

CONTRACTING WITH COMPANIES

This book surveys the main rules of Company Law governing the making of contracts with companies. It adopts an economic perspective, examining these rules in terms of the risks they apportion between companies and parties contracting with them. It reviews the use that has been made of economics in the analysis of Company Law and considers what guidance this can provide in analysing corporate contracting. The book then examines the relevant law and the issues raised by this law, covering the role of corporate constitutions as the source of the authority of corporate agents, the mechanisms of corporate activity and decision-making, the identification of corporate contracting parties, pre-incorporation contracts and other contracts with non-existent companies, the contractual power of a company's board, the protection of parties dealing with subordinate corporate agents and the regulation of contracts in which a director has a conflict of interest.

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CONTEMPORARY STUDIES IN CORPORATE LAW

Edited by John Parkinson (d. 2004),
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Corporate law scholarship has a relatively recent history despite the fact that corporations have existed and been subject to legal regulation for three centuries. The modern flourishing of corporate law scholarship has been matched by some broadening of the field of study to embrace insolvency, corporate finance, corporate governance and regulation of the financial markets. At the same time the intersection between other branches of law such as, for example, labour, contract, criminal law, competition, and intellectual property law and the introduction of new interdisciplinary methodologies affords new possibilities for studying the corporation. This series seeks to foster intellectually diverse approaches to thinking about the law and its role, scope and effectiveness in the context of corporate activity. In so doing the series aims to publish works of high intellectual content and theoretical rigour.

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Table of Contents

<i>Table of Cases</i>	xviii
<i>Table of Legislation</i>	xxvii
<i>Preface</i>	xxxii
1 Attribution and Risk Assignment: An Introduction to the Legal and Economic Dimensions of Contracting with Companies	1
1 ATTRIBUTION	1
1.1 The Attribution of Contracts to a Company: An Historical Perspective	2
1.2 The Attribution of Contracts to a Company: The Current Position	6
1.3 The Approach of this Book	9
2 SOME GENERAL OBSERVATIONS ON THE LAW GOVERNING ATTRIBUTION	11
2.1 Lack of Focus on the Artificial Nature of Corporate Personality	11
2.2 Statutory Reform	13
2.3 Competitiveness, Economic Analysis and Company Law	15
3 ATTRIBUTION AS ASSIGNMENT OF RISK	15
3.1 Improving Economic Efficiency through Rules of Law	17
3.2 Improving Economic Efficiency through the Detail of Rules of Law	18
3.3 Rules of Law and the Economics of Information	20
2 Assigning Risk: An Economic Perspective on the Law Governing Contracting with Companies	23
1 THE AIMS OF THIS CHAPTER	23
2 AN ECONOMIC VIEW OF RULES OF LAW	24
2.1 The Use of Economics in the Analysis of Law	24
2.2 The Economic Significance of Company Law	25
2.3 "Competitive" Companies: Competition as a Dynamic Process	27
2.4 Differing Approaches to Economic Analysis and to the Future	28
3 STANDARDS OF ECONOMIC EFFICIENCY	31
3.1 Neo-Classical Economic Analysis	31

viii Contents

3.1.1	<i>Wealth Maximisation and Allocative Efficiency</i>	31
3.1.2	<i>Pareto Efficiency</i>	32
3.1.3	<i>Kaldor-Hicks Efficiency</i>	33
3.1.4	<i>Contracting in Neo-Classical Economic Analysis</i>	34
3.1.5	<i>The Role of Legal Rules in Neo-Classical Analysis</i>	34
3.2	Alternatives to Neo-Classical Analysis	35
3.2.1	<i>The "Neo-Institutional" Schools</i>	35
3.2.2	<i>Contracting in the Face of Uncertainty and Opportunism</i>	36
3.2.3	<i>Incomplete Contracting</i>	37
3.3	Other Notions of Economic Efficiency	38
3.3.1	<i>Productive Efficiency</i>	38
3.3.2	<i>Dynamic Efficiency</i>	38
3.3.3	<i>Legal Incentives for Innovation</i>	39
3.4	Economic Efficiency and Information	41
3.4.1	<i>Information and Transaction Costs</i>	41
3.4.2	<i>Information and the Stimulation of Economic Activity</i>	43
4	AN ECONOMIC VIEW OF THE COMPANY	43
4.1	The Legal Institution	43
4.2	The Economic Role of the Company	46
4.2.1	<i>The "Nexus of Contracts" Model</i>	46
4.2.2	<i>The Economic Role of Corporate Management</i>	47
4.2.3	<i>The Separation of Management from Ownership</i>	48
4.2.4	<i>Voting Rights as a Contractual Safeguard for Shareholders</i>	49
4.2.5	<i>Managerial Discretion and the Danger of Opportunism</i>	50
4.3	Differing Economic Approaches to the Company	52
5	AN ECONOMIC VIEW OF CORPORATE MANAGEMENT	53
5.1	The Management Structure of a Company	53
5.2	The Internal Organisation of Corporate Management	54
5.3	Corporate Agency	55
6	AN ECONOMIC FRAMEWORK FOR ANALYSING THE RULES GOVERNING CONTRACTING WITH COMPANIES	56
6.1	Limiting the Authority of Corporate Agents	56
6.1.1	<i>The Economic Rationale of Limits on Actual Authority</i>	56
6.1.2	<i>The Economic Implications of the Remedy of Invalidity</i>	58
6.2	The Economic Cost for Companies of Overriding Rules of Attribution	60
6.2.1	<i>The Risk of Loss from Unauthorised Contracts</i>	60
6.2.2	<i>An Increased Risk of Loss and Limited Liability</i>	61
6.2.3	<i>Factors that Mitigate the Risk of Loss from Unauthorised Contracts</i>	62
6.2.4	<i>Taking Avoiding Action to Minimise the Risk of Loss</i>	63
6.2.5	<i>The Quality of Corporate Agents</i>	64

6.2.6	<i>The One-Sided Nature of the Remedy of Invalidity</i>	65
6.3	The Cost for Third Parties of a Risk of Invalidity	66
6.3.1	<i>Transaction Costs</i>	66
6.3.2	<i>Sources of Information for Third Parties</i>	68
6.3.3	<i>Agents' Behaviour as a Source of Information</i>	68
6.3.4	<i>Third Parties as the Least-Cost-Avoider</i>	70
7	ANALYSING THE LAW GOVERNING CONTRACTING WITH COMPANIES	71
3	<i>The Power to Make Contracts for a Company</i>	73
1	THE LEGAL SOURCE OF CONTRACTUAL POWER	73
2	THE CONSTITUTION OF A COMPANY	76
2.1	The Legal Role of the Constitution	76
2.2	The Format of a Company's Constitution	77
2.3	The Legal Effect of a Company's Constitution	78
2.4	The Economic Significance of Shareholders' Rights under the Constitution	81
3	THE MANAGEMENT STRUCTURE OF A COMPANY	82
3.1	The Board of Directors	82
3.1.1	<i>The Board as a Company's Principal Organ of Management</i>	82
3.1.2	<i>The Board's Autonomy as an Organ of the Company</i>	83
3.1.3	<i>The Operation of the Board as an Organ of Governance</i>	85
3.2	The Shareholders	88
3.2.1	<i>The Role of Shareholders in Corporate Governance</i>	88
3.2.2	<i>The Operation of the Shareholders as a Decision-Making Body</i>	90
3.2.3	<i>The Shareholders' Powers of Management</i>	90
3.2.4	<i>The Ancillary Powers of Ratification and Release</i>	91
3.2.5	<i>Shareholders and Managerial Decision-Making</i>	92
3.2.6	<i>The Governance Implications of the Ancillary Powers</i>	93
3.2.7	<i>Decision-Making on Behalf of an Insolvent Company</i>	94
4	THE ACTUAL AUTHORITY OF THE BOARD TO MAKE CONTRACTS	95
4.1	The Vesting of Contractual Power in the Board	95
4.1.1	<i>The Vesting Process</i>	95
4.1.2	<i>Identifying the Board</i>	96
4.2	The Specification of the Company's Contractual Power	97
4.2.1	<i>The Contractual Capacity of a Company</i>	97
4.2.2	<i>Contractual Capacity and the Objects Clause</i>	98
4.3	The Powers of the Company	100
4.3.1	<i>The Constitution's Role in Defining the Powers of the Company</i>	100
4.3.2	<i>Distinguishing Limits on the Powers of the Company from Limits on the Powers of the Board</i>	101

