GUILDHALL CHAMBERS

Property News

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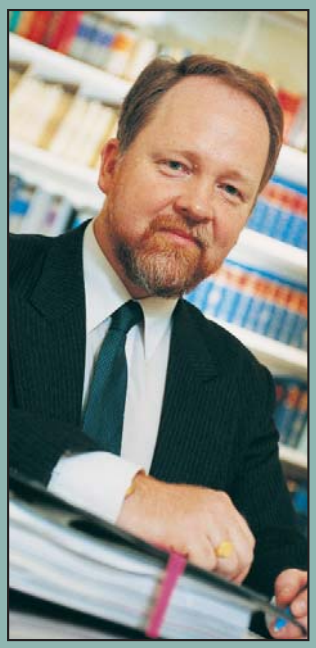
Team News

We are delighted to announce that a long-standing member of the team, Brian Watson, has accepted an appointment as a District Judge sitting in Bristol, from 8th November.



Many of you will know Brian from his extensive practice, his frequent provision of seminars on a wide range of topics, and his regular contributions to this newsletter.

We will miss Brian as a valued member of the Property team, but our loss is the huge gain of the bench in Bristol. We hope, for the sake of our clients and all litigants, that he is given plenty of opportunity on the bench to deal with the property law matters in which he has excelled for so long.

Welcome to another edition of the Guildhall Chambers Property Newsletter. This issue deals with some important recent developments. Just as adverse possession appeared finally to be settled and clear following *Pye v Graham* in the House of Lords, and then the coming into force of the Land Registration Act 2002, human rights have now intervened to complicate matters.

Elsewhere in this issue are commentaries on a House of Lords decision on mortgages and limitation; and on an interesting Court of Appeal 1954 Act decision on ground (f), involving our very own Malcolm Warner.

As ever, we are all happy to assist you on these and all other aspects of property law. If you have any queries, get in touch!

2006 is likely to be another busy year and we hope to keep you abreast of further developments through our seminars and newsletters.

Ewan Paton, Editor

Seminar News

We have recently completed another successful round of our Property Law seminars, in Bristol, Cardiff, Exeter, Cirencester and Salisbury. The topics on this round were a general Property Law cases update, and a specific update on Agricultural Law. If you would like to view the notes for these talks, please visit the Property Team page of our website. If you would like to arrange an in-house seminar for your own CPD purposes, please contact our team clerks Charlie Ellis or Heather Mings.

We will be presenting our Spring Seminar Series in March 2006 when Malcolm Warner will be speaking on easements. He will review how to acquire and lose them and answer frequently asked questions on them with a brief update of recent cases. John Virgo will discuss legal liability risks to non-clients and in property transactions generally.

We will be hosting seminars at the following venues:

Tuesday 7 March	**Cardiff**	The Copthorne Hotel
Thursday 9 March	**Salisbury**	The Red Lion Hotel
Tuesday 14 March	**Cirencester**	The Crown of Crucis
Thursday 16 March	**Exeter**	The Buckerell Lodge

All the seminars will commence at 5pm and will attract 1.5 CPD hours.

Adverse possession

European *Pye* in the sky: human rights, registered title and adverse possession

Part I: *Beaulane Properties*: Strauss's waltz around the statute

Beaulane Properties v Palmer [2005] 3 WLR 554 (Ch. D., Nicholas Strauss QC, 23/3/05) is a case with which many readers will by now be familiar, initially from its brief report in 'The Times'. The judgment of the Deputy High Court judge weighed in at an impressive 106 manuscript pages. It is rich in learning, authority and reasoning. However, it ends with a highly questionable statutory interpretation technique which may not survive appeal.

On its facts, the case was an unremarkable adverse possession fight over a field near Heathrow. Factual possession with intent to possess was established, but a deliberate concealment of the squatter's intentions was found to have occurred in 1991, meaning that 12 years only ran from then. The time bar fell, and the section 75 LRA 1925 statutory trust on the registered title would have been imposed, in July 2003. This was prior to the coming into force of the LRA 2002, but subsequent to the coming into force of the Human Rights Act 1998 on 2nd October 2000.

