

SEMINAR 22nd January 2018

- ❖ *HOW TO READ A COMMERCIAL LEASE - THE IMPORTANT CLAUSES* 50 mins
- ❖ *OPEN QUESTION TIME* 10 mins

- ❖ **NEXT SEMINAR 19th FEBRUARY 2018**

*SEMINAR BY DOUG STEVENS TO 1st & 2nd YEAR GRADUATES
DELIVERED AS A POWERPOINT PRESENTATION*

IMPORTANCE OF READING & UNDERSTANDING COMMERCIAL LEASES

- ▶ VALUATION (for investment, rent review or lease renewal)
- ▶ IF YOU ARE VALUING A PROPERTY (CAPITAL AND RENTAL VALUATIONS) THE TERMS ON WHICH THE LEASE IS HELD DIRECTLY IMPACT ON VALUE
- ▶ YOU NEED TO IDENTIFY THOSE CLAUSES WHICH WILL IMPACT ON RENTAL AND CAPITAL VALUE
- ▶ DOES A CLAUSE ADD VALUE OR MIGHT IT CAUSE A LOSS IN VALUE OR IS IT NEUTRAL ie, market norm
- ▶ ASSET MANAGEMENT & AGENCY
- ▶ WHETHER YOU ARE A LANDLORD (L/L) OR TENANT (T) OR AN ADVISER TO EITHER OR A MANAGING AGENT YOU NEED TO UNDERSTAND - WHAT THE LEASE PERMITS OR RESTRICTS ?
- ▶ WHAT CONTROLS DOES THE L/L HAVE? - WHAT RIGHTS HAS THE T GOT?
- ▶ EACH MAJOR CLAUSE IN A LEASE WOULD WARRANT A SEPARATE SEMINAR
- ▶ THERE IS CASE LAW ON EVERY CLAUSE IN A LEASE

ARE THERE ANY OTHER DOCUMENTS?

- ▶ ASK IF THERE ARE ANY OTHER DOCUMENTS FOR THE PROPERTY BESIDES THE LEASE
- ▶ IF THE PROPERTY IS A LARGE STORE OR SUPERMARKET THERE MAY BE AN AGREEMENT FOR LEASE IN ADDITION TO THE LEASE
- ▶ IF THE PROPERTY HAS CHANGED HANDS ie, tenant has assigned lease, THE LICENCE TO ASSIGN MIGHT VARY THE LEASE TERMS
- ▶ ARE THERE ANY LICENCES FOR ALTERATION?
- ▶ ARE THERE ANY DEEDS OF VARIATION?
- ▶ IS THE LEASE YOU ARE READING A REVERSIONARY LEASE - IN WHICH CASE YOU MAY ALSO NEED THE PRECEEDING LEASE

▶ IS THE LEASE INSIDE THE LANDLORD & TENANT ACT 1954 OR IS IT CONTRACTED OUT?

- ▶ IN OLD LEASES THERE WILL BE A CLAUSE SAYING THAT SECTIONS 24-28 OF L & T ACT 54 IS EXCLUDED BY A COURT ORDER
- ▶ IN MODERN LEASES IT WILL SAY IN THE DEFINITIONS THAT THERE IS NO L & T ACT SECURITY OF TENURE, ie, NO RIGHT TO RENEW THE LEASE UPON IT`S EXPIRY

