

# Law in 101 words

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



## Assault & battery

Section 39 of the Criminal Justice Act 1988 states: "Common assault and battery shall be summary offences". Any information that D did unlawfully assault and batter V contrary to that section is bad for duplicity because it charges two separate offences: *DPP v Little* (1992). Assault, said the Divisional Court, is to cause an apprehension of violence, while battery is to inflict it. A physical attack from behind cannot be an assault because the victim was caused no apprehension of it. In contrast the standard indictment under s47 OAPA 1861 is that D assaulted V thereby causing him actual bodily harm.

## Ancient mooring rights

Temporary mooring is an incident of the public right of navigation. A riparian owner may grant an easement to moor permanent, but easements cannot exist "in gross". Royal grants of franchises to moor permanently are not easements and can exist independently of the dominant land. The Thames Conservancy Act 1857 vested the bed and shores of the Thames in the Thames Conservators, now the Port of London Authority, but by s179 preserved existing franchises and other rights. In *Couper v Albion* (2013) Mr Couper, with an art collection in barges moored on the Thames, claimed but failed to establish such rights.

## Bees

Bees are *ferae natura*, so qualified property in them can be obtained by lawfully

taking them, but is lost if they regain their natural liberty and leave without the intention of returning. You do not obtain property if bees swarm on a tree on your land, but you do if you hive them. If the swarm then leaves the hive, it remains your property as long as it can be seen and followed: Bracton as cited in *Kearry v Pattinson* (1939). Here the CA held that the owner may not pursue them onto another's land without permission and so loses property.

## Charitable company

The Charities Act 2011 s193 defines "charitable company" as "a charity which is a company", but, like the 1960 and later Charities Acts, does not define "company". The Companies Act 2006 s1 says "In the Companies Acts 'company' means a company formed and registered under this Act" but does not extend the definition to other legislation; nor does the Interpretation Act 1986. In *Re Stanley, Re, Tennant v Stanley* (2006) Buckley J said: "The word company has no strictly legal meaning." In *Southwood v Taylor* (1979) the EAT held that "company" did not have the wider meaning possible under *Re Stanley*.

## Corporate vicars corrected

The RLD is fallible. By the Ecclesiastical Offices (Terms of Service) Measure 2009 benefices, to which individuals are appointed after 31 January 2011, are held on "common tenure" (a term of years expiring, with exceptions, on the

holder's retirement date), which does not include security of tenure on the expiry of the term. Existing holders of benefices may elect to hold them by common tenure instead of freehold. The land of benefices continues to be vested freehold in the corporation sole, whether or not an individual is a member of the corporation. Thanks to St Laurence the Learned, aka Laurence Target.

## Credibility of witnesses

"It is commonplace...that a witness who makes a poor impression in the witness box may be found..., when his evidence is considered in the light of all the other evidence bearing upon the issue, to have been both truthful and accurate. Conversely, the evidence of a witness who at first seemed impressive and reliable may...have to be rejected...it is dangerous to assess the credibility of the evidence given by any witness in isolation from other evidence...capable of throwing light on its reliability" (*Attorney General of Hong Kong v Wong Muk Ping* [1987])

## Cy-près doctrine

In *Re Weir Hospital* [1910] 2 Ch 124 Cozens-Hardy MR said that the trustees were "bound to apply the funds in the named charities unless it be impracticable...A case for the cy-près application of trust funds cannot be manufactured, but must arise *ex necessitate rei*". The cy-près doctrine had its origins in Medieval ecclesiastic law and was first codified in 1960. The Charities Act 2011 gives the courts and the Charity Commission greater discretion in applying it, taking into account not only the original purpose but also the spirit of the original gift and effective use of the property.

## Whistleblowing in the public interest

Mr Nurmohamed was the director of Chesterton's Mayfair office. Chesterton changed the basis for calculating managers' commissions, which Mr Nurmohamed accepted reluctantly. He made three protected disclosures asserting that Chesterton deliberately mis-stated £2m to £3m costs, which would reduce the earnings of over 100 senior managers including himself. He was dismissed, and Chesterton admitted that it was unfair. In *Chesterton Global v Nurmohamed* (2015), the EAT said that it is enough that the whistle-blower believes that the disclosure is in the public interest, whether or not it actually is, and that the other managers were a sufficient group of the public. **NLJ**

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