The Deputy Judge held that, where a registered title was automatically barred by the operation of section 75, Article 1 of the first Protocol to the European Convention on Human Rights, protecting the human right to "peaceful enjoyment of possessions", was engaged and prima facie infringed. The limitation and title-barring provisions were more than mere time bars controlling access to the courts: they effected an extinguishment and transfer of title away from the registered proprietor, which was a "deprivation" of a property right. It was therefore necessary to see whether the law applying adverse possession to registered land could be justified on any public policy ground, and whether that law a was proportionate implementation of such policy having regard to the human right infringed.

After a detailed survey of the history of the legislation from 1833 and a wealth of Strasbourg authority, the Deputy Judge held that the present law on registered land could not be so justified. He agreed with the reasoning of the Law Commission, in their paper and report preceding the 2002 Act, that the traditional justifications for adverse possession (promoting certainty of title and discouraging stale claims) had no application where title was registered. Further, it was not clear that Parliament had even had such policy aims in mind in 1925 or earlier when enacting land registration legislation, because the law on adverse possession was then understood to be far more restrictive than its recent exposition in *Pye v Graham*. In particular, "adverse" possession was understood, from *Leigh v Jack* (1879) 5 Ex. D 264 until at least *Powell v McFarlane* (1977) 38 P&CR 450, to require possession which was inconsistent with the owner's intentions for the land. If it was not so inconsistent, the possession was deemed to be by his "implied licence". That view was, from *Powell* to *Pye*, scotched as a "heresy", along with any accompanying notions that the squatter's possession had to be "adverse" in some hostile or ousting sense. In 1980, Parliament had in any event expressly reversed, by Sch.1 para. 8(4) Limitation Act 1980, the possibility of implying a licence to possess merely because the possession was not inconsistent with the owner's intentions.

The learned Deputy Judge *could* simply have said that Parliament had now acted to correct the injustice and human rights violation constituted by the pre-2002 Act law on adverse possession and registered land, and the most he could do in relation to that law (in cases falling between 2nd October 2000 and 13th October 2003) was make a "declaration of incompatibility" with the ECHR, under section 7 of the Human Rights Act. That would have been something of a Pyrrhic victory for Beaulane, since it would not then have got its land back. Further, Parliament would have had no legal obligation to legislate further to address the incompatibility thus identified, and would almost certainly have said that the 2002 Act was a sufficient response.

However, the Deputy Judge instead chose to employ the interpretative duty under section 3 of the Human Rights Act so as to rewrite section 75 of the 1925 Act. For cases where 12 years expired in the 'window' between the Human Rights Act and the 2002 Act, he held that the statutory trust imposed by that section would only arise where "adverse possession" had occurred *in the sense in which the law was understood in 1925*. So for this category of cases, and this purpose alone, a line of authority declared to have been heretical and wrong, and then reversed by statute, was revived. If the possession was not inconsistent with the owner's intentions, it was not adverse, as had been said in *Leigh v Jack* in 1879.

But what about Sch. 1 para. 8(4) of the Limitation Act 1980? While the Deputy Judge correctly stated that section 3 HRA 1998 allowed considerable latitude in interpreting and re-interpreting legislation so as to make it human rights-compatible, it does not permit a departure from clear and unambiguous statutory words which can bear no other meaning. The *Leigh v Jack* view of the law cannot be revived without ignoring Sch. 1 para. 8(4), which specifically overruled it by expressly providing that possession cannot be deemed non-adverse (by way of implied licence) merely on the "consistency with the owner's future intentions" analysis. This obstacle was not squarely addressed by the Deputy Judge in the final passages of his judgment.

Initial reaction to *Beaulane* was sceptical, and in some cases flippant and derogatory (see the updates to *Emmet on Title* in particular, ridiculing the decision and referring to Mr. Strauss QC as "Deputy Dawg"). The Court of Appeal (per Neuberger LJ) has been more complimentary, stating in passing that it was

an "impressive [and] powerfully reasoned" judgment, without having to decide whether it was right (see *Tower Hamlets LBC v Barrett* [2005] EWCA Civ. 923, paras. 120-1). A few months later, Mr. Strauss QC found an even more distinguished ally...

Part II: *Pye v UK* – the human rights of property development companies, or "it's all the Government's fault"....

