Actualidad Jurídica Uría Menéndez, 57, septiembre-diciembre de 2021, pp. 155-167

Foro de Actualidad

Internacional

ENGLISH CONTRACT LAW FOR SPANISH LAWYERS. ARTICLE THREE - USING ENGLISH LAW GOVERNED PRECEDENTS

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Derecho inglés de los contratos para abogados españoles – Artículo dos – La buena fe en los contratos sujetos a ley inglesa

Este es el último de los artículos de la trilogía que hemos dedicado a los contratos de derecho inglés. En este nuevo trabajo tratamos los conceptos generales a tener en cuenta a la hora de utilizar un precedente regido por la ley inglesa como punto de partida para la elaboración de un proyecto de acuerdo regido por la ley española.

Palabras clave:
Precedentes, Contratos de derecho inglés.

English Contract Law for Spanish Lawyers – Article Two – Good faith in English Law Governed Contracts

This is the third in a series of three articles relating to English law contracts. In this third article we cover more general points to be borne in mind when using an English law governed precedent as the starting point for producing a draft agreement governed by Spanish law.

Keywords:
Precedent, English Law Contracts.

FECHA DE RECEPCIÓN: 16-11-2021

FECHA DE ACEPTACIÓN: 18-11-2021

Bircham, Alex; Cahill, Gillian; Wethered, Tom (2021). English Contract Law For Spanish Lawyers. Article Three - Using English Law Governed Precedents. *Actualidad Jurídica Uría Menéndez*, 57, pp. 155-167 (ISSN: 1578-956X).

1. Introduction

In many respects, a well-drafted English law contract (i.e., one which is clear, comprehensive and unambiguous) may provide a useful starting point for a Spanish lawyer who wishes to draft a Spanish law contract in English. There are, however, a number of English law specific features of which a Spanish lawyer should be aware and which may require some adjustment.

This Article will look at a number of issues that come up regularly for Spanish lawyers in this context, including the requirement of consideration, the use of "deeds", the infamous "best endeavours" clause, penalty clauses and indemnity clauses.

2. Consideration

2.1. What is consideration?

Consideration is one of the key elements necessary to create a legally valid and binding contract in English law, the others being: (i) an offer by one party; (ii) unequivocal acceptance of that offer by another; (iii) a clear intention to create legal relations, objectively judged; and (iv) sufficient certainty of contractual terms.

Under English law, it is a requirement for the formation of a simple contract (i.e., one not entered into as a "deed"[1] between two or more parties that each party should provide "consideration". Consideration is a peculiarity of the common law but essentially amounts to a requirement that each party to the contract provide something of value, or assume some liability or detriment, for the contract to be legally binding. The consideration may be expressly stated in the contract, although it is not necessary to do so.

The doctrine of consideration is generally understood to be based on reciprocity and to require that, for a party to a contract to be able to enforce the obligations of the other party, the first party must give or promise to give something in exchange.

2.2. What is required for there to be consideration?

There are a number of specific, technical, common law rules which govern the doctrine of consideration, such as:

i. consideration must be sufficient but need not be adequate — i.e., what is given or promised must be sufficient in terms of having some value (even if only a nominal value) but certainly need not be of equal value to the consideration offered by the other party/ies[2];

ii. consideration must move from the promisee — i.e., it must be provided by the party to whom the promise (which that party now wishes to enforce) has been made[3];

iii. consideration does not need to move to the promisor — i.e., it does not necessarily need to benefit the other party to the contract by whom the promise was made; it could be an obligation to provide some benefit or service to a third party[4]; and

iv. past consideration is not sufficient consideration — i.e., consideration which has already been provided when the contract is entered into will not satisfy the requirement[5].

2.3. What is the purpose of consideration?

Consideration (and its civil law cousin, *causa*) can technically be traced back to Roman law, although most of the English case law establishing the rules surrounding consideration as we understand it today was developed during the 17th, 18th and 19th centuries; for this reason, the commercial logic and rationale underpinning such cases may not be immediately apparent, particularly to civil lawyers when viewed in the context of a 21st century commercial transaction.

