

# Discount and hawkins

[Law](#), [Contract Law](#)



Discount and Hawkins Case Case Synopsis The subject matter of the case is presented as a negotiation between a real estate developer, Hawkins, and a possible anchor tenant, Discount Marketplace. Both parties are represented by professional negotiators: Myra Hart is representing the Hawkins Company and Genia is representing the Discount Marketplace. The Hawkins Company is a real estate developer, who is operating across UK, offering different types of services, such as: Mortgages, Energy Performance Certificates, Sales and Lettings. They are interested in having Discount Marketplace as a tenant in a proposed shopping center.

The Discount Marketplace is an innovative national retailer with the main activity focused on operating with hard goods, which involves selling small housewares. Their interest is to sign a lease with the new mall. Several issues were debated during the negotiation, but the most important for both parties were the use of property and the operating covenant. Parties bounced back and forth between these two issues during the negotiation. The mall developer insisted on having the contract signed for 15 years, while having a soft constrain of 10 years.

Since both parties expected retailer to operate for 25 years, it shouldn't have been a problem for the retailer to sign the contract for 10 years. Although the retailer considered it would be better for them, regarding their type of activity, to sign for a shorter period of 5 years. They would also have a second option of making business with other developers, who wouldn't require a contract signed for such a long period. Finally they reached an agreement on having the contract signed for a period of 7 years. In the end they made a deal, agreeing on main issues.

They settled on discussing some options left in the future. This involved the qualitative language regarding possible tenants and the period of time in which the notice would be made before leaving. Rough Issue Map 1. The Use of Property The negotiation started with discussion of the issue regarding the use of property. The Developer wished that the Retailer would deal only with soft goods, and asked them to use same product mix for all locations around the country. The proposal was declined because the Retailer felt it was limiting to deal with only soft goods.

Retailer wanted to be free in selecting the type of goods and services. Their argument was that they needed to be more flexible regarding their product mix in order to achieve innovation and to follow their advertising strategy. Also the Retailer didn't agree to use the same product mix across country because their main activity was based around a strategy of adapting the product mix. In order to get to an agreement the Developer suggested limiting the activity to some percentage of the operation area. They offered a limit of 10 – 15% for trial.

The Retailer accepted the offer and issue was solved. 2. Operating Covenant Developer's concern about the contract duration was that the Discount Marketplace would operate for only as long as the business would be viable. Their aspiration level was to sign the contract for a period of minimum 15 years and their soft constrain was to sign the contract for a minimum of 10 years. Developer needed to be sure that the retailer would perform the best they can and they needed to be safe in case the Marketplace wanted to make sudden changes after signing the contract, like changing the location too soon.

The Retailer's aspiration level was to have the contract signed for a period of maximum 5 years and their hard constrain was 7 years. Signing the contract for 15 years would be difficult to finance. Also the developer held an advantage of receiving a long income stream. In Retailer's case, the flexibility of being able to move, when required, was crucial. They discussed the problem and the Developer was willing to accept 7 years only if the Retailer accepted a rent step-up clause. This clause would be valid in case Retailer decided to leave and to find another tenant in their place.

The retailer declined the offer by arguing that they already agreed on the rent terms. In the end, the issue was solved and the Developer accepted to sign the contract for 7 years. 3. Terms of leaving The Developer made two offers to the Retailer, in case they would decide to leave. First proposal was that the Retailer would have to find a sub-let tenant. The second proposal was to find a sub-let tenant together; The Developer preferred to be the one to choose, since they were doing real estate business and were better qualified and gained more experience in this area.

The Retailer representative accepted the second offer. During the negotiation of other terms Retailer repacked the issue with other demands: they wanted to be able to assign another tenant without waiting for the Developer approval. But the proposal was rejected. Since parties couldn't reach an agreement, retailer proposed to use a qualitative language in respect to possible future tenants. If the proposed tenant fitted the parameters then the developer approval wouldn't be needed and if the tenant fell outside the parameters, it would be required.

Issue was not solved because the new proposal made no sense to the developer and they needed an advice from a lawyer in order to write the qualitative language. 4. Notice: The Developer required at least 18 months notice from retailer before they would decide to leave. The retailer agreed at the beginning of negotiation, but then they rejected the offer and suggested a period of 12 months instead. Developer ignored the proposal and this issue remained unsolved. 5. Sub-letting conditions The Developer was concerned by the fact, that the Retailer could sub-let the place at a very high rent.

In this case they wanted to take the full rent from sub-letting. A second option for Retailer was to remain on the lease and to split the surplus in rent with the Developer. The Retailer agreed to split the rent surplus. 6. Use of property regarding sub-letting Both parties came to an agreement, that the Retailer wouldn't sub-let to offices, call centers, educational training, furniture retailers, video arcades and movie theaters. 7. Rent Terms: The Retailer would benefit from a low rate of rent because if they would leave the place next day after signing the contract the developer would get the rent for 25 years.