
From: David Neuberger [GRO]
Sent: Mon 22/04/2019 11:58:43 AM (UTC)
To: David Cavender [GRO]; Owain Draper [GRO]
Cc: Anthony Grabiner [GRO]; Gideon Cohen [GRO]
Subject: DEN 27 RE: Post Office - partial draft skeleton

David,
Very helpful.
Thank you.
David

From: David Cavender [GRO]
Sent: 22 April 2019 11:38
To: Owain Draper [GRO]
Cc: David Neuberger [GRO]; Anthony Grabiner [GRO]; Gideon Cohen [GRO]
Subject: Re: Post Office - partial draft skeleton

David,
There are two cons.
One tomorrow at 11am on the phone with the internal Post Office legal team, Womble Bond (Andy Parsons) and probably Herbert Smith (Alan Watts). This will be a dial in from wherever you are. I will also be on this call and I think AG too. The aim of this is to prepare for the meeting on Wednesday and make sure we are all on the same page.
One on Wednesday with the Post Office board in Moorgate. This has now (apparently) been moved to 8.30am. I am also attending this and given the start time will travel there direct from home. The last I heard AG was going to phone into this meeting.
Best Regards
David C.

Sent from my iPhone

On 22 Apr 2019, at 11:24, Owain Draper [GRO] wrote:

Thanks, David.
The grounds will have to be re-visited once I have got a full first draft skeleton. I am sure I will be able to cut it down. The skeleton already departs from it in important ways.
I am afraid I don't know about the conferences – they are not in my diary.

Kind Regards,
Owain
Owain Draper
One Essex Court, Temple
EC4Y 9AR
Switchboard: [GRO]

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From: David Neuberger [GRO]
Date: Monday, 22 April 2019 at 11:21
To: David Cavender [GRO], Owain Draper [GRO], Anthony Grabiner [GRO], Gideon Cohen [GRO]
Subject: RE: Post Office - partial draft skeleton

Dear all,
I have been through this too now, and return it with a few comments.

I agree with David C that it is good and that it strikes the right tone.
Generally speaking, I have tried not to repeat the points I made on the grounds of appeal.
Btw, am I expected to participate in the cons on Tuesday and/or Wednesday? And, if so, who else on our team will be there, will the cons be on the phone, and if so is it envisaged that we will all be in the same room, and if so where?

David

From: David Cavender <[REDACTED]>
Sent: 19 April 2019 16:29
To: David Neuberger <[REDACTED]>; Owain Draper <[REDACTED]>; Anthony Grabiner <[REDACTED]>; Gideon Cohen <[REDACTED]>
Subject: RE: Post Office - partial draft skeleton

All,

I have looked at the first draft of the first part of the skeleton and attach it with a couple of comments. I think it is very good and strikes the right tone. I particularly like the more belligerent attitude to the "relational contract" issue and the subtle way it explains our position on this point below !

Best
D.

From: David Neuberger
Sent: 19 April 2019 16:17
To: Owain Draper; Anthony Grabiner; David Cavender; Gideon Cohen
Subject: RE: Post Office - partial draft skeleton

Thanks very much David and Owain.

I will look at the redraft.

Surely not hours!

If so, I am very sorry to be the cause of such a problem.

On another point, I don't see any great difficulty in saying that there was and is sufficient first instance material which effectively precluded us dissing the existence/usefulness of the notion of a relational contract, but the point is up for grabs in the CA.

David

From: Owain Draper <[REDACTED]>
Sent: 19 April 2019 15:00
To: David Neuberger <[REDACTED]>; Anthony Grabiner <[REDACTED]>; David Cavender <[REDACTED]>; Gideon Cohen <[REDACTED]>
Subject: Post Office - partial draft skeleton

Dear All,

Please find attached draft introduction & section on Common Issue 1, relational contract.

I am sending this at an early stage to inform the discussion of the important points that David makes in his comments on the relevant part of the draft Grounds. I have not taken those points into account in this version.

I apologise for the use of both past and present tense, but that will take hours to fix.

