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Case No: HC04C03092

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/04/2006

Before :

MR JUSTICE PETER SMITH

Between :

(1) Michael Baigent

Claimants

(2) Richard Leigh

- and -

The Random House Group Limited

Defendant

**Mr Jonathan Rayner James QC and Mr Andrew Norris (instructed by Orchard Brayton
Graham LLP) for the Claimants**
Mr John Baldwin QC and Mr James Abrahams (instructed by Arnold & Porter (UK) LLP)
for the Defendant

Hearing dates: 27th, 28th February, 7th, 8th, 9th, 10th, 13th, 14th, 15th, 17th and 20th March
2006

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this
Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE PETER SMITH

INDEX

A SETTING THE SCENE

- 1 Introduction
- 2 The Claimants
- 3 Writing and Publication of HBHG
- 4 The Mystery

B HOLY BLOOD HOLY GRAIL

- 5 Analysis of HBHG
- 6 A Central Theme

C DAN BROWN AND THE DA VINCI CODE

- 7 Dan Brown
- 8 Researching and writing DVC
- 9 Analysis of DVC

D THE CLAIM

- 10 Complaints by Claimants
- 11 Proceedings
- 12 Defendants Seek Clarification
- 13 Lewison J Order
- 14 Changes in Pleadings

E CENTRAL THEME

- 15 Changes
- 16 Significance of Central Theme
- 17 Treatment of Central Theme

F DEFENDANTS STANCE

- 18 Defence
- 19 The VSS

G LEGAL MATTERS

- 20 Outline
- 21 Sawkins
- 22 Copying a Substantial Part of HBHG
- 23 IPC Media
- 24 Green v Broadcasting Corporation
- 25 Authorities in Non Textual Infringement Cases

- 26 Ravenscroft
- 27 Designers Guild

H APPLICATIONS OF LEGAL PRINCIPLES TO THE FACTS

- 28 The Defendants Contentions
- 29 The Synopsis
- 30 Use of Books in Writing The Synopsis
- 31 Criticism of Dan Brown on Books Available when Synopsis written
- 32 Absence of Blythe Brown from the Trial
- 33 Use of HBHG by Blythe Brown/Dan Brown

I THE CENTRAL THEMES AND ANALYSIS

- 34 General Observations
- 35 Non Protection for Ideas and Facts alone
- 36 Baigent on Central Themes
- 37 Destruction of Baigent's Evidence
- 38 Change of Course by the Claimants
- 39 Claimants Closing on Central Themes
- 40 Claimants Difficulties of Formulation

J CONCLUSION ON CENTRAL THEMES

- 41 Reason for rejecting Central Themes
- 42 The Task of Analysis
- 43 Central Themes, What are they?
- 44 Natural Chronological Order
- 45 False Creation
- 46 Conclusion on Rejection of Central Themes

K INDIVIDUAL POINTS ON CENTRAL THEMES

- 47 Use of HBHG
- 48 Central Theme 1
- 49 Central Theme 2
- 50 Central Theme 3
- 51 Central Theme 4
- 52 Central Theme 5
- 53 Central Theme 6
- 54 Central Theme 7
- 55 Central Theme 8
- 56 Central Theme 9
- 57 Central Theme 10
- 58 Central Theme 11
- 59 Central Theme 12
- 60 Central Theme 13

61 Central Theme 14
62 Central Theme 15

L CENTRAL THEME IN DVC

M LANGUAGE COPYING

N REFERENCES TO HBHG IN SOURCES USED BY DAN AND BLYTH BROWN

63 Jesus Survives
64 Langdon Reveals
65 Constantine

O WITNESSES

66 Mr Leigh
67 Mr Brown
68 Blythe Brown
69 Mr Ruben
70 Mr Janson-Smith

P OTHER MATTERS

Q END GAME

R THE CENTRAL THEME

Peter Smith J :

A SETTING THE SCENE

1 Introduction

1. The two Claimants Michael Baigent and Richard Leigh claim that the novel The Da Vinci Code (“DVC”) is an infringement of their copyright in their book The Holy Blood and The Holy Grail (“HBHG”).
2. The Claimants are two of the three authors of HBHG. The third author, Henry Lincoln is not a *claimant* and does not participate in the claim. No point is taken about his non participation. Nor is there any claim that the Claimants’ title to sue in respect of their interests in that copyright by reason that they had been two of the three joint holders copyright.
3. DVC was written by Dan Brown who lives and works in America. The Claimants’ case *is that* in writing DVC he produced a book which is an infringing copy of HBHG. The Defendant to the proceedings is The Random House Group Ltd (“Random”) which is responsible for the publication of DVC in the United Kingdom. Dan Brown is not a Defendant, but Random relied upon *his* witness statements and his evidence in this action. In reality Mr Brown is on trial over the authorship of DVC.
4. By virtue of various mergers and acquisitions Random publishes both HBHG and DVC. Further a film production of DVC is apparently in the offing starring Tom Hanks with a scheduled release in May 2006. It is a testament to cynicism in our times that there have been suggestions that this action is nothing more than a collaborative exercise designed to maximise publicity for both books. It is true that the book sales of both books have soared during the course of the trial (in the case of HBHG it is said to be a tenfold increase).
5. I am not in a position to comment on whether this cynical view is correct but I would say that if it was such a collaborative exercise Mr Baigent and Mr Brown both went through an extensive ordeal in cross examination which they are likely to remember *for* some time.

2 The Claimants

6. The Claimants together with Mr Lincoln spent 5 years researching HBHG between 1976 and 1981 leading to its publication in 1982. As will be seen later in this judgment HBHG was *preceded* by a number of television documentaries. Mr Baigent said that he had spent 75% of his waking hours during that period researching various points underpinning HBHG.
7. He was born in New Zealand and moved to England in 1976 and had an interest in religion “esoteric” thought. After completing studies at university culminating in a BA in psychology with comparative religion and philosophy he developed a private interest in the Knights Templar.
8. Mr Leigh was born in New Jersey and after secondary education completed a BA in English Literature at Tufts University Boston. He became interested in the Grail Romances whilst an undergraduate and also steeped himself in comparative religions. Thereafter he completed an MA at the University of Chicago in comparative literature

and studied for a PHD at the State University of New York. After various part time teaching jobs he moved to London so as to be *able* to maintain the lifestyle that he wanted (he describes it as genteel bohemianism). There he met Henry Lincoln at a lecture course held at the Wrekin Trust Summer School. During those lectures Henry Lincoln digressed about a village in the South of France called “Rennes-le-Chateau” and the mystery relating to the village. This led to Henry Lincoln showing to Mr Leigh a key document used for the writing of HBHG the “*Dossiers Secrets*”. It was this document and its possible link to the Templars that interested Mr Baigent and led to the three of them collaborating in producing HBHG.

9. HBHG was written mostly by Mr Leigh. He had the benefit of input of research from Mr Baigent and discussions with him and Henry Lincoln.
10. A more detailed analysis of how they created HBHG is to be found in Mr Baigent and Mr Leigh’s witness statements. None of this is in dispute.

3 *Writing And Publication Of HBHG*

11. The book was first published in 1982 and was a tremendous success. The Claimants described their book as being one of “*historical conjecture*”. By *this* I understand them to be saying that they have researched the matter and as a result of that research are able to make hypotheses about various particular points and suggest that they might be plausible without actually committing themselves to whether or not they believe them to be correct. Mr Baigent hypothesised that the way in which they presented their research was not orthodox and used techniques which had been criticised by orthodox historians such as giving weight to folklore legends and using literary work to help strengthen the plausibility of the argument. It is therefore suggested by Mr Baigent that HBHG is a book written “*for ordinary people*” and that is why Mr Leigh used techniques usually seen in novels.
12. There were discussions following publication about making a film but these did not come to any clear conclusion.
13. Publication of HBHG was preceded by the preparation of the book proposal (“The Outline”) by Mr Baigent, Mr Leigh (under the pseudonym Bardmont) and Mr Lincoln. The outline starts with a proposition that Jesus was not a poor carpenter from Nazareth but a Jewish aristocrat who was in addition a priest-king, married and he had children who after “the alleged crucifixion” were smuggled to a Jewish community in Southern France where the bloodline was perpetuated. It is said that in the late 5th century the Roman church seeking to establish its supremacy throughout Christendom made a pact with Jesus’ line and bound itself forever to the Holy Blood but betrayed that 180 years later and connived at the assassination of Jesus’ lineal descendant and arrogated to itself the right to create Kings. Fortunately apparently, the Bloodline was not extinguished and continued through the centuries and played a major role in the instigation of the Crusades, was instrumental in the foundation of the Knights Templar and played a vital role in other historical enigmas then shrouded in secrecy. Finally it was asserted there was a secret order in France still in existence pledged to the protection and support of the Holy Blood with the avowed objective of establishing a new sacred and universal monarchy.

14. It also suggested that they approached research in a different way. They called this “synthesis” (a theme referred to in HBHG at page 324) which ascribes the benefits of looking at historical events not merely from the point of view of technical historical researches but also from the point of view of persons interested in literature. It was this combined interest they suggested that led them to the merger of the two lines of thought and to their “conjectural” proposition that the bloodline of Jesus not only survived in France but merged with the Merovingian bloodline around the 5th century and carried on. This possibility they suggest only occurred to them because of their specialist historical approach combined with their combined specialist literature approach (in the medium of Mr Baigent and Mr Leigh respectively).

4 **The Mystery**

15. The major part of The Outline sets out from a priest called Berenger Saunier who was the parish priest at Rennes-le-Chateau. It is said that he found secrets hidden in a hollowed out Visi-Goth column in the Church which gave him access to great wealth far beyond what he could have earned from his living as a priest.
16. The investigation of this localised mystery featured in at least one of the television programmes preceding HBHG. The investigation of this story led according to The Outline to various other mysteries and to a collection of documents in the Bibliotheque Nationale called the Dossiers Secrets. The Dossiers contained one page attesting the existence of a serious organisation called the Ordre de Sion said to have been founded in 1090 by Godfroi de Bouillon 9 years before the First Crusade. It is alleged that in 1188 it was re christened the Preure de Sion et L’Ordre de La Rose Croix Veritas. The list of Grand Masters went down through a long list of names culminating in Jean Cocteau who was the Grand Master supposedly from 1916. The text then goes on to refer to the legend of the Holy Grail and their conclusion that there might be some linkage between the Merovingian bloodline and the Grail. It was speculated that it might be Joseph of Arimathea or Jesus and that it was suspicious that it appeared at the same time as the peak of the Crusades when Godfroi (a Merovingian descendant allegedly) had conquered the Holy Land and had been proclaimed King (sic) of Jerusalem. They led to the conclusion that Mary Magdalene was carrying the blood royal in fact Jesus’ bloodline so she had Jesus’ children. She then founded a line when taking refuge in the South of France which intermarried with the Franks (sic) to produce the Merovingians.
17. This outline led to HBHG.

B **HOLY BLOOD HOLY GRAIL**

5 **Analysis Of HBHG**

18. In the introduction to HBHG Mr Lincoln sets out how the idea for HBHG developed. It started with a “*Chronicle*” film created by him and screened in February 1972 “*The Lost Treasure of Jerusalem?*” This was based on the Saunier discovery and the possible linkage of Rennes-le-Chateau to a painting by Nicolas Poussin “*The Shepherds of Arcadia*”. It was suggested that the famous portrait was of a tomb near Rennes-le-Chateau. The Second Chronicle film “*The Priest, The Painter and The Devil*” expanded on the connections between Saunier, Poussin and Devil worship.

The third “*The Shadow of the Templars*” concentrated on the Templar role if any in the Rennes-le-Chateau mystery.