ARE LEASES IN A STANDARDISED FORM? NO

- ❖ EVERY LEASE IS DIFFERENT - EVEN WITHIN A SHOPPING CENTRE OR MULTI-LET OFFICE
- ❖ ATTEMPTS AT STANDARDISATION HAVE BEEN MADE BY BODIES SUCH AS RICS, BPF, BCO NOTHING HAS BEEN MADE OBLIGATORY - BUT SOME ADOPTION BY WAY OF A CODE
- ❖ EACH L/L & T AND THEIR SOLICITORS WANT TO ADOPT THEIR OWN FORM OF WORDING FOR EACH CLAUSE
- ❖ DEPENDENT ON THE STRENGTH OF THEIR NEGOTIATING POSITION THEIR FORM OF WORDING WILL BE ADOPTED. HENCE THE VARIATIONS IN LEASES MAKING EACH OF THEM UNIQUE
- ❖ THERE IS NO UNIVERSAL ORDER FOR EACH CLAUSE - BUT MODERN LEASES DO ATTEMPT TO HIGHLIGHT MAKE THE CONTENTS OF THE LEASE CLEARER BY PROVIDING IN THE OPENING PAGES A SUMMARY OF THE CLAUSES & DEFINITIONS OF MATERIAL WORDS
- ❖ OVER THE YEARS LEASES HAVE BECOME LONGER AND LONGER
- ❖ AIM OF THIS SEMINAR IS TO HELP YOU READ, UNDERSTAND AND SUMMARISE LEASES SO THAT YOU CAN REPORT ON IT AND ADVISE ON IT - FOR VALUATION/ASSET MANAGEMENT PURPOSES
- ❖ IT IS IMPORTANT TO IDENTIFY THE IMPORTANT CLAUSES IN THE LEASE AND INDEED ANY WHICH ARE NOT IN IT
- ❖ YOU SHOULD PREPARE A SUMMARY OF THE LEASE TERMS UNDER A SERIES OF HEADINGS - SO THAT YOU DO NOT MISS ANYTHING OF RELEVANCE

MAKE A SUMMARY OF THE MAJOR CLAUSES

- ▶ **DATE OF LEASE** THIS MAY DICTATE THE LEASE COMMENCEMENT DATE AND MAY DICTATE THE RENT REVIEW DATE(S).
- ▶ IS THE LEASE DATED PRE-1ST JAN 1996 (LANDLORD & TENANT COVENANTS ACT 1995) - IF SO PRIVITY OF CONTRACT ON ASSIGNMENT WILL APPLY
- ▶ **TERM COMMENCEMENT DATE**
- ▶ **PARTIES** - ARE THE LANDLORD (L/L) & TENANT (T) THE SAME AS THE CURRENT L/L & T. IS THERE A GUARANTOR FOR THE T
- ▶ IF NOT THERE HAS BEEN A SALE OF THE L/L INTEREST AND/OR AN ASSIGNMENT OF T'S INTEREST. DOES THE LICENCE TO ASSIGN CONTAIN ANY VARIATIONS TO THE LEASE?
- ▶ YOU NEED TO ESTABLISH THE ACTUAL CURRENT TENANT – eg, FOR AN INVESTMENT SALE TO CHECK COVENANT STRENGTH
- ▶ **DEMISE** WHAT HAS ACTUALLY BEEN DEMISED IN THE LEASE - ie, ALL THAT PROPERTY ON BASEMENT GROUND AND PART FIRST FLOOR.
- ▶ ARE THERE VOIDED AREAS DEMISED.
- ▶ COMPARE ACTUAL DEMISE WITH HYPOTHETICAL DEMISE – BECAUSE AT RENT REVIEW THERE MAY BE AN ASSUMPTION THAT YOU VALUE SOMETHING DIFFERENT FROM THE ACTUAL DEMISE

