General: Interest on damages

Issues like this are often decided on minimal argument, yet can involve significant sums. In Challinor, the award was 3% above base, and in Sycamore, 3% reducing to 2.5%.

The jurisdiction to award interest (to judgment) derives from s. 35A of the Senior Courts Act 1981 and (from judgment) from s. 17 of the Judgments Act 1838 read with CPR 40.8.

The major points are:

The former practice in commercial cases of awarding 1% above base rate is no longer presumed.
The principle behind awarding interest is to achieve restituo in integrum.
The approach may differ between a case where the award seeks to replace money C has lost, and one where the award represents an accretion to C's funds (e.g. typically a personal injury case). In the former, the rate at which C might have borrowed might be an indicator of the rate to be awarded whereas in the latter, a depositor rate might be a more appropriate comparator.
It is uncertain to what extent the court should rely on evidence of actual lending rates which may have been charged to the receiving party as distinct from evidence of what a person in the same class of persons as the receiving party might have been charged. Regardless of this distinction it is apparent that, evidence of prevailing rate scan be persuasive in helping a judge come to a figure: in Attrill v Dresdner Kleinwort [2012] EWHC 1468 (QB), the award was 5% over base based on evidence that this was a typical rate for unsecured borrowers since 2008.

The stark difference between the opposing submissions on interest in Sycamore, are salutary: C argued for Â£1.31m and D for only £81,000 (C substantially succeeded).The lesson for those preparing a claim is that they should consider adducing specific evidence about what borrowing rates were available to someone in the same class of persons as the claimant: such evidence could substantially boost the ultimate award.

PI: Swift v Secretary of State for Justice [2013] EWCA Civ 193

C's dependency claim under the Fatal Accidents Act 1976 ("the Act") was dismissed in the High Court on the grounds that she had been living with the deceased for less than 2 years immediately before his death. The claimant appealed to the Court of Appeal.C averred that s.1(3)(b) of the Act was incompatible with her rights under article 14 of the ECHR in conjunction with article 8, since it unjustifiably discriminated against persons who had been cohabiting for less than 2 years by excluding them from the class of family members entitled to claim damages for loss of dependency under the Act. Alternatively the claimant argued that it interfered with her right to respect for family life contrary to article 8(1) in a manner which was not justified under article 8(2).

In considering s.1(3) the CA made the following observations:

- The legitimate aim of s.1(3) is to confer a benefit on dependants to recover damages in respect of their loss of dependency, while confining that benefit to those who had relationships of some degree of "permanence and

dependence";
- There had to be some way of proving the requisite degree of permanency and constancy in the relationship beyond the mere fact of living together as husband and wife;
- Due to the social and economic implications of enlarging the class of dependants, Parliament should be afforded a generous margin of discretion.

Ultimately, the CA found that s.1(3)(b) was not incompatible with article 14 of the Convention in conjunction with article 8. It was a proportionate means of pursuing the legitimate aim of the statute. There was no obviously right answer, but the decision made by Parliament was not manifestly without reasonable foundation and was one which it was entitled to make. It followed that even if article 14 was engaged, the difference in treatment of cohabitees on the basis of 2 years' cohabitation was justified.

The same reasoning inevitably led to the conclusion that, even if s.1(3)(b) amounted to an interference with the claimant's right to respect for her family life in breach of article 8(1), it was justified under article 8(2).

Landlord and Tenant: Guidance on how discretion under s.20(1) Landlord and Tenant Act 1985 (

The Act requires a landlord to fulfil various consultation requirements prior to carrying out works to a property if it wishes to recover more than a small specified sum in respect of those works. A landlord can, however, ask for the consultation requirements to be dispensed with. The Act states that dispensation may be made "if it is reasonable".

In this case the consultation process had been prematurely curtailed and the landlord sought dispensation. It was refused by the LVT, the Upper Tribunal and the Court of Appeal.

The approach of the tribunals below was supported by Lords Hope and Wilson. In strong dissenting judgments they considered that the seriousness of the breach was a proper factor for refusing dispensation.

However, the majority of the Supreme Court was clear that the consultation guidance was not an end in itself. Lord Neuberger (supported by Lord Clarke and Lord Sumption) emphasised that when hearing an application to dispense with consultation the focus should be on whether the failures caused prejudice – either through inappropriate works or paying more than would be appropriate. It is for tenants to show a credible case for prejudice which the landlord may seek to rebut. Whilst culpability of a landlord may be relevant – so that the more egregious a landlord's failure to consult the more readily the LVT will find prejudice - it is the prejudice (or lack thereof) that is key. If there is relevant prejudice then in order to obtain dispensation the landlord should (absent some good reason to the contrary) reduce the amount claimed as service charge to compensate for that prejudice (knowing that LVT's will adopt a sympathetic attitude to the tenants on this issue of quantum). In addition to fully compensating for the prejudice, to obtain conditional dispensation the landlord would also have to pay i) its own costs of making the application ii) the tenants' reasonable costs in connection of investigating and challenging that application.

Landlord and Tenant: Birmingham City Council v Beech [2013] EWHC 518 QB

Birmingham CC ('C') let a 3 bedroom house on a joint tenancy to husband ('H') and wife ('W') in 1967. H died and W succeeded to the tenancy. H and W's daughter ('D') had lived in the property on an on/off basis since 1970. D returned to the property with her partner ('D2') in 2007 to look after W.

In 2009 W moved into a residential care home while D and D2 continued living in the property. W signed a notice to quit in 2010 and died that same year. C's policy was to allocate properties with 3 bedrooms only to those who really need a property of that size. C sought possession.

In terms of the Art. 8 defence, it was argued by D and D2 that (1) D had childhood links to the property; (2) both provided care to 3 neighbours and (3) W's grandchildren stayed at the property at weekends.

When Art. 8 is engaged, the relevant question is whether possession is a proportionate means of achieving a legitimate aim?

The relevant principles are:

- The threshold for establishing an arguable case that a local housing authority is acting disproportionately when seeking possession of public sector accommodation is a high one, only met in a small proportion of cases (Powell [2011] 2 WLR 287)
- The facts relied on by the occupier of the property must be exceptional before a defence based on Art.8 can have a real prospect of success (Corby v Scott[2012] HLR 23)
- The reasons why the threshold is so high lie in the public policy and public benefit inherent in the functions of the housing authority in dealing with its housing stock, a precious and limited public resource. (Thurrock v West [2012] EWCA Civ 1435)

In view of the above, the Judge held that there were no exceptional circumstances in Beech and granted possession.