Consideration is closely linked to the enforceability of a contract — whereas many centuries ago, informal agreements were made on the basis of "word of honour", the enforceability of such agreements was a problem for the parties and there existed no definitive proof that an agreement had been reached. Consideration essentially filled, at least part of, that evidentiary gap. By ensuring that both parties are offering some kind of *quid pro quo* as they enter into the contract, it became much easier to enforce a contract as it could be readily verified what X and Y had promised to each other. Thus, a bare promise remains unenforceable but a contract where X agrees to buy Y's company in exchange for nominal consideration of €1 should be enforceable if the other technical requirements for the formation of a contract are met.

2.4. Why is the absence of consideration generally not a problem in commercial transactions?

The absence of, or deficiency in, consideration is not normally an issue in arm's length commercial transactions, as one party is unlikely to undertake to provide gratuitous benefits to the other.

There may, however, be particular legal instruments (e.g., options or guarantees; variations to / waivers of contractual rights) which contain a unilateral promise by one party but which may not be supported by consideration provided by the other party. In such cases, the solution may be to "create" some consideration, even if nominal (e.g., "*in consideration of the payment of €1.00, receipt of which is hereby acknowledged*"), or alternatively, to execute the relevant contract as a "deed"[6].

3. Deeds

3.1. What is a "deed"?

A "deed" is a specific type of contract under English law. "Deeds" have specific requirements as to their formation, and there are specific legal consequences for executing a contract as a "deed" rather than as a simple contract.

3.2. Why execute a document as a "deed", what are the consequences?

Under English law, certain transactions or circumstances are subject to a statutory or common law requirement for a "deed", such as:

i. any agreement that is made without consideration must be a "deed" to be valid and enforceable (e.g., a guarantee of an existing debt by a parent company for no consideration). This also includes the release of any debt, liability or obligation where no consideration is given;

ii. a gift or voluntary assignment of tangible goods that is not accompanied by delivery of possession[7];

iii. the amendment, termination or discharge of a "deed" can only be implemented by way of another "deed";

iv. the transfer or creation of an interest in land (including a mortgage or a charge);[8]

v. the appointment of a new trustee where there is not a separate transfer of the trust property into the name of the new trustee[9]; and

vi. the granting of any power of attorney[10].

In addition, under English law, the statutory limitation period for actions brought under a simple contract is six years from the date on which the cause of action accrued, whereas the limitation period is generally 12 years in the case of actions brought under a "deed". The use of a "deed" can therefore create a valid and binding contract which may not have been enforceable due to a lack of consideration, and also increase the limitation period for such enforceability.

3.3. What are the technical requirements to execute a contract as a "deed"?

There are four key requirements for a valid "deed" under English law, arising from a combination of common law rules and statutory provisions:

i. a "deed" must be in writing, whereas a simple contract may be formed verbally under English law if all other requirements (including that of consideration) are met;

ii. the document in question should on its face (i.e., expressly, in writing) bear the word "deed" or some other indication that it is intended to take effect as a "deed";

iii. it must be validly executed as a deed by the relevant parties in accordance with specific formalities. For individuals, this means it should be signed and witnessed, while the execution requirements for a corporate entity will differ depending on its jurisdiction of incorporation — speak to a member of the IEC team if you require further guidance on this; and

iv. to be enforceable, a "deed" must be "delivered" — this a technical requirement which would normally be met through conduct by the person executing the "deed" indicating that such person intends to be bound by it.

3.4. Is an English law "deed" equivalent to an "escritura publica" under Spanish law?

It should be clear to any Spanish lawyer reading the preceding paragraphs that a "deed" under English law should not be confused or equated with an "*escritura publica*" under Spanish law — these are two separate concepts, with different purposes, consequences, formalities and requirements, and must be approached on that basis.

