

DALHUISEN ON
TRANSNATIONAL
COMPARATIVE,
COMMERCIAL,
FINANCIAL AND
TRADE LAW

VOLUME 3

*Financial Products, Financial
Services and Financial Regulation*

Jan Dalhuisen

FOURTH EDITION



• HART •
PUBLISHING

Dalhuisen on Transnational Comparative, Commercial, Financial and Trade Law Volume 3

Financial Products, Financial Services and Financial Regulation

Jan Dalhuisen

*Professor of Law, King's College London
Miranda Chair in Transnational Financial Law,
Catholic University of Lisbon
Visiting Professor UC Berkeley*



• HART •
PUBLISHING

OXFORD AND PORTLAND, OREGON
2010

Published in the United Kingdom by Hart Publishing Ltd
16C Worcester Place, Oxford, OX1 2JW
Telephone: +44 (0)1865 517530
Fax: +44 (0)1865 510710
E-mail: mail@hartpub.co.uk
Website: <http://www.hartpub.co.uk>

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA
Tel: +1 503 287 3093 or toll-free: (1) 800 944 6190
Fax: +1 503 280 8832
E-mail: orders@isbs.com
Website: <http://www.isbs.com>

© Jan Dalhuisen 2010

Jan Dalhuisen has asserted his right under the Copyright, Designs and Patents Act 1988, to be identified as the author of this work.

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, without the prior permission of Hart Publishing, or as expressly permitted by law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to Hart Publishing Ltd at the address above.

British Library Cataloguing in Publication Data
Data Available

ISBN: 978-1-84946-061-3

Typeset by Columns Design Ltd, Reading
Printed and bound in Great Britain by
TJ International Ltd, Padstow, Cornwall

Table of Cases

Australia

Charles v Federal Commissioner of Taxation [1954] 90 CLR 598	303
--	-----

Belgium

Cour de Cass, 9 February 1933 [1933] I Pas, 103	78
Cour de Cass, 17 October 1996 [1995–96] RW 1395	85
Cour de Cass, 22 September 1994 [1994–95] RW 1264	78
Cour de Cass, 27 November 1981 [1981–82] RW 2141	85
Tribunal de Commerce of Brussels, 16 Nov 1978, reprinted in (1980) 44 Rev de la Banque 249	14

European Court of Justice

Case 62/70 Coditel [1980] ECR 881	665
Case 2/74 Reyners v Belgian State [1974] ECR 631	605
Case 8/74 Procureur du Roi v Dassonville [1974] ECR 837	604–605, 618
Case 33/74 Van Binsbergen v Bedrijfsvereniging Metaalnijverheid [1974] ECR 1299	605
Case 14/76 De Bloos [1976] ECR 1497	616
Cases 110/78 and 111/78, Van Wesemael [1979] ECR 35	665
Case 120/78 Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein [1979] ECR 649	619, 674, 678
Case 33/78 Somafer [1978] ECR 2183	616
Case 139/80 Blanckaert & Willems [1981] ECR 819	616
Case 203/80 Guerino Cassati [1981] ECR 3211	605
Case 279/80 Webb [1981] ECR 3305	665
Cases 286/82 and 26/83, Luisi and Carbone [1984] ECR 377	605, 615
Case 205/84 Commission v Germany [1986] ECR 375	663, 665
Case 221/85 Commission v Belgium [1987] ECR 719	617
Case 198/86 Conradi [1987] ECR 4469	617
Case C-362/88 GB-Inno-BM [1990] ECR I-667	664
Case C-180/89 Commission v Italy [1991] ECR 709	665
Case C-340/89 Vlassopoulou [1991] ECR I-2357	617
Case C-353/89 Mediawet [1991] ECR I-4069	665
Case C-76/90 Saeger v Denemeyer [1991] ECR I-4221	616, 664
Case C-204/90 Bachman [1992] ECR 249	665
Case C-106/91 Ramrath [1992] ECR I-3351	618
Cases C-267 and C-268/91, Keck and Mithouard [1993] ECR I-6097	618–619, 678
Case C-330/91 Commerzbank [1993] ECR I-4017	617
Case C-19/92 Kraus [1993] ECR I-1663	618
Case C-275/92 Schindler [1995] ECR I-1039	665
Case C-1/93 Halliburton [1994] ECR I-1137	617
Case C-384/93 Alpine Investments BV v Minister van Financien [1995] ECR I-1141	616, 665, 676, 678, 696
Case C-415/93 Union Royale Belge des Sociétés de Football Association ASBL and others v Jean-Marc Bosman [1995] ECR I-4921	618

