

BIRDS' MODERN INSURANCE LAW

Eighth Edition

John Birds



SWEET & MAXWELL

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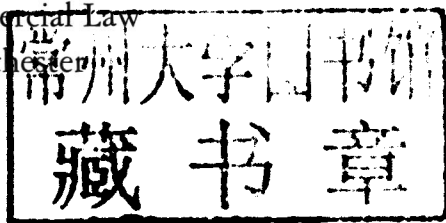
EIGHTH EDITION

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SWEET & MAXWELL



THOMSON REUTERS

First edition 1982
Second edition 1988
Third edition 1993
Fourth edition 1997
Fifth edition 2001
Sixth edition 2004
Seventh edition 2007

Published in 2010 by Thomson Reuters (Legal) Limited
(Registered in England & Wales, Company No 1679046.
Registered Office and address for service:
100 Avenue Road, London NW3 3PF)
trading as Sweet & Maxwell

*For further information on our products and services, visit
www.sweetandmaxwell.co.uk

Typeset by LBJ Typesetting of Kingsclere
Printed in Great Britain by TJ International Ltd, Padstow, Cornwall

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A CIP catalogue record for this book is available from the British Library.
ISBN: 978-1-847-03916-3

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2010

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PREFACE

I think that it is fair to say that the most significant developments in the three years since the previous edition have been legislative and regulatory rather than as a result of case law, although I hope that I have covered all the relevant cases decided since 2007. There are certainly some that have clarified certain things, for example *Tyco Fire & Integrated Solutions (UK) Ltd v Ross-Royce Motor Cars Ltd* (subrogation in co-insurance situations), one or two confirming that the courts are taking a stricter line (as against insurers) regarding warranties and a number exploring the proper scope of the MIB agreements in the light of the Motor Insurance Directives (now consolidated).

On the legislative front, the Third Parties (Rights against Insurers) Act 2010 has finally enacted, with minor modifications, the Law Commissions' 2001 Report, but, given that it was uncertain at the time of writing whether the Bill would get through Parliament before the general election and that the date for its implementation, which in any event will only be prospective, remains uncertain, I have retained coverage of the 1930 Act and referred only to the changes that will happen following the implementation of the 2010 Act. On the regulatory front, I have taken account of the fact that the FSA replaced the Insurance Conduct of Business Rules with the Insurance Conduct of Business Sourcebook and given a little more attention to the effect of that.

The Law Commissions' project on insurance contract law grinds on rather slowly, although it is less ambitious than originally envisaged. The first Report to emanate from this, the recommendations in which would very sensibly produce much-needed reform of pre-contractual disclosure and misrepresentation in consumer insurances, appeared in December 2009. Obviously this is referred to, although not in enormous detail given that it is quite uncertain as to when the draft Bill will be presented to Parliament. It is to be hoped that it does not suffer the fate of the 1980 Report. I refer as appropriate to other reforms that might result from their work, although unfortunately their very interesting Issues Paper 6 on damages for late payment and the insurer's duty of good faith appeared too late (in March 2010) for more than the briefest of references to be inserted at proof stage. At the European level, some reference is made to the *Principles of European Insurance Contract Law*, the first volume of which was published in 2009. The prospect of this forming the basis for an optional regime for insurance contract law is by no means fanciful, but again

it will probably be some time before an appropriate regulation is agreed. In the meantime, and subject to the need for me to declare an interest in that project, it is suggested that the *Principles* repay careful study at least for comparative law purposes.

For the first time since this book was first published in 1982, I have made some structural changes, dividing up the two previously largest chapters (on insurable interest and utmost good faith) and introducing paragraph numbers in the hope that this may ease referencing. Many thanks, as always, to the staff at Sweet & Maxwell for their support and encouragement and for allowing some additions at proof stage.

