CHAPTER 4

LAW AND PRECEDENT

. . . the lawless science of our law,
That codeless myriad of precedent,
That wilderness of single instances . . .

Alfred Lord Tennyson:
Aylmer's Field

1. LAW AND FACT

The proper construction of a written contract is a question of law. However, the ascertainment of the meaning of a particular word is a question of fact.[1] 4.01

The division between what is a question of law and what is a question of fact is extremely difficult to draw.[2] However, it has been said on many occasions that the proper interpretation of a contract is a question of law. Thus it is for the judge to interpret the contract, even when he is assisted by a jury,[3] and the jury is bound to accept the judge's direction upon the construction of the contract. Indeed, it is largely because trials were heard by juries that the construction of a contract is classified as a question of law at all. As Lord Diplock pointed out in *Pioneer Shipping Ltd v B. T.P. Tioxide Ltd*:

> ". . . in English jurisprudence, as a legacy of the system of trial by juries who might not all be literate, the construction of a written agreement, even between private parties, became classified as a question of law . . . A lawyer nurtured in a jurisdiction which did not owe its origin to the common law of England would not regard it as a question of law at all . . . Nevertheless, despite the disappearance of juries, literate or illiterate, in civil cases in England, it is far too late to change the technical classification of the ascertainment of the meaning of a

[1] This paragraph was referred to with approval in *Canada (Attorney General) v Rostrust Investments Inc* [2007] CanLII 1878.

[2] The problem notably arose in connection with the law of mistake: see *Midland Great Western Railway of Ireland v Johnson* (1858) 6 H.L.Cas. 798; *Cooper v Phibbs* (1867) L.R. 2 H.L. 149; *Solle v Butcher* [1950] 1 K.B. 671. The distinction between law and fact in that context is nowadays of little, if any, importance.

[3] e.g. to determine whether a trade custom has been proved, or whether a word bears a secondary trade meaning. In *Turner v Sawdon & Co* [1901] 2 K.B. 653, the trial judge left a question of construction to the jury. The Court of Appeal held that he was wrong to do so, as there was no question proper to be left to the jury. See also *Grenfell v E Meyrowitz Ltd* [1936] 2 All E.R. 1313.

written contract between private parties as being 'a question of law' for the purposes of judicial review . . ."

In *Carmichael v National Power Plc*[4] Lord Hoffmann, while agreeing with Lord Diplock's account of the original reason for the classification, added a further historical gloss:

"[T]he rule was adopted in trials by jury for purely pragmatic reasons. In mediaeval times juries were illiterate and most of the documents which came before a jury were deeds drafted by lawyers. In the eighteenth and nineteenth centuries the rule was maintained because it was essential to the development of English commercial law. There could have been no precedent and no certainty in the construction of standard commercial documents if questions of construction had been left in each case to a jury which gave no reasons for its decision."

In *Khan v Khan*[5] Arden L.J. said that there can be no difference in principle between the rules which apply to the interpretation of contractual documents and those which apply to oral contracts.[6]

However, in *Thorner v Majors*,[7] in the context of a discussion of proprietary estoppel rather than contract, Lord Neuberger of Abbotsbury said:

"(a) the interpretation of a purely written contract is a matter of law, and depends on a relatively objective contextual assessment, which almost always excludes evidence of the parties' subjective understanding of what they were agreeing, but (b) the interpretation of an oral contract is a matter of fact (I suggest inference from primary fact), rather than one of law, on which the parties' subjective understanding of what they were agreeing is admissible."

Apart from the historical origins of the rule (trial by jury) Lord Neuberger suggested that the dichotomy was underpinned by practical reasons. He said:

"If the contract is solely in writing, the parties rarely give evidence as to the terms of the contract, so it is cost-effective and practical to exclude evidence of their understanding as to its effect. On the other hand, if the contract was made orally, the parties will inevitably be giving evidence as to what was said and done at the relevant discussions or meetings, and it could be rather artificial to exclude evidence as to their contemporary understanding. Secondly, and perhaps more importantly, memory is often unreliable and self-serving, so it is

[4] [1999] W.L.R. 2024.

