



The Confluence of Public and Private International Law

**Justice, Pluralism and Subsidiarity in the
International Constitutional Ordering of Private Law**

ALEX MILLS

CAMBRIDGE

THE CONFLUENCE OF PUBLIC AND PRIVATE INTERNATIONAL LAW

Justice, Pluralism and Subsidiarity in the International
Constitutional Ordering of Private Law

ALEX MILLS



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi

Cambridge University Press
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org
Information on this title: www.cambridge.org/9780521731300

© Alex Mills 2009

This publication is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without
the written permission of Cambridge University Press.

First published 2009

Printed in the United Kingdom at the University Press, Cambridge

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data
Mills, Alex.

The confluence of public and private international law : justice, pluralism and
subsidiarity in the international constitutional ordering of private law / Alex Mills.
p. cm.

Includes bibliographical references and index.

ISBN 978-0-521-51541-2

1. Conflict of laws. 2. International law. 3. International and municipal law. I. Title.
K7040.M55 2009
341-dc22
2009005509

ISBN 978-0-521-51541-2 hardback
ISBN 978-0-521-73130-0 paperback

Cambridge University Press has no responsibility for the persistence or
accuracy of URLs for external or third-party internet websites referred to
in this publication, and does not guarantee that any content on such
websites is, or will remain, accurate or appropriate.

Any one watching keenly the stealthy convergence of human lots, sees a slow preparation of effects from one life on another, which tells like a calculated irony on the indifference or the frozen stare with which we look at our unIntroduced neighbour.

George Eliot, *Middlemarch* (1874), Chapter XI

ACKNOWLEDGMENTS

This book is based on a doctoral thesis completed at the Faculty of Law, University of Cambridge. It benefited from research funding provided by Gonville and Caius College and the Faculty of Law in Cambridge, and from the hospitality and generous assistance of Professors Jürgen Basedow and Reinhard Zimmermann during a period at the Max Planck Institute for Comparative and International Private Law in Hamburg, and of Professor George Bermann during a period as a Visiting Scholar at Columbia University.

I would like to thank Finola O'Sullivan and Tom O'Reilly at Cambridge University Press for their guidance and strong support of this project, and the anonymous referees who offered comments on the manuscript. An earlier version of Chapter 2 was published as 'The Private History of International Law' (2006) 55 *International and Comparative Law Quarterly* 1. A small section of Chapter 5 was included in 'The Dimensions of Public Policy in Private International Law' (2008) 4 *Journal of Private International Law* 201. Both are reproduced here with thanks to their publishers and referees.

This book would not have been possible without the support of my family, and it has been greatly enriched by the influence of colleagues and friends, near and far, who help make academic life in Cambridge so inspiring and rewarding. I am especially grateful to Professor Philip Allott, Professor James Crawford, Dr Geert De Baere, Dr Douglas Guilfoyle, Dr Daniel Joyce, Professor Vaughan Lowe, Professor Susan Marks, Professor Brian Opeskin, Dr Pippa Rogerson, Dr Tim Stephens, Dr Kimberley Trapp, Dr Isabelle Van Damme, and to my doctoral supervisor, Richard Fentiman, whose encouragement and assistance were at all times generous and cheerfully administered.

