Trinity Term

[2015] UKSC 53

On appeal from: [2013] EWCA Civ 368

JUDGMENT

Woolway (Appellant) vMazars (Respondent)

before

Lord Neuberger, President

Lord Sumption

Lord Carnwath

Lord Toulson

Lord Gill (Scotland)

JUDGMENT GIVEN ON

29 July 2015

Heard on 11 February 2015

Appellant	Advocate to the Court
Timothy Morshead QC	David Forsdick QC
Daniel Kolinsky QC	
(Instructed by HMRC Solicitors Office)	(Instructed by The Government Legal Department)

LORD SUMPTION: (with whom Lord Carnwath and Lord Toulson agree)

1.
Local authority rates are the oldest tax in continuous existence in England, having originally been introduced in the reign of Queen Elizabeth I by the Poor Relief Act 1601 (43 Eliz 1, c 2). Historically, they were payable in respect of the rateable occupation of hereditaments, and that continues to shape the law in this area even though non-domestic rates are today imposed on unoccupied hereditaments also. The core concepts underlying the assessment of rates are that they are a tax on property and not on persons or businesses, and that the "hereditament" is the unit of assessment. Each hereditament is separately identified in the rating list and separately assessed, notwithstanding that the same occupier may have more than one. The question at issue on this appeal is how different storeys under common occupation in the same block are to be entered in the rating list for the purpose of non-domestic rating.

2.
Tower Bridge House is an eight-storey office block in St Katherine's Way in the London Borough of Tower Hamlets. In plan it is a U-shaped building. The open space between the three wings is filled by a covered atrium, with a central lift shaft containing six high-speed lifts serving the first to seventh floors of the building. There is a common reception area on the first floor serving the entire building. Mazars is a firm of chartered accountants which occupies the non-common areas of the second and sixth floors under separate leases. The first, third, fourth and fifth floors are occupied by the solicitors Reynolds Porter Chamberlain. The seventh floor is divided between two other occupants.

3.
Where different parts of an office building are occupied by the same occupier, the ordinary practice of the valuer, and apparently of valuers generally, is to enter them as a single hereditament if they are contiguous, but as separate hereditaments if they are not. In accordance with this practice, in the 2005 rating list, the non-common parts of the two storeys occupied by Mazars were entered as separate hereditaments. The non-common parts of the first storey occupied by Reynolds Porter Chamberlain were entered as one hereditament, and the non-common parts of the third, fourth and fifth floors occupied by the same firm were together entered as another hereditament. Each of the spaces separately occupied on the seventh floor was also entered as one hereditament. In February 2010, Mazars applied to merge the two entries for the spaces demised to them to form a single hereditament, with an allowance for fragmentation of 10%. They proposed that the merger should take effect from 26 November 2007, when they had begun to occupy the two floors, and contended that although physically separate, they were functionally inter-dependent. The Valuation Tribunal for England agreed that the two entries should be merged, and allowed 5% for fragmentation. The Valuation Officer appealed to the Upper Tribunal (Lands Chamber). The case came before the President of the Chamber, who affirmed the Valuation Tribunal's decision as to merger, but held that there should be no fragmentation allowance. The Valuation Officer has appealed to this court on the merger issue, but the disallowance of Mazars' claim to a fragmentation allowance has left them with no financial interest in the outcome. They have not therefore appeared on the further appeal of the Valuation Officer to this court. We have, however, been assisted by Mr Forsdick QC, who appeared as the Advocate of the Court, and whose submissions have been of great value in elucidating a novel and difficult point.

4.
"Hereditament" is a somewhat archaic conveyancing term which as a matter of ordinary legal terminology refers to any species of real property which would descend upon intestacy to the heirs at law: see section 205(1)(ix) of the Law of Property Act 1925. In a conveyance, there is no problem about its bounds. They will be identified by the deed. But notwithstanding more than four centuries of experience, the question how a hereditament is to be identified for rating purposes remains in important respects unclear. Section 64(1) of the Local Government Finance Act 1988 defines a hereditament as anything which would before the passing of the Act have been a hereditament for the purposes of section 115(1) of the General Rate Act 1967. That means a

"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 the valuation list."

The result, in the absence of further statutory definition, is that the meaning of "hereditament" is left to be elucidated by the courts in accordance with the principles underlying the rating Acts.

5.

The question which arises in a case like this is a very simple one. Given that non-domestic rates are a tax on individual properties, what is the property in question? In principle, the fact that the same occupier holds two or more properties is irrelevant to the rateable status of any of them. He must pay rates separately on each. If the law is to be rational and consistent, the circumstances in which a continuous territorial block is to be treated as several separate properties or in which geographically separate properties are to be treated as one for rating purposes, must be determined according to some ascertainable and defensible principle.

6.
There are two principles on which these questions might be decided. One is geographical and depends simply on whether the premises said to constitute a hereditament constitute a single unit on a plan. The other is functional and depends on the use that is or might be made of it. The distinction was first applied in a series of rating cases in Scotland, where the question was essentially the same as the one which arises on this appeal, namely whether property should be assessed for local rates as a number of distinct heritable subjects or as unum quid ("one thing"). These cases establish that the primary test is geographical, but that a functional test may in certain cases be relevant either to break up a geographical unit into several subjects for rating purposes or to unite geographically dispersed units in unum quid. By far the commonest application of the functional test is in derating cases. In these cases, the functional test serves to divide a single territorial block into different hereditaments where severable parts of it are used for quite different purposes. Thus a garage used in conjunction with a residence within the same curtilage will readily be treated as part of the same hereditament, whereas a factory within the same curtilage which is operated by the same occupier may not be. There are, however, rare cases in which function may also serve to aggregate geographically distinct subjects. It is with this latter question that the present appeal is concerned.