Continued

- ▶ **TERM** – WHAT IS THE LENGTH OF THE LEASE?
- ▶ DOES IT START FROM THE DATE OF THE LEASE OR A DIFFERENT DATE (LEASE TERM COMMENCEMENT DATE)
- ▶ WHAT IS THE ACTUAL UNEXPIRED LEASE TERM – RECORD THIS IN YOUR SUMMARY
- ▶ IS IT A LONG TERM, ie, 15 YEARS OR LONGER – OR IS IT A SHORT TERM - < 5 YEARS?
- ▶ **RENT** - WHAT IS THE RENT PAYABLE?
- ▶ NB RENT STATED IN LEASE MAY NOW BE DIFFERENT FOLLOWING A RENT REVIEW (LOOK AT DATES OF LEASE AND REVIEWS)
- ▶ HAS THERE BEEN A FIXED UPLIFT (COMPOUND INTEREST) OR RPI INCREASE
- ▶ ARE THERE CAPPED UPLIFTS.
- ▶ IS IT A BASE RENT (80%?) WITH TURNOVER TOP-UP. WHAT IS THE TURNOVER PERCENTAGE/THRESHOLDS
- ▶ **BREAK CLAUSE** – DOES EITHER L/L OR T HAVE A RIGHT (OPTION) TO DETERMINE THE LEASE BEFORE THE CONTRACTUAL EXPIRY DATE?
- ▶ IF BOTH PARTIES HAVE RIGHT TO BREAK THE LEASE (A MUTUAL BREAK) THE LEASE MUST BE CONTRACTED OUT OF L & T ACT.
- ▶ CAREFULLY RECORD THE DATE FOR SERVICE OF BREAK NOTICE AND THE DATE IT TAKES EFFECT, IE, DATE IT TERMINATES THE LEASE. ROLLING BREAKS?
- ▶ NB TIME IS OF THE ESSENCE IN RELATION TO BREAK NOTICES
- ▶ THE PRESENCE OF A BREAK CLAUSE DOES IMPACT ON VALUE BECAUSE A SHORTER LEASE TERM MAY BE ASSUMED IF BREAK EXERCISED.
- ▶ **RE-DEVELOPMENT BREAK CLAUSE** - HAS THE L/L RESERVED THE RIGHT TO TERMINATE THE LEASE FOR A RE-DEVELOPMENT? IF SO RECORD THE DATE (S) AND NOTICE PERIODS

REPAIRS

- ▶ **FRI** FULL REPAIRING AND INSURING
- ▶ **OR EFFECTIVE FRI**- L/L RESPONSIBLE FOR STRUCTURE - T LIMITED TO INTERNAL (EXTERIOR SOMETIMES) ie, L/L RECOVERS COST THROUGH SERVICE CHARGE PAYMENTS
- ▶ NOTE THE BASIS OF **SERVICE CHARGE** - STATED AS A %AGE OR CALCULATED PER SQ FT GROSS, WEIGHTED OR UNWEIGHTED - OR CALCULATED BY REFERENCE TO RATEABLE VALUE
- ▶ **IRT** INTERNAL REPAIRING TERMS - ADDITION TO RENTAL VALUE (say 10%?)
- ▶ **SCHEDULE OF CONDITION?** - WRITTEN or PHOTOGRAPHIC - KEEP IN SAME CONDITION ONLY
- ▶ T COVENANTS TO REPAIR - TO KEEP IN GOOD AND SUBSTANTIAL REPAIR/DECORATION & CONDITION. HELD TO MEAN REPAIR AND REPLACEMENT BUT NOT GIVING BACK THAT WHICH WAS NOT GIVEN.
- ▶ T COVENANT TO REBUILD IS ONEROUS (GENERALLY CONFINED TO LONG LEASES)
- ▶ INHERENT/LATENT DEFECTS THESE ARISE FROM A DEFECT IN DESIGN, CONSTRUCTION OR MATERIALS USED AND ARE GENERALLY EXCLUDED FROM T`S LIABILITY.

ALTERATIONS

- ▶ *IS THE T PERMITTED TO CARRY OUT ALTERATIONS/IMPROVEMENTS?*
- ▶ *IF SO STRUCTURAL OR ONLY NON-STRUCTURAL*
- ▶ *L/L WISHES TO MAINTAIN STRUCTURAL INTEGRITY AND APPEARANCE & VALUE OF HIS BUILDING. T WISHES TO ALTER TO SUIT HIS BUSINESS*
- ▶ *STRUCTURAL - OFTEN NOT PERMITTED. POSSIBLE DISCOUNT OF RENTAL VALUE.*
- ▶ *NON-STRUCTURAL – GENERALLY PERMITTED WITH LLCNTBUW (OD)*
- ▶ *LANDLORDS CONSENT NOT TO BE UNREASONABLY WITHHELD OR DELAYED*
- ▶ *NO ALTERATIONS – IN LISTED BUILDINGS NO ALTERATIONS MAY BE PERMITTED*
- ▶ *REINSTATEMENT – RETURN TO ORIGINAL STATE AT END OF LEASE IF REQUIRED BY L/L*