4. "Endeavours" clauses

4.1. Endeavours clauses in English law

Expressions such as "best endeavours" and "reasonable endeavours" (known as "endeavours clauses") are frequently found in English law governed contracts to allow the parties to agree a level of obligation short of an absolute obligation. An absolute obligation is usually denoted by the use of the term "shall" in the contract. Although endeavours clauses have been frequently considered by the English Courts, no exact meanings have been established for the various formulations used. As a result, the interpretation of the terms is highly context and fact-sensitive, taking into account the interests, costs and resources of the parties and the underlying circumstances of the agreement in question.

That being said, it is possible to extrapolate from the current state of English case law that certain general principles can be drawn and that there is a spectrum of endeavours clauses ranging from "best endeavours" on one end to "reasonable endeavours" on the other, with certain variants in between. Whilst, in accordance with what Andrew Burrows QC referred to as the "modern approach in English law to contractual interpretation", an endeavours clause must be interpreted (i.e., as regards the content and extent of the parties' obligations) at the time the contract was made[11], the clause's satisfaction will be assessed by reference to the facts and circumstances at the time that performance falls due, no matter how unexpected or unusual they may be[12].

Given that the requirements arising from an endeavours clause are dependent on the facts of each particular case, the other relevant provisions of the contract in question, the surrounding commercial context, etc., the following table sets out some key characteristics of the main types of endeavours clauses (e.g., "best endeavours", "all reasonable endeavours", "reasonable endeavours", etc.), as an aid to the contractual interpretation of such terms.

4.2. Characteristics of common "endeavours" clauses in English law

Obligation	Perspective	Requires expenditure? Sacrifice to obligor's commercial interests?	Overview
Best endeavours	The obligation is generally viewed from the obligee's perspective. The obligor's interests should only be considered to a limited extent.	May require significant expenditure by the obligor, including for the obligor to sacrifice its commercial interests, but not ruinously so. The obligor is required to consider all possibilities (to "leave no stone unturned") and generally to take action which, having regard to its costs and degree of difficulty, is commercially practicable.	Imports the highest standard, but it is not an absolute obligation. It will still be qualified by a test of reasonableness and may be superseded by other obligations, such as directors' fiduciary duties. Includes steps which a prudent, determined and reasonable obligee, acting in their own interests and desiring to achieve that result, would take.
All reasonable endeavours	Unclear. May imply an objective or subjective standard depending on the circumstances.	May require expenditure by the obligor. May or may not require the obligor to sacrifice its commercial interests. Depends on choice of contractual words and nature of the obligation, including extent of parties' control (e.g., the more control the obligor has over the outcome, the more objective the standard becomes and the more the obligor is expected to sacrifice its commercial interests).	Likely to exhibit characteristics of both best and reasonable endeavours - simply put, it functions as a "middle ground" between the two formulations. Involves balancing the contractual obligation against all relevant commercial considerations. Involves considering the extent of the obligor's and obligee's respective control over the desired outcomes. There is some suggestion that an all reasonable endeavours clause has the same effect as a best endeavours clause, as "all" suggests that a party should try multiple approaches available to it[13] which could equate the two[14]. However, other case law has held that a party under an obligation to use all reasonable endeavours is not always required to sacrifice its own commercial interests (which is a key feature of the best endeavours obligation[15] Thus, this type of clause appears to occupy a middle ground.

Obligation	Perspective	Requires expenditure? Sacrifice to obligor's commercial interests?	Overview
Reasonable endeavours	The obligation is considered primarily from the obligor's perspective. Only minimal effort may be required by the obligor.	May require limited expenditure by the obligor, but does not generally require the obligor to sacrifice its commercial interests unless the contract specifies certain steps to be taken by obligor.	Regarded as the least onerous "endeavours" term. Determined by an objective standard *unless* the contract expressly specifies certain steps to be taken in relation to the performance of the obligation (in which case, those steps *must* be taken). Obligor to act in the interests of the obligee but is not expected to take actions resulting in significant detriment to the obligor *unless* the contract specifies otherwise.