19. All of the films therefore centred on Rennes-le-Chateau. However HBHG was a follow up as he says when he closed the last film with “*something extraordinary is waiting to be found.... and in the not too distant future, it will be*”. HBHG is said to be what the something is and how extraordinary discovering of it had been.
20. Later editions had an additional 1996 introduction. It is interesting to see that in that introduction the authors recount the way in which HBHG attracted huge attention from religious groups and the extraordinary number of attacks that were made upon them. It also recounts their approach by a film director Paul Schrader on behalf of himself and Martin Scorsese about a film. It continues “*we would like to think however that our book helped create a climate which made possible such works as Scorsese’s adaptation of Nicos Kazantzaka’s novel the Last Temptation..... Even before [HBHG] was published Liz Greene had drawn upon our research for the novel revolving around Nostradamus. She drew on it in her second novel “The Puppet Master”. In later years that followed material from [HBHG] found its way into a multitude of other fictional narratives from tacky thrillers and pot boilers to very serious literature indeed.*”. The introduction goes on to recount extensive translation and use made of HBHG. It then went on to refer to “*fragments of gossip*” about the latest activities of Pierre Plantard and the Priory of Sion and then said “*in a very real sense we felt the story had passed out of our hands – had passed beyond us into the public domain and hands of other researchers. This, as we stated at the end of [HBHG] was just what we hoped would happen. We saw ourselves as merely having scratched the surface of something – of a mystery which extended over at least 20 centuries, and radiated out across the whole of western civilisation....*”
21. That introduction is to be found only in the UK edition. It is not in the US edition which Mr Brown and his wife used.
22. It is certainly true that HBHG spawned a mass of literature. A look at the website “Priory-of-Sion.com” details the vast amount of literature which HBHG and DVC has spawned.
23. The paperback edition (US) contained an introduction which *was* similar to the 1996 UK paperback introduction.
24. This introduction shows the different types of audience that might be interested in HBHG. British interest it is suggested was concentrated on subjects like the Knights Templar and the Crusades, Freemasonry and cultural aspects like the significance of Poussin and others. This of course was strengthened by the whetting of the British audience with the chronicle programmes. In the United States however the response was more of a religious (and largely negative) attack. DVC as will be seen later in this judgment attracted a similar attack which apparently caught Mr Brown by surprise. The authors in this introduction spoke about HBHG in these terms “*yet above and beyond these more specialised spheres remain three pervasive and overriding themes: the mystery of Rennes-le-Chateau; the bloodline or “Grail Dynasty”; and the Priory de Sion that exclusive secret society which from the middle ages to the present has figured prominently in our story. We believe our book has shaken a quantity of fruit from the trees of all three themes....*”

25. HBHG is divided into three parts. The first part is “The Mystery”. This recounts as I have said the finding of treasures by Sauniere, his apparent unexpected wealth and the treasures comprising some documents which on examination had some coded messages in them, one of them being linked to Dagobert II a Merovingian king “*to Dagobert II king and to Sion belongs this treasure and he is there dead*”. Sauniere died on 22nd January 1917 (having had a stroke on the 17th January 1917 allegedly) without revealing his secrets. It is said that his wealth was passed to his housekeeper Marie Denarnaud but she too took the secrets to her grave in 1953. The story then meanders around Poussin’s picture and the message pointed to on the grave by the shepherds: “*Et in Arcadia ego*”. This, the book shows is a theme that has appeared more than once (the last one for example being in reverse on a bas relief at Shugborough Hall Staffordshire. (It has its own curious coded message).) This part then goes on to discuss the history of the Cathars a religious sect which lived in the area of Rennes-le-Chateau in the 13th century when they were eradicated as being heretics.
26. This section of the book then recounts what is described as the “orthodox” account of the foundation of the Knights Templars derived initially from the works of William of Tyre who wrote between 1175 and 1185. This area has attracted more recent attention see for example the film “*The Kingdom of Heaven*” which itself is a fine example of the adaptation of facts to create a “factional account”. The authors recount the founding of the Templars conventionally in 1118, their linkage with St Bernard of Clairvaux and their expansion over the next 100 years culminating in their Grand Master’s incompetent role in the battles of Cresson and the more well known one in July 1187 at the Horns of the Hattin. Over the next hundred years the Templars had a reduced role in the reduced Kingdom of Jerusalem but maintained themselves in France and elsewhere but were the subject matter of an attack by Philippe IV of France on 13th October 1307. It is asserted in HBHG all the Templars were simultaneously arrested “*in a security operation worthy of the SS or Gestapo....*” After the arrests various attempts were made to eliminate the Templars throughout Western Europe but of differing results. It is suggested (for example) that a sizeable contingent of English and French Templars fought on Robert the Bruce’s side at the battle of Banockburn in 1314.
27. They then present a mysterious history of Templars. This has the Templars surviving via Freemasons and taking part in the French Revolution (it being asserted that on the execution of Louis XVI when he was guillotined an unknown man is reported to have leapt on to the scaffold dipped his hand in amongst the blood and cried “*Jacques De Molay, thou art avenged!*”. (He was the last Grand Master of the Knights Temple burned at the stake in 1314).)
28. The secret history of the Templars goes on to recount that the Templars were accommodated in a part of the site of the Holy Temple and kept horses there; defiling the Holy Site in Muslim eyes. It is suggested that some secrets were discovered there by the Templars and this led to their apparent rapid rise to power and wealth. It is suggested that the Templar treasure was buried in the region of Rennes-le-Chateau and for some reason the Templars in this area were excluded from the general order of Philippe IV.
29. The final chapter (4) of the First Part introduces the Dossiers Secrets. Discovering the name “*Plantard*” on the back of some photographs of Rennes-le-Chateau led the

Claimants to track down Pierre Plantard. It is said that they had difficulties obtaining access to the Dossiers Secrets but ultimately they had access and this led to six “*indisputable historical facts*” as follows:-

- 1 There was a secret order behind the Knights Templar which created the Templars as its military and administrative arm and it was known as the Priory of Sion.
 - 2 The Priory of Sion had been directed by a *sequence* of Grand Masters whose names are among the most illustrious in western history and culture.
 - 3 Although the Knights Templars were destroyed and dissolved between 1307 and 1314 the Priory remained unscathed but acted in the shadows behind the scenes and orchestrated certain critical events in western history.
 - 4 The Priory of Sion exists today and is still operative it is influential and plays a role in high level international affairs as well as in the domestic affairs of certain European countries.
 - 5 The avowed and declared objective of the Priory of Sion is the restoration of the Merovingian dynasty and bloodline not only to the throne of France but the thrones of other European nations.
 - 6 The Merovingian dynasty is sanctioned and justifiable both legally and morally via Dagobert, Godfroi De Bouillon and other royal families throughout Europe.
30. That summary set the scene for part 2 of HBHG “*The Secret Society*”. This section starts with identifying a site in Jerusalem (Mount Zion) and the creation of an order there, the Abbey of Notre Dame de Zion. After the fall of Jerusalem in 1099 it is suggested that a group of anonymous figures convened in secret conclave but their identity has “*eluded all historical enquiries*”. Despite a persuasive claim by Raymond Count of Toulouse this allegedly mysterious and influential body of electors promptly offered the throne to Godfroi who declined the title but accepted instead that of Defender of the Holy Sepulchre of which he was known until his death in 1100. He was then succeeded by his brother Baldwin who was crowned King of Jerusalem. It is speculated that this secret conclave could have occupied Mount Zion and would this be the Priory of Sion?
31. This is then linked to mysteries about the foundation of the Knights Templar and the suggestion that this Priory of Sion might have stood behind both St Bernard and the Knights Templar. Alternately according to the Priory of Sion documents it is suggested that there was a severance between the Priory and the Knights Templar in 1188. This was said to be as a result of the ineptitude of Gerard de Ridefort the Templars’ Grand Master (see above) at Cresson and Hattin. It is described as the “*the cutting of the Elm*”. This part then leads to a list of the Grand Masters of the Priory of Sion (reproduced at page 131 of the UK paperback edition). This list is said to have been copied by Mr Brown (contrary to his evidence that he obtained it from the internet). The list at page 131 (UK edition) is reproduced at page 430-431 of DVC. It includes a reference to “*Les Nautoniers*” and hyphenates the name Saint-Claire in two places.

32. The addition of the description of Grand Masters and hyphens the Claimants say are unique to them as they added them in their list. There was at the time that Mr Brown was writing DVC no reproduction of the original list on the internet so the only source of the list in DVC could have come from HBHG. This seems to me to be correct. This is one of the schedule of language similarities (No 5) secondarily relied upon by the Claimants.
33. The long list of Grand Masters (including Botticelli under the name Filipepi) includes names such as Robert Boyle, Isaac Newton, Victor Hugo, Jean Cocteau and most significantly (for the purpose of this litigation at any rate) Leonardo Da Vinci. At the end of HBHG a potted history of each of the Grand Masters is given. In the case of the earlier Grand Masters it is very sparse.
34. The Claimants suggest in HBHG that they were sceptical about the list initially. Once again the text meanders through the theme of Arcadia sidetracks round the Rose Croix, the Stuarts and numerous other wide ranging areas where questions are posed but no answers are offered culminating in chapter 8 "*The secret Society today*". This reintroduces the briefly mentioned Pierre Plantard. The authors discerned Mr Plantard's apparent *key* role in the Priory of Sion and were anxious to meet him. After some delays ultimately they met him in spring 1979. He apparently met them in neutral ground in a Paris cinema rented by the BBC. He was described as being dignified, courteous and of a discreetly aristocratic bearing and unostentatious appearance with a gracious volatile but soft spoken manner. He apparently displayed enormous erudition and impressive nimbleness of mind. Significantly apparently he could not drive a car.
35. They had three meetings with Mr Plantard and he provided them with various declarations such as the fact that the Priory of Sion held the lost treasure of the Temple of Jerusalem (booty plundered by Titus's Roman legions in AD70 as recorded on the Arch of Titus in the forum). The treasure was spiritual and was a secret in some way. It was not explained how this treasure which was in Rome until it fell into the clutches of Alaric the Goth in 410 and was then hidden in Jerusalem to be found by the Templars some 700 years later. Maybe it was a different treasure. Maybe the Romans missed the best part of the treasure when the mount was destroyed and subsequently rebuilt. This is possible I conjecture.
36. The authors overcome their natural suspicion about dismissing the Priory of Sion as a minor "*lunatic fringe sect*" if not an outright hoax. Nevertheless they concluded that there was something in the Merovingian claim but speculated that there was something very special about the Merovingian Blood Royal which required it to be treated differently to all the other disinherited royal lines that litter Europe. Mr Plantard limited his claim to the restoration of the Merovingians via the Priory of Sion.
37. After the television series and after the publication of HBHG material emerged which suggested that the Rennes Le Chateau mystery and the Priory of Sion documents were all an elaborate hoax in which Mr Pierre Plantard had a significant role. I do not have to elaborate or even determine that issue. Anybody who is already not aware of the detailed denouement will find it at the website Priory-of-sion.com referred to above. Mr Baigent in his evidence before me said they were always suspicious of Mr Plantard but I do not find such suspicion in HBHG; it was essential for HBHG to have

credibility that the Priory of Sion as introduced to them had a plausible basis because without that a large part of HBHG simply disappears as a credible book if not an outright hoax or piece of fiction.

38. Part Three of the book "*the Bloodline*" starts at page 295 (UK edition). In that part they refer to the fact apparently that in earlier manuscripts concerning the Grail story it is called "*Sangreal*" or "*Sangraal*". They speculate that this might mean "*Sang Raal*" or "*Sang Real*" i.e. Sang Royal namely Royal Blood. From this series of speculative leaps and bounds the Claimants link the Grail with the royal bloodline i.e. the Merovingian line. This is summarised at page 328 (UK edition) "Our Hypothesis".
39. It is then suggested that Mary Magdalene brought the Holy Grail or blood royal to France and the grail is closely associated to Jesus and relates in some way to blood or more specifically to a bloodline and lineage. The Grail Romances however for the most part are set in Merovingian times but were not composed until after Godfroi de Bouillon a possible Scion of the Grail Family and actual Scion of the Merovingians was installed in everything but name as King of Jerusalem.
40. They observe that if they had been dealing with anyone other than Jesus this would have led to a self evident conclusion that they were all linked. They nevertheless drew the same conclusion by testing it as a tentative hypothesis which explained everything. It led to a bloodline descending from Jesus through Dagobert II and in effect ultimately to Pierre Plantard. At this tentative stage of their conjectures they ruled it out without any more evidence. This led to the proposition that Jesus being Jewish would have been married (as otherwise the fact would have been glaringly conspicuous). This would be the more so if he enjoyed the title of Rabbi and the reference in the fourth gospel to a wedding at Cana was it is suggested Jesus' own marriage to Mary Magdalene who is identified as his wife. They then carry their conjecture on to Jesus' dynasty, the strength of a marriage between the House of David (Jesus) and the tribe of Benjamin (Mary Magdalene) and the threat he posed by being married the rightful claim to the throne with children.
41. It is suggested (although Mr Baigent denied this) (page 377) that there is a possibility of a fake crucifixion. In this context that is one of the bullet points attached to the back of the cover of the US edition of HBHG. However the survival of Jesus was not apparently considered to be important; what was more important was the arrival in Marseilles of Mary Magdalene bringing the Royal Blood along with Joseph of Aramathea (they do not follow the Glastonbury diversion).
42. Interesting although all this is no actual research is provided by the authors in their speculative travel. The possible questions are posed but why the *q*uestions can be posed and the basis of the material which led to them being able to pose them is not to be found in HBHG.
43. They go on to portray the inconvenience that this conjectural theory causes the established church. It stems from the deification of Jesus which flowed from the Council of Nicea which was presided over by Constantine the Great in 325 AD. Traditionally as they set out in the text Constantine was treated as adopting the Christian faith having seen the Chi-rho sign in a prophetic dream shortly before the battle of Milvian Bridge when he defeated Maxentius in AD 312. Tradition recounts

that the Chi-rho signal was emblazoned on the shields of his troops. As a consequence Constantine's victory over Maxentius came to represent a miraculous triumph of Christianity over Paganism. They suggest that the position was actually somewhat different. Constantine did not convert but headed the Pagan religion of Sol Invictus a Syrian cult in origin which was adopted by Roman Emperors a century before (possibly through contacts with the wife of Septimius Severus who was from Syria). This religion it is said harmonised with the cult of Mithras which was prevalent in Rome (especially in military circles) at that time. Thus for example the Christian religious day of Sunday was taken from the cult of Mithras and both celebrated a major birth on December 25th. Mithraism also stressed the immortality of the soul and a future judgment in the resurrection of the dead (there is not necessarily anything original in that as a faith).

