AMNICK LEGAL magazine

ALL YOU NEED TO KNOW ABOUT EMPLOYMENT LAW

SPECIAL REPORT

UK's relationship with China: the new successful alliance?

PLUS

Can you be green and profitable?

Should we be concerned?

Post-Brexit forecasts

VOL. 1

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EDITOR'S NOTE

STARTING A PROJECT is always a challenge, and it requires hard work, resilience and trust. When more than two people start working together they may just be individuals carrying on their own work, or they may be a team. In the end, their outputs will show who they really are. This magazine has been our project and our challenge, we started it as individuals and we found ourselves as a team.

It is not long since I have started working for Amnick, however during this short time I have found myself increasingly inspired by the enthusiasm shown by this organisation, as well as by the rapid progression of the Legal Team I have been leading and with whom I have shared inquiries, insecurities, desire to improve and subsequent improvements deadline after deadline, as we still continue doing today. For this reason, I consider this magazine not an ending point but a starting point, being sure about the awaiting new projects and more challenges that from now on we will take on with enthusiasm and trust, as a team. For this, and much more, I would like to thank Julia Chiapini (Business Development Manager), for encouraging me to take some risks, Anqa Tirmazee (Executive Management Associate) for her constant support, and John David, our Director, for believing in me as a team leader. My gratitude also goes to each and every member of the Legal Team for their hard working and for following me with trust.

That said, it is with pleasure that on behalf of Amnick's Legal Team I present the inaugural edition of Amnick's Legal e-magazine. Through this magazine we have attempted to portray some critical legal matters, focussing on companies, business contracts and commercial law. Beginning with BREXIT and its overall impact, we have analysed the current and evolving economic relationship between UK and China, the consequences of BREXIT on competition law, as well as the companies' environmental responsibility and its possible changes following the UK withdrawal from the EU. The magazine continues by analysing some proposals about commercial regulations as well as the evolution of the principles of good faith and liability in commercial contracts, to conclude with the protection of IP rights and working relationships. Lastly, it focus on the impact of technology over law firms.

Enjoy the reading.

Kind regards,

Eliana Roccatani

Legal Team Leader

POST-BREXIT FORECASTS THE INTERNATIONAL AND EUROPEAN IMPACT

INTRODUCTION

After the British EU Referendum and the consequent speculations over the potential UK withdrawal from the European Union, the inquiries concerning the effects of a possible reshape of the current European balances are not just a domestic political matter and, beyond affecting the European Union and its Members, they spread a storm of concerns internationally.

Economic experts warn on the consequences of the UK divorce from the EU and stress that a withdrawal from the EU will considerably affect British economy in the short and medium period as well as potentially in the long term. Moreover, the Britain's decision could open to an escalation of secession instances from other EU Members, with a consequential disintegration of the EU.

If the British exit should go further and be formalized, the post-Brexit era will be the scenario that EU citizens, Britons and other non-EU citizens, more specifically businesses, customs, firms, travellers, banks, investors and professionals over the world, are going to cope with for an indefinite period of time, along with numerous global changes currently identified in one unique outcome: uncertainty.

As nothing happens automatically, until the UK, in accordance with the Article 50 of the Lisbon Treaty, will present a formal notice to withdraw from the EU, the apparent stasis would not bring to a markets' stability; on the other side, it will temporarily freeze the current situation, and the rights. In fact, the status of Europeans living in Britain will not change initially, since the two-years period of negotiations, and the longer time necessary to stipulate new agreements, will allow every EU citizen to travel to Britain and the companies to continue to operate in the EU single market. Afterwards, in case the UK formalizes its exit from the EU, Britain would lose every privilege derived from its membership, and Britons' as well as EU citizens' living standards would radically change.

Importantly, a UK without or outside the European Union would result in a country without its previous internal trade market and outside the "free trade" zone; without a decision making power to protect its interest in the Eurozone and a strong external representativeness; with no single currency and single banking system. Britain would lose its rights derived from the European treaties and the advantages coming from EU's international commercial agreements; it would leave the customs union, the right to benefit from the EU single market and, thus, free circulation of goods, capital, services and people would end. In other words, Britain choice to exit the EU will strike trade market inside the UK and its global trade outside the EU as well as the banks system and investments.

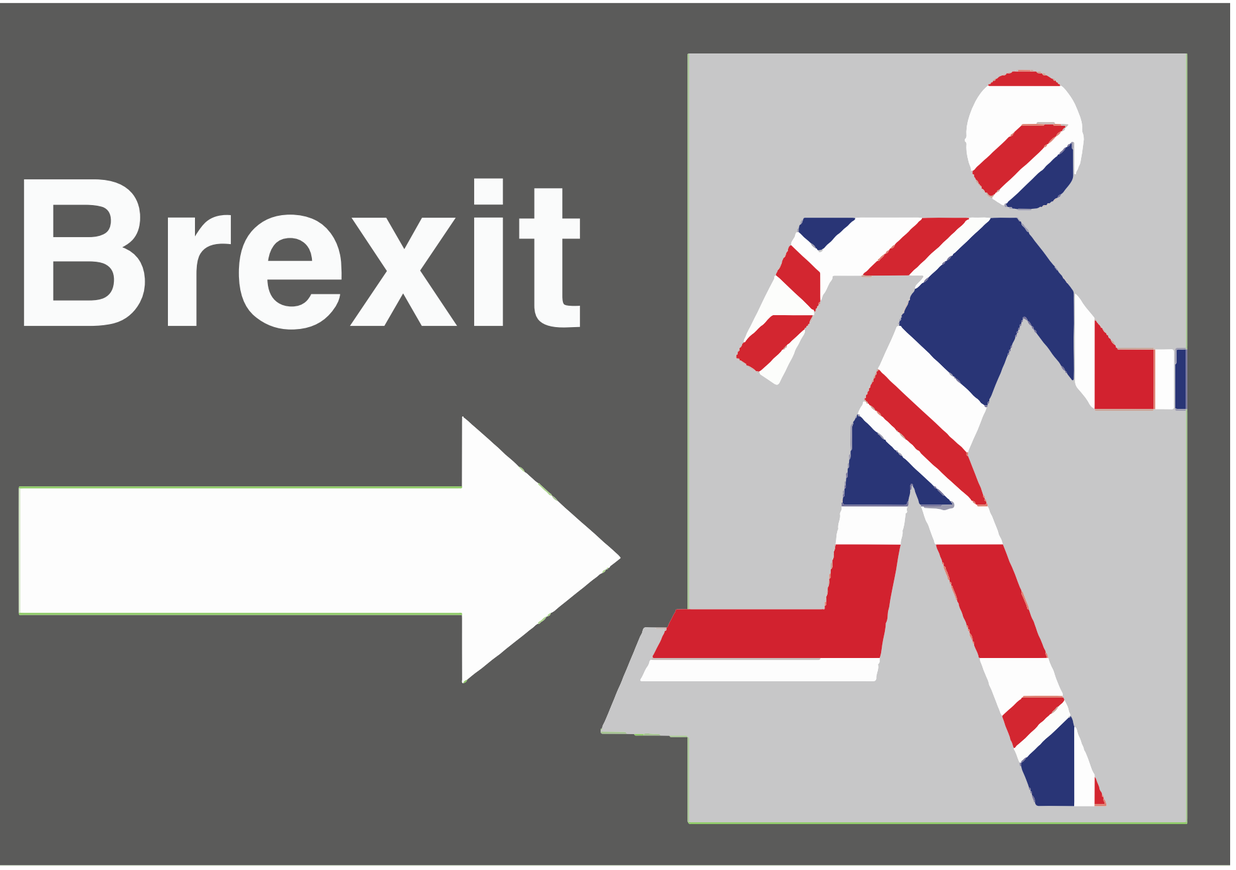
A BRITAIN WITHOUT EUROPE

WHAT HAPPENS NEXT

The Bank of England has expressed its concerns about Brexit, stating that it could cause not only the UK recession, along with a period of high inflation and an unemployment increase, but also negative repercussions on the global economy. Similar concerns came from the European Central Bank (ECB), which has stated the massive negative impact of Brexit on the European economic growth, on the euro, and hence on the banking system and the international markets. According to the ECB's president Mario Draghi, Brexit phenomena could activate a race to the competitive depreciation of monies worldwide; increase risk premiums and cause economic turbulence internationally. Lastly, also the International Monetary Fund (IMF) has forecasted that UK withdrawal could cause a steep fall in house prices, and that post-Brexit uncertainty would afflict confidence, investments, increase financial market volatility and spark a stock market crash. As a consequence, Britain's exit from the EU would directly impact on Europeans with enormous economic, political, social effects, and sequentially drag non-European centres of power, imposing some revisions on them.

Undeniably, the Referendum results have showed that fears about immigration triumphed over threats to the economy, and the idea for which, by leaving the EU, Britain would be able to administrate the migratory flow with his own rules was stronger than the post-Brexit economic risks.

The freedom of movement is one of the main principles of the EU. The Treaty on the Functioning of the European Union and European Parliament and Council Directive 2004/38/EC guarantee Europeans the right to move freely. As well as EU laws, there are international



"A WITHDRAWAL FROM THE EU WILL CONSIDERABLY AFFECT BRITISH ECONOMY IN THE SHORT AND MEDIUM PERIOD AS WELL AS POTENTIALLY IN THE LONG TERM"

documents which establish the freedom to and the right to leave one state and the freedom of movement and residence within the borders of each state. As an example, the Article 11 of the International Covenant of the Economic, Social and cultural Rights establish the right to an adequate standard of living. Therefore, immigration is another difficult challenge the UK will have to cope with, along with tariffs' issues, co-operation, cross-border security, and some very specific and sophisticated laws derived from the EU legislation.

In this setting, the exit negotiations acquire a considerable importance, as the whole of the listed consequences will be proportionate to their impact and to the relationship that will be settled between the UK and the EU for the years to come. Therefore, the negotiation during which Britain and the EU will be essentially counterposed, is the first complication that the UK has to face for its exit.

The Article 50 of the Lisbon Treaty, which requires two-years of negotiations on the terms of leaving, with a possible extension under unanimous agreement of the other Member States, will put the UK in a position of disadvantage. Moreover, at the end of the negotiation, the exit terms will have to be approved by the EU Members, and the exit will happen whether an agreement shall be reached or not.

Despite the UK apparent determination to be considered internationally as a single entity, in order to continue to trade and provide services worldwide, Britain will have to build alliances and trade deals. Nevertheless, while an isolation from the EU market would enormously damage its economic interests, on the other hand, UK future agreements will have to provide different solutions from the ones resembling the EU treaties, since a state that is not part of the EU cannot have its privileges and, in addition, a solution that does not contradict Britons' will is required.
Whilst the resigning UK Prime Minister David Cameron has expressed the intention to preserve a friendly relationship with the EU and strict collaboration over trade, co-operation and security issues, the Chancellor of Germany Angela Merkel has ruled out the possibility of a middle-solution for Britain, making an "in or out" statement. In the same direction are the French President François Hollande and the Italian Prime Minister Matteo Renzi, on the grounds that only countries that accept EU principles, such as the four fundamental freedoms of movement of people, goods, services and capital, are entitled to have free access to the single market.

THE CONSEQUENCES

The most dangerous consequence of a divorce between the UK and the EU is the uncertainty that would result. The lack of confidence spreads a fear over the outcomes on the existing relationships, and affects the futures ones, paralysing decisions. As Britain has not provided a programme neither clear guidelines for the moment, and the issue of new laws as well as the stipulation of new treaties will require many years, every field would directly or indirectly be affected.

The financial markets would increase their risk exposure and strike the businesses, a loss of confidence would affect investors, consumers and trades, delays would follow, legislative uncertainty would cause a lack of regulatory protection, affect existing and future contracts, courts decisions and the law enforcement.

Investors already started to move from the British pound to the U.S. dollar, the Japanese yen and the Swiss franc, and disinvest's operations are continuing towards safe assets like gold futures.
The UK departure from the EU would put a barrier to the market of alternative investment funds (AIFs) in EU countries by professional investors, till Brexit allowed pursuant to a passport, that cuts the barriers otherwise erected by more restrictive countries (see the Alternative Investment Fund Managers Directive - AIFMD).
As a consequence the market for this sources of capital will be limited to non-European countries.

An application of the passport system is in provided by the Markets in Financial Instrument Directive (MiFID), that could not be any longer used by banks and investment firms to conduct investment business across the EU without obtaining licences or authorizations to operate in each country. Becoming third country for MiFID, the UK would lose its passporting rights, as a consequence, to continue to operate in Europe they might move their activities to a EU subsidiary or require new licences in the EU jurisdictions, subject to strict approval. Banks would lose their title of credit institutions and therefore they authorizations to operate in the EU, and they might move some activities to the EU.

Courts and Parliament will have to decide if the principles established in the EU legislation or derived from its charters are binding as absorbed in English law, persuasive or ineffective. The same issues will arise with regard to the rules of interpretation, the strength of Court of Justice of the European Union (CJEU) rulings and English Court precedents, also considering that many EU laws will continue to be applied as already implemented in the UK's legislation. The uncertainty over the regulatory system will result in the law unpredictability, which will have an impact on the choice of global firm to invest and conduct their business in the UK.
While the regulatory frame derived from the implementation of international treaties stipulated by the UK as an individual party will not change, along with the stipulations that are into force with that parties Britain might decide to set down new agreements with, all the others regulations will depend on public support, political sensitiveness and the UK interest in preserving them.
Some examples are the World Trade Organisation (WTO) agreements, the European Convention on Human Rights (ECHR), bilateral investment treaties (BITs) with single countries, environmental and employment law.

On the contrary, other stipulations, as the
Brussels I Regulation (No. 1215/2012 on jurisdiction, recognition and mutual enforcement of judgements in civil and commercial matters) will no longer apply to the UK, with the consequent risk for a party to be subject to two disputes over the same matter before courts placed in different countries, in default of an exclusive jurisdiction clause. Moreover, many formalities will be required for the mutual recognition of judgements, with a risk for the enforcement of Britain judgements in the EU and vice versa, as foreign court could not be obliged to respect a judgement issued by a court of another country. These transformations will drive contractors to choose a litigation forum outside England.

Also the Rome I Regulation (No 593/2008) and Rome II Regulation (No 864/2007) on the law applicable to contractual and extra-contractual regulations will no longer apply and, if and until the UK will stipulate other agreements, consequent issues regard the law to apply at international cases will occur, except for the case the contractors have agreed a choice of law clause in their international commercial contracts.

The EU customs union, that makes the EU the largest trading block, not only represents the EU answer to dangerous goods, illegal traffic, dumping, terrorism and organised crime, protecting consumers and providing the EU Member States with rights, but it also abolishes all controls and customs tax between them, imposing to non-EU countries a common external tariff. One of the consequences of the custom Union is that all the countries within the EU and some countries outside of the EU negotiates as single entity.

As only EU Members constitute and make up the EU single market, Britain will clearly not continue to benefit from free entry into the EU's market. Consequently, financial firms and other companies will find many challenges to enter EU market channels, UK firms will become "third country firm" (TCFs) and would lose the advantage to passport their services into EU countries.
The limits to the free circulation of person itself would hit the services industry as well as the free movement of goods would damage export companies. Britain will be subjected to customs duties, border controls and strict customs procedures, with effects on the goods' price and othe business costs as well as on its VAT system, that will have to be reviewed. In fact, unless the UK decides to keep its VAT system aligned with the EU's, double taxations might occur in transactions between the UK and the EU Member States. Overall, the negative consequences would worsen with the length of time usually necessary to stipulate trade agreements.

Should the EU and Britain company law diverge, EU companies could be forced to revisit their structure, as different regulations would apply to UK or EU companies with subsidiaries respectively in the EU or in the UK. UK companies would no longer benefit from the abolition of withholding taxes on payments of dividends between associated companies of different Member States and from the elimination of double taxation for subsidiaries. Moreover, the European Companies, regulated by the European Company Statute, that allows a company to operate in different EU countries under a single statute, will cease to be an alternative.
If the UK will not issue a new regulation, there will be a regulatory gap as the UK has repealed the current Data Protection Act and a new EU regulation will be implemented in the next two years.
Many international companies have based offices or European headquarters in Britain for the main purpose to enter into the EU, hence, many of them will be forced to move in order to continue to provide services to their EU clients. Furthermore, in case the UK ceases to be an European Economic Area (EEA) Member State, cross border mergers with companies in the EEA could no longer be possible for UK companies. International mergers involving business supplying goods or services in the UK and in the EU would be subjected to a competition between theEU Commission and the UK's Competition and Markets Authority (CMA), and parallel investigations would occur, with consequent application of two different rules and procedures as well as a redoubling of sanctions. Lastly, UK exporters will not cease to be obliged to comply EU environmental andsafety standards to gain access into the EU market. With the possibility of Britain withdrawal, English law might cease to be the law contractors choose to govern their international commercial contracts. In fact, this choice is influenced by the country level of economic and political stability, its globalisation level, its importance in the financial and commercial landscape, its grade of legal certainty, and its business friendly approach.

Also pre-existing commercial contract are questioned and not only on the grounds of possible interpretation issues, but more importantly in case of impossibility to perform or fulfil the contract, and occurred lack of interest, consideration or profitability. In fact, if renegotiations are impossible due to the conflictual contractors' relationship, its considerable expenses, the risks, pound's fluctuation or not replaceable performance, the contractual parties, that might have relied on the pre-Brexit economic and juridical background, might assume that it was essential for the contract scope and that the contract is consequently frustrated. Therefore, the pre-existing contractual relationship could be exposed to the contract termination on the grounds of a material adverse change or force majeure clauses.

However, the possibility to terminate a contract will depend on its terms, external factors and facts of the case; yet a contractual irremediable frustration would be easier to invoke when the contract has the EU as its territorial scope, and in similar circumstances.

In the intellectual property rights field, although the laws are basically domestic laws and EU laws, such us the European Patent Convention (EPC), will continue to be applied, the UK exit from the EU would strike at the laws purpose by preventing an extended protection of these rights and a common enforcement by the European Union Trade Marks (EUTM) and the Registered Community Designs (RCD). In fact, a separate UK registration would be needed to cover the UK, and the rights will have to be registered in UK and in EU. Alternatively, they could be protected through an international registration, such as the one provided by the Hague system at the World Intellectual Property Organisation (WIPO). Nevertheless, these changes will particularly affect the protection of digital media works, whose protection require a high level of co-operation.

Direct impact of the UK's departure from the EU can be registered on consumers with reference to the on line commerce because of the regulations' divergences that will follow, to the roaming charges that will be based on the tariffs applied by the mobile operators, rather than regulation, on the flight prices. Some consequences there could also be in the data protection field, and for instance in the right to be forgotten. Moreover, in case the new UK data protection law will differ from the EU's, businesses could decide to move data to the UE.

Lastly, as it mostly derives from the EU legislation, also Employment law will be questioned with regard to the qualification's recognition, the guarantees in case of business transfer, working time, part time- fixed and fixed-term employee protection, pensions, discrimination, and so on. In fact, currently most of the above directives have already been implanted into British law, hence the question is what will happen to these rights once we left the EU. To get rid of these laws each law would need to be scrapped or changed individually, and this process could be timely. By leaving the EU it would mean the UK could not benefit from some of these rights in the future.

Although the outcome of Bexit will not be clear until a late phase of the process, it is already understood that the UK resolution to start a new approach towards immigration has no way to be conciliated with the EU fundamental principle of free movement of people in the EU area, since it is unencumbered and unconditional. Therefore, it is likely that the automatic right to travel, live and work freely will end, not only for Europeans wishing to move to the UK but also for Britons, that will no longer able to consider themselves EU citizens. This significant decision will have an impact on the future shape of Britons as a population but also on the framework of UK's future relationships with the EU. In fact, the choice to move towards a Free Trade Agreement system (FTA), the European Free Trade Association (EFTA) or to stay in the European Economic Area (EEA) will be largely influenced by the consequences that the model adopted might have on Britain's immigration control. On the other hand, the prediction that immigration will be stopped is unlikely, instead, it could only be controlled and driven. Therefore, the question actually is who could live in the UK in the future and who could stay after having already arrived.

In particular, a deal should be reached to regulate the condition of UK and EU migrants already living in a EU Member State, for whom reciprocal rights could be granted in order to guarantee the exercise of rights on which EU citizens have already relied. Consequently, the UK will have to consider that in response to its decisions, other countries would respond adopting the same approach with British living outside the UK. Moreover, a legitimate expectation to continue to enjoy rights previously granted could be recognised, and some limitation to UK immigration law could result under human rights law, both from the Court of Strasburg's jurisprudence and the European Convention on Human Rights, towards which the UK will be bound regardless of its EU exit (see Article 8 of the ECHR).

THE ALLIANCES RESHAPED

Among the alternatives that the UK might consider outside EU membership, the Norwegian model (European Economic Area or EEA) simply constitutes a softer solution that would allow the UK to enjoy the benefits of the EU's single market without full privileges and responsibilities of the EU membership. In fact, the EEA - that reunites the EU Member State and the three of the EFTA (European Free Trade Association) states (Iceland, Liechtenstein, Norway), and that consequentially requires the EFTA membership too - would not enable the UK to maintain the common external customs tariff, but it would guarantee internal free access to the EU single market and the passporting rights, with consequent free movement of goods, services, people and capital. Therefore, it would not allow the UK to achieve a control over immigration, and it would require the UK to comply with EU trade policy, EU laws and respect the decisions of the Court of Justice of the EU without the power to influence it and participate to the EU legislative process.

