

Dilapidations

John de Waal QC
Hardwicke

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Two questions:

- ▶ (1) How does the age, character and location of the building and the length of the lease affect the tenant's liability for dilapidations?
- ▶ (2) How does a tenant pass liability for dilapidations down the chain to its sub-tenants?

Valuing dilapidations

- ▶ Identify scope of T's repairing obligations
- ▶ Identify extent to which T in breach
- ▶ Consider age of premises
- ▶ Consider character / location of premises
- ▶ Then consider impact of s.18(1) LTA 1927

Repair or Repair plus?

- ▶ What do we mean by repair?
- ▶ Good condition
- ▶ Renewal
- ▶ Rebuild / reconstruct / replace
- ▶ The problem of ‘inherent defects’

What is disrepair?

- ▶ “ ... a deterioration from some previous physical condition” - *Post Office v Aquarius Properties*
- ▶ not failure of function
- ▶ not anticipated future damage
- ▶ do the works go beyond repair?

Does age matter? (1)

- ▶ Are we comparing the current condition of the building with its condition:
 - at the date of construction?
 - or at the date of the lease?

Does age matter? (2)

- ▶ Looking backwards - repairing an old building
- ▶ Looking forwards - the expected commercial life of the building

Character and locality

- ▶ Does it make a difference if the area is going down? –
Anstruther-Gough v McOscar

Passing liability down the chain

- ▶ (1) Liability to repair as between head landlord and sub-tenant
- ▶ (2) Covenants in sub-leases to perform the repairing covenants in the headlease

As between head landlord and sub-tenant

- ▶ No privity of contract, but
- ▶ Direct covenants may be required on grant of sub-lease
- ▶ Direct liability may arise:
 - on surrender of head lease
 - on forfeiture of head lease

Sub-tenant's covenant with tenant

- ▶ Independent obligation
- ▶ Covenants of indemnity
- ▶ Performing the covenant



John de Waal QC

+44 (0)20 7242 2523

john.dewaalqc@hardwicke.co.uk

www.hardwicke.co.uk/people/john-de-waal-qc