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Case Review
Firth v HMRC FFT 2022

The Tribunal was however clearly concerned about the "surprisingly little" financial information supplied to them and the fact that the general manager, who gave evidence for the tax payer, was in its view "over-egging" the position and that "bald assertions" were unsupported by documentation.

7



Case Review
Firth v HMRC FFT 2022

"...although we had a plethora of information, much of it was bald assertion...unsupported by contemporaneous documentation."

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Case Review
Firth v HMRC FFT 2022

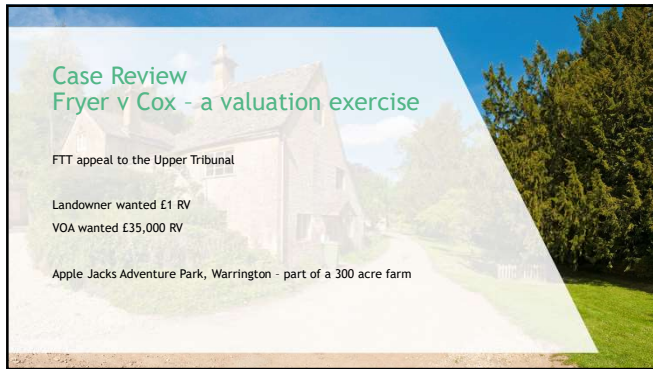
Interestingly, the Tribunal accepted that some aparthotels would fall on the trading side and is further qualify for BPR.

The narrow point is that if you let serviced apartments you should consider your BPR position very carefully.

The wider point is that this proof of the existence of a large "grey area" in the middle of the property letting spectrum where many property letting businesses will sit - and consequently their BPR status will be uncertain

Evidence is key

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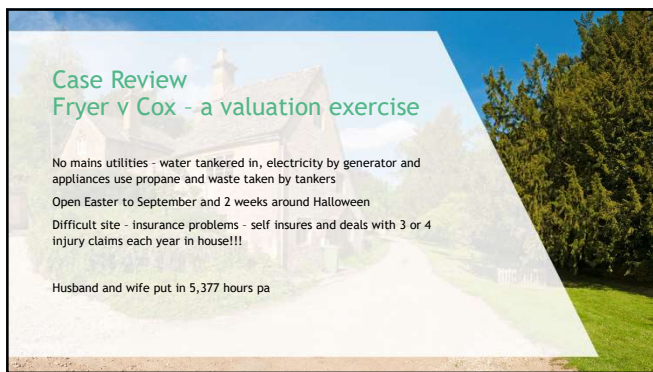
Case Review
Fryer v Cox - a valuation exercise

FTT appeal to the Upper Tribunal

Landowner wanted £1 RV
 VOA wanted £35,000 RV

Apple Jacks Adventure Park, Warrington - part of a 300 acre farm

10



Case Review
Fryer v Cox - a valuation exercise

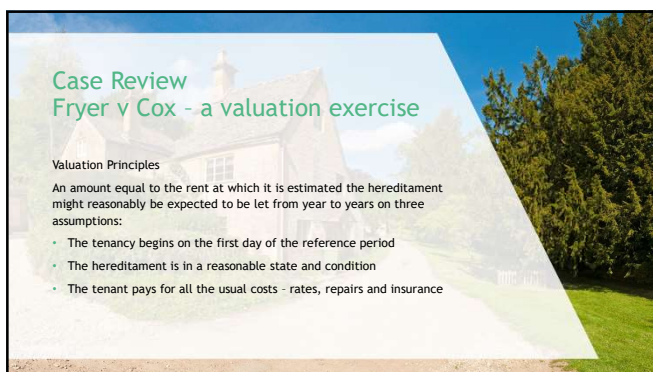
No mains utilities - water tankered in, electricity by generator and appliances use propane and waste taken by tankers

Open Easter to September and 2 weeks around Halloween

Difficult site - insurance problems - self insures and deals with 3 or 4 injury claims each year in house!!!

Husband and wife put in 5,377 hours pa

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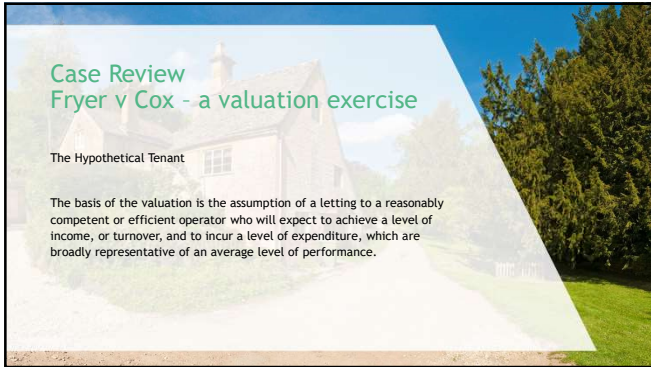
Case Review
Fryer v Cox - a valuation exercise

Valuation Principles

An amount equal to the rent at which it is estimated the hereditament might reasonably be expected to be let from year to years on three assumptions:

- The tenancy begins on the first day of the reference period
- The hereditament is in a reasonable state and condition
- The tenant pays for all the usual costs - rates, repairs and insurance