In addition to the above, other formulations may be used - for example, "commercially reasonable endeavours". This variant may at first glance appear to soften the "reasonable endeavours" obligation but the English Courts have not given any support for this view, it having been decided that, much like "reasonable endeavours", "commercially reasonable endeavours" does not require a party to disregard or act against its own commercial interests in order to fulfil its obligations[16].

Given the inherent uncertainty regarding what these formulations will ultimately require in practice, in sophisticated commercial transactions contracting parties sometimes seek to define more precisely what would be required to fulfil a defined standard such as "commercially reasonable efforts" — this could be done in a variety of ways (e.g., by defining specific steps or actions that would be required to be taken, excluding measures that would not be required, setting a defined limit on the level of expenditure that would need to be incurred in satisfaction of the obligation, etc.).

4.3. Endeavours clauses in Spanish law

The closest concept in Spanish law to endeavours clauses are obligations of means (*obligación de medios*) and result (*obligación de resultados*). An obligation of means only requires the obligor to work diligently (considering the particular circumstances) and in good faith (that is, without fault, according to Art. 1104 of the Spanish Civil Code) towards fulfilling a particular obligation, even if in the end the expected result is not achieved. By contrast, an obligation of result is only fulfilled if the particular result envisaged by the relevant obligation is achieved.

On the basis of the above, when adapting an English law precedent for use in a Spanish law contract, a Spanish lawyer must bear in mind that a "best endeavours" clause under English law is broadly analogous to an obligation of result under Spanish law. However, as explained in Section 4.2 above, while similar, they are not the same concept, as a "best endeavours" clause is not an absolute obligation, but rather is qualified by a test of reasonableness and may be superseded by

other obligations, while an obligation of result under Spanish law is an absolute obligation. By contrast, a Spanish law obligation of means is not an absolute obligation, but rather only requires a particular standard to be adopted by the obligee when attempting to fulfil the obligation; in that way, an obligation of means is similar to an English law "reasonable endeavours" clause. However, once again, these concepts, while similar, are not analogous — for example, as a Spanish law obligation of means is subject to a duty of good faith, while an English law "reasonable endeavours" clause does not impose such a requirement (but rather only requires the obligee to act "reasonably" in all the circumstances, from an objective perspective).

4.4. Endeavours clauses in US law

Expressions such as "best efforts" and "reasonable efforts" are commonly found in US law contracts but have received little attention from the English courts; for that reason, there is no definitive judicial interpretation of these particular terms under English law.

In US case law, there is conflicting judicial interpretation as regards the "efforts" formulations. It is less clear there, for example, that there is a spectrum of obligations ranging from "best" to "reasonable", and "efforts" obligations have been found to entail a standard of "good faith" and "diligence" for which there is no equivalent in the English case law. Therefore, while the terms "best/reasonable efforts" and "best/reasonable endeavours" are sometimes used interchangeably in practice, the correct approach is to use the "endeavours" formulations for English law governed agreements, taking into account the subtle distinctions between such formulations discussed in Sections 4.1 and 4.2 in mind.

5. Penalty clauses

Traditionally, a provision in a contract which allowed the innocent party to recover liquidated damages (e.g., a fixed sum irrespective of the actual loss suffered) from a party who was in breach would be enforceable only if the sums expressed to be recoverable were a genuine or reasonable bona fide pre-estimate of loss[17].

If not, and the purpose of the clause was to act as a deterrent, it would be a penalty and so, to the extent that it exceeded the actual loss suffered, it would be unenforceable. This is so as to protect against unconscionable or oppressive behaviour which aims to punish a breaching party rather than protect the legitimate interests of the innocent party. Note that this rule is seen as "*an exception to the general principle of English law that a contract should be enforced in accordance with its terms*"[18] and is therefore enforced sparingly.

In accordance with general English law principles of contractual interpretation, the test as to whether a pre-estimate of loss is genuine is an objective one. As such, irrespective of whether the parties actually believed that the amount was a genuine pre-estimate of loss at the time of entering the contract, it is for the Court to determine whether the sum be considered a genuine pre-estimate based on the information reasonably available to the parties at the time the contract was entered into.

