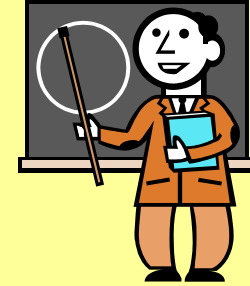


Dilapidations Three

Leases, RICS Guidance and Protocol

Dilapidations

Lecture Overview



Lecture One – Dilapidations Overview and Schedules of Condition

Lecture Two – Schedules of Condition, Dilapidations and Scott Leases

Lecture Three – Leases, RICS Guidance and Protocol

Lecture Four – Legal Frame work

Lecture Five - Clients / Terms & Conditions

Lecture Six - Client

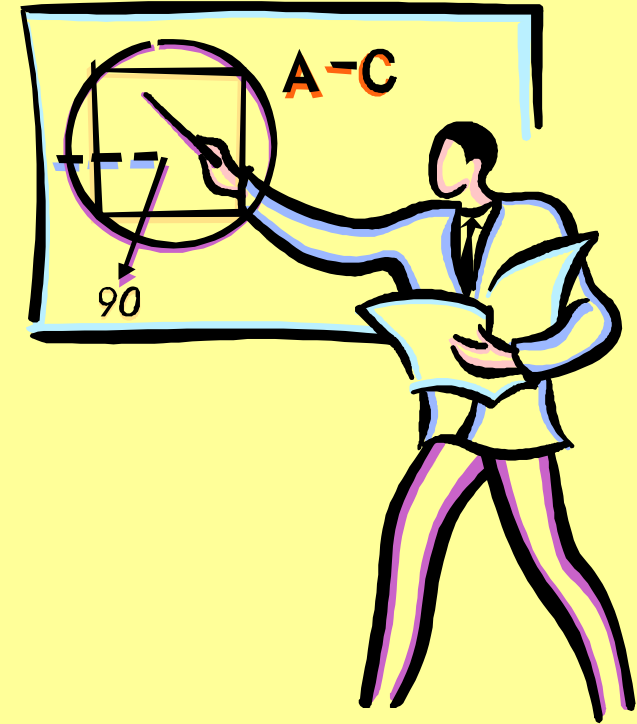
Review

- **Schedules of Condition**
- **Schedules of Dilapidations**
- **Scott Schedules**

Summary

Every lecture will follow the same format:

- The first hour or so will be my presentation (but it will need some participation from you!).
- The second hour or so will be a tutorial – active learning.
- The last half an hour will be general feedback.



- Groups of Six Teams of threes

Property One

Your client is the tenant who is considering buying the lease. You have heads of terms and your client requires a Schedule of Condition and a Property Report

Property Two

Your client is the Landlord who wants to serve a Schedule of Dilapidations. You have a summary of the lease. Prepare and advise.

Course Work



Course work requirement:

Oral presentations

In groups of six with teams of three (with five minutes minimum each) on Schedules of Conditions & Property Reports and Schedules of Dilapidations

??? Date ????? Ready to present

Today - Now

First Part

- What is a lease (from a surveyors view)
- Main types of lease - FRI leases and limited liability
- Lease clauses
- Reading leases Fast
- Reading leases slowly and case law
- RICS Guidance notes
- Civil Procedures Rules /Protocol

Second Part

- Prepare a Schedule of Condition or a schedule of Dilapidations with lease

Last Half Hour

- Feed back

Further reading

- Read RICS Dilaps Guidance
- www.DilapsHelp.com. And everything in the library

Question: Has everyone read the RICS Guidance notes?



Dilapidations Process

- ✓ Client rings for advice/ quote
- ✓ Talk to client
- ✓ Confirm instruction and T & Cs
- ✓ Gather available information
- ✓ Inspect property
- ✓ Prepare Schedule of Condition or Dilaps report
- ✓ Advise and agree way forward with your client
- ✓ Meet other surveyor
- ✓ Negotiate and agree
- ✓ Negotiate and Disagree and go to court

What is a lease?

A lease is a legally binding contract between a landlord and a tenant governed by the ***Landlord and Tenant Act 1927*** (with revisions).

The lease sets out the intention of the parties for a tenancy of a building or part of a building, usually based on initial Heads of Agreement.

In exchange for rent the landlord promises occupation and quiet enjoyment of the premises, while the tenant promises to maintain and repair the property to the standard required in the lease.

Two main types of leases:

1. Tenant fully repairing and insuring (FR&I), and
2. Limited repairing liabilities:
 - Internal repairing only, or
 - Landlord responsible for certain matters such as common parts by payment of service charge.

