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CHRISTOPHER DURRANT

CORPORATE INSOLVENCY: LAW AND PRACTICE

SWEET & MAXWELL

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**CORPORATE INSOLVENCY:
LAW AND PRACTICE**

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PREFACE

From the viewpoint of the present authors, corporate insolvency law has one great attraction: it is an area where collaboration between the academic and the practitioner can be particularly fruitful. It is impossible for the practitioner to be effective in this field without the necessary conceptual grounding, and the "ivory tower" academic is unlikely to be able to acquire the necessary sense of proportion unless he takes steps to find out what is happening on the ground. Like it or not, such concepts as "the floating charge", "the fixed charge on future assets", and "title retention" involve abstract legal ideas of some subtlety, but they are of crucial practical importance. It is fair to say that, in purely monetary terms, millions of pounds each year turn upon the application of these concepts to practical situations. There can be few areas of law which are at once so conceptually satisfying and of such vital day-to-day importance to practitioners and their clients.

There are other reasons why at present a partnership of talents is particularly helpful in this field. One is that corporate insolvency principles have been evolving over the past couple of years at a rate so giddy that the busy practitioner cannot hope to keep fully abreast both of developments and his current workload without assistance from the academic. On the other hand, the practitioner will frequently encounter real situations to which new or undecided law must be applied long before anything like them has come before any court. As he is often concerned to make sure that, in his client's case at least, the matter never does come before a court, it may be many months or years before his academic colleague becomes aware of common problems which are of considerable importance but to which there are no clear or certain answers. The reader will find a number of "practice scenarios" in the following chapters illustrating problems of this type. The authors have enjoyed pooling their skills in suggesting solutions to these problems and hope the reader will consider the results worthwhile.

One thing which has recently united lawyers, whether academics or practitioners, and accountants working in the field of corporate insolvency, is their common feeling of righteous indignation at the extent to which their existence has been poisoned by the legislature lately. After years of delay Parliament at last produced the Companies Act 1985, the long awaited consolidating statute incorporating virtually the whole of company law into a single Act. The Department of Trade mounted a special campaign to acquaint practitioners with the contents of the new legislation, and even gave them additional time to familiarise themselves with its layout. Yet at the same time, in a belated and inadequate response to the 1982 Cork Report, the Bill which was to become the Insolvency Act 1985, was piloting its perilous course through the Houses of Parliament, attracting 1,200 amendments in the process. This Bill contained sections amending or replacing the consolidating Companies Act 1985!

Not content with this piece of lunatic legislative mismanagement, the Government chose to force the Bill through its last stages in the Lords in a manner little short of a national disgrace. The Upper House, in which this non-political Bill had started its Parliamentary Odyssey, was threatened with the removal of its right to introduce major legislation into Parliament.

The brave new world under which company law was to be found in a single statute did not last long, therefore. It was hardly surprising that many lawyers pointed out the obvious, namely that the Government had put the cart before the horse in passing the Insolvency Act 1985 after a consolidating statute on company law. The Government responded by announcing on December 17, 1985 that it had decided to reconsolidate corporate insolvency law into a single statute, presumably by way of making a right out of two wrongs. In fact we have ended up with two statutes, the Insolvency Act 1986 and the Company Directors Disqualification Act 1986, and an unfortunate and artificial separation between the law on corporate insolvency and the general company law with which it is inextricably connected.

It is to be hoped that Parliament will now allow the dust to settle for a while on corporate insolvency law. Litigation in the courts observes no such moratorium, however, and there have been a number of important decisions over the past nine months, during the writing of this book. We have accommodated as many as possible.

Having outlined our aspirations, and recounted our troubles, in producing this monograph we must leave it to the reader to judge our efforts. We recognise that where we have ventured into uncharted waters, the map making may prove less than perfect but we hope at least to have saved those who follow a good deal of preliminary labour.

We would like to thank our respective wives, Catherine and Pam, and Chris's partners, for their help and encouragement, and also Alan Sugar without whose business acumen the writers of legal textbooks would be an even more diffident and under-rewarded race than they now are.

We have attempted to state the law as at March 1, 1987.

DAVID MILMAN
CHRIS DURRANT
1987

GUIDE TO LAW REPORTS

AC	Appeal Cases (1891–)
ACLR	Australian Company Law Reports
App Cas	Appeal Cases (1875–90)
ALJR	Australian Law Journal Reports
All ER	All England Law Reports
BCC	British Company Cases
BCLC	Butterworths Company Law Cases
Build Law Rep	Building Law Reports
CBNS	Common Bench New Series (English Reports)
Ch	Chancery Division (1891–)
Ch App	Chancery Appeals (1865–75)
Ch D	Chancery Division (1875–90)
CLC	Current Law Consolidated
CLD	Company Law Digest
CLR	Commonwealth Law Reports (Australia)
CLY	The Company Law Yearbook
Co Law	The Company Lawyer
Com L R	Commercial Law Reports
Crim L Rev	Criminal Law Review
De G J & Sm	De Gex, Jones & Smith
DLR	Dominion Law Reports (Canada)
E & B	Ellis & Blackburn (English Reports)
E B & E	Ellis, Blackburn & Ellis (English Reports)
ECR	European Court Reports
EG	Estates Gazette
FTCLR	Financial Times Commercial Law Reports
FTLR	Financial Times Law Reports
ICR	Industrial Cases Reports
IL & P	Insolvency Law and Practice
ILRM	Irish Law Reports Monthly
ILT	Irish Law Times
IR	Irish Reports
JP	Justice of the Peace
KB	Kings Bench
LJ	Law Journal
LJ Ch	Law Journal (Chancery)
Lloyd's Rep	Lloyd's Law Reports
LR Eq	Law Reports Equity (1865–75)
LT	Law Times
LT Jo	Law Times Journal
M & W	Meeson & Welsby (English Reports)
NI	Northern Irish Reports
NIJB	Northern Irish Judicial Bulletin
NLJ	New Law Journal
NSWLR	New South Wales Law Reports
NSWR	New South Wales Reports
NZCLC	New Zealand Company Law Cases
NZLR	New Zealand Law Reports

