

# 3~4 Digest

A Monthly Review of Relevant News, Cases and Articles

Volume 5, Number 4

July 1999

**O**n 25<sup>th</sup> June 1999, Mr Justice Lightman delivered judgment in **BCCI SA v. Ali**, dismissing the stigma claims of five test-case BCCI employees. Although he found BCCI to have acted in breach of the trust and confidence term implied in the employees' contracts of employment, Mr Justice Lightman held that the employees were unable to establish that stigma had caused any loss. The judgment contains an interesting analysis of the line of cases which consider 'loss of a chance'.

The Digest is delighted to announce that David Allison has accepted an invitation to join Chambers and will become a tenant in October 1999.

This issue of the Digest includes materials up to 30 June 1999. It was compiled by Jeremy Goldring and David Allison.

Jeremy Goldring

## GENERAL NEWS

### INSOL 2001

Chambers is a main sponsor for INSOL 2001, which is to take place in London on 17-20 July 2001. The conference will provide a forum for the exchange of information and ideas on insolvency law for judges, accountants, lawyers, lenders, academics, debt traders and insurance insolvency experts from throughout the world. Further details may be found at the INSOL website ([www.insol.org](http://www.insol.org)).

### National Audit Office report on director disqualification

On 21 May 1999 the National Audit Office published a report by the Comptroller and Auditor General to Parliament on the cost and effectiveness of disqualification of company directors.

### Financial Services and Markets Bill

The Bill was introduced in the House of Commons on 17 June 1999. When enacted and in force it will largely replace the existing regime. The Financial

Services Authority will be responsible for a much wider area of financial supervision than under the existing regime.

### Human Rights Act 1998

In May, the Government announced that the Human Rights Act would come into force on 2 October 2000. The enactment of the stipulation of a right to a fair trial in Article 6 may have considerable implication in the field of insolvency law.

### Thresholds for small and medium sized companies

The Government has announced that it intends to consult on raising the threshold for audit exemption to £4.2 million (the maximum permitted under EU law).

### Company Donations to political parties

The DTI has signalled its intention to adopt the recommendations made by the Committee on Standards in Public Life. This would mean that any company intending to make any form of donation to a political party or organisation should be required to have the prior authority of its shareholders.

### **Winding-up statistics**

In the first quarter of 1999 there were 3,729 company insolvencies in England and Wales. This represents a 9.8% increase on the fourth quarter of 1998.

### **Reform of insolvency law**

A recent Insolvency Service study examined how insolvency law might be reformed to differentiate between responsible risk-takers and culpable bankrupts. The Government announced that it would consult over the proposals. It would further produce important but uncontroversial changes to insolvency law as soon as possible.

### **AY Bank Limited**

On 25 June 1999, a Serbian-controlled bank which was subject to sanctions, was placed into administration on the petition of its directors. This is believed to be the first bank placed into administration since Barings. [Simon Mortimore QC, Jeremy Goldring]

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## **CPR WATCH**

### **Amendments to the Civil Procedure Rules**

The Civil Procedure Rules continue to be the subject of constant revision. The fifth set of amendments was issued on 28 June 1999 and come into force on 12 July 1999. The sixth set will be available on 29 July 1999. The amendments, together with news of other CPR developments, can be found, as always, at the Lord Chancellor's web-site ([www.open.gov.uk/lcd](http://www.open.gov.uk/lcd)).

### **Forms**

CPR forms, including those in the Commercial Court Guide, are available at Court Service web-site ([www.courtservice.gov.uk/](http://www.courtservice.gov.uk/)). These can apparently be completed on-screen.

### **Lectures**

**Marion Simmons QC** was a faculty member on a 2-day advocacy course designed in the context of the CPR, which concentrated on case preparation and analysis skills. The course was organised by the Oxford Institute of Legal Practice for the litigation department of a firm of solicitors.

### **Publications**

The 5<sup>th</sup> edition of the **Butterworths Insolvency Law Handbook**, which is edited by **Michael Crystal QC**, **Mark Phillips QC** and **Glen Davis** and which incorporates all the amendments made to the Insolvency Rules by the CPR, will be published in August.

### **Cases and Practice Directions**

**Breeze v. John Stacy & Sons Ltd**, *New Law Online*, 21 June 1999. CA (Peter Gibson, Judge and Clarke LJ)

The coming into force of the CPR did not alter the principles to be applied in determining whether the use

of privileged materials, disclosed inadvertently by solicitors, should be restrained.

**Cadogan Properties Ltd v. Mount Eden Land Ltd**, *New Law Online*, 29 June 1999. CA (Gibson and Waller LJ)

Where the Court of Appeal concluded that the judge's decision on substituted service was wrong, it would take into account Part 1 of the CPR in deciding what order should be made for the future. The court was bound to do what it could to ensure that the trial of the case proceeded quickly and efficiently, saving expense where possible (following **McPhilemy v. Times Newspapers Ltd**).

**Companies Court (Skeleton arguments: Time limits)** *The Times*, 25 June 1999. Ch D. (Arden J)

For a Monday hearing, bundles and skeleton arguments are to be lodged by 10am on the preceding Friday. A chronology and list of issues (agreed where possible) are to be lodged with skeletons.

**McPhilemy v. Times Newspapers Ltd**, *The Times*, 26 May 1999. CA (Lord Woolf MR, Judge and May LJ)

In reviewing a decision made prior to 26 April 1999 the Court of Appeal would not interfere after that date, if it would not have done so if the appeal had been heard prior to that date. The court would only interfere with a decision of a court below if that decision were wrong. If the decision was not wrong prior to 26 April 1999, it did not become wrong for the purposes of an appeal as a result of the subsequent coming into force of the CPR. However, if the decision was one with which the court would have interfered prior to 26 April 1999, in deciding what order should be made for the future, this court would take into account, in particular, part 1 of the CPR.

**Matthews v. Tarmac Brick and Tiles Ltd**, *New Law Online*, 14 June 1999. CA (Lord Woolf MR, Clarke and Mance LJ)

In giving guidance about the fixing of cases for the convenience of expert witnesses in the context of the CPR, Lord Woolf stated that it was essential that if parties wanted cases to be fixed for hearing in accordance with the dates which meet their convenience, those dates should be fixed as early as possible. The parties could not always expect the courts to meet their convenience.

**North Holdings Ltd v. Southern Tropics Ltd**, *New Law Online*, 17 June 1999. CA (Aldous and Morritt LJ)

At the heart of Civil Procedure Rules is the requirement of the courts to manage cases actively. That will require a new approach by the Registrar to proceedings under section 459 of the Companies Act 1985. He will need to give directions to enable petitions to come on for trial efficiently, quickly and as inexpensively as possible. The approach to be adopted is set out in CPR 1.4(2). Ample use should be made of the power to require a joint expert or the appointment of an assessor.

**Practice Direction for the Court of Appeal (Civil Division)**

Digested at Vol.5, No.3. Now further reported at [1999] 1 WLR 1027; [1999] 2 All ER 490.

**Practice Direction (Civil Litigation: Procedure)**

[1999] 1 WLR 1124.

