

3-4 DIGEST



a monthly review of relevant news, cases and articles Vol 14 No 1 | June 2008

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 Marcus Haywood
 Hannah Thornley
 Simon Fuller
 William Willson
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 Professor Muir Hunter QC
 Professor Ian Fletcher
 Professor Sarah Worthington
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It is with great sadness that we report the death of Marion Simmons QC on 2 May 2008. Over the 18 years for which Marion was at 3-4 South Square, she was a much loved and highly valued member of chambers. Her enthusiasm and dedication to her practice and her professional colleagues will be missed by us all. An obituary appears below.

In a much publicised judgment, Mr Justice Andrew Smith has held that terms imposing current account bank overdraft charges were not excluded from assessment for fairness under the Unfair Terms in Consumer Contracts Regulations 1999. Those charges were not, however, capable of amounting to penalties at common law. Robin Dicker QC and Jeremy Goldring appeared for HBOS plc.

In *Re Whistlejacket Capital Ltd* the Court of Appeal has had cause to consider the meaning of certain security documents relating to a structured investment vehicle incorporated in Jersey. Robin Dicker QC and Barry Isaacs appeared for the receivers. Meanwhile in *Coyne v DRC Distribution Ltd* the Court of Appeal has considered some of the circumstances in which a costs order will be made against an administrator personally. David Alexander QC appeared for DRC Distribution Ltd.

On 23 May 2008, Mr Justice Patten appointed 27 May 2008 as the relevant date for the purpose of bringing into force schemes for the transfer of property, rights and liabilities of Metronet Rail BCV Ltd and Metronet Rail SSL Ltd to two nominee companies of Transport for London. The purpose of the PPP administrations has been achieved by the bringing into force of the transfer schemes. Gabriel Moss QC and David Allison acted for the PPP administrators and William Trower QC and Tom Smith acted for Transport for London.

This edition of the Digest was prepared by William Willson.

Marcus Haywood

OBITUARY

Marion Simmons QC (11 April 1949 – 2 May 2008)

Marion Simmons, called to the Bar in 1970, began her career at the chambers of Patrick (subsequently Lord) Neill QC at 2 Hare Court in Middle Temple. Whilst there, she built up an impressive junior practice in commercial work and appeared in a number of high profile and reported cases. In the late 1980's, at a time in her career when she might have been contemplating taking silk, she instead changed direction to work with Peter Whiteman QC on tax and judicial review matters. In order to

develop a practice in that area, she moved to his chambers at Queen Elizabeth Building in 1989. The break up of those chambers the following year meant that Marion's career underwent a second major change of direction within as many years as she found a new home at 3-4 South Square. It was typical of her commitment and determination that she rose, uncomplaining, to this new challenge of building a career in insolvency and related areas. To her new colleagues, she was a dedicated and selfless source of help and advice. The move to Gray's Inn

also saw an increase in her work (much of it unspoken and behind the scenes) both in Gray's Inn, particularly in helping in the development of its advocacy training for students, and in the Bar Council, where was she instrumental in pioneering the Bar Direct Access scheme. In 1993 she was one of the first women juniors to be made a Bencher of Gray's Inn. The following year she was appointed a QC. Thereafter, alongside her practice, she developed a broad and successful judicial career. She had been an assistant recorder since 1990, and was appointed a recorder in

1998. She was appointed vice-chairman of the appeals committee of the Institute of Chartered Accountants of England & Wales (in 2000), a member of the Mental Health Review Tribunal Restricted Patients Panel (also in 2000), a member of the Accountancy Investigation and Disciplinary Board (2005) and, in 2003, part time chairman of the Competition Appeal Tribunal. In October 2007, she was appointed to chair the Persons Appointed Panel of the Medicines and Healthcare Products Regulatory Agency. She continued with her work with these latter two tribunals in particular through many months while she battled privately with, and seemingly overcame, cancer. When, in late April 2008, she learned that in fact she had only a week or two to live, she let it be known, and was deluged with messages and visits from hundreds of colleagues and friends throughout the legal profession, including her colleagues at 3-4 South Square. The messages and visits reflected how well she was known and loved by a great many at all levels in the profession, and this was undoubtedly a great comfort to her in her last few days. Her bravery in this period was exemplified by her insistence on completing a judgment for a Competition Appeal Tribunal, holding conferences with her fellow panel members from her hospital bed. She leaves behind, as well as her sister Jenny and her family, of whom she was immensely fond and proud, the many friends she gathered over the years, with whom she loved to share her passion for music