Case C-439/93 Lloyd's Register of Shipping v Société Campenon Bernard [1995]	
ECR I-1961	616
Case C-55/93 Van Schaik [1994] ECR I-4837	665
Case C-55/94 Reinhard Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano [1995] ECR I-4165	615, 618, 664
Case C-101/94 Commission v Italy [1996] ECR I-2691	664
Case C-272/94 Guiot [1996] ECR I-1095	665
Case C-3/95 Reisebüro Broede v Gerd Sandker [1996] ECR I-6511	665
Case C-57/95 France v Commission [1997] ECR I-1627	713

France

Cour Administrative d'Appel de Paris, March 30 1999	489
Cour de Cass, 19 Aug 1849, D 1.273 (1849)	86
Cour de Cass, 31 January 1854, D 2.179 (1855)	79
Cour de Cass, 11 March 1879, D 1.401 (1879)	79, 141
Cour de Cass, 21 July 1897, DP 1.272 (1898)	83-84
Cour de Cass, 16 January 1923, D 1.177 (1923)	86
Cour de Cass, 24 May 1933 [1934] Rev Cr de Dr Intern'l Pr 142	85
Cour de Cass, 21 March 1938, D 2.57 (1938)	79, 141
Cour de Cass, 24 October 1950 [1950] Bull civil 1, 155	79
Cour de Cass, 21 July 1958 [1958] II JCP 10843	84
Cour de Cass, 20 Nov 1979 (1980) 33 Rev Trim de Droit Commercial 43	84
Cour de Cass, 14 Oct 1981, Semaine Juridique II 19815 (1982)	14
Cour de Cass, 84 March 1988, Bull IV, nr 99 (1988)	83
Cour de Cass, 15 March 1988, Bull Civ IV, 106 (1988)	83
Cour de Cass, 20 June 1989, D Jur 431 (1989)	83
Cour de Cass, 9 January 1990, (1990) Gaz Pal 127	238
Cour de Cass, 5 Nov 1991, Bull Civ, IV, no 328 (1992)	14
Cour de Cass, 15 December 1992, Bull IV no 412 (1992)	83
Cour de Cass, 5 March 1996, Bull IV, no 72 (1996)	83
Trib De Commerce de Paris, Mar 8, 1976; 28 Le Droit Maritime Francais 558 (1976)	14
Versailles Court of Appeal, 20 September 1995	77

Germany

BGH, 25 Oct 1952, BGHZ 7, 365	102
BGH, 28 June 1954, BGHZ 14, 117	92
BGH, 24 November 1954 [1955], NJW 339	342
BGH, 22 February 1956, BGHZ 20, 88	93
BGH, 30 April 1959, BGHZ 30, 149	103
BGH, 38 BGHZ 254 (1962)	356
BGH, 14 Oct. 1963, BGHZ 40, 156	104
BGH, 1 July 1970, 54 BGHZ 214	91
BGH, 5 May 1971, BGZ 56, 123	92
BGH, [1971] NJW 799	92
BGH, 9 July 1975, BGHZ 64, 395	104
BGH, 6 July 1978 [1981] NJW 2244	343
BGH, 23 September 1981 [1981] NJW 275	98
BGH, BGHZ 95, 39	101, 238
BGH, 11 July 1985 [1985] NJW 2897	356
BGH, (1987) 100 BGHZ 353	214
BGH, BGHZ 71, 189	101, 238

RG, 2 June 1890; RGZ 2, 173	96
RG, 23 December 1899, RGZ 45, 80	97
RG, 10 October 1917, RGZ 91, 12	97
RG, 5 November 1918, RGZ 94, 305	97
RG, 20 March 1919, RGZ 79, 121	97
RG, 4 April 1919, RGZ 95, 244	93
RG, 11 June 1920, RGZ 99, 208	102
RG, 14 October 1927, RGZ 118, 209	97
RG, 9 April 1929, RGZ 124, 73	97
RG, 9 April 1932, RGZ 136, 247	103
RG, 4 April 1933, RGZ 140, 223	92

Netherlands

Amsterdam Court of Appeal 16 April 1931, W 12326 (1931)	66
HR, 13 Nov 1737	106
HR, 25 January 1929 [1929] NJ 616	66
HR, 21 June 1929 [1929] NJ 1096	66
HR, 13 March 1959 [1959] NJ 579	66
HR, 17 June 1960 [1962] NJ 60	66
HR, 17 Apr 1964 [1965] NJ 23	15, 217
HR, 6 March 1970 (Pluvier), NJ 433 (1970)	63, 66
HR, 7 March 1975 [1976] NJ 91	66
HR, 3 October 1980 [1981] NJ 60	66, 98
HR, 22 May 1984, (1985) NJ 607	14
HR, 18 September 1987 [1988] NJ 876	66
HR, 19 May 1989 [1990] NJ 745	359
HR, 27 November 1992 [1993] NJ 316	66
HR, 11 June 1993 [1993] NJ 776	15, 217
HR, 5 November 1993 [1994] NJ 258	66
HR, 18 January 1994 [1994] RvdW 61	67
HR, 14 October 1994 [1994] NJ 447	65
HR, 17 February 1995 [1996] NJ 471	65
HR, 19 May 1995 [1996] NJB 119	71
HR, 16 May 1997 [1997] RvdW 126	15, 217
HR, 5 September 1997 [1998] NJ 437	66

