



# PROMISES and CONTRACT LAW

Comparative Perspectives

MARTIN HOGG



CAMBRIDGE

# PROMISES AND CONTRACT LAW

Comparative Perspectives

MARTIN HOGG



CAMBRIDGE  
UNIVERSITY PRESS

**CAMBRIDGE**  
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Published in the United States of America by Cambridge University Press, New York

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107416970](http://www.cambridge.org/9781107416970)

© Martin Hogg 2011

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2011

First paperback edition 2014

*A catalogue record for this publication is available from the British Library*

*Library of Congress Cataloguing in Publication data*

Hogg, Martin.

Promises and contract law : comparative perspectives / Martin Hogg.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-521-19338-2 (hardback)

1. Promise (Law) 2. Contracts. I. Title.

K845.P76.H64 2011

346.02-dc22

2011013371

ISBN 978-0-521-19338-2 Hardback

ISBN 978-1-107-41697-0 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

## PROMISES AND CONTRACT LAW

*Promises and Contract Law* is the first modern work to explore the significance of promise to contract law from a comparative legal perspective. Part 1 explores the component elements of promise, its role in Greek thought and Roman law, the importance of the moral duty to keep promises and the development of promissory ideas in medieval legal scholarship. Part 2 considers the modern contract law of a number of legal systems from a promissory perspective. The focus is on the law of England, Germany and three mixed legal systems (Scotland, South Africa and Louisiana), though other legal systems are also mentioned. Major topics subjected to a promissory analysis include formation of contract, third party rights, contractual remedies and the renunciation of contractual rights. Part 3 analyses the future role which promise might play in contract law, especially within a harmonised European contract law.

MARTIN HOGG is a Senior Lecturer at the School of Law, University of Edinburgh. He has researched and published extensively in the field of obligations law, in both a national and comparative context.

For Alexa

## PREFACE

It is the thesis of this work that promise has played an important role in the contract law not only of those jurisdictions whose legal culture derives directly and unashamedly from Roman law and the medieval *ius commune* but also in those systems forming part of the Common law world, systems which are somewhat more reticent in acknowledging a debt to Roman or medieval European legal influences. The importance of promise in contract law derives from a mixture of sources: from the natural law tradition of Aristotle, Aquinas, and the late scholastics; from Roman law itself; from the canon law; and from the emphasis placed in later centuries upon the will, of which the promise is one specific manifestation. It is argued that, while promise was the paradigm voluntary obligation in medieval and early modern law, its primacy was largely supplanted by a model of agreement with the contract as its concrete expression, one in which promise was relegated largely to a description of the nature of agreement (as an exchange of promises) and of some unusual transactions which could not easily be accommodated within an agreement model, such as the promise of reward. Promise survived, however, as a discrete obligation in one European system, that of Scotland, and the functions which it is capable of performing in that system offer some inspiration for a possible rediscovery of the value of promise in other systems. Many transactions analysed in this work are only with difficulty fitted into a contractual model, whereas, it will be argued, it would be more honest to recognise that the unreciprocated or unilateral promise provides a neater and more apposite explanation for the basis of liability. It will also be suggested that the promise in the wider sense of a contractual promise is a concept which still illuminates much of the substantive content of contract law, despite attacks which have been made against promise by the reliance theory of obligational liability and other non-promissory theories.

It is not the intention of this work to suggest that *all* of contract law can be explained by the idea of promise. Indeed, it will be admitted that many controls upon parties' promises are imposed externally, without

reference to the will or promise of the parties, in order to enforce societal norms embodying values, such as objective good faith. Nonetheless, the case will be put that the promise, especially the unilateral promise, might usefully be given a greater role in contract law than it currently plays in most legal systems, and that it is heartening that just such a view appears to have been taken by the drafters of model legal projects such as the Principles of European Contract Law (PECL) and the Draft Common Frame of Reference (DCFR). At the present time, the probable future of promise in European legal systems, and conceivably further afield in the US and South Africa, is a bright one.

