

Break Clauses

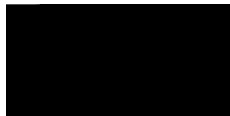
Second Edition

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essential it is to have an up-to-date book on the topic. Legal academics and students; developers, owners, occupiers and managers of property; and lawyers and others who advise and represent those people all need an authoritative and comprehensive book on break clauses. Mark Warwick QC and Nicholas Trompeter deserve gratitude and praise for having taken time out of their busy practices to produce a second edition of this book.

The book is well and clearly structured, so that any reader can easily identify and find the passage or passages which deal with the problem in hand. The authors have succeeded in producing a book on break clauses which is both scholarly and practical, and both full and concise. The authors express themselves clearly and readably, and, quite rightly, they have an eye both on the academic reader and on the practitioner, and they cover all legal aspects of what one might call the full life of a break clause – from what a break clause actually is to the effect of exercising a break clause. But, very sensibly, the authors have not stopped there. Apart from referring to break clauses in different types of lease (and the consequential statutory impact) they have included chapters on drafting break clauses, exercising break clauses and professional negligence in connection with break clauses.

It is interesting and gratifying to note that, as with all the best and full legal treatments of a specific topic, reading this book shines a light on much wider areas of law than one might at first sight expect. Insolvency, assignment, estoppel, mistake, side agreements, unjust enrichment are just some of the areas which have come into play in cases involving break clause cases, and all those areas are relevantly covered in this book.

From a selfish perspective, it has been interesting to remind myself of cases which I argued when at the Bar or subsequently decided when a judge – from *A v G* in 1978 (frighteningly, over 35 years ago) to *M v P v BNP Paribas* at the end of last year. The latter case was decided just in time for the authors to cover it in this book. It illustrates rather well three of the points made above. First, it shows that new points keep on coming in relation to break clauses; secondly, it shows that break clauses often produce difficult points; thirdly, it shows how break clause cases can involve wider points of law – in that case the law of implied terms.

In summary, this is an excellent and much needed book which treats a difficult and significant topic very well both academically and practically.

David Neuberger
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 March 2016

AUTHORS' PREFACE TO THE SECOND EDITION

It is a commonplace with a textbook that the progeny is larger than the forebear. This book is an extreme example of that tendency. Although there have been a large number of cases concerned with aspects of break clauses in the last few years, the blame for the growth lies on the shoulders of the authors, not the judges. Further thoughts, plus readers' suggestions, have added topics, and even some new chapters. Really, the book has undergone a substantial re-write.

Case-law since the first edition has tended to emphasise the importance of strict compliance with the conditions in a break clause, and the content of the break notice. The many cases dealing with the former are discussed in Chapters 9 and 10. Prominent amongst the cases emphasising the importance of the careful drafting of a break notice is the Court of Appeal decision in *Hyatt v Hyatt*, [2014] 2 P&CR 5.

One topic which now justifies its own chapter is the recovery of 'overpaid' rent and other sums. The recent decision of the Supreme Court (*Mortgage Repayment Protection v BNP Paribas*) [2015] 3 WLR