PCC	Palmer's Company Cases
P & C R	Property and Compensation Reports
QB	Queens Bench
RTR	Road Traffic Reports
SA	South African Reports
SC	Session Cases
SJ	Solicitors Journal
SLT	Scots Law Times
STC	Simons Tax Cases
Times	The Times
TLR	Times Law Reports
VR	Victoria Reports
WLR	Weekly Law Reports
WN	Weekly Notes

TABLE OF CASES

Allobrogia Steamship Corp., <i>Re</i> [1978] 3 All E.R. 423	55
A.B.C. Coupler and Engineering Co., <i>Re</i> (No. 3) [1970] 1 W.L.R. 702	5, 64, 126
A.G.A. Estate Agencies, <i>Re</i> 1986 P.C.C. 398	55
A.N.Z. Banking Group v. Gibson [1981] 2 N.Z.L.R. 513	22
Abbott (J.W.) & Co. Ltd., <i>Re</i> (1913) 30 T.L.R. 13	122
Arahams (S.) and Sons Ltd., <i>Re</i> [1902] 1 Ch. 695	144, 145
Agricultural Wholesale Society, <i>Re</i> [1929] 2 Ch. 261	138
Ah Toy v. Registrar of Companies (1986) 10 A.C.L.R. 630	44
Airlines Airspares v. Handley Page [1970] Ch. 193	27
Allebart Pty. Ltd., <i>Re</i> [1971] 1 N.S.W.L.R. 24	70
Aluminium Industrie Vaassen B.V. v. Romalpa Aluminium Ltd. [1976] 1 W.L.R. 676	9, 100, 102
Amalgamated Investments and Property Co. Ltd., <i>Re</i> [1985] Ch. 349	138
American Express International Banking Corp. v. Hurley [1985] 3 All E.R. 564	33
Andrabell Ltd., <i>Re</i> [1984] 3 All E.R. 407	107
Anglo-Austrian Printing and Publishing Union <i>Re</i> , <i>Brabourne v. Anglo-Austrian Printing & Publishing Union</i> [1895] 2 Ch. 891	74, 170
Anglo-French Co-operative Society Ltd., <i>ex p. Pelly</i> , <i>Re</i> (1882) 21 Ch.D. 492	129
Anglo-Moravian Hungarian Junction Railway Co., <i>Re ex p. Watkin</i> (1875) 1 Ch.D. 130	10, 11
Annamond Park & Co. <i>Re</i> [1930] N.I. 47	85
Apex Leisure Hire v. Barratt [1984] I.C.R. 452	30
Archivent Sales & Developments v. Strathclyde Regional Council (1985) 27 Build.L.R. 98	103
Arctic Engineering Ltd., <i>Re</i> (No. 2) [1986] 1 W.L.R. 686	18
Argylls Ltd. v. Coxeter (1913) 29 T.L.R. 355	16
Armagh Shoes, <i>Re</i> [1984] B.C.L.C. 405	80
Armorduct Manufacturing Co. Ltd. v. General Incandescent Co. Ltd. [1911] 2 K.B. 143	91
Armour v. Thyssen Edelstahlwerke 1986 S.L.T. (O.H.) 452	98
Armstrong Whitworth Securities Co. Ltd., <i>Re</i> [1947] Ch. 673	50, 69
Aro Co., <i>Re</i> [1980] Ch. 196, 453; 1 All E.R. 32, D.C.	90, 91
Arrow (Leeds) Ltd., <i>Re</i> [1986] B.C.L.C. 538	65
Art Reproduction Co. Ltd., <i>Re</i> [1952] Ch. 89	139
Ashpurton Estates Ltd., <i>Re. See Victoria Housing Estates v. Ashpurton Estates</i> .	37, 144
Asiatic Electric Co. Pty Ltd., <i>Re</i> (1970) W.N. (N.S.W.) 361	74, 170
Associated Dominions Assurers Society, <i>Re</i> (1962) 109 C.L.R. 516	11
Associated Securities Ltd., <i>Re</i> [1981] 1 N.S.W.L.R. 742	114
Associated Travel Leisure Services Ltd., <i>Re</i> [1978] 1 W.L.R. 547	68
Atkins & Co. v. Wardle (1890) skt. affd.; 5 T.L.R. 734	162
Att.-Gen. Reference (No. 2 of 1982) [1984] Q.B. 624	176
Automatic Bottlemakers Ltd., <i>Re</i> [1926] Ch. 412	83
Ayerst v. C. & K. (Construction) [1976] A.C. 167	66
Azoff-Don Commercial Bank, <i>Re</i> [1954] Ch. 315	55
B.A.B. v. Parish [1979] 2 Lloyd's Rep. 361	162
Baby Moon (U.K.) Ltd., <i>Re</i> 1985 P.C.C. 103	56
Bacal Contracting Ltd. v. Modern Engineering (Bristol) Ltd. [1980] 2 All E.R. 655	31
Bador v. North American Wood Preserving Ltd. (1981) 124 D.L.R. (3d) 571	11
Baker, <i>Re</i> (A Bankrupt), <i>ex p. Eastbourne Waterworks Co. v. Official Receiver</i> [1954] 1 W.L.R. 1144	94
Banister v. Islington L.B.C. (1972) 71 L.G.R. 239	134
Bank of Baroda v. Panessar [1986] 3 All E.R. 751	22
Bank of Montreal v. Woodtown Developments (1979) 99 D.L.R. (3d) 739	122

