In Bevetta v Rhodesia Railways Ltd the court found that the contract of service under consideration had become temporarily impossible of performance but nevertheless applied principles very similar to the rules of partial impossibility discussed in the last chapter. This case will be considered in rather more detail below.  

The general rule in regard to temporary impossibility is that it does not extinguish the obligation but merely suspends it until such time as it once more becomes possible of performance, when full performance, if that is possible, may be demanded. If full performance is not possible, the creditor is entitled to demand what performance is possible in accordance with the rules governing partial impossibility of performance discussed in the last chapter, provided that to enforce such performance would not in effect amount to imposing an obligation on the debtor different from that which he originally undertook to perform, for in such a case the obligation would have become wholly impossible of performance. The Digest appears to have placed no time limit upon the duty to perform, but certainly in modern times it seems to be important to determine whether time is of the essence of the contract, and if not, then what part it does play in the contract.

In Weyl v United Restaurants Ltd the plaintiff was engaged

1. 1947 (2) SA 1075 (SR).
2. Post at p 169.
3. P 46.3.98.8. See also Unterholzner Schuldverhältnisse § 241; Wessels The Law of Contract in South Africa § 2634; Spencer v Gostelow 1920 AD 617 at 626.
4. Post at p 173.
5. 1903 TH 161.
as a restaurant manager for a period of two years from 1 September 1902. He was absent from work without leave for three months on account of illness. The court held that the contract implied that he would serve the defendant company *de die in diem* for the specified time except for such reasonable periods as might be necessitated through illness or incapacity, and that three months' absence was in the circumstances unreasonable and entitled the employer "to consider [his] obligations at an end".

It can be seen from what has been said above that this case is really one of partial impossibility, rather than one of temporary impossibility, for after three months' absence from work the manager could not complete two years' continuous service *de die in diem* before 1 September 1904, when the contract was due to expire. Furthermore, the restaurant was, it appears, not managed for the three months the plaintiff was away from work. This is not work that can accumulate and be done by the employee on his resumption of duty, perhaps by deferring or forfeiting holidays, or working longer hours. Full performance in this case has become absolutely impossible, despite the fact that the contract itself implicitly recognized the possibility of short absences owing to indisposition, and so had a certain amount of flexibility built into it—perhaps in addition to the concept of "substantial" performance that has already been considered.6

It was pointed out in *Van der Marwe v Colonial Government*7 that the "nature of the plaintiff's work will affect the legal position of this case", and that "there is also this further circumstance, that the work might have been accumulating during


7. (1904) 21 SC 520 at 524-5. See also *Lubbe v Colonial Government* (1906) 16 CTR 128, 2 Buch AC 277.
the period when the services ceased, and that first accumulation of work might have been disposed of later on". In that case, mainly on the ground that the plaintiff had not received notification that his services had been terminated, it was held that the interruption in his work caused by the military authorities had not had any legal effect upon his contract of employment.

One of the problems which bedevils locatio onerum is the fact that examples derived from the letting and hiring of property are often uncritically applied.

In Myers v Stearman, the court said, quite correctly, that "[t]he principles which guide the Court in the case of locatio onerum are similar to those which are applied to a locatio rei. A lessee of a house is entitled to terminate the contract and to leave the house if he be not afforded a convenient use or enjoyment of the property let (Voet, 19, 2, 23; Grotius, 3, 19, 12.) Now in the case of a letting of services, the locatior is the servant, the condutor the master, and the services which the locatior is to perform are in the same position as the res in a locatio rei. Hence the services themselves, and not the workman, take the place of the house. If, therefore, the master does not obtain from the servant the proper enjoyment of the services let, then he may, like the lessee of a house, who is deprived of the use of the property, terminate the lease of the services (locatio operarum)."

8. 1910 TPD 869 at 873-4.

The court confirmed that

"[i]t matters not in such a case whether the employer is deprived of these services by the illness of the servant or by any other act for which the master is not responsible . . . . It is not for every trifling deprivation of services that a rescission may take place, but only for such an interruption as the law considers considerable under the particular circumstances of the case."

This approach has been followed in later cases, but it is submitted that the last two sentences quoted above are too widely stated. It does not follow that because locatio conventio rei and locatio conventio operarum (or, for that matter, opera faciendi) are species of the same genus and governed by the same legal principles that the legal consequences following upon partial impossibility in the case of a locatio conventio rei should be transferred to a situation of temporary impossibility in a case of locatio conventio operarum.

In most cases of locatio conventio rei the property is let for a fixed period, and if the lessee is deprived of its use and occupation for a portion of that period full performance of the obligation under the contract is impossible. Furthermore, the contract of lease does not envisage temporary loss of use of the premises. Even when the lessee goes on holiday he retains use of the premises let.

10. See Boyd v Stuttaford & Co (1910) 4 Buch AC 141 at 150; Boyd v Stuttaford & Co 1910 AD 101 at 116; Bassetta v Rhodesia Railways Ltd 1947 (2) SA 1075 (SR) at 1080.

11. Though it may be possible to extend the lease to make up for the period of deprivation, this would be a new contract and would depend upon the will of the parties.
B. Analysis of Temporary Impossibility

In *locatio condivolto operarum* the position can be quite different.\(^\text{12}\) The contract itself contemplates, as has been shown, the possibility that the employer may not have the services of his employee for short periods owing to his illness, leave, etc. Furthermore, a great many contracts are of the permanent and pensionable variety, which contemplate service over a great many years up to a certain retirement age, and in many cases may even be extended for a period beyond that, subject to certain conditions, such as a medical certificate.

The correct view seems to be that a break in a contract of service of this kind should be treated as a case of temporary impossibility of service, provided that the break does not endure for so long as to make the performance under the original contract wholly or at least partially impossible of performance. It is clear that the ratio which the break in service bears to the length of the contract is important here.

In *Palusky v Pestoll*, Bristow J said:

"The case might have been different if the partnership were going on for two or three years longer and there were a reasonable certainty of the respondent's being restored to health within a comparatively short time; but as it is, the partnership must expire in any event within six months, the respondent has been away five months already and there is no evidence from which it can be said when he will be able to resume work."

---

\(^\text{12}\) As Solomon J pointed out in *Boyd v Stuttaford & Co* 1910 AD 101 at 150, a "rigid application of that principle would..., cause grave injustice, and would be quite inconsistent with the idea that *locatio condivolto* is a *bona fide* contract."

\(^\text{13}\) 1920 WLD 32 at 35.
In that case the partnership was for a period of some five years and required the regular attendance of the respondent partner to act as cattle auctioneer. At the date of the action it was thought that the respondent would not be fit for work for at least another six weeks, which would have made his absence from duty nearly seven months out of the five years of the contract.

In *Bernette v Rhodesia Railways Ltd* the plaintiff, who had been in the employ of the defendant and its predecessors in title for a continuous period of more than thirty-three years, was interned purely because he was an enemy subject. He was released less than eight months later. Immediately before his release he communicated with the defendant with regard to his position and was informed by the defendant that it was of the opinion that his internment had automatically terminated his services and that as he had not yet qualified for a pension, he could not be granted one. It would seem that at the date of his internment he had 97 days leave due to him. At the time of his internment he had only some eighteen months to serve to qualify for a pension. His duties were those of a way inspector, which, it would seem, meant that duties could not be accumulated as a backlog and worked off later. However, his conditions of service are not well enough evidenced in the report to enable one to determine whether they were flexible enough to permit him to make up for lost service.

Had he applied immediately to the court for an order of reinstatement in his permanent and pensionable position, the court might very well have treated the measure as causing temporary impossibility of performance, and granted his request. As it was, he seems to have waited some six years.

---

14. 1947 (2) SA 1075 (SR).
before going to court to claim a pension on a "modified scale" under regulation 148 (5), which had been applicable to him as an employee of the defendant. Such pension could be granted to him only if the defendant was found to have "dispensed with" his services before he had reached pensionable age. This was the difficulty facing Tredgold J. It is not suggested that his decision that, in the circumstances, the defendant had "dispensed with" the services of the plaintiff, was not right, or that the result of this decision was not equitable in the circumstances, but the process of reasoning in regard to the principles of the law relating to supervening impossibility of performance, with respect, leaves much to be desired.

If Tredgold J had come to the conclusion that the temporary impossibility had continued so long that full performance of the plaintiff's obligations under the contract had now become impossible, and that therefore the defendant had the right to elect whether or not it would accept the partial performance under the contract which remained possible, and that it had in fact elected to terminate the contract, one might have queried his findings of fact, but not his decision on the law applicable. Instead, he found in effect that in cases of temporary impossibility of performance the remedies appropriate for partial impossibility of performance are available. Following this line of reasoning, several writers on the law of contract have adopted this approach.

15. Though that is open to some doubt, see Ramsden "Temporary Supervening Impossibility of Performance" (1977) 94 SALJ 162 at 163, 169 n 147. Clearly, however, by the time of the case the plaintiff had acquiesced in the termination of his service see Stewart v Wrightson (Pty) Ltd v Thorpe 1977 (2) SA 943 (A) at 952.

16. De Wet and Yeats Kontraktesreg en Handelsreg 160; Christie The Law of Contract in South Africa 466 (though the latter's statement of the law referred to here is not as such inaccurate, it fails to tell the whole story).
Tredgold J's reasoning has been criticised by me elsewhere in some detail, and I do not propose to repeat those criticisms here except to say that temporary impossibility neither terminates an obligation nor gives rise to a right to terminate an obligation.

