

# Dilapidations Six

## Schedules of Dilapidations (Review)

# Quote

**“Repartition is the mother of skill / learning”**

Tony Robbins

# Today - Now

## First Part

Dilaps review  
Goal Setting  
Offices

## Second Part

- Work on your oral presentation

## Last Half Hour

- Up date on your presentation
- Your Dilaps topic

## Further reading

- Read a Dilapidations book

[www.DilapsHelp.com](http://www.DilapsHelp.com) Has many book reviews

Copyright of 1stAssociated.co.uk,  
not to be used in any format  
without express written permission

# You should be able to present on and answer exam questions on the following, can you?

1. Schedules of Condition
2. Schedules of Dilapidations
3. Scotts Schedules
4. RICS Guidance Note
5. Section 18 Valuations
6. Costing Dilapidations
7. Licences
8. Break clauses
9. Side letters
10. Covenants types of 4 Rs & yield up
11. Types of damage claims
12. CPR
13. Section 146 notices
14. T & C letter
15. Dilapidations process
16. Dilapidations case law as listed

# Dilaps from the Landlord's View



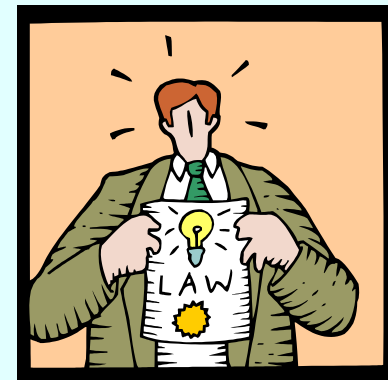
Copyright of 1stAssociated.co.uk,  
not to be used in any format  
without express written permission

# Surveyor's 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

# Legal Contract - The Lease

- The lease is a legal contract
- Breaches of the contract are actionable
- It's also governed by the CPR - Civil Procedure Rules
- A Schedule of Dilaps is a list of the breaches (or should be) of the lease
- It can end up in high court – but in reality the chartered surveyors nearly always sort it out – only about 3% of cases go to court



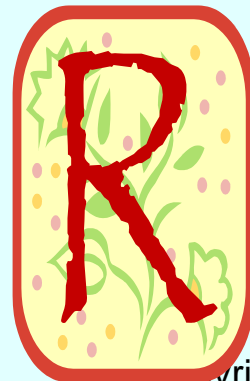
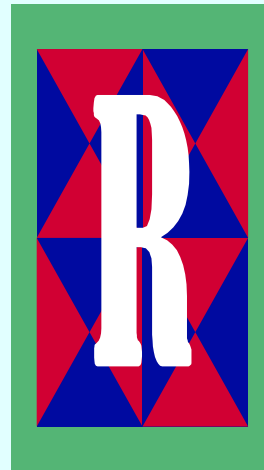
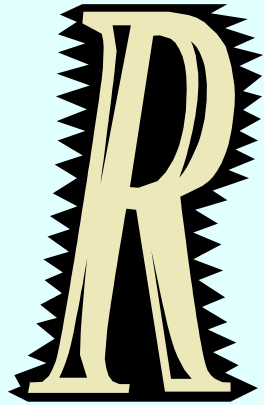
# Leases = Contracts



- The lease is an agreement/ contract between two parties
- It has various rules known as covenants
- The contract is actionable in common law
- Can be modified and altered with agreement of all parties
- For a breach of covenants (the rules which the contract is set up on)
- Damages are actionable
- Damages are limited by the diminution in value of the property (section 18 valuation)

# Covenants

4Rs and yield up

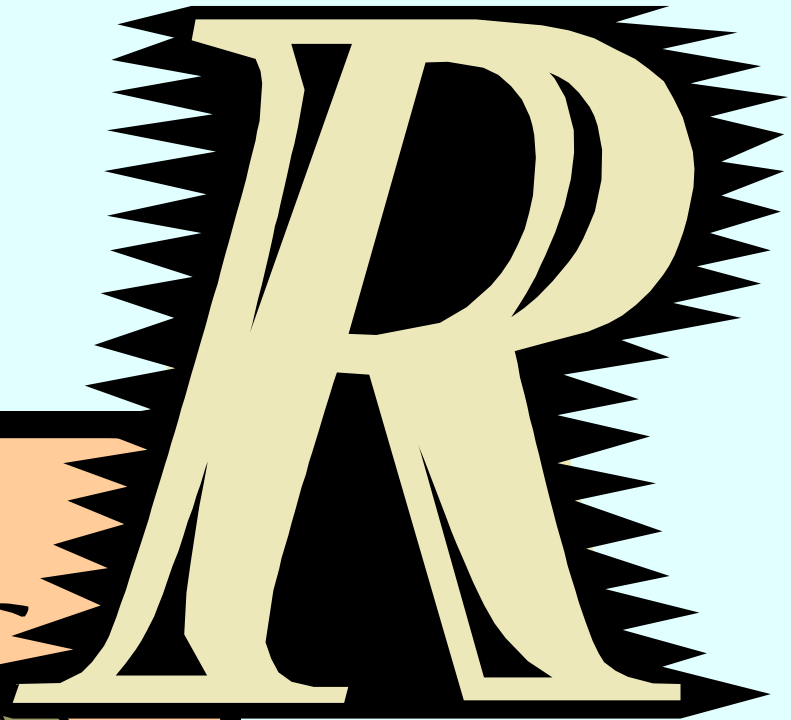
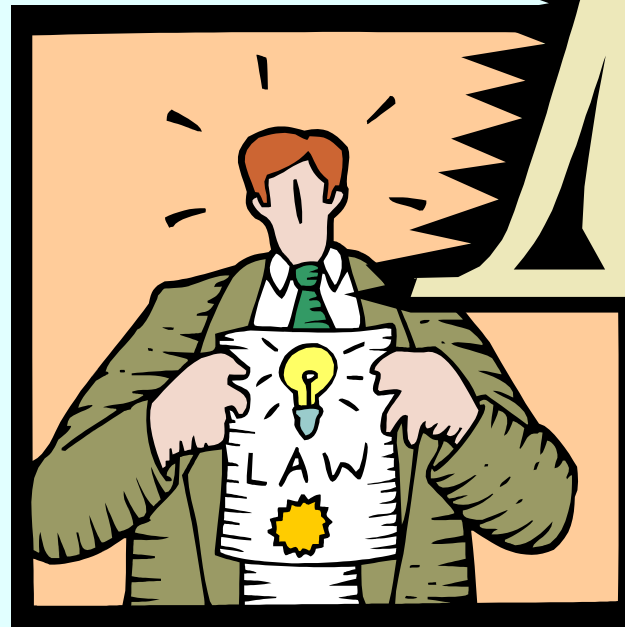