x Contents

4.4 The Powers of the Board	102
4.4.1 <i>The Limiting Effect of the Objects Clause</i>	102
4.4.2 <i>Other Constitutional Limits on the Board's Powers</i>	103
4.4.3 <i>Directors' Duties as Limits on the Board's Powers?</i>	104
4.4.4 <i>The Proper Purposes Doctrine</i>	106
5 CONTRACTING BEYOND THE LIMITS ON THE BOARD'S AUTHORITY	108
5.1 The Shareholders' Ancillary Powers	108
5.1.1 <i>The Need to Override the Limits on the Board</i>	108
5.1.2 <i>The Shareholders' Powers to Override the Limits on the Board</i>	109
5.1.3 <i>The Economic Costs of Setting Limits on the Board's Authority</i>	110
5.2. Obtaining the Shareholders' Approval for a Contract	111
5.2.1 <i>Expense, Delay and Uncertainty</i>	111
5.2.2 <i>Mitigating the Uncertainty of Delay</i>	112
5.2.3 <i>The Board's Authority to give Undertakings about their Future Conduct</i>	113
6 CONCLUSIONS AND REVIEW	115
6.1 The Rationale of Limiting the Board's Actual Authority	115
6.2 The Balancing Exercise	117
6.3 The Scope for Evolving an Efficient Division of Powers	118
6.4 Problems in Corporate Decision-Making	119
6.5 The Cost for Third Parties	121
4 Issues of Identity and Existence	123
1 INTRODUCTION	123
2 THE IDENTIFICATION OF CORPORATE CONTRACTING PARTIES	126
2.1 Seeking the "Presumed Common Intention" of the Parties	126
2.2 Confusing the Identity of Connected Companies	128
2.3 Ensuring the Accurate Use of a Company's Registered Name	130
3 THE NON-EXISTENCE OF A CORPORATE CONTRACTUAL PARTY: PRE-INCORPORATION CONTRACTS AND OTHER SCENARIOS	132
3.1 The Risk of Non-Existence	132
3.2 The Common Law Rules	133
3.3 Planning Ahead of Incorporation	138
4 STATUTORY REFORM	139
4.1 The First European Directive	139
4.2 Section 36C of the Companies Act 1985	140

4.2.1	<i>The Terms of the Provision</i>	140
4.2.2	<i>Legal Issues Arising from the Wording of the Provision</i>	141
5	THE MEANING AND EFFECT OF SECTION 36C	141
5.1	The Proviso to Section 36C	141
5.2	The Legal Nature of the Contract Given Effect by Section 36C	142
5.2.1	<i>Can the Agent Enforce the Contract against the Third Party?</i>	142
5.2.2	<i>The Braymist Case: Enforcement against the Third Party</i>	142
5.2.3	<i>The Court of Appeal's Judgment</i>	143
5.2.4	<i>Review of the Court of Appeal's Judgment in Braymist</i>	145
5.3	Who is "the person purporting to act for the company or as agent for it" in section 36C?	146
5.3.1	<i>Distinguishing Decision-Making from Decision-Implementing Agents</i>	146
5.3.2	<i>The Braymist Case: Limiting Section 36C to Decision-Implementing Agents</i>	146
5.3.3	<i>Review of Etherton J's Judgment in Braymist</i>	147
5.4	Contracting with a Company that "has not been Formed"	148
5.4.1	<i>Pre-Incorporation Contracts as Part of a Broader Category</i>	148
5.4.2	<i>Two Sub-Categories of Pre-Incorporation Contract</i>	148
5.4.3	<i>Companies that "have not been Formed"?</i>	149
5.4.4	<i>Must the Non-Existent Company have been Formed Later?</i>	150
5.4.5	<i>The Place of incorporation of a Company Subsequently Formed</i>	150
5.4.6	<i>The Exclusion of Post-Dissolution Contracts</i>	152
5.4.7	<i>Review of the Cotronic Decision</i>	155
5.5	Claims for a Quantum Meruit for Work Done	155
6	THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	156
6.1	Novation and Ratification at Common Law	156
6.2	A Company's Right to Enforce Pre-Incorporation Contracts	157
7	CONCLUSIONS AND REVIEW	158
5	<i>Contracting with the Board</i>	161
1	INTRODUCTION	161
1.1	The Need for a Reliable Reference Point for Third Parties	161
1.2	The Obligation to Ensure that Third Parties Enjoy "Security of Transaction"	163

xii Contents

2	OVERRIDING A COMPANY'S LIMITED CONTRACTUAL CAPACITY	164
	2.1 The Current Position	164
	2.2 The Common Law Doctrine of Ultra Vires	165
	2.2.1 <i>The Nature of the Doctrine</i>	165
	2.2.2 <i>The Legal Effect of the Doctrine</i>	166
	2.2.3 <i>The Rationale of the Doctrine</i>	167
	2.3 The Need for Reform	168
	2.4 Section 35 of the Companies Act 1985	169
	2.4.1 <i>A Presumption of Unlimited Contractual Capacity?</i>	169
	2.4.2 <i>Distinguishing A Company's Limited Contractual Capacity from the Limited Actual Authority of its Board</i>	170
3	THE BOARD'S ACTUAL AUTHORITY	170
	3.1 The Limits on a Board's Actual Authority	170
	3.2 The Legal Effect of a Contract Made Without Actual Authority	173
	3.3 The Overriding Rules of Attribution Applicable to Contracts Made or Approved by a Company's Board	174
	3.3.1 <i>The Common Law Approach</i>	174
	3.3.2 <i>The Need for Statutory Reform</i>	177
4	THE STATUTORY RULES OF ATTRIBUTION	178
	4.1 Section 36A(6)	178
	4.2 Section 35A	179
	4.2.1 <i>The Nature of the Statutory Reform</i>	179
	4.2.2 <i>Elaboration of the Terms of Section 35A</i>	179
	4.2.3 <i>The Company Law Review's Recommendations</i>	180
	4.2.4 <i>Qualification by Section 322A</i>	180
	4.2.5 <i>Analysis of Section 35A</i>	181
	4.3 A Person Dealing with a Company?	182
	4.3.1 <i>Any Legal Person Other than the Company?</i>	182
	4.3.2 <i>Section 35A and Directors</i>	183
	4.3.3 <i>Certain Directors cannot be "a person dealing with a company"?</i>	184
	4.3.4 <i>Section 35A and Shareholders</i>	185
	4.4 The "Power of the Board of Directors"?	188
	4.4.1 <i>Identifying the "Board of Directors"?</i>	188
	4.4.2 <i>The Relevance of Procedural Regulations such as Quorum Requirements</i>	188
	4.4.3 <i>Do Procedural Regulations Define the Board or Merely Limit its Powers?</i>	189
	4.4.4 <i>The Approach to the Issue in the Henniker-Major Case</i>	190
	4.4.5 <i>Review of the Second Condition after the Henniker-Major Judgments</i>	192
	4.4.6 <i>The Complementary Powers of the Shareholders</i>	193