Three important points need to be borne in mind regarding temporary impossibility:

(i) The position would seem to be that temporary impossibility suspends the duty to perform the obligation thus rendered temporarily impossible, as long as the impossibility continues. Because of the synallagmatic nature of reciprocal contracts, however, the party thus deprived of the benefit of performance can withhold his counter-prestation and even recover under a condus atroc any performance already rendered in respect of the obligation temporarily made impossible; for instance, he can obtain a pro rata refund of rental already paid by him in respect of premises that he has been unable to occupy. In addition, the time for completion may be extended, unless time is of the essence of the

18. See note 3 above.
20. Building contracts often oblige the architect to extend the time in such circumstances (see H S McKenzie The Law of Building Contracts and Arbitration in South Africa 3rd ed (1977) 186). In England it has been held that this obtains even in the absence of such a clause (King v Pevlar (1876) 34 LT 887). In my view our law would take a similar view in appropriate cases, owing to the suspensive nature of temporary impossibility. It is also interesting to note that section 7(1) of the Prescription Act 18 of 1943 provided that extinctive prescription was suspended so long as the performance of an obligation was delayed by use major or the debtor was lawfully entitled to delay the performance on any other ground. (See Montesoso Township & Investment Corporation (Pty) Ltd v Standard Bank of S A Ltd 1964 (3) SA 221 (T) at 238; Purity Insurance Co Ltd (in li m) v Mohau 1967 (2) SA 459 (A) (continued)
contract \(^1\) or the delay would be unreasonable. \(^2\)

(ii) On the termination of the temporary impossibility the situation has to be examined to see whether the obligation is now

(a) capable of being substantially performed, in which case not only is the creditor entitled to demand the performance but he is obliged to accept it; \(^3\)

(b) capable of being performed only in part, which means that the contract is now partially impossible of performance and the creditor may elect to accept what is possible or to treat the contract as at an end; \(^4\)

(c) no longer capable of being performed in whole or in part, in which event the temporary impossibility will have

20. (continued) 459 (A) at 467; *Guvender v The Master* 1971 (2) SA 434 (D) at 435; *Volkskas Bpk v The Master* 1978 (1) SA 59 (T) at 74-5. See also sections 3(1) and 13 of the Prescription Act 68 of 1969, which provide for prescription to be postponed or delayed where superior force prevents the judicial interruption of the running of prescription in certain cases (and *Mardie v Commercial Union Assurance Co of S A Ltd* 1977 (2) SA 269 (T).)

21. See for example, *Andrew Miller & Co Ltd v Taylor & Co Ltd* [1916] 1 KB 402 (CA); *Leston Gas Co v Leston-curw-Giswedd UDC* [1916] 2 KB 428 (CA); *Metropolitan Water Board v Dick, Kerr & Co Ltd* [1916] AC 119, 34 LTR 138; *Staun Ltd v Gomboa* [1939] 1 KB 132, [1938] 3 All ER 135. Although these are English cases it is submitted that the position would be the same in our law, since it is a question of interpretation of the contract, see *Algoa Milling Co Ltd v Arkel & Douglas* 1918 AD 145 at 166-7.

22. See Ramsden "Temporary Supervening Impossibility of Performance" (1977) 94 SALJ 162 at 163.

23. See above at pp 150f.

24. See above at pp 152f.
become total and absolute and either party may regard the contract as at an end,\(^{25}\) that is, neither party can insist on performance,\(^{26}\) though, of course, a substituted performance can be agreed upon.

(iii) If at any stage during the continuance of the temporary impossibility it becomes apparent that the original obligation will no longer be capable of being performed in full, then it may be evident that

(a) substantial performance will be impossible, having regard in particular to the nature of the obligation which had originally been promised and to the question of the materiality of the time of performance; again, either party should be entitled to elect to treat the contract as at an end;\(^ {27}\)

(b) the original obligation can be performed only partially, in which event two courses are open to the creditor: he may immediately treat the contract as at an end; or he may postpone his decision until the temporary impossibility has ended, to enable him then to make up his mind whether to accept the performance which still remains possible or to terminate the contract.\(^ {28}\)

25. See W A Ramsden "Temporary Supervening Impossibility of Performance" (1977) 94 SALJ 162 at 165.

26. See W A Ramsden "Temporary Supervening Impossibility of Performance" op cit and the cases there cited in support of this proposition, especially Boyd v Stratford & Co 1910 AD 101 and Schlegermann v Meyer, Bridgman & Co Ltd 1920 CPD 494.

27. See W A Ramsden "Temporary Supervening Impossibility of Performance" (1977) 94 SALJ 162 at 168.

28. See above at pp 152f. This might be thought to be hard on the debtor, but it must be remembered that normally performance has to be made within a reasonable time, so that if the delay is unreasonable the debtor can elect to treat the contract as at an end: see para (ii)(c) above.
It will thus be seen that whilst temporary impossibility of performance merely suspends the obligation to perform during the continuance of the impossibility, it can ripen into either partial or total impossibility.

It would seem that where a party has an election to treat the contract as at an end, he ought to notify the other party to the contract that he is exercising his right of election and of his decision. This appears to be the general practice in England. However, notice may not always be possible or necessary.

It is a question of fact in each case when the creditor is entitled to conclude that temporary impossibility has hardened into absolute impossibility (whether partial or entire) so as to enable him to notify the debtor that he considers the contract to be at an end.

If the parties take different views on whether the circumstances entitle the contract to be regarded as at an end, the party contending that they do has the burden of establishing that he was justified in his belief.

Temporary impossibility of performance does not only arise in

29. R G McElroy & Glanville Williams Impossibility of Performance (Cambridge Univ Press 1941) at 231, and it appears to have been one of the principal concerns of Tredgold J in Beretta's case (supra).


32. R G McElroy & Glanville Williams op cit at 229.
contracts that require continuity of performance, such as a contract of employment or a working partnership or a lease, but it also arises in contracts of sale and delivery of goods, and contracts of carriage of goods by sea, as well as other contracts that do not require continuity of performance. The rules outlined above should apply equally to all kinds of contract rendered temporarily impossible of performance through the advent of a supervening *casus fortuitus* or *vis major*.

33. In the words of R H Christie *The Law of Contract in South Africa* at 466.

34. See *Van der Merwe v Colonial Government* (1904) 21 SC 520; Boyd *v Stuartford & Co* (1910) 4 Cuch AC 141; Boyd *v Stuartford* 1910 AD 101; Meyers *v Sieradski* 1910 TPD 869; Silicosie Board *v City Deep* 1949 (2) SA 813 (T); Beretta *v Rhodesia Railways Ltd* 1947 (2) SA 1075 (SR).

35. See *Pelinsky v Rustell* 1920 WLD 32; *Schlegergamn v Meyer*, *Bridgens & Co Ltd* 1920 CPD 494.

36. Voet 19.2.27; 19.11.27; Pothier Lawage88 120, 121, 152; *Johannesburg Consolidated Investment Co v Mendelssohn & Bruce Ltd* 1903 TH 286; *Hansen-Schrader & Co v Kopelowitz* 1903 TS 707; cf Cooper *The S A Law of Landlord & Tenant* at 180, who predicates "a supposition upon which the parties contracted," on the failure of which a remission of rental is claimable. The wording is redolent of the English rule of frustration in cases such as *Knell v Henry* [1903] 2 K B 740 and *Chandler v Wabazar* [1904] 1 KB 493 (CA), and in effect means that the landlord is liable to perform all that he has promised to perform, albeit tacitly or by implication of law.

37. *Yodatiken v Angehrn & Piel* 1914 TPD 254 at 259-60 - a customer cannot be expected to wait for an indefinite time for a strike to end and coal to be available.

38. *Algoa Milling Co Ltd v Arkell & Douglas* 1918 AD 145.
CHAPTER 8

THE EFFECT OF SUPERVENING IMPOSSIBILITY OF PERFORMANCE

A. Modification of the Contract

The general rule is that a party to a contract may not invoke the doctrine of impossibility of performance to excuse himself from the performance of one term of the contract while seeking to keep the contract otherwise in force, if this would result in the parties being bound to an entirely different contract.

In *African Realty Trust Ltd v Holmes* the court said that there "is authority for the proposition that when the basis of a contract falls away the contract falls away with it". Although the court referred to a number of English cases on this point, it also referred to some Roman and Roman-Dutch texts. The Roman texts are concerned with the stipulation for a *dos*, which as has been seen, was a very special case, and to the perishing of a *res* upon whose continued existence the obligations of the parties depend. The writings of Leonhard, Naber, Moltzer and Windscheid were also referred to. This principle, which was accepted as a part of our law in *Schlangenmnn v Meyer, Bridgens & Co Ltd*, was assumed to be so in

1. *Benjamin v Myers* 1946 CPD 655 at 662-3.
2. 1922 AD 389 at 400.
3. Above at p 10.
4. And about which there can be no quarrel. Besides the authorities there quoted, see D 46.3.107.
5. Discussed above at p 78.
6. 1920 CPD 494.
NaoDuff & Co Ltd (in liquidation) v Johannesburg Consolidated Investment Co Ltd. I have dealt with this question earlier in this work and have submitted that, despite these weighty dicta, the doctrine of changed circumstances is not applicable in our law.

Certainly the courts cannot go so far as to make a new contract for the parties, as they did at one time in Germany, in an endeavour to give effect to the intentions of the parties so far as was possible in the circumstances. This rule is absolutely clear in our law, unless in effect the performance ordered by the court is no more than was impliedly owed under the original contract itself, whether tacitly contracted for or by implication of law.