New Zealand

Automobile Association (Canterbury) Inc v Australasian Secured Deposits Ltd [1973] 1 NZLR 417	117
--	-----

United Kingdom

Alderson v White (1858) 2 De G & J 97	117
Aluminium Industrie Vaassen BV v Romalpa Aluminium Ltd [1976] 2 All ER 552	118
Aneco Reinsurance Underwriting Ltd v Johnson & Higgins Ltd [2002] 1 Lloyd's Rep 157	302
Armour and Others v Thyssen Edelstahlwerke AG [1990] All ER 481	106
Bank of Baroda v The Vysya Bank Ltd; > [1994] 2 Lloyd's Rep 87	376
Baring v Corrie 2 B & Ald 137 (1818)	577
Bechuanaland Exploration Co v London Trading Bank [1898] 2 QBD 658	13, 594
Becket v Towers Assets Co [1891] 1 QB 1	114

Borden (UK) Ltd v Scottish Timber [1979] 3 All ER 961	118
British Eagle International Airlines Ltd v Compagnie Nationale Air France [1975] 2 All ER 390	347
Caparo Industries Plc v Dickman [1990] 2 AC 605	302
Carreras Rothmans Limited v Freeman Mathew Treasure Ltd [1985] 1 Ch 207, [1985] All ER 155	117, 341–342
Chase Manhattan Bank v Israel British Bank [1979] 3 All ER 1025	119
Chaw Yoong Hong v Choong Fah Rubber Manufactory [1962] AC 209	116
Clayton's Case (1816) 35 ER 767	540
Clough Mill Ltd v Martin [1985] 1 WLR 111	117
Compaq Computer Ltd v The Abercorn Group Ltd (1991) BCC 484	119
Donald v Suckling (1866) LR 1 QB 585	149
Dublin City Distillery v Doherty [1914] AC 823	111
Farina v Home (1846) 153 ER 1124	110
Foley v Hill (1848) 2 HCL 28	516
G&E Earle Ltd v Hemsworth RDC (1928) 140 LT 69	120
George Inglefield Ltd, Re [1933] Ch 1	114, 116–117
Goodwin v Roberts [1876] 1 AC 476	12
Government Stock v Manila Rail Co [1897] AC 81	111
Green v Farmer 98 ER 154 (KB 1768)	341
Harlow and Jones Ltd v American Express Ban Ltd & Creditanstalt-Bankverein [1990] 2 Lloyd's Rep 343	14
Helby v Matthews [1895] AC 471	120
Holroyd v Marshall [1862] 10 HL Cas 191	111, 120
Illingworth v Houldsworth [1904] AC 355	111
Interview Ltd, Re [1973] IR 382	118
IRC v Rowntree and Co Ltd [1948] 1 All ER 482	116
JH Rayner & Co v Hambro's Bank Ltd [1943] 1 KB 37	375
Joachimson v Swiss Bank Corp [1921] 3 KB 110	516, 540
Joseph v Lyons (1884) 15 QBD 280	113
Kelcey, Re [1899] 2 Ch 530	120
Libyan Arab Foreign Bank v Bankers Trust [1988] 1 Lloyds Rep 259	593
Lloyds & Scottish Finance Ltd v Cyril Lord Carpet Sales Ltd (1979) 129 NLJ 366	117
McEntire v Crossley Brothers Ltd [1895] AC 457	117
Miller v Pace (1758) 1 Burr 452	320
Momm v Barclays Bank International Ltd [1977] QB 790	323
MS Fashions Ltd v BCCI [1993] Ch 425	117
National Westminster Bank plc v Spectrum Plus Ltd [2005] UKHL 41	111
North Western Bank v Poynter [1895] AC 56, no 3051; [1895] All ER 754	106
Olds Discount Co Ltd v John Playfair Ltd [1938] 3 All ER 275	116
Picker v London and County Banking Co (1887) 18 QBD 512 (CA)	12
Polsky v S&A Services [1951] 1 All ER 185	116
Power Curber International Ltd v National Bank of Kuwait SAK [1981] 2 Lloyds Rep 394, [1981] 3 All ER 607	14
Raffeißen Zentralbank Österreich AG v Five Star General Trading LLC [2001] 3 All ER 257	15
Rogers v Challis (1859) 27 Beav 175	120
Ryall v Rolle (1749) 1 Atk 165	79
Salomon v A Salomon & Co Ltd [1897] AC 22	111
SCF Finance Co Ltd v Masri (No 2) [1987] QB 1002	516
Sewell v Burdick (1884) 10 AC 74	114

