DOUG STEVENS SEMINAR

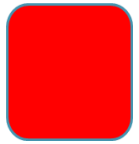
Monday 16th December 2019

08.00 HRS TO 09.00 HRS

VENUE

JLL
30 Warwick Street
London
W1B 5NH

SUBJECT



Apprentice Style Quiz
- 20 Questions on Property Issues 60 Mins

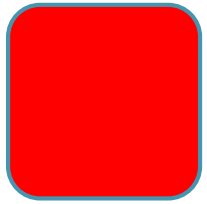
NEXT SEMINAR : 20th January 2020

Venue to be confirmed

Previous SEMINARS ***www.douglasstevens.co.uk SEMINARS***

A Tenant had a contracted out lease which expired on 1 December 2019 – but they are still in occupation

- Q. Are they ‘holding over’?



- Or

- Are they a ‘tenant at will’?

HOLDING OVER – or TENANT AT WILL

- In a contracted out lease the tenant has no rights to remain in occupation once the contractual expiry date has been reached
- A tenant staying in occupation after a contracted out lease has expired has no rights whatsoever
- **A. THEY ARE CLASSIFIED AS A 'TENANT AT WILL'**
- So the answer is

- The landlord can remove them at any time with no compensation
- If it were a lease inside the Landlord & Tenant Act 1954 the tenant can remain in occupation after the contractual expiry of the lease under the provisions of section 24 of The Act
- They are said to be 'holding over'

You granted a lease with security of tenure for a term of 10 years from 25 December 2009

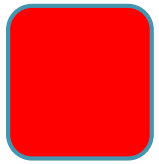
- Q. When is the earliest date you could as landlord have served notice to bring this lease to an end?

- 25 December 2018 

- 24 December 2018 

DATES FOR S.25 NOTICES

- The lease which commenced 25 December 2009 will contractually expire on 24 December 2019 (it was for 10 years not 10 years and 1 day)
- Under the L&T Act 1954 the maximum notice period for a S.25 Notice to terminate a lease is not more than 12 months (and not less than 6 months)
- The correct date is therefore 25 December 2018

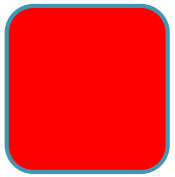


As landlord you granted a lease for a term of 5 years expiring 25 December 2019. You have not served a S.25 Notice and the tenant has not served a S.26 Notice

- Q. When is the earliest date you can as landlord terminate this lease?

- 24 June 2020

- 16 June 2020



DATES FOR S.25 NOTICES

- Although the lease granted for 10 years from 25 December 2009 is due to contractually expire on 24 December 2019 it will not end until either the landlord serves a S.25 Notice or the tenant serves a S.26 Notice
- In this case the landlord could serve a S.25 Notice **today 16TH December** giving the tenant a minimum of six months notice
- A. The answer is therefore 16 June 2020

- NB the not < 6 and not > 12 month period does not have to be on a quarter day
- So you could serve 6 months notice today

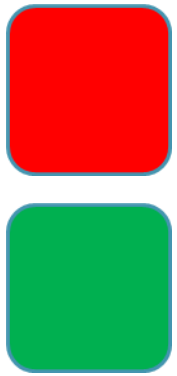
- You are a tenant of a shop unit on a lease inside the Act which expires 28 September 2020.

  The landlord has not served a S.25 Notice. The property is significantly over-rented.

  You wish to serve a S.26 Notice to bring your lease to an end (terminate it) and the notice specifies 28 September 2020.

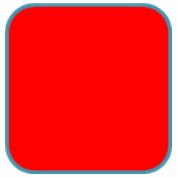
  Q. If you intend to renew the lease when is the latest date by which you must register this request / issue proceedings at the Court?