List of the Practice Directions applicable to civil litigation under the Civil Procedure Rules.

**Practice Note (Chancery Division: Civil Procedure Rules)**

*The Times*, 4 May 1999. Ch D

Guidance for practitioners on the procedure of the Interim Applications Court and Companies Court under the CPR.

**Practice Note (Court of Appeal, Civil Division: Disposal of bundles)**

*The Times*, 30 June 1999.

Where the case has been determined following a court hearing one set of papers would normally be taken by the official transcriber and would not be returned. Any remaining sets should be collected at the end of the hearing and those not taken would be destroyed by the Civil Appeals Office after 21 days.

**Practice Note (Court of Appeal, Civil Division: Assessment of costs)**

Digested at Vol.5, No.3. Now further reported at [1999] 1 WLR 871; [1999] 2 All ER 638.

**Rollinson v Kimberly Clark Ltd** *The Times*, 22 June 1999. CA (Peter Gibson and Judge LJJ)

When a trial date was imminent, it was not acceptable for a solicitor to seek to instruct an expert witness without checking his availability or, if instructions had been given, to go ahead when there was no reasonable prospect of the expert's availability. Another expert should be instructed.

**St Alban's Court Ltd v. Daldroch Estates Ltd** Ch D

Digested at Vol.5, No.3. Now further reported at *The Times*, 24 May 1999.

**SBJ Stephenson Ltd v. Mandy**, *New Law Online*, 30 June 1999. CA (Nourse, Swinton Thomas and Mummery LJJ)

Where an appeal against an interlocutory injunction was before the Court of Appeal only about 2 weeks before the trial was fixed to float, it was not appropriate to have a full hearing on the merits of the appeal. Such a hearing would incur unnecessary expense and was not an appropriate use of the court's resources (applying part 1.1 of the CPR).

**Glen Davis**: 'Insolvency proceedings in the age of Woolf', *Insolvency Intelligence*, Vol. 16, No. 6.

Pickavance and Lane: "Experts under the 1998 Civil Procedure Rules", [1999] ADRLJ 96

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## ADMINISTRATION

**Re Osmosis Group Ltd**, *New Law Online*, 25 May 1999. Ch D (Rimer J)

Leave to sell a division of the Company prior to a section 23 meeting would be granted to administrators where the sale was urgent and approved by two major creditors, though such an order should not be taken as conferring the court's approval of the terms of the sale so as to render the administrators immune from any criticism which anyone may thereafter seek to make about it.

**Re P D Fuels Ltd** [1999] BCC 450. Ch D (Rimer J)

An application for authorisation by the Court to sell the company's principal remaining asset without the approval of the creditors at a section 23 meeting was granted, as unless the sale was concluded immediately there was a real risk that the opportunity of a sale at a price which had been agreed would be lost.

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## ARBITRATION

**The 'Baltic Universal'** QBD (Comm Ct)

Digested at Vol. 5, No. 3. Now further reported at [1999] 2 All ER 625.

**Bankers Trust Co v PT Jakarta International Hotels and Development** [1999] 1 All ER (Comm) 785; *The Times*, 10 May 1999. QB (Comm Ct) (Cresswell J)

On an application brought to restrain foreign proceedings brought in breach of an arbitration agreement governed by English law, the applicant had to show to a high degree of probability that its case was right and that it was entitled as of right to restrain the foreign proceedings. If the applicant could do so, and the application had been brought promptly and before the foreign proceedings were too far advanced, the court would grant an injunction unless there was good reason not to. On the facts there was a real risk that a failure to give effect to such an arbitration clause might undermine the development and maintenance of an efficient and productive worldwide market in derivatives and swaps.

**Danae Air Transport SA v Air Canada**

Digested at Vol.5, No.3. Now further reported at [1999] 1 All ER (Comm) 794

**Laker Airways Inc v FLS Aerospace Ltd** *The Times*, 21 May 1999; *The Independent*, 24 May 1999. QBD (Rix J)

A barrister appointed as an arbitrator was not barred from that role because he belonged to the same set of chambers as a barrister acting for one of the parties.

**Omnium de Traitement et de Valorisation SA v Hilmarton Ltd** *unreported*, CCH Commercial Law Cases Newsletter, Report 18, 3. QB (Comm Ct - Timothy Walker J)

It was not contrary to public policy to enforce an arbitration award which did not offend public policy under the proper law of the contract or the curial law, even if English public policy might have taken a different view.

**Patel v. Patel** CA

Digested at Vol.5, No.3. Now further reported at [1999] 1 All ER (Comm) 923.

**Poseidon Schiffart GmbH v. Nomadic Navigation Co Ltd** QBD (Colman J)

Digested at Vol. 5, No. 3. Now further reported at [1999] CLC 755.

**Soleimany v Soleimany** CA

Digested at Vol.4, No.3. Now further reported at [1999] QB 785.

**Westacre Investments Inc v Jugoimport-SDPR Holding Co Ltd** QBD

Digested at Vol.4, No.4. Now further reported at *The Independent*, 25 May 1999; [1999] QB 740; [1999] 1 All ER (Comm) 865.

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## BANKING

**Banco Santander SA v Bayfern Ltd** *The Times*, 9 June 1999. QB (Comm Ct - Langley J)

A bank confirming a deferred payment letter of credit which made a discounted payment to the beneficiary of the letter in return for the assignment of the beneficiary's rights under the letter was not entitled to reimbursement by the bank that issued the letter of credit if fraud on the part of the beneficiary was established before the maturity date.

**Czarnikow-Rionda Sugar Trading Inc v Standard Bank London Ltd** *The Independent*, 14 June 1999.

QB; [1999] 1 All ER (Comm) 890. (Comm Ct - Rix J)  
An injunction would not be granted to prevent a defendant from paying out the proceeds of a letter of credit on the basis of the fraud exception unless the fraud had come to the bank's notice in time.

**Harvey Jones Ltd v. Woolwich Plc**, *unreported*, June 1999. Central London County Court (Judge Hallgarten QC)

A paying bank was liable in conversion to the true owner of a cheque for its face value where the cheque had been stolen and then materially altered, in that the name of the payee had been changed, before the cheque came into the possession of the collecting bank. (cf. **Smith v. Lloyds TSB Group plc**, below).

**Kredietbank Antwerp v Midland Bank plc** *The Times*, 12 May 1999; *The Independent*, 7 May 1999. CA (Evans, Mummery and Sedley LJJ)

A bank, when presented with a specific document under the terms of a letter of credit and which it was obliged to consider if it was the original, could not reject it when it clearly was the original as required under the credit and was not itself the copy of some other document.

**Lloyds Bank plc v Lampert** [1999] BCC 507. CA (Kennedy and Mummery LJJ)

The words "repayable on demand" used by a bank in an overdraft facility letter to a company meant what they said and it was in no way inconsistent for a bank, or any other lender, to grant a facility which it and the borrower envisaged would last for some time, but with the caveat that the lender retained the right to call for payment at any time on demand. The bank was therefore entitled to require the company to repay on demand.

