

WHIMSICAL WAYLEAVES, ENIGMATIC EASEMENTS

- The proprietary rights and powers of utilities providers: electricity, gas & water

*A presentation to
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by

***Greville Healey
Falcon Chambers***

Greville practises at Falcon Chambers, specialising in property litigation. His areas of expertise include the telecommunications codes, development agreements, easements, land registration, and commercial landlord and tenant. In recent years he has appeared in the High Court in disputes over rights of way and of drainage, and commercial leases, and in the Court of Appeal in disputes over vendor and purchaser deposits, tenant's fixtures, and rights of light. Next month he is appearing in the Court of Appeal in a land registration case concerning rectification of the register. He has been described in the legal press as an "acclaimed junior", "a rising star at the property bar" and "a powerful courtroom advocate with a great client manner", who is "very clever, very quick and very client friendly" and has "talent above his seniority of call".

FALCON CHAMBERS

**Falcon Court
Temple
London EC4Y 1AA**

Tel: 020 7343 2484
Fax: 020 7343 1261
Email: healey@falcon-chambers.com

1. Common law: how does the requirement for a dominant tenement work in the context of substantial undertakings?
 - a. The requirement for a dominant tenement: *London & Blenheim Estates Ltd v Ladbroke Retail Parks Ltd* [1994] 1 W.L.R. 31
 - b. The identification of the dominant tenement: *Johnstone v Holdway* [1963] 1 Q.B. 601
 - c. No expansion of the dominant tenement: the rule in *Harris v Flower*
 - d. Proximity of the dominant and servient tenements? *Todrick v Western National Omnibus Co Ltd* [1934] Ch. 561
 - e. An undertaker's undertaking as the dominant tenement:
 - i. *Stockport Waterworks Co v Potter* 159 E.R. 545
 - ii. *Re Salvin's Indenture* [1938] 2 All ER 498

2. Gas transporters
 - a. Gas Act 1986 (as amended by the Gas Act 1995 and the Utilities Act 2000)
 - b. The Gas Code (sch. 2B of the Gas Act 1986)
 - c. Rights of Entry (Gas and Electricity Boards) Act 1954
 - d. Easements granted by deed

3. Electricity
 - a. Easements vs wayleaves
 - b. Electricity Act 1989
 - i. Necessary wayleaves: sch. 4 para. 6 of the 1989 Act
 - ii. Notice to remove: sch. 4 para. 8 of the 1989 Act
 - iii. Wayleave guidance January 2014: Guidance for Applicants and Landowners and/or occupiers
 - iv. *William Tracey Ltd v SP Transmission Plc* [2016] CSOH 14
 - c. Rights of Entry (Gas and Electricity Boards) Act 1954
 - d. *National Grid Transmission Plc v Hillam* (Chancery Division District Registry (Leeds), 25 November 2016): an interim injunction permitting the National Grid to enter onto private land

4. Water, drains and sewers

- a. *Ystradyfodwg & Pontypridd Main Sewerage Board v. Bensted* [1907] A.C. 264: undertakers as owners of the space embraced by the pipe
- b. *Radstock Co-Operative and Industrial Society Ltd. v Norton-Radstock UDC* [1968] Ch. 605
- c. Water Industry Act 1991
 - i. Powers to lay pipes: s. 158 & 159 of the 1991 Act
 - ii. Undertaker's duty to move pipes: s. 185 of the 1991 Act