Bank of New South Wales v. Federal Commissioner of Taxation (1979) 145 C.L.R. 438	94
— v. Official Assignee [1982] 1 N.Z.L.R. 427	65, 146
Bank of Scotland v. Hutchinson, Main and Co. (Liquidators of) [1914] S.C. 1	114
Bank of South Australia (No. 2) [1985] 1 Ch. 578	47
Banque de l'Indochine et de Suez S.A. v. Euroseas Group Finance Co. [1981] 3 All E.R. 198; [1981] Com.L.R. 77	162
Banque des Marchands de Moscou v. Kindersley [1951] Ch. 112	55, 68
Barber & Nicholls Ltd. v. R. & G. Associates (London) Ltd. (1982) 132 N.L.J. 1076 ..	162
Barclays Bank v. Quistclose Investments [1970] A.C. 567	109, 115, 118
Barclays Bank Ltd. v. Simms (W.J.) Son and Cooke (Southern) [1980] Q.B. 677	27, 113
Barclays Bank v. Willowbrook International, <i>The Financial Times</i> , July 9, 1985	82
Barker (George) (Transport) Ltd. v. Eynon [1974] 1 W.L.R. 462	25, 137
Barleycorn Enterprises Ltd., <i>Re</i> [1970] Ch. 465	120
Barnes, <i>ex p.</i> [1896] A.C. 146	160
Barrett & Co. v. Livesey (1981) 131 N.L.J. 1213	143
Barrows v. Chief Land Registrar, <i>The Times</i> , October 20, 1977	31
Bartlett v. Mayfair Property Co., <i>Re</i> [1898] 2 Ch. 28	87
Bateson (John) & Co. Ltd., <i>Re</i> [1985] B.C.L.C. 259	10, 11, 52
Bathampton Properties, <i>Re</i> [1976] 1 W.L.R. 168	65
Batten v. Wedgwood Coal and Iron Co. (1884) 28 Ch.D. 317	119
Beatty v. Guggenheim Exploration Co. (1919) 225 N.Y. 380	116
Beeton & Co. Ltd., <i>Re</i> [1913] 2 Ch. 279	157
Bellaglade Ltd., <i>Re</i> [1977] 1 All E.R. 319	91, 123
Berkeley Securities (Property) Ltd., <i>Re</i> [1980] 1 W.L.R. 1589	138
Berry (Herbert) Associates Ltd. v. I.R.C. [1977] 1 W.L.R. 1437	91, 97
Bismarck Australia Pty. Ltd., <i>Re</i> [1981] V.R. 527	77
Bluston & Bramley Ltd. v. Leigh [1950] 2 K.B. 548	93
Bond Worth Ltd., <i>Re</i> [1980] Ch. 228	100, 102
Bondina Ltd. v. Rollaway Shower Blinds Ltd. [1986] 1 W.L.R. 517	162
Boodle, Hatfield & Co. v. British Films Ltd. 1986 P.C.C. 176	136
Borax Re & Co. Ltd. [1901] 1 Ch. 326	75
Borden (U.K.) Ltd. v. Scottish Timber Products and McNichol Brownlie [1981] Ch. 25	100, 105, 106
Bostels Ltd., <i>Re</i> [1968] Ch. 346	65
Boston House Property Co. v. Ludgate Finance Co. Ltd. (1966) 110 S.J. 769	46
Bowkett v. Fuller's Union Electric Works [1923] 1 K.B. 160	90
Briant Colour Printing Ltd., <i>Re</i> [1977] 1 W.L.R. 942	135
Bridgewater Engineering Co. Ltd., <i>Re</i> (1879) 12 Ch.D. 181	126
Brightlife Ltd., <i>Re</i> [1986] 3 All E.R. 673	77, 78, 80, 82, 89, 95, 142
Brinds Ltd. v. Offshore Oil (1986) 2 B.C.C. 98, 916	58
British Eagle International Airlines Ltd. v. Compagnie Nationale Air France [1975] 1 W.L.R. 758	84, 129
British Thomson-Houston Co. v. Sterling Accessories [1924] 2 Ch. 33	163
British Waggon Co. v. Lea (1880) 5 Q.B.D. 149	46
Brown (Henry) & Sons v. Smith [1964] 2 Lloyd's Rep. 476	161
Brunton v. Electrical Engineering Corp. [1892] 1 Ch. 434	136
Brush Aggregates Ltd., <i>Re</i> [1983] B.C.L.C. 320	142
Bryanston Leasings v. Principality Finance [1977] R.T.R. 45	101
Bullard v. Marchant [1986] I.C.R. 389	30
Bunbury Foods v. National Bank of Australasia (1984) 153 C.L.R. 491	22
Burston Finance v. Speirway [1974] 1 W.L.R. 1648	136
Burt, Boulton and Bull v. Hayward [1895] 1 Q.B. 276	11, 31
Bush, <i>Re</i> [1930] 2 Ch. 202	138
Business Computers Ltd. v. Anglo-African Leasing Ltd. [1977] 1 W.L.R. 578	128
Business Computers International Ltd. v. Registrar of Companies, <i>The Times</i> , July 1, 1987	60
Byblos Bank S.A.L. v. Al Khudhairy 1986 P.C.C. 249	22, 23, 25
Cairney v. Back [1906] 2 K.B. 746	96