**National Westminster Bank plc v Story** *The Times*, 14 May 1999. CA (Lord Woolf MR, Auld and Robert Walker LJJ)

Three separate credit facilities which were negotiated, agreed and documented as one transaction providing the borrowers with an overall level of credit subject to common conditions, were provided by a bank under one agreement for the purposes of the Consumer Credit Act 1974.

**Smith v. Lloyds TSB Group plc**, *unreported*, [date]. QBD (Blofeld J)

A collecting bank was not liable in conversion to the true owner of a cheque for its face value where the cheque had been stolen and then materially altered, in that the name of the payee had been changed without the consent of any person liable on the cheque, before the cheque came into the possession of the bank. (cf. **Harvey Jones Ltd v. Woolwich plc**, above) [Marion Simmons QC]

**Yorkshire Bank plc v Lloyds Bank plc** *The Times*, 12 May 1999. QBD (Judge Pitchers)

A bank which received a cheque from an individual on the basis that it would either apply the sum to the purchase of shares or return it to the individual, did not owe a duty of care to the bank against which the cheque was drawn not to lose it.

Hudson: "Money as property in financial transactions", [1999] JBL 170.

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## BANKRUPTCY

**Re Blackman (a Debtor)** [1999] BCC 446. Ch D. (Stanley Burnton QC)

The failure of the petitioning creditors to comply with r 6.8 IR 1986 by not stating the consideration for the debt was an insufficient basis by itself to justify the

dismissal of the petition. Excessive respect for the formalities had been introduced in the past which the Insolvency Rules had intended to avoid and the Deputy Judge had been wrong to dismiss the petition on this ground alone.

**Re Bremner (a bankrupt)** [1999] BPIR 185. Ch D. (Jonathan Sumption QC)

The Court exercised its discretion under s336(4)(e) to postpone the sale of the house until 3 months after the death of the bankrupt, even though more than a year had elapsed since the bankruptcy order. Exceptional circumstances justified the making of the order, namely the bankrupt was terminally ill and his wife was caring for him in the house.

**Cadogan Estates Ltd v McMahon** *The Times*, 1 June 1999. CA (Stuart-Smith and Laws LJ, Jonathan Parker J)

A proviso in a protected tenancy which gave the landlord a right of re-entry if the tenant became bankrupt, was an obligation under the subsequent statutory tenancy within the meaning of Case 1 of Schedule 15 to the Rent Act 1977. Accordingly, the tenant's bankruptcy in breach of that obligation amounted to grounds for possession.

**De Rothschild v Bell (a Bankrupt)** CA

Digested at Vol.5, No.3. Now further reported at [1999] 2 WLR 1237; [1999] 2 All ER 722; [1999] BPIR 300.

**Re Garrow**, *New Law Online*, 10 June 1999. Ch D (Jacob J)

A statutory demand would be set aside where there was a genuine cross-claim in an amount exceeding the petitioner's debt (applying **Re Bayoil SA** [1999] 1 WLR 147). While a delay in pursuing a cross-claim was relevant to the exercise of the court's discretion, there was no rule that if a cross-claim could have been litigated earlier it could not be taken into account.

[Lexa Hilliard]

**Glenister v Rowe** CA

Digested at Vol.5, No.3. Now further reported in *The Independent*, 14 June 1999.

[Mark Arnold]

**R v Lord Chancellor, ex parte Lightfoot** QBD

Digested at Vol.4, No.10. Now further reported at [1999] 2 WLR 1126.

**Re Patel**, *New Law Online*, 19 May 1999. Ch D (Robert Englehart QC)

Benefits under an occupational pension scheme to which the bankrupt was entitled at the date of the bankruptcy order were vested in the trustee-in-bankruptcy under section 306 of the Insolvency Act 1986 (applying **Re Landau** [1998] Ch 223). However, those benefits did not include so much of the bankrupt's pension as was attributable to the period of his service after the date of the bankruptcy order.

**Re Omar**, *New Law Online*, 27 May 1999. Ch D (Jacob J)

Even if disclosure of documents to a third party by the trustee-in-bankruptcy was outside the purposes of the bankruptcy, it could be justified in exceptional circumstances.

**Rooney v Cardona** CA

Digested at Vol.5, No.3. Now further reported at [1999] BPIR 291.

**Re Stockwell**, *New Law Online*, 25 June 1999. Ch D (Evans-Lombe J)

Where during the course of bankruptcy, a bankrupt had acquired no right to payments which were made to him after discharge, there was no after-acquired property which could be vested in the trustee by service of a notice under section 307 of the Insolvency Act 1986.

[Richard Adkins QC, Hilary Stonefrost]

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## COMPANY

**Re an Inquiry into Mirror Group Newspapers plc** Ch D.

Digested at Vol.5, No.3. Now further reported at [1999] 1 BCLC 690; [1999] 2 All ER 641.

**Attorney General's Reference (No 2 of 1998)** *The Times*, 10 May 1999; *The Independent*, 6 May 1999; [1999] BCC 590. CA (Beldam LJ and Butterfield and Gray JJ)

The construction of section 447 CA 1985, by which the Secretary of State for Trade and Industry can require a company to produce documents or explain where they are, was wide enough to include the provision of an explanation not only of the text of the document but also of, amongst other things, the creation, authorship, accuracy, completeness, intended purpose, destination and significance of the document or its contents, and of the use to which it was in fact put.

**Johnson v Gore Wood & Co** [1999] BCC 474. CA (Nourse, Ward and Mantell LJ)

The Court of Appeal set out the principles to be applied in circumstances where a company has suffered an actionable wrong and a shareholder wishes to recover loss in a personal action against the wrongdoer.

**Christensen v. Scott** [1996] 1 NZLR 273 is not to be followed in England as it conflicts with the principle that a shareholder has no personal cause of action to recover loss sustained by diminution in value of his shares by reason of the misappropriation of the company's assets.

**Re Legal Costs Negotiators Ltd** CA

Digested at Vol.5, No.2. Now further reported at [1999] BCC 547.

**O'Neill v Phillips** *The Times*, 21 May 1999; [1999] BCC 600; [1999] 1 WLR 1092; [1999] 2 All ER 961. HL (Lords Hoffmann, Jauncey, Clyde, Hutton and Hobhouse)

Unfairness to a member of a company within s459(1) CA 1985 generally required some breach of the terms on which he had agreed that the affairs of the company should be conducted. He was not entitled to demand purchase of his shares simply because he felt that he had lost trust and confidence in the other members.

**Ransomes plc, unreported**, 1 July 1999. CA (Lord Bingham CJ, Otton and Robert Walker LJJ)  
The Court of Appeal dismissed an appeal from the order of Lloyd J ([1999] BCLC 775) confirming the cancellation of the Company's share premium account. It rejected an argument that given the changed circumstances since the hearing at first instance, the confirmation should be refused because there was no discernible purpose for the cancellation. The Court of Appeal emphasised that on such an application the Companies Court should be told the general purpose of what was proposed and emphasised the applicability of the principle of full and frank disclosure.

