Michaelmas Term
[2025] UKPC 58
Privy Council Appeal No 0043 of 2024

JUDGMENT

Rogelio Antonio Hawkins (Appellant) *v* Abarbanel Limited (Respondent) (Cayman Islands)

From the Court of Appeal of the Cayman Islands

before

Lord Reed
Lord Hodge
Lord Burrows
Lord Stephens
Dame Janice Pereira

JUDGMENT GIVEN ON
2 December 2025

Heard on 7 October 2025

Appellant
Philip Rule KC
Samir Amin
(Instructed by Henry Orren Merren IV)

Respondent
Toby Brown
(Instructed by Nelsons Attorneys-at-Law Ltd (Cayman Islands) and Seddons GSC LLP (London))

LORD BURROWS:

1. Introduction

1. The Board is here concerned with two appeals (in the same proceedings) from the Cayman Islands Court of Appeal. The first and main appeal is substantive. The question at issue is whether the breach of a statute, by which a moneylender failed to obtain a licence for carrying on its business, rendered a contract of loan made by the lender, and secured by a charge over the borrower's land, unenforceable for illegality. The Court of Appeal, upholding the first instance judge, held that the contract was not unenforceable for illegality and could therefore be enforced by the lender against the borrower.

2. The second appeal raises a procedural issue. The Court of Appeal refused the borrower permission to appeal to the Judicial Committee of the Privy Council despite the borrower having an appeal as of right. Although this procedural appeal does not now directly affect the parties, because the borrower was given special leave to appeal by the Board in any event, it raises an important question of general public importance on which we have had full submissions from the parties. That question is as follows: did the Court of Appeal apply the correct legal test in deciding that permission to appeal should be refused even though there was an appeal as of right?

2. Facts

3. Rogelio Antonio Hawkins (who is the plaintiff and the appellant in these appeals) is a resident of the Cayman Islands. Abarbanel Ltd (the defendant and the respondent in these appeals) is a company registered in the Cayman Islands which is ultimately owned and under the control of two brothers resident in the USA, David and James Barker. At all material times, its two sole directors (David Barker and Kelvin Latta) were US citizens.

4. On 19 February 2014, Mr Hawkins and Abarbanel entered into a loan agreement under which a principal sum of US$357,000 was advanced by Abarbanel. The term of the loan was one year but could subsequently be extended from month to month. Interest, calculated daily and compounded, was at 16% per annum for the first year, increasing to 18% per annum if the account fell into arrears, and thereafter at 15.27% above the 10-year "constant maturity rate" on US Treasury securities (then 2.73%). The loan was secured by charges upon two properties owned by Mr Hawkins, including his home.

5. Prior to executing the charges on 14 March 2014, Mr Hawkins received legal advice from an attorney to the effect that the proposed interest rates were very high. Mr Hawkins' attorney offered to try to negotiate better terms with Abarbanel but Mr Hawkins

refused his help. In April 2014, a further $50,000 (unsecured) was advanced to Mr Hawkins by Abarbanel, bringing the total loan to $407,000.

6. Mr Hawkins fell into arrears on the loans and, on 26 January 2018, Abarbanel gave notice of its intention to enforce its security. Subsequently it served an account claiming that $875,000 was owed.

7. In mid-September 2018, Mr Hawkins discovered that, apparently in breach of the Local Companies (Control) Act (2007 Revision) ("LCCA"), and the Trade and Business Licensing Act (2007 Revision) ("TBLA"), Abarbanel did not have any licences to carry on its moneylending activities.

8. Mr Hawkins commenced the proceedings, with which the Board is here concerned, seeking, inter alia, first, a declaration that the loan contract and charges were illegal, void and unenforceable and that no interest was payable under the loan, and, secondly, a discharge of the charges.

9. Pursuant to a consent order dated 28 September 2018, in October 2018 Mr Hawkins repaid to Abarbanel $376,036, being the remaining part of the principal sum that he had not repaid. The charge over his home, but not his other property, was discharged. As of July 2021, Abarbanel claimed that over $763,000 was still owing by way of compound interest.

10. The trial and the appeal to the Court of Appeal and this substantive appeal to the Board have therefore been concerned with Abarbanel's claim to interest, and its intention to obtain payment of that interest by enforcing its remaining charge.

3. The relevant statutory provisions

(1) The LCCA

11. Sections 2, 4, 5, 11 and 23 of the LCCA, in so far as material, read as follows:

> "**2. Definitions and interpretation**
>
> (1) In this Law –

'Board' means the board established by section 4 of the Trade and Business (Licensing) Law (2007 Revision); …

4. Circumstances in which local business may be carried on

(1) Subject to subsection (3), no company shall carry on business in the Islands unless it is so empowered by its Memorandum of Association and –

(a) it is a local company which, at the relevant time, is complying with section 5 or is a wholly owned subsidiary of such a company; [or]

(b) it is licensed under this Law and under the Trade and Business Licensing Law (2007 Revision) and, at the relevant time, is carrying on such business in accordance with the terms and conditions imposed in such licence and not otherwise; …

(2) Any company which contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of two hundred dollars for each day the offence continues and on conviction on indictment to a fine of one thousand dollars for each day the offence continues.

(3) The Governor in Cabinet may, in exceptional circumstances, having regard to the public interest, exempt any company from all or any of the provisions of this Law subject to such terms and conditions as the Governor in Cabinet may deem fit.