[5] [2008] Bus. L.R. D73 *Khan v Khan* was followed in *Kahn v Dunlop Haywards (DHL) Ltd* [2007] EWHC 2659 (QB). This corresponds with the view expressed in a previous edition of this book. That edition referred to *Torbett v Faulkner* [1952] 2 T.L.R. 659, in which Romer L.J. said that the ascertainment of the effect of an oral contract was "entirely a question of fact and no question of construction arises". Cf. *Yorkshire Insurance Co Ltd v Campbell* [1917] A.C. 218 at 221, per Lord Sumner. In the author's view this approach conflates the identification of contract terms and their interpretation.

[6] See also *Masterton Homes Pty Ltd v Palm Assets Pty Ltd* [2009] NSWCA 234.

[7] [2009] 1 W.L.R. 776.

better to exclude evidence of actual understanding when there is no doubt as to the terms of the contract, as when it is in writing. However, it is very often positively helpful to have such evidence to assist in the interpretation of an oral contract, as the parties will rarely, if ever, be able to recollect all the details and circumstances of the relevant conversations."

The practical considerations to which he referred do not appear to differentiate between identifying the terms of an oral contract (upon which oral evidence is admissible) and interpreting those terms once they have been identified. In the penultimate sentence of the cited passage Lord Neuberger refers to a written contract where "there is no doubt as to the terms". This can only mean that there is no doubt about what terms were agreed, rather than no doubt about what they mean. The final sentence, however, refers to admitting evidence of subjective intention, not for the purpose of identifying the terms of the contract (what terms were agreed?) but for the purpose of interpreting it (what do the agreed terms mean?). It is submitted that this would be a major departure from the objective nature of contractual interpretation, and indeed seems at variance with the actual decision in the case itself, which was that a representation or assurance should be objectively interpreted, albeit in the context of the particular relationship between the representor and the representee.

Since the proper construction of a written contract is a question of law, the court is not bound by concessions about its meaning made by counsel in the course of argument. In *Bahamas International Trust Co Ltd v Threadgold*[8] Lord Diplock said:

"In a case which turns, as this one does, on the construction to be given to a written document, a court called on to construe the document in the absence of any claim to rectification, cannot be bound by any concession made by any of the parties as to what its language means. That is so even in the court before which the concession is made; *a fortiori* in the court to which an appeal from the judgment of the court is brought. The reason is that the construction of a written document is a question of law. It is for the judge to decide for himself what the law is, not to accept it from any or even all of the parties to the suit; having so decided it is his duty to apply it to the facts of the case. He would be acting contrary to his judicial oath if he were to determine the case by applying what the parties conceived to be the law, if in his own opinion it were erroneous."

For the same reason, the court is not restricted to an interpretation which has been advanced by counsel. Since the question of construction is one of law, it is at large.[9]

[8] [1974] 1 W.L.R. 1514, HL, applied in *Biggin Hill Airport Ltd v Bromley L.B.C.* [2001] EWCA Civ 1089, CA.

[9] *Charter Reinsurance Co Ltd v Fagan* [1997] A.C. 313, CA (reversed by HL on different grounds).

However, in *HLB Kidsons v Lloyd's Underwriters*[10] Rix L.J. said that "a judge should be very sure of his ground" before rejecting a concession about a one-off document, affecting only the parties to the contract, where the party making the concession was as experienced in reading and evaluating such documents as anyone.

Although the ascertainment of the meaning of a written contract is a question of law, many steps in the process of ascertaining that meaning are classified as questions of fact.[11] In *Brutus v Cozens*,[12] an appeal concerned the meaning of the word "insulting" as applied to the phrase "insulting behaviour" in the Public Order Act 1936. Lord Reid said:

> "It is not clear to me what precisely is the point of law which we have to decide. The question in the case stated for the opinion of the court is 'Whether, on the above statement of facts, we came to a correct decision in point of law.' This seems to assume that the meaning of the word 'insulting' in s.5 is a matter of law. And the Divisional Court appear to have proceeded on that footing. In my judgment that is not right. The meaning of an ordinary word of the English language is not a question of law. The proper construction of a statute is a question of law. If the context shows that a word is used in an unusual sense the court will determine when that unusual sense is. But here there is in my opinion no question of the word 'insulting' being used in any unusual sense."