**[Simon Mortimore QC]**

Armour: "Corporate personality and assumption of responsibility", [1999] LMCLQ 246.

Griffiths: "Section 317 and efficient self-dealing: what should an interested director be required to disclose", *The Company Lawyer*, Vol.20, No.5, 189

Sealy: "When is a non-executive director "independent"?", *CCH Company Law Newsletter*, Issue 43, 6

Shapira: "Liability of corporate agents: *Williams v Natural Life Ltd* in the House of Lords", *The Company Lawyer*, Vol.20, No.5, 130

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## CONFLICT OF LAWS

**Attorney-General for Gibraltar v May** [1999] 1 WLR 998. CA (Hirst, Ward and Robert Walker LJJ)  
An undertaking was given by the Attorney-General not to use an affidavit of assets sworn by the defendant in *Mareva* proceedings in criminal proceedings. The undertaking was varied, as the criminal court in Gibraltar was the proper forum to decide whether the evidence should be available at the trial.

**Hough v. P& O Containers Ltd** QBD (Admiralty Court)  
Digested at Vol.4, No.4. Now further reported at [1999] QB 834.

**QRS I Aps v Frandsen** *The Times*, 27 May 1999. CA (Simon Brown, Auld and Thorpe LJJ)  
The rule that English courts would not directly or indirectly enforce the revenue laws of another country

was not overridden by the Brussels Convention and/or principles of European law.

**The Sea Mass** [1999] 1 All ER (Comm) 945. QB (Admiralty Ct) (Rix J)  
Where a bill of lading incorporated the Hague-Visby or Hague Rules, the carrier's fundamental obligation was to exercise due diligence, not to keep and return the goods. It followed that for the purposes of Art. 5(1) of the Brussels Convention, the place of performance of the obligation under such a bill of lading depended upon the nature of the claim made by the holder of the bill of lading. In the present case the claim was that the defendants had failed to use due diligence to provide a seaworthy vessel at the commencement of the voyage, which was in England, so the English Court had jurisdiction under Art. 5(1).

**Turner v Grovit** [1999] 1 All ER (Comm) 929, *The Times*, 16 June 1999. CA (Stuart-Smith and Laws LJJ, Jonathan Parker J)

Where an English court concluded that proceedings had been launched in another Brussels Convention jurisdiction solely for the purpose of harassing and oppressing a litigant in English proceedings, the Court had the power to protect its own process by restraining the plaintiff in the other jurisdiction by injunction from continuing the foreign process.

**Unibank A/S v Christensen** *The Times*, 30 June 1999. ECJ

A document drawn up without any involvement of a public officer was not an "authentic instrument" for the purposes of the enforcement provisions of the Brussels Convention.

**Van Uden Maritime BV v Kommanditgesellschaft in Firma Deco-Line** ECJ

Digested at Vol.5, No.1. Now further reported at [1999] 2 WLR 1181.

**Viskase Ltd v. Paul Kiefel GmbH** CA

Digested at Vol.5, No.3. Now further reported at [1999] 1 WLR 1305.

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## CONTRACT

**BCCI SA v. Bugshan**, *New Law Online*, 28 May 1999. QBD (Comm Ct – Thomas J)

It was clear that the subsequent conduct of the parties could be taken into account as evidence of whether the parties had reached an agreement and was to be accorded such weight as the court considered proper. It was not, however, admissible as to the construction of the agreement reached.

**JJD SA v Avon Tyres Ltd** [1999] CLC 702. QBD (Evans-Lombe J)

Notwithstanding the coming into force of section 12 of the Torts (Interference with Goods) Act 1977, it was an implied term of a contract of bailment of indefinite

duration that the bailment terminated after the expiry of a reasonable time.

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## CORPORATE INSOLVENCY

**Alf Vaughan & Co v Royscot Trust plc** [1999] 1 All ER (Comm) 856. Ch D. (Judge Rich QC)

Where the owner was entitled to recover goods held by another under a terminated lease or hire-purchase agreement, a threat to do so by the owner, made before the other party applied for relief from forfeiture, would not be illegitimate in the absence of exceptional circumstances amounting to unconscionable behaviour. Although an application for relief from forfeiture might delay the receivers in dealing with assets, it was not illegitimate for an owner entitled to possession to extract advantage from such a delay in negotiating a price for the release of those assets to the receivers. [Lloyd Tamlyn]

**BCCI SA (in liquidation) v Ali and Others** *The Times*, 30 June 1999. Ch D. (Lightman J)

In order to constitute the carrying out of an unlawful business so as to amount to a breach of trust and confidence term implied into a contract of employment, it was necessary to show that the employer's conduct was such that the employee could not reasonably be expected to tolerate it a moment longer after he had discovered it and could walk out of his job without prior notice.

[Richard Sheldon QC]

**Re Barton Manufacturing Co Ltd** Ch D.

Digested at Vol. 4, No.9. Now further reported at [1999] 1 BCLC 740.

**In re Continental Assurance Company of London plc.** Ch D.

Digested at Vol.5, No.1. Now further reported at [1999] 1 BCLC 751.

[Gabriel Moss QC, Stephen Atherton, Felicity Toubé]

**Deloitte and Touche AG v. Johnson**, *The Times*, 16 June 1999. PC (Lords Slynn, Hope, Hobhouse and Millett and Sir John Balcombe)

A debtor or alleged debtor of a company in liquidation could not apply for the removal of a liquidator, in whom the creditors and contributories of the company appeared to have confidence, on the ground that he was subject to a conflict of interest, and the defendant to an action brought by the a company in liquidation could not ask the court on that ground to restrain the action.

**Dora v Simper** *The Times*, 26 May 1999. Ch D. (Buckley J)

As a claim by a creditor for relief under s423 IA 1986 from a transaction at an undervalue was made on behalf of every victim, a plaintiff judgment creditor

could not claim the full amount of his judgment and costs, simply because the defendant's assets were alleged to have been sold at an undervalue.

**Re Floor Fourteen Ltd**, *New Law Online*, 24 May 1999. Ch D (David Donaldson QC)

Where there was no challenge to the propriety of a voluntary liquidator bringing proceedings to recover sums as preferences or for wrongful trading, the costs of those proceedings would be an expense of the liquidation, recoverable in priority to any distribution to preferential creditors.

**Re Galileo Group Limited** Ch D.

Digested at Vol.3, No.8. Now further reported at [1999] Ch 100.

[Richard Adkins QC, William Trower, Mark Phillips]

**Re Greenhaven Motors Ltd** [1999] BCC 463; [1999] 1 BCLC 635. CA (Aldous, Potter and Chadwick LJJ)

The decision whether or not to sanction the exercise of a power which fell within Part I or Part II of Schedule 4 to the Insolvency Act 1986 was a decision for the court or the creditors' committee, not the liquidator. Accordingly, the test on an application for sanction under section 167(1)(a), was not whether the Court should interfere with the liquidator's wish to exercise the power on **Leon v. York-o-Matic** grounds, but whether the interests of those with a real interest in the assets of the company were likely to be best served by sanction of the power.

