



Pulling Away From the Fuel Pumps

On 19th August in *Peninsular Securities Ltd. v Dunne's Stores (Bangor) Ltd.* [2020] UKSC 36, the Supreme Court delivered its judgment putting an end to the principle that in restrictive trading covenants imposed in leases, or transfers, the common law doctrine of restraint of trade does not apply where the covenantor is not giving up an existing freedom which he had to trade in an unrestricted manner. This means that the principle to that effect established 53 and a half years ago almost to the day by the House of Lords in *Esso Petroleum Ltd, v Harper's Garage (Stourport) Ltd.* in February 1967 ([1968] AC 269) ("*Esso*") can be laid to rest.

This means that, quite apart from the need to consider Chapters I and II of the Competition Act 1998, when



trading covenants over land, the common law doctrine of restraint of trade can in theory at least be applied to treat as void covenants which are an unreasonable restraint on the freedom to trade from land. The test is now whether "the trading society" would accept a particular form of restraint not being unreasonable restraint of trade, as foreshadowed by Lord Wilberforce in his dissenting judgment in *Esso*. So the answer to the enforceability of the covenant will be an evidential one.

A number of difficult questions arise from this decision and



the author of this Note will try to answer them in a further Note in September. What is clear is that parts of his chapter on competition law (Chapter 21) in his book on restrictive covenants will need revision!

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