

ABSTRACT

Chapter 7 CESL: specific provisions

Articles 66 and 68

Prof. Hugh Beale

University of Warwick

Hugh Beale's paper will look at the sources of obligations and duties in contracts that are governed by the CESL. He will give an overview of the various sources of terms listed or referred to in Art 66, with references to the other articles of the CESL that are relevant.

He will then discuss the question of obligations or duties that were not specifically agreed by the parties, with particular reference to Art 68 (Contract terms which may be implied). He will argue that there are many terms which, though not explicitly mentioned by the parties, may be treated as "tacitly agreed" by the parties and which therefore do not have to meet the "necessity" test of Article 68.

He will then consider the issue of "ancillary" obligations and duties, in particular duties to avoid causing harm to the other party (obligations de sécurité, Schutzpflichten) and how the CESL interacts with the otherwise applicable law on these topics.