5. Provisions to be complied with by local companies

(1) For the purposes of section 4(1)(a) a local company is complying with this section if –

(a) it is Caymanian controlled;

(b) at least sixty per cent of its shares are beneficially owned by Caymanians; and

(c) at least sixty per cent of its directors are Caymanians. …

11. Granting and revocation of licence

(1) Subject to this Law, the Board may, in its discretion, grant a licence in respect of which application has been made …, but, if the Board is of the opinion that it would not be in the public interest to grant a licence, it may refuse to grant one without giving any reason for so refusing …

(3) A licence may not be issued for a duration longer than twelve years without the consent of the Governor, and may be subject to such terms and conditions as the Board may see fit to specify therein; and the Board, upon the written application of the licensee may, from time to time, extend the scope of such licence.

(4) Subject to any general directions which the Governor may, from time to time, give in respect of the consideration of such applications the Board shall, in deciding whether or not to grant a licence, have regard *inter alia* to the following matters –

(a) the economic situation of the Islands and the due protection of persons already engaged in business in the Islands;

(b) the nature and previous conduct of the company and the persons having an interest in that company whether as directors, shareholders or otherwise;

(c) the advantage or disadvantage which may result from that company carrying on business in the Islands;

(d) the desirability of retaining in the control of Caymanians the economic resources of the Islands;

(e) the efforts made by the company to obtain Caymanian participation;

(f) the number of additional people from outside the Islands who would be required to reside in the Islands were the application to be granted;

(g) whether the company, its directors and employees have and are likely to continue to have the necessary professional, technical and other knowledge to carry on the business proposed by the company;

(h) the finances of the company and the economic feasibility of its plans;

(i) whether the true ownership and control of the company have been satisfactorily established; and

(j) the environmental and social consequences that could result from the carrying on of the business proposed to be carried on by the company.

…

23. Effect of infringement on business transactions

For the avoidance of doubt it is hereby declared that no business transaction shall be void or voidable by reason only that, at the relevant time, any party thereto is in breach of this Law."

(2) The TBLA

12. Sections 4, 12, and 26 of the TBLA, in so far as material, read as follows:

"**4. Establishment of Board**

There is established a Board called the Trade and Business Licensing Board.

12. Trades and businesses requiring to be licensed

> Every person carrying on a trade or business mentioned in the Schedule shall, unless exempted under section 3, take out an annual licence in respect thereof in accordance with this Law in respect of each place where such trade or business is carried on."
>
> [The Schedule lists a wide range of professions, trades and technical activities, industry and agricultural activities, and "any other business or trade not specified herein in which a service is offered for reward". Section 3 exempts certain persons and products, for example, charitable corporations and employed craftsmen.]
>
> "**26. Offences and penalties**
>
> Whoever – …
>
> (b) carries on or attempts to carry on without a licence a trade or business which is required to be licensed under this Law; or
>
> (c) being a person to whom a licence has been granted under this Law, carries on a trade or business in contravention of a condition or restriction contained in such licence,
>
> is guilty of an offence and liable on conviction to a fine of five thousand dollars or to imprisonment for twelve months."

4. *Esso Standard Oil SA Ltd v Jose's Ltd* [1999] CILR 51 and [2000] CILR 304

13. The question of the enforceability of contracts made in breach of the licensing requirements in the LCCA and TBLA was previously considered by the Cayman courts in *Esso Standard Oil SA Ltd v Jose's Ltd* ("*Esso*").

14. The defendant ran a petrol station leased from the plaintiff, Esso Standard Oil SA Ltd, and tied, by a dealership agreement, to selling Esso petrol. The defendant sought to avoid its obligations under the contract (and lease) with the plaintiff on the ground that the plaintiff was carrying on business in the Cayman Islands without having the required licences, at the time the contract was made, under the LCCA and the TBLA.

15. In the Grand Court of the Cayman Islands, [1999] CILR 51, Murphy J held, inter alia, that the failure to have the required licences did not render the contract void or unenforceable. This was because, subsequent to the contract being made, licences had been obtained by the plaintiff and they applied retrospectively to when the contract was made. But in any event, and directly relevant to what the Board has to decide on this appeal, Murphy J held that, even if the licences had not operated retrospectively, the contract was neither void nor unenforceable for illegality for the following reasons:

(i) The LCCA and the TBLA neither expressly nor impliedly prohibited contracts made in the carrying on of the unlicensed business.

(ii) In deciding that there was no implied prohibition it was important to look at the purpose of the licensing regime under the LCCA and the TBLA. Murphy J explained the purpose of the LCCA in the following way at p 97:

> "Having regard to the stated objects of the LCC[A] and its provisions, it is clear that it is aimed at screening foreign aspirants wishing to do business in the Cayman Islands. Thus, the section 11(3) criteria focus on the nature of the applicant and the needs of Caymanians and of the Cayman Islands. What the LCC[A] does not do … is to regulate the carrying on of business by foreign companies once in the Cayman Islands, in the sense of regulating their commercial activity and their contractual relations."

That there was no implied prohibition of contracts followed a fortiori in respect of the TBLA because that was "purely a revenue statute" (p 100).

(iii) In any event, section 23 of the LCCA saved the contract. Murphy J said at p 101:

> "I believe that section 23 was intended by the legislature to save all transactions entered into by companies which might have been in breach of section 4 of the LCC[A]. It could not mean anything else. It is expressed to be 'for the avoidance of doubt'—that is, with a view to avoiding commercial contractual chaos."

