

Supreme Court rules no
deemed fulfilment of conditions
precedent in English law:

*King Crude Carriers and others v
Ridgebury November and others*
[2025] UKSC 39

December 2025



This appeal centred on the 1881 House of Lords decision in the Scottish case of *Mackay v Dick* which introduced the principle that where a party wrongfully prevents the fulfilment of a condition precedent to its own debt obligation, that condition is deemed fulfilled and the debt becomes payable. After much academic debate and mixed judicial treatment, the Supreme Court has confirmed that no such principle exists in English law. In doing so, the Supreme Court has overturned the Court of Appeal and reaffirmed that the focus should be on the terms of the contract, express and implied, and their proper interpretation, rather than imposing a legal fiction which would treat a condition as fulfilled.

The sellers in this case relied on *Mackay v Dick* to argue that the conditions precedent clauses in three contracts should be treated as satisfied, so they could bring debt claims for unpaid deposits against the buyers. The sellers also brought claims in damages. However, as it was assumed that the sellers suffered no loss because the market price for each asset was higher upon termination than the purchase price, they would likely only be able to recover nominal damages. Therefore, bringing a debt claim was more attractive to the sellers as, if successful, it would have allowed the sellers to recover the full amount of the unpaid deposits.

The Supreme Court ultimately found that the principle in *Mackay v Dick* rests on a legal fiction - treating a condition precedent as fulfilled where in reality it has not been performed. The Court held that such fictions undermine transparent reasoning and should be removed wherever possible, noting that there is simply "*no convincing explanation for Mackay v Dick as a principle of law*".

The facts and decisions below

In April 2020, three Memoranda of Agreement (the “**MOAs**”) were entered into for the sale and purchase of three oil tankers, based on the Norwegian Saleform 2012 standard form contract.

It was a condition precedent under each MOA that the buyers were required to provide documentation for the purposes of opening deposit accounts, following which they were to pay in deposits of 10% of the purchase price. The buyers failed to provide the documentation and as a result the accounts could not be opened, and the deposits were not paid. The sellers therefore terminated the three MOAs and claimed the deposits in debt, totalling US\$4.94 million.

The sellers succeeded at first in arbitration which held that the sellers were, relying on the *Mackay v Dick* principle, entitled to claim payment of the deposits as a debt. The buyers appealed to the High Court on the question of whether the *Mackay v Dick* principle existed in English law. The High Court determined that it did not. The sellers then appealed to the Court of Appeal, which reversed the High Court decision. The buyers then appealed to the Supreme Court.

Supreme Court judgment

The Supreme Court held that the *Mackay v Dick* principle does not exist in English law for the following reasons:

- Applying the *Mackay v Dick* principle would “*fundamentally undermine*” established contract law, particularly in areas like the sale of goods and land where the passing of property is typically a condition precedent to the obligation to payment. If title could not pass due to action or inaction of a buyer, the *Mackay v Dick* principle might still deem the property transferred and the purchase price would become payable. There would therefore inevitably need to be limits and exceptions applied to the principle and this, the Supreme Court concluded, would not make for a robust principle of law.
- The principle relies on legal fictions such as “*deemed performance, or a deemed waiver, or a quasi-estoppel*”, which obscure clear reasoning. The Supreme Court noted that, in the words of Jeremy Bentham, “*in English law, fiction is a syphilis, which runs in every vein, and carries into every part of the system, the principle of rotteness.*”
- English contract law is based on the primacy of contract - the focus should be on the express and implied terms of the contract and their proper interpretation (being the true bargain made by the parties). This approach upholds “*certainty and predictability*” in commercial law.
- Claimants are adequately protected by the law of damages for breach of contract, which compensates for actual loss without disregarding the contract’s terms.
- The Supreme Court also noted that the judgment in *Mackay v Dick* relied on a doctrine borrowed from civil law rather than any English law

authorities, and that English case law is divided, with some cases supporting the principle but others, including persuasive judicial commentary, rejecting it. Importantly, the outcomes in supporting cases could have been reached using established principles on damages for breach of contract.

