Practice&Law

FORTY YEARS OF AN INDUSTRY INSTITUTION

Blundell Lectures Guy Fetherstonhaugh QC and Oliver Radley-Gardner survey the rich history of the lecture series

The Blundell Lectures have consistently been at the cutting edge of developments in property law. As they approach their 40th anniversary, their quality and topicality is as high as it has ever been.

The lectures bring together leaders in their field to uncover the challenges the future holds for the property profession, and consider vital, practical ideas on how to meet them.

The words above have been adapted from the encomium by Kim Lewison QC, now of course Lewison LJ, written on the 25th anniversary of the lectures.

Some might say that, as a Blundell lecturer himself, and a member of Blundell's own chambers (now Falcon Chambers), the author might have offended against the maxim "*nemo iudex in causa sua*" – but that would be unthinkable for such a distinguished member of the Court of Appeal.

Concentrating on the first 25 years of the Blundell Lectures, which brought the 20th century to a close, leaves those of more recent memory to the enjoyment of future commentators and allows the passage of time to identify a number of adjectives that characterise the lectures.

Learned

The Blundell Lectures are full of conspicuous displays of practical learning and wisdom. The 1986 lecture given by Kim Lewison and Philip Freedman (now CBE QC) in 1986 asked: "Circumventing property statutes: can it still be done?" The question was triggered by the celebrated decision of the House of Lords in *Street* v *Mountford* [1985] UKHL 4; [1985] 1 EGLR 128 in relation to avoidance of the Rent Act. The speakers considered whether the courts' approach to tax avoidance schemes – still a matter of much popular interest – could be related to the property field.

Many other lectures have served to provide authoritative views from senior practitioners who are, or have become, respected judges. Examples include Rupert Jackson QC (now Jackson LJ) and David Neuberger QC (now Lord Neuberger, President of the Supreme Court) in 1991; Paul Morgan QC (now Morgan J) in 1995; Terence Etherton QC (now the Chancellor of the High Court) in 1996; Nicholas Patten QC (now Patten LJ) in 1998; and the debate between Lord Millett and the then Neuberger J in 2000.

And it is also pleasing to be able to relate that the Blundell Lectures have been cited in court (see Lord Rodger in *Ashworth Frazer* v *Gloucester City Council* [2001] UKHL 59; [2002] 1 EGLR 15: "The decision [in *Killick* v *Second Covent Garden Property Co Ltd* [1973] 1 WLR 658] has even won the accolade of being 'the refuge of the desperate'" – a reference to Jonathan Gaunt's remark in a 1987 lecture.

THE BLUNDELL QUIZ

The four-decade history of the Blundell Lectures has provided high-level oratory from some of the nation's finest legal minds. Can you identify the authors of the following comments? (Answers on the next page)

1) "There are no buns for Tiny Tim's tea."
2) "[During the last seven years] the property world has suffered from the worst recession in living memory."
3) "Bankers paid on commission are again coming to the fore."
4) "The Doubting Thomases of the conveyancing world retired to their corner."
5) "This rhetorical flourish was delivered to a green sea of empty benches."
6) "Yew berries are apparently poisonous to sheep and 36 ewes and 100 lambs did not return from lunch."
7) "Leaving me standing there having, for all I know, given a judgment which is spoken of with reverence and as a precedent in the world of oysters."
8) "Many of those present will not remember the Dark Ages."

REX FEATURES

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ONLINE THIS WEEK

LAW REPORT The Estates Gazette Law Reports are now available exclusively on EGi each week and in bound volume three times a year. This week we report *Ng v Charalambous*.

Relevant

Even the older lectures raise issues that could still be debated today.

In 1977, for example, Christopher Priday spoke on the topic "Receivership, bankruptcy and liquidation in relation to leased premises". Some of the labels may have changed, but the problems are familiar.

Options and break clauses remain as puzzling and relevant as they always were. In 1988, David Neuberger QC and John Bassett FRICS delivered papers on options, and asked: "Why are the time limits in a rent review clause elastic whereas the time limits of an option are strict?" This question remains in search of an answer.

In fact, much sage advice given by lecturers on rent review continues to be valid, such as when Richard Main FRICS, speaking in 1994, asked why we do not have "rent review clauses which are capable of practical interpretation by the people who actually operate them". Or when Ronald Bernstein, in 1979, posed the question: "Will the greater refinement, and greater detailing, of rent review clauses in the end increase or decrease the proportion of disputes out of which there emerges an answer generally accepted to be wrong?"

Eloquent

The lectures throw up many a striking phrase. George Grover, FRICS, speaking in 1982, said: "To talk in terms of revolution within the hallowed hulls of the conservative legal and surveying professions is comparable to a galley slave offering advice to the captain on the direction of the ship. Both are guaranteed to ensure limited future prospects within either craft."

