

LLOYD'S LAW REPORTS

Editors:

Michael Daiches, Barrister
Professor Robert Merkin

2008
Volume 1

informa

LONDON

2008

All editorial correspondence to: Lloyd's Law Reports,
Informa Law, Informa House, 30–32 Mortimer Street,
London W1W 7RE.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording and/or otherwise, without the prior written permission of Informa Law.

The Law Reports contained in this part are verbatim judgments and while every care has been taken to ensure their accuracy neither the editor nor Informa Law can accept any responsibility for any loss occasioned to any person acting or refraining from acting as a result of any statements contained therein.

Informa Law
Informa House
30–32 Mortimer Street
London W1W 7RE

an Informa Business

© 2008 Informa UK Ltd

ISSN 0024–5488
ISBN 978–1–84311–769–8

Subscriptions

Subscriber Helpdesk: Tel: +44 (0)20 7017 5532, Fax: +44 (0)20 7017 4781,
Email: law.enquiries@informa.com

Subscriptions for Asia Pacific should be addressed to Informa Law Asia, No 1 Grange Road,
#08–02 Orchard Building, Singapore 239693 (Tel: +65 6835 5151, Fax: +65 6734 2938,
Email: grant.rowles@informa.com)

Lloyd's Electronic Law Reports includes the full archive from 1919 to date. Please telephone customer services for more information.

Lloyd's and the Lloyd's crest are the registered trade marks of the society incorporated by the Lloyd's Act 1871 by the name of Lloyd's.

Typeset by Interactive Sciences Ltd, Gloucester
Printed in Great Britain by MPG, Bodmin, Cornwall
Printed on paper sourced from sustainable sources

CASES JUDICIALLY CONSIDERED

- Abu Dhabi National Tanker Co v Product Star Shipping Ltd (The Product Star) (No 2) [1993] 1 Lloyd's Rep 397, **applied**: [2008] 1 Lloyd's Rep 558
- Adams v Cape Industries plc [1990] Ch 433, **distinguished**: [2008] 1 Lloyd's Rep 479
- Aggeliki Charis Compania Maritima SA v Pagnan SpA (The Angelic Grace) [1995] 1 Lloyd's Rep 87, **applied**: [2008] 1 Lloyd's Rep 230
- AIC Ltd v Marine Pilot Ltd (The Archimidis) [2007] 2 Lloyd's Rep 101, **followed**: [2008] 1 Lloyd's Rep 86
- Akai Pty Ltd v Peoples Insurance Co Ltd [1998] 1 Lloyd's Rep 90, **considered**: [2008] 1 Lloyd's Rep 93
- Al-Adsani v United Kingdom (2001) 34 EHRR 273, **applied**: [2008] 1 Lloyd's Rep 673
- Albazer, The [1976] 2 Lloyd's Rep; [1977] AC 774, **considered**: [2008] 1 Lloyd's Rep 462
- Alfred McAlpine Capital Projects Ltd v Tilebox Ltd [2005] BLR 271, **applied**: [2008] 1 Lloyd's Rep 541
- Ali Shipping Corporation v Shipyard Trogir [1998] 1 Lloyd's Rep 643; [1999] 1 WLR 314, **referred to**, **considered**, **applied** and **distinguished**: [2008] 1 Lloyd's Rep 616
- Amin Rasheed Shipping Corporation v Kuwait Insurance Co [1983] 2 Lloyd's Rep 365, **referred to**: [2008] 1 Lloyd's Rep 326
- Angelic Grace, The [1995] 1 Lloyd's Rep 87, **considered**: [2008] 1 Lloyd's Rep 652
- Axios, The [1979] 1 Lloyd's Rep 331, **considered**: [2008] 1 Lloyd's Rep 54
- Associated Electric and Gas Insurance Services Ltd v European Reinsurance Co of Zurich [2003] 1 WLR 1041, **referred to** and **considered**: [2008] 1 Lloyd's Rep 616
- Athletic Union of Constantinople v National Basketball Association [2002] 1 Lloyd's Rep 305, **not followed**: [2008] 1 Lloyd's Rep 316
- Atisa SA v Aztec AG [1983] 2 Lloyd's Rep 579, **considered**: [2008] 1 Lloyd's Rep 179
- Australian Foods v Pars Ram [2002] NSWSC 1180, **distinguished**: [2008] 1 Lloyd's Rep 40
- A v B [1989] 2 Lloyd's Rep 423, **considered**: [2008] 1 Lloyd's Rep 54
- A v B [2007] 1 Lloyd's Rep 237, **applied**: [2008] 1 Lloyd's Rep 239
- A v B (No 2) [2007] 1 Lloyd's Rep 358, **applied**: [2008] 1 Lloyd's Rep 16; **applied** and **considered**: [2008] 1 Lloyd's Rep 239
- Babanaft International Co SA v Avant Petroleum Inc (The Oltenia) [1982] 1 Lloyd's Rep 448, **considered**: [2008] 1 Lloyd's Rep 286
- Baird Textile Holdings Ltd v Marks & Spencer [2002] 1 All ER (Comm) 737, **applied**: [2008] 1 Lloyd's Rep 316
- Baldock v Webster [2006] QB 315, **distinguished** and **doubted**: [2008] 1 Lloyd's Rep 40
- Bank Mellat v Helleniki Techniki SA [1984] QB 291, **referred to**: [2008] 1 Lloyd's Rep 608
- Bank of England v Riley [1992] Ch 475, **applied**: [2008] 1 Lloyd's Rep 161
- Bank of Tokyo-Mitsubishi Ltd v Baskan Gida Sanayi [2004] 2 Lloyd's Rep 395, **considered**: [2008] 1 Lloyd's Rep 434
- Bankovic v Belgium (2001) 123 ILR 94, **applied**: [2008] 1 Lloyd's Rep 673
- Banque Bruxelles Lambert SA v Eagle Star Insurance Co Ltd [1997] AC 191, **distinguished**: [2008] 1 Lloyd's Rep 250
- Barrett Bros (Taxis) Ltd v Davies [1966] 1 WLR 1334, **considered**: [2008] 1 Lloyd's Rep 286
- Berge Sisar, The [2001] 1 Lloyd's Rep 663; [2002] 2 AC 205, **considered**: [2008] 1 Lloyd's Rep 462
- Berry v British Transport Commission [1962] 1 QB 306, **distinguished**: [2008] 1 Lloyd's Rep 16
- Black Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1981] 2 Lloyd's Rep 446, **applied** and **explained**: [2008] 1 Lloyd's Rep 239
- Blain, Ex parte, In re Sawers (1879) 12 Ch D 522, **referred to**: [2008] 1 Lloyd's Rep 30
- Bols Distilleries BV v Superior Yacht Services Ltd [2007] 1 Lloyd's Rep 683, **applied**: [2008] 1 Lloyd's Rep 396, **considered**: [2008] 1 Lloyd's Rep 197; [2008] 1 Lloyd's Rep 434
- British Racing Drivers' Club Ltd v Hextall Erskine & Co [1996] 3 All ER 667, **distinguished**: [2008] 1 Lloyd's Rep 16
- Bruns v Colocotronis (The Vasso) [1979] 2 Lloyd's Rep 412, **applied**: [2008] 1 Lloyd's Rep 210
- Canada Trust Co v Stolzenberg (No 2) [1998] 1 WLR 547, **considered**: [2008] 1 Lloyd's Rep 197, **considered**: [2008] 1 Lloyd's Rep 434; [2002] 1 AC 1, **referred to**: [2008] 1 Lloyd's Rep 344; **considered**: [2008] 1 Lloyd's Rep 434
- Cantor Fitzgerald International v Horkulak [2004] EWCA Civ 1287, **applied**: [2008] 1 Lloyd's Rep 558
- Cetelem SA v Roust Holdings Ltd [2005] 2 Lloyd's Rep 494, **referred to**: [2008] 1 Lloyd's Rep 616; [2005] 1 WLR 3555, **considered**: [2008] 1 Lloyd's Rep 684
- Chanel Ltd v FW Woolworth & Co Ltd [1981] 1 WLR 485, **distinguished**: [2008] 1 Lloyd's Rep 161

- Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd [1993] 1 Lloyd's Rep 291, **applied** and **explained**: [2008] 1 Lloyd's Rep 239
- Chaudhari v British Airways plc [1997] EWCA Civ 1413, **applied**: [2008] 1 Lloyd's Rep 661
- Cia Maritima Zorzoza SA v Sesostris SAE (The Marques de Bolarques) [1984] 1 Lloyd's Rep 652, **considered**: [2008] 1 Lloyd's Rep 93
- CMA CGM SA v Beteiligungs-Kommanditgesellschaft MS Northern Pioneer (The Northern Pioneer) [2003] 1 Lloyd's Rep 212, **considered**: [2008] 1 Lloyd's Rep 608
- Compagnie Commerciale Sucres et Denrees v C Czarnikow Ltd (The Naxos) (HL) [1991] 1 Lloyd's Rep 29, **distinguished**: [2008] 1 Lloyd's Rep 355
- Compagnie Tunisienne De Navigation SA v Compagnie D'Armement Maritime SA [1970] 2 Lloyd's Rep 99, **applied** and **explained**: [2008] 1 Lloyd's Rep 239
- Compania Naviera Maropan SA v Bowaters Lloyd Pulp and Paper Mills Ltd [1955] 1 Lloyd's Rep 349, **considered**: [2008] 1 Lloyd's Rep 597
- Cooper v Slade (1858) 6 HLC 746, **applied**: [2008] 1 Lloyd's Rep 161
- Coppard v Customs and Excise Commissioners [2003] QB 1428, **distinguished** and **doubted**: [2008] 1 Lloyd's Rep 40
- Council of the Borough of South Tyneside v Wickes Building Suppliers Ltd [2004] EWHC 2428 (Comm), **referred to** and **applied**: [2008] 1 Lloyd's Rep 616
- Cover Europe Ltd, In re [2002] BCLC 61, **considered**: [2008] 1 Lloyd's Rep 197
- Crédit Suisse Fides Trust SA v Cuoghi [1998] QB 818, **considered**: [2008] 1 Lloyd's Rep 684
- Croudace Construction Ltd v Cawoods Concrete Products Ltd [1978] 2 Lloyd's Rep 55, **considered**: [2008] 1 Lloyd's Rep 639
- C v D [2007] 2 Lloyd's Rep 367, **considered**: [2008] 1 Lloyd's Rep 93
- Deepak Fertilisers and Petrochemicals Corporation v ICI Chemicals and Polymers Ltd [1999] 1 Lloyd's Rep 387, **considered**: [2008] 1 Lloyd's Rep 639
- Department of Economic Policy and Development of the City of Moscow v Bankers Trust Co [2005] QB 207, **referred to** and **applied**: [2008] 1 Lloyd's Rep 616
- Derby, The [1984] 1 Lloyd's Rep 635; [1985] 2 Lloyd's Rep 325, **considered**: [2008] 1 Lloyd's Rep 262
- Deutsche Schachtbau- und Tiefbohrgesellschaft mbH v Ras Al-Khaimah National Oil Co [1988] 2 Lloyd's Rep 293; [1990] 1 AC 295, **referred to**: [2008] 1 Lloyd's Rep 326
- Di Placito v Slater [2004] 1 WLR 1605, **referred to**: [2008] 1 Lloyd's Rep 161
- Dolling-Baker v Merrett [1990] 1 WLR 1205, **referred to**: [2008] 1 Lloyd's Rep 616
- Donohue v Arco Inc [2002] 1 Lloyd's Rep 425, **applied**: [2008] 1 Lloyd's Rep 532, **considered**: [2008] 1 Lloyd's Rep 652
- Doric Pride, The [2006] 2 Lloyd's Rep 175, **considered**: [2008] 1 Lloyd's Rep 597
- Downing v Al Tameer Establishment [2002] BLR 323, **considered**: [2008] 1 Lloyd's Rep 673
- Dresser UK Ltd v Falcongate Freight Management Ltd (CA) [1991] 2 Lloyd's Rep 557, **doubted**: [2008] 1 Lloyd's Rep 344
- Drouot Assurance SA v Consolidated Metallurgical Industries [1999] QB 497, **considered**: [2008] 1 Lloyd's Rep 197; [2008] 1 Lloyd's Rep 434
- Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd [1915] AC 79, referred to: [2008] 1 Lloyd's Rep 541
- Dunlop v Lambert (1839) 6 CI & F 600; (1839) Macl & Rob 663, **considered**: [2008] 1 Lloyd's Rep 462
- East West Corporation v DKBS 1912 [2003] 1 Lloyd's Rep 239; [2003] QB 1509, **considered**: [2008] 1 Lloyd's Rep 462
- El Amria, The [1981] 2 Lloyd's Rep 119, **considered**: [2008] 1 Lloyd's Rep 652
- Elektrim SA v Vivendi Universal SA [2007] 1 Lloyd's Rep 693, **applied**: [2008] 1 Lloyd's Rep 479
- Elektrim SA v Vivendi Universal SA (No 2) [2007] 2 Lloyd's Rep 8, **considered**: [2008] 1 Lloyd's Rep 230
- Esso Australia Resources Ltd v Plowman (Minister for Energy and Minerals) (1995) 128 ALR 391, **referred to**: [2008] 1 Lloyd's Rep 616
- Ethiopian Oilseeds v Rio del Mar Foods Inc [1990] 1 Lloyd's Rep 86, **considered**: [2008] 1 Lloyd's Rep 119
- Euro London Appointments Ltd v Claessens International Ltd [2006] 2 Lloyd's Rep 436, **considered**: [2008] 1 Lloyd's Rep 541
- Export Credits Guarantee Department v Universal Oil Products Co [1983] 2 Lloyd's Rep 152, **considered**: [2008] 1 Lloyd's Rep 541
- Fawdry & Co v Murfitt [2003] QB 104, **distinguished** and **doubted**: [2008] 1 Lloyd's Rep 40
- Finzel, Berry & Co v Eastcheap Dried Fruit Co [1962] 2 Lloyd's Rep 11, **distinguished**: [2008] 1 Lloyd's Rep 40
- Fiona Trust and Holding Corporation v Privalov [2007] 2 Lloyd's Rep 267, **considered**: [2008] 1 Lloyd's Rep 93; (HL) [2008] 1 Lloyd's Rep 254, **applied**: [2008] 1 Lloyd's Rep 360
- Fiona Trust and Holding Corporation v Privalov [2008] 1 Lloyd's Rep 254, **applied**: [2008] 1 Lloyd's Rep 673
- Fogarty v United Kingdom (2001) 34 EHRR 302, **applied**: [2008] 1 Lloyd's Rep 673
- Fourie v Le Roux [2007] 1 WLR 320, **applied**: [2008] 1 Lloyd's Rep 161
- Fred Drughorn Ltd v Rederiaktiebolaget Transatlantic [1919] AC 203, **considered**: [2008] 1 Lloyd's Rep 639