The Pye companies, having lost in the House of Lords and thus exhausted their domestic remedies, petitioned the European Court of Human Rights in Strasbourg, seeking relief against the UK government for the violation of their Article 1 of the first protocol human right, for having permitted until 2003 an unjust set of adverse possession laws to exist with the result that they had lost their case (and their land) to the Grahams.

On 15th November 2005 the European Court of Human Rights held, by a majority of 4:3, that the pre-LRA 2002 English law on adverse possession as applied to registered title, and as applied to Pye's registered title in the House of Lords decision in *Pye v Graham*, did indeed amount to a violation of the right to peaceful enjoyment of possessions under Article 1 of the first Protocol to the Convention. The Court held that:

i Article 1 was engaged by the relevant provisions of the Limitation Act 1980 and Land Registration Act 1925, since they had the potential to remove and extinguish the otherwise absolute and indefeasible property right conferred by a registered title (paras. 34-52).

ii the provisions operated as an interference with the proprietor's property rights, by transferring them to another, and were not merely a procedural limitation on the right of access to the courts. The State was potentially responsible for this interference by permitting such provisions to exist (paras. 53-62).

iii while the law of adverse possession might still serve some legitimate policy aim (although the aims relied upon - the avoidance of stale claims and promotion of certainty of title - appeared to have little relevance to a system of registered title: paras. 63-67)...

iv ...the taking of the applicant's property without compensation was disproportionate to such aims, and failed to strike a fair balance between such aims and the owner's rights (paras. 68-76).

Particular weight was attached to the changes made by the Land Registration Act 2002, and the fact that their rationale (as articulated by the Law Commission) was that the present law on adverse possession and registered land could not be justified. It is also clear that the judgment in *Beaulane* had a considerable influence on the Court's decision and reasoning; judgment having apparently been delayed so that the Court could consider it.

The question of compensation ("just satisfaction") for Pye was reserved. They are claiming in excess of £20 million as the value of the land they lost.

The judgment is available from the ECHR website at www.echr.coe.int. Many readers may find themselves agreeing with the strong dissent of the minority. They questioned why a property development company, which bought land knowing and being advised on the English law on title and possession, could complain about a human rights violation when their title was taken away by a combination of those laws and their own inactivity. Many will further question why the British taxpayer should foot the bill for Pye, and possibly thousands of other registered title 'victims' of adverse possession, simply because the Government left the Limitation Act 1980 and section 75 Land Registration Act 1925 unamended until 2002.

Nevertheless, there is no appeal from the ECHR. The immediate practical implications are these:

i an ECHR decision is **not** immediately directly effective and binding in English courts. So if an opponent starts waving a copy under the nose of a County Court judge, or if, like the editor of one e-newsletter I received from a major firm, says that it renders all pending pre-LRA 2002 claims "doomed to failure", they are wrong. Under s2 Human Rights Act 1998, where a human rights issue is engaged the court must "take into account" such decisions, but where there is a conflict between an ECHR decision and an English decision, the latter prevails and continues to bind lower courts, on the principle of *stare decisis*: see *Leeds City Council v Price* [2005] 1 WLR 1825, CA.

So for the time being, the courts here remain bound to follow the House of Lords' decision in *Pye v Graham* in relation to claims accruing pre-2nd October 2000 (i.e. non-*Beaulane* claims). It is possible, however, that the next appellate decision on adverse possession and registered title may end up with permission being given to appeal to the House of Lords, giving their Lordships the opportunity, if they so wish, of reconsidering and restating the law.

ii it is fairly clear from the reasoning in the ECHR, echoing that in *Beaulane* and in the Law Commission Report upon which the 2002 Act was based, that the same conclusion would *not* be reached in relation to *un*registered land. The traditional justification for adverse possession there - that it resolves uncertainty as to title, where that title is historically based on possession rather than registration - was implicitly approved by the Court. Those reasons would either provide a justification of a *prima facie* interference with a property right, or else support the argument (rejected in relation to registered land) that there is no interference at all in such a case, because the paper owner's fee simple in possession is an *inherently* relative and defeasible title.

iii the decision may make it slightly more likely that *Beaulane Properties* will either not be appealed, or else survive an appeal. It remains the writer's view that this should not necessarily follow, given the problematic use of s3 HRA 1998 in that case rather than a declaration of incompatibility. However, for the time being, all registered title adverse possession claims, in which the time bar may have fallen between 2nd October 2000 and 13th October 2003, should be met with the *Beaulane* defence where appropriate, unless and until that decision is reversed.