Calgary and Edmonton Land Co. (In Liquidation), <i>Re</i> [1975] 1 W.L.R. 355	66
Calsil Ltd. v. Seimon (1983) 7 A.C.L.R. 418	163
Camburn Petroleum Products Ltd., <i>Re</i> [1980] 1 W.L.R. 86	64
Capital Finance Co. v. Stokes [1969] 1 Ch. 261	136
Capital Fire Insurance Association, <i>Re</i> (1883) 24 Ch.D. 408	137
Caribbean Products (Yam Importers) Ltd., <i>Re</i> [1966] Ch. 331	92
Caroma Enterprises Ltd., <i>Re</i> (1980) 108 D.L.R. (3d) 412h7	77
Carreras Rothmans Ltd. v. Freeman Matthews Treasure Ltd. [1985] Ch. 207 ..	109, 115, 117, 118, 143
Caston Cushioning, <i>Re</i> [1955] 1 W.L.R. 163	42
Centrebind, <i>Re</i> [1967] 1 W.L.R. 377	40
Centrifugal Butter Co. Ltd., <i>Re</i> [1913] 1 Ch. 188	49
Chancery Lane Registrars' Case (1985) 1 Ins. L. & P. 54	7, 9, 17
Channel Airways Ltd. v. Manchester Corporation [1974] 1 Lloyd's Rep. 456	136
Chapel House Colliery Co., <i>Re</i> (1883) 24 Ch.D. 259	65
Chapman's Case (1866) L.R. 1 Eq. 346	65, 68, 158
Charge Card Services Ltd. (No. 2) <i>Re</i> [1986] 3 W.L.R. 697	142
Charterland Gold Fields Ltd., <i>Re</i> (1909) 26 T.L.R. 132	19, 50, 51
Chase Manhattan Bank N.A. v. Israel-British Bank (London) Ltd. [1981] Ch. 105	113, 116
Chelsea Cloisters (In Liquidation), <i>Re</i> (1980) 41 P. & C.R. 98	111, 117
Chesterfield Catering Co., <i>Re</i> [1977] 1 Ch. 373	59
Chic Ltd., <i>Re</i> [1905] 2 Ch. 345	19, 38
Christonette International Ltd., <i>Re</i> [1982] 1 W.L.R. 1245	120
City Equitable Fire Insurance Co., <i>Re</i> (No. 2) [1930] 2 Ch. 293	129
Civica Investments Ltd., <i>Re</i> [1983] 126 S.J. 446	127
Civil Service and General Store (1888) 58 L.T. 220	62, 152
Clarke Taylor & Co. Ltd. v. Quality Site Developments 1981 S.L.T. 309	98
Claybridge Shipping Corp. S.A., <i>Re</i> (1982) 132 N.L.J. 203	58
Cleary v. Brazil Railway Co. (1915) 113 L.T. 96	11
Clough Mill Ltd. v. Martin [1985] 1 W.L.R. 111	98, 100, 101, 102
Clyde Marine Insurance v. Renwick & Co. 1924 S.C. 113	138
Coghlan v. S.H. Lock (Australia) Ltd. (1987) 3 B.C.C. 183	163
Colombian Fire Proofing, <i>Re</i> [1910] 1 Ch. 758	147
Commercial and Industrial Installations, <i>Re</i> (1986) 2 B.C.C. 98, 901	59
Compania Merabello San Nicholas S.A., <i>Re</i> [1973] Ch. 75	55
Company, A, <i>Re</i> [1894] 2 Ch. 349	63
—, <i>Re</i> (1950) 94 S.J. 369	57
—, <i>Re</i> [1973] 1 W.L.R. 1566	58
—, <i>Re</i> [1986] B.C.L.C. 127	60
—, <i>Re</i> [1986] B.C.L.C. 261	57
—, <i>Re</i> (No. 003729 of 1982) <i>Re</i> [1984] 1 W.L.R. 1090	58
—, <i>Re</i> (No. 001573 of 1983) [1983] Com.L.R. 202	65
—, <i>Re</i> (No. 002794 of 1986) <i>Re</i> (1986) 2 B.C.C. 99, 281	61
—, <i>Re</i> (No. 00359 of 1987) (1987) 3 B.C.C. 160	55
Consolidated Diesel Engine Manufacturers Ltd., <i>Re</i> [1915] 1 Ch. 192	67
Consolidated Entertainments Ltd. v. Taylor [1937] 4 All E.R. 432	122
Consolidated Gold Fields of New Zealand, <i>Re</i> [1953] Ch. 689	85
Consolidated Trades Ltd. v. Downes [1981] 2 N.Z.L.R. 247	33
Constellation (The) [1966] 1 W.L.R. 272	91
Contemporary Cottages (N.Z.) Ltd. v. Margin Traders Ltd. [1981] 2 N.Z.L.R. 114	142
Cook v. "X" Chair Patents Co. Ltd. [1960] 1 W.L.R. 60	91, 158
Cooper (Gerald) Chemicals Ltd. [1978] Ch. 262	165
Cope (Benjamin) Ltd., <i>Re</i> [1914] 1 Ch. 800	83
Coregrange, <i>Re</i> [1984] B.C.L.C. 453	66
Cornhill Insurance v. Improvement Services Ltd. [1986] 1 W.L.R. 114	57
Corporation of Bacup v. Smith (1890) 44 Ch.D. 395	10, 132
Country Traders Distributors, <i>Re</i> [1974] 2 N.S.W.L.R. 135	156
Coventry and Dixon's Case (1880) 14 Ch.D. 660	171
Craven v. Blackpool Greyhound Stadium [1936] 3 All E.R. 513	50
Creative Handbook Ltd., <i>Re</i> [1985] B.C.L.C. 1	59
Crigglestone Coal Co. [1906] 2 Ch. 327	65