John Birds
Manchester/Sheffield
April 2010

TABLE OF CASES

AA Mutual International Insurance Co Ltd, Re [2004] EWHC 2430 (Ch); [2005] 2 B.C.L.C. 8	2.4
AP Stephen v Scottish Boatowners Mutual Insurance Association (The Talisman); sub nom. Stephen v Scottish Boatowners Mutual Insurance Association (The Talisman); Stephen v Scottish Boatowners Mutual Insurance Association [1989] 1 Lloyd's Rep. 535; 1989 S.C. (H.L.) 24; 1989 S.L.T. 283, HL	13.2.2
AXA General Insurance Ltd v Gottlieb; sub nom. Gottlieb v Axa General Insurance Ltd [2005] EWCA Civ 112; [2005] 1 All E.R. (Comm) 445; [2005] 1 C.L.C. 62	14.12
AXA Insurance UK Plc v Norwich Union Insurance Ltd [2007] EWHC 1046 (Comm); [2008] Lloyd's Rep. I.R. 122	21.2
Ackbar v CF Green & Co Ltd [1975] Q.B. 582; [1975] 2 W.L.R. 773; [1975] 2 All E.R. 65, QBD	12.6.2
Adams v Andrews [1964] 2 Lloyd's Rep. 347, QBD	21.7
Adams v Dunne [1978] R.T.R. 281; [1978] Crim. L.R. 365, DC	21.2.3
Adcock v Cooperative Insurance Society Ltd [2000] Lloyd's Rep. I.R. 657, CA (Civ Div)	15.11
Adie & Sons v Insurance Corp (1898) 14 T.L.R. 544	5.1.1, 5.1.5
Agapitos v Agnew (The Aegeon) (No.1) [2002] EWCA Civ 247; [2003] Q.B. 556; [2002] 3 W.L.R. 616	7.15, 14.12
Agnew v Lansforsakringsbolagens AB [2001] 1 A.C. 223; [2000] 2 W.L.R. 497; [2000] 1 All E.R. 737, HL	6.3
Agnew-Surpass Stores v Cummer-Yonge Investments (1975) 55 D.L.R. (3d) 676, Sup Ct (Can)	17.14
Akers v Motor Insurers Bureau [2003] EWCA Civ 18; [2003] Lloyd's Rep. I.R. 427	21.8.1
Albion Insurance Co v Government Insurance Office of New South Wales (1969) 121 C.L.R. 342	18.2.1
Alchorne v Favill (1825) 4 L. (O.S) 47	16.1.2
Alder v Moore [1961] 2 Q.B. 57; [1961] 2 W.L.R. 426; [1961] 1 All E.R. 1, CA	13.3.4
Aldrich v Norwich Union Life Insurance Co Ltd [1998] C.L.C. 1621; [1999] Lloyd's Rep. I.R. 276, Ch D	8.1
Alfred James Dunbar v A&B Painters Ltd and Economic Insurance Co Ltd and Whitehouse & Co [1986] 2 Lloyd's Rep. 38, CA (Civ Div)	12.5, 12.6.3, 12.6.4
Alfred McAlpine Construction Ltd v Panatown Ltd (No.1); sub nom. Panatown Ltd v Alfred McAlpine Construction Ltd [2001] 1 A.C. 518; [2000] 3 W.L.R. 946; [2000] 4 All E.R. 979, HL	4.2
Alfred McAlpine Plc v BAI (Run-Off) Ltd [2000] 1 All E.R. (Comm) 545; [2000] 1 Lloyd's Rep. 437; [2000] C.L.C. 812; (2001) 3 T.C.L.R. 5, CA (Civ Div)	9.11
Allen v Robles [1969] 1 W.L.R. 1193; [1969] 3 All E.R. 154; [1969] 2 Lloyd's Rep. 61, CA (Civ Div)	14.11.4