A lease is for a specified term of years which may be anything up to 999 years. During the life of a lease there may have break clauses and certainly rent review clauses.

Questions from a Landlords view



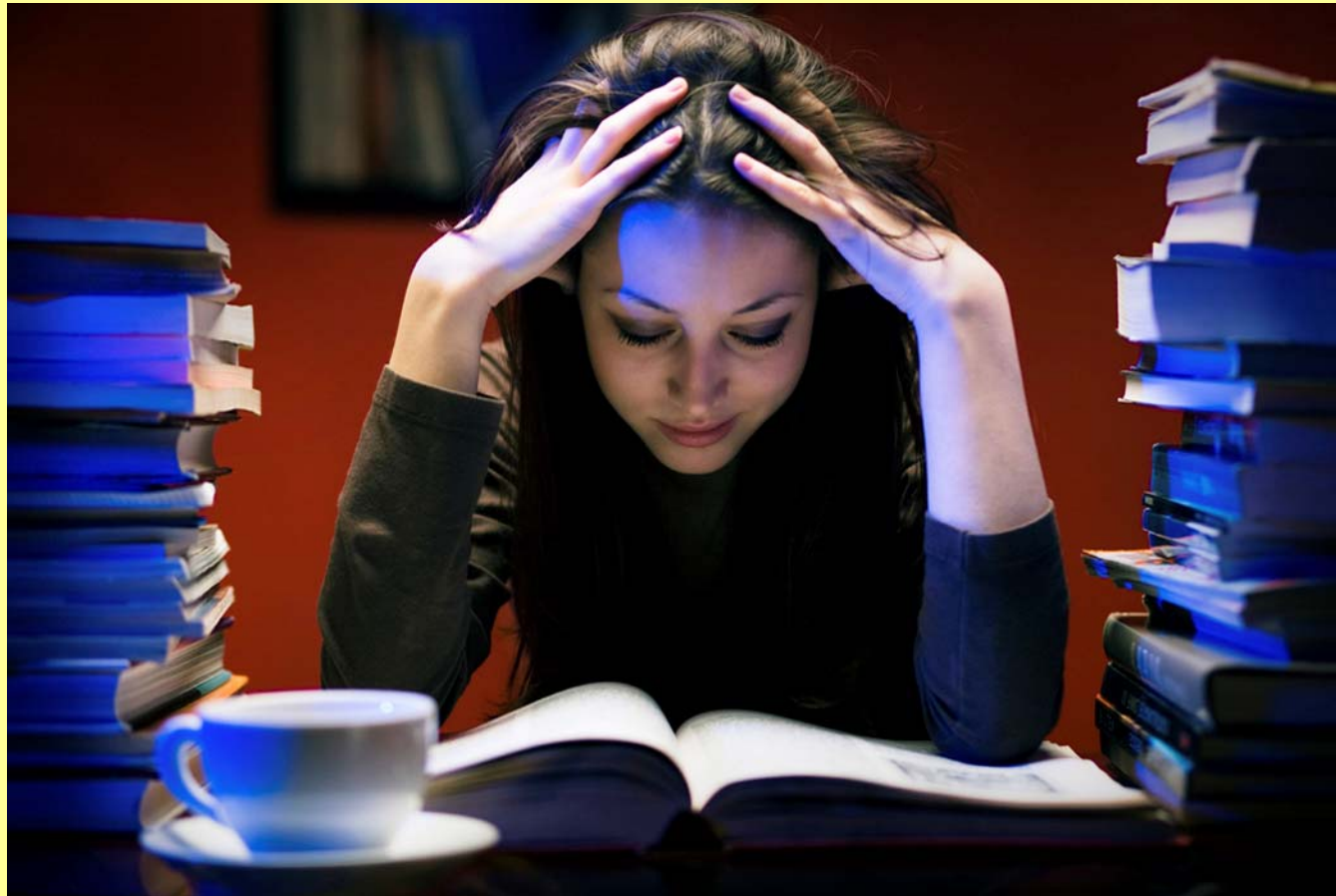
- Why would a landlord want anything but a FRI lease?
- Why would they want anything but a lease term as possible?
- And as many clauses in the lease as possible?

Evolving Leases



- FRI Leases are getting more common – (because Landlords want to receive rent and have no costs)
- Length of lease is reducing (Tenants want flexibility)
- Leases getting bigger and more complicated (Lawyers and investors protect against everything!)
- No two leases the same - The code for leasing business premises 2007 (was 2002) ignored by most

Reading the lease slowly



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LEASE CLAUSES - Unfair Game?