7.
In Bank of Scotland v Assessor for Edinburgh (1890) 17 R 839, the Lands Valuation Appeal Court dealt with a number of rating appeals involving banks with office premises used in conjunction with nearby residential premises occupied by bank employees. There were three categories of residential premises: (i) dwellings which were in buildings separate from the bank's offices; (ii) dwellings which were under the same roof as the commercial offices with internal communication between them; and (iii) dwellings which were under the same roof but with no internal communication between them, or none that was in use. Lord Trayner held that in case (i) the dwellings fell to be valued separately while those in cases (ii) and (iii) were unum quid with the commercial offices. Lord Wellwood agreed with him on cases (i) and (ii), but not on case (iii) which he would have directed to be separately valued. However, the underlying principle applied by both judges was the same. They applied the geographical principle, distinguishing cases where the various bank buildings formed a continuous territorial block from cases where they did not. In those cases where the different buildings did not form a continuous territorial block, they could be treated as unum quid only where there was a necessary functional connection between them. Lord Trayner said at p 843:

"In the case of the Commercial Bank I think the assessor has gone wrong in including the messengers' houses as part of the bank. These houses form no part of the bank buildings; they are separate houses in the adjoining street, no doubt sufficiently near to the bank to be convenient and suitable for the bank servants, but still no part of the bank buildings, and therefore no part of the unum quid. The assessor in support of the view he has adopted referred to the case of M'Jannet, 10 R 32, but I do not think that that case has any application here. It was decided in that case that the conservatory, stables, and outhouses connected with a dwelling-house were not to be separately valued, but were to

be regarded and valued as a unum quid. I agree entirely with that decision. The different parts of the subject to be valued lay together, and were within the one enclosure; they were the different parts which together went to make up the establishment. But although the stables, for example, were held in that case to be part of the residence and to be so valued, it does not follow that stables are in every case to be valued as part of the residence to which they are an accessory. The stables of a gentleman in town are as much a convenience or accessory to his town residence as they are in the case of a country house. They are not, however, valued along with the town residence, although situated in the adjoining street or mews. They are not so connected - as they were in the case of a country mansion or residence - as to make it impossible or difficult to let them separately. In the same way the Commercial Bank could not well retain their bank premises, and let the part thereof devoted to official residence, but they could quite well and conveniently let the messengers' houses in the street to persons entirely unconnected with the bank. I think these houses therefore should be separately entered and valued in the Valuation-roll."

Lord Wellwood, at p 844, divided the residential buildings into three categories:

"First - Those which are entirely detached from the bank buildings, as in the case of the messengers' houses of the Commercial Bank of Scotland. I agree with Lord Trayner that the yearly value of those houses should be separately entered in the roll.

Second -The houses which form part of the main building, but have no internal communication with the business premises. I am of opinion that the yearly value of those dwelling-houses also should be separately entered. The fact that they form part of the same building with the business premises is not I think in this question material, and was not much relied on by the respondent. Structurally they are self-contained premises, and could be let separately if this were desired. The respondent relied mainly upon the consideration that the houses form necessary adjuncts to the bank premises, and together with them fell to be valued as a unum quid.

Dwelling-houses for bank officials connected with the bank premises are no doubt usual and useful additions to banking premises, but it is not indispensable that they should form part of the bank buildings, as is shewn in the case of the messengers' houses of the Commercial Bank of Scotland. If, as is sometimes the case, it did not suit any of the officials to reside in the dwelling-houses, they could be let to a tenant with no more danger to the bank than if they were under a different roof. The case seems to me to be precisely the same as that with which we are familiar of the lower flat of a dwelling-house being converted into a shop with a separate entrance. The upper flats may or may not be occupied by the shopkeeper himself as a dwelling-house, but I take it that in any case the dwelling-house and the shop are valued separately.

Third - Dwelling-houses which are connected by internal communication with the business premises. In regard to those I have more doubt. 'In their actual state' they are at present connected with the business premises by an internal door of communication, which is used not merely as a convenient short cut by the occupant of the dwelling-house, but also by other bank officials and servants for the purpose of locking the outer door of the bank and other purposes. This means of communication could be easily cut off by building up or even locking the door. But that is not the present state of matters, and the question being doubtful, I am not prepared to differ from the opinion of Lord Trayner and the Valuation Committee as to those dwelling-houses."

8.
The point on which Lord Traynor and Lord Wellwood differed, concerning premises which were contiguous but did not interconnect arose for decision a year later in Bank of ScotlandvAssessor for

Edinburgh (1891) 18 R 936. Lord Wellwood, sitting with Lord Kyllachy, repeated his view that they fell to be separately valued. Lord Kyllachy, said, at p 938:

“The test I think here is whether the houses in question are capable, not merely physically but, all conditions being considered, of being separately let, and having a separate rent or value attached to them. As regards the house occupied by the messenger, and which has no internal communication with the rest of the bank, I agree with the opinion of Lord Wellwood at the last court. I see no reason, at least none appears in the case, why, if the bank chose, this house should not be separately let to a suitable tenant, or assigned by way of pension to an old servant, or otherwise dealt with as a separate and independent dwelling.

9.
In University of Glasgow v Assessor for Glasgow1952 SC 504, the Lands Valuation Appeal Court held that various buildings of the University which were physically separate from the main buildings, capable of being separately let and dispersed among buildings belonging to other proprietors, were properly entered on the valuation roll as separate subjects. Lord Keith, delivering the judgment of the court, treated the first Bank of Scotland case as authority for the geographical principle (p 509). He said at p 510:

“The common enclosure in many cases supplies a useful basis, or test, for a unum quid entry. It is the reason why a villa with its garden ground, or a mansion house with its policies, and any ancillary buildings are entered as a unum quid. The geographical conception has never been lost sight of in making up entries in the Valuation Roll, and in the case of John Leng & Co v Assessor for Dundee Lord Sands took occasion twice to refer to ‘the ordinary geographical arrangement followed in making up the Valuation Roll’. There may be cases where geographical unity has to be departed from, as where premises within what would otherwise be a single entity are separately let, or lands or buildings within a common enclosure are used for separate purposes. It is not perhaps possible to lay down general rules for all cases. Something must depend on particular circumstances. But the broad general principles are as stated.”

10.
Midlothian Assessor v Buccleuch Estates Ltd[1962] RA 257 concerned geographically separate parcels of woodland and sawmills on separate sites, which were operated as a single business. Lord Kilbrandon, sitting in the Lands Valuation Appeal Court, observed at p 268:

“It has never yet been admitted that you can have a unit of valuation consisting of widely scattered heritable subjects connected only by some functional or commercial nexus, and I do not see why it should be. I do not think one is being merely old fashioned or obscurantist in insisting, in the conception of unum quid, on a fairly close physical relationship between what might be considered as parts of a commercial unit; one is, after all, attempting to value not a business but heritable subjects, and it may be that the precedents, which all insist on such a physical relationship, indicate a determination to preserve that essential distinction. … Not only do I know of no precedent in valuation practice which could justify a functional approach to the problem such as is here sought to be made, but I am still of opinion that no such approach can in this case give a proper content to the whole words of the statute.”

