

This is the first in an occasional series in which partner Nick Cox takes a closer look at some of more obscure corners of the law. Sometimes, even the most seemingly remote bits of legislation can prove surprisingly useful.

Obscure legal terminology: Mesne profits

by litigation partner, Nick Cox

If you ever have to tangle with commercial property law, you may have tripped over the rather obscure term 'mesne profits'. It can cause mix-ups, not least in the spelling and pronunciation.

The concept of mesne (pronounced 'mean') profits comes from the medieval origins of our modern landlord and tenant law. Under the feudal system, all land was owned by the King. He would dole it out to his barons on the basis that they provided him with soldiers whenever he wanted to raise an army. Soon this turned into a nice way of raising money by charging rent for the land.

In turn, the barons would let out part of the land to tenant farmers and they would pay rent – usually in kind, by providing livestock or crops – for the privilege of being able to keep some of the produce for themselves. Thus the concept of chains of tenancies was born.

The person to whom you paid your rent became known as the 'mesne landlord'. The word meant 'intermediate' in old French (a bit like the mean of two numbers) and used to be spelt 'meen'. It metamorphosed into the present spelling through the middle ages.

Thus the phrase was originally 'mesne rents and profits' meaning all the rent or profit from the land that could be extracted by the intermediate landlord.

Because 'rent' has acquired a special meaning in modern property law, the phrase 'mesne profits' is now reserved for the claim that a landlord has after a tenancy has been brought to an end but the tenant has failed to leave. It signifies that while the occupier is no longer a tenant, the landlord remains entitled to be compensated for the tenant's continued occupation. It is now sometimes substituted by the phrase 'damages for use and occupation'.

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