16. Murphy J's decision and his essential reasoning were upheld by the Cayman Islands Court of Appeal: [2000] CILR 304 (Georges JA, with whom Zacca P and Rowe

JA concurred). It is helpful and sufficient simply to cite the following passage from the judgment of Georges JA at pp 313-314:

> "I find nothing in the Control Law [ie the LCCA] which would require any prohibition of specific contracts to be read into that Law. Indeed, there are indications to the contrary. Thus, the penalty for the contravention is a fine for each day that the contravention continues… The underlying purpose of the Control Law is adequately served by treating the prohibition as one attaching to the carrying on of business and not to the invalidation of contracts made in the course of carrying on such business. The Law was enacted to empower a statutory board to control the level of participation in business by persons who were not Caymanian. There is no apparent intention to protect a particular section of the public who would be liable to exploitation unless some checks and balances were put in place, or to ensure effective control of resources in times of crisis, or to protect the public generally by ensuring that professionals offering specialized services are duly qualified.
>
> Here, the intention is to ensure that entities which can claim Caymanian status by being incorporated in the Cayman Islands but which are in fact controlled by persons who do not have Caymanian status will not be able to carry on business, unless licensed by the Caymanian Protection Board. This objective can effectively be achieved by laying charges against entities which infringe the Law and imposing fines calculated on the basis of the number of days during which the infringement occurs. An even more drastic method of control is available: where the circumstances justify such an action, the Board is also empowered to revoke licences which have been granted, thus bringing the enterprise completely to an end.
>
> In my view, section 23 of the Control Law also supports the interpretation that the legislature did not intend to prohibit specific contracts made in the course of carrying on business.
>
> …
>
> Arguments may be advanced that transactions which may be neither void nor voidable may none the less be unenforceable at the instance of a party who has acted in breach of the Law.

> Whether this is so or not, the section does indicate that the legislature did not intend to make illegal specific contracts made in the course of carrying on a business at a period when there was no licence in force."

5. The decisions below in this case

(1) Ramsay-Hale CJ

17. In the Grand Court of the Cayman Islands, Ramsay-Hale CJ held that the contract of loan and the charge were valid and enforceable: [2022] (2) CILR 442. Approaching the matter first as a matter of "statutory illegality" (which was her heading at para 69), Ramsay-Hale CJ considered herself bound by the Court of Appeal's decision in *Esso*. Although, subsequent to *Esso,* further matters to which the licensing board must have regard were added to section 11(4) by the 2007 revision in subsections 4(f) to (j), that did not affect Murphy J's and the Court of Appeal's analysis of the purpose of the LCCA. The contract in this case was therefore neither expressly nor impliedly prohibited by the LCCA. That was supported by section 23 of the LCCA. There was even less of an argument that the contract was impliedly prohibited in respect of a breach of the TBLA, the only purpose of which was to raise revenue.

18. Ramsay-Hale CJ reasoned that she did not need to go on to consider "common law illegality" (which was her heading at para 95) because of section 23 of the LCCA. She cited Lord Hamblen as having made clear in *Henderson v Dorset Healthcare University NHS Foundation Trust* [2020] UKSC 43; [2021] AC 563 ("*Henderson*") that common law illegality, and hence the law laid down in the leading case of *Patel v Mirza* [2016] UKSC 42; [2017] AC 467, did not apply where the effects of the illegality were dealt with by statute. But had she thought it necessary to consider common law illegality, the application of Lord Toulson's "trio of considerations" in *Patel v Mirza* would have led to the same result that the contract and the charge were not unenforceable. This was because there was a public policy of promoting the validity of contracts and the purpose of the licensing regime in the LCCA would not be undermined by enforcing contracts made in breach of the provisions. Citing what Georges JA had said in *Esso* (see para 16 above) she considered that the criminal sanctions (ie fines based on the number of days that the infringement continued), without rendering contracts unenforceable, would effectively achieve the objective of the statute.

(2) The Court of Appeal

19. Ramsay-Hale CJ's decision and essential reasoning were upheld by the Court of Appeal (Beatson JA, with whom Martin JA and Goldring P agreed): CICA (Civil) Appeal

No 0001 of 2023; [2024] (1) CILR 73. Beatson JA's main reasoning (on the issues with which this appeal is concerned) was as follows:

(i) The Court of Appeal's decision in *Esso* was distinguishable from the present case because, on the facts of that case, a licence with retrospective effect had been granted. Strictly speaking, therefore, *Esso* was not binding on Ramsay-Hale CJ or the Court of Appeal. Nevertheless, it was of strong persuasive authority. In particular, the amendments to section 11 of the LCCA in the 2007 Revision did not change its purpose. Ramsay-Hale CJ and the Court of Appeal were therefore entitled to follow *Esso.*

(ii) The LCCA and the TBLA neither expressly nor impliedly prohibited the loan contract despite Abarbanel not having a licence to carry on its business. This was because of the purpose (or policy) of the statutes. Beatson JA agreed with the courts in *Esso* that the purpose of the LCCA was to control the level of participation in business in the Cayman Islands by non-Caymanians and not to protect a particular section of the public or the public generally. He also accepted (see para 55) that the TBLA was no more than a revenue-raising statute.

(iii) That conclusion was supported by section 23 of the LCCA. In Beatson JA's words at para 42 (and see to the same effect at para 44):

> "That amounts to an express statement that transactions by those who do not have a licence are not void or voidable. But even if, contrary to my view, it does not, it is at least a strong indication that breach of the requirements of the LCCA, including the licensing requirement do not render transactions void or voidable."