Allis-Chalmers Co v Fidelity & Deposit Co of Maryland (1916) 114 L.T. 433	5.1.2
Aluminium Wire and Cable Co Ltd v Allstate Insurance Co Ltd [1985] 2 Lloyd's Rep. 280, QBD	20.2.5
American Surety Co of New York v Wrightson (1910) 103 L.T. 663	18.3.2
Amey Properties Ltd v Cornhill Insurance Plc [1996] L.R.L.R. 259; [1996] C.L.C. 401, QBD (Comm)	21.3.4, 21.3.6
Anctil v Manufacturers Life Insurance Co [1899] A.C. 604, PC (Can)	3.4.1, 6.5
Anders & Kern UK Ltd (t/a Anders & Kern Presentation Systems) v CGU Insurance Plc (t/a Norwich Union Insurance) [2007] EWCA Civ 1481; [2008] Lloyd's Rep. I.R. 460	8.3
Anderson v Commercial Union Assurance Co (1885) 55 L.J.Q.B. 146	16.1.3
Anderson v Commercial Union Assurance Co Plc (No.1), 1998 S.C. 197; 1998 S.L.T. 826; 1997 G.W.D. 29–1486, IH (2 Div)	15.6, 16.1
Anderson v Fitzgerald (1853) 4 H.L.C. 483	9.5, 10.2.1
Anderson v Norwich Union Fire Insurance Society [1977] 1 Lloyd's Rep. 253, CA (Civ Div)	13.3.3
Anderson v Pacific Fire & Marine Insurance Co (1871–72) L.R. 7 C.P. 65, CCP	7.5
Andrews v Patriotic Assurance Co (1886) 18 L.R.Ir. 355	16.2
Aneco Reinsurance Underwriting Ltd (In Liquidation) v Johnson & Higgins Ltd; sub nom. Aneco Reinsurance Underwriting Ltd v Johnson & Higgs Ltd [2001] UKHL 51; [2001] 2 All E.R. (Comm) 929; [2002] 1 Lloyd's Rep. 157	7.10
Anglo African Merchants Ltd v Bayley; Exmouth Clothing Co Ltd v Bayley [1970] 1 Q.B. 311; [1969] 2 W.L.R. 686; [1969] 2 All E.R. 421, QBD (Comm)	12.2, 12.6.1
Ansari v New India Assurance Ltd [2008] EWHC 243 (Ch); [2008] Lloyd's Rep. I.R. 586	7.16
Anstey v British Natural Premium Life Assurance Ltd (1909) 99 L.T. 765	6.5
Antaios Compania Naviera SA v Salen Rederierna AB (The Antaios) [1985] A.C. 191; [1984] 3 W.L.R. 592; [1984] 3 All E.R. 229, HL	13.3
Arab Bank Plc v John D Wood (Commercial) Ltd; Arab Bank Plc v Browne [2000] 1 W.L.R. 857; [2000] Lloyd's Rep. I.R. 471; [2000] Lloyd's Rep. P.N. 173, CA (Civ Div)	17.9
Arab Bank Plc v Zurich Insurance Co; Banque Bruxelles Lambert SA v Zurich Insurance Co [1999] 1 Lloyd's Rep. 262; [1998] C.L.C. 1351, QBD (Comm)	4.1, 7.6.2, 7.12
Arif v Excess Insurance Group Ltd, 1986 S.C. 317; 1987 S.L.T. 473, OH	3.10.2
Arterial Caravans v Yorkshire Insurance Co [1973] 1 Lloyd's Rep. 169, QBD	7.11.1
Arthur Barnett Ltd v National Insurance Co of New Zealand [1965] N.Z.L.R. 874	17.7
Ashmore v Corp of Lloyd's [1992] 1 W.L.R. 446; [1992] 2 All E.R. 486; [1992] 2 Lloyd's Rep. 1; (1992) 136 S.J.L.B. 113, HL	1.3
Assicurazioni Generali SpA v Arab Insurance Group (BSC) [2002] EWCA Civ 1642; [2003] 1 W.L.R. 577; [2003] 1 All E.R. (Comm) 140	7.10
Austin v Drewe (1816) 6 Taunt. 436	13.5, 13.8.5