- Gan Insurance Co Ltd v Tai Ping Insurance Co Ltd (No 3) [2002] Lloyd's Rep IR 612, **applied**: [2008] 1 Lloyd's Rep 558
- Gantner Electronic GmbH v Basch Exploitatatie Maatschappij BV, Case C-111/01 [2003] ECR I-4207, **considered**: [2008] 1 Lloyd's Rep 197
- Glidepath BV v Thompson [2005] 2 Lloyd's Rep 549, **referred to** and **distinguished**: [2008] 1 Lloyd's Rep 616
- Golden Ocean Assurance Ltd v Martin (The Goldean Mariner) [1990] 2 Lloyd's Rep 215, **followed**: [2008] 1 Lloyd's Rep 344
- Great Marine (No 1)*, The [1990] 2 Lloyd's Rep 245, **considered**: [2008] 1 Lloyd's Rep 54
- Greek Fighter*, The [2006] Lloyd's Rep Plus 99, **considered**: [2008] 1 Lloyd's Rep 597
- Hadley Design Associates Ltd v Westminster London Borough Council [2003] All ER (D) 164, **considered**: [2008] 1 Lloyd's Rep 639
- Halpern v Halpern [2007] 2 Lloyd's Rep 56, **referred to**: [2008] 1 Lloyd's Rep 210, **applied**: [2008] 1 Lloyd's Rep 326
- Handelskwekerij GJ Bier BV v Mines de Potasse d'Alsace SA, Case 21/76 [1976] ECR 1735, **applied**: [2008] 1 Lloyd's Rep 396
- Happy Day*, The [2002] 2 Lloyd's Rep 487, **considered**: [2008] 1 Lloyd's Rep 511
- Harbour Assurance Co (UK) Ltd v Kansa General International Insurance Co Ltd [1993] 1 Lloyd's Rep 455, **applied**: [2008] 1 Lloyd's Rep 239
- Hassneh Insurance Co of Israel v Mew [1993] 2 Lloyd's Rep 243, **referred to** and **applied**: [2008] 1 Lloyd's Rep 616
- Helen Miller*, The [1980] 2 Lloyd's Rep 95, **considered**: [2008] 1 Lloyd's Rep 597
- Hermine*, The [1979] 1 Lloyd's Rep 212, **considered**: [2008] 1 Lloyd's Rep 72
- Hi-Fert Pty Ltd v Kiukiang Maritime Carriers Inc (No 5) (The Kiukiang Career) (1998) 90 FCR 1; [1999] 2 Lloyd's Rep 782, **considered**: [2008] 1 Lloyd's Rep 119
- HIH Casualty and General Insurance Ltd v Chase Manhattan Bank [2003] 2 Lloyd's Rep 61, **applied**: [2008] 1 Lloyd's Rep 210
- Hiscox Underwriting Ltd v Dickson Manchester & Co Ltd [2004] 2 Lloyd's Rep 438, **referred to**: [2008] 1 Lloyd's Rep 616
- Holland v Lampen-Wolfe [2000] 1 WLR 1573, **applied**: [2008] 1 Lloyd's Rep 673
- Home and Overseas Insurance Co Ltd v Mentor Insurance Co (UK) Ltd [1989] 1 Lloyd's Rep 473; [1989] 3 All ER 74, **referred to**: [2008] 1 Lloyd's Rep 326
- Houston City*, The [1954] 2 Lloyd's Rep 148; [1956] 1 Lloyd's Rep 1, **considered**: [2008] 1 Lloyd's Rep 597
- Insurance Co v Lloyd's Syndicate [1995] 1 Lloyd's Rep 272, **referred to**: [2008] 1 Lloyd's Rep 616
- Interbulk Ltd v Aiden Shipping Co Ltd (The Vimeira) [1984] 2 Lloyd's Rep 66, **considered**: [2008] 1 Lloyd's Rep 7
- Intertrader SA v Lesieur Tourteraux SARL [1978] 2 Lloyd's Rep 509, **considered**: [2008] 1 Lloyd's Rep 179
- Jones v Saudi Arabia [2007] 1 AC 270, **applied**: [2008] 1 Lloyd's Rep 673
- Kahler v Midland Bank [1950] AC 24, **considered**: [2008] 1 Lloyd's Rep 93
- Ketchum International plc v Group Public Relations Holdings Ltd [1997] 1 WLR 4, **applied**: [2008] 1 Lloyd's Rep 684
- Keydon Estates Ltd v Western Power Distribution (South Wales) Ltd [2004] EWHC 996 (Ch), **referred to**: [2008] 1 Lloyd's Rep 608
- Kinnear v Falconfilms NV [1996] 1 WLR 920, **considered**: [2008] 1 Lloyd's Rep 434
- Kitchin, Re (1881) 17 Ch D 668, **applied**: [2008] 1 Lloyd's Rep 210
- Knauf UK GmbH v British Gypsum Ltd [2002] 1 Lloyd's Rep 199, **distinguished**: [2008] 1 Lloyd's Rep 344
- Konkola Copper Mines plc v Coromin Ltd [2006] 1 Lloyd's Rep 410, **considered**: [2008] 1 Lloyd's Rep 434, **referred to**: [2008] 1 Lloyd's Rep 396
- Kontogeorgas v Kartonpak Case C-104/95 [1996] ECR I-6643, **referred to**: [2008] 1 Lloyd's Rep 475
- Kyrgyz Mobil v Fellowes International [2005] EWHC 1314 (Comm), **considered**: [2008] 1 Lloyd's Rep 239
- Lebeaupin v Richard Crispin and Company (1920) 4 Ll L Rep 122, **considered**: [2008] 1 Lloyd's Rep 179
- Leffler v Berlin Chemie, Case C-443/03 [2005] ECR I-9611, **applied**: [2008] 1 Lloyd's Rep 396
- Lemenda Trading v African Middle East Petroleum Co Ltd [1988] 1 Lloyd's Rep 361; [1988] QB 448, **considered**: [2008] 1 Lloyd's Rep 93
- Lesotho Highlands Development Authority v Impregilo SpA [2005] 2 Lloyd's Rep 310, **referred to**: [2008] 1 Lloyd's Rep 239; [2006] 1 AC 221, **applied**: [2008] 1 Lloyd's Rep 616
- Livania*, The [2008] 1 Lloyd's Rep 86, **considered**: [2008] 1 Lloyd's Rep 597
- Lobb Partnership v Aintree Racecourse Co Ltd [2000] CLC 431, **considered**: [2008] 1 Lloyd's Rep 532
- London and Leeds Estates Ltd v Paribas Ltd (No 2) [1995] 1 EGLR 102, **referred to**, **considered** and **applied**: [2008] 1 Lloyd's Rep 616
- Lordvale Finance plc v Bank of Zambia [1996] QB 752, **applied**: [2008] 1 Lloyd's Rep 541
- Ludgate Insurance Co Ltd v Citibank NA [1998] Lloyd's Rep IR 221, **applied**: [2008] 1 Lloyd's Rep 558
- Mabanaft International Ltd v ERG Petroli SpA (The Yellow Star) [2000] 2 Lloyd's Rep 637, **considered**: [2008] 1 Lloyd's Rep 286

