

Cheshire and Fifoot's
Law of Contract

M. P. Furmston

Tenth Edition

Butterworths

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Law of Contract

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Historical Introduction

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Preface to the tenth edition

Geoffrey Cheshire died in October 1978. His death marked the end of direct involvement, even by way of encouragement, of the authors in the continued editing of this work, though in content and style it remains predominantly theirs. A preface is not the place for an obituary but I may be permitted to record my abiding gratitude for the exceptional kindness consistently shown me by both authors.

There are major changes in the appearance of this edition with the disappearance of the side notes and the abandonment of the division of the book into parts. The decision to make these changes was dictated by a desire to mitigate the ever-increasing costs of production, and in combination they have saved perhaps as many as ninety pages.

The most important substantive change in the law of contract since the ninth edition is undoubtedly the enactment of the Unfair Contract Terms Act 1977 and this has required extensive discussion. There have also been a number of House of Lords decisions of particular importance, such as *Photo Production v Securicor Transport*; *Johnson v Agnew* and *National Carriers v Panalpina* (the last of which vindicated the view adopted in the ninth edition that the doctrine of frustration should be applicable to leases). The incorporation of such new material has been the primary task of this edition but I have also tried to keep under anxious review the whole fabric of the work. The most obvious results of this will be found in chapter 2 (some factors affecting modern contract law) and chapter 18 (performance and breach). The first attempts to draw attention to a number of themes which underlie many modern developments in the subject. The second arises from my view that the complex rules about the effects of performance and breach are best understood if they are considered together. It goes without saying that in all of this my object, however imperfectly achieved, has been to maintain the original character of the book as a clear statement in narrative form of the essential principles of the subject. I have attempted to state the law as it appeared to me on 1 January 1981.

The writing of this work has created many debts of gratitude. I must acknowledge the help of many correspondents from all over the world, who have written to point out mistakes or to query debateable propositions. I must also thank a number of reviewers of the ninth edition for their careful and thought-provoking comments and many colleagues and students for discussions which have illuminated dark corners. More specifically, I should thank Brian Simpson for revising his historical introduction; Alex Alstead for invaluable guidance through the maze of competition law; Nigel Lowe for similar help with the mysteries of the Consumer Credit Act and Hugh Beale for helpful discussion on many topics.

My greatest debts are to my publishers and my family. The former have accepted my implausible excuses for delay with a charm equalled only by the

speed and efficiency with which the manuscript once delivered was converted to print. My children (who have increased in number from five to nine since the last edition) have borne my frequent disappearances into my study at weekends and in the evenings with remarkable fortitude, and my wife has provided that measure of encouragement without which the work would not have been completed at all.

M P Furmston
Bristol
9 May 1981

Preface to the first edition

Paley, in the preface to his once celebrated *Principles of Moral and Political Philosophy*, remarks that 'when a writer offers a book to the public upon a subject on which the public are already in possession of many others, he is bound by a kind of literary justice to inform his readers, distinctly and specifically, what it is he professes to supply and what he expects to improve'. If we are to obey the first of these injunctions, we must say boldly that we profess to examine the principles underlying the English law of contract, to indicate the difficulties which surround their application, to illustrate them from the accidents of litigation and the practices of life, where such a course seems profitable, to justify or excuse their vagaries by a reference to their history. To answer the second and more invidious injunction, we hasten to disown with Paley 'any propensity to depreciate the labours of our predecessors, much less to invite a comparison between the merits of their performances and our own'; but we suggest that, even on so well-trodden a road, there is room for a new guide. *Anson on Contract*, for example, has directed the steps, not only of the present authors, but of generations of pupils. But the very success which has demanded the publication of eighteen editions has in some measure impaired its utility, and a mode of treatment, apposite sixty years ago, may be thought out of focus with present needs. *Pollock on Contract*, on the other hand, while it retains through successive editions the inimitable imprint of its distinguished author, does not profess to be comprehensive, and for this reason cannot be offered without support to the student.

Whether we have made out a case for a new book on contract, still less whether we have succeeded in supplying it, is not for us to say. Once more to quote Paley, 'of the execution the reader must judge; but this was the design'. But we must be allowed one word of apology. The preparation of our book has been unduly protracted by the alarms and excursions of the last six years. Set aside in the early stages of the war, it was later resumed and had then to be largely rewritten. We are conscious that it has suffered in the process and that signs of over-writing may be apparent. Unexpected delays have aggravated the difficulty, always anxious, of absorbing current developments in Parliament and in the courts, in the business world and in professional literature, and have accentuated the feeling, ever present to authors of textbooks, that they may pursue, but can never overtake, the fleeting vision of the law. We may only hope that we have set an established subject in a new perspective, neither disdaining older authorities where they are valuable nor citing new cases merely because they are novelties.

It is customary for authors to lighten their labours and resolve their doubts by importuning friends more learned than themselves. We are conscious that many of our colleagues, well qualified to advise, would have corrected our errors. But in the special circumstances in which the book had

to be written, we felt constrained to forego this advantage and to accept, for good or ill, the consequences of isolated judgment. We cannot, however, refrain from acknowledging our debt to Mr F H Lawson MA, Fellow of Merton College, Oxford, whose gift of illuminating a dark problem by a quick and penetrating observation has offered us fruitful suggestions which we have gratefully accepted. It is perhaps proper to add that, while each chapter has been separately prepared by one of the authors and then subjected to the criticism of the other, we accept joint and several liability for the whole.

G C Cheshire
C H S Fifoot
Oxford
June 1945

Table of Statutes

References to "Statutes" are to Halsbury's Statutes (Third Edition) showing the volume and page at which the annotated text of the Act will be found.