Kind Regards,

Owain

Owain Draper

One Essex Court, Temple

EC4Y 9AR

Switchboard: [REDACTED]

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From: David Neuberger <[REDACTED]>
Date: Friday, 19 April 2019 at 12:16
To: Owain Draper <[REDACTED]>, Anthony Grabiner <[REDACTED]>

David Cavender <GRO>, Gideon Cohen <GRO>

Subject: RE: Revised letter for the CA

Dear all,

I attach the draft grounds of appeal with my comments.

Five general points:

1. In this very complex and detailed case, one could go on making comments till the proverbial cows come home, and I have decided that enough is enough.
2. I have not yet read the documents which Andrew Parsons has sent us in his two recent emails, so their content has not been taken into account
3. Anything which can shorten the grounds would be welcome. I appreciate that there is a lot of ground to cover and that the way the Judge dealt with the issues does not help, but any increase in internal cross-referring or shortening of points would be welcome to the CA I am sure.
4. We are inconsistent as to whether the Judge's view is dealt with in the present or past tense. It is a ridiculously small point, but I noticed it and was (irrationally I admit) slightly irritated by it, and it may be that the CA may be too.
5. Some of the Judge's conclusions are truly eye-watering.

Happy Easter/Passover to one and all – even the Judge (albeit through gritted teeth).

David

From: Owain Draper <GRO>

Sent: 18 April 2019 12:11

To: David Neuberger <GRO>; Anthony Grabiner <GRO>;
David Cavender <GRO>; Gideon Cohen <GRO>

Subject: Re: Revised letter for the CA

I agree. It does not help on the NTC (where the right is identical for each party).

I hope to have a first draft of the parts of the Skeleton Argument dealing with Common Issue 1 (relational contract) and Common Issue 2 (implied terms) ready tonight or tomorrow morning. I think they are the most important parts and will certainly be the longest.

Could David, David or Tony spare me 10 mins for a brief chat on the relational contract arguments?

Best,

Owain

Owain Draper

One Essex Court, Temple

EC4Y 9AR

Switchboard: <GRO>

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From: David Neuberger <GRO>

Date: Thursday, 18 April 2019 at 11:32

To: Owain Draper <GRO>, Anthony Grabiner <GRO>;
David Cavender <GRO>, Gideon Cohen <GRO>

Subject: RE: Revised letter for the CA

I suppose it can be said that the difference makes the judge's surprising conclusion a bit less silly.

But, at least as an immediate reaction, these subtle distinctions of language don't make any difference to the points we are making.

I hope to revert today with my comments on the draft written case.

David

From: Owain Draper <GRO>

Sent: 18 April 2019 10:55

To: Anthony Grabiner <GRO>; David Cavender <GRO>; David
Neuberger <GRO>; Gideon Cohen <GRO>

Subject: Re: Revised letter for the CA

Dear All,

Having looked again at the termination on notice provision in the SPMC, it is not perfectly mutual. I think we will need to adjust what is said in the grounds on this.

The term permits the SPM to terminate on 3 months notice (without saying “at least” or “not less than”), whereas Post Office can terminate “not less than 3 months notice”.

Q how the SPM termination right would be interpreted. It seems unlikely that it would be read in the strict sense to require exactly 3 months notice to be given, but I have not yet looked again at Lewison or the cases.

Kind Regards,

Owain

Owain Draper

One Essex Court, Temple

EC4Y 9AR

Switchboard: [GRO]

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The content of this email is confidential and may subject to legal professional privilege. If you are not the intended recipient, please delete it permanently and inform the sender.

From: Owain Draper [GRO]

Date: Tuesday, 16 April 2019 at 18:26

To: Anthony Grabiner [GRO], David Cavender [GRO],
David Neuberger [GRO], Gideon Cohen [GRO]

Subject: Revised letter for the CA

Dear All,

Please find attached the revised draft letter that I mentioned earlier. Any comments on whether it is worth sending in this form?

Best,

Owain

Owain Draper

One Essex Court, Temple

EC4Y 9AR

Switchboard: [GRO]

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