- McElhinney v Ireland (2001) 34 EHRR 322, **applied**: [2008] 1 Lloyd's Rep 673
- Madeleine*, The [1967] 2 Lloyd's Rep 224, **considered**: [2008] 1 Lloyd's Rep 262
- Mahesan v Malaysia Government Officers' Cooperative Housing Society [1979] AC 374, **applied**: [2008] 1 Lloyd's Rep 161
- Mantovani v Carapelli SpA [1980] 1 Lloyd's Rep 375, **applied**: [2008] 1 Lloyd's Rep 16
- Mary Lou*, The [1981] 2 Lloyd's Rep 272, **considered**: [2008] 1 Lloyd's Rep 597
- Mediterranean Feeders LP v Berndt Meyering Schiffahrts [1997] EWCA Civ 1796, **applied**: [2008] 1 Lloyd's Rep 684
- Mexico 1*, The [1990] 1 Lloyd's Rep 507, **considered**: [2008] 1 Lloyd's Rep 511
- Millar's Machinery Co Ltd v David Way & Son (1934) 40 Com Cas 204, **considered**: [2008] 1 Lloyd's Rep 639
- Miller v Dixon [2002] 1 WLR 1615, **applied**: [2008] 1 Lloyd's Rep 40
- Minmetals Germany GmbH v Ferco Steel Ltd [1999] CLC 647, **considered**: [2008] 1 Lloyd's Rep 479
- Mira Oil Resources of Tortola v Bocimar NV (The Obo Venture) [1999] 2 Lloyd's Rep 101, **considered**: [2008] 1 Lloyd's Rep 286
- Motorola Credit Corporation v Uzan (No 1) (CA) [2002] 2 All ER (Comm) 945, **considered**: [2008] 1 Lloyd's Rep 684
- Motorola Credit Corporation v Uzan (No 2) [2004] 1 WLR 113, **considered**: [2008] 1 Lloyd's Rep 684
- Murlidhar Aggarwal v State of Uttar Pradesh (1974) 2 SCC 472, **considered**: [2008] 1 Lloyd's Rep 93
- National Westminster Bank plc v Rabobank Nederland RV [2007] EWHC 1742 (Comm), **considered**: [2008] 1 Lloyd's Rep 239
- Naviera Amazonica Peruana SA v Compania Internacional de Seguros del Peru [1988] 1 Lloyd's Rep 116, **referred to**: [2008] 1 Lloyd's Rep 608
- Navigation Maritime Bulgare v Rustal Trading Ltd (The Ivan Zagubanski) [2002] 1 Lloyd's Rep 106, **followed**: [2008] 1 Lloyd's Rep 230
- Neste Chemicals SA v DK Line SA (The Sargasso) (CA) [1994] 2 Lloyd's Rep 6, **doubted**: [2008] 1 Lloyd's Rep 344
- Niedersachsen*, The [1983] 2 Lloyd's Rep 600, **considered**: [2008] 1 Lloyd's Rep 54
- Ogden v Graham (1861) 1 B&S 773, **applied**: [2008] 1 Lloyd's Rep 72
- OT Africa Line Ltd v Magic Sportswear Corporation [2005] 2 Lloyd's Rep 170, **considered**: [2008] 1 Lloyd's Rep 93
- Oxford Shipping Co Ltd v Nippon Yusen Kaisha (The Eastern Saga) [1984] 2 Lloyd's Rep 373, **applied**: [2008] 1 Lloyd's Rep 616
- Panama and South Pacific Telegraph Co v India Rubber (1875) LR 10 Ch App 515, **applied**: [2008] 1 Lloyd's Rep 161
- Paragon Finance plc v Nash [2002] 1 WLR 685, **applied**: [2008] 1 Lloyd's Rep 558
- Pemberton v Hughes [1899] 1 Ch 781, **distinguished**: [2008] 1 Lloyd's Rep 479
- Philips Electronique Grand Public SA v British Sky Broadcasting Ltd [1995] EMLR 472, **applied**: [2008] 1 Lloyd's Rep 558
- Philips Hong Kong Ltd v Attorney General of Hong Kong (1993) 61 BLR 41, **applied**: [2008] 1 Lloyd's Rep 541
- Picnie at Ascot v Kalus Derigs [2001] FSR 2, **referred to**: [2008] 1 Lloyd's Rep 1
- Premium Nafta Products Ltd v Fili Shipping Co Ltd [2007] UKHL 40, **applied**: [2008] 1 Lloyd's Rep 239
- Presbyterian Church (NSW) Property Trust v Rodean Construction Pty Ltd [1982] 2 NSWLR 398, **distinguished**: [2008] 1 Lloyd's Rep 40
- Profilati Italia Srl v PaineWebber Inc [2001] 1 Lloyd's Rep 715, **applied**: [2008] 1 Lloyd's Rep 479
- Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355, **distinguished**: [2008] 1 Lloyd's Rep 40
- P*, The [1992] 1 Lloyd's Rep 470, **considered**: [2008] 1 Lloyd's Rep 54
- Ralli Brothers v Compania Naviera Sota y Aznar SA [1920] 2 KB 287, **considered**: [2008] 1 Lloyd's Rep 93
- Rederiaktiebolaget Argonaut v Hani [1918] 2 KB 247, **considered**: [2008] 1 Lloyd's Rep 639
- Refeo Inc v Eastern Trading Co [1999] 1 Lloyd's Rep 159, **applied**: [2008] 1 Lloyd's Rep 161; **considered**: [2008] 1 Lloyd's Rep 684
- Reggazoni v Sethia Ltd [1956] 1 Lloyd's Rep 435, **considered**: [2008] 1 Lloyd's Rep 93
- Renusagar Power Co Ltd v General Electric Co, AIR 1994 SC 860, **considered**: [2008] 1 Lloyd's Rep 93
- Republic of Haiti v Duvalier [1989] 1 Lloyd's Rep 111, **considered**: [2008] 1 Lloyd's Rep 684
- Republic of India v India Steamship Co Ltd (No 2) (The Indian Grace) [1998] 1 Lloyd's Rep 1, **considered**: [2008] 1 Lloyd's Rep 119
- Royal & Sun Alliance Insurance plc v MK Digital FZE (Cyprus) Ltd [2006] 2 Lloyd's Rep 110, **applied**: [2008] 1 Lloyd's Rep 396
- Russell v Russell (1880) 14 Ch D 471 at page 474, **applied**: [2008] 1 Lloyd's Rep 616
- Rustal Trading Ltd v Gill & Duffus SA [2000] 1 Lloyd's Rep 14, **considered**: [2008] 1 Lloyd's Rep 61
- R v Cruttenden [1991] 2 QB 66, **referred to**: [2008] 1 Lloyd's Rep 161
- R v Harvey [1999] Crim LR 70, **applied**: [2008] 1 Lloyd's Rep 161
- R v Smith [1960] 2 QB 423, **applied**: [2008] 1 Lloyd's Rep 161
- R v Wellburn (1979) 69 Cr App R 254, **applied**: [2008] 1 Lloyd's Rep 161