Alex Mills
March 2009

INDEX OF CASES, JUDICIAL OPINIONS AND ARBITRAL AWARDS

International Court of Justice / Permanent Court of International Justice

- Anglo-Iranian Oil Co. (United Kingdom v. Iran)* [1951] ICJ Reports 89 279
Anglo-Iranian Oil Co. (United Kingdom v. Iran) [1952] ICJ Reports 93 279
Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands v. Sweden) [1958] ICJ Reports 55 103, 214, 257, 258, 259
Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda) (2006) ICJ (3 February 2006) 83, 232
Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium) [2002] ICJ Reports 3 225
Avena and Other Mexican Nationals (Mexico v. United States of America) [2004] ICJ Reports 12 82, 103
Barcelona Traction, Light and Power Co. Ltd (Belgium v. Spain) [1970] ICJ Reports 3 103
Certain Property (Liechtenstein v. Germany), Preliminary Objections [2005] ICJ Reports 6 103
Elettronica Sicula SpA (ELSI) (United States of America v. Italy) [1989] ICJ Reports 15 268
Fisheries Jurisdiction (Federal Republic of Germany v. Iceland) [1974] ICJ Reports 3 79
Jurisdiction of the Courts of Danzig (1928) PCIJ Ser B, No. 15 83, 103
LaGrand (Germany v. United States of America) [2001] ICJ Reports 466 82, 103
Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276, Advisory Opinion [1971] ICJ Reports 16 93, 280
Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion [2004] ICJ Reports 135 283
Legality of the Threat or Use of Nuclear Weapons (WHO Case), Advisory Opinion [1996] ICJ Reports 226 76
North Sea Continental Shelf (Denmark v. Germany and Netherlands v. Germany) [1969] ICJ Reports 3 79

ABBREVIATIONS

ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms 1950
ECJ	European Court of Justice
ICCPR	International Covenant on Civil and Political Rights 1966
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ICTY	International Criminal Tribunal for the Former Yugoslavia
ILC	International Law Commission
PCIJ	Permanent Court of International Justice
VCLT	Vienna Convention on the Law of Treaties 1969
WTO	World Trade Organization

CONTENTS

<i>Acknowledgments</i>	page xi	
<i>Index of cases, judicial opinions and arbitral awards</i>		xii
<i>Abbreviations</i>	xxiv	
1 Justice, pluralism and the international perspective		1
1.1 Introduction	1	
1.2 Justice, pluralism and private international law	3	
1.2.1. Justice and the application of foreign law	4	
1.2.2. Justice and jurisdiction	6	
1.2.3. Justice and foreign judgments	8	
1.2.4. Party expectations	8	
1.2.5. Conclusions	10	
1.3 Perspectives on private international law	10	
1.3.1. The systemic perspective	10	
1.3.2. National and international perspectives	12	
1.3.3. Autonomy and mutuality	14	
1.4 Justice revisited	16	
1.4.1. Conflicts justice	16	
1.4.2. Systemic justice	17	
1.4.3. Private international law rules as secondary rules	19	
1.5 The components of private international law	20	
1.6 The international character of private international law	23	
1.7 Outline	24	
2 The private history of international law		26
2.1 Introduction	26	
2.2 The origins of private international law	28	
2.2.1. Roman law	29	
2.2.2. The statisticians	30	
2.2.3. The common law	36	
2.3 The positivist 'revolution' in international law	37	
2.3.1. General features of positivism	37	
2.3.2. Sovereignty and state practice	38	
2.3.3. The positivist account of international law	40	
2.3.4. Positivist international law and private international law	44	

2.4	Natural law	53
2.4.1.	Natural law and international law	53
2.4.2.	Natural law and private international law	56
2.5	Historicism	61
2.5.1.	Historicism and international law	61
2.5.2.	Historicism and private international law	63
2.6	The end of the private history of international law?	66
2.6.1.	The decline of universality	66
2.6.2.	Self-limitation in public and private international law	70
2.6.3.	Private international law as national law	71
2.7	Conclusions	72
3	From positivism to constitutionalism	74
3.1	Introduction	74
3.2	Critiques of positivism	75
3.2.1.	The myth of sovereignty	75
3.2.2.	Explanatory critique	78
3.2.3.	Normative critique	79
3.3	Beyond positivism	81
3.3.1.	New natural law	81
3.3.2.	New historicism	84
3.3.3.	Sovereignty reconsidered	87
3.4	Challenges to the international/national legal divide	88
3.4.1.	Explanatory critique	89
3.4.2.	Normative critique	96
3.5	International constitutional law and subsidiarity	99
3.5.1.	Constitutionalism and international 'secondary norms'	100
3.5.2.	Universalism and the supremacy of international law	102
3.5.3.	Subsidiarity	103
3.5.4.	The allocation of regulatory authority	106
3.5.5.	International federalism and global governance	107
3.6	Conclusions	112
4	Private international law and constitutional law in federal systems	115
4.1	Introduction	115
4.2	'Federal' private international law	117
4.2.1.	The possibility of federal private international law	117
4.2.2.	Internal and international private international law	117
4.2.3.	The slow development of federal private international law	119
4.2.4.	The special role of private international law in federal systems	122
4.3	The United States	125
4.3.1.	Private international law – international or constitutional?	127