Shipton, Anderson & Co (1927) Ltd v Micks Lambert & Co [1936] 2 All ER 1032	341
Siebe Gorman & Co Ltd v Barclays Bank Ltd [1979] 2 Lloyd's Rep 142	117
South Australia Asset Management Corp v York Montague Ltd [1997] AC 191	302
Stein v Blake [1995] 2 WLR 710	117, 338, 341
Syrett v Egerton [1957] 3 All ER 331	120
Tatung (UK) Ltd v Galex Telesure Ltd (1989) 5 BCC 325	119
Thomas v Searles [1891] 2 QB 408	109
Three Rivers District Council and Others v Governor and Company of the Bank of England [2000] 2 WLR 1220	489
Watson, Re (1890) 25 QBD 27	116
Welsh Development Agency Ltd v Export Finance Co (Exfinco) BCC 270 (1992)	114, 116
Wickham Holdings Ltd v Brooke House Motors Ltd [1967] 1 All ER 117	112
Wilson v Day [1759] 2 Burr 827	110
Winkfield, The [1900–03] All ER 346	121
Yorkshire Woolcombers Associations Ltd, Re [1903] 2 Ch 284	111
Zahnrad Fabrik Passau GmbH v Terex Ltd [1986] SLT 84	169

United States

Adler v Ammerman Furniture Co 100 Conn 223 (1924)	144
Agnew, Re, 178 Fed 478 (1909)	150
Appleton v Norwalk Library Corp 53 Conn 4 (1885)	148
Babbitt & Co v Carr 53 Fla 480 (1907)	142
Bamberger Polymers International Bank Corp v Citibank NA 477 NYS 2d 931 (1983)	376
Bank of California v Danamiller 125 Wash 225 (1923)	148
Barbour Plumbing, Heating & Electric Co v Ewing 16 Ala App 280 (1917)	142
Barton v Mulvane 59 Kan 313 (1898)	144
Beatrice Creamery Co v Sylvester 65 Colo 569 (1919)	148
Beck v Blue 42 Ala 32 (1868)	144
Benedict v Ratner 268 US 353 (1925)	128
Benner v Puffer 114 Mass 376 (1874)	149
Bevill, Breslett and Schulman Asset Management Corporation and SS Cohen v The Savings Building and Loan Co (in the matter of) USCA 3rd Cir, 896 Fed Rep 2d, 54 (1990)	127
Blackford v Neaves 23 Ariz 501 (1922)	145
Blackwell v Walker Bros 5 Fed 419 (1880)	147–148
Brainerd & H Quarry Co v Brice 250 US 229 (1919)	23
Brian v HA Born Packers' Supply Co 203 Ill App 262 (1917)	147
Bryant v Swofford Bros Dry Goods 214 US 279 (1909)	143
Burch v Pedigo 113 Ga 1157 (1901)	144
Burrier v Cunningham Piano Co 135 Md 135 (1919)	148
Call v Seymour 40 Ohio St 670 (1884)	145
Carolina Co v Unaka Spring's Lumber Co 130 Tenn 354 (1914)	147
Chase & Baker Co v National Trust & Credit Co 215 F 633 (1914)	128
Chicago R Equipment Co v Merchant's Nat Bank 136 US 268 (1890)	145
Clinton v Ross 108 Ark 442 (1912)	149
Cohen v Army Moral Support Fund (In re Bevill, Breslett and Schulman Asset Management Corp 67 BR 557 (1986)	127
Columbus Buggy Co, Re, 143 Fed 859 (1906)	144
Coonse v Bechhold 71 Ind App 663 (1919)	146
Cushion v Jewel 7 Hun 525 (1876)	143
Davis v Giddings 30 Neb 209 (1890)	145