5	THE GOOD FAITH QUALIFICATION	194
5.1	A Third Condition of Section 35A	194
5.2	The Common Law Background	195
5.2.1	<i>The Indoor Management Rule and Constructive Notice</i>	195
5.2.2	<i>A Duty to Make Further Inquiry as an Efficient Allocation of Risk</i>	196
5.3	Rebutting the Statutory Presumption of Good Faith	198
5.3.1	<i>The Economic Role of the Good Faith Qualification</i>	198
5.3.2	<i>The Inefficiency of Knowledge as a Qualifying Factor</i>	199
5.3.3	<i>Good Faith and Liability for Knowing Receipt</i>	200
5.4	Attributing Knowledge to a Corporate Third Party	200
5.4.1	<i>The Problem of Attributing or Imputing Knowledge to a Company</i>	200
5.4.2	<i>Determining the Knowledge of a Company for the Purposes of Knowing Receipt</i>	201
6	A THIRD PARTY'S LIABILITY FOR KNOWING RECEIPT	203
6.1	The Conditions of Liability	203
6.2	The Requirement of Knowledge	205
6.3	A Third Party's Right to Pursue its Own Commercial Interests	206
6.3.1	<i>The Danger of an Inefficient Risk of Liability</i>	206
6.3.2	<i>The Akindele Case</i>	208
6.3.3	<i>The Akindele Test of "Unconscionability"</i>	209
6.4	The Good Faith Qualification to Section 35A	212
7	CONTRACTS WITH DIRECTORS OR OTHER DESIGNATED PERSONS	213
7.1	Section 322A	213
7.1.1	<i>The Ambit and Effect of Section 322A</i>	213
7.1.2	<i>The Rationale of Section 322A</i>	214
7.2	Section 322A and Multi-Party Contracts	215
8	CONCLUSIONS AND REVIEW	216
6	<i>Contracting with Other Corporate Agents</i>	219
1	INTRODUCTION	219
1.1	The Case for Ensuring Reliability	219
1.2	The Authority of Subordinate Agents	220
1.3	Dealing with Subordinate Agents	220
1.4	The Economic Role of the Overriding Rules of Attribution Applicable to Subordinate Agents	222
2	THE FRAMEWORK OF THE LAW	224
2.1	Ostensible Authority	224
2.2	Determining the Ostensible Authority of Corporate Agents	225
3	THE INDOOR MANAGEMENT RULE	227

xiv Contents

3.1 The Nature of the Rule	227
3.1.1 <i>A Presumption of Regularity</i>	227
3.1.2 <i>Constructive Notice of Irregularity</i>	228
3.1.3 <i>Statement of the Indoor Management Rule</i>	229
3.2 An Analysis of the Indoor Management Rule	229
3.2.1 <i>A Corporate Agent's Appearance of Authority</i>	229
3.2.2 <i>The Doctrine of Constructive Notice</i>	230
3.3 Circumstances that put a Third Party "on Inquiry"	232
3.3.1 <i>A Third Party's Duty to find out more</i>	232
3.3.2 <i>Circumstances Putting a Third Party on Inquiry?</i>	233
3.3.3 <i>Circumstances in which Third Parties are the Least-Cost-Avoider</i>	234
3.3.4 <i>Factors Putting Third Parties "on Inquiry"</i>	236
3.4 The Displacement of the Indoor Management Rule	238
3.4.1 <i>The Presumption of Regularity as an Instance of Ostensible Authority</i>	238
3.4.2 <i>The Problem of Finding a Representation of Ostensible Authority</i>	239
4 THE DIPLOCK APPROACH TO CORPORATE AGENCY	240
4.1 Adapting Agency Law to Corporate Personality	240
4.2 The Restatement of the Law in the Freeman & Lockyer Case	241
4.3 The Diplock Approach	244
4.3.1 <i>The Four Conditions of Ostensible Authority</i>	244
4.3.2 <i>The Implications of the Diplock Approach</i>	244
5 AN ANALYSIS OF THE FOUR CONDITIONS OF OSTENSIBLE AUTHORITY	245
5.1 A Representation of Authority	245
5.1.1 <i>Representing the Authority of a Corporate Agent</i>	245
5.1.2 <i>The Scope of a Representation of Authority</i>	246
5.2 Someone with Actual Authority to Manage the Company must make the Representation	247
5.2.1 <i>The Representation must be Attributable to the Company</i>	247
5.2.2 <i>Authority to be a Reliable Reference Point for Third Parties?</i>	248
5.2.3 <i>The Economic Cost of not having a Reliable Reference Point</i>	250
5.2.4 <i>The Agent as a Reference Point</i>	252
5.2.5 <i>The Agent as a Reliable Reference Point</i>	253
5.2.6 <i>The Continuing Uncertainty in the Law</i>	256
5.3 The Representation must have induced the Third Party to enter into the Contract	257

5.3.1	<i>The Need for Reliance</i>	257
5.3.2	<i>A Third Party's Suspicion may negate Reliance</i>	258
5.3.3	<i>Actual or Constructive Knowledge Negates Reliance</i>	258
5.4	The Company has the Capacity to enter into the Contract and to Delegate the Necessary Authority to the Agent	260
6	THE ABOLITION OF THE DOCTRINE OF CONSTRUCTIVE OR DEEMED NOTICE	261
7	CONCLUSIONS AND REVIEW	262
7	Contracts Involving Self-Dealing	265
1	INTRODUCTION	265
1.1	The Meaning of Self-Dealing	265
1.2	The Legal Significance of Self-Dealing	266
1.3	The Law Governing Contracts Involving Self-Dealing	267
1.4	The Economic Significance of Regulating Self-Dealing	270
1.5	Disclosure in a Unitary Board System	272
1.6	The Structure of the Law	273
2	IDENTIFYING CONTRACTS INVOLVING SELF-DEALING	274
2.1	Defining a Conflict of Interest	274
2.2	The Ambit of the No Conflict Rule	275
2.3	The Company Law Review	276
3	THE EFFECT OF SELF-DEALING ON THE POWER TO MAKE CONTRACTS FOR COMPANIES	277
3.1	Actual Authority	277
3.1.1	<i>The Special Nature of the Power to Award Remuneration</i>	277
3.1.2	<i>Other Special Limits Affecting Actual Authority</i>	278
3.2	Breach of the Directors' Duty of Good Faith	280
4	SELF-DEALING AND THE OVERRIDING RULES OF ATTRIBUTION	281
4.1	Section 35A of the Companies Act 1985	281
4.2	The Indoor Management Rule	282
4.3	Ostensible Authority and the Diplock Approach	284
5	THE ADDITIONAL LAW GOVERNING THE VALIDITY OF CONTRACTS INVOLVING SELF-DEALING	285
6	THE REQUIREMENT TO DECLARE OR DISCLOSE AN INTEREST IN A CONTRACT INVOLVING SELF-DEALING	287
6.1	The Legal Significance of the Disclosure Requirement	287
6.2	The Significance of the Disclosure Requirement's Having Two Legal Sources	288
6.3	Complying with the Disclosure Requirement	290
6.4	What Must a Director Disclose to Satisfy the Disclosure Requirement?	293