Austin v Zurich General Accident & Liability Insurance Co Ltd [1945]	
K.B. 250; (1945) 78 Ll. L. Rep. 185, CA	18.0, 18.4.1
Australia & New Zealand Bank Ltd v Colonial & Eagle Wharves Ltd	
[1960] 2 Lloyd's Rep. 241, QBD (Comm)	7.6.1
Australia Casualty Co Ltd v Federico (1986) 66 A.L.R. 99	13.6.2
Australian Agricultural Co v Saunders (1875) L.R. 10 C.P. 668	18.4.2
Avandero (UK) Ltd v National Transit Insurance Co Ltd [1984] 2 Lloyd's	
Rep. 613, QBD (Comm)	20.1.3
Ayrey v British Legal & United Provident Assurance Co Ltd [1918] 1 K.B.	
136, KBD	7.7.1, 12.4
B (A Minor) v Knight [1981] R.T.R. 136, QBD	21.2.1
BP Exploration Operating Co Ltd v Kvaerner Oilfield Products Ltd [2004]	
EWHC 999; [2004] 2 All E.R. (Comm) 266; [2005] 1 Lloyd's Rep.	
307	17.14.1
Babatsikos v Car Owners Mutual Insurance Co [1970] 2 Lloyd's Rep. 314,	
CA (Vic)	7.9
Baghbadrani v Commercial Union Assurance Co Plc [2000] Lloyd's Rep.	
I.R. 94, QBD	14.13.1
Ballast Plc, Re; sub nom. St Paul Travelers Insurance Co Ltd v Dargan	
[2006] EWHC 3189 (Ch); [2007] B.C.C. 620; [2007] B.P.I.R. 117	17.2
Bank Leumi le Israel BM v British National Insurance Co Ltd [1988] 1	
Lloyd's Rep. 71, QBD (Comm)	7.2.1
Bank of Nova Scotia v Hellenic Mutual War Risks Association (Bermuda)	
Ltd (The Good Luck) (Disclosure) [1992] 2 Lloyd's Rep. 540 (Note),	
QBD (Comm)	6.3, 9.2, 9.4.1, 9.8
Bankers Insurance Co Ltd v South [2003] EWHC 380 (QB); [2004]	
Lloyd's Rep. I.R. 1; [2003] P.I.Q.R. P28	6.1, 9.11, 13.1.1
Banque Financiere de la Cite SA (formerly Banque Keyser Ullmann SA) v	
Westgate Insurance Co (formerly Hodge General & Mercantile Co	
Ltd); sub nom. Banque Keyser Ullmann SA v Skandia (UK)	
Insurance Co; Skandia (UK) Insurance Co v Chemical Bank; Skandia	
(UK) Insurance Co v Credit Lyonnais Bank Nederland NV [1991] 2	
A.C. 249; [1990] 3 W.L.R. 364; [1990] 2 All E.R. 947, HL	8.1, 15.1
Banque Financiere de la Cite SA v Parc (Battersea) Ltd [1999] 1 A.C. 221;	
[1998] 2 W.L.R. 475; [1998] 1 All E.R. 737, HL	17.2
Banque Financiere de la Cite SA v Westgate Insurance Co (1988) 138	
N.L.J. 287, CA (Civ Div)	7.4
Barclay Holdings (Australia) Pty Ltd v British National Insurance Co Ltd	
(1987) 8 N.S.W.L.R. 514	7.8
Barclays Bank Ltd v Quistclose Investments Ltd; sub nom. Quistclose	
Investments Ltd v Rolls Razor Ltd (In Voluntary Liquidation) [1970]	
A.C. 567; [1968] 3 W.L.R. 1097; [1968] 3 All E.R. 651; (1968) 112	
S.J. 903, HL	4.4
Barnes v London, Edinburgh and Glasgow Life Insurance Co [1892] 1	
Q.B. 864, QBD	3.4.1
Barrett Bros (Taxis) Ltd v Davies; sub nom. Lickiss v Milestone Motor	
Policies at Lloyds [1966] 1 W.L.R. 1334; [1966] 2 All E.R. 972;	
[1966] 2 Lloyd's Rep. 1; (1966) 110 S.J. 600, CA	9.9, 14.6.2,
	14.7.1, 14.11.1
Barrett v London General Insurance Co Ltd [1935] 1 K.B. 238; (1934) 50	
Ll. L. Rep. 99, KBD	21.3.5

