied by a temporary certificate: *Bowring Services v Scottish Widows* (1985).

### Creating legal relations

For the purpose of establishing whether a contract exists, the parties' intention to create legal relations is to be determined objectively and not by enquiring into their respective states of mind. In *Attrill & others v Dresdner Kleinwort & others* (2012) QBD there was evidence that Dresdner's announcement in August 2008, of a minimum bonus pool of €400m, was such an intention. Therefore, the claimants were entitled to damages equal to the difference between the respective amounts of bonus paid under letters issued in December 2008, based on a reduced bonus pool, and the corresponding amount based on the August minimum.

### E-infringement of copyright

In *Dramatico and others v BskyB and others* (2012), ChD, it was held that the three tests in s97A of the Copyright, Designs and Patents Act 1988 had been satisfied and five of the six defendant ISPs agreed orders to block or impede access to Pirate Bay, which had infringed the claimant's copyright. The three tests were (i) the ISPs were service providers, (ii) Pirate Bay's operators had used those services to infringe copyright and (iii) the defendants had actual knowledge of that use. The finding did not breach Art 10 (freedom of expression) of the European Convention on Human Rights.

### False imprisonment of prisoner

The Prison Officers' Association called a strike on 29 August 2007. The governor of Wealstun Prison issued an order that prisoners should remain in their cells throughout the day. Mr Iqbal's normal routine on that day would have included six hours out of his cell. In *POA v Iqbal* (2009) the CA allowed the POA's appeal against a finding of false imprisonment and an award to Mr Iqbal of damages of £5. False imprisonment requires a direct causal link between the act and the imprisonment, but the immediate case was the governor's order, not the prison officers' decision to strike. NLJ

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