Copyright of 1stAssociated.co.uk,  
not to be used in any format  
without express written permission

# Repair Covenant

## Repairs Covenants

Detail standard of repair  
required

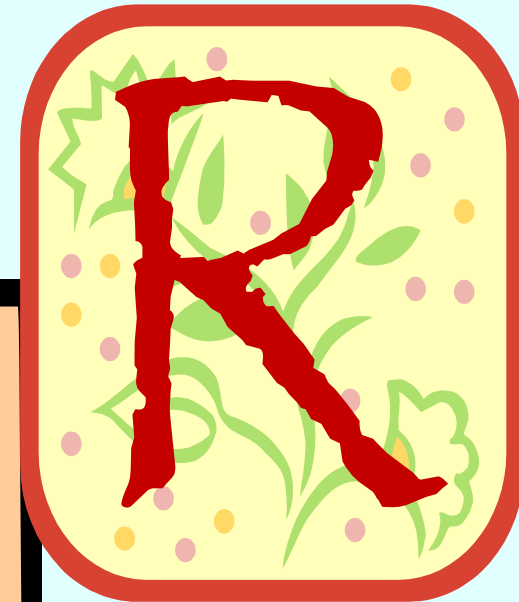
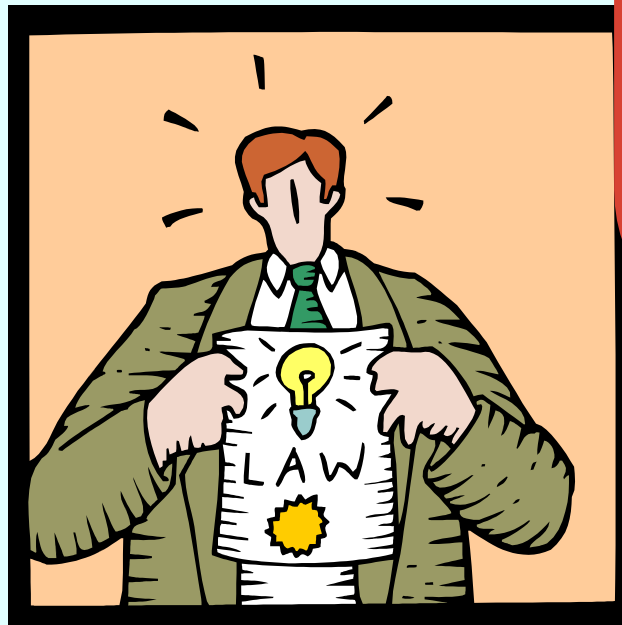


Copyright of 1stAssociated.co.uk,  
not to be used in any format  
without express written permission

# Redecorate Covenant

## Redecoration

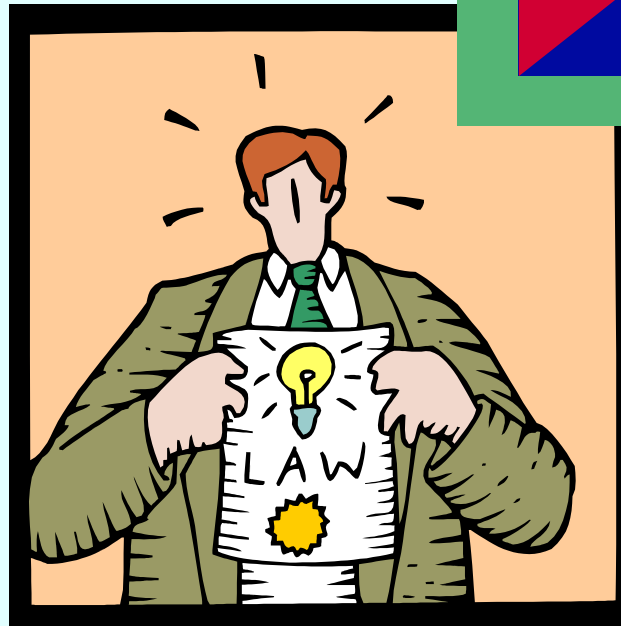
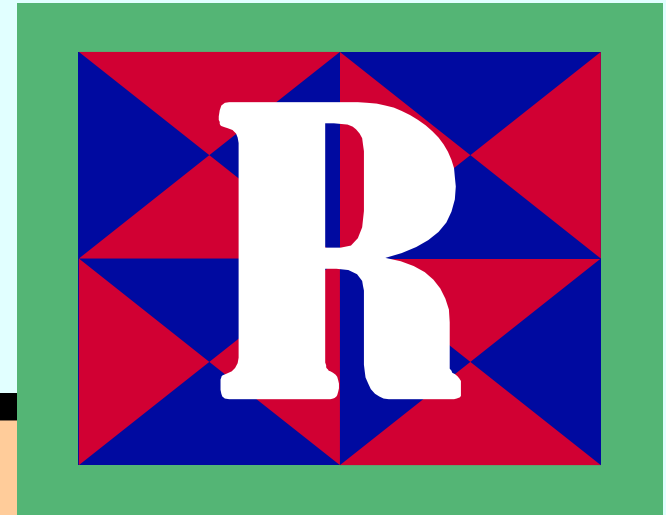
Frequency and standard of  
redecorating



