

RICHARD SOUTHERN KC

7KBW

CONDITIONS PRECEDENT AND DEBT OBLIGATIONS

**HOW – IN PRACTICE – DO YOU NOW ESTABLISH
THAT A CONDITION HAS BEEN SATISFIED SO THAT
A DEBT OBLIGATION ARISES FOLLOWING KING
CRUDE CARRIERS SA V RIDGEBURY**

MACKAY v DICK (1881) 6 App Cas 251

Lord Blackburn

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“It would follow in point of law that the defender having had the machine delivered to him, was by his contract to keep it, unless on a fair test according to the contract it failed..., in which case he would be entitled to call on the pursuers to remove it.

And **by his own default** he can now never be in a position to call upon the pursuers to take back the machine, on the ground that the test had not been satisfied, **he must, as far as regards that, keep, and consequently pay for it.**”

Lord Watson

“The [sellers] were only entitled to receive payment of the price of the machine on the condition that it should be tried at a proper working face provided by the [buyer], and that on trial it should [perform as required].

They have been thwarted in the attempt to fulfil that condition by the neglect or refusal of the [buyer] to furnish the means of applying the stipulated test; and their failure being due to his fault, I am of opinion that ... **they must be taken to have fulfilled the condition.**”

King Crude Carriers v Ridgebury [2025] UKSC 39

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2. Deposit

...the Buyers shall lodge a deposit of 10% ... of the Purchase Price ... with the Deposit Holder within three (3) Banking Days after the date that:

(i) this Agreement has been signed by the Parties and exchanged ...; **and**

(ii) the Deposit Holder has confirmed in writing to the Parties that the account has been fully opened and ready to receive funds.

Court of Appeal [85]

“... an obligor is not permitted to rely upon the non-fulfilment of a condition precedent to its debt obligation where it has caused such non-fulfilment by its own breach of contract, **at least [1] where such condition is not the performance of a principal obligation** by the obligee, [2] **nor one which it is necessary for the obligee to plead and prove as an ingredient of its cause of action**, and [3] **save insofar as a contrary intention is sufficiently clearly expressed**, or [4] **is implicit** because the nature of the condition or the circumstances of the case make it inappropriate.”

Colley v Overseas Exporters [1921] 3 K.B. 302

The claimant sold a quantity of leather belting to the defendants fob Liverpool.

In breach of contract, the defendant buyers failed to name an effective ship, so that the claimant was prevented from loading the goods.

The claimant sued for the price of the goods.

The claim failed: "To hold that *Mackay v Dick* applies where the property has not passed would lead to extraordinary results."

There is no injustice in the result: [68]

... the consequence of rejecting *Mackay v Dick* as a principle of law does not lead to injustice. ... [the] breach is appropriately and adequately dealt with in English law ... in damages. Those damages aim to compensate the claimant by putting it into as good a position as if the contract had been performed ...

There is no good reason to strain to uphold a claim for debt where ... allowing the debt claim may exceed the claimant's net loss.

The question asked

How — in practice — do you now establish that a condition has been satisfied so that a debt obligation arises following *King Crude Carriers SA v Ridgebury*?

Nothing has changed.

We are not faced with a new problem, but an old one.

“Debitum in praesenti, solvendum in futuro”

A debt due at present, payable in the future.

Distinguish:

When a debt accrues due; and

When (and how) a debt is payable.

The Dominique [1989] AC 1056

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“Full freight” was “deemed to be earned **on signing** bills of lading”.

Freight was **to be paid** “within five days of signing **and surrender**” of the bills of lading.

The charter was terminated **after the bills of lading had been signed** but **before they were surrendered**.

***The Karin Vatis* [1988] 2 Lloyd's Rep 330**

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Freight deemed earned as cargo loaded.

95% of freight to be paid within 3 banking days after completion of loading and surrender of signed Bills of Lading, . . . vessel and/or cargo lost or not lost.

Balance of freight . . . to be settled within 20 days after completion of discharge and Owners' presentation of Laytime Statements.

Avoid avoidable conditions precedent

Suggested wording

2. Deposit

As security for the correct fulfilment of this Agreement the Buyers shall lodge a deposit of 10% of the Purchase Price (the "Deposit) **which shall accrue due and non-returnable upon signature of this Agreement by the parties.**

The deposit shall be **paid** in accordance with the provisions of Addendum No 1 to this Agreement.

Mechanics for payment of the Deposit

Make provision as to where and how the deposit is to be paid as part only of the machinery of payment, without affecting the time when the debt accrues.

If necessary, the contract can state expressly that Deposit accrues due in any event upon signing the Contract, and is not affected by the provisions for where and how the Deposit is to be paid.

The Blankenstein [1985] 1 WLR 435

So far as the deposit is concerned, the position of [the Seller] in the event of the repudiation of the contract by [the Buyer] was as follows.

[1] If the repudiation occurred after [the Buyer] had paid the deposit, [the Seller] would be safe: they would have the deposit and could keep it.

[2] If the repudiation occurred after the obligation to pay the deposit had accrued due, but before [the Buyer] had paid it, [the Seller] could sue [the Buyer] for the deposit as a debt ...

[3] But if the repudiation occurred before [the Buyer's] obligation to pay the deposit had fallen due, then [the Seller] could only recover damages for the repudiation ..."

Measure of Damages for failure to pay Deposit

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In *King Crude Carriers* the SC observed of *The Blankenstein*:

[Robert Goff LJ] went on to decide, dissenting from the majority only on this point, that the damages claim did not encompass the amount of the deposit.

We are not concerned with that point because, on this appeal, the quantum of the damages for breach of contract, and whether they embrace the non-payment of the deposit, is not before us.



**The Judge,
Siegfried Charoux**

Richard Southern KC

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Call: 1987
Silk: 2006

Richard Southern KC specialises in commercial litigation and arbitration, including shipping, energy, commodities and international trade, as well as professional negligence, marine and non-marine insurance, and reinsurance.

As a silk, Richard's work has included a wide range of litigation and arbitration. Recently Richard has been involved in several significant cases including one about counterfeit crude oil, a claim for investments misappropriated by their custodian. He represented Classic Maritime in a series of heavily contested cases no less than sixteen times both at trial and on appeal. He recently won a landmark shipbuilding arbitration before a panel of three retired Commercial Court judges and he represents the London reinsurance market in proceedings arising out of the Chapeconese air disaster.

He is ranked by Chambers UK as a leading silk in shipping & commodities and energy & natural resources (*"He is extremely good. He is very thorough, always delivers on time and has a very good instinct for where a case is going to go"*) and by The Legal 500 as a leading silk in commodities, insurance and reinsurance, and shipping (*"an excellent advocate who picks the right points"*). His work is principally advocacy and advisory. Richard sits regularly as an arbitrator in LMAA, LCIA and SIAC disputes, and is an IMI Qualified Mediator.

Disclaimer

**7 King's Bench Walk
Temple
London EC4Y 7DS**

+44 (0)20 7910 8300

seniorclerks@7kbw.co.uk

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