Cripps v. Wickenden [1973] 1 W.L.R. 944	22
Crofthead Ltd., <i>Re, The Times</i> , February 18, 1975	61
Crompton, <i>Re</i> [1914] 1 Ch. 954	65, 76
Crowley v. Northern Bank Finance Ltd. [1981] I.R. 353	57
Cullen (R.A.) Ltd. v. Nottingham Health Authority (1986) 2 B.C.C. 99, 368	131
Cully v. Parsons [1923] 2 Ch. 512	32
Currie v. Consolidated Kent Collieries [1906] 1 K.B. 134	158
Curtis (D.H.) (Builders) Ltd. [1978] Ch. 162	130
Cushla Ltd., <i>Re</i> [1979] 3 All E.R. 415	131
Customs and Excise Commissioners v. Hedon Alpha Ltd. [1981] Q.B. 818	171
Cyona Distributors Ltd., <i>Re</i> [1967] Ch. 889	165, 166
D.S.Q. Property Co. v. Lotus Cars [1987] 1 W.L.R. 127	60
Darashah v. U.F.A.C. (U.K.) Ltd. <i>The Times</i> , March 30, 1982	154
Davies v. Directloans Ltd. [1986] 1 W.L.R. 823	153
Davis (S.) & Co., <i>Re</i> [1945] Ch. 402	47
Day Nite Carriers Ltd., <i>Re</i> [1975] 1 N.Z.L.R. 172	171
De Courcy v. Clement [1971] Ch. 693	39
De Lorean Motor Cars Ltd. v. Northern Irish Carriers [1982] N.I. 163	137
Deaway Trading Ltd. v. Calverly [1973] I.C.R. 546	26
Debtor (No. 66 of 1955), <i>Re A, ex p.</i> [1956] 1 W.L.R. 1226	130
Destone Fabrics, <i>Re</i> [1941] Ch. 319	147
Deutz Engines v. Terex Ltd. 1984 S.L.T. 273	98
D'Eyncourt v. Gregory (1866) L.R. 3 Eq. 382	103
Diamond Fuel Co., <i>Re</i> (1879) 13 Ch.D. 400	156
Diane (Stockport) Ltd., <i>Re The Times</i> , July 15, 1982	17
Diesels Components Pty. Ltd., <i>Re</i> (1985) 9 A.C.L.R. 825	25, 27, 137
Display Multiples, <i>Re</i> [1967] 1 W.L.R. 571	60
Distributors and Warehousing, <i>Re</i> [1986] B.C.L.C. 129	45
Dividend Fund Inc. <i>Re</i> [1974] V.R. 451	85
Dorchester Finance v. Stebbing (1977) unreported	171
Dorklerk Investments Pty. Ltd. v. Bhyat [1980] 1 S.A. 443	165
Downer Enterprises, <i>Re</i> [1974] 1 W.L.R. 1460	126
Downs Distribution Co. v. Associated Blue Star Stores (1948) 76 C.L.R. 463	11
Dramstar <i>Re</i> , (1980) 124 S.J. 807	59
Durham Fancy Goods v. Jackson (Michael) (Fancy Goods) Ltd. [1968] 2 Q.B. 839	163
Dynamics Corp. of America (No. 2) <i>Re</i> [1976] 1 W.L.R. 757	65
E.C.G.D. v. Turner 1981 S.L.T. 286	114
E.C.S.C. v. Liquidator of Société Ferrière Saint'Anna SpA [1983] (No. 168182) E.C.R. 1681	93
E.V.T.R. <i>Re</i> , (1987) 3 B.C.C. 389	109
Earle Ltd. v. Hemsworth R.D.C. (1928) 44 T.L.R. 605	78, 96
East Midlands Electricity Board v. Grantham June 3, 1980, Kettering County Ct.	162
Eastern Holdings Establishment of Vaduz v. Singer & Friedlander [1967] 1 W.L.R. 1017	90
Eastern Retreads Wholesale Pty. Ltd., <i>Re</i> (1979) 4 A.C.L.R. 136	145
Edric Audio Visual <i>Re</i> , (1981) 125 S.J. 395	65
Edwards v. Bendall (1953) 103 L.J. 351	68
Elkins v. Capital Guarantee Society (1900) 16 T.L.R. 423	110
Ellis (Matthew) Ltd., <i>Re</i> [1933] Ch. 458	147
Eloc Electro-Optiek and Communicatie BV, <i>Re</i> [1981] 3 W.L.R. 176	55
Elwick Bay Shipping Co. v. Royal Bank of Scotland 1982 S.L.T. 62	22
Emerald Stainless Steel Ltd. v. South Side Distributors 1983 S.L.T. 162	98
Emmadert Ltd., <i>Re</i> [1979] Ch. 540	59, 127
Emmerson v. Computer Time International [1977] 1 W.L.R. 734	127
Engel v. South Metropolitan Brewing and Bottling Co. [1892] 1 Ch. 442	122
Engineering Industry Training Board v. Samuel Talbot (Engineers) Ltd. [1969] 2 Q.B. 270	93
English and Scottish Mercantile Investment Co. Ltd. v. Brunton [1892] 2 Q.B. 700	78
Etic Ltd., <i>Re</i> [1928] 1 Ch. 861	171

Evans v. Rival Granite Quarries Ltd. [1910] 2 K.B. 979	77, 90
Evans (C.) & Son Ltd. v. Spritebrand [1985] 2 W.L.R. 317	163
Exchange Securities and Commodities (In Liquidation) <i>Re</i> [1987] 2 W.L.R. 893	70, 91, 119
Export Credit Guarantee Department v. Turner 1981 S.L.T. 286	115
Fabric Sales Ltd. v. Eratex [1984] 1 W.L.R. 863	55
Fairline Shipping Corporation v. Adamson [1975] Q.B. 180	164
Falcon R.J. Developments Ltd., <i>Re</i> (1987) 3 B.C.C. 147	5, 54
Fargro Ltd. v. Godfroy [1986] 1 W.L.R. 1134	43
Farley v. Housing and Commercial Developments [1984] B.C.L.C. 442	129
Farrer (T.N.) Ltd. <i>Re</i> [1937] 1 Ch. 352	157, 158
Farrows Banks <i>Re</i> [1921] 2 Ch. 1684	156
Faulds (R.A.) Ltd. <i>Re</i> (1986) 2 B.C.C. 99, 269	58
Federal Business Developments Bank v. Shearwater Marine (1979) 102 D.L.R. (3d) 257	155
Federspiel (Carlos) v. Twigg [1957] 1 Lloyd's Rep. 240	99
Fenton, <i>Re</i> [1931] 1 Ch. 85	130
Fenton v. Stablegold [1986] I.C.R. 236	30
Fir View Furniture Co. <i>Re The Times</i> , February 9, 1971	133
Fitness Centre (South East) Ltd., <i>Re</i> [1986] B.C.L.C. 518	5, 64
Flagstaff Silver Mining Co. of Utah <i>Re</i> , (1875) L.R. 20 Eq. 268	88
Fleetwood & District Electric Light and Power Syndicate, <i>Re</i> [1915] 1 Ch. 486	139
Flitcroft's Case (1882) 21 Ch.D. 519	129, 171
Flocks of Bristol (Builders), <i>Re</i> [1982] Com.L.R. 55	64
Food Controller v. Cork [1923] A.C. 647	93
Ford & Carter Ltd. v. Midland Bank Ltd. (1979) 129 N.L.J. 543	21, 25
Forster v. Wilson (1843) 12 M. & W. 191	129
Foss v. Harbottle (1843) 2 Hare 461	43
Foster Clark Ltd.' Indenture Trust, <i>Re</i> [1966] 1 All E.R. 43	26
Four Point Garage v. Carter [1985] 3 All E.R. 12	103
Fowler v. Broads Patent Night Light Co. Ltd. [1893] 1 Ch. 724	156
— v. Commercial Timber Co. [1930] 2 K.B. 1	43, 157, 158
Fox Bros. Clothes Ltd. v. Bryant [1979] I.C.R. 64	158
Foxhall & Gyle (Nurseries) Ltd., Petitioners 1978 S.L.T. (Notes) 29	4
Freeman & Lockyer v. Buckhurst Park Properties (Mangal) Ltd. [1964] 2 Q.B. 480	32
Freevale Ltd. v. Metrostore Holdings Ltd. [1984] Ch. 199	27
French's Wine Bar Ltd. (1987) 3 B.C.C. 173	63, 66, 152
Fryer v. Ewart [1902] A.C. 187	121
Gabriel Controls Pty. Ltd. (1982) 6 A.C.L.R. 684	75
Garvin (Theo) Ltd., <i>Re</i> [1969] 1 Ch. 624	85, 138
General Billposting Co. v. Atkinson [1909] A.C. 118	158
General Radio Co. Ltd., <i>Re</i> [1929] W.N. 172	96
General Rolling Stock Co. <i>Re</i> , Joint Stock Discount Co.'s Claim (1872) 7 Ch.App. 646	138, 158
General Share and Trust Co. v. Wetley Brick and Pottery Co. (1882) 20 Ch.D. 260	122
Gerard v. Worth of Paris [1936] 2 All E.R. 905	43
Gertzenstein Ltd., <i>Re</i> [1937] Ch. 115	51
Glen v. Gilbey Vintners Ltd. 1986 S.L.T. 553	107
Glyncorwg Colliery Co., <i>Re</i> [1926] Ch. 951	119
Goldburg (No. 2), <i>Re</i> [1912] 1 K.B. 606	21, 25
Gomba Holdings Ltd. v. Homan [1986] 1 W.L.R. 1301	26, 32, 33, 155
Goodman v. First National Finance Corporation Ltd. [1983] B.C.L.C. 203	163
Gordon and Rennie v. Standard Merchant Bank [1984] 2 S.A. 519	165
Gorman (Siebe) & Co. v. Barclay's Bank; Same v. McDonald (R.H.) and Barclays Bank [1979] 2 Lloyd's Rep. 143	78, 80, 81, 82
Gorringe v. Irwell India Rubber Works (1888) 34 Ch.D. 128	101
Gosling v. Gaskell [1897] A.C. 575	31
Gough v. Wood & Co. [1894] 1 Q.B. 713	102
Gough's Garages v. Pugsley [1930] 1 K.B. 615	31