Three principal sections to the lease which are:

- Landlord's duties and responsibilities
- Tenant's duties and responsibilities
- Statutory and regulatory requirements

Other than offering quiet enjoyment the landlord may have **NO OTHER RESPONSIBILITY** under a FRI lease unless there is multiple occupation with common parts.

Tenants Liabilities

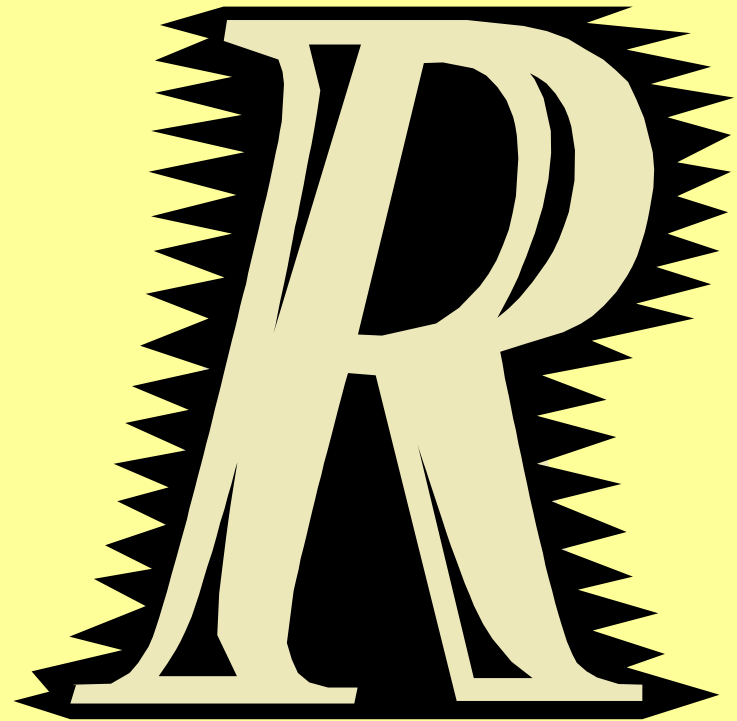
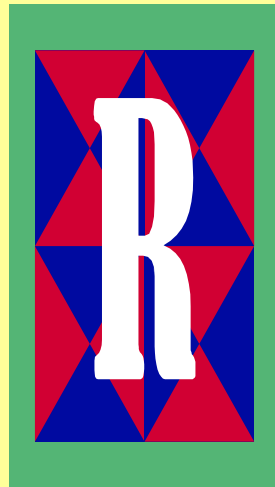
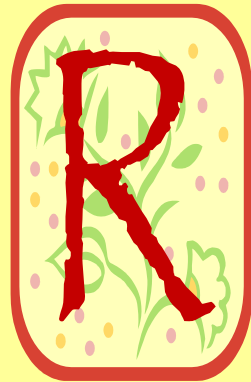
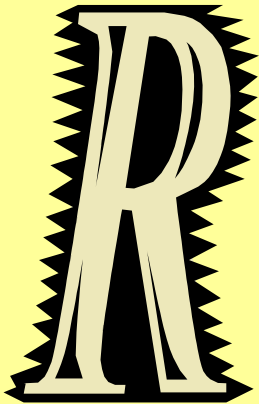


Find the tenants section and divided into the 4Rs & yield up

The tenant's duties and responsibilities might be onerous. The extent of his liabilities is established both by the wording of the lease and by case law precedent.

The 4Rs

4Rs and yield up



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COVENANTS

Express Covenants

Is written within the lease and is a breach of contract if not carried out.

Implied Covenants

Items the lease is silent on can be covered by statute or implied covenants (the landlord's aim is to cover everything, and be silent on nothing - that's why the leases are getting bigger!)

Reading Leases fast!

Ask the solicitor
only to send you
the relevant bits



(3) Repairs

Throughout the said term well and substantially to repair and keep in good and substantial repair and condition the Demised Premises including all appurtenances thereto belonging and the sanitary water heating cooling and ventilating apparatus the sewers drains conduits gutters watercourses boundary walls and fences pipes cables wires ducts and mains and apparatus associated therewith and any equipment and fittings ancillary thereto forming part of the Demised Premises or solely serving the same and to renew and replace from time to time all Landlord' fixtures and fittings being part of the Demises Premises which may become beyond repair