**Re Grey Marlin Ltd** *The Times*, 29 June 1999. Ch D. (David Donaldson QC)

Since the payment of VAT, PAYE and employees' National Insurance contributions by a liquidator came within r 4.218(1)(a) IR 1986 and the remuneration of a provisional liquidator had a significantly higher priority than that of a liquidator, the payment out of the assets of the company of VAT, PAYE and National Insurance contributions by a provisional liquidator took priority over all other classes of expenses identified in r 4.218(1).

**Hughes and others v. Hannover**

**Ruckversicherungs-Aktiengesellschaft [Emlico]** CA Digested at Vol.3, No.1. Now further reported at [1999] BPIR 224.

[Gabriel Moss QC, Martin Pascoe]

**Re Latreefers Inc (No 2)**, *New Law Online*, 27 May 1999. Ch D (Lloyd J)

There was a prospect of benefit to creditors sufficient to found jurisdiction to wind up a foreign company where there was (i) a substantial debt owed to the company by a third party, albeit outside the jurisdiction, and (ii) the real prospect of a claim against the company's directors for misfeasance, albeit that the claim might ultimately fail.

[Richard Adkins QC, Martin Pascoe, Robin Dicker]

**Re Mineral Environment Agency v. Stout** Ch D.  
Digested at Vol.5, No.1. Now further reported at  
[1999] BCC 422.

**Phillips v Brewin Dolphin Bell Lawrie Ltd** [1999]  
BCC 557; [1999] 1 BCLC 714; [1999] 2 All ER 844.  
CA (Lord Woolf MR, Morritt and Laws LJ)  
On an application under section 238 of the Insolvency  
Act 1986 in respect of an alleged transaction at an  
undervalue, the court had to identify the relevant  
transaction by reference to the person with whom it  
was entered, and could only take account of the  
elements of the transaction between the company and  
that person.

**Re RS&M Engineering Co Ltd**, *New Law Online*, 15  
June 1999. CA (Clarke and Chadwick LJ and Sir Iain  
Glidewell)

As a matter of jurisdiction, the power to review  
conferred by rule 7.47(1) of the Insolvency Rules is  
unfettered. It is, however, a power which is to be  
exercised judicially. It would be inappropriate - save in  
the most exceptional circumstances - for a judge to  
exercise that power in order to substitute his own  
decision for that of another judge of co-ordinate  
jurisdiction reached on the same material after a full  
consideration of the arguments. The power to review is  
not to be used in order to hear an appeal against a judge  
of co-ordinate jurisdiction. A liquidator had no right to  
the costs he had incurred in unsuccessfully challenging  
a debenture-holder's security out of the assets held  
subject to that security (applying **Re MC Bacon Ltd  
(No 2)** [1990] BCLC 607).

**Re Thirty Eight Building Ltd (No 2)**, *New Law  
Online*, 25 May 1999. Ch D (Hazel Williamson QC)  
The jurisdiction to review an order under rule 7.47(1)  
of Insolvency Rules 1986 must be exercised extremely  
cautiously. Save in very exceptional circumstances  
where it might be necessary to correct an obvious  
injustice, it must be confined to cases of changed  
circumstances or the introduction of fresh evidence. It  
is not intended to enable an unsuccessful party to have  
a second attempt to convince the court of its case.  
[Robin Dicker, Adam Goodison]

**Re Transworld Bank & Trust Ltd**, *unreported*, 20  
May 1999. Grand Court of the Cayman Islands  
(Murphy J)  
The liquidators of an insolvent company in voluntary  
liquidation (under supervision of the court) would be  
removed on the application of the majority creditors in  
circumstances where those liquidators had acted as  
auditors of the company, had followed the views of  
former management rather than the majority creditors,  
had failed to investigate former management, and had  
generally acted with intransigence and a lack of  
objectivity.  
[Mark Phillips QC, Jeremy Goldring]

**Re Westmaze Ltd** Ch D.  
Digested at Vol.4, No.7. Now further reported at  
[1999] BCC 441.

**Re Wilmott Trading (No 2)**, *The Times*, 17 June  
1999. Ch D (Neuberger J)  
A waste management license issued under the  
Environmental Protection Act 1990 and vested in a  
company ceased to exist on that company being  
dissolved.

**Winchester Commodities Group Ltd v. R D Black  
& Co** Ch D

See under Solicitors.

[David Marks, Lexa Hilliard]

de Kerloy: "Assessing a liquidator's or administrator's  
liability for negligence and proceedings under section  
212 of the Insolvency Act 1986", *IL&P*, Vol.15 No.3,  
79

Gabriel Moss QC: "New Zealand Law Commission  
Report on Cross Border Insolvency", Vol.12, No.5  
*Insolvency Intelligence* 36

Gabriel Moss QC: "Cross Frontier Co-operation in  
Insolvency-Assistance from the Courts in England and  
the US", [1999] *Insolvency Lawyer*, Issue 4, 146

Omar: "Insolvency jurisdiction in Malaysia and  
Singapore: Statutory Assistance", [1999] *Insolvency  
Lawyer*, Issue 4, 172.

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## COSTS

**Nordsten Allgemeine Versicherungs AG v Internav  
Ltd** *The Times*, 8 June 1999. CA (Kennedy, Otton  
and Waller LJ)

The jurisdiction of the Court to order a non-party to  
pay the costs of an action provided by s51 SCA 1981  
was not limited to those cases where a costs order had  
been made against a party to the litigation. In  
exercising the discretion under s51 the financial  
interest of a non-party in the result of the litigation was  
an important factor to take into account, whether or not  
the agreement concerning that interest fell within the  
strict definition of champerty.

**Official Receiver v Brunt** CA  
Digested at Vol.5, No.3. Now further reported at  
[1999] BCC 571; [1999] 1 WLR 1129; [1999] 3 All  
ER 122.

**Stabilad Ltd v Stephens & Carter Ltd** CA  
Digested at Vol.4, No.9. Now further reported at  
[1999] 1 WLR 1201.

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## DAMAGES

**Europe Mortgage Co Ltd v GA Property Services Ltd** *unreported* 22 April 1999, CCH Commercial Law Cases Newsletter, Report 17, 2. (Moore-Bick J)  
The scope of a property valuer's duty only extended to loss caused by any inadequacy of the security as such and did not extend to the value of the loan secured on the property, so that where a lender sold its loan portfolio at a discount it was not liable for any loss thereby occurring.

**Platform Home Loans Ltd v Oyston Shipways Ltd** HL  
Digested at Vol.5, No.2. Now further reported at [1999] CLC 867.

**Standard Chartered Bank v Pakistan National Shipping Corporation** [1999] CLC 761. QB (Comm Ct - Toulson J)  
The test of whether the plaintiff had acted reasonably in mitigation was the same in the case of fraud as in any action for tort or breach of contract.

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## DIRECTORS & DISQUALIFICATION

**Re Barings plc (No. 5)** [1999] 1 BCLC 433. Ch D. (Jonathan Parker J)  
Whilst directors are entitled (subject to the articles of association of the company) to delegate particular functions to those below them in the company chain, and to trust their competence and integrity to a reasonable extent, the exercise of the power of delegation does not absolve a director from the duty to supervise the discharge of the delegated functions.