Copyright of 1stAssociated.co.uk,  
not to be used in any format  
without express written permission

# Reinstatement Covenant

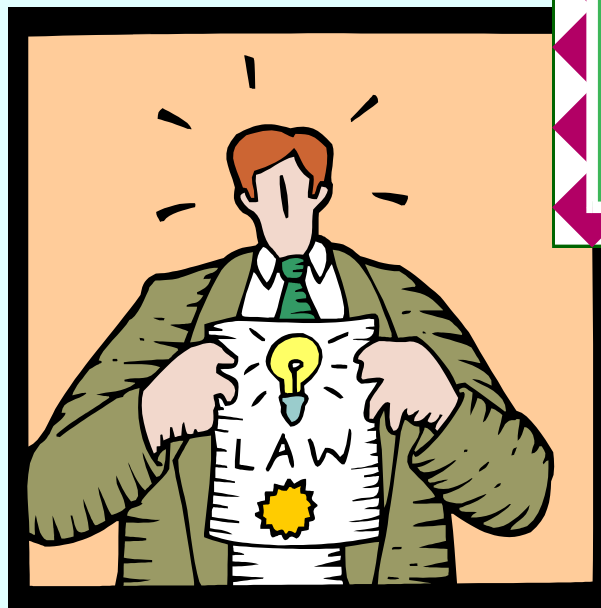
Put back to how  
detailed in the lease  
subject to any licences



Copyright of 1stAssociated.co.uk,  
not to be used in any format  
without express written permission

# Statutory Regulation Covenant

Usually a requirement to meet  
statutory regulation such  
Heath and Safety at Work Act



Copyright of 1stAssociated.co.uk,  
not to be used in any format  
without express written permission

For your Presentation

Has everyone got lease terms  
divided into the four covenants?  
H/O

These are Express covenants

You also have Implied covenants

# Working for the Landlord



Schedule of Dilapidations  
Usually towards end of lease

Gather the information

# Information from the Start of the Lease

- Lease!
- Drawings of the demise
- Schedule of Condition if there is one
- Side letters - check it's legally binding
- Licences and
- Any approved alterations, drawings & spec
- Original photos
- Original sale details
- Anything the landlord feels is useful!



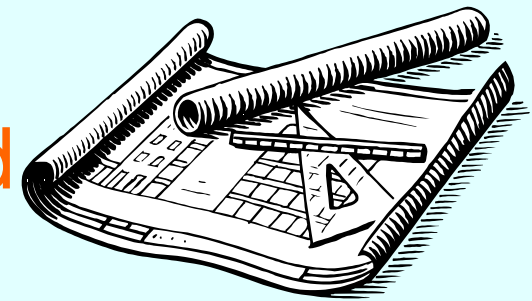
# At the start of the lease Schedules of Condition

S of Cs Can be very powerful and limit liability if appended to the lease these may get more popular with the property market changing



# Through the Term of the Lease

- Licences can give approval to alter the lease so need to be considered
- Approved (as stated in the lease) alteration drawings and specifications if possible
- Side letters that may have legal implications



# Additional Information for the Assignment

We are going to add in a licence or side letter alteration, which may or may not have been approved under the lease terms

# Site Visit



- Site visit = site notes
- Site visit = photos
- Site visit = sketches
- Site visit = walk round the area
- Site visit = Talk to anyone and everyone that can be of use to you
- Site visit = take your time
- Site notes = record of everything you see

# Site Notes

It's been said that Schedules of Dilapidations are more onerous than Building Surveys / Structural Surveys as the items listed ultimately have to be proved if the case goes to law

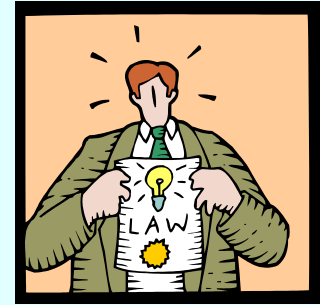
Use site notes to record, use your own system, use your own short hand



# Site Notes

- May be asked for in court, so make sure you have a system
- Walk round the property, pace the property to get approximate size
- Record systematically – I use top to bottom externally and from the front internally
- Consider original condition at start of lease
- Advise on remedy – usually look at long term option as working for landlord





- Transfer from site notes to Dilapidations Schedule, usually by dictation
- You need to put clause number, nature of breach, remedy and, for the purposes of your presentation, appropriate case law All taken from the lease
- The tenant does not have to use the landlord's remedy just fix the breach