Kerr, however, draws attention to a certain permissible substituted performance adverted to by Pothier, where he says that "if the lessee is deprived of the use and enjoyment of the property let, or a part of it, during the currency of the lease as a result of vis in magno, "the lessor is entitled to offer to lodge the lessee in another house pending

---

7. 1924 AD 573 at 603.
8. Above at pp 74f.
9. See W A Ramsden "Impossibility of Performance and Changed Circumstances in German Law" (1976) 39 THR-HR 367.
10. Algosa Milling Co Ltd v Arkell & Douglas 1918 AD 145 at 159, 166-7; Bayley v Harwood 1954 (3) "A 498 (A) at 510-1; Bhabar v Phillips 1956 (4) SA 638 (FC) at 643; Tali Ranching Co (Pty) Ltd v Circle "A" Ranching Co (Pty) Ltd 1975 (3) SA 612 (W) at 615.
11. Cash Wholesalers (Pty) Ltd v Marcus 1961 (2) SA 347 (SR) at 351; thus it seems that in a case of temporary imposibility of performance an extension of time may be allowed. (See above at p 167.)
13. Louage 88147, 149.
execution of the repairs", and that if he does, such "an offer would prevent the resolution of the lease". If he does not, "the lessee is discharged from liability for rent during the whole of the remaining period of the lease, even though the lessor, after having restored the house, offers it to him; for the lessee is not compelled to take back the house, when he has been forced to procure another one". 14

However, in view of the observations of our courts, 15 it is extremely doubtful if these views of Pothier 16 would find favour today, for they would have the effect of substituting new leased premises for those originally let under the contract.

B. Contract Extinguished

Generally, supervening impossibility that complies with the requirements outlined in this work discharges the obligations of both parties to the contract if the impossibility is entire, 17 whatever the type of contract involved. 18 It

14. The translation is by Mulligan Pothier's Treatise on the contract of Letting and Hiring.

15. See note 10 above.

16. In Louage § 147.

17. D 45.1.37; 45.1.83.5 pr; 45.1.91.1; 45.1.140.2; 50.17.23; Leyser Meditations especially 190 (4); Bischofberger v Van Wyk 1981 (2) SA 607 (W).

18. For example, sale and delivery of goods ( Yodtikan v Angehm & Piel 1914 TPD 254); locatio conductio in its various forms (see p 166 above); carriage of goods (Algoa Milling Co Ltd v Arkell & Douglas 1918 AD 145); exchange (Donallus Vol 11 c 1656 (ad D de verb Oblig ius 140.2.8) c 1758 of 1847 ed); Vaat 19.4.1; Wessels The Law of Contract in South Africa § 2712, etc.
extinguishes their obligations by operation of law;¹⁹ hence there is no breach of contract²⁰ and reliance on the impossibility is not affected by reliance on the other subsequent acts of the other party.²¹

The case of Beretta v Rhodesia Railways Ltd²² tends to contradict this proposition (with regard to temporary impossibility at least), but this approach, as has been shown, appears to be wrong.²³

Exceptions

There are some exceptions to this rule.

1) The first exception is more apparent than real, namely, that where the obligation is valid at its inception it remains valid in spite of the fact that circumstances have changed to produce a situation where such an obligation could no longer come into existence, provided that performance remains both physically and legally possible.²⁴

19. Supervening impossibility of performance does not necessarily have the effect of discharging the contract in all legal systems, for example, it does not have this effect in French law (Toullier 4.156 n 447).

20. Van der Linden 1,15,2; Pothier Lociage § 309; Daly v Chisholm & Co Ltd 1916 CPD 562 at 569; Petera Flannan & Co v Kokstad Municipality 1919 AD 427 at 437-8; Schildemann v Meyer, Bridgans & Co Ltd 1920 CPD 494 at 500; Wilson v Smith 1956 (1) SA 393 (N) at 396; Strenze v Van Zyl 1958 (3) SA 563 (O) at 566 (though obiter because the common-law position was excluded by statute); Bekker NO v Duvenhage 1977 (3) SA 884 (E) at 889.


22. 1947 (2) SA 1075 (SR) at 1081.


extinguishes their obligations by operation of law,\textsuperscript{19} hence there is no breach of contract\textsuperscript{20} and reliance on the impossibility is not affected by reliance on the other subsequent acts of the other party.\textsuperscript{21}

The case of \textit{Beretta v Rhodesia Railways Ltd}\textsuperscript{22} tends to contradict this proposition (with regard to temporary impossibility at least), but this approach, as has been shown, appears to be wrong.\textsuperscript{23}

\section*{Exceptions}

There are some exceptions to this rule.

(i) The first exception is more apparent than real, namely, that where the obligation is valid at its inception it remains valid in spite of the fact that circumstances have changed to produce a situation where such an obligation could no longer come into existence, provided that performance remains both physically and legally possible.\textsuperscript{24}

\begin{enumerate}
\item Supervening impossibility of performance does not necessarily have the effect of discharging the contract in all legal systems, for example, it does not have this effect in French law (Toullier 4.156 n 447).
\item Van der Linden 1.15.2; Pothier \textit{Loubthe} $\S$ 309; Daly \textit{v} Chtbalom & Co Ltd 1916 CPD 562 at 569; Peters \textit{Flummer} & Co v Kokstad Municipality 1919 AD 427 at 437-8; Schlangemann \textit{v} Meyer, Bridgans & Co Ltd 1920 CPD 494 at 500; Wilson \textit{v} Smith 1956 (1) SA 393 (W) at 396; Strauss \textit{v} Van Zyl 1958 (3) SA 563 (D) at 556 (though obiter because the common-law position was excluded by statute); Bekker NO \textit{v} Duvenhage 1977 (3) SA 884 (E) at 889.
\item Schlangemann \textit{v} Meyer, Bridgans & Co Ltd 1920 CPD 494 at 504.
\item 1947 (2) SA 1075 (SR) at 1081.
\item See W A Ramsden "Temporary Supervening Impossibility of Performance" (1977) 94 \textit{SALJ} 162 at 168-70 and A J Kerr "The Effect on Leases of Supervening Impossibility of Performance" (1977) 94 \textit{SALJ} 389 at 394-5.
\item D 50.17.85.1; Wessels \textit{The Law of Contract in South Africa}, $\S$ 2531.
\end{enumerate}
180.

(i) Where there is a rule of the substantive law that relates to the particular contract in question and governs the position in relation to risk, that rule will prevail over the principles relating to supervening impossibility of performance. Such rules exist, for example, in sale, locatio conductio operis factendi and mutuum (loan for consumption, such as a loan of money).

25. D 18.6.8.pr; 19.2.13.5; C 4.23.1; Voet 18.6.1.2; 18.6.3.4; 18.6.7.8; Grotius 3.14.34; Van der Keessel Thesis Selectus § 639 n; Van Leeuwen Get Roomshollandsche Recht 2.131; Van der Linden Koopmans Handboek 1.15.9; Terrington v Simpson (1841) 2 Mennies 110; Cohen v Neesse (1886) 4 SC 123; Wolff & Co v Bruce, Mavers & Co (1889) 7 SC 133; W W Barrett v Ngaama (1901) 22 NLR 223; De Kock v Frieham (1902) 19 SC 136; Cousyn v The Government 1909 TS 444; Rod's Trustees v Scott & De Villiers 1910 TS 47; Horne v Butt 1915 CPD 331; Juta & Co v Rowch 1924 TPD 730; Goldstein v Hartspread 1942 NPD 158; Benjamin v Musa 1948 CPD 655; Rahad v Director of Food Supplies 1949 (3) SA 703 (A) at 709; Van der Merwe v Viljoen 1953 (1) SA 60(A); Kitwell Clothing v Quorn Hotel 1966 (3) SA 407 (RAD).

26. Voet 19.2.30; Murray v Room & Sorey (1855) 2 Searle 157; Maberley v Searle (1902) 19 SC 540; Hughes v Fletcher 1957 (1) SA 326 (SR).

27. Voet 12.1.4; Grotius 3.10.1.5; Van der Linden 1.15.2; Van Leeuwen Censura Forensis 144.

28. In addition certain statutes, such as the General Law Amendment Act 8 of 1879 of the Cape of Good Hope (see United Mines of Bullfonteen v De Beers Consolidated Mines (1900) 17 SC 419) and its equivalent in the Orange Free State (though in the latter statute the words "war and insurrection" were inserted into the sentence "through inundation, tempest or such like considerable misfortune the land has produced nothing"), namely Ordinance 5 of 1902 (see Strauss v Van Byl, 1958 (3) SA 563 (O)) disallowed "any deduction or abatement whatever" of rent on account of the loss of use or occupation of premises as a result of certain events which could undoubtedly constitute via major or casus fortuitus. However, these statutes were repealed by the Pre-Union Statute Law Revision Act 43 of 1977.
I do not propose to consider such rules in detail, for they are outside the scope of this enquiry and are so complicated as to be impossible for me to treat of them adequately. For example, the rule *periculum amputoris in sale* requires that the sale be *perfecta*, not an easy concept to define, the passing of risk is affected by suspensive and resolutive conditions in the agreement and by the requirements relating to counting and measuring generic goods sold, and so on. In every contract, whether it be one of sale, *locatio conductio*, *mutuum* or any other type of contract, the parties can, of course, exclude the rules of risk, in which event the principles

29. *Instita* 2.23.3; 3.23.1; L 18.1.35.5; 18.6.1.1; 18.6.8.pr; C 4.38.15; 4.48.2; Cujacius ad D 18.13.5.5; Voet 18.6.1; 18.6.3.4; Pothier Vente § 306; Combrink & Co v The British South Africa Co (1901) 18 SC 45; Page NO v Blieden & Kaplan 1916 TPD 605; Goldstein v Harrisperad 1942 NPD 156 at 162; Monger v Ross 1951 (2) SA 82 (C); Kitwell Clothing v Quorn Hotel 1966 (3) SA 407 (RAD) at 409; Dale v Pun Fares 1968 (3) SA 264 (0). See also Mackieuran's *Sale of Goods in South Africa* 4 ed (1972) § 221ff and Norman's *Purchase & Sale in South Africa* 4 ed (1972) at 194ff

30. D 18.1.3; 18.6.8.pr; 20.4.11.1; Faber ad C 4.41.8.2; Voet 18.3.1; 18.6.5; Grotius *Inleiding* 3.14.29; Pothier Oblig § 220; Pothier Vente § 311-12; Goudsmit *Rendekten-systeem* § 51; Schorer n 366; Keiser v Barry's Executor 1879 Buch 175; Vessels & Co v Abraham, Creacie v Abraham (1908) 10 HCG 225; Fasi Sady v Shuoi (1882) 2 EDC 301 at 305; Jacob v Petersen 1914 CPD 705; Schulen v Horton & Co 1918 TPD 343; Peri-Urban Areas Health Board v Tomasetti 1962 (2) SA 346 (A) at 351.