This statement was cited with approval by Lord Slynn of Hadley, delivering the only reasoned speech in the English valuation case of Hambleton District Council v Buxted Poultry Ltd[1993] AC 369, 378.

11.

More recently, in Burn Stewart Distillers plc v Lanarkshire Valuation Joint Board[2001] RA 110, the Lands Tribunal for Scotland held that premises under common occupation but situated on opposite sides of a main road constituted two hereditaments. The tribunal observed, at pp 140-141:

“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. Where the subjects share characteristics of function which, in a robust practical sense, support the use of a single term to describe the physical subjects, they can be treated as one unit. … On the other hand, 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 to be regarded as a 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. The fact that one business may need to occupy two separate physical subjects does not change the character of the 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. We are not persuaded that there is a consistent practice which would lead to that result. If there is, we see no need to follow it. … In the present case there is a clear physical separation of the two subjects. They each have a clear curtilage and these curtilages are separated by a public road and pavements. … Although, in a sense, little different from the interposition of a public road, the fact that the ratepayers do not have exclusive occupation of the land which provides their access to that public road and the intermittent presence at their gate of large, slow-moving vehicles belonging to another occupier, tends to enhance the impression of separation of the two subjects. A test based on appearance and impression may properly be treated as part of the geographical test. The two subjects have no unifying visual characteristics. There is nothing to indicate that they are operated together, far less that the physical presence of one is essential to the function of the other. … Their physical characteristic as two distinct subjects is supported by the consideration that there is no real doubt that the subjects could be let separately.”

12.
I derive from these decisions three broad principles relevant to cases like this one where the question is whether distinct spaces under common occupation form a single hereditament. First, the primary test is, as I have said, geographical. It is based on visual or cartographic unity. Contiguous spaces will normally possess this characteristic, but unity is not simply a question of contiguity, as the second Bank of Scotland case illustrates. If adjoining houses in a terrace or vertically contiguous units in an office block do not intercommunicate and can be accessed only via other property (such as a public street or the common parts of the building) of which the common occupier is not in exclusive possession, this will be a strong indication that they are separate hereditaments. If direct communication were to be established, by piercing a door or a staircase, the occupier would usually be said to create a new and larger hereditament in place of the two which previously existed. Secondly, where in accordance with this principle two spaces are geographically distinct, a functional test may nevertheless enable them to be treated as a single hereditament, but only where the use of the one is necessary to the effectual enjoyment of the other. This last point may commonly be tested by asking whether the two sections could reasonably be let separately. Third, the question whether the use of one section is necessary to the effectual enjoyment of the other depends not on the business needs of the ratepayer but on the objectively ascertainable character of the subjects. The application of these principles cannot be a mere mechanical exercise. They will commonly call for a factual

judgment on the part of the valuer and the exercise of a large measure of professional common sense. But in my opinion they correctly summarise the relevant law. They are also rationally founded on the nature of a tax on individual properties. If the functional test were to be applied in any other than the limited category of cases envisaged in the second and third principles, a subject (or in English terms a hereditament) would fall to be identified not by reference to the physical characteristics of the property, but by reference to the business needs of a particular occupier and the use which, for his own purposes, he chose to make of it.

13.
One would not expect the law to be any different when the identical questions arise for decision in England. However, confusion has been caused by the leading English case, which is the decision of the Court of Appeal in Gilbert v S Hickinbottom and Sons Ltd [1956] 2 QB 40. The facts in this case were very similar to those in Burn Stewart Distillers. A large industrial bakery comprised a number of buildings in two blocks separated by a street. The Lands Tribunal held, overruling the valuation officer, that they constituted a single hereditament, and its decision was affirmed by the Court of Appeal. Denning LJ held that geographically contiguous spaces were normally to be treated as one hereditament and geographically separate spaces as distinct, but that there were “exceptional cases” where their function required a different treatment. He gave as examples of the treatment of separate premises as one hereditament, the case where a road bisected a nobleman’s park, or agricultural land (in the days when agricultural land was rateable) or a golf course. The common feature of these cases, he thought (pp 49-50), was that

“the two properties on either side of the road are so essentially one whole – by which I mean, so essential in use the one to another – that they should be regarded as one single hereditament.”

14.
Denning LJ appears to have derived this test from the decision in the University of Glasgow case, which he cited with approval. In my opinion his statement of the law was correct, although I would not necessarily endorse his examples, at any rate without more facts. The reason why Denning LJ nevertheless felt bound to dismiss the appeal was that the application of the test was “a question of degree and therefore of fact” (p 50), and if the Lands Tribunal thought that it was one hereditament they must have had their reasons. This seems a surprising conclusion on the facts recited in the report, but it has no bearing on the principle. Denning LJ was manifestly not suggesting that the Lands Tribunal was free to apply the test or not as they thought fit.

15.
The views of the other two judges are less clear. Morris LJ regarded it as undesirable to lay down general principles to govern what he regarded as a “common sense assessment” (p 52). The closest that he came to indicating in what circumstances geographically separate spaces might be regarded as a single hereditament was in the following passage, at p 52:

“buildings which, though not actually enclosed together or actually contiguous, are very near together and are not separated by the presence of other buildings and are being put to one common use may be regarded as comprising one hereditament. There can be no doubt that ordinarily very great weight will be placed upon what may be termed the geographical test. But the question is always one of fact and degree.”

The case before him he regarded as an exceptional one which depended on its particular facts (p 53), although it is not clear which particular facts made the difference, nor why.

16.
The third member of the court, Parker LJ, offered the following guidance, at pp 53-54:

“Whether or not premises in one occupation fall to be entered in the valuation list as one or more hereditaments depends upon a number of considerations. Without attempting an exhaustive list, the following considerations can be mentioned:

(1)
Whether the premises are in more than one rating area. If so, they must be divided into at least the same number of hereditaments as the rating areas in which the premises are situated.

(2)
Whether two or more parts of the premises are capable of being separately let. If not, then the premises must be entered as a single hereditament.

(3)
Whether the premises form a single geographical unit.

(4)
Whether though forming a single geographical unit the premises by their structure and layout consist of two or more separate parts.

(5)
Whether the occupier finds it necessary or convenient to use the premises as a whole for one purpose, or whether he uses different parts of the premises for different purposes.

Whereas a consideration of questions (1) and (2) will in certain events conclude the matter one way or the other, the same does not, I think, result from a consideration of any one of the other questions alone. The conclusion, where the considerations of (1) and (2) are not decisive, must depend on the weight to be attached on the facts of each case to the other considerations. No doubt the most important of these other considerations is whether the premises form a geographical unit. Can they be ringed round on a map?”