# Schedules of Dilapidations

Copyright of 1stAssociated.co.uk,  
not to be used in any format  
without express written permission

LOCATION/ELEMENT	CLAUSe No.	DEFECT/NATURE OF BREACH	REMEDY	QUANTITY OF WORK	COST
<b>2.0.0 EXTERNAL</b>					
<b>2.1.0 ROOF</b>					
2.1.1		Loose / dislodged Asbestos Cement eaves fillers adjacent to gutter.	Re-fix loose / dislodged eaves fillers to the Asbestos Cement roof and leave secure.		
<b>2.2.0 FRONT ELEVATION</b>					
2.2.1		Weathered decorative / protective finish and general silt and debris to box gutter.	Clean out box gutter to remove silt and dirt and leave clean and tidy.		
2.2.2			Prepare Asbestos Cement gutter and leave ready for redecoration.		
2.2.3		Warped, stained, weathered and split timber boarding. Areas of rot and decay.	Cut out areas of boarding affected by rot and decay and replace with new to match. Fill all splits or replace boarding as necessary, thoroughly clean down and prepare all of the boarding and leave ready for new stained finish.		
2.2.4		Tenant has installed burglar alarm box.	Remove Tenants burglar alarm box secured to timber cladding and make good holes and damage.		
2.2.5		Tenant has installed wiring, metal brackets and the like.	Remove Tenants wiring, brackets and similar fixtures and fittings and make good all areas disturbed.		

LOCATION/ELEMENT	CLAUSE No.	DEFECT/NATURE OF BREACH	REMEDY	QUANTITY OF WORK	COST
2.2.6		Peeling decorations, cracked and defective putties and general deterioration to timber casement windows.	Reinstate cracked and defective putties, remove loose and flaking paint, thoroughly prepare all surfaces and leave ready for new stain finish.		
2.2.7		Corrosion and general minor deterioration to decorative coating to roller shutter door. Split slat above the wicket door.	Remove areas of corrosion, apply rust inhibitors, prime and seal. Thoroughly clean down and leave the door ready for redecoration.		
2.2.8			Replace split slat to the roller shutter door directly above the wicket door with new and leave the door in good repair and in full working order.		
2.2.9		Worn and defective decorations.	Thoroughly prepare previously stained timber boarding, windows and the like and apply solvent based, external grade stain, colour to be approved.		
2.2.10			Prepare previously painted woodwork and metalwork and gloss paint.		
2.2.11			Prepare Asbestos Cement gutter and paint.		
<b>2.3.0</b>		<b>LEFT-HAND GABLE</b>			
2.3.1		Impact damaged bricks to the external corner – 9No.	Provide and fix 150 x 150 steel angle 1800mm high to the corner of the wall to protect the brickwork and conceal the areas of impact damage. prepare and prime the angle and leave ready for redecoration.		

LOCATION/ELEMENT	CLAUSE No.	DEFECT/NATURE OF BREACH	REMEDY	QUANTITY OF WORK	COST
2.3.2		Tenants brackets, cables, pipes to be removed.	Remove exposed wires, brackets, cables, pipes and the like which constitute Tenants fixtures and fittings and make good all areas disturbed. (See separate comment re: oil pipe)		
2.3.3		Tenants vent extends through wall.	Remove flue, make good brickwork to walls, including blockwork internally and other areas disturbed.		
2.3.4		Tenant has installed steel container.	Remove steel container, slabs and the like adjacent to the right-hand gable wall and make good all areas disturbed.		
<b>2.4.0</b>		<b>REAR ELEVATION</b>			
2.4.1		Tenant has installed TV aerial, burglar alarm box etc.	Remove Tenants TV aerial and other cables, burglar alarm boxes secured to the rear elevation and make good all areas disturbed.		
2.4.2		Areas of damaged brickwork adjacent to the fire escape door. Cracking to brickwork above the fire escape door.	Make good damaged bricks adjacent to the fire escape door with new to match.		
2.4.3			Cut out cracking above the fire escape door, build in stainless steel ties to strengthen, repoint to match and leave secure.		
2.4.4		General minor wear to fire escape door.	Thoroughly prepare fire escape door, ease and adjust and leave ready for redecoration.		
2.4.5		Worn and defective decorations.	Thoroughly prepare previously painted woodwork and metalwork and gloss paint.		

# Scott Schedule

**Schedules of dilapidations are to be prepared as per a Scott Schedule**

Terminal Schedule of Dilapidations Accrued at .....						
1	2	3	4	5	6	7
Item No.	Clause No.	Breach Complained of	Remedial Works	Landlords Costings	Tenant's Comments	Judge's Comments
1	2.3	Qty 24 missing Roof tiles	Repair	£ 109		
2	2.17	Demolition of Extension	Reinstate	£27,806		
3	2.18	Illegal signage	Remove	£ 204		
Dated .....						
Signed ..... Surveyor appointed by landlord						

# The NOT perfect tenant!

## What can the Landlord do?

Various remedies for breach of lease terms  
(contract)



Copyright of 1stAssociated.co.uk,  
not to be used in any format  
without express written permission