Alternative arguments of the sellers

If unable to establish the *Mackay v Dick* principle as a principle of law, the sellers sought to rely on it as an aid to contractual interpretation or as based on an implied term.

Contractual interpretation

The sellers sought to rely on the maxim that a party should not be entitled to take advantage of its own wrong, e.g. avoiding liability to pay the deposit by breaching its obligation to provide the documentation needed to open the deposit accounts. However, the Supreme Court highlighted that "***there are many contractual circumstances in which a party may [take advantage of its own wrong]. This is most obviously illustrated by the principle that damages for breach of contract are to compensate the claimant and not to punish the defendant and, subject to rare exceptions, damages or an account of profits are not awarded to strip profits made by the defendant's breach. Contract law permits efficient breach and the defendant may therefore profit from its wrong.***"

Moreover, in this case, the buyers weren't attempting to take advantage of their own wrong. Instead, they were relying on their own breach of the conditions precedent clause for "purely defensive" reasons against the sellers' debt claim, while accepting their liability in damages.

The sellers also argued that the buyers' interpretation of the MOAs would result in the unreasonable and absurd consequence of allowing the buyers to avoid their agreed obligations. However, the Supreme Court found that the problem with this argument is that "*it effectively strikes out the condition and rewrites the terms of the contract.*"

Implied term

The sellers further argued that since the deposit arrangements were intended to benefit the buyers, this could indicate an implied term that the arrangements could not be enforced if the buyers themselves had made it impossible to comply with them. However, the implied terms which were proposed by the sellers were rejected by the Supreme Court because they either rendered the conditions precedent clause unworkable (the deposit would have to be paid into an account where no account existed) or they sought to rewrite the contract.

Condition to payability only

The sellers also argued that the conditions precedent clause was only a condition to the *payability* of the deposit, not to its *accrual*, meaning that the right to the deposit accrued when the MOAs were concluded. The sellers argued that unless that was the case, there would be a lacuna in the contractual allocation of risk as the sellers are locked in whereas the buyers will have a window of time to decide not to proceed without forfeiting the deposit. The Supreme Court did not accept this. Whilst acknowledging that this scenario could exist, the Supreme Court was of the opinion that the window would be short and in all cases the buyers would be liable in damages if they decided not to go ahead. The Court emphasised that if the intention had been for the deposit to accrue on signing the MOAs, the MOAs could have expressly provided for this.

Commentary

Given the *Mackay v Dick* principle is a civil law doctrine established in Scots law, a mixed civil and common law system, it is unsurprising that the principle has received mixed treatment in English case law, which is a common law jurisdiction. Civil law systems also have concepts such as a general duty of good faith which have similarly not been imported into English law.

The Court of Appeal attempted to accommodate the principle in English law, couching it in the maxim that a party should not be entitled to take advantage of its own wrong. However, the Supreme Court clearly viewed this reasoning as overly strained, preferring to assert the conventional position of freedom to contract, especially given the commercial law context where there are sophisticated parties able to agree what is suitable for them (i.e. no consumer protection or unequal bargaining power issues etc.).

As the Supreme Court stressed, **"it is always open to the parties to include a term in the contract making clear that a condition precedent to a debt obligation does not apply where the failure of the condition precedent is caused by the debtor's breach."**

Indeed in M&A transactions, share purchase agreements typically allocate responsibility for fulfilment of conditions between the parties through carefully negotiated contractual provisions such as endeavours clauses and so-called 'hell-or-high-water' provisions, with an express right for each party to waive the conditions for which they are not responsible without having to rely on any purported principle of deemed fulfilment.

Where the contract does not provide such a right, given the potential difference in exposure between damages versus debt claims, any buyer will need to take a holistic view before deciding whether (and to what extent) to perform or breach the contract, taking into account the likelihood and quantum of damages, the evidential hurdles for the seller around causation and remoteness, and any strategic or commercial considerations.



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