Gowers v. Walker [1930] 1 Ch. 262	94
Grace Rymer Investments Ltd. v. Waite [1958] Ch. 831	141
Gramophone Records Ltd., <i>Re</i> [1930] W.N. 42	158
Grantham Wholesale Fruit, Vegetable and Potato Merchants Ltd., <i>Re</i> [1972] 1 W.L.R. 559	18
Gray's Inn Construction Co. Ltd., <i>Re</i> [1980] 1 All E.R. 814	62, 152
Great Eastern Electric Co. Ltd. <i>Re</i> [1941] Ch. 241	44, 120
Greenstone Shipping Co. S.A. v. Indian Oil Corp. <i>Financial Times</i> , March 20, 1987	104
Greenstone, <i>Re</i> [1900] 2 Q.B. 306	65
Greycaine Ltd., <i>Re</i> [1946] Ch. 269	13
Griffin Hotel Co. Ltd., <i>Re</i> [1941] Ch. 129	78, 94, 95
Griffiths v. Secretary of State for Social Services [1974] Q.B. 468	26, 157
Griggs (Douglas) Engineering Ltd., <i>Re</i> [1963] Ch. 1	88
Grosvenor Metal Co. Ltd., <i>Re</i> [1950] Ch. 63	92
Gyton v. Palmour [1945] K.B. 426	134
Hall (William) (Contractors) Ltd., <i>Re</i> [1967] 1 W.L.R. 948	97
Hallett's Estate <i>Re</i> (1880) 13 Ch.D. 696	117, 118
Halt Garage Ltd., <i>Re</i> [1982] 3 All E.R. 1016	171
Hammer and Sohne v. H.W.T. Realisations Ltd., 1985 S.L.T. (Sh.Ct.) 21	98
Hand v. Blow [1901] 2 Ch. 721	122
Handley Page v. Rockwell Machine Tool Co. [1970] 2 Lloyd's Rep. 459	128
Hardie v. Hanson (1960) 105 A.L.J.R. 455	166
Harpur's Cycle Fittings Co., <i>Re</i> [1900] 2 Ch. 731	123
Harris v. Beauchamp Bros. [1893] 2 Q.B. 534	72, 86
Harrison v. Kirk [1904] A.C. 1	51
Hart v. Barnes (1983) 7 A.C.L.R. 310	80
Hawkins (F.T.) & Co. Ltd., <i>Re</i> [1952] Ch. 881	47
Hayter (A.E.) & Sons (Porchester) Ltd., <i>Re</i> [1961] 1 W.L.R. 1008	65
Heaton & Dugard v. Cutting Bros. [1925] 1 K.B. 655	89
Hellyer v. Sheriff of Yorks. [1974] 2 W.L.R. 844	93
Helmore v. Smith (No. 2) (1886) 35 Ch.D. 449	11
Hendon v. Adelman and others (1973) 117 S.J. 631	162
Hendy Lennox (Industrial Engines) Ltd. v. Graham Puttick Ltd. [1984] 1 W.L.R. 485	103, 106
Highfield Commodities Ltd., <i>Re</i> [1984] 1 W.L.R. 149	61
Hill Pottery Co. <i>Re</i> (1866) L.R. 1 Eq. 649	90
Hirachand Punamchand v. Temple [1911] 2 K.B. 330	88
Hire Purchase (Furnishing) Co. Ltd. (The) v. Richens (1887) 20 Q.B.D. 387	44
Hoare v. British Columbia Development Associations (1912) 107 L.T. 602	142
Hockley (William) Ltd., <i>Re</i> [1962] 1 W.L.R. 555	88
Hodson v. Blanchards (London) Ltd. (1911) 131 L.T.Jo. 9	57
— v. Tea Co. (1880) 14 Ch.D. 859	65, 76
Holiday Stamps, <i>Re</i> (1985) 82 L.S.Gaz. 2817	64
Holland v. Hodgson (1872) L.R. 7 C.P. 327	103
Holliday (L.B.) & Co., <i>Re</i> [1986] 2 All E.R. 367	85
Holmes (Eric) (Property), <i>Re</i> [1965] Ch. 1052	144
Holtz v. Parkdale Refrigeration Ltd. (1981) 117 D.L.R. (3d) 185	162
Home and Colonial Insurance Co., <i>Re</i> [1930] 1 Ch. 102	16, 51
Horne (Rob.) Paper v. Rioprint (unrep.), November 10, 1978	101
Household Products Co. Ltd., <i>Re</i> , (1981) 124 D.L.R. (3d) 325	83
Hubbuck v. Helms (1887) 56 L.J.Ch. 536	75
Hudson's Concrete Products v. D.B. Evans (Bilston) Ltd. (1961) 105 S.J. 281	88
Hughes (C.W. & A.L.) Ltd., <i>Re</i> [1966] 1 W.L.R. 1369	97
Husey v. London Electric Supply Corp. [1902] 1 Ch. 411	132
Hutton v. West Cork Railway Co. (1883) 23 Ch.D. 654	157
Icknield Developments Ltd., <i>Re</i> [1973] 1 W.L.R. 537	7, 10
Illingworth v. Houldsworth [1904] A.C. 355	74
Imperial Hotel (Aberdeen) Ltd. v. Vaux Breweries 1978 S.L.T. 113	155
Ind Coope and Co. Ltd., <i>Re</i> [1911] 2 Ch. 223	73