44. Everything came together in the Council of Nicea when by a substantial majority (218 for and 2 against) it was decided that Jesus was a god not a mortal prophet. This led to the banishment of the contrary Arian tradition. This developed through the next century leading to the unification of the church and state control through Theodosius the Great. There were of course hiccups along the way (old traditions die hard). Julian the Apostate was such a hiccup.
45. The purpose of this discourse by the Claimants is to show why the establishment church was determined to suppress the bloodline history.
46. The rest of this part of the book leading to chapter 15 (conclusion and portents for the future) consists of a series of conjectures but with no real evidence showing any linking between the royal bloodline and the Merovingians as such. The conjectures are to be found at pages 410-412 and are at the far end of conjecture in my view.
47. In their final chapter they conjecture that Jesus' wife and offspring after fleeing the Holy Land found a refuge in the South of France with a Jewish community and preserved their lineage. That lineage in the 5th century intermarried with the royal line of the Franks thus engendering the Merovingian dynasty. The church had a pact with this dynasty but broke that and colluded in the assassination of Dagobert. However Jesus' bloodline or at any rate the Merovingian bloodline survived and carried on through to Godfroi. The secrets of this were discovered in an excavation in the temple in the so called stables of Solomon by the Templars. They speculate that it might have been the equivalent so to speak of Jesus' marriage licence and or the birth certificates of his children and that all of these might have been referred to as the Holy Grail. However the Grail could also mean Mary Magdalene as well.
48. For the future this might be a good idea in the modern world it is speculated because if Jesus was acknowledged as a mortal prophet he might well become acceptable to both Muslims and Jews and would therefore be able to implement one of the primary tenets of Templar policy alleged to be the reconciliation of Christianity with Judaism and Islam.
49. I will not depart from that last statement which seems somewhat surprising as a policy of the Templars (see for example the refusal of the Knights Templar en masse to convert to Christianity at the battle of the Hattins which led to their beheading). However they continued to speculate that it all collapsed with the loss of the Holy Lands finally in 1291 which then made the Knights Templar redundant and

expendable. The protection of the Bloodline secret thereafter continued via the Priory of Sion. It is suggested (page 428) that the French Revolution was a devastating blow to Merovingian hopes (see the statement alleged to be made at the execution of Louis referred to above).

50. At page 430 they maintained that their hypothesis whilst it could not be certain to be correct in every detail they were convinced that the essential outlines of their hypothesis was accurate. Their research has persuaded them that the mystery of Rennes-le-Chateau involved a serious attempt by influential people to re-establish a Merovingian monarchy in France if not indeed in the whole of Europe and that the claims of legitimacy of such monarchy rested on a Merovingian descent from Jesus.
51. There are three problems about that summary. First as I have said above the Rennes-le-Chateau mystery derives from the material provided ultimately via Pierre Plantard which has been strongly held to be fake. Second Pierre Plantard himself did not claim at any time to be descended from Jesus. No evidential material has been produced for these speculations. Third the Merovingians were never Kings of France; they were Kings *in* France.
52. I have set out at some length what in my opinion is an overall analysis of HBHG. I have done that (and will do the same further in this judgment in respect of DVC) because that is essential in my view to deciding this case. The key to solving the conundrum posed by this judgment is in reading HBHG and DVC.
53. There was nothing original (in the non technical copyright sense) in the material the Claimants put forward concerning Rennes-le-Chateau and the Priory of Sion. As I have set out above it all ultimately emanated from pre-existing French writings and Pierre Plantard and people associated with him. Equally there was nothing original in the Claimants presentation of the Grail material.

6 A Central Theme

54. What was original was the merging of the Jesus bloodline with Merovingian bloodline as an idea. I have already set out above the hypothesis thus put forward (HBHG page 430). Mr Leigh confirmed this in cross examination (T6/842/2-13) when he had been cross examined about the 15 Central Theme Points. He expressed the view that there were certain key points among those which were uniquely theirs. The unique ones he suggested were Jesus' bloodline flowing in to the Merovingian line and second that the Grail was not only a thing or a phenomenon but was also a person and the bloodline. Mr Rayner James QC for the Claimants in his closing submissions (T11/1575/3) suggested other potential original ideas on the part of the Claimants namely Godfroi reclaiming his birth right and heritage and that the Priory of Sion were the protectors of the bloodline and equally the Holy Grail. I am not sure that the latter is much of a point because it is merely a consequence of linking the bloodline with the Merovingian line which would then have the consequential effect of the Priory of Sion protecting both. Nor is there much in the former point either. The major conjectural point seems to me to be the merger of the bloodline in the Merovingian line.

C DAN BROWN AND THE DA VINCI CODE

7 Dan Brown

55. DVC was his fourth book. Prior to that he had written Digital Fortress (1998), Angels & Demons (2000), Deception Point (2001) and DVC (2003).
56. The first three books were not successful in the sense of sales (the total sales for the three books was approximately 26,000) although they have revived following the success of DVC.
57. Mr Brown came from an academic background on the East Coast of the United States. In addition to developing an interest in literature he after spending time in Spain developed an interest in art as a communication between the artist and the viewer. He then developed interests in music and moved to Los Angeles to develop a career in song writing. He produced some limited albums of original music but was really dependent on working as an English teacher at Beverly Hills Prep School. He met his wife Blythe through the National Academy of Song Writers where she was the director of artistic development. Despite the Academy's effort to promote him his music career never took off.
58. In 1993 while on vacation in Tahiti he read a book by Sydney Sheldon and thought that he might be able to write a "thriller" of this type one day. Thereafter he wrote a humorous book (187 men to avoid) and then moved on to the publication of his four books.
59. In his witness statement he sets out how he writes his novels. First he selects a theme which is the "big idea". He suggests that his novels are research intensive so they can take up to two years to write. He chooses a subject which is not black and white but rather contains a grey area where there is no clear right or wrong no definite good or evil and makes for great debate. His writing process is very disciplined. He makes his books location driven and because of a fascination with codes likes to have codes and secrecy elements in all of his books.
60. In Angels & Demons he introduced Robert Langdon as a character for the first time. He is based on an artist and philosopher John Langdon.
61. In Angels & Demons he introduced the literary concept of academic lectures as part of the thriller.
62. Introduced in Angels and Demons also were religious architecture concepts. He and his wife Blythe loved researching these subjects and it enabled them to work together as a husband and wife team in creating the novels. It is clear that a lot of research material that he gathered for writing Angels & Demons was used in the DVC.

8 Researching And Writing DVC

63. In his evidence Mr Brown said that he and Blythe spent a year or so travelling and conducting research during the writing of DVC. During this exercise they met historians and academics and extended travels from the Vatican and France to England and Scotland in order to investigate the historical underpinnings of the notes.

The research (taking in to the account the leftovers from Angels & Demons) on DVC apparently started in 2000. There are a number of documents which were created by Blythe which the Claimants contend were created in the period 25/7/2000 – 7/12/2000. I will deal with these documents further in the judgment. Not a lot of the research documents survived.

64. In early January 2001 Mr Brown prepared a number of short proposals to submit to Heidi Lange a new literary agent whom he was trying to encourage to take him on. He submitted a number of small synopses. One was “*The Botticelli Code*”. Another was “*The Da Vinci Code*”. None of these short proposals has survived.
65. Heidi Lange having received these was apparently very interested in the Da Vinci Code and asked him to submit a more detailed synopsis. He started this exercise around the 16th January 2001 and submitted it by 31st January 2001. This document (“the Synopsis”) has survived and will be dealt with further in this judgment. It was apparently written in just 2 weeks or so.
66. In February 2001 Mr Brown’s Editor (Mr Kaufman) moved to Doubleday and he showed the DVC synopsis to them. An exchange of internal emails dated 23rd April 2001 and 1st May 2001 showed that internally the publishers clearly linked the Synopsis to many of the books that had in effect sprung from HBHG.
67. In mid May 2001 Mr Brown moved to Doubleday and at the same time started writing DVC.
68. Between that date and 15th March 2002 the Claimants suggest various other documents were created. I will again refer to these further in more detail later in this judgment.
69. On 15th March 2002 Mr Brown sent the first 190 pages of DVC to Mr Kaufman. That document has not survived. By 22nd March 2002 Mr Kaufman had edited the 190 pages down to 128 pages (apparently without consulting Mr Brown) and has distributed that 128 pages. That document has survived. On 24th April 2002 a document “*final chapters*” was created with 50 pages of material for the book in varying degrees of detail. On 29th April 2002 Mr Brown emailed Bill Scott-Kerr 141 pages of the start of DVC promising (perhaps optimistically) that another 600 pages would be ready. On 3rd May 2002 Mr Kaufman separately sent to Bill Scott-Kerr a further attachment of the first 128 pages of DVC.
70. On 16th August 2002 Mr Brown submitted the final DVC manuscript to Bill Scott-Kerr and delivered the final chapters to Mr Kaufman on 20th August 2002. He checked those chapters and Advance Reader Copies were published.
71. There were exchanges in October about why Mr Brown chose the surname Saunier and why he chose the surname Teabing the latter is not particularly mysterious: it is part of an anagram of the two Claimants’ names. Saunier was chosen because that was the name of the priest who allegedly discovered the secrets in Rennes-le-Chateau. That is the only part of the Rennes-le-Chateau mystery incorporated in DVC.
72. In March 2003 DVC was published in the US (hardcover).

73. It is self evident that Mr Brown looked at HBHG before DVC was finished (he accepts that). It is equally self evident that Blythe Brown looked at HBHG extensively. The original copy of HBHG as disclosed contains numerous annotations and markings mostly by her but also by Mr Brown. The date of these annotations and markings is in dispute. Of all the books used it is the most heavily annotated.
74. At page 339 (chapter 60) of DVC in one of the Teabing lectures to Sophie he shows her his library. Three books are identified:- The Templar Revelations (“TR”), The Woman with the Alabaster Jar (“WAJ”) and The Goddess in the Gospels (“GG”).
75. Teabing refers to what he describes as “*perhaps the best known tome*”. He refers to the cover “*Holy Blood, Holy Grail the acclaimed international bestseller*” Sophie observes that she has never heard of it, Teabing explains that is because she is young and it all came out in the 1980s. He criticises the authors as making some dubious leaps of faith in their analysis but suggests that their fundamental premise is sound and to their credit “*they finally brought the idea of Christ’s bloodline in to the mainstream*”. This is really intended to be reflective of his condescending character.
76. I have already observed the anagram in the name Teabing as being another example of how HBHG was clearly in the mind of Mr Brown when he finalised DVC.
77. Significantly the first 190 pages submitted in March 2002 do not have the Teabing character nor any of the material that is said to come from HBHG.
78. Very little of the research material has in fact apparently survived. Between the writing of the first 190 pages and the delivery of the final draft in August 2002 the balance it is difficult to see at what stage precisely the relevant parts were written.
79. Mr Brown in his witness statement denies that he copied from HBHG and stated that he thought of the history and theory of the Da Vinci Code from text was readily available other than HBHG and these were the text that were studied prior to seeing it.
80. The research process started with the purchase of books. The first book apparently purchased was TR in May 2000 (cross examination T8/1060 et seq). He said in his witness statement that he did not have a copy of HBHG at the time that he wrote the Synopsis (paragraph 164). He conceded he might have acquired a copy fairly early in the writing process but was no more precise than that. He conceded that the acquisition of TR would lead him to buying HBHG. The Claimants contend that either Mr Brown or Blythe Brown had a copy of HBHG before the Synopsis was written and that it was used extensively for the purpose of preparing various information sheets by Blythe Brown in 2000. That is not accepted by Mr Brown and it is a point I will deal with further in this judgment.