Bates v Robert Barrow Ltd; Ansell v Robert Barrow Ltd [1995] 1 Lloyd's Rep. 680; [1995] C.L.C. 207, QBD (Comm)	12.6.2, 20.2.2
Bauman v Royal Indemnity Co, 36 N.J. 12 (1961)	13.1.2
Bawden v London, Edinburgh and Glasgow Assurance Co [1892] 2 Q.B. 534, CA	12.5.1, 12.5.2
Bazeley v Forder (1867–68) L.R. 3 Q.B. 559, QB	3.4.1
Beach v Pearl Assurance Co Ltd [1938] I.A.C. Rep.3	5.1.2
Beacon Carpets v Kirby [1985] Q.B. 755; [1984] 3 W.L.R. 489; [1984] 2 All E.R. 726; (1984) 48 P. & C.R. 445; (1984) 81 L.S.G. 1603; (1984) 128 S.J. 549, CA (Civ Div)	4.7
Beacon Insurance Co Ltd v Langdale [1939] 4 All E.R. 204; (1939) 65 Ll. L. Rep. 57, CA	20.2.2
Bean v Stupart (1778) 1 Doug. 11	9.1
Beauchamp v National Mutual Indemnity Insurance Co Ltd (1937) 57 Ll. L. Rep. 272, KBD	9.3.2
Becker Gray & Co v London Assurance Corp [1918] A.C. 101, HL	13.8.5, 13.9, 13.9.2
Bedford Insurance Co Ltd v Instituto de Resseguros do Brasil [1985] Q.B. 966; [1984] 3 W.L.R. 726; [1984] 3 All E.R. 766, QBD (Comm)	2.4
Bee v Jenson [2007] EWCA Civ 923; [2007] 4 All E.R. 791; [2007] 2 All E.R. (Comm) 1172	17.5
Bell v Lever Brothers Ltd; sub nom. Lever Bros Ltd v Bell [1932] A.C. 161, HL	14.13.1
Beresford v Royal Insurance Co Ltd [1938] A.C. 586, HL	13.2.1, 14.2
Berger and Light Diffusers Pty Ltd v Pollock [1973] 2 Lloyd's Rep. 442, QBD (Comm)	7.9
Bestquest Ltd v Regency Care Group [2003] Lloyd's Rep. I.R. 392, CC (London)	3.10.6, 11.4
Beswick v Beswick [1968] A.C. 58; [1967] 3 W.L.R. 932; [1967] 2 All E.R. 1197; (1967) 111 S.J. 540, HL	19.3.2
Biddle v Johnston [1965] 2 Lloyd's Rep. 121; (1965) 109 S.J. 395, DC	21.2.4
Biggar v Rock Life Assurance Co [1902] 1 K.B. 516, KBD	12.5.2, 12.5.6
Black King Shipping Corp v Massie (The Litsion Pride) [1985] 1 Lloyd's Rep. 437; (1984) 134 N.L.J. 887, QBD (Comm)	8.1, 14.12
Blackburn Low & Co v Vigors (1887) L.R. 12 App. Cas. 531, HL	7.6.1
Blackburn Rovers Football & Athletic Club Plc v Avon Insurance Plc (Preliminary Issues) [2005] EWCA Civ 423; [2005] 1 C.L.C. 554; [2005] Lloyd's Rep. I.R. 447	13.9.2
Blackburn Rovers Football & Athletic Club Plc v Avon Insurance Plc [2006] EWHC 840 (QB); [2007] Lloyd's Rep. I.R. 1; (2006) 150 S.J.L.B. 574, QBD	13.9.2
Blackley v National Mutual Life Association (Australasia) [1972] N.Z.L.R. 356	7.7.1, 12.4
Blanchette v US Ltd (1973) 36 D.L.R. (3d) 561	12.5.5
Board of Management of Trim Joint District School v Kelly; sub nom. Trim Joint District School Board of Management v Kelly [1914] A.C. 667, HL (UK-Irl)	13.6
Boardman v Phipps; sub nom. Phipps v Boardman [1967] 2 A.C. 46; [1966] 3 W.L.R. 1009; [1966] 3 All E.R. 721, HL	12.6.1
Boehm v Bell (1799) 8 T.R. 154	3.10.3