In his 1989 lecture, Kim Lewison offered: "In dark moments one may be forgiven for wondering whether words in a lease ever mean what they say." The junior property practitioner may wish to embroider that quotation, from the author of the leading book on interpretation, onto a cushion for some night-time comfort.

And these days, of course, Lewison LJ decides what the words mean.

Ahead of their time

Often neglected is the role of the Blundell lecturer as futurologist.

In 1979, Frederick Lane and Derek Wood QC travelled to the next millennium to consider condominiums and co-ownership – something Parliament did not do until 2004.

Mr Wood ended by questioning whether "we would ever see condominiums in this country on the scale and grandeur of some of those which may be seen across the Atlantic". He added: "It may be that, at the end of the day, there are limits to the community spirit in England beyond which we will not be pushed". Prophetic indeed.

Historic

And what of the Blundell lecturer as social commentator? The lectures reveal much about the economic and business concerns of the day.

Ronald Bernstein QC, in the first lecture in 1976, said that, before rent review clauses came into general use, the usual experience was that, in business tenant renewal proceedings, "the landlord was pressing for a relatively short term – say five or seven years – whilst the tenant was pressing for the longest possible term – 14 years". Perhaps painfully to the members of the legal profession, he continued: "Surveyors have made a cleaner job of many thousands of arbitrations or determinations that have taken place under [rent review] clauses than have the lawyers who drafted them."

Another discernible historic theme is the increasing institutionalisation of the property investment market. In his lecture in 1976, Muir Hunter QC mourned the passing of the "quay flats empire" run by the London County Freehold and Leasehold Property Company Limited. The mature reader will recollect that this company administered mansion flats throughout Greater London through local estate management offices, staffed by its own employees, and run on benevolent and paternal lines. Alas no longer. Writing in 1978, Robert Pryor contrasted the increasing complexity of service charge provisions in leases with those of the past, where "a covenant by the tenant contained in two or three lines to pay a fair proportion of the costs... would suffice".

In 1979, Michael Clarke FRICS added a comment which happily can no longer be true: "It is sobering to realise that there are chartered surveyors still in practice who qualified before the Law of Property Act 1925 and who... have taken little trouble since to keep pace with the welter of legislation affecting land and property which has gushed from the Palace of Westminster..."

In 1981, Paul Baker QC lamented that "the telephone is coming to replace the post as a means of doing business". Writing in 1984, John Marples FRICS was able to reminisce about his senior colleagues' first encounters on the continent with something called a "shopping centre". These comments will surely remain relevant to students of modern social history.

Co-operative

Lastly, and perhaps most importantly, the hallmark of the lectures must surely be their collaboration between lawyers and surveyors.

As John Stuart Colyer QC said in 1985: "Lawyers are not so wicked, nor are we so clever as we suppose, and most of the problems that arise are caused by insufficient mutual understanding between the legal property advisers and the valuation and surveyor property advisers."

The lectures have done their best to supply that understanding.

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WHO WAS BLUNDELL?

Lionel Blundell (called to the Bar in 1933) was an authority on leasehold law, editing the 24th edition of *Woodfall's Law of Landlord and Tenant*. The Rent Acts were a prolific source of Lionel's work: in one year, he monopolised the All England Law Reports, then known internally as the "11 King's Bench Walk Weekly", after the name of his chambers. He was similarly involved in many leading cases in the early life of the Landlord and Tenant Act 1954.

On his death, the next head of chambers, Ronald Bernstein QC, instituted the Blundell Lectures, with the first held in 1976 under the auspices of what is now the Bar Council and the RICS, joined by the Law Society in 1983.

In a foreword in 1977, Sir Leslie Scarman, later Lord Scarman, said: "The lectures are for the instruction and delight of the whole profession." He added that they served "not only as an appropriate memorial of a great lawyer but as a vision guiding the profession along difficult paths towards a better and simple law".

The first Lectures were priced at £2.50 per lecture, or £7.50 for all five. The current Lectures cost a little more, but the profits are divided equally amongst the institutions' charities.

QUIZ ANSWERS

1) Jonathan Brock "When it is safe to accept rent?" (1992); 2) Hugh Cross, dilapidations (1994); 3) Geoffrey Dale FRICS, damages for negligent valuation (1995); 4) Terence Etherton QC, the Law of Property (Miscellaneous Provisions) Act 1989 (1996); 5) Stephen Fogel, the Landlord and Tenant (Covenants) Act 1995 (1996); 6) Martin Rodger, "Fitness for purpose – caveat lessee?" (1999); 7) David Green FRICS, rent review arbitrations (1991); 8) Jonathan Brock QC (again), consent to assignment (1998)