xvi Contents

6.4.1	<i>Inadequate Disclosure</i>	293
6.4.2	<i>Liability for Inadequate Disclosure?</i>	294
6.4.3	<i>The Limits of the Required Disclosure?</i>	295
6.5	The Legal Effect on a Contract of a Failure to Comply with the Disclosure Requirement	296
6.5.1	<i>The Company's Right to Avoid the Contract</i>	296
6.5.2	<i>An Election not to Rescind</i>	297
6.5.3	<i>An Innocent Third Party</i>	297
6.5.4	<i>Unreasonable Delay or Acquiescence.</i>	298
6.5.5	<i>Impossibility of Restitution</i>	299
7	SPECIAL REGIMES UNDER PART X OF THE COMPANIES ACT 1985	300
7.1	Contracts Involving an Enhanced Risk of Abuse	300
7.2	Directors' Remunerations	301
8	SECTION 320 OF THE COMPANIES ACT 1985	303
8.1	Substantial Property Transactions	303
8.2	The Rationale of Section 320	303
8.2.1	<i>Additional Protection for the Shareholders</i>	303
8.2.2	<i>Section 320 and the Unanimous Consent Rule</i>	306
8.3	The Conditions that Trigger Section 320	307
8.3.1	<i>The Statutory Conditions</i>	307
8.3.2	<i>An Arrangement?</i>	308
8.3.3	<i>Non Cash Assets?</i>	308
8.3.4	<i>The Value of the Non-Cash Asset?</i>	309
8.3.5	<i>The Company's Asset Value?</i>	311
8.4	Consequential Liability under Section 322.	311
9	CONCLUSIONS AND REVIEW	312

Table of Cases

<i>A Company, Re</i> [1986] BCLC 382	113
<i>Aberdeen Railway v Blaikie</i> (1854) 1 Macq 461	268, 269, 287
<i>Adams v Cape Industries</i> [1990] Ch 433 (CA)	43, 129
<i>Adams v R</i> [1995] BCC 376 (PC)	294
<i>Addie v The Western Bank</i> (1866–69) LR 1 Sc 145 (HL)	297
<i>AG v Great Eastern Railway</i> (1880) LR 5 HL 473	99
<i>Alexander Ward v Samyang</i> [1975] 1 WLR 673 (HL)	119
<i>Argentum Reductions (UK), Re</i> [1975] 1 WLR 186	120
<i>Armagas v Mundogas</i> [1986] AC 717 (HL)	241, 248, 249, 252, 253, 255, 256, 259
<i>Ashbury Railway Carriage & Iron Co v</i>	
<i>Riche</i> (1875) LR 7 HL 653	98, 99, 102, 103, 118, 165, 166, 167, 260
<i>Automatic Self-Cleansing Filter Syndicate v</i>	
<i>Cunninghame</i> [1906] 2 Ch 34 (CA)	84, 106
<i>Aveling Barford v Perion</i> [1989] BCLC 626	98, 165
<i>Baden Delvaux and Lecuit v Société Générale</i>	
[1993] 1 WLR 509	205
<i>Badgerhill Properties v Cottrell</i> [1991] BCC 463 (CA)	126, 132, 137
<i>Bairstow v Queen's Moat Houses</i> [2001] 2 BCLC 531 (CA)	98, 165
<i>Bamford v Bamford</i> [1970] Ch 212 (CA)	102, 106, 107, 109, 204
<i>Bank of Tokyo v Karoon</i> [1987] AC 45 (CA)	129
<i>Barings, Re</i> [1999] 1 BCLC 433; [2000] 1 BCLC 523 (CA)	63, 83
<i>Barnes v Addy</i> (1874) 9 Ch App 244 (CA)	200
<i>Barron v Potter</i> [1914] 1 Ch 895 (CA)	85, 91, 109
<i>BCCI v Akindele</i> [2001] Ch 437 (CA)	105, 205, 208, 209, 211, 212, 218, 235, 259, 281
<i>BDG Roof-Bond v Douglas</i> [2000] 1 BCLC 401	306
<i>Beattie v Beattie</i> [1938] Ch 708 (CA)	80
<i>Bell Houses v City Wall Properties</i> [1966] 2 QB 656 (CA)	98, 99, 167
<i>Belmont Finance Corp v Williams Furniture (No 2)</i>	
[1980] All ER 393 (CA)	172, 199, 200, 209
<i>Benson v Heathorn</i> (1842) 1 Y & C Ch 326	269
<i>Beswick v Beswick</i> [1968] AC 58 (HL)	128
<i>Biggerstaff v Rowatt's Wharf</i> [1896]	
2 Ch 93 (CA)	228, 229, 230, 232, 236
<i>Bishopsgate Management v Maxwell</i> [1993]	
BCC 120 (CA)	83, 280
<i>Black v Smallwood</i> (1966) 117 CLR 52	133, 136, 147
<i>Boardman v Phipps</i> [1967] 2 AC 46 (HL)	268
<i>Bonelli's Telegraph Co, Re</i> (1871) LR 12 Eq 246	86, 88, 190

xviii Table of Cases

<i>Boschoek Proprietary v Fuke</i> [1906] Ch 148	75, 77, 101, 110, 174, 194
<i>Boulting Bros v ACTAT</i> [1963] 2 QB 606 (CA)	268, 270, 274, 285, 294
<i>Bowmakers v Barnet Instruments</i> [1945] 1 KB 65 (CA)	97, 154
<i>Brady v Brady</i> (1987) 3 BCC 535 (CA)	94
<i>Bratton Seymour Service Co v Oxborough</i> [1992] BCC 471 (CA)	78, 79, 80
<i>Bray v Ford</i> [1896] AC 44 (HL)	268, 271, 293
<i>Braymist v Wise Finance</i> [2001] WL 172108 (Ch.D); [2002] Ch 273 (CA); [2002] EWCA Civ 127	133, 140, 142, 143, 145, 146, 147, 148, 150, 151, 152, 153, 159, 160
<i>Breckland v London & Suffolk Properties</i> [1989] BCLC 100	84, 85, 119
<i>Bridges and Salmon v The Swan (Owner) ("The Swan")</i> [1968] 1 Lloyd's Rep 5	137
<i>British Bank of the Middle East v Sun Life</i> [1983] 2 Lloyd's Rep 9 (HL)	68, 70, 241, 248, 250, 253, 256, 258
<i>British Racing Drivers' Club v Hextall Erskine</i> [1997] 1 BCLC 182	111, 213, 304, 306, 310
<i>British Thomson-Houston v Federated European Bank</i> [1932] 2 KB 176 (CA)	236, 239, 248, 254
<i>Browne v La Trinidad</i> (1887) 37 Ch D 1 (CA)	79, 80
<i>Bushell v Faith</i> [1970] AC 1099 (HL)	78, 90
<i>Cane v Jones</i> [1980] 1 WLR 1451	87, 306
<i>Cape Breton, Re</i> (1885) 29 Ch D 795 (CA)	285
<i>Carlton Communications and Granada Media v</i> <i>The Football League</i> [2002] EWHC 1650	3, 43
<i>Centofanti v Eekitimer Pty</i> (1995) 15 ACSR 606	296
<i>Central Estates (Belgravia) v Woolgar</i> [1972] 1 QB 48 (CA)	195
<i>Charterbridge Corporation v Lloyds Bank</i> [1970] Ch 62	96, 104, 166, 267, 280
<i>Charterhouse Investment Trust v Tempest Diesels</i> (1985) 1 BCC 99	86, 190
<i>Clarke v The Imperial Gas Light and Coke Co</i> (1832) 4 B & Ad 315	5
<i>Cleveland Manufacturing v Muslim Commercial Bank</i> [1981] 2 Lloyd's Rep 646	257
<i>Clough v The London and North Western Railway Co</i> (1871-72) LR 7 Ex 26	297
<i>CMS Dolphin v Simonet</i> [2001] 2 BCLC 704	288
<i>Colin Gwyer v London Wharf</i> [2002] EWHC 2748; [2003] 2 BCLC 153	52, 69, 89, 94, 104, 105, 280, 286, 307
<i>Commings v Scott</i> (1875) LR 20 Eq 11	123, 127
<i>Conegrade, Re</i> [2002] EWHC 2411	95, 306, 307
<i>Cook v Deeks</i> [1916] 1 AC 554 (PC)	288