9 *Analysis Of DVC*

81. The text is preceded by a page designed to clothe the book with authenticity headed “*Fact*”. He refers to the Priory of Sion as being a European secret society founded in 1099 as being a real organisation identified in the Bibliotheque Nationale and the Dossier Secrets with various Grand Masters. The second part relates to the existence of Opus Dei a deeply devout Catholic Sect that has been the topic of recent controversy. Finally all descriptions of artwork, architecture, documents and secret

rituals are accurate. Of course merely because an author of fiction describes matters of being factually correct does not mean that they are factually correct. It is a way of blending fact and fiction together to create that well known model “*faction*”. The lure of apparent genuineness makes the books and the films more receptive to the readers/audiences. The danger of course is that the *faction* is all that large parts of the audience read and they accept it as truth.

82. DVC opens with the murder of a curator of the Louvre museum Jacques Sauniere. Mysteriously he is described as the last sole guardian of one of the most powerful secrets ever kept and he struggles to preserve this secret in some way. The scene then moves on to Robert Langdon’s hotel late at night where his night is disturbed by a French policeman from an organisation said to be the equivalent of the FBI. He was shown a photograph of Sauniere’s dead body and whisked along to the Louvre. There he is introduced to a Captain Fache. They discuss the fact that Sauniere failed to meet Langdon at a meeting earlier that night. He was taken to Sauniere’s body on which Sauniere had apparently using his own blood drawn the symbol of the pentacle. Sauniere’s body was also positioned in the form of a pentacle and had left a concealed message using a black-light pen.
83. In parallel with these revelations are chapters dealing with Sauniere’s murderer a member of Opus Dei responding to the directions of a Cardinal Aringarosa. No part of the Opus Dei strands of DVC forms part of the Claimants’ case. Sauniere’s message comprises a series of apparently random letters and two bizarre texts. Further use of the black-light pen shows that Sauniere had drawn circles around his body leaving him in the position of a life size replica of Leonardo Da Vinci’s most famous sketch the Vitruvian man. As part of the investigation Langdon is introduced to Sophie Neveu from the police’s cryptology department. The numerically coded message of Sauniere is discussed. Langdon and Sophie form an alliance (I will not spoil the plot by revealing how). Sauniere is actually her grandfather. They had become estranged some ten years earlier as a result of a bizarre ceremony she had accidentally witnessed. Langdon deciphers the odd textual message left by Sauniere and it leads him to Leonardo Da Vinci’s work the Mona Lisa.
84. Langdon in discussions with Sophie introduces a secret society of which he alleges Sauniere was a member. He reveals it as the Priory of Sion. He summarises the history of the Priory of Sion to her and its Grand Masters (page 158). This is the first serious lecture in DVC. At a later stage he continues the lecture concerning the Priory of Sion by stating its belief that Constantine and his male successors converted the world from a matriarchal paganism to patriarchal Christianity by waging a campaign of propaganda that demonised the sacred feminine. It obliterated the goddess from modern religion forever.
85. Various chases around sites in Paris ensue and during a taxi drive Langdon carries on his lecture about the Priory of Sion (page 217). He reveals its foundation by Godfroi, the fact that he was the possessor of a powerful secret that had been in his family since the time of Christ and that founded the Priory of Sion as a secret brotherhood charged with protecting the secret by quietly passing it on from generation to generation. The Priory whilst in Jerusalem learned of a stash of hidden documents buried beneath the ruins of Herod’s temple which had been built on the top of earlier ruins of Solomon’s temple. These documents were corroborative of Godfroi’s secret and so explosive in nature that the church would stop at nothing to get them. The

Priory vowed that no matter how long it took these documents must be recovered from the rubble and protected forever so that the truth would never die. The Priory created a military arm the Knights Templars to recover the documents. It is speculated by Langdon that the Knight Templars found something and took it to Europe (not Titus' treasure presumably). They were given unprecedented powers by the then Pope Innocent II (he speculates because of the explosive nature of the material they had obtained).

86. Thereafter the Templars expanded massively but were then the subject matter of an attack in the 1300s instigated by the then Pope Clement V and carried out in consort by Philippe IV. The operation is described as being a military manoeuvre "**worthy of the CIA**". Langdon explained that the documents were smuggled away from Paris on one of the Templar ships in La Rochelle before they could be seized by the agents of Philippe IV. He then draws the link with the Holy Grail and that the documents are only half of the Holy Grail treasure and poses a speculative question that the Holy Grail may not be a cup but something else. Langdon recalls a similar surprised expression of an editor of his when he presented a book making the same point. The editor is called Faukman (an anagram of Mr Brown's own editor Mr Kaufman, one of Mr Brown's literary devices that he likes using).
87. In a later discussion Sophie reveals that she believed Sauniere was the top member of the four Grand Masters of the Priory of Sion who were guardians of its secrets. Langdon recalls the Dossiers Secrets and the catalogue number at the Bibliotheque Nationale.
88. Langdon then decides to invoke the assistance of a religious historian he knows who lives near Versaille whose name is Leigh Teabing. This (page 293) is the first appearance of Teabing in DVC. Sophie speculates about whether or not Teabing is a member of the Priory of Sion but Langdon rejects that pointing out his whole life has been trying to broadcast the truth about the Holy Grail whereas the Priory's oath is to keep its nature a secret.
89. They meet Teabing and he delivers a lecture to Sophie about what is the Holy Grail and how Da Vinci painted the Holy Grail. He goes on to discuss how Christianity was shaped by Constantine but not in a traditional way pointing out that Constantine as I have said earlier only became baptized on his deathbed "**too weak to protest**". He sets out the changes to Christianity starting with the Council of Nicea and the deification of Jesus (changing the vote 218 for 2 against to "**a relatively close vote at that**").
90. He then goes on to discuss Da Vinci's portrait of the Last Supper. None of this of course is derived from HBHG. He identifies various anomalies in the portrait starting with the omission to paint the cup of Christ. He points out tantalisingly that the Holy Grail is a person not a thing and is a woman. He adjourns to his study and pointing out an 8 foot long print of the Last Supper suggests that the apostle John is actually a woman, Mary Magdalene. He points out that the juxtaposition of Jesus and Mary Magdalene is in the figure of a V which leads to a creation of the letter M standing for Mary Magdalene. All of this is self evident because Jesus was a Jew and could not therefore be unmarried. He would also be expected to have children. If any of this was not correct one would have expected comment on that to have been in one of the bible gospels. He refers to some of the Gnostic gospels which were found in Egypt in

the 20th century and the Gospel of Philip which refers to Mary Magdalene as being the companion of Jesus. He points out that the union of Jesus and Mary Magdalene was a powerful union of the House of David and the House of Benjamin creating a fusion of two royal bloodlines and that Mary Magdalene carried the bloodline of Jesus. He explains the true meaning of Sang Real as meaning Royal Blood.

91. He continues the lecture after referring to the books in his library and that according to Priory of Sion records Mary Magdalene was pregnant at the time of the crucifixion and she fled the Holy Land with Joseph of Arimathea and arrived in France where she gave birth to a daughter whose name was Sarah. (I should point out that this information could not have been obtained from HBHG).
92. He then recounts the duties of the Priory to preserve the documents and to protect the bloodline itself setting out the growth of Christ's bloodline under cover in France until a bold move in the 5th century when it intermarried with the Merovingians. A short recounting of the Merovingian bloodline is then set out including reference to Godfroi who as Langdon points out ordered the Knights Templars to recover the Sanggeal documents from beneath Solomon's temple. At page 347 it is pointed out that two direct Merovingian lines remain in the Plantard and Saint-Clair family. Both are in hiding protected by the Priory.
93. There then ensues various chases with Sophie and Langdon fleeing to England. The police follow up and visit Teabing's house. There the list of the Priory Grand Masters is referred to by the policeman.
94. Sophie and Langdon visit the temple church and archives held at Kings College. They visit Westminster Abbey. All the time they are being pursued by the assassin from Opus Dei (now called Silas a change from Oedipus in the Synopsis). They then arrive at Rosslyn also associated with the Templars and the Saint-Clairs. There they receive a lecture from Sophie's grandmother and she makes the important statement "***in fact the Priory had always maintained that the Grail should never be unveiled***" (page 581). The final secret is revealed at the end of the book.
95. I have understated the intervening roles of Opus Dei and Teabing and the ending of the book.
96. The Claimants acknowledge that there is a significant amount of material in DVC which is not derived from HBHG.
97. The books are of course very different. HBHG is presented as a non-fictional book whereas DVC is a classic thriller work of fiction dressed up with "***facts***" to give it an air of authenticity and to arouse the interest of the readers.
98. Both books have created storms of controversy. Somewhat surprisingly in my view both sets of authors were apparently surprised at the storm of controversy that their books created. This can only be naivety if true. I cannot believe that if books are going to be written which challenge vital tenets of the established church that they are not going to attract attention.
99. The storm created by DVC has been even greater than that created by HBHG. It has developed a huge publication of books attacking the facts from the establishment's

point of view. The sensitivity of the established church is somewhat surprising given that the book is a work of fiction. That might be of course because the public nowadays tends to equate works of fiction with factional context as being correct. This is of course not confined to books. One sees similar blurrings in films take the well known films *U571* and *The Patriot*. The former lists the capture of a U boat by a British Navy destroyer before the United States was in the Second World War and transposes it to the capture of a U boat by an American crew. The latter in context of the American War of Independence takes an SS massacre at Oradour Sur Glane in June 1944 and transposes it back to a massacre allegedly carried out by the British in the American War of Independence.

100. Dan Brown found himself assailed at numerous book signings. He found himself unable to answer these charges (because his wife had done all the research in reality). He revisited the research to arm himself against the onslaught.
101. DVC has been extremely successful. Its sales have allegedly been 40 million in its first year. Film rights have ensued and there maybe even a further book written by Mr Brown drawing on similar material in the not to distant future. DVC has certainly led to a revival of HBHG and its sales culminating in the increase arising from this trial.
102. The Claimants apparently are upset at the way in which they have been treated in DVC. For my part I find that surprising. I suppose it is a matter of subjectivity but it seems to me their book is given a true level of prominence when Teabing's library is inspected and I do not see the anagram of their names as being anything other than a compliment to them. I do not suppose Mr Kaufman was offended.
103. As is usual with books that attract a lot of publicity they have attracted the wrath of the literary experts of the world. Fortunately it is not part of my judgment to assess the literary worth of the books or even the truth behind them. I simply observe that the Observer for example in the style for which it and its sister publication the Grauniad is justly complimented in Private Eye provides both sides of the argument. "***[I pity] what led him to having to listen to such a load of tosh***" (Nick Cohen 12 March 2006). Contrast Viv Groskop "***pen a best seller and wait for the sneers***" (19th March 2006 The Observer). I suppose in the world of publication 40 million buyers cannot be wrong. This seems to be the view of Mr Ruben the President of Doubleday and various other companies in the Random House Group when he says "***....I have certainly never read anything like Mr Brown's work. I believe then, and still believe now, that this type of book had never been written before***". (Paragraph 78 of his witness statement) (query *Dune* for example). However these questions are not for me.

D **THE CLAIM**

10 **Complaints by the Claimants**

104. The Claimants made a first letter of complaint on 5th February 2004 (a year after the publication). It was asserted that the Claimants made a sequence of connections that no-one had made before drawing on expertise in a number of diverse areas and that for the first time they expressed a continuous linkage running from the tribe of Benjamin through the New Testament, the Merovingian dynasty and from there to Godfroi de Bouillon and the Crusades. It was asserted that this is the Central Theme

also of DVC and had been copied by Mr Brown. In addition it was asserted that they were the first authors to propose the highly material thesis that the Holy Grail was a metaphor for Mary Magdalene rather than it being merely an artefact which concept again it was asserted had been copied by Mr Brown. It was then asserted that Mr Brown in effect “*shortened the way*” by lifting everything out of HBHG rather than doing his own research, and that he had appropriated the literary labour of the Claimants.

105. In a later letter of clarification dated 12th March 2004 it is asserted that put simply Mr Brown used HBHG as the basis for DVC and at regular intervals the plot comes to a halt and Mr Brown reveals pellets of information concerning a centuries old conspiracy. These pellets are not available it is asserted from public sources but are rather the result of years of research undertaken by the Claimants which form the basis of HBHG and these have been lifted from HBHG and Mr Brown has thereby used all of the Claimants skill and labour expended in creating HBHG.