(4) Redecoration

In a proper and workmanlike manner to paint with three coats of good quality paint all the wood metal and other parts of the Demised Premises heretofore or usually painted as to the external work in the third year and as to the internal work in the third year of the said term and in each case the painting to be done as well in the last three months of the term (howsoever determined) provided that there is an interval of two years between the works with good quality materials

(5) Works required by statute local and other authorities

To observe and perform all requirements of and to do and execute or cause to be done and executed all such works and things as under or by virtue of any Acts of Parliament local Acts Building Regulations or bye-laws already or hereafter to be passed and rules and regulations thereunder now are or shall or may be directed or required to be done or executed upon or in respect of the Demised Premises or any part thereof or in respect of the user thereof whether by the owner Landlord Tenant or occupier thereof and at all times during the term hereby granted to indemnify and keep indemnified the Landlord against all claims demands expenses and liabilities in respect thereof

(25) Yielding up

To yield up the Demised Premises (but not with trade and other tenant's fixtures) with vacant possession (subject to the provisions of the Landlord and Tenant Act 1954) at the determination of the said term in good and substantial repair and condition in accordance with the covenants hereinbefore contained

Reading leases slowly and know some of the case law



- It's one thing to read the lease it's another to understand the implications
- What you can and can't do relates to the terms of the lease and case law

What is Case Law



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Civil Law Statute

- Civil law has developed has been by statute based law, more commonly known as an Act of Parliament. Parliament is the supreme law-making body in the United Kingdom and brings into force statutes which are also known as primary legislation. In many instances such Acts of Parliament have had the function of clarifying, codifying and overruling the common law.

Case Law

- Case law is still very important even where there is an Act of Parliament, as acts are sometimes difficult to interpret. If parties cannot agree how an act is to apply they will have to litigate and allow a Judge to decide. These cases are then used in future to help us interpret the act.

Example Case Law



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“Repair”

“Repair” is required to a standard suitable for age, character and locality of the building

Proudfoot v Hart 1890



‘Old’ does not mean ‘Disrepair’

Because something is old it does not mean it's in disrepair

Reger International Ltd v Tiree Ltd 2006



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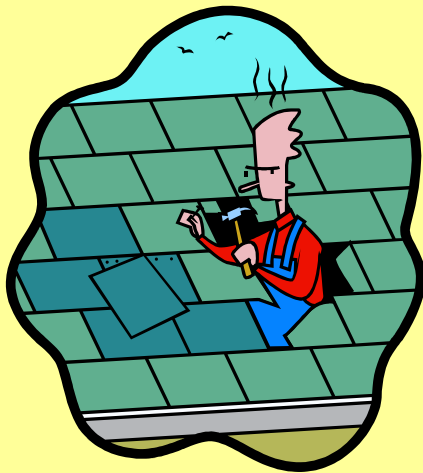
“Keep in good repair”

Not just a further commitment but an immediate requirement

Elite Investments Ltd v TI Bainbridge Silencers Ltd 1986

Roof deteriorating at time lease taken - can be asked to repair on the next day

Three different repair covenants three different meanings



- » “to keep in good and well maintained repair and to yield up the same on determination of the lease”
- » “to maintain in good and substantial order and to yield up the same in good and substantial order on determination of the lease”
- » “to maintain in no better condition than at the commencement of the lease”

These three types of clauses constitute different tenant liabilities.

“Repair”

- Most leases are “repair” leases – but make sure that you know what your one is
- So, required to a standard suitable for age, character and locality of the building



More case law next time



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Rules for Preparing Dilapidations