This work contains, particularly in Part 1, a discussion of the various legal theories which have over the centuries been suggested as explanations for the normative force of contract law. It must be stressed, however, that the search for an 'ideal' theory of contract law is not the objective of this work, as it is for many works on contract theory. Too much contract theory gives the appearance of being based upon an ideal of what the law should be, rather than what it actually is, and of thus being disconnected from the law with which the courts are concerned. Projects for the construction of utopian contract law and theory are all very well, but the approach adopted in this work is largely one of attempting to discover what role promise has played, and still plays, in the law of concrete legal systems. Nonetheless, some suggestions are offered as to how will theory, in a reinvigorated form, might continue to offer an overarching explanation for the normative force of promises and contracts, given that there is a perceived crisis in the minds of some about how to justify the enforcement of voluntary obligations. In offering ideas concerning such a reinvigorated will theory, it will be suggested that promissory theory cannot realistically hope to explain all of contract law, as it once tried to, but that this incompleteness need not be seen as a weakness.

The present study is, as the title indicates, a comparative one. Promise as a field of study comes alive in a comparative context, in both a legal jurisdictional as well as disciplinary sense. In terms of legal systems, the primary focus is on one system from each of the three great western legal families: England (representing the Common law), Germany (representing the civilian family) and Scotland (for the mixed legal systems). Given the comparatively small size of Scotland as a jurisdiction, the mixed legal systems of South Africa and Louisiana are also considered in Parts 2 and 3 of the work. There is in addition some reference to Common law cases from the USA, Canada and Australia. In respect of non-legal disciplines, observations on the idea of promise are offered

from the field of philosophy (especially linguistic philosophy), theology and anthropology.

I am indebted to a number of people and organisations for assistance rendered with the research which I undertook for this book. I am grateful to my two research assistants, Gemma Grant and Michael Johnston, for work which they did for me over two successive summers. The Edinburgh Law School allowed me a period of sabbatical leave in which to conduct my research and to prepare the manuscript of this work, and I extend my thanks both to the Head of School, Professor Douglas Brodie, for supporting my application for leave and to colleagues who covered my teaching and other duties during my absence. I was a guest at Tulane University in New Orleans, and at Stellenbosch University in South Africa, during that sabbatical leave, and I am grateful to the Dean and Faculties of both institutions for a desk and library access. I am especially grateful to Professor Vernon Palmer at Tulane for his support, which was an invaluable contribution to my successful time in New Orleans. That visit to New Orleans was funded by an award from the Carnegie Trust for the Universities of Scotland, for whom sincere appreciation for their generous assistance is gratefully extended. I was also the happy recipient of a Max Planck Society Scholarship which enabled me to visit the Max Planck Institute for Comparative and International Private Law in Hamburg to conduct research on German law, and I owe a great debt of thanks to Professor Reinhard Zimmermann for supporting me in my scholarship application to the Society and in arranging accommodation for me at the Institute. Lastly, I should not omit to thank Laurence Marsh for his eagle-eyed copy-editing and all of the staff in the Law division of Cambridge University Press who assisted with the production of this book, especially Finola O'Sullivan and Richard Woodham.



## ABBREVIATIONS OF COURT NAMES

(given in brackets after case citations in the table of cases)

A	Appellate Division of the Supreme Court of South Africa
BCCA	British Columbia Court of Appeal
C	Cape of Good Hope Provincial Division of the Supreme Court of South Africa
CAS	Court of Appeal of Singapore
CC	Constitutional Court of South Africa
CExC	Court of Exchequer Chamber of England and Wales
Ch	Chancery Division of the High Court of England and Wales
CP	Court of Common Pleas of England and Wales
CPD	Common Pleas Division of the High Court of England and Wales
CSC	Cape Colony Supreme Court
CSIH	Court of Session (Scotland), Inner House
CSOH	Court of Session (Scotland), Outer House
D	Durban and Coast Local Division of the High Court of South Africa
E	Eastern Cape Local Division of the Supreme Court of South Africa
EWCA	Court of Appeal of England and Wales (incl. cases heard prior to 1875 by the Court of Appeal in Chancery)
FCA	Federal Court of Australia
HCA	High Court of Australia
HL	Appellate Committee of the House of Lords
KB	King's Bench Division of the High Court of England and Wales
KZNHC	KwaZulu-Natal High Court
LAC	Labour Appeal Court of South Africa

