

THE PROPERTY LITIGATION QUIZ

Your Quizmaster

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Jonathan specialises in property litigation and professional negligence arising out of it.

In recent years Jonathan has successfully extended his property qualifications by developing a wide mediation practice.

In November 2007 Jonathan was named as Chambers & Partners Real Estate Silk of the Year.

Jonathan also comes highly recommended in the legal directories: Chambers UK, 2007 [Real Estate] says he is an 'impressive courtroom advocate', with 'extreme cleverness and creativity'.

This year the Legal 500 says that he is 'an excellent fighter, a first-class tactician and is highly responsive and commercial' and that he 'is the man most likely to equal Dowding's reputation at the top'

This prompted Jonathan's mother to ask him who Dowding was.

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ANSWERS

These answers compliment and amplify the audience voting results and answers recorded on the separate PowerPoint presentation which is also posted on this PLA website.

1. Redact is not one of the UK's favourite words.
2. An increase in the length of the term will amount to a surrender and re-grant. A surrender of part of the demise will not: see Woodfall 17.032. and *Jenkin R Lewis v Kerman* [1971] Ch 477. Buckley J.
3. Nicholls LJ was talking about L&T Act 1985 s.20C when he said 'The landlord should not 'get through the backdoor what he has been refused by the front'. *Holding & Management v Property Holding & Investment Trust* [1989] 1 WLR 1313 at 1324.
4. "*Now this is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning*" is not an opening line. It is Churchill at the Lord Mayor's Lunch, Mansion House following the victory at El Alamein in North Africa, London, 10 November 1942
5. The value of the property is not a reason, in itself and standing alone, to bring a summary possession claim in the High Court: see CPR 55PD.1 and *Mutley v Somerset* [2007] PLSCS 255
6. S.84 LPA 1925 is for covenants which 'restrict user'. This means negative covenants. *Blumenthal v Church Commissioners* 2004] EWCA Civ 1688. Even if the positive covenant has a negative aspect ('don't paint it black') a basically positive covenant is excluded from the Lands Tribunal's jurisdiction.
7. In *Winter v Traditional & Contemporary Contracts Ltd* [2008] 03 EG 180 the CA said that the LT when calculating compensation under s.84(1)(aa) LPA 1925 when a restrictive covenant is discharged or modified could take into account any matter in relation to loss of value as long as it does not make an error of law. Carnwath LJ: "*Once it is accepted that the tribunal applied the correct test, its conclusion becomes one of fact that could be challenged in this court only if it were shown to be based upon no evidence or otherwise irrational ... it has to be remembered that they surveyor member of the tribunal was an expert in his own right. He was entitled to form his own conclusion, based upon the evidence and on his own view of the site ..*"
8. Expert evidence that is contradictory to evidence subsequently given by the same expert is not confidential to that arbitration. It was said to be in the public interest in *London & Leeds Estates v Paribas (No.2)* [1995] 1 EGLR 102.