Day v Basset 102 Mass 445 (1869)	143
Dunlop v Mercer 156 Fed 545 (1907)	144
Elliott v Capital City State Bank 103 NW 777 (Iowa 1905)	544
Executive Growth Investment Inc, Re, 40 BR 417 (1984)	128
Fairbanks v Malloy 16 Ill. App 277 (1885)	143
Faist v Waldo 57 Ark 270 (1893)	150
Ferguson v Lauterstein 160 Pa 427 (1894)	143
Fields v Williams 91 Ala 502 (1890)	148
Finlay v Ludden & B Southern Music House 105 Ga 264 (1898)	143
Frank v Batten 1 NY Supp 705 (1888)	150
Frank v Denver & RGR Co 23 Fed 123 (1885)	144
Franklin Motor Car Co v Hamilton 113 Me 63 (1915)	143
General Electric Credit Corp v Allegretti 515 NE 2d 721 (Ill App Ct 1987)	23
General Ins Co v Lowry 412 F Supp 12 (1976)	125
Goldstein v Securities and Exchange Commission, DC Cir 23 June 2006	311
Goodell v Fairbrother 12 RI 233 (1878)	150
Grand Union Co, In re, 219 F 353 (1914)	128
Granite Partners, LP v Bear, Stearns & Co 17 F Supp.2d 275 (SDNY 1998)	422
Grants Pass & Josephine Bank v City of Grants Pass 28 P 2d 879 (Oregon 1934)	544
Green v Darling 10 Fed Cas 1141 (DRI 1828)	342
Hall v Nix 156 Ala 423 (1908)	144
Hanesley v Council 147 Ga 27 (1917)	149
Hanson v Dayton 153 Fed 258 (1907)	143
Harkness v Russell I & Co 118 USA 663 (1886)	145
Hatch v Lamas 65 NHS 1 (1888)	143
HB Claflin Co v Porter 34 Atl 259 (1895)	145
Holt Manufacturing Co v Jaussand 132 Wash 667 (1925)	147
Home Bond Co v McChesney 239 US 568 (1916)	128
Horn v Georgia Fertilizer & Oil Co 18 Ga App 35 (1916)	148
Howland, Re, 109 Fed 869 (1901)	150
Hydraulic Press Manufacturing Co v Whetstone 63 Kan 704 (1901)	143
Ivers & P Piano Co v Allen 101 Me 218 (1906)	145
James Baird Co v Gimbel Bros Inc, 64 F 2d 344, 46 (1933)	125
Jonas v Farmers Bros Co (In re Comark) 145 BR 47, 53 (9th Cir, 1992)	127
Jordan v National Shoe and Leather Bank 74 NY 467 (1878)	342
JWD Inc v Fed Ins Co 806 SW 2d, 327 (1991)	23
Kentucky Wagon Manufacturing Co v Blanton-Curtis Mercantile Co 8 Ala App 669 (1913)	147
Kham & Nate's Shoes No 2 v First Bank of Whiting, 908 F 2d 1351 (1990)	125
KMC v Irving Trust Co 757 F2d 752 (1985)	187
Knowles Loom Work v Knowles 6 Penn (Del) 185 (1906)	145
Krause v Com 93 Pa 418 (1880)	144
Lombard-Wall, In re, 23 BR 165 (1982)	127
Lombard-Wall Inc v Columbus Bank & Trust Co, No 82-B-11556 Bankr. SDNY 16 Sept 1982	127
Louisville & NR Co v Mack 2 Tenn CCA 194 (1911)	148
LTV Steel Co, Inc v US 215 F3d 1275 (2000)	272
Lutz, Re, 197 Fed 492 (1912)	144
Lyon, Re, Fed Cas No 8, 644 (1872)	147
Major's Furniture Mart Inc v Castle Credit Corp 602 F 2d 538 (1979)	128
Malin-Yates Co v Justice of the Peace (State ex rel) Ct 51 Mont 133 (1915)	145