The FTA (Free Trade Agreement) model would simply consist of independent agreements with the single countries that, depending on negotiations, could allow the access to the EU market of goods and services.

Any alternative model is based on the positions enjoyed by Switzerland, Turkey or Canada. The Turkish Model would allow the UK to export goods within the EU without restrictions and to preserve the common external customs tariff. While the access to the EU market for services could be possible under negotiations, the free movement of people could be restricted. Moreover, the UK would not contribute to the EU budget but would lose its law making power within the EU.

The Swiss Model should be more flexible as the UK relationships with European and non-European countries would be based on bilateral agreements sector-based and independent FTAs with third countries as the UK would not be part of the EU customs union. However, for Switzerland migration constitutes a matter of debate, and it is possible that additional restrictions to the actual deals with the EU might occur in this matter.
The Canadian Model would not be determined for the UK, as it would eliminate the tariff barriers only between UK and Canada.

Where negotiations with the EU does not bring about any solution, and even if some separate deals with single EU Member States could be agreed, the UK would continue to the part of the World Trade Organization (WTO). This is the hypothesis of total breach with the EU, as a consequence, the four fundamental freedoms would end, import tariffs would be imposed, the General Agreement on Tariffs and Trade (GATT) as well as General Agreement on Trade in Services (GATS) would be applied, and the UK would be able to impose the WTO's principle of the most favoured nation. Consequently, the tariff applied by the EU to its "most favoured nation" outside the EU would have to be applied to the goods exported from the UK to the EU. Though, at the same time, Britain negotiation's chances would be limited by the EU disaccord to grant the UK concessions that, in application if the WTO agreement, should be extended also to the other WTO Members. Moreover, Britain will have to handle many limitations, such as the prohibition of government subsidies, protectionism's policies, it will have to follow WTO principles of non-discrimination, its market access could be restricted and UK business will be in a disadvantaged position in comparison with its EU competitors.

After leaving the biggest trade block in the world, the UK might look for other partners outside Europe. China has already expressed its concerns about the dangerous economic consequences of Brexit and, in contrast to the UK's strategies it has incited to follow co-operative strategies and unity in order to find solutions to the open issues together. It is significant that while China is opening his economy searching global partners, the UK's decision to leave the EU might result in a reversal from globalisation that furthermore affects China market's interest in the UK market. In fact, China interest for the UK derives from its strategic relationship with the West, and as a link to oppose a stronger answer to the USA economic supremacy. Since China and the EU are interested in opening a negotiation, after Brexit, the UK will have to rely on his own weaker diplomatic and economic strength to propose China a valid alternative to other partners. Nevertheless, it is likely that Britain will be forced to accept less favourable terms than might otherwise obtain staying in the EU as its exit from the EU creates obstacles for China's tourists, investors, and companies that would consider to move their European headquarters to other EU countries. Moreover, if Scotland and Ireland will obtain the independence English economy will be less attractive. Therefore, it is clear that if the UK and China would reach an agreement it would not be very advantageous for the UK.

After its withdrawal from the EU, the UK could also move forward to embracing the Commonwealth, as its relationships with Canada, Australia, New Zealand and India have been prevented by the EU membership.Nevertheless, the UK's trade with the Commonwealth would never resemble the volume of the EU's. Moreover, a hypothetical free trade agreement with Australia would be limited by the WTO rules on trade agreement. Lastly Australia might force the UK to revisit the strict visa requirements that Australian citizens currently have to comply with to enter UK's borders.

Britain divorce from the EU would also exclude the UK from the Comprehensive Economic and Trade Agreement (CETA) stipulated between the EU and Canada, and the negotiations with the USA will be influenced by the UK disfavour for the Transatlantic trade and Investment Partnership (TTIP) between the EU and the US.

From a different prospective, Australian business will be damaged after Britain leaves the EU, as they could lose their passporting rights with a consequent relocation of their operations. Similarly for India, that is already moving to build trade negotiations with Netherlands, France and Germany. Therefore, Australia and India could find the EU more attractive than the UK and, exactly like China, they could try to benefit from the UK isolation acquiring more market positions. For instance, Australian's new visa proposal aims to attract specialist foreign workers that could enhance Australian economy and make it more productive and competitive.

Conclusion

In conclusion, while the EU and countries like China, Canada, Australia and India are looking for strategies of international economic and trade integration, the UK withdrawal from the EU limits its global connections, strike its economy, and rather than facilitating its international strength, exposes Britain to a subjection from more powerful countries, including the EU.
Should Britain leave the EU in fact and form, in the years to come it is likely to create legislative competition between the EU and the UK aimed to attract investments while, as in Australia and in Canada, the adoption of a strict immigration system, will not guarantee a decrease in the migrants' flow, that could conversely increase in case of partnership with China and Australia.

Eliana Roccatani
06.07.16

[1] China-History of WW2, 'When the KMT exists, the nation exists, I shall exist; when the KMT vanishes, the nation vanishes, I shall vanish too', http://www.history.co.uk/study-topics/history-of-ww2/china (accessed 22nd October 2016)
[2] BBC News, Carrie Gracie, Could Brexit mean a new UK-China relationship? http://www.bbc.co.uk/news/world-asia-china-36966594 (accessed October 18th 2016)

[3] BBC News, Carrie Gracie, Could Brexit mean a new UK-China relationship? http://www.bbc.co.uk/news/world-asia-china-36966594 (accessed October 18th 2016)
[4] Gov.uk, Department for International trade, Office of Financial Sanctions Implementation, Exporting to China, https://www.gov.uk/government/publications/exporting-to-china (accessed October 18th 2016)

UK-CHINA RELATIONSHIPS
ECONOMIC DEVELOPMENT AND COMMERCIALISATION

ABSTRACT: *The British and Chinese have collaborated in numerous ways and on a variety of causes. The two nations strive to reach their full development potential and have supported each other to help achieve their economic goals. The article discusses a range of current hot topics from the Hinkley Point C project, The Newton Fund, as well as the present position involving trade and the demand for exports and imports between two great nations. The research findings all prompt the message that the bond between China and the UK is leading them both towards commercial success as they are taking advantage of each other's specialties and power to reinforce their position on the global market. A clear discovery made through the research is that whilst China depends on the UK for its world-class financial and professional services, the UK heavily relies on China to fund it on projects they are working together, in order to compete on a large scale.*

The UK-China bond is strengthening like never before. The British-Chinese relations have evolved with time as The UK and the People's Republic of China were once on the opposing sides of the Cold War, while the Republic of China and the UK were allies during World War II. According to research by an academic in the early 1950s British companies were among the first to trade with communist China, highlighting the strong bond that both nations share from the beginning of their commercial relationship.1 Therefore it is not surprising that one of the countries taking advantage of the fall in the value of the sterling is China and in return they are showing a greater interest in helping the UK pass this difficult phase with ease.

According to a BBC interview, a 34-year-old Shanghainese MBA student based in the UK believes that small British enterprises have the potential to make it big in China. The MBA student believes that digital platforms provide a great platform for occupational training courses. Whilst China has the technology, it falls behind on content. Thus, the UK-China growth bond would allow both economies to expand not only in terms of economic growth but also ensure greater human capital as the joining of the two great nations would mean improved efficiency and better quality work done by highly skilled workers. Online operating UK businesses could benefit from this initiative as it could open doors for business expansion by partnering with workers from China who are keen to work on similar causes and could provide up-to-date technology for the organisation to use to not only help UK based companies but also reach out to Chinese businesses to develop a wider client market and provide the Chinese with something they lack whilst benefiting from a service provided by them.[2]

This section discusses the implications Brexit has had upon Britain's export/ import market, the demand for property in the UK and how there has been an increase in the demand to use Britain's professional services after the devaluation of the pound. The fall in the value of the pound, although a concern for the domestic market with a general rise in inflation, has had the opposing effect on the foreign market. A report by the BBC was quoted as saying that "China has never been this rich and London has never been this affordable".[3] The devaluation of the sterling has meant that UK imports have suddenly become expensive in comparison to exports, which have become the more affordable option. This may be of advantage to homegrown businesses, which face less competition from overseas companies due to the fall in the value of the pound. This will lead to a rise in consumption leading to an increase in aggregate demand as more money flows into the economy than out. The Gov.uk website sets out clearly the extent of the arms embargo on China. An arms embargo is a ban on the export of 'arms and related material' - i.e. military ammunition, weapons and goods - which may be imposed by a number of organisations, including the UN, the EU or the Organisation for Security and Co-operation in Europe". "Most services can be exported or imported freely", though there are some restrictions, which must be checked before one considers trading goods with China.[4] There are different restrictions posed on different countries, so what the UK might be allowed to export to one country it may not be the same for another country.

The rise in the demand for exports mean that demand for British legal, professional and business services may also be higher as domestic consumers may seek advice before investing in this period of uncertainty. As British services would deem to be that bit cheaper, demand to use services provided by UK's biggest law firms and financial services may also increase. The department for international Trade, in a report by Gov.co.uk, states that the top UK exports to China include the Jaguar Land Rover (JLR), medicinal and pharmaceutical products, power generating machinery and equipment as well as general industry machinery and components. Hence, both UK and China have a comparative advantage over different categories of products and services, which they supply to the other in exchange of a mutual benefit. The act of providing goods and services outside of the national market is a great way for companies and organisations to showcase their talent as well as to increase commercialisation by raising brand awareness and gaining access to customers on a global scale. There are legal implications one must comply with before proceeding to provide its services to foreign businesses. According to Gov.uk if you supply a service in a foreign country, you must conform to local regulations. For example, it might be illegal for you to provide legal or financial advice unless you have certain professional qualifications. Before selling your service overseas, you may want to take action to protect your intellectual property there. UK trademark registration

5 Gov.uk, Department for International Trade, Exporting to China, https://www.gov.uk/government/pubications/exporting-to-china (accessed October 18th 2016)
6 The Independent, Hamish McRae, Interest rates will fall tomorrow after Brexit –here's what that means for your mortgage and your savings, http://www.independent.co.uk/voices/brexit-interest-rates-fall-what-does-that-mean-for-you-housing-a7134376.html (accessed October 19th 2016)
7 The Telegraph, Isabelle Fraser, Huge spike in Chinese property investors' interest in the UK post Brexit, http://www.telegraph.co.uk/property/house-prices/huge-spike-in-chinese-property-investors-interest-in-the-uk-post/ (accessed October 19th 2016)
8 Gov.uk, Sadiq Khan approves plans for up to 10,000 new homes in Barking, https://www.london.gov.uk/press-releases/mayoral/mayor-approves-up-to-1000-new-homes-in-barking (accessed on 19th October 2016)

9 Gov.uk, Department for Transport, Lord Ahmad of Wimbledon and the Rt Hon Chris Grayling MP, UK and China to increase flight between both countries in boost for Global Britain, https://www.gov.uk/government/news/uk-and-china-to-increase flights-between-both-countries-in-boost-for-global-britain-
10 The Guardian, Gwyn Topham, Deal to double flights between UK and China takes off, https://www.theguardian.com/business/2016/oct/11/deal-to-double-flights-between-uk-and-china-takes-off (accessed 20th October 2016)
11 BBC News, John Moylan, Hinkley Point: What is it and why is it important? (accessed 21st October 2016)
12 EDF Energy website, Hinkley Point C is more than just a power station, https://www.edfenergy.com/energy/nuclear-new-build-projects/hinkley-point-c (accessed on 20th October 2016)
13 The Lawyer, Jonathon Manning, Ashurst, Clifford Chance and HSF complete Hinkley Point deal, https://www.thelawyer.com/issues/online-september-2016/ashurst-clifford-chance-hsf-complete-hinkley-point-deal/ (accessed on 21st October 2016)

MARYAM ASIF

and patents only cover the UK, thus its important for UK companies to take appropriate steps to protect intellectual property when considering working with businesses overseas. Copyright material is automatically protected in many countries.5

Surprisingly, foreign investors are also keener about investing in the UK market. Foreign investors from the likes of China see this as their opportunity to buy assets and properties in London whilst domestic citizens struggle to buy properties due to the devaluation of the pound. To combat the rise in inflation The Bank of England's monetary policy committee has reduced interest rates to an all time low to 0.25%.6 However, despite the low interest rates', securing a mortgage has become even more difficult as lenders are less willing to give away mortgage deals easily. Instead, house prices have risen due to an increased demand to buy UK property after the fall in interest rates. Whereas, a report by the Telegraph claims that "Juwai, China's biggest international property portal, said the number of Chinese buyer inquiries into UK property in the month after Britain voted to leave the European Union was 40pc higher than average". The report also highlights that "according to CBRE, Chinese buyers make up 5 per cent of owners of residential property in London's West End, and the UK is the most popular place to buy property in Europe for Chinese investors". This outlines how cheaper the capital has become after the drop in the value of the sterling against the dollar and the Yuan, making it a much more affordable place to invest in for the Chinese affluent.7

The implications Brexit will have on the UK are still yet to be seen but so far it seems as if this has made the UK appear more welcoming than ever. The falling pound has benefitted local businesses, as they will witness an upsurge in the demand for their goods and services leading to a surplus on the current account. An increase in foreign direct investment from countries such as China demonstrates that the UK can still compete on a global level despite losing membership of the EU. Alternatively, rise in the number of Chinese purchasing property in London provides an incentive to improve relations with the Chinese economy and to use this as an excuse to boost business opportunities with the Chinese. The Gov.uk also pinpoints that the new elected mayor of London, Sadiq Khan is working to combat the housing issue faced by many Brits by possibly creating laws ensuring that Londoners are put first and will use his mayoral powers to prevent thousands of homes in new developments being sold off-plan to overseas investors each year. The mayor aims to support housing associations in their plans to ensure a minimum of 80,000 new homes built a year and has approved "plans for up to 10,000 new homes in Barking".8 Thus, problems faced by the British in buying residential property in the current economic climate should be combatted soon.

UK-CHINA'S PLANS FOR INVESTING IN THE FUTURE

The current news making headlines concerns the deal made on 11th October 2016 between UK and China to increase the number of flights between themselves by more than double. According to Gov.uk "Under the new deal passenger flights can now increase from the current maximum of 40 per week for each nation to up to 100. There will be no limit on the number of all-cargo services, creating new opportunities for UK trade and businesses".9 This move has been taken to boost tourism between the two nations as a means of increasing economic growth through increased expenditure by foreigners as well as to create awareness of similarities and differences in culture both nations share to strengthen not only their commercial relationship but cultural relations. A source from the guardian newspaper states "visits from China increased by 46% from 2014 to 2015, with Chinese tourists spending £586m". Also, increasing the number of flights between the two nations would mean travellers would have more control over when they go and how long they stay in the other country. This in return may give rise to an increase in the number of jobs taken by the British in China or vice versa. It has also been highlighted that "up to 100 passenger flights a week each way will now be allowed, instead of 40, with no limit on cargo flights. Restrictions on destinations within each country have also been lifted". Having access to a range of destinations across the countries may also provide an incentive for job seeker's to travel between the two nations in search of jobs and will also mean that the Chinese may be more willing to take on British citizens for jobs considering the growing relation between the nations. Earlier this year, direct flights between Manchester airport and Beijing airport have also been raised to boost growth in other cities outside of the capital too. It has been reported that these flights have had a success with the flights between Manchester and Beijing operating at 90% during the summer. Thus, the British aviation minister is keen on signing a deal to increase direct flights to other Chinese cities too. However, with this comes a risk, as previously the decision for additional flights between the UK and China wasn't much of a success as it was expected to be. This is suggestive by when "British Airways launched a daily route to the Chinese industrial Centre of Chengdu from Heathrow in September 2012 but reduced the frequency in 2014 after disappointing ticket sales" as asserted by the Guardian. Thus, the decision to lift the ban on the number of flights operating between different cities in UK and China is one we would have to wait to see the effects off with a positive approach that this would strengthen the UK's relation with China and make the Chinese even more open to trading with the UK and subsequently helping us grow even stronger as a country.10

EDF Energy plans on building the first new nuclear power station in the UK for a generation. The project is called Hinkley Point C and would be based in Somerset. The project is said to be able to generate electricity by 2025 and according to a report by the BBC, Hinkley Point C will generate 7% of the UK's electricity when all other nuclear power stations have closed down. The project is said to cost £18 billion and will be financed with help from EDF, with the Chinese government agreeing to pay a third of the total cost. Thus, giving the UK government the benefit of not having the burden of paying for the construction of the new power station. After many considerations regarding the UK-China Hinkley Point-c project, the new prime minister Theresa May has signalled for the new power station to be built in Somerset "backed by France's EDF energy company and one of China's main nuclear suppliers". Initially there were concerns over the effect this would have over the UK's national security as the project would give the Chinese the allowance to involve themselves in the decision making for future UK projects.11 According to information taken from the EDF Energy webpage, the project will provide a great deal of opportunities as it will create over 25,000 new employment opportunities, providing opportunities to national and international individuals and businesses. The opportunities are said to benefit those of the following disciplines: construction, civil engineering, electrical installation, hospitality, catering, logistics, security, site services, support roles and others over the coming years. When complete, Hinkley Point C will also have an expected workforce of nearly a thousand people who will be needed to run the Power station throughout its 60-year operation".12 Ashurst, Clifford Chance and Herbert Smith Freehills (HSF) have all advised on the Hinkley Point C nuclear power station deal according to the Lawyer. The Silver circle firm "Ashurst is also advising CGN on establishing a broader UK partnership for the development of new nuclear power stations at Sizewell in Suffolk and Bradwell in Essex. The firm is also involved in a joint venture designed to bring Chinese nuclear technology to the UK for future projects".13

Another interesting subject worth mentioning is the Newton fund. The UK and China are collaborating on a number of research calls under the Newton Fund. The Newton Fund is managed by UK's Department of Business, Energy and Industrial Strategy and the Ministry of Science and Technology in China. The British Council describes the Newton Fund as an organisation aimed at promoting "economic development and welfare in partnering countries, through science and innovation partnerships". It was launched in 2014, originally granted £75 million expenditure every year for five consecutive years. However, now the fund is receiving double the amount of investment from £75 million to £150 million by 2021. The British Council and the National Natural Science Foundation of China (NSFC) are taking applications for grants to run workshops for UK and Chinese researchers, as part of Researcher Links. Researcher Links Workshops bring together early-career researchers from the UK and China to allow them to form international connections that can improve the quality of their research.16 The only way both countries can move forward is by ensuring their youth are equipped with the skills to be able to compete with other economies. Thus, providing quality training through workshops and encouraging university students to build connections and to take an interest in research opportunities will help UK and China move a step closer to fulfilling their aims. According to reports by Gov.co.uk, Jo Johnson, the UK's minister for universities, science, research and innovation, has confirmed that since 2014, the UK-China innovation and partnership fund, also known as the Newton fund, has "committed 200 million across 37 countries and supported over 200 partnerships". The British Council and China Scholarship Council have launched the PhD placement scheme. An article by the Newton Fund claims that this scheme provides sponsorships for UK and Chinese PhD students and their supervisors to spend a period of study of 3 to 12 months (for PhD students) and up to 3 months (for supervisors) at higher education institutions in China or the UK. The focus is on research areas including: health and life sciences, food and water security, environmental technologies, energy, urbanisation, education and creative economy. This provides a platform for UK and Chinese PhD students to collaborate and research in their chosen area together to come up with solutions to problems relating to the sciences or to work together to advance technology in the ever-changing world. Through the Newton fund both countries are partnering together to work on causes such as sustainable agriculture and smart cities, to improve the lives of millions across the globe. In this way the British and Chinese can work together to commercialise new products and technologies in the market by collaborating on projects and using each other's research to find solutions to problems occurring all over the globe.17

To wrap up, the effect commercialisation would have on the UK and China is of great importance. Whilst this will mean greater competition through trading it will also open doors through the development of research, science and technology- elements that are essential for moving forward. UK businesses and professional services would find it more accessible to work and expand in China after the relaxation of EU laws that Britain had to follow and the lift on the number of flights operating between UK and China. This will open doors to a range of opportunities as both countries' head towards increasing their global presence through projects such as Hinkley Point C and the Newton Fund.