<i>Cooperatieve Rabobank v Erik Aarnoud Minderhoud</i> (ECJ Case C-104/96) [1998] 2 CMLR 270	11, 177, 265
<i>Costa Rica Railway v Forwood</i> [1900] 1 Ch 756; [1901] 1 Ch 746 (CA)	269, 275, 294
<i>Cotman v Brougham</i> [1918] AC 514 (HL)	98, 167
<i>Cotronic (UK) v Dezonie</i> [1991] BCC 200 (CA)	131, 133, 135, 142, 145, 153, 154, 155, 160
<i>Cottrell v King</i> [2004] 2 BCLC 413; [2004] EWHC 397	182, 186
<i>County Life Assurance Co, Re</i> (1869–70) LR 5 Ch App 288 (CA)	230
<i>County of Gloucester Bank v Rudry Merthyr Steam and House Coal Colliery</i> [1895] 1 Ch 629 (CA)	197, 230, 236
<i>Cowan de Groot v Eagle Trust</i> [1992] 4 All ER 700	70, 207, 212, 273, 274, 276, 283, 288, 292, 298
<i>Craven Textile Engineers v Batley FC</i> [2001] BCC 679 (CA)	297, 300
<i>Criterion Properties v Stratford UK Properties</i> [2004] 1 WLR 1846 (HL); [2004] UKHL 28; [2003] 1 WLR 2108 (CA); [2002] EWCA Civ 1883; [2002] 2 BCLC 151; [2002] EWHC 496	105, 107, 204, 207, 210, 212, 213, 235, 259, 280, 281, 284
<i>Crowther v Carpets International</i> [1990] BCLC 460	112, 307
<i>Cumbrian Newspapers Group v Cumberland & Westmorland Herald Newspapers [1987] Ch 1</i>	78, 110
<i>David Payne & Co, Re</i> [1904] 2 Ch 608 (CA)	96, 102, 106, 166, 172, 198, 203
<i>Dawson International v Coats Paton</i> [1989] BCLC 233 (Outer House); [1990] BCLC 560 (First Division); [1991] BCC 276	113, 114
<i>Demite v Protec Health</i> [1998] BCC 638	306
<i>Dorchester Finance Co v Stebbing</i> [1989] BCLC 498	83
<i>Duck v Tower</i> [1901] 2 KB 314	230
<i>Duckwari (No 1), Re</i> [1997] 2 BCLC 713 (CA)	305, 306, 308, 310
<i>Duckwari (No 2), Re</i> [1999] Ch 253 (CA)	306, 308, 310, 311
<i>Duckwari (No 3), Re</i> [1999] Ch 268 (CA)	306, 308, 310
<i>Duomatic Ltd, Re</i> [1969] 2 Ch 365	87, 89, 286, 306
<i>EBM Co v Dominion Bank</i> [1937] 3 All ER 555 (PC)	197, 237
<i>Egyptian International Foreign Trade Co v Soplex</i> [1985] 2 Lloyd's Rep 36; [1985] BCLC 404 (CA)	71, 241, 246, 247, 254
<i>EIC Services v Phipps</i> [2004] 2 BCLC 589 (CA); [2004] EWCA Civ 1069; [2003] 1 WLR 2360; [2003] EWHC 1507	87, 182, 185
<i>El Ajou v Dollar Land Holdings</i> [1994] BCC 143 (CA)	82, 201, 202, 203, 204, 205, 298
<i>Eley v Positive Government Security Life Assurance Co</i> (1876) 1 Ex D 88 (CA)	79, 80, 220
<i>Empress Engineering, Re</i> (1880) 16 Ch D 125 (CA)	134
<i>English & Colonial Produce Co, Re</i> [1906] 2 Ch 435 (CA)	134
<i>Erlanger v New Sombbrero Phosphate Co</i> (1878) 3 App Cas 1218 (HL)	297

xx Table of Cases

<i>Ernest v Nicholls</i> (1857) 6 HLC 401 (HL)	3, 4, 5, 13, 73, 176, 196, 225, 228, 231, 233
<i>Euro Brokers v Monacor (London)</i> [2003] 1 BCLC 506 (CA); [2003] EWCA Civ 105	87, 306
<i>Evans v Brunner Mond & Co</i> [1921] 1 Ch 359	89
<i>Express Engineering Works, Re</i> [1920] 1 Ch 466 (CA)	87, 91
<i>Farrar v Farrars</i> (1888) 40 Ch D 395 (CA)	268, 288
<i>First Energy v Hungarian International Bank</i> [1993] BCC 533; [1993] BCLC 1409 (CA)	67, 241, 248, 249, 254, 255, 256, 263
<i>Fitzsimmons v R</i> (1997) 23 ACSR 355	296
<i>Folkes Group v Alexander</i> [2002] 2 BCLC 254; [2002] EWHC 51	78
<i>Foss v Harbottle</i> (1843) Hare 461	79, 80, 91, 120
<i>Foster v Foster</i> [1916] 1 Ch 532	91, 109
<i>Framlington Group v Anderson</i> [1995] BCC 611	266
<i>Freeman & Lockyer v Buckhurst Park Properties</i> [1964] 2 QB 480 (CA)	8, 73, 74, 86, 224, 225, 229, 240, 241, 246, 254
<i>Fulham FC v Cabra Estates</i> [1992] BCC 863 (CA)	52, 113, 114, 115, 117, 307
<i>Gardner v Parker</i> [2004] 1 BCLC 417; [2003] EWHC 1463	120
<i>Gething v Kilner</i> [1972] 1 All ER 1166	113
<i>Giles v Rhind</i> [2003] Ch 618 (CA); [2002] EWCA Civ 1428	120
<i>Global Telecommunications v Wilmbury</i> [2003] 1 BCLC 145; [2002] EWHC 1988	80
<i>Goldsmith (Sicklesmere) v Baxter</i> [1970] Ch 85	9, 123, 124, 125, 127, 128
<i>Gramophone & Typewriter v Stanley</i> [1908] 2 KB 89 (CA)	84
<i>Grant v UK Switchback Railway</i> (1889) LR Ch D 135 (CA)	103, 109, 174, 188, 279
<i>Gray v New Augusta Porcupine Mines</i> [1952] 3 DLR 1	294, 295
<i>Greer v Downs Supply</i> [1927] 2 KB 28 (CA)	206
<i>Guinness v Saunders</i> [1990] 2 AC 663 (HL)	83, 88, 173, 174, 183, 273, 274, 277, 278, 288, 291, 297, 300
<i>Halt Garage, Re</i> [1982] 3 All ER 1016	98, 105, 165
<i>Hawke's Bay Milk Corporation v Watson</i> [1974] 1 NZLR 236	133, 136
<i>Heald v O'Connor</i> [1971] 1 WLR 497	98
<i>Hellmuth Obata & Kassabaum (t/a Hok Sport) v</i> <i>King and Frauenstein</i> [2000] WL 1480187 (QBD, Technology & Construction Court)	155, 156
<i>Hely-Hutchinson v Brayhead</i> [1968] 1 QB 549 (CA)	215, 221, 273, 274, 279, 283, 284, 287, 288, 290, 299
<i>Heron International v Lord Grade</i> [1983] BCLC 244 (CA)	113