**Re Deaduck Ltd**, *New Law Online*, 28 May 1999. Ch D (Neuberger J)  
Where on an application to disqualify a director, the registrar, in concluding that the director was unfit, had taken into account a factor which was not fairly supported on the evidence and ought to have been but was not spelt out by the Secretary of State with sufficient specificity to afford the director a reasonable opportunity to deal with it, his decision was susceptible to challenge on appeal.  
[Lloyd Tamlyn]

**Official Receiver v Vaas** [1999] BCC 516. Ch D. (Blackburne J)  
The fact that the director had held himself out as a director of many companies, but on a nominee basis, abrogating his responsibility for those companies, was of itself an extremely serious matter deserving of a substantial period of disqualification.

**Secretary of State for Trade and Industry v Rosenfield** [1999] BCC 413. Ch D. (Judge Cooke)  
The requisite need under s17 CDDA 1986 for leave to act was that of the four companies involved, there being a good chance that the companies and their employees would suffer if the applicant was not acting as a director. On the question of protecting the public, the public interest would always prevail over the needs of the individual.

**Re Surrey Leisure Ltd** Ch D.  
Digested at Vol.5, No.1. Now further reported at [1999] 1 BCLC 731.

Hicks: "Director Disqualification-is it a lottery?", IL&P, Vol.15 No.3, 73

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## EUROPEAN LAW

**R v Secretary of State for the Environment, Transport and the Regions, ex parte International Air Transport Association** *The Times*, 3 June 1999. QBD (Jowitt J)  
An EC Council regulation was valid even where all the community members had a conflicting commitment to an international convention subscribed to prior to EC membership and notwithstanding that, because of the antecedent commitment, none of them was obliged to comply with that regulation.

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## GUARANTEES

**Finley v Connell Associates (a Firm)** *The Times*, 23 June 1999. Ch D. (Richards J)  
In a creditors' agreement not to sue a principal debtor, a reservation of rights against the debtor's surety could be implied, and would have the same effect as an express reservation, namely to prevent the surety from being discharged.

**Stimpson v. Smith** CA  
Digested at Vol.5, No.3. Now further reported at [1999] 2 WLR 1292; [1999] 2 All ER 833.

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## LIMITATION

**Cia de Seguros Imperio v Heath (REBX) Ltd** *The Independent*, 3 May 1999; [1999] 1 All ER (Comm) 750. QB (Comm Ct - Langley J)  
No distinction was to be drawn for limitation purposes between an action for damages for fraud at common law and its counterpart in equity based on the same facts.

**Coulthard v Disco Mix Club Ltd** Ch D.  
Digested at Vol.5, No.3. Now further reported at  
[1999] 2 All ER 457.

**Lowsley v. Forbes (trading as L E Design Services)**  
HL  
Digested at Vol.4, No.7. Now further reported at  
[1999] 1 AC 329.

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## NEGLIGENCE

**Connolly-Martin v Davis** *The Times*, 8 June 1999. CA  
(Beldam, Brooke and Mummery LJ)  
In the absence of any special assumption of  
responsibility, a barrister when giving an undertaking to  
the Court on his client's behalf owed no enforceable duty  
of care to his client's opponent. Where, therefore, he  
gave the undertaking without first obtaining his client's  
instructions and subsequently advised his client,  
erroneously, that the undertaking was no longer binding,  
he could not be sued for damages by his client's  
opponent on the ground that, as a result of his negligence,  
they had lost an opportunity of obtaining the remedy  
sought in their litigation.

**Merivale Moore plc v Strutt & Parker** *The Times*, 5  
May 1999. CA (Nourse and Buxton LJ and Sir  
Christopher Staughton)  
Unqualified advice as to the anticipated yield to be  
derived from a property after its development, given by  
professional surveyors and valuers, that was acted on by  
their clients in the purchase of a leasehold development  
property that proved to be financially disastrous, justified  
a finding of negligence.

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## PENSIONS

**Bus Employees Pension Trustees Ltd v Harrod** *The  
Times*, 6 May 1999; [1999] 2 All ER 993. Ch D. (Scott  
V-C)  
An occupational pension scheme which had effectively  
been wound up did not become a scheme to which s1  
Pension Schemes Act 1993 applied when its trustees  
subsequently acquired a cause of action. That event  
did not constitute the beneficiaries "members", since  
the possibility of a subsequent discretionary  
augmentation was not an accrued benefit for the  
purpose of determining whether or not there were any  
members.

**Derby Daily Telegraph Ltd v Pension Ombudsman**  
*The Times*, 12 May 1999. Ch D. (Rimer J)  
While there were no special rules of construction  
applicable to the provisions of pension schemes, such  
provisions ought to be construed in a purposive and  
practical, rather than a literal way.

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## PROCEDURE

**A Straume (UK) Ltd v. Bradlor Developments Ltd  
(in Administration)** Ch D.  
Digested at Vol.5, No.3. Now further reported in *The  
Times*, 29 June 1999.  
[Adam Goodison]

**Abbey National plc v Frost (Stephen Leonard),  
Solicitors' Indemnity Fund Ltd intervening** CA  
Digested at Vol.5, No.2. Now further reported at  
[1999] 1 WLR 1080.

**Bourns Inc v Raychem Corporation** *The Times*, 12  
May 1999; *The Independent*, 24 May 1999; [1999] 3  
All ER 154. CA (Sir Stephen Brown, Swinton and  
Aldous LJ)  
Confidential documents disclosed by a party for a  
limited purpose could be used by the opposing party  
for that purpose only.

**Commissioners of Customs and Excise v Anchor  
Foods Limited** Ch D.  
Digested at Vol.5, No.2. Now further reported at  
[1999] 1 WLR 1139.  
[Sandra Bristoll]

**Dixon v Allgood** *The Independent*, 4 May 1999. CA  
(Lord Woolf MR, Robert Walker and May LJ)  
Applications for leave to appeal from separate  
decisions given on different days in the same case  
might be made in a single application.

**Federal Bank of the Middle East v Hadkinson** *The  
Times*, 28 May 1999. Ch D. (Arden J)  
The term "the defendant's assets" used in a freezing  
order extended to assets of which the defendant was  
the legal owner only, but not the beneficial owner.

**First American Corp v Sheik Zayed Bin Sultan Al-  
Nahyan** CA  
Digested at Vol. 4, No.7. Now further reported at  
[1999] WLR 1154.

**Gio Personal Investment Services Ltd v. Liverpool  
and London Steamship Protection and Indemnity  
Association Ltd** CA  
Digested at Vol.5, No.1. Now further reported at  
[1999] 1 WLR 984.

**Gray v Gray** *unreported*, 12 May 1999. Ch D.  
(Nicholas Warren QC)  
Allowing a claim to be made which was inconsistent  
with previous sworn testimony would not necessarily  
be an abuse of process such that the claim would have  
to be struck out.