and theatre and entertaining at her house in Sussex and her colleagues, for whom she was a tireless help and support. She will be greatly missed by everyone who knew her.

[Gabriel Moss QC;
Robin Dicker QC;
William Trower QC]

BANKING

Office of Fair Trading v Abbey National PLC and Ors [2008] EWHC 875 QBD (Commercial Court) (Mr Justice Andrew Smith), 24 April 2008

Notwithstanding that they were (save in limited and minor respects) in plain intelligible language, terms imposing current account bank overdraft charges were not excluded from assessment for fairness under the Unfair Terms in Consumer Contracts Regulations 1999 as relating to the adequacy of the price or remuneration as against the services supplied in exchange within the meaning of Regulation 6(2)(b). Those charges were not, however, capable of amounting to penalties at common law.

[Robin Dicker QC;
Jeremy Goldring]

CIVIL PROCEDURE

The Brunei Investment Agency v Prince Jefri Bolkiah Unreported ChD (Peter Smith J), 11 June 2008

The BIA brought proceedings for committal against Prince Jefri based on various allegations of contempt of court, namely that he was in breach of freezing injunctions and orders for disclosure of his assets, and caused false evidence to be

placed before the English court in the previous committal proceedings brought by the BIA against Prince Jefri in 2005. The committal proceedings arose out of continuing litigation between the BIA and Prince Jefri in which the BIA is seeking to have Prince Jefri comply with the terms of an out-of-court settlement he reached with the BIA and the Government of his Majesty the Sultan in May 2000. In November 2007, the Privy Council rejected Prince Jefri's defences to the BIA's claim for specific performance of that agreement, and ordered that he must comply with its terms. Prince Jefri failed to attend the trial of the BIA's committal application. His lawyers indicated that he was not prepared to attend the trial voluntarily and was currently abroad. The Judge considered it appropriate in the circumstances of the case to issue a bench warrant for Prince Jefri's arrest, not backed for bail, in order to compel his attendance at Court. The hearing of the trial has been adjourned pending the execution of the warrant for arrest.

[Martin Pascoe QC;
Stephen Atherton QC;
Richard Fisher]

Renewable Power & Light PLC v (1) Renewable Power & Light Services Inc (a company incorporated under the laws of Alberta) (2) David M Lewis (3) Dominic Colvin [2008] EWHC 1058 (Ch) ChD (Lewison J), 16 May 2008

In a without notice application for a freezing order, the Claimant ("C") had obtained a freezing order against one of the

Defendants ("L") on the basis that he had been acting in breach of certain lock-in arrangements. This basis was wholly false. C sought the continuance of the freezing order and/or L's undertakings on the basis that L was, by disposing of his share capital, attempting to make himself judgment proof by dissipating the proceeds of that sale. In this context, C relied upon payments that had been made by L from the share sale proceeds before the date of the freezing order. C also relied upon the nature of the allegations made against L in the substantive action which it argued necessitated an inference that he would attempt to make himself judgment proof by dissipating his assets. The Judge held that there was no evidence that L had been making unjustified payments from the proceeds of his sale of shares or that L was or had any intention of evading his legal obligations. Further, the Judge held that the allegations made against L in the substantive action did not justify the inference that he would be likely to make himself judgment proof unless restrained. C was ordered to pay indemnity costs after the date it became clear that the freezing order had been obtained on a false basis. L continued undertakings pending an appeal by C.

