

# Vendor-Purchaser Agreements

*James Wibberley*



Guildhall  
CHAMBERS

# Substance not Form

- In placing cases on the spectrum, the court will look at the substance of the relationship. See *Allied Dunbar (Frank Weisinger) Ltd v Weisinger* [1988] IRLR 60
- Substance can be traced across multiple transactions. See *Nordenfelt v Maxim Nordenfelt* [1894] AC 535.
- Employees becoming shareholders can place themselves at the vendor-purchaser end of the spectrum. See *Kynixa Ltd v Hynes* [2008] EWHC 1495 (QB)

# Approach to Reasonableness



"I believe in reasoning with my opponets unless I have something on them."

- 1) What does the covenant mean?
- 2) What legitimate interest does it seek to protect?
- 3) Does it do no more than reasonably necessary?

See *Allied Dunbar & TFS Derivatives v Morgan* [2005] IRLR 246

# Reasonableness

- The court will usually defer to the parties, but this is not an absolute rule.
- Vendor can be required to temporarily retire.
- Don't necessarily need to assess whether lesser forms of protection would suffice.
- Covenants will be enforced even when only small percentage of a company is owned.

# Practical Tips

- Don't forget the construction question.
- Identify the benefit(s) being bought; i.e. the opportunity to maintain customer connections.
- Think about what the period of the restriction will let you do.
- Don't forget about implied covenants.
  - Can't target old customers
  - Can't hold out as continuing the business