- Saint Line Ltd v Richardsons Westgarth Co Ltd (1940) 67 Ll L Rep 62, **considered**: [2008] 1 Lloyd's Rep 639
- Schiffahrtsgesellschaft Detlev von Appen GmbH v Voest Alpine Intertrading GmbH (The Jay Bola) [1997] 2 Lloyd's Rep 279, **applied**: [2008] 1 Lloyd's Rep 230
- Science Research Council v Nassé [1980] AC 1028, **referred to**: [2008] 1 Lloyd's Rep 616
- Seaconsar Far East v Bank Markazi Iran [1994] 1 Lloyd's Rep 1; [1994] 1 AC 438, **considered**: [2008] 1 Lloyd's Rep 434
- Seavision Investment SA v Evennett (The Tiburon) [1992] 2 Lloyd's Rep 26, **distinguished**: [2008] 1 Lloyd's Rep 16
- Senate Electrical Wholesalers Ltd v Alcatel Submarine Networks Ltd [1999] 2 Lloyd's Rep 423, **considered**: [2008] 1 Lloyd's Rep 286
- Sennar, The (No 2) [1985] 1 Lloyd's Rep 521; [1985] AC 490, **applied**: [2008] 1 Lloyd's Rep 210
- Shackelford, The [1978] 2 Lloyd's Rep 154, **considered**: [2008] 1 Lloyd's Rep 511
- Shamil Bank of Bahrain v Beximco Pharmaceuticals Ltd [2004] 2 Lloyd's Rep 1, **applied**: [2008] 1 Lloyd's Rep 326
- Singh v State of Trinidad and Tobago [2006] 1 WLR 146, **applied**: [2008] 1 Lloyd's Rep 161
- Sinochem International Oil (London) Co Ltd v Mobil Sales and Supply Corporation [2000] 1 Lloyd's Rep 670, **considered**: [2008] 1 Lloyd's Rep 532
- Siu Yin Kwan v Eastern Insurance Co Ltd [1994] 1 Lloyd's Rep 616, **considered**: [2008] 1 Lloyd's Rep 639
- Société Nationale Industrielle Aerospatiale v Lee Kui Jak [1987] AC 871, **applied**: [2008] 1 Lloyd's Rep 532
- Sohio v Gatoil [1989] 1 Lloyd's Rep 588, **considered**: [2008] 1 Lloyd's Rep 532
- Stretford v Football Association Ltd [2007] 2 Lloyd's Rep 31, **applied**: [2008] 1 Lloyd's Rep 673
- Sun Life Assurance Co of Canada v Jervis [1944] AC 111, **referred to**: [2008] 1 Lloyd's Rep 616
- Tatry, The, Case C-406/92 [1995] 1 Lloyd's Rep 302 (sub nom The Maciej Rataj); [1999] QB 515, **considered**: [2008] 1 Lloyd's Rep 197; [2008] 1 Lloyd's Rep 434
- Teheran-Europe Co Ltd v ST Belton (Tractors) Ltd [1968] 2 Lloyd's Rep 37, **considered**: [2008] 1 Lloyd's Rep 639
- Thornett & Fehr and Yuills, In re [1921] 1 KB 219, **considered**: [2008] 1 Lloyd's Rep 179
- Toepfer v Molino Boschi Toepfer v Molino Boschi [1996] 1 Lloyd's Rep 510, **considered**: [2008] 1 Lloyd's Rep 652
- Tournier v National Provincial and Union Bank of England [1924] 1 KB 461, **considered**: [2008] 1 Lloyd's Rep 616
- Trafigura Beheer BV v Kookmin Bank Co [2005] EWHC 2350 (Comm), **considered**: [2008] 1 Lloyd's Rep 532
- Trafigura Beheer BV v Kookmin Bank Co (No 2) [2007] 1 Lloyd's Rep 669, **considered**: [2008] 1 Lloyd's Rep 532
- Trans Oceanic Co Ltd v Newton Shipping Ltd (The Minerva), 17 January 2001, unreported, **considered** and **distinguished**: [2008] 1 Lloyd's Rep 286
- Tudor Marine Ltd v Tradax Export SA (The Virgo) [1976] 2 Lloyd's Rep 135, **referred to**: [2008] 1 Lloyd's Rep 413
- Turner v Grovit [2002] 1 WLR 107, **applied**: [2008] 1 Lloyd's Rep 532
- Tzortzis v Monark Line [1968] 1 Lloyd's Rep 337, **doubted**: [2008] 1 Lloyd's Rep 239
- Union Discount Co Ltd v Zoller [2002] 1 WLR 1517, **applied**: [2008] 1 Lloyd's Rep 16
- Vale do Rio Doce Navegação SA v Shanghai BAO Steel Ocean Shipping Co Ltd [2000] 2 Lloyd's Rep 1, **followed**: [2008] 1 Lloyd's Rep 230, **referred to**: [2008] 1 Lloyd's Rep 616
- Veracruz I, The [1992] 1 Lloyd's Rep 353, **considered**: [2008] 1 Lloyd's Rep 54
- Waite and Kennedy v Germany (1999) 30 EHRR 261, **applied**: [2008] 1 Lloyd's Rep 673
- Westacre Investments Inc v Jugoinport SDPR Holding Co Ltd [1999] QB 740, **applied**: [2008] 1 Lloyd's Rep 479
- West Tankers Inc v Ras Riunione Adriatica di Sicurtà (The Front Comor) [2005] 2 Lloyd's Rep 257, **followed**: [2008] 1 Lloyd's Rep 230
- White & Carter (Councils) Ltd v McGregor [1962] AC 413, **considered**: [2008] 1 Lloyd's Rep 541
- WPP Holdings Italy SRL v Benatti [2008] Lloyd's Rep Plus 20, **considered**: [2008] 1 Lloyd's Rep 434
- Zelger v Salinitri, Case 129/83 [1984] ECR 2397, **referred to**: [2008] 1 Lloyd's Rep 344
- Z Ltd v A-Z [1982] 1 Lloyd's Rep 240, **considered**: [2008] 1 Lloyd's Rep 54

STATUTES JUDICIALLY CONSIDERED

PAGE

UNITED KINGDOM—

ARBITRATION ACT 1996

s 1(c)	382
s 2	239, 608
(3)	684
s 4	239
s 7	360
s 9	254, 360
s 24	61
s 30	316
s 31	316
s 33	7
s 38	371
s 44	230, 371, 684
s 46	326
s 58	239
s 66	608
s 67	40, 186, 316, 382
s 68	7, 316, 479
s 69	250, 316, 608
(2)	712
s 72	93
s 73	40, 61, 316, 382
s 103	479

CIVIL JURISDICTION AND JUDGMENTS ACT 1982

s 25	161
------------	-----

COMMERCIAL AGENTS (COUNCIL DIRECTIVE) REGULATIONS 1993

reg 17(6)	78
-----------------	----

CONSUMER CREDIT ACT 1974

s 75	30
------------	----

FRAUD ACT 2006

s 31	161
------------	-----

LONDON COURT OF INTERNATIONAL ARBITRATION RULES

r 26	712
------------	-----

RELEVANCE OF EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) ACT 1975 661

SUPREME COURT ACT 1981

s 37	161, 230, 382, 684
------------	--------------------

UNFAIR CONTRACT TERMS ACT 1977 639

EUROPEAN UNION—

COUNCIL DIRECTIVE 86/653/EEC

art 7(2)	475
----------------	-----

COUNCIL REGULATION 44/2001

art 5.1(b)	462
art 19	396
art 23	396
art 27	197, 396, 434
Parts 6.20 and 62	230

	PAGE
COUNCIL REGULATION 1348/2000/EC	
art 14	396
EUROPEAN CONVENTION ON HUMAN RIGHTS	
art 6	360, 673
INTERNATIONAL—	
FOSFA 22	
cl 27	458
MONTREAL CONVENTION	
art 17	661

CONTENTS

NOTE: These Reports should be cited as
“[2008] 1 Lloyd’s Rep”

	COURT	PAGE
Agrinvest International Inc and Others:— Standard Bank plc and Another v.....	[QBD (Comm Ct)]	532
AIC Ltd v Marine Pilot Ltd (The “Archimidis”).....	[CA]	597
Albon v Naza Motor Trading Sdn Bhd.....	[CA]	1
Alfred McAlpine Business Services Ltd:— Braes of Doune Wind Farm (Scotland) Ltd v.....	[QBD (TCC)]	608
<i>Archimidis</i> , The.....	[CA]	597
ASM Shipping Ltd v Harris and Others	[QBD (Comm Ct)]	61
Associated British Ports:— Ferryways NV v	[QBD (Comm Ct)]	639
BAE Systems (Operations) Ltd and Others:— Royal & SunAlliance Insurance plc v.....	[QBD (Comm Ct)]	712
Bandwidth Shipping Corporation v Intaari (The “Magdalena Oldendorf”).....	[CA]	7
Barclay v British Airways plc	[Ox CC]	661
Benatti:— WPP Holdings Italy Srl and Others v	[CA]	396
Bocimar NV (The “Channel Alliance”):— Golden President Shipping Corporation v.....	[QBD (Comm Ct)]	428
Braes of Doune Wind Farm (Scotland) Ltd v Alfred McAlpine Business Services Ltd	[QBD (TCC)]	608
British Airways plc:— Barclay v	[Ox CC]	661
British Energy Power and Trading Ltd and Others v Credit Suisse and Others	[CA]	413
Bunge SA:— Gulf Import & Export Co v.....	[QBD (Comm Ct)]	316
<i>Capaz Duckling</i> , The.....	[QBD (Comm Ct)]	54
Capital Bank plc:— Fairfax Gerrard Holdings Ltd and Others v	[CA (Civ Div)]	297
Cereal Investments Company (CIC) SA v ED&F Man Sugar Ltd.....	[QBD (Comm Ct)]	355
<i>Channel Alliance</i> , The.....	[QBD (Comm Ct)]	413
Chevassus-Marche and Others v Groupe Danone.....	[ECJ]	475
Comandate Marine Corporation v Pan Australia Shipping Pty Ltd (The “Comandate”).....	[FCAFC]	119
<i>Comandate</i> , The.....	[FCAFC]	119
Commonwealth Secretariat:— Sumukan Ltd v.....	[CA]	40
<i>Count</i> , The	[QBD (Comm Ct)]	72
Credit Suisse and Others:— British Energy Power and Trading Ltd and Others v	[CA]	413
CTI Group Inc v Transclear SA (The “Mary Nour”)	[QBD (Comm Ct)]	179
CTI Group Inc v Transclear SA (The “Mary Nour” (No 2)).	[QBD (Comm Ct)]	250
C v D	[CA]	239
Czech Republic v European Media Ventures SA	[QBD (Comm Ct)]	186
D:— C v	[CA]	239
ED&F Man Sugar Ltd:— Cereal Investments Company (CIC) SA v.....	[QBD (Comm Ct)]	355

