



Falcon Chambers

# Supreme Court decision in Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Limited [2015] UKSC 72

- The law of implied terms was not altered by the Privy Council in *Attorney General of Belize v Belize Telecom Ltd* [2009] 1 WLR 1988
- The test for the implication of a term remains whether it is necessary to give business efficacy to the contract.
- The test is not one of absolute necessity but whether, without the term, the contract would lack commercial or practical coherence.
- A term will not be implied where it 'lies uneasily' with the express terms in the contract.
- The law on apportionment upon the exercise of a break clause mirrors that of the law on apportionment upon forfeiture.
- However, where the break date is certain it may well be possible to apportion the final rental payment.
- The Supreme Court approves the decision in *Ellis v Rowbotham* [1900] 1 QB 740 that rent payable in advance is not apportionable under the Apportionment Act 1870.
- The Supreme Court provides guidance on when it will be appropriate to overrule a long-held decision on statutory interpretation.

Guy Fetherstonhaugh QC and Kester Lees acted for the Appellant and Nicholas Dowding QC and Mark Sefton acted for the Respondents

Full analysis of this judgment is available on our website [here](#)

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