

Boilerplate: Practical Clauses

Fifth Edition

Richard Christou
Solicitor (M.A. Cantab.)



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Preface to the Fifth Edition

The fifth edition of this book is still based upon the same plan as previous editions. Developments in legislation and case law have been considered and taken into account both in the legal commentary and, where necessary, in the precedents themselves. On this occasion my business affairs have taken up much of time, and I have gratefully accepted the assistance of Robert Crossley in dealing with the necessary textual changes.

Developments in consumer law, as a result of continuing legislation from the European Union, have continued apace and the new developments here are dealt with in Chapters 6, 7 and 13. The law relating to contracting with consumers has particular relevance for contracts concluded over the internet, and new developments in this area (particularly driven by EU legislation) have been included in this chapter.

Again EU developments have impacted the discussion in Chapter 12 on disputes and conflict of laws. The Rome Convention has been converted into two new EU Regulations: Regulation 593/2008(EC) (known as Rome I) relating to governing law in contractual matters and Regulation 864/2007 (known as Rome II) on the law applicable to non-contractual obligations. The impact of the new Insolvency Regulation (1346/2000/EC) is also discussed. Finally, this chapter also discusses the latest cases under the Council Regulation on the Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (44/2001/EC) (The Brussels Regulation), where it is gratifying to see that some of the propositions put forward in the previous edition have been confirmed by later case law.

The law in this edition is in general as stated at November 2009.

Richard Christou
London

Preface to the Fourth Edition

In general, I have taken the opportunity to update this 4th Edition of *Boilerplate* to cover the latest developments in statute and case law. However, there are three areas that deserve special mention.

First, I have substantially revised the discussions in Chapters 7 and 10 on the question of the exclusion of liability for misrepresentation and fraud, in the light of the important decisions in *Granville Oils & Chemicals Ltd v Davis Turner & Co Ltd*, *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank*, *Infinitel Ltd v Artisan Contracting Ltd* and *E. A. Grimstead & Son Ltd v McGarrigan*.

Second, I have expanded upon the interpretation and operation of choice of law and jurisdiction clauses in Chapter 12, following the European Court Decisions in *Turner v Grovit* and *Erich Gasser GmbH v MISAT Srl*, and the Decisions of the English Courts in *Apple Corps Ltd v Apple Computer Inc* and *Through Transport Mutual Insurance Association (Eurasia) Ltd v New India Assurance Co Ltd (The Hari Bhum)*.

Finally, I have added an entirely new chapter which attempts to deal with the question of boilerplate in relation to contracting over the internet. The subject lends itself particularly well to inclusion in this book, now that the field is sufficiently developed in both UK and EC legislation and practice. This is because the main aim of the regime as it has emerged in the European Union is not to prescribe special substantive rules for internet contracting, which affect the subject matter of the contract itself. Instead it sets up a procedural framework to promote the fair and expeditious conclusion of contracts over the internet, whilst leaving the subject matter of such contracts to be governed by the same legal principles applicable to all contracts with similar subject matter, by whatever medium they are concluded. I was therefore able to concentrate on creating precedents which were generally applicable to internet contracting, and thus truly falling within the classification of boilerplate as I have defined it for the purposes of this book.

The law in this edition is in general as stated at May 2005.

Richard Christou
London

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