This distinction applies to written contracts in the same way.[13]

Nor is this approach confined to "ordinary" words. The ascertainment of a technical term is equally a question of fact. So in *Hill v Evans*,[14] Lord Westbury L.C. said:

> "It is true, as a proposition of law, that the construction of a specification (like the construction of all other written instruments) belongs to the Court; but the specification of an invention contains generally, if not always, some technical terms, some phrases of art, some description of processes which require the light to be derived from what are called the surrounding circumstances. It is therefore an admitted rule of law, that the explanation of the words or technical terms of art, the phrases used in commerce and the proof and results of the processes which are described (and in a chemical patent, the ascertainment of chemical equivalents) that all these are matters of fact upon which evidence

[10] [2009] 1 Lloyd's Rep. 8 at [84].
[11] In *Torbett v Faulkner* [1952] 2 T.L.R. 659, Romer L.J. said that the ascertainment of the effect of an oral contract was "entirely a question of fact and no question of construction arises". Cf. *Yorkshire Insurance Co Ltd v Campbell* [1917] A.C. 218 at 221, per Lord Sumner. These views seem to conflate two stages in the overall question of interpretation.
[12] [1973] A.C. 854.
[13] *Commonwealth Smelting Ltd v Guardian Royal Exchange Assurance Ltd* [1986] 1 Lloyd's Rep. 121; *Belgravia Navigation Co SA v Cannor Shipping Inc., The Times*, April 18, 1988; *Norwich Union Life Insurance Society v P. & O. Property Holdings Ltd* [1993] 1 E.G.L.R. 164, CA; *Fitzroy House Epworth Street (No.1) Ltd v The Financial Times Ltd* [2006] 2 All E.R. 776.
[14] (1862) 4 De G.P. & J. 288 (a case of interpretation of patents).

> may be given, contradictory testimony may be adduced, and upon which it is the province and the right of a jury to decide."

The process of construction or interpretation, therefore, consists of at least two elements, one element of which is factual, and the other legal. The two stage process was summarised by Lindley L.J. in *Chatenay v Brazilian Submarine Telegraph Co Ltd*[15] as follows:

> "The expression 'construction,' as applied to a document, at all events as used by English lawyers, includes two things: first the meaning of the words; and secondly their legal effect, or the effect to be given to them. The meaning of the words I take to be a question of fact in all cases, whether we are dealing with a poem or a legal document. The effect of the words used is a question of law."

Thus in a criminal trial it is the function of the judge to rule on the interpretation of a contract, rather than the function of the jury to decide what it means as a question of fact.[16] However, in a libel action although the question whether words are *capable* of bearing a defamatory meaning is a question of law of the judge, whether they *do* bear such a meaning is a question of fact for the jury.[17]

Most questions of fact cannot be determined by the court without evidence to prove them. Sometimes, however, the court may take judicial notice of facts, in which case they may be regarded as proved without the necessity of evidence. Even in such a case, however, it seems unlikely that a party could be prevented from leading evidence on such a fact. In the case of the determination of the meaning of an ordinary English word, evidence of meaning is positively inadmissible. Thus in *Lovell and Christmas Ltd v Wall*,[18] Fletcher Moulton L.J. said:

> "I think that it is arguable that evidence may be taken as to the meaning of the word 'provision merchants'. I say that it is arguable because it must not be thought that the court cannot take judicial cognisance of the fact that the words have different meanings in different contexts. For instance I doubt very much whether the court ought to take evidence as to the meaning of the word 'chair'. That word in connection with domestic furniture has one meaning. But 'chair' in connection with a railway has another. I very much doubt whether a court would consider itself perfectly entitled to take cognisance of the fact that 'chair' used in connection with a railway, means a mode of fastening a rail to a sleeper."

It is, therefore, a curiosity that the ascertainment of the meaning of an ordinary English word is a question of fact which cannot be proved by any admissible evidence.[19]

[15] [1892] 1 Q.B. 79. See also *Neilson v Harford* (1841) 8 M. & W. 806 at 823, per Parke B.
[16] *R. v Spens* [1991] 1 W.L.R. 624, CA.
[17] *Slim v Daily Telegraph* [1968] 2 Q.B. 157.
[18] (1911) 104 L.T. 85. See also *Marquess Camden v IRC* [1913] 1 K.B. 641. In 1977 the word "supermarket" was sufficiently out of the ordinary for evidence to be admissible to explain it: *Calabar (Woolwich) Ltd v Tesco Stores Ltd* [1978] 1 E.G.L.R. 113.
[19] The logic of the rule has been questioned in Australia: *Pepsi Seven-Up Bottlers Perth Pty Ltd v Commissioner of Taxation* (1995) 62 FCR 289; *Dyson v Pharmacy Board* (2000) 50 N.S.W.L.R. 523.

of Property Act 1925 the word "person" meant a natural person and not an artificial person such as a limited company.