NC	Northern Cape Provincial Division of the Supreme Court of South Africa
NSCA	Nova Scotia Court of Appeal
NZCA	New Zealand Court of Appeal
NZSA	Supreme Court of New Zealand
OCA	Ontario Court of Appeal
PC	Privy Council
QB	Queen's Bench Division of the High Court of England and Wales
SCA	Supreme Court of Appeal of South Africa
SCC	Supreme Court of Canada
SCNSW	Supreme Court of New South Wales
SCQ	Supreme Court of Queensland
SCWA	Supreme Court of Western Australia
T	Transvaal Provincial Division of the Supreme Court of South Africa
UKSC	United Kingdom Supreme Court
W	Witwatersrand Local Division of the Supreme Court of South Africa

## TABLE OF CASES

### ARRANGED BY JURISDICTION

#### Australia

- Abbot v. Lance* (1860) Legge 1283 (SCNSW) 228  
*BP Refinery (Westernport) Pty Ltd v. Shire of Hastings* (1977) 180 CLR 266, (1978) 52 ALJR 20 (PC) 271  
*Coal Cliff Collieries Pty Ltd v. Sijehama Pty Ltd* (1991) 24 NSWLR 1 (SCNSW) 203  
*Hospital Products Ltd v. United States Surgical Corp.* (1984) 156 CLR 41 (HCA) 203  
*McRae v. Commonwealth Disposals Commission* (1951) 84 CLR 377, (1951) 25 ALJ 425 (HCA) 373, 384  
*Mobil Oil Australia Ltd v. Lyndel Nominees Pty Ltd* (1998) 153 ALR 198, (1998) FCR 475 (FCA) 229  
*Raffaele v. Raffaele* [1962] WAR 29 (SCWA) 275  
*R v. Clarke* (1927) 40 CLR 227 (HCA) 228  
*Sabemo v. North Sydney Municipal Council* [1977] 2 NSWLR 880 (SCNSW) 194–196  
*Veivers v. Cordingley* [1989] 2 Qd R 278 (SCQ) 228  
*Waltons Stores (Interstate) Ltd v. Maher* (1988) 164 CLR 387 (HCA) 187

#### Canada

- Canada Square Corp. Ltd v. Versa Food Services Ltd* (1981) 130 DLR (2d) 205, 34 OR (2d) 250 (CA) 236  
*Chinook Aggregates Ltd v. Abbotsford* (1989) 35 CLR 241 (BCCA) 222  
*Elsev v. J. G. Collins Insurance Agencies Ltd* (1978) 83 DLR 1, [1978] 2 SCR 916 (SCC) 397  
*Force Construction Ltd v. Nova Scotia (Attorney General)* [2008] NSJ No 490 (NSCA) 221  
*Martel Building Ltd v. Canada* [2000] 2 SCR 860 (SCC) 221  
*R v. Ron Engineering & Construction (Eastern) Ltd* [1981] SCR 111 (SCC) 221  
*Tarmac Canada Inc v. Hamilton-Wentworth (Regional Municipality)* 1999 Carswell Ont 2761 (OCA) 221  
*Tercon Contractors Ltd v. British Columbia (Ministry of Transportation & Highways)* 2010 SCC 4 (SCC) 221  
*Vorvis v. Insurance Corp. of British Columbia* [1989] 1 SCR 1085 (SCC) 375