xxi Table of Cases

<i>Hickley v Hickley</i> (1876) 2 Ch D 190	288
<i>Hickman v Romney or Kent Sheepbreeders Association</i> [1915] 1 Ch 881	79, 80
<i>Hogg v Cramphorn</i> [1967] Ch 245	106, 107
<i>Houghton v Northard, Lowe & Wills</i> [1927] 1 KB 246 (CA)	236, 237, 239, 245, 246
<i>Howard Smith v Ampol Petroleum</i> [1974] AC 821 (PC)	69, 104, 106, 107, 280
<i>Howard v Patent Ivory Manufacturing Co</i> (1888) LR 38 Ch D 156	135, 196, 198, 238, 283
<i>Hutton v West Cork Railway Co</i> (1883) 23 Ch D 654 (CA)	88, 277
<i>Imperial Mercantile Credit Association v Coleman</i> (1871) LR 6 Ch App 558 (CA)	271, 295
<i>Imperial Mercantile Credit Association (Liquidators) v Coleman</i> (1873) LR 6 HL 189 (HL)	294
<i>Industrial Development Consultants v Cooley</i> [1972] 1 WLR 443	272
<i>International Sales & Agencies v Marcus</i> [1982] 3 All ER 551	97, 200, 204
<i>Introductions v National Provincial Bank</i> [1970] Ch 199 (CA)	96, 166, 198
<i>Irvine v Union Bank of Australia</i> (1876–77) LR 2 App Cas 366 (PC)	5, 13, 101, 104, 109, 176
<i>Janred Properties v Ente Nazionale Italiana per Il Turismo</i> (14 July 1983, unreported)	169
<i>John v Price Waterhouse</i> [2002] 1 WLR 953	80
<i>Johnsey Estates (1990) v Newport Marketworld</i> (10th May 1996, unreported)	164, 178
<i>Johnson v Gore Wood & Co (No 1)</i> [2002] 2 AC 1 (HL)	120
<i>Jon Beauforte, Re</i> [1953] Ch 131	13, 177, 196
<i>Jyske Bank v Spjeldnaes</i> The Times, September 28, 1999; [1999] WL 819062 (CA)	173, 174, 183
<i>Keech v Sandford</i> (1726) Sel Cas Ch 61	268
<i>Kelner v Baxter</i> (1866) LR 2 CP 174	133, 134, 135, 136, 149
<i>Kinsela v Kinsela Pty</i> [1988] BCLC 250; (1986) 4 NSWLR 722	94
<i>Koenigsblatt v Sweet</i> [1923] 2 Ch 314 (CA)	65, 134, 166, 174
<i>Kreditbank Cassel v Schenkers</i> [1927] 1 KB 826 (CA)	12, 236, 237, 238, 239, 245
<i>Lands Allotment Co</i> [1894] 1 Ch 616 (CA)	172, 267
<i>Lee Panavision v Lee Lighting</i> [1991] BCC 620; [1992] BCLC 22 (CA); [1991] BCLC 575	107, 273, 274, 289
<i>Lee v Lee's Air Farming</i> [1961] AC 12 (PC)	43, 182

xxii Table of Cases

<i>Leeds Estate Building and Investment Company v Shepherd</i> (1887) 36 Ch D 787	172
<i>Lennard's Carrying Co v Asiatic Petroleum Co</i> [1915] AC 705 (HL)	202
<i>Lindsay Petroleum v Hurd</i> (1873–74) LR 5 PC 221	298
<i>Litster v Forth Dry Dock & Engineering Co</i> [1990] 1 AC 546 (HL)	140
<i>Mahony v East Holyford Mining</i> (1875) LR 7 HL 869 (HL)	5, 13, 176, 197, 228, 230, 231, 234, 236, 239, 248
<i>Manchester Trust v Furness</i> [1895] 2 QB 539 (CA)	206, 212
<i>Marblestone Industries v Fairchild</i> [1975] 1 NZLR 543	133, 136
<i>Marshall's Valve v Manning</i> [1909] 1 Ch 267	119
<i>Meinhard v Salmon</i> (1928) 249 NY 456	269
<i>Melhado v Porto Alegre</i> (1874) LR 9 CP 503	80
<i>Meridian Global Funds Management Asia Ltd v Securities Commission</i> [1995] 2 AC 500 (PC)	2, 9, 202, 203
<i>Micro-Leisure v County Properties & Developments</i> [1999] SLT 1428; [2000] BCC 872	305, 309
<i>Midland Bank Trust Co v Green</i> [1981] AC 513 (HL)	195
<i>Midland Bank v Reckitt</i> [1933] AC 1 (HL)	70, 197, 238
<i>Montagu's Settlement Trusts, Re</i> [1987] Ch 264	209
<i>Morris v Kanssen</i> [1946] AC 459 (HL)	176, 181, 184, 185, 196, 198, 215, 226, 227, 235, 238, 282, 283, 284
<i>Movitex v Bulfield</i> [1988] BCLC 104	268, 288
<i>Multinational Gas v Multinational Services</i> [1983] Ch 258 (CA)	43, 52, 56, 87, 89, 104, 117, 306
<i>Natal Land v Pauline Colliery Syndicate</i> [1904] AC 120 (PC)	134
<i>Neptune (Vehicle Washing Equipment) v Fitzgerald</i> [1995] BCC 474; [1995] BCC 1000	96, 273, 280, 281, 287, 291
<i>New Cedos Engineering, Re</i> [1994] 1 BCLC 797	87
<i>New Zealand Netherlands Society v Kuys</i> [1973] 1 WLR 1126 (PC)	294
<i>Newborne v Sensolid</i> [1954] 1 QB 45 (CA)	133, 136, 143, 145, 147
<i>Northside Developements v Registrar-General</i> (1990) 64 ALJR 427	6, 12, 196, 197, 283
<i>Northumberland Avenue Hotel Co, Re</i> (1886) 33 Ch D 16 (CA)	135
<i>NW Transportation Co v Beatty</i> (1887) 12 App Cas 589 (CA)	285
<i>Oakbank Oil v Crum</i> (1882) 8 App Cas 65 (HL)	76, 100
<i>Oshkosh B'Gosh Inc v Dan Marbel Inc</i> (1988) 4 BCC 795 (CA)	124, 126, 131, 132
<i>OTV Birwelco v Technical & General Guarantee</i> [2002] 2 BCLC 723; [2002] EWHC 2240	7, 124, 125, 128, 131, 171
<i>Oxford Benefit Building and Investment Society, Re</i> (1886) 35 Ch D 502	172