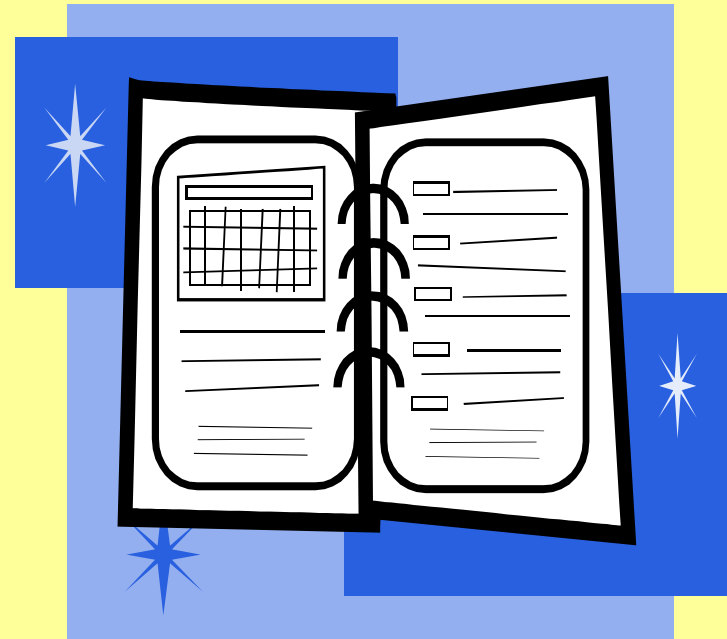
- RICS Guidelines
- Protocol
- Case Law



RICS Guidance

Read the RICS
Guidance Note

It's very readable



RICS Dilapidations Guidance Notes Effective from June 2008

Providing advise to RICS members on factors to be taken into consideration when taking client instruction, reviewing the lease and other relevant documents, inspecting the subject property and producing and responding to schedules and other documentation for use by the client, the other party to the lease, third parties, the courts and other legal institutions, such as tribunals.

60 pages

RICS Guidance 100% essential reading

Read the RICS
Guidance Note

It's very readable



RICS Guidance Surveyor's Role

Adviser

Or

Expert witness

RICS Guidance Notes



Introduction

Role of the Surveyor

Taking Instruction

The lease and other enquires

Inspection

The schedule

Claims at the end of the term

Claims during the term

Break clause

Claims against landlords

Alternative dispute resolution

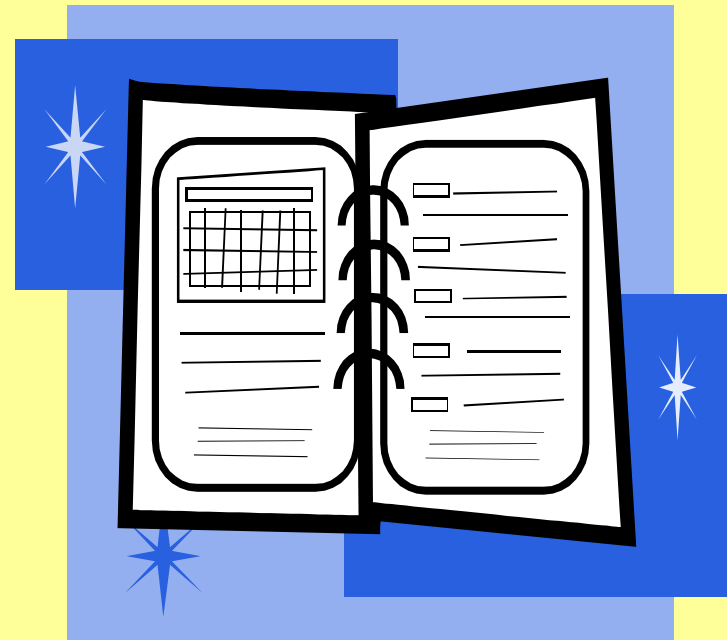
Settlements

Appendices

RICS Guidance - Read it

Read the RICS
Guidance Note

It's very readable



Civil Procedure Rules - it's about being reasonable

- Civil Procedure Rules cover litigation and apply to dilapidations claims.
- The associated protocols and guidance, should be applied from the moment that the preparation of the schedule of dilapidations is discussed between a client and a surveyor

Divide Again



- Get into groups of six.
- Pick two local buildings you all know and can get to, which has access to at least one elevation of the outside and two rooms inside.

Pick a Role

- Landlord
- Landlords Surveyor
- Landlords Solicitor

Or

- Tenant
- Tenants Surveyor
- Tenants Solicitor



Pick a Building



Pick a local building,
which could be a:

- Café
- Bar
- Public building, such as a library, university or leisure centre etc.

It just needs to be open and
within easy reach of here.



**Carry out a
Dilapidations
Schedule in Scott
format with a
“repair” clause
and a “put and
keep in good
repair” clause**

Dilapidations Process

- ✓ Client rings for advice/ quote
- ✓ Talk to client
- ✓ Confirm instruction and T & Cs
- ✓ Gather available information
- ✓ Inspect property
- ✓ Prepare Schedule of Condition or Dilaps report
- ✓ Advise and agree way forward with your client
- ✓ Meet other surveyor
- ✓ Negotiate and agree
- ✓ Negotiate and Disagree and go to court

Question Sheet 1

- What are the main types of lease
- What is the best way to establish the covenants that effect the property
- How does a landlord show a breach of a covenants



Court has final say

Court has discretion – although a party has “won” the litigation the court has discretion – which is why dilapidations are risky

Johnsey Estates Ltd v Secretary of Environment Transport and Regions 2001

My Quote for the Day

“Imagination is more important than knowledge”

Albert Einstein