(iv) Section 23 of the LCCA also appeared to preclude the loan being unenforceable at common law. As Lord Hamblen made clear in *Henderson*, where the effects of illegality are dealt with by statute, then the statute must be applied and common law illegality has no role. Beatson JA said at para 73:

> "As far as the LCCA is concerned, the express provision in section 23 that no business transaction shall be void or voidable by reason only that any party to it is in breach of the LCCA appears to preclude the loan being unenforceable at common law."

(v) In the absence of a similar provision in the TBLA, Beatson JA thought there might be more scope for unenforceability at common law. But in any event the factors to be considered at common law, applying *Patel v Mirza,* were very similar to those that had been examined in determining whether the contract was impliedly prohibited by the statutes. As the purpose of the statutes would not be undermined by enforcing contracts made in breach of the licensing requirements, the contract of loan was not unenforceable at common law.

6. The law on illegality in respect of contracts and its application in this case

(1) What is the illegality in question?

20. There is now no dispute that Abarbanel has contravened the two statutes by carrying on business (in the Cayman Islands) without a licence. That was found as a fact (applying the civil standard of proof) by Ramsay-Hale CJ. The relevant illegality is therefore a breach of statute. By reason of section 4(2) of the LCCA and section 26 of the TBLA a breach of the statute in question is a strict liability criminal offence.

21. Toby Brown, counsel for Abarbanel, stressed that no criminal proceedings have been brought against Abarbanel and that the Board should not assume that, applying the criminal standard of proof, Abarbanel would be found guilty of a criminal offence. The Board accepts that it cannot make that assumption and, indeed, the pleadings, as specifically amended on this point, did not allege that Abarbanel had committed a crime. Nevertheless, when considering the statutes and their effects, it is of central importance that the statute in question does create a criminal offence with criminal sanctions. The important point, and not in dispute, is that Abarbanel has committed a breach of statute by carrying on business without a licence and that such conduct constitutes a criminal offence if that can be proved to the criminal standard.

(2) Statutory illegality

(a) The relationship between statutory illegality and common law illegality

22. Where the relevant illegality is laid down in a statute, an essential question in relation to a contract formed, or performed, in breach of the statute, is whether the statute has dealt with the effects of the illegality on the enforceability of the contract. The common law of illegality, as set out in *Patel v Mirza*, only comes into play where statute has not dealt with the effects of the illegality on a contract and has therefore not precluded the operation of the common law.

23. That that is the correct approach was made clear by Lord Toulson in *Patel v Mirza* and was reiterated by Lord Hamblen in *Henderson*. See also *Energizer Supermarket Ltd v Holiday Snacks Ltd* [2022] UKPC 16; [2023] 2 P & CR 9, para 32. In *Henderson*, Lord Hamblen said, at para 74:

> "it should be emphasised that *Patel* concerned common law illegality rather than statutory illegality. Where the effects of the illegality are dealt with by statute then the statute should be applied. As Lord Toulson JSC stated at para 109 of *Patel*: 'The courts must obviously abide by the terms of any statute.'"

24. Have the relevant statutes here dealt with the effects of the illegality on the enforceability of the contract? This is a question of ordinary statutory interpretation. Putting section 23 of the LCCA to one side for the moment, the important question is whether the statute expressly or impliedly prohibits contracts made by companies who are carrying on business in the Cayman Islands without the required licence.

(b) Express or implied prohibition of contracts (leaving aside section 23 of the LCCA)?

25. The question as to whether a statute has expressly or impliedly prohibited a contract made in breach of the statute has been addressed in a number of leading cases.

26. In the context of licensing, one of the best-known cases is *In re Mahmoud and Ispahani* [1921] 2 KB 716. Here a wartime order, made by delegated legislation, prohibited the purchase or sale of linseed oil without a licence from the Food Controller. The claimant (who had a licence) contracted to sell linseed oil to the defendant, who did not have a licence, although the claimant was told by the defendant that he had. The defendant refused to accept the oil but the claimant's action for damages for non-acceptance failed because the contract was prohibited by the legislation and was therefore unenforceable by either party.

27. In contrast it was decided in *St John Shipping Corpn v Joseph Rank Ltd* [1957] 1 QB 267 that the statute that prohibited the overloading of a ship did not also prohibit contracts of carriage. A statutory illegality defence also failed in *Okedina v Chikale* [2019] EWCA Civ 1393; [2019] ICR 1635. The claimant employee had been employed by the defendant as a live-in domestic worker for over 18 months after her visa ran out. When she was summarily dismissed and ejected from the home, she brought actions for unfair and wrongful dismissal. Her claims succeeded because there was no statutory illegality defence (nor was there a common law illegality defence). As regards a statutory illegality defence, the Court of Appeal decided that, as a matter of statutory interpretation, the relevant legislative provisions on employing an illegal immigrant neither expressly

nor impliedly rendered the contract of employment unenforceable by the employee, albeit that she did not have a visa and so was being employed contrary to those provisions.

28. Here it is clear that there is no express prohibition, in either the LCCA or the TBLA, of a contract made in breach of the licensing requirements. But is there any implied prohibition? That turns primarily on a consideration of the purpose of the statutes.

29. The Board agrees with the lower courts, and with Murphy J and the Court of Appeal in *Esso*, that the purpose of the LCCA is not to render contracts made by unlicensed businesses unenforceable. In particular, it is not designed as a consumer protection measure to invalidate contracts that are unfair. Rather the purpose of the LCCA is to "screen" (as Murphy J put it in *Esso*), and to ensure a measure of control over, foreign companies carrying on business in the Cayman Islands so as to protect and promote Cayman-controlled companies. It is designed to promote the interests of the Cayman Islands and Cayman islanders in the setting up of, and employment by, companies carrying on business in the Cayman Islands.