## England and Wales (and Channel Islands)

- Alan & Co. Ltd v. El Nasr Export & Import Co.* [1972] 2 QB 18, [1972] 2 All ER 127 (EWCA) 433
- Albazero, The* [1977] AC 774, [1976] 3 All ER 129 (HL) 321, 323–328, 329–330
- Aliakmon, The* [1985] QB 350, [1985] 2 All ER 44 (EWCA), affd. [1986] AC 785, [1986] 2 All ER 145 (HL) 321
- Alfred McAlpine Construction Ltd v. Panatown Ltd* [2001] 1 AC 518, [2000] 4 All ER 97, [2000] 3 WLR 946 (HL) 323, 327, 328, 380, 381
- Amec Development Ltd v. Jury's Hotel Management (UK) Ltd* [2001] 1 EGLR 81 (Ch) 375
- Antclizo Shipping Corp. v. Food Corp. of India* ('The Antclizo No. 2') [1992] 1 Lloyd's Rep 558 (EWCA) 203
- Anglia Television Ltd v. Reed* [1972] 1 QB 60, [1971] 3 All ER 690 (EWCA) 373, 386, 391
- Anglo-Russian Merchant Traders Ltd, Re* [1917] 2 KB 679 (EWCA) 203
- Attorney-General v. Blake* [2001] 1 AC 268, [2000] 4 All ER 385 (HL) 374
- Balfour v. Balfour* [1919] 2 KB 571, [1918–19] All ER Rep 860 (EWCA) 275
- Bank of Boston Connecticut v. European Grain & Shipping Co.* [1989] AC 1056, [1989] 1 All ER 515 (HL) 342
- Banque Financière de la Cité SA v. Skandia (UK) Insurance Co. Ltd* [1991] 2 AC 249, [1990] 2 All ER 947 (HL) 209
- Banning v. Wright* [1972] 1 WLR 972, [1972] 2 All ER 987 (HL) 440
- Barclays Bank v. O'Brien* [1994] 1 AC 180, [1993] 4 All ER 417 (HL) 166
- Bell v. Lever Bros Ltd* [1932] AC 161, [1931] 1 All ER Rep 1 (HL) 245
- BIM Kemi AB v. Blackburn Chemicals Ltd* (No. 1) [2001] 2 Lloyd's Rep 93 (EWCA) 342
- Blackpool Aero Club v. Blackpool & Fylde District Council* [1990] 1 WLR 1995, [1990] 3 All ER 25 (EWCA) 220–221, 223
- Bolton v. Mahadeva* [1972] 1 WLR 1009, [1972] 2 All ER 1322 (EWCA) 361
- Borelli and others v. Ting and others* [2010] UKPC 21 (PC) 261
- Bowes v. Shand* (1877) 2 App Cas 455, [1874–80] All ER Rep 174 (HL) 363, 364
- Bremer Handelsgesellschaft mbH v. Raiffeisen Hauptgenossenschaft EG* [1982] 1 Lloyd's Rep 599 (QB) 440
- Bremer Handelsgesellschaft mbH v. Vanden Avenne-Izegem PVBA* [1978] 2 Lloyd's Rep 109 (HL) 441, 443
- Bridge v. Campbell Discount Co. Ltd* [1962] AC 600, [1962] 1 All ER 385 (HL) 396–397
- British Columbia etc. Sawmill Co. Ltd v. Nettleship* (1868) LR 3 CP 499 (CP) 368
- British Westinghouse Electric and Manufacturing Co. Ltd v. Underground Electric Railways Co. of London Ltd* [1912] AC 673, [1911–13] All ER Rep 63 (HL) 372
- British Steel Corporation v. Cleveland Bridge and Engineering Co. Ltd* [1984] 1 All ER 504 (QB) 235
- Byrne & Co. v. Leon van Tienhoven & Co.* (1880) 5 CPD 344, [1874–80] All ER Rep Ext 1432 (CPD) 225

