



CASE LAW UPDATE
FOR
PROFESSIONAL CONFERENCES
COMMERCIAL PROPERTY ISSUES SPRING 2025

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OVERVIEW

- **54 Act: New lease terms; Code rights; Reform**
- **Landlord & Tenant**
 - Lease or licence
 - Tenant insolvency
 - Lessons on forfeiture
- **Selling mixed use buildings**
- **Boundaries: lessons from the Court of Appeal**

NEW LEASE TERMS

- **Renewal rent: s34, Landlord and Tenant Act 1954**
 - “..having regard to the terms of the tenancy ..[the rent that]..might reasonably be expected..in the open market..”
- **Other renewal terms: s35**
 - Have “regard to the terms of the current tenancy”
 - **O’May v City of London Real Property Co [1983] AC 726**
 - “the burden of persuading the court” to change is on the proposer and “must, in the circumstances of the case, be fair and reasonable”

NEW LEASE TERMS

- **Kwik-Fit Properties Ltd v Resham Ltd [2024] EWCC 4**
 - 25-year **“motorists centre”** lease (1996) in Tyne & Wear; passing rent £35k; new 15 year lease agreed;
 - In dispute
 - Tenant break every 5 years? No as no **“real possibility of ..need to terminate ..because of the Premises becoming unsuitable ..Rather, the tenant's desire is simply to retain maximum flexibility”**
 - Rent – £39,300 (closer to L figure), but both experts more **“an advocate rather than .. solely giving independent & impartial evidence to the Court of .. own independent opinion”**

NEW LEASE TERMS

- **Lessons**

- **1. Provide concrete evidence for new break right**
 - As to tenant/landlord's business need + market conditions
 - Why not take/grant a shorter lease?
 - What will be the trigger?
- **2. Expert's duty to the court**
 - Trumps obligation to client
 - Not allow advocacy on client's behalf

54 ACT v CODE

- **Electronic Communications Code 2017**
 - **Part 5: Transitional provisions for agreements pre 28.12.17**
 - **Landlord & Tenant Act 1954, Part II rights continue & Code rights not apply**
- **Landlord and Tenant Act 1954**
 - **Section 64: Tenancy end 3 months after application “finally disposed of”**

54 ACT v CODE

- **Gravesham Borough Council v On Tower UK Ltd [2024] UKUT 151 (LC)**
 - Agreement 1997 – pre **Code** rights
 - T fails to protect right to renew under **1954 Act**
 - T cannot apply for **Code** rights: **“astonishing”** if **“operators could choose to renew under the Code instead of under the 1954 Act”**
 - **Section 64** = T’s tenancy continues until determined – no implied termination

54 ACT v CODE

- **Lessons**

- **1. Rare case but ensure that application is made in time under the **1954 Act** as more favourable to tenant**

54 ACT CONSULTATION

- <https://lawcom.gov.uk/consultation-on-right-to-renew-business-tenancies-published/>
 - Abolition of the Act – ie no security of tenure
 - A “contracting-in” regime
 - A “contracting-out” regime
 - Mandatory security of tenure
 - + should all commercial leases benefit?
 - 1st consultation closed: 19.2.25

LEASE / LICENCE

- **AP Wireless II UK Ltd v On Tower UK Ltd [2024] UKUT 263 (LC)**
 - Lease or licence?
 - Lease = **“agreement to grant exclusive possession for a term at a rent”**
 - 1997 agreement **“shall continue for no less than the Minimum Term” terminable by “not less than 12 months’ notice in writing to expire at any time on or after the expiry of the Minimum Term”**
 - → no possibility of periodic tenancy as **“The notice could expire at any time on or after the date of expiration of the Minimum Term”**

LEASE / LICENCE

- **Lessons**

- 1. Upper Tribunal but following Court of Appeal (**Street v Mountford**) re: term & older authority re: **“term certain”**
- 2. Unsatisfactory decision: **“Following the decision of the House of Lords in the Prudential case [1992] 2 AC 386, the law appeared clear in its effect, intellectually coherent in its analysis, and, in part, unsatisfactory in its practical consequences”**
 - (Lord Neuberger: **Mexfield Housing v Berrisford [2011] UKSC 52**)
- 3. Appeal?

TENANT INSOLVENCY

- **Restructuring plan (RP): Part 26A Companies Act 2006**
 - RP is court approved arrangement with creditors allowing company to carry on as going concern
 - Court may sanction RP & bind dissenting creditors who are **“out of the money”** where
 - Dissenting creditors not worse off than under **“relevant alternative”**
 - Agreed by at least one class creditors with economic interest in **“relevant alternative”**

TENANT INSOLVENCY

- **Cineworld Restructuring [2024] EWHC 2475 (Ch)**
 - Two **“out of the money”** landlords object to RP - as have undertakings from Cineworld not to compromise again
 - RP sanctioned:
 - Upholding undertakings would breach *pari passu* principle
 - Undertakings of no benefit under **“relevant alternative”**
 - No suggestion of bad faith by Cineworld, trading position deteriorated since undertakings, late engagement by landlords

TENANT INSOLVENCY

- **Lessons**

- **1. Undertakings are not a silver bullet in insolvency**
- **2. Look in practical terms before court proceedings – what would the creditor's position be if this does not go ahead?**

