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FINANCIAL SERVICE

Quantity Surveyors. A claim of professional negligence against Defendant Quantity Surveyors relating to residential development was dismissed. The Defendants denied negligence and said that it was the bank's negligent decision to lend in the first place which was the real cause of loss (*Bank of Ireland (UK) Plc v. Watts Group Plc* [2017] EWHC 1667 (TCC)).

Financial Ombudsman Service. The Ombudsman Service dismissed a complaint in respect of a loan agreement. The complaint form said that the Claimants wanted details in writing of their debt, a copy of the welcome letter sent on the transfer of the loan and for an agreement that their credit rating would be unaffected. The decision letter did not deal with the true complaint and was held by the High Court to be irrational (*R (On the Application of Kelly) v. Financial Ombudsman Service*, 13th December 2017).

Security for Costs. The Court of Appeal allowed an appeal against the refusal to grant security for costs on the basis that there was an after-the-event insurance policy in place. The underlying case was that a bank and firm of accountants entered into an unlawful means conspiracy so that their business and assets could be sold at an undervalue by administrators (*Premier Motor Auctions v. Price Waterhouse Coopers LLP* [2017] EWCA Civ 1872).

Valuation. The Supreme Court considered the quantum of damages where a lender had advanced funds on the basis of a negligent valuation. There had been an earlier loan which was discharged by the loan in question. The lender had received some benefit attributable to the events which caused its loss and these had to be taken into account. The discharge of the existing indebtedness was not simply a collateral benefit (*Tiuta International v. De Villiers Surveyors Limited* [2017] UKSC 77).

Unfair Terms. The ECJ made a preliminary ruling that the Unfair Terms Directive does not apply to proceedings brought by the successful bidder in an auction of immovable property following extrajudicial enforcement of a mortgage granted by a consumer. The proceedings were independent of the legal relationship between the creditor and the consumer and the mortgage had been enforced (*Banco Santander v. Lopez* (Case C-598/15)).

Market Manipulation. The High Court granted pre-action disclosure which might evidence that a bank had caused a company to suffer loss from foreign currency trading through market manipulation. Although the relevant trades had taken place over ten years earlier, it was argued that there was concealment (*ECU Group Plc v. HSBC* [2017] EWHC 3011 (Comm)).

Financial Ombudsman Service. The High Court considered a preliminary issue as to whether a decision by the FOS was within the Arbitration Act 1996 Section 6. The FOS had decided a complaint in respect of the loss of a pension and there had been a subsequent agreement between the complainant and the pension administrator for reconsideration of the complaint. It was held that this was not arbitration agreement (*Berkeley Burke v. Charlton* [2017] EWHC 2396 (Comm)).

Lease-Purchase. The ECJ has considered the issue of VAT on hire-purchase contracts and held that it depends on whether it can be inferred from the financial terms of the contract that exercising the option appears to be the only economically rational choice that the lessee will be able to make. It was agreed that a lease agreement is a supply of services and a hire-purchase agreement is a supply of goods (*Revenue & Customs Commissioners v. Mercedes-Benz Financial Services UK* (C-164/16)).

Statutory Demand. The Chancery Division overturned a decision of a District Judge that there were substantial grounds for disputing a debt so that a statutory demand should be set aside. The basis was that there was a doubt about the lender's identity. The agreement in question was a loan which stated that the lender was the Appellant's company. However, the debtor was later asked to enter into a "personal guarantee". In fact the document was a loan agreement and the individual Appellant was named as the lender. The Court held that it was perfectly clear that the Appellant was personally entitled and the debtor personally liable (*Diamond v. Holden*, 8th November 2017).

Bills of Sale. The Law Commission has published a report on preventing unfair terms on log book loans. There are recommendations as to adequate warnings at the outset of the agreement and permitting borrowers to end the agreement by handing over the goods rather than paying the rest of the loan.

FOOD

Sentence. The Court of Appeal (Criminal Division) heard an appeal by the owner of a restaurant which had served a take-away meal. This contained peanuts and resulted in a fatality. The Crown Court sentence was a total of six years imprisonment including a sentence for manslaughter. Appeals against convictions and sentence were dismissed (*R v. Zaman* [2017] EWCA Crim 1783).

Direct Sale. The European Court gave a ruling on the concept of "direct sale to the final consumer or user" under Regulation (EC) No.834/2007. The underlying facts concerned a mail order business offering organic spices. The referring Court asked whether it was necessary for the sale to occur in the presence of both the operator and the final consumer for it to be sold "directly". The ruling was that it was necessary for the sale to

occur in the presence of the operator and the final consumer (*Kaminn v. Zentrale zur Bekämpfung* (Case C-289/16)).