…

Later, after citing the University of Glasgow case, he addressed the geographical and functional tests in the following terms, at pp 54-55:

“[The geographical test] is so often decisive that it is a convenient starting point to the inquiry, but it is not decisive in all cases. Thus, though the premises may form a geographical unit, the manner in which different parts are used may justify the premises being treated as several hereditaments; cf North Eastern Railway Co v Guardians of York Union[1900] 1 QB 733, 739 per Channell J. The appellant’s contention, however, is that though the functional test may justify treating a geographical unit as two hereditaments, it is wholly inapplicable where the premises occupied are geographically and structurally separate. There is no doubt, I think, that in the latter case little weight will ordinarily be given to any functional connexion, but it is another thing to say that it is irrelevant. If, as is admitted, a functional connexion is a relevant consideration when considering a geographical and structural unit, I fail to see why as a matter of law it cannot be considered at all when there are separate geographical and structural units. Each case must be considered on its particular facts, due weight being given to the degree and nature of the separation on the one hand and the importance of the functional connexion on the other.”

In these passages, Parker LJ clearly rejected the submission that function was irrelevant where premises were geographically separate. He was right to do so, because function may be relevant to the question whether separate premises must necessarily be enjoyed together, or are incapable of being reasonably let as separate units: see his proposition (2). Whether Parker LJ would have recognised the relevance of function to a case of geographically separate premises for any wider purpose is not clear. His proposition (5) suggests that he might have done, although he considered that even in such a case function was of “little weight”.

17.
In my opinion, the decision in Gilbert cannot be supported, at any rate on the grounds given, and the reasoning cannot be regarded as authority for very much. The only clear statement of principle is that of Denning LJ, which he does not appear to have applied. Mr Forsdick QC, the Advocate of the Court, submitted that the effect of the judgments of Morris LJ and Parker LJ was that it was for the tribunal of fact to determine not just the functional connection between separate premises, but the relevance of its conclusion on that point. I do not think that that clearly emerges from either judgment, but if it was indeed their view, then I respectfully disagree. Both the geographical and the functional principle require an evaluation of the facts by the tribunal of fact. However, the relationship between them is not itself a question of fact but a question of principle. The relevant principle is in my opinion summed up in the three propositions which I have extracted from the Scottish cases. The geographical test and the functional test are different and in some respects inconsistent. They cannot both operate in parallel unless there is some rational framework of principle for distinguishing their respective spheres. The English and the Scottish cases are agreed that the potential inconsistency is to be resolved by acknowledging the primacy of the geographical test and the subordinate character of the functional test. But what does this mean? The answer to the question must surely be supplied by the tribunal of law which posed it. To treat the relationship between these two incommensurate tests as no more than a question of fact and degree is to leave to the tribunal of fact what amounts to a discretion to give the functional test such weight as they choose as against the geographical one, and to allow the business choices of the occupier to determine the bounds of the hereditament. This would in turn make the basis of assessment more opaque and less consistent as between different occupiers. It would be a poor substitute for clear and principled rules, capable of uniform application.

18.
Until the present case came before the Valuation Tribunal and the President of the Lands Chamber, there had been no decision on how these principles were to be applied to cases in which the same occupier occupied different storeys within the same building. The only case which was arguably in point was British Railways Board v Hopkins (Valuation Officer)[1981] RA 328, in which the Lands Tribunal treated different storeys under common occupation as constituting a single hereditament, whether they were contiguous or not. But the decision turned on other issues and there was no discussion of this particular point. On the other hand, valuation officers had for some years adopted the practice of treating contiguous storeys under common occupation as one hereditament, but non-contiguous storeys as distinct hereditaments. As far as the case-law is concerned, this was therefore an unresolved question when the present case came before the Valuation Tribunal and then the President of the Lands Chamber.

19.
The President accepted Denning LJ’s formulation in Gilbert as applied to premises which were horizontally separated, in the sense that they were in different buildings or different territorial blocks. It will be apparent from what I have already said that I agree with him about this. But he thought that

premises which were in the same building but were vertically separated were different. At para 20, he observed:

“I agree with Mr Woolway, and with the submissions made by Mr Kolinsky on the point, that in identifying hereditaments within a modern office building the concept of the curtilage has no useful part to play, and is far removed from what Denning LJ had in mind when formulating his general rules in Gilbert vHickinbottom. The Valuation Tribunal, having concluded that the two floors were within the same curtilage, then explored whether there was an ‘essential: functional link’ between them. In so doing it was clearly misapplying Denning LJ’s general rules, where the question of the essential functional link only arose in the case of premises that were not within the same curtilage but were separated by a highway, and I do not think that an essential connection should be treated as a criterion in the present case. I agree in any event with the Valuation Officer that a detailed inquiry into the functional relationship between parts of a building in the same occupation is of no assistance in the present case and is positively undesirable. It seems to me inappropriate to explore the degree of functional interaction between two floors in common occupation. Any such process would tend to be detailed and time-consuming (as it was in the present case) and always liable to reassessment as the occupier made changes in the way that the space was utilised. The fact that the floors of office premises are in the same occupation for the purposes of the occupying firm is by itself; in my judgment, a significant pointer.”

He concluded, at para 29:

“The proper approach in a case such as this, therefore, in my judgment, is to treat the floors occupied within the building by the same occupier as a single hereditament. Since the occupier will be occupying the floors as offices for the purposes of his business, it is not in my view necessary to investigate the functional interrelationship between the floors at any particular time. In the present case, therefore, floors two and six are properly to be entered as a single hereditament, as the Valuation Tribunal determined; and the Valuation Officer’s appeal on this point fails.”

20.
In effect, therefore, the President applied neither a geographical test nor a functional one. He declined to ask himself whether the possession of both storeys was necessary to the enjoyment of either, nor whether they could be let separately, nor whether they intercommunicated (the answers would clearly have been No, Yes and No respectively). He quite rightly regarded the way in which a particular occupier chose to use the premises together as irrelevant. Yet at the same time he considered that when separate premises were located in the same building, it was wrong to apply a geographical test either. He therefore declined to ask himself Parker LJ’s question, whether the alleged single hereditament could be “ringed round” on a plan (the answer would have been No).

