still can be will not prevent the service of a valid notice to complete.

Both aspects of this decision are most welcome and provide considerable comfort for a vendor of registered land who has completed his own purchase but has not yet become registered proprietor.

A.J. OAKLEY

GOOD NEWS FOR MRS. MALAPROP

ALLIGATORS masquerading as allegories on the banks of the Nile rarely feature in the Law Reports, and their connection to a notice served to exercise a break clause in a commercial lease may not seem immediately apparent, but in *Mannai Investment Co. Ltd.* v. *Eagle Star Life Assurance Co. Ltd.* [1997] 2 W.L.R. 945, Lord Hoffmann wove the two together in a masterly analysis of language, its meaning and purpose. He was considering the legal effect of a notice which specified a mistaken date, and he was pointing out that the meaning of words shifts according to context. His speech encompassed the whole issue of construction of documents—a question which aroused acute controversy. All five Law Lords (Lords Goff, Jauncey, Steyn, Hoffmann and Clyde) gave reasoned speeches, Lords Goff and Jauncey dissenting.

The facts of the case were quite simple. Mannai Investment Co. Ltd. was a tenant of office premises in Jermyn Street under a 10 year lease, which was expressed to commence on and include 13 January 1992. When the market for commercial rents in the West End declined, Mannai understandably decided to take advantage of Clause 7(13), under which the tenant could serve notice to operate a break clause, "such notice to expire on the third anniversary of the term commencement date". Accordingly, Mannai's solicitors purported to serve such notice, but instead of specifying the correct date for expiry, 13 January 1995, they wrote: "Pursuant to Clause 7(13) of the Lease we as Tenant hereby give notice to you to determine the Lease on 12 January 1995". Eagle Star, the landlord, was thus able to claim that the notice was ineffective, and the controversy went to court.

At first instance, Judge Rich Q.C. (sitting as an additional judge of the High Court in the Chancery Division) held that the notice was valid; the Court of Appeal ([1995] 1 W.L.R. 1508) reversed this decision and upheld the landlord's contention; by a three to two majority, the House of Lords has now allowed the tenant's appeal, although on different grounds from those at first instance.

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The judge had relied upon *Sidebotham* v. *Holland* [1895] 1 Q.B. 378 to conclude that, although the notice contained the date 12 January, because the last moment of 12 January was also the first moment of 13 January, in fact the notice operated validly to determine the lease on 13 January. This amazing feat of verbal prestidigitation was not well received by the Court of Appeal, which quite sensibly decided that *Sidebotham* v. *Holland* was no such authority, and which considered itself bound by *Hankey* v. *Clavering* [1942] 2 K.B. 326. The latter case had similarly been concerned with a notice purporting to operate a break clause in a lease; the landlord had inadvertently inserted 21, instead of 25, December, and the notice had failed.

The House of Lords was invited to overrule *Hankey* v. *Clavering.* Lord Goff, who delivered the first opinion, refused to do so. He considered that the present law was clear and well settled, and that the tenant could easily have avoided the mistake by inserting, as an alternative to the specified date, a date identifiable by reference to the terms of the particular governing clause. He also considered that to allow errors to pass would bring uncertainty into this area, and would, more fundamentally, alter the nature of such notices by merely requiring that the giver of the notice should express a clear intention to exercise his rights. In his opinion, the erroneous date should have been fatal to the validity of the notice.

Such a precise and uncompromising approach is indeed hallowed by precedent, though it also leads to technical distinctions which may seem unjustifiable to any non-lawyer. Lord Goff was, for example, quite happy to accept that if a notice contained by mistake an *impossible* date, such as happened in *Carradine Properties Ltd.* v. *Aslam* [1976] 1 W.L.R. 442, when the notice given in 1974 specified an expiry date in 1973, then the notice could still be valid, as ordinary principles of construction could be used to insert the correct date. Thus in *Carradine* the expiry date was read as 1975. His other objections are interesting. The contention that a relaxed approach would bring uncertainty is moot: one could argue that far more uncertainty is produced by allowing small errors to invalidate documents, and that a clear intention should indeed be the crucial determinant of validity.

Such was the attitude of the majority of their Lordships, who were prepared to overrule *Hankey* v. *Clavering* and to endorse as a test for the validity of notices Goulding J.'s dictum in *Carradine:* "... is the notice quite clear to a reasonable tenant reading it? Is it plain that he cannot be misled by it?" The approach has much to recommend it and is to be warmly welcomed. The law is eschewing technicality, and instead marching arm in arm with commercial

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common sense—it must after all have been quite clear to Eagle Star that Mannai wished to exercise the break clause, and as from the relevant date. A finding that the notice was invalid because of the slip would have brought the landlord a lucky but quite unmerited and unmeritorious advantage.

The case has implications far beyond the relatively esoteric area of break clauses; Lord Steyn in particular emphasised that notices served under break clauses were not unique, but should be treated as part of a general category of unilateral notices served under contractual rights. So, by a narrow majority, a robust and generous construction of legal documents, including those involving estates in land, has been endorsed. Precision is still preserved as appropriate, because the test requires that the recipient be well aware of any notice's import, but the pernickety attitude which refuses to accept that Mrs. Malaprop's allegory can ever be understood as an alligator, and which places form above substance, has been relegated to a back seat. As a result, parties should in future be able to deal more confidently with each other: the ever present danger of a slip of a pen will no longer threaten to invalidate a clear document and commercially sensible constructions will prevail.

LOUISE TEE

ASSISTING SUICIDE RENDERED FINANCIALLY PAINLESS

MISS Plant and Mr. Dunbar were lovers. When she was accused of theft from her employers, she decided to kill herself, and he decided to join in. After two unsuccessful attempts, the third proved unlucky. Mr. Dunbar died, hung by a sheet from their loft, and Miss Plant survived. Although subsequently convicted of false accounting, she was never tried for aiding, abetting, counselling or procuring Mr. Dunbar's suicide, contrary to the Suicide Act 1961, s. 2(1). But when she claimed, by virtue of survivorship, the entire beneficial interest in the house they had owned as joint tenants, and jointly held building society and bank accounts, together with the benefit of various insurance policies, the estate of Mr. Dunbar objected, contending that the forfeiture rule applied to prevent her from obtaining an enhanced interest in the house and the accounts, and from entitlement to the insurance moneys. The Court of Appeal (Hirst, Phillips and Mummery L.JJ.) held that she could succeed in all her claims: *Dunbar (administrator of Dunbar (deceased))* v. *Plant* [1997] 4 All E.R. 289. This important decision explores the scope of the forfeiture rule, and considers the extent to which

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