

# Break clauses: vacant possession

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# Context

- What is a break clause?
- Break clause conditional upon yielding up with 'full vacant possession' on the break date
- Express condition

# What is 'vacant possession'?

Obligation now has three elements:

- No-one left behind who is using or enjoying the premises, or representing someone who is claiming the right to do so
- No legal impediment to the enjoyment of the property
- Nothing left in or on the premises which would be a '*substantial impediment*' to the enjoyment of possession of that property

# Satisfying the elements

- Identify the demise: e.g. break clause refers to
  - ‘the Building and every part thereof other than the two shop units’
  - The ‘Building’ is ‘Tripartite Chambers, 1 Station Road and 10 Green Lane and adjoining airspace comprised in and demised to the landlord’
- Why?
- Common errors
  - Keeping a set of keys

# Satisfying the elements

The third element is more complicated:

- ‘*substantial impediment*’ to the enjoyment of ‘the Premises’
- What to think about:
  - ‘the Premises’ for the purpose of the break clause
  - defined / not defined

# Third element: an example

- Express requirement to yield up 'the Premises' up in accordance with Clause X.
- Clause X says that:
  - 'Unless the landlord requires otherwise, all alterations and additions made by the tenant must be removed, and the premises must be reinstated to their original condition and layout.'*
- Premises:
  - *'the Building and every part thereof other than the two shop units'*
  - *The 'Building' is 'Tripartite Chambers, 1 Station Road and 10 Green Lane and adjoining airspace comprised in and demised to the landlord'*

# Third element: an example

- For this lease:
  - Unless the landlord agrees otherwise, it is the original condition that must be reinstated
  - Presence or absence of anything which is a substantial impediment to the enjoyment of the premises *in that configuration* will defeat the break
  - No exceptions for:
    - ‘upgrades’ to mechanical and electrical equipment which do not reduce the net internal area or affect the letting value;
    - use of substitute materials of comparable quality

# A second example

- Express requirement to yield up ‘the Premises’ with vacant possession at the break date.
- Premises:  
*‘the land and building at 1 Pudding Lane, including Conduits, landlord’s fixtures and any additions alterations and improvements, but excluding the airspace above’*
- Clause Y says that the tenant is to:  
*‘remove all tenant’s fixtures, including partitioning, to reinstate the premises to the to a condition commensurate with the Base Building Definition, and to comply with the tenant’s reinstatement obligations’*



The End