**[Antony Zaccaroli QC;
Felicity Toubé]**

COMMERCIAL LITIGATION **Westacre Investments Inc v The State-Owned Company Yugoimport [2008] EWHC 801 (Comm)** **QBD Commercial Court (Tomlinson J), 21 April 2008**

The Claimant ("C") had obtained an arbitration award against the Defendant ("D") in respect of which the High Court had subsequently entered judgment in March 1998. C sought registration of the judgment in Singapore with a view to then obtaining a garnishee order in respect of funds in Singapore belonging to D. The application for registration in Singapore was made (in October 2004) more than six years after the date of the judgment. The Singapore Court of Appeal directed C to apply to the English court to determine whether it would have made a third party debt order in respect of an assumed debt in England at the date on which registration of the English judgment was initially permitted in Singapore. Held that conceptually a judgment, although interest bearing for only six years, remained enforceable without limit of time. Different procedural rules applied to the different methods of enforcement. The power to make both an interim third party debt order, and the final order, was discretionary. The rule made no reference to the time elapsed since the date of the judgment. The lapse of six years since judgment carried no special significance and was simply one factor to be taken into account in the overall exercise of discretion. On the facts of this case, the Court would have made a third party debt order in October 2004, on the assumption that there was

a debt within the jurisdiction. In the absence of some compelling evidence of prejudice to the judgment debtor accruing from the delay in enforcement, the Court would regard the grant of garnishee relief as virtually axiomatic.

[Michael Crystal QC; Tom Smith]

TeliaSonera Finland Oyj v Alfa Telecom Turkey Limited **Unreported** **High Court of the British Virgin Islands, 9 May 2008**

On an application for an interlocutory injunction, the Court should not attempt to determine difficult questions of law which call for detailed argument. The Court so held in granting an interlocutory injunction restraining Alfa from registering the transfer of shares, valued at approximately US\$2.9 billion, in a BVI company holding a significant interest in the Turkish mobile telephone provider, Turkcell. The Court subsequently ordered that fortification of the substantial cross-undertaking in damages could be met either by payment into Court or by the provision of a suitable guarantee, provided it was given by a bank with a place of business in the BVI.

[Ben Valentin]

COMPANY LAW **The Brunei Investment Agency v His Royal Highness Prince Jefri Bolkiah** **Unreported** **The Grand Court of the Cayman Islands** **(Henderson J), 5 June 2008**

In May 2000, the Brunei Investment Agency ("the BIA") entered into a Settlement Agreement whereby Prince Jefri

was required to transfer all his assets to the BIA. Prince Jefri failed to comply with his obligations under the Settlement Agreement. The High Court of Brunei Darussalam made orders requiring Prince Jefri to transfer his assets to the BIA including, in particular, the shares owned by him in a Cayman Islands company. The Cayman Islands company indirectly owned the Hotel Bel-Air in Los Angeles. Prince Jefri having failed to comply with the relevant orders, further orders of the High Court of Brunei Darussalam ordered the execution by the Registrar of share transfers on behalf of Prince Jefri in favour of the BIA. The BIA then applied to the Grand Court of the Cayman Islands for an order pursuant to section 46 of the Companies Law (2007 Revision) seeking rectification of the register of members of the Cayman Islands company with a view to obtaining ownership and control of the Hotel Bel-Air. Applying *Pattni v Ali* [2007] 2 AC 85, Henderson J found that the orders made by the High Court of Brunei Darussalam were orders in personam for specific performance by Prince Jefri of his obligations under the Settlement Agreement and not orders which operated in rem. Henderson J further concluded that the effect of *Pattni v Ali* (in particular at paragraph [27]) and *Miller v Gianne and Redwood Hotel Investment Corporation* [2007] CILR 18 was to change the law of the Cayman Islands: foreign judgments that are enforceable directly in the Cayman Islands are no longer confined merely

to money judgments for a debt or definite sum.