4.3.2.	The two revolutions in United States private international law	133
4.3.3.	The impact of the constitution on State choice of law rules	140
4.3.4.	The impact of the constitution on exceptions to State choice of law rules	145
4.3.5.	The impact of the constitution on jurisdiction	147
4.3.6.	The impact of the constitution on the recognition and enforcement of judgments	151
4.3.7.	Explaining the weak impact of the constitution on US private international law – subsidiarity and regulatory competition	152
4.4	Australia	157
4.4.1.	Applicable law in diversity jurisdiction	157
4.4.2.	Early interpretation of the Full Faith and Credit clause	159
4.4.3.	The Australian revolution – choice of law in tort	162
4.5	Canada	167
4.5.1.	The Canadian revolution – jurisdiction and the recognition and enforcement of judgments	168
4.5.2.	The Canadian revolution – choice of law in tort	173
4.6	The European Union	175
4.6.1.	The need for European private international law	177
4.6.2.	Private international law and the internal market	180
4.6.3.	The expanding role of private international law	182
4.6.4.	Subsidiarity and the idea of private international law as structure	185
4.6.5.	Private international law as a system of rights protection	187
4.6.6.	Reconciling structure and rights protection	198
4.6.7.	Mutual recognition and the ‘country of origin’ principle	200
4.7	Conclusions	205
4.7.1.	Private international law as structure	206
4.7.2.	Private international law as rights protection	207
4.7.3.	Federalism and private international law	209
5	The confluence of public and private international law	211
5.1	Introduction	211
5.2	Evidence of a systemic perspective in private international law	213
5.2.1.	International law and institutions	214
5.2.2.	The United States	217
5.2.3.	Common law states and the European Union	222
5.2.4.	Conclusions	224
5.3	Constitutional structure	224
5.3.1.	International regulation of regulation	225
5.3.2.	Territoriality	234

5.3.3. Personality	246
5.3.4. Cultural identity and private international law	255
5.3.5. Public policy	257
5.3.6. Interests and connections	259
5.4 International rights protection	264
5.4.1. The development of international private rights	264
5.4.2. The domestic effect of international rights	269
5.4.3. International rights in the formulation of private international law rules	271
5.4.4. International rights in the application of private international law rules – international public policy	274
5.4.5. International harmonisation of procedural law	287
5.5 International economic law and private international law	288
5.6 Party autonomy	291
5.7 Subsidiarity in private international law	295
6 Conclusions	298
<i>Bibliography</i>	310
<i>Index</i>	388

- Nottebohm Case (Liechtenstein v. Guatemala)*, Second Phase [1955] ICJ Reports 4 247
Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion [1949] ICJ Reports 174 85
Serbian and Brazilian Loans cases, France v. Yugoslavia; France v. Brazil (1929) PCIJ Ser A, Nos. 20–1, Judgments 14–15 214, 230, 291, 292
SS 'Lotus' (France v. Turkey) (1927) PCIJ Ser A, No. 10 253
Tunis and Morocco Nationality Decrees (1923) PCIJ Ser B, No. 4 103

International Criminal Tribunal for the Former Yugoslavia

- Prosecutor v. Furundzija* (1999) 38 ILM 317 282
Prosecutor v. Tadic (1996) 35 ILM 32 95