ALIENATION

- ▶ ALIENATION MEANS ASSIGNMENT UNDERLETTING or SHARING POSSESSION
- ▶ **ASSIGNMENT** - WHOLE ONLY - OR - PROHIBITED - OR L/L PRE-EMPTION
 - ▶ - WHOLE ONLY FOR L/L CONTROL
 - ▶ - PROHIBITED - SHORT LEASE - ANCHOR TENANT- NEAR END
 - ▶ - PRE-EMPTION L/L WANTS IT BACK
- ▶ **UNDERLETTING** - WHOLE ONLY - OR - IN PART OR PARTS - OR PROHIBITION
- ▶ **SHARING POSSESSION** - CONCESSIONS - LARGE STORES - %AGE?
- ▶ IDENTIFY WHERE RESTRICTIVE ALIENATION WOULD IMPACT ON VALUATION
- ▶ LLCNTBUW S.19 LANDLORD & TENANT ACT 1927 - L/L DEEMED NOT TO ACT UNREASONABLY
BUT - THIS WILL NOT OVER-RIDE SPECIFIED QUALIFICATIONS/CONDITIONS
- ▶ ASSIGNMENT L/L CONSENT MAY BE SUBJECT TO - COVENANT - GOOD ESTATE MANAGEMENT
TENANT MIX POLICY
- ▶ UNDERLETTING - MARKET RENT (NOT < PASSING RENT) - LEASE ON SAME TERMS -
 - ▶ SIMILAR REVIEW DATES - CONTRACTED OUT - GUARANTOR - RENT DEPOSIT

ALIENATION continued

- ▶ ASSIGNMENT - PRE-1996 (L & T COVENANTS ACT 1995) PRIVITY OF CONTRACT
- ▶ - POST- 1996 AGA AUTHORISED GUARANTEE AGREEMENT
- ▶ Q IS A PRE-AGA PROPERTY MORE VALUABLE ?
- ▶ A YES IF ORIGINAL COVENANT STRONGER
- ▶ PRE-EMPTION - ON RECEIVING AN APPLICATION FOR ASSIGNMENT (OR UNDERLETTING) L/L RESERVES RIGHT TO EXERCISE A PRE-EMPTION TO TAKE THE LEASE BACK (A SURRENDER) AT SAME PREMIUM AS OFFERED TO T IN MARKET
- ▶ Q. DOES THE EXISTENCE OF THE PRE-EMPTION DEPRESS THE RENTAL VALUE?
- ▶ A. PROBABLY NOT. THE LEVEL OF PREMIUM OFFERS (IF ANY) MIGHT BE LESS AS PROSPECTIVE ASSIGNEES MIGHT BID LESS (OR NOT BID) ASSUMING THAT L/L WILL EXERCISE THE PRE-EMPTION - BUT THE T BY EFFECTING A SURRENDER ESCAPES ANY DILAPIDATIONS LIABILITY AND ANY FUTURE LIABILITY WHICH MIGHT HAVE ARISEN IF THE ASSINGNEE DEFAULTED

USER - PERMITTED USER

- ▶ **PERMITTED USER** - NORMALLY LISTED IN THE DEFINITIONS
- ▶ IT WILL SPECIFY THE ACTUAL USE AND THE USE CLASS ,ie A1, A2, A3, B1,D2
- ▶ **OPEN USER** ie, LLCNTBUW (OD) WITHIN USE CLASS - OR SEVERAL USE CLASSES
- ▶ **QUALIFIED USER** - L/L CONSENT (NB S.19 L&T Act 1927 does not apply)
SO L/L DOES NOT NEED TO ACT REASONABLY
- ▶ **ABSOLUTE RESTRICTIVE USER** (10% DISCOUNT) - COMPETITION ACT 1998
- ▶ IS THERE AN **EXCLUSIVITY CLAUSE?**

- ▶ NB - AGA TERMS MAY FURTHER RESTRICT WHAT USE IS ACCEPTABLE
- ▶ NB - RENT REVIEW PROVISIONS MAY ASSUME NO USER RESTRICTIONS

