

**A. THE FRAMEWORK*****American Cyanamid and the Two Thresholds***

| No. | Authority                                                    | Judgment Para | Proposition                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----|--------------------------------------------------------------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1   | <i>American Cyanamid Co v Ethicon Ltd</i> [1975] AC 396      | 8             | The foundational test for interim injunctions: (1) serious issue to be tried; (2) adequacy of damages; (3) balance of convenience. Cited via the White Book 2025 commentary.                                                                                                                                                                                                                                                                                                 |
| 2   | <i>Simon Carves Ltd v Ensus UK Ltd</i> [2011] EWHC 657 (TCC) | 9             | In bond cases, the “serious issue” limb splits: <ul style="list-style-type: none"> <li>• Against a bank, the court will not restrain payment where the bond conditions have been complied with, absent clear evidence of fraud of which the bank has notice;</li> <li>• Against a beneficiary, the court may grant relief where the claimant has a strong case that the underlying contract clearly and expressly prohibits the beneficiary from making the call.</li> </ul> |

**B. STEP 1: AGAINST THE BANK*****The Autonomy Principle***

| No. | Authority                                                                          | Judgment Para | Proposition                                                                                                                                                                                                              |
|-----|------------------------------------------------------------------------------------|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3   | <i>Edward Owen Engineering Ltd v Barclays Bank International Ltd</i> [1978] QB 159 | *             | An on-demand performance bond is treated as equivalent to cash; the bank must pay upon presentation of a compliant demand unless fraud is clearly established to the bank’s knowledge.                                   |
| 4   | <i>Tetronics (International) Ltd v HSBC Bank plc</i> [2018] EWHC 201 (TCC)         | 65            | Whilst a valid call is a prerequisite to payment under a bond, an allegation that the call is invalid is not ordinarily a basis for an injunction against the issuing bank. The autonomy principle applies absent fraud. |

**C. STEP 2: AGAINST THE BENEFICIARY*****(ii) Defective Notice***

| No. | Authority                                                                  | Judgment Para | Proposition                                                                                                                                                 |
|-----|----------------------------------------------------------------------------|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6   | <i>Andrews and Millett, Law of Guarantees (7th ed.) at para 7-007</i>      | 63            | Whether a demand complies with contractual requirements is a matter of construction in each case.                                                           |
| 7   | <i>Tetronics (International) Ltd v HSBC Bank plc</i> [2018] EWHC 201 (TCC) | 65            | Even if the demand were invalid, that would not be a basis for an injunction against the bank as opposed to the beneficiary. Also relevant to Step 1 above. |

***(iii) Instrument Nature and Conclusive Evidence Clause***

| No. | Authority                                                                                   | Judgment Para | Proposition                                                                                                                                                                                     |
|-----|---------------------------------------------------------------------------------------------|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8   | <i>Autoridad del Canal de Panama v Sacyr SA</i> [2018] 1 All ER (Comm) 916 at [81(6)]       | 38, fn 1      | A clause requiring payment against certification is inconsistent with any requirement that the beneficiary otherwise establish the principal debtor's liability before enforcing the guarantee. |
| 9   | <i>Bitumen Invest AS v Richmond Mercantile Limited FZC</i> [2017] 1 Lloyd's Rep 219 at [27] | 38, fn 1      | Supporting authority on conclusive evidence clauses.                                                                                                                                            |
| 10  | <i>Van Der Merwe v IIG Capital LLC</i> [2008] 2 All ER (Comm) 1173 at [32]                  | 38, fn 1      | Supporting authority on conclusive evidence clauses.                                                                                                                                            |
| 11  | <i>Balfour Beatty Civil Engineering v Technical &amp; Guarantee Co Ltd</i> [2000] CLC 252   | 38, fn 1      | Supporting authority on conclusive evidence clauses.                                                                                                                                            |

**(iv) Additional Authorities on the Threshold**

| No. | Authority                                                                  | Judgment Para | Proposition                                                                                                                                                                             |
|-----|----------------------------------------------------------------------------|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12  | <i>Yuanda (UK) Co Ltd v WW Gear Construction Ltd</i> [2010] EWHC 720 (TCC) | *             | Use of "guarantee and not an indemnity" and net-of-set-off wording can indicate a conditional guarantee where proof of actual underlying liability is a condition precedent to payment. |

**D. DAMAGES**

*No separate authorities were cited in the judgment under this head. The Court's analysis proceeded on the basis of the general principles established by the authorities listed above.*

**E. BALANCE OF CONVENIENCE**

| No. | Authority                                                                                       | Judgment Para | Proposition                                                                                                                                                                                                                                                                                |
|-----|-------------------------------------------------------------------------------------------------|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 13  | <i>Alternative Power Solution Ltd v Central Electricity Board</i> [2014] UKPC 31 at paras 79–81 | 81            | The wider reputational concerns for the performance bond market are ordinarily compelling grounds to refuse an injunction against a bank on the balance of convenience, even where fraud against the bank is alleged. The Privy Council accepted these wider considerations as compelling. |

**\* Cited in the skeleton arguments; not expressly named in the judgment; included as useful authority / underpinning some of the analysis.**

**Note:** *This note is intended as a reference guide for delegates and does not constitute legal advice. The authorities are summarised for the propositions for which they were cited in or in connection with the judgment. Delegates should refer to the full text of each authority for the complete reasoning.*

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