Manchester, Sheffield and Lincolnshire Railway Co v North Central Waggon Co (1888) 13 App Cas 554	117
Mann Inv Co v Columbia Nitrogen Corp 325 SE 2d 612 (1984)	132
Marine Bank v Weaver 455 US 551 (1982)	551
Maxson v Ashland Iron Works 85 Ore 345 (1917)	145
Midland-Guardian Co v Hagin 370 So 2d, 25 (1979)	23
Murray v Butte-Monitor Tunnel Min Co 41 Mont 449 (1910)	145
National Live Stock Bank v First Nat'l Bank of Genesee 203 US 296 (106)	23
Nebraska Dept of Revenue v Loewenstein 115 SCt 557 (1994)	127
Newell Bros v Hanson 97 Vt 297 (1924)	148
Newhall v Kingsbury 131 Mass 445 (1881)	147
Oriental Pac (USA) Inc v Toronto Dominion Bank 357 NYS 2d 957 (NY 1974)	14
Otto v Lincoln Savings Bank 51 NYS 2nd 561 (1944)	342
Paris v Vail 18 Vt 277 (1846)	150
Perkins v Metter 126 Cal 100 (1899)	145
Peter Water Wheel Co v Oregon Iron & Steel Co 87 Or 248 (1918)	147
Pfeiffer v Norman 22 ND 168 (1911)	143
Phillips v Hollenburg Music Co 82 Ark 9 (1907)	146
Pittsburgh Industrial Iron Works, Re, 179 Fed 151 (1910)	149
Prentiss Tool & Supply Co v Schirmer 136 NY 305 (1892)	150
Reese v Beck 24 Ala 651 (1854)	144
Rodgers v Rachman 109 Cal 552 (1895)	147
RTC v Aetna Cas & Sur Co of Illinois 25 F 3d 570, 578-580 (7th Cir, 1994)	422
Savall v Wauful 16 NY Supp 219 (1890)	150
Scott v Farnam 55 Wash 336 (1909)	143
Sears, R & Co v Higbee 225 Ill App 197 (1922)	145
SEC v WJ Howey Co 328 USA 293 (1946)	551
Sinclair v Holt 88 Nev 97 (1972)	23
Smith v Gufford 36 Fla 481 (1895)	148
Smith v Long Cigar & Grocery Co 21 Ga App 730 (1917)	150
Sound of Market Street, Inc v Continental Bank International 819 F 2d 384 (1987)	375
State v Automobile 122 Me 280 (1925)	147
State v White Furniture Co 206 Ala 575 (1921)	146
Swann Davis Co v Stanton 7 Ga App 688 (1910)	148
Thayer v Yakima Tire Service Co 116 Wash 299 (1921)	148
Thomas Furniture Co v T&C Furniture Co 120 Ga 879 (1909)	149
Tufts v Stone 70 Miss 54 (1892)	143
Undercoffer v Whiteway Neon Ad Inc 152 SE 2d 616, 618 (1966)	133
Union Machinery & Supply Co v Thompson 98 Wash 119 (1917)	150
Van Marel v Watson 235 Pac 144 (1925)	148
Whitsett v Carney 124 SW 443 (1910)	145
Winton Motor Carriage Co v Blomberg 84 Wash 451 (1915)	144
Young v Phillips 202 Mich 480 (1918)	145

Table of Legislation and Related Documents

Australia

Payment System and Netting Act 1998, s 16	351
---	-----

Belgium

Bankruptcy Act 1997	79
Code Civil, Art 1690	64, 86

European Union

Amsterdam Treaty	604, 607, 611, 626
Brussels Convention on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, 1968, Art 16(5)	169
Decision 98/415/EC	686
Decision 1999/468/EC	687
Directive 64/429/EEC concerning the freedom of establishment and the freedom to provide services	667
Directive 70/50, Art 3	605
Directive 73/183/EEC on the abolition of the restrictions on the freedom of establishment and on the freedom to provide services in respect of self-employed activities of banks and other financial institutions	667
Directive 77/799/EEC on tax cooperation	624
Directive 77/80/EEC (First Banking Directive)	489, 666–668, 704
recital 10	674
Art 1	515
Art 4(1)	674
Directive 78/660/EEC (Fourth Company Law Harmonisation Directive)	671, 685
Directive 79/279/EEC (Admission Directive)	670–671, 685
Art 5	670
Art 10	670
Art 15	670
Directive 80/390/EEC (Listing Particulars Directive)	670–672, 685
Art 24b	672
Directive 80/987/EEC (Insolvency Directive)	709
Directive 82/121/EEC (Interim Reporting Directive)	670
Directive 82/501/EEC (Regular Financial Reporting of Listed Companies Directive)	671
Directive 83/349 (Seventh Company Law Harmonisation Directive)	671, 685
Directive 83/350/EEC (Consolidated Supervision Directive)	511, 666–667, 714
Directives 85/611/EEC and 85/612/EEC on undertakings for collective investments in transferable securities (UCITS)	304, 309, 669, 672, 674, 693, 711
Art 4	673
Art 14	672
Art 15	672
Art 20	672
Art 21	672

Art 44	673
Art 45	673
Directive 86/524/EEC	667
Directive 86/635/EEC (Consolidated Accounts Directive)	666, 668
Directive 87/102/EEC concerning consumer credit	
Ann I	39
Art 4(3)	39
Art 7	39
Directive 87/345/EEC (Mutual Recognition Directive)	670
Directive 88/220/EEC	672
Directive 88/357/EEC (Second Insurance Directive – Non-Life)	691
Directive 88/361/EEC	621–622, 625–626, 661–662, 673
Art 5(6)	624
Directive 89/117/EEC	668
Directive 89/229 EEC (Own Funds Directive)	632, 675, 709
Directive 89/298/EEC (Public Offer Prospectus Directive)	552, 583, 591, 669–672, 705, 708
Art 2(1)	557
Art 3(f)	557
Art 21	670
Directive 89/592/EEC (Insider Dealing Directive)	500–501, 679
Directive 89/646/EEC (Second Banking Directive)	595, 606, 615–616, 625, 632, 664–666, 669, 675, 681–682, 690, 692, 695, 697, 714
Preamble	536
Art 1	515
Art 9	680
Directive 89/647/EEC (Solvency Directive)	632, 639, 675, 709–710
Directive 90/211/EEC allowing for mutual recognition	670
Directive 90/619/EEC (Second Insurance Directive – Life)	691
Directive 91/308/EEC (Money Laundering Directive)	679
Directive 91/31/EEC	632
Directive 91/633/EEC	632
Directive 92/121 EEC (Large Exposures)	711
Art 6	711
Directive 92/16/EEC	632
Directive 92/30/EEC	714
Directive 92/49/EEC (Third Insurance Directive, Life)	665, 675, 690
Directive 92/96/EEC (Third Insurance Directive, Non-Life)	665, 675, 690
Directive 93/22/EEC (Investment Services Directive)	490–491, 536, 552, 554, 573, 577, 580, 587, 595, 606, 625, 627, 632, 664–665, 673, 675–678, 681–682, 685, 688, 690–694, 696–697, 700–701, 708, 710, 714, 716
Preamble	704
recital 33	697
recital 41	697
Art 1(1)	692
Art 1(13)	701
Art 1(2)	692
Art 1(4)	552
Art 2	693
Art 2(1)	692
Art 2(2)	692
Art 3	695