11 Proceedings

106. The Claim form was issued on 1st October 2004 and sought the usual relief for infringement of copyright including an injunction and delivery up for destruction on the basis that the Defendant had reproduced or authorised the reproduction of a substantial part of the copyright in HBHG.
107. Originally the Particulars of Claim asserted that HBHG had expressed a single Central Theme that the Holy Grail was a person, Mary Magdalene that had given rise to a continuous bloodline of David deriving from a relationship with Christ through time running from her to the Merovingians and then on to Godfroi and the Crusades. As part of the Central Theme it was asserted that HBHG set out a secret move of Mary Magdalene with the Grail to a refuge with a Judaic community in Gaul an originating function of the structure of the Priory of Sion and the Knights Templar in their role as guardians of the bloodline and the state of religion and subsequent conversion of Constantine and the significance of celibacy in the Judaic system. The original Particulars of Claim was served on 15th October 2004.

12 Defendants Seek Clarification

108. The Defendants sought a clarification of the Particulars of Claim under CPR part 18. Part of that response was to identify the Central Theme by reference to 19 numbered points. The Defendants tried to strike out the response.

13 Lewison J Order

109. Shortly before the hearing of the Application before Lewison J on 27th October 2005 the Claimants served a document called the Voluntary Supplemental Schedule (“VSS”). This presented a different Central Theme broken down into 15 numbered points. On 27th October 2005 Lewison J made an order by consent. The recitals contained confirmations by the Claimants (1) the only matter complained of by the Claimants is the matters expressly set out in the 15 Central Theme points of the VSS (2) the only purpose of the contents of the column on the left hand side of the VSS is to establish that the matter contained in the corresponding Central Theme point does appear in HBHG and (3) the only purpose of the contents of the column on the right

hand side of the VSS is to establish the matters contained in the corresponding Central Theme point does appear in DVC and supports the allegation of copying of the matter in the corresponding Central Theme point.

110. Recital 4 stated that any matter which is contained in the passages quoted in the VSS is irrelevant to the extent that it does not relate to the corresponding Central Theme point and an example is given about the date of the birth of Mithras. Finally recital 5 states that the Claimants do rely on some instances of similarities in language to prove copying which they are required to set out by 10th November 2005.
111. By consent the Schedule to the Particulars of Claim, the additional Particulars of copying attached to the Claimants response for request for information, the general statements document and the summary of the Central Theme attached to the Claimants response were struck out.
112. On 10th November 2005 by letter the Claimants solicitors set out 5 copying points. On 17th February 2006 the Claimants set out further copying points making a total of 17.
113. In the meantime on the 19th January 2006 the Particulars of Claim were amended. The Central Theme as set out in paragraph 3 was abandoned and was replaced with an annex to the Particulars of Claim. This is the Central Theme (“CT”) relied upon by the Claimants. It was broken up by the Amended Particulars of Claim to 15 points. At the start of the trial this was transformed in to one single page of text. Nevertheless the trial proceeded and the cross examination and re-examination took place around the 15 broken down themes.
114. In addition by paragraph 3 A the Claimants asserted that HBHG contained the Central Theme on the basis of the VSS served on 14th October 2005.

14 Changes In Pleadings

115. It is important to note that in the struck out general statements (paragraph 2) it was asserted that HBHG consisted of more than just a sequence of suggestions, contentions, arguments and hypothesis but also consisted of copiously researched documented evidence to support the suggestions, contentions, arguments and hypothesis. It was asserted that there was a unique and specific manner in which these were connected to each other and the manner whereby they were assembled in a coherent organisation was a structure (“*an architectural edifice of ideas*”). The manner in which the material was assembled was asserted to constitute the books design and that while some of the elements of design might be in the public domain the design itself was not. It was then asserted that Mr Brown appropriated the various components of a massive jigsaw puzzle but in addition the altogether original way in which those components were fitted together and he plundered not only the facts but more importantly the relationship between the facts, the evidence that supports such relationships, the interpretation of such relationships and the conclusions to be drawn from such relationships.
116. That disappeared from the Claim by virtue of paragraph 1(C) of Lewison J’s order.

E **CENTRAL THEME**

15 **Changes**

117. A comparison of the original Central Themes (1-19) with the final version is illuminating. Thus Themes 4 and 5 were heavily re-written and introduced the concept of Mary Magdalene fleeing with the Royal Bloodline and that the Grail might have meant two things simultaneously, first the bloodline and second Mary Magdalene herself. These are somewhat fundamental omissions from the Central Themes as now portrayed by the Claimants. The explanation for the omission namely that it was a blunder is not really satisfactory.
118. The original Central Theme 9 (the collapse of the Roman Empire and the church of Rome and the making of a pact with Clovis the most powerful Merovingian monarch coupled with the counter promise to the church pledging itself to his bloodline in perpetuity) disappeared. This omission in this case also seems somewhat surprising as it seems to me that it is part of the way in which their historical conjecture has developed. Why I conjecture eliminate the formulation of the pact but retain its breach?
119. Original Theme 16 (the relationship between the Priory of Sion and the Templars and their separation in 1188 also disappears). This too seemed to me to be a surprising abandonment given the significance attached to the continuation to the Priory of Sion after the demise of the Templars.
120. It follows that there are in my view significant changes to the Central Theme exhibited by the change of heart of the Claimants.
121. I attach to this judgment a copy of the Central Theme. It will be seen that the architecture and structure arguments referred to in the letters of claim and in the original general statements have disappeared.

16 **Significance Of The Central Theme**

122. The Amended Particulars of Claim assert that the Central Theme is expressed in HBHG. Although the Central Theme as drafted is a construct for the purpose of this litigation only nevertheless the primary case is that the Central Theme is to be found in HBHG. In closing Mr Rayner James QC said it was “*the bridge*” between HBHG and DVC. He acknowledged that the Central Theme had to be in HBHG for the Claimants to establish their case. In paragraph 96 of his witness statement Mr Baigent stated that this was a summary of their hypothesis and for the purpose of the litigation was given the title Central Theme. After reviewing the various Central Themes he concluded (paragraph 379) that an extraordinary amount of skill and effort had been expended by the Claimants and Mr Lincoln in researching and writing HBHG and in the expression of the Central Theme. In the next part of his witness statement he expressed the view that the 15 points should all be read together and that they all form an integral part of the Central Theme and they were all inter-related. He expressed the view that authors always considered HBHG to be about the Central Theme. I have a little difficulty with this given the changes to the Central Theme made during the course of this action. In paragraph 382 he stated that the themes must be read together because they are intrinsically related and “*they all work together to form the*

architecture of our book". The themes he then suggests are not numerically significant but are inter-related in different ways.

123. This of course is the struck out architecture point. Objection was taken to this evidence at the opening of the trial by the Defendants and rightly so. If there is going to be a case based on the architecture and structure and the inter-relation of the themes, given the effect of Lewison J's order I ruled that it was not made out in the pleadings and I ordered the Claimants to provide further clarification on this point as it had been referred to again and expanded in the Claimants opening skeleton argument (paragraph 61). The answer provided was somewhat tame "*the Central Themedescribes a Central Theme expressed in HBHG that description sets out the progression of the Central Theme through the points numbered 1-15. That progression follows a natural chronological order and as a progression each point depends for its place on the progression on the preceding and succeeding points*". Other than that no argument was to be put forward in relation to order, linkage, connection and the like beyond that natural linkage.
124. So the natural linkage was the fact that they were numbered 1-15 and the events identified in each was in a chronological sequence. This in my view hardly falls within the idea of architecture but I will deal with this further in this judgment. It is of course also contrary to the way in which Mr Baigent expressed it in (for example) paragraph 382 of his witness statement. Nevertheless anymore detailed structure disappeared from the case as a result of this answer.
125. In addition as I have set out above I permitted the number of textual copies to be expanded. It is not suggested by the Claimants that these establish their case of copyright infringement. They are secondary "*footprints*" to support a primary case which is based on the copying of the Central Theme. They are not said to be infringing copies.
126. The Claimants (see paragraph 65 of the opening skeleton on their behalf) submit that there is little left to HBHG without the Central Theme and as DVC reduces the Central Theme its reproduction is therefore an infringement of the copyright existing in HBHG.

17 Treatment of Central Theme

127. In their closing (section 3) the Claimants reverted to the analysis of the Central Theme. As is set out in that part the Claimants' case is based on copying from HBHG something other than is in the text i.e. a non-textual infringement case. It is asserted that the purpose of the Central Theme is to identify what is in the work which has alleged to have been copied but that the test of infringement remains always a comparison of what is expressed in DVC with what is expressed in HBHG. It is asserted that the Central Theme acts as a bridge between the two works.
128. I have difficulty with that. As was said in the opening the Central Theme is HBHG and without it, it is said there is little left. Whilst the Central Theme may be a bridge it is plainly more than that. It is the Central Theme that is alleged to have been copied. The Central Theme therefore must be found in HBHG and it must be that that must be copied and found in DVC. Indeed that is the purpose of the VSS. This necessarily in my view involves a careful analysis of the Central Theme to see what

the Central Theme actually comprises and consequently once it is correctly analysed whether it is of such substance that it can be protected by the action when it is established that the Defendants have copied it. It is insufficient in my view to attempt to devalue the Central Theme (paragraph 56 of the Claimants' closing) as a tool in identifying what is alleged to have been copied. This does not do justice to the way in which the Claimants assert the relevance of the Central Theme as set out in the pleading and the evidence set out above. As it is not based on textual copying it is necessary to identify precisely what it is as a first step before it can actually be considered whether it is actually capable of subsisting as a literary work which can be infringed by it copying. The reason why this is important is that Mr Brown has admitted that he made use of HBHG at some stage in the writing of DVC. His case is however in so doing he did not copy a substantial part of HBHG and that he did not copy the Central Theme as identified and claimed to exist by the Claimants.

F DEFENDANT'S STANCE

18 Defence

129. First Mr Brown denies that he copied HBHG. In so far as he used it as a source he did so in conjunction he contended with a number of others and generally after those others. All he got from these sources were ideas of a general nature. The Defendants submit that is not infringing in a copyright sense.
130. Second Mr Brown contends that he wrote the Synopsis for DVC before either he or his wife ever looked at HBHG. Yet it is accepted that the Synopsis contains most of the ideas complained of as having been taken from HBHG.
131. Third the Defendants contend that the Central Theme is not in HBHG nor in DVC and that substantial parts are missing from both books. Further it is contended that the Central Theme does not represent a theme which is presented by HBHG as it is neither central nor any theme of HBHG. In this context it is contended that the 15 points are not presented in HBHG in a way that they are differentiated from or distinguished from a mass of other material and is not apparent to a reader that 15 Central Theme points are the Central Theme of HBHG.
132. Finally if it is established that any information which happens to be in HBHG a reproduction of that is not an infringement of copyright because information is not protected by copyright.
133. In this context I should note that a substantial amount of time was deployed in trying to establish precisely when Mr Brown and/or his wife possessed and used HBHG. This is relevant for two reasons. First, the Claimants contend that if they establish that Mr Brown is not telling the truth as to when he copied and that in fact he copied earlier it can be used to infer that he has something to hide. This ought to lead to a conclusion that he would only copy if it was worthwhile and a conclusion therefore that he substantially copied HBHG.
134. Second, it shows that contrary to Mr Brown's contention that HBHG was the primary source of the material to DVC and not the other sources which he identifies in the Defendants defence and in his evidence.

19 *The VSS*

135. As I set out above the VSS is the material which the Claimants contend shows by comparison between HBHG and DVC that supports their contention that HBHG contains the Central Theme and is also contained in DVC.
136. It is an unwieldy document and has been changed from time to time. I was provided with a copy of both HBHG and DVC with the relevant passages marked up. Some passages are very long. Thus for example CT4 is supported as regards HBHG by one track of 24 pages. To address this complaint the Claimants produced a “*condensed*” VSS as document 5 annexed to their closing submissions. I propose in this judgment to analyse the Central Themes by reference to the final 15 sections and deal with the evidence of witnesses and documents and the shortened VSS at that time.