CONTENTS—continued

	COURT	PAGE
<i>Elli, The and Frixos, The</i>	[QBD (Comm Ct)]	262
<i>El Nasharty v J Sainsbury plc</i>	[QBD (Comm Ct)]	360
<i>Emmott v Michael Wilson & Partners Ltd</i>	[CA]	616
<i>Entico Corporation Ltd v United Nations Educational Scientific and Cultural Association; Secretary of State for Foreign and Commonwealth Affairs (Intervening)</i>	[QBD (Comm Ct)]	673
<i>European Media Ventures SA:— Czech Republic v</i>	[QBD (Comm Ct)]	186
<i>Fairfax Gerrard Holdings Ltd and Others v Capital Bank plc</i>	[CA (Civ Div)]	297
<i>Ferryways NV v Associated British Ports</i>	[QBD (Comm Ct)]	639
<i>Fiona Trust & Holding Corporation and Others v Privalov and Others</i>	[HL]	254
<i>Gater Assets Ltd v Nak Naftogaz Ukrainiy (No 2)</i>	[QBD (Comm Ct)]	479
<i>Golden Fleece Maritime Inc and Another v ST Shipping & Transport Inc (The “Elli” and The “Frixos”)</i>	[QBD (Comm Ct)]	262
<i>Golden President Shipping Corporation v Bocimar NV (The “Channel Alliance”)</i>	[QBD (Comm Ct)]	428
<i>Government of Pakistan:— Sabah Shipyard (Pakistan) Ltd v</i>	[QBD (Comm Ct)]	210
<i>Groupe Danone:— Chevassus-Marche and Others v</i>	[ECJ]	475
<i>Gulf Import & Export Co v Bunge SA</i>	[QBD (Comm Ct)]	316
<i>Harris and Others:— ASM Shipping Ltd v</i>	[QBD (Comm Ct)]	61
<i>High Seas Venture Ltd Partnership v Sinom (Hong Kong) Ltd (The “Newforest”)</i>	[QBD (Comm Ct)]	504
<i>Holystone Overseas Ltd:— Pacific Maritime (Asia) Ltd v</i>	[QBD (Comm Ct)]	371
<i>Howard & Hallam Ltd:— Lonsdale v</i>	[HL]	78
<i>Imerys Minerals Ltd:— M & J Polymers Ltd v</i>	[QBD (Comm Ct)]	541
<i>Independent Petroleum Group Ltd v Seacarriers Count Pte Ltd (The “Count”)</i>	[QBD (Comm Ct)]	72
<i>Intaari (The “Magdalena Oldendorff”):— Bandwidth Shipping Corporation v</i>	[CA]	7
<i>Istil Group Inc (No 2):— Republic of Kazakhstan v</i>	[QBD (Comm Ct)]	382
<i>J Sainsbury plc:— El Nasharty v</i>	[QBD (Comm Ct)]	360
<i>Kensington International Ltd v Republic of Congo</i>	[CA]	161
<i>Kolden Holdings Ltd v Rodette Commerce Ltd and Another</i>	[QBD (Comm Ct)]	197
	[CA]	434
<i>Livanita, The</i>	[QBD (Comm Ct)]	86
<i>Lloyds TSB Bank plc and Others:— Office of Fair Trading v</i> ...	[HL]	30
<i>Lonsdale v Howard & Hallam Ltd</i>	[HL]	78
<i>Magdalena Oldendorff, The</i>	[CA]	7
<i>Magnifica Marine SA (The “Capaz Duckling”):— Swift-Fortune Ltd v</i>	[QBD (Comm Ct)]	54
<i>Marine Pilot Ltd (The “Archimidis”):— AIC Ltd v</i>	[CA]	597
<i>Mary Nour, The</i>	[QBD (Comm Ct)]	179
<i>Mary Nour, The (No 2)</i>	[QBD (Comm Ct)]	250
<i>Michael Wilson & Partners Ltd:— Emmott v</i>	[CA]	616
<i>M & J Polymers Ltd v Imerys Minerals Ltd</i>	[QBD (Comm Ct)]	541
<i>Mobil Cerro Negro Ltd v Petroleos de Venezuela SA</i>	[QBD (Comm Ct)]	684
<i>Musawi v R E International (UK) Ltd and Others</i>	[Ch D]	326
<i>Nak Naftogaz Ukrainiy (No 2): Gater Assets Ltd v</i>	[QBD (Comm Ct)]	479
<i>National Westminster Bank plc v Rabobank Nederland (No 3)</i>	[QBD (Comm Ct)]	16
<i>Naza Motor Trading Sdn Bhd:— Albon v</i>	[CA]	1
<i>Newforest, The</i>	[QBD (Comm Ct)]	504
<i>Northgate, The</i>	[QBD (Comm Ct)]	511
<i>NV Norexa and Others (The “Skier Star”):— Verity Shipping SA and Another v</i>	[QBD (Comm Ct)]	652

CONTENTS—*continued*

	COURT	PAGE
Ocean Pride Maritime Ltd Partnership v Qingdao Ocean Shipping Co (The “Northgate”).....	[QBD (Comm Ct)]	511
Oceantrade Corporation:— Samsun Logix Corporation v.....	[QBD (Comm Ct)]	450
Office of Fair Trading v Lloyds TSB Bank plc and Others....	[HL]	30
Othon Ghalanos Ltd:— Scottish & Newcastle International Ltd v	[HL]	462
Pacific Maritime (Asia) Ltd v Holystone Overseas Ltd	[QBD (Comm Ct)]	371
Pan Australia Shipping Pty Ltd (The “Comandante”):— Comandante Marine Corporation v	[FCAFC]	119
Petroleo Brasileiro SA Petrobras:— Petromec Inc v.....	[CA]	305
Petroleos de Venezuela SA:— Mobil Cerro Negro Ltd v	[QBD (Comm Ct)]	684
Petromec Inc v Petroleo Brasileiro SA Petrobras.....	[CA]	305
Phillips and Another v Symes and Others	[HL]	344
Privalov and Others:— Fiona Trust & Holding Corporation and Others v	[HL]	254
Qingdao Ocean Shipping Co (The “Northgate”):— Ocean Pride Maritime Ltd Partnership v	[QBD (Comm Ct)]	511
Rabobank Nederland (No 3):— National Westminster Bank plc v	[QBD (Comm Ct)]	16
R E International (UK) Ltd and Others:— Musawi v.....	[Ch D]	326
Republic of Congo:— Kensington International Ltd v.....	[CA]	161
Republic of Kazakhstan v Istil Group Inc (No 2)	[QBD (Comm Ct)]	382
Rodette Commerce Ltd and Another:— Kolden Holdings Ltd v	[QBD (Comm Ct)]	197
	[CA]	434
Royal & SunAlliance Insurance plc v BAE Systems (Operations) Ltd and Others	[QBD (Comm Ct)]	712
Sabah Shipyard (Pakistan) Ltd v Government of Pakistan	[QBD (Comm Ct)]	210
Sabrewing, The	[QBD (Comm Ct)]	286
Samsun Logix Corporation v Oceantrade Corporation.....	[QBD (Comm Ct)]	450
Sanhe Hope Full Grain Oil Foods Production Co Ltd v Toepfer International Asia Pte Ltd.....	[QBD (Comm Ct)]	458
Scottish & Newcastle International Ltd v Othon Ghalanos Ltd.	[HL]	462
Seacarriers Count Pte Ltd (The “Count”):— Independent Petroleum Group Ltd v	[QBD (Comm Ct)]	72
Sinom (Hong Kong) Ltd (The “Newforest”):— High Seas Venture Ltd Partnership v	[QBD (Comm Ct)]	504
Skier Star, The	[QBD (Comm Ct)]	652
Socimer International Bank Ltd v Standard Bank London Ltd..	[CA]	558
Standard Bank London Ltd:— Socimer International Bank Ltd v	[CA]	558
Standard Bank plc and Another v Agrinvest International Inc and Others.....	[QBD (Comm Ct)]	532
Starlight Shipping Co and Another v Tai Ping Insurance Co Ltd Hubei Branch and Another	[QBD (Comm Ct)]	230
ST-CMS Electric Company Private Ltd:— Tamil Nadu Electricity Board v	[QBD (Comm Ct)]	93
ST Shipping & Transport Inc (The “Elli” and The “Frixos”):— Golden Fleece Maritime Inc and Another v..	[QBD (Comm Ct)]	262
STX Pan Ocean Co Ltd v Ugland Bulk Transport AS (The “Livanita”)	[QBD (Comm Ct)]	86
Sumukan Ltd v Commonwealth Secretariat.....	[CA]	40
Swift-Fortune Ltd v Magnifica Marine SA (The “Capaz Duckling”).....	[QBD (Comm Ct)]	54
Symes and Others:— Phillips and Another v	[HL]	344