xxiii Table of Cases

<i>Pantone, Re 485</i> [2002] 1 BCLC 266	52, 89, 104, 267
<i>Parke v Daily News</i> [1962] Ch 927	89
<i>Pender v Lushington</i> (1877) 6 Ch D	70, 78, 79, 90
<i>Percival v Wright</i> [1902] 2 Ch 421	104
<i>Permanent Building Society v Wheeler</i> (1994) 14 ACSR 109	296
<i>Peskin v Anderson</i> [2001] 1 BCLC 372 (CA)	104
<i>Phonogram v Lane</i> [1982] QB 938 (CA)	133, 135, 136, 137, 140, 141, 150, 151, 160
<i>Plus Group v Pyke</i> [2002] 2 BCLC 201 (CA); [2002] EWCA Civ 370	268
<i>Porteous v Element Books</i> [1996] CLY 1029 (CA)	126, 130
<i>Precision Dippings v Precision Dippings Marketing</i> [1986] Ch 447 (CA)	87, 306
<i>Prudential Assurance Co v Newman Industries (No 2)</i> [1982] Ch 204 (CA)	120
<i>Quin & Axtens v Salmon</i> [1909] AC 442 (HL)	84, 91, 110
<i>Rackham v Peek Foods</i> [1990] BCLC 895	112, 307
<i>Rama v Proved Tin and General Investments</i> [1952] 2 QB 147	5, 176, 239, 242, 243, 244, 245, 257
<i>Rayfield v Hands</i> [1960] Ch 1	79
<i>Rayner v DTI</i> [1989] CH 77 (CA) [1990] 2 AC 418 (HL)	3, 40, 43, 56
<i>Regal (Hastings) v Gulliver</i> [1942] 1 All ER 378 (HL)	268, 272
<i>Rhodian River Shipping Co SA & Rhodian Sailor Shipping</i> <i>Co SA v Halla Maritime Corporation</i> [1984] 1 Lloyd's Rep 373	126, 128
<i>Riche v Ashbury Railway Carriage Co</i> (1874) LR 9 Ex 224	166
<i>Rita Joan Dairies v Thomson</i> [1974] 1 NZLR 285	138
<i>Rolled Steel v British Steel</i> [1986] 1 Ch 246 (CA)	96, 98, 102, 105, 106, 166, 169, 172, 173, 175, 176, 196, 197, 204, 218, 227, 232, 237, 275, 276, 279, 283
<i>Rover International v Cannon Film Sales</i> [1987] BCLC 540; (1987) 3 BCC 369	142, 145, 150, 151, 152, 153
<i>Royal British Bank v Turquand</i> (1855) 5 E & B 248; (affirmed) (1856) 6 E & B 327	5, 175, 225, 227, 230, 231, 232, 233, 236, 255
<i>Royal Brunei Airlines v Phillip Tan Kok Ming</i> [1995] 2 AC 378 (PC)	208
<i>Ruben v Great Fingall Consolidated</i> [1906] AC 439 (HL)	12, 238
<i>Runciman v Runciman plc</i> [1992] BCLC 1084; [1993] BCC 223	86, 88, 104, 173, 190, 191, 273, 277, 278, 279, 280, 281, 287, 290, 297, 299, 302
<i>Russo-Chinese Bank v Li Yay Sam</i> [1910] AC 174 (PC)	175, 252, 259

xxiv Table of Cases

<i>Salomon v Salomon & Co Ltd</i> [1987]	
AC 22 (HL)	3, 43, 44, 56, 182, 265, 266
<i>Schmaltz v Avery</i> (1851) 16 QB 655	145
<i>Selangor United Rubber Estates v Craddock</i> [1968] 1 WLR 1555	200
<i>Shackleford, Ford & Co v Dangerfield</i> (1868) LR 3 CP 407	124
<i>Shaker v Al-Bedrawi</i> [2003] Ch 350 (CA); [2002]	
EWCA Civ 1492	120
<i>Sharpe, Re</i> [1892] 1 Ch 154 (CA)	200
<i>Shaw (John) & Sons (Salford) v Shaw</i> [1935]	
2 KB 113 (CA)	84, 85, 106, 109, 119
<i>Shaw v Groom</i> [1970] 2 QB 504 (CA)	97, 154
<i>Silkstone & Haigh Moor Coal v Edey</i> [1900] 1 Ch 167 (CA)	268, 288
<i>Smith & Fawcett, Re</i> [1942] Ch 304 (CA)	69, 104, 267, 280
<i>Smith v Croft (No 2)</i> [1988] Ch 114	120
<i>Smith v Henniker-Major</i> [2002] Ch 182 (CA); [2002]	
EWCA Civ 762; [2002] BCC 544 (Ch D)	66, 82, 88, 96, 97, 103, 180, 183, 184, 185, 186, 187, 188, 189, 190, 191, 193, 214, 217, 278, 281
<i>Smith v The Hull Glass Co</i> (1852) 11 CB 897	4, 226
<i>South London Greyhound Racecourses v Wake</i> [1931] 1 Ch 496	238
<i>State of South Australia v Marcus Clark</i> (1996) 19 ACSR 606	276, 296
<i>Tavarone Mining Co, Re</i> (1873) LR 8 Ch App 956 (CA)	80
<i>TCB v Gray</i> [1986] Ch 621	5, 73, 171, 189, 190, 191, 192
<i>Teck Corporation v Millar</i> (1973) 33 DLR (3d) 288	107
<i>Tesco Supermarkets v Natrass</i> [1972] AC 153 (HL)	202
<i>Thompson's Settlement, Re</i> [1956] Ch 99	268, 270, 288
<i>Thorby v Goldberg</i> (1964) 112 CLR 597	115
<i>Tito v Waddell (No 2)</i> [1977] Ch 106	268, 270
<i>Todd v Robinson</i> (1885) 14 QBD 739 (CA)	275
<i>Top Creative v St Albans DC</i> [2000] 2 BCLC 379 (CA)	153
<i>Torvale Group, Re</i> [1999] 2 BCLC 605	75, 87, 110, 111, 175, 194, 215, 279
<i>Towcester Racecourse Company v The Racecourse Association</i>	
[2003] 1 BCLC 260; [2002] EWHC 2141	78
<i>Transvaal Lands v New Belgium</i> [1914] 2 Ch 488 (CA)	269, 274, 275
<i>Tudor Marine v Tradax Export ("The Virgo")</i> [1976]	
2 Lloyd's Rep 135 (CA)	145
<i>Twinsectra v Yardley</i> [2002] 2 AC 164; [2002] UKHL 12	212
<i>Underwood v Bank of Liverpool and Martins</i> [1924]	
1 KB 775 (CA)	70, 197, 237, 239
<i>Universal Steam Navigation Co v McKelvie</i> [1923] AC 492 (HL)	137
<i>W & M Roith, Re</i> [1967] 1 WLR 432	280
<i>Walker v WA Walker Personnel</i> [2002] BPIR 621	95, 286, 306
<i>Welfab Engineers, Re</i> [1990] BCLC 833	94

xxv Table of Cases

<i>West Mercia Safetywear v Dodd</i> [1988] BCLC 250 (CA)	52, 89, 94, 104, 267, 286, 307
<i>Wilson v Kelland</i> [1910] 2 Ch 306	206
<i>Wood v Odessa Waterworks</i> (1889) LR 42 Ch D 636	79
<i>Wright & Son v Romford BC</i> [1957] 1 QB 431	4
<i>Wright v Atlas Wright (Europe)</i> [1999] 2 BCLC 301 (CA)	87, 306
<i>Wright v Morgan</i> [1926] AC 788 (PC)	268
 <i>Zemco v Jerrom-Pugh</i> [1993] BCC 275 (CA)	 281

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Table of Legislation

EUROPE

First Directive on Company Law	10, 11, 13, 14, 82, 143, 144, 150, 163, 168, 169, 177, 178, 182, 184, 186, 187, 189, 193, 195, 232, 265
Art 7	139
Art 9	177
(1)	168, 189
(2)	187
Regulation 2157/2001 OJ 2001 L 294/1	76