31. D 18.1.25; 18.1.36.7; 19.1.35 and 6; Cujacius ad D 18.1.35.5; Brunnerman ad D 18.6.5; Voet 18.6.4; Grotius *Inleiding* 3.14.35; Van Leeuwen *Consuura Forensis* 1.4.19.9; Pothier Vente § 310; Stewart & Co v Benjamin & Co (1871) 2 Roscoe 58; Rome, Schonhoff & Gattety v Meynhal & Co (1879) 9 Buch 91; Jamieson v Goodliffe (1881) 1 SC 206; Combrink v The British South Africa Co (1901) 18 SC 45; Fisher v Harrison (1901) 18 SC 78; Page NO v Blieden & Kaplan 1916 TPD 605.
of supervening impossibility will apply with full effect unless the parties have clearly and specifically provided for risk in their agreement.

If the principles of supervening impossibility of performance are inapplicable and the rules of risk do not govern the situation, the creditor will have all the normal remedies available to him for a breach of contract, such as a claim for specific performance or damages or both. It is not proposed to examine these remedies here, for similar reasons to those mentioned already in relation to the rules of risk.

C. Acquired Rights

The extinction of the contract does not affect, or, rather, prejudice, rights already acquired under the contract or acts performed under it before it was ended by supervening impossibility of performance. In particular the following rules apply:

(a) Recovery of part performance

Part performance may be recovered in whole or in part to compensate for the corresponding loss in counter-vailing performance, either by the conditio sine causa

32. Voet 18.6.3; Gengan v Fother 1977 (1) SA 825 (D).
33. D 18.1.78.3; 18.6.1.pr; Voet 18.6.2; Horne v Butt 1915 CPD 331.
34. Lucerne Asbestos Co Ltd v Barker 1928 WLD 311 at 331; Joiner v Bates 1977 (4) SA 560 (T) at 568-9; Omar National Airways Cfa 1980 (1) SA 378 (N) at 397-8, 401.
35. Peters v Flannan & Co v Kokstad Municipality 1919 AD 427; Wylock v Milford Investments (Pty) Ltd 1962 (4) SA 298 (C).
36. D 4.5.1.37; 45.1.51; 45.1.91.1; Pothier Oblig $ 614; Cloete v Union Corporation Ltd 1929 TPD 508 at 521.
183.

or the condicio causa data causa non secuta. These are remedies that are of general application outside the sphere of supervening impossibility of performance and so will not be examined in any greater detail here.

(b) Part payment for work part done

A part payment may be claimed for work or services part performed where the employer has benefited on the principle that "sequam est nominem cum alterius detrimento fiari locupletorem."

(c) Remission of amount payable

On the same principle a remission of the amount payable can be claimed where performance of the other party to the contract cannot be entire, owing to supervening impossibility of performance; for example, a remission of rent to take account of a substantially diminished use and occupation of the leased premises as a result of

37. Also called the condicio ob cause datum. D 12.4. 3. 2, 3; 12.4.3.5.pr, 1, 2; 12.7.1; 12.4.3.16; C 4.6.1, 2, 8, 9.

38. See for more information on these remedies Wouter de Vos Vervolgingsaanspreeklikheid in die Suid-Afrikaanse Reg 2 ed 324 ff; J C De Wet "Die Sogenaamde 'Exceptio non adimpleti contractus' in die Praktyk van Vandag" (1945) B THR-RR 239.


40. Hitchins v Breslin 1913 TPD 677 at 685.
the supervening event, or a reduction in the purchase price payable because of a substantial diminution of the property as a result of *casus fortuitus* or *vis major*.

(d) Position where no enrichment occurs

Problems arise where no right has accrued and no countervailing enrichment has ensured. For example, in a building contract per *aevi rationem* the contractor is not entitled to be paid until the entire work has been satisfactorily completed. Hence, until then the risk of *casus fortuitus* or *vis major* lies upon the contractor, who must bear the loss. The only time he is entitled to compensation is when the owner receives a benefit from his part performance or what remains of it, and when the recognised rules of enrichment apply.

---

41. *D 19.2.25.6; Pothier Louage § 157; Rubridge v Hadley* (1848) 2 Menzies 174; *Northwestern Hotel Ltd v Rolfes, Rabel & Co* 1902 TS 324; *Rolfes, Rabel & Co v Zweigenhaft* 1903 TH 242; *Johannesburg Consolidated Investment Co Ltd v Mendelschein & Bruce Ltd* 1903 TH 286 at 292; *Morris v Nepprin & Habb Ltd* 1903 TS 244; *Fleming v Johnson & Richardson* 1903 TS 319; *Barsem, Schrader & Co v Kopelowits* 1903 TS 707 at 712-13, 718; *Bayley v Harwood* 1954 (3) SA 498 (A) at 499-500.

42. *Daly v Chisholm & Co Ltd* 1916 CPD 562; *Stansfield v Kuhn* 1940 NPD 84; *Mnyandu v Mnyandu NO* 1964 (1) SA 418 (N) at 424; *Joubert v Bester* 1977 (4) SA 560 (T) at 556; and see above at pp 160f.

43. That is to say, an "entire" or "lump-sum" contract, as it is generally called.

44. *D 19.2.36; Donnellus Com de Jure Civ 13.9.14; Voat 19.2.37; Glück ad Rand* 19.2.10.55; *Brunnemann Com ad Rand* 19.2.36; *Bothwell v Union Govt (Min of Lands)* 1917 AD 262 at 280; *Gerlikov SA (Pty) Ltd v Johannesburg City Council* 1970 (3) SA 579 (A) at 583-84. See also *H S Chanock "Impossibility of Performance and the Passing of Risk with Special Reference to Building Contracts" (1936) 53 SALJ 306 at 310.

45. See above at p 160 (unless there is an express provision in the contract dealing with the matter).
There are a number of different kinds of contract under which one party may incur expenses without enriching the other, where it would seem equitable for the court to order reimbursement of these expenses. For example, supposing the owners of a ship were to request a salvage company to go to the rescue of their ship and the salvors were to dispatch a tug, perhaps hundreds of miles, to the spot where the ship was stated to be positioned, only to discover that the ship had sunk to the bottom of the ocean before the tug's arrival, could the salvors claim their expenses in the absence of any express term to that effect? It is possible that, unknown to either party, the contract could have become impossible of performance shortly after the tug was dispatched on its rescue mission. Furthermore, the salvage agreement might merely provide that the salvors were to be paid a proportion of the value of the vessel and cargo salvaged.

In such cases a reference to established custom or a close scrutiny of the agreement might very well persuade the court that the salvor is entitled to expenses reasonably incurred in an attempt to safeguard another's property and interests in circumstances where it is quite possible that the whole enterprise might well turn out to be fruitless.

The problem with such an approach is that where the venture is a hazardous one and the hazards can be foreseen but the parties have made no provision for them, a court will fairly readily conclude that the risks were assumed by the person undertaking to do the work. Furthermore, a foreseen risk or one that could reasonably have been anticipated by definition cannot constitute *via major* or *casus fortuitus*.

In the United States of America there have been a number of

46. See above at pp 101-2.
47. See above at pp 98f.
Space Administration, Defence and other government contracts that fall into the difficult area described here. In each case a contract for the manufacture of a specific item was awarded by the government to a manufacturer, who, after years of research in some cases, and considerable expense, had been forced to face the unpalatable fact that what he had contracted to make and to deliver to the government was, in the state of scientific knowledge and technology at that time, incapable of achievement. In some of these cases the courts awarded the contractors compensation for their fruitless task.

It is submitted that where a new product is to be developed or an existing one is to be manufactured to new and untried


49. Many of these cases were treated by the American courts as cases of supervening impossibility of performance. It is submitted that this would not be so in our law. Although the parties were unaware of it at the time of contracting, their contracts were in fact impossible of implementation from the very outset. Impossibility of performance in our law does not depend upon the state of mind of the parties, that is, whether they were aware of the impossibility or not. (Sorucoton & Sorucoton v Shurish & Co 1908 TS 300; Tharon Ltd (In Liquidation) v Gaos 1929 CPD 345; Dickenson’s Mosave (Pty) Ltd v Oberholser 1952 (1) SA 443 (A); Wilson v Smith 1956 (1) SA 393 (W); as also in English law at Strickland v Turner (1852) 7 Ex 206, 155 ER 919; Couturier v Haestia (1852) 8 Ex 40, 155 ER 1250; Scott v Coulson (1903) 2 Ch 249; Galloway v Galloway (1914) 30 TLR 531).
specifications (such as the manufacture of an unusually lightweight bullet-proof vest capable of stopping bullets of a very high velocity), the contract is as hazardous as sending a tug to rescue a ship in stormy seas, so that the general rule applicable will be that the manufacturer took upon himself the risk that he might not be able to develop and produce the article promised. It is nevertheless possible that our courts, like the American courts, will closely scrutinise the agreement to see whether a warranty could be implied that the expenses reasonably incurred by the manufacturer on behalf of the employer should be reimbursed to him, that is, the expenses incurred up to the point when he should have realised that it was fruitless to proceed further.