RENT REVIEW PROVISIONS

- ▶ **RENT REVIEW DATE(S)** - THIS MIGHT BE THE ANNIVERSARY OF THE DATE OF THE LEASE OR THE STATED COMMENCEMENT DATE OF THE LEASE TERM OR THE REVIEW DATES MAY BE LISTED IN THE RENT REVIEW CLAUSE OR ELSEWHERE
- ▶ **RENT REVIEW PERIOD** - IN MODERN LEASES THIS IS LIKELY TO BE FIVE YEARS BUT MAY BE MORE OR LESS THAN FIVE YEARS AND THIS WILL IMPACT ON RENTAL VALUE
ie, 3 YR REVIEW PERIOD ADD 1or 2%. 14 YR PERIOD ADD 4.5% or 9%
0.5% TO 1% FOR EACH YEAR DIFFERENT TO STANDARD 5 YEAR REVIEW PERIOD
- ▶ **UPWARDS ONLY?** MOST MODERN LEASES WILL STATE THAT AT RENT REVIEW THE REVISED RENT SHALL NOT BE LESS THAN THE CURRENT RENT PASSING BUT IN SOME LEASES BY DESIGN OR DEFAULT THE RENT MAY BE SUBJECT TO DOWNWARDS PROVISION.
- ▶ **ASSUMED LEASE TERM** - WITHIN THE RENT REVIEW CLAUSE IT WILL STATE WHETHER THE LEASE TERM YOU ARE TO ASSUME IS THE UNEXPIRED TERM OR IT MIGHT STATE A MINIMUM TERM , SAY 10 YEARS OR IT MIGHT STATE THAT IT IS FOR THE WHOLE TERM OF THE ORIGINAL LEASE.
NB - ASSUMED LEASE TERM MAY BE DIFFERENT FROM ACTUAL UNEXPIRED LEASE TERM
- ▶ SEE CASE LAW **CANARY WHARF INVESTMENTS (THREE) V TELEGRAPH GROUP LTD 2003** WHERE THE DECISION WAS THAT THE WHOLE TERM OF 25 YEARS WAS TO BE ASSUMED. THE LEASE TERM ASSUMPTION HAS VALUATION IMPLICATIONS WHERE THE ASSUMED LEASE TERM IS LONGER THAN THE NORM FOR THAT MARKET SECTOR OR SHORTER THAN THE NORM FOR THAT MARKET SECTOR.
- ▶ IMPLICATIONS OF ASSUMED LEASE TERM LONGER THAN NORM OR SHORTER THAN NORM ?
- ▶ 5 YEARS MIGHT BE OK FOR A SINGLE SHOP UNIT - BUT 15/20/25 YEARS MAY BE TOO LONG AND MAY RESULT IN A POSSIBLE DISCOUNT.
- ▶ HOWEVER, 5YEARS/10YEARS WOULD BE REGARDED AS TOO SHORT FOR A LARGE STORE (DEPARTMENT STORE OR FOODSTORE) AND A DISCOUNT WOULD APPLY.
- ▶ **BASIS TO VALUE** - THE BASIC PREMISE OF THE RENT REVIEW IS TO ACHIEVE AN OPEN MARKET RENT AT THE RELEVANT REVIEW DATE. THE WORDING PROVIDES FOR A NUMBER OF ASSUMPTIONS AND DISREGARDS.