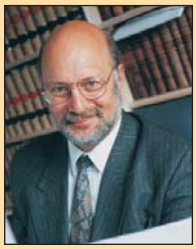
iv If you have clients who lost registered titles to adverse possession in recent years, wait and see what the ECHR says about compensation. If Pye get their money (or some of it), your client ought to get some too! You may also have to pursue currently pending cases to their conclusion first, so as to exhaust your domestic remedies before bringing a claim for "just satisfaction" from the government. If this becomes a live issue, a further seminar or newsletter on the required procedure may follow ...

Ewan Paton

Landlord and tenant act 1954 s30(1)(f)

The Case of the Disappearing Army Huts

Wessex Reserve Forces and Cadets Association v White, CA 1/12/05 (2005) 49 EG 89 (CS)



Can a landlord oppose an application for a new tenancy on ground (f), asserting an intention to demolish the premises, when the tenant has the right under the lease to remove most of the buildings on the premises, leaving little or nothing to demolish?! The Court of Appeal did not think so.

The demised premises, used by T for air cadet training and therefore "business purposes", consisted of a substantial tarmac area, an open grassed area with two substantial "Spooner" style army huts, a small stone store by the entrance, a Portakabin, a garden shed and a pre cast concrete building. L gave notice terminating the existing tenancy under S.25 stating it would rely on S30(1)(f) on any application for a new tenancy, solely on the basis of an intention to *demolish* rather than (e.g.) redevelop or construct. T duly applied to the Court for a new tenancy.

Under the existing lease T was *obliged* at the end of the term to *"remove all buildings and other erections...and restore the land to the condition in which it was when taken over by the Air Ministry"* – it being assumed that there had been earlier leases dating back to World War II which this repeated.

At the trial of a preliminary issue before Michael Harvey QC as to whether ground (f) could be established it was held that:

- The army huts were sectional in construction and could be moved although quite a number of their constituent elements (e.g. asbestos roofing, internal dry linings) would be scrapped and would need to be replaced.
- The army huts were bolted to a brick skirting wall and a network on brick piers under the floors.
- The army huts were fixtures - L accepting they were *tenant's fixtures* i.e. part of the realty but fixtures that T was entitled to sever from the land and remove at the end of the term.
- The stone stall was a fixture.
- The other buildings (garden hut, Portakabin and concrete sectional building) were all chattels.
- T intended to and would remove all these structures at the end of the existing lease.
- Since the army huts would have been removed before the expiry of the term there would be nothing on site for L to demolish when it recovered possession and hence it could not have an "intention to demolish" for the purposes of ground (f). If the tenant left the brick plinths etc and the stone stall that was not sufficiently substantial part of the premises comprised in the holding for ground (f) either.
- On T's secondary case (even if the stone shed was capable of being "premises comprised in the holding" which would still be there at the end of the term) the S 31A(1)(a) was satisfied i.e. T consented to a term in a new lease allowing L to enter to demolish this building.

L appealed asserting that the Judge had erred in applying the principle in *Gregson v Cyril Lord* [1963], 1 WLR 41 as to the meaning L's intention – per Upjohn LJ at p.46. T served a respondents notice asserting the judgment should be upheld on other grounds being (1) the army huts were chattels, and (2) as tenant's fixtures they never did form part of the "premises comprised in the holding".

On the appeal T decided not to open – and hence leave open for argument in the future – whether the huts themselves were chattels. The writer believes the case for them so being was overwhelming – see *Elitestone v Morris* [1997] 1 WLR 687 and *Billing v Pill* [1954] 1 QB 70.

L's appeal failed. Essentially the Court of Appeal decided:

- Using the *Gregson v Cyril* Lord test, L could not have any intention of demolishing the army huts because they would not be on site at the end of the term.
- There was an outstanding issue as to whether it would be a term of the new lease that T could have huts on site given that under the existing terms they should be off site by the end of the term.
- The stone stall could in any event be dealt with under S 31A.

