

THE  
LAW OF  
DERIVATIVES

SIMON JAMES

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speculation as to what a judge will do, and the outcome can be equally surprising.

On some legal issues, it is possible to be pretty certain what the outcome will be; on other issues, it is more difficult. But in all cases the best that can be given is an assessment of the likely outcome—the risk involved. As a result of this inevitable uncertainty, I have not in general tried to lay down what the law is—unless it is very clear, this gives a false sense of certainty—but rather to point out where the risks lie.

I have attempted to state the law as I understand it, undoubtedly wrongly in parts, as at 1 April 1999. The law in this area is, in general, moving fast, but the most major legal changes in the offing concern regulation. In July 1998, the Government published draft legislation to replace the Financial Services Act 1986. There was then a period of consultation, including a report by a committee of both Houses of Parliament which was critical of aspects of the proposals, following which the Government published revised draft legislation in June 1999. As at the time of writing, the Government appears intent upon pushing this revised draft legislation through Parliament quickly.

Even aside from the proposed legislative changes, in June 1999 the Financial Services Authority published new versions of the Grey Paper and *The London Code of Conduct* through which the wholesale financial markets are regulated (see pages 146–149). The papers retain the same sort of exhortation, guidance and warnings as their predecessors, though with the heavier hand of the Financial Services Authority becoming apparent. Two features in particular are perhaps worthy of mention, both arising from *Larussa-Chigi v. CS First Boston*. First, the wording in the previous standard form letter to end-users in the wholesale financial markets has been changed to avoid the terms of the Code being introduced as a term of the contract between counterparties (see page 149). Second, there is more emphasis on the possible need of end-users for advice, the desirability of making it clear whether advice is being given and the regulatory framework within which it should be given.

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## CONTENTS

<i>Preface</i>	v
<i>Table of Cases</i>	xv
<i>Table of Legislation</i>	xxvii
<b>1 DERIVATIVES</b>	<b>1</b>
1.1 Introduction	1
1.2 What are derivatives?	2
1.2.1 Derivatives generally	2
1.2.2 Forwards and futures	3
1.2.2.1 The difference between forwards and futures	4
1.2.2.2 Forwards' and futures' prices	6
1.2.3 Swaps	6
1.2.3.1 Interest rate swaps	6
1.2.3.2 Currency swaps	7
1.2.3.3 Equity swaps	8
1.2.3.4 Commodity swaps	9
1.2.4 Options	9
1.2.4.1 The price of options	10
1.2.5 Complex derivatives	12
1.2.6 Credit derivatives	13
1.2.7 Other derivatives	14
1.3 Legal risk and derivatives	15
1.3.1 Categories of legal risk	16
1.3.1.1 Product risk	16
1.3.1.2 Counterparty risk	17
1.3.1.3 Transaction risk	18
1.3.1.4 Handling risk	18
1.3.2 Dealing with legal risk	19
<b>2 THE NATURE OF A DERIVATIVES CONTRACT</b>	<b>21</b>
2.1 Introduction	21
2.2 Gaming and wagering	22
2.2.1 The nature of gaming and wagering	22
2.2.1.1 Mutuality	23

2.2.1.2 Other interests in the transaction	24
2.2.1.3 Loans for wagering transactions	26
2.2.2 Section 63 of the Financial Services Act 1986	26
2.3 Credit derivatives and insurance	30
2.3.1 Banking business	30
2.3.2 Insurance business	32
2.3.2.1 Insurance contracts	32
2.3.2.2 Other types of "insurance business"	34
2.4 Derivatives and confidentiality	35
2.4.1 Bankers and confidentiality	36
2.4.2 Are derivatives confidential?	37
<b>3 CAPACITY TO ENTER INTO DERIVATIVES TRANSACTIONS</b>	<b>39</b>
3.1 Introduction	39
3.2 Companies incorporated under the Companies Acts	42
3.2.1 The express terms of a company's memorandum of association	42
3.2.2 Implied powers	45
3.2.3 The enforceability of an ultra vires transaction	47
3.2.3.1 Corporate capacity	48
3.2.3.2 Abuse of powers	49
3.2.3.3 Constructive trusts	50
3.2.4 Should a company's memorandum be inspected?	54
3.2.5 Connected and associated parties	55
3.2.6 The ultra vires risks in dealing with companies incorporated under the Companies Acts	56
3.3 Local authorities	57
3.3.1 Implied powers	58
3.3.2 The purpose for which functions are exercised	60
3.3.3 The risks of dealing with local authorities	61
3.4 Building societies	61
3.5 Insurance companies	63
3.5.1 The ability of insurance companies to enter into derivatives transactions	63
3.5.2 The validity of transactions entered into unlawfully by insurance companies	67
3.5.3 The risks of dealing with insurance companies	69
3.6 Foreign corporations	70
3.7 Trusts	71
3.8 Authority	73
3.8.1 Actual authority	73
3.8.2 Apparent authority	74
3.8.3 The risk of lack of authority	75
3.9 Restitution	75
<b>4 MISREPRESENTATION</b>	<b>77</b>
4.1 Introduction	77

