LADY CHIEF JUSTICE OF NORTHERN IRELAND

BRITISH AND IRISH COMMERCIAL BAR ASSOCIATION ANNUAL CONFERENCE

THE LAWS OF CONTRACT & UNJUST ENRICHMENT IN 2026

MANCHESTER

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Good afternoon.

I want to begin by thanking the organisers of the British and Irish Commercial Bar Association for inviting me to join you once again at this annual forum.

I have had the pleasure of attending BICBA events over the past number of years, and it is always a highlight. Each gathering provides a valuable opportunity for colleagues from across the four jurisdictions to come together, share insights, and to reflect on the common issues that shape commercial practice in these islands. I am honoured to contribute to that discussion again today.

It is a particular pleasure to be with you in Manchester. Northern Ireland and Manchester have long been linked by ties of trade, industry, and indeed, people, connections which continue to shape our common commercial environment. There is, I think, a shared instinct across all jurisdictions represented here today for practical, principled, and commercially attuned decision-making. BICBA plays an important role in sustaining that shared understanding with the cross-jurisdictional membership ensuring that conversations are enriched by different perspectives, traditions, and legal frameworks.

Against that backdrop it is fitting that today's conference has a focus on the law of contract and unjust enrichment, being doctrines that underpin modern commerce and provide the architecture for fairness when arrangements break down.

As we look across the commercial landscape of today, it is clear that the law of contract continues to carry much of the weight of modern economic life. It is the framework through which parties allocate risk, define expectations, and order their affairs. My own experience in practice in matrimonial law is not wasted when I thought about the topic for discussion. It brought to mind the run of caselaw, starting with *Parlour v Parlour*[1], on the division of assets on the breakdown of marriage raised themes of unjust enrichment and compensation in that case in relation to the enhancements to a footballer's career.

Now in my role as Lady Chief Justice, I adjudicate across divisions and so can offer some more direct experience. In Northern Ireland, as elsewhere in these islands, recent years have seen a rise in the number and complexity of commercial disputes brought before the courts. This is not surprising. Global supply-chain pressures, renewed investment activity, and the rapid expansion of technology-driven business models have each placed additional strain on contractual relationships. These pressures have also generated new questions about how far contractual obligations extend, how risks are to be interpreted, and how equity should operate when unexpected circumstances intervene. Many of these questions are common across our jurisdictions, and it is striking how commercial practitioners in Belfast, Dublin, Edinburgh, and Manchester are grappling with parallel issues.

Alongside contract, the law of unjust enrichment continues to serve as an important corrective, ensuring that where contractual structures fail, or where benefits are transferred without a proper legal basis, the law delivers a principled and fair response. The four-question analytical structure is, of course, well-embedded, as Lord Clarke reminded us in *Benedetti v Sawiris*[2] when he said:

> "It is now well established that a court must first ask itself four questions when faced with a claim for unjust enrichment as follows.

[1] *McFarlane v McFarlane; Parlour v Parlour* [2004] EWCA Civ 872
[2] *Benedetti v Sawiris* [2014] AC 938

(1) Has the defendant been enriched?

(2) Was the enrichment at the claimant's expense?

(3) Was the enrichment unjust?

(4) Are there any defences available to the defendant?"

Of course, unjust enrichment and contract do not exist in isolation. They operate as part of the common law framework which underpins commercial law, giving it the necessary flexibility to ensure that it can respond to the ever-changing realities of commercial life.

Our Commercial Court has, over the past two decades, evolved into a forum with, in my view, a reputation for disciplined case management, principled reasoning, and an instinctively pragmatic approach to commercial disputes. More broadly, within these islands, our jurisdiction occupies a distinctive space legally, economically, and institutionally. Northern Ireland's commercial and chancery work is shaped by scale, by the close integration between its specialist lists, and by the particular economic pressures of a small, export-oriented economy operating simultaneously within UK, all-island, and European commercial ecosystems.

These factors generate a litigation environment in which the courts frequently confront disputes that blend contractual principles with equitable intervention, where fiduciary obligations intersect with commercial realities, and where unjust enrichment operates alongside the law of contract to correct the transfer of benefits obtained without legal basis.

One of the clearest recent illustrations of this approach is the decision of the Commercial Court in *C-TEC (NI) Limited v Cairns & Siroflex Ltd*[3], a case that concerned not only trademark infringement but the broader question of when

[3] *C-TEC (NI) Limited v Cairns & Siroflex Ltd* [2025] NICh 13

commercial conduct becomes parasitic, that is, when one party appropriates the investment, reputation, and market position of another without paying for it.