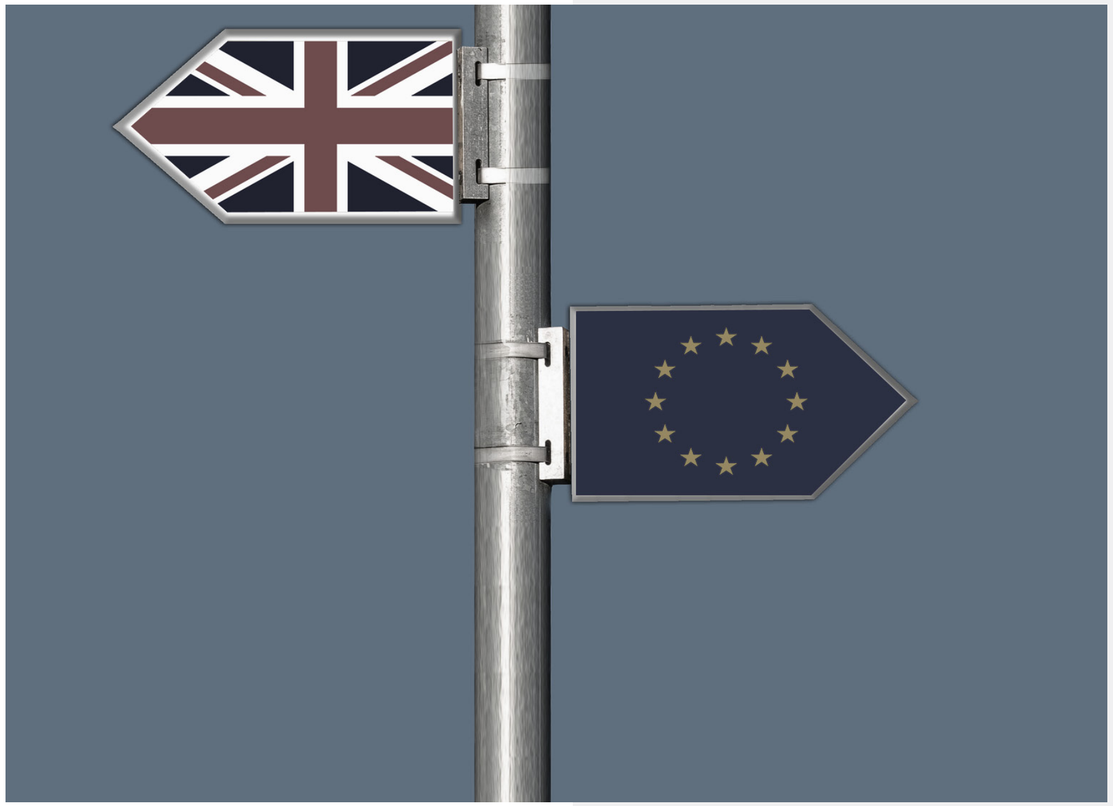
China's involvement in the project would mean it would have a 33% stake in Hinkley Point C. However, in a country such as the UK where there is a huge current account deficit, investment from abroad is something we cannot afford to loose. A deficit on the current account means that we have more money flowing out of the economy in the form of imports, than money coming in. A report by the guardian claims the "UK's current account deficit was 6.9% of GDP in the first three months of the year"14. Therefore, to fill this gap we depend on more foreign direct investment to ensure a positive balance of payment. Thus, investment from China will help the UK to offset the deficit with a surplus in the capital account. This provides an incentive for the UK to increase growth by agreeing for China to invest in their project and have a future say in any future decisions made by the UK. With economic growth there would possibly come an increase in trust between the two nations to use each other's platform their showcase their services and power, whether that be in the form of money or skill.

Furthermore, Chancellor Phillip Hammond has begun discussions with China on an ambitious free-trade deal that would see greater access for major Chinese businesses and banks to the UK economy. The impact globalisation would have from this economic relationship would also lead to their being more competition in the UK market, with competition arising not only against domestic companies but also against those from China as cheap manufactured goods would enter the UK more easily. Although businesses may struggle for customers, it will no doubt be a win-win situation for customers. Additionally, in return for greater access to the UK for its manufactured products and investments, China would cut down or limit barriers for British service industries such as banking and insurance. This will help increase commercialisation as it will give scope for British firms to have greater access and presence in China.15

THE COMPLIANCE OF COMPETITION LAW__

ABSTRACT: competition policy are government policies aimed to prevent and reduce the abuse of monopoly power and to build a free market in which every operator has the same access despite its dimensions, economic or market power, and presence in the market. To regulate the dynamics for a fair market, competition law gives a set of rules that promotes or seeks to maintain market competition by regulating anti-competitive conduct committed by companies18.

The principles of competition law, consisting in achieving free movement of goods and services in a context of fair competition and free market, prohibit agreements or practices between companies directed to or with the effect to restrict free trading and competition between business. This includes the repression of free trade caused by anti-competitive agreements, such as cartels, but it could also bring to ban abusive behaviours by a firm dominating a market, or anti-competitive practices that tend to lead to such a dominant position. Practices controlled in this way may include predatory pricing, tying, and many others, such as the mergers and acquisitions of large corporations, including some joint ventures. Transactions that are considered to threaten the competitive process can be prohibited altogether, or approved subject to "remedies" such as an obligation to divest part of the merged business or to offer licenses or access to facilities to enable other businesses to continue competing19.



The benefits from competition law are numerous, and they concern not only small and less competitive companies, but also consumers through encouraging enterprise, innovation, efficiency and a widening of choice, by enabling consumers to buy goods and services at a good price and contributing to national competitiveness20. Competition law regulation derives from the EU legislation. The 1998 competition Act aimed to bring the UK in line with EU competition policy21. The key pillars that are apart of competition policy in the UK and in the European Union involve the elimination of agreements that restrict competition, including price-fixing, and the prohibition of the abuse of a dominant position, along with Market liberalization, which involves introducing competition in previously monopolistic sectors such as energy supply, retail banking and postal services. Competition policy also analyses state aid measures, such as subsidies to flag air carriers, to ensure that such measures do not distort the level of competition in the Single Market. Lastly, there are investigations of mergers and take-overs between firms (e.g. a merger between two large groups which would result in them dominating the market) conducted by mainly the competition and markets authority (CMA). The CMA is the principal competition authority. It took over its predecessors, the Office of Fair Trading (OFT) and the Competition Commission (CC) causing consultation on competition reform. The CMA also has power to stop a proposed merger where there are concerns the merger may be anti-competitive, and to consider with the companies involved whether the merger should be allowed to proceed. The European Commission has exclusive powers to act on certain large mergers with a European dimension and powers to investigate anti-competitive practices affecting trade between members of the European Union 22. Article 101 of TFEU restricts agreements that are not aligned with EU policy. For an infringement of Article 101(1) to be established, an agreement between two or more undertakings has to have as its object or effect the prevention, restriction or distortion of competition and appreciable effect on competition and on trade between Member States. Article 101(1) requires that the effect on competition should be appreciable.

The Commission recognises that many agreements between companies with small market shares or which are small in size are unlikely to have any adverse appreciable effect on competition. Such agreements will not infringe Article 101(1), and even if an agreement is caught by Article 101(1), it may benefit from an exemption under Article 101(3). The Article 101(3) criteria allow an agreement to stay in force when it contributes to improving production, promotes economic progress, allows consumers a fair share of the resulting benefit, and does not eliminate competition. Companies must assess for themselves whether an agreement meets the criteria for exemption and, if these criteria are all met, the agreement may be exempt from the application of Article 101(1). However, there is greater legal certainty imposed23. Article 102 of TFEU stops businesses at a dominant position from abusing it. It only applies where an undertaking has a "dominant position", which effectively means market power. To determine whether or not this is the case it is necessary to examine the relevant market, the undertaking's position in that market, and whether the dominant position is in a "substantial part of the common market". Relevant market is defined in terms of the product market, geographic market, and, occasionally, temporal market. The main purpose of market definition is to "identify in a systematic way the competitive constraints that the undertakings involved face"24. These constraints include demand substitutability, supply substitutability and potential competition. Article 102 includes a non-exhaustive list of examples of abusive conduct: directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions, limiting production, and so on. Where breaches have been established, the Commission may impose fines of up to 10% of the total worldwide turnover in the preceding business year. The European Commission does not have the power to fine individuals or send them to jail. Some Member States do however have such powers, e.g. the UK. Decisions by the European Commission may be appealed to the General Court (EGC). The Court has the power to annul a Commission decision, in whole or in part, and may reduce (or even increase) the level of the fine. It is possible to appeal a decision of the General Court, although only on a point of law, to the European Court of Justice25.

The case about the Mercedes- Benz26 shows that breaching competition law is economically risky. In fact, in 2013, Mercedes-Benz and five of its commercial vehicle dealers were fined over £2.8 million for unlawful cartel activity. Specifically, two dealers agreed that they would not approach customers from each other's area. The fines imposed represented up to 18 months' profit after tax of the businesses involved. Therefore, failure to comply can have serious implications for a business, and it may expose an individual to the risk of criminal prosecution, which includes prison sentences, disqualification of directors, along with fines. Moreover, more significant restrictions in agreements that breach competition law may be unenforceable.

The main principles of competition law which affect trade within the UK and EU can be found in Chapters 1 and 2 of the Competition Act 1998 and Articles 101 and 102 of the Treaty on the Functioning of the European Union. Per these regulations, there are some types of anti-competitive behaviour for example: 1) Cartels

A "cartel" describes any organisation or arrangement between at least two competitors that is designed to reduce competition between them and to increase prices or profitability beyond the level that could be achieved competitively. The most common practices may consist in price fixing, market sharing or information exchange27. Any understanding or agreement about price levels can constitute price fixing. Unlawful price fixing includes co-ordination of the timing of price increases. Market sharing may involve an agreement to allocate customers or sales territories to individual cartel members, or not to go after another's customers. Also, information exchange may constitute cartel when an undertaking agrees to share confidential or commercially sensitive information with competitors, such as information about prices, customers or sales information, since it could lead to co-ordinated commercial behaviour which affects competition by cutting the other competitors off the market and directly impact on consumers. On the other hand, if the information provided is historical, and therefore it has no value in predicting future commercial behaviours, it is permissible.

There are also other forms of co-operation that can be prohibited if the objective or effect is to reduce competition. However, they may be permissible if, for example, there are customer benefits that outweigh any anti-competitive effect in the form of Joint purchasing agreements, Specialisation agreements, Joint advertising and Joint sales.

Dominant position, as discussed earlier in article 102, can lead to breach if this position is abused. A business is considered dominant due to its size, its power over a period and market share. If a business is in a dominant position it will be regarded as abusing that position if it engages in conduct which exploits

How a business can comply with competition law?
To monitor and limit the risks of breaching competition law it is important to carefully analyse the company's business in terms of contact with competitors to identify areas where the company might risk being in breach. Next, the seriousness of each of the risks identified should be assessed, e.g. categorising which of your staff are working in a high-risk area of the business such as, marketing and sales managers, contract control managers. Lastly, policies, procedures and training could be set up to reduce the chances of identified risk occurring. This could involve establishing an employee competition code of conduct accompanied by staff training on the application of the code. Businesses must regularly review the steps above and the company's commitment to compliance. The Competition and Markets Authority (CMA) expects directors to be able to identify potential risks of breaching competition law. These may include getting the company's solicitors to check important contracts before they are signed to see if their terms follow competition law.

THE IMPACT OF BREXIT ON COMPETITION LAW

The territorial extension of the agreements between undertakings or the territorial impact of their commercial behaviours is also important for the application of both UK and EU regulations. If we consider an agency, that is a fiduciary relationship based on consent and authority, one party (the principal) gives authority to another party (the agent) to create a legal relationship between the principal and a third party. When considering entering an agency relationship, particularly when one of the parties is overseas, the first consideration is to look at where the parties are and where the contract is to be performed. For agreements concerning trade within the UK only, the Competition Act 1998 may apply, which basically prohibits agreements which influence trade within the UK or which have as their distortion of competition within the UK; would result in abuse of a dominant market position which has or is capable of influencing trade within the UK.

The UK legislation is based closely on Article 101 and Article 102 of the Treaty on the Functioning of the European Union 2012/C 326/01, but in relation to trade between EU Member States. Therefore, the 19 behaviour must have effect on competition and effects on trade between Members States. When it does not occur, the national competition rules are applied. Agency agreements are generally exempt from the provisions of both the Act and the Treaty, as they fall within the “vertical agreement” exclusion. In EU terms this is known as a block exemption. Under EU law, these block exemptions allow agreements if certain conditions are met, regardless of the effect on competition in the relevant market, discussed earlier (see article 101.3). If no block exemption applies, then the Article 101 prohibition applies and the agreement is automatically void. In the case of what is a “genuine” agency agreement, where the agent bears no commercial risk, the competition rules do not apply and the parties are more free to decide prices, territory limits and customers. The following restrictions on an agent will generally not be anti-competitive: limits on the agent’s territory; limits on the customers to whom the agent may sell; the price at which the agent must sell or purchase goods or service; and exclusive agency provisions during the term of the agreement28.

18 COMP, D. (2012, April 16). What is competition policy? – European commission. Retrieved October 14, 2016, from European commission, http://ec.europa.eu/competition/consumers/what_en.html
19 A. P. Dash, Mergers and Acquisitions (Krishan Makhijani,) p34
20 The purpose of competition policy - the importance of competition policy - office of fair trading. (1995). Retrieved October 6, 2016, from Business case studies, http://businesscasestudies.co.uk/office-of-fair-trading/the-importance-of-competition-policy/the-purpose-of-competition-policy.html#axzz4N4m3rwyj
21 Economics Help. (2015). UK competition policy. Retrieved October 4, 2016, from Economics Help, http://www.economicshelp.org/microessays/competition/

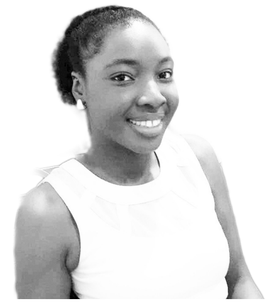
22 Government. (2012, December 21). Competitive markets and anti-competitive activity. Retrieved October 7, 2016, from GOV.UK, https://www.gov.uk/government/publications/competitive-markets-and-anti-competitive-activity/competitive-markets-and-anti-competitive-activity
23 Field Fisher Waterhouse LLP. (2010, January). EU Competition Law. Retrieved October 2, 2016, from fieldfisher.com, http://www.fieldfisher.com/pdf/EU-competition-law-articles-101-102.pdf
24 Rhona Smith, Core EU Legislation 2015-16 (Palgrave, United Kingdom), p165
25 Field Fisher Waterhouse LLP. (2010, January). EU Competition Law. Retrieved October 2, 2016, from fieldfisher.com, http://www.fieldfisher.com/pdf/EU-competition-law-articles-101-102.pdf
26 Competiton and Markets Auhority , ‘Competition law case studies ‘ (2015) <https://www.gov.uk/government/case-studies/competition-law-case-studies> accessed 10 September 2016

In terms of substance UK competition law within the EU system will not change much. Even if Articles 101 and 102 TFEU will no longer be applicable to the UK, EU competition law enforcement and existing EU case law will continue playing a very influential role in the way UK competition law is applied by the CMA and UK courts. Nevertheless, the CMA and the UK courts will no longer be bound by the European Court’s case law and will not be subject to Article 3 of Regulation 1/2003, which currently provides that what is permitted under EU competition law cannot be prohibited under national competition law. There will be legislative accommodations, and further legislative accommodations may be necessary. For example, a provision that would have to be revisited is s. 60, which is a “convergence clause” ensuring that the application of UK competition law should be compatible with the application of EU competition law by the Commission and by the European Courts29.

To conclude, the risks associated with being a party to an anti-competitive agreement or abusing a dominant position are serious. This is a key deterrent for businesses as it is major disruption and damage to a company’s reputation which arise from lengthy investigations or subsequent litigation from customers, competitors and consumers. The advice to give a company to comply with these laws is to devise and actively implement a competition compliance policy that is specifically tailored to that company. This does two major things, minimises the risk of being non-compliant in the first place, and if a company is investigated for anti-competitive behaviour, evidence of a competition compliance policy may be considered by the CMA and European Commission, and could lead to a reduction in fine.

27 Office of Fair Trading , ‘A quick guide to competition and consumer protection laws that affect your business’ (2007) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284428/oft911.pdf> accessed 9 September 2016

28 Stephanie Honnefelder, ‘Competition policy ‘ (2016) <http://www.europarl.europa.eu/ftu/pdf/en/FTU_3.2.1.pdf> accessed 17 September 2016
29 Assimakis Komninos, ‘Brexit and Competition law ‘ (Blog 2016) <http://kluwercompetitionlawblog.com/2016/05/20/brexit-and-competition-law/> accessed 13 September 2016



DORIS EMENCHETA

ENVIRONMENTAL LAW AND COMPANIES
CAN YOU BE GREEN AND PROFITABLE?

Our sources of environmental law comes from International law, the EU and national law. A significant proportion of environmental law comes from the EU which is directly applicable or implemented through national legislation. Nevertheless, that is not to say that there are no national laws dealing with environmental issues. The Environmental Protection Act 1990, Environmental Act 1995 and more. Although environmental law regulations are decentralised, in other words, local authorities have huge amounts of discretion in how to apply environmental law. There are key bodies that deal with environmental law such as The Department of Environment, Food, and Rural Affairs (DEFRA), Parliamentary select committees – scrutiny of central government and Advisory bodies e.g. The Royal Commission on Environmental Pollution (RCEP).

Companies need to know what their business does and how they could affect the environment, subsequently it should then look at the relevant laws that they need to apply to their business. Under the Climate Change Act, UK-listed companies have a duty to incorporate carbon emissions reporting in their annual company reports from September 2013.
This is in the hopes that public perception will influence the decisions of companies, to put environmental concern first. Another law is water offsetting. This is where companies commit to water reduction programmes and in the interim acquire water allowances to offset their consumption. Placing monetary value on key environmental issues, is an increasing trend that hopes to see companies taking environmental issue more seriously.

If companies fail to follow environmental legislation this could result in massive fine. The Sentencing Council's "Environmental Offences Definitive Guideline" (the Sentencing Guideline) allows courts to identify how much to fine a company if they are in breach of their environmental obligations. Since 1 July 2014 there has been a higher fines for environment offences. This new guideline introduces a 12-step framework for the courts to follow when deciding upon sentences for environmental crime. For larger companies with turnovers more than £50 million, the guideline allows the court to go outside their recommendations so that the company receives a more proportionate sentence. The court also has to make sure that a fine imposed on an organisation must be "sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to improve regulatory compliance". This stricter approach is evident in R v Thames Water Utilities Ltd.33 In this case Thames Water's pumping stations failed due to becoming clogged with discarded items. As such, untreated sewage was discharged directly into a brook which flows through National Trust land in an Area of Outstanding Natural Beauty. The company failed to respond to various alarms warning them of a pump failure. The escaped sewage only came to light after a report was made to the National Trust by a member of the public. A significant clean-up operation was needed. As such, the company was sentenced to a fine of £250,000 and was ordered to pay nearly £7,000 in costs. Thames Water, although having pleaded guilty, then appealed against the size of this fine. But the Court of Appeal was unsympathetic and stated that the fine imposed was "lenient.

BREXIT AND ENVIRONMENTAL LEGISLATION

Over 70% of the UK's environmental law comes from the EU but after the recent Brexit vote and the Government deciding to trigger Article 50 at the end of March 2017, the question is what will happen to environmental law regulations? Law which implements EU Directives relating to waste, energy, water, manufacturing and mining, and public access to environmental information and the requirement for comprehensive Environmental Impact Assessments (EIA) on the development of large or environmentally significant facilities derives from an EU Directive on EIA will be implemented into UK law.

These regimes are already administered and enforced by UK based bodies (e.g. the UK Environment Agency and/or Local Planning Authorities), so the conversion into UK law should be relatively straightforward. This is in step with what the Prime Minister has said in her creation of the 'Great Repeal Act' which would transpose as much existing EU law as possible into UK law upon exit.

However problems arise in areas of democratic accountability. For these laws to be implemented in UK law, quickly and efficiently the executive branch of government will have to have increased powers to pass and amend legislation without subjecting it to the full scrutiny of parliament.

"WITHOUT AN INDEPENDENT, INSTITUTIONAL BODY WITH EQUIVALENT MONITORING CAPABILITIES AND MEANS OF RECOURSE, IT IS LIKELY THAT ENVIRONMENTAL LAWS WILL NOT BE TAKEN SERIOUSLY"

This could lead to swathes of environmental legislation either being watered down until they are meaningless or they may not be transposed at all. This is more than likely in Theresa's May government as many of them believe that having a stronger economy is more important than the environment and others have called the EU nature protections at 'spirit crushing.' The next step for businesses is to make sure that there lawyers are up to speed with upcoming new environmental laws that may be imposed upon them. As of right now, companies should follow the laws on environment that exist now. But they should also keep in mind that these laws can change and there may be new obligations. Whether this will be to stricter or not depends on the type of deals the current government can get.

Furthermore, a lot of the UK's environmental law is enforced by the EU, with heaving sanctions and fines. Without an independent, institutional body with equivalent monitoring capabilities and means of recourse, it is likely that environmental laws will not be taken seriously. Therefore, there needs to be rethink in how the UK wants to implement their laws, decentralisation may not be the best or effective way for this to occur. There are also huge amounts of law that is not readily transposable, One such law is the EU chemical regulation which is constantly being updates with new chemicals that are banned.

Again, would the UK make its own list or would it mirror the actions of the EU. If the latter, then what would the UK have in what chemicals should be banned. Lastly, on an international level, environmental effects are transboundary. It is better for the UK to work with everyone than on its own to mitigate the effect of pollution.

WHAT DOES BREXIT MEAN FOR BUSINESSES?

The next step for businesses is to make sure that there lawyers are up to speed with upcoming new environmental laws that may be imposed upon them. As of right now, companies should follow the laws on environment that exist now. But they should also keep in mind that these laws can change and there may be new obligations. Whether this will be to stricter or not depends on the type of deals the current government can get.