- Central London Property Trust Ltd v. High Trees House* [1947] KB 130 (KB) 165, 183–185, 442–443, 445
- Centrovincial Estates plc v. Merchant Investors Assurance Co. Ltd* [1983] Com LR 158 (EWCA) 245
- Charter Reinsurance Co. Ltd v. Fagan* [1997] AC 313, [1996] 3 All ER 46 (HL) 13
- Chartbrook Ltd v. Persimmon Homes Ltd* [2009] UKHL 38, [2010] 1 All ER (Comm) 365 (HL) 13
- CIBC Mortgages v. Pitt* [1994] 1 AC 200, [1993] 4 All ER 433 (HL) 166
- Coloniale Import-Export v. Loumidis Sons* [1978] 2 Lloyd's Rep 560 (QB) 203
- Combe v. Combe* [1951] 2 KB 215, [1951] 1 All ER 767 (EWCA) 181
- Co-operative Insurance Society v. Argyll Stores (Holding) Ltd* [1998] AC 1, [1997] 3 All ER 297 (HL) 350–351
- Couturier v. Hastie* (1856) 5 HL Cas 673 (HL) 245
- Cox v. Troy* (1822) 5 B & Ald 474 153
- Dakin v. Lee* [1916] 1 KB 566, [1914–15] All ER Rep Ext 1302 (KB & EWCA) 361
- Dakin v. Oxley* (1864) 15 CB (NS) 646, 10 LT 268 361
- Daulia Ltd v. Four Millbank Nominees Ltd* [1978] Ch 213, [1978] 2 All ER 557 (EWCA) 228
- Damon Cia S.A. v. Hapag-Lloyd International SA ("The Blackenstein")* [1985] 1 WLR 435, [1985] 1 All ER 475 (EWCA) 236
- Darlington Borough Council v. Wiltshier Northern Ltd* [1995] 1 WLR 68, [1995] 3 All ER 895 (EWCA) 328
- Deutsche Genossenschaftsbank v. Burnhope* [1995] 4 All ER 717 12
- Dickinson v. Dodds* [1876] 2 Ch D 463 (EWCA) 224
- Dunlop Pneumatic Tyre Co. Ltd v. New Garage and Motor Co. Ltd* [1915] AC 79, [1914–15] All ER Rep 739 (HL) 395, 397, 400
- Elder Dempster & Co. Ltd v. Paterson Zochonis & Co. Ltd* [1924] AC 522 (HL) 296
- Errington v. Errington* [1952] 1 KB 290, [1952] 1 All ER 149 (EWCA) 228
- Esso Petroleum v. Niad* [2001] EWHC 6 (Ch) 375
- Experience Hendrix LLC v. PPX Enterprises Inc.* [2003] EMLR 25 (EWCA) 375
- Ficom SA v. Sociedad Cadex Ltda* [1980] 2 Lloyd's Rep 118 (QB) 440
- Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32, [1942] 2 All ER 122 (HL) 414
- Foakes v. Beer* (1884) 9 App Cas 605 (HL) 445
- Fyfeux v. Clyfford* (1518) KB 27/1026 124
- Golden Strait Corporation v. Nipon Yusen Kubishika Kaisha ("The Golden Victory")* [2007] UKHL 12, [2007] 2 AC 353, [2007] 3 All ER 1 (HL) 381
- Grains & Furrages SA v. Huyton* [1997] 1 Lloyd's Rep 628 (QB) 245
- Great Peace Shipping Ltd v. Tsaviris Salvage* [2002] EWCA Civ 1407, [2003] QB 679 (EWCA) 245
- Greene v. Capell* (C1/94/22) 123
- Hadley v. Baxendale* (1854) 9 Exch 341 (CExC) 145, 369, 370, 383
- Harlingdon & Leinster Enterprises Ltd v. Christopher Hull Fine Art Ltd* [1991] 1 QB 564, [1990] 1 All ER 737 (EWCA) 364
- Harvela Investments Ltd v. Royal Trust of Canada Ltd* [1986] AC 207, [1985] 2 All ER 966 (HL) 220, 223