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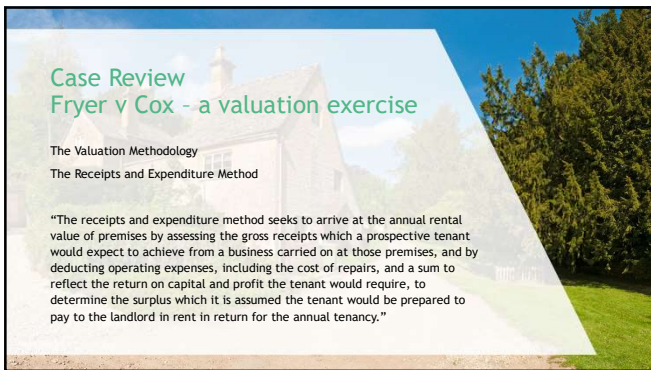


Case Review Fryer v Cox - a valuation exercise

The Hypothetical Tenant

The basis of the valuation is the assumption of a letting to a reasonably competent or efficient operator who will expect to achieve a level of income, or turnover, and to incur a level of expenditure, which are broadly representative of an average level of performance.

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Case Review Fryer v Cox - a valuation exercise

The Valuation Methodology

The Receipts and Expenditure Method

"The receipts and expenditure method seeks to arrive at the annual rental value of premises by assessing the gross receipts which a prospective tenant would expect to achieve from a business carried on at those premises, and by deducting operating expenses, including the cost of repairs, and a sum to reflect the return on capital and profit the tenant would require, to determine the surplus which it is assumed the tenant would be prepared to pay to the landlord in rent in return for the annual tenancy."

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Case Review Fryer v Cox - a valuation exercise

The Receipts

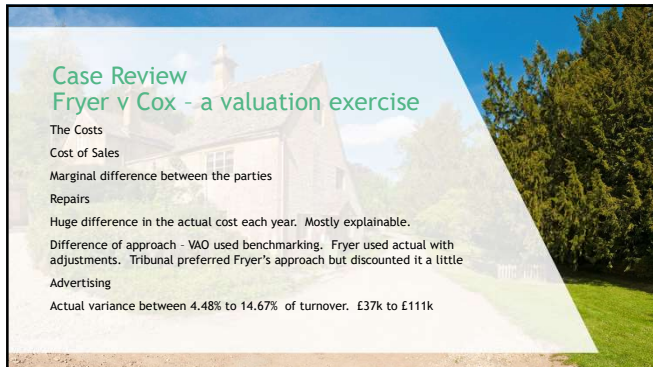
Trading year:	2011	2012	2013	2014
Total receipts:	£749,745	£637,420	£760,166	£825,464

"We would expect the hypothetical tenant to exercise caution in his budget for receipts."

An average of £755,000 was decided to take account of explainable differentials in 2012 and 2014

Consideration of Visit England reports - interesting but not site specific

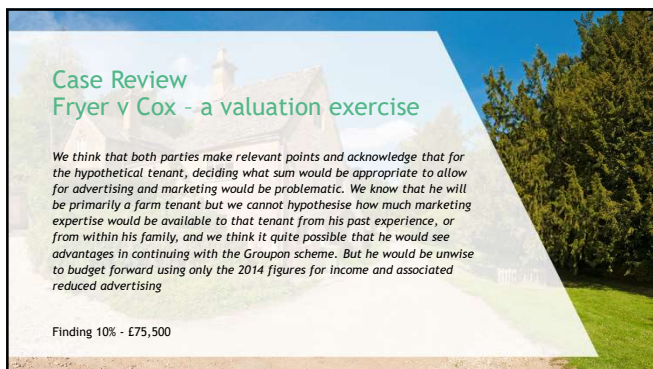
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Case Review
Fryer v Cox - a valuation exercise

The Costs
Cost of Sales
Marginal difference between the parties
Repairs
Huge difference in the actual cost each year. Mostly explainable.
Difference of approach - VAO used benchmarking. Fryer used actual with adjustments. Tribunal preferred Fryer's approach but discounted it a little
Advertising
Actual variance between 4.48% to 14.67% of turnover. £37k to £111k

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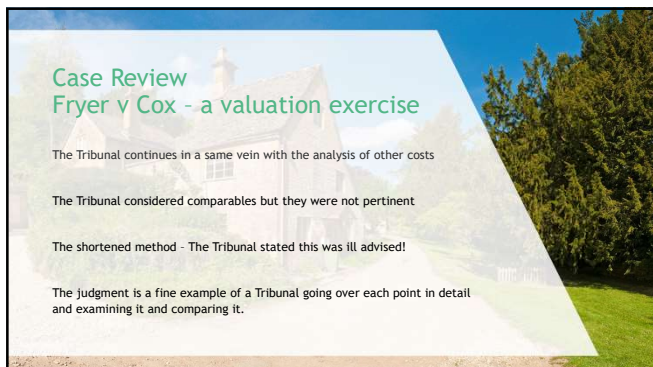


Case Review
Fryer v Cox - a valuation exercise

We think that both parties make relevant points and acknowledge that for the hypothetical tenant, deciding what sum would be appropriate to allow for advertising and marketing would be problematic. We know that he will be primarily a farm tenant but we cannot hypothesise how much marketing expertise would be available to that tenant from his past experience, or from within his family, and we think it quite possible that he would see advantages in continuing with the Groupon scheme. But he would be unwise to budget forward using only the 2014 figures for income and associated reduced advertising

Finding 10% - £75,500

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Case Review
Fryer v Cox - a valuation exercise