However, in a recent decision of the Supreme Court, the test for determining whether a particular provision is a penalty clause was revisited in detail, with the Court ultimately reformulating the same. In the joint appeals of *Cavendish Square Holding BV v Talal El Makdessi and ParkingEye Ltd v Beavis*[19], the Supreme Court described the penalty rule as an "*ancient, haphazardly constructed edifice which has not weathered well*" but noted that similar rules existed in all other developed systems of law and retention of the rule had been recommended by the Law Commissions of England and Wales and of Scotland. Lords Neuberger and Sumption went on to define the true test relating to the enforceability of penalty provisions as whether:

"*… the impugned provision is a secondary obligation which imposes a detriment on the contract-breaker out of all proportion to any legitimate interest of the innocent party in the enforcement of the primary obligation*".[20]

A "secondary obligation" is an obligation which arises as a result of, and provides a remedy for, breach of a primary obligation. While the judgment in this case leaves a number of questions unanswered, the words "out of all proportion" appear to considerably narrow the circumstances in which a contractual provision may be struck down as being a penalty in the future, significantly increasing the discretion of the parties to agree liquidated damages in the context of commercial agreements between properly advised parties. In this regard, the Supreme Court confirmed that "*in a negotiated contract between properly advised parties of comparable bargaining power, the strong initial presumption must be that the parties themselves are the best judges of what is legitimate in a provision dealing with the consequences of breach*"[21].

Thus, in *Makdessi* it was held that neither clause at issue was a penalty, one being a price adjustment clause, the other a call option. Both clauses were primary rather than secondary obligations. In *ParkingEye, which concerned an advertised* excess parking charge, it was held that there was a legitimate interest in charging overstaying motorists a sum which extended beyond mere recovery of loss. Further, the advertised charge did not fall within the scope of the basic test for unfairness under the Unfair Terms in Consumer Contracts Regulations 1999 following the recent interpretation of this test by the European Court of Justice.

Based on the revised position set out in these cases, so long as a contracting party can demonstrate that it is using a liquidated damages clause to protect a legitimate interest and the sum to be paid is not exorbitant or unconscionable (i.e., not "*out of all proportion to any legitimate interest of the innocent party*") the following principles now apply:

i. it is no longer a requirement for a sum in liquidated damages to represent a "*genuine pre-estimate of loss*";

ii. the compensatory principle (i.e., that damages for breach should only compensate loss and never act as a deterrent to breach) has been relaxed, provided that other requirements are met. Thus, the fact that the predominant purpose of a clause is to act as a deterrent against breach of contract would not, in itself, render that clause unenforceable;

iii. the party seeking to rely on a penalty clause does not actually have to suffer or prove a loss;

iv. the penalty does not just have to be a specified financial amount. The parties could agree a penalty clause allowing a party, for example, to withhold deferred consideration or require the transfer of certain property as the consequence for breach; and

v. generally, the parties have greater freedom to make such provision within a contract as they see fit to regulate the consequences for breach.

6. Indemnities

6.1. Indemnities in English Law – why have one?

Under English law, an "indemnity" is a contractual promise to reimburse the other party for losses arising out of a specific, identified liability or a particular trigger event (which may include a breach of a certain obligation), and will usually involve a heavily negotiated, standalone clause. It is therefore a primary obligation and differs to a general duty to pay damages awarded by a Court for breach of contract.