21.
The President of the Lands Chamber was labouring under the difficulty that he was bound by Gilbert, and therefore obliged to make more sense of it than the judgments really permit. At any rate, I am unable to accept his reasoning. It introduces an arbitrary distinction between horizontal and vertical separation which responds to no discernible principle. In order to pass from level 2 to level 6, it is necessary to leave the demised premises on level 2, enter the common parts over which Mazars had a licence but no right of possession, and to ascend in a lift to the common parts on level 6 before entering the other premises. This is no different, either geographically or functionally, from leaving a building which is exclusively occupied by the ratepayer, crossing land belonging to someone else and entering another building under the same occupation. The President remarks that the lifts were fast

and the move from one level to the other simple, but why should that be any more relevant than the fact that the separate building was only a short distance away or could be reached at high speed by car? In my opinion there is no rational reason to regard Denning LJ's test as any less applicable to distinct premises within the same building than it is to different buildings within the same urban park. It is clear that the President was strongly influenced by the Valuation Officer's acceptance that vertically or horizontally contiguous spaces in the same building fall to be treated as one hereditament, so that if Mazars had occupied levels 2 and 3, instead of levels 2 and 6, the result would have been different. This concession, as I have pointed out, is not necessarily correct unless the two spaces directly intercommunicate. For present purposes, however, it is enough to note that there is nothing anomalous about the notion that the result is different when the spaces are not contiguous and do not directly intercommunicate. It simply shows that the same occupier has two distinct taxable properties, just as he would have if they were on opposite sides of the street.

22.
For these reasons I would allow the Valuation Officer's appeal, set aside the orders of the Valuation Tribunal and the Upper Tribunal and declare that the premises demised to Mazars on the second and sixth storeys of Tower Bridge House are to be entered in the rating lists as separate hereditaments.

LORD GILL: (who agrees with Lord Sumption)

23.
I agree that this appeal should be allowed.

24.
It seems that in this case the decision whether the ratepayer's premises constitute one hereditament or two does not affect the overall value of them; but in other cases the effect of the decision may be significant (eg Trunkfield (Valuation Officer) v Camden London Borough Council[2011] RA 1). The appeal is important from that practical point of view; but its principal importance is that it requires us to examine, in a modern context, the principles by which the hereditament is to be identified, and to do so in a case that does not involve de-rating.

25.
The Valuation Tribunal for England ("VTE") held that the premises were a single hereditament on the view that the two floors were within a single curtilage and that the integrated use of them was essential to the efficiency of the ratepayer's business as a whole.

26.
In the Upper Tribunal (Lands Chamber) the President (Mr George Bartlett QC) agreed with the decision of the VTE, subject to a reduction of the valuation; but he took a different approach. He was not persuaded that the essential functional link between the two parts, on which the VTE had relied, should be the criterion. He considered that a detailed inquiry into such a question would be "positively undesirable" (para 20). He considered it significant that the two floors were in single occupation, and that in the context of a modern office building the concept of the curtilage had no place. His decision turned on the facts relating to the physical nature of the premises and the purposes for which the ratepayer occupied them, there being no significant difference from the occupier's point of view between floors that were adjoining and floors that were separated.

27.
The Court of Appeal dismissed an appeal against that decision, essentially for the reasons given by the President of the Tribunal.

28.
The decision of the Court of Appeal in Gilbert vS Hickinbottom and Sons Ltd [1956] 2 QB 40 has been central to this case. It has stood for nearly 60 years. The effect of it was that premises of different kinds situated on opposite sides of a highway were to be regarded as one hereditament where the ratepayer had integrated its use of one with its use of the other. It is plainly an unsatisfactory decision. There is no common thread of reasoning in the opinions of the three judges. I cannot understand why Denning LJ (as he then was), who clearly favoured the geographical test and found three cases based on it that commended themselves to his mind, one of them being the Glasgow University case [1952] SC 504, deferred to the conclusion of the Lands Tribunal to the contrary effect, especially when it was not clear to him why the Tribunal had distinguished those cases from the case that was under appeal.

29.
In the result, the Gilbert decision has been understood to mean that whether separate premises constitute a single hereditament may depend on the use to which the ratepayer puts them: in short, that geographical separation may in some circumstances be outweighed by functional integration.

30.
The Gilbert case was decided on the definition of hereditament in section 68 of the Rating and Valuation Act 1925 ("the 1925 Act"); namely:

"any lands, tenements, hereditaments or property which are or may become liable to any rate in respect of which the valuation list is by this Act made conclusive"

In section 115(1) of the General Rate Act 1967 ("the 1967 Act"), which now applies, "hereditament" means

"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 the valuation list."

Counsel for the valuation officer suggested that that the Gilbert decision should be distinguished because it was decided on the definition of hereditament in the 1925 Act, which in counsel's submission was materially different from the present definition. I do not accept that. The 1967 Act was a consolidating measure. It was reasonable in such a consolidation to recast the former definition, which suffered from circularity. In my view the reference to a "unit of … property which is, or would fall to be, shown as a separate item in the valuation list" simply means a unit of property that would constitute a separate hereditament in accordance with established legal principles. I agree with the Court of Appeal on this point. If I am right in the view that section 115(1) has not changed the law on the point, it follows that the decision in Gilbert cannot be side-stepped in this way.

31.
The real point on which the Gilbert case should be distinguished is that it concerned industrial de-rating. In Gilbert and in the other de-rating cases that have been referred to in this appeal, it was to the advantage of the ratepayer if ancillary but separate premises could be said to be part of one hereditament. If they were, the benefit of de-rating was applied to the whole. Inevitably in such cases ratepayers emphasised the functional connection. The influence of that consideration is immediately apparent in the Gilbert case and, in similar circumstances, in the Scottish case of John Leng and CovAssessor for Dundee1929 SC 315. It can also be seen in the unsuccessful argument for the ratepayer in the Glasgow University case, where the University enjoyed partial exemption from local rates.

32.
De-rating cases are not concerned with valuation for rating. They are about the remission of a liability for rates based on the use that the ratepayer makes of the property. On the other hand, valuation for rating is concerned with physical premises. It cannot be right that geographically separate premises should be valued as one hereditament simply because the ratepayer chooses to link his use of one with his use of the other. To modify the geographical test with considerations of functionality, in this sense of the word, is to add to a clear and objective test the uncertainty of a test that is dependent on whatever happens to be the ratepayer's choice of use.