9. After judgment the Court will not look at correspondence marked 'without prejudice' to assess whether a party has acted unreasonably in refusing mediation: *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576. This is also the case in which Dyson LJ referred to the Court making an order that a party who refuses to mediate should have the burden of filing a witness statement, ahead of the trial, explaining why.
10. Management fees calculated on the basis of a % of total spending on permitted services is not a provision compliant with the 2006 RICS Code of Practice Service Charges in Commercial Property. The management fee must be a reasonable price for the total cost of managing the provision of services.
11. A s.25 notice is served when it is posted: *Beanby Estates v Egg Stores (Stamford Hill) Ltd* [2003] 21 EG 190; *Webber (Transport) Ltd v. Network Rail Infrastructure Ltd (formerly Railtrack Plc)* [2004] 1 W.L.R. 320
- 11A. Tim Power's age is nothing to do with you.
12. Gale on Easements by Messrs Gaunt and Morgan says this in its preface: "*For many years one of our most respected colleagues disdained to own a legal textbook. He maintained that all problems can be solved by a careful analysis of the facts and the application of basic legal principles; to clutter the mind with other people's problems only leads to confusion and error. There is much to be said for this point of view but it does not work with Easements*"
13. The landlord must take all reasonable steps to minimise disturbance when it has a duty to carry out external repairs and provide quiet enjoyment: *Goldmile Properties v. Lechouritis* [2003] 15 EG 143.
14. A tenant can withdraw a notice under s.3(1) of the Landlord & Tenant Act 1927: *Norfolk Capital Group v Cadogan Estates* [2004] EWHC 384 (Ch). You can't contract out of Part 1 of the 1927 Act - see s.9.
15. "You're delicious, so capricious, if I find out you don't want me I'll be vicious" was a lyric in Greek's ESC entry in 2005.
16. Ex turpi causa non oritur action - from a base cause or matter an action does not arise
17. Service on the Claimant within the unextended period was a strict term in *Rennie v Westbury Homes (Holdings) Ltd* 20 EG 296
18. In *Marklands v Virgin Retail* the landlord was prohibited from introducing break up values not on the basis that words importing the singular do not include the plural unless expressly provided, though that factor was important in *Level Properties v Balls Brothers*
19. Pet Shop Boys had a hit with 'Rent'.
20. Police, Court and prison buildings is not an exemption for the need to acquire an EPC?

21. Booth & Co, Dibb Lupton Broomhead, Eversheds and Pinsent Curtis were the 4 firms mentioned in the 1995-6 Chambers & Partners Legal Directory, in the North East in the category "Litigation (property)":
22. Relief against forfeiture under s.146(2) is on such terms as to costs etc but not 'security'.
23. Sch 4 Para 6(2) LRA 2002: *No alteration affecting the title of the proprietor of a registered estate in land may be made under paragraph 5 without the proprietor's consent in relation to land in his possession unless (a) he has by fraud or lack of proper care caused or substantially contributed to the mistake, or (b) it would for any other reason be unjust for the alteration not to be made.*
24. *Harvey v Pratt* [1965] 1 WLR 1025 says you cannot have a lease without a definite start date
25. The landlord of a tenant in liquidation can prove for all debts and damages to include all future loss of rents, damages for dilaps, empty rates, projected service charges etc but subject to a duty to mitigate by re-letting (even if only at a lower level)
26. A good way of making sure a tenant leaves at the end of the term is to claim 'double value' by serving a notice making that claim under s.1 of the Landlord & Tenant Act 1730
27. In 2007 the Readers Digest Trusted Brands Survey found financial advisers less trusted than lawyers.
28. You have a choice when it comes to the rule that you can contract out of business tenancy protection by serving the right notice before it is entered into.
29. A residential sub-tenant cannot sue his immediate landlord for defects in installations outside the immediate landlord's demise: *Niazi Services Ltd v. Van der Loo* [2004] 1 W.L.R. 1254.
30. Close Brothers Investment Ltd is not run by brothers.
31. Receipt of a reverse premium by a company for tax purposes is treated as income, save insofar as it can be attributed to expenditure which qualifies for capital allowances
32. In a conditional contract, it is implied that parties will co-operate to make the contract workable.
33. 'Hair' has a song called 'Aquarius' but not as in *Post Office v. Aquarius Properties* [1987] 1 All E.R. 1055, CA
34. Renunciation in Scottish law is not the same as surrender because sub interests fall away.
35. Time is presumed (subject to contrary indication) to be of the essence in relation to time limits under an option

36. A wall which does not separate buildings belonging to different owners (a hedge does) but the foundation of the wall goes beyond the hedge to projects into the land of another owner will not be a party wall,
37. Phillipa Shire of Lawrence Graham does not share a name with a town or village
38. "Pie in the sky will not be enough" in relation to L&T Act 1954 s.30(1)(f): *Zarvos v. Pradhan* [2003] 2 E.G.L.R.37.
39. You cannot in a contract to purchase land, exclude s.49(2) LPA 1925
40. In *Antaios Cia Naviera v Salen Rederierna* [1985] AC 191, Lord Diplock said that "*if a detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion which flouts business common sense it must be made to yield to business common sense*'