A view which the American courts could possibly have taken, but did not take, is that the contract really embraced two separate contracts, the first to conduct research with a view to developing a process for the manufacture of the article, and second to manufacture it when that process had been developed. The second would then have proved to be initially impossible of performance, but the first had been carried out and payment for the work performed in that regard was due.

50. This was the view taken in earlier cases, such as Superintendent & Trustees v Bennett 27 NJ 513 (1859) and States v Leonard 20 Minn 494 (1874), but later cases have tended to take the view that the employer warrants that the plans and specifications are adequate to produce the desired result (for example, North American Phillips Co v United States 175 Ct Cl 71, 358 F 2d 980 (1966) and Simpson Timber Co v Palmsberg Construction Co 377 F 2d 380 (9th Cir 1967) unless the contractor had reason to know of the inadequacy, as in Bandla v Hickey 93 Cal App 2d 658, 209 P 2d 398, 399 (Dist Ct App 1949). However, some American courts appear to have proceeded on negligence rather than warranty as a basis (Kinser Construction Co v State 204 NY 361, 97 NE 871 (1912)).
However, it is submitted that no general rule can be laid down and each case must be considered on its own facts. There are unfortunately no South African cases that could serve as guidelines, although the statements of the members of the bench of the Appellate Division in Bayley v Harwood to the effect that it would be unreasonable in the circumstances of that case to expect either party to incur the considerable expense required to make the premises let comply with the new regulations indicate that in the appropriate case our courts may very well adopt the line of reasoning suggested here.

D. Effect of Specific Terms in the Contract

As has been pointed out, a risk may be expressly or impliedly assumed by one of the parties to the contract.

Where there is an express provision, whether it covers the situation is a matter of construction. In the words of Voet:53

"If a vendor takes on himself the risk of fortuitous accident, he is not considered liable for ordinary accidents but only for such as occur rarely and are out of the ordinary course . . . ."

For it must be remembered that in our law the general rule that impossibility excuses applies unless the contract excludes it.54

The determination of the scope and effect of such a provision

51. 1954 (3) SA 498 (A) at 504.
52. See above at pp 98f.
54. Bischofberger v Van Eyk 1981 (2) SA 607 (W) at 610-12.
calls for its being read in its context in the agreement.\textsuperscript{55} A voetstoots clause has been held to be insufficient to overcome the operation of a zoning under the Group Areas Act of 1966.\textsuperscript{56}

Similarly, a provision exempting the promisor from his duty to perform in the case of \textit{casus fortuitus} is also possible, indeed common,\textsuperscript{57} and the scope and effect of such a provision must be determined in the same way.\textsuperscript{58}

Where the common-law rules relating to the passing of risk have been excluded by the terms of the contract, it follows that the provisions of the law relating to supervening impossibility of performance are free to operate and may obtain.\textsuperscript{59}

\textsuperscript{55} D 50.16.1.26; Van der Linden 1.14.4.
\textsuperscript{56} Ormaela v Andrews Cafe 1980 (1) SA 378 (W).
\textsuperscript{57} Algoa Milling Co Ltd v Arkell & Douglas 1918 AD 145.
\textsuperscript{58} Since the rules for ascertaining the intention of the parties are in accordance with the general rules of interpretation, they are not set out here.
\textsuperscript{59} Gengam v Pather 1977 (1) SA 826 (D).
CHAPTER 9

PLEADING AND ONUS OF PROOF

A. Pleading

It is not necessary to allege supervening impossibility of performance in one's pleadings, so long as one alleges facts from which such impossibility can be inferred. Nor does it matter whether the plaintiff, after alleging the facts relevant to his case, claims that the agreement has become null and void and asks the court to find and to declare that he is entitled to regard the agreement as invalid, or whether he moreover that he cancelled the agreement as a result of the alleged and asks that such cancellation be confirmed; the argument and result are the same.

B. Burden of Proof

The onus of establishing that a duty is owed lies upon the person alleging that such duty is owed, and the onus of establishing a defence which will excuse him from performing that duty lies upon the person setting up that defence. This is in accordance with the normal rules relating to onus in civil actions, which follow the principle that he who avers must prove. This is the legal burden of proof, as opposed to the evidential burden, which falls outside the purview

1. Botha v Burisch 1930 TPD 251. See also above p 140.
2. Stander v Reiter 1977 (4) SA 560 (T).
of this chapter.

The onus of establishing that an event amounts to a casus or casus fortuitus for example, that a storm was so violent that the debtor could not reasonably have been expected to provide against it, lies upon the debtor. The mere fact that an independent person or agency has intervened will not necessarily suffice to indicate _vis major_ however if the act of that person or agency could have been influenced by the conduct of the debtor. In such a case the debtor will have to go further and prove that the acts of that person or agency were not in fact the result of his own conduct.

Once _vis major_ or _casus fortuitus_ has been established, the presumption is that the debtor was not guilty of negligence and it is for the creditor to show he was, where such negligence would entitle him to relief, except in the case of a contract of deposit, when the depositary bears the legal burden of showing that the property deposited was lost or destroyed without negligence on his part, or a contract

5. _D_ 22.3.19; _Pothier_ Oblig § 620; _New Heriot Gold Mining Ltd v Union Government (Minister of South African Railways & Harbours)_ 1916 AD 415 at 438 & 462. And see above pp 964.

6. _Frenkel v Ohlsson's Cape Breweries Ltd_ 1909 TS 957 at 965-6. See also _Benjamin v Myers_ 1946 CPD 655 at 661-2.

7. _Schorer_ n. 332 ad _Grotius_ 3.8.4; _Van der Keussel Thesae_ Selectae 540; _Frenkel v Ohlsson's Cape Breweries Ltd_ (supra); _Benjamin v Myers_ (supra).

8. _D_ 17.2.52,3 and Gothofredus's note thereon; _D_ 19.2.9.4; _Vinnius ad Instit._ 3.15.2 comm no 5; _Grotius Inicidum_ 3.7.9; 3.8.4; _Van Leeuwen Censura Forensae_ 1.4.10,10 & 11; _Van der Keussel Thesae Selectae_ 540; _Pothier Oblig_ § 620; _Schorer_ n. 332 ad _Grotius_ 3.8.4; _Mposelo v Banks_ (1902) 19 SC 370; _Shakasi v Carr_ 1906 TS 303; _Parecone v MacDonald_ 1908 TS 809; _Lithuli v Omar_ 1909 TS 10; _Frenkel v Ohlsson's Cape Breweries Ltd_ 1909 TS 957; _Enslin v Meyer_ 1925 OPD 125 at 131; _Weiner v Calderbank_ 1929 TPD 654 at 663-8; _Hoffend v Ellett_ 1949 (3) SA 91 (A) at 104.
of loan, where the borrower bears a similar onus. The same applies to contracts of pledge and hire, where the onus would appear to lie on the pledgee and lessee respectively to establish that the loss or destruction of the thing pledged or hired was not a result of his negligence. In the case of hire, however, there are authorities which tend to show that the burden of proof lies upon the lessor to show that a fire which destroyed the premises let was caused by the negligence of the lessee or someone for whom he was responsible, although the better view would appear to be that set out above.

Hence, in the case of an action to recover articles handed over under a contract of depositum, commodatum, pledge etc, or their value, the plaintiff need not allege negligence, since the onus will lie on the defendant to show that he is not liable for their loss, either by culpa or dolus. I am not

9. Grotius 3.8.4 and Schorer's note thereon; Medaille & Schiff v Roux (1903) 20 SC 438; Marks v Model Hire Motor Service Ltd 1928 CPD 476; Sulaiman v Ananda 1931 CPD 509; Van der Merwe v Sarsbante 1940 GML 36 at 43-4.

10. Grotius 3.8.4; Van der Keessel Theses Selectae § 540; Voet 13.7.5 (citing Grotius and Van Leeuwen); Windscheid Rand 3.2.5.5; Daly v Chisholm & Co Ltd 1916 CPD 562 at 566-8.

11. D 1.15.3.1; 9.2.9; 18.6.11; 19.9.3; 19.11.1; 44.7.1.4; 54.17.23; C 4.24.5; Hollandse Consultatien 1.256; Mposelo v Banks (1902) 19 SC 370 at 373; Frenkel v Ohlsson's Cape Breweries Ltd 1909 TS 967 at 963-5; Daly v Chisholm & Co Ltd 1916 CPD 562 at 566-8.

12. Schorer's note to Grotius 3.8.4 (MaaSdorp's translation at p 668); Voet 9.2.20-3. (Though in Voet 19.2.29-31 the onus is placed on the lessee when he is sued ex contractu, the author stating that the lessee is not liable for levissima culpa - Voet 19.2.3).

13. See n 11.

concerned here with the extent of the liability of the defendant if he fails to discharge that onus, for as hypothesis supervening impossibility of performance will not obtain and hence such a consideration would fall outside the scope of this work.\textsuperscript{15}

The standard of care required to be established by the defendant in order to escape liability differs from contract to contract. Voet,\textsuperscript{16} it has been shown, is of the opinion that a lessee is not liable for \textit{culpa levissima}.