	PAGE		PAGE
Administration of Justice Act 1705		Competition Act 1980	
s 19	570	s 25, 26	299, 303
Arbitration Act 1950 (2 <i>Statutes</i> 433)		27	299
s 4 (1)	348	28	299, 303
21 (1)	348	29	299
Arbitration Act 1979 (49 <i>Statutes</i> 58)		30	299, 301
s 1-4	348	Consumer Credit Act 1974 (44 <i>Statutes</i>	
Bankruptcy Act 1914 (3 <i>Statutes</i> 33)		746)	22, 198, 275
s 45	454	s 50	391
Betting and Gaming Act 1960		56 (2)	404, 422
Sch 6	291	(3)	267
Betting and Loans (Infants) Act 1892		57 (3)	422
(17 <i>Statutes</i> 422)	394	60	198
s 5	391	61 (1)	198
Betting, Gaming and Lotteries Act		65	198
1963 (14 <i>Statutes</i> 539)	313	69 (1)	50
Bills of Exchange Act 1882 (3 <i>Statutes</i>		(6)	422
188)	455, 468, 470, 471	(7)	50
s 3 (1)	198	102 (1)	422
26	434	113 (7)	392
27	66	127	198
(2)	471	137-140	275
29	408	175	422
(1)	295	Contracts of Employment Act 1972	
30	295	(42 <i>Statutes</i> 310)	18
62, 89	511	Contractual Remedies Act 1979 (New	
92	297	Zealand)	265
Bills of Lading Act 1855 (31 <i>Statutes</i>		Copyright Act 1956 (7 <i>Statutes</i> 128)	
44)		s 8	73
s 1	455	36 (1), (3)	455
Carriage by Air Act 1961 (2 <i>Statutes</i>		Corporate Bodies' Contracts Act 1960	
604)	18	(7 <i>Statutes</i> 14)	197
Carriage of Goods by Air Act 1932	173	Counter-Inflation Act 1973	18
Carriage of Goods by Sea Act 1924		Criminal Justice Act 1948	569
(31 <i>Statutes</i> 523)	173	Criminal Law Act 1967 (8 <i>Statutes</i> 552;	
Carriage of Goods by Sea Act 1971		35 <i>Statutes</i> 552)	
(41 <i>Statutes</i> 1312)	18, 149, 173	s 1	326
Chancery Amendment Act 1858		5 (1)	326
[Lord Cairns' Act] (25 <i>Statutes</i>		13 (1)	327
703)	538, 565	14 (1), (2)	327
Cheques Act 1957 (3 <i>Statutes</i> 238)		Criminal Law Act 1977	320
s 2	469	Currency and Bank Notes Act 1954	
Civil Liability (Contribution) Act 1978		(2 <i>Statutes</i> 770)	
(48 <i>Statutes</i> 357)	581	s 1	501
Civil Procedure Act 1833		Customs Consolidation Act 1876	580
s 5	570	Defective Premises Act 1972 (42	
Coinage Act 1971 (41 <i>Statutes</i> 225)		<i>Statutes</i> 1395)	123
s 2	501	Employers' Liability Act 1880	384
Companies Act 1948 (5 <i>Statutes</i> 110)		Equal Pay Act 1970 (40 <i>Statutes</i> 561)	319
s 5	398, 399	European Communities Act 1972 (42	
38, 43	399	<i>Statutes</i> 59)	303
50 (5)	270	s 9 (2)	428
73	50	10	304
Companies Act 1980 (50 (1) <i>Statutes</i>	455	Evidence Act 1851 (12 <i>Statutes</i> 815)	177
73)		Exchange Control Act 1947 (22	
s 74	401	<i>Statutes</i> 900)	340
		Factors Act 1889 (1 <i>Statutes</i> 94)	445
		s 1 (1)	445
		2 (1)	445

	PAGE		PAGE
Factors Act 1889 <i>cont'd</i>		Insurance Act 1971 (Jamaica)	
s 9	120, 255, 446	s 74 (1)	424
Fair Trading Act 1973 (43 <i>Statutes</i>		Landlord and Tenant Act 1927 (18	
1618)	22, 158, 299, 369	<i>Statutes</i> 451)	
s 4	368	s 9	18
94, 107, 110	299	Landlord and Tenant Act 1954 (18	
Family Law Reform Act 1969 (17		<i>Statutes</i> 726)	
<i>Statutes</i> 792, 148)		s 17	18
s 1, 12	379	Landlord and Tenant Act 1962 (18	
19	408	<i>Statutes</i> 615)	312
Fatal Accidents Act 1846 (23 <i>Statutes</i>		Larceny Act 1861	242
780)	410	Law of Property Act 1925 (27 <i>Statutes</i>	
Fatal Accidents Act 1959 (23 <i>Statutes</i>		341)	462, 464, 504,
801)			506, 507, 553
s 2 (1)	410	s 1 (6)	385
Fatal Accidents (Damages) Act 1908	410	40	177, 178, 184, 189, 191,
s 1	410		192, 561
Finance Act 1926		(1)	183, 185, 187, 190, 191,
s 15	583		197, 503
Finance Act 1960		(2)	193
s 37, 38	551	41	500
Finance Act 1970 (32 <i>Statutes</i> 342)		47 (1)	408
s 32	198	52	197
Gaming Act 1710 (14 <i>Statutes</i> 519)	294,	54 (2)	197, 261
	296, 297, 298	56 (1)	411, 412
s 1	294	73	25
Gaming Act 1738 (14 <i>Statutes</i> 521)		78 (1)	405
s 2	291	123	434
Gaming Act 1739	291	124 (1)	453
Gaming Act 1744	291	136	460
Gaming Act 1835 (14 <i>Statutes</i> 522)	294,	137 (3)	465
	295, 296, 297, 298	205 (1)	411, 412
s 1	294	(ix)	184
Gaming Act 1845 (14 <i>Statutes</i> 523)	292,	Law Reform (Enforcement of Con-	
	293, 294, 297, 298, 341, 587	tracts) Act 1954 (7 <i>Statutes</i> 14)	178
s 18	287, 290	Law Reform (Frustrated Contracts)	
Gaming Act 1892 (14 <i>Statutes</i> 533)	284,	Act 1943 (7 <i>Statutes</i> 9):	226, 482, 527,
	292, 293, 297, 298, 299		533
s 1	293	s 1 (1)	527
Gaming Act 1968 (14 <i>Statutes</i> 696)	291,	(2)	528
	296, 313	(3)	529, 530
s 2 (1), (2)	291	2 (1)-(3), (5)	531
3-8	291	Law Reform (Miscellaneous Pro-	
9	297	visions) Act 1934 (13 <i>Statutes</i> 115)	
16 (1)-(5)	297	s 1 (1)	474
23	297	Law Reform (Miscellaneous Pro-	
40, 41, 46, 52	291	visions) Act 1970 (40 <i>Statutes</i>	
Hire-Purchase Act 1938	121, 198	781)	351, 393
Hire-Purchase Act 1954	121	s 1 (1)	98, 484
Hire-Purchase Act 1964 (30 <i>Statutes</i>		6	351
55)	121, 198	Limitation Act 1980 (50 (1) <i>Statutes</i>	
s 10, 11	422	1253)	66, 566
Hire-Purchase Act 1965 (30 <i>Statutes</i>		s 5, 6	567
61)	121, 198	8 (1)	567
s 12 (2), (3)	422	11 (1)	567
17 (1)-(4)	122	23	567
18 (1)-(3)	122	28 (1), (2)	569
19 (2)	122	29 (7)	570
29 (3)	122	32	568
58 (1)	121	33	567
Honours (Prevention of Abuses) Act		Limitation Amendment Act 1980	
1925 (24 <i>Statutes</i> 742)	328	(50 (1) <i>Statutes</i> 411)	
Housing Act 1980	18	s 6	570
Income Tax Act 1918	184	Maintenance Agreements Act 1957	316
Indian Contract Act 1872	208	Marine Insurance Act 1906 (17	
Industrial Relations Act 1971 (41		<i>Statutes</i> 836)	268
<i>Statutes</i> 2062, 2216)		s 14 (2)	408
s 34 (1)	105	18 (1), (2)	269
Infants Relief Act 1874	75, 379,	21-24	198
	380, 392, 393, 591	33	118
s 2	66, 393	(3)	118