Independent Air Travel Ltd., <i>Re</i> [1961] 1 Lloyd's Rep. 604	110
Independent Automatic Sales v. Knowles and Foster [1962] 1 W.L.R. 974	142
India (Government of) Ministry of Finance (Revenue Division) v. Taylor [1955] A.C. 491	138
Industrial Design and Manufacture <i>Re</i> [1984] 10 N.I.J.B. 1	148
Industrial Insurance Association <i>Re</i> [1910] W.N. 245	64
Inglefield (George) Ltd. <i>Re</i> [1933] Ch. 1	143
I.R.C. v. Goldblatt [1972] Ch. 498	97
— v. Hoogstraten [1985] Q.B. 1077	69
Inns of Court Hotel Co. <i>Re</i> (1868) L.R. 6 Eq. 82	148
Intermain Properties Ltd. <i>Re</i> [1986] B.C.L.C. 265	67
International Factors Ltd. v. Rodriguez [1979] Q.B. 351	112
International Harvester Export Co. v. International Harvester (Australia) Ltd. (1983) 7 A.C.L.R. 391	11, 26, 157
Interview Ltd., <i>Re</i> [1975] I.R. 382	99
Inverness District Council v. Highland Universal Fabricators 1986 S.L.T. 556	32
Irish Oil and Cake Mills v. Donnelly (1984) (unreported)	34
Irish Shipping Ltd., <i>Re</i> [1986] I.L.R.M. 518	113
Islington Metal and Plating Works <i>Re</i> [1984] 1 W.L.R. 14	138
James, <i>ex p.</i> , (1874) 9 Ch.App. 609	11, 52, 70
Jartay Developments Ltd., <i>Re</i> (1983) 22 Build.Law Reps. 134	112, 114
Jarvis v. Islington B.C. (1909) 73 J.P. 323	32
Johns-Manville Canada Inc. v. John Carlo Ltd. (1981) 113 D.L.R. (3d) 286	114
Johnson (B.) & Co. (Builders) Ltd., <i>Re</i> [1955] Ch. 634	16, 37, 171
Jones (W.H.) & Co., <i>ex p.</i> Frankenburg, <i>Re</i> , (1913) 2 L.J.C.C. 101	57
Joplin Brewery Co., <i>Re</i> [1902] 1 Ch. 79	144
Karsberg (B.), <i>Re</i> [1956] 1 W.L.R. 57	5
Kasofsky v. Kreegers [1937] 4 All E.R. 374	23
Katherine et Cie, <i>Re</i> [1932] 1 Ch. 70	45
Kayford Ltd. (In Liquidation), <i>Re</i> [1975] 1 W.L.R. 279	111, 113, 114
Keenan Bros., <i>Re</i> [1986] B.C.L.C. 242	80, 81
Kelly v. McMahon Ltd. [1980] I.R. 347	79, 80, 145
Kernohan Estates Ltd. v. Boyd [1967] N.I. 27	33
Kestongate Ltd. v. Miller [1986] I.C.R. 672	30
Ketley (A.) v. Scott [1981] I.C.R. 241	153
Kinsela v. Russell Kinsela Pty. Ltd. (1986) 10 A.C.L.R. 215	163
Knowles v. Scott [1891] 1 Ch. 717	10
Kruppstahl v. Quitman [1982] I.L.R.M. 551	105
Laceward Ltd., <i>Re</i> [1981] 1 W.L.R. 133	58
Ladbroke Leasing Ltd. v. Reekie 1983 S.L.T. 155	98
Lambert Jones Estates Ltd. (1982) unreported	33
Lanaghan Bros. Ltd., <i>Re</i> [1977] 1 All E.R. 265	65
Lancashire Cotton Co. <i>Re</i> (1887) 35 Ch.D. 656	91
Langley Constructions (Brixham) Ltd. v. Wells [1969] 1 W.L.R. 503	90
Latchford v. Beirne [1981] 3 All E.R. 705	33
Latham v. Greenwich Ferry Co. [1895] W.N. 77	119
Lathia v. Dronsfield Bros. Ltd. [1987] B.C.L.C. 321	27, 33
Lee v. Lee's Air Farming Ltd. [1961] A.C. 12	157
Lee (Tony) Motors v. Macdonald and Son [1981] 2 N.Z.L.R. 281	128
Leeds Twentieth Century Decorators, <i>Re</i> [1962] C.L.Y. 365	158
Leigh v. Taylor [1902] A.C. 157	103
Leitch (W.C.) Bros., (No. 1), <i>Re</i> [1932] Ch. 71	166
Leslie (J.) Engineers Co. (In Liquidation), <i>Re</i> [1976] 1 W.L.R. 292	63, 152
Levi & Co., <i>Re</i> [1919] 1 Ch. 416	126
Levy (A.I.) (Holdings) Ltd., <i>Re</i> [1964] Ch. 19	62, 63
Lewis Merthyr Consolidated Collieries, <i>Re</i> [1929] 1 Ch. 498	73, 79, 94
Leyton & Walthamstow Cycle Co. Ltd., <i>Re</i> [1901] W.N. 225	64
Libertas-Kommerz G.m.b.H. 1978 S.L.T. 222	148