[2015] EWC Crim 960
Protecting Our Wildlife And Environment Should Be Key To Brexit Plan (Blue & Green Tomorrow, 30th September 2016) <http://blueandgreentomorrow.com/2016/09/30/protecting-wildlife-environment-key-brexit-plan/> accessed 22 October 2016

Brexit and UK Environmental Law - October update (Lexology, 14 October 2016) <http://www.lexology.com/library/detail.aspx?g=ba300fb5-401f-4829-b49e-90f63b5a8ad8> accessed 22 October 2016

What does the Great Repeal Act mean for our environment? (businessGreen, 19 October 2016) <http://www.businessgreen.com/bg/opinion/2474503/what-does-the-great-repeal-act-mean-for-our-environment>

STEPHANIE STEVENS

[37] Foster, N 'Foundation Myth as Legal Formant: The Medieval Law Merchant and the New Lex Mercatoria'.
[38] R. Goode 'Goode on Commercial Law', 4th edn, revised by E. McKendrick, London, Penguin (2010) 1350.
[39] Foster, Ibid at 1.
[40] Ibid.
[41] The Carrier's Case (1473) YB Pas 13 Edw IV, 9, pl 5; Selden Soc (64) 30, 32, cited in JH Baker 'The Law Merchant and the Common Law' 38 CLJ (1979) 295 at 299.
[42] JS Ewart 'What Is the Law Merchant?' 3 Columbia Law Review (1903) 135 at 138.
43 Foster, Ibid at 1.
[44] Sachs, S 'From St Ives to Cyberspace: The Modern Distortion of the Medieval "Law Merchant" 2006 American University International Law Review 685.
[45] C Kerr 'The Origin and Development of the Law Merchant' 15 Virginia Law Review (1928-1929) 350 at 367.
[46] Sachs, Ibid at 8.
[47] Ibid.
[48] Ibid.
[49] J. Ambrose Raftis, the Estates of Ramsey Abbey (Pontifical Inst. of Mediaeval Studies, Studies and Texts 3, 1957).
[50] J. Rogers, The early history of the law of bill and notes (1995) (investigating bills of exchange).

SHOULD ENGLISH COMMERCIAL LAW BE CODIFIED IN A COMMERCIAL CODE?

ABSTRACT: *This article will consider the development of commercial law from medieval times, with particular reference to the law merchant, also known as 'lex mercatoria'. It will examine the different conceptions of the law merchant and the reality of its function as a body of law. Recent suggestions have been made that a 'new lex mercatoria' should represent commercial law in a contemporary English legal system by bringing back the characteristics of the law merchant[37]. This article argues that this would be disastrous, as misconceived ideas wrongly suggest that the law merchant was sound body of law. What the English legal system needs is a Commercial Code.*

THE HISTORY OF COMMERCIAL LAW

In medieval times, the courts relied on the law merchant in order to adjudicate on commercial matters. The law merchant is generally understood to have been law and international in nature[38], in terms that the rules were uniform across national boundaries and similar across Europe. Therefore, foreign traders from all parts of Europe would expect to receive the same ruling of law in the UK as he would in his own European country. Judges determined disputes involving foreigners not by English commercial law but according to the general law, reflecting international and commercial practice[39]. An unstated assumption underlying these claims is that the law merchant constituted one body of rules[40].

Dr Robert Stillington compares the law merchant to natural law, 'a universal law throughout the world'[41]. However, there is a substantial body of scholarship, produced by equally important authors, which takes quite a different view. On the question whether the law merchant can be characterised as law, Ewart writing just over a century ago, sets out what has become the more traditional analysis. Ewart viewed the law merchant as 'nothing but a heterogeneous lot of loose undigested customs, which it is impossible to dignify with the name of a body of law'[42]. Further support for this view comes from the fact that many 'merchant' courts were simply ordinary courts which also adjudicated on commercial business matters[43]. They did not specialise in commercial law and there was therefore no substantive body of law that strictly classified as commercial law. The system needs a Commercial Code, which will codify the unclear areas of commercial law and bring the much needed certainty and transparency within commercial law.

Fair Court of St Ives, for example, should not be considered as 'a special court for merchants, but rather as a seigneurial court whose business is primarily commercial in nature'[44]. It could not be said that the law merchant was international. In the 1928.1029 volume of the Virginia Law Review, Kerr refers to Davies': 'decided misconception of the Law Merchant, in that he regarded its features to be of universal uniformity and application[45]. Returning to the Fair Court of St Ives, Sachs has shown that, as regards those disputes appearing before the court in the period 1270-1374, the customs of the merchants were so local and varied that 'if one were to ignore the areas of law for which the variations were substantial, very little of a shared 'law merchant' would remain[46]. Any international standardisation would be 'better explained as a result of the convergent evolution of local customs, rather than as a conscious expansion of a single body of law across Europe[47].

For hundreds of years, historians have sought from the Medieval times, evidence of an independent, exclusively mercantile legal system as a solution to contemporary problems of foreign trade. The law merchant was created autonomously by merchants and expressed their customs, reflecting unwritten usages rather than the written command of a sovereign legislator. At the same time, the law merchant was not the product of a single country, but was rather universal, establishing practical principles and convenient procedures to govern commerce across political borders[48]. However, what the fair court rolls reveal is that the merchants of St. Ives did not create their own legal order out of their own needs and views. Rather, the administration of the fair was in large part subject to the authority of the King of England and the Abbey of Ramsey, a powerful monastic foundation that held both the St. Ives fair and the manor of Slepe in which the village was located[49]. The King and Abbot had significant authority over the creation of legal principles, the resolution of disputes, and the enforcement of the fair court's judgments. The merchants did participate in each of these areas of authority, especially in rendering judgments. However, there is little evidence indicating that the merchants who traded at St. Ives possessed any unique rights to independence or autonomous self-government. In fact, the best way of understanding the fair court may not be as a special court for merchants, but rather as a seigniorial court—a lord's court—the business of which was primarily commercial in nature[50].

It is argued that the law merchant in the Medieval times was largely dysfunctional. First, it was not law, as there were no substantive set of rules which applied to particular facts and circumstances. Instead, the judges used the customs of their country and a set of unwritten rules in order to reach decisions in disputes over commercial matters. Secondly, these rules were not uniform or universal across Europe, but rather differed depending on the social and cultural customs of the country and varied across different places. A return to this commercially uncertain and inconsistent period would be disastrous in a world where commercial law is in need of certainty, transparency and consistency, in order to allow companies to conduct their businesses without constant fear of litigation. It is therefore argued that the common law is no longer sufficient for the purposes of setting out the legal rules of commercial law and the British system needs to set out the law not merely in statutes, but in a Commercial Code.

[51] Arden, M ‘Time for an English Commercial Code?’ 1997, 56 CLJ 516
[52] Clarke, M ‘Doubts from the Dark Side-the Case against Codes’ 2001 Journal of Business Law, 605
[53] R. Goode, Ibid at 2.
[54] Ibid.
[55] Arden, Ibid at 15.
[56] R. Goode, Ibid at 2.
[57] The Pollock-Holmes Letters, Volume I, Cambridge 1942, pp.7-8
[58] Arden, Ibid at 15.
[59] Ibid.
[60] Goode, R ‘The Codification of Commercial Law’ 1988 14 Mon Law Review 135.
[61] Arden, Ibid at 15.
[62] Foster, Ibid at 1.

The old merchant has ceased to be a separate corpus of law and unlike some civil law systems, English law does not possess a Commercial Code, nor does it formally subject transactions between merchants to different regime from ordinary civil law regarding transactions between non-traders.

WHAT IS NEEDED IS A COMMERCIAL CODE

Case law is not easily accessible to judges, as they need to look into numerous cases in order to find the relevant decisions and common law principles. This is very time-consuming and a Commercial Code would set out the relevant principles in a neat, straight-forward manner, which is easily accessible not only to the courts, but also to the public. This would provide traders with higher levels of predictability within the law and more certainty of the law when conducting their business affairs[51]. The common law remains an invaluable method of developing law to meet changing needs and its advantage is that it is easily applicable to real life situations[52]. But there are limits on its ability to develop the law in line with constant changes in commercial practice. The common law process is constrained by the doctrine of precedent and by the unwritten limits on judicial legislation. The limitations on the common law method is one of the reasons why a developed modern society like ours needs a Law Commission to undertake extensive reviews of huge areas of outdated law[53].

A common argument against having a Commercial Code is that the law will become inflexible and stagnant, failing to meet the fast-changing commercial needs in the business world[54]. However, it is argued that even in the field of common law, the principles have already emerged, therefore the judge’s room for manoeuvre is already restricted by the doctrine of precedent[55]. The longer a principle has been established, the less likely it is that the courts will change it or depart from it, particularly in commercial law where certainty and consistency are considered important[56]. There are also strict limits on the extent to which the courts are able to create new principles of law. Nevertheless, the courts still have and will continue to have an important role in interpreting the law. Moreover, the supposed loss of judicial flexibility must be weighted with the advantages that can come from codification. in fact, codification makes the law more accessible. A code of law, written in modern language, would be intelligible to the ordinary reader, but case law is largely inaccessible to the public in general, except through textbooks. Stephen argues that laws exist ‘not for the scientific satisfaction of the legal mind but for the convenience of lay people who sue or be sued’[57]. Law should be expressed, as far as possible, in the manner in which it will be most easily understood by its user.

In most situations it is much quicker and easier to find the answer to a legal problem in a Code. The majority of legal problems do not raise new and fascinating points of law but can be solved by applying existing well-established principles. Collecting these principles in a single document will make it easier to find the legal principles applicable to many cases. This should reduce the costs of taking legal advice, litigation, it will reduce the cost to the taxpayer and will make the justice system accessible to a wider population[58]. In addition, the process of codification enables the law to be updated and modernised. A Code may be introduced to cover areas of law which lack clarity in case law and statute. It is not necessary to codify the whole of commercial law. This would be pointless in some areas which are safely left to statute and case law, such as carriage of goods by sea and insurance[59]. This would represent a similar Code to the Uniform Commercial Code in the US and it would serve to restate, simplify and modernize the law in a small number of areas to make it more responsive to practices and needs of modern commerce while containing built-in mechanisms to allow for future development[60].

Codification would also resolve the uncertainty that arises where there is a conflict of authorities or where there is no authority on a particular matter of law. Lastly, there is in many areas an excessive amount of case law. Skeleton arguments are often overburdened with case law[61]. Some legal principles therefore lack transparency and the final decision on an issue is often lost in lengthy leading and dissenting judgments.

Upon reflection, the law merchant used in Medieval Times was not, in reality, a practical tool for adjudicating on commercial matters. In fact, there were no substantive set of universal rules followed by all courts, rather the principles were developed based on indigenous customary law of different villages and countries. The King of England and Abbott of Ramsey played a significant part in the way in which the law was established and enforced. This raises issues of democracy, as members of the public often had no say on the way legal matters were decided. In addition, it cannot be called ‘international’, precisely because there was no uniformity in its application across borders. As a result, merchants could not predict the outcome of their case in a different country. Understandably, going back to this adjudication based on social and cultural custom would not improve the current position of commercial law, as it will provide flexibility at the expense of certainty, transparency and consistency within the law. Therefore, a ‘new lex mercatoria’ would be a step backward in the English legal system[62]. Instead, what is needed is a commercial code which need not codify the whole entirety of commercial law, but rather the parts which are less apparent in existing case law and statute.

SILVIYA HRISTOVA

GOOD FAITH IN COMMERCIAL CONTRACTS

HISTORICAL AND RECENT APPLICATION OF THE PRINCIPLE OF "GOOD FAITH"

Historically, the English courts have tended to be hostile to the concept of good faith. However, a duty of good faith has long been implied into contracts of partnership, agency and other agreements involving fiduciary obligations.

Yam Seng of the International Trade Corporation demonstrated a shift from the English Courts' general rule and suggested that a duty of good faith could and should, in fact, be implied into commercial contracts.
The judge suggested that, in some cases, a duty of good faith might need to be implied into other commercial contracts, such as franchise, joint venture and long term distribution agreements where "a high degree of communication and co-operation" is required to make the relationship work.

However, the content of an obligation to act in good faith has not been exhaustively defined. For instance, in Street v Derbyshire Unemployed Workers' Centre, Auld LJ said: "the words 'in good faith' have a core meaning of honesty". In a similar way, an attempt to define good faith is illustrated in CPC V Qatari Diar, where the court concluded that an obligation in a property joint venture to act in "utmost good faith" did not require one party to subordinate its interests to those of the other party.

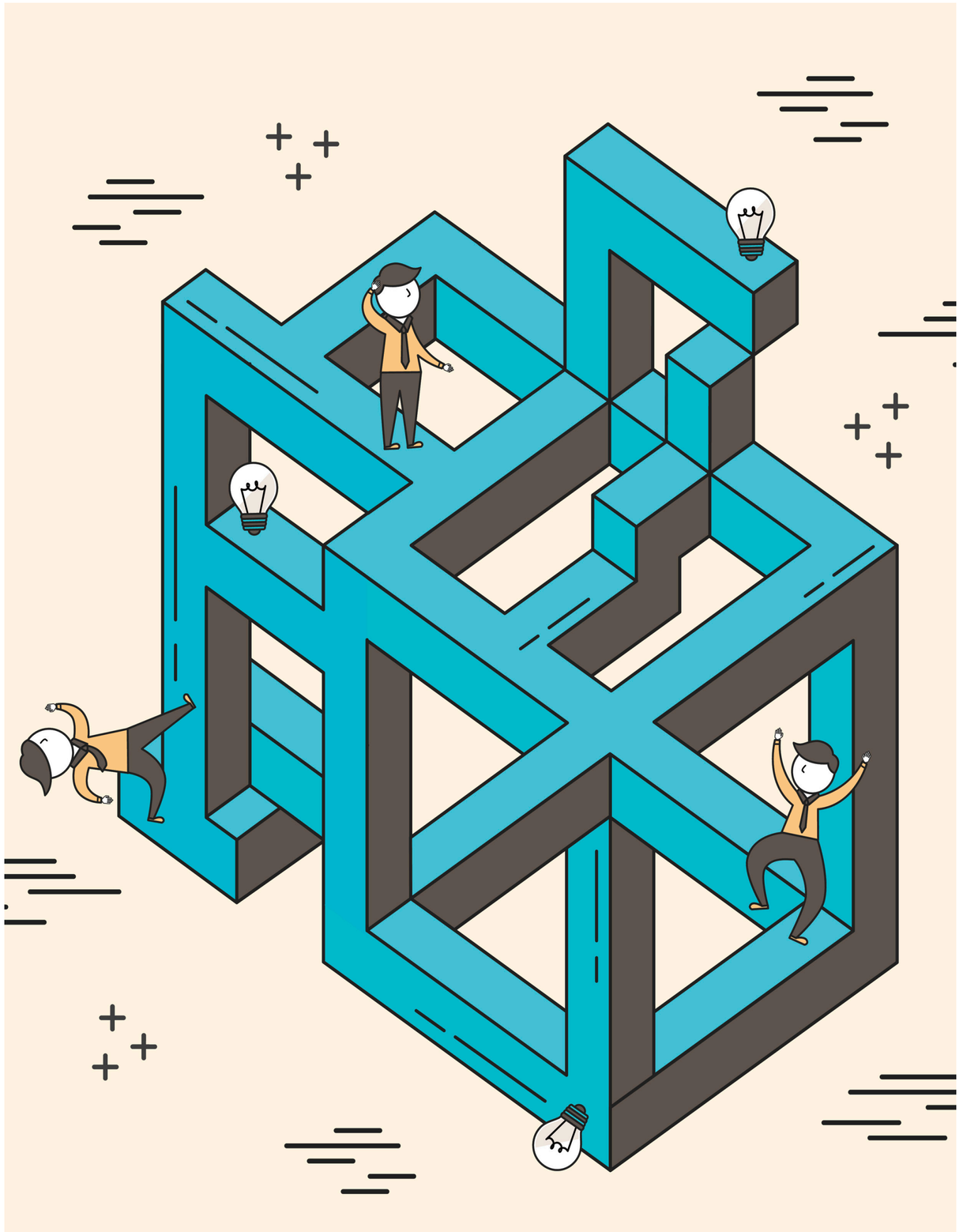
Much also depends on how widely the courts interpret any obligation to act in good faith. In Mid-Essex Hospital Services v Compass Group UK and Ireland Ltd.

the High Court judge concluded that the agreement contained a broad express obligation to act in good faith. In his view, the NHS Trust had breached that duty by effectively ignoring the spirit of the agreement in its approach to the service levels scheme. The Court of Appeal agreed that a number of the payments demanded had been excessive. However, it found that the duty of good faith was much narrower and did not apply to the service levels scheme; as a result, the NHS Trust was entitled to hold the catering provider to the letter of the agreement.

Lord Justice Bingham in Interfoto Picture Library Ltd v Stiletto Visual Programmes stated that: "in many civil law systems, and perhaps in most legal systems outside the common law world, the law of obligations recognises and enforces an overriding principle that in making and carrying out contracts parties should act in good faith […] English law has, characteristically, committed itself to no such overriding principle but has developed piecemeal solutions".

In a previous Review[Richard Smellie, "Can you imply good faith into contracts under English law?", Annual Review (October 9, 2013), Richard Smellie wrote about the importance of the decision of the Supreme Court in Rainy Sky S.A. and others v Kookmin Bank where duties of cooperation or "fidelity to the parties bargain" in the performance of the contract have been implied and when it came to considering ambiguities in contract documents Richard explained that "where the language is clear, the rights and obligations will be clear, but language is often susceptible to more than one possible meaning, particularly when arguments arise or the unexpected occurs".

Commercial contracts are often complex, and ascertaining the true nature of the parties' agreement on a particular point can be challenging. The starting point is, of course, the words on the page, but where there is conflict or ambiguity, this must specifically be interpreted. It is at this point that the law of the contract steps in, with rules on how the contract is to be interpreted. While good faith can be advocated as a healthy reaction to formalism in contractual interpretation and give the adjudicators flexibility in ensuring that the spirit of the agreement is implemented, what and how such interpretations are to be developed and applied remains unclear. 72 In the Kookmin case, the Supreme Court confirmed the particular importance of giving weight to "business common sense" in ascertaining what the parties meant by the language they used, when ambiguity arises.



DIFFERENT JURISDICTIONS RECOGNISING GOOD FAITH IN CONTRACTS

Jurisdictions around the world generally recognise the principle that contracting parties owe each other a duty of good faith in the performance of their contractual obligations. In the United States, this principle is enshrined in the Uniform Commercial Code which provides that "every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement".

Similar provisions are found in the commercial codes of most civil law jurisdictions, and the courts in common law jurisdictions such as Australia and Canada increasingly recognise a broad principle of good faith and fair dealing

England stood out as one of the few jurisdictions that did not recognise an implied duty of good faith between contracting parties. A leading commentary on the issue notes that "in keeping with the principles of freedom of contract and the binding force of contract, in English contract law there is no legal principle of good faith of general application, although some authors have argued that there should be".

For a long time, commentators have suggested that a general duty of good faith would be introduced into English law as a result of efforts to standardise contract law within the European Union. As all member states of the European Union have implemented the Directive on Unfair Terms in Consumer Contracts, they will have to

come to terms with a general notion of 'good faith' in a central area of their contract law76 as it is regarded a vitally important ingredient for a modern general law of contract in some legal systems.77 For instance, the Italian notion like the German notion, however, is a broader ethical idea in serving to protect the relationship, but creates a legal obligation of "openness, diligent fairness, and a sense of social solidarity"78. In general, the civil law tradition looks at good faith as a broad, comprehensive principle which includes many concepts considered in the common law tradition to be discrete matters.79 By way of contrast, the French civil code at the article 1134, paragraph III, has been used with great restraint and its impact described as "shallow"80

COMPARISON BETWEEN AN IMPLIED AND EXPRESS DUTY TO ACT IN GOOD FAITH

A critical issue is what, precisely, is required by an implied contractual duty of good faith. Some examples are given by English case law regarding express terms to the same effect. As illustrated in Berkeley Community Villages Ltd v Pullen, Morgan J held that an express term requiring the parties to act with the utmost good faith towards one another imposed an obligation "to observe reasonable commercial standards of fair dealing in accordance with their actions which related to the Agreement and also requiring faithfulness to the agreed common purpose and consistency with the justified expectations of the other party".
Similarly, Vos J at held that "the obligation of utmost good faith in the contract was to adhere to the spirit of the contract […] and to observe reasonable commercial standards of fair dealing, and to be faithful to the agreed common purpose, and to act consistently with the justified expectations of the parties".

In a recent case, Portsmouth City Council v Ensign Highways Ltd, the High Court rejected the contention that an express duty of good faith stated in part of a contract operated across the contract as a whole. The key point arising out of this case is that, where the parties have identified specific situations in which they will be required to act in good faith, it is less likely that the Court will find that there is a general duty to perform a contract in good faith.

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CONCLUSION

In conclusion, anyone involved in long-term contractual relationships, including distribution agreements, joint ventures, outsourcing agreements and financing agreements, would be well advised to take note of the Yam Seng judgment and act in good faith. However, the likelihood that in future disputes relating to the performance of contracts a duty of good faith and fair dealing may very well be an issue exists, at least until it is settled by the appeal courts.

As noted above, generally, the good faith standard requires subjective honesty from the contracting parties. Beyond this, the standard requires contracting parties to have regard to legitimate or reasonable expectations of the other party.

The concept of 'good faith' was described by Bingham LJ in Interfoto as a principle of fair and open dealing and an overriding principle existing in other legal systems. Nevertheless, different jurisdictions approach the notion of good faith differently. For instance, similarities are observed between German and Italian notion of good faith whereas a difference in the French Civil Code is noted as being less impactful in contracts.

SHUBIKA MADAAN

INTERVIEW:
CHIAMAKA OKEKE

Head of residential conveyancing department in the head office - Thackray Williams

She was inspired to get into law by her father who advised her about the wide availability of opportunities for lawyers. At the time, her father was not actually speaking to her.