Probably the most instructive way to view this case is to appreciate that although the Court is assessing the evidence adduced by L as to his intention during the trial, the relevant date for such intention to be operative is not the trial date but in fact the date when the old lease will fall in (three months thereafter) and it is to be assumed that on that date there will be no new tenancy. As Lord Bridge said in *Westminster Council v British Waterways Board* [1985] 1 AC 676, 681:

"I find it difficult to resist the conclusion that (the judge) approached the planning issue on the assumption of an uninterrupted occupation of the premises...(which the grant of a new tenancy would, of course, in practice ensure) and failed to

appreciate that the Act…requires, for this purpose, a hypothetical resumption of possession by (the landlords) to be assumed."

It follows that the Court is to assume the tenant has left and the landlord enters into possession and finds what he finds. The Court has to assess at trial what will in fact be his intention at that point. In the instant case there would have been no huts on site to demolish.

The secondary argument in the respondent's notice is also important (although not highlighted by the Court of Appeal). Tenant's fixtures properly so called can be removed at any time during the tenancy by T, and there is no additional rent burden to L nor liability to L if they fall into decay – this is a matter of law quite apart from provisions in the lease (as here). They are not part of the holding – *New Zealand Gov. Corp. v H M & S Ltd.* [1982] QB 1145 and therefore are not "premises comprised in the holding". The Judge at first instance was not attracted to this argument but it appears to be well founded.

Malcolm Warner

Reverter of sites

Reverting to type? *Fraser v Canterbury Diocesan Finance Board* (No. 2) [2005] 3 WLR 964

The somewhat obscure area of reverter of sites conveyed as places of worship or education has been subjected to a surprising twist by virtue of the decision of the House of Lords in the above case on 28th October 2005.

Under various Victorian statutes originating as exceptions to mortmain, donors were permitted and encouraged to convey land for the purposes of religious worship (the Places of Worship Sites Act 1873) or education (the School Sites Act 1841), with the proviso that when they ceased to be used for such purposes, the lands would revert to the donor or the owner of the lands from which they were severed.

The possibility of such reverter has generated a mini-industry amongst genealogists, whose *modus operandi* is to find a school or church conveyed on the above basis, trace the successors of the persons entitled on reverter, pay them money in return for an assignment of their rights, then pursue a claim for the property when e.g. the school or church closes or burns down. Schools and church authorities have often defended such claims by arguing that reverter in fact occurred long before the recent event relied upon, and more than 12 years before the coming into force of the Reverter of Sites Act 1987, with the result that the 'revertee' or his successor is limitation-barred.

Central to such arguments was a line of authority, from *A.G. v Shadwell* [1910] 1 Ch. 92 to *Fraser v Canterbury Diocesan Board of Finance* (No. 1) [2001] Ch. 669 via *Habermehl v A.G.* [1996] EGCS 148, stating that when considering whether reverter had occurred, one looked to the *specific purpose and trusts* in the original donor's conveyance, and asked whether the property had ceased to be used on *those* terms. So if the donor had been quite specific in his bounty e.g. by stipulating use as a school for poor children in a particular parish of a particular faith, and those terms were no longer being observed in any one respect, reverter would occur, even if the property was still being used for a permitted purpose within the relevant Act.

In *Fraser v Canterbury Diocesan Board of Finance (No. 2)*, essentially 'round 2' between the intrepid genealogist and church authority from *Fraser (No. 1)*, but over a different school site, the House of Lords overturned the above cases on this point. The issue was whether there had been a reverter under the School Sites Act 1841 in relation to an 1866 conveyance of land to be used as a school "for the education of children and adults of the labouring manufacturing and other poorer classes in the Ecclesiastical District of St. Phillips Maidstone...and for no other purpose." The deed also required that the school should be conducted according to the Church of England's principles for promotion of church education of the poor, and provided for its control by Church of England members. The contest was between reverter in 1995, when the school finally closed (in which case Fraser, now the successor of the original grantor, would be entitled to the money under the statutory trusts), or at an earlier time, in any event before 1975, when the school ceased to be used just for the education of children of the labouring and poorer classes.

The House of Lords held that a departure from and breach of the trusts of the conveyance had not been established on the facts, merely because the school may have begun before 1975 to educate some local middle class children as well as poor children. However, of more significance, and of relevance to the parallel provisions of the Places of Worship Sites Act 1873, was the finding that in looking to see whether reverter had occurred, one did not look to see whether there had been a departure from the specific purpose and terms of the original conveyance or trust conveying the school. The relevant test was whether the site was still being used for the general selected purpose within the 1841 Act (e.g. "the education of poor persons"), even if the grantor's original conveyance had been in narrower and more specific terms, as here.