International arbitral awards

- Azinian v. Mexico*, ICSID ARB(AF)/97/2 (Award, 1 November 1999) 268
Azurix Corp. v. The Argentine Republic, ICSID ARB/01/12 (Award, 14 July 2006) 265
Feldman v. Mexico, ICSID ARB (AF)/99/1 (NAFTA) (Award, 16 December 2002) 267
International Thunderbird Gaming Corporation v. Mexico (NAFTA) (Award, 26 January 2006) 267
Loewen v. United States, ICSID ARB (AF)/98/3 (NAFTA) (Award, 26 June 2003) 254, 267
Metalclad Corp. v. United Mexican States, ICSID ARB (AF)/97/1 (Award, 30 August 2000) 266
Mondev International Ltd v. United States, ICSID ARB (AF)/99/2 (Award, 11 October 2002) 267
Neer Claim (1926) 4 UNRIAA 60 265
Roberts Claim (1926) 4 UNRIAA 77 265
Waste Management, Inc. v. Mexico (Number 2), ICSID ARB (AF)/00/3 (NAFTA) (Award, 30 April 2004) 267
World Duty Free Company Ltd v. Kenya, ICSID ARB/00/7 (Award, 4 October 2006) 276

European Court of Justice

- Accession of the Community to the European Convention on Human Rights* [1996] ECR I-1759, ECJ Opinion 2/94 199
Ahlström (A) Osakeyhtiö v. EC Commission [1988] ECR 5193, Case 89/85 235
Boukhalfa v. Germany [1996] ECR I-2253, Case C-214/94 197
Cassis de Dijon [1979] ECR 649, Case C-120/78 200
Centros Ltd v. Erhvervs- og Selskabsstyrelsen [1999] ECR I-1459, Case C-212/97 200
Comet BV v. Produktschap voor Siergewassen [1976] ECR 2043, Case 45/76 197
Debaecker v. Bouwman [1985] ECR 1779, Case 49/84 196
Denilauler v. Couchet Frères [1980] ECR 1553, Case 125/79 190

- Eco Swiss China Time Ltd v. Benetton International NV* [1999] ECR I-3055, Case C-126/97 195, 196
- Eurofood IFSC* [2006] ECR I-3813, Case C-341/04 195
- European Agreement on Road Transport Case (Commission of the European Communities v. Council of the European Communities)* [1971] ECR 263, Case 22/70 181
- Grunkin and Paul*, Case C-353/06 (14 October 2008; Opinion of the Advocate General, 24 April 2008) 204
- Hengst Import BV v. Campese* [1995] ECR I-2113, Case C-474/93 190
- Hoffmann v. Krieg* [1988] ECR 645, Case 145/86 191
- Ingmar GB Ltd v. Eaton Leonard Technologies Inc.* [2000] ECR I-9305, Case C-381/98 192, 235, 258
- Internationale Handelsgesellschaft v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125, Case 11/70 199
- Kamer van Koophandel en Fabrieken voor Amsterdam v. Inspire Art* [2003] ECR I-10155, Case C-167/01 200
- Kloms v. Michel* [1981] ECR 1593, Case 166/80 190
- Kremzow v. Republik Österreich* [1997] ECR I-2629, Case C-299/95 196, 199
- Krombach v. Bamberski* [2000] ECR I-1935, Case C-7/98 191, 195, 196, 199, 205
- Lugano Convention* (7 February 2006), ECJ Opinion 1/03 182
- Mund & Fester v. Hatrex Internationaal Transport* [1994] ECR I-467, Case C-398/92 195
- Open Skies Case (Commission of the European Communities v. Federal Republic of Germany)* [2002] ECR I-9855, Case C-476/98 181
- Owusu v. Jackson* [2005] ECR I-1383, Case C-281/02 119, 181, 182, 272
- Pendy Plastic Products BV v. Pluspunkt Handelsgesellschaft mbH* [1982] ECR 2723, Case 228/81 190
- Renault v. Maxicar* [2000] ECR I-2973, Case C-38/98 191, 195, 196
- Rewe-Zentralfinanz eG et Rewe-Zentral AG v. Landwirtschaftskammer für das Saarland* [1976] ECR 1989, Case 33/76 197
- Solo Kleinmotoren GmbH v. Emilio Boch* [1994] ECR I-2237, Case C-414/92 191
- Tessili v. Dunlop* [1976] ECR 1473, Case 12/76 22
- Überseering v. Nordic Construction Company Baumanagement* [2002] ECR I-9919, Case C-208/00 200, 201
- Van Gend en Loos v. Netherlands Inland Revenue Administration* [1963] ECR 1, Case 26/62 186

