

## Real estate Christmas quiz

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The third and final instalment in this mini quiz series is a real estate odyssey.

Surely there can't be any more tricks and traps left in the real estate legal world? And surely AI technology can just deal with all of this now in any event? Read on if you dare...

As before the answers are at the bottom – no cheating!

### Question 1

**Dave owns his own AI tech business and has plans to expand. Recent hires have taken staff numbers to 25 and the business has outgrown its current office premises. Dave has found some new premises which would be ideal and has agreed terms with the landlord, Hal – 10 years at £35k p.a. plus VAT. Hal is commercial in his dealings, but fair overall and is particular about the way he manages his buildings. For instance he uses a standard form lease and deals with it himself to keep costs down. He says there is no need for Dave to use a lawyer as he won't accept any amendments to the lease anyway. Dave remonstrates with Hal about amending the lease, but Hal says "I'm sorry, Dave. I'm afraid I can't do that." It's take it or leave it. Dave signs up, moves in and starts using the premises as agreed.**

**All good?**

- A.** No. Dave didn't get a lawyer to review the lease terms which is compulsory under English law.
- B.** Yes. The business is in the new premises and is booming. No looking back now.
- C.** A mixture of both of the above.

## Question 2

Same facts as in question 1. 2 years after Dave and his staff take up occupation, the landlord, Hal, is offered a grand sum for the freehold interest in the building, but only if it is sold with vacant possession and the deal is completed within 2 months. The buyer wants to redevelop. Hal serves a break notice on Dave. Unbeknown to Dave, the lease included a landlord break right exercisable at any time on not less than 1 month's notice – he had read it, but had misunderstood the clause.

**What does Dave do next?**

- A. Dave bites the bullet and instructs a lawyer to advise him.
- B. Dave tells his staff they'll have to vacate. The lease is clear – he has now re-read it and has spoken to the landlord. There's no point fighting it.
- C. Dave does nothing (and hopes the problem will go away on its own). Hal is unhappy and gets in touch leaving a voicemail, "I think you know what the problem is just as well as I do."

## Question 3

Same facts as question 2. Dave secures a £50k payment from Hal and vacates. He has had to move quickly and so found new temporary accommodation not far away on a small business park. The landlord, Chas, has agreed Dave can move in straight away on a handshake and they agree to sort out the written lease later – all music to Dave's ears. Chas and Dave did though agree basic terms – the rent at £40k pa plus VAT payable quarterly in advance, the premises to be kept in good repair and the arrangement to run from year to year until either party terminates. 2 years pass and things have been running smoothly. The written lease hasn't been done yet, but it will be done sometime soon.

- A. All's well that ends well.
- B. Hang on. Here we go again. Dave should have used a lawyer to deal with both the tax side (SDLT) and the compulsory Land Registry issues.
- C. As the written lease has not been done, in fact Dave has no legal basis to occupy, which is a precarious position for his business to be in.

## Question 4

Same facts as question 3. On the grapevine, Chas hears about the £50k "ransom" payment that Dave successfully extracted from Hal a few years earlier and wants to avoid being in the same position potentially. He gets on with recording the lease in writing which is for an 8 year term. Dave agrees to sign up to the formal lease and to forego his security of tenure rights to keep Hal on side. Chas has a lawyer deal with the formalities as does Dave and the lease is negotiated briefly, completed, SDLT paid and registered at the Land Registry. Things go well, time passes and the lease expiry date soon looms. Dave wants to renew. Chas is happy to discuss that, but is not sure of his plans for the building. Negotiations for a new lease start, but progress very slowly. The expiry date passes. Dave remains in occupation paying rent.

- A. Oh well, it's bound to sort itself out at some point and everything stays the same whilst Dave is there paying the rent. The knees up can carry on for now.
- B. Dave's lease has expired so he has no right to remain in occupation and could be turfed out at a moment's notice.

C. By remaining in occupation and paying the rent which Chas has accepted, Dave has acquired a new protected periodic lease.

## Question 5

**Same facts as in question 4. A new lease is eventually signed up. A few years later Dave decides to downsize a little and as a result has surplus space. Chas wants to help, but cannot afford to take a surrender of the surplus space as he needs the full rent and Dave cannot afford to pay a premium for a surrender. So Dave decides to sublet the surplus space, which is fine with Chas. A sub-tenant is found, a sublease completed and all's well. A short time afterwards Chas finds a buyer for his freehold interest and the buyer's lawyers review the occupational leases. Dave's lease is the key one. One eagle-eyed assistant spots that the term expiry date of Dave's sublease is the same as the expiry date of Dave's lease.**

A. Lucky Dave. Dave has managed to get the subtenant to cover his lease liabilities in relation to the sublet part right up until the end of Dave's lease.

B. Poor Chas. The sale is going to be held up as this is a problem.

C. Poor Chas and Dave. Real estate assets are tricky.



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