CONTENTS—*continued*

	COURT	PAGE
Tai Ping Insurance Co Ltd Hubei Branch and Another:— Starlight Shipping Co and Another v.....	[QBD (Comm Ct)]	230
Tamil Nadu Electricity Board v ST-CMS Electric Company Private Ltd	[QBD (Comm Ct)]	93
Toepfer International Asia Pte Ltd:— Sanhe Hope Full Grain Oil Foods Production Co Ltd v	[QBD (Comm Ct)]	458
Trafigura AG (The “Sabrewing”):— Waterfront Shipping Company Ltd v.....	[QBD (Comm Ct)]	286
Transclear SA (The “Mary Nour”):— CTI Group Inc v	[QBD (Comm Ct)]	179
Transclear SA (The “Mary Nour” (No 2)):— CTI Group Inc v	[QBD (Comm Ct)]	250
Ugland Bulk Transport AS (The “Livanita”):— STX Pan Ocean Co Ltd v.....	[QBD (Comm Ct)]	86
United Nations Educational Scientific and Cultural Associa- tion; Secretary of State for Foreign and Commonwealth Affairs (Intervening):— Entico Corporation Ltd v.....	[QBD (Comm Ct)]	673
Verity Shipping SA and Another v NV Norexa and Others (The “Skier Star”)	[QBD (Comm Ct)]	652
Waterfront Shipping Company Ltd v Trafigura AG (The “Sabrewing”)	[QBD (Comm Ct)]	286
WPP Holdings Italy Srl and Others v Benatti	[CA]	396

LLOYD'S LAW REPORTS

Editors: Michael Daiches, Barrister, and Professor Robert Merkin

PART I

Albon v Naza Motor Trading Sdn Bhd

[2008] VOL 1

COURT OF APPEAL

24 October; 6 November 2007

ALBON
v
NAZA MOTOR TRADING SDN BHD

[2007] EWCA Civ 1124

Before Lord Justice WALLER,
Lord Justice LONGMORE and
Sir PETER GIBSON

Arbitration — Anti-arbitration injunction — Dispute under contract governed by English law — Defendant seeking stay in favour of arbitration in Malaysia — Claimant disputing validity of arbitration clause — English court ordering trial on validity of arbitration clause — Whether defendant to be restrained from proceeding with arbitration.

The parties entered into a motor vehicle distribution agreement governed by English law. Mr Albon commenced proceedings in England for sums overpaid by him under the agreement. Naza Motors applied for a stay of the proceedings on the ground that the parties had entered into a Joint Venture Agreement (JVA) governed by Malaysian law and providing for arbitration in Malaysia. Mr Albon asserted that his signature on the arbitration clause was a forgery.

On 26 June 2005 Mr Albon obtained permission under CPR Part 11 to serve proceedings on the defendant in Malaysia, pursuing (together with other claims against Naza Motors and its principal shareholder Mr Nasim) claims against Naza Motors in respect of overpayments allegedly made by Mr Albon to Naza Motors in the course of performance or intended performance of the UK Agreement. Naza Motors filed an acknowledgement of service and applied to the court for an order declaring that it had no jurisdiction or should not exercise any jurisdiction that it might have and that by reason of the arbitration clause in the JVA the present proceedings should be stayed. Lightman J upheld the grant of permission to pursue the claim in respect of overpayments but set aside permission in respect of the other claims (*Albon v Naza Motor Trading Sdn Bhd* [2007] 1 Lloyd's Rep 297). By a

second judgment Lightman J dismissed an application by Naza Motors to set aside an alternative service order which Mr Albon obtained under CPR Part 6.8 (*Albon v Naza Motor Trading Sdn Bhd* (No 2) [2007] 1 All ER (Comm) 813. By a third judgment Lightman J ordered that the question of the validity of the JVA and of the arbitration clause should be tried in England (*Albon v Naza Motor Trading Sdn Bhd* (No 3) [2007] 2 Lloyd's Rep 1).

On 24 April 2007 Naza Motors made "the Barrell application" seeking to recall and reopen the previous three judgments. That application was due to be tried in October 2007. On 23 May 2006 on an application without notice Mr Albon obtained an order from Warren J against Naza Motors restraining it from commencing or taking any steps in arbitration proceedings in Malaysia, which had purportedly been commenced in November 2005, on the ground that the JVA was a forgery. Mr Albon gave a cross-undertaking in damages. On 4 July 2007 the injunction was discharged as the sanction for failure by Mr Albon to comply with a court order requiring him to provide security for his cross-undertaking. In the present proceedings Mr Albon applied for the grant of a fresh injunction in the same terms as the previous injunction.

The application before Lightman J raised two issues: (1) whether the court had jurisdiction to grant an injunction; and (2) if so, whether the court should in its discretion bar Naza Motors from taking any further steps in the arbitration pending the judgment on the Barrell application, or whether the relief should be limited to barring Naza Motors from inviting the arbitrators to rule on the authenticity of the JVA while leaving them free to proceed with the arbitration in the interim.

Lightman J granted the injunction. The learned judge held that he had jurisdiction to give permission for service abroad either under CPR 6.20(5) or by reason of Naza Motors willingly submitting to the jurisdiction of the English court by making a counterclaim. As far as discretion was concerned, the judge held that: although Mr Albon's lawyers were guilty of a serious failure to bring to the attention of Warren J the need for permission to serve the proceedings on Naza Motors, there was no sufficient reason why permission should not be granted; an undertaking by Naza Motors not to invite the arbitrators to determine the issue conditional on Mr Albon agreeing to participate in the arbitration proceeding was not sufficient for Mr Albon's protection; and an

injunction was necessary because it could not be said that the arbitration could proceed without prejudice to the determination of the authenticity of the arbitration clause, the authenticity issue would soon be determined by the English court, there was limited scope for the arbitrators to proceed with the arbitration until the authenticity of the JVA had been decided, and it would be oppressive to Mr Albon to defend the arbitration while still exposed to the enormous costs of the English action.

Naza Motors appealed. The finding of jurisdiction in the formal sense of the term was not contested, but Naza Motors argued that unconscionability went to the jurisdiction of the court to restrain the arbitration but that had not been demonstrated, and that any order would interfere with the autonomy of the arbitration process.

—*Held by CA (WALLER and LONGMORE LJ and Sir PETER GIBSON)*, that the appeal would be dismissed.