# If the Tenant does not Comply?

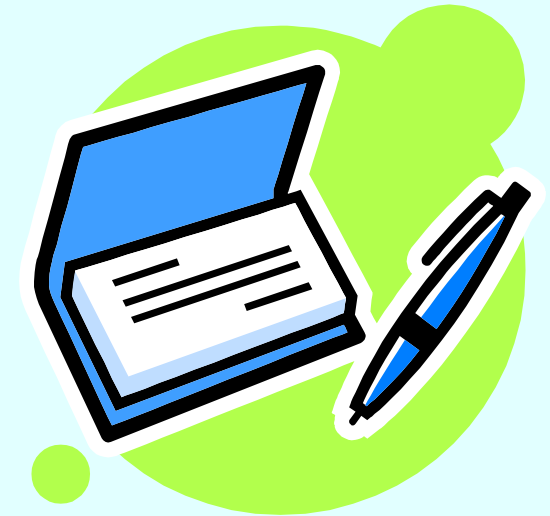
The landlord has various options:

- Damages = Money or/and work
- Landlords = Re entry
- Forfeiture = Lease ended
- Specific performance = Forced

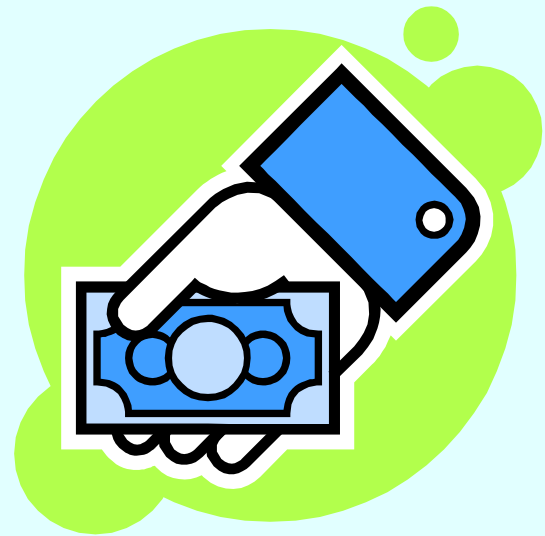
# Damages

## The most common claim

- To put the landlord in the position they would have been in if the clause/ covenants had not been breached
- Damages are made up of lots of things but limited by Section 18 valuations

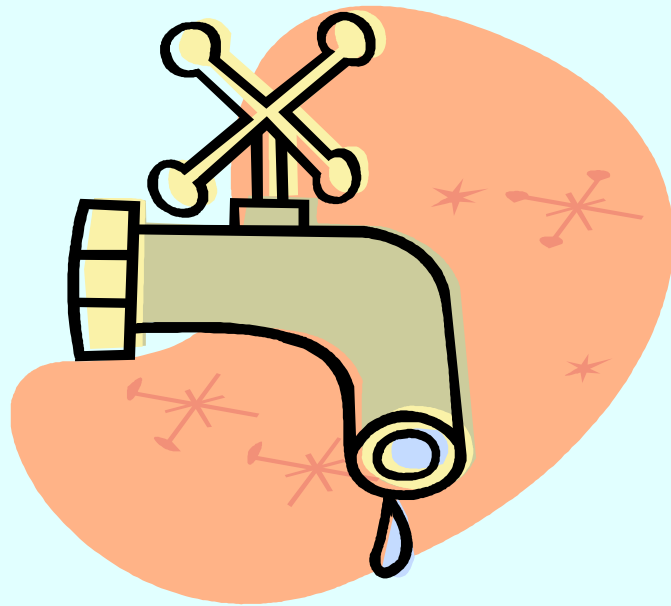


# Damages



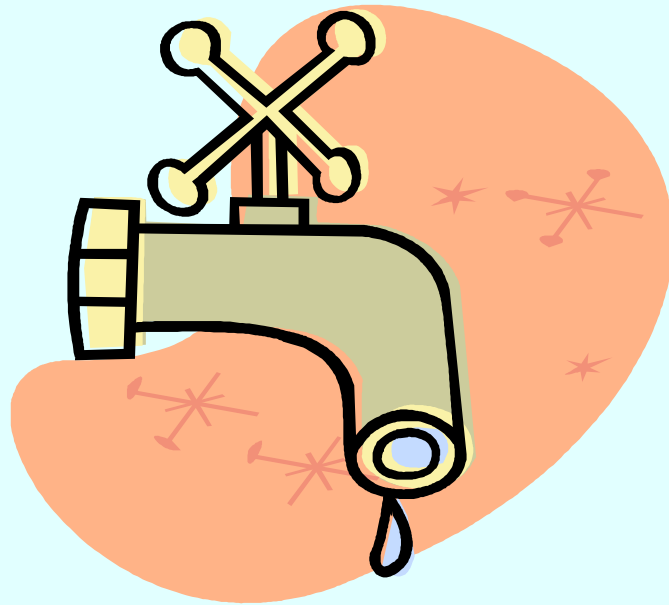
- Beaches of Repair
- Beaches of Redecoration
- Beaches of Reinstatement
- Breaches of Statutory Regulations
- !!!!!!! And fees to recover !!!!!!!
- !!!!!!! And Loss of rent etc!!!!!!

