The extent of the the hereditament: *Woolway* and The Rating Hypothesis

Timothy Morshead QC
Landmark Chambers

Woolway (VO) v Mazars

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Woolway (VO) v Mazars

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- 1 April 2005: 2005 list
- 8 February 2010: Mazars proposal to alter 2005 list
- 29 July 2010:VTE hearing
- 24 August 2010: VTE decision
- 15 May 2012:Upper Tribunal appeal hearing
- 11 June 2012:Upper Tribunal decision
- 14 February 2013:Court of Appeal hearing
- 17 April 2013:Court of Appeal decision
- 11 February 2015: Supreme Court hearing
- 15 April 2015 … and counting.

The legislation

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- Rating and Valuation Act 1925, section 68
  - "any lands, tenements, hereditaments or property which are or may become liable to rate in respect of which the valuation list is by this Act made conclusive"
- General Rate Act 1967
  - "property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in a valuation list"
- Local Government Finance Act 1988, section 64(1)

Judicial concern

- *Vtesse Networks Ltd v. Bradford (VO)* [2006] EWCA Civ 1339, Sedley LJ at 39-40
  - "It is a matter of concern that liability to business rates can depend so heavily on the uncertain meanings of the two key concepts, hereditament and rateable occupation. [Counsel for the Appellant] is right to separate the two things and to insist that until a hereditament is identified, occupation cannot arise"

- "Legislative gobbledegook": Reeves (Listing Officer) v. Northrop [2013] EWCA Civ 362 at ¶9 per Sir Alan Ward

The leading case

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- *Gilbert v. Hickinbottom* [1956] 2 QB 40
  - Denning LJ's three "general rules"
    - Properties in same occupation within same curtilage, or contiguous = one hereditament
    - Properties in same occupation but not in same curtilage and not contiguous = separate hereditaments
    - Properties in same occupation but separated by a highway = one hereditament – but only if the two properties are so essential in use the one to the other that they should be regarded as one
  - Morris LJ: "common sense assessment of the features of the case" for borderline cases
  - Parker LJ: geographical test is a "convenient starting point to the inquiry, but it is not decisive in all cases"
- NOT REGARDED BY PRESIDENT IN WOOLWAY V. MAZARS AS DETERMINATIVE: President had regard to a variety of facts including whether there was any "practical significance" for the occupier in having discontiguous floors, rather than contiguous ones.
- Fairness

The horizontal plane

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Offices in two separate blocks, the entrances of which are separated by about 43m

The vertical plane

Woolway (VO) v. Mazars LLP [2013] RA 263

The issue

Extract from the Statement of Agreed Facts and Issues in the Supreme Court:

"The single issue in the case is whether the second and sixth floor of Tower Bridge House should be entered into the rating list as a single hereditament or as two separate hereditaments."

"In resolving that question it is agreed that the Supreme Court ought to consider:-

- In determining whether property occupied by a single ratepayer should be shown in the list as one hereditament or as more than one hereditament, to what extent if at all is it material to consider
  - the extent to which any part of the property is or appears physically separate from any other;
  - any other physical feature relating to the property;
  - non-physical factors, including the extent to which any physical separation between different parts affects the economic or practical utility of the property to the ratepayer.
- The extent to which fairness ought to influence the issue and, to the extent that fairness is material, what are the comparators by which fairness ought to be considered.
- The extent to which the guidance contained in the Court of Appeal's decision in Gilbert v Hickinbottom [1956] 2 QB 40 provides appropriate and sufficient guidance for cases such as the present appeal.
- The extent to which the approach of the President of the Upper Tribunal (Lands Chamber) in the present case provides appropriate and sufficient guidance for the circumstances of this case and more generally.
- How if at all "common sense" should be applied in resolving borderline cases, by what criteria borderline cases should be recognized and by what principles should they be decided."