- Hedley Byrne & Co. Ltd v. Heller & Partners Ltd* [1964] AC 465, [1963] 2 All ER 575 (HL) 296
- Hoening v. Isaacs* [1952] 2 All ER 176 (EWCA) 361
- Hong Kong Fir Shipping Co. Ltd v. Kawasaki Kisen Kaisha Ltd* [1962] 2 QB 26, [1962] 1 All ER 474 (EWCA) 364
- Huntoon Co. v. Kolynos (Inc.)* [1930] 1 Ch 528 (EWCA) 341
- Hurford v. Pile HLS MS 105f.f.291* 124
- Hughes v. Metropolitan Railway Co.* (1877) 2 App Cas 439 (HL) 442, 443
- Investors Compensation Scheme Ltd v. West Bromwich Building Society* [1998] 1 WLR 896, [1998] 1 All ER 98 (HL) 13
- Johnson v. Agnew* [1980] AC 367, [1979] 1 All ER 883 (HL) 406
- Jones v. Padavatton* [1969] 1 WLR 328, [1969] 1 WLR 328 (EWCA) 275
- Kiely & Sons v. Medcraft* (1965) 109 Sol Jo 829 (EWCA) 361
- Kleinwort Benson Ltd v. Malaysia Mining Corp. Bhd.* [1989] 1 WLR 379, [1989] 1 All ER 785 (EWCA) 238
- Koufos v. C. Czarnikow Ltd ("The Heron II")* [1969] 1 AC 350, [1967] 3 All ER 686 (HL) 389
- Liverpool City Council v. Irwin* [1977] AC 239, [1976] 2 All ER 39 (HL) 272
- Luyt v. Boteler* (C1/60/142) 123
- Lynch v. DPP of Northern Ireland* [1975] AC 653 (HL) 261
- Mediterranean Salvage & Towage Ltd v. Seamar Trading & Commerce Inc.* [2009] EWCA Civ 531, [2010] 1 All ER (Comm) 1 (EWCA) 271
- MSM Consulting Ltd v. United Republic of Tanzania* [2009] EWHC 121 (QB), (2009) 123 Con LR 154 (QB) 202
- Moorcock, The* (1889) 14 PD 64, [1886–90] All ER Rep 530 (EWCA) 270
- Mulvenna v. Royal Bank of Scotland plc* [2003] EWCA Civ 1112, [2003] All ER (D) 439 (EWCA) 370
- National Westminster Bank v. Morgan* [1985] AC 686, [1985] 1 All ER 821 (HL) 166
- Nisshin Shipping Co. Ltd v. Cleaves & Co. Ltd* [2003] EWHC 2602, [2004] 1 All ER (Comm) 841 (QB) 299
- North Ocean Shipping Co. Ltd v. Hyundai Construction Co. Ltd* [1979] QB 705, [1978] 3 All ER 1170 (QB) 261
- Offer-Hoar and others v. Larkstore Ltd and anor.* [2006] EWCA Civ 1079, [2006] 1 WLR 2926, [2007] 1 All ER (Comm) 104 (EWCA) 381
- Pan Atlantic Insurance Co. Ltd v. Pine Top Insurance Co. Ltd* [1995] 1 AC 501, [1994] 3 All ER 581 (HL) 245
- Pao On v. Lau Yiu Long* [1980] AC 614, [1979] 3 All ER 65 (PC) 261
- Pell Frischman Engineering v. Bow Valley Iran* [2009] UKPC 45, [2010] BLR 73 (PC) 375
- Petromec Inc. v. Petroleo Brasileiro SA Petrobras* [2005] EWCA Civ 891, [2006] 1 Lloyd's Rep 121 (EWCA) 203
- Photo Production Ltd v. Securicor Transport Ltd* [1980] AC 827, [1980] 1 All ER 556 (HL) 406
- Pillans v. van Mierop* (1765) 3 Burr 1663 143–144
- Pinnel's Case* (1602) 5 Co Rep 117a, [1558–1774] All ER Rep 612, 77 ER 237 (CP) 433
- Powell Duffryn Steam Coal Co. v. Taff Vale Railway* (1874) LR 9 Ch 331 (EWCA) 350