- 27 September 2020
- 24th March 2020



WHEN TO ISSUE PROCEEDINGS AT COURT TO RENEW LEASE HAVING SERVED A S.26 NOTICE

- The answer is a minimum of 1 day before the termination date stated in the S.26 Notice
- i.e. no later than 27 September 2020



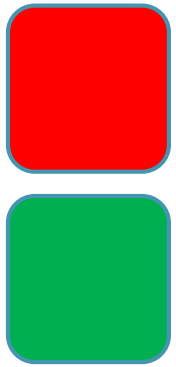
- Failure to do so will result in the tenant having no rights to renew the lease
- Having issued proceedings at the Court the tenants lease terminates on 28 September 2020
- BUT having requested a new lease and issued proceedings their lease continues under S.24 Landlord & Tenant Act – they are `holding over`
- They can then negotiate the terms of a new lease

When the Courts are assessing claims for negligence on behalf of valuers it is often the case that the incorrect valuation has resulted from a mis-measurement of the property or land

- Q. What is the tolerance or acceptable margin of error which the Courts will accept?

- 5%

- 1%



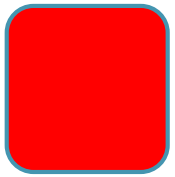
MARGIN OF ERROR FOR MEASUREMENT

- Whilst some buildings and land might be difficult to measure it will not vary in size according to the state of the economy or market conditions – it remains throughout the same size.
- Accordingly the margin of error permitted by the Courts is only 1%

- Whereas in relation to valuations of land or property which are subject to often volatile market conditions the Courts accept a margin of error of up to 10% and in very complicated cases up to 20%

Different types of property have different Use Class classifications

- Q. Do cinemas, nurseries and gyms all fall within the same Use Class ?



- YES

- NO

The relevant planning legislation is the Town & Country Planning Use Classes Order 1987

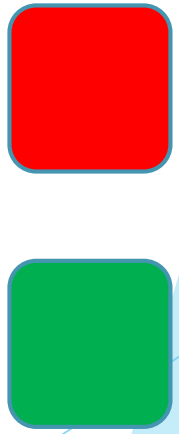
- A1 Shops
- A2 Financial
- A3 Restaurants
- A4 Pubs
- A5 Takeaway
- B1 Business
- B2 General Industrial
- B8 Distribution
- C1 Hotels
- C2 Residential Institutions
- C3 Dwellinghouses
- D1 Non-residential Institutions i.e. clinics, health centres, day nurseries, schools, art galleries, museums etc
- D2 Assembly and leisure - cinemas, music halls, bingo, swimming, skating, gymnasiums
- Sui Generis uses not within any class including betting shops, theatres, scrapyards, petrol filling stations, car showrooms, nightclubs, launderettes, casinos

- The answer to the question is that cinemas and gymnasiums fall within Class 2 and nurseries fall within Class D1

- Q. Is it the case that every lease of commercial premises granted since 1 January 1996 must contain an Authorised Guarantee Agreement (AGA)

- NO

- YES



AGA’S

- The Landlord & Tenant Covenants Act 1995 made it mandatory for all leases granted from 1 January 1996 to contain an Authorised Guarantee Agreement (AGA).
- So the answer is YES

- This means that if the tenant under the terms of the lease wishes to assign their lease to another party the landlord will as a condition of granting consent to the assignment require the tenant to enter into an Authorised Guarantee Agreement which guarantees that the incoming tenant (the assignee) will perform all the obligations in the lease.
- However should that assignee (the new party) then assign the lease the original tenant who provided the AGA would be released from their liabilities (unless the AGA expressly continues the liability).

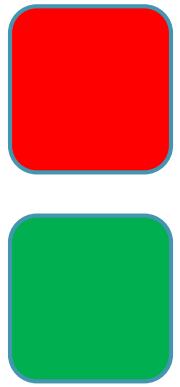
You have **recently purchased** the freehold of a shop unit which is let to a tenant on a lease inside the Landlord & Tenant Act which has **three years** left (expiring Dec 2022) to run before its contractual expiry

You wish to occupy the premises for your own occupation

- Q. Can you serve a 'hostile' S.25 Notice to gain vacant possession in December 2022 under Section 30 (g) of the Landlord & Tenant Act 1954

- YES

- NO



S.30 (g) Landlord & Tenant Act 1954 – own occupation

- A ‘hostile’ S.25 Notice is one which states that the landlord will object to the tenant renewing the lease.
- One of the 7 grounds under S.30 of the Landlord & Tenant Act 1954 to object - whereby a landlord can take back possession of a property for his own occupation is S.30(g)
- However there is a **5 year** qualifying role such that unless the landlord has owned the property for not less than 5 years before they seek possession of the property then they are unable to do so.
- In the case we are considering if the freeholder has just purchased the property which has 3 years unexpired they will not be able to obtain vacant possession by December 2022 –
- So the answer to the question is NO