4.2 What can be misrepresented?	79
4.2.1 Fraud and rescission	79
4.2.2 Negligent misrepresentation	81
4.2.3 Risks	81
4.3 Rescission	81
4.3.1 Affirmation of the contract	82
4.3.2 Lapse of time	83
4.3.3 Impossibility of restoring the parties to their pre-contractual position	83
4.3.4 Third party rights	84
4.4 Fraud	84
4.5 Misrepresentation Act 1967	86
4.5.1 Negligent misrepresentation	86
4.5.2 Innocent misrepresentation	86
4.6 Negligent misrepresentation	87
4.6.1 When does a duty of care arise?	88
4.6.2 The development of the criteria to establish the existence of a duty of care	89
4.6.2.1 From <i>Hedley Byrne</i> to <i>Anns v. Merton</i> —the search for a limiting principle	89
4.6.2.2 <i>Smith v. Bush</i> and <i>Caparo v. Dickman</i> —the abandonment of the search for a principle	91
4.6.2.3 The current position—assumption of responsibility	93
4.6.3 How can responsibility be assumed?	95
4.6.4 Who can assume responsibility?	96
4.6.5 To whom will responsibility be assumed?	96
4.6.6 In respect of what will responsibility be assumed?	97
4.6.7 What sort of representation is necessary?	98
4.6.8 The effect of a disclaimer	100
4.6.9 The influence of a contract	100
4.6.10 Agents	101
4.6.11 The nature of any duty assumed	102
4.6.12 Loss	103
4.6.12.1 The general principle	103
4.6.12.2 Scope of the duty	104
4.6.12.3 Remoteness	105
4.6.12.4 Contributory negligence	105
4.6.13 The risk of liability in negligent misstatement	106
<b>5 FIDUCIARY DUTIES</b>	<b>109</b>
5.1 Introduction	109
5.2 Who is a fiduciary?	110
5.3 What duties does a fiduciary have?	112
5.3.1 Undivided loyalty	113
5.3.2 No conflict	114
5.3.3 No profit	114
5.3.4 Good faith	115

5.3.5 Breach of confidence	115
5.4 The problems of being a fiduciary	115
5.5 The problem of dealing with a fiduciary	118
5.6 Criminal liability	120
<b>6 THE REGULATION OF DERIVATIVES</b>	<b>121</b>
6.1 Introduction	121
6.2 The scope of the Act	123
6.2.1 Investments	123
6.2.1.1 The definition of derivatives	123
6.2.1.2 Common forms of derivative	127
6.2.2 Investment business	128
6.2.3 Investment business in the United Kingdom	130
6.3 Authorisation	133
6.4 Exemption	135
6.5 Overseas institutions	140
6.5.1 Part IV of Schedule 1 to the Act	140
6.5.2 The ISD and 2BCD Regulations	140
6.5.2.1 Investments and activities governed by the ISD and 2BCD Regulations	142
6.5.2.2 Activities covered by the ISD and 2BCD Regulations	143
6.5.2.3 United Kingdom regulation of passported firms	144
6.6 The regulation of the wholesale markets	146
6.7 The regulation of authorised persons	150
6.7.1 The Statements of Principle	150
6.7.1.1 General principles	152
6.7.1.2 Market principles	153
6.7.1.3 Customer principles	154
6.7.1.4 Regulator principles	156
6.7.2 The rules of self-regulating organisations	156
6.7.2.1 The SFA's rules	161
6.7.3 General rules	163
6.7.4 Misleading statements and practices	164
6.7.4.1 Deceptive statements and omissions	164
6.7.4.2 Misleading impressions	166
6.7.5 Insider dealing	167
6.7.5.1 Securities	168
6.7.5.1.1 Securities	168
6.7.5.1.2 Regulated markets and professional intermediaries	169
6.7.5.2 Inside information	170
6.7.5.3 The offences	171
6.7.5.3.1 Dealing	171
6.7.5.3.2 Encouraging	172
6.7.5.3.3 Disclosing	172
6.7.5.4 Special defences	173
6.7.5.4.1 Market makers	173
6.7.5.4.2 Market information	173