UNITED KINGDOM – ACTS OF PARLIAMENT

Bills of Exchange Act 1882	237
s 82	237
Bubble Act 1720	45
Business Names Act 1985	124
s 4	124
Companies Act 1862	5
Companies Act 1948	79, 86, 131, 275, 289
s 20	79
(1)	79
s 108(4)	131
s 145(4)	86
Companies Act 1981	124
s 24(1)	124
Companies Act 1985	6, 7, 8, 10, 11, 45, 56, 61, 62, 73, 75, 76, 77, 78, 79, 82, 83, 84, 87, 88, 89, 90, 91, 98, 99, 100, 102, 106, 108, 110, 111, 114, 116, 123, 124, 125, 126, 128, 131, 133, 134, 139, 140, 151, 152, 153, 154, 158, 161, 163, 164, 165, 166, 168, 169, 170, 171, 173, 177, 178, 179, 180, 181, 184, 191, 194, 196, 199, 200, 201, 206, 212, 213, 214, 217, 219, 221, 226, 230, 248, 260, 261, 267, 268, 270, 273, 274, 278, 281, 285, 286, 288, 289, 290, 291, 297, 300, 301, 303, 306, 307, 308, 309, 311
Part X	11, 106, 213, 270, 273, 274, 285, 286, 300, 301
Part XI	123
Part XI	206
s 1(1)	123, 124

xxviii Table of Legislation

s 3(3)	77
s 3(A)	98
s 4	75, 84, 102, 110, 166
(1)	77
s 5	166
s 8(2)	78
s 9	75, 84, 110
(1)	77
s 13(3)	123, 124
s 14	79
(1)	78
s 16	77
s 17	110
(1)	77, 110
(2)	77, 110
s 28	124
(6)	124, 131
s 34	154
s 35	99, 100, 134, 163, 165, 169, 170, 179, 260
(1)	98, 164, 168
(2)	100, 165, 170
(3)	62, 77, 100
(4)	99, 165
ss 35–35B	10, 62
s 35A	82, 163, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 198, 199, 200, 201, 203, 204, 210, 212, 213, 214, 215, 216, 217, 218, 219, 221, 226, 227, 248, 260, 261, 281, 282, 298
(1)	179, 221
(2)	179
(a)	179
(b)	180, 199, 201, 212
(c)	180, 194
(3)	179
(4)	179
(5)	62, 179
(6)	179
s 35B	163, 179, 180, 195
s 36	6, 73, 125, 128, 152
(a) (inserted by CA 1989)	125, 161, 171
(b) (inserted by CA 1989)	8, 161, 171
(4) (pre-CA 1989 section)	139
ss 36–36C	169
s 36A	7, 125, 128
(2)	7, 125, 161
(3)	171
(4)	7, 161, 171
(5)	178

xxix Table of Legislation

(6)	10, 189
s 36C	133, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 155, 156, 159, 160
(1)	140, 144
s 81	45
s 125	78, 89, 110
(2)	110
(3)	110
ss 125-7	110
s 142	261
s 199	275, 289
s 263	98
s 282	83
s 285	230
s 303	83, 84, 88
s 309	114
s 310	268
(3)	56, 62
s 311	301
ss 311-3	278
s 312	301
s 317	274, 275, 285, 287, 289, 290, 291
(1)	270
(3)	274, 290
(7)	285
(9)	289
s 318	301
s 319	91, 108, 267, 273, 278
s 320	91, 108, 116, 213, 267, 273, 274, 286, 297, 303, 304, 305, 306, 307, 308, 309, 310, 311
(2)	311
s 320-2	87, 286, 306
s 321	303
(2)	303
s 322	173, 288, 297, 303, 311
(2)(a)	311
(4)	303
(5)	311
s 322A	10, 62, 163, 173, 179, 180, 181, 182, 183, 184, 185, 187, 213, 214, 215, 216, 261, 267, 274, 281, 282, 297, 298, 303, 311
(1)	213, 303
(2)	180, 213, 303
(3)	214, 282, 303
(4)	183
(5)	181, 214, 282
(6)	214, 282
(7)	181, 216, 217
ss 330-44	273

xxx Table of Legislation

ss 330–46	301
s 346	180, 213, 274, 286, 290, 307
ss 348–51	123
s 348(1)	123
s 349	126
(1)	123
(4)	131, 158, 159
s 350	7
(1)	125, 128, 171
(2)	128, 171
s 351(1)	125
s 369	111
(4)	111
s 370(6)	90
ss 373–74	90
s 378	111
(1)	75, 90
(2)	75, 90
(3)	111
s 380	177
s 382	291
s 395	206
s 459	77
s 652	152
s 653	153
(3)	153
s 711A	180, 196, 261
s 727	200
s 735(1)	151
(4)	151
s 736(1)	213
s 739(1)	308
(2)	308
s 741(1)	83, 191
Companies Act 1989	4, 6, 7, 56, 62, 77, 98, 99, 102, 125, 130, 139, 140, 161, 163, 164, 165, 166, 168, 169, 179, 180, 196, 261, 262
s 108	163, 179
s 130(4)	140
s 142	196
s 349	
(2)	131
(3)	131
(4)	130, 131
Company Directors Disqualification Act 1986	56
Consumer Protection Act 1987	40
Contracts (Rights of Third Parties) Act 1999	7, 156, 157, 158, 159
s 1(3)	157

xxxii Table of Legislation

European Communities Act 1972	133, 139, 140, 150, 168, 169, 189
s 9(1)	164, 168, 169, 189
(2)	133, 139, 140, 150
Insolvency Act 1986	3, 11, 43, 56, 95, 168, 307
s 178	1
s 186	11
s 214	3, 43, 56
s 238	11, 95, 168, 307
s 239	11, 95, 168, 307
Insolvency Act 2000	56
Joint Stock Companies Act 1844	2, 3, 4, 5, 44, 83, 176, 225
Joint Stock Companies Act 1856	4, 5
Law of Property Act 1925	163, 178
s 36A(6)	163, 164, 178
s 74(1)	163, 178
Law of Property Act 1989	4, 7
Limited Liability Act 1855	3, 40, 44, 225
Partnership Act 1890	225
s 5	225

UNITED KINGDOM – STATUTORY INSTRUMENTS

Companies (Fair Dealing by Directors) (Increase in Financial Limits) Order 1990 SI/1990/1393	307
Art 2(a)	307
Companies (Tables A to F) Regulations 1985 SI/1985/805	5, 183, 267, 270
Table A	5, 54, 183, 267, 268, 270, 275, 277, 279, 289, 291, 293
reg 70	77
reg 72	54
reg 84	277
(1)	275, 289
reg 85	268, 270, 289, 293
reg 86	291
reg 94	267, 275, 279
reg 95	279
Companies Act 1989 (Commencement No 6 and Transitional and Saving Provisions) Order 1990 SI/1990/1932 6	161
Companies Act 1989 (Commencement No 8 and Transitional and Saving Provisions) Order 1990 SI/1990/2569	163, 179
Directors' Remuneration Report Regulations 2002 SI/2002/1986	302
Foreign Companies (Execution of Documents) Regulations 1994 SI/1994/950	140, 151, 152, 169
Foreign Companies (Execution of Documents) Regulations 1995 SI/1995/1729	140, 151, 169

Preface

The aim of this book is to survey and analyse those areas of Company Law concerned with the making of contracts. In keeping with the spirit of 'Contemporary Studies in Corporate Law', it examines this law in its economic context. The DTI's 'Company Law Review', which produced its Final Report in 2001, has acknowledged the economic role of Company Law and identified improving the 'competitiveness' of companies as a goal of Company Law reform. This book argues that reforming the law of corporate contracting can contribute to the pursuit of this goal.

John Parkinson encouraged me to write this book for the series. His untimely and unexpected death in February 2004 has been a great loss to academic law and to Company Law in particular. His reputation and influence spread far beyond the legal community and his leading role in the steering group of the Company Law Review and in the aftermath of that project has been widely acknowledged and commended. I am grateful for his advice during the writing of this book and for his comments on the draft manuscript.

In writing this book, I have been helped by many friends and colleagues. I am grateful in particular to David Milman for his comments and advice and to Simon Baughen, Gerard McCormack and Anthony Ogus for commenting on various draft chapters. I would also like to thank Laura Short and Myra Knutton for their help and Richard Hart for his patience and support.

Whilst I have attempted to state the law as at the end of April 2004, I have been able to take some account of subsequent developments, in particular the judgments of the Court of Appeal in *EIC Services v Phipps* and the House of Lords in *Criterion Properties v Stratford Properties*.