Sometimes, a duty to re-negotiate might arguably exist under principles of international trade law, occasionally called *lex mercatoria*, for better or for worse. Such a duty may arise in the case of substantial upheaval (*bouleversement*) of the economic equilibrium between the two sides. 41 Similar principles may be found in narrow usages within a specific industry, or broader trade custom incorporated into principles promulgated by the Rome-based International Institute for the Unification of Private Law. 42 These ‘UNIDROIT Principles’ attempt to suggest how commercial parties should react to dramatic and unforeseen circumstances that interfere with the performance of contract duties, either through excuse of performance, adaptation of the contract obligation, or a duty to re-negotiate, failing which the contract terminates. 43

In this connection, one recollects the old Latin maxim *noscitur a sociis*: a word is known by the company it keeps. Context dictates meaning, with words taking a different sense from divergent sentences. Our feet run. Our noses run. One might see a run on the bank. 49

41 These principles may be invoked on the basis of industry custom and commercial usage. See for example French Code civil art 1135 (consideration not only of expressed terms, but also of ‘l’usage’) and art 1511 of the French Code de procédure civile which for international arbitration directs application of ‘des usages du commerce’. cf arts 1135 and 1511 with art 21 of the International Chamber of Commerce Arbitration Rules (2012 Version), stipulating that the tribunal ‘shall take account of . . . any relevant trade usages’.

42 Principles of International Commercial Contracts, issued first in 1994, then re-issued with modifications in 2004 and 2010. See also Commission on European Contract Law (‘Lando Principles’) chaired by Danish law Professor Ole Lando, presented in full in 1998.

43 The UNIDROIT Principles contain a section on ‘Hardship’ defined to exist when events fundamentally alter the equilibrium of the contract because the cost of performance has increased or the value received has diminished. The concept of hardship includes (inter alia) events that could not reasonably have been taken into account at the time of conclusion of the contract and whose risk was not assumed by the party. In the event of hardship the party may request renegotiation. On failure to reach an agreement a court may either (i) ‘terminate the contract at a date and on terms to
be fixed’ or (ii) ‘adapt the contract with a view to restoring its equilibrium’. See UNIDROIT Principles, arts 6.2.2 and 6.2.3.

49Linguists sometimes describe phenomenon by word ‘polysemy’. If someone says ‘I get it’ this might mean ‘I understand’ or ‘I receive it’ or ‘I buy it’ or ‘I catch a disease’.

Referring Principles:

IV.5.2 - Context-oriented interpretation
IV.6.7 - Duty to renegotiate