Deutsche Genossenschaftsbank v Burnhope[281]

2. A partnership deed provided that if "any partner" committed certain breaches of the agreement then "the other partners" could expel him from the partnership. It was held that notwithstanding s.61 of the Law of Property Act 1925 "the other partners" meant all the other partners, and that one partner could not act alone.

Re a Solicitors' Arbitration[282]

3. A restrictive covenant prohibited use of the burdened land except for the purposes of "a private dwellinghouse". It was held that notwithstanding s.61 of the Law of Property Act 1925 this prevented the use of the land for two or more dwellinghouses.

Crest Nicholson Residential (South) Ltd v MacAllister[283]

[281] [1995] 1 W.L.R. 1580, HL.
[282] [1962] 1 W.L.R. 353.
[283] [2003] 1 All E.R. 46, criticised in *Martin v David Wilson Homes Ltd* [2004] 3 E.G.L.R. 77.

CHAPTER 6

IMPLIED TERMS

Heard melodies are sweet
But those unheard are sweeter

Keats:
Ode on a Grecian Urn

1. THE NATURE OF IMPLIED TERMS

The implication of a term into a contract depends on the presumed intention of the parties. In some cases that intention is collected merely from the express words of the contract or from a combination of the express words of the contract and the surrounding circumstances; in others it is collected from the nature of the legal relationship into which the parties have entered. 6.01

The expression "implied term" is used by lawyers in a wide variety of senses, and a wider variety of circumstances. In *Luxor (Eastbourne) Ltd v Cooper*[1] Lord Wright said:

> "The expression 'implied term' is used in different senses. Sometimes it denotes some term which does not depend on the actual intention of the parties but on a rule of law, such as the terms, warranties or conditions which, if not expressly excluded, the law imports, as for instance under the Sale of Goods Act and the Marine Insurance Act. But a case like the present is different because what it is sought to imply is based on an intention imputed to the parties from their actual circumstances."

In this passage Lord Wright distinguishes between two types of implied term; those which are rules of law, and those which are based on an intention imputed to the parties from their actual circumstances. The rules of law arise because of the nature of the contract into which the parties have entered. In other words the parties have manifested an intention to enter into a relationship of employer and employee, or buyer and seller, or landlord and tenant, and in consequence the law imputes to them a certain intention by virtue of their express intention to enter into that relationship.

[1] [1941] A.C. 108 at 137.

Implied terms of this kind operate as "default rules"[2] as opposed to "ad hoc gap fillers".[3] Where the default rules are those imposed by the common law, it is thought that the parties can in general exclude them by express words.[4] But where they are imposed by statute, it is a question of interpretation of the statute whether they can be excluded. The distinction between standardised implied terms and individual implied terms arising out of a particular contract has become more pronounced over the years. The distinction was drawn by Viscount Simonds and Lord Tucker in *Lister v Romford Ice and Cold Storage Co Ltd.*[5] However, it was not clearly developed until the decision of the House of Lords in *Liverpool City Council v Irwin.*[6] In that case, the House of Lords held that there was to be implied into a contract of tenancy of a flat in a high rise block an obligation on the part of the landlord to take reasonable care to keep in repair and lit essential means of access and rubbish chutes. The clearest expression of the distinction between the two types of implied term is to be found in the speech of Lord Cross of Chelsea who said:

> "When it implies a term in a contract the court is sometimes laying down a general rule that in all contracts of a certain type-sale of goods, master and servant, landlord and tenant, and so on-some provision is to be implied unless the parties have expressly excluded it. In deciding whether or not to lay down such a prima facie rule the court will naturally ask itself whether in the general run of such cases the term in question would be one which it would be reasonable to insert. Sometimes, however, there is no question of laying down any prima facie rule applicable to all cases of a defined type but what the court is being in effect asked to do is to rectify a particular—often a very detailed—contract by inserting in it a term which the parties have not expressed. Here it is not enough for the court to say that the suggested term is one the presence of which would make the contract a better or fairer one; it must be able to say that the insertion of the term is necessary to give—as it is put—business efficacy to the contract and that if its absence had been pointed out at the time both parties assuming them to have been reasonable men-would have agreed without hesitation to its insertion."