	PAGE		PAGE
Marine Insurance Act 1906 <i>cont'd</i>		Patents Act 1949 (24 <i>Statutes</i> 550)	
s 34	118	s 57	158
35	118	Payment of Wages Act 1960 (12	
(3)	118	<i>Statutes</i> 190)	313
36-41	118	Pharmacy and Poisons Act 1933 (21	
50 (2)	455	<i>Statutes</i> 860)	
Married Women's Property Act 1882		s 18	30
(17 <i>Statutes</i> 116)		Policies of Assurance Act 1867 (17	
s 11	408	<i>Statutes</i> 831)	
Matrimonial Causes Act 1973 (43		s 1	455
<i>Statutes</i> 539)		Prevention of Fraud (Investments)	
s 7	374	Act 1958 (22 <i>Statutes</i> 968)	270
12	274	Protection from Eviction Act 1977	
34	316, 349, 374	(47 <i>Statutes</i> 661)	18
35	513	Protection of Birds Act 1954 (2	
Sch 3	429	<i>Statutes</i> 192)	29
Matrimonial Proceedings and Pro-		Protection of Depositors Act 1963	
perty Act 1970 (40 <i>Statutes</i> 795)		(22 <i>Statutes</i> 1008)	270
s 41	429	Race Relations Act 1968 (40 <i>Statutes</i>	
Mental Health Act 1959 (25 <i>Statutes</i>		103)	319
42)	569, 402	s 23	374
s 4	402	Race Relations Act 1976 (46 <i>Statutes</i>	
103 (1)	403	389)	
149 (2)	402	s 72	319
Mental Treatment Act 1930	402	Railway and Canal Traffic Act 1854	
Mercantile Law Amendment Act 1856		s 7	165
(7 <i>Statutes</i> 8)		Real Property Act 1845	
s 2	566	s 5	411
3	185	Remuneration, Charges and Grants	
13	570	Act 1975	
Merchant Shipping Act (Amendment)		s 1	525
Act 1862		Rent Act 1968 (18 <i>Statutes</i> 777)	
s 54 (1)	57	s 86, 88, 89	374
Merchant Shipping (Safety and Load		Rent Act 1977 (47 <i>Statutes</i> 387)	18
Line Conventions) Act 1932		s 78	18
(31 <i>Statutes</i> 545)	312	Resale Prices Act 1964 (37 <i>Statutes</i>	
Misrepresentation Act 1967 (22		158)	305, 306, 307, 314
<i>Statutes</i> 675)	114, 170, 237,	s 1	420
249, 252, 253, 258, 273		(1)	420
s 1	252, 253, 260, 262, 265, 266	5 (2)	306
2	266	Resale Prices Act 1976 (46 <i>Statutes</i>	
(1)	110, 250, 251, 252, 257,	2033)	304, 313
(2)	264, 265, 266	s 1-4	419
(3)	257, 262, 265	8	420
3	170, 265, 266, 267	11	305
4	266	(2)	305
5	266	12	305
7	250	(1)	305
Money-lenders Act 1900 (22 <i>Statutes</i>		(2)	306
693)		13	306
Moneylenders Act 1927 (22 <i>Statutes</i>		(1), (2)	306
700)	275	14	420
s 6	505	(2)	306
7	342	15	420
Monopolies and Mergers Act 1965		16	306, 420
(37 <i>Statutes</i> 177)	368	(1), (2)	306
Monopolies and Restrictive Practices		17	420
(Inquiry and Control) Act 1948		(2)	306
(37 <i>Statutes</i> 60)	299, 368	24 (1)	305
Motor Vehicles (Passenger Insurance)		25 (1)-(3)	307
Act 1971 (41 <i>Statutes</i> 1189)	158	26	307, 420
National Assistance Act 1948 (23		(1)-(3)	420
<i>Statutes</i> 636)		Restrictive Trade Practices Act 1956	
s 42	78	(37 <i>Statutes</i> 77)	299, 301, 305,
Nullity of Marriage Act 1971 (41		313, 368	
<i>Statutes</i> 752)		s 6 (3)	301
s 2	274	(7)	300
Partnership Act 1890 (24 <i>Statutes</i>		24	419
500)		25	307, 314
s 40	527	(1), (2)	420
		Restrictive Trade Practices Act 1968	
		(37 <i>Statutes</i> 316)	299, 369