Tell us a little bit about yourself

"I was actually eaves dropping on a conversation my dad was having with a friend". What was fascinating was that though she specialized in residential conveyancing she felt that law in general fit into the fabric of society. Chiamaka believes that the concept of a law is very power in itself in the impact that it has on society. Her view is that within a democracy it works and even better within a complete utopia, it is a great leveler as it is just in it's essence with the power to effect change. It is a living breathing organism that you become a part of in it's most general form. She got into property law totally by accident and initially she was inspired to do something else as she was attracted to the law due to her belief in social justice, she wanted to make a change to the society. She feels that in many ways the property law field is directly involved in helping people the main point is removing all the hassle from a process that can be really cumbersome and she helps her clients achieve their goals in swift manner. People say the 3 most stressful things you have to do in life is 1) marriage 2) divorce 3) purchasing a property/moving house. These things do not need to be stressful it depends on whether the person wishing to achieve these things wants the process to be stressful. In the 15 years she has worked in the industry one of the best comments she got from a client was that "this was actually pleasant and not as bad as she thought it would be".

How long has your firm been in existence? Tell us a bit more about it's history?

The firm has been in existence for many years. A merger in 2003/2004 brought it to it's present guise as 'Thackray Williams'. We employ 140 people spread across three offices and as well as having achieve the Lexcel Practice Management Standard (a quality mark for solicitors and which only 3% of firms have attained), the firm is also included in 'The Legal 500', which is a listing of the top 500 firms in the UK.

Tell us about the services/products your company provides?

The work the firm does covers everything from 1) residential property department where I work covers the buying and selling of freehold and leashold property and most issues concerning residential property ownership. This can be further split into three sub-specialties namely residential conveyancing, new build and leasehold enfranchisement 2) Commercial property transactions ranging from arranging leases for office space, property development projects- Purchasing plots of land to develop and building assets such as flats, properties e.t.c. for businesses/developers 3) Family law - which encapsulates divorce, child care 4) Wills and Probate - tax planning, dealing with wills 5) Debt collection which is self explanatory 6) Civil litigation - grieviances from the public against businesses, business to business disagreements and other contentious matters 7) Landlord and tenant disputes.The residential conveyancing department is massive and splits into various smaller niche areas to encourage specialization - such as freehold, lease extensions, buying and selling of properties which is her specific field of expertise also includes things such as right of way.

What makes your organisation/firm stand out from other businesses providing the same service /what is your unique selling point?

We do what we do and we do it very well. The number of clients returning to use our services and recommending us to others tells us that we are getting things right. You don't have to reinvent the wheel; you just have to make a better one.

"ANYONE CAN DO A GREAT JOB BUT IF THE EXPERIENCE IS NOT GREAT FOR THE CLIENT, IT'S POINTLESS HOW GOOD THE WORK IS AS THE CLIENT MAY NOT REFER YOU TO OTHER PROPECTIVE CLIENTS."

Do you believe the skill set required for the job is changing ? If so, in what way?

Because this is an wide question Chiamaka chose to focus on specifically the residential conveyancing perspective. You have to be more "tech savy" now. Everything is going online, this includes interactions with estate agents to the way title documents are accessed. As lawyers in more general and loose terms at university you are taught about the law but no educational institution teaches you about the social aspects of the law such as marketing, customer/client service, networking and relationship building e.t.c. Whilst her firm does have a dedicated marketing department you "MUST" take your head out of your books and realise that aspect is as important and realise that there are people all around you who can refer work to you. For instance, this highlights the importance of being able to connect with your client in a more "social" aspect. By social, she doesn't refer to "going out clubbing with your clients" but rather in "experiential" aspects. The way our generation thinks is more "relational" whilst "millenials" are more "experiential". So as legal professionals we have to not just know the law but provide an "experience" for the client. Now you must consider the views of millenials as these are the people who are destined to be your future clients. The way we (our generation) dealt with things and the way our preceding generation dealt with things are very different. You have to be able to "sit with the curve and be ahead of the curve...ALWAYS in business as that is the way your business stays relevant" and how you also stay relevant in your ability to adapt to the growing changes. So to summarise, Chiamaka believes your core skill sets are still the same as you have to know the law unless you want to be sued but there is a lot more involved as we weren't taught these soft skills such as "marketing and sales". Some people have a natural flair for it and some don't. In the beginning of the profession the focus was more on your ability to do a good job, but now it's more than that, anyone can do a great job but if the experience is not great for the client, it's pointless how good the work is as the client may not refer you to other propective clients.

FRANCIS OKEKE

“LIMITATION OF LIABILITY CLAUSES ARE A USEFUL WAY OF BALANCING THE RISK BETWEEN PARTIES TO A COMMERCIAL CONTRACT.”

[86]D. Keenan & S. Riches, Land Law (9th edn Harlow, Pearson Education Limited 2009), 279.
[87]Contracting Under Standard Terms, Art. 1.6(2) Unidroit Principles 2010.
[88]Terms in Consumer Contracts Regulations 1999, 1.
[89]Unfair Contract Terms Guidance (Office of Fair Trading 2008), 10.
[90]D. Keenan & S. Riches, Business Law (9th edn Harlow, Pearson Education Limited 2009), 279.
[91]Richard Stone & James Devenney, Text, Cases and Material on Contract Law (3rd edn, New York, Routledge 2014) 296.
[92]Ewan McKendrick, Contract Law (10th edn, Pelgrave MacMillan, 2013) 194.
[93]Schroeder Music Publishing Co Ltd v Macaulay [1974] 1 WLR 1308
[94]David Yates, Exclusion Clauses in Contracts (2nd edn, Sweet & Maxwell, 1982) 1.
[95]Limitation and Exclusion of Liability (Quickguides, Ashurt LLP 2009)

LIMITATION OF LIABILITY IN BUSINESS CONTRACTS

***ABSTRACT:** This article will begin by introducing the reader to the nature of business contracts. It will continue examining standard terms and bargaining positions. Lastly, it will deal with the benefits and concerns associated with limiting liability. The article individually analyses the legal system with reference to business-to-business (BtoB) contracts, large business-to-small business (Btob) contracts and business-to-consumer (Btoc) contracts. The final part of the article distinguishes between the common law and statute law methods of controlling exclusion and limitation clauses in contract.*

A business contract on the basis of standard terms contained in a pre-printed document is known as a standard form contract . In these type of contracts the terms are those devised by a business in advance, they are not individually negotiated with the consumer, and the terms are not usually open to negotiation. Therefore, the contractor must either accept them in their entirety as part and parcel of the deal or take his business elsewhere.

Most of the times, the contractor is a consumer that, as an individual not acting for the purposes of his or her trade, business or profession, finds his position particularly disadvantaged when signing standard contracts. Moreover, standard terms of contract are often expressed in a language, which may be unintelligible for the ordinary person. A consumer may find himself bound by a contract even though he did not properly understand the terms. In some cases, the document may be so awe-inspiring that it is not read at all

The concept of freedom of contract, on which the law of contract is founded, would seem to suggest that if the terms contained in a standard form contract are undesirable, the consumer can simply seek a better alternative. This may be the case in competitive markets where the parties possess equal bargaining powers, but, in practice, the parties rarely contract as equals. Consumers, in particular, have found themselves in a weak bargaining position, victims of very one-sided contracts Lord Diplock described a superior bargaining power is ‘to be in a position to adopt a take it or leave it attitude toward a party desirous of entering into a contract to obtain goods or services’

This article will focus on a topic which is often considered to be the most crucial for any contracting party: liability. How it may arise and how, in contractual terms, it can be limited.

Exclusion clauses are a common feature of contracts nowadays, and they are particularly important because they are express terms used by the party providing a service or a product, which aim to exclude or limit the liability they might incur in the event of a breach of contract. They are usually expressed as standard, pre-printed conditions in the contract and the receiving party has no option but to accept them, as they are not usually open to negotiation[95].

Limitation of liability clauses are a useful way of balancing the risk between parties to a commercial contract. Nevertheless, such clauses are perfectly fair when they are the result of free negotiations between equals but, all too often, they are imposed on a weaker party such as a consumer or a client by a stronger party such as a producer, manufacturer, service provider etc. This results in unfair dealings.

Generally, if a court finds that the terms of a contract are unfair, it can rule that they should not be enforced too strictly. When this happens, it can vary or even void the contract[97]. A court will take a number of factors into account when it decides whether a contract is unfair. This includes examining how equal the parties to the contract are, as well as what scope they had to bargain over the terms and conditions

This is clearly stated by Lord Wilberforce’s dictum in Photo Production Ltd v Securicor Transport Ltd, where he says that ‘in commercial matters generally, the parties are of equal bargaining power. Similarly, in Granville Oil, Tuckley LJ explained that the Unfair Contract Terms Act 1977 (UCTA) should not massively intrude into contracts between commercial parties of equal bargaining strength, who are generally be considered capable of making contracts of their choosing and expect to be bound by their terms. Therefore, when experienced businessmen representing substantial companies of equal bargaining power enter into an agreement, they are usually taken to have had regard to the matters known to them and should be taken to be the best judge on the question whether the terms of the agreement are reasonable. Generally speaking, the courts should not assume that either is likely to commit his company to an agreement which he believes to be unfair, or which he thinks includes unreasonable terms. Unless satisfied that one party has taken unfair advantage of the other, or that a term is so unreasonable that it cannot properly have been understood or considered, the court should not interfere

However, the courts’ approach to the regulation of exclusion and limitation clauses in business contracts is markedly different from contracts involving consumers. Section 17(2) of UCTA defines a ‘customer’ as a ‘party to a standard form contract who deals on the basis of written standard terms of business of the other party to the contract who himself deals in the course of business.

Contracts for the supply of goods and services may be made between businesses of equal bargaining power (BtoB), large businesses and small businesses (Btob) or businesses and consumers (Btoc). First, I will explore the different types of contractual relationships and will then examine the ways in which liability can be incurred.

BTOB RELATIONSHIPS

BtoB relationships are relations between large businesses. The size of the business usually refers to commercial capability. Large businesses typically involve large-scale corporate-controlled financial and business services and potentially have greater resources to manage their issues.

UCTA applies to clauses that seek to limit or exclude liability in BtoB contracts. Section 3(2) of UCTA states that a party cannot rely on a contract term to exclude or limit liability for breach except in so far as the term satisfies the requirement of "reasonableness. UCTA will only apply, however, where the parties are entering into the contract on written standard terms of business.

In the complex world of liability limitation in BtoB contracts, the recent case of Commercial Management is a valuable reminder of both the existence and the extent of the reasonableness test set down by the Unfair Contract Terms Act 1977 (UCTA).

In Commercial Management, a contractor asserted that the limitation of liability clause prevented any claim concerning a defect in the product from being brought, unless it was notified within 28 days of the appearance of the defect. Although the court acknowledged the importance of allowing commercial parties to decide how they allocate risk, it found that the contractor's limitation of liability clause was not reasonable for the purposes of UCTA. The factor that appeared most persuasive to the judge was that, bearing in mind the nature of the works and the likely time lag in the appearance of any defects, along with the fact that the sub-contractor would have limited opportunities as a contractor (rather than a user of the property) to identify any issues in the works, it was not reasonable to expect the sub-contractor to comply with the 28-day time limit in the contractor's limitation clause[109].

In fact, in order for a limitation of liability to be valid, it must be reasonable as well as incorporated into the terms of the agreement with the customer and be clearly worded. The wording should be clear because any uncertainty or contradiction in the wording will be construed in favour of the weaker party[110]. Therefore, unless the exclusion or limitation clause is incorporated into the relevant contract, it will be unenforceable[111]. When a party is trading on its standard terms, an unusual or unclear exclusion clause may fail if it is not given a sufficient degree of prominence. The more unusual or onerous the clause, the more prominence it should be given[112].

Nevertheless, some limitations are not permitted even if the clause that establishes them is valid. In fact, it is not possible to exclude or restrict liability for death or personal injury resulting from negligence[113]. In the case of other loss or damage resulting from negligence, liability can be restricted, but only insofar as the term or notice satisfies the UCTA reasonableness test[114]. The rule applies regardless of whether the person to whom the exclusion is directed is a business or a consumer.

The UCTA reasonableness test applies where parties contract on one party's standard terms of business. It is therefore widely accepted that individually negotiated contracts are less likely to be scrutinised from the courts as to the reasonableness of their liability limitations or exclusions, provided that parties do not attempt to exclude liability for matters which cannot be excluded at law. The courts are less willing to intervene in these contracts because the contracts are seen as agreed by parties of equal power.

Section 11(1) of UCTA requires that a contract term is 'a fair and reasonable one to be included having regard to the circumstances which were, or thought reasonably to have been, known to or in the contemplation of the parties when the contract was made'[115]. The burden of showing that a limitation clause was reasonable at the time when the contract was made rests with the party seeking to uphold the clause[116]. The main reason to render a clause as unreasonable is if the contract term has been misrepresented or not brought to the attention to the other party at the time the contract was made[117]. Therefore, if both parties willingly and knowingly agreed to a stipulated clause, the courts are hesitant to intervene even if the clause seems unreasonable, unfair or largely disadvantageous to one party.

Btob relationships are relationships between large businesses and small businesses. There are obvious, consistent and persistent differences in the behaviour and experiences of small businesses in markets, compared to larger businesses. Due to these differences, smaller businesses can be vulnerable market actors. It has been shown that size and maturity of a business correlated strongly with better market experiences and outcomes[118].

Small businesses have inherent capability constraints related to time, size, behavioural biases and resource limitations. They suffer from knowledge gaps about the products and services on offer. They also do not have the internal resources or time to devote to being 'active consumers'[119]. The imposition of terms and conditions by larger suppliers in contracts with smaller businesses poses risks for these types of businesses with their inequality of bargaining power, evidenced in the limited ability of researchers to unilaterally influence or change unfair terms[120]. Small businesses are also likely to have a greater unmet legal need as they may not be able to access legal services due to financial considerations. Additionally, discussions with small businesses engaged in market and social research highlighted general unfamiliarity with the current legal framework for rights and available remedies when purchasing goods and services. In particular, anecdotal evidence provided to MRS suggests that small businesses are generally unaware of the fact that there are different legal frameworks for business and consumer purchases and that this has implications on the type and level of protection afforded for their purchase of goods and services[121].

In particular, if we consider the energy market, the problems experienced by small businesses are similar to those experienced by consumers, yet consumers benefit from a comprehensive set of protections which are constantly monitored and improved by Ofgem in order to make help consumers and thus the demand-side of the market work better. Given that the evidence marshalled above shows micro-businesses encounter many of the same issues, there are strong reasons for the regulator to more systematically and coherently regulate on behalf of vulnerable businesses, like they do consumers[122].

UCTA does not adequately differentiate between small businesses and larger ones. However, it has been argued that the extension of unfair contract terms protection to small businesses would create two different laws applicable to businesses in a BtoB environment, resulting in different applicable terms and conditions depending on the size of the customer. Nevertheless, this is not necessary as the mechanisms in UCTA are already adequate and appropriate for creating balance between BtoB parties. The reasonableness test, in particular, takes into account the bargaining position of the businesses, which is better indicative of the strength of a business, than the business size.

Accordingly, via the reasonableness test and through the enhanced controls to BtoB contracts on the supplier's standard terms, UCTA seeks to redress imbalances in bargaining power. In fact, focusing on bargaining power rather than simply the size of the purchasing company is a much better way of introducing fairness. A company is likely to have more bargaining power in some purchasing situations than others, regardless of the size of the company. The current arrangements reflect that.

Finally, based upon the reasoning behind the extension of consumer protections, it is not clear why the Department for Business, Innovation and Skills (BIS) is considering extending these protections to small businesses and not to other organisations, such as non-profits, social enterprises and charities, which may exceed the employee threshold but may be similarly or even more commercially unsophisticated[123].

BTOC RELATIONSHIPS

English law has traditionally had the concept of freedom of contract, therefore if two people entered into a contract which was one sided or unfair there was little protection for the less favourably treated party. In recent years this position has substantially changed as regards consumer contracts. This has been driven both by UCTA which sought to protect consumers from certain types of unfair contract terms, and by European law, most importantly the Unfair Terms Directive (1993/13/EC)[124], implemented into English law by the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR).

Lawyers had long argued that UCTA and the UTCCRs were complex, inconsistent and confusing when taken together. In response, the Consumer Right Act 2015125 (CRA) came into force on 1st October 2015, taking consumer contracts outside of UCTA. As a consequence, UCTA now only applies to BtoB contracts, and the UTCCRs are replaced by the CRA. Hence, when looking at whether the terms in a consumer contract are "fair", including any terms limited or restricting liability, lawyers now only need to look at the CRA.

The CRA merges the various rules under the UCTA and UTCCR which give consumers protection against contractual wording that could be used to give traders an unfair advantage. Whilst much of the law remains the same, the CRA has also introduced some limited changes. Unlike the UTCCRs, but broadly in line with UCTA, the CRA applies to notices as well as terms, blacklists certain terms and covers both negotiated and non-negotiated terms.

Under s62(4) of CRA, a term is unfair if "contrary to the

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[96] Roger Brownsword, Contract Law: Themes for the 21st century (2nd edn, OUP, 2006) 49, 57.
[97] Ibid.
[98] Contracts (The Law Society of New South Wales 2014)
[99] Photo Production Ltd v Securicor Transport Ltd [1980] 1 All ER 556.
[100] Granville Oil and Chemicals Ltd v Davis Turner & Co Ltd [2003] 1 All ER (Comm) 819.
[101] J. Bellamy, 'Exclusion and limitation clauses is business contracts' 2009 ThirtyNine Essex Street.
[102] Ibid.
[103] Unfair Contract Terms Act 1977, s17(2).
[104] J. Brits & G.H.K Botha, 'Conceptual Framework for Modeling Business Capacities' 2007 Informing Science and Education Joint Conference
[105] Unfair Contract Terms Act 1977, s3(2).
[106] Unfair Contract Terms Act 1977, s3(1).

requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer"[126]. There are certain aspects of EU legislation or case law that are now made more explicit via inclusion in the CRA. For example, the CRA sets out that the courts must consider the fairness of terms in consumer contracts even where the parties to a case do not raise it as an issue, so long as the court has sufficient information to allow it to do so.

The CRA requires a contract to be entered in with 'good faith'. The requirement of 'good faith' embodies a general principle of fair and open dealing. It means that terms should be expressed fully, clearly and legibly and that terms that might disadvantage the consumer should be given appropriate prominence. However, transparency is not enough on its own, as good faith relates to the substance of terms as well as the way they are expressed and used.

The CRA also requires a supplier not to take advantage of consumers' weaker bargaining position or lack of experience in deciding what their rights and obligations shall be. Contracts should be drawn up in a way that respects consumers' legitimate interests. In assessing fairness, we take note of how a term could be used. A term is open to challenge if it is drafted so widely that it could be relied on in a way to harm consumers. It may be considered unfair if it could have an unfair effect, even if it is not at present being used unfairly in practice and there is no intention to use it unfairly. In such cases businesses could achieve fairness by redrafting the term more precisely, so that it reflects their practice and intentions.

Transparency is also fundamental to fairness. Regulation 7 of the Unfair Terms in Consumer Contracts Regulations 1999 introduces a further requirement that standard terms must use plain introduces a further requirement that standard terms must use plain and intelligible language. Terms should not just be clear for legal purposes. When we assess fairness, we also have to consider what a consumer is likely to understand by the wording of a clause. Even if a clause would be clear to a lawyer, we will probably conclude that it is potentially unfair if it is likely to mislead or be unintelligible to consumers. Contracts should be in language that is plain and intelligible to ordinary people. Consumers should also have the chance to read all the terms before agreeing to the contract.

COMMON LAW

Under British Common law, the courts need to decide whether a particular term has been incorporated into the contract and whether reasonable steps have been taken to give notice of the term to the other contracting

party. If the exclusion clause has not been incorporated into the contract, it cannot take legal effect and, therefore, the party seeking to rely on it cannot do so.

In the case of L'Estrange v Graucob[127], the claimant brought an automatic vending machine for use in her café, signing a 'sales agreement' which provided that: 'any express or implied condition, statement or warranty statutory or otherwise, not stated herein is thereby excluded'. She did not read this document and was completely unaware of the sweeping exclusion clause hidden in the small print. The machine did not work properly but it was held that she was still bound to pay for it because by signing the agreement she had effectively signed her rights away. The signed is presumed to have read and understood the significance of all the terms contained in the document.

However, this general rule will not apply where the other party had misrepresented the terms of the agreement. In Curtis v Chemical Cleaning and Dyeing Co [128], the claimant took a wedding dress to be cleaned by the defendants. She signed a piece of paper headed 'receipt' after being told by the defendant's assistant that it exempted the cleaners from liability for damage to beads and sequins. The 'receipt' however, contained a clause excluding liability 'for any damage howsoever arising'. When the dress was returned, it was badly sustained. It was held that the cleaners could not accept liability for damage to the material of the dress by relying on the exclusion clause because its scope had been misrepresented by the defendant's assistant.

The exclusion clauses may be contained in an unsigned document such as a ticket or a notice. In the eventuality, the clauses will form part of the contract only if two conditions are met. First, the document must be regarded by a reasonable man as contractual in nature and, as such, likely to contain exclusion clauses. In Chapelton v Barry Urban District[129], Mr Chapelton hired two deck chairs for 3 hours from the defendant council. He received two tickets which he put into his pocket unread. Each ticket contained a clause exempting the defendant from liability for 'any accident or damage arising from the hire of the chair'. Mr Chapelton was injured when the chair he sat on collapsed. He successfully sued the council, as the court of Appeal held that a reasonable man would assume that the ticket was a mere receipt and not a contractual document which might contain conditions. Therefore, the defendant had not succeeded in incorporating the exemption into the contract with Mr Chapelton.