\textit{Culpa lata}, like all forms of negligence, is relative, and depends upon the circumstances surrounding the particular case.\textsuperscript{17} In a gratuitous deposit the depositary is responsible only for \textit{culpa lata in abstratro}, and not \textit{culpa levissima} or even \textit{culpa levius}.\textsuperscript{19} Where, however, it is not gratuitous, he will be liable for \textit{culpa levius},\textsuperscript{20} and possibly even \textit{culpa levius}.

\begin{itemize}
\item \textsuperscript{15} It may, however, be a matter of some doubt, for example in the case of a lessee (see D.9.2.9; Grotius 3.8.4; 3.19.11; Voet 9.2.20; Van Leeuwen Censura Forensica 1.4.10.10; Vinnius Belgae Quaest 11 C 33; Sadae De Ce Prox 3.8.9; Potthier Louange & 199 and the other authorities referred to in Doly v Chisholm & Co Ltd 1916 CPD 562 at 566.)
\item \textsuperscript{16} See n 12 above. See also Voet 18.6.2, where he states that in contracts involving delivery which are entered into for the benefit of both parties such as lease, the lessee is liable only for \textit{culpa levius in abstratro}.
\item \textsuperscript{17} Shakah v Gurn 1906 TS 303.
\item \textsuperscript{18} Van der Kneess Theses Selectae 531.
\item \textsuperscript{19} \textsuperscript{18} 16.3.32; 50.17.23; Voet 16.3.7; Grotius Inlaiding 3.7.9, which according to Voet means that he must exercise the same degree of care as he does in relation to his own affairs, where, clearly, he is not liable; Nederlandsche Adviso, Book 1.305; Roma Marston v Rathia Dulbech (1914) 36 112 227.
\item \textsuperscript{20} Voet 16.3.7; Crocker v Doig & Murray (1880) 7 NLR 111; Runyon v Johnson (1895) 2 OR 188; Webber v Searle (1902) 19 SC 540; Prosknaf v Marrinson & Co 1917 TPD 963; Bashoff v McDonald (1916) 37 NLR 414. (Though in Voet 19.2.30 it is implied that he may even be liable for \textit{culpa levissima}.)
\end{itemize}
Levissimus where he has offered himself as a depositary (though the generally held view is that culpa levis will be sufficient even here). Where the deposit is made almost entirely for the benefit of the depositary, for example, where he accepts custody in order to use it, he is treated in effect like a borrower. And where he is in mora, he becomes liable even for accidental loss, unless he can show that the goods would have perished in the hands of the depositor in any event.

In commodatum the borrower is even liable for culpa levissimus, since it is assumed that the loan is for the sole benefit of the borrower, and also for accident if he uses it outside the area of use contemplated by the contract or if he is in mora. The position is different if it can be shown that the loan is for the benefit of both the lender and the borrower, for here the borrower is liable only for culpa levis.

In New Heriot Gold Mining Co Ltd v Union Government (Minister of South African Railways and Harbours) Innes CJ said that "a defence of vis major should not be upheld save on

22. D 16.3.1.35; Marais v Anders 1901 EDC 76.
23. Pothier Oblig § 142.
25. Kroman v Mostert (1881) 1 SC 185.
26. D 13.6.6.2; 13.6.18; Grotius Inleiding 3.9.7; Voet 13.6.4.
27. D 13.6.6.2-9; Grotius Inleiding 3.9.7.
30. Grotius Inleiding 3.8.4, and Schorer's note therein 332; Voet 13.7.5; Van der Keessel Theese Selectae 640.
31. 1916 AD 415 at 438. See also West Rand Estates Ltd v New Zealand Insurance Co Ltd 1929 AD 245 at 263, where similar remarks were made in another connection.
the clearest evidence". It is submitted that this was not meant to suggest that a higher standard of proof is required in such cases, but that the ordinary civil standard of proving facts on a balance of probabilities obtains.32

<table>
<thead>
<tr>
<th>Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acacia Mines Ltd v Boshoff 1957 (1) SA 93 (T)</td>
</tr>
<tr>
<td>Adler v Bloemfontein Town Council (1894) 11 CLJ 69</td>
</tr>
<tr>
<td>Administrator (Transvaal) v Industrial &amp; Commercial Timber &amp; Supply Co Ltd 1932 AD 25.</td>
</tr>
<tr>
<td>African Realty Trust Ltd v Holmes 1922 AD 389</td>
</tr>
<tr>
<td>Aitken (B N) (Pty) Ltd v Tamarillo (Pty) Ltd 1979 (1) SA 1090 (D) (see under &quot;B&quot;)</td>
</tr>
<tr>
<td>Aitken (BN) (Pty) Ltd v Tamarillo (Pty) Ltd 1979 (4) SA 1064 (N) (see under &quot;B&quot;)</td>
</tr>
<tr>
<td>Algoa Milling Co Ltd v Arkell &amp; Douglas 1918 AD 145</td>
</tr>
<tr>
<td>Ambrose &amp; Aitken v Johnson &amp; Fletcher 1917 AD 327</td>
</tr>
<tr>
<td>A McAlpine &amp; Son (Pty) Ltd v Transvaal Provincial Administration 1974 (3) SA 506 (A)</td>
</tr>
<tr>
<td>B K Tooling (Eden) Pty v Scope Precision Engineering (Eden) Pty 1979 (1) SA 391 (H)</td>
</tr>
<tr>
<td>BN Aitken (Pty) Ltd v Tamarillo (Pty) Ltd 1979 (1) SA 1090 (D) (see under &quot;A&quot;)</td>
</tr>
<tr>
<td>BN Aitken (Pty) Ltd v Tamarillo (Pty) Ltd 1979 (4) SA 1064 (N) (see under &quot;A&quot;)</td>
</tr>
<tr>
<td>Bahadur v Phillipson 1956 (4) SA 638 (FC)</td>
</tr>
<tr>
<td>Bank v Boesch 1959 (2) SA 377 (T)</td>
</tr>
<tr>
<td>Barnabas Plein &amp; Co v Sol Jacobson &amp; Son 1928 AD 25</td>
</tr>
<tr>
<td>Barrett (WW) v Ngazana (1901) 22 NLR 223</td>
</tr>
<tr>
<td>Baum v Rode 1905 TS 66</td>
</tr>
<tr>
<td>Baumann v Thomas 1920 AD 428</td>
</tr>
<tr>
<td>Bayley v Harwood 1953 (3) SA 239 (T)</td>
</tr>
<tr>
<td>Bayley v Harwood 1954 (3) SA 498 (A)</td>
</tr>
<tr>
<td>Bekker NO v Duvenhage 1977 (3) SA 884 (E)</td>
</tr>
<tr>
<td>Becker's Executors Ex parte 1939 CPD 496</td>
</tr>
<tr>
<td>Bedford v Uys 1971 (1) SA 549 (C)</td>
</tr>
<tr>
<td>Bell v Estate Douglas (1906) 23 SC 561</td>
</tr>
</tbody>
</table>
Benjamin v Myers 1946 CPD 655
Benoni Produce Co v Gündelfinger 1918 TPD 453
Benoni Produce Co v Minister of Railways & Harbours 1914 WLD 31
Beretta v Rhodesia Railways Ltd 1947 (2) SA 1075 (SR)
Bester v Taylor 1912 OPD 60
Bhikhagee v Southern Aviation (Pty) Ltd 1949 (4) SA 105 (E)
Biloden Properties v Wilson 1946 NPD 750
Bischoffberger v Van Eyk 1981 (2) SA 607 (W)
Bodemer v American Insurance Co 1960 (4) SA 428 (T)
Boose v Zeederberg & Duncan 1918 CPD 283
Boshoff v Havemann (1919) 40 NLR 414
Boshoff v McDonald (1916) 37 NLR 414
Bothwell v Union Government (Minister of Lands) 1917 AD 262
Boyd v Stuttaford & Co (1910) 4 Buch AC 141
Boyd v Stuttaford & Co 1910 AD 101
Breslin v Hitchens 1914 AD 312
British South Africa Co v The Salisbury Investment Society (1904) 21 SC 238
Broderick Properties Ltd v Rood 1962 (4) SA 447 (T)
Burger v Central South African Railways 1903 TS 571
Cash Wholesalers (Pty) Ltd v Marcuse 1961 (2) SA 347 (SR)
Chamotte (Pty) Ltd v Carl Coetzee (Pty) Ltd 1973 (1) SA 644 (A)
Cloete v Union Corporation Ltd 1929 TPD 508
Cohen v Wessels (1886) 4 SC 123
Colien v Rietfontein Engineering Works 1948 (1) SA 413 (A)
Combrink & Co v The British South Africa Co (1901) 18 SC 45
Commercial & Agricultural Bank v De Pass, Spence & Co 1870 NLR (Old Series) 10
Concrete Products Co (Pty) Ltd v Natal Leather Industries 1946 NPD 377
Connock's (SA) Motor Co Ltd v Sentraal Wertslike Ko-operatiewe Maatskappy Bpk 1964 (2) SA 47 (T)
Coombs v Muller 1913 EDL 433
Corondimas v Badat 1946 AD 548
Couzyn v The Government 1909 TS 444
Credit Corporation of South Africa Ltd v Botha 1968 (4) SA 837 (N)
Crocker v Doig & Murray (1880) 1 NLR 111
Cronje v Standard Bank (1891) 4 SAR 145
Crook v Erasmus 1927 EDL 142
Cross v Hiehahn 1954 (1) SA 216 (N)