# Re-entry



- The lease will usually have a provision which enables the Landlord to serve a notice asking for work to be done in a “reasonable time” and if not the landlord carries out the work
- The lease needs to be specific on re-entry rights or the landlord could end up as a trespasser or breaching the covenants of the tenant for quiet enjoyment

# Re-entry



- Maybe best option give the Section 18 Limitation on damages and uncertainty of Dilaps
- The work would be charged back as a debt and avoid Section 18 damage limitation arguments known as Jervis v Harris clause

# Rights of Re-entry Case Law

## Case Law:

*Jervis v Harris (1995)*

*Hammersmith v Creska (1999)*



# Forfeiture



- Forfeiture of lease for breach of covenant
- Section 146 correctly served

## Difficult as:

- 38 Act protects tenant (providing original lease longer than 7 years and more than three years remain)
- Requires leave of court under 38 Act
- Landlord has to show / prove grounds for forfeiture

# Specific Performance

- Tenant required to do specific work by law
- Is rarely used as does not solve problem considered last resort by many

## Case Law:



## *Rainbow Estates v Tokenhold*

# Heads of Claim – “Likely” Content

“Likely” because it depends upon your specific lease terms

- Building costs - Cost of work
- Procurement costs tender drawings & spec & Engineers
- Professional fees for managing and admin etc
- Loss of mesne rents, rates, service charges and interest
- Consultant fees for preparing and/ or negotiation fee
- VAT

Once agreement has been made many surveyors use what is known as a 'Heads of Claim'. This sets out the costings, which we would recommend.

PROPERTY  
ADDRESS

HEADS OF CLAIM

(Add figures to shaded cells only)

A Building Costs					D Fees			
A.1	Building costs		£113,105.00	D.1	Preparation of schedule	£950.00		
A.2	Prelims, o'head and profit	15%	£16,965.75	D.2	Service of schedule	£500.00		
A.3	Health and Safety		£1,500.00	D.3	Contract administration @ 12%	£15,788.49		
Sub total			£131,570.75	D.4	Other fees	£0.00		
B Procurement					D.5	Solicitors	£0.00	
		Weeks		D.6	Engineers	£0.00		
B.1	Preparation of design	3		D.7	Negotiation to settlement @ 5%	£6,578.54		
B.2	Tender period	3		Sub total			£23,817.03	
B.3	Lead in period	2						
B.4	Contract period	12						
Total procurement period		20						
C Mesne profits					F VAT			
		Weeks	Rate	F.1	VAT on A	£23,024.88		
C.1	Loss of rent	20	0	£0.00	F.2	VAT on C.1, C.2, C.3.	£0.00	
C.2	Loss of rates	20	0	£0.00	F.3	VAT on D	£4,167.98	
C.3	Loss of service charge	20	0	£0.00	Sub total			£27,192.86
C.4	Loss of interest	20	0	£0.00				
Sub total			£0.00	TOTAL			£182,580.64	

**Notes :**

1. Loss of mesne profit to be confirmed.
2. The above claim includes VAT (subject to clarification over the VAT position for the property)
3. We reserve the right to add additional costs or damages to the statement of claim at a later date.

without express written permission

# What can the Landlord claim on?

Anything the  
surveyor agrees?

Or is it the legal  
breaches of the  
contract?



# Lawyers Five Part Test

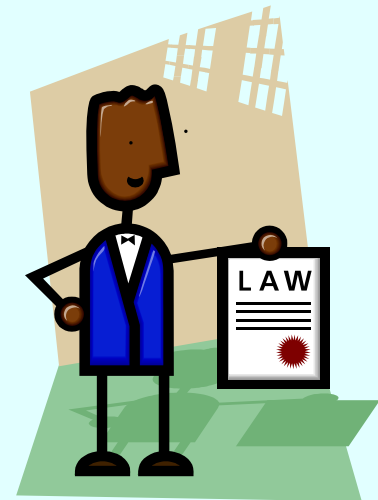
In court it's the latter and uses the five part test; but only 3% of cases go to court



Copyright of 1stAssociated.co.uk,  
not to be used in any format  
without express written permission

# Five Part Test

1. What is the physical subject matter of the covenant?
2. Is the subject matter in a damaged or deteriorating condition?
3. Is the nature of the damage or deterioration such as to bring the subject matter below the standard contemplated by the covenant?



# Five Part Test

4. What work is necessary to put the subject matter of the covenant into the contemplated condition?
5. Is the work nonetheless of such a nature that the parties did not contemplate that it would be the liability of the covenanting party?



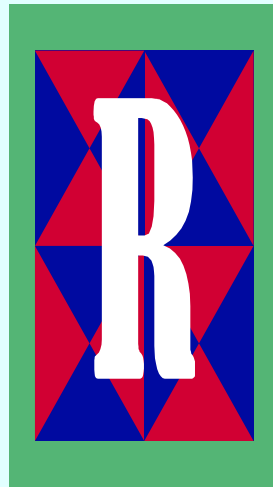
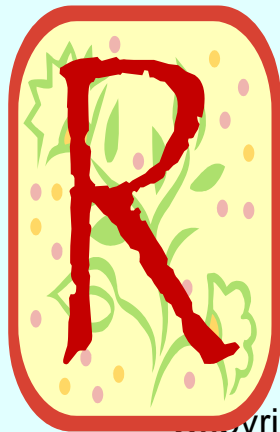
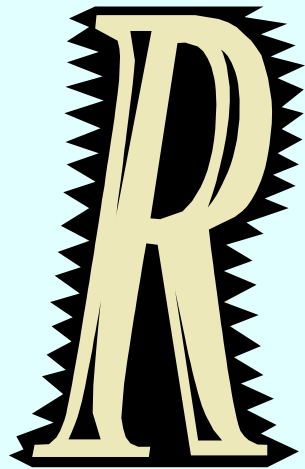
# Legals

- Only a specialist lawyer can truly correctly interpret this within the bounds of the lease
- You don't have to you're the surveyor bring common sense to the matter!