Art 3(3) and (4)	695
Art 3(7)(e)	695
Art 7	680
Art 10	695–696
Art 11	573, 695–697, 716, 718
Art 11(2)	695, 697
Art 11(3)	697
Art 13	697
Art 14(3)	701
Art 15	701
Art 15(3)	701
Art 15(4)	701
Art 16	701
Art 17(4)	697
Art 18(2)	697
Art 19(11)	697
Art 19(2)	697
Art 19(4)	696–697
Art 19(6)	697
Art 20	701
Art 21	701
Art 21(2)	701
Art 24	696–697
Directive 93/6/EEC (Capital Adequacy Directive of 1993)	675, 710
Directive 94/18/EEC	670
Directive 94/19 EEC (Deposit Protection Directive)	712
Directive 97/5/EC on cross-border credit transfers	623
Directive 97/9/EC (Investors Compensation Directive)	712
Directive 98/26/EC concerning settlement finality	3, 40, 43, 139, 190, 343, 348, 360, 406–407, 413, 416, 418, 420, 435, 505, 685, 719
recital 4	418
recital 9	418
recital 11	418
Art 3	418
Art 3(1) and (2)	418
Art 9	351
Art 9(2)	434
Directive 2000/12/EC (Credit Institutions Directive)	491, 536, 595, 606, 615–616, 632, 639, 665–666, 675, 681, 689, 693, 705, 709–710
Art 1	515
Art 42	535
Art 132	535
Directive 2000/31/EC on certain legal aspects of electronic commerce in the Internal Market	565, 716–717
recital 38	716
Art 3	565, 716
Art 3(4)(a)(iii)	716
Art 4	716
Directive 2000/35/EC on combating late payment in commercial transactions	39
Directive 2000/46/EC (E-Money Directive)	719
Directives 2001/107/EC and 2001/108/EC (UCITS)	309, 315, 673, 711

Directive 2001/24/EC (Winding-up of Credit Institutions Directive)	712
Directive 2001/34/EC (Consolidated Admission and Reporting Directive) ..	670, 704–705, 709
Art 8	705, 708
Directive 2001/65/EC (Fair Value Accounting Directive)	685
Directive 2001/97/EC (Second Money Laundering Directive)	397, 719
Directive 2002/47/EC on financial collateral arrangements	37, 39–40, 43, 50, 139, 179, 182–183, 190, 193, 200, 352, 354, 360, 412, 416, 419–420, 435, 505, 685, 719
Art 5	419
Art 7	419–420
Art 8	419
Art 9(1)	419
Directive 2002/87/EC in the area of prudential supervision of financial conglomerates	512
Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in financial conglomerates	715
Directive 2003/124/EC (Market Abuse Implementing Directive)	710
Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision	311, 713
Directive 2003/48/EC on taxation of savings income in the form of interest payments	623, 625, 719–720
Directive 2003/51/EC (Accounting Modernisation Directive)	685
Directive 2003/6/EC (Market Abuse Directive)	688
Art 1	501
Directive 2003/71/EC (Prospectus Directive)	483, 491, 504, 552, 556–557, 560, 569, 627, 670, 683, 685–686, 704–705, 709
recital 41	706
Art 2(1)(c)(iii)	706
Art 2(1)(d)	705
Art 2(4)	706
Art 2(a)	552
Art 3	705
Art 3(2)	706
Art 4(1) and (2)	706
Art 5(1)	706
Art 5(2)	707
Art 5(2)(d)	707
Art 5(3)	707
Art 5(4)	707
Art 5(5)	706
Art 7	706
Art 7(2)(e)	707
Art 9(1)	707
Art 10(4)	706
Art 11(3)	706
Art 13(1)	707
Art 14(1)	707
Art 14(8)	706
Art 15(7)	706
Art 16(1)	707
Art 17(1)	708
Art 19(2)	708
Art 20(3)	706