The dispute in *C-TEC* unfolded against the backdrop of a long-established commercial relationship in the construction products market. For over fifteen years, C-TEC, a Northern Ireland-based, family-run company, had successfully marketed its flagship sealant, CT1, using formulations manufactured by Den Braven and later Bostik, and had built a substantial reputation through sustained investment and a wide distribution local, national, and international network.

In late 2019 the commercial landscape shifted. C-TEC terminated its relationship with Bostik and moved to a new supplier, while Bostik began supplying the same underlying formulations to Siroflex, which launched a competing product, OB1, into the same market space.

The former CT1 distributor in Northern Ireland left the C-TEC network and began distributing OB1, and Siroflex rolled out an advertising campaign promoting OB1 using comparison materials displayed in trade outlets.

This combination of market proximity, brand history, commercial rivalry and promotional messaging, set within the Northern Ireland construction trade sector, gave rise to C-TEC's allegation that Siroflex had crossed the line from legitimate competition into parasitic appropriation of the reputation and investment bound up in the 'CT1' mark.

The defendant's advertising materials repeatedly claimed that OB1 contained "the original CT1 formula" and, in the words attributed to a representative in promotional literature, that "It is the exact same formulation that I have grown and worked with for the past 14 years". These statements did not merely convey similarity. Rather, the court found that they were directed at capturing the accumulated market goodwill and consumer loyalty that C-TEC had built over many years.

The court found that the advertising did significantly more than draw a legitimate comparison. As the court observed, the defendant was "… seeking to promote and sell its OB1 product claiming it has not only the same formula but all the reputational attributes of CT1," with the result that "the defendant has substantially interfered with the plaintiff's use of its trade mark to acquire or preserve a reputation capable of attracting customers and retaining their loyalty."

This analysis recognises that the value of a commercial sign is not confined to physical composition but extends to the reputational capital generated by sustained investment.

C-TEC had spent approximately £10 million promoting CT1, and the court accepted that this investment had produced a substantial market reputation associated with quality, reliability, and the message that CT1 was the single product needed to complete a job.

The defendant's conduct, however, sought to reap the benefit of this investment without contributing to it. As the court later put it, "… by claiming all the reputational attributes of the CT1 trademark for its OB1 product the defendant is thereby seeking to direct the customers who were drawn to CT1 due to its reputation, to transfer their allegiance to OB1".

The language here is reminiscent of the concepts that animate unjust enrichment, including matters of wrongful advantage, appropriation of value, and enrichment without entitlement and the judgment is explicit in describing the defendant's conduct as parasitic and as "riding on the coat tails of CT1".

The court was satisfied that this approach created a likelihood of changing customers' economic behaviour and amounted to taking "unfair advantage" within the meaning of section 10(3) of the Trade Marks Act 1994.

The Northern Ireland contribution in *C-TEC* can be seen therefore to lie not only in its rigorous doctrinal application but in its articulation of the underlying

commercial principle that a trader is not entitled to appropriate another's market identity, reputation, and investment. The reasoning resonates strongly with unjust enrichment, even if the cause of action was framed in trademark terms. The defendant had taken a benefit, namely CT1's market reputation, without paying for it. The court recognised the inherent unfairness of that transfer and intervened accordingly providing relief.

The second case that illuminates the contemporary interplay between contract, equity and unjust enrichment is the high-profile litigation conducted in the Northern Ireland High Court between the boxer Carl Frampton and his manager, former boxer, Barry McGuigan. Few commercial disputes in recent years have carried comparable public resonance. Both men are household names. McGuigan was a world champion featherweight whose triumphs in the 1980s gave him an almost uniquely cross-community appeal during one of the most difficult periods in Northern Ireland's history. Frampton was his protégé whose own world title victories similarly united audiences across traditional divides. Their relationship had long been held up as an embodiment of what Northern Ireland could achieve when talent, opportunity and trust converged, but when that relationship collapsed, it did so publicly and comprehensively, leading to parallel litigation in Belfast and London and giving rise to allegations that reached far beyond the sporting arena.

As recorded in the published judgment[4], following initial arguments on jurisdiction, their partnership had generated multiple sets of proceedings one issued in England by McGuigan's Cyclone companies and two issued in Northern Ireland by Frampton. The case required the High Court to navigate overlapping claims in contract, fiduciary duty, company law and a complex commercial structure in which promotional rights, boxer manager agreements,

[4] *Frampton v McGuigan and McGuigan and Cyclone Promotions (Ltd.)* [2018] NIQB 52

and corporate governance overlapped with a factual matrix described by the judge as "exceptionally difficult to follow or understand".