30. That this is the purpose emerges particularly clearly from the 1971 version of the LCCA which, unlike the 2007 revision, had a "Memorandum of Objects and Reasons". This reads as follows:

> "At present it is possible in certain cases to avoid the effect of the Work Permit Law by forming a local company and conducting a business through the company which, in the eyes of the law, is resident in the Islands although it may be in the full control of foreigners. It is sought to exercise some control over this situation by requiring all companies doing business locally to be under the control of local people or to be licensed to carry on business here."

31. This was reaffirmed at the start of the 1971 version of the LCCA where there was a preamble which reads:

> "A Law to prohibit save under licence the carrying on in the Cayman Islands of local businesses by companies which are not under Cayman control."

32. Similarly, the Board agrees with the lower courts, and with Murphy J and the Court of Appeal in *Esso*, that the purpose of the TBLA is not to render contracts made by unlicensed businesses unenforceable. Rather the purpose of the TBLA is to raise revenue by requiring payment for a licence. Again this emerges particularly clearly from the 1971

version of the TBLA which, unlike the 2007 revision, had a "Memorandum of Objects and Reasons". This includes the following:

> "[T]he function of the Trade and Business Licensing Law is to raise a certain amount of revenue…"

33. In addition to the purposes of the LCCA and the TBLA, there are other factors that support the correct statutory interpretation as being that contracts made by unlicensed companies are not impliedly prohibited. For example, and as referred to by the Court of Appeal in *Esso* and by Ramsay-Hale CJ in this case, it is rational for the legislator to have treated the relevant and sufficient sanctions for breach of the statutes as being the criminal sanctions expressly provided for in section 4(2) of the LCCA and section 26 of the TBLA. In this respect, it is noteworthy that the fine specified under section 4(2) of the LCCA is related to the days during which the business is carried out without a licence, not to the number of contracts made during that time. A further relevant factor is to consider the consequences if contracts were impliedly prohibited. On the face of it, there would be commercial chaos if every contract made by a non-licensed business in the course of carrying on business were to be unenforceable. These would presumably include, for example, employment contracts, contracts for utilities, contracts for the use of premises, let alone core business contracts such as the contract of loan in this case. Standing back from the detail of the TBLA, it would be especially odd if a contract was held to be unenforceable because the party seeking to enforce the contract had not paid what might be regarded as equivalent to a tax.

34. The conclusion is that, as a matter of statutory interpretation, neither Act impliedly prohibits a contract made by a company that is carrying on a business without a licence. Moreover, there is nothing to suggest that either Act was concerned to protect a consumer by rendering an unfair contract unenforceable.

(c) Section 23 of the LCCA

35. The Board can now turn to section 23 of the LCCA. In the Board's view, section 23 is an express provision making clear that a contract made in breach of the licensing regime in the LCCA is not unenforceable.

36. Philip Rule KC sought to resist this analysis by drawing a distinction between contracts that are void, voidable and unenforceable. Certainly, he is correct that one can draw a conceptual difference between those three. An unenforceable contract, in contrast, for example, to a void contract can be said to exist and to have existed from the date of formation and therefore can confer rights even though neither party can come to court to enforce those rights (an example being a contract which has been rendered unenforceable by the expiry of a limitation period).

37. However, the context and purpose of section 23 make plain that no such distinction is here being drawn. There would be no rational reason for deciding that a breach of the licensing provision does not make a contract void or voidable but nevertheless renders it unenforceable. That would have the effect of largely undermining saying that the contract is not void or voidable. A statutory interpretation that tends to produce absurdity should be avoided unless the words dictate that result. Here the words do not dictate that result because one can interpret void or voidable as covering the whole field of contractual validity including enforceability. On the proper interpretation, the words of section 23 mean that the contract is not void or voidable or unenforceable.

38. That is supported by the fact that, while the modern preferred terminology (especially after *Patel v Mirza*) is that a contract affected by illegality may be rendered unenforceable, the terminology of a contract being void for illegality has often been used. That is, in this context the terms "void" and "unenforceable" have not been sharply distinguished and have been used interchangeably. For the terminology of void for illegality, see, for example, *Cope v Rowlands* (1836) 2 M & W 149, 157; *Phoenix General Insurance Co of Greece SA v Halvanon Insurance Co Ltd* [1988] QB 216, 268; *Harbour Assurance Co (UK) Ltd v Kansa General International Insurance Co Ltd* [1993] QB 701, 724. See also *Anson on Contract*, 31st ed (2020), p 410. It follows that, at the time section 23 was being drafted, the draftsman's use of the term "not void" would reasonably have been understood as encompassing the contract not being unenforceable.

39. The fact that other statutes have referred to "void or unenforceable" (see, eg, section 5 of the (Cayman) Insurance Act 2010) is beside the point because one always has to consider the context and purpose of the particular provision in question.

