

Identifying the hereditament

The contrary view

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2nd April 2014

Gilbert – the leading case

The general rule:

- (1) same curtilage or contiguous – unless exceptions apply
- (2) not in same curtilage or contiguous – “as a general rule” must be treated as separate even if used by the same occupier for the same purpose;
- (3) separated only by a public highway - “general rule” still applies but....

The exception:

- the third rule is not inflexible; essentially one whole e.g. golf course, nobleman’s park, “so essential to one another”

Gilbert – principled departure from a strict approach?



Gilbert recognised that contiguity was not a hard and fast rule to which no exceptions could be made.

The following principles appear to emerge (some more clearly than others) from the pre-1967 case law (principally *Gilbert*):

- a. first and foremost, what is or is not a hereditament is a question of fact: Morris LJ in *Gilbert* @ p51 following *North East Railway Co v. York Union* [1900] 1 QB 733; and Parker LJ at p55. It is only if immaterial considerations are taken into account in answering that question or there is a misdirection in law that this Court will intervene;
- b. the weight to be attached to legally relevant considerations is for the decision maker and not for this Court on appeal: Morris LJ in *Gilbert* @ p51 and p52 and Parker LJ @ p54;
- c. attempts to lay down inflexible propositions which are inevitably or invariably applicable is inappropriate: Denning LJ @ p49; Morris LJ @ p52 and Parker LJ at p54;
- d. although it may be an appropriate starting point, there is no general rule that premises in the same occupation which are geographically and structurally separate (and if capable of being separately let) will necessarily be separate hereditaments: Morris LJ @ p52; Parker LJ @ p54 – “not decisive in all cases” or Denning LJ @ p49 – “not inflexible” rule;
- e. in borderline cases, it will be appropriate to adopt a commonsense assessment of the features of the case than to have recourse to some standard formula: Morris LJ at p52;
- f. there is a wide range of considerations which are legally relevant to the question of fact: listed (but not exhaustively) by Parker LJ @ p53-54. There is no indication in any of the case law that this list of relevant factors is exhaustive or immutable.



The HMRC approach

Contiguous floors occupied by the same firm even if reliant on common parts for access between the floors can be a single hereditament.

Non-contiguous floors occupied by the same firm reliant on common parts for access between the floors cannot be.

Why? What is the principled basis for such an approach?

If no hard rule, where is the line to be drawn



Once it is recognised that there is no hard and fast rule and that there is scope for exceptions, on what principled basis should one apply exceptions?

(a) if a factory and workshop on opposite sides of the road can be a single hereditament, why not two stories of an office linked by a lift?

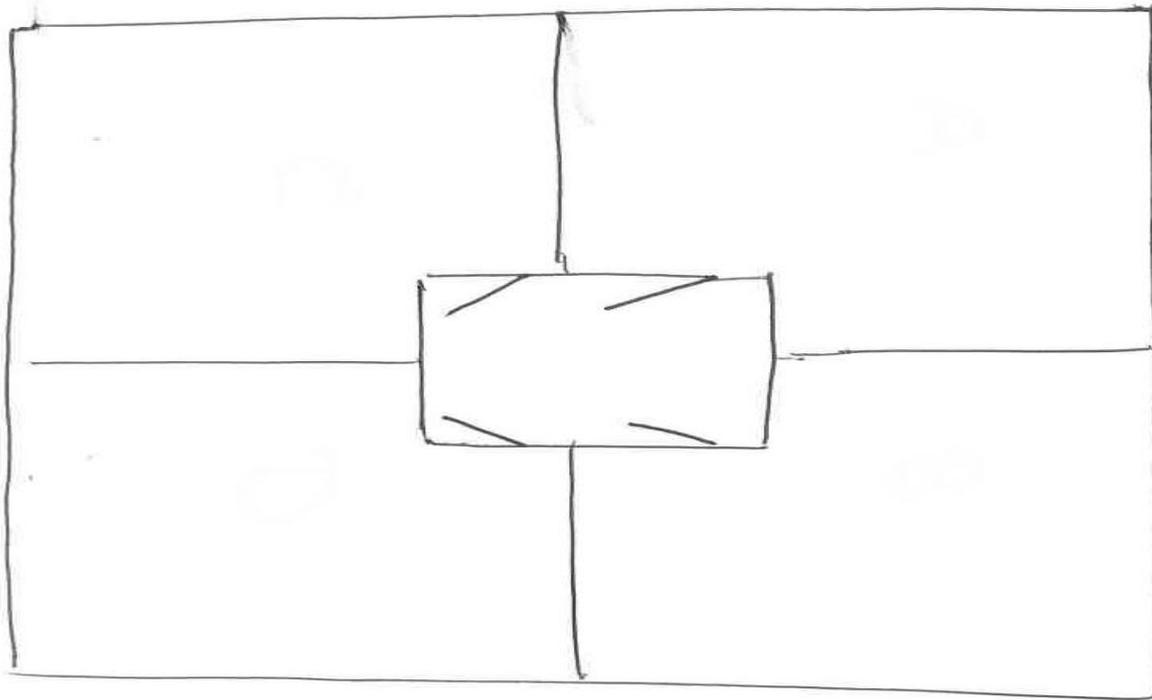
(b) if two contiguous floors of an office block can be a single hereditament, why not two non-contiguous?

(c) if two adjoining office suites can be a single hereditament, why not two office suites across the corridor from each other? – Canary Wharf - large floor plates, four office suites in each corner of building with central common parts.

Canary Wharf Example



Four suites of offices on each corner – common parts
(excuse my drawing)



A question of fact?



LC and CA in *Woolway* emphasised that the *Gilbert* fact finding role of the decision maker: [34].

- lack of practical significance to separation;
- physical test – same building/red line;
- separate floors linked by a direct lift – no practical difference to contiguous floors linked by a lift.
- geographical test survives
- no departure from established principles

Are those principles right? Supreme Court to decide.

Implications

- single office blocks – separated floors
- adjacent office blocks – no change
- factories/warehouses on industrial estate – no change
- inconsistency?