The person seeking to rely on the exclusion clause must show that reasonable steps have been taken to give notice of the clause to the other contracting party. That amount to reasonably sufficient notice will vary according to the nature of the clause. As Denning LJ commented in Spurling v Bradshaw[130], the more unreasonable a clause is, the greater the notice which must be given of it. Some clauses would need to be printed in red ink with a red hand pointing to it before the notice can be held to be sufficient.

The red hand rule was applied by the Court of Appeal in Interfoto Picture Library v Stiletto Visual Programmes[131]. Stiletto, an advertising agency, ordered 47 photographic transparencies from Interfoto, which operated a photo library. The transparencies were accompanied by a delivery note which contained a number of conditions. Condition 2 provided that a holding fee of £5 per day was payable in respect on each transparency retained after 14 days. Stiletto did not return the transparencies on time and interfoto sued for the holding fee payable under Condition 2, which amounted for £3,785. The Court held that condition 2 had not been incorporated into the contract. Interfoto had not taken reasonable steps to bring such an unusual, unreasonable and onerous term to Stilletto's attention.

STATUTE LAW

Over the years, Parliament stepped in to control the use of unfair exclusion clauses in particular kinds
of contract and now the overwhelming majority of these clauses are covered by the provisions of the UCTA, as supplemented by the UTCCR.

The CRA 2015 defines a consumer as "an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession"[132]. This definition of consumer is wider than existing definitions found in UK and EU law as it includes individuals who enter into contracts for a mixture of business and personal reasons. Therefore, the law in the UK has shown a gradual change towards more protective provisions for the weaker parties in a contract, the consumers.

The Unfair Contract Terms Act 1977[133] (UCTA) renders certain exclusion clauses unenforceable and subject others to a test of reasonableness. Leng believes that 'the question of reasonableness is the most difficult issue of all as much turns on the facts of the case and upon the discretion of a judge'[134].

Therefore, Leng[135] advices 'not to draft exclusion clauses too broadly'. Under the reasonableness test, a single clause should be taken as a whole when deciding its enforceability. The test does not allow to separate the reasonable and unreasonable parts of the clause. Therefore,
if only one part is unreasonable, it renders the whole clause unreasonable[136]. The way to overcome this problem is for drafters to separate the clause into different sub-clauses. The test will then be applied individually to each sub-clause so the unreasonableness of one does not affect the enforceability of the others[137]. However, Leng also explains that UCTA does not articulate a specific definition of 'reasonableness'[138]. The meaning of 'reasonable' is left for the judges to determine based on their subjective view consideration[139]. Judicial decisions are therefore often uncertain and invalid. This is due to the lack of consistent precedent because every case is decided on its own circumstances[140]. A term found to satisfy the reasonableness test in one case may be held unreasonable in another. The party not in breach may restrain from suing against the exclusion clause because of the high expenses of making a claim and the huge uncertainty of the outcome in court. With few exceptions, the reasonableness is mostly unsatisfactory for both parties.

Upon reflection, exclusion or limitation clauses are considered reasonable when decided by parties of equal bargaining power. However, the current law fails to differentiate large businesses from smaller ones. For many different reasons, smaller business can be vulnerable market actors. Therefore, contracts entered into on the standard terms of the bigger business, can result in unfair dealings. Although there are strong arguments for providing small businesses with the same protection as consumers, it has been argued that UCTA does seek to redress the inequality in bargaining power. In fact, bargaining power is a much more accurate indicator of fairness in a contract, rather than simply the size of a business. The CRA seeks to protect consumers from unfair dealings with businesses, by requiring that terms be established in an open and fair dealing, in a transparent manner and in good faith. Courts have tried to protect weaker parties in contract through the common law. In order for a term to be rendered valid, it must be validly incorporated into contract and if ambiguous, it will be constructed against the party seeking to rely on it, under the 'contra proferentem' rule. Although UCTA aims to clarify uncertainties in the common law, the test of 'reasonableness' remains under the Judge's discretional judgement, reliant upon the judge's judgement and therefore mostly unsatisfactory. The law has come a long way but is still in need of further clarification with regards to exclusion and limitation clauses.

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[107] Commercial Management (Investments) Ltd. v Mitchell Design and Construct Ltd [2016] EWHC 76
[108] Unfair Contract Terms Act 1977
[109] Commercial Management (Investments) Ltd. v Mitchell Design and Construct Ltd [2016] EWHC 76
[110] D. Keenan & S. Riches, Business Law (9th edn Harlow, Pearson Education Limited 2009) 279.
[111] Olley v Marlborough Court Ltd [1949] All ER 127.
[112] Spurling (J) v Bradshaw [1956] 2 All ER 121.
[113] Unfair Contract Terms Act 1977, s2(1).
[114] Ibid, s2(2).
[115] Ibid, s11(1).
[116] R. Craig, 'Limitation of Liability in B2B contracts: a reminder of the application of UCTA' 2016 Carson McDowell.
[117] Ter Kah Leng, 'Assessing the Reasonableness of Exception Clauses' (2011) 23(2).[118] Federation of Small Businesses, 'Protection of Small Business when Purchasing Goods and Services: Call for Evidence' 2015.
[119] Ibid.
[120] Jo Swinson MP, Market research society, 'Submission to BIS Call for Evidence– Protection of Small Businesses when purchasing goods and services' 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433139/bis-15-209-protection-of-small-businesses-when-purchasing-goods-and-services-call-for-evidence.pdf, 5.
[121] Ibid.
[122] Ken Moon, Federation of Small Businesses, Protection of Small Business when Purchasing Goods and Services: Call for Evidence' 2015, 18.[123] O. Bray, 'The City of London Law Society response to the Department of Business, Innovation and Skills document "Protection of Small Businesses when Purchasing Goods and Services: Call for Evidence' , The City of London Law Society 2015, 5.
[124] Unfair Terms Directive (1993/13/EC).
[125] Consumer Right Act 2015.
[126] Consumer Right Act 2015, s62(4).
[127] L'Estrange v Graucob [1934] 2 KB 583.
[128] Curtis v Chemical Cleaning and Dyeing Co [1951] 1 All ER 631.
129 Chapelton v Barry Urban District Council [1959] 2 All ER 701.
[130] Spurling (J) v Bradshaw [1956] 2 All ER 121.
[131] Interfoto Picture Library v Stiletto Visual Programmes Ltd [1989] QB 433.[132] Consumer Rights Act 2015.
[133] Unfair Contract Terms Act 1977, s 11.
[134] Ter Kah Leng, 'Assessing the Reasonableness of Exception Clauses' (2011) 23(2) Singapore Academy of Law Journal 579.
[135] Ter Kah Leng, 'Assessing the Reasonableness of Exception Clauses' (2011) 23(2).
[136] Stewart Gill Ltd v Horatio Myer & Co Ltd [1992] 1 QB 600, 609.
[137] Watford Electronics v Sanderson CFL Ltd [2001] 1 All ER Comm 696.
[138] Ter Kah Leng, 2011, 581.
[139] George Mitchell (Chesterhall) Ltd v Finney Lock Seeds Ltd [1983] 2 AC 803.
[140] Richard Taylor & Damian Taylor, Contract Law Directions (3rd edn, Oxford, Oxford University Press, 2011) 157.

BREACH OF CONFIDENCE

The breach of confidence has developed from equality and common law. The original purpose is to protect secrets. The obligation has be recognised since the 19th Century. The first case to recognise this concept was Prince Albert vs Strange .

This concept can be used to stop disclosing information or to stop people exploiting ideas as shown in Fraser v Thames Television LTD . In this case three actresses devised an idea for a television based on the story of three female singers who formed a band. They discussed the idea with Thames Television, subject to the three actresses being given the parts of the rock singers, however Thames made the programme without the three actresses. The court accepted the plaintiff argument where it stated for an idea would need to be 'sufficiently developed, so that it would be seen to be a concept which is capable of being realised'. Therefore, it is clear for an idea to be protected by confidentiality it needs to have some development.

A more modern key case is Michael Douglas v Hello , in which the legal issue concerned whether unauthorised photos were taken was in fact a breach of confidence or not, also considering that the photographer took photos of a celebrity wedding and that another magazine held the exclusive rights to the photos. In this case the judge decided that the photos were confidential. However, three conditions for the duty of confidentiality were stated in Coco v AN Clark LTD . The first condition is the necessary of confidence. The second condition is the obligation of confidence and the third condition there must be unauthorised use of information.

The duty of confidentiality is particularly complex not only considering that the limits of confidentiality could be hard to determine, but also because they overlaps with the right of privacy and freedom of expression. As a consequence, any invasions of privacy would be deal by the Human Rights Act 1998 and the European Convention on Human Rights 1953 and, more specifically, the courts are required to adopt a balance between Article 8 (right to respect for private and family life) and Article 10 (freedom of expression) of the European Convention on Human Rights.

Privacy has been defined as the state of being apart from other people or concealed. For privacy courts have taken to asking whether a person has a reasonable expectation of privacy then the court will go onto to consider whether that right is overridden by another right. This is the 'an intense focus' concept. One case highlighting the hardship of the intense focus concept is Campball v MGN . Although this concept was originally to protect secrets, however, it has expanded to celebrities having greater control over their fame can be exploited.

Therefore, the duty of confidentiality is not limited to commercial or industrial situations. In fact, the obligation of confidence has been enforced between husband and wife (Argyll vs Argyll) and expanded to include state secrets (A-G vs The Observer LTD). Even a secret disclosed between friends could imply a duty, thus a breach of confidentiality could arise (Stephens vs Avery). So it is clear that the observance of this duty could be required to any kind of relationships, and that the obligation is not limited to contractual relationships. This is confirmed in W v Edgell , which shows that it applies to fiduciary relationships, and specifically, to the relationship between a doctor and patient. In fact, some relationships, such as this, imply a fiduciary duty consisting in a legal or ethical relationship of trust. However a different test was applied in Carflow Products (UK) vs Linwood Securities LTD in which, in the absence of a contractual agreement, any confidentiality has been considered as implied.

The court gives a great weight to the relationships of the parties. This was decided in Prince of Wales v Associated Newspapers . In McKennitt and ors v Ash the court of appeal stated the longer the pre-existing relationships the more likely an obligation would arise.

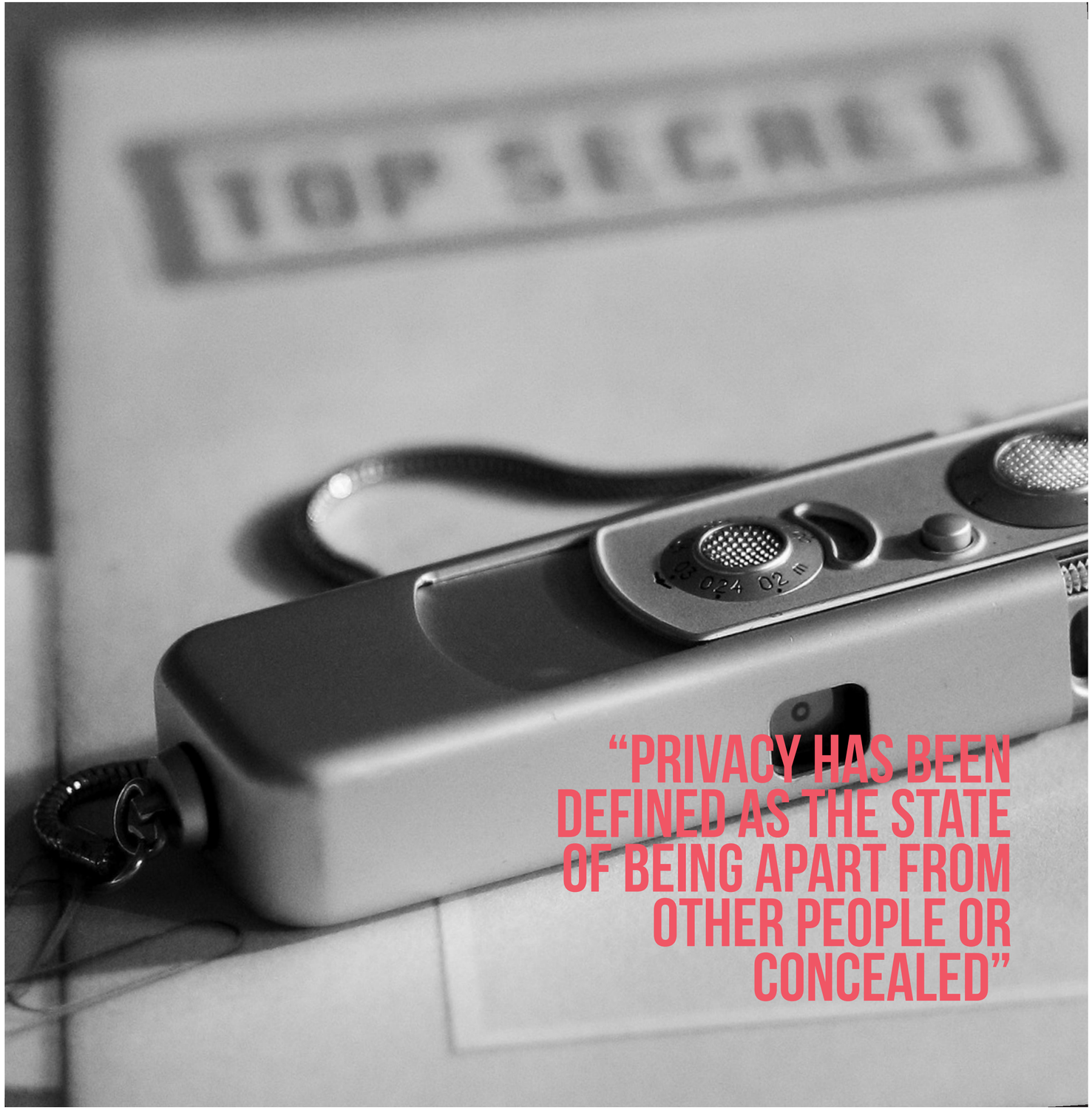
Nevertheless, not every information or material can be considered confidential and, as a consequence, protected by a duty of confidentiality. Over the time case law has provided some guidelines, until reaching some fundamental prerequisites for which the disclosure of an information may cause breach of confidence.

First of all, the information is required to have the necessary quality of confidence.

This concept was explored in Herbert Morris LTD vs Saxelby which stated: 'if information is so detailed that you cannot carry it in your head then it is a trade secret.' The general meaning of a trade secret is a secret device or technique used by a company in manufacturing its products. Case law has decided it includes prices, delivery routes and databases (Vestergaard Frandsen S/A v Bestnet European). However, Lord Parker in Hertbert Morris LTD vs Saxelby stated that: 'if it is simply a general method or scheme that is easily remembered then it is not[a trade secret]'. If it is not a trade secret for it to come under this doctrine, it needs to have 'the necessary quality of confidence about it, namely it must not be something which is public knowledge and public knowledge' (Saltman Engingeering Company v Campball Engingeering Company).

The legal question which arise from this case is how can we tell if the information has the 'necessary quality of confidence about it. The judge in Thomas Marshell (Exports) LTD v Guinle felt that there should be four elements taken into account when looking into 'necessary quality'. The first element concerns the effects of the release of the information and, specifically, if it would be injurious to somebody or give advantage to his rivals. The second element is connected with the owner's belief that the information is confidential or secret. The third concerns the reasonableness of the first two requirements. Lastly, the information must be considered taking into account trade practice.

Case law has shown that any information available to the public ceases to be confidential, and this can include activities taking place in public places (Woodward v Hutchins) .Therefore, for the breach



"PRIVACY HAS BEEN DEFINED AS THE STATE OF BEING APART FROM OTHER PEOPLE OR CONCEALED"

“IF INFORMATION IS SO DETAILED THAT YOU CANNOT CARRY IT IN YOUR HEAD THEN IT IS A TRADE SECRET.”

Prince Albert vs Strange (1849) 1 Mac and G 25.
Fraser v Thames Television LTD (1994) 1 QB 44.
Michael Douglas v Hello (No 8) (HL) 5RB 2007
Coco v AN Clark LTD (1969) RPC 41
Campball v MGN (2002) 2 AC 457
Argyll vs Argyll (1967) CH 303
A-G vs The Observer LTD (1989) AC 109.
Stephens vs Avery (1988) 1 CH 457. Tina Hart, Simon Clark and Linda Fazzani, (2013). Intellectual Property Law. 6th ed. London : Palgrave Macmillan Law Masters. 203.
W v Edgell (1990) 1 CH 359. Zoey Peters. (2016). W v Edgell . Available: http://swarb.co.uk/w-v-edgell-ca-1990/. Last accessed 1/11/2016.

Carflow Products (UK) vs Linwood Securities LTD (1996) FSR 424 .
Prince of Wales v Associated Newspapers (2008) CH 57.
McKennitt and ors v Ash and another (2006) EWCA CIV 1714.
Herbert Morris LTD vs Saxelby (1916) AC 688.
Vestergaard Frandsen S/A v Bestnet European LTD EWCA CIV 424.
Hertbert Morris LTD vs Saxelby (1916) 1 AC 688.
Saltman Engingeering Company v Campball Engingeering Company (1963) 3 All er 413.
Thomas Marshell (Exports) LTD v Guinle (1979) 1 ch 227.
Woodward v Hutchins (1977) 2 All ER 751.
Coco v AN Clarke (1968) RPC 41 High Court.
Polymasc pharmaceutical Plc v Stephen Alexander Charles (1999) FSR 711.
W v Edgell (1990) 1 CH 359.
Stephens v Avery (1988) 1 CH 457
ibid
Carflow Products (UK) vs Linwood Securities LTD (1996) FSR 424.
Campball v Mirror Group Newspaper (2004) UKHL 22 (2002) EWCA Civ 1373.
Douglas v Hello (2005) EWCA Civ 595.
Tournier v National Provinical and Union Bank of England (1924) 1 KB 461.

Morison v Moat (1851) 9 Hare 492.
Hivac v Park Royal Science Instruments ltd (1946) 1 All 350,
FFS Travel and Leisure ltd v Johnson (1999) FSR 505.
Lion Laboratories LTD v Evans and others (1984) 2 All ER 417).
Hubbard v Vosper (1972) 2 QB 84.

W v Edgell (1990) 1 CH 359.

domain. One example of information being in the public domain is the patents register and, in fact, the protection of IP rights. Confidentiality involves a set of rules that limits access or places restrictions on information, therefore, generally speaking, publication of information removes the obligation of confidence but a person who is under an obligation may be held to that obligation for a certain period of time. This is the concept of spring back. The enactment of The Human Rights Act 1998 has now reinforced the protection.

The second condition that must occur is the obligation of confidence between the parties. Coco v AN Clarke states that the information must be ‘imparted in circumstances imposing an obligation of confidence’. This element depends on the relationship of the parties. Within a contract, confidence may be an express or an implied term, and this extends to contracts of employment, as confirmed in Polymasc pharmaceutical Plc v Stephen Alexander Charles . Nevertheless, the confidential obligation is not restricted to contractual relationships. Examples include doctor-patient relationships (W v Edgll) to friendship (Stephens v Avery).For an obligation to arise there needs to be circumstances such that ‘any reasonable man standing in the shoes of the recipient of the information would have realised that upon reasonable grounds the information was given to him in confidence’ (Coco v AN Clarke). However, in Carflow Products LTD v Linwood Securities LTD a subjective test was applied, which consists in examining what the parties intended to impose and accepted.

A breach of confidence may also occur in absence of pre-existing relationships between the parties. In this case, the conditions for a breach of confidence appear not to need to rely on the second requirement from Cococase. One example of this is Campbell v Mirror Group Newspaper , concerning a well-known supermodel who was photographed leaving a narcotics anonymous meeting. The House of Lords said that an obligation of confidence could extend to strangers if the information are observed in private. In this judgement it was stated that the enactment of the Human Rights Act has served to ‘identify private information as something worth protecting as an aspect of human autonomy and dignity’. Chris Hunt has suggested that Campbell and Douglas v Hello , together with the Human Rights Act,have created a new tort of misuse of private information.

The last condition is the unauthorised use of the information. The authority to disclose information is normally covered by the agreement. There are some special circumstances which include a contractual relationship, as the parties to a contractual agreement may have an express terms of confidence in their agreement. This may consist in implied terms as well as expressed terms however this varies. This can be bank (Tournier v National Provinical and Union Bank of England , Partnership agreements (Morison v Moat), and any contracts that will give rise to an fiduciary relationship. Also for contracts of employment the obligation of confidence is normally part of the contract. This duty is highlighted in Hivac v Park Royal Science Instruments ltd , where the claimants were restrained from employing Hivac employees. The employee had been working for the defendants in their spare time although there was no proof that confidential evidence was disclosed. The Court of Appeal accepted that there was a risk that confidential information could be leaked thus this could break the obligation.

On the facts of FFS Travel and Leisure ltd v Johnson it was stated that it is critical to distinguish the trade secrets the employee could claim as their property from skills and experience, but the former employee would be subjected to this obligation. In this case, and considered the favour towards trade secrets’ protection, it seem to be critical for employers to be able to protect their own work.

The defence that could be used to an action in this area of law should not be aimed to prove that there was not a duty of confidentiality, on the contrary the only defence for disclosing an information is to prove that the information was for the public interest.