40. Similarly, the main case relied on by Mr Rule on this issue, *Chase Manhattan Equities Ltd v Goodman* [1991] BCC 308, can be, and should be, distinguished. In that case, the claimant had contracted to buy shares from one of the defendants. It alleged, inter alia, that the contract of sale was unenforceable for illegality because one of the directors of the selling company was acting in breach of insider dealing legislation (ie the Company Securities (Insider Dealing) Act 1985). It was held that an insider dealing offence had been committed, contrary to the 1985 Act, and that the contract of sale was unenforceable for illegality. That was so despite section 8(3) of that Act which laid down that "No transaction is void or voidable by reason only that it was entered into in contravention [of the Act]". Knox J took the view, not least applying the "affront to the public conscience" test that was then in vogue, that the common law illegality doctrine was not ousted by section 8(3), that Parliament must be taken to have appreciated the differences between voidable and unenforceable contracts, and that "where Parliament desires to make a transaction unenforceable rather than void or voidable it does so in terms" (at p 339). He also thought that, while the principal purpose of section 8(3) was not to disrupt completed Stock Exchange transactions, on the facts only the parties were involved and the machinery of the Stock Exchange had not operated in relation to the sale agreement.

41. There is no need to consider whether *Chase Manhattan* would now be decided the same way in the light of the restatement of common law illegality in *Patel v Mirza* and the even earlier rejection (in *Tinsley v Milligan* [1994] 1 AC 340) of the "affront to the public conscience" test. The important point is that the relevant statute, and hence the context and the purpose of that statute, were different from the present case. Moreover, on the facts of the present case, as is explained at paras 44–45 below, the common law position would in any event be that the contract was enforceable. That marks a fundamental point of distinction from *Chase Manhattan* where Knox J was construing the words in section 8(3) against the background of his having decided, applying the common law, that the contract would otherwise be unenforceable. The Board therefore rejects Mr Rule's submission that, if correctly decided, the *Chase Manhattan* case dictates that section 23 applies only to a contract not being void or voidable and does not also mean that a contract is "not unenforceable".

42. Section 23 is in the LCCA. There is no separate "for the avoidance of doubt" provision in the TBLA. Does that mean that some doubt is left on this issue in respect of carrying on a business without the required licence under the TBLA? In the Board's view, the answer to that is "no". The two statutes were first enacted one after the other on the same day (13 December 1971); and the Trade and Business Licensing Board charged with issuing licences under the LCCA was created under section 4 of the TBLA so that they need to be read together. Although the words of section 23 refer to a breach of "this Law", literally meaning the LCCA, the two Acts are so closely connected that, applying a purposive interpretation, the express clarification of the position in the LCCA means that there is also no room for doubt in respect of the TBLA.

43. The Board's conclusion therefore is that neither the LCCA nor the TBLA expressly or impliedly prohibits a contract made in breach of the statute; and that section 23 goes further, and removes any doubt, by making clear that a contravention of the LCCA or the TBLA does not render a contract void, voidable or unenforceable.

(3) Common law illegality?

44. Given what has been concluded on statutory illegality, there is no room for common law illegality as laid down in *Patel v Mirza*. As has been explained at paras 22-23 above, where statute has dealt with the effects of the illegality the courts must apply the statute and the common law is ousted.

45. Nevertheless, the Board agrees with the lower courts that, if one were to go on to consider the trio of considerations set out in *Patel v Mirza*, the same answer would be reached that the contracts made in breach of the statutes are not unenforceable. Lord Toulson explained the trio of considerations as follows at para 101:

> "one cannot judge whether allowing a claim which is in some way tainted by illegality would be contrary to the public interest, because it would be harmful to the integrity of the legal system, without (a) considering the underlying purpose of the prohibition which has been transgressed, (b) considering conversely any other relevant public policies which may be rendered ineffective or less effective by denial of the claim, and (c) keeping in mind the possibility of overkill unless the law is applied with a due sense of proportionality. We are, after all, in the area of public policy. That trio of necessary considerations can be found in the case law."

Applying that approach, the policies underlying the statutory illegality in question, as articulated above, are consistent with, and are outweighed by, the importance that should be attached to upholding contracts which have been freely agreed. Contracts made in breach of the statutes are therefore not unenforceable. There would be no need to go on to discuss the third of the trio of considerations, disproportionality. But if one did, it is clear that, in pursuing the statutory aims, it would be disproportionate (by causing commercial chaos: see para 33 above) to treat contracts made in breach of the statutes as unenforceable.

(4) Proceeds of Crime Act (2025 Revision) ("POCA")

46. For completeness, it should be noted that the appellant also sought to argue that POCA should be taken into account by the Board. That legislation is concerned with the confiscation of assets obtained by criminal conduct. The appellant's case was that to hold that the contract was enforceable on these facts would be inconsistent with that legislation.

47. The Board refused to entertain this part of the appellant's case because it was not pleaded and was only vaguely mentioned before the Court of Appeal. It was essentially a new point being raised before the Board for the first time. It would be inappropriate for this Board to consider what may be complex provisions on proceeds of crime without the benefit of the views of the lower local courts. In any event, as Mr Brown made clear, Abarbanel has not been convicted of a criminal offence.

48. Nothing in this judgment undermines the bringing of criminal and confiscation proceedings for offences under the LCCA and the TBLA. Refusing an illegality defence to enforceability of a contract is not inconsistent with the imposition of sanctions (including confiscation) provided for by the criminal law if it can be established to the required standard of proof that an offence has been committed.

