The strict "Mansfield rule" (*Carter* v. *Boehm* (1766) 3 Burr. 1905), that those who propose insurance must disclose all material information, is an unusual rule born of particular times and circumstances past. The paradigm of 1766 was a general businessman in a London coffee bar, insuring ships and merchandise far away in a world without CNN. A rule of 1766 for the contents of ships on the other side of the ocean is not necessarily the right rule for insurance on the contents of a house down the road today. In 1980, a report of the English Law Commission concluded that English law on this was "inherently unreasonable". In 1982, the Australian Law Commission advised that "a new balance should be struck between the underwriter's need for information and the insured's need for security in relying upon insurance". In Australia, the law was reformed; in England, it was not.

As regards the unreformed rule of disclosure, *Economides* shows a further softening by the courts, and a shift away from the assumption of 1766 that the insured is always the best person to gather information. As regards misrepresentation, it is still all too easy for proposers to undervalue their belongings and too easy for insurers to rescind. True, insurers usually don't, but the fact that they might undercuts the peace of mind which insurers themselves represent to be much of the value of insurance. If a house has any antiques, a professional valuation costs about £500 a day. If insurers specifically required valuation, people might shop around for cheaper cover or better locks. The belief that the Court did not express but clearly implied is that insurers should "put up or shut up". As regards contract law at large, the Bowen dictum is not a hard and fast rule. In the law of misrepresentation, a statement is not treated as a statement of fact at all, unless reliance on it is reasonable. *Economides* reminds us that there are degrees of reliance and that much depends on the proper interpretation of the statement in question.

MALCOLM CLARKE

THE CONVEYANCING PROBLEMS OF RAPID RESALES—A REPRISE

IN [1993] C.L.J. 22 reference was made to the problems that the system of registered conveyancing can pose for a purchaser of land who immediately contracts to sell the land on. In such circumstances, section 110(5) of the Land Registration Act 1925 obliges him, in the event that his own purchaser so requests, "notwithstanding any stipulation to the contrary, [to] either procure the registration of himself as proprietor of the land ... or procure a disposition from the proprietor to the purchaser". Such a request is unlikely to be

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significant when it is made before he has completed his own purchase, since he will normally be able to oblige his vendor to execute the necessary disposition in favour of his purchaser. However, this will be impossible once he has completed. He will no longer be able to make, under section 37(2), an effectual transfer of the land before becoming registered proprietor. Consequently, he will not be in a position to complete his own sale until he has become registered; this is almost certain to produce a delay in completion and is highly likely to place him in breach of contract. The possibility of a request being made at this stage therefore constitutes a potential hazard, the precise nature of which had to be considered by the Court of Appeal in *Urban Manor* v. *Sadiq* [1997] 1 W.L.R. 1021.

The contract between the parties related to land which the vendor had already contracted to purchase from its registered proprietor and incorporated the 20th edition of the National Conditions of Sale; these, like the other sets of standard conditions utilised today, lay down time limits, which are of the essence, for the making of requisitions on title and observations on the replies to the requisitions and, subject thereto, deem the purchaser to have accepted the title. The vendor duly made title by providing office copies of its own vendor's registered title; the purchaser's requisitions contained nothing to suggest that any request might be made pursuant to section 110(5). The vendor, having completed its own purchase, duly served a notice to complete with which the purchaser failed to comply. During an agreed extension of time, the purchaser for the first time referred to section 110(5), contending that, since the vendor was not registered as proprietor, it had never been in a position to complete and so the notice to complete was invalid. The vendor rejected these contentions and, once the extension of time had expired, rescinded the contract and forfeited the deposit. The Court of Appeal (Staughton, Roch and Morritt L.JJ.) held that it had been entitled so to do.

It was not disputed that the question of whether title had to be made in accordance with section 37(2) or section 110(5) was itself a matter of title. The vendor contended that the failure of the purchaser to make any reference to this issue in his requisitions meant that he had thereby accepted title and could not subsequently require title to be made in accordance with section 110(5). The purchaser contended that any contractual provision limiting the time at which a request under section 110(5) could be made was a "stipulation to the contrary" and so was invalidated by that subsection; accordingly, such a request could be made at any time prior to completion. Millett J. had reached this conclusion in *Lee* v. *Olancastle* (1987) (unreported) but it had not there been contended

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that the vendor's title had been accepted. Millett J. had also held, and the purchaser also contended, that a vendor who could not make title in accordance with section 110(5) was not in a position to complete and so could never serve a notice to complete. Consequently, according to the purchaser, a vendor who has completed his own purchase but has not yet been registered as proprietor cannot protect himself from being "ambushed" by his own purchaser at any time prior to completion and cannot serve a notice to complete even if no "ambush" has yet occurred.

The Court of Appeal held that section 110(5) would clearly invalidate any stipulation which prevented the purchaser from requesting the vendor to make title in one of the two ways mentioned therein. However, a stipulation limiting the time at which such a request could be made was not a "stipulation to the contrary" provided that the period given for the request to be made gave the purchaser a real opportunity of doing so once title had been made. The National Conditions of Sale did so; consequently, the purchaser had accepted the vendor's title before any reference to section 110(5) had been made. This decision clearly applies to contracts which incorporate any of the standard conditions of sale; consequently, a vendor who has not yet registered his title will only be at risk of a request being made until his purchaser has or is deemed to have accepted title. The court did not specifically consider what the position would be where there is no such stipulation. Morritt L.J. could think of no reason why a purchaser who has seen the registered title should be able to wait until completion day to make his request, but he chose to distinguish rather than disagree with the contrary opinion of Millett J. in *Lee* v. *Olancastle.* And while the conclusion that this is a matter of title must mean that no request can be made once title has been accepted, under open contract a purchaser can go on objecting to the title more or less indefinitely unless and until he places himself in unreasonable delay.

The court then went on to hold, disagreeing in this respect with *Lee* v. *Olancastle,* that, while the possibility of a request under section 110(5) being made is a contingent obligation binding on the vendor, that does not prevent a notice to complete being served at a time when no request has yet been made. The court does not appear to have realised that this latter conclusion was not actually necessary; the decision that the time limit was effective meant that by the time the notice to complete was served there was no longer any possibility of a request under section 110(5) being made anyway. However, the express disapproval of *Lee* v. *Olancastle* greatly assists a vendor in situations where the purchaser has not yet clearly accepted title; provided that no request has yet been made, the possibility that one

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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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