

3.2.2.1 General principles

Page 71, after 'Pause for reflection' **insert** –

In *Greville v Venables* ([2007] EWCA Civ 878), the Court of Appeal refused to find a partnership agreement where the parties had expressly discussed the matter several times but reached no agreement. Although a partnership could have been implied from G's involvement in V's equine business, it was also explicable in terms of the parties' personal relationship. Lloyd LJ concluded that the suggestion that V intended to make an offer of partnership would 'fly in the face' of the facts and would 'contradict the express dealings and discussions between the parties'.

3.5.2 The policy considerations

Page 98, second bullet point, at the end of line 2, **insert** –

In *Fitzpatrick Contracts Ltd v Tyco Fire and Integrated Solutions Ltd* ([2008] EWHC 1301), the judge said (at [9]) that where the transaction is performed, 'the court will more readily conclude that there was a contract, even if it is impossible to identify the coincidence of offer and acceptance'. Similarly, in *RTS Flexible Systems Ltd v Molkerei Alois Müller* ([2008] EWHC 1087), Clarke J stated that, where contract performance has been commenced, 'the court strongly inclines to the concluding that the parties have entered into some contract even though such a contract cannot be spelt out by a classic analysis of the sequence of offer and acceptance' (at [65]).

3.6.1 Conditional agreements

Page 100 at the end of paragraph 1, **add**-

Where no contract is concluded, a claimant who has done work in anticipation of a concluded contract may be able to claim on the basis of promissory estoppel (see 4.3) or unjust enrichment (see 3.8.1).

3.6.2.3 Previous dealing, custom and reasonableness

Page 104, after discussion of the *Baird textile Holdings* case, **insert –**

✘ In *Schweppe v Harper* [2008] EWCA Civ 442, S had offered to seek ‘reasonable finance’ from a third party on H’s behalf for a fee of £50,000. When H subsequently withdrew S’s authority to deal on his behalf, and obtained finance from other sources, the court held that the concept of ‘reasonable finance’ could not be given any practical meaning, and it was impossible for a court to determine what it would be reasonable for H to accept’. There was no enforceable contract.

3.6.2.5 Agreements to (or not to) negotiate

Page 106, in (ii) ‘**Difficulty in determining whether breach has occurred**’ after the quote from the *Queensland Electricity* case **insert –**

A clear case of breach was found in *Ryanair Ltd v SR Technics Ltd* (2007). There, SR Technics provided maintenance services for Ryanair's aircrafts at Stansted airport. Ryanair agreed to allow the work to be moved to Dublin airport, on the basis that SR Technics would grant Ryanair licence to occupy a hangar for 15 years, subject to the landlord's consent (which could not be unreasonably withheld). Subsequently, SR Technics made no attempt to obtain the relevant consent and sought to terminate the contract and evict Ryanair after the landlord offered it €5 million to surrender its remaining lease. The court held that SR Technics was in breach of an implied term to use best endeavours to obtain the landlord's consent to Ryanair's use of the hangar.

Page 107 at the end of (iii) **only relates to a particular ‘cost to *Petromec*’ insert-**

Similarly the court had a basis on which to judge whether good faith had been exercised in *Tramtrack Croydon Ltd v London Bus Services Ltd* [2007] EWHC 107 (Comm), 31.1.07).

The good faith obligation was not abstract but linked to requirements of reasonableness and a mechanism for making the determination. Without these, the requirement of good faith negotiation was “intrinsicly without objective criteria” and would offend the principle in *Walford v Miles*. This was the case in *BBC Worldwide v Bee Load* [2007] EWHC 134 (Comm), 8.2.07, where no machinery supported the assessment of good faith.

3.7.2 Family and social agreements

Page 114, after the discussion of *Hadley v Kemp* (1999), **insert** –

A similar result was reached in *McPhail v Bourne* [2008] EWHCA 1235. The claim of two former members of the band Busted, who left before it became famous, failed to obtain a share in the goodwill of the name and the copyright of certain songs. The judge found that it would be inappropriate to imply an intention to create legal relations, since the relationship between the band members had been informal and social in nature.

3.8.1 Restitution for unjust enrichment

Page 117 after discussion of *British steel Corp v Cleveland Bridge and Engineering Co Ltd*, **add-**

In *Yeoman's Row Management Ltd v James Cobbe* [2008] UKHL a property developer reached an oral agreement ‘subject to contract’ in principle with a property owner to buy its property and expended substantial amount of time and money in obtaining planning permission pursuant to the agreement but the owner subsequently refused to enter into a binding contract, the developer was entitled to *quantum meruit* payment for his services in obtaining the planning permission. The owner was unjustly enriched because it had obtained the value of the developer’s services without having to pay for them.