	PAGE		PAGE
Restrictive Trade Practices Act 1956		Sales of Goods Act 1893 <i>cont'd</i>	
<i>cont'd</i>		s 25 (2)	120, 130, 446
s 5 (2)	299	50	546
7 (1)	369	(3)	546
(3)	302	51	545
9 (1)	302	(3)	545
Restrictive Trade Practices Act 1976		52	566
(46 Statutes 1955)	299	58 (2)	28
s 1	302, 313	62	132, 184, 532
(1)	314	(1)	566
(2)	303, 314	Sale of Goods Act 1979 (49 Statutes	
(3)	303	1102)	18, 123, 477
(6)	314	s 3	601
2	313, 314, 369	(3)	380
(1), (2)	303	7	532
6	300, 314	8 (2)	597
7	300	20	532
(1)	299	28	477
8	300	30 (1)	481
(2)-(5)	300	(2), (3)	483
9	300, 301	31 (2)	486
10	303	Settled Land Act 1925 (30 Statutes	
(1)	369	344)	
11	300	s 27 (1), (2)	385
12	299, 300	Stamp Act 1891	198, 309
13 (3)	301	Statute Law Revision Land Civil	
16, 18	300, 301	Procedure Act 1883	565
19	303	s 5	565
(1)	303	Statute of Frauds (1677) (7 Statutes	
21	369	6)	9, 43, 172, 181, 191,
(1), (2)	302	503, 506, 507	
24 (2)	301	s 1-3	175
25 (2)	314	4	174, 175, 176, 177, 178,
26	314	183, 185, 190, 191, 503	
28	300, 301	5, 6	175, 176
29-34	301	7-9	175
35 (1)	302, 369	17	174, 175, 177, 183
(2)-(4)	302	Statute of Frauds Amendment Act	
43 (1)	301	1828 [Lord Tenterden's Act]	
Sch 2		(7 Statutes 7)	
para 5	301	s 1	570
Sch 3	300, 301	Statute of Gloucester (1278)	3
Restrictive Trade Practices Act 1977		Stock Jobbing (1733)	341
(47 Statutes 1467)	299	Suicide Act 1961 (8 Statutes 519)	
Road and Rail Traffic Act 1933	310	s 1	320
Road Traffic Act 1930	18	Supply of Goods (Implied Terms)	
s 35 (1)	124	Act 1973 (43 Statutes 1337)	122,
Road Traffic Act 1934 (28 Statutes		160, 163, 164, 165	
176)		Supreme Court of Judicature Act	
s 8 (1)	309	1873	437, 460, 503, 568, 572
Road Traffic Act 1960 (28 Statutes		s 25	500
219)		(6)	460
s 151	150, 158	Supreme Court of Judicature (Con-	
207	321	solidation) Act 1925 (25 Statutes	
Road Traffic Act 1972 (42 Statutes		708)	
1633)	18	s 43	565
s 60 (5)	309	44	503
148 (4)	408	Theft Act 1968 (8 Statutes 782)	
Sales of Goods Act 1893 (30 Statutes		s 15, 16	320, 326
6)	14, 28, 119, 120, 137	Third Parties (Rights against Insurers)	
s 2	382, 402, 403, 532	Act 1930 (3 Statutes 175)	408
(5)	532	Trade Descriptions Act 1968 (37	
4	177, 178, 183, 505	Statutes 948)	
6	119, 205	s 6	30
7	532, 533	35	239
11 (1)	132	Trade Union and Labour Relations	
12	120, 122	Act 1974 (44 Statutes 1766)	
13	113, 122	s 18	105
14, 15	122	Trading with the Enemy Act 1939	
17	334	(38 Statutes 359)	323
18	344	Transport Act 1962 (26 Statutes 925)	158
(4)	532		

	PAGE		PAGE
Transport Act 1962 <i>cont'd</i>		Unfair Contract Terms Act 1977	
s 43 (7)	158	<i>cont'd</i>	
Transport Act 1968	158	s 9	169
Truck Act 1831 (12 <i>Statutes</i> 11)	313	(1), (2)	169
Truck Act 1940 (12 <i>Statutes</i> 85)	313	10	167
Unfair Contract Terms Act 1977 (47		11	164
<i>Statutes</i> 84)	22, 23, 157, 172	(1)	164, 266
s 1	161	(2)	164, 165
(3)	159	(3)	164
(4)	169	(4)	166
2	159, 160, 161, 169	(5)	164
(1)	160, 161	12	171
(2)	161, 162	(1)-(3)	163
(3)	161	13	169
3	155, 159, 160, 161, 162	17	161
(2)	162	27 (2)	168
4	159, 167	29	171
5	159, 169, 170, 171	Sch 1	159
(3)	171	Sch 2	164, 165
6	159, 160, 163, 164, 167, 169, 171	Uniform Laws on International Sales	
(1)	161, 163	Act 1967 (30 <i>Statutes</i> 128)	
(2), (3)	163	Sch 2	
(4)	159	art 7	144
7	159, 160, 162, 163, 164, 169, 171	Unsolicited Goods and Services Act	
(2)	162	1971	43
(3), (4)	163	Wages Councils Act 1959 (12 <i>Statutes</i>	
8	170, 266	157)	
		s 12 (1)	18

