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

https://doi.org/10.1017/S0008197300134324 Published online by Cambridge University Press

mitigation of its effects can be sanctioned by judicial exercise of the statutory discretion to disapply it conferred by the Forfeiture Act 1982.

The forfeiture rule is described, but not defined, in the 1982 Act as the rule of public policy which "in certain circumstances" precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing: s. 1(1). The reluctance of Parliament to articulate the rule underlines the uncertainty of the case law. Some authorities endorse an absolute bar on taking a benefit as a result of murder or manslaughter of the deceased, rejecting any "sentimental speculation" into the moral guilt of the offender (*Re Hall's Estate* [1914] P. 1; *Re K* [1985] Ch. 85), whereas others advocate a more nuanced approach, in cases of manslaughter asking whether the offender was guilty of deliberate, intentional and unlawful violence, or threats of violence (*Gray* v. *Barr* [1971] 2 Q.B. 554; *Re H* [1991] F.L.R. 441). It has been recognised that so-called "motor manslaughter" cases do not activate the rule, thereby promoting a different policy, that criminally liable defendants are indemnified by their insurers for the benefit of the plaintiff's claim (*Tinline* v. *White Cross Insurance Association Ltd.* [1921] 3 K.B. 327; *James* v. *British General Insurance Co. Ltd.* [1927] 2 K.B. 311). The application of an absolute rule was judicially criticised in New South Wales as recently as 1993, Kirby P. identifying "controversy as to its scope, uncertainty about the exceptions, and confusion as to the rationale" (*Troja* v. *Troja* (1994) 33 N.S.W.L.R. 269, 278).

The enactment of the Forfeiture Act 1982 has made such controversy futile in England and Wales. It has never been contended that the court could sanction the conferment or retention of benefit on a person convicted of murder, and the discretion to grant relief is denied in such cases: see 1982 Act, s. 5. Where a person is guilty of manslaughter or other offences of culpable homicide, it is no longer necessary to examine the detail of the offence to decide whether the rule applies in the first place, as the court can delay inquiry to the later stage when the exercise of the discretion to grant relief is being considered. This sensible procedural course has now been adopted by the Court of Appeal in *Dunbar* v. *Plant*. The majority clarify the legal position by holding that the forfeiture rule applies in all cases of murder, manslaughter, or related offences (including assisting suicide), and reject the ambitious reasoning (dating from *Gray* v. *Barr*) that violence or threats of violence is necessary for the application of the rule. As Phillips L.J. succinctly puts it, "The appropriate course where the application of the rule appears to conflict with the ends of justice is to exercise the powers given by the Forfeiture Act".

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However, the Forfeiture Act raises difficulties of its own, notably the formula to be applied. The statute is not particularly helpful. Apart from requiring the court "to have regard to" the conduct of the offender and the deceased, and to such other circumstances as appear to be material, all that is specified is that the court should not make a modification order unless "the justice of the case" requires the effect of the forfeiture rule to be modified: s. 2(2). In *Dunbar* v. *Plant,* the Court of Appeal held that this did not mean that the correct approach was "to do justice between the parties", in this case Miss Plant, the offender, and the parents of Mr. Dunbar, representing his estate. The first and paramount consideration must be (according to the majority) whether the culpability of the beneficiary's conduct was such as to justify application of the forfeiture rule at all. Where the death has resulted from a suicide pact, the survivor would normally attract sympathy rather than prosecution, and the appropriate order would be to give total relief against forfeiture. In setting aside the judge's order (for partial relief only), the majority were influenced by the fact that the assets destined for Miss Plant had not derived from the deceased's family, and that the family would be acquiring an "unwelcome windfall". Mummery L.J., dissenting, would have upheld the judge's order, as the moral claims and wishes of the deceased's family, who would be entitled to take on application of the forfeiture rule, were material and should be given weight.

There remains considerable uncertainty over the method of application of the statutory discretion. It is notable that in all reported cases where relief from forfeiture has been granted, modification of the rule has been total: see *Re K* [1986] Ch. 180, *Re H* [1991] 1 F.L.R. 441, *Re S* [1996] 1 W.L.R. 235, and now *Dunbar* v. *Plant.* It seems that once the judge determines that the moral culpability of the offender demands relief from the consequences of the forfeiture rule, it is difficult to find a satisfactory rational basis on which to divide the spoils.

STUART BRIDGE

TRUSTEES' EXEMPTION CLAUSES

IN *Armitage* v. *Nurse* [1997] 3 W.L.R. 1046, the Court of Appeal determined what the effect would be of including in a trust instrument an exemption clause ("an *Armitage* exemption clause") which purported to absolve a trustee of that trust from all liabilities

https://doi.org/10.1017/S0008197300134324 Published online by Cambridge University Press