- - BUT - were the landlord to delay serving notice to terminate the lease so that their period of ownership was 5 years by the date on which their `hostile S.25 notice was to terminate the lease then this would be a valid qualifying ground to secure vacant possession.
- Statutory compensation would be payable to the tenant

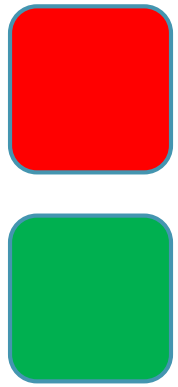
The RICS Code of Measuring Practice (COMP 6th Edition) provides guidance for the measurement of offices, industrial, residential and retail premises.

International Property Measuring Standards (IPMS) have now been adopted to bring the UK into line with measuring practices in other countries.

- Q. Is it now mandatory for IPMS to be adopted by Chartered Surveyors for the measurement of offices, industrial, residential and retail ?

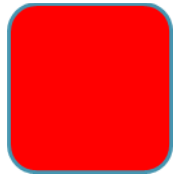
- YES

- NO



Mandatory measuring practice

- IPMS has now been formally approved for the following sectors:
  - Offices, industrial, residential
- Where introduced they have become mandatory some time ago. Until recently IPMS for retail was still under consultation.
- BUT IPMS Retail Buildings has now been published (and has become mandatory) since **16 September 2019**
- So the answer to the question is YES



- However, in practice, surveyors can, with their clients consent, continue to adopt RICS COMP 6th Edition bases of measurement rather than the new IPMS bases of measurement
-

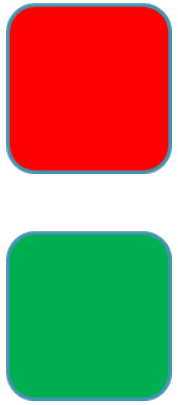
- You are dealing with a lease renewal under the Landlord & Tenant Act 1954.

  You have yet to reach agreement with the other side as to the rental level or indeed as to the proposed length of the new lease

- Q. Which of these two issues needs to be agreed first?

  - Rent

  - Lease Term



Order of dealing with L & T Act issues

- Whether the lease renewal is to be settled by way of negotiation between the parties or a County Court by a Judge or by a PACT Arbitrator or PACT Independent Expert there is a defined, logical order in which the issues should be resolved.
- The first matter to be resolved is lease length which falls under S.33 of the Landlord & Tenant 1954

- Accordingly the answer is LEASE TERM first then rent

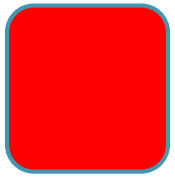
- The second issue to be decided is any other terms in the lease such as break clauses, repairing clauses, alienation provisions etc. These fall under **S35 of the L&T Act 1954**
- The last matter to be decided is the rent (because this may well be influenced by the length of the term and any other terms of the lease)
- This is dealt with under S.34 of the L&T Act 1954

You are dealing with a commercial building (office or retail or industrial). In whatever commercial sector the property is in it must comply with the relevant Fire Regulations.

There is only one means of escape from this property (i.e. no other fire escape doors or exits)

- Q. What is the maximum travel distance which fire regulations will permit before some secondary means of escape would need to be provided ?

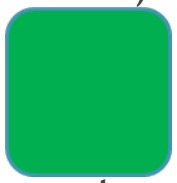
- 36 metres



- 18 metres

Travel distances for Fire safety

- Fire Regulations for commercial buildings are now dealt with under the provisions of the **Regulatory Reform (Fire Safety) Order 2005**
- There are currently nearly 20,000 commercial fires in the UK each year so fire safety is of the utmost importance
- The person Responsible for the building (who may be the owner, the landlord, the employer, the occupier, a facilities manager or a managing agent) will be responsible for:
  - Carrying out a regular fire risk assessment
  - Informing staff of any safety risks identified
  - Ensuring appropriate fire safety measures are in place
  - Maintaining the safety measures
  - Providing fire safety information instructions and training to staff
  - Creating adequate safety plans to be carried out in the event of an emergency
- The maximum permissible travel distance is 18 metres and the exit must lead as directly as possible to a place of safety which may be to the open air (where unrestricted dispersal away from the building can be achieved) or to a protected corridor or stairway

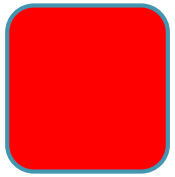


- So the answer is 18 metres
- If, for instance, a rectangular retail unit has a standard front door but a fire escape door to the rear it could then be 36 metres travel distance as the distance is 18 metres each way from the furthest point.