# Claim Areas to Consider

4Rs and yield up

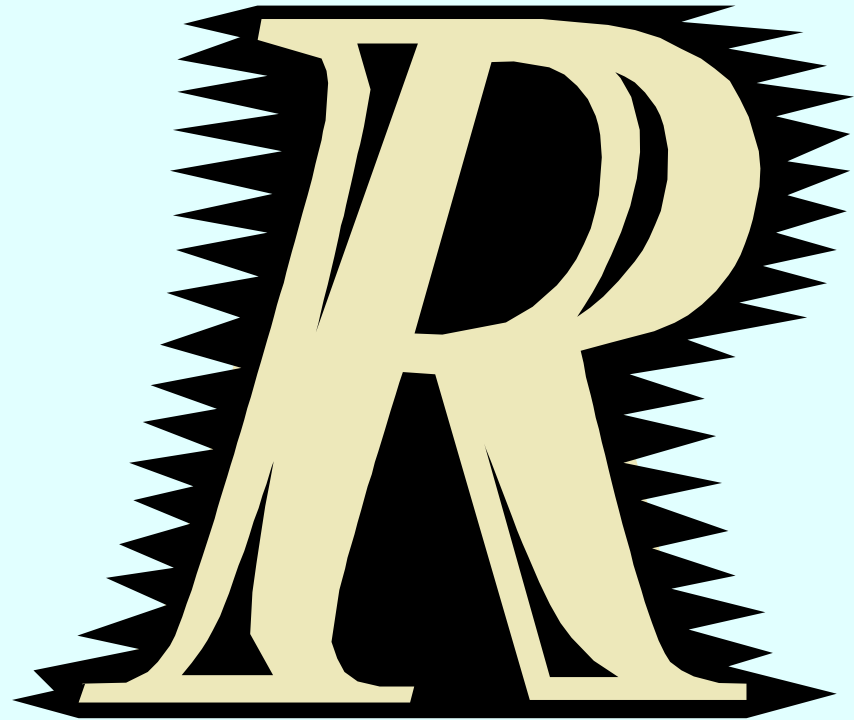


Copyright of 1stAssociated.co.uk,  
not to be used in any format  
without express written permission

# Repair

## Repairs

Define elements  
that are in  
disrepair



# Classic Case Law

*Quick v Taff-Ely (1986)*

*Post Office v Aquarius (1987)*

# Newish Case law

*Welsh v Greenwich Borough Council (2000)*

# Classic Case Law

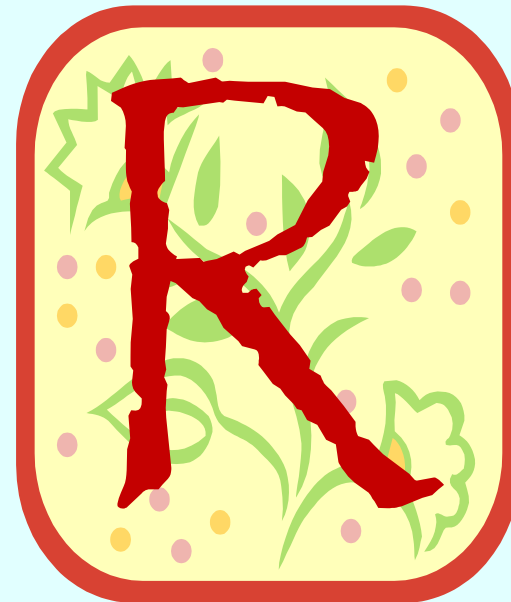
## Betterment

*Richard Roberts v Douglas Smith (1988)*

# Redecorate

## Redecoration

Frequency and  
standard of  
redcoration and  
normally at end of  
lease



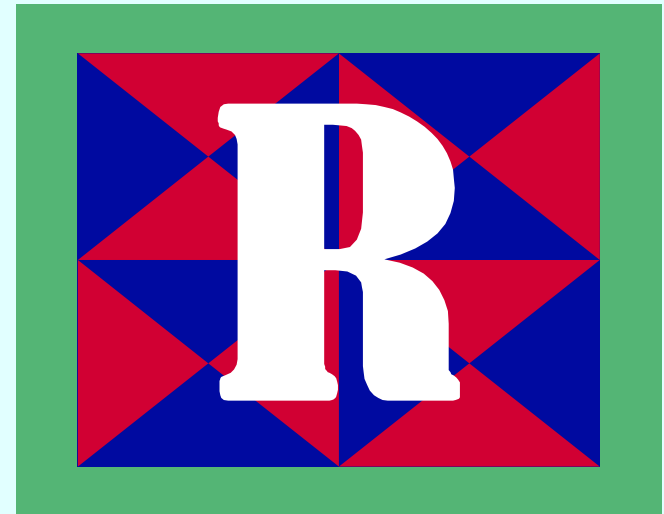
# Reinstatement

## Reinstate

Put back to how detailed  
in the lease subject to any  
licences

Likely to be a large claim  
area

Often Largest part of the  
claim



# Additional Information for the Assignment

We are going to add in a licence or side letter alteration, which may or may not have been approved under the lease terms

# Statutory Regulation

Usually a requirement to meet  
statutory regulation such

Health and Safety at Work Act

Building Regs

Planning

Fire Regs

Asbestos

DDA

Health and Safety



# Damages



Costs to put the client back in the position he would have been in if the tenant had complied with the covenants