(1) Given that there was a sufficiently good arguable case for Mr Albon to be justified in issuing and continuing proceedings in England, that there was likewise a good arguable case not only that Mr Albon's signature on the JVA had been forged but that the forgery was brought into existence after Mr Albon issued his proceedings in order to stop the English proceedings in their tracks, and that the English court was to be the final judge on the question of the authenticity of the JVA, the immediate and co-extensive continuance of arbitration proceedings was unconscionable. It was a needless expense; it would be difficult to avoid over-proliferation of pleadings and disclosure if the parties did not know whether it would be ultimately determined that the JVA was genuine or not; it need not take long to determine the forgery issue; and Naza could cooperate in a speedy resolution of that question if it wished to do to (*see paras 13 and 14*).

—*Per Longmore LJ*: It may be right that the question of oppressiveness or unconscionability was not, strictly speaking, a question of discretion but did constitute a condition of the exercise of the court's jurisdiction. But if a judge had applied the right principle (as here), the Court of Appeal should give considerable weight to the judge's assessment of the facts leading him to his conclusion of unconscionability and should be slow to interfere with that assessment (*see para 15*).

(2) While there was in the ordinary case much to be said for the argument that the caution exercised by the court relating to anti-suit injunctions should be increased or even redoubled in the case of an anti-arbitration injunction, this was not an ordinary case. It was properly arguable that the agreement to arbitrate had been forged in order to defeat proceedings properly brought in England and, in addition, it was at present agreed that the English court would determine that question. The autonomy of the arbitrators had thus already been undermined because they were, in any event, precluded for the present from determining that question (*see paras 16 and 17*).

(3) Permission to appeal against the judge's decision to award to the claimant the costs of the application for the injunction because he succeeded would be refused.

It was not an inevitable rule that costs were not ordered on applications for interim injunctions and the judge was entitled to conclude that Naza Motors had miscalculated and should suffer the consequences. The judge ordered that the claimant's costs of the application for the injunction should be the claimant's costs in any event because he had succeeded. Although costs were not usually ordered on applications for interim injunctions this was not an invariable rule and the judge had been entitled to conclude that Naza Motors had miscalculated the likelihood of persuading the court that the arbitration should continue (*see paras 20 and 21*);

—*Picnic at Ascot v Kalus Derigs* [2001] FSR 2, referred to.

The following cases were referred to in the judgment:

Glencore International AG v Exter Shipping Ltd [2002] 2 All ER Comm 1;

Picnic at Ascot v Kalus Derigs [2001] FSR 2.

This was an appeal from the judgment of Lightman J, [2007] 2 Lloyd's Rep 420, granting the claimant an anti-suit injunction preventing the defendant from pursuing an arbitration in Malaysia.

Robert Anderson QC, instructed by Sheridans, for the claimant; Stephen Nathan QC and Neil Kitchener, instructed by Stephens Innocent LLP, for the defendant.

The further facts are stated in the judgment of Longmore LJ.

Tuesday, 6 November 2007

JUDGMENT

Lord Justice LONGMORE:

1. This appeal is an interlude in hard fought litigation being case managed by Lightman J in the Chancery Division. It stems from a car dealing relationship between Mr Albon in England and Naza Motor Trading Sdn Bhd ("Naza") in Malaysia. Practically everything in the relationship is controversial but in broad outline it can be said that Mr Albon provided agency services in England in respect of cars imported by Naza from Malaysia and, at any rate according to Mr Albon, at a later date also in relation to cars exported from England to Malaysia.

2. Disputes arose between the parties and on 26 August 2005 Master Bragge granted Mr Albon permission to serve out of the jurisdiction a claim

form in which Mr Albon claimed against both Naza and Mr Nasim, its controlling director and shareholder, that he had made overpayments to Naza in the course of performing the importation agreement. The grounds, on which that permission was granted, were that the claim was made in respect of a contract which was made in England and/or was governed by English law. On 28 October there was an attempt to serve the claim form on Naza at their office in Malaysia but that purported service was ineffective because the document which was served was marked "Not for service out of the Jurisdiction" and was untranslated. Naza's solicitors (Finers) on 21 November pointed out that service was defective and on 14 December 2005 they withdrew acknowledgements of service which they had needlessly served. Two days later Naza served on Mr Albon a notice of dispute and conciliation prior to arbitration pursuant to an arbitration clause in a written document called a Joint Venture Agreement ("the JVA") dated 29 July 2003. On 11 January 2006 Mr Albon's solicitors said that Mr Albon had not signed that agreement; Mr Albon has ever since said that his purported signature on the document was a forgery. On 29 March 2007 (in his third judgment in this matter, [2007] 2 Lloyd's Rep 1) Lightman J held that, since Naza has applied for a stay of the English proceedings, it is for the English court to decide whether the JVA is a genuine document and whether accordingly there is a genuine agreement to arbitrate between the parties. Naza has not yet decided whether to seek permission to appeal this judgment but has agreed (subject to any possible appeal) that it will not invite the arbitration tribunal which has now been appointed to determine that question. It has thus been agreed for present purposes that the question of authenticity will be determined finally by the English courts.

3. In the fourth judgment of 31 July 2007 ([2007] 2 Lloyd's Rep 420) Lightman J decided that, pending the decision as to the genuineness of the JVA, the arbitration should not proceed and he has granted an injunction restraining Naza from pursuing the arbitration pending resolution of that question. It is this fourth judgment that is now under appeal, permission having been granted by Rix LJ limited to the question whether the court had jurisdiction to grant the injunction. He refused permission to appeal the discretionary aspects of the judge's decision and there is now a renewed application to this court on the discretionary issues. He also adjourned to this court an application for permission to appeal the order for costs made in favour of the claimant.

4. In his third judgment, Lightman J described the issue as to the genuineness of the JVA in the following way (at para 8):

Mr Nasim and a Mr Naidu (an employee of Naza Motors) have made witness statements to the effect that Mr Albon signed the JVA or acknowledged his signature on the JVA in their presence at the offices of Naza Motors in Kuala Lumpur on the 29 July 2003. Mr Albon has made a witness statement to the effect that he never agreed to or signed the JVA and he suggests that his signature was "lifted" from a document which he signed at about that time at the request of Mr Nasim to be provided to the Malaysian tax authorities. Mr Albon points out a number of features of Naza Motors' case which (he argues) call into question the evidence of Mr Nasim and Mr Naidu. These include that: (1) the JVA was allegedly made on the 29 July 2003 but according to its terms was deemed to have commenced six years earlier in March 1997. One of Naza Motors' witnesses, Ms Amin, in part of her evidence states that the explanation for this given to her by Mr Nasim is that this earlier date was the date when the importation of cars into the UK commenced. Mr Nasim in his later evidence and Mr Albon however agree that trading only started in November 1997; (2) Naza Motors have produced no other document referring to the JVA; (3) Naza Motors first asserted the existence of the JVA in a letter from their solicitors FSI dated the 22 December 2005; (4) though (according to Naza Motors) the JVA was drafted by Mr Naidu who (according to Mr Nasim) "had many years experience in drafting legal documents on behalf of the Naza group of companies" and though Mr Albon, Naza Motors, Mr Nasim and NA Carriage are named as parties, the document is signed only by Mr Albon and Mr Nasim personally, and there is no reference to Naza Motors at all on the signature page; (5) the layout and print of the last (signature) page is not the same as for the previous pages and the last (signature) page is paginated differently; (6) the "draft" which Naza Motors says was produced for discussion prior to finalising the JVA has never been produced; and (7) Naza Motors have refused to permit Mr Albon's expert Mr Brown to take the original JVA away for (non-destructive) testing and to carry out an ESDA test. I cannot resolve the issue of the genuineness of the JVA on the material before me. There must be cross-examination of Mr Albon, Mr Nasim and Mr Naidu and (in all probability) expert evidence. All I can say on the material before me is that the outcome of the trial of the issue is wide open.

5. In these circumstances Mr Robert Anderson QC for Mr Albon submits not only that it is a fair inference that the JVA (together with its arbitration clause) is not genuine but a forgery but also that it is a forgery which has been brought into existence