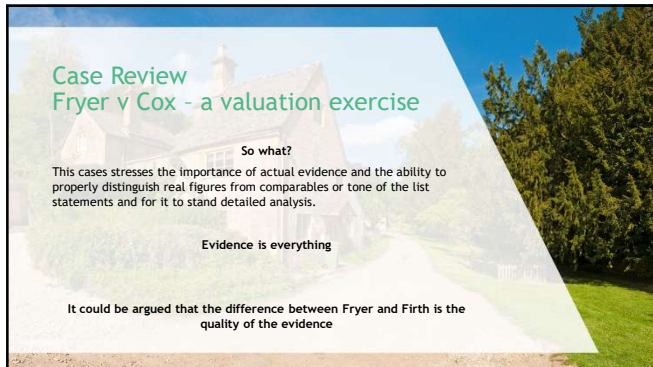
The Tribunal continues in a same vein with the analysis of other costs

The Tribunal considered comparables but they were not pertinent

The shortened method - The Tribunal stated this was ill advised!

The judgment is a fine example of a Tribunal going over each point in detail and examining it and comparing it.

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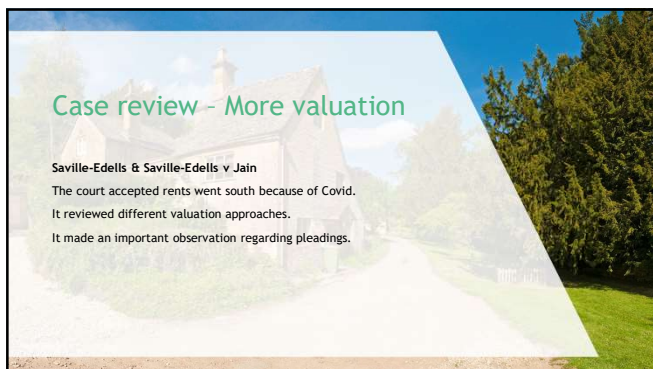
Case Review
Fryer v Cox - a valuation exercise

So what?
 This cases stresses the importance of actual evidence and the ability to properly distinguish real figures from comparables or tone of the list statements and for it to stand detailed analysis.

Evidence is everything

It could be argued that the difference between Fryer and Firth is the quality of the evidence

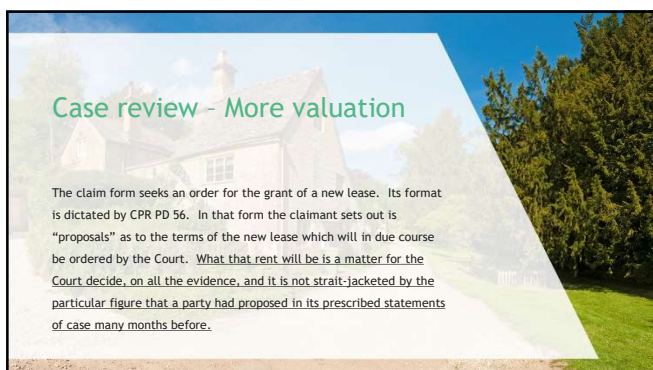
19



Case review - More valuation

Saville-Edells & Saville-Edells v Jain
 The court accepted rents went south because of Covid.
 It reviewed different valuation approaches.
 It made an important observation regarding pleadings.

20



Case review - More valuation

The claim form seeks an order for the grant of a new lease. Its format is dictated by CPR PD 56. In that form the claimant sets out is "proposals" as to the terms of the new lease which will in due course be ordered by the Court. What that rent will be is a matter for the Court decide, on all the evidence, and it is not strait-jacketed by the particular figure that a party had proposed in its prescribed statements of case many months before.

21

Case review - More valuation

S Franses v The Cavendish Hotel (Part 2)

Make sure you understand what valuation is required?

The valuation date for the interim rent was as long ago as January 2016. Here, a major problem for the Landlord was that its valuation expert witness had not properly valued a year-to-year tenancy, as required by the Act as the starting point for the interim rent decision. Because the Tenant had in fact had more than 5 years' of occupation, he had approached the valuation as if it were of a 5-year term, ignoring the fact that the Act intends the interim rent figure to reflect the uncertainty to a tenant of not knowing whether or when its tenancy will be reviewed.

22

Case review - Live to work or work to live?

AHGR LIMITED and - (1) LUKE KANE-LAVERACK (2) PETER KANE-LAVERACK

If a planning permission and a lease require premises to be used as a "live/work unit", must the tenant "live and work" or "live and/or work" at the premises? On the first appeal, Meade J held that the second reading is correct.

The Court of Appeal has now granted permission for a second appeal and the claimant landlord will be inviting the Court of Appeal to prefer the first reading of the term "live/work unit".

Hearing Status: Float on 14-Mar-2023 or 15-Mar-2023 - estimated length (in hours): 6:00

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Case review - Judicial Review

Arnold White Estates v The Forestry Commission June 2021

Under Part 54.5 of the Civil Procedure Rules, a claim for judicial review must be filed both "(a) promptly" and "(b) in any event not later than 3 months after the grounds to make the claim first arose".

The notes in paragraph 54.5.1 of the White Book emphasise that a claimant "must ... challenge the substantive decision that is the real basis of their complaint".