The practical effect of the decision will be to make it far more difficult for education and church authorities to establish that reverter occurred in the distant past, barring the revertee's title and leaving them absolutely entitled, if e.g. a school which educates some "poor persons", or a church for divine worship or residence for an officiating minister has continued to exist on the site until recently, despite historical changes to its nature contrary to the original donor's strict conditions.

Ewan Paton

Mortgages and limitation

Reaching the Limit in the House of Lords
West Bromwich Building Society v Wilkinson [2005] UKHL 44

Section 20(1) of the Limitation Act 1980 provides that no claim shall be brought to recover (a) any principal sum of money secured by a mortgage or other charge on property; or (b) proceeds of the sale of land, after the expiration of 12 years from the date on which the right to receive money accrued.

In *Hopkinson v Tupper* [1997] 6 CL 462, the Court of Appeal had suggested that it was "seriously arguable" that when a mortgagee re-possessed and sold the security and thereafter sought to recover any shortfall its claim was then in simple contract (whatever the nature of the instrument under which the debt was initially secured).

Understandably, that suggestion had caused alarm for lenders and hope for defaulting borrowers since the former had, by and large, assumed that any claim to such shortfall lies under the mortgage document by which the mortgage was created and was thus governed by the 12 year limitation period specified in either section 20 or in section 8 of the Act for a document under seal (i.e. a "speciality") and not the 6 year limitation period applicable under section 5.

A little over three years ago, the Court of Appeal in *Bristol & West plc v Bartlett* [2003] 1 WLR 284, provided some much needed clarity by putting the suggestion made in *Hopkinson v Tupper* firmly to bed. Claims to a shortfall after a sale by a mortgagee thus have a 12 year limitation period not 6 years.

Significantly, in reaching its decision the Court of Appeal held that section 20 was applicable in preference to section 8. Further, on the basis that section 20(1) applied to claims for the principal it had to follow that claims for interest were governed by the 6 year limitation period in section 20(5).

The Facts

For reasons best known to them, in October 1988, Mr and Mrs Wilkinson purchased a house in Norfolk which they could not afford. They scarcely made any repayments and by October 1989 the mortgagee had obtained and executed an order for possession. On 14 November 1990 the property was sold for a sum that left a shortfall of £23,921.92.

For over 12 years the Wilkinsons heard nothing. If they gave any thought to it at all they could have been forgiven for thinking that, having been turfed out of their home in October 1989, they were now in the clear. In November 2002, two days shy of the twelfth anniversary of the sale, they were served with a claim for £46,865.99. The mortgagee was after the shortfall.

The Issue(s)

The Wilkinsons argued that the mortgagee's claim was barred by the 12 year limitation period in section 20(1) of the 1980 Act. As stated above, under that section the 12 years run from the date on which the right to receive the money accrued. The right to receive the money accrued, they said, when they defaulted and the mortgagee thereby became entitled to take steps to recover its balance at that time and not later.

The mortgagee asserted that section 20 had no application because, at the date when the action was brought, the money was not secured by a mortgage. The house had been sold long before and the mortgagee claimed that it therefore only had a personal claim under the mortgage deed so that the relevant period of limitation was that in section 8 of the Act. There, 12 years is expressed to run from "the date on which the cause of action accrued".

The appeal posed two questions. The question of general importance was whether section 20 applies in a case in which an advance is originally secured by a mortgage but the security is realised (or released) before proceedings are commenced. The second question was specific to a construction of the particular mortgage deed there under consideration.

Giving the lead judgment, Lord Hoffmann expressly approved *Bristol & West plc v Bartlett*. If there was any lingering doubt, it is now clear not only that 12 years is the limitation period but that that limitation period derives from section 20 even when the security is realised before proceedings to recover the shortfall are commenced (although in fact those comments were technically probably obiter in the final analysis).

Arguably, it would be easier for a mortgagee to contend that 12 years runs only from the act of exercising the power of sale if section 8 applied as opposed to section 20 (which specifically refers to the date on which the right to receive the money accrued). That, of course, would have meant that the hapless mortgagor could have been hit by an action well in excess of twelve years after he had been compelled to leave his home.