(5) Conclusion on the substantive appeal

49. For all these reasons, the substantive appeal is dismissed.

7. The appeal on the correct legal test for refusing permission to appeal where there is an appeal as of right

(1) The relevant legislation and case law

50. By section 3(1) of the Cayman Islands (Appeals to Privy Council) Order 1984 (SI 1984/1151) (which is secondary legislation under the powers essentially conferred by the Judicial Committee Act 1844):

> "… an appeal shall lie as of right from decisions of the Court [ie the Cayman Islands Court of Appeal] to [His] Majesty in Council in the following cases–
>
> (a) final decisions in any civil proceedings, where the matter in dispute on the appeal to [His] Majesty in Council is of the value of £300 sterling or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of £300 sterling or upwards; …"

51. In addition, by section 3(2)(a):

> "… an appeal shall lie from decisions of the Court to [His] Majesty in Council with the leave of the Court in the following cases–
>
> (a) decisions in any civil proceedings, where in the opinion of the Court the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to [His] Majesty in Council; …"

52. Section 22 preserves the special leave to appeal that may be given by His Majesty in Council.

53. It is not in dispute that in this case Mr Hawkins had an appeal "as of right" to the Board under section 3(1)(a) of the 1984 Order. It is also not in dispute that the Cayman Islands Court of Appeal has a role to play in respect of permission to appeal because, even though an appeal is available as of right, that local court needs to verify that there is such a right and to deal with certain procedural matters (eg conditions may be imposed as regards costs and the preparation of the record of proceedings).

54. Furthermore, in respect of several other jurisdictions, it has been accepted by the Board that the local court may properly refuse permission, even though there is an appeal as of right, if there is not a genuinely disputable issue.

55. In *Alleyne-Forte v Attorney-General of Trinidad and Tobago* [1998] 1 WLR 68, 73, Lord Nicholls, giving the judgment of the Board on an appeal from Trinidad and Tobago, said this:

> "An appeal as of right, by definition, means that the Court of Appeal has no discretion to exercise. All that is required, but this *is* required, is that the proposed appeal raises a genuinely disputable issue in the prescribed category of case; here, a claim … to redress a contravention of a provision for the protection of a fundamental right."

56. In the leading case of *A v R (Guernsey)* [2018] UKPC 4; [2018] 3 LRC 533 Lord Hodge, giving the advice of the Board on an appeal from Guernsey, where there was an appeal as of right because the value of the matter in dispute was £500 or more, said the following at para 8:

> "An appellant's appeal as of right does not mean that the Court of Appeal has no control over the appeal. Orders in Council in many jurisdictions with appeals as of right to the Board provide for the appellate court to grant final leave to appeal only after the appellant has provided security for costs and complied with other prescribed procedural conditions, such as the preparation of the record of proceedings. More generally, a court of appeal has power to make sure that there is a genuinely disputable issue within the category of cases which are given an appeal as of right."

He then went on to cite with approval the passage set out in the previous paragraph from Lord Nicholls' judgment in *Alleyne-Forte*. Lord Hodge further accepted that permission for an appeal as of right could be refused by the local court of appeal if the appeal was an abuse of process.

57. In *Meyer v Baynes* [2019] UKPC 3, on an appeal from Antigua and Barbuda, it was not in dispute that the claimant had an appeal as of right. The question was whether the Court of Appeal had been entitled to refuse him permission to appeal to the Board. Lord Kitchin, giving the advice of the Board, quoted the above passages from *A v R* and *Alleyne-Forte* and continued as follows at para 23:

> "The Board considers that this reasoning is also applicable to appeals from the Court of Appeal of the Eastern Caribbean Supreme Court (Antigua and Barbuda) … the Court of Appeal has a right to police applications of this kind and to consider whether any proposed appeal raises a genuinely disputable issue. In this case the Court of Appeal exercised that right, refused leave to appeal and dismissed the application. In so doing, it did not exceed its jurisdiction, and it made no error in approaching the application in the way that it did."

58. It is also noteworthy that in the Cayman Islands Court of Appeal, in *Rabsco Inc v Prasad* [2023] (2) CILR 447, para 4, Birt JA said the following:

> "The circumstances in which an appellate court can refuse leave to appeal to the Privy Council where such appeal lies as of right by statute are extremely limited. As the Privy Council pointed out in *A v R* ([2018] UKPC 4, para 8), it may only do so where there is no 'genuinely disputable issue.' That is a very low threshold bearing in mind that there is a statutory appeal as of right."

59. Also of relevance is that the Board has considered as a separate question what the powers of the Board are where there is an appeal as of right and the local court of appeal has allegedly wrongly refused leave to appeal to the Board. Lord Hodge in *A v R* said at para 12:

> "In the Board's view the limits of the discretion to refuse leave to appeal in a case where an appeal as of right has been wrongly refused by the local court may be stated thus: the Board may refuse permission to an application to appeal, if the appeal is devoid of merit and has no prospect of success … and also if the appeal is an abuse of process, such as might arise in the hypothetical example [referred to earlier of the appeal as of right having no time limit and the appeal being brought a considerable time later after the decision had been acted on and given effect]. Another example of an abuse of process could,

> depending on the circumstances, be where the local court of appeal had refused an appeal to itself or where the proposed appeal raises questions of fact which have not been raised in that court."

See also Judicial Committee (Appellate Jurisdiction) Rules 2024, r 13(5); and Judicial Committee of the Privy Council Practice Direction 3.37.