24



Case review - Judicial Review

In *R. (on the application of Thornton Hall Hotel Ltd.) v Wirral Metropolitan Borough Council* [2019] EWCA Civ 737, a case concerning an extremely late challenge to a grant of planning permission, the Court of Appeal said that

"[what] is required to satisfy the requirements of promptness will vary from case to case" and "depends on all the circumstances", but "[the] court will not generally exercise its discretion to extend time on the basis of legal advice that the claimant might or should have received

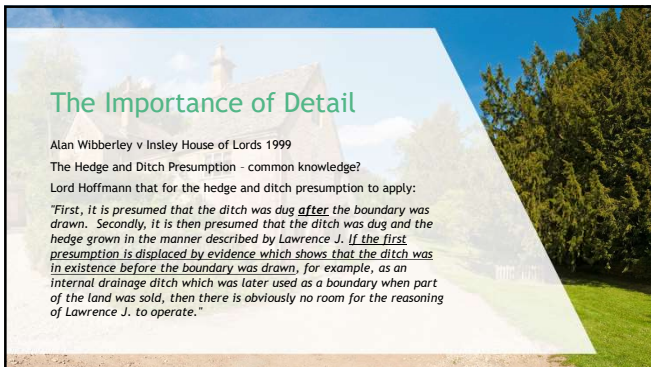
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Wilsons Solicitors

The Importance of Detail

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The Importance of Detail

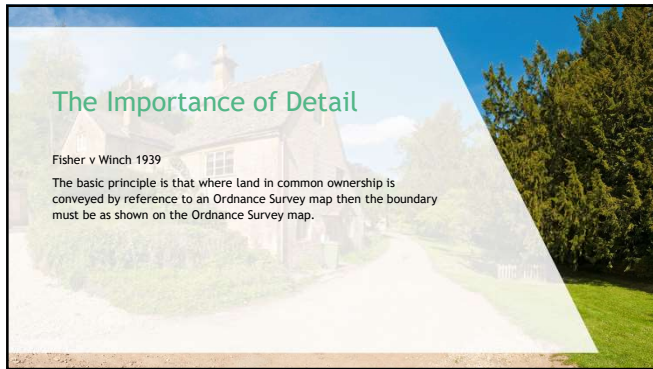
Alan Wibberley v Insley House of Lords 1999

The Hedge and Ditch Presumption - common knowledge?

Lord Hoffmann that for the hedge and ditch presumption to apply:

"First, it is presumed that the ditch was dug *after* the boundary was drawn. Secondly, it is then presumed that the ditch was dug and the hedge grown in the manner described by Lawrence J. If the first presumption is displaced by evidence which shows that the ditch was in existence before the boundary was drawn, for example, as an internal drainage ditch which was later used as a boundary when part of the land was sold, then there is obviously no room for the reasoning of Lawrence J. to operate."

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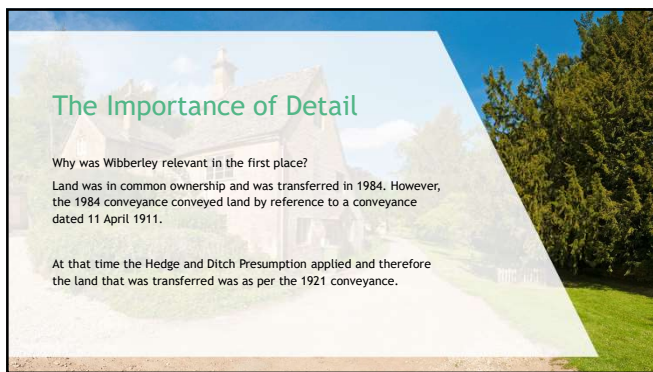


The Importance of Detail

Fisher v Winch 1939

The basic principle is that where land in common ownership is conveyed by reference to an Ordnance Survey map then the boundary must be as shown on the Ordnance Survey map.

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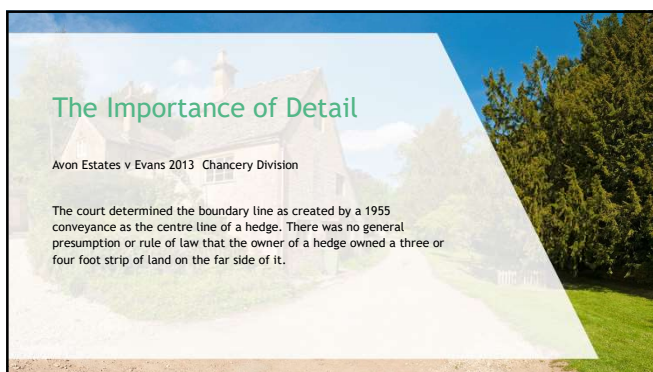
The Importance of Detail

Why was Wibberley relevant in the first place?

Land was in common ownership and was transferred in 1984. However, the 1984 conveyance conveyed land by reference to a conveyance dated 11 April 1911.

At that time the Hedge and Ditch Presumption applied and therefore the land that was transferred was as per the 1921 conveyance.