Art 21(3)(a)	708
Art 24	706
Art 28	705
Art 29	705
Directive 2004/109/EC (Transparency Directive)	333, 491, 627, 688
Directive 2004/109/EC (Transparency Obligation Directive)	708
Art 2(1)(i)	709
Directive 2004/25/EC (Take-over Bids Directive)	718
recital 23	719
Art 4	719
Art 5	719
Art 6	719
Art 7	719
Art 8	719
Art 11	719
Art 12	719
Art 15	719
Art 16	719
Directive 2004/39/EC on markets in financial instruments (MiFID)	491, 552, 554, 562, 564, 572–573, 577, 580, 587, 595, 606, 627, 665–666, 675–678, 682–683, 685, 688, 692–696, 698–705, 708, 711
recital 5	701
recital 32	700
recital 39	693
recital 44	702–703
Art 1	693
Art 1(1)	694
Art 2	693
Art 4(1)	693
Art 4(1)(26)	700
Art 4(1)(7)	694
Art 4(1)(8)	694
Art 4(15)	694
Art 4(18)	552
Art 4(2)	693
Arts 5–15	693
Art 5(1)	564
Art 5(2)	564, 694, 702
Art 9	695
Art 11	693–694, 702
Art 12	695
Art 13	693–695, 702
Art 14	693, 702
Art 14(1)	694
Art 15	680, 694, 702
Art 19	700
Art 21	700
Art 21(2)	698
Art 22	700, 702
Art 24	703
Art 24(1)	694

Art 25	700
Art 27	700, 702
Art 28	700
Art 29	564, 702
Art 30	564, 702
Art 31	693, 695
Art 31(2)	695
Art 31(5) and (6)	564, 702
Art 32	695
Art 32(7)	700
Art 33	695
Art 34	695
Art 35	695
Arts 36 ff	564
Art 44	702
Art 45	702
Arts 56 ff	535
Art 61	700
Art 62	700
Implementing Directive	
recital 44	699
Art 27	699
Art 28	699
Ann I	
section A	693
section C	693
Directive 2004/72/EC (Market Abuse Implementing Directive)	710
Directive 2005/60/EC (Third Money Laundering Directive)	719
Directive 2005/60/EC (Third Money Laundering Directive)	398
Directive 2006/48/EC (Credit Institutions Directive)	491, 536, 595, 606, 615–616, 632, 639, 665–666, 675, 681, 689, 693, 709–710
recital 17	690
recital 18	690
Art 1(2)	694
Arts 6	689
Art 23	680, 691
Art 24	691
Art 25(2) and (3)	691
Art 26	692
Art 26(1)	690
Art 27	689
Art 28	692
Art 29	689
Art 31	690
Art 33	690
Art 37	690
Art 40	689
Art 139	535
Title II	689
Directive 2006/49/EC (Capital Adequacy of Investment Firms Directive) ...	454, 456, 535, 632, 649, 675, 710–711

Art 38	535
Directive 2006/73/EC (MiFID Implementing Directive)	697
recital 26	702
Art 44(3)	698
Art 45(5)	698
Art 46(1)	698
Directive 2007/64/EC (Payment Services Directive)	720
Directive 2009/65/EC (UCITS IV Directive)	304, 315
Directive on the prevention of the use of the financial system for the purpose of money laundering	396, 398
Art 3	396
Art 6	396
Art 8	396
Art 9	396
Art 11	396
Art 13	397
Draft Common Frame of Reference (DCFR)	39, 50–51, 63, 160, 180, 182, 193, 202, 588
EC Treaty	607, 686, 701
Art 3(t)	716
Art 56	713
Art 95	503
Art 105(4)	686
Art 105(6)	686
Art 153(3)(b)	716
Art 202	687
Art 206	687
Art 211	687
Art 226	687
EEC Treaty	478, 604, 619, 713
Art 2	607
Art 30	674, 678
Art 57	662
Art 59	675, 678
Art 67	366, 621
Art 67(2)	621
Art 73(b) and (d)	713
Art 106(1)	366, 621
ESCB and ECB Statute, Art 18.1	427
EU Treaty, Art 4	611
Lisbon Treaty	604, 608, 611, 626
Maastricht Treaty 1992	535, 604, 607, 609–610
Art D	611
Nice Treaty 2001	604, 611
Recommendation 77/534/EEC	670
Recommendation 87/62/EEC	668
Recommendation 87/63/EEC	668
Regulation (EC) 1346/2000 on insolvency proceedings	59, 61
Art 2(g)	62, 219
Regulation (EC) 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Brussels I)	389, 616
Art 22 (5)	169