60. Most recently, Lord Leggatt, giving the judgment of the Board in *Water and Sewerage Authority of Trinidad and Tobago v Sahadath* [2022] UKPC 56, para 31, said this:

> "Where, as in this case, an appeal lies to the Board as of right, it is still necessary to obtain leave from the court appealed from or from the Board itself. Leave may be refused if the applicant fails to comply with any condition that may be imposed under the local law but also if it is clear that there is no genuinely disputable issue or that the appeal is an abuse of process: see *Alleyne-Forte v Attorney-General of Trinidad and Tobago* [1998] 1 WLR 68, 73; *Crawford v Financial Services Institutions Ltd* [2003] UKPC 49; [2003] 1 WLR 2147, para 23; *A v R* [2018] UKPC 4, para 8; *Meyer v Baynes* [2019] UKPC 3, para 22. Even where leave has been granted, the Board has power to strike out an appeal which is not properly arguable or otherwise abusive: *Consolidated Contractors International Co SAL v Masri* [2011] UKPC 29, paras 3, 15. An appeal from a decision based on concurrent findings of fact will fall in this category unless an arguable case is made out that there are special circumstances justifying departure from the Board's settled practice not to entertain a further appeal."

61. There is also a useful examination of the relevant case law, albeit prior to *A v R*, in Lord Mance and Jacob Turner, *Privy Council Practice* (2017) at paras 3.12–3.18, 3.36–3.38, 3.65.

(2) The approach of the Court of Appeal in this case

62. The Court of Appeal (Goldring P, Martin JA and Beatson JA) in this case refused Mr Hawkins permission to appeal to the Board even though it accepted that he had an appeal as of right. The judgment of the Court of Appeal, to which all members of the court contributed, was given by Beatson JA on 5 April 2024.

63. Beatson JA's judgment considered several authorities including, in particular, *A v R* and the Cayman Islands Court of Appeal cases of *Rabsco Inc v Prasad* and *Ahmad Hamad Algosaibi and Bros Co v Saad Investments Co Ltd* CICA No 15 of 2018, 6 July 2022. The essential reasoning in Beatson JA's judgment was as follows:

(i) *A v R* recognised that the local court of appeal can refuse permission for an appeal as of right in two categories of case. First, where there is no genuinely disputable issue or, secondly, where the appeal would be an abuse of process.

(ii) The "no genuinely disputable issue" test is clearly less stringent (as Birt JA had said in *Rabsco Inc v Prasad* it imposes "a very low threshold") than the tests for permission to appeal in England and Wales in, for example, CPR r 52.6 that the appeal would have a real prospect of success or that there is some other compelling reason for it to be heard.

(iii) At para 13, Beatson JA said:

> "The commonest examples of cases that have been held to raise no genuinely disputable issue or where an appeal as of right would be an abuse of process are those falling within the settled practice that, save in exceptional circumstances, the JCPC declines to hear appeals against concurrent findings of fact in the courts below."

(iv) It was also recognised in *A v R* that, where the local court of appeal has refused leave even though there is an appeal as of right, it is still open to a person to apply to the JCPC for special leave to appeal but the JCPC may refuse the application where the appeal is devoid of merit and has no prospect of success.

(v) The local court of appeal can also apply that test of whether the appeal is devoid of merit and has no prospect of success (in making sure that there is a genuinely disputable issue). At para 17, Beatson JA said,

> "The question therefore is whether or not this court can properly conclude that the appellant's proposed appeal is devoid of merit and has no prospect of success."

(vi) Having examined the grounds of appeal, the conclusion reached in applying that test was set out in para 25 as follows:

> "the court considers that none of the grounds are properly arguable and that the appellant's proposed appeal is devoid of merit and has no prospect of success. Accordingly, the court considers that the appellant has no genuinely disputable issue on appeal and that it would be an abuse of process for this court to give him leave to petition His Majesty in Council. Leave is accordingly refused."

(3) Did the Court of Appeal err in law?

64. The Board's view is that the Court of Appeal's judgment carefully and accurately brought together leading authorities on the correct test to be applied to permission to appeal where there is an appeal as of right and accurately derived from them a correct test to apply. It then applied that test. The Board rejects the submission of Mr Rule that the Court of Appeal applied the wrong test and lost sight of the very low threshold it was required to apply. There was no error of law by the Court of Appeal.

(4) What is the best approach?

65. It is apparent from the Court of Appeal's judgment and the relevant case law that there is a proliferation of correct tests for refusing permission to appeal where there is an appeal as of right: no genuinely disputable issue, an abuse of process, devoid of merit, and no prospect of success. The Board agrees with the Court of Appeal that one cannot rationally say that the first two tests apply only to the local court of appeal and the last two tests apply only where the Board is considering special leave. The same test or tests must apply to a petition for leave to appeal before the local court of appeal as it does to the Board on a renewed application for leave to appeal.

66. Given that the threshold should be a very low one, the Board considers that the best approach, so as to achieve greater simplicity and certainty, is that the relevant test to be applied, whether by the court of appeal or the Board, is as follows. Where there is an appeal as of right, permission to appeal will be refused where the appeal raises no genuinely disputable issue or, which appears to be synonymous, the appeal is devoid of merit, or the appeal is otherwise an abuse of process. The justification for not allowing such an appeal to be brought is that it would amount to an abuse of process so that there is no question of such a refusal illegitimately undermining what is often a fundamental or constitutional right.

67. Although the Board is not here being asked to consider what the correct approach of the Board should be where there is an appeal as of right and the local court has given (rather than refused) permission to appeal, it follows from the reasoning above (see, in particular, the citation at para 60 above) that the Board has the power to strike out an

appeal which, in the Board's view, raises no genuinely disputable issue or is devoid of merit or is otherwise an abuse of process. An appeal from a decision based on concurrent findings of fact, where there are no exceptional circumstances, and yet the court of appeal has given permission to appeal to the Board, is an example of where this power can be exercised.

(5) Conclusion on the procedural appeal

68. For all these reasons, the appeal on the procedural issue is also dismissed.