TRAVEL

Airlines. The Court of Appeal Civil Division held that where a passenger had connecting flights with a non-community carrier departing from an EU airport with a connection at a non-EU airport to reach a final destination outside the EU the connecting flight could be taken into account for the purposes of calculating delay in respect of compensation sought under Regulation 261/2004 (*Gahan v. Emirates* [2017] EWCA Civ 1530).

COMMERCIAL AGENTS

Commodity Market and Exchange. In a case involving rough diamonds the High Court considered whether a person was a commercial agent. It was held that the important question was the scope of the authority of the agent and the retainer and whether this included developing goodwill. It was held that the Claimant had been a commercial agent but dismissed the claim for compensation on termination of the agency under the Directive because of the operation of a commodity exchange or a commodity market. However, damages were payable at common law (*W Nagel v. Pluczenik Diamond Co NV* [2017] Bus LR).

LICENSING

Homes in Multiple Occupation. The High Court heard an appeal by way of case stated following the acquittal by the Magistrates of an offence of managing a house in multiple occupation which was not licenced. The property was a two-storey self-contained flat above a restaurant. It was held that commercial premises above or below living accommodation counted towards the calculation of the number of storeys and the appeal was allowed (*Woking Borough Council v. Johnson* [2017] EWHC 2547 (Admin)).

ANIMALS

Costs. The RSPCA removed cattle belonging to a farmer. One of the issues was bailment and it was held that an agreement by the farmer to let the RSPCA enter the land to care for the cattle did not give rise to a bailment. Even if it had been there was no right to recover expenses (*Tongue v. Royal Society for the Prevention of Cruelty to Animals* [2017] EWHC 2508 (Ch)).

Destruction Order. The High Court considered the power under Section 4B of the Dangerous Dogs Act 1991 to make a contingent destruction order. Consideration was given as to whether such an order naming a person other than the owner of the dog could be the person for the time being in charge of it. Following an appeal by way of case stated from the Crown Court it was held that there was no power to make the order in the circumstances of the case which was remitted to determine whether certain persons were for the time being in charge of the dog (*Webb v. Chief Constable of Avon & Somerset Constabulary* [2017] EWHC 3311 (Admin)).

Keeper. The Defendant had been found guilty of keeping or training a dog for use in connection with an animal fight under the Animal Welfare Act 2006. It was held that a person could keep an animal by having actual visible possession but also by requesting another to keep it for them. Actual possession was not essential for keeping (*Wright v. Reading Crown Court* [2017] EWHC 2643 (Admin)).

GAMING

Cheating. A professional gambler sued a casino for winnings at Punto Banco. The Supreme Court considered the criminal test for dishonesty and dismissed an appeal by the gambler (*Ivey v. Genting Casinos* [2017] UKSC 67).

CONSUMER PROTECTION

Average Consumer. In proceedings in which there were allegations of threatening infringement in respect of London taxis the Court of Appeal dismissed an appeal from a decision that marks for models of taxis were invalid for lack of distinctive character. The Court said that the term “average consumer” included any class of consumer at whom the guarantee of origin was directed and who would be likely to rely on it when, for example, making a decision to buy or use goods. It did not matter whether a user was one who took complete possession or one who merely hired the goods. Therefore there should not be excluded the hirer of the taxi from a class of consumers whose perception should be considered (*London Taxi Corporation Limited v. Frazer-Nash Research Limited* [2017] EWCA Civ 1729).

AMENDMENT OF INFORMATION

Housing. In a prosecution under the Housing Act 2004 Magistrates were asked to amend the information in respect of the name of the Defendant. They consented to the amendment and there was an appeal by way of case stated to the High Court. The Court considered the power to state a case before the final determination of a matter. It was held that the local authority always intended to prosecute the substituted Defendant and that its director was aware of the fact. It was not a case where there was any room for confusion with some other legal entity. It was not a case of mistaken identity but rather mis-statement of name (*Platinum Crown Investments Limited v. North East Essex Magistrates' Court* [2017] EWHC 2761 (Admin)).

PLANNING

Enforcement Notices. The High Court considered an appeal by way of case stated from a Magistrate's decision that a planning enforcement notice had not been a nullity. It was said that the notice had been issued by a deputy manager rather than a development control manager under delegated authority. The Court held that if there had been a requirement as to signature an error regarding the person taking the action was not one resulting in a nullity. A signature was not part of the delegation under the Local Government Act 1972. The appeal was dismissed (*Beg v. Luton Borough Council* [2017] EWHC 3435 (Admin)).

IMPORTATION

Poppy Straw. The High Court considered the meaning and application of the definition of poppy straw in the Misuse of Drugs Act 1971 in an appeal by way of case stated. The Court agreed with the Appellant as to the meaning of the word “mowing” and that the poppy heads and stalks were not “mown” and so were not poppy straw. The case involved the importation from the Netherlands of consignments of dried poppy heads with a view to satisfying orders for decorative poppy heads in the USA (*Marwaha v. UK Border Revenue Agency* [2017] EWHC 2321 (Admin)).