European Court of Human Rights

- Bosphorus v. Ireland* (2006) 42 EHRR 1 199
- Drozđ and Janousek v. France and Spain* (1992) 14 EHRR 745 285
- Iribarne Perez v. France* (1996) 22 EHRR 153 285
- James v. United Kingdom* (1986) 8 EHRR 123 104

- K v. Italy* (2006) 43 EHRR 50 285
Lithgow v. United Kingdom (1986) 8 EHRR 329 104
Loizidou v. Turkey (1995) 20 EHRR 99 196
Mamatkulov v. Turkey (2005) 41 EHRR 25 285
Pellegrini v. Italy (2002) 35 EHRR 2 285
Prince Hans-Adam II of Liechtenstein v. Germany [2001] ECHR 467 286
Soering v. United Kingdom (1989) 11 EHRR 439 285
X v. Belgium and the Netherlands (1975) 7 D&R 75 283

Australia

- Ainslie v. Ainslie* (1927) 39 CLR 381 283
Anderson v. Eric Anderson Radio & TV Pty Ltd (1965) 114 CLR 20 161
Armstead v. Armstead (1954) VLR 733 118
Attorney-General (United Kingdom) v. Heinemann Publishers Australia (1988) 165 CLR 30 228
Australian Capital Television v. Commonwealth (1992) 177 CLR 106 164
Australian Temperance & General Mutual Life Assurance Society Ltd v. Howe (1922) 31 CLR 290 158
Blunden v. Commonwealth (2004) 203 ALR 189 165
Breavington v. Godleman (1988) 169 CLR 41 120, 157, 162–6, 170, 174
Chaff and Hay Acquisition Committee v. JA Hemphill and Sons Pty Ltd (1947) 74 CLR 375 120
Dow Jones v. Gutnick [2002] HCA 56 245
Harris v. Harris [1947] Vict LR 44 161
Hodge v. Club Motor Insurance Agency (1974) 7 SASR 86 161
Jones v. Jones (1928) 40 CLR 315 161, 162
King v. Kidman (1915) 20 CLR 425 158
Koop v. Bebb (1951) 84 CLR 629 162
Lange v. Australian Broadcasting Corporation (1997) 189 CLR 520 164
Laurie v. Carroll (1958) 98 CLR 310 120
Lloyd v. Lloyd (1962) ALR 279 118
McKain v. R W Miller & Co. (SA) Pty Ltd (1992) 174 CLR 1 164, 174
Merwin Pastoral v. Moolpa Pastoral (1933) 48 CLR 565 162
Musgrave v. Commonwealth (1937) 57 CLR 514 158
Nationwide News v. Wills (1992) 177 CLR 1 164
Neilson v. Overseas Projects Corporation of Victoria [2005] HCA 54 17, 166, 251, 259
Oceanic Sun Line Special Shipping Company Inc. v. Fay (1988) 165 CLR 197 22, 223
Pederson v. Young (1964) 110 CLR 162 120
Permanent Trustee Co. (Canberra) v. Finlayson (1967) 9 FLR 424 162
Permanent Trustee Co. (Canberra) v. Finlayson (1968) 122 CLR 328 162
Pfeiffer v. Rogerson (2000) 203 CLR 503 120, 162, 164–6

Potter v. The Broken Hill Proprietary Company Limited (1906) 3 CLR 479 239
Re Cth Agricultural Service Engineers Ltd [1928] SASR 342 161
Re E and B Chemicals and Wool Treatment [1939] SASR 441 161
Re E and B Chemicals and Wool Treatment (No. 2) [1940] SASR 267 161
Régie National des Usines Renault SA v. Zhang (2002) 210 CLR 491 163, 165, 223, 246
Robb Evans of Robb Evans and Associates v. European Bank Ltd [2004] NSWCA 82 228
Stevens v. Head (1993) 176 CLR 433 164, 174
Union Steamship Co. of Australia Pty Ltd v. King (1988) 166 CLR 1 163
Voth v. Manildra Flour Mills Pty Ltd (1990) 171 CLR 538 22
Walton v. Walton [1948] Vict LR 487 157
XYZ v. The Commonwealth [2006] HCA 25 247