Jones v Herxheimer (1950)

Crewe Services and investment corporation  
v silk (1998)



*Ruxley v Forsythe (1994)*

*Carven Builders v SOS Health (1999)*

*Larksworth v Temps house (1999)*

*Ultraworth v General Accident (2000)*

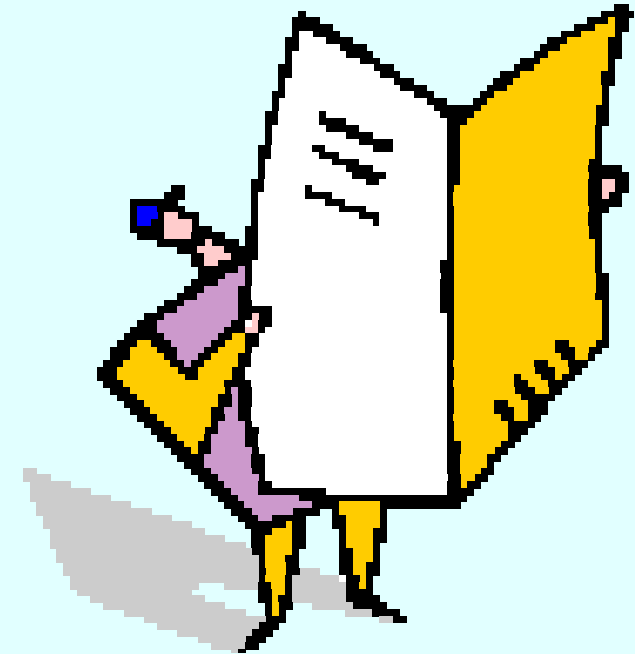
# Section 18

## Limits to a claim

**Difference between the market value in good condition and the market value in the condition the property's in limits the dilaps claim**

# RICS Guidance Notes

- Best “recommended” practice
- Read it several times
- Gives standard formats
- Gives time scales
- Incorporates Civil Procedure Rules

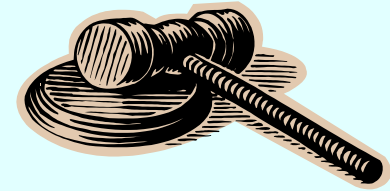


# Civil Procedure Rules (CPR)

- Part of RICS Guidance notes
- Pre-action processes and time scales
- Pre-action offers
- Statement of truths
- Court able to reward or punish based on CPR



# Case Law List



## Specific performance:

*Rainbow Estates v Tokenhold*

## Re-entry:

*Jervis v Harris (1995)*

*Hammersmith v Creska (1999)*

## Is there a breach of covenant:

*Quick v Taff-Ely (1986)*

*Post Office v Aquarius (1987) Welsh v Greenwich  
Borough Council (2000)*

# Case Law



**Standard contemplated by the covenant:**

*Proudfoot v Hart (1886)*

**Disrepair:**

*Calthorp v McOscar (1924)*

**Remedy for breach:**

*Lister v Lane (1893)*

# Case Law



## Betterment

*Richard Roberts v Douglas Smith (1988)*

*Brew Brothers v Snack Ross (1969)*

*Jones v Herxeimer (1950)*

*Crewe Services and Investment Corporation  
v Silk (1998)*

*Ruxley v Forsythe (1994)*

*Carven Builders v SOS Health (1999)*

*Larksworth v Temps house (1999)*

*Ultraworth v General Accident (2000)*



## **Specific performance:**

*Rainbow Estates v Tokenhold*



## Re-entry:

*Jervis v Harris (1995)*



## Re-entry:

*Hammersmith v Creska (1999)*



# Is there a Breach of Covenant?

*Quick v Taff-Ely (1986)*



**Is there a breach of covenant?**

*Post Office v Aquarius (1987)*  
*Welsh v Greenwich Borough*  
*Council (2000)*



**Standard contemplated by the  
covenant:**

*Proudfoot v Hart (1886)*



## Disrepair:

*Calthorp v McOscar (1924)*



# Remedy for Breach:

Lister v Lane (1893)



**Betterment:**

*Richard Roberts v Douglas Smith  
(1988)*



# *Brew Brothers v Snack Ross (1969)*



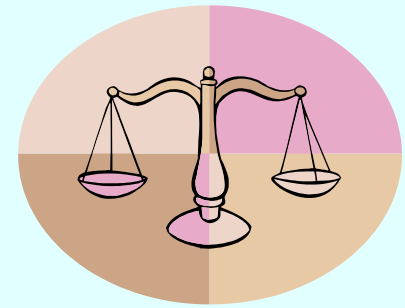
## *Jones v Herxeimer (1950)*



*Crewe Services and Investment  
Corporation v Silk (1998) Ruxley v  
Forsythe (1994)*



# Carven Builders v SOS Health (1999)



# *Larksworth v Temps House (1999)*



# *Ultraworth v General Accident (2000)*

Copyright of 1stAssociated.co.uk,  
not to be used in any format  
without express written permission

# You should be able to present on and answer exam questions on the following, can you?

1. Schedules of Condition
2. Schedules of Dilapidations
3. Scotts Schedules
4. RICS Guidance Note
5. Section 18 Valuations
6. Costing Dilapidations
7. Licences
8. Break clauses
9. Side letters
10. Covenants types of 4 Rs & yield up
11. Types of damage claims
12. CPR
13. Section 146 notices
14. T & C letter
15. Dilapidations process
16. Dilapidations case law as listed