33.
Numerous cases have been referred to by counsel for the appellant and by the amicus that purport to apply the Gilbert decision. It would be an unprofitable exercise to go through them one by one. They merely demonstrate the various approaches that courts and tribunals have taken in the attempt to deduce a coherent principle from the Gilbert case. Notable among these cases is Trunkfield (Valuation Officer) vCamdenLondon Borough Council[2011] RA 1. It concerned two adjoining office buildings. The ratepayers occupied one building in its entirety. In the other, they occupied the third, fifth and sixth floors and part of the fourth. In the valuation list there was a single assessment for the first building and four separate assessments for the floors occupied by the ratepayers in the other building. The Valuation Tribunal determined that the five assessments should be merged. In his appeal to the Upper Tribunal (Lands Chamber) the valuation officer contended that there should be two assessments, one for the first building and one for the four floors occupied in the other. The President allowed the appeal and directed that the list should be amended as the valuation officer proposed. If, as I assume, there were no means of internal communication between any of the four floors in the second building, the question in this appeal would have arisen; but in the event the valuation officer's position precluded any discussion of that question. In my view the valuation officer's position was unsound.

34.
Section 67 of the 1967 Act requires the valuation officer inter alia to maintain a valuation list for each rating area in accordance with the provisions of Part V of the Act. In Scotland, the equivalent obligation of the assessor is to make up a valuation roll listing all of the lands and heritages in his valuation area (Local Government (Scotland) Act 1975, section 1). The expression "lands and heritages" dates back to the Lands Valuation (Scotland) Act 1854 (17 & 18 Vict c 91). Although the law of valuation for rating is governed in Scotland by different legislation, the essential point is identical in both jurisdictions. It is to identify the unit of valuation. In my view, there is no reason why the two jurisdictions should diverge on the principles of the matter. On the contrary, it is desirable that they should coincide.

35.
In the law of Scotland, the identification of the valuation unit, or the unum quid, rests on a geographical test. The history of the matter begins with the decision of the Lands Valuation Appeal Court in Bank of Scotland v Assessor for Edinburgh (1890) 17 R 839. That case concerned a number of bank buildings and the associated dwellinghouses of the staff who worked in them. In some cases, those in the third category referred to by Lord Sumption (para 7) the dwellinghouse was part of the bank building itself, but had no internal means of communication with the bank premises. Lord Trayner thought that in those cases the whole building should be valued as a unum quid. Lord Wellwood thought that the dwellinghouse and the bank premises should be valued as separate lands and heritages. In the following year, the Lands Valuation Appeal Court reconsidered the case. On that

occasion the court, consisting of Lord Wellwood and Lord Kyllachy, decided that where the bank premises and the staff dwellinghouse were not internally connected, they should be entered in the roll as separate lands and heritages (Bank of ScotlandvAssessor for Edinburgh (1891) 18 R 936). In my view, that was correct. The absence of an internal connection between the residential unit and the bank premises meant that to reach the bank the occupier of the dwellinghouse had to leave the building and go by the street to the public entrance of the bank.

36.
The question arose again in Glasgow University v Assessor for Glasgow 1952 SC 504. In that case the ratepayer, in seeking the benefit of partial de-rating, argued that there should be a single entry in the roll comprehending the main University buildings as planned and built as such, and with later additions; together with a diverse group of peripheral University buildings dispersed among the buildings of other proprietors. This last group included, for example, a laboratory and a reading room that was on a separate site on the other side of a main road. The Lands Valuation Appeal Court concluded that the main buildings lay within “the University enclosure proper”, being structurally and geographically part of a common whole, and should be entered in the roll as a unum quid. On the other hand it considered that while the peripheral buildings were functionally part of the University, they were geographically separate and should be entered as separate lands and heritages. That decision reaffirmed the primacy of the geographical test.

37.
The geographical test was strictly applied by the Lands Valuation Appeal Court in Edinburgh Merchant Co Education Board v Assessor for Lothian1982 SC 129 in a case where two schools on opposite sides of a main road had come to be occupied as one. One set of buildings was situated in playing fields. The other was in a set of converted terraced houses. Access from one to the other was by a path over a railway bridge and a lane. Although they were occupied as a functional unit, the court concluded that there was no geographical unum quid.

38.
The Glasgow University case and the Gilbert case were considered by the Lands Tribunal for Scotland in Burn Stewart Distillers plcvLanarkshire Valuation Joint Board[2001] RA 110. In that case the ratepayer contended that there should be a single entry in the roll for premises situated on opposite sides of a main road. On one side the premises consisted of warehousing and the main office accommodation. On the other, there was a whisky bottling complex and distribution plant with ancillary storage space and small proportion of office and cloakroom space. On this side there was a canteen used by staff from both premises. Materials were moved between the two premises by fork-lift trucks which traversed the public road. A concrete communications conduit linking the two premises ran under the main road. The main office accommodation constituted the head office of the ratepayer and dealt with many matters unrelated to the bottling and distribution plant, including worldwide marketing. The Tribunal, chaired by Lord McGhie, applied the geographical test and held that it was not satisfied. The Burn Stewart decision was referred to in argument in Trunkfield (Valuation Officer) v CamdenLondon Borough Council (supra); but was not referred to in the judgment.

39.
I agree with the three general principles that have been stated by Lord Sumption (at para 12). It is important to emphasise that the reference to functionality in the second and third of these principles is not a reference to the use that the ratepayer chooses to make of the premises. It is a reference to a necessary interdependence of the separate parts that is objectively ascertainable. For example, such

an interdependence is to be found between a tourist attraction in a castle and the associated gift shop in the castle grounds (Roxburghe Estates v Assessor for Scottish Borders Council[2004] RA 15). Conversely, functionality in this sense may also be relevant where premises that are apparently geographically linked are wholly dissociated; for example, the hotel and the engine sheds at a railway station (North Eastern Railway Co v Guardians of York Union[1900] 1 QB 733).

40.
To the three general principles that Lord Sumption has laid down, I would add only the comment that in the application of them, the concept of fairness, alluded to in this case by the President of the Tribunal, has no place. In my opinion, these general principles provide straightforward and workable guidance that is consistent with the underlying theory of rating law that rates are a tax on a ratepayer's property and not on a ratepayer's business (Midlothian Assessor v Buccleuch Estates Ltd[1962] RA 257, Lord Kilbrandon at p 268).

41.
It was suggested on behalf of the valuation officer that in the application of the geographical test the decisive criterion is contiguity. That is an extreme position that I do not accept. Properties that are discontiguous but nonetheless geographically linked, may constitute one hereditament if the occupation of one part would be pointless without the occupation of the other. The Glasgow University case is an example. In that case it was clearly right that an assemblage of academic buildings constituting the core of the university campus should be valued as a unum quid. Roxburghe Estates vAssessor for Scottish Borders Council (supra) is another example. In that case the lands and heritages consisted of exhibition rooms within a castle with an adjacent gift shop and restaurant, a coffee shop and parts of the gardens and ground. The gift shop and the restaurant owed their existence to the castle; whereas the coffee shop was situated outside the pay wall and had an independent existence that linked it more closely with a nearby garden centre. It was not part of the unum quid.