**Grupo Torras SA v Fahad Mohammed Al Sabah**  
CA.  
Digested at Vol.5, No.2. Now further reported at  
[1999] CLC 885.

**Hood Sailmakers Ltd v Berthom Boat Co Ltd** *The Independent*, 10 May 1999. CA (Auld and Sedley LJJ)  
Where a judge noticed the existence of a possible conflict of interest concerning a solicitor in a case, it was entirely proper for him to ask the party affected whether he took any point on it. It was not, however, for the judge to take the point of his own motion. If the party whose interests and confidentiality were possibly at risk took no point on the matter there was nothing for the Court to decide.

**Kamenou (t/a Regency Developments) v Pariser**  
QDB (Judge Bowsher QC)

Where a plaintiff accepted money paid into court in circumstances covered by Ord. 62 r 5(4), he was entitled to the costs provided for by the rule and the court could not in the exercise of its discretion award him a greater amount. On the true construction of Ord. 62 r 5(4) the words "his costs of the action" referred to the costs of the proceeding against the paying-in defendant and did not include the costs of proceeding against other defendants.

**Locabail (UK) Ltd v Bayfield Properties Ltd** *The Times*, 18 May 1999. Ch D. (Lawrence Collins QC)  
A solicitor acting in a judicial capacity was not obliged to disqualify himself from sitting in a case in which the fiduciary duty of loyalty he, or his firm, owed to an existing client would prevent his firm from acting for one of the parties unless the interests of his firm's clients was such to raise doubts in the minds of a reasonable person as to the solicitor's impartiality.

**Manatee Towing Co v. Oceanbulk Maritime SA**  
QB (Comm Ct)  
Digested at Vol.5, No.3. Now further reported at *The Times*, 11 May 1999.

**Memory Corporation plc v Sidhu** *The Times*, 31 May 1999. Ch D. (Hart J)  
Where a search or asset-freezing injunction was granted on an application without notice following an advocate's failure to bring a relevant decision to the attention of the Court, it did not necessarily follow that the freezing order would be discharged. That was in contrast to where a party obtained an order following a non-disclosure of fact.

**Nascimento v Kerrigan** *The Times*, 23 June 1999. CA (Chadwick and Clarke LJJ and Sir Iain Glidewell)  
Paragraph 20 of the *Practice Direction (Court of Appeal: Leave to Appeal and Skeleton Arguments)* was not ultra vires and the Court of Appeal would follow the guidance there set out as the test to be applied in deciding whether to give permission to appeal after an unsuccessful appeal and a refusal of permission at first instance.

**R. v. Bow County Court, Ex p Pelling** QB D. Ct  
Digested at Vol.5, No.3. Now further reported at [1999] 2 All ER 582.

**Re Merc Property Ltd** *The Times*, 19 May 1999; *The Independent*, 3 May 1999. Ch D. (Lindsay J)  
An applicant for a wasted costs order should be mindful of the principle of proportionality. Moreover, an application should be made expeditiously and before the judge who had heard the substantive proceedings.

**Securum Finance Ltd v Ashton** *The Independent*, 28 June 1999. Ch D. (Ian Hunter QC)  
Where an action had been struck out for want of prosecution, that did not amount to *res judicata* since there had necessarily been no adjudication on the merits, and therefore no determination of any issue which could found an estoppel.

**Shell UK Ltd v Enterprise Oil plc** *The Times*, 17 June 1999. Ch D. (Lloyd J)  
In determining whether an expert has departed from his instructions in a material respect, the materiality of the error had to be considered according to its potential effect on the result and /or the process, particularly when it was not possible to wait until the effect of the error was known.

**Shikari v. Malik** CA  
Digested at Vol. 5, No.3. Now further reported at *The Times*, 20 May 1999.

**Society of Lloyd's v. Jaffray** QB (Comm Ct)  
Digested at Vol.5, No.3. Now further reported at [1999] CLC 713.

**Sullivan v Co-operative Insurance Society Ltd** *The Independent*, 18 May 1999. CA (Judge and May LJJ)  
Whilst a litigant was entitled to engage any lawyer he chose, the question whether he had been reasonable in his choice had to be looked at objectively on the assessment of his costs.

**Unilever v Procter & Gamble** [1999] 2 All ER 691. Ch D. (Laddie J)  
The plaintiff's application for quia timet relief based upon a statement of commercial intention by the defendant during negotiations was rejected. The without prejudice rule was not confined to admissions, but applied to all bona fide without prejudice statements which touched upon the strengths or weaknesses of the parties' case or which placed a valuation on the party's rights.

**Young and others v Robson Rhodes (a Firm)** *The Times*, 11 May 1999. Ch D. (Laddie J)  
On a proposed merger of two substantial accountancy partnerships, where members of one had been retained as experts on behalf of a plaintiff engaged in major litigation against members of the other, justice could only be done by carefully erecting an information barrier, or Chinese wall, which would protect the plaintiff's interests by imposing effective physical separation between those concerned.

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## PROPERTY

**Alan Wibberley Building Ltd v. Insley** HL  
Digested at Vol.5, No.3. Now further reported at  
[1999] 1 WLR 894.

**Clickex Ltd v McGann** *The Times*, 26 May 1999.  
CA (Butler-Sloss LJ and Holman J)  
A notice served for the purpose of creating an assured  
shorthold tenancy within the meaning of s20 Housing  
Act 1988, with dates which differed from the tenancy  
agreement so that it was not obvious which was correct  
did not give rise to an assured shorthold tenancy and  
the new tenant was therefore an assured tenant who  
enjoyed the protection appropriate to that status.

**Earnshaw v Hartley** *The Independent*, 10 May 1999.  
CA (Nourse and Buxton LJJ, Sir Christopher  
Staughton)  
The interest of someone absolutely entitled to a share  
in an unadministered estate was a sufficient interest for  
the purposes of s9 of the Limitation Act 1980. Where,  
therefore, one beneficiary had been in possession of  
property comprising such an estate he was unable to  
sustain a claim for adverse possession against the other  
beneficiaries.

**Manchester Airport plc v Dutton** CA  
Digested at Vol.5, No.3. Now further reported at  
[1999] 2 All ER 675.

**Newlon Housing Trust v Alsulaimen** HL  
Digested at Vol.4, No.8. Now further reported at  
[1999] 1 AC 313

**On Demand Information plc v. Michael Gerson  
(Finance) plc** Ch D  
Digested at Vol.5, No.3. Now further reported at  
[1999] 2 All ER 811.  
[Fidelis Oditah]

**Re Lomax Leisure Ltd (1999)** Ch D.  
Digested at Vol.5, No.3. Now further reported at *The  
Times* 4 May 1999; *The Independent*, 21 June 1999;  
[1999] 3 All ER 22.

**Ropaigealach v. Barclays Bank plc** CA  
Digested at Vol.5, No.1. Now further reported at  
[1999] 3 WLR 17.

**Target Holdings Ltd v Priestley** *The Times*, 13 May  
1999. Ch D. (Judge John Hicks QC)  
Contracts of disposition, as distinct from executory  
contracts for disposition, of interests in land were not  
subject to the formal requirements created by s2 Law  
of Property (Miscellaneous Provisions) Act 1989.