Bolands Ltd v London & Lancashire Fire Insurance Co Ltd; sub nom. London and Lancashire Fire Insurance Co Ltd v Bolands Ltd [1924] A.C. 836; (1924) 19 Ll. L. Rep. 1m HL (UK-Irl)	13.3.2
Bolton Partners v Lambert (1889) L.R. 41 Ch. D. 295, CA	12.3.4
Bond Air Services v Hill [1955] 2 Q.B. 417; [1955] 2 W.L.R. 1194; [1955] 2 All E.R. 476, QBD	9.12
Boss v Kingston [1963] 1 W.L.R. 99; [1963] 1 All E.R. 177; [1962] 2 Lloyd's Rep. 431, DC	11.1.3
Bovis Construction Ltd v Commercial Union Assurance Co Plc [2001] 1 Lloyd's Rep. 416; [2002] T.C.L.R. 11; [2001] Lloyd's Rep. I.R. 321, QBD (Comm)	18.1
Bowskill v Dawson (No.2) [1955] 1 Q.B. 13; [1954] 3 W.L.R. 275; [1954] 2 All E.R. 649, CA	19.3.4
Bradley & Essex & Suffolk Accident Indemnity Society, Re [1912] 1 K.B. 415, CA	9.11, 13.1.2, 22.1.3
Bradley v Eagle Star Insurance Co Ltd [1989] A.C. 957; [1989] 2 W.L.R. 568; [1989] 1 All E.R. 961, HL	15.1, 20.1, 20.1.1, 20.1.2
Braunstein v Accidental Death Insurance Co (1861) 1 B. & S. 782	14.7
Bretton v Hancock [2005] EWCA Civ 404; [2005] R.T.R. 22; [2005] Lloyd's Rep. I.R. 454	21.2, 21.2.1, 21.2.5
Bristol and West Building Society v May May & Merrimans (No.2) [1998] 1 W.L.R. 336; [1997] 3 All E.R. 206; [1997] N.P.C. 31, Ch D	17.9
Brit Syndicates Ltd v Italaudit SpA (In Liquidation) (formerly Grant Thornton SpA); sub nom. Brit Syndicates Ltd v Grant Thornton International [2008] UKHL 18; [2008] 2 All E.R. 1140; [2008] 2 All E.R. (Comm) 1	7.3, 7.12
British & Foreign Marine Insurance Co Ltd v Gaunt; sub nom. Gaunt v British & Foreign Marine Insurance Co Ltd (No.3) [1921] 2 A.C. 41; (1921) 7 Ll. L. Rep. 62, HL	13.4
British Bank of the Middle East v Sun Life Assurance Co of Canada (UK) [1983] 2 Lloyd's Rep. 9; [1983] Com. L.R. 187; (1983) 133 N.L.J. 575, HL	12.3.3
British Traders Insurance Co v Monson, 111 C.L.R. 86; (1964) 38 A.L.J.R. 20, HC (Aus)	3.9.1, 4.2, 4.7, 15.7, 16.2.3
British Workmen's & General Assurance Co v Cunliffe (1902) 18 T.L.R. 502	10.2.2
Britton v Royal Insurance Co (1866) 4 F. & F. 905	14.12
Brook v Trafalgar Insurance Co Ltd (1946) 79 Ll. L. Rep. 365, CA	12.3.3, 14.6.2, 14.11.3
Brotherton v Aseguradora Colseguros SA (No.2); sub nom. Brotherton v La Previsora SA Compania de Seguros [2003] EWCA Civ 705; [2003] 2 All E.R. (Comm) 298; [2003] 2 C.L.C. 629	7.3, 7.11.2, 8.2
Brown and Brown v Albany Construction Co [1995] N.P.C. 100, CA (Civ Div)	17.9
Brown v Raphael [1958] Ch. 636; [1958] 2 W.L.R. 647; [1958] 2 All E.R. 79; (1958) 102 S.J. 269, CA	7.2.1
Brown v Roberts [1965] 1 Q.B. 1; [1963] 3 W.L.R. 75; [1963] 2 All E.R. 263, QBD	21.2.1
Brown v Royal Insurance Co (1859) 1 El. & El. 853	16.1.2, 16.1.3
Brown v Zurich General Accident and Liability Insurance Co Ltd [1954] 2 Lloyd's Rep. 243, QBD	21.3.6