**[Martin Pascoe QC;
Stephen Atherton QC]**

CORPORATE INSOLVENCY
Re Whistlejacket Capital Ltd (in receivership)
[2008] EWCA Civ 575
CA (Civ Div) (Lord Phillips LCJ, Jacob and Lloyd LJ),
22 May 2008

The Company was a structured investment vehicle whose receivers brought proceedings for directions as to how they should proceed, in circumstances where the assets of the Company were inadequate to meet its liabilities. The liabilities with which the case was primarily concerned were those under US medium term notes ("USMTN"). The dispute was as to priority between creditors, and turned as to one point on the security trust deed ("STD") and as to the order on the Indenture governing the USMTN. Clause 6.6 of the STD provided that "any monies received by the Security Trustee or any Receiver after the Enforcement Date shall be applied in the following order of priority..." and listed various classes of creditor in the sub-clauses which followed. The Court held that Clause 6.6 did not impose an obligation to pay money, but rather an obligation as to how money was to be paid as and when it came to be paid. Clause 6.6 dealt only with priority of payment, not with time of payment. As regards priority of payment it prescribed the position as between successive classes of creditor, as set out in the sub-clauses, not within such classes. During the period before insolvency, when the view would

be taken that the Company's assets were sufficient to enable it to discharge its obligations of payment to Senior Creditors (and those with a higher priority) as and when they fell due, the receivers would be able to pay out sums as they fell due for payment, relying on the adequacy of the remaining assets for future payments. Once insolvency arrived, if it did, the receivers would be able to exercise a discretion normal on the part of receivers as to how to realise assets, what reserves or retentions they should make, and what they could properly pay out. In paying out they would need to be aware of the obligation to pay each class of creditors pro rata and pari passu, including for any debts due but not yet payable. Section 10.01(c) of the Indenture obliged the Company, following an Insolvency Acceleration Event, to give notice of not less than 20 nor more than 30 days to the Trustee of the Indenture of a date on which the Company would be obliged to pay the holders of USMTN, in whole, an amount by way of redemption of the USMTN, that date being no later than 30 days after the service of the Security Trustee's notice of an Insolvency Acceleration Event on the Company. If the Company did not give such a notice (as in fact it did not) the due date for payment was 30 days after the Security Trustee's notice. The Court held that Section 10.01(c) had the effect of imposing a new obligatory payment date. This applied to all USMTN which were outstanding, not having been paid in full, including those falling due for payment on the date of the Insolvency Acceleration Event. It followed that the effect of the

clause would be either to postpone, accelerate or leave unchanged the payment date in respect of USMTN, depending on the original maturity dates.

**[Robin Dicker QC;
Barry Isaacs]**

**In re Metronet Rail BCV Ltd
(in PPP administration) and
In re Metronet Rail SSL Ltd
(in PPP administration)
Unreported
Ch D (Patten J), 23 May
2008**

The PPP administrators applied to the Court for an order pursuant to paragraphs 1(2) and 3 of Schedule 15 to the Greater London Authority Act 1999 (“the GLA Act”) that the Court appoint 27 May 2008 as the relevant date for the purpose of bringing into force schemes for the transfer of property, rights and liabilities of BCV and SSL (“the Transfer Schemes”) to two nominee companies of Transport for London (“TfL”). The purpose of the PPP administrations (as set out at section 220(2) of the GLA Act) would be achieved by the bringing into force of the Transfer Schemes. A pre-administration creditor of SSL (whose claim was not to be transferred as one of the relevant liabilities to the new PPP nominee company, with the consequence that the claim would remain in an insolvent company) appeared before the Court and submitted that (i) it had serious concerns in relation to its treatment under the Transfer Scheme of SSL; (ii) it wished to apply for an adjournment of the hearing for the appointment of the relevant date provided the Court was prepared to make a pre-emptive