42.
On the facts of the present case, I fail to see why premises on separate floors of a building, where the only access from one to the other is through the common parts, should be regarded as one hereditament. In reaching that view, the President has misdirected himself. He has lost sight of the geographical test. He has been influenced by the use that the present occupier has chosen to make of the premises and has introduced an irrelevant and confusing consideration of fairness.

43.
It was suggested in the discussion in this case that if the two parts of the office had been on adjacent floors they could have been treated as one hereditament on the view that they were contiguous in the vertical rather than the horizontal plane. That, in my view, is a contrived argument. The disjunction of the two parts of the ratepayer's offices lies in the fact that the only access between them is through the public part of the building. The same disjunction would apply even if they were on adjacent floors. In that event, I would have taken the view that they remained separate hereditaments.

LORD NEUBERGER: (who agrees with Lord Sumption and Lord Gill)

44.
I add a few words of my own, partly because we are disagreeing with the experienced and respected President of the Lands Chamber, whose decision was unanimously upheld by the Court of Appeal, and partly because I have found this a difficult point in the light of the unsatisfactory state of the English and Welsh case-law.

45.
This case concerns the issue whether two physically separate pieces of property, namely the second and sixth floors of an office building, can be a single hereditament for rating purposes because they are occupied by, and let to, the same person in connection with the same business.

46.
The statutory definition of “hereditament” in section 115(1) of the General Rate Act 1967 states that it is “such a unit of … property which is, or would fall to be, shown as a separate item in the valuation list.” While, at least to some extent, that is a circular definition, it does contain the expression “unit of property”, which carries with it the notion of a single piece of property, what in Scots law is called unum quid. And, in that connection, I entirely agree that there should be no difference of approach between Scottish and English law on the issue raised on this appeal.

47.
Normally at any rate, both as a matter of ordinary legal language and as a matter of judicial observation, a hereditament is a self-contained piece of property (ie property all parts of which are physically accessible from all other parts, without having to go onto other property), and a self-contained piece of property is a single hereditament. As the Scottish Lands Tribunal said in Burn Stewart Distillers plc v Lanarkshire Valuation Joint Board [2001] RA 110, 140, “the emphasis on the geographical test is an aspect of recognition that lands and heritages are physical subjects”. Thus, two separate self-contained buildings, even if sharing a common wall, would not be expected to be a single hereditament but two hereditaments. And a building no part of which was self-contained would be expected to be a single hereditament.

48.
At first sight, it might appear that whether certain premises constitute one hereditament or two hereditaments should not depend on how those premises are occupied. To quote again from Burn Stewart, “[a] ‘business’ is not a concept based on physical or heritable factors” (p 141). Of course, occupation is traditionally a central issue in rating law, but at least primarily for the purpose of determining who, if anyone, is in rateable occupation. On the face of it, however, it may be thought that there should be no logical connection between the identification of the boundaries or extent of a hereditament and the identification of the rateable occupier of that hereditament.

49.
Nonetheless, on further reflection, it can be seen that the occupation of premises can in some circumstances serve to control their status as one or more hereditaments. An office building let to and occupied by a single occupier would be a single hereditament, but if the freeholder let each floor of the building to a different occupying tenant, retaining the common parts for their common use, then each floor would be a separate hereditament. Furthermore, it is well established that premises are not merely liable to have their rateable value assessed, but also to have their status as a hereditament assessed, by reference to the machinery, plant and other structures which have been placed in or on them, whether by the occupier or someone else, sometimes even if the structure retains its character as a chattel – see per Lord Radcliffe in London County Council v Wilkins (Valuation Officer) [1957] AC 362, 378.

50.
The problem thrown up by this appeal is how far what I have described as the normal position in para 47 above, ie what Lord Gill has called the geographical test, should be modified by a particular occupational arrangement. In my view, that question should, if possible, be answered in a way which

is not only principled, but which is as clear and practical as possible. That is because Valuation Officers and others concerned with rating are entitled to expect to know what approach to adopt when such an issue arises, and the approach should be one which is tolerably easy to apply. However, as is not unusual, clarity and practicality are to some extent in conflict, and, unsurprisingly in the complex and multi-faceted world of land and buildings, there cannot be complete certainty.

51.
Where premises consist of two self-contained pieces of property, it would, in my view, require relatively exceptional facts before they could be treated as a single hereditament. The mere fact that each property may have the same occupier should, at least normally, make no difference. As Lord Keith said in Glasgow University v Assessor for Glasgow 1952 SC 504, 509, "[i]n the ordinary case … the question whether separate buildings, or parts of buildings, should be entered in the Roll as unum quid falls to be decided primarily from the geographical standpoint".

52.
However, it is possible to conceive of facts which would justify a different conclusion. Thus, if one property could not sensibly be occupied or let other than together with the other property, I think that the two properties could, and indeed normally should, be properly treated as a single hereditament. As Lord Keith went on to say in Glasgow University at p 510, quoting Lord Trayner in Bank of Scotland v Assessor for Edinburgh (1890) 17 R 839, 843, for two separate properties to be treated as a single hereditament, it is not enough that one of the properties is "a convenience· or accessory" for the other: it would have to be "impossible or difficult to let them separately". Strict necessity is not the test. As Lord Sumption says, his three tests set out in para 12 (with which I agree) have to be applied with professional common sense to the facts of each case.

53.
A golf course, a shipyard, a distillery or a factory which is, in each case, divided by a public road could properly be treated as a single hereditament. These are all examples given in the decision of the Lands Tribunal for Scotland in Burn Stewart Distillers plc v Assessors for Lanarkshire Valuation Joint Board [2001] RA 110, where it was rightly said that, while "the fact that certain heritable subjects function together as one business will, by itself, be insufficient to demonstrate that they are to be regarded as a unum quid in any physical sense", "[i]t is impossible to lay down clear rules which will apply in all cases". The Lands Tribunal also suggested that, while "physical separation of subjects" would normally prevent them from being a single hereditament (to use the English expression), "[w]here the subjects share characteristics of function which, in a robust practical sense, support the use of a single term to describe the physical subjects, they can be treated as one unit" (p 141). That is well illustrated by the unreported 1982 Scottish case of Lothian Regional Council v Assessor for Lothian Region whose effect is summarised in these terms in Armour on Valuation for Rating (looseleaf, August 2014 ed), para 10-05:

"[I]t was held to be competent for the assessor to make a single composite entry in the roll in respect of 923 bus shelters maintained by the appellants throughout the region, where the work involved in making separate entries would have been very onerous and unnecessary, there being no suggestion of any prejudice suffered by the appellants as a result."