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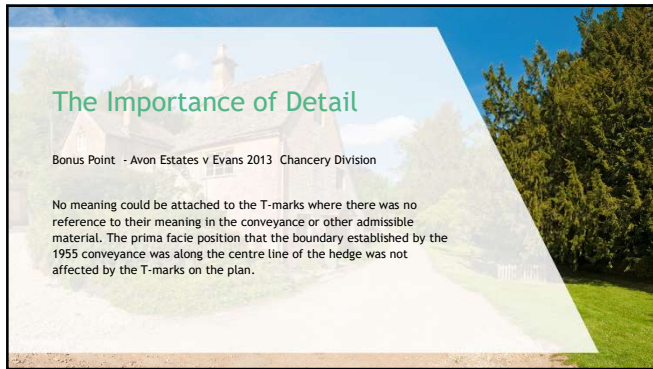


The Importance of Detail

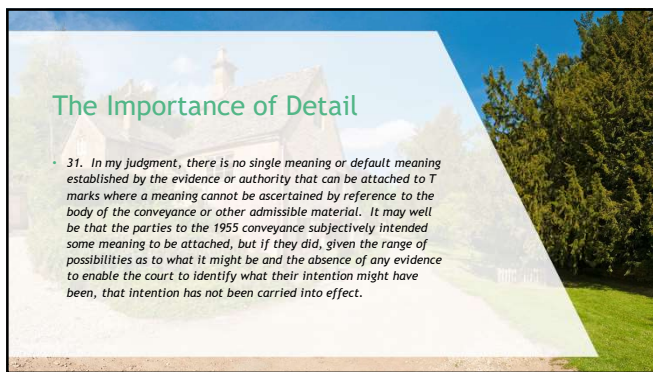
Avon Estates v Evans 2013 Chancery Division

The court determined the boundary line as created by a 1955 conveyance as the centre line of a hedge. There was no general presumption or rule of law that the owner of a hedge owned a three or four foot strip of land on the far side of it.

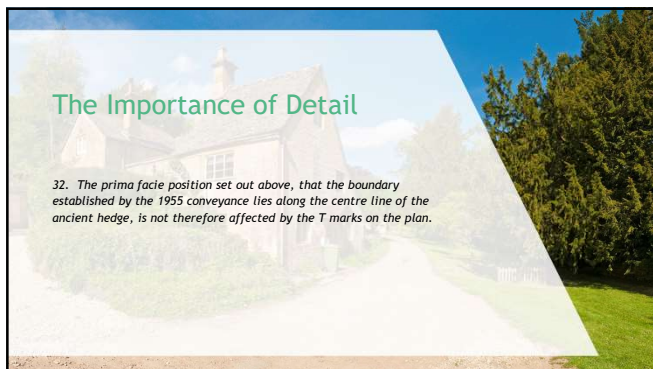
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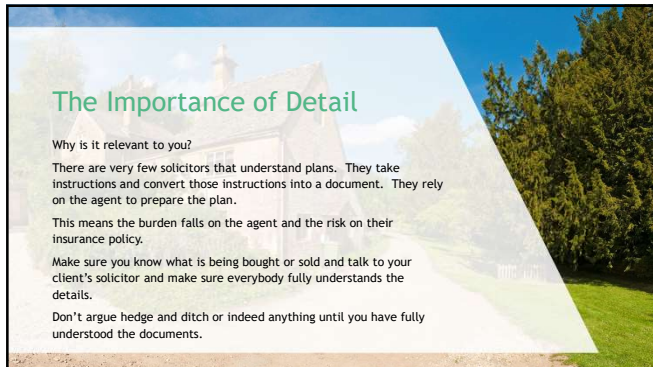
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The Importance of Detail

Why is it relevant to you?

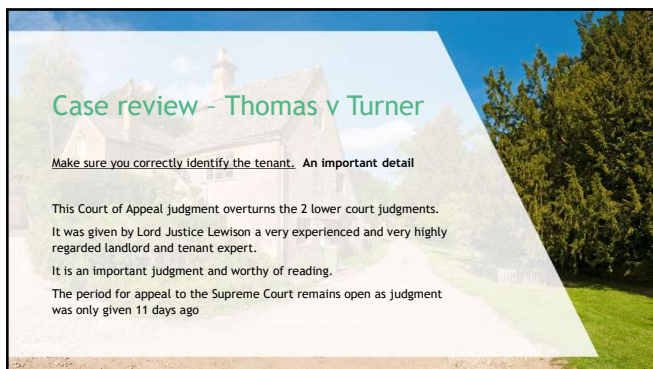
There are very few solicitors that understand plans. They take instructions and convert those instructions into a document. They rely on the agent to prepare the plan.

This means the burden falls on the agent and the risk on their insurance policy.

Make sure you know what is being bought or sold and talk to your client's solicitor and make sure everybody fully understands the details.

Don't argue hedge and ditch or indeed anything until you have fully understood the documents.

34



Case review - Thomas v Turner

Make sure you correctly identify the tenant. An important detail

This Court of Appeal judgment overturns the 2 lower court judgments. It was given by Lord Justice Lewison a very experienced and very highly regarded landlord and tenant expert.

It is an important judgment and worthy of reading.