costs order in its favour limited at least to indemnifying or preventing it from being made to pay the costs of the adjournment in the event that ultimately it either decided not to challenge the relief sought on the application or it did decide to challenge it and was unsuccessful. Mr Justice Patten held that it would not be a proper exercise of his discretion to give the costs protection which was sought. The learned Judge placed reliance on the following matters: (i) The Court would need to be satisfied, albeit on a preliminary basis, that there was at least something approaching an arguable claim or issue which was relevant to the exercise of the Court’s discretion when appointing the relevant date for the Transfer Schemes; (ii) Under the terms of the GLA Act the Court’s function appeared, under Schedule 15, to be limited simply to fixing the date for the commencement of the Transfer Schemes; (iii) Although the consent of “other appointees” to the Transfer Schemes was required under the GLA Act, as a matter of construction these words were limited to another relevant PPP company and did not include the ordinary creditors of the PPP company. Accordingly, without having to decide the point, there was a very significant question mark as to whether or not the creditor had locus to bring an application for an adjournment; (iv) There was no challenge to the way in which the PPP administrators had conducted themselves in relation to the Transfer Schemes; (v) The evidence revealed that the contract with the creditor had

been terminated and the new PPP company had deemed it unnecessary to take a transfer of any liabilities under the contract in order to perform the relevant activities as defined, i.e. the carrying on of the running of the London Underground, under the Transfer Schemes; (vi) The consent of the new PPP company was a pre-requisite to the transfer of the liabilities under the contract, and a refusal of consent was, on the face of it, an insuperable obstacle to a challenge to the effect that those liabilities should have been transferred; (vii) The creditor was not currently able to do more than to indicate the sort of areas that it might wish to probe if it were given the indemnity and an adjournment was then granted; (viii) By way of analogy, on an application pursuant to section 425 of the Companies Act 1985 to sanction a scheme of arrangement, the Court would not determine in advance whether or not a particular opposing creditor should be protected from a costs order against it. Mr Justice Patten went on to appoint 27 May 2008 as the relevant date for the purpose of bringing into force the Transfer Schemes.

**[Gabriel Moss QC;
William Trower QC;
David Allison;
Tom Smith]**

**(1) Martin Thomas Coyne
(2) Matthew Douglas
Hardy v (1) DRC
Distribution Ltd (2)
Christopher Foster
[2008] EWCA Civ 488
CA (Civ Div) (Ward, Jacob,
Rimer LJJ), 15 May 2008**

The appellant insolvency

practitioners ("C") appealed against an order requiring them to pay personally the costs of an application by the first respondent ("D") to remove them as administrators of a company ("U"). D was a substantial creditor of U. U became insolvent and its managing director ("F") appointed C as joint administrators. Before that F had caused U to transfer its plant and machinery and trade marks to another company ("UI") and to transfer its premises to himself. U ceased to trade and UI took over its business and employees. After their appointment C indicated that they would take steps to recover U's property, if necessary by court proceedings against F. In the event C never recovered any of U's assets and took no proceedings to that end. C tried to sell the business to D but that was not possible because what C were able to sell was unclear. When D learned that C were proposing to deal with UI and F, it applied for C to be removed as administrators. UI did not proceed with its offer for the business and C concluded that the purpose of the administration could no longer be achieved. C then applied for their appointment to cease and for U to be compulsorily wound up. The Judge made a winding-up order and terminated C's appointment. Nothing remained of D's application save the question of costs. The Judge ordered C and F jointly to pay D's costs. C argued that, in ordering them to pay the costs, the Judge had adopted a summary procedure when he should not have done and that he should not have considered