List of Cases

A		PAGE			PAGE
A to Z Bazaars (Pty) Ltd v Minister of Agriculture (1974)		47	Allen v Robles (1969)		492
Aaron's Reef v Twiss (1896)	258, 271		Allen v Waters & Co (1935)		580
Abbott v Lance (1860)	52		Alliance Bank v Broom (1864)		72
Aberfoyle Plantations Ltd v Cheng (1960)	129		Allsopp v Wheatcroft (1872)		362
Abrahams v Herbert Reisch (1922)	538		Amalgamated Investment and Property Co Ltd v John Walker & Sons Ltd (1976)	201	
Abram SS Co v Westville SS Co (1923)	254, 255		Ames v Milward (1818)	241	
Achille Lauro Fugioacchino & Co v Total Societa Italiana per Azioni (1969)	520		Amoco Australian Pty Ltd v Rocca Bros Motor Engineering Co Pty Ltd (1975)	367	
Ackroyd & Sons v Hasan (1960)	450, 451		Anderson Ltd v Daniel (1924):	311, 344, 345	
Adam v Newbigging (1888)	259		Anderson (W B) & Sons Ltd v Rhodes (Liverpool) Ltd (1967)	247	
Adams v R Hanna & Son Ltd (1967)	91		Andre & Cie SA v Ets Michel Blanc & Fils (1979)	240, 264	
Adams v Lindsell (1818)	12, 33, 45, 46		Andrews v Hopkinson (1957)	59	
Adams v Richardson and Starling Ltd (1969)	146		Angel v Jay (1911)	261	
Adamson v Jarvis (1827)	581		Angelia, The (1973)	155, 516	
Addison v Brown (1954)	373		Anglia Television Ltd v Reed (1972)	538	
Addison v Gandassequi (1812)	432		Angus v Clifford (1891)	238	
Adler v Dickson (1955)	147, 149, 150		Anon (1455)	79	
Admiralty Comrs v National Provincial and Union Bank of England Ltd (1922)	583		Anon (1478)	26	
Ahmad v Inner London Education Authority (1978)	319		Anon (1495)	79	
Ahmed Angullia Bin Hadjee Mohamed Salleh Angellia v Estate and Trust Agencies (1927) Ltd (1938)	474		Anon (1498)	5	
Aiken v Short (1856)	587		Anon (1773)	176	
Ailion v Spiekermann (1976)	374		Appleby v Myers (1867)	482, 529, 531	
Ajayi (Emmanuel) v R T Briscoe (Nigeria) Ltd (1964)	86, 88, 90		Applegrath v Colley (1842)	296	
Ajit v Sammy (1967)	499		Applegate v Moss (1971)	569	
Akerhielm v De Mare (1959)	246		Appleson v H Littlewood Ltd (1939)	102	
Akerib v Booth (1961)	146		Apthorp v Neville & Co (1907)	320	
Alan (W J) & Co Ltd v El Nasr Export and Import Co (1972)	90, 477		Aquis Estates Ltd v Minton (1975)	509	
Albazer, The (1977)	413		Arab Bank Ltd v Barclays Bank Ltd (1954)	324	
Alberg v Chandler (1948)	287		Arbuthnot v Norton (1846)	328	
Alder v Moore (1961)	558		Archbolds (Freightage) Ltd v S Spanglett Ltd (1961)	310, 311, 345	
Alderslade v Hendon Laundry Ltd (1945)	146		Ardennes (Cargo Owners) v Ardennes (Owners) (1951)	109, 544	
Alexander v Rly Executive (1951)	153, 156		Argentino, The (1888)	538	
Alexander v Rayson (1936)	71, 328, 329, 330, 332, 336, 340, 343, 344, 373		Argos, The (1873)	429	
Allan (J M) (Merchandising) v Cloke (1963)	329, 330, 332		Argy Trading Development Co v Lapid Developments Ltd (1977)	87, 242	
Allcard v Skinner (1887)	275, 278, 279, 281, 282		Armstrong v Jackson (1917)	261	
Allcard v Walker (1896)	211		Armstrong v Stokes (1872)	441	
Allen v Rescous (1676)	320		Arrale v Costain Civil Engineering Ltd (1976)	276	
			Aruna Mills Ltd v Dhanrajmal Gobindram (1968)	543	
			Asfar & Co v Blundell (1896)	533	
			Ashbury Rly Carriage Co v Riche (1875)	400	
			Ashmore, Benson, Pease & Co Ltd v Dawson Ltd (1973)	311	
			Associated Newspapers Ltd v Bancks (1951)	488	

	PAGE		PAGE
Astley v Reynolds (1731)	275	Baylis v Bishop of London (1913)	575, 586
Astley Industrial Trust Ltd v Grimley (1963)	124, 134, 152	Beach v Reed Corrugated Cases Ltd (1956)	550
Atkinson v Denby (1862)	338	Beale v Taylor (1967)	113, 237
Atlantic Maritime Co Inc v Gibbon (1954)	518	Beaman v ARTS Ltd (1949)	568
Atlee v Backhouse (1838)	275	Beattie v Lord Ebury (1872)	238, 240
A-G v Great Eastern Rly Co (1880)	399	Beauforte (Jon) (London) Ltd, Re (1953)	400
A-G (Australia) v Adelaide SS Co (1913)	316	Beckham v Drake (1849)	474
Attwood v Lamont (1920)	351, 353, 354, 361, 362, 374, 375, 376, 377	Bedford (Duke) v British Museum Trustees (1822)	561
Attwood v Small (1838)	243	Beesly v Hallwood Estates Ltd (1961)	86, 240
Australian Hardwoods Pty Ltd v Railways Comrs (1961)	564	Begbie v Phosphate Sewage Co (1875)	244, 320
Automatic Fire Sprinklers Pty Ltd v Watson (1946)	555	Behn v Burness (1863)	134, 135
Avery v Bowden (1885)	490	Bell v Lever Bros Ltd (1932)	13, 199, 204, 206, 208, 209, 211, 213, 217, 240
Ayerst v Jenkins (1873)	322	Bell Houses Ltd v City Wall Properties Ltd (1966)	400, 401, 591, 599
B			
Band B Viennese v Lesane (1952)	311	Belmont Finance Corp'n Ltd v Williams Furniture Ltd (1979)	330
Babcock v Lawson (1879)	260	Belvoir Finance Co Ltd v Cole Ltd (1969)	341
Backhouse v Backhouse (1978)	281	Belvoir Finance Co Ltd v Stapleton (1971)	332, 334
Baddeley v Earl Granville (1887)	349	Bennett v Bennett (1952)	316, 317, 349, 370, 371, 373
Badische Anilin und Soda Fabrik v Schott Segner & Co (1892)	362	Bentley (Dick) Productions Ltd v Harold Smith (Motors) Ltd (1965)	113, 236, 248
Bagge v Slade (1616)	94	Bentsen v Taylor Sons & Co (No 2) (1893)	107, 135, 487, 534
Bagot v Chapman (1907)	231, 232	Bentworth Finance Ltd v Lubert (1968)	130
Bagot v Stevens, Scanlan & Co (1966)	247, 567	Benyon v Nettlefold (1850)	322
Bahamas International Trust Co Ltd v Threadgold (1974)	107	Berg v Sadler and Moore (1937)	320, 335
Bailey v Thurston (1903)	475	Beresford v Royal Insurance Co Ltd (1937)	320, 322
Baily v De Crespigny (1869)	516	Berry v Berry (1929)	503
Bainbridge v Firmstone (1838)	74	Besseler, Waechter, Glover & Co v South Derwent Coal Co Ltd (1938)	507
Bainbridge v Browne (1881)	282	Beswick v Beswick (1968)	411, 412, 413, 560, 564
Baker v Courage & Co (1910)	568	Bettini v Gye (1876)	133, 134, 135
Baker v Hedgecock (1888)	376	Bevan v Bevan (1955)	325
Baker v Jones (1954)	348	Bevington and Morris v Dale & Co Ltd (1902)	532
Baldwyn v Smith (1900)	403	Bickerton v Burrell (1816)	446
Balfour v Balfour (1919)	98, 99, 100, 101	Biffin v Bignell (1862)	274
Balkis Consolidated Co v Tomkinson (1893)	273	Bigg v Boyd Gibbins Ltd (1971)	31
Ball v Hesketh (1697)	65	Bigos v Bousted (1951)	340
Ballett v Mingay (1943)	395, 396	Bilbie v Lumley (1802)	582
Bank Line Ltd v A Capel & Co (1919)	488, 521	Bilborough v Holmes (1876)	472
Bank of Montreal v Stuart (1911)	281	Bingham v Bingham (1748)	204
Bannerman v White (1861)	110	Binions v Evans (1972)	418
Barber v Crickett (1958)	129	Birch v Paramount Estates Ltd (1956)	112
Barber v Vincent (1680)	381	Birkmyr v Darnell (1704)	179
Barclay v Pearson (1893)	338, 340	Birmingham and District Land Co v London and North Western Rly Co (1888)	84, 90, 507
Barclays Bank Ltd v W J Simms Son and Cooke (Southern) Ltd (1979)	586, 588	Birtley and District Co-operative Society Ltd v Windy Nook and District Industrial Co-operative Society Ltd (No 2) (1960)	365
Barker v Stickney (1919)	416	Bisset v Wilkinson (1927)	238
Barnes & Co v Toye (1884)	381	Blachford v Preston (1799)	327
Barrow v Isaacs (1891)	536	Black v Smallwood (1965-6)	428
Barrow & Bros v Dyster, Nalder & Co (1884)	435	Blanchette v CIS Ltd (1973)	424
Barton v Armstrong (1975)	243, 275	Blades v Free (1829)	453
Barwick v Reade (1791)	328	Blake v Concannon (1870)	387
Bashir v Comr of Lands (1960)	131		
Batten v White (No 2) (1960)	35		
Batty v Metropolitan Property Realisations Ltd (1978)	247, 248		
Baumwoll Manufacturer Von Carl Scheibler v Furness (1893)	417, 418		
Bawdes v Amhurst (1715)	193		
Bayliffe v Butterworth (1847)	445		

