Dhooharika's trial before the Supreme Court in Mauritius, which in themselves sufficed to allow his appeal. The trial was fast-tracked by the Director of Public Prosecutions and took place just two months after the first editorial appeared, apparently because of public concern. Despite the defendant wishing to rely upon his good faith as a defence, he was not permitted to give evidence in person and the Supreme Court had reference only to his affidavit. The Supreme Court was further criticised for hastening to sentence without hearing any evidence by way of mitigation, especially when the sentence might be imprisonment. In any event, the offending passages in the newspaper, as cited by the Privy Council, make it tolerably clear that Mr. Dhooharika was not saying that he believed Mr. Hurman's allegations, rather that they should be openly investigated and decided upon by a tribunal. The Mauritius Supreme Court decision that this amounted to an attack on the Chief Justice seems close to incomprehensible and, notwithstanding it being a question of fact, the Privy Council seemed prepared to reverse it. If this is the kind of trial that awaits critics of the judiciary in Mauritius, then not even the recognition of a public interest defence should be enough to save the offence from the prospect of abolition.

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LAND REGISTRATION: RECTIFICATION AND PURCHASERS

A claims an interest in B's property; C is a purchaser who is unaware of A's claim. This is a typical land law dispute involving two innocent parties (A and C). Registration systems generally set out to protect C – it is thought compelling that purchasers should be able to rely on the register to buy land quickly and risk-free. However, there are some limits to this protection.

Leaving aside forgery, registration disputes between A and C have arisen in two principal contexts. Overriding interests (especially where A claims actual occupation) have provided a large proportion of the litigation. However, there has been much discussion over the past few years regarding rectification of the register. Where there has been a mistake, the register may be rectified so as to correct the mistake. Where this has been especially controversial is where there is a mistake in the registration of B (who may or may not be the person primarily responsible for the mistake), but B has executed a registrable disposition in favour of C and C has been registered. Assuming that C is *bona fide*, there is a strong argument that C has been misled by the register's identification of B as being the proprietor with powers to deal with the land. This is strengthened by Land Registration Act 2002 ("L.R.A."), s. 23.

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Two factors complicate the question, making the issues less clear-cut than they might immediately appear. First, there is protection of a proprietor in possession, so that C in possession succeeds unless he has been careless or it would be unjust not to rectify: L.R.A., Sch. 5, paras. 3, 6. Possession is given a wide meaning, so that few proprietors other than chargees will not qualify. It may be observed that both as regards actual occupation (favouring claimants) and proprietors in possession (favouring current proprietors) the system places much emphasis on occupation/possession. This means that people are safe in their homes, though possession and occupation also apply in commercial contexts. Secondly, indemnity is payable by the Land Registry where the register is rectified (or rectification is refused). This means that we can be more relaxed about the risks posed by rectification. The proprietor not in possession will normally be indemnified following rectification, whereas a successful proprietor in possession defence will result in indemnity being payable to the claimant refused indemnity.

These factors may well be linked together. Thus wider powers to rectify also mean a wider scope for indemnity. Indeed, unavailability of rectification against C might lead to A's both losing the land and being refused indemnity – this would apply where A would have a good claim against B without any rectification, but B has disappeared or is insolvent. As has been observed, for land registration to remove A's title without compensation is incredibly harsh and may well be inconsistent with human rights principles.

It was in this context that the Court of Appeal decision in *Gold Harp Properties Ltd. v Macleod* [2014] EWCA Civ 1084 falls to be considered. The mistake in question was the wrongful removal of a registered lease (held by A) from the register. This was engineered by the proprietor of the fee simple (B). B then leased the land, this lease being registered. This new lease was now vested in C. Once it is appreciated that the grantee of this lease and C were companies controlled by B or his business associate, it is easy to appreciate that the merits were entirely on A's side. It was not disputed in the Court of Appeal that rectification of B's title was appropriate. However, the question was whether C, as a subsequent registered proprietor, could be affected by rectification. It might be added that the disputed premises concerned roofspace with development potential: there was neither actual occupation by A nor possession by B.