**Re White (deceased)** [1999] 2 All ER 663. Ch D.  
(Park J)  
Where a partner died or retired and his interest in the  
partnership assets accrued to the continuing partners,

the amount payable to him was determined by  
reference to the partnership agreement. In construing  
the agreement, the court leaned in favour of a  
construction that the amount payable was to be  
ascertained by reference to the current values of the  
assets and not to their historic costs, but that  
construction could be displaced by clear provisions in  
the partnership agreement.

**Land Registration Rules 1999 (SI 1999 No. 128)**  
These rules, made under the Land Registration Act  
1925 substantially amend the 1925 rules, and are  
operative from July 1 1999.

Draper: "Under influence: a review": [1999] 63 Conv.  
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## RECEIVERS

**Medforth v Blake** *The Times*, 22 June 1999; *The  
Independent*, 24 June 1999; [1999] 3 All ER 97. CA  
(Sir Richard Scott V-C, Swinton Thomas and Tuckey  
LJJ)

The duties which a receiver managing mortgaged  
property owed to the borrower included, but were not  
necessarily confined to, a duty of good faith. Subject  
to the receiver's primary duty to try to bring about a  
situation in which interest on the secured debt could be  
paid and the debt itself repaid, the receiver owed a duty  
to manage the property with due diligence.

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## RESTITUTION

**Nurdin and Peacock plc v DB Ramsden and Co Ltd**  
Ch D.  
Digested at Vol.5, No.2. Now further reported at  
[1999] 1 WLR 1249.

Segal: "Remedial constructive trusts in insolvencies-  
recent developments in England and New Zealand",  
Vol.12, No.5 Insolvency Intelligence 33.

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## SECURITY

Capper: "W[h]ither the floating charge?", [1999]  
Insolvency Lawyer, Issue 4, 162.

Villiers: "A path through the subrogation jungle: whose  
right is it anyway?", [1999] LMCLQ 165

Worthington: "Back door security devices", [1999]  
Insolvency Lawyer, Issue 4, 153.

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## SOLICITORS

**Paragon Finance plc v Freshfields** CA  
Digested at Vol.5, No.3. Now further reported at [1999] 1 WLR 1183.

**Winchester Commodities Group Ltd v. R D Black & Co.** *unreported*, 16 July 1999. Ch D (John Martin QC)

In the light of a finding on the evidence that the Defendant solicitors' bills were interim statute bills, special circumstances required to be established to justify taxation of the bills under section 70 of the Solicitors Act 1974. Although the amounts involved were high, any queries raised did not amount to such circumstances (**Re Norman** (1886) 16 QBD 673 considered), principally in light of the facts that the action was substantial, the Defendants had been retained for their expertise and had rendered detailed accounts prior to payment of the various bills. In addition neither Rule 7.34 of the Insolvency Rules 1986 nor the fact of liquidation amounted to special circumstances in the present case.

[David Marks, Lexa Hilliard]

**Worby v Rosser** *The Times*, 9 June 1999. CA (Peter Gibson, Ward and Chadwick LJ)

A solicitor engaged by a testator in the preparation and execution of a later will did not owe a duty of care to the person who had expectancies under the earlier will.

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## TORT

**Generale Bank Nederland NV (formerly Credit Lyonnais Bank Nederland NV) v Export Credits Guarantee Department** HL  
Digested at Vol.5, No.2. Now further reported at [1999] CLC 823.

**Gruppo Torras v, Al Sabah**, *New Law Online*, 24 May 1999. QBD (Comm Ct – Mance J)

In proving the mental element of conspiracy, it is sufficient that the conspiracy was aimed at or directed at the plaintiff in circumstances where it could be said that it could be reasonably foreseen that it may injure him. Rigorous insistence on the need for specific intent to injure the particular plaintiff was unjustified.

[Richard Hacker QC, Robin Knowles, Antony Zaccaroli]

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## TRUSTS

**Bank of Cyprus (London) Ltd v Markou** Ch D.  
Digested at Vol.5, No.2. Now further reported at [1999] 2 All ER 707.

**Brown v Bennett** [1999] BCC 525; [1999] 1 BCLC 649. CA (Morritt, Aldous and Hutchinson LJ)  
A defendant could not be liable as a constructive trustee for knowingly assisting in a breach of trust when it gave full value for the business of the company as it existed at the time when it acquired the business.

**Wight v Olswang** *The Times*, 18 May 1999; *The Independent*, 24 May 1999. CA (Peter Gibson and Potter LJ and Blofeld J)

Where a settlement had two trustee exemption clauses, one protecting all trustees from liability for breach of trust and one which expressly did not apply to paid trustees, then paid trustees could not rely on the general exemption.

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## VOLUNTARY ARRANGEMENTS

**Inland Revenue Commissioners v. Duce** Ch D.  
Digested at Vol.5, No.1. Now further reported at [1999] BPIR 189.

**Johnson v Davies** CA  
Digested at Vol.4, No.3. Now further reported at [1999] Ch 117.

**Raja v Rubin** CA  
Digested at Vol.5, No.3. Now further reported at *The Independent*, 24 May 1999; [1999] BCC 579; [1999] 1 BCLC 621; [1999] 3 All ER 73.

**Re a Debtor (No. 488 of 1996)** Ch D.  
Digested at Vol.5, No.1. Now further reported at [1999] BPIR 206.

**Re Millwall Football Club and Athletic Co (1985) plc** Ch D.  
Digested at Vol.4, No.10. Now further reported at [1999] BCC 455.

**Re Oxford United Football Club Ltd.** *unreported*, 7 July 1999. Ch D (Pumfrey J)  
In their report to the Court under section 2(2) of the Insolvency Act, the Joint Nominees of a CVA recommended that a meeting of creditors be held and specified a date for that meeting. In the event, the date could not be met as the Nominees failed to give 14 clear days notice (rule 1.9(2) of the Insolvency Rules 1986; **Mytre Investments v. Reynolds (No 2)** [1996] BPIR 464; **Skipton Building Society v. Collins** [1998] BPIR 267). On an application by the Nominees, it was held that the Court had power under section 3(1) of the Insolvency Act 1986 to permit the meeting to be called at a date later than was referred to in the report, though new notices of the meeting giving 14 clear days notice would be required.

[Stephen Atherton]

**Rooney v Cardona** *The Times*, 24 May 1999. Ch D.  
(Judge Weeks QC)

The “fees, costs, charges, and expenses properly incurred and payable” over which a trustee in bankruptcy was entitled to payment in priority even to the costs and expenses of the supervisor of the voluntary arrangement by operation of r5.21(2) IR comprised only those fees, costs, charges and expenses incurred prior to the point at which the assets were transferred to the supervisor.

[Antony Zacaroli]

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## CONFERENCE

**Gabriel Moss QC** was a member of a panel at INSOL Bermuda '99 that discussed 'Various Techniques and Approaches to Cross-border Insolvency'. The panel otherwise consisted of American and Commonwealth judges.

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