Dale v Fun Fares 1968 (3) SA 264 (D)
Daly v Chisholm & Co Ltd 1916 CPD 562
Dave v Birrell 1936 TPD 192
Davis v Lodestone 1921 AD 153
Davy v Walker & Sons 1902 TH 114
De Kock v Frieham (1902) 19 SC 136
Dickenson's Motors (Pty) Ltd v Oberholzer 1952 (1) SA 443 (A)
Dobbs v Verran 1923 EUL 176
Dryland Farms (Pty) Ltd v Botha 1969 (2) SA 617 (G)
Dunoon's Executor Ex parte 1910 TS 886
Dutch Reformed Church Council v Crocker 1953 (4) SA 53 (C)

East Asiatic Co v Hansen 1933 NPD 297
Electrolux (Pty) Ltd v Khota 1961 (4) SA 244 (W)
Elite Electrical Contractors v The Covered Wagon Restaurant 1973 (1) SA 195 (RAD)
Enochson v Evans (1900) 9 HCG 54
Enseleit v Enseleit 1952 (2) SA 385 (T)
Enslin v Meyer 1925 OPD 125
Erasmus v Du Toit 1910 TPD 1037
Eschini v Jones 1929 CPD 26

Fagan v Pretorius 1921 CPD 502
Fairclough v Buckland 1913 SR 186
Fazi Booi v Short (1882, 2 EDC 301
Fisher v Harrison (1901) 18 SC 78
Flemming v Johnson & Richardson 1903 TS 319
Fluxman v Brittain 1941 AD 273
Ford v Abercrombie 1904 TS 884
Frenkel v Olisson's Cape Breweries Ltd 1901 TS 957
Fruhauf v Morrison & Co 1911 TPD 963

Gengan v Pather 1977 (1) SA 826 (D)
George v Fairmead (Pty) Ltd 1958 (2) SA 465 (A)
Godfrey & Aronstein v Bernberg & Co 1903 TH 372
Goldberg v Nante 1903 TH 150
Goldstein v Haripersad 1942 NPD 158
Gcvender v The Master 1971 (2) SA 434 (D)
Gowan v Bowern 1924 AD 550
Graham v Estate of Alcock 1906 TH 38
Graham v McGee 1949 (2) SA 770 (D)
Greenberg v Meds Veterinary Laboratories (Pty) Ltd 1977 (2)
   SA 277 (T)
Grobbelaar NO v Bosch 1964 (3) SA 687 (E)
Grosvenor Motors (Potchefstroom) Ltd v Stana (Pty) Ltd 1975
   (1) SA 730 (A) & 1975 (4) SA 965 (Appendix)

Hansen, Schrader & Co v Kopelowitz 1903 TS 707
Harrismith Building Society No 2 v Taylor 1938 OPD 36
Hartogh v National Bank 1907 TH 207 & 1907 TS 1092
Hauman v Nortje 1914 AD 293
Hauptfleisch v Caledon Divisional Council 1963 (4) SA 53 (C)
Hay v The Divisional Council of King William's Town (1880)
   1 EDC 97
Hayes v Field (1923) 44 NLR 311
Haynes v Kingwilliamstown Municipality 1950 (3) SA 841 (E)
Heartley v Poupart (1829) 1 Benzie 400
Hersman v Shapiro & Co 1926 TPD 367
Heyman NO & Napier v Rounthwaite 1917 AD 456
Hitchins v Breslin 1913 TPD 677
Hitchins v Breslin 1914 AD 312
Hoffend v Elgeti 1949 (3) SA 91 (A)
Holzhausen v Minnaar (1905) 10 HCG 50
Horne v Hutt 1915 CPD 331
Hughes v Fletcher 1957 (1) SA 326 (SR)
Hughes v Levy 1907 TS 276

Inkin v Borehole Drillers 1949 (2) SA 366 (A)
Iscor Pension Fund v Balbern Holdings (Pty) Ltd 1973 (4) SA 515 (T)

Jacob v Petersen 1914 CPD 705
Jacob v Evans and Campbell 1937 (2) PH J 21
Jajbhay v Cassim 1939 AD 537
Jamieson v Goodliffe (1881) 1 SC 206
Jameson's Minors v Central South African Railway 1908 TS 575
Johannesburg Consolidated Investment Co v Mendelsohn & Bruce Ltd 1903 TH 286
Joe v Mahomet (1901) 11 CTR 816
Johannesburg Municipality v O'Sullivan 1923 AD 201
Jordan v Mines & Minerals Exploration Syndicate Ltd 1904 TH 227
Joubert v Bester 1977 (4) SA 560 (T)
Juta & Co v Rorich 1924 TPD 730

Kaiser v Shanker & Co (1904) 21 SC 320
Keyter v Barry's Executor 1879 Buch 175
Kitwell Clothing v Quorn Hotel 1966 (3) SA 407 (RAD)
Koenig v Johnson & Co Ltd 1935 AD 262
Kopelowitz v Hansen, Schrader & Co 1903 TH 134
Kyte v McLeod (1881) 6 EDC 43

Laidlow v Crowe 1935 NPD 241
Laljee v Ornadutt (1883) 4 NLR 117
Landmark v Van der Walt (1884) 3 SC 300
Lanificio Varam SA v Masural Fils (Pty) Ltd 1952 (4) SA 655 (A)
Lithuli v Omar 1909 TS 192
Lombard v Pongola Sugar Milling Co Ltd 1963 (4) SA 119 (D)
201.

Lorentz v Rabinowitz 1938 CPD 143
Loubser v Vorster 1944 CPD 380
Lubue v Colonial Government (1906) 16 CTR 125, 2 Buch AC 277
Lucerne Asbestos Co Ltd v Becker 1928 WLD 311

Maberley v Searle (1902) 19 SC 540
MacDuff & Co Ltd (in liquidation) v Johannesburg Consolidated Investment Co Ltd 1924 AD 573
Man v Sidney Hunt Motors (Pty) Ltd 1958 (2) SA 102 (GW)
Marais v Anders 1901 EDC 76
Marais v Commercial Union Assurance Co of S A Ltd 1977 (2) SA 269 (T)
Marks v Model Hire Motor Service Ltd 1928 CPD 476
Marquard & Co v Biccard 1921 AD 366
Martin v De Kock 1948 (2) SA 735 (A)
Mathole v Mothle 1957 (1) SA 256 (T)
McAlpine (A) & Son (Pty) Ltd v Transvaal Provincial Administration see under "A" above
McCabe v Burisch 1930 TPD 261
Medallie & Schiff v Roux (1903) 20 SC 438
Michau v Rousseau 1913 CPD 146
Middleton v Carr 1949 (2) SA 374 (A)
Mnyandu v Mnyandu NO 1964 (1) SA 418 (N)
Moffat v Rawstorne 1927 TPO 435
Momsen v Mostert (1881) 1 SC 185
Montesse Township & Investment Corporation (Pty) Ltd v Standard Bank of S A Ltd 1964 (3) SA 221 (T)
Moosa v Schiele 1905 TS 616
Morgan & Ramsay v Cornelius & Hollis (1910) 31 NLR 447
Morris v Mappin & Webb Ltd 1903 TS 244
Moser v Milton 1945 AD 517
Mountstephens & Collins v Ohlson's Cape Breweries 1907 TH 56
Mposelo v Banks (1902) 19 SC 370
Muller's Estate v Colonial Government (1902) 12 CTR 947
Mullin (Pty) Ltd v Benade Ltd 1962 (1) SA 211 (A)
Murman v Minchin (1910) 10 HCG 313
Murray v Room & Sorey (1855) 2 Searle 157
Myers v Sieradzki 1910 TPD 869
Naidoo v Ramnarain 1962 (3) SA 903 (D)
Naran v Pillai NO 1974 (1) SA 283 (D)
National Employers Mutual General Insurance Association v
Gary 1931 AD 187
Neuman v Johnson (1895) 2 OR 188
Neebe v Registrar of Mining Rights 1902 TS 65
New Heriot Gold Mining Co Ltd v Union Government (Minister of
South African Railways and Harbours) 1916 AD 415
Norden v Shaw (1847) 2 Meuzies 150
North Beach Garage (Pty) Ltd v Durban City Council 1973 (3)
SA 318 (D)
North Western Hotel Ltd v Rolfe, Nebel & Co 1902 TS 324
Nortje v Pool NO 1966 (3) SA 96 (A)
Novick v Benjamin 1972 (2) SA 842 (A)
Novick v Comair Holdings Ltd 1979 (2) SA 116 (W)

Oakland Nominees (Pty) Ltd v Gelria Mining & Investment Co
(Pty) Ltd 1976 (1) SA 441 (A)
Oerlikon SA (Pty) Ltd v Johannesburg City Council 1970 (3)
SA 579 (A)
Ornelas v Andrew's Cafe 1980 (1) SA 378 (W)

Pahad v Director of Food Supplies 1949 (3) SA 703 (A)
Page NO v Blieden & Kaplan 1916 TPD 606
Pandor's Trustees v Beatley & Co 1935 TPD 358
Parity Insurance Co Ltd (in liquidation) v Mchunu 1967 (2)
SA 459 (A)

Parr v Crosbie (1886) 5 EDC 211
Parson v Langemann 1948 (4) SA 263 (C)
Parsons v MacDonald 1908 TS 369
Partridge v Adams 1904 TS 472
Pelusky v Pastoll 1920 WLD 32

Peri-Urban Areas Health Board v Tomaselli 1962 (3) SA 346 (A)
Peri-Urban Areas Health Board v Breet NO 1958 (3) SA 783 (T)
Peters Flanman & Co v Kokstad Municipality 1919 AD 427
Petersen v Tobiansky 1904 TH 73
Pillay v Krishnä 1946 AD 946
Phillipson v Bahadur 1956 (1) SA 83 (SR)
Poppe, Schunhoff & Guttery v Mosenthal & Co (1879) 9 Buch 91

