

As used as a found in *W.D. Roderick Ramage* 11-7-16

## Law in 101 words

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



### Brexit

The referendum is merely informative of the supposed will of the country. Given the lies and the geographical skewing of the vote, is it democratic? Neither the European Union Referendum Act 2015 nor the Political Parties, Elections & Referendums Act 2000 give legal effect to referendums. The immediate political issue is whether the PM may exercise the prerogative to invoke Art 50 without the consent of parliament. The next is whether, on taking office, she should throw away our strongest card by invoking Art 50 before agreeing terms. I voted for out, not stupidity. Anyone for passport controls round the M25?

### Four corners

In *Gwyn v Neath Canal* (1868) Chief Baron Kelly said: "The result of all the authorities is, that when a court of law can clearly collect from the language within the four corners of a deed, or instrument in writing, the real intentions of the parties, they are bound to give effect to it by supplying anything necessarily to be inferred from the terms used, and by rejecting as superfluous whatever is repugnant to the intention so discerned". "The right course is not to reform or correct the instrument but to construe it by the light of the recitals" *Channell B*!

### Oral variation in writing

*Globe v TRW Lucas* (2016) concerns a dispute about the supply of electric motors for assisted steering systems for motor cars.

The CA held (obiter) that a clause in the supply contract requiring amendments to be made in writing signed by both parties did not prevent them from varying it by a new contract, oral or by ~~contract~~. The CA's decision in *United Bank v Asif* (2000) would have supported the clause, but *World Online v I-Way* (2002) would not. The CA was not bound by either of its prior inconsistent decisions: the first exception in *Young v Bristol Aeroplane* (1944).

\* conduct

### Passing off by domain name

Yoyo.email Ltd registered the domain names rbsbank.email, rbs.email, natwest.email and coutts.email, and RBS, which owned the relevant trademarks, filed a complaint to the World Intellectual Property Organization, whose domain name dispute resolution panel concluded that Yoyo had registered the domain names in bad faith and ordered that they be transferred to RBS. In *Yoyo v RBS* (2015) the court held it had no jurisdiction as a appeal body from such decision and affirmed the decision in *British Telecom v One in a Million* (1999). Simply registering a distinctive domain name is a misrepresentation of connection with the goodwill in the name.

### Splashing pedestrians

The RTA 1988, s3 makes it an offence to drive on a road without reasonable consideration for other persons using the road, and by s3ZA(4) a person is to be regarded as driving without reasonable consideration for other persons only

if those persons are inconvenienced by his driving. An example in the CPS' guidance on driving incidents is "driving through a puddle causing pedestrians to be splashed". A driver prosecuted for overtaking traffic on a motorway's inside lane was acquitted because he had caused no actual inconvenience: *Dilks v Nowman-Shaw* (1981). How big a splash causes inconvenience remains to be tested.

### Whistleblowing gone wrong

Three nurses made protected disclosures about a colleague, who made false statements about his experience and qualifications. Other staff thought that the three were conducting a witch hunt and subjected them offensive behaviour. NHS Manchester transferred the three to other employment; and they complained to an ET under the ERA 1996 s47B, saying that they had suffered detriments as a result of making protected disclosures. In *Fecitt v NHS Manchester* (2011) the CA held that they had not been victimised by NHS Manchester, it was not unlawful for other employees to victimise whistleblowers and that NHS Manchester was not vicariously liable.

### Unilluminated speed sign

Mr Butler was charged with driving in excess of a 40 mph speed limit. His defence was that the terminal speed limit sign did not comply with the Traffic Signs Regulations and General Directions 2002. The regulations require such a sign within 50 yards of a street lamp illuminated by electricity to be illuminated. The magistrates found that he had driven 46 mph, it was dark and the sign was not illuminated and acquitted him. On appeal, in *DPP v Butler* (2010), the court held that the magistrates were entitled to find that the sign did not comply with the regulation.

### Unsigned notices

At common law oral notice suffices: *Doe v Macartney v Crick* (1805). Agreement between the parties or legislation may require notices to be in writing (eg Arbitration Act 1996, s14) or to be signed (eg Employment Rights Act 1996, s36). In *TBAC v Valmar* (2015) a notice to complete was unsigned and contained several errors. The court upheld the notice. Leaving the space for signing blank did not mean that the notice was a draft and ineffective. The court construed the notice objectively, asking what it would mean to a reasonable recipient and adopting the meaning consistent with business common sense.

NLJ

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