It is relatively common for there to be an assumption within the rent review provisions that the demised premises are assumed to be
“ *fit for immediate occupation and use and occupation* ”

- Q. Does this mean that you value the property as though it is fitted out by the tenant –
- i.e. that you should add an additional sum to the open market rent to ?

- NO

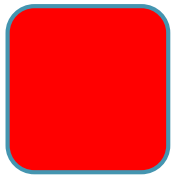


- YES

Assumed specification at rent review

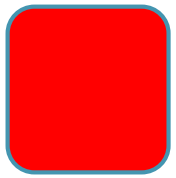
- This wording sounds like you are to assume that the property is fitted out and so you should add something extra to the open market rent to reflect the fact that it is “fit for immediate occupation”.
- However that is NOT what this wording means
- The leading case on this issue is **London & Leeds Estates Limited vs Paribas Limited (1995)**
- It effectively determined that where such wording occurs it is valuation neutral
- i.e. it does not mean that the landlord can value fixtures and fittings or that the tenant can argue for a rent free period for fitting out
- It simply means that the property is in a state ready to receive the tenants fixtures and fittings
- It is not therefore possible to secure a rent greater than 100% by the landlord – nor is it possible for the tenant to argue that they should have the equivalent of a rent free period to fit out the property

- So the answer is NO



The lease of the property you are dealing with states that "*there should 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 the incoming tenant to fit out the demised premises so as to be ready for immediate use*".

- Q. Is this a headline rent assumption?



- OR

- Q. Is this a 'Day One' (net effective) rent assumption?

HEADLINE AND NET EFFECTIVE RENT

- Most modern leases are worded such that at rent review the tenant cannot argue for a discount for the equivalent of a rent free period.
- This is referred to as a 'Day One' rent assumption i.e. rent is payable from the first day of the rent review date with no allowance being made for any rent free which might be obtained in the open market on a new letting.
- It is now commonplace for suitable wording, as per above, to be used such that, in effect, it is assumed that the tenant has already had the benefit of a rent free period within which they are assumed to have fitted out the property.
- The material words are a **"rent free period for fitting out".** **Answer is 'Day One' - rent**

- HOWEVER if there is no reference in the wording for a period for "fitting out", wording of this nature will be categorised as a 'Headline Rent'. This means that if a capital sum or lengthy rent free period would be needed to effect a letting in the marketplace and any such capital sum or lengthy rent free period is assumed to have already been enjoyed by the tenant then the tenant is being asked to pay a headline rent (gross of incentives) and this is regarded as significantly onerous.
- The major court case on this is Broadgate Square plc vs Lehman Bros Limited (1995) where the wording was:
  - *"The best yearly rent which would reasonably be expected to become payable in respect of the premises after the expiry of a rent-free period of such length as would be negotiated in the open market between a willing landlord and a willing tenant".*
  - The judgement was that it was "held to be impossible to confine the relevant words to fitting out rent free periods only, such that there was no escape from the conclusion that the reviewed rent was to be a headline rent.

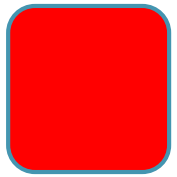
The Rateable Values of commercial buildings are decided by the Valuation Office Agency (VOA)

They adopt a fixed valuation date and then publish the valuation list at a later date

The previous valuation date (known as the Antecedent date) was 1 April 2015

- Q. When is the next antecedent date?