G **LEGAL MATTERS**

20 *Outline*

137. Fortunately I was told by both parties that there was no significant point of law involved in this case to trouble me.
138. That led to the production of two folders containing only (sic) 20 authorities and the citation of further authorities in the parties’ respective closing speeches. My initial feeling on the statements of both Counsel was “*Timeo Danaos et dona ferentes*”. I feel having analysed the authorities in the light of the submissions that my thought was correct.
139. To emphasise the points the Claimants produced for me as annex 1 to their closing submissions a flowchart as to how I should approach the issues in this case.
140. In their closing submissions the Claimants say that the claim is for infringement of copyright in a literary work HBHG by the writing of another literary work DVC. The claim is about applying existing established principles of UK copyright law to the facts as they have emerged. The claim is of non-textual infringement in literary work. It is conceded that such a claim is unusual and because of its nature presents a greater difficulty of analysis than a textual infringement claim.
141. I follow the Claimants “*golden mean*” as set out in their closing submissions. The first point is to identify the work that is relied upon. It is the book HBHG meaning the text that appears reproduced in the published work. It falls within the class of literary works for the purposes of the Copyright Design and Patents Act 1988 (“CDPA88”). The conditions for subsistence of copyright in this work (originality of skill and labour in expression of the work) are admitted by the Defendants (paragraph 5 of the amended Defence). There is a reservation as to the extent of the originality of HBHG and no admission is made as to the originality of any part or element of HBHG.
142. The use of the word “originality” in that paragraph of the Defence is potentially confusing.

21 Sawkins

143. “Originality” for the purposes of CDPA does not equate to novelty see *Sawkins v Hyperion Records Ltd [2005] 1WLR 3281* paragraphs 27-36. A work “need only be **“original” in the limited sense that the author originated it by his efforts rather than slavishly copying it from the work produced by the efforts of another person**”. One looks at the labour expended in achieving the relevant work. Copyright is designed to protect a person from others taking the fruits of his labour and thus short circuiting the work that they must put in to it.
144. Thus it can be said to be irrelevant that the vast majority of the material in HBHG for example is itself derived from other sources. What is protected is the effort put in by the Claimants in researching those sources and the ultimate presentation in the form of HBHG it reflects it is submitted more than slavish copying from those other sources.
145. There is an immediate collision when the material that is produced contains much that is fact or ideas. As Mummery LJ said in *Sawkins* (paragraph 29) **“the important point is that copyright can be used to prevent copying of a substantial part of the relevant form of expression, but it does not prevent use of the information, thoughts or emotions expressed in the copyright work. It does not prevent another person from coincidentally creating a similar work by his own independent efforts. It is not an intellectual property monopoly in the same sense as a patent or registered design. There is no infringement of copyright in the absence of a direct or indirect causal link between the copyright work and the alleged copy”**.
146. It is important to appreciate that because of various expressions about what this case was alleged to concern. Similar expressions plainly occurred in the *Sawkins* case (see paragraph 15). There is nothing for example in this case (as the Claimants rightly point out in their closing) which if decided in their favour would stultify creative endeavour, obtain a monopoly on ideas or historical information or create a precedent which extends the boundaries of copyright protection in sphere of literary works. As I have set out above the Claimants by HBHG intended to create discussion and intended that discussion to manifest itself in other books articles and television programmes. It seems odd that they have only chosen to attack the DVC. I cannot accept Mr Leigh’s observation that the action was only started because their efforts were not properly acknowledged in DVC. First I believe (contrary to his belief) that their work was genuinely and clearly acknowledged. Anybody reading DVC and who had their thoughts stimulated to read further in this area would on looking at chapter 60 go to HBHG as the best source of the material. It is a fact that the Claimants’ book sales have benefited from DVC (and this litigation).
147. Second, I do not believe that the litigation would have been commenced because of a lack of acknowledgment. An acknowledgment is an irrelevance from the point of view from infringement of copyright save in limited perhaps statutory defences which are not raised in this case.
148. It is important to appreciate that the Claimants do not claim a monopoly in respect of facts or ideas as expressed in HBHG.

22 Copying A Substantial Part Of HBHG

149. By section 16 (3) CDPA88 copying a copyright work is an infringement if the work or “*a substantial part of it*” has been copied. The Claimants’ case is not that a substantial part of the *text* of HBHG has been copied but there has nevertheless been copying of a substantial part of the work to produce an altered copy or a colourable imitation.
150. There have been a number of important decisions concerning copying of the nature alleged in this case (i.e. non-textual). Before I analyse those however I should make some preliminary observations. First it is necessary to identify features that have been allegedly copied. In this case it is said that the Central Themes are the features allegedly copied.
151. The differences between the two copyright works are not relevant and while the copied features must be a substantial part of the copyright work relied upon there is no need for them to be a substantial part of the Defendant’s work (see Lord Millet *Designers Guild v Russell Williams (textiles) Ltd [2001] FSR 11* citing *Warwick Film Productions Ltd v Eisinger [1969] 1 Ch 508*).
152. There is much in DVC that is the original (in the non copyright sense) effort of Mr Brown with the assistance of his wife Blythe. There is much in the text and plot of DVC which is not in HBHG. The part that is copied from HBHG must be a substantial part of it but it does not have to be a substantial part in DVC.
153. The Claimants nevertheless acknowledge that absolute protection against copying is not available. I refer to paragraph 33 of their closing submissions. Copyright protection is not confined to the literal text in literary work and changing a few immaterial words in a work that is otherwise the same will not escape liability as they rightly observe. At the other end of the spectrum however they acknowledge copyright should not protect against the borrowing of an idea contained in a work. The courts will not protect “*works*” through this extreme level of abstraction. An extreme level of abstraction was shown in paragraph 111 of the Defendant’s opening skeleton argument. There they say that if there was any scheme of the 15 central points it is that Jesus was father of a bloodline which married into the Merovingians in France and his descendants who have been protected since the Middle Ages by a secret society have a claim to the throne of Palestine. As the Claimants set out in their closing submissions, the extreme points are easy to identify but there is a point on the spectrum which the complexity of the expression warrants protection. *The line to be drawn is to enable a fair balance to be struck between protecting the rights of the author and allowing literary development. That seems to me to be a fair stance to take.*

23 IPC Media

154. It can be drawn (for example) from the judgment of Laddie J in *IPC Media Ltd v Highbury-Pleasure Publishing Ltd [2005] FSR 20* at page 444 “*It is impossible to define the boundary between the mere taking of general concepts and ideas on the one hand and copying in the copyright sense on the other*”.

24 **Green v Broadcasting Corporation**

155. However as part of the assessment of the level of abstraction it seems to me clear that there must be certainty in the subject matter of such monopoly given by copyright in order to avoid justice to the rest of the world see *IPC Media* paragraph 7 referring to *Green v Broadcasting Corporation New Zealand [1989] RPC 700*.
156. The Claimants criticised that submission (see paragraph 57 of their closing submissions). I do not accept the criticism is valid. What the Defendants are saying is that if what is asserted to be infringed is so general that it cannot be certain that would lead to a conclusion that it is such a level of abstraction that no protection should be afforded to it. It is important to appreciate the context in which the Defendant raised this issue, namely the uncertainty created by the Claimants' own inability clearly to state what the Central Theme is by reason of their changes of the Central Theme. The point is that if the Claimants do not know with certainty what their Central Theme is how can anybody else possibly know? The fact that the Defendants have conceded (with the reservation) copyright in HBHG as a whole is nothing to the point. It is for the Claimants to establish that what has been copied is a substantial part of HBHG and in this context that means a substantial part of the Central Theme in a way which seeks to exploit for the Defendant's own benefit the Claimants' work in producing it.

25 **Authorities In Non-Textual Infringement Cases**

157. It is particularly important when a literary work is dealing with actual events to see what it is alleged is protectable and what is infringed.
158. In *Harman Pictures NV v Osborne [1967] 1 WLR 723* the Plaintiffs owned the copyright in a reproduction in cinematographic form of a book "*The Reason Why*" dealing with the Charge of the Light Brigade and the events connected with it. Discussions ensued between them and the Defendants about the possibility of purchase of the Plaintiffs rights or a joint production based on the reason why but they came to nothing. Later the Plaintiff discovered the Defendants intended to produce on their own account a film called "*The Charge of the Light Brigade*" based on a screenplay written by John Osborne the first Defendant (a well known author). The Plaintiffs issued a writ claiming that there was a marked similarity in the choice of incidents in the book and the screenplay although besides any similarities there were many dissimilarities. They applied for an interlocutory injunction. In the course of giving judgment Goff J dealt with the situation where ideas or schemes or systems or methods are sought to be protected see:-

"It is common ground that there can be an original work entitled to protection although the subject matter is not original, but is for example, as in the present case, some well-known event in history. The precise amount of knowledge, labour, judgment or literary skill or taste which the author of any book or other compilation must bestow upon its composition in order to acquire copyright in it within the meaning of the Copyright Act, 1911, cannot be defined in precise terms: per Lord Atkinson in Macmillan & Co. Ltd. v. Cooper. There is, however, no dispute that Mrs. Woodham-

Smith displayed all these qualities in amply sufficient measure and acquired copyright in her book, whilst the plaintiffs' title to the film rights by assignment is also not disputed. What is much more difficult is whether the plaintiffs have made out a sufficient prima facie case of infringement, or rather intended infringement, and before considering the facts, I must refer at some length to the relevant law.

There is no copyright in ideas or schemes or systems or methods: it is confined to their expression.....

*One must, however, be careful not to jump to the conclusion that there has been copying merely because of similarity of stock incidents, or of incidents which are to be found in historical, semi-historical and fictional literature about characters in history, see *Poznanski v. London Film Production Ltd.* In such cases the plaintiffs, and that includes the plaintiffs in the present case, are in an obvious difficulty because of the existence of common sources, as was emphasised in the case of *Pike v. Nicholas...*”*

159. On the facts Goff J granted the interlocutory injunction.

26 *Ravenscroft*

160. The next case is probably the most important in the area of the present litigation *Ravenscroft v Herbert [1980] RPC 193*. This was a claim by the author of a non-fiction book called *The Spear of Destiny*. He alleged that the First Defendant James Herbert a well known author in writing a novel entitled *The Spear* had infringed his copyright. The central feature of both books was a spearhead which forms part of the Hapsburg Treasure exhibited in Vienna. It is described in the museum guide as The Holy Lance. After the 13th century it was venerated as the lance with which the side of Jesus was pierced at the crucifixion. It is said that the spear had been carried in important battles as an emblem and the victories were attributed to its power. The Plaintiff's book combined historical facts and a great deal of mysticism and purports to tell the story of the spear from the earliest times down to the end of the Second World War.

161. Mr Herbert's book is a thriller which weaves an improbable story it is alleged of neo Hitler terrorism in England around the supposed post war exploits of the spear. The Judge (Brightman J as he then was) was plainly unimpressed with the book. For example the fact that the spear is apparently in Vienna is dealt with by Mr Herbert simply describing that as a useless replica.

162. The Plaintiff's allegation was that Mr Herbert was alleged to have made extensive use of the Plaintiff's non fiction work in order to paint in a backcloth of apparent truth against which his own fiction story can be narrated. The question for decision in the case was whether he made a legitimate or illegitimate use of the Plaintiffs work.

163. The Plaintiff's book is summarised in the judgment. The judgment then went on to consider how Mr Herbert came to write *The Spear*. He discovered the Plaintiff's

book, bought it, read it and thought it would make a splendid theme for a novel. He duly produced a novel which is summarised in the judgment and plainly did not as I say impress Brightman J “*One must not underestimate the commercial attraction of the rubbish which I have attempted to describe. The book is written with much inventiveness and a racy flow of language and incident and the numerous scenes of violence exercise a strong appeal to certain readers. The Defendants novels have enjoyed great financial success. Mr Herbert does not think of himself as a serious novelist*”.

164. I make no such comments about either book in the present case as this is not as I have said a quest for truth of the speculative conjectures or an exercise in literary criticism of either book.
165. Mr Herbert conceded that he used the Plaintiff’s book for the source of much of the material.
166. There were numerous examples of significant textual copying (up to 50). The Judge concluded that Mr Herbert had the Plaintiff’s book in front of him when writing his own book (a point which Mr Rayner James QC attempted to put repeatedly to Mr Brown in cross examination). He also acknowledged he had no independent knowledge of medieval history and did no research of his own and as the Judge observed there was much language copying from one book to the other in the Defendants writing of (for example) the prologue. The prologue contains a long list of Emperors of the Roman Empire and the Holy Roman Empire and others (vis Alaric the Visigoth and Theodoric the Visigoth) who held the spear and were successful. These were identical reproductions of the Plaintiffs record save the Roman General Aetius and apparently St Francis of Assisi. I suppose the naming of Aetius is superfluous if the spear is held by Theodoric the Visigoth bearing in mind the result of the Battle of Chalons (as I prefer to call it). Perhaps the dying Theodoric passed it on to Aetius.
167. General Patton emerges in the story but that is not surprising given his apparent interest in mystical things and the surprising manner of his death. As the Judge pointed out the question to decide is the question of fact whether there has been substantial copying of The Spear of Destiny amounting to an infringement of the Plaintiff’s rights. The first question is whether there has been copying and secondly whether the copying is substantial. That factual decision on the facts of that case has no significance in the present dispute. Thus merely because an author of a work of non fiction successfully sued an author of fiction based on his non fictional book provides me with no assistance whatsoever.
168. The judgment is important however in the analysis as between facts and ideas and copyright claims which involve facts or ideas. Thus at page 203 he said this:-

“Mr. Laddie, for the defendants, rightly says that an author has no copyright in his facts, nor in his ideas, but only in his original expression of such facts or ideas. He submitted that in deciding whether copying is substantial there are four principal matters to be taken into account. First, the volume of the material taken, bearing in mind that quality is more important than quantity; secondly, how much of such

material is the subject-matter of copyright and how much is not; thirdly, whether there has been an animus furandi on the part of the defendant; this was treated by Page-Wood V.C. in Jarrold v. Houlston (1857) 3 K & J. 708 as equivalent to an intention on the part of the defendant to take for the purpose of saving himself labour; fourthly, the extent to which the plaintiff's and the defendant's books are competing works.