Both Lords Hoffmann and Scott (delivering the only other judgment) were firmly of the view that the sale of the property by the mortgagee did not interrupt, for section 20 purposes, the time that had already started to run. As Lord Hoffmann stated, it would be strange if the lender could stop (or, rather, restart) time running by his own act in exercising the power of sale.

In fact, it should be stated that even had section 8 applied, the deficiencies of the deed were so grave that their lordships' preferred construction meant that the claim was statute - barred on any analysis.

Ultimately *West Bromwich Building Society v Wilkinson* was, perhaps, a curious case to reach the House of Lords since most of the argument turned on the construction of a mortgage deed that was grossly deficient. Indeed, the

mortgagor had already abandoned use of that particular draft of the deed by the time that the final appeal was heard. For the practitioner seeking to resist a shortfall claim on limitation grounds that remains a document of first importance. In general terms, however, where a mortgagee client is faced with a claim issued less than 12 years after sale in circumstances in which default on the mortgage was more than 12 years ago limitation should almost certainly be pleaded in any defence.

Tim Walsh

Brief notes

Trusts of land/beneficial interests

Stack v Dowden [2005] EWCA Civ. 857

Common intention constructive trust principles re-stated by the Court of Appeal. Chadwick LJ approved and applied his own judgment in *Oxley v Hiscock* [2005] Fam. 211, and confirmed that the old-style "survivor can give a valid receipt" declaration in a transfer is not an express declaration of beneficial joint tenancy (*Huntingford v Hobbs* [1993] 1 FLR 736 followed), nor of any assistance in quantifying the parties' constructive trust based interests if they had given no thought to what such words meant.

Clarke v Harlow, Judge Behrens QC, Leeds, 12/8/05 (unreported: Lawtel transcript)

Equitable accounting between formerly co-habiting beneficial co-owners will generally not apply until the period *after* their separation. Before then, there will be a presumed common purpose in relation to their expenditure on improvements and the mortgage, and so no liability *inter se* to account even where one of them can point to substantial expenditure incurred solely by him/her.

Adverse possession (in addition to the above!)

Three cases in which the courts implied a "licence" to occupy, despite Sch. 1 para. 8(4) LA 1980, making possession "non-adverse"

Colin Dawson Windows Ltd. v Kings Lynn & West Norfolk BC & Howard [2005] EWCA Civ. 09

Continuing negotiations to purchase whatever interest paper owner had in land (but without express written acknowledgment of title): implied licence continued until last letter.

Batsford Estates (1983) Co. Ltd. v Taylor [2005] EWCA Civ. 489

Previously asserted claim of tenancy for life, followed by complete silence and non-payment of rent for next >12 years. Implied licence inferred again, despite silence and absence of any overt acts by possessor, because a "reasonable person" would have assumed his continued possession was by permission.

Clowes Developments v Walters & Dowsett [2005] EWHC (Ch.) 669 (Hart J)

Relatives assumed possession in place of mother, former express occupational licensee of property developer. Mother left and developer sold on to third party company, no fresh licence agreed. Hart J. held that relatives' continued intention had been to occupy by permission of someone, and not an intention to possess so as to exclude the owner as far as possible. Possession therefore not adverse, and did not matter that mother's original licence extinguished on transfer of property to third party.

Ewan Paton

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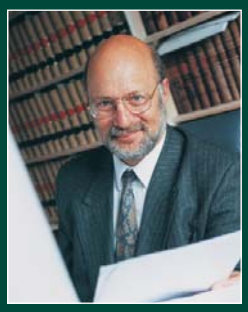

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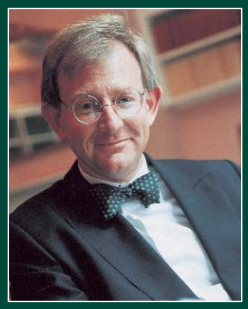

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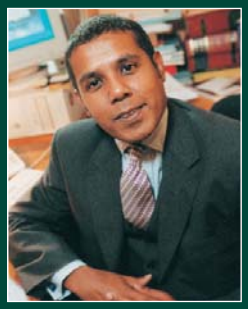

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