Rabkin v National Bank 1915 CPD 545
Rahman v Suliman (1900) 21 NLR 133
Rama Narotam v Natha Dullabh (1914) 35 NLR 227
Raphael v Clutterbuck (1900) 10 CTR 320
Rapp & Mäister v Aronovsky 1943 WLD 68
Reed v Reed 1901 EDC 244
Resisto Dairy (Pty) Ltd v Auto Protection Insurance Co Ltd 1963 (1) SA 639 (A)
Rex v Oakley 1935 OPD 38
Rex v Stamp (1879) Kotze 63
Rex v Zillah 1911 CPD 643
Reynolds v Kinsey 1959 (4) SA 50 (FC)
Rolfes, Nebel & Co v Zweigenhaft 1903 TH 242 (see also unen "Z")
Rood's Trustee v Scott & De Villiers 1910 TS 47
Roussouw v Hauman 1949 (4) SA 796 (C)
Rubridge v Hadley (1848) 2 Menzies 174

Saambou-Nasionale Bouvereniging v Friedman 1979 (3) SA 942 (A)
SA Crushers (Pty) Ltd v Pamlass 1951 (2) SA 543 (H)
Salisbury (The) Building & Investment Society v The Investment Co (South Africa Co) (1904) 21 SC 238
Sampson v Union & Rhodesia Wholesale Ltd (in liquidation) 1968 AD 468
SA Mutual Aid Society v Cape Town Chamber of Commerce 1968 SA 598 (A)
Sander & Co v Douglas (1900) 21 NLR 246
Schlingemann v Meyer, Bridgens & Co Ltd 1920 CPD 494
Scott v Poupart 1971 (2) SA 373 (A)
Schulz v Morton & Co 1910 TPD 343
Scrutton & Scrutton v Ehrlich & Co 1908 TS 300
Searle & Son v Arkell & Douglas (1899) 16 SC 522
Shakazi v Gurr 1906 TS 303
Sheffield & Sheffield v Hart 1903 TH 469
Silicosis Board v City Deep 1949 (2) SA 813
Smuts v Smuts 1971 (1) SA 819 (A)
Soorju v Pillay 1962 (3) SA 906 (N)
Spencer v Gostelow 1920 AD 617
Stander & Co v Douglas (1900) 21 NLR 246
Stansfield v Kuhn 1940 NPD 84 and 238
Steerkamp v Nederlandsch Zuid Afrikaansche Hypotheek Bank 1916 TPD 396
Stellenbosch Divisional Council v Shapiro 1953 (3) SA 418 (C)
Stewart & Co v Benjamin & Co (1871) 2 Roscoe 58
Stewart Wrightson (Pty) Ltd v Thorpe 1977 (2) SA 943 (A)
Steyn v Steyn 1939 WLD 234
Stockham & De Jong v Kaplansky & Co (1901) 18 SC 156
Strauss v Van Zyl 1958 (3) SA 563 (O)
Strydom v Scheepers 1942 GLW 73
Stuttaford & Co v Parker 1921 CPD 381
Snyman v Mugglestone 1935 CPD 565
Sulaiman v Amardien 1931 CPD 509
Swart v Smuts 1971 (1) SA 819 (A)

Talu Ranching Co (Pty) Ltd v Circle "A" Ranching Co (Pty) Ltd 1975 (3) SA 612 (N)
Techni-Pak Sales (Pty) Ltd v Hall 1968 (3) SA 231 (W)
Terrington v Simpson (1841) 2 Menzies 110
Theron Ltd (in liquidation) v Goss 1929 CPD 345
Thomas v Bauman & Giffillan 1914 TPD 197
Thorne, Stuttaford & Co v McNally (1891) 8 SC 143
Tillbrook v Port Elizabeth Town Council (1910) 3 BAC 39
Torbet v Executors of Attwell 1879 Buch 195
Treasurer-General v Loxton (1881) SC 304
Treasury (The) v Gundelfinger & Kaumheimer 1919 TPD 329
Trust Bank van Afrika Bpk v Eksteen 1964 (3) SA 402 (A)
Trust Bank of Africa Ltd v Van der Walt 1962 (1) SA 175 (T)
Trust Bank of South Africa Ltd v Maharaj 1961 (2) SA 770 (N)

Uitenhage Municipality v Uys 1974 (3) SA 800 (E)
Union Government v National Bank of South Africa Ltd 1921 AD 121
United Mines of Bultfontein v De Beers Consolidated Mines (1900) 17 SC 419

Van den Heever v Bester 1961 (3) SA 625 (D)
Van der Merwe v Colonial Government (1904) 21 SC 520
Van der Merwe v Scribante 1940 GNL 36
Van der Merwe v Viljoen 1953 (1) SA 60 (A)
Van Diggelen v De Bruin 1954 (1) SA 188 (SW)
Van Druten v Cloete (1885) 3 HCG 276
Van Heerden v Hermann 1953 (3) SA 180 (T)
Van Rooyen v Minister van Openbare Werke en Gemeenskapbou 1978 (2) SA 835 (A)
Van Wyk v Millington 1948 (1) SA 1205 (C)
Victoria Falls & Transvaal Power Co Ltd v Consolidated Langlaagte Mines Ltd 1915 AD 1
Volkskas Bpk v The Master 1975 (1) SA 69 (T)
Vos v Cronje & Duminy 1947 (4) SA 873 (C)

Ward v Francis (1896) 8 HCG 82
Ward v Francis (1896) 8 HCG 82
Ward v Francis (1896) 8 HCG 82
Ward v Francis (1896) 8 HCG 82
Ward v Francis (1896) 8 HCG 82

Wege v Kemp 1912 TPD 135
Wegner v Surgeon 1910 TPD 571
Weinberg v Weinberg Bros (Pty) Ltd 1951 (3) SA 266 (C)
Weiner v Calderbank 1929 TPD 654
Weinrich's Excutros, Ex parte 1929 CPD 37
Wessels & Co v Abraham, Crosbie v Abraham (1908) 10 HCG 225
West Rand Estates Ltd v New Zealand Insurance Co Ltd 1925 AD 245
West Witwatersrand Areas Ltd v Roos 1936 AD 62
Reyl v United Restaurants Ltd 1903 TH 161
William Maine & Son (Pty) Ltd v Rhodesia Railways L976 (4)
    SA 914 (SR)
Williams v Evans 1978 (1) SA 1770 (C)
Wilson v Smith 1956 (1) SA 393 (W)
Winder v Taylor 1921 TPD 518
Wingeren v Ross 1951 (L) SA 82 (C)
Wireohms SA (Pty) Ltd v Greenblatt 1959 (3) SA 909 (C)
Witwatersrand Township Estate & Finance Corporation Ltd v
    Rand Water Board 1907 TS 231
Wolff & Co v Bruce, Mavers & Co (1889) 7 SC 133
Wolman ND, Ex parte 1946 CPD 672
Wylock v Milford Investments (Pty) Ltd 1962 (4) SA 298 (C)

Yodaiken v Angehrn & Piel 1914 TPD 254

Zweigenhaft v Rolfes, Nebel & Co 1903 TH 242 (see also under
    "R")
Acetylene Corporation of Great Britain v Canada Carbide Co (1921) 8 LT LR
Albouy v Retemeyer 3 Moo PC 452, 13 ER 184
Andrew Miller & Co Ltd v Taylor & Co Ltd [1916] 1 KB 402 (CA)
Anglo-Russian Merchant Traders & John Batt & Co's Arbitration [1917] 2 KB 679
Appleby v Myers (1867) LR 2 CP 651, 36 LJCP 331, 16 LT 669
Ex Ch
Aspdin v Austin (1844) 5 QB 671, 114 ER 1402
Austin v Moyle (1605) Noy 118, 74 ER 1083

B v Bremer Rolandmühle Reisegegericht (11 Zivilsenat) 21 March [1916] 88 ER G 172
Badische Co Ltd (In re) [192] 2 Ch 383
Baily v De Crespiigny (1889) LR 4 QB 180
Banducci v Hickey 93 Cal App 2d 658, 209 P 2d 396 (Distr Ct App 1949)
Bank Line Ltd v Arthur Capel & Co [1919] AC 435
Blackburn Bobbin v Allen [1918] 1 KB 540; affirmed [1918] 2 KB 46/7
Blakely v Miller [1903] 2 KB 760
Boast v Firth (1868) LRCP 1
Brewster v Kitchell (1698) 1 Salk 198, 91 ER 177 1 LD Rayn 317, 91 E.R. 108
Brown v Mayor of London (1863) L3 CBNS 828, 143 ER 327
Bush v Whitehaven Tonnd Harbour Trustees (1888) 52 JP 392

Carter v Carter (1733) Cos 7 Talbot 271, 25 ER 773
Chandler v Webster [1904] 1 KB 493 (CA)
Chinese Mining and Engineering Co v Sale [1917] 2 KB 599
Churchward v The Queen (1866) LR 1 QB 173
Comptoir Commercial Anversois (In re) v Power San & Co [1920] 1 KB 868
Author  Ramsden W A

PUBLISHER:
University of the Witwatersrand, Johannesburg
©2013

LEGAL NOTICES:

Copyright Notice: All materials on the University of the Witwatersrand, Johannesburg Library website are protected by South African copyright law and may not be distributed, transmitted, displayed, or otherwise published in any format, without the prior written permission of the copyright owner.

Disclaimer and Terms of Use: Provided that you maintain all copyright and other notices contained therein, you may download material (one machine readable copy and one print copy per page) for your personal and/or educational non-commercial use only.

The University of the Witwatersrand, Johannesburg, is not responsible for any errors or omissions and excludes any and all liability for any errors in or omissions from the information on the Library website.