	PAGE		PAGE
Blake & Co v Sohn (1969)	452	British Airways Board v Taylor (1976)	238
Blathwayt v Lord Cawley (1976)	319	British and American Telegraph Co v Colson (1871)	17, 46
Bligh v Martin (1968)	204	British and Beningtons Ltd v N W Cachar Tea Co (1923)	504
Bloom v American Swiss Watch Co (1915)	48	British Basic Slag Ltd's Agreements, Re (1963)	301
Boast v Firth (1868)	516, 517	British Columbia Saw Mills Co v Nettleship (1868)	13
Boissevain v Weil (1950)	577, 592	British Concrete Co v Schelff (1921)	364
Bold v Brough, Nicholson and Hall Ltd (1964)	551	British Crane Hire Corp'n Ltd v Ipswich Plant Hire Ltd (1975)	142
Bolton v Madden (1873)	62	British Eagle International Airlines Ltd v Compagnie Nationale Air France (1975)	349
Bolton v Mahadeva (1972)	479, 480, 481, 482	British Homophone Ltd v Kunz and Crystallate Gramophone Record Manufacturing Co Ltd (1935)	240
Bolton Partners v Lambert (1889)	426	British Movietonews Ltd v London and District Cinemas Ltd (1952)	514
Bond Air Services Ltd v Hill (1955)	270	BP Exploration Co (Libya) v Hunt (No 2) (1979)	530
Boone v Eyre (1779)	479	British Road Services Ltd v Arthur Crutchley & Co Ltd (1968)	144
Boothbey v Sowden (1812)	92	British Russian Gazette Ltd v Associated Newspapers Ltd (1933)	509, 510, 511
Borrows v Ellison (1871)	570	British School of Motoring Ltd v Simms (1971)	127
Bostel Bros Ltd v Hurlock (1924)	311, 332	British Transport Commission v Gourley (1956)	550, 551
Boston Deep Sea Fishing and Ice Co v Ansell (1888)	492	British Waggon Co v Lea (1880):	472, 473
Boston Deep Sea Fishing and Ice Co Ltd v Farnham (1957)	427	British Westinghouse Electric and Manufacturing Co v Underground Electric Rlys Co of London (1912)	552
Bottoms v York Corp'n (1892)	512	Brocklehurst, Re, Hall v Roberts (1978)	280
Boughton v Knight (1873)	402	Brodie v Brodie (1917)	350
Boulton v Jones (1857)	221, 473	Brogden v Marriott (1836)	286
Bourn v Mason (1669)	404	Brogden v Metropolitan Rly Co (1877)	33
Bowden's (E M) Patents Syndicate Ltd v Herbert Smith & Co (1904):	460, 463	Brook v Hook (1871)	324
Bowes v Shand (1877)	499	Brooke (Lord) v Rounthwaite (1846)	239
Bowler v Lovegrove (1921)	361	Brooks v Burns Philp Trustee Co Ltd (1969)	318, 349, 374
Bowmakers Ltd v Barnet Instruments Ltd (1945)	336	Brooksbank v Smith (1836)	568
Bowman v Secular Society (1917)	318	Brooks Wharf and Bull Wharf Ltd v Goodman Bros (1937)	576, 580, 581
Bowry v Bennett (1808)	344	Broom v Davis (1794)	480
Boydell v Drummond (1809)	188, 572	Brougham v Dwyer (1913)	591
Boys v Chaplin (1968)	537	Brown v Gould (1972)	37
Brace v Calder (1895)	552	Brown v London (1670)	593
Bracebridge v Buckley (1816)	536	Brown v Muller (1872)	554
Bradbury v Morgan (1862)	55	Brown v Raphael (1958)	239
Brading v F McNeill & Co Ltd (1946)	545	Brown v Sheen and Richmond Car Sales Ltd (1950)	58
Bradley v Newson (1919)	485	Brown Jenkinson & Co Ltd v Percy Dalton (London) Ltd (1957)	320
Bradley Egg Farm Ltd v Clifford (1943)	398	Browne, Re, ex parte Martingell (1904)	288
Branca v Cobarro (1947)	35	Browning v Morris (1778)	338, 582
Brandt v Liverpool, Brazil and River Plate Steam Navigation Co (1924)	151	Bruner v Moore (1904)	508
Brandt (H O) v H N Morris & Co (1917)	436	Bubb v Yelverton (1870)	288
Brandt's Sons & Co v Dunlop Rubber Co (1905)	457, 461	Buckland v Buckland (1968)	274
Branwhite v Worcester Works Finance (1969)	423	Buckland v Farmer and Moody (1979)	491
Breadalbane (Marquess) v Marquess of Chandos (1837)	216	Buckley v Irwin (1960)	276
Brekkes Ltd v Cattel (1972)	369	Buckpitt v Oates (1968)	101
Bremen v Zepata (1972)	349	Budgett & Co v Binnington & Co (1891)	512
Bremer Vulkan Schiffbau und Maschinenfabrik v South India Shipping Corp'n (1981)	125	Bufe v Turner (1815)	269
Bret v JS (1600)	70, 71		
Brickwoods Ltd v Butler and Walters (1969)	88		
Bridge v Campbell Discount Co Ltd (1962)	121, 536, 556		
Bridgeman v Green (1757)	282		
Bridger v Savage (1885)	287, 294		
Briss v Woolley (1954)	246		
Brikom Investments Ltd v Carr (1979)	86, 90, 508		
Brimnes, The (1974)	51		
Brisbane v Dacres (1813)	582		
Britain v Rossiter (1879)	193		