The decision in respect of jurisdiction underscored the need for procedural robustness in matters of jurisdiction. Although the defendants argued that the English courts had been first seised of the dispute because their claim form had been issued earlier, the court held that, within the UK jurisdictional framework, priority is determined not by the date of issue but by the date of valid service. The judgment found that Frampton's writs had been properly served in Northern Ireland before the English claim form was served, with the result that "the Northern Ireland court was therefore seised first of the proceedings brought by Frampton" and was the appropriate forum to determine the claims.

Although the matter ultimately settled before trial, the numerous interlocutory rulings illustrate the multi-faceted challenges in commercial cases with complex evidential pictures, untangling of opaque financial arrangements, and competing assertions of jurisdictional authority.

The claim raised the classic restitutionary question of whether one party had been enriched at another's expense in circumstances the law could not permit, a core theme that continues to shape the development of commercial law in our jurisdiction.

A further Northern Ireland case that meaningfully illustrates the themes of contractual responsibility, loss allocation and unjust gain in a commercial setting is the long-running litigation in *North South Pig Company (NI) Ltd v McAuliffe & Others*[5].

Unlike the personality-driven dispute in *Frampton*, this case arose from the breakdown of a substantial cross-border agrifood venture involving a cooperative of pig farmers, a trading company, and a group of directors accused

[5] *North South Pig Company (NI) Ltd v McAuliffe & Others* [2022] NICA 65

of diverting corporate assets and restructuring the business in a manner that left the plaintiff company without the benefit of its established commercial model. The allegations included the payment of unlawful dividends, the extraction of directors' fees, the diversion of trade to a connected entity, and the collapse of the plaintiff's income stream after the defendants resigned *en masse* and established alternative structures for the same activity.

Much of the claim turned upon a high-value loss of profits calculation, with the plaintiff alleging in excess of €4 million in lost earnings and the defendants asserting that the company had failed to mitigate its loss as required by established contractual principles.

The judgment is particularly instructive for present purposes because the Court of Appeal found that although the trial judge had correctly identified the plaintiff's duty to mitigate, he had failed to apply that principle coherently when assessing damages. The judge had held that the plaintiff made a "conscious choice" not to reinstate its former profitable business model after the defendants' departure, and that this decision "flowed against the obligation … to mitigate its loss".

Notwithstanding this, the judge nevertheless awarded loss of profits damages across the entire period, including years after the point at which the company had, by its own strategic decision, reduced its turnover to nil. The Court of Appeal remitted the case for fresh consideration of mitigation, an outcome that underscores the centrality of the mitigation principle to modern commercial disputes, particularly those involving speculative forward-looking losses and expert accountancy evidence.

Beyond the damages analysis, the case also speaks directly to questions of unjust enrichment-type concerns in commercial governance. Although not pleaded in restitutionary terms, the allegations, which involved the payment of dividends beyond the company's resources, the withdrawal of directors' expenses, and the

rerouting of trade through a competing entity controlled by the same individuals, are paradigmatic of situations in which the law must determine whether value has been wrongfully extracted and whether the proper contractual and fiduciary boundaries have been observed. The High Court's findings that certain payments were recoverable and others not, and the Court of Appeal's close engagement with the proper legal tests for recovery, demonstrate how Northern Ireland's commercial courts approach situations in which enrichment, detriment, and wrongful diversion of corporate opportunity overlap within a contractual frame.

Recent jurisprudence across the broader landscape of UK private law, makes it clear that the pressures shaping modern commercial disputes are no longer confined to contracts, fiduciary duties, or the allocation of financial risk. They now touch upon questions of identity, technology and the very boundaries of human creativity.

A striking illustration is found in the *Lunak Heavy Industries (UK) Ltd v Tyburn Film Productions Ltd*[6] litigation, in relation to which an application for leave to appeal is before the Supreme Court currently.

The dispute in this case arose from the digital "resurrection" of the late actor Peter Cushing for the 2016 Star Wars film "Rogue One: A Star Wars Story". In the original 1977 Star Wars film, Cushing had portrayed Grand Moff Tarkin, who patrons of a certain vintage will no doubt agree was one of cinema's great villains.

In the Court of Appeal, Tyburn Film Productions, a company with which Cushing had worked extensively, argued that a 1993 Letter Agreement, drafted when Cushing was terminally ill and designed to allow Tyburn to use doubles, prosthetics, CGI and other techniques to complete a TV project, also gave Tyburn

[6] *Lunak Heavy Industries (UK) Ltd v Tyburn Film Productions Ltd* [2025] EWCA Civ 1643

a continuing veto over any posthumous reproduction of his image if that project was never completed, and that the estate's 2016 licence breached that agreement.