The random house dictionary defines the public interest as ‘the welfare or well-being of the public and appeal to the public’ Examples can be found in case someone is undertaking a criminal offence (Lion Laboratories LTD v Evans and others) or the information is about Scientology (Hubbard v Vosper).

This defence can be successfully used as a defence for the safety of others and public interest, as stated in W v Edgell ,which concerned the release of a mental hall report patient considered a danger to others. The Court of Appeal held there was a duty of confidence between a doctor and a patient but this duty had to be balanced against the public interest in protecting the public form violent.

On the other hand, there are a number of remedies against the breach of confidence which are available. They include so called super injunctions and damages.

Damages are monetary compensation that is awarded by a court in a civil matter to an individual who has been injured through the wrongful conduct of another . The purposes of damages is to restore an injured party to the position the party was in before being harmed. Damages are calculated on the basic of compensating the claimant for the value of property.

In order to establish the loss incurred, there seems to be a distinction between whether the duty of confidence is a contractual or non-contractual obligation. The Court of Appeal case of Indata Equipment Suppliers LTD v ACL LTD stated that damages should be assessed on a tortious basic, that is such sum as would put the claimant into the position they would have been if it not been for the tort or breach of confidence. In particular, the claimant could request an equitable remedy, and specifically, an account of the profits where information has been for commercial purposes. As this area of law is mostly concerned with information that are supposed to be not-disclosed, it would be possible to seek an injection, that would try to prevent disclosure of that information. However, to take out an injection the claimant would need to meet a high threshold test as laid down in the Human Rights Act 1998. It states that an injection would only be granted if a breach of confident is likely to be proved at trial (Cream Holdings LTD v Bannerjee).

Another development, thought to protect confidentiality, is the current emphasise on entering into non-disclosure agreement which is a legal contract that outlines confidential material or knowledge the parties may wish to share. This is an effective way to protect confidential information, also considering that the court gives a great weight to the relationships of the parties.

In conclusion, this area of law is interesting. Especially, the interlinked nature of the international law of privacy and the British legal concept of breach of confidence. After conducting research into this area it appears that this concept is filling a gap as much properties rights need to have some written proves whereas this concept doesn’t.

Kelly Summersett

KELLY SUMMERSETT

TRADEMARKS AND INTELLECTUAL PROPERTY IN THE EU

ABSTRACT: This article looks at the laws around Trade Marks within the EU, also exploring the concept of Goodwill and the action of passing off. It will also look at the differences between trade mark infringements and the action of passing off. Lastly, it will look at possible action of infringement.

Trademarks are defined as a symbol and words that, legally registered or established by use,represents a company or product.177 The TRIPS agreement or The Agreement on Trade Aspects of Intellectual Property 1995 defines it as any sign, or any combination of signs, capable of distinguishing the goods or service of one undertaking from those of another178. Therefore, the function of a trademark is to distinguish one product from another. This was affirmed by Scandecor Developments AB v Scandecor Marketing179, and this is particularly important to protect a brand or product against competitors.
The Paris Convention, established in 1883, created the beginnings of the recognition between various countries of each other's intellectual property's rights and it gives international protection to 'well know' trademarks. Nevertheless, there are a few criticisms of this convention that the 'well known trademark provision has a unsatisfactory effect.
Within EU law a trademark may be protected either by filling national trademark within the home country or across the whole of the EU by means of a European Union Trade Mark, which allow a single registration across the whole of the EU.
It is important to register as it helps protect the brand and it gives legal rights. In fact, if not registered, the rights over the mark have to be proven.180 A registered is valid for 10 years181 , and it is possible to cancel or remove a trademark from the register.
One ground for removing a trade mark is revocation on grounds of non-use182. This can only happen if the trademark has not been use for five years. A trade mark can be challenged for non-use if the trademark has been used in ways which differs from an essential element from the mark registered. One example of this in action was United Biscuits v Asda Stores183. The United biscuits registered marks of photos of Penguins were revoked for lack of use since the designs of penguins used on the packing were so different from those covered by the registered. Thus the claim failed.
Another way would be for a trademark to become 'generic'. For this ground it can be challenged under Section 46, which discipline the case in which the trade mark has become common 'in the trade' for the product or service for which it is registered by reason of the act of inactivity of the proprietor. Lastly, one more way for trademarks to be removed from the registered is through invalidity, that occurs when a trademark not have been accepted for registered to start with.184 A consequence of non-use of a trade mark is the original owner would lose the legal rights to the trade marks.

An application of a trade mark can be reused under section 3(1), in fact, signs which cannot be represented graphically or are not able to distinguish the goods of one trader from another would be likely be refused. This is also true of trade marks devoid of distinctive character would likely be refused. In AD2000 Trade Marks (1997)185 was stated that 'a trade mark need to be distinct by nature or become district through nature. '
In the case 16/74 Centrafarm v Winthrop186 the specific subject matter of a trade mark was defined in similar to those of a patent that the specific subject matter is the guarantee to the owner of the trademark. The opener has exclusive rights for the purpose of putting products by the trademark into circulation for the first time187.
The procedure for obtaining a trade mark is governed by the Regulation 207/2009 on the Community Trade Mark188. Under this procedure, to be protected ,the sign must be registered with the Office for Harmonisation in the Internal market.
In Dyson v Registrar of trademarks ECJ189 it was said that the essentials of a trademark consist in that it has to be a sign or combination of signs and it must be capable of distinguishing companies, and it must be capable of being represented graphically. Moreover, it must be perceptible by one or more of the senses.190
This was discussed in the case of The Court of Law of Andine Community Case Number 194 – IP – 2006, that stated that only 'perceptible sign is apt to constitute a trademark, by leaving to an observer an image or impression which causes the distinction or identification of a certain product'.191 Sounds and smells may be able to be trademarked. As you imagine smells and sounds cannot be represented as graphically but it has been suggested that you can put musically notation and chemical equation for smells or it may be possible to described it.

The case law shows that the use of identical marks or even similar may be enough for infringement. This was shown in the case of Future Enterpises PTE LTD v McDonald's192. The issue concerned the use of 'McCafe', which is a trademark of McDonald's, and 'McCoffee'. It was decided 'McCoffee' was too close and thus it is an infringement.

For a trademark to be successful it must be capable of distinguishing one set of goods from another. Legally, this means it had to convey no meaning to the consumer expect in the context of the applications goods or services.
in the case of McDonalds Corp v Silcorp it was stated that it would be unfair if McDonald's could not claim a monopoly over the use of Mc or Mac syllables, or in combination. In fact, monopoly is a control or advantage obtained by one company over the commercial market in one area. In McDonalds Corp v Coffee Hut Stores193 the court, when deciding an application to register the mark McBeans in respect of coffee, while noting that McDonalds had a reputation, said there was nothing distinctive about the McDonalds marks once outside the business world194.

For secondary infringement there could be a 'similarity of goods and/or services203. This could mean whether an identical or similar mark has been used. One example can be found in Assembled Investments PTY LTD v OHIM and Waterford Wedgwood Plc CFI 204. The applicant sought to register the trademark 'Waterford' in respect of wine from a certain area in South Africa, however, the owner of the trademark, that had called Waterford in relation to glassware, opposed the registration. Since the names and marks are identical, the legal question within this case was whether the goods were not similar. It was decided the goods were not similar and, as a consequence, the opposition was dismissed. In fact, it was stated that 'in order to assess the similarity of the goods in question, account must be taken of all the relevant factors which characterise the relationship between those good, these factors include their nature, intended purpose, method of use and whether they are in completion with each other'. EU laws show the use of keywords are trademarks by an online service provider to promote its own service does not amount to use of those trademarks in relation to the goods (L'oreal SA v eBay International AG205).

"TRADEMARKS HAVE AN IMPORTANT ROLE WHEN LOOKING AT INTELLECTUAL PROPERTY AS IT AFFORDS PROTECTION, AND TO BREACH A TRADEMARK HAS SOME VERY SERIOUS CONSEQUENCES."

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177 The English Dictionary.
178 The agreement on Trade Related Aspects of Intellectual Property Rights.
179 Harms, L. The Enforcement of Intellectual Property : A Case Book,(2012) , 3rd Edition, World Intellectual Organization.
180 European Union Intellectual Property Office (2016). Online Services. Available: https://oami.europa.eu. Last accessed 30/09/2016.
181 The Government (2015). Trade marks. Available :https://www.gov.uk/how-to-register-a-trade-mark/register-a-trade-mark. Last accessed 16/10/2016
182The Government (2014). Trade marks – Revocation. Available: https://www.gov.uk/government/publications/trade-marks-revocation/revocation-non-use-proceedings. Last accessed 16/10/2016
183 (1997) RPC 513
184 Nucleus Law Firm (2016). Revocation. Available : http://www.nucleus-ip.com/services/trade-marks/Revocation---Rectification.aspx. Last accessed 16/10/2016

185 RPC 1666
186 16/74 Centrafarm v Winthrop (1974) ECR 1183.
187 Kaczorowska, A.European Union Law, (2014) 3rd Edition, Oxford : Oxford University Press.
188 Kaczorowska, A.European Union Law, (2014) 3rd Edition, Oxford : Oxford University Press.
189 Dyson v Registrar of trademarks ECJ 25 January 2005 C – 321/03 ECR 2007 1 687.
190 Dyson v Registrar of trademarks ECJ 25 January 2005 C – 321/03 ECR 2007 1 687.
191 Harms, L. The Enforcement of Intellectual Property : A Case Book,(2012) , 3rd Edition, World Intellectual Organization.
192 Clarke,S., Hart, T. And Fazzani, L.Intellectual Property Law, (2013) Sixth Edition. Basingstoke: Palgrave Macmillan : Future Enterpises PTE LTD v McDonald's (2007) SGCA 18
193 McDonalds Corp v Coffee Hut Stores LTD (1994) 55 CPR 3d 463.
194 Harms, L. The Enforcement of Intellectual Property : A Case Book,(2012) , 3rd Edition, World Intellectual Organization.

195 Clarke,S., Hart, T. And Fazzani, L.Intellectual Property Law, (2013) , Sixth Edition. Basingstoke: Palgrave Macmillan.
196 World Intellectual Property Organization . (2012). Implications of the TRIPS agreement . Available: http://www.wipo.int/edocs/pubdocs/en/intproperty/464/wipo_pub_464.pdf. Last accessed 16/09/2016.
197 Johnstone v R 2003 UKHL 28 UK I.
198 LTJ Diffusion v Sadas Vertbaudet ECJ 20 March 2003 C 291/00, ECR 2003 1 2799
199 The Agreement on Trade Related on Intellectual Property.
200 Clarke,S., Hart, T. And Fazzani, L.Intellectual Property Law, (2013) Sixth Edition. Basingstoke: Palgrave Macmillan.
201 British Sugar Plc v James Robertson and Sons LTD (1996) RPC 281 UK.
202 Clarke,S., Hart, T. And Fazzani, L.Intellectual Property Law, (2013) Sixth Edition. Basingstoke: Palgrave Macmillan.
203 Assembled Investments PTY LTD v OHIM and Waterford Wedgwood Plc CFI
204 The Agreement on Trade Related on Intellectual Property : Assembled Investments PTY LTD v OHIM and Waterford Wedgwood Plc CFI 12th June 2007, T 105/05, ECR 2007, 11 60
205 L'oreal SA v eBay International AG ECJ 12th July 2011, C 324/09.

206 Lucy Smith . (2011). Design Rights Infrigements . Available: https://www.wrighthassall.co.uk/expertise/intellectual-property/design-rights-infringement/. Last accessed 01/10/2016.
207 Steve Wilson . (2015). Protecting IP rights in the Eu. Available: http://www.osborneclarke.com/connected-insights/publications/protecting-ip-rights. Last accessed 01/10/2016.
208 Reckitt and Coleman Products v Borden INC Number three (1990) 1 ALL ER 873
209 Trego v Hunt 1895 AC 7
210 Hentys Corporate (2015) what is passing off? Available : http://www.hentys.com/dyn/_assets/_pdfs/201107Passingoff.pdf. Last accessed 20/10/2016
211Hentys Corporate (2015) what is passing off? Available : http://www.hentys.com/dyn/_assets/_pdfs/201107Passingoff.pdf. Last accessed 20/10/2016

Also unregistered design rights are important when looking at trademarks. Generally, speaking registering trademarks is the best way to get protection. This area is covered by the EU unregistered Community Design or UCD206. Nevertheless, an unregistered trademark may be protected by nations law in the member state207. The UCD provides protection but this is not absolute. The protection is three years from the date it is made public. For this protection the design must prove that the sign is novel in that it must be different from any previous designs and it must have 'individual character'. This means it must create an overall different impression from earlier designs

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Honest traders are protected by the concept of 'Passing off'. This type of action is normally used for unregistered trademarks. For a successful action there needs to be the presence of goodwill. In Reckitt and Coleman Products v Borden INC Number three208 the three requirements have been highlighted. They are the existence of claimants Goodwin, a misrepresentation and damage. Goodwill has been defined as 'The whole advantage, wherever it may be, of the reputation and connection of the firm which have been built up by years of honest work209. There must be a misrepresentation by the defendant in the course of business that leads the person to believe that the goods and services are provided by your company210. Misrepresenting is the next element. This seems to be linked to the defendant state of mind. The last element is damage. Here, the claimant must be able to show damage or the possibility of damage. Remedies are available for an action of passing off. These are based on the actual loss suffered.

It is possible to be granted a license for a trademark. A licence is an agreement between the owner of
the trademark and another party211 that grants him permission . The essence of the use of licence in these terms is one of quality control. There are many benefits, including additional revenue streams and benefit from another skills plus many more. There are many ways to license trademarks including franchising (a specialised license where the franchisee is allowed by the franchiser in return for a fee to use a particular business model and IP rights), merchandising, brand exhaustion, brand exhaustion and co-branding. In conclusion, trademarks have an important role when looking at intellectual property as it affords protection, and to breach a trademark has some very serious consequences.

Kelly Summersett

EMPLOYMENT LAW UNFAIR TREATMENT IN THE WORK PLACE

***ABSTRACT:** Employment law is an important branch of the UK Legislation that helps to establish working conditions that enable people to work in an atmosphere free of bias, establish working conditions that prevent harassment and maintain sanitary and safe working conditions. These 3 factors are just examples of actions the Employer should always take when their Employees being treated fairly. In this article I will discuss the rights of employees in the work place with particular focus on procedural factors employees should bear in mind in relation to Repudiatory claims.*

The workplace can sometimes be seen to be a daunting environment in which employees, and young employees in particular, are more likely to face unfair treatment in the workplace and less likely to take the steps or aware of the steps that can be taken to resolve them or defend themselves efficiently. Unfair treatment can be defined as the Employer treating an Employee unfairly or unfavourably due to their age, being or becoming a transsexual person, being married or in a civil partnership, being pregnant or on maternity leave, disability, race including colour, nationality, ethnic or national origin, religion, belief or lack of religion/belief, sex .sexual orientation. Unfair treatment within the work place can manifest in many different forms. For example, the denial to make an application for a promotion within the company every 2 years, in violation of a contract clause that stated this right, canbe considered a case of the employer unfairly treating the employee by breaching an expressed term in the contract. Likewise, behaviour consisting of exploiting an employee or personally persecuting an employee within the work place, would be deemed to be victimisation. Therefore, victimisation within the workplace may occur when the manager constantly berates a receptionist for the occasional typo error in a document and stating these mistakes are being made due to dyslexia. This behaviour would be unfair as the employee is being targeted for his disability/ learning difficulties in violation of the Equality Act 2010 , but also in breach of an implied term of mutual trust and obligation in the employment contract. When an employee enters the employment contract, whether it is expressly or impliedly stated in the contract, the employer has a duty to pay his relevant wages, provide work, indemnify and take reasonable care for employees safety. In particular, the concept of what is deemed to be “taking reasonable care” can be explained in 3 aspects:

- safety of employees is ensured,
- a safe workspace environment exists,
- and a safe system of work exists.

These duties are particularly relevant depending on the risk associated with the relevant occupation. However, they are not the only responsibilities owed by an employer, as the employer must look to uphold a relationship of mutual trust and confidence with his employees, and consider that Positive and constructive employee relations are often without question, the backbone behind the success of some of the most successful companies or organisations in the world. In fact they are able to build a sense of togetherness and, in this way, a real sense of a family unit beginnings to grow and prosper .

“Young workers should be aware of their rights” written by Phillip Landau published in the Guardian on 9/9/14 “Victimisation definition” http://www.thefreedictionary.com

“Importance of Employee relations, why employee relations at the work place?” www.managementstudyguide.com
“Damaged or just distressed?” written by Christina Morton in Personnel Today on 1/2/01
“25% of women report unfair treatment in the work place” www.Reliableplanet.com
Employment Law 2016 by Gillian Phillips and Karen Scott
“Solicitors Regulation Authority Handbook, chapter 5” www.sra.org.uk
“Employment Right act 1996” www.legislation.gov.uk
221 Employment Law 2016 by Gillian Phillips and Karen Scott

The principle according to whom employers have a duty to maintain trust and confidence is supported by the case of Gogay v Hertfordshire County Council, 2000, IRLR 703 . In this case the employee sought damages for breach of the implied term of trust and confidence. This stemmed from the employers knee jerk reaction of suspending an employee from her role as a care worker in a children’s home whilst being investigated for allegations of child abuse without full facts or evidence, pending what was to be a very emotional investigation. Scenarios such as the case that I just referred to are sadly a common occurrence . This is neither morally nor legally acceptable and would in fact be in breach of the duties I stated above and can provide the grounds for what is called a Repudiatory claim.

A Repudiatory claim is a claim for the breach of an express or implied term by either the employee or employer. It is pivotal to assess the seriousness of the breach, as the breach in question must be serious enough to warrant either the employee or employer treating the employment contract as discharged. This is highlighted in the case of Pepper v Webb [1969] ALL ER 216 1 WLR 514. In this case the breach of contract had been so serious that the discharging of the contract prematurely was justified.

Therefore, a claim for a Repudiatory breach will be made to an Employment Tribunal, in the event that the employer has committed a breach so serious that it speaks to the root of the employment contract in question. The example I used earlier referring to an employee being deprived of a promotion, highlights what constitutes as violating the standards of “fair treatment” in the workplace and consequently this could lead to bringing it could bringing a successful claim for breaching the duty of mutual trust implied within the employment contract. Another example may be found in Legal Practise where the employee is a Paralegal or Trainee Solicitor on a 1 year contract and the Solicitor they take instructions under has knowingly let his client present a story to the police that he knows to be untrue in breach of the SRA code of Conduct chapter 5 O(5.2) and ask that

you go along with the story with the threat to be dismissed. It is against the UK Legislation for a solicitor or their firm to knowingly present an account to the police that they know to be false. Therefore, the Trainee or the Paralegal would be within their right to see their employers conduct as a breach so serious in relation

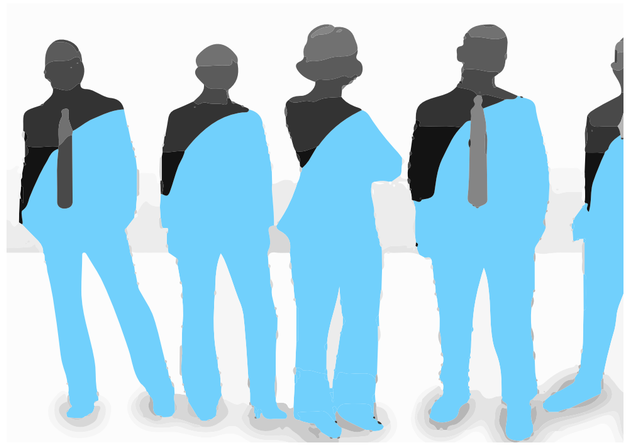
to duty of mutual trust an confidence between the solicitor and his employee. In addition, the Solicitors conduct of breaching the SRA rules is also sufficient for the employee to treat the contract as discharged and seek a repudiatory claim against their employer.

In the event that a situation like the above examples arises, employees should be aware that they always have 2 options before them. In fact, they could:

The employee will be in a strong position if they can produce evidence in the form of witness statements from fellow co-workers, character references recorded audio footage, video footage, emails and letters supporting this serious breach by the employer. But nevertheless, even with evidence supporting the assumed claim, the employer has the right to justify the dismissal of the employee without notice. This right would be supported by the case of ICC Co v Ansell (1888)221.

In this case, the employer dismissed the Director without notice, but at the time of the dismissal, he did not possess the evidence to justify dismissing without notice. At a later date, he was able to support this dismissal after the fact by adducing evidence of this director taking bribes which would have been in breach of his employment contract. This is an example of how an employer may seek to justify their dismissal.

Lastly, when deciding the avenue of pursuing a claim for repudiation, the employee must ensure they meet the criteria of being classed as an “employee” in accordance with s.230(1) of the Employment Rights Act 1996. Key factors the court will consider in determining whether someone is an employee are:

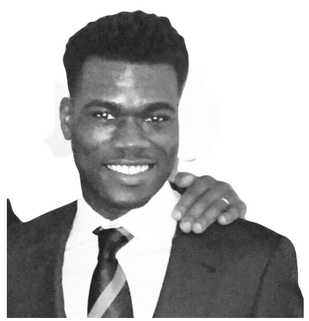


- accept the breach and treat their employment contract as discharged without providing notice as required by Section 86 of the Employment Rights At 1996
- or, waive the breach and continue with the contract.
- The existence of a contract with the employer,
- The individual has to carry out the work personally,
- There has to be “mutuality of obligation” between the two parties,
- The employer’s “control” over the work that the employee does.