	PAGE		PAGE
Building and Civil Engineering Holi- days Scheme Management v Post Office (1966)	75	Carlton Hall Club v Laurence (1929)	296, 299
Bull v Pitney-Bowes Ltd (1966)	357	Carney v Plimmer (1897)	298
Bullock v Lloyds Bank Ltd (1955)	358, 363, 375	Carpenters Estates Ltd v Davies (1940)	565
Bulpitt & Sons Ltd v S Bellman (1962)	275	Carrington v Roots (1837)	190, 191
Bunge Corpn v Tradax Export SA (1981)	73	Carter v Boehm (1766)	268
Bunn v Guy (1803)	137	Carter v Silber (1892)	386
Burden v Harris (1937)	62	Carter (John) v Hanson Haulage (Leeds) Ltd (1965)	154
Burdick v Garrick (1870)	288	Cartwright v Cooke (1832)	510
Burgess v Cox (1951)	567	Cartwright v Hoogstoel (1911)	51
Burgess v Rawnsley (1975)	185	Carvalho v Hull Blyth (Angola) Ltd (1979)	349
Burlinson v Hall (1884)	192	Carvill v Irish Industrial Bank Ltd (1968)	493
Burmah Oil Co Ltd v Bank of England (1979)	458	Case of the Sale of Barley, The (1505)	5
Burnaby v Equitable Reversionary Interest Society (1885)	278	Casey's Patents, Re, Stewart v Casey (1892)	65
Burnard v Haggis (1863)	389	Cassell & Co v Broome (1972)	89, 263
Burnett v Westminster Bank Ltd (1966)	395, 396	Caton v Caton (1867)	188
Burrow v Scammell (1881)	140, 141	Cator v Croydon Canal Co (1841)	459
Burrowes v Lock (1805)	227	Cehave NV v Bremer Handel- gesellschaft mbH (1976)	23, 136
Burrows (John) Ltd v Subsurface Surveys Ltd (1968)	273	Cellulose Acetate Silk Co Ltd v Widnes Foundry (1925) Ltd (1933)	556
Busch v Stevens (1963)	87	Central London Property Trust Ltd v High Trees House Ltd (1947)	83, 84, 85, 87, 89, 91
Bushwall Properties Ltd v Vortex Properties Ltd (1976)	571	Central Rly Co of Venezuela (Directors, etc) v Kisch (1867)	244, 271
Business Computers Ltd v Anglo- African Leasing Ltd (1977)	40	Chandler v Kertey (1978)	322
Butcher v Stapely (1685)	466	Chandler v Webster (1904)	525, 526, 527, 528
Butler Machine Tool Co v Ex-Cell-O Corpn (1979)	192	Chanter v Hopkins (1838)	151
Butlin's Settlement Trusts, Re (1976)	144	Chapelton v Barry UDC (1940)	130, 139, 141
Butwick v Grant (1924)	216	Chaplin v Hicks (1911)	537, 549, 550
Buxton v Rust (1872)	442	Chaplin v Leslie Frewin (Publishers) Ltd (1966)	382, 384, 385, 389, 390
Byrne v Schiller (1871)	186	Chaplin v Rogers (1800)	176
Byrne v Van Tienhoven (1880)	531	Chappell & Co Ltd v Nestlé Co Ltd (1960)	73
	46, 50	Chapple v Cooper (1844)	380, 381
C		Charrington v Simons & Co (1970)	562
CHT Ltd v Ward (1963)	297, 298	Charter v Sullivan (1957)	647
CMG, Re (1970)	280	Charterbridge Corpn Ltd v Lloyds Bank Ltd (1970)	400
Cadbury Schweppes Ltd's Agreement, Re (1975)	300	Charterhouse Credit Co v Tolly (1963)	152
Caddick v Skidmore (1857)	185	Chater v Beckett (1797)	176
Cadman v Horner (1810)	256	Cheshire & Co v Vaughan Bros & Co (1920)	294
Calder v Dobell (1871)	466	Chess (Oscar) Ltd v Williams (1957)	112, 113, 236
Callisher v Bischoffsheim (1870):	71, 72	Chesterfield (Earl) v Janssen (1751)	272
Campbell Discount Co v Bridge (1961)	536, 558, 559	Chesterfield Colliery Co v Hawkins (1865)	434
Cameron v Campbell and Worthing- ton Ltd (1930)	547	Chesworth v Farrar (1967)	75
Camillo Tank SS Co v Alexandria Engineering Works (1921)	600	Chettiar v Chettiar (1962)	335, 346
Candler v Crane, Christmas & Co (1951)	246	Chichester v Cobb (1866)	95
Canham v Barry (1855)	344	Chillingworth v Esche (1924)	35
Cannon v Bryce (1819)	341, 342	China National Foreign Trade Trans- portation Corpn v Eulogia Shipping Co SA of Panama, The Mihalis Xilas (1979)	497
Capital Motors Ltd v Beecham (1975)	249	Chinnock v Sainsbury (1860)	563
Car and Universal Finance Co Ltd v Caldwell (1965)	254, 255, 258	Chocolate and Sugar Confectionery Resale Price Reference, Re (1967)	307
Caribonum Co Ltd v Le Couch (1913)	360	Christie Owen and Davies Ltd v Rapacioli (1974)	451
Carle and Montanari Inc v American Export Isbrandtsen Lines Inc. (1968)	148	Christy v Row (1808)	481
Carlill v Carbolic Smoke Ball Co (1893)	12, 26, 27, 42, 57, 102, 131, 171, 283, 285		
Carlisle and Cumberland Banking Co v Bragg (1911)	231, 233, 234		