The period for appeal to the Supreme Court remains open as judgment was only given 11 days ago

35



Case review - Piles of Procter

Procter v Procter - High Court and then Court of Appeal 2021
Procter v Procter - High Court 2022
Pile v Pile - High Court July 2022

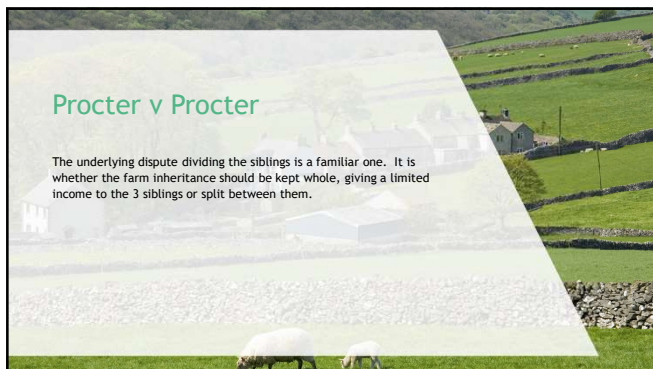
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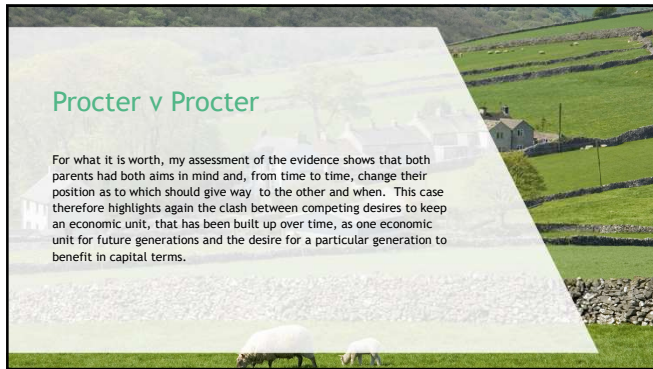
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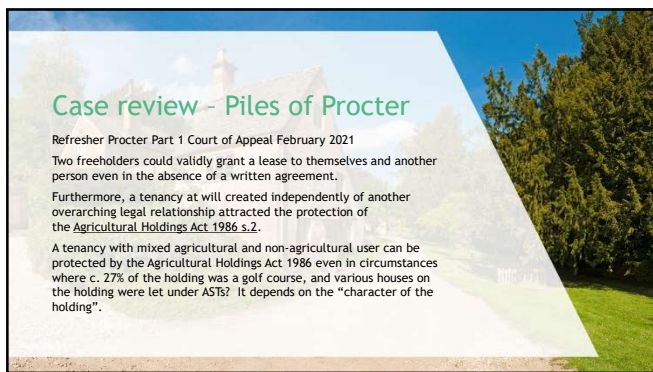
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Procter v Procter

For what it is worth, my assessment of the evidence shows that both parents had both aims in mind and, from time to time, change their position as to which should give way to the other and when. This case therefore highlights again the clash between competing desires to keep an economic unit, that has been built up over time, as one economic unit for future generations and the desire for a particular generation to benefit in capital terms.

40



Case review – Piles of Procter

Refresher Procter Part 1 Court of Appeal February 2021

Two freeholders could validly grant a lease to themselves and another person even in the absence of a written agreement.

Furthermore, a tenancy at will created independently of another overarching legal relationship attracted the protection of the Agricultural Holdings Act 1986 s.2.

A tenancy with mixed agricultural and non-agricultural user can be protected by the Agricultural Holdings Act 1986 even in circumstances where c. 27% of the holding was a golf course, and various houses on the holding were let under ASTs? It depends on the "character of the holding".

41



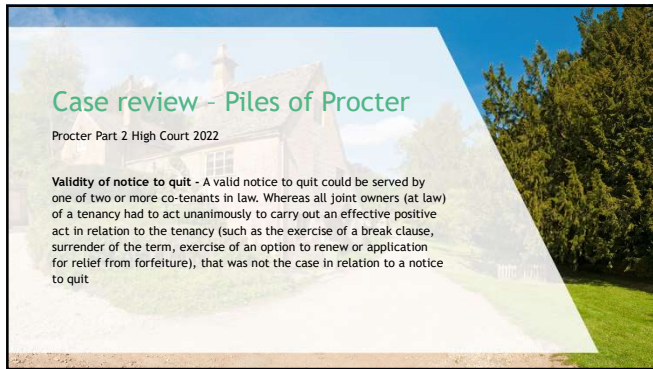
Case review – Piles of Procter

Procter Part 2 High Court 25 May 2022

Summary

A valid notice to quit an agricultural tenancy could be served by one of two or more co-tenants in law: unanimity of the tenants was not required. Whilst the claimant's service of notice to quit an agricultural tenancy held on trust for a family partnership was effective, it was made in breach of her fiduciary duties in connection with the tenancy as one of the trustees for the partnership. A notice to quit could not be withdrawn, but the court intervened to prevent it from taking effect by making an order for rescission.

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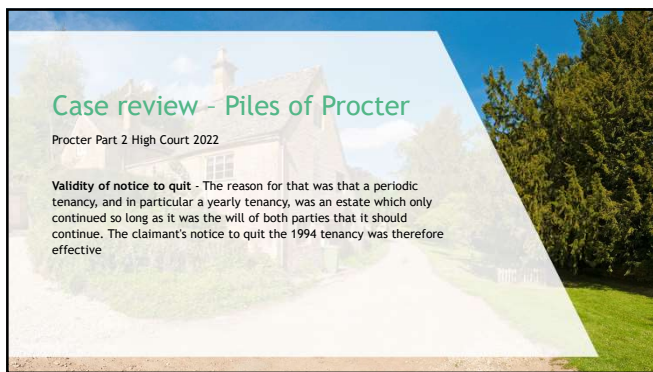


Case review - Piles of Procter

Procter Part 2 High Court 2022

Validity of notice to quit - A valid notice to quit could be served by one of two or more co-tenants in law. Whereas all joint owners (at law) of a tenancy had to act unanimously to carry out an effective positive act in relation to the tenancy (such as the exercise of a break clause, surrender of the term, exercise of an option to renew or application for relief from forfeiture), that was not the case in relation to a notice to quit