A similar distinction was also drawn by Lords Wilberforce, Edmund-Davies and Fraser of Tullybelton.[7] This approach was repeated by Lord Denning M.R. in *Shell UK Ltd v Lostock Garage Ltd*,[8] in which he distinguished between:

[2] *Mahmud & Malik v BCCI* [2000] A.C. 20 at 45 per Lord Steyn.
[3] *Equitable Life Assurance Society v Hyman* [2002] 1 A.C. 408 at 459 per Lord Steyn.
[4] *Photo Productions Ltd v Securicor Transport Ltd* [1980] A.C. 827 at 848 per Lord Diplock.
[5] [1957] A.C. 555.
[6] [1977] A.C. 239. See also *Duke of Westminster v Guild* [1985] Q.B. 688.
[7] Lord Wilberforce described the term as arising as a matter of necessity from the relationship which the parties had agreed upon. The latter two described the term as a "legal incident" of the kind of contract.
[8] [1976] 1 W.L.R. 1187.

> "all those relationships which are of common occurrence, such as the relationship of seller and buyer, owner and hirer, master and servant, landlord and tenant, carrier by land and by sea, contractor for building works, and so forth."[9]

and:

> "cases, not of common occurrence in which from the particular circumstances a term is to be implied."

Where the court is concerned with a tailor-made implied term, the general test is that of necessity, in the sense that it is what the contract must mean.[10] Where however, the term in question is said to be a standard term in a contract of a particular nature, wider questions arise. In *Crossley v Faithful & Gould Holdings Ltd*[11] Dyson L.J. said:

> "It seems to me that, rather than focus on the elusive concept of necessity, it is better to recognise that, to some extent at least, the existence and scope of standardised implied terms raise questions of reasonableness, fairness and the balancing of competing policy considerations."[12]

In *Makers UK Ltd v Camden London Borough Council*[13] Akenhead J. considered the judgment of Dyson L.J. in *Crossley v Faithful & Gould Holdings Ltd*,[14] where a term was implied as an incident of a legal relationship. He said:

> "I do not consider that Dyson LJ was rejecting the 'necessity' element of the implication of terms; that is too well established in English law. He found it simpler to concentrate in that case on the other elements."[15]

It may well be that all circumstances in which the court implies terms (and hence the nature of the terms implied) are but "shades on a continuous spectrum".[16] Professor Glanville Williams observes[17] that there are at least three kinds of implied terms:

(i) terms that the parties probably had in mind but did not trouble to express;

(ii) terms that the parties, whether or not they actually had them in mind, would probably have expressed if the question had been brought to their attention; and

[9] He declined to hold, although tempted, that a "solus" agreement, under which a petrol filling station operator agreed to buy all petrol from a single supplier, was of sufficiently common occurrence to fall within the first category.
[10] For different formulations of the test see **para.6.05** below.
[11] [2004] 4 All E.R. 447.
[12] See Peden, "Policy concerns behind implication of terms in law" (2001) 117 L.Q.R. 459.
[13] (2008) 120 Con. L.R. 161.
[14] [2004] 4 All E.R. 447.
[15] The author is not convinced that this observation is correct.
[16] *Liverpool City Council v Irwin* [1977] A.C 239 at 253, per Lord Wilberforce.
[17] In his justly celebrated article "Language and the Law" (1945) 61 L.Q.R. 71 at 401.

(iii) terms that, whether or not the parties they had them in mind or would have expressed them if they had foreseen the difficulty, are implied by the court because of the court's view of fairness or policy or in consequence of rules of law.

He points out that of these three kinds of implied term: (i) is an effort to arrive at actual intention; (ii) is an effort to arrive at hypothetical or conditional intention-the intention that the parties would have had if they had foreseen the difficulty; and (iii) is not concerned with the intention of the parties except to the extent that the term implied by the court may be excluded by an expression of positive intention to the contrary. However, as has been seen in Chapter 2, the actual intention of the parties is not what the court is trying to ascertain. What the court seeks to ascertain is the presumed intention of the parties (or more accurately the meaning that the contract would convey to a reasonable reader). It is, therefore, more accurate to describe case (i) as an effort to arrive at the presumed intention of the parties, rather than their actual intention; or what the reasonable reader would understand the contract to mean.[18] Both case (i) and case (ii) involve a search for the presumed intention of the parties, although case (ii) requires the further assumption that the subsequent difficulty was foreseen at the date of the contract. The contrast between actual and presumed intention in this context was explained by Mason J. in *Codelfa Construction Pty Ltd v State Rail Authority of New South Wales*[19] as follows:

"The implication of a term is to be compared, and at the same time contrasted, with rectification of a contract. In each case the problem is caused by a deficiency in the expression of the consensual agreement. A term which should have been included has been omitted. The difference is that with rectification the term which has been omitted and should have been included was actually agreed upon; with implication the term is one which the parties would have agreed had they turned their minds to it-it is not a term actually agreed upon. Thus, in the case of the implied term the deficiency in the expression of the consensual agreement is caused by the failure of the parties to direct their minds to a particular eventuality and to make explicit provision for it. Rectification ensures that the contract gives effect to the parties' actual intention; the implication of a term is designed to give effect to the parties' presumed intention."

Early expressions of the function of the court in implying terms repeatedly stressed the intention of the parties. Thus in *The Moorcock*,[20] Bowen L.J. said:

"I believe that if one were to take all the instances, which are many, of implied warranties and covenants in law which occur in the earlier cases which deal with real property, passing through the instances which relate to the warranties

[18] *Attorney General of Belize v Belize Telecom Ltd* [2009] 1 W.L.R. 1988.
[19] (1982) 149 C.L.R. 337 at 346. See also *Liverpool City Council v Irwin* [1977] A.C. 239 at 266D, per Lord Edmund-Davies.
[20] (1889) 14 P.D. 64 at 68. See also *Hamlyn & Co v Wood & Co* [1891] 2 Q.B. 488, per Kay L.J. ("the court ought not to imply a term in a contract unless there arises such an inference that the parties must have intended the stipulation in question that the court is necessarily driven to the conclusion that it must be implied").

of title and of quality, and the cases of executory sale and other classes of implied warranties like the implied authority of an agent to make contracts, it will be seen that in all these cases the law is giving to the transaction such efficacy as both parties must have intended it should have."

In these and similar passages, the judges concentrated on the presumed intention of the parties. In later cases, however, the distinction drawn by Lord Wright[21] has come to the fore.

In practice however, the court does not always adhere to any rigid division between different kinds of implied term; rather it treats them as shades on a continuous spectrum.[22] In the case of most commercial contracts, the implication of a term may be based either on textual considerations or on a combination of the text of the contract and the background facts. In some cases, however, the court will not imply a term on the basis of background facts. In *Bratton Seymour Service Co Ltd v Oxborough*,[23] Steyn L.J. said of a company's articles of association:

"I will readily accept that the law should not adopt a black-letter approach. It is possible to imply a term purely from the language of the document itself: a purely constructional implication is not precluded. But it is quite another matter to seek to imply a term into articles of association from extrinsic circumstances. Here the company puts forward an implication to be derived not from the language of the articles of association but purely from extrinsic circumstances. That, in my judgment, is a type of implication which, as a matter of law, can never succeed in the case of articles of association. After all, if it were permitted, it would involve the position that the different implications would notionally be possible between the company and different subscribers."

This dictum has been approved by the Privy Council.[24]

In *Mosvolds Rederi A/S v Food Corp of India*,[25] however, Steyn J. spoke of three categories of implied term. He said:

"Sometimes it is said that a term is implied into the contract when in truth a positive rule of law of contract is applied because of the category in which a particular contract falls. Another type of implied term is a term in order to give business efficacy to the contract. The basis of such an implication is that the contract is unworkable without it. There is, however, another form of implication. It is not permissible to imply a term simply because the court considers it to be reasonable. On the other hand, it is possible to imply a term, if the court or arbitrator, as the case may be, is satisfied that reasonable men, faced with the suggested term which *ex hypothesi* was not expressed in the contract, would

[21] *Luxor (Eastbourne) Ltd v Cooper* [1941] A.C. 108.
[22] *Liverpool City Council v Irwin* [1977] A.C. 239 at 253, per Lord Wilberforce.
[23] [1992] B.C.L.C. 693.
[24] *HSBC Bank Middle East v Clarke* [2006] UKPC 31; [2007] L.R.C. 544; *Attorney General of Belize v Belize Telecom Ltd* [2009] 1 W.L.R. 1988.
[25] [1986] 2 Lloyd's Rep. 68.