Although Tyburn's contractual claim lay against the estate, its claim against Lucasfilm and Lunak was framed in unjust enrichment, alleging that they had been enriched by rights that should have rested exclusively with Tyburn. The Court of Appeal ultimately struck out the claim, holding that no value had been transferred from Tyburn to the filmmakers and that whatever rights existed under the 1993 agreement were personal contractual rights, not proprietary interests capable of supporting a restitutionary claim

Although the dispute was procedurally narrow, with its focus on whether Tyburn could mount an unjust enrichment claim the factual matrix presents issues of far wider significance. We await with interest the outcome of the Supreme Court's consideration.

The significance of the case lies far beyond its procedural conclusion. It highlights, with vivid clarity, how advances in CGI and synthetic image technology have outpaced the contractual language of even the most forward-thinking agreements of the late twentieth century. The 1993 Letter Agreement could not have foreseen the present capability to recreate an actor's likeness with near photorealistic precision, let alone the broader frontier now opened by artificial intelligence, voice synthesis models and generative algorithms capable of producing entirely new "performances" in the style of long deceased artists.

In cultural terms, the Cushing example has become emblematic. It invites us to grapple with the reality that a performer may "appear" in new creative works without ever stepping before a camera, or even after their death, and that their voice may be reconstructed through a neural network trained on archival material. These are not theoretical concerns, rather they are the lived challenges of an industry now negotiating the boundaries between human identity and artificial replication.

From a legal perspective, such developments expose significant vulnerabilities. If the law does not ensure that image rights, voice rights and performance rights are governed by tightly drafted contractual provisions, performers risk seeing their identity commercialised in ways they did not anticipate, agree to, or ever envisage. In the AI era, where vast commercial value can be extracted from an actor's likeness or a musician's signature sound without their direct involvement, the potential for unjust enrichment becomes far more acute. The risk is that technological sophistication will outpace legal protections, enabling enrichment without consent, compensation or contractual foundation. The issues explored, however narrowly, in the Star Wars case to date are therefore not peripheral to modern private law; they are, pun fully intended, at its frontier.

As I said earlier, the nature of the work of the Commercial Court does not mean that it is immune to the rising numbers of personal litigants that we are seeing across all types of proceedings. So let me turn briefly to the real world reality of our topic-and how litigants understand the concept of unjust enrichment in seeking a remedy.

In the Court of Appeal, we dealt recently with an appeal from the High Court in which the appellant, a personal litigant, argued that the judge's errors during remedy proceedings had negatively impacted his ability to defend those proceedings, which resulted in unfairness[7]. The substantive proceedings had concerned the nature of a contractual agreement between the parties which resulted in findings against the defendant, now appellant, necessitating a remedies hearing. On appeal, the appellant averred that he had been subjected to unfair treatment during the remedies process on a threefold basis, namely that the judge failed to make reasonable adjustments for the fact that he was a litigant in person, had failed to take any steps to make adjustments for his disabilities

[7] *Samuel Forbes Carson and Samuel James McKee and Fiona Mary McKee* [2022] NICh 9, [2025] NICA 53, [2026] NICh 7.

and finally, that she had failed to take reasonable account of medical evidence presented by him and conducted hearings in his absence.

During the Court of Appeal proceedings, the appellant sought to amend and expand the appeal to include an appeal against the substantive judgment, some three years later, on the basis that of a challenge to a credibility assessment made by the judge. This was dismissed.

That left the question of whether the appellant had been treated fairly at the remedies hearing as the only valid ground in front of us. The right to a fair trial was engaged, given the argument was being made that the judge had treated him unfairly. The appeal turned on whether the appellant was afforded a fair trial at the remedies stage. Related to that question was whether the judge had exercised her discretion properly in refusing an adjournment of the remedies hearing on medical grounds.

Having regard to the authorities, including *Bilta (UK) Ltd & Others v Tradition Financial Services Ltd*[8], which provides authoritative guidance on adjournment applications due to illness and solidifies the principle that a fair trial takes precedence over scheduling concerns, and the particular facts of this case, we were regrettably compelled to the view that the judge had left out of account a relevant consideration in exercising her discretion, namely the recommendation of the appellant's psychiatrist that, prior to court, either in person or remotely, the appellant should have some time-limited, stabilising medical intervention. This meant that the third limb of the appeal succeeded. The other two limbs of appeal were dismissed on the basis that the judge had made generous allowance for the fact that the appellant was a personal litigant and had provided reasonable adjustments by allowing remote attendance.