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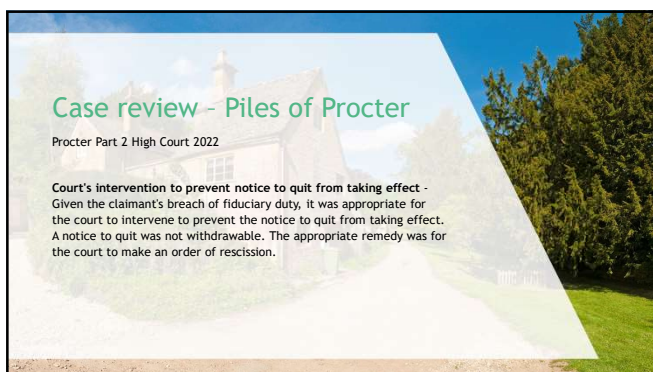


Case review - Piles of Procter

Procter Part 2 High Court 2022

Validity of notice to quit - The reason for that was that a periodic tenancy, and in particular a yearly tenancy, was an estate which only continued so long as it was the will of both parties that it should continue. The claimant's notice to quit the 1994 tenancy was therefore effective

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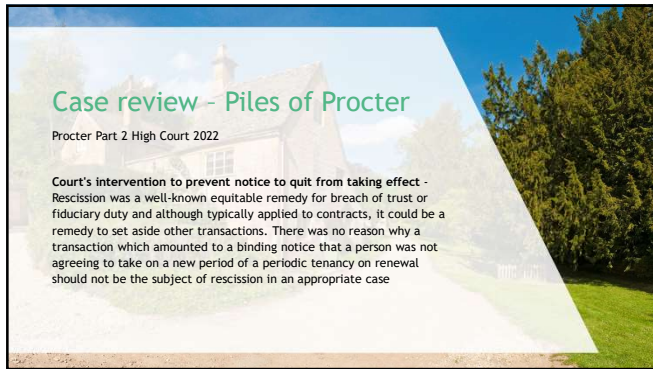


Case review - Piles of Procter

Procter Part 2 High Court 2022

Court's intervention to prevent notice to quit from taking effect - Given the claimant's breach of fiduciary duty, it was appropriate for the court to intervene to prevent the notice to quit from taking effect. A notice to quit was not withdrawable. The appropriate remedy was for the court to make an order of rescission.

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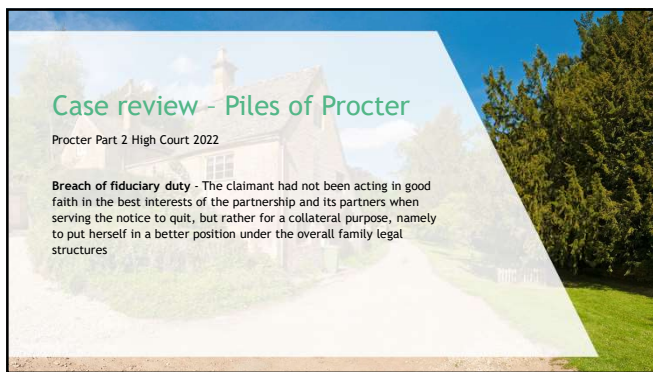


Case review - Piles of Procter

Procter Part 2 High Court 2022

Court's intervention to prevent notice to quit from taking effect - Rescission was a well-known equitable remedy for breach of trust or fiduciary duty and although typically applied to contracts, it could be a remedy to set aside other transactions. There was no reason why a transaction which amounted to a binding notice that a person was not agreeing to take on a new period of a periodic tenancy on renewal should not be the subject of rescission in an appropriate case

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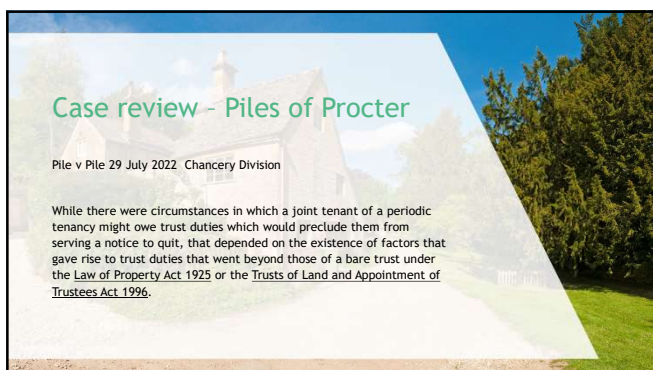


Case review - Piles of Procter

Procter Part 2 High Court 2022

Breach of fiduciary duty - The claimant had not been acting in good faith in the best interests of the partnership and its partners when serving the notice to quit, but rather for a collateral purpose, namely to put herself in a better position under the overall family legal structures

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Case review - Piles of Procter

Pile v Pile 29 July 2022 Chancery Division

While there were circumstances in which a joint tenant of a periodic tenancy might owe trust duties which would preclude them from serving a notice to quit, that depended on the existence of factors that gave rise to trust duties that went beyond those of a bare trust under the Law of Property Act 1925 or the Trusts of Land and Appointment of Trustees Act 1996.