Copyright protects the skill and labour employed by the plaintiff in production of his work. That skill and labour embraces not only language originated and used by the plaintiff, but also such skill and labour as he has employed in selection and compilation. The principles are clear from the cases. There is a helpful summary of the authorities in [Harman Pictures N.V. v. Osborne \(\[1967\] 1 W.L.R. 723\)](#). For my purposes it is sufficient to cite two passages from that case which are taken from earlier authority:

... another person may originate another work in the same general form, provided he does so from his own resources and makes the work he so originates a work of his own by his own labour and industry bestowed upon it. In determining whether an injunction should be ordered, the question, where the matter of the plaintiff's work is not original, is how far an unfair or undue use has been made of the work? If, instead of searching into the common sources and obtaining your subject-matter from thence, you avail yourself of the labour of your predecessor, adopt his arrangements and questions, or adopt them with a colourable variation, it is an illegitimate use''.

This appears at page 730 of the report.

There is also this passage:

In the case of works not original in the proper sense of the term, but composed of, or compiled or prepared from materials which are open to all, the fact that one man has produced such a work does not take away from anyone else the right to produce another work of the same kind, and in doing so to use all the materials open to him. But as the law has been precisely stated by Hall V.C. in Hogg v. Scott, .the true principle in all these cases is that the defendant is not at liberty to use or avail himself of the labour which the plaintiff has been at for the purpose of producing his work, that is, in fact, merely to take away the result of another man's labour or, in other words, his property''': see page 732.

*In this case the judge was confronted with the well-known book by Mrs. Cecil Woodham Smith entitled *The Reason Why* and also the script for a motion picture written by John*

Osborne. The question which the judge posed was this (at page 736):

... did John Osborne work independently and produce a script which, from the nature of things, has much in common with the book, or did he proceed the other way round and use the book as a basis, taking his selection of incidents and quotations therefrom, albeit omitting a number and making some alternations and additions, by reference to the common sources and by some reference to other sources?

*That is the same test as was stated by [Buckley L.J. in *Elanco Products Ltd. v. Mandops \(Agrochemical Specialists\) Ltd. \[1979\] F.S.R. 46*](#) which was heard on motion for interim relief. The facts, briefly, were that the plaintiffs had invented a herbicide and had carried out trials in order to discover how the product could best be used. Various research establishments had also conducted their own field trials. The results of both the plaintiffs' trials and of the independent trials had been published in certain scientific journals. The plaintiffs marketed the herbicide in tins with which they included a leaflet compiled by the plaintiffs which set out detailed instructions on how the herbicide should be used, upon what crops and when, and what weeds it would best control. The plaintiffs claimed copyright in the leaflet and asserted that it was a compilation of what they regarded as relevant information extracted from all the available literature and especially from their own. After the patent had expired the defendants began to sell the same herbicide with a leaflet which was alleged to be similar to the plaintiffs'. The substantial defence raised by the defendants was that they were entitled to take any information available to the public including that contained in the plaintiffs' literature provided that they did not adopt the same form or the same language, that is to say provided that they did not just copy the plaintiffs' literature. Buckley L.J. said this at page 57:*

"As I understand the law in this case, the defendants were fully entitled to make use of any information of a technical or any other kind, which was available to them in the public domain, for the purpose of compiling their label and their trade literature, and they were not entitled to copy the plaintiffs' label or trade literature thereby making use of the plaintiffs' skill and judgment and saving themselves the trouble, and very possibly the cost, of assembling their own information, either from their own researches or from sources available in documents in the public domain and thereby making their own selection of material to put into that literature and producing their own label and trade literature".

*The main thrust of Mr. Laddie's argument was that the plaintiff intended his book to be read as a factual account of historical events, that the defendant accepted it as fact and did no more than repeat certain of those facts. The plaintiff cannot claim a monopoly in historical facts. The law of copyright does not preclude another author from writing upon the same theme. It is perfectly legitimate for another person to contrive a novel about the Hofburg spear, even about its supposed ancestry and supernatural powers. Otherwise one would be driven to the conclusion that the plaintiff has a monopoly of the facts. Members of the public are entitled to use *The Spear of Destiny* as a historical work of reference. Mr. Laddie conceded that if the plaintiff had research and selected which facts to use, and had expended substantial labour in making that selection, and a substantial amount of his labour had been taken by the defendant, then there might be infringement. In the present case, he submitted, the plaintiff's facts were selected by history or by Dr. Stein and not by the plaintiff. In the result, there had been no reproduction of the plaintiff's book in relation to a substantial part thereof. In the course of his copying the defendant confined himself to those matters which are represented in the plaintiff's book as historical facts, whether their origin is to be found in documented history or in the meditations of Dr. Stein.*

In developing his argument Mr. Laddie drew a distinction between historical works and works of fiction. He said that if any author writes a history book he obtains copyright, but what amounts to an infringement of that copyright, i.e. substantial reproduction, depends to a great extent upon whether all the defendant has taken is historical facts or amounts to more than that. The degree of user which would amount to an infringement is different in the case of a historical work than in the case of a work of fiction. There is more freedom to copy in the case of the historical work.

I am inclined to accept that a historical work is not to be judged by precisely the same standards as a work of fiction. The purpose of a novel is usually to interest the reader and to contribute to his enjoyment of his leisure. A historical work may well have that purpose, but the author of a serious and original historical work may properly be assumed by his readers to have another purpose as well, namely to add to the knowledge possessed by the reader and perhaps in the process to increase the sum total of human experience and understanding. The author of a historical work must, I think, have attributed to him an intention that the information thereby imparted may be used by the reader, because knowledge would become sterile if it could not be applied.

Therefore, it seems to me reasonable to suppose that the law of copyright will allow a wider use to be made of a historical work than of a novel so that knowledge can be built upon knowledge.”

169. There is a further observation on Mr Laddie’s submissions at page 206:-

*“In my judgment, Mr. Laddie's proposition must not be pressed too far. It is, I think, clear from the authorities that an author is not entitled, under the guise of producing an original work, to reproduce the arguments and illustrations of another author so as to appropriate to himself the literary labours of that author: see *Pike v. Nicholas* (1870) L.R. 5 Ch. App. 251, [Ladbroke \(Football\) Ltd. v. William Hill \[1964\] 1 W.L.R. 273](#) and the passages, which I have already read, from the *Harman Pictures N.V.* case.*

Mr. Sheridan, for the plaintiff, invites me to view the matter in a different light. He submits that the plaintiff's work is not a historical work of the conventional type, because it is not a chronology. It is not a continuous methodical record of public events (which is the primary dictionary definition of "history"). The plaintiff's book is poles away from history. It is disjointed and unmethodical (no offensive criticism is intended of the literary technique that he employs) being composed of a variety of different events, recollections, quotations, philosophy, meditations and so on, designed to support the theory in which the plaintiff had come to believe. Vast areas of history are left out by the plaintiff in his attempt to persuade the reader that the Hofburg Spear has the ancestry and attributes which the plaintiff believes are to be ascribed to it. The book is a very personal insight into history. What the plaintiff has done is to select events from history and from his recollection of the meditations of Dr. Stein in order to present to the reader the credentials of the Hofburg Spear.

I accept Mr. Sheridan's analysis of the nature of the plaintiff's work.

*There was a suggestion by Mr. Laddie that some distinction should be drawn in the present case because much of what the defendant copied from *The Spear of Destiny* was merely information derived by the plaintiff from Dr. Stein. I do not think it matters whether the source of the plaintiff's book was painstaking research into documented history or painstaking recording and recollection of what Dr. Stein had told him. It was also suggested that a distinction should be drawn on the ground that *The Spear of Destiny* was, since the death of Dr. Stein, the only possible source of certain of the facts brought to light by the meditation of Dr. Stein. It does not, however,*

seem to me that the paucity of sources of information excuses the defendant from taking the trouble of assembling his own information and making his own selection of material. If that is not practicable, he can always apply to the plaintiff for a licence”.

170. Not surprisingly the Claimants rely upon this case as being a strong pointer in their favour. Less surprisingly and equally understandable in its context is Mr Baldwin QC’s reliance upon parts of the judgment for the defence (he was second junior Counsel on behalf of the Defendants).
171. First it seems to me that it is accepted that an author has no copyright in his facts nor in his ideas but only in his original expression of such facts or ideas. Original in that context does not mean novel of course.
172. Second the purpose of copyright is to protect the skill and labour employed by the Plaintiff in the production of his work.
173. Third in the case of works not original in the proper sense of the term but composed or compiled from materials which are open to all the fact that one man has produced such a work does not take away from anyone else the right to produce another work of the same kind *“and in doing so to use all the materials open to him”*. What he cannot do however is avail himself of the labour of the Plaintiff.
174. Subject to what I say in the next paragraph where a book is intended to be read as a factual historical event and that the Defendant accepts it as fact and did no more than repeat certain of those facts the Plaintiff cannot claim a monopoly in those historical facts. It is accordingly perfectly legitimate for another person to contrive a novel based on those facts as otherwise a Claimant would have a monopoly of the facts. This was an argument put forward by Mr Laddie (page 205 above line 18). It seems to me that the Judge accepted that argument as far as it went (see the bottom of that page and on to page 206). This seems to me to mirror what the Claimants actually expected to occur when they published their book. I do not see Brightman J as such rejecting Mr Laddie’s submissions.
175. It is true (page 206 above) that he accepted that Mr Laddie’s proposition must not be pressed too far as he rightly set out in that part of his judgment although the historical contents and the arguments can be used they cannot be used through the medium of appropriating the literary labours of the original author.
176. In other words the facts and the themes and the ideas cannot be protected but how those facts, themes and ideas are put together (this is the Claimants’ *“architecture”* argument) can be. It follows from this that the Claimants must show that there is a putting together of facts, themes and ideas by them as a result of their efforts and it is that which Mr Brown has copied. I should say on passing that there is no claim based on collocation.

27 *Designers Guild*

177. The next important decision is *The Designers Guild* case.

178. This was a claim by the Plaintiff to enforce its copyright in the artwork for the fabric design Ixia. The infringement complained of was the creation of the Defendants own design Marguerite. There were two issues namely what had the designers of Marguerite copied from Ixia and second did what had been copied amount to the whole or substantial part of Ixia. At first instance the trial judge (Mr Lawrence Collins Q.C as he then was) examined all the circumstances and the witnesses and disbelieved essentially the Defendants and concluded that they had used Ixia (despite their protests to the contrary). On the second issue he rejected the Defendants submissions based on a dissection of the Ixia design and suggestions that they lacked originality and concluded that what happened amounted to a copying of a substantial part of Ixia.
179. On appeal the Judge's findings as to copying were not challenged; the only issue was substantiality. The Court of Appeal overturned the Judge's view as to substantiality on the basis of three reasons namely visual comparison, dissection and ideas rather than expression.
180. Visual comparison has nothing to do with the present case.
181. Second dissection is relevant in the sense that the copied features must not be dealt with piecemeal but the copying as a whole and the cumulative effect (as the Judge had done at first instance) must be considered. However, as Lord Hoffman pointed out (paragraph 22) *"if there had been no findings anything that had been copied except the notion of flowers and stripe, the conclusion in the Court of Appeal would have been unexceptionable, with this involved ignoring the findings of fact, both in their detail and their cumulative effect"*.
182. The key part of the judgment as regards to the present case concerns and observations on *"ideas and expressions"*. Lord Hoffman said this (paragraph 23:-

"Ideas and expression

23 It is often said, as Morritt L.J. said in this case, that copyright subsists not in ideas but in the form in which the ideas are expressed. The distinction between expression and ideas finds a place in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) ([1994] O.J. L336/213), to which the United Kingdom is a party (see Article 9.2: "Copyright protection shall extend to expressions and not to ideas ..."). Nevertheless, it needs to be handled with care. What does it mean? As Lord Hailsham of St Marylebone said in [L.B. \(Plastics\) Ltd v. Swish Products Ltd \[1979\] R.P.C. 551 at 629](#), "it all depends on what you mean by 'ideas'".