6.7.5.4.3 Price stabilisation	174
<b>7 THE OTC DERIVATIVES CONTRACT</b>	<b>175</b>
7.1 Forming a contract	175
7.1.1 Confirmations	178
7.1.1.1 The effect of a master agreement	179
7.1.1.2 Rectification	180
7.1.1.3 Estoppel	181
7.1.1.3.1 Promissory estoppel	182
7.1.1.3.2 Estoppel by convention	183
7.1.1.3.3 Estoppel by representation	183
7.1.1.3.4 Misleading confirmations	184
7.1.1.4 The value of a confirmation	185
7.2 Construing agreements	185
7.3 The ISDA Master Agreement	187
7.3.1 The architecture of ISDA documentation	188
7.3.2 Transactions governed by a master agreement	190
7.3.3 Dating a master agreement	192
7.3.4 Single agreement	193
7.3.5 Representations	193
7.3.5.1 Status	194
7.3.5.2 Powers	194
7.3.5.3 No violation or conflict	195
7.3.5.4 Consents	197
7.3.5.5 Obligations binding	198
7.3.5.6 Absence of events of default	199
7.3.5.7 Absence of litigation	199
7.3.5.8 Accuracy of specified information	200
7.3.5.9 Branches	201
7.3.5.10 Warranty of authority	201
7.3.6 Transfer	202
7.3.7 Amendments	204
7.3.8 Counterparts	205
7.3.9 Notices	206
7.3.10 Governing law	206
7.3.10.1 Governing law absent express choice by the parties	208
7.3.11 Jurisdiction	209
7.3.11.1 Process agents	214
7.3.11.2 Immunities	215
7.3.12 Payments	215
7.3.12.1 Payments and options	217
7.3.12.2 The netting of payments	219
7.3.12.3 Changing the branch of payment	219
7.3.12.4 Foreign payment moratoria	220
7.3.13 Payments in foreign currencies	222
7.3.13.1 Judgments in foreign currencies	223
7.3.14 Interest payable on default	225

7.3.14.1 Interest and penalties	227
7.3.14.2 Interest after judgment	230
7.3.14.3 Certification	232
7.3.15 Events of default	234
7.3.15.1 Failure to pay or make delivery	235
7.3.15.2 Other defaults	235
7.3.15.3 Credit support	236
7.3.15.4 Misrepresentation	236
7.3.15.5 Specific transactions	236
7.3.15.6 Cross default	237
7.3.15.7 Bankruptcy	237
7.3.15.8 Merger without assumption	238
7.3.15.9 The consequences of an event of default	239
7.3.15.10 The sum due on an event of default	240
7.3.15.11 Is the settlement amount affected by the credit status of the parties?	242
7.3.15.12 Is the right to terminate all transactions for one breach enforceable?	243
7.3.15.13 Are means of calculating the sums due on termination enforceable?	245
7.3.16 Other remedies	247
7.3.17 Termination events	248
7.3.17.1 The consequences of a termination event	250
7.3.17.2 The relationship between events of default and termination events	251
7.3.18 Credit support	252
<b>8 EXCLUDING AND LIMITING LIABILITY</b>	<b>255</b>
8.1 Introduction	255
8.1.1 Construction of exclusion clauses	256
8.1.2 Regulatory control of exclusion clauses	257
8.2 Pre-contractual obligations and liabilities	258
8.2.1 Common law controls	258
8.2.2 Statutory controls	260
8.2.2.1 The requirement of reasonableness	261
8.2.2.2 The consequences of unreasonableness	264
8.3 Contractual obligations	265
8.3.1 Consequential loss	266
8.3.2 Damages caps	267
8.3.3 Time limits	267
8.3.4 No set-off clauses	267
8.3.5 Statutory controls	267
8.3.5.1 UCTA	267
8.3.5.2 The Unfair Terms in Consumer Contracts Regulations	270
8.4 Protecting third parties	271
8.4.1 "Himalaya" clauses	272
8.4.2 Promises not to sue	273

<b>9 INSOLVENT COUNTERPARTIES</b>	<b>275</b>
9.1 Threatened insolvency	275
9.2 Administration	276
9.2.1 Introduction	276
9.2.2 The requirements for administration	277
9.2.3 The effect of an administration order on derivatives transactions	279
9.3 Administrative receivership	281
9.4 Insolvent liquidation	283
9.5 Foreign liquidations	285
<b>10 CONTENTIOUS DERIVATIVES</b>	<b>287</b>
10.1 Resolving disputes	287
10.1.1 Negotiation	288
10.1.2 Expert determination	289
10.1.3 Arbitration and courts	292
10.2 Handling disputes	295
10.2.1 Litigation privilege	296
10.2.2 Legal advice privilege	298
10.2.3 Common interest privilege	299
10.2.4 Loss of privilege	299
10.2.5 Without prejudice communications	300
<b>APPENDIX ISDA'S MASTER AGREEMENT*</b>	<b>303</b>
<i>Index</i>	333

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