L'Industrie Verriere Ltd., <i>Re</i> [1914] W.N. 222	59
Lines Bros. (In Liquidation), <i>Re</i> [1983] Ch. 1	65, 84
Lister (Ronald Elwyn) Ltd. v. Dunlop Canada Ltd. (1982) 135 D.L.R. (3d) 1	22, 23
Liverpool Corporation v. Hope [1938] 1 K.B. 751	122
Lloyds and Scottish Finance Ltd. v. Cyril Lord Carpet Sales (1979) 129 N.L.J. 366	143
London and Cheshire Insurance Co. v. Laplagrene Properties [1971] Ch. 499 ..	136, 143
London County and Westminster Bank Ltd. v. Tompkins [1918] 1 K.B. 515 ..	124, 135
Lord Advocate v. Liquidator of Purvis Industries 1958 S.C. 338	94
London and Paris Banking Corp. <i>Re</i> , (1875) L.R. 19 Eq. 444	58
London Press Hinge Co., <i>Re</i> [1905] 1 Ch. 576	23, 90
London Wine Shippers Ltd., <i>Re</i> 1986 P.C.C. 121	115
Lovelock v. Margo [1963] 2 Q.B. 786	121
Lowestoft Traffic Services Ltd., <i>Re</i> [1986] B.C.L.C. 81	5, 48, 54
Lubin, Rosen and Associates Ltd., <i>Re</i> [1975] 1 W.L.R. 122	48, 54
Lundy Granite Co. Ltd., <i>Re</i> (1871) 6 Ch.App. 462	125
Lupton v. White (1808) 15 Ves. 440	105
Lympne Investments <i>Re</i> [1972] 1 W.L.R. 523	58
Lyric Syndicate, <i>Re</i> (1900) 17 T.L.R. 162	67
M.C.H. Services Ltd., <i>Re</i> , (1987) 3 B.C.C. 179	5, 54
McCarter v. Roughan and McLaughlin [1986] I.L.R.M. 447	31
McCarthy (M.) & Co. (Builders) Ltd. (No. 2), <i>Re</i> [1976] 2 All E.R. 339	65
McClintock v. Westminster Electric Supply Corp., <i>The Times</i> , May 2, 1931	132
McCutcheon v. MacBrayne Ltd. [1964] 1 W.L.R. 125	100
McDowall's Case (1886) 32 Ch.D. 366	158
McGowan v. Gannon [1983] I.L.R.M. 516	33
McGreavy <i>Re</i> [1950] Ch. 269	133
McKay and Hughes (1973) Ltd. v. Martin Potatoes Inc. [1984] 9 D.L.R. (4th) 439	90
McMahon v. North Kent Ironworks [1981] 2 Ch. 148	23
Mace Builders (Glasgow) Ltd. v. Lunn [1986] 3 W.L.R. 921	145
Mack Trucks (Britain), <i>Re</i> [1967] 1 W.L.R. 780	26
Macleod v. Alexander Sutherland 1977 S.L.T. (Notes) 44	26
Madeley Homecare, <i>Re</i> [1983] N.I. 1	45
Maidstone Building Provisions, <i>Re</i> [1971] 1 W.L.R. 1085	165
Maidstone Palace of Varieties Ltd., <i>Re</i> [1909] 2 Ch. 283	11
Mancetter Developments Ltd. v. Garmanson Ltd. et al [1986] 2 W.L.R. 871	164
Manchester Trust v. Furness [1895] 2 Q.B. 539	118
Manila Railways Co. Ltd., <i>Re</i> [1897] A.C. 81	77
Manley, Petitioner 1985 S.L.T. 42	4, 34, 97
Manmac Farmers Ltd., <i>Re</i> [1968] 1 W.L.R. 572	67
Mannesmann Tube Co. Ltd., <i>Re</i> [1901] 2 Ch. 93	94
Manurewa Transport Ltd., <i>Re</i> [1971] N.Z.L.R. 909	77
Maritime Life Assurance Co. v. Chateau Gardens [1984] 2 D.L.R. (4th) 553	10
Marley Tile Co. Ltd. v. Burrows [1978] Q.B. 241	93
Margart Pty. Ltd., <i>Re</i> [1985] B.C.L.C. 314	31, 103, 152
Marriage, Neave & Co., <i>Re</i> [1896] 2 Ch. 663	134, 135
Marshall v. Cottingham [1982] Ch. 82	13
Maskelyne British Typewriters Ltd., <i>Re</i> [1898] 1 Ch. 133	19, 20, 37
Masser Ltd. <i>Re</i> (1987) 5 I.L.T. 43	80
Masureik & Allen Pty. Ltd., <i>Re</i> (1982) 6 A.C.L.R. 39	74, 151
Matthews (F.P. & C.H.) Ltd., <i>Re</i> [1982] Ch. 257	149
Mawcon Ltd., <i>Re</i> [1969] 1 W.L.R. 78	62
Maxform SpA v. Mariani & Goodville Ltd. [1981] 2 Lloyd's Rep. 54	162
Mayfair Property Co., <i>Re</i> [1898] 2 Ch. 28. <i>See</i> Bartlett v. Mayfair Property Co.	87
Measures Bros. v. Measures [1910] 2 Ch. 248	158
Mechanisations (Eaglescliffe) Ltd., <i>Re</i> [1966] Ch. 20	144
Medisco Equipment Ltd., <i>Re</i> [1983] B.C.L.C. 305	48, 54, 64
Meigh v. Wickenden [1942] 2 K.B. 160	26, 33, 36
Memco Engineering Ltd., <i>Re</i> [1986] Ch. 86	97
Mendip Press Ltd., <i>Re</i> (1901) 18 T.L.R. 38	144
Mersey Steel and Iron Co. v. Naylor, Benzon & Co. (1884) 9 App.Cas. 434	129, 138