making the findings and order that he did without first giving C the opportunity of explaining their position from the witness box. Held, that D had been entitled to ask the Court to rule on its application for costs against F and C, and C had no right to insist that, before deciding the costs question, the Judge should hear oral evidence from, and cross-examination of, the witnesses. The Judge was in principle entitled to embark on an assessment of the incidence of costs in a summary way. He had read the evidence and heard full argument from counsel; and his conclusion was that all he had read and heard pointed to the conclusion that he should make the costs order he did. The relevant considerations justified the Judge's conclusion that, had the substantive issues on D's application remained alive, he could and would have removed C under para 88 of Schedule B1 of IA 1986. Whether or not C should have accepted the appointment in the first place, they should not have entertained any thought of an attempted sale of the business and assets before recovering them from F and UI. Only then would they be in a position to invite offers from interested parties on a level playing field and to deliver the business and assets to the winning bidder. Without an unscrambling of the transactions, the purpose of the administration could not be achieved, nor was it. The Judge was entitled to conclude that C did not act expeditiously and with the requisite robustness of purpose and that conclusion justified the costs order he made. Although in certain

respects the Judge had perhaps been more critical of C than they fairly deserved, those elements of his judgment did not undermine his ultimate decision.

[David Alexander QC]

**Re Delberry Limited
[2008] EWHC 925 (Ch)
ChD (Terence Mowcheson
QC), 26 February 2008**

The applicant liquidator ("S") applied under s 236 of IA 1986 for an order requiring the respondent administrative receivers ("R") to produce documents in their possession. R had been appointed administrative receivers of the company ("D") by a debenture holder ("L"). Prior to the appointment, R had been engaged by D at L's request to carry out a review of D's business and had been involved in negotiations concerning a sale of D's assets. The sale was completed less than a week after R's appointment as administrative receivers. R claimed fees of £97,000 plus solicitors' and agents' fees totalling £80,000. S applied to fix R's costs under s 36 of IA, but the hearing was adjourned with a view to mediation. S brought the instant application citing concerns as to the manner in which R were charging for their services and R's conduct of D's affairs relating to the sale. S sought production of (i) time records for certain pre-receivership work relating to D; (ii) correspondence with L relating to R's remuneration and disbursements, pre- and post-receivership; (iii) all documentation concerning R's strategy and planning, particularly in relation to the

decision not to trade. R contended that (1) pre-receivership work carried out at L's request and paid for by L did not relate to D or its business dealings, affairs or property within the meaning of s 236(2)(c); (2) S did not reasonably require the documents and the s 236 application was an abuse of process since S was seeking the documents to bolster her application under s 36; (3) a liquidator should not use a s 236 application to obtain an insight into the strategic considerations for receivership. Held that (1) The identity of the person bearing the costs of preparing the documents could not affect the jurisdiction to make an order under s 236. Where a liquidator was concerned to assess the work done during the sale of a business by administrative receivers shortly after their appointment, the nature of the work carried out before their appointment could clearly be relevant to assessing the extent of the work required to be carried out after their appointment and which could properly be regarded as a receivership expense. Accordingly, it could not be accepted that time records and correspondence relating to pre-receivership work did not fall within s 236(2)(c) on the ground that they did not relate to D's business affairs. (2) There was no reason why s 236 could not be used by a liquidator to ascertain whether she should bring an application under s 36 to have the administrative receivers' remuneration fixed. The more difficult question was whether, were the issues confined to narrow remuneration questions,

the liquidator should be permitted to rely on the s 236 procedure late in the day when the application to fix was ready to be heard before an adjournment by agreement. Given the history of correspondence in the instant case, the duties owed by administrative receivers, the delay which had already occurred and the volume of documentation required, there was nothing oppressive in ordering production of the first two classes of document sought. The information was relevant to the remuneration issue and might assist S in considering whether R had discharged their substantive duties. Production might also assist a mediation. (3) Where the receivership was effectively at an end and the liquidator was investigating the circumstances of the sale of the business, there was no reason why she should not see documents concerning the receivers' strategy and planning which appeared to be relevant to the manner in which they had discharged their duties.