54.
The cases summarised in the English text book Ryde on Rating and the Council Tax (looseleaf, July 2014 ed), paras C-210 and 211, suggest that the most frequent type of case where the question of whether two separate properties are to be treated as a single hereditament arises in connection with

industrial or retail premises. Ryde'ssummary of the effectofthose cases also suggests that, on the current understanding of the law, the question is one to which the answer is unpredictable following the unfortunate decision of the Court of Appeal in Gilbert v S Hickinbottom & Sons Ltd [1956] 2 QB 40 (which I shall discuss in more detail below). Indeed, the question is almost treated as an issue of discretion for each first instance tribunal, which is an approach that is both unprincipled and unclear. The Scottish cases cited in Armour demonstrate a far more satisfactory state of affairs.

55.
There is a risk, as I have mentioned, of being too prescriptive in generalising about an issue which, as a matter of fact, can apply to cases which are rather different from the present case (which of course concerns floors in an office building). However, it seems to me that a principled approach to all premises, whether used or recorded as office, retail, industrial, warehouse, recreational or any other purpose, which accords with the law as I understand it to have been laid down in Scottish courts, is as follows. In order to decide whether two separate self-contained units of property constitute a single hereditament, one does not so much look at the actual occupation or actual use of those properties, although that might provide useful evidence in some marginal cases. Rather one looks at the relationship between the two properties, as discussed in paras 51-53 above. And, when considering the two properties in this connection, one takes into account the plant, machinery, and other fixtures (including some chattels) which form part of the property for all rating purposes – see the London County Council case cited above.

56.
In my opinion, two separate self-contained floors in the same office building, whether or not they are contiguous, cannot be said to satisfy such a test, at least in the absence of very unusual facts. Once they cease to be self-contained, because, say, an internal means of access (eg an internal staircase) is constructed, so that each floor is accessible from the other without going onto other property – eg the common parts of the building – then the two hereditaments will normally be treated as have been converted into one larger hereditament. Unless there is such a means of access, each floor is self-contained from the other, and each can be occupied and let independently of the other. Accordingly, I can see no good reason why they should be treated as a single hereditament merely because they happen to be let to and occupied by the same tenant. It is true that they are in the same building, but it is hard to see why a different result should obtain if, for instance, the respondents had occupied the second floor of Tower Bridge House and the sixth floor of an adjoining building.

57.
The courts below considered that it was artificial and unfair to treat two self-contained floors in common occupation in the same building differently depending on whether or not they were at consecutive levels. There is considerable force in that, but their error was to assume that the two floors should be treated as a single hereditament if they were at consecutive levels. As explained, if they are each self-contained from the other, then, absent very unusual facts, they should be separate hereditaments. Furthermore, closer consideration suggests that, particularly in modern buildings, two consecutive floors are not actually contiguous to each other: there will often be a void between them, which contains servicing equipment and is in the possession and occupation of the landlord of the building. Absent a communicating internal staircase or lift, passing through the void, two consecutive floors in the same building would be physically separated in much the same way as two non-consecutive floors.

58.

I do not doubt that there will be cases where the guidance given on this appeal will be difficult to apply with any confidence. However, it is hard to believe that we will be leaving the law of England and Wales on this topic in a less satisfactory state than it was as a result of Gilbert, although it is only fair to add that the judgments in that case contain some accurate and helpful dicta. At p 50, Denning LJ correctly expressed approval of earlier Lands Tribunal cases where it had been held that properties on different sides of the road in the same occupation should normally be assessed as separate hereditaments. However, he dismissed the appeal against a decision to the opposite effect, on the ground that "there must be some distinction because the chairman of the Lands Tribunal had those cases well in mind, and he had the advantage of a view" - an analysis which it is tempting to describe as an abdication of an appellate judge's responsibility.

59.
In Gilbert, Denning LJ also stated the correct test, namely where "the two properties … so essential in use the one to another … that they should be regarded as one single hereditament" (pp 49-50); however, that test is to be assessed objectively and not by reference to the needs or use of the particular occupier, and it is by no means clear to me that Denning LJ was saying that. Morris LJ at p 52 seems to have thought that the actual use was important, but it is not clear what weight he thought it should be given, although it led him to join in wrongly dismissing the appeal. Parker LJ set out a number of factors at pp 53-54, and (correctly) said that if premises consist of two properties which are not "capable of being separately let …, then the premises must be entered as a single hereditament". However, he also identified a number of other factors, which may be of more questionable value, as is supported by the fact that he also wrongly joined in dismissing the appeal.

60.
While there are therefore undoubtedly dicta in Gilbert which may be right, it is difficult to know precisely what to make of it. At best, it is an unhelpful decision, and the actual result was wrong: the appeal should have been allowed. The Scottish cases, which are more fully considered by Lord Sumption and Lord Gill, are far more satisfactory, and, as Lord Gill says, it is very hard to understand how Denning LJ's approval of them can be reconciled with his dismissing the appeal in Gilbert.

61.
As it is, for the reasons given by Lord Sumption, and indeed for those given by Lord Gill, I would allow this appeal.

LORD CARNWATH: (agrees with Lord Sumption)

62.
I agree that the appeal should be allowed for the reasons given by Lord Sumption. The treatment of contiguous floors in single occupation (which is addressed in the judgments of Lord Neuberger and Lord Gill) is not before us for decision, and I would prefer not to express any firm view. The Valuation Officer's practice of treating such cases as single hereditaments, even if in part concessionary, seems to me unobjectionable if it avoids narrow factual disputes about degrees of connection.

LORD TOULSON: (who agrees with Lord Sumption, Lord Gill and Lord Neuberger)

63.
I agree with the judgments of Lord Sumption and Lord Neuberger. I agree also with the judgment of Lord Gill, subject to the qualification that I am not sure about distinguishing Gilbert on the basis that it was a de-rating case. But there is no need for me to say any more on that point, since I entirely agree with Lord Gill's description of Gilbert as "plainly an unsatisfactory decision".