ASSUMPTIONS

- ▶ **VACANT POSSESSION**
- ▶ **WILLING LANDLORD + WILLING TENANT** (NOT IN S.34 L & T ACT 1954)
- ▶ ON SAME TERMS AS THIS LEASE OR HYPOTHETICAL LEASE? ARE YOU REQUIRED TO ASSUME THE SAME TERMS AS THIS LEASE OR AN HYPOTHETICAL LEASE.
- ▶ COMPARE LEASE TERMS TO THE RENT REVIEW ASSUMPTIONS - RENT REVIEW WORDING PREVAILS
- ▶ **LET AS A WHOLE** - ARE YOU REQUIRED TO ASSUME THAT THE PROPERTY IS LET AS A WHOLE OR PARTS (ACTUAL OR ASSUMED) AND ADOPT A RENT WHICH IS THE GREATER OF THE WHOLE/SUM OF PARTS
- ▶ **SPECIFICATION** - DOES THE LEASE REQUIRE YOU TO ASSUME THAT THE SPECIFICATION IS SHELL OR FITTED OR PART FITTED? ARE THERE ANY SCHEDULES OF FIXTURES AND FITTINGS ATTACHED?
- ▶ THE LEADING CASE ON THE ASSUMPTIONS WHICH ARE TO BE MADE REGARDING THE SPECIFICATION OF A UNIT IS **LONDON AND LEEDS ESTATES LTD V PARIBAS LTD [1995]** - *THAT THE DEMISED PREMISES ARE FIT FOR IMMEDIATE OCCUPATION AND USE AND THAT ALL FITTING OUT AND OTHER TENANT'S WORKS REQUIRED BY SUCH WILLING TENANT HAVE ALREADY BEEN COMPLETED.*
- ▶ **USE** - ARE YOU TO ASSUME THE ACTUAL USE (SEE USER CLAUSE IN LEASE) OR AN ASSUMED USE STATED IN THE RENT REVIEW PROVISIONS?

DISREGARDS

- ▶ HISTORICALLY DISREGARDS WERE LIMITED TO **TENANTS OCCUPATION, GOODWILL AND IMPROVEMENTS** (derived from s.34 L & T ACT 1954)
- ▶ **RENT FREE/CONCESSION/CAPITAL CONTRIBUTION ON LETTING** - IT IS NOW COMMONPLACE FOR MODERN LEASES TO CONTAIN WORDING TO THE EFFECT THAT A RENT FREE PERIOD AND/OR A RENT CONCESSION AND/OR ANY CAPITAL CONTRIBUTION BY A LANDLORD TO A TENANT ON LETTING ARE TO BE DISREGARDED. THIS IS NORMALLY EFFECTED BY USE OF WORDING SIMILAR TO THE FOLLOWING:
“THERE SHALL BE NO DISCOUNT, REDUCTION OR ALLOWANCE TO REFLECT (OR COMPENSATE ANY INCOMING TENANT FOR THE ABSENCE OF) ANY RENT FREE OR CONCESSIONARY RENT PERIOD WHICH REFLECTS THE TIME IT WOULD TAKE FOR THE INCOMING TENANT TO FIT OUT THE DEMISED PREMISES SO AS TO BE READY FOR IMMEDIATE USE OR ANY CAPITAL PAYMENT OR OTHER CONSIDERATION IN LIEU THEREOF AND WHICH WILL BE GRANTED TO THE WILLING LESSEE IN THE OPEN MARKET AT THE RELEVANT REVIEW DATE SO THAT SUCH OPEN MARKET RENT SHALL BE THAT WHICH WILL BE PAYABLE AFTER THE EXPIRY OF ANY SUCH RENT FREE OR CONCESSIONARY RENT PERIOD FOR FITTING OUT PURPOSES WHICH THE WILLING LESSEE SHALL HEREBY BE ASSUMED TO HAVE BEEN ENJOYED”.
- ▶ DISREGARD ONLY IN RELATION TO FITTING OUT PERIOD - THE WORDING ABOVE SEEKS TO ACHIEVE WHAT IS REFERRED TO AS A **DAY ONE RENT** i.e. AT RENT REVIEW A TENANT CANNOT ARGUE THAT THEY REQUIRE A RENT FREE PERIOD TO FIT OUT THE UNIT BECAUSE THEY ARE ALREADY ASSUMED TO HAVE HAD THE BENEFIT OF SUCH RENT FREE PERIOD.
- ▶ THIS WORDING HAS EVOLVED FOLLOWING THE CASE OF BROADGATE SQUARE-V-LEHMAN BROTHERS WHERE THE FOLLOWING WORDING WAS ADOPTED:
“ .. THE BEST YEARLY RENT WHICH WOULD REASONABLY BE EXPECTED TO BECOME PAYABLE AFTER THE EXPIRY OF A RENT-FREE PERIOD OF SUCH LENGTH AS WOULD BE NEGOTIATED IN THE MARKET UPON A LETTING OF THE PREMISES AS A WHOLE.....”
- ▶ THIS WORDING DOES NOT LIMIT THE INCENTIVES TO RENT FREE OR CAPITAL WHICH WILL BE THE EQUIVALENT OF THE PERIOD FOR FITTING OUT A UNIT - IT REQUIRES THE DISREGARD OF ALL INCENTIVES AND THEREFORE CONFERS A **HEADLINE RENT** - WHICH IS ONEROUS

TIME TRAPS - IS TIME OF THE ESSENCE

- ▶ ARE THERE SPECIFIED DATES FOR SERVICE OF **L/L's RENT REVIEW NOTICE OR T's COUNTER-NOTICE?** OR FOR APPOINTMENT OF AN ARBITRATOR
- ▶ FAILURE TO ADOPT THE CORRECT TIMESCALES MAY RESULT IN THE LOSS OF L/L's ABILITY TO EXERCISE THE REVIEW OR THE ACCEPTANCE OF A TENANT'S RENTAL OFFER OR THE INABILITY TO HAVE AN ARBITRATOR APPOINTED
- ▶ YOU NEED TO CAREFULLY RECORD ANY SUCH MECHANISMS BECAUSE TIME MAY BE OF THE ESSENCE .
- ▶ IS **TIME OF THE ESSENCE?**
- ▶ *UNITED SCIENTIFIC HOLDINGS LTD V BURNLEY BOROUGH COUNCIL* ([1978] –
- ▶ TIME IS NOT OF THE ESSENCE UNLESS IT IS STATED TO BE.
- ▶ **DEEMING PROVISIONS** – WORDS THAT MAKE TIME OF THE ESSENCE – IN RELATION TO SERVICE OF NOTICES OR REFERENCE TO 3RD PARTY, ie, “*BUT NOT AT ANY AT OTHER TIME*”
- ▶ *Mecca Leisure Ltd v Renown Investments (Holdings) Ltd.*
- ▶ *Starmark Enterprises Limited -v- CPL Distribution Limited*
- ▶ *Secretary of State for Communities and Local Government v Standard Securities Ltd*

DISPUTE PROCEDURE

- ▶ HOW IS RENT REVIEW DECIDED IF PARTIES CAN'T NEGOTIATE A SETTLEMENT?
- ▶ APPLICATION TO RICS? - WHO CAN APPLY - L/L OR T?
- ▶ **ARBITRATOR** (Umpire) or **INDEPENDENT EXPERT** - or option to choose?
- ▶ ARBITRATOR - GOVERNED BY ARBITRATION ACT 1996 Reasons - Award on costs
- ▶ IF EXPERT ARE REASONS REQUIRED? COSTS SHARED 50/50 OR DETERMINED
- ▶ RECORD THE TIME FRAMES FOR APPLICATIONS - TIME FRAMES FOR DECISIONS

▶ OTHER MATTERS

- ▶ INTEREST ON ARREARS?
- ▶ MEMORANDUMS TO RECORD SETTLEMENT?

OTHER CLAUSES

- ▶ **INSURANCE** - REDEVELOPMENT WHERE BUILDING DESTROYED - RENT COVER
- ▶ **PLANNING** - HAS T RIGHTS TO MAKE A PLANNING APPLICATION
- ▶ **L/L DEVELOPMENT** - WHAT RIGHTS RESERVED IN LEASE FOR L/L TO DEVELOP ADJACENT PROPERTY? - CAN T OBJECT
- ▶ **STATUTORY REQUIREMENTS** - T TO COMPLY WITH ALL STATUTES
- ▶ **FORFEITURE** - L/L'S RIGHTS TO TAKE BACK FOLLOWING BREACH BY T OF PAYMENT OF RENT, FAILURE TO REPAIR, BREACH OF ANY OTHER COVENANTS
- ▶ **LANDLORDS COVENANTS** - QUIET ENJOYMENT, INSURANCE, DEROGATION OF GRANT