FORFEITURE

- **Prerequisites**
 - (i) forfeiture clause triggered by (ii) breach of lease & where (iii) right to forfeit not lost by waiver;
 - No waiver: treating lease as ongoing in spite of knowledge breach eg rent demand/acceptance, serving notices, inspecting;
- **Wrongful forfeiture → damages for tenant**
- **Tenant's relief from forfeiture by court order**
 - Non-rental breach → court's discretion: **s146(2), LPA 1925**

FORFEITURE: TRIGGERING THE RIGHT

- **SBP 2 SARL v 2 Southbank Tenant Ltd [2025] EWHC 16 (HC)**
 - Lease: L can forfeit if T **“unable to or deemed unable to pay its debts within the meaning of sections 122 or 123 of the [IA 1986]”**
 - **S123, 1986 Act**: Inability to pay debts = **“proved to the satisfaction of the court”**
 - L issues forfeiture proceedings based on insolvency
 - Insolvency not **“proved to the satisfaction of the court”** → right to forfeit not triggered

FORFEITURE: TRIGGERING THE RIGHT

- **Leicester Square Ltd v Empire Cinema [2024] EWHC 2294 (Ch)**
 - T fails to pay rent during covid lockdown
 - **Commercial Rent (Coronavirus) Act 2022** moratorium (inc appeal period) expires 21.5.23;
 - 4.5.23: L peaceably re-enters (arguing T has no genuine intention to appeal) & grants new lease; T pays arrears
 - Moratorium continuing on 5.5.23 → right to forfeit not triggered
 - T granted summary judgment: forfeiture unlawful

FORFEITURE: TRIGGERING THE RIGHT

- **Tanfield v Meadowbrook Montessori Ltd [2024] EWHC 1759 (Ch)**
 - 2016 lease for 10 years; rent quarterly, NO provision that rent due **“whether formally demanded or not”**
 - Landlord peaceably re-enters without formal demand = unlawful forfeiture → wrongful trespass
 - Tenant entitled to damages (loss of income) + possibly exemplary damages as L ends lease for **“personal gain”**
 - → Damages = **“a sum very comfortably exceeding the petition debt in its entirety”** → landlord’s winding-up petition dismissed.

FORFEITURE & RELIEF

- **Bijlani v Medical Express (London) Ltd [2024] EWHC 2246 (KB)**
 - 10-year lease (2014), Harley Street; user “legitimate surgical/dental [procedures]” by “dental practitioner ..qualified and registered in .. UK with .. GDC”
 - Tenant suspended by GDC; carries out botox treatment
 - Breach of lease as not “legitimate surgical dental procedures” + no GDC registration → forfeiture possible
 - Relief granted on continued payment of rent + non-use by tenant – no reputational risk to landlord

FORFEITURE

- **Lessons**

- **1. Check the right to forfeit has arisen – the lease + definitions clauses**
- **2. Don't accept/demand rent or take any steps which might indicate the landlord considers the lease still to be on-going**
- **3. Be practical about relief from forfeiture – but insist on court application**
 - **Zestcrest v County Hall Green Ventures [2011] 50 EG 60**

TENANT'S PRE-EMPTION RIGHTS

- **Landlord and Tenant Act 1987**

- Immediate landlord proposes disposal **“affecting”** relevant premises → qualifying tenants have rights of 1st refusal
- L must serve **s5** notice offering disposal to qualifying tenants & sever the transaction **“so as to deal with each building separately”**: **s5(3)**
- **“Building”** not defined

TENANT'S PRE-EMPTION RIGHTS

- **SGL 1 Ltd v FSV Freeholders Ltd & Others [2025] EWHC 3 (Ch)**
 - L severed transaction into Block A and Block B,C,E (& split price)
 - Court holds all 4 blocks = 1 building → previous s5 notices invalid
 - Qualifying tenants now have rights against purchaser
 - 13 “**non-exhaustive**” factors to decide if building or buildings
 - A factor/ factors may have “**magnetic attraction**” pointing towards a certain conclusion

TENANT'S PRE-EMPTION RIGHTS

- **Lessons**

- 1. Look at the 13 factors, but above all..
- 2. Use common sense: **“The fact that the tenants in each block have rights over the common roads, gardens and grounds of the estate creates problems which are simply not addressed in the Act”**
- Look for **“magnetic attraction”**

BOUNDARIES

- **Boundaries**

- **Land Registry plans show “A general boundary [which] does not determine the exact line of the boundary”**: **Land Registration Act 2002, s60(2)**

- **Adverse possession**

- **Factual possession, intention to possess, no consent**

- **If for 12 years before 13.10.23 → paper owner title extinguished & holds on trust for adverse possessor**: **Limitation Act 1980, s17 & Land Registration Act 1925, s75**

BOUNDARIES

- **Clapham & Wright v Narga [2024] EWCA Civ 1388**
 - Adverse possession established before 2003; use since late 1970s
 - Land registered 2003; Ms Narga purchased 2020; no **“reasonable and careful inspection”** reveals adverse possessors
 - BUT what was boundary of land Ms Narga bought?
 - 1982 (sale of part) boundary = south of brook
 - 2003 (registration) boundary = fence to north of brook (because of AP)
 - → Ms Narga bought the land with the fence as boundary

BOUNDARIES

- **Lessons**

- **1. If exact boundary important**

- Inspect carefully
 - Talk to neighbours

- **2. If have land by adverse possession – register it!**

CASE LAW UPDATE

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Please note that these training notes are designed solely for use as part of a training session. They are outline only and are not a comprehensive statement of the law on the subject area. For further guidance, please refer to the standard works and published resources on the topic.