- Raffles v. Wichelhaus* (1864) 2 H&C 906, 159 ER 375 246
- Rann v. Hughes* (1778) 4 Bro PC 27, 7 TR 350n 144
- Regalian Properties plc v. London Docklands Development Corporation* [1995] 1 WLR 212, [1995] 1 All ER 1005 (Ch) 195, 202
- Reigate v. Union Manufacturing Co. (Ramsbottom)* [1918] 1 KB 592, [1918–19] All ER Rep 143 (EWCA) 270
- Reniger v. Fogossa* (1550) 1 Plowd 1, 75 ER 1 142–143
- Riyad Bank v. Ahli United Bank (UK) plc* [2006] EWCA Civ 780, [2006] 2 All ER (Comm) 777, [2006] 2 Lloyd's Rep 292 (EWCA) 328
- Rose & Frank Co. v. J. R. Compton & Bros. Ltd* [1923] 2 KB 261 (EWCA) 275
- RTS Flexible Systems Ltd v. Molkerei Alois Müller GmbH & Co. KG (UK Production)* [2010] UKSC 14, [2010] 3 All ER 1 (UKSC) 12, 236
- Ruxley Electronics & Construction Ltd v. Forsyth* [1996] AC 344, [1995] 3 All ER 268 (HL) 369, 379–380
- St Martin's Property Corp. Ltd v. Sir Robert McAlpine & Sons Ltd* [1994] 1 AC 85, [1993] 3 WLR 408, [1993] 3 All ER 417 (HL) 325–328
- Scandinavian Trading Tanker Co. AB v. Flota Petrolera Ecuatoriana ("The Scaptrade")* [1981] 2 Lloyd's Rep 425 (QB); [1983] 2 AC 694, [1983] 2 All ER 763, [1983] 2 Lloyd's Rep 253 (HL) 203, 397
- Selectmove, Re* [1995] 1 WLR 474, [1995] 2 All ER 531 (EWCA) 433
- Shanklin Pier v. Detel Products Ltd* [1951] 2 KB 854, [1951] 2 All ER 471 (KB) 296
- Shirlaw v. Southern Foundries (1926) Ltd* [1939] 2 KB 206, [1939] 2 All ER 113 (EWCA) 270
- Sim v. Rotherham MBC* [1987] Ch 216, [1986] 3 All ER 387 (Ch) 361
- Smith v. Hughes* (1871) LR 6 QB 597, [1861–73] All ER Rep 632 (QB) 246
- Statoil ASA v. Louis Dreyfus Energy Services LP* [2008] EHCW 2257 (Comm), [2009] 1 All ER (Comm) 1035 (QB) 245
- Star Steamship Society v. Beogradska Plovidba ("The Junior K")* [1988] 2 Lloyd's Rep 583 (QB) 203
- Stead v. Dawber* (1839) 10 A & E 57 441
- Sudbrook Trading Estate Ltd v. Eggleton* [1983] 1 AC 444, [1982] 3 All ER 1 (HL) 232
- Sumpter v. Hedges* [1898] 1 QB 673 (EWCA) 361
- Supershield Ltd v. Siemens Building Technologies FE Ltd* [2010] EWCA Civ 7, [2010] 1 Lloyd's Rep 349 (EWCA) 133, 371
- Thorner v. Major* [2009] UKHL 18, [2009] 3 All ER 945 (HL) 188, 189
- Tito v. Waddell (No. 2)* [1977] Ch 106, [1977] 3 All ER 129 (Ch) 375
- Transfield Shipping Inc. v. Mercator Shipping Inc. ("The Achilles")* [2009] 1 AC 61, [2008] 4 All ER 159 (HL) 371
- Trans Trust SPRL v. Danubian Trading Co.* [1952] 2 QB 297, [1952] 1 All ER 970 (EWCA) 340
- Tweedle v. Atkinson* (1861) 1 B&S 393, 121 ER 762 (QB) 146, 295
- Union Eagle v. Golden Achievement Ltd* [1997] AC 514, [1997] 2 All ER 215 (PC) 412
- Universe Tankships of Monrovia v. ITWF* [1980] AC 614 (EWCA), revd. [1983] AC 366 (HL) 261
- Victoria Laundry (Windsor) Ltd v. Newman Industries Ltd* (1949) 2 KB 528, [1949] 1 All ER 997 (EWCA) 369, 388