The discussion of the position by earlier cases raised two principal ways in which A might succeed. The first was the registration of C might itself be a mistake so as to justify a separate rectification. This was rejected by the Court of Appeal in *Norwich and Peterborough B.S. v Steed* [1993] Ch. 116 and *Barclays Bank plc v Guy* [2008] 2 E.G.L.R. 74: one can see the strength of the argument that it cannot be a mistake for a registration to be made following a disposition by a registered proprietor. The second route was to argue that rectification of the lease may follow from

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rectification of the fee simple. At this point, things become complex. There are at least four strands of reasoning. Two were mooted by Lord Neuberger M.R. in subsequent proceedings in *Guy* ([2011] 1 W.L.R. 681): that the rectification of B's title may require rectification of C's title in order to be effective and that the subsequent registration may be seen as "part and parcel" of the mistaken registration (the latter comes close to the proposition rejected in *Steed*). There has also been discussion whether rectification can be retrospective, in the sense of affecting interests created prior to the rectification. The balance of authority was hostile to this, though it was never settled. The third argument is that rectification may affect C by virtue of L.R.A., Sch. 5, para. 8: "The powers under this Schedule to alter the register, so far as relating to rectification, extend to changing for the future the priority of any interest affecting the registered estate or charge concerned." Its predecessor provision (L.R.A. 1925, s. 82(2)) was differently expressed and did not include the words "for the future". The relationship between these strands of reasoning was never made clear in the earlier cases, nor is it discussed in *Gold Harp*.

In *Gold Harp*, the court relied almost entirely upon para. 8, though there was extensive discussion of retrospective rectification. Cases and the textbook analyses were discussed, the court noting that very different approaches have been taken. Quite a lot of stress is placed upon the Court of Appeal decision in *Argyle B.S. v Hammond* (1985) 49 P.&C.R. 148, in which it was held that rectification against C was available where the registration of B was consequent upon a void transfer (an alleged forgery). However, this is explicable on the basis that the 1925 legislation allowed rectification where the proprietor would not have been the estate owner in unregistered land (s. 82(1)(g)); this provision is not repeated in the 2002 Act. Reliance is also placed on Law Com. No. 254, though the court underplays the point that there appears to have been a change of heart in the final report: Law Com. No. 271.

For the Court of Appeal, the clinching argument was that the para. 8 powers make sense only if subsequent interests can be affected. The limiting words "for the future" can readily be given effect by stressing that no liability can be incurred for pre-rectification events. Suppose that C had been in possession prior to rectification of C's lease: there would be no prospect of C's being liable for trespass. Only continued possession after rectification could give rise to a trespass claim.

Overall, the result looks to be supportable. Though the earlier cases provide only limited support, the conclusion does appear to be the natural reading of para. 8. The extent to which it fits the policy underlying the legislation necessarily depends upon the reader's perception as to the role of registration. Though we may be wary of enabling an attack to be made on a *bona fide* purchaser who has had to rely upon the register, *Gold Harp* is clear that C, if in possession, will be protected by paras 3

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and 6. This confirmation in the para. 8 context is to be applauded. Further, C will be protected by indemnity if rectification is ordered. A most welcome consequence of the decision is that it removes the risk (mentioned above) that inability to rectify against C might mean that A loses the land without any indemnity being payable.

A final question is whether the *Gold Harp* reliance on para. 8 means that the other possible means of affecting C are redundant. They may be most important if there are limits to the situations to which para. 8 applies. Two examples will be mentioned. The first is that para. 8 applies only where there is rectification. What happens if B is bound by A's claim, such that there is alteration rather than rectification against B? This might be a severe limitation on the utility of para. 8. However, it would appear on the facts of *Gold Harp* that B would have been bound by A's lease prior to rectification; para. 8 still applied.

The second example concerns the nature of C's title. In *Gold Harp*, C was a tenant. It is clear that para. 8 applies to leases and charges. But what if C has acquired B's title? It is difficult to see how para. 8 can apply where there is no rectification of B's title. Nevertheless, to distinguish between different types of third party (tenant, chargee, purchaser) appears unprincipled: why allow rectification against a tenant of a 999 year lease, but not a purchaser of the freehold?

It may be hoped that para. 8 will be interpreted so as to avoid these problems. Although *Gold Harp* almost certainly settles the position in many cases (in a welcome manner), it is realistic to expect that further litigation will be required.

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THE DEFENCE OF ILLEGALITY IN TORT LAW: BEYOND JUDICIAL REDEMPTION?

IN *Hounga v Allen* [2014] UKSC 47; [2014] 1 W.L.R. 2889, the Supreme Court unanimously upheld a claim in the statutory tort of discrimination by a woman who had been dismissed from her employment. The fact that the woman had been working in breach of immigration laws did not enliven the illegality defence. *Hounga* is one of several recent cases in which the illegality defence has been examined at the ultimate appellate level, the other decisions being *Gray v Thames Trains Ltd* [2009] UKHL 33; [2009] 1 A.C. 1339, *Stone & Rolls Ltd v Moore Stephens* [2009] UKHL 39; [2009] A.C. 1391, and *Les Laboratoires Servier v Apotex Inc* [2014] UKSC 55; [2014] 3 W.L.R. 1257. The fact that the defence has been considered so frequently as of late at the apex level seems to confirm that the Law Commission was

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