Canada

Amchem Products Inc. v. British Columbia (Workers' Compensation Board) [1993] 1 SCR 897 172, 174, 231
Beals v. Saldanha [2003] 3 SCR 416 171, 222, 223
Braintech Inc. v. Kostiuik [1999] 63 BCLR 3d 156 169
British Columbia v. Imperial Tobacco Canada Ltd [2005] 2 SCR 473 171
Castillo v. Castillo [2005] SCC 83 171
Dupont v. Taronga Holdings Ltd (1986) 49 DLR (4th) 335 170
Gillespie Management Corp. v. Terrace Properties (1989) 39 BCLR 2d 337 193
Gray v. Kerslake [1958] SCR 3 170
Hanlan v. Sernesky (1998) 38 OR 3d 479 175
Hunt v. T&N [1993] 4 SCR 289 170, 171, 174, 207, 222, 223
Lung v. Lee (1928) 63 OLR 194 120
Morguard Investments Ltd v. De Savoye [1990] 3 SCR 1077 120, 168–174, 223
Mutual Trust Co. v. St-Cyr [1996] RDJ 623 172
Pro Swing v. Elta Golf [2006] SCC 52 8
R v. Hape [2007] SCC 26 229, 261
Reference re Secession of Quebec [1998] 2 SCR 217; 37 ILM 1340 86, 104
Tolofson v. Jensen [1994] 3 SCR 1022 10, 164, 173–5, 222, 245, 246
Unifund Assurance Co. v. Insurance Corp. of British Columbia [2003] 2 SCR 63 171
United States of America v. Ivey (1995) 26 OR 3d 533 244
United States of America v. Ivey (1996) 30 OR 3d 370 169, 172, 228, 244
United States of America v. Shield Development Co. (2005) 74 OR 3d 583 171
Weir v. Lohr and Allstate Insurance Co. of Canada (1967) 65 DLR 2d 717 168
Wong v. Wei (1999) 65 BCLR 3d 222 175

France

Avianca (Cass, 1e civ, 20 February 2007) 242
Corp. del Cobre v. Bradden Copper Corp. (1984) 65 ILR 57 282

Simitch v. Fairhurst (Cass, 1e civ, 6 February 1985) 242
SNTR v. CATA (1984) 65 ILR 83 282
Pajot (Cass, 1e civ, 22 May 2007) 242
Prieur v. de Montenach (Cass, 1e civ, 23 May 2006) 242

Germany

Nigerian masks case (BGH 22 June 1972 NJW) 280
Verenigde Deli-Maatschappijen v. Deutsch-Indonesische Tabak-Handelsgesellschaft mbH (1963) 28 ILR 16 281

The Netherlands

Alnati, Supreme Court (Hoge Raad), 13 May 1966, NJ 1967, 3 193
Indonesian Corp. PT Escomptobank v. NV Assurantie Maatschappij de Nederlanden van 1845 (1970) 40 ILR 7 282
Senembah Maatschappij NV v. Republiek Indonesie Bank Indonesia and De Twentische Bank NV (1959) 30 ILR 28 282