- 1 April 2021



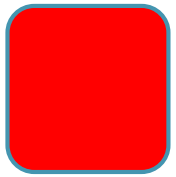
- 1 April 2019

ANTECEDENT DATE for assessment of Rateable Values

- The antecedent date is 1 April 2019
- So the answer is 
- The VOA have already started to calculate the rateable values of commercial / business premises
- The new valuation list is generally published five years after the last list so this should l be 1 April 2022 but the government have elected to move this forward one year so that the new list would come into effect 1 April 2021

The retail sector has been hit hard by Administrations and Company Voluntary Arrangements (CVAs)

- Q. Is a pre-pack the same thing as an Administration and/or a CVA?
- YES



- NO

ADMINISTRATION / CVA

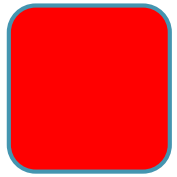
- A CVA is an arrangement whereby a company wins permission from a Court to prepare a plan to present to its creditors to enable the company to survive – in most cases paying its creditors less than they are actually owed.
- It requires 75% of the creditors to vote in favour of the CVA
- An Administration also requires a Court Order and allows the reorganisation of the companies affairs or realisation of its assets for the benefit of creditors. The key aim is to rescue the company so that it can continue trading as a going concern.
- If the Administrator trades from the premises then the rent and other outgoings must be paid. If not then no rent is payable.
- A pre-pack is an insolvency process which allows a viable but insolvent business to be sold in order that it can continue trading without the burden of its debts. It protects the limited company from action from creditors and is a pre-package sale of the companies assets.
- A new company is formed and the old company is transferred to the hold company. The old company is then put into administration. It is often the directors of the 'Old Co' who form the 'New Co'.
- So the answer is that a PRE - PACK is different from a CVA or Administration
- Clinton Cards is a recent pre-pack sale

There is often a period of time between the contractual expiry of a lease inside the Act and the date when a new lease is agreed and this is referred to as an interim period.

The rent payable during this interim period is referred to as an interim rent.

- Q. Is the interim rent assessed on exactly the same basis whether the tenant does renew their lease - or- does not to renew their lease?

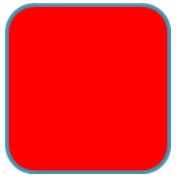
- NO



- YES

INTERIM RENT – 2 BASES OF VALUATION

- When the Landlord & Tenant Act 1954 was enacted no consideration was given to the period which might elapse (the interim period) between the old lease expiring and the new lease commencing – or – the tenant ultimately deciding not to renew the lease.
- An amendment was made in 1969 (Law of Property Act) and also in 2003 Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 which altered Section 24 of the Landlord & Tenant Act the provision under which the lease continues after expiry – the 'holding over' period
- Two provisions were made for the calculation of interim rent:
  - 1. If the tenant did take a new lease
  - 2. If the tenant didn't renew or the landlord secured vacant possession under Section 30
- The valuation differences are as follows:
  - 1. Section 24(c) – If the tenant does renew the lease then the interim rent they pay for the interim period is generally the same as the rent which will be payable under the new lease unless it can be demonstrated that there are substantial differences in the rent or lease terms.
  - 2. Under the provisions of Section 24(d) if a new lease is not taken up by the tenant then the basis of assessment is different:
    - It is assumed that the tenancy is granted from year to year (an annual tenancy) and (should it be the case) if there is a significant rental increase a deduction should be made to 'temper the effect' of that increase - often this was a 10% discount
    - So the answer is NO



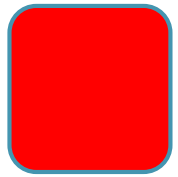
You are landlord of a property on which the tenant has a full repairing and insuring (FRI) lease.

However they have failed to keep the premises in good repair.

You are worried that at the forthcoming rent review the Arbitrator (or Independent Expert) will put a lower rent on the property because of the disrepair.

- Q. Should you be worried?

- YES



- NO

IMPACT OF DIS-REPAIR ON RENTAL VALUE AT RENT REVIEW

- It is invariably the case that one of the assumptions in the rent review provisions in a lease which is held on FRI terms is that the
- "*tenant has fully complied with the covenants in the lease*"
- and these would include the covenants to repair and decorate
- Accordingly no discount should be made from a full open market rental value

NO you needn`t be worried

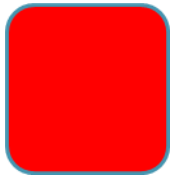
Planning authorities often seek payments or commitments from developers to carry out additional works as a condition of granting planning permission.

They can require the developer to enter in to a S.106 Agreement

– or –

make a payment (a levy) under Community Infrastructure Levy (CIL)

- Q. Is a S.106 Agreement and a CIL the same thing?
- YES



- NO

Are S.106 Agreements & CIL's the same thing?