Scotland

- *Burn Steward Distillers Plc v. Lanarkshire Valuation Joint Board* [2001] RA 110, 140-141 (Lands Tribunal for Scotland)

> "We consider that the emphasis on the geographical test is an aspect of recognition that lands and heritages are physical subjects. The underlying purpose is to provide a proper basis for a tax on property, not a tax on persons or businesses … we are satisfied that the fact that certain heritable subjects function together as one business will, by itself, be insufficient to demonstrate that they are unum quid in any physical sense.
>
> A 'business' is not a concept based on physical or heritable factors. Entry in the roll is based on identification of heritable subjects. It is clear that undue emphasis on a business connection as evidence of functional connection between subjects could lead to a distinction for rating purposes between a business whose operating units were in close proximity and those whose operating units were, perhaps only slightly, more remote. There is no basis in legislation for such a distinction. We see no basis in fairness for it."

Fairness in rating

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- *Ladies Hosiery and Underwear Ltd v. West Middlesex Assessment Committee* [1932] 2 KB 679

The *amicus's* examples

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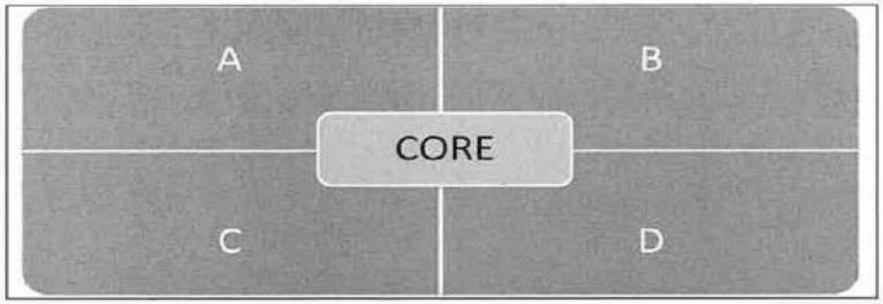
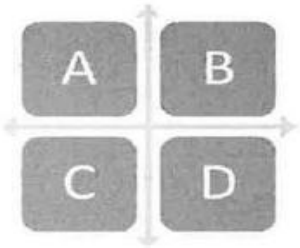
Example 1: This diagram shows a floor of a multi-user office block with a central core (toilets, stairs, lifts) and suites of offices off the central core and only accessible from the core. There is no direct access between any of the suites. On the Appellant's case, an occupier of A and B would occupy a single hereditament. An occupier of A and D, occupying exactly the same quantum of space, of the same quality, at the same address, with the same distance required to be traversed across the core, would occupy two hereditaments. Thus two occupiers, occupying the same quantum and quality of space in the same building on the same floor, would by virtue only of an accident of space availability find themselves facing different rating liability.



Similarly, if the only difference from the example above was that there were corridors (or common toilets or common stairwells between A and B (see below) the same occupier as occupying A and B above would nonetheless be occupying two hereditaments. An element (or from the tenant's perspective an accident) of the design which makes no difference to the quality of the occupation would directly impact the rating liability



The *amicus's* examples

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Example 2: This diagram attempts to show a cross-section of a multi-storey building with a central core. On the Appellant's case, A and C would be a single hereditament, A and D would comprise two separate hereditaments. If, however, by accident of design, D vertically overlapped to even the smallest extent with A, A and D would be a single hereditament.

	C	
E	O	F
C	R	D
A	E	B

Similarly, an occupier of A, C and E would occupy a single hereditament. The occupier of A, D and E would occupy three separate hereditaments. In all cases, the quality, quantum and value to the occupier would be identical.

The rating hypothesis

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- Local Government Finance Act 1988, Schedule 6, para 2(1):
- “The rateable value of a non-domestic hereditament shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions:
- (a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
- (b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;
- (c) the third assumption is that the tenant undertakes to pay all usual tenant’s rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.”

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Vs.

- *Allen (VO) v. English Sports Council* [2009] RA 289

+

= £360,000 RV

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+

= £242,650RV

?

= £480,000RV

Hardman (VO) v. British Gas Trading Limited [2015] UKUT 53

= £1 RV

?

= £1,012,500 RV

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