United Kingdom

A & Ors v. Secretary of State for the Home Department [2005] UKHL 71 283
Adams v. Adams [1971] P 188 280
Adams v. Cape Industries Plc [1990] Ch 433 8, 16, 224, 240, 284
Air Foyle Ltd v. Center Capital Ltd [2002] EWHC 2535 15
Airbus Industrie GIE v. Patel [1998] 2 All ER 257 231
Aksionairnoye Obschestvo AM Luther v. James Sagor & Co. [1921] 3 KB 532 281
Al-Bassam v. Al-Bassam [2004] EWCA Civ 857 285
Anglo-Iranian Oil Co. v. Jaffrate (The Rose Mary) [1953] 1 WLR 246 (Supreme Court of Aden) 279, 282
Arkwright Mutual Insurance v. Bryanston [1990] 2 QB 649 22
Armitage v. Nanchen (1983) 4 FLR 293 284
Attorney-General (New Zealand) v. Ortiz [1984] AC 1 228, 280
Banco Atlantico SA v. British Bank of the Middle East [1990] 2 Lloyd's Rep 504 274
Boys v. Chaplin [1971] AC 356 162
Britannia Steamship Insurance Association v. Ausonia Assicurazioni SpA [1984] 2 Lloyd's Rep 98 274
British Airways Board v. Laker Airways Ltd [1984] QB 142 (CA) 262, 273
British Airways Board v. Laker Airways Ltd [1985] 1 AC 58 (HL) 262, 273
British South Africa Co. v. Companhia de Moçambique [1893] AC 602 239
Buehler v. Chronos Richardson Ltd [1998] 2 All ER 960 21

- Buttes Gas & Oil v. Hammer* (No. 3) [1982] AC 888 93
Caglar v. Billingham (1996) 108 ILR 510 280
Canada Trust Co. v. Stolzenberg (No. 2) [2002] 1 AC 1 254
Carl Zeiss Stiftung v. Rayner and Keeler Ltd (No. 2) [1967] 1 AC 853 280
Cherney v. Deripaska [2008] EWHC 1530 (Comm) 272
Citibank NA v. Rafidian Bank & Anor [2003] EWHC 1950 195
Connelly v. RTZ [1998] AC 854 272
Cottington's Case (1678) 3 Car 2, 2 Swanst 326 244
Dallal v. Bank Mellat [1986] 1 QB 441 270
De Wutz v. Hendricks (1824) 2 Bing 314 278
Definitely Maybe (Touring) Ltd v. Marek Lieberberg Konzertagentur GmbH [2001] 4 All ER 283 240
Duport Steels Ltd v. Sirs [1980] 1 All ER 529 5
Edmunds v. Simmonds [2001] 1 WLR 1003 251
EI Du Pont de Nemours v. Agnew [1987] 2 Lloyd's Rep 585 22
Emanuel v. Symon [1908] 1 KB 302 16, 250
Foster v. Driscoll [1929] 1 KB 470 193
Glencore International A/G v. Metro Trading [2001] All ER (Comm) 103 239
Government of India v. Taylor [1955] AC 491 228
Government of The United States of America v. Montgomery (No. 2) [2004] UKHL 37 285
Grovit v. De Nederlandsche Bank & Ors [2007] EWCA Civ 953 226
Gur Corporation v. Trust Bank of Africa Ltd [1987] QB 599 280
Hall v. Brooklands Auto-Racing Club (1933) 1 KB 205 9
Harding v. Wealands [2004] EWCA Civ 1735 249
Harding v. Wealands [2006] UKHL 32 249, 287
Herceg Novi v. Ming Galaxy [1998] 4 All ER 238 273
Hesperides Hotels v. Aegean Turkish Holidays Ltd [1978] 1 QB 205 93, 280
Holland v. Lampen-Wolfe [2000] UKHL 40 226
Huntington v. Attrill [1893] AC 150 228
In re Claim by Helbert Wagg & Co. [1956] Ch 323 278, 282
In re Fried. Krupp AG [1917] 2 Ch 188 278
In re Macartney [1921] 1 Ch 522 283
In re Meyer [1971] P 298 278
In re Missouri Steamship Co. (1889) 42 Ch D 321 278
Irish Shipping Ltd v. Commercial Union Assurance Co. Plc (The Irish Rowan) [1991] 2 QB 206 273
JH Rayner (Mincing Lane) Ltd v. Department of Trade and Industry [1990] 2 AC 418 91
Jones v. Minister of the Interior of the Kingdom of Saudi Arabia [2006] UKHL 26 232
Kaufman v. Gerson [1904] 1 KB 591 278
Kennedy v. Cassillis (1818) 36 ER 635 244
Konkola Copper Mines v. Coromin [2005] EWHC 898 182