Depending on the specific drafting, an indemnity clause may provide certain benefits or extra protections for the indemnified party when compared to a standard breach of contract claim. For example:

i. *Trigger*: an indemnity is typically triggered by losses incurred due to a specific event or identified liability. The indemnified party therefore only needs to prove that the trigger event has occurred (and anything else required under the specific wording of the clause, such as the losses suffered), without necessarily having to prove the fault of the indemnifying party in connection thereto;

ii. *Causation*: under English law, contractual damages are limited to losses which are *caused* by the relevant breach. This essentially means that the innocent party must prove that the loss would not have been caused absent the breach, noting that any new, intervening act would break the chain of causation. In a widely drafted indemnity, however, this direct causal link can be broadened. For example, consider an indemnity clause which covers losses "*arising as a direct result of X*" as compared to one which covers losses "*arising as a result of or in connection with Y*"; the second clause is clearly far more wide-reaching, going beyond a direct causal link and covering any losses that are connected to the relevant trigger event. The specific wording can therefore provide greater protection and recovery for the indemnified party;

iii. *Remoteness*: under English law, damages for a contractual breach can only be claimed if the loss was *reasonably foreseeable* (i.e., in the contemplation of the contracting parties at the time the contract was entered into). The knowledge of the parties when assessing this falls under two limbs: (i) imputed knowledge, which includes knowledge of what happens "in the ordinary course of things" and which the parties are deemed to have known, and (ii) actual knowledge, which includes special circumstances outside of the ordinary course

but which were communicated to the breaching party or otherwise known by the contracting parties at the time the contract was made[22]. In addition, the Courts will apply an objective test of "reasonableness" to the foreseeability of the relevant losses. It has been suggested by the English Courts that an express provision in an indemnity clause excluding the rules around remoteness would be enforceable, meaning that a strongly positioned party could be indemnified for any losses arising from the trigger event, whether or not they are reasonably foreseeable[23]. If, however, there is no such express provision and the clause refers to losses "*arising directly or indirectly out of X*" the standard test of remoteness will be imported into the clause[24];

iv. *Mitigation*: in a claim for breach of contract under English law, the innocent party has a duty to act reasonably to reduce its loss. However, for a debt claim, the principle of mitigation does not apply. Depending on the wording of the indemnity, it could be argued that it is a simple debt claim, and therefore that the indemnified party has no duty to try to reduce the loss caused by the trigger event. The indemnifying party should therefore try to include an express obligation in the indemnity clause for the indemnified party to mitigate any loss; and

v. *Legal costs*: in English law arbitration or litigation proceedings for breach of contract, a breaching party who is ordered to pay damages is usually also required to pay part of the innocent party's legal costs. By contrast, an indemnity clause can be expressly drafted to cover any legal costs incurred by the indemnified party in relation to the trigger event or enforcing the indemnity itself.

6.2. Indemnities in Spanish Law

While an indemnity clause in an English law contract can be viewed as a debt claim triggered by a specific event or liability, there is a tendency in Spanish law contracts to include a more general "*indemnización*" in relation to any breach of contract, which would instead translate as a general duty to pay contractual damages ordered by the Courts in England and Wales. Spanish lawyers should be aware of this difference when adapting English law contracts, as they may need to include the broad *indemnización* clause typically contained in a Spanish law contract.

Similarly, if a Spanish lawyer is dealing with an English language contract governed by Spanish law against an English counterparty, they can expect to receive strong push-back on any such general indemnity clause, as the word "indemnity" will be interpreted by an English lawyer in a different manner. To avoid confusion, when including indemnities as they are understood under English law, it is typical in a Spanish law contract drafted in the English language to refer to "specific indemnities", which differentiates such clauses from a more general "*indemnización*".

7. Conclusions and practical advice

An English law precedent can be a good reference point for UM lawyers who wish to draft a Spanish law contract in the English language. However, it is important to bear in mind the various differences that will arise when adapting such precedents.

i. Consideration is one of the basic requirements for the formation of a valid contract under English law, and must be present in all simple English law contracts for them to be valid. A "deed" can be used to circumvent the requirement for consideration, if necessary (especially with regard to the often "one-sided" legal instruments such as options, guarantees and variations to or waivers of contractual rights). Under Spanish law, consideration is not a recognized doctrine and is not required for a contract to be enforceable — therefore, when adapting an English law precedent for use under Spanish law, you may remove references to "consideration", and/or nominal payments (e.g. if a consideration of €1 is given under an English contract, this may not be necessary under a Spanish contract if the commercial agreement is €0).