[John Briggs; Tom Smith]

Re Phoenix Kapitaldienstes GmbH
Unreported
Bankruptcy Division (Mr Registrar Jaques), 8 April 2008

The German administrator of a German-based investment undertaking not otherwise subject to the EC Insolvency Regulation sought confirmation and recognition of his appointment by the English court. The UNCITRAL Model Law did not assist as the Applicant wished to pursue enquiries into transactions which preceded the

implementation of the cross-border insolvency regulations. Recognition was afforded at common law in accordance with the Privy Council decision in *Cambridge Gas Transport Corporation v Official Committee of Unsecured Creditors of Navigator Holdings PLC* [2006] UKPC 26.

[David Marks]

LANDLORD AND TENANT
Governors of the Peabody Trust v Michael Reeve
Unreported
ChD (Gabriel Moss QC), 2 June 2006

The claimant social landlord ("P") claimed that it was entitled to exercise unilateral variations to its tenancy agreements in accordance with the procedure under section 103 of the Housing Act 1985. Clause 5 of the tenancy agreements contained two sub-clauses; the first prevented L from altering the terms of the tenancy, save in regards of rent, unless both the tenant and L agreed in writing; the second provided a mechanism whereby L could change the provisions of its tenancies by serving a notice of variation under s 103. The Court was asked to determine whether, on its true construction, clause 5 gave L the ability to effect unilateral variations in the terms of its tenancy agreement using the s103 procedure, and if L did have such a right, whether the clause was not binding by virtue of the Unfair Terms in Consumer Contract Regulations 1999, reg 8. L submitted that (1) clause 5 had to be interpreted to take into account the fact that with such a large number of

properties and tenants under its control it needed to have a unilateral method of varying tenancy agreements, otherwise its housing stock would become impossible to manage; (2) the ability to unilaterally vary the terms of the tenancy agreement was fair. Held that (1) Although it was true that a unilateral variation would be useful to L, and would avoid a risk of its housing stock becoming unmanageable, it was nevertheless a risk that the legislature had chosen to allow registered social landlords to run on the basis that they would be able to manage without such powers. As there was doubt as to the meaning of clause 5 as a whole, and, in the light of the contradictory nature of the sub-clauses, as to the meaning of the sub-clauses, the Court was obliged by reg.7(2) of the Regulations to adopt the interpretation most favourable to the tenant. Accordingly, there could be no variation of the tenancy agreement without the agreement, in writing, of both parties. (2) If that was wrong, it was necessary to consider the fairness of a unilateral variation clause. L had incorporated two entirely contradictory clauses into the tenancy agreement and had then attempted to rely on one of them to enforce a power of unilateral variation; such actions were contrary to any concept of fair and open dealing, the tenancy agreements already made ample provision for future events; there was no reason to suggest that L would be left in an impossible position without a sweeping variation clause. (3) To satisfy the requirements of the Regulations, any such unilateral variation clause would need at a minimum to take full and proper account of the commonsense guidelines set out by the Office of Fair Trading for tenancy agreements.

[David Marks]

TALKS

Michael Crystal QC presented a paper (in collaboration with Prof Ron Harris of Tel Aviv University) on "The Transplantation of British Company Law in Post-Ottoman Palestine" at the Institute for Advanced Studies, The Hebrew University of Jerusalem, on 11 June 2008.

[Michael Crystal QC]

Gabriel Moss QC will be speaking at INSOL Europe, Barcelona, on 3 October 2008, on "Highlights in European Insolvency Case Law".

[Gabriel Moss QC]

OTHER NEWS

We would like to congratulate Richard Sheldon QC on his appointment as a visiting professor of law at Nottingham University.

[Richard Sheldon QC]

The digest is a collation of references to reported and unreported cases and other items of relevance to the professional practices of the Barristers at 3-4 South Square, Gray's Inn, London WC1R 5HP. It is not intended to constitute legal advice, and the contents should not be relied upon without checking the original text of any authority or periodical cited. No duty of care is hereby assumed to any person, and no liability is accepted for the content.

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