At the remedies hearing which followed the appeal, the appellant represented himself once again and court faced the not insignificant task of ensuring

[8] *Bilta (UK) Ltd (in liquidation) 9 & Others v Tradition Financial Services Ltd* [2021] EWCA Civ 221

procedural fairness where the appellant sought to rely upon incomplete or unreliable evidence.

This case is but one example of the practical difficulties courts encounter when litigants represent themselves, particularly in complex cases. It demonstrates the intricate procedural, evidential, and fairness issues that can arise which require courts to navigate misunderstandings, ensure reasonable adjustments, and safeguard fair trial rights while maintaining the integrity and efficiency of the proceedings. We see these issues arise in a commercial context as well as those more usually thought of as being in the personal litigant landscape.

The private law concepts discussed today of how value is created, shared or lost within human relationships, and how the law responds when those relationships break down, find some of their most human and practical expressions in the family courts. So let me pivot for a moment. The modern law of financial remedies has long recognised that the economic consequences of family life cannot be reduced to a narrow account of "needs". Nowhere is that clearer than in the paired decisions of *McFarlane v McFarlane; Parlour v Parlour*, which I mentioned earlier, in which the Court of Appeal in England & Wales held that fairness may require active redress of the long-term economic disparity created by the parties' choices within the marriage.

The court accepted that where one spouse had abandoned a promising career to care for young children, thereby enabling the other to achieve exceptional professional success, it would be unjust for the economically stronger spouse to retain the entirety of that financial benefit. The court emphasised that familial contributions, be they financial, domestic or relational, are incommensurable but of equal worth, and that in high earning marriages, the exercise of discretion may properly extend to sharing surplus income and permitting deferred capitalisation so that the spouse left economically disadvantaged is not permanently consigned

to a lower financial trajectory as a result of choices made for the family as a whole.

This concern with economic fairness, and with respecting the dignity and value of both parties' contributions, was developed further in *Miller v Miller*[9]. Although the marriage there was short and childless, the House of Lords rejected any return to the orthodoxy of awarding only what was "necessary" to get the applicant "back on her feet".

The court recognised that even short marriages can give rise to legitimate expectations and can alter the parties' economic position in ways that fairness requires the law to address. In *Miller*, the wife's domestic and emotional contributions, coupled with the circumstances of the marriage's breakdown, meant that her entitlement could not be confined to a narrow calculation of reasonable requirements.

The court stressed that equality of respect for the parties' respective roles is the backbone of modern ancillary relief and that the statutory discretion must be exercised in a way that avoids discrimination and reflects the real-world impact of the choices made within the marriage.

If *McFarlane/Parlour* and *Miller* illuminate the substantive principles of fairness, *Villiers v Villiers*[10] brings into sharp relief the essential procedural protections that must accompany them. In *Villiers,* the Court of Appeal decisively rejected an attempt to confine the scope of section 27 of the Matrimonial Causes Act 1973 by importing a requirement that an applicant must prove a historic failure to maintain prior to the date of issue.

The High Court's introduction of this novel "condition precedent", which was raised for the first time at final hearing, was found to be both a misunderstanding

[9] *Miller v Miller* [2005] EWCA Civ 984
[10] *Villiers v Villiers* [2022] EWCA Civ 772

of the statutory scheme and a breach of procedural fairness. The Court of Appeal held that the question under section 27 must be assessed at the date of hearing, not frozen at the date of application, and that the statutory direction to consider "all the circumstances of the case", could not be curtailed by judicial innovation. It also firmly rejected attempts to revive the old common-law duty of a husband to maintain his wife, emphasising that the modern Act is an equality-based, gender-neutral code designed to meet need and prevent injustice. The judgment stands as a vivid reminder that fairness in family law is not solely about substantive outcomes, but also about the integrity of the process: the right of each party to a fair hearing, proper disclosure, and decisions taken on principled grounds rather than procedural technicality.

In conclusion, I think that as we assess the developments shaping 2026, one theme emerges with clarity - the law of contract and unjust enrichment is not standing still. It is evolving as part of a maturing commercial justice system that seeks to combine principled certainty with practical fairness. The approach of the courts is directed at fostering a culture in which disputes are resolved earlier, more proportionately and with greater attention to clarity of process. This culture empowers practitioners, enhances predictability for business, and strengthens public confidence in the administration of justice. Contract and unjust enrichment are therefore not simply doctrinal fields but vital mechanisms supporting the economic and social life of each jurisdiction represented here today.

Thank you.