	PAGE		PAGE
Citizens' Bank of Louisiana v First National Bank of New Orleans (1873)	84, 85	Cook v Lister (1863)	92, 93
City and Westminster Properties (1934) Ltd v Mudd (1959)	59, 114, 115, 509	Cooke v Eshelby (1887)	442
Clark v Kirby-Smith (1964)	247	Cooke v Oxley (1790)	45, 50
Clarke v Cobley (1789)	397	Cooke v Wilson (1856)	433
Clarke v Dickson (1858)	255, 259	Coomber, Re, Coomber v Coomber (1911)	280
Clarke v Dunraven (Earl) (1897):	26, 57	Cooper v Jarman (1866)	474
Clarke (L G) Re, ex parte Debtor v S Ashton & Son (1967)	93	Cooper v Joel (1859)	256
Clarkson Booker Ltd v Andjel (1964)	439	Cooper v Phibbs (1867)	211, 584, 585
Clay v Ray (1864)	340	Cooper v Reilly (1829)	328
Clay v Yates (1856)	330, 344	Cooper v Willis (1906)	325
Cleaver v Mutual Reserve Fund Life Association (1892)	320, 407	Cope v Rowlands	310, 311
Clegg v Hands (1890)	562	Coral v Kleyman (1951)	289
Clements v London and North Western Rly Co (1894)	384, 385	Cork and Bandon Rly Co v Cazenove (1847)	386
Cleveland Petroleum Co Ltd v Dartstone Ltd (1969)	356, 367	Cornish v Abington (1859)	218
Clifton v Palumbo (1944)	31	Cornwall v Wilson (1750)	459
Clore v Theatrical Properties Ltd (1936)	417	Cornwall v Hawkins (1872)	361
Clough v London and North Western Rly Co (1871)	254, 258, 259	Cornwall v Henson (1900)	487
Clubb v Hutson (1865)	325, 326	Corpe v Overton (1833)	388
Clyde Cycle Co v Hargreaves (1898):	381	Cory v Gertcken (1816)	397
Clydebank Engineering and Ship-building Co v Yzquierdo-y-Castaneda, Don Jose Ramos (1905)	557	Couchman v Hill (1947)	109, 114
Coates v Wilson (1804)	381	Couldery v Bartrum (1881)	92
Cochrane v Willis (1865)	204, 211	Coulls v Bagot's Executor and Trustee Co Ltd (1967)	67, 404, 413
Cockerton v Naviera Aznar SA (1960)	151	Coulthart v Clementson (1879)	55
Coco v A N Clark (Engineers) Ltd (1968)	127	Courtney and Fairbairn Ltd v Tolaini Bros (Hotels) Ltd (1975)	36
Coffey v Dickson (1960)	112	Couturier v Hastie (1852)	181, 202, 203, 205, 207
Coggs v Bernard (1703)	74	Coutts & Co v Browne-Lecky (1947)	392
Cohen v Kittell (1889)	293	Cowan v Milbourn (1867)	318, 343
Cohen v Roche (1927)	566	Cowern v Nield (1912)	385, 392
Cole v North Western Bank (1875)	443	Cox v Phillips Industries Ltd (1976)	549
Collen v Wright (1857)	57, 447, 454	Cox v Troy (1822)	16
Collins v Blantern (1767)	315, 326, 592	Coxhead v Mullis (1878)	393, 394
Collins v Godefroy (1831)	77	Crabb v Arun District Council (1976):	86, 87
Collins v Hopkins (1923)	123	Cremdean Properties Ltd v Nash (1977)	267
Colverd (AF) & Co Ltd v Anglo Overseas Transport Co Ltd (1961)	154	Crouch v Credit Foncier of England (1873)	469
Colyer v Clay (1843)	211	Craddock Bros Ltd v Hunt (1923)	214
Combe v Combe (1951)	86, 88, 91	Craig, Re, Meneces v Middleton (1971)	278
Commercial Plastics Ltd v Vincent (1965)	361	Crane v Hegeman-Harris Co Inc (1971)	215
Compagnie de Commerce et Commission SARL v Parkinson Stove Co (1953)	44	Craven-Ellis v Canons Ltd (1936)	599
Compania de Electricidad de la Provincia de Buenos Aires Re (1979)	571	Cricklewood Property and Investment Trust Ltd v Leighton's Investment Trust Ltd (1945)	495, 513, 523
Compagnie Francaise des Chemins de Fer Paris-Orleans v Leeston Shipping Co (1919)	252	Crippen, <i>In the Estate of</i> (1911)	320
Compania Naviera Maropan SA v Bowaters Lloyd, Pulp and Paper Mills Ltd (1955)	555	Crisp v Churchill (1794)	330
Comptroller of Stamps (Victoria) v Howard-Smith (1936)	457	Crow v Rogers (1724)	406
Condor v The Barron Knights Ltd (1966)	516	Cuddee v Rutter (1720)	560
Connors Bros Ltd v Connors (1940)	362, 365	Cumber v Wane (1721)	82
Consolidated Agencies Ltd v Bertram Ltd (1965)	571	Cumming v Ince (1847)	274
Continental Tyre and Rubber (Great Britain) Co Ltd v Heath (1913)	376	Cundy v Lindsay (1878)	13, 17, 213, 222, 223, 224, 225, 226
		Cunliffe v Harrison (1851)	483
		Cunliffe-Owen v Teather and Greenwood (1967)	116
		Cunningham v Harrison (1973)	580
		Currie v Misa (1875)	62
		Curtis v Chemical Cleaning and Dyeing Co (1951)	145, 241
		Cutter v Powell (1795)	8, 479, 480, 481, 482, 523, 528, 529
		Cyril Leonards & Co v Sims Securities Trust Ltd (1971)	493
		Czarnikow v Roth, Schmidt & Co (1922)	348