- Vitol SA v. Norelf Ltd* [1996] AC 800, [1996] 3 All ER 193 (HL) 406  
*Walford v. Miles* [1992] 2 AC 128, [1992] 1 All ER 453 (HL) 203, 237  
*White v. Jones* [1995] 2 AC 207, [1995] 1 All ER 691 (HL) 300–301  
*Williams v. Roffey Bros.* [1991] QB 1, [1990] 1 All ER 512 (EWCA) 165,  
 433–434  
*Wiluszynski v. Tower Hamlets LBC* [1989] ICR 493, [1989] IRLR 259 (EWCA) 361  
*Wrotham Park Estate Co. Ltd v. Parkside Homes Ltd* [1974] 1 WLR 798, [1974] 2 All  
 ER 321 (Ch) 375  
*Yeoman's Row Management Ltd v. Cobbe* [2008] UKHL 55, [2008] 4 All ER 713  
 (HL) 188  
 Anonymous cases:  
 YB T.17 Edw IV f.4 pl.4 123  
 YB M.9 Hen V f.14 pl.23 123  
 YB P.11 Hen VI f.35 pl.30 123

## Germany

### *Reichsgericht*

- RGZ 75, 169 331  
 RGZ 78, 239 191  
 RGZ 99, 147 159, 253  
 RGZ 101, 47 206  
 RGZ 108, 1, 7 206  
 RGZ 124, 81 237  
 RGZ 170, 246 332

### *Bundesgericht*

- BGHZ 12, 286 282  
 BGHZ 15, 224 332  
 BGHZ 21, 102 279  
 BGHZ 25, 250 331  
 BGHZ 34, 355 448  
 BGHZ 40, 91 331, 332  
 BGHZ 48, 396 283  
 BGHZ 66, 51 191  
 BGHZ 74, 383, 392 206  
 BGHZ 90, 198 424  
 BGHZ 91, 324 254  
 BGHZ 133, 36 331  
 BGH LM §123 BGB Nr. 52 207  
 BGH NJW 1965, 812 192  
 BGH NJW 1965, 1955 311  
 BGH NJW 1972, 288 331



BGH NJW 1972, 1189	283
BGH NJW 1973, 1793	206
BGH NJW 1984, 1177	273
BGH NJW 1985, 2411	331, 332
BGH NJW 1989, 3099	331
BGH NJW 1990, 975	207
BGH NJW 1991, 2484	419
BGH NJW 1992, 1965	206
BGH NJW 1993, 1323	207
BGH NJW 1995, 190	253
BGH NJW 1996, 250	419
BGH NJW 2000, 2342	391
BGH NJW 2000, 2812	387
BGH NJW-RR 1996, 429	207
BGH VersR 1972, 274	331

### *Other courts*

BAG NZA 1994, 1080	424
Landgericht Hanau, NJW 1979, 721	252
OLG Celle NJW-RR 1996, 585	357
OLG Naumburg NJW-RR 1998, 873	357

### **New Zealand**

<i>Fletcher Challenge Energy Ltd v. Electricity Corporation of New Zealand Ltd</i> [2002] 2 NZLR 433 (NZCA)	275
<i>Nielsen v. Dysart Timbers Ltd</i> [2009] NZSC 43 (NZSA)	224

### **Scotland**

<i>A v. B</i> 2003 SLT 242 (CSOH)	341
<i>Aberdeen Harbour Board v. Heating Enterprises Aberdeen Ltd</i> 1990 SLT 416, 1989 SCLR 716 (CSIH)	306
<i>Achinmoutie v. Hay, Mor.</i> 12126	287
<i>Advice Centre for Mortgages Ltd v. McNicoll</i> 2006 SLT 591, 2006 SCLR 602 (CSOH)	160
<i>Aisling Developments Ltd v. Persimmon Homes Ltd</i> [2008] CSOH 140, 2009 SLT 494 (CSOH)	
<i>Avintair Ltd v. Ryder Airline Services Ltd</i> 1994 SC 270, 1994 SLT 613 (CSOH)	160–161
<i>Baillie Estates Ltd v. Du Pont (UK) Ltd</i> [2009] CSOH 95, 2009 GWD 25–399 (CSOH)	276
<i>Balfour Beatty Construction (Scotland) Ltd v. Scottish Power plc</i> 1994 SC (HL) 20, 1994 SLT 807 (HL)	370