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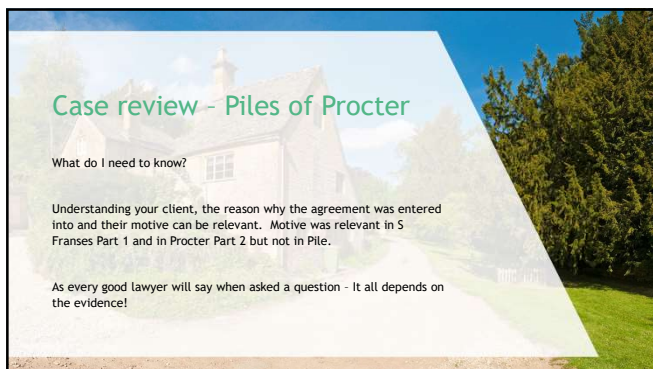


Case review - Piles of Procter

Pile v Pile 29 July 2022 Chancery Division

The only pleaded basis for a trust was the fact of co-ownership of the periodic tenancies; no other legal basis for the existence of any other fiduciary duties was pleaded. There was no serious issue to be tried that Frank owed trust duties to his brother, Simon, which precluded him from serving a notice to quit, irrespective of whether that was done for the purpose of acquiring new leases.

49



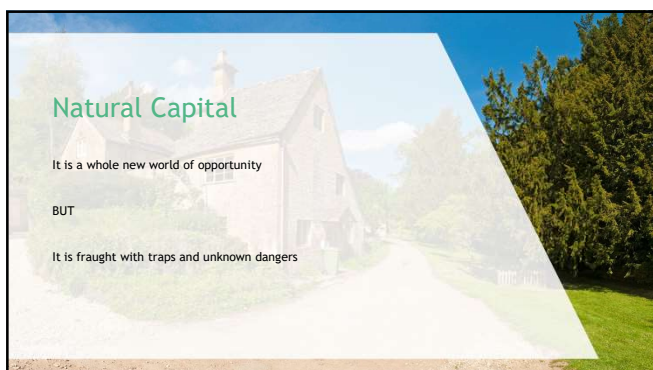
Case review - Piles of Procter

What do I need to know?

Understanding your client, the reason why the agreement was entered into and their motive can be relevant. Motive was relevant in 5 Franes Part 1 and in Procter Part 2 but not in Pile.

As every good lawyer will say when asked a question - It all depends on the evidence!

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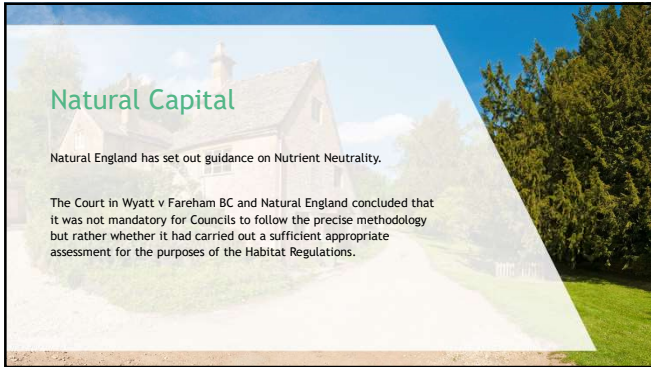
Natural Capital

It is a whole new world of opportunity

BUT

It is fraught with traps and unknown dangers

51



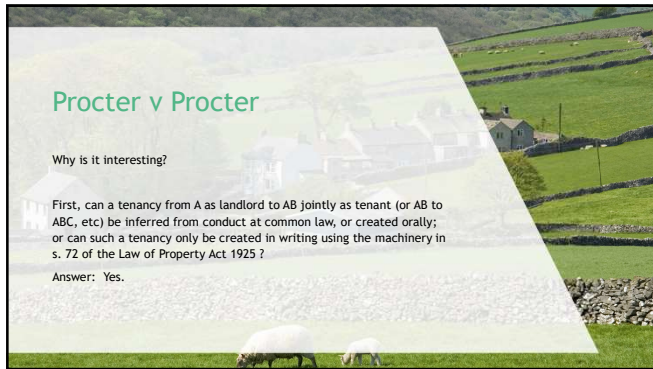
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54



Procter v Procter

Why is it interesting?

First, can a tenancy from A as landlord to AB jointly as tenant (or AB to ABC, etc) be inferred from conduct at common law, or created orally; or can such a tenancy only be created in writing using the machinery in s. 72 of the Law of Property Act 1925 ?

Answer: Yes.

55



Procter v Procter

Why is it interesting?

Secondly, is it possible to have possession (or, in the L&T context, exclusive possession), in circumstances where there is an overlap between the individuals comprising the landlord and the individuals comprising the tenant?

Answer: Yes.

56



Procter v Procter

Why is it interesting?

Thirdly, is it possible to infer the grant of exclusive possession where there is a partial overlap between the individuals constituting the landowner and the persons claiming to be in possession of the land ?

Answer: Yes.

57



Procter v Procter

Why is it interesting?

Fourthly, is a tenancy at will a true tenancy ?

Answer: Yes.

58



Procter v Procter

Why is it interesting?

Fifthly, can a tenancy at will be protected by the Agricultural Holdings Act 1986?

Answer: Yes.

59



Procter v Procter

Why is it interesting?

Sixthly, could a tenancy with mixed agricultural and non-agricultural user be protected by the Agricultural Holdings Act 1986, in circumstances where c. 27% of the holding was a golf course, and various houses on the holding were let under ASTs?

Answer: Yes.

60