Browning v Phoenix Assurance Co Ltd [1960] 2 Lloyd's Rep. 360, QBD	21.3.3
Bryant v Primary Industries Insurance Co [1990] 2 N.Z.L.R. 142, CA (NZ)	11.4
Buchanan v Motor Insurers Bureau [1955] 1 W.L.R. 488; [1955] 1 All E.R. 607; [1954] 2 Lloyd's Rep. 519, QBD	21.7
Buckland v Palmer [1984] 1 W.L.R. 1109; [1984] 3 All E.R. 554; [1985] R.T.R. 5; (1984) 81 L.S.G. 2300; (1984) 128 S.J. 565, CA (Civ Div) ...	17.10
Bugge v Taylor [1941] 1 K.B. 198, KBD	21.2
Burnand v Rodocanachi Sons & Co (1881–82) L.R. 7 App. Cas. 333, HL	3.3, 15.8, 17.2, 17.4.1, 17.4.2
Burns v Shuttlesworth Ltd; sub nom. Burns v General Accident Fire and Life Assurance Corp Plc [1999] 1 W.L.R. 1449; [1999] 2 All E.R. 27; [1999] P.I.Q.R. P229, CA (Civ Div)	20.1
Burridge v Haines (1918) 87 L.J.K.B. 641	14.11.2
Burts & Harvey Ltd v Vulcan Boiler and General Insurance Co Ltd (No.2); Alchemy Ltd v Vulcan Boiler and General Insurance Co Ltd (No.2) [1966] 1 Lloyd's Rep. 354, QBD	15.11
Byrne v Motor Insurers Bureau [2008] EWCA Civ 574; [2008] 4 All E.R. 476; [2008] R.T.R. 26	21.9
CTN Cash and Carry Ltd v General Accident Fire and Life Assurance Corp [1989] 1 Lloyd's Rep. 299, QBD	9.4, 9.8
Caledonia North Sea Ltd v London Bridge Engineering Ltd; sub nom. Caledonia North Sea Ltd v BT Plc; Caledonia North Sea Ltd v British Telecommunications Plc; Caledonia North Sea Ltd v Norton (No.2) Ltd (In Liquidation); EE Caledonia Ltd v London Bridge Engineering Ltd [2002] UKHL 4; [2002] 1 All E.R. (Comm) 321; [2002] 1 Lloyd's Rep. 553	17.5, 18.0, 18.2.2
Calf v Sun Insurance Office; sub nom. Calf and Sun Insurance Office's Arbitration, Re [1920] 2 K.B. 366; (1920) 2 Ll. L. Rep. 304, CA	13.3
Callaghan (t/a Stage 3 Discotheque) v Thompson [2000] C.L.C. 360; [2000] Lloyd's Rep. I.R. 125, QBD (Comm)	12.6.1
Callaghan v Dominion Insurance Co Ltd [1997] 2 Lloyd's Rep. 541, QBD	15.1
Cambridge v Motor Insurers Bureau; sub nom. Cambridge v Callaghan [1998] R.T.R. 365, CA (Civ Div)	21.8
Canadian Indemnity Co v Canadian Johns-Manville Co (1990) 72 D.L.R. (4 th) 478	7.7
Canadian Indemnity Co v Walkem Machinery & Equipment Ltd (1975) 52 D.L.R. (3d) 1	13.6.5, 13.6.6
Candler v London & Lancashire Guarantee & Accident Co of Canada (1963) 40 D.L.R. (2d) 408	13.6.1
Candolin v Vahinkovakuutusosakeyhtio Pohjola (C537/03) [2005] E.C.R. I-5745; [2006] R.T.R. 1; [2005] 3 C.M.L.R. 17, ECJ (1st Chamber)	21.5
Canelhas Comercio Importacao e Exportacao Ltd v Wooldridge; sub nom. Wooldridge v Canelhas Comercio Importacao e Exportacao Ltda [2004] EWCA Civ 984; [2005] 1 All E.R. (Comm) 43; [2004] 2 C.L.C. 469, CA (Civ Div)	13.3, 13.3.2

Canning v Farquhar (1885–86) L.R. 16 Q.B.D. 727, CA	5.1.3, 5.1.4, 5.7.3
Cape Plc v Iron Trades Employers Insurance Association Ltd [2004] Lloyd's Rep. I.R. 75; [1999] P.I.Q.R. Q212, QBD (Comm)	13.3.2
Caple v Sewell [2001] EWCA Civ 1848; [2002] Lloyd's Rep. I.R. 627	21.3.3
Carr and Sun Insurance, Re (1897) 13 T.L.R. 186	14.12.2
Carreras Ltd v Cunard Steamship Co Ltd [1918] 1 K.B. 118, KBD	15.9.2
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Diab v Regent Insurance Co Ltd [2006] UKPC 29; [2007] Bus. L.R. 915; [2007] 1 W.L.R. 797; [2006] 2 All E.R. (Comm) 704, PC (Bze)	14.6.1
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E Dibbens & Sons (In Liquidation), Re [1990] B.C.L.C. 577, Ch D	4.4, 4.5
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Engelbach, Re [1924] 2 Ch. 348	19.3.1
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Feasey v Sun Life Assurance Co of Canada; Steamship Mutual Underwriting Association (Bermuda) Ltd v Feasey [2003] EWCA Civ 885; [2003] 2 All E.R. (Comm) 587; [2004] 1 C.L.C. 237	3.1, 3.4, 3.4.1, 3.4.2, 3.5, 3.6, 3.8, 3.10.1, 3.10.2, 3.10.7, 4.2.2