The employee, assuming they have met the criteria of the Employment Rights Act and the UK Courts will be classed as an “employee”. The damages they may potentially receive, will reflect the financial position they would have been in if the breach of contract in question did not occur. This will be made of the wages/salary for the notice period expressly stated in their employment contract. When deciding if to bring a claim to the Employment Tribunal it is important to consider:

- its financial cost against the potential damages that may be received,
- whether proceeding to the employment tribunal and covering costs of representations,
- funding an investigation and filing of numerous documentation.

Over what may be a lengthy period of time is worth the financial settlement they may or may not even receive depending on the merit of the claim. Nevertheless this should not dissuade the employee from pursuing a legitimate defence of their employee rights to fair treatment in the work place. In conclusion, the violation of any contractual obligations within the employment contract whether it is implied or expressed, will provide grounds to raise a claim against the employer. However this principle does not only aide the employee but can be applicable for the employer. An employment contract effectively is documentation.



JOHN OKUNPOLOR

THE RISE OF AI IN LEGAL PRACTICE
THE CHANGING LANDSCAPE OF LAW

ABSTRACT: This article discusses how technology has changed the way law is practiced and what this means for the future of legal professions. It will look at how technology has already impacted the law, and reveal the pros and cons of adopting technology into legal practice. It will also reveal the importance of embracing technology and how it can aid the development of legal practice. In this way, the article challenges the notion that technology would only lead to the structural collapse of the legal profession by using research, online articles and books. It will argue that law firms should fully embrace technology and begin to incorporate it into their practice.

INTRODUCTION

When thinking of the meaning of technology, it is clear that different people think of technology differently. To some, it will advance human kind into doing new and impossible things.Others believe technology will steal our jobs as they develop their own intelligence. Others see technology as a means to accomplish various tasks in our daily lives. However, everyone can agree that technology has captured the imagination and attention of the world. It is true to say that for every field technology has influenced, it was met with scepticism, as well as some ethical issues surrounding, but this has not stopped these fields from adopting technology to gain the benefits and progress it provides. The same cannot be said for the legal sector. It is clear that while the technology around the legal world advances at an exponential rate, and as such advancing different parts of society, technology within the legal world is much slower. This article aims to discuss the ways in which technology has impacted the law, the challenges the legal sector faces in the growing technological age and how law firms should respond to these changes. Law may be slow to adapt to change but with the rise of AI in the legal practice, it needs to fully embrace these changes.

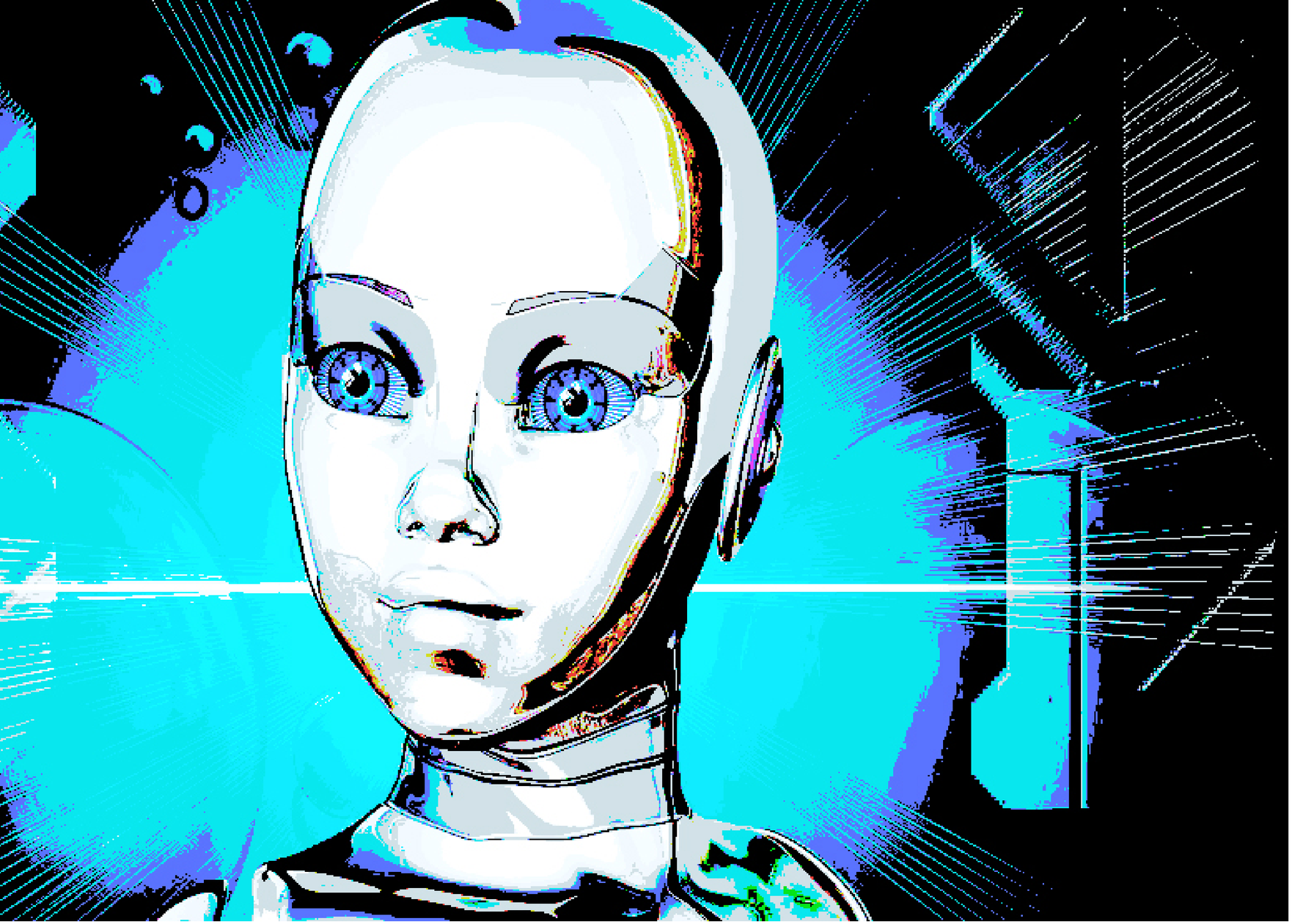
TECHNOLOGY AND LAW FIRMS

The application of technology in the practice of law has been substantial. We have seen a drastic change in the way law firms handle data, or promote their existence. High street firms have used the power of the internet to promote their services whilst medium firms store vast amount of data on their computers. However, this is only the tip of the iceberg in the advancements of technology in 21st century. Magic Circle firms such as DLA Piper, Clifford Chance and now more recently Freshfields have taken advantage of these advances and have adopted AI into their legal department. The reasons for this are clear, these technologies can help improve the quality and speed of lawyers work. Elevate, a top legal services provider based in California, used Kira, a form of AI, to help assist them in reviewing a multilingual contract. With Kira, Elevate was able to save the client $500,000 and eliminate a minimum of 5,000 additional review hours223. This is equivalent to saving 55.5% of time. Berwin Leighton Pierce is also known for using AI in its real estate department and commercial practices for 'deep research' and processing (extracting specific pieces of information from large documents). The associates have named this AI LONALD which is welcomed as being more efficient, productive and accurate than they can possibly be.224 In this way AI has enabled the jobs of professionals to be done more quickly and cost-effectively.

AI has also impacted the way legal information is delivered. As Horton said 'the largest benefit technology has had for lawyers is the one that is taken the most for granted: faster access to knowledge bases – whether that be in terms of legislation, case law or internal firm knowledge.'225 This is clearly seen in the huge amounts of data available over the internet. A quick google search is becoming increasingly accurate, and helpful for the rising litigants in person and those who want to cut back on legal costs. Law firms are becoming increasingly aware of the benefits that having an online presence can have. A recent example of this is Bird & Bird who have created a Virtual General Counsel. This means that clients can have access to Bird & Bird's lawyers instead of having to rely on their overworked in-house legal staff. The law firm set up a video link, phone line and email box, with software allowing each task to be picked up by the right person. Instead of worrying about increasing legal costs clients are charged a fixed fee. As a result, the company saw a 40 per cent reduction in its legal spend.226 This is clear evidence that technology not only allows people to have greater access to knowledge but will overall push down the costs of receiving such knowledge.

"IF LAW FIRMS WANT TO BE ABLE TO GAIN NEW CLIENTS AS WELL AS REDUCE THEIR COSTS, AI WILL PROVIDE THAT."

Lastly, AI has and will improve access to justice. By using AI, efficiency increases and legal costs reduces as such the flow of justice increases. More people will be able to afford legal services, and so do not clog up the system by their lack of knowledge about the legal process. It will also free up court time as processing legal documents becomes quicker. This in turn will mean the government does not have to spend thousands of pounds on the court's functioning. Instead technology can be used to expand the service lawyers provide as they will be able to supply legal advice more cheaply and create new different kinds of legal services. Furthermore, technology enables vulnerable and intimidated witnesses to give evidence in a separate location and saves police time as officers don't need to transfer dangerous criminals to court or be there physically.227 The capabilities are endless and this is only the beginning of the way technology can be used to handle legal services.



223‘Case Study:Elevate saves client $500,000 and over 5000 work hours with Kira’ <http://info.kirasystems.com/case-study-elevate-partners-with-kira> accessed 3rd October 2016

224 Chrissie Lightfoot, ‘Come the AI legal armageddon, what’s in it for me?’ (entreprenuerlawyer, 28 October 2015) <http://entrepreneurlawyer.co.uk/come-the-ai-legal-armageddon-whats-in-it-for-me/> accessed 3 October 2016
225 ‘iLaw – how technology is changing the legal profession’ (the college of law, 1 July 2014) <https://www.collaw.edu.au/insights/ilaw-technology-changing-legal-profession/> accessed 24 September 2016
226 ‘Virtual legal teams are giving clients a cheaper, more efficient option’ (financial times,) <https://www.ft.com/content/8bb682fe-39f9-11e4-83c4-00144feabdc0> accessed 1 October 2016
227Ministry of Justice and The Rt Hon Damian Green MP, ‘Improving justice through new technology’ (gov.uk, 17 January 2015) <https://www.gov.uk/government/news/improving-justice-through-new-technology> accessed 1 October 2016
228 Dan Bindman, ‘Report: artificial intelligence will cause “structural collapse” of law firms by 2030’ (Legal Futures, 1 December 2014) <http://www.legalfutures.co.uk/latest-news/report-ai-will-transform-legal-world> accessed 3 October 2016

229 Thomas Connelly, ‘Solicitors and barristers among professionals least likely to be replaced by robots, research reveals’ (Legal Cheek, 15 September 2015) <http://www.legalcheek.com/2015/09/solicitors-and-barristers-among-least-likely-to-be-replaced-by-robots-research-reveals/> accessed 5 October 2016
230 Ibid 8
231 [2015] EWCA Civ 400
232 Katie King, ‘Top Blackstone Chambers QC rejects Oxford prof’s claim that technology will destroy legal profession’ (Legal Cheek, 29 October 2016) < http://www.legalcheek.com/2015/10/top-blackstone-chambers-qc-rejects-oxford-profs-claim-that-technology-will-destroy-legal-profession/> accessed 23 September 2016
233 ‘2010 CyberSecurity Watch Survey Results’ (January 2010) <http://mkting.csoonline.com/pdf/2010_CyberSecurityWatch.pdf> accessed 7 October 2016
234 Deloitte, ‘Cyber crime: a clear and present danger Combating the fastest growing cyber security threat’ (2010) <https://www2.deloitte.com/content/dam/Deloitte/za/Documents/risk/ZA_RA_CyberCrime_CombatingFastestGrowingCyberSecurityThreat_2015.pdf> accessed 7 October 2016

235 Marco de Roni, ‘Not if but when: The rise and rise of AI in legal practice’ (Legal Cheek, 19 September 2016) <http://www.legalcheek.com/lc-journal-posts/not-if-but-when-the-rise-and-rise-of-ai-in-legal-practice/> accessed 29 September 2016

CHALLENGES THE LEGAL SECTOR FACES

Technology in the legal sector brings with it some challenges. One such challenge is that the advancement in technology may lead to the “structural collapse” of law firms by 2030,228 bringing a radical change to the economic model of law firms. Historically, law firms have had a pyramid structure, with partners at the top doing high-level work and trainees and paralegals at the bottom. In this way, the first impact automation will bring is at the bottom of the pyramid. Redundancies will be made at the lower level of law firms as technology is able to complete the tasks that paralegals and trainees do more efficiently and at lower costs. This is corroborated with a study done in Oxford University that reveals that solicitors, barristers and judges have only a 3.5% chance of being replaced by robots. However professions at the lower end of the spectrum such as paralegals (legal associate professionals) and legal secretaries are in danger of 66% and 98% automation respectively.229 Those interested in the profession in the future will face an uphill battle just to get into it. We have already seen the amount of training contracts in top city laws firms decline by 20% since 2008.230 If law firms begin to adopt new and advancing technology this number will only get bigger and there will be a change in the way law firms operate.

The second impact would be as the legal profession becomes more digitalised, it will lose its personal touch. This is evident in the case of Procter v Raleys Solicitors.231 This case involved a miner’s compensation claim in which a failure to explore the client’s needs ended in lost damages. The court cited a lack of “personal contact” with the client as key. The error arose because there was no conversation; the claim had been process-driven and the human dynamic was missing. This is because the role of lawyers is more than just having the best defence, argument or written contract. The legal profession is a matter of trust, it creates a fiduciary relationship with the client and the importance of communication, persuasion and contact is paramount. Cases that deal with vulnerable children, rape victims and someone’s company can be an emotive topic. It is the lawyer’s job to respond to these sensitive issues and provide the best advice, even if it may not be the most efficient advice. It is not clear that technology can do this, no AI has passed the Turing test. On the other hand, there is an argument that as technology improves individuals are becoming less personal. Many people would rather use a self-service checkout than wait for a sales assistant, ask Siri for help instead of speaking to an expert, or help themselves to a drink rather than flag down a waiter.232 Nevertheless, whilst the lack of personal contact does not seem to be a problem in these sectors, it is an important issue in the legal industry as it could render ineffective justice. Therefore, there is a significant challenge that law firms face if they were to embrace technology, the balance of efficiency and emotional intuitiveness must be achieved.

Another major challenge that will impact the legal profession is data protection and security. Threat posed to organizations by cyber-attacks have increased exponentially and neither the potential victims nor cyber security professionals can cope, placing targeted organizations at significant risk.233 The fact that a large amount of personal data managed by law firms are exposed to the numerous risks of technology can lead to law firms becoming increasingly vulnerable. Personal and confidential data can be lost, damaged and even breached by online hackers. In 2016 there was a flurry of cyber-attacks on different organisations such as TalkTalk. This not only cost them thousands of pounds but it ruined their reputation. As law firms continue automation, they will continually have that risk. However, this risk can mitigated if law firms understand the seriousness of cyber threats. They would also need to focus their money on providing a risk-based approach to cyber-security and knocking down the walls associated with siloed approaches of dealing with cyber threats.234

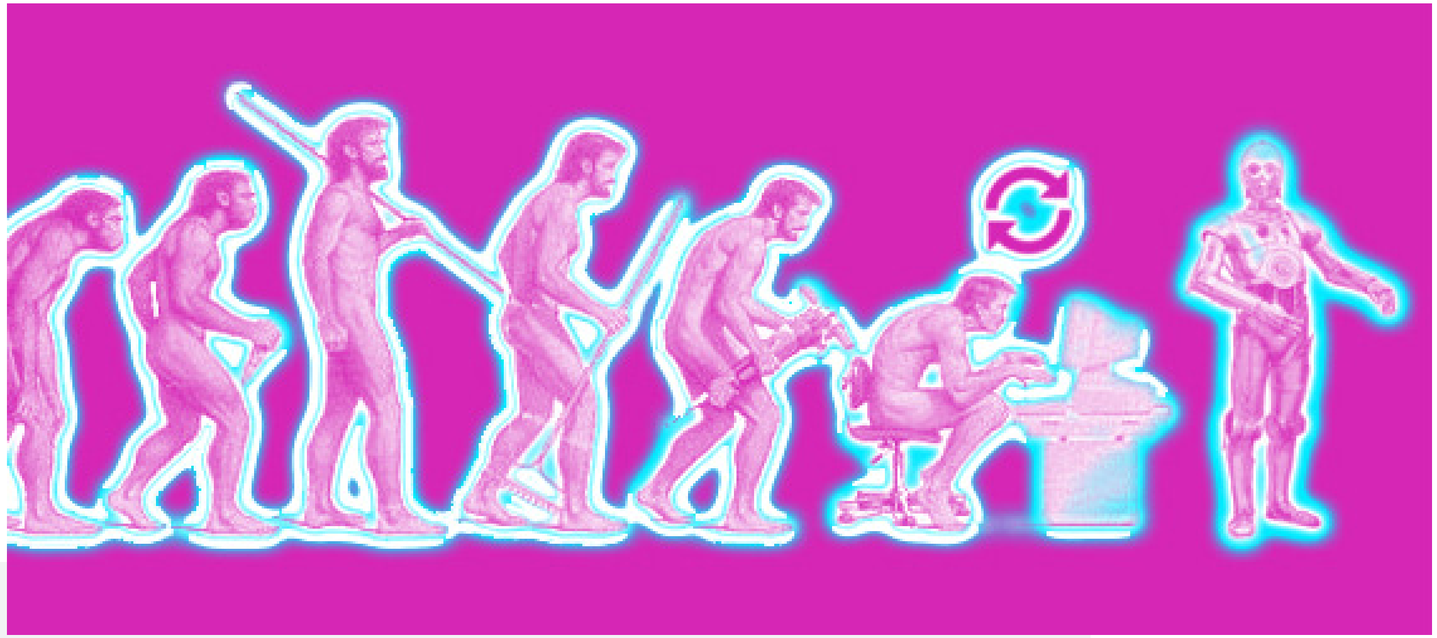
Lastly, the economic costs of adopting AI and then adopting adequate protection from cyber-attacks is substantial. This could see the widening gap between city law firms and high-street law firms, as they would neither have the means nor the funds to implement AI. Nonetheless, it can be argued that these costs are only short term. It used to be that owning a computer or a smart phone was expensive but now the majority of people have access to these types of technology. Furthermore, in the long term, law firms will not only save money but make a substantial profit as legal AI can carry out research and document analysis quickly and inexpensively. As such, the challenge of costs is short-term and if law firms want to be able to gain new clients as well as reduce their costs, AI will provide that.

THE LEGAL SECTOR'S RESPONSE

Now, that some of the key benefits and challenges that law firms will face have been explained, the question remains as to how law firms should respond. Cheaper costs, greater efficiency and speedier justice outweigh the challenges that adopting technology may bring. A lot of these challenges can be mitigated or may create new roles in the legal profession. Furthermore, firms are under serious threat as legal services are made cheaper and more readily available outside of law firms because of technology. If law firms want to remain the best place to get legal advice, law firms need to be "tech savvy" and have both legal and organisational skill. Lawyers cannot just have legal know how and be commercially aware, they need to also understand the way technology can be used and aid in their provision of legal services. In this way, technology in the legal sector can produce new jobs just like previous industrial revolutions have. Jobs such as 'Legal Technologist', 'Legal Hybrid', 'Legal Knowledge Engineer' and 'Enhanced Practitioner'.235 Although there is a real danger for change in the legal industry this change is not necessarily bad and could in fact open the door to many potential law students to work in new and exciting jobs.

CONCLUSION

As you can see technology has had a massive impact on the way lawyers practice and deliver legal services. Using AI will allow it to provide cheaper but more efficient services as well as allowing people to have better access to justice. But it does come with its own challenges such as increased risk of data hacking and a seismic change in the economic model of the legal sector. However, law firms need to respond positively to technology and begin to use them in their law firms. If law firms do not begin to incorporate technology into the legal sector, in house legal firms and Big Four Accountants can start using it and realise they no longer need to rely on law firms. It is imperative that law firms become more visible online and begin using the technology resources available to it. The legal sector cannot be slow to respond to these changes, they must not or they face becoming extinct.



STEPHANIE STEVENS

Joseph Gibbs Editor/Coordinator

Having produced articles for all the magazines it has developed my layout skills and made me think more and experiment with form, colour, change of pace and typography, image selection and placement. Editing the legal magazine gave me the opportunity to design a concept and see it through to completion whilst liaising with the designers and other people involved. Having been challenged by these projects it has given me valuable skills and more work to add to my portfolio.

josephpgibbs@outlook.com
josephgibbsgraphicdesigner.com

Meera Chauhan

This experience was great to be a part of, as I feel that we kept learning as we progressed onto each magazine. I learned more about layout, and making things look clean and readable, while keeping it aesthetically pleasing. Also it was a great lesson in working closely with the team, and keeping the look and of the magazine consistent. Though my favourite part was learning from the team and seeing how they would tackle the design, which was always inspiring!

mdchauhan89@googlemail.com
https://meerachauhandesign.wordpress.com

Sarah Manterlin

Working on the Amnick magazines allowed me to develop my skills and interests in editorial design. It was the perfect opportunity for me to kick start my career in graphic deeign by working on exciting and diverse projects. I now have the self confidence and the ability to grow as a junior designer.

hello@sarahmanterlin.com
www.sarahmanterlin.com

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