ii. When adapting an English law agreement originally executed as a "deed", it is important to distinguish these from public deeds and the concept of *escurita publica* — just because a contract is a "deed" under English law does not necessarily mean it will need to be an *escurita publica* under Spanish law, and *vice versa*. You may also need to adapt the document to update signature blocks and other English deed-specific content that is not required under Spanish law.

iii. It is important to exercise caution when including endeavours clauses in a Spanish law governed contract based on an English precedent — such clauses have a specific (and highly context dependent) interpretation under English law that may not translate well to a Spanish law governed agreement. Consider carefully whether these terms achieve your objective in a Spanish law governed contract, and in cases of doubt consider whether it would be preferable either to (i) make use of the Spanish law concepts of obligations of means (*obligación de medios*) and result (*obligación de resultados*) and/or (ii) expressly set out and define what the relevant party is required to do to satisfy the obligation in the relevant agreement. In all cases, the goal must be to reflect, under Spanish law, the standard of obligation sought by the client... even where the client is expressing its instructions in English, perhaps even by reference to "endeavours" language or other English law concepts.

iv. All English Law Governed Precedents will have been drafted to avoid the prohibition on penalty clauses. Under Spanish law, however, there is no such prohibition — you may therefore look to strengthen "penalty" type provisions, and not be as concerned with avoiding the word "penalty" or justifying the amount of liquidated damages or penalty set out in the clause.

v. It is important to consider the specific drafting under an English law indemnity clause, and how this translates to, and works under, Spanish law. While an indemnity clause in an English law contract will be heavily negotiated and limited to specific losses arising from a particular event, you may wish to insert a broader "*indemnización*" clause for any breach of a Spanish law governed contract, and distinguish such clause from any "specific indemnities" you may also seek to include.

Notas

1 See further Section 3.
2 See the emblematic case of *Chappell v Nestle* [1960] AC 87, among others.
3 *Tweddle v Atkinson* [1861] 1 B.& S. 393.
4 *Re Wyvern Developments Ltd* [1974] 1 W.L.R. 1097.
5 *Lampleigh v Braithwaite* [1615] EWHC KB J17.
6 See further Section 3.
7 *Irons v Smallpiece* (1819) 2 B&E Ald 551 and *Cochrane v Moore* (1890) 25 QBD.
8 Section 52 of the Law of Property Act 1925.
9 Section 40 of the Trustee Act 1925.
10 Section 1(1) of the Powers of Attorney Act 1971.
11 *Federal Republic of Nigeria v JP Morgan Chase Bank NA* [2019] EWHC 347 (Comm).
12 *Jet2.Com Ltd v Blackpool Airport Ltd* [2011] EWHC 1529.
13 *UBH (Mechanical Services) v Standard Life Assurance Co.*, The Times, 13 November, 1986.
14 *Rhodia Int'l Holdings Ltd. & Rhodia UK Ltd. v. Huntsman Int'l LLC* (2007) EWHC 292 (Comm).
15 *CPC Group Ltd v Qatari Diar Real Estate Investment Co* [2010] EWHC 1535 (Ch).
16 *CPC Group Ltd v Qatari Diar Real Estate Investment Co* [2010] EWHC 1535 (Ch).
17 *Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co. Ltd* [1915] A.C. 847.
18 *Euro London Appointments Ltd v Claessens International Ltd* [2006] ECWA Civ 385.
19 *[2015] UKSC 67.*
20 *Cavendish Square Holding BV v Talal El Makdessi and ParkingEye Ltd v Beavis [2015] UKSC 67.*
21 *Ibid*, para 35.
22 *Hadley v Baxendale* [1854] 9 Ex 341.
23 *Robophone Facilities Ltd v Blank* [1966] 1 WLR 1428.
24 *Capita v RFIB Group* [2015] EWCA Civ 1310.