24 Plainly there can be no copyright in an idea which is merely in the head, which has not been expressed in copyrightable form, as a literary, dramatic, musical or artistic work, but the distinction between ideas and expression cannot mean anything so trivial as that. On the other hand, every element in the expression of an artistic work (unless it got

there by accident or compulsion) is the expression of an idea on the part of the author. It represents her choice to paint stripes rather than polka dots, flowers rather than tadpoles, use one colour and brush technique rather than another, and so on. The expression of these ideas is protected, both as a cumulative whole and also to the extent to which they form a "substantial part" of the work. Although the term "substantial part" might suggest a quantitative test, or at least the ability to identify some discrete part which, on quantitative or qualitative grounds, can be regarded as substantial, it is clear upon the authorities that neither is the correct test. [Ladbroke \(Football\) Ltd v. William Hill \(Football\) Ltd \[1964\] 1 W.L.R. 273](#) establishes that substantiality depends upon quality rather than quantity (Lord Reid at 276, Lord Evershed at 283, Lord Hodson at 288, Lord Pearce at 293), and there are numerous authorities which show that the "part" which is regarded as substantial can be a feature or combination of features of the work, abstracted from it rather than forming a discrete part. That is what the judge found to have been copied in this case. Or to take another example, the original elements in the plot of a play or novel may be a substantial part, so that copyright may be infringed by a work which does not reproduce a single sentence of the original. If one asks what is being protected in such a case, it is difficult to give any answer except that it is an idea expressed in the copyright work.

*25 My Lords, if one examines the cases in which the distinction between ideas and the expression of ideas has been given effect, I think it will be found that they support two quite distinct propositions. The first is that a copyright work may express certain ideas which are not protected because they have no connection with the literary, dramatic, musical or artistic nature of the work. It is on this ground that, for example, a literary work which describes a system or invention does not entitle the author to claim protection for his system or invention as such. The same is true of an inventive concept expressed in an artistic work. However striking or original it may be, others are (in the absence of patent protection) free to express it in works of their own: see [Kleeneze Ltd v. D.R.G. \(U.K.\) Ltd \[1984\] F.S.R. 399](#). The other proposition is that certain ideas expressed by a copyright work may not be protected because, although they are ideas of a literary, dramatic or artistic nature, they are not original, or so commonplace as not to form a substantial part of the work. *Kenrick & Co. v. Lawrence & Co. (1890) 25 Q.B.D. 99*, is a well-known example. It is on this ground that the mere notion of combining stripes and flowers would not have amounted to a substantial part of the plaintiff's work. At that level of abstraction, the idea, though expressed in the*

design, would not have represented sufficient of the author's skill and labour as to attract copyright protection.

26 Generally speaking, in cases of artistic copyright, the more abstract and simple the copied idea, the less likely it is to constitute a substantial part. Originality, in the sense of the contribution of the author's skill and labour, tends to lie in the detail with which the basic idea is presented. Copyright law protects foxes better than hedgehogs. In this case, however, the elements which the judge found to have been copied went well beyond the banal and I think that the judge was amply justified in deciding that they formed a substantial part of the originality of the work.”

183. Lord Millet criticised the Court of Appeal in effect for attempting by considering that whilst copying had occurred a substantial part of the expression of the idea had not (paragraphs 34-35):

“34 The Court of Appeal began by making a visual comparison of the two designs. Their initial reaction was that it did not look as if the defendants' design involved the copying of a substantial part of the copyright work. As Morritt L.J. put it at para. 30:

On the broadest level they just do not look sufficiently similar.

Recognising that it would not be right to reach a concluded view "on so subjective and unanalytical approach alone", they proceeded to conduct a detailed analysis of the judge's findings of fact and recorded the many differences of detail in those features of the defendants' design which the judge had found to have been copied from the copyright work. This only served to confirm their initial impression. They concluded that, while the defendants had copied the idea of the copyright work and adopted the same techniques, they had not copied a substantial part of the expression of the idea. They accordingly allowed the defendants' appeal.

35 It is difficult to avoid the impression that the Court of Appeal were not persuaded that the defendants had copied the copyright work at all. Unable to reverse the judge's unchallenged findings that they had, they thought that if the defendants had copied any features of the copyright work they could not have copied very much. By adopting this approach they not only went behind the judge's unchallenged findings of fact, which they were not entitled to do, but rejected his finding of substantiality which, being essentially a matter of impression, an appellate court should always be very slow to do”.

184. He also gave guidance as to how a claim of the present type should be approached (paragraphs 38-41):

“38 An action for infringement of artistic copyright, however, is very different. It is not concerned with the appearance of the defendant's work but with its derivation. The copyright owner does not complain that the defendant's work resembles his, his complaint is that the defendant has copied all or a substantial part of the copyright work. The reproduction may be exact or it may introduce deliberate variations--involving altered copying or colourable imitation as it is sometimes called. Even where the copying is exact, the defendant may incorporate the copied features into a larger work much and perhaps most of which is original or derived from other sources. But while the copied features must be a substantial part of the copyright work, they need not form a substantial part of the defendant's work: see [Warwick Film Productions Ltd v. Eisinger \[1969\] Ch. 508](#). Thus the overall appearance of the defendant's work may be very different from the copyright work, but it does not follow that the defendant's work does not infringe the plaintiff's copyright.

39 The first step in an action for infringement of artistic copyright is to identify those features of the defendant's design which the plaintiff alleges have been copied from the copyright work. The court undertakes a visual comparison of the two designs, noting the similarities and the differences. The purpose of the examination is not to see whether the overall appearance of the two designs is similar, but to judge whether the particular similarities relied on are sufficiently close, numerous or extensive to be more likely to be the result of copying than of coincidence. It is at this stage that similarities may be disregarded because they are commonplace, unoriginal, or consist of general ideas. If the plaintiff demonstrates sufficient similarity, not in the works as a whole but in the features which he alleges have been copied, and establishes that the defendant had prior access to the copyright work, the burden passes to the defendant to satisfy the judge that, despite the similarities, they did not result from copying.

40 Even at this stage, therefore, the inquiry is directed to the similarities rather than the differences. This is not to say that the differences are unimportant. They may indicate an independent source and so rebut any inference of copying, but differences in the overall appearance of the two works due to the presence of features of the defendant's work about which no complaint is made are not material. In the present case the disposition of the flowers and (except in one instance) the colourways of the defendants' design are very

different from those of the plaintiffs' design. They were not taken from the copyright work, and the plaintiffs make no complaint in respect of them. They make a significant difference to the overall appearance of the design, but this is not material where the complaint is of infringement of copyright and not passing off.

41 Once the judge has found that the defendants' design incorporates features taken from the copyright work, the question is whether what has been taken constitutes all or a substantial part of the copyright work. This is a matter of impression, for whether the part taken is substantial must be determined by its quality rather than its quantity. It depends upon its importance to the copyright work. It does not depend upon its importance to the defendants' work, as I have already pointed out. The pirated part is considered on its own (see [Ladbroke \(Football\) Ltd v. William Hill \(Football\) Ltd \[1964\] 1 W.L.R. 273 at 293](#), per Lord Pearce) and its importance to the copyright work assessed. There is no need to look at the infringing work for this purpose”.

185. Finally Lord Scott stated that the court should consider whether the Defendant “*has incorporated substantial part of the independent skill, labour etc contributed by the original author in creating the copyright work and that that test is based on the principle” a copier is not at liberty to appropriate the benefit of another's skill and labour”* (paragraph 64).

H APPLICATION OF LEGAL PRINCIPLES TO THE FACTS

186. It is with those unchallenged legal principles that I go on to consider the claim further. I have already set out how HBHG was written. I have alluded in general terms the way in which Mr Brown says DVC was written and I will set this out in more detail. I should however, point out at this stage that Mr Brown's version of events is challenged as shall be seen further in this judgment when I analyse the evidence that was given before me.

28 The Defendant's Contentions

187. The analysis of how it is alleged DVC was written is to be considered in light of the Amended Defence where it is denied that (1) there is any Central Theme in HBHG (2) if there is it cannot be readily found or (3) if there is any Central Theme in HBHG as alleged or (4) even whether HBHG has any Central Theme at all. The Defence also contends that HBHG contains a very large number of ideas and suggestions not all of which are consistent with each other and many of which appear to be marginal. The Central Theme it is suggested is an arbitrary selection of some of those ideas and suggestions with modifications and amplification to suit a presently unknown purpose. That was further expanded in the trial. The Defendants contend that the Central Theme is an artificial creation dovetailed to what can be found in the DVC. Thus it is submitted large parts of essential elements of HBHG are jettisoned from the

Central Theme because they do not appear in the DVC and are thus inconvenient for the purpose of present play.

188. The Defendants further deny that DVC was copied from HBHG but if there are any similarities it is denied that any inference of copying or that DVC reproduced a substantial part of HBHG can be made. It is asserted that the Claimants have no monopoly over historical matters, ideas or theories. The matters set out in the VSS it is suggested are ideas or facts not capable of protection by copyright law as alleged by the Claimants.
189. It is also asserted that a number of other sources in particular WAJ, TR and Rule by Secrecy (“RBS”) contain in substance at least as much as the Central Theme as does DVC. Mr Brown contends that he saw WAJ and TR before he referred to HBHG and saw RBS after he had seen HBHG.
190. The Defence then set out the way in which Mr Brown wrote his earlier books and then embarked upon research simulated first by Da Vinci and messages hidden in his paintings and they *“together found thousands of sources to draw from including artwork, architecture, religious documents, rituals and other historical facts and artefacts and they met with historians and other academics and extended their travels from the Vatican and France to England and elsewhere. Much of this research finds its way into DVC albeit in a distilled form”*. (Paragraph 16). Little of this was produced at the trial.
191. He submitted the Synopsis (in January 2001) and gave evidence he had not seen HBHG prior to that submission.
192. The response to the VSS is set out in Schedule 1 to the Amended Defence. I will deal with this detailed response when I come to assess the VSS. However, it is important to note that the preamble is important. Mr Brown in the preamble states that he looked at numerous sources whilst researching and writing the DVC including HBHG. There was no single or primary source. The Hiram Key (“HK”), TR the Goddess in the Gospels (“GG”) and WAJ were important sources although there were many others.
193. He also states *“in relation to any particular fact or topic it is generally not possible to identify whether there was one particular source or whether matters became known to Mr Brown as a result of him consulting numerous sources. The latter is more likely.”*
194. Accordingly it is important to appreciate that Mr Brown has no positive case generally as regards which sources he relied upon when writing the parts of DVC about which the Claimants complain.

29 *The Synopsis*

195. Certain parts of the Synopsis were redacted due to grounds of commercial confidentiality. It is said of the Synopsis in the Amended Defence (paragraph 17) that it contains the entire framework and thematic crux of the novel as well as specific clues, locations and characters.

196. The Synopsis starts with the reference to Priory of Sion being a factual organisation and founded in 1188 and being active today and including illustrious past grandmasters such as Isaac Newton, Botticelli, Victor Hugo and Leonardo Da Vinci. It next refers to Opus Dei and the critical reports allegedly of that organisation with allegations of brainwashing, coercion, and other practices. Finally, it notes that all descriptions of artwork and architecture and secret rituals are accurate and or paintings and the codes hidden within them can still be seen today. This is the executive summary to whet the reader's appetite.

30 Use of Books in Writing The Synopsis

197. It is plain that the title The Da Vinci Code is taken from TR. The cover of the book describes it as being "*the Secret Code of Leonardo Da Vinci revealed*". Chapter 1 is headed "*The Secret Code of Leonardo Da Vinci*". Mr Brown's original copy as provided in this action has significant notes and markings on them. Most of these marks were done by his wife Blythe. Seven books are listed in a "*partial*" bibliography namely TR, GG, WAJ, History of Knights Templar, HK, Knights Templar and Born in Blood. At that stage there is no reference to RBS. Nor is there any reference to HBHG. One book has been lost (The Knights Templar). Mr Brown says in his witness statement (paragraph 164) that he did not own a copy of HBHG at the time he wrote the Synopsis nor had he or Blythe read it.
198. When starting on the research which was started in May 2000 he started buying books. One of the first books he purchased was TR. The Synopsis he says was written long before they bought or consulted HBHG.
199. I have considerable difficulties with that statement. On the cover of TR is this statement. "*One of the most fascinating