- **Section 106 of the Town and Country Planning Act 1990** (as amended), commonly known as **s106 agreements**, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable
- Following negotiation between the developer seeking planning consent and the planners the two parties will enter in to a binding legal document confirming what payment the developer must or what works (ie, build a road) the developer must do as a condition of receiving planning consent.
- The Community Infrastructure Levy (CIL) is a planning charge, introduced by the Planning Act 2008, as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area. It came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010.
- Development may be liable for a charge under CIL if your local planning authority has chosen to set a charge in its area. It varies Council to Council
- New developments that create net additional 'gross internal area' of 100 square metres or more, or create new dwellings, are potentially liable for the CIL levy
- They are different – So the answer is NO

- Both S.106 and CIL may apply on the same planning application

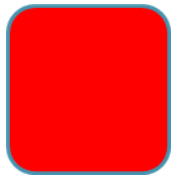
Tenant makes an application for licence for alterations/improvements ▫ t wishes to put in a new feature staircase between g/f & f/f cutting through the floor slab so that they can use f/f for sales

l/l`s consent is not to be unreasonably withheld for non-structural alterations and structural alterations

L/L can see that the proposed works will add to the value of the property.
If L/L gives consent the works will count as Tenants improvement and be disregarded at rent review and lease renewal (if within last 21 years)

- Q. The L/L says he will approve the application for the improvements BUT wishes to carry out the work himself at his own cost and put the rent up accordingly and the works will NOT count as Tenants improvements

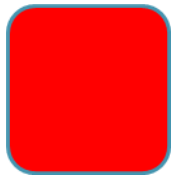
- Can the L/L do that?

- YES 

- NO 

Can L/L carry out Tenants improvements?

- The answer is YES



- The cutting of a hole in the floor slab and the installation of a sales staircase will constitute structural works. A secondary fire escape may also be required.
- As the lease states that L/L's consent for non-structural & structural works is NOT to be unreasonably withheld the L/L must give consent.
- However even though there may be no reference to this in the lease the L/L can carry out the works at his own cost and charge a reasonable increase in rent
- The L/L uses S.3 of the Landlord & Tenant Act 1927

You own a hotel in London and part of the building has a shop unit within your ownership on which you wish to secure vacant possession.

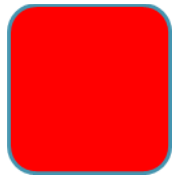
The shop lease is inside the L & T Act 1954.

You have served a ‘hostile’ S.25 notice objecting to the renewal of the lease because you want the shop unit back

Your ground of objection is S.30 (f) – re-development. The tenant wants to renew.

- Q. You don’t actually need vacant possession as part of a larger scheme.
- You don’t actually intend to do the works of alteration/re-development that your plans and proposals specify – you hoped that facing a big legal case the tenant would vacate willingly
- Can you persuade the Court to give you vacant possession?

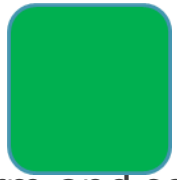
- YES



- NO

Intention S.30 (f) L & T Act 1954

- The answer is NO



- Ground (f) requires a firm and settled intention to carry out the scheme of works.
- It was held that the landlords proposed scheme of works was "designed with the material intention of undertaking works that would lead to the eviction of the tenant regardless of the works' commercial or practical utility and irrespective of the expense".
- Ground (f) assumes that the landlord's intention to demolish or reconstruct the premises is obstructed by the tenant's occupation.
- This is exemplified by (i) the words "could not reasonably do so without obtaining possession of the holding" in section 30(1)(f) and (ii) section 31A, which precludes a finding that ground (f) has been satisfied if the works can reasonably be carried out by exercising a right of entry that the tenant is willing to include in the terms of the new tenancy [
- It follows that the landlord's intention to carry out the works cannot be conditional on whether the tenant chooses to assert his claim to a new tenancy. The intention to demolish or reconstruct the premises must exist independently of the tenant's statutory claim to a new tenancy
- **S Franses Ltd (Appellant) v The Cavendish Hotel (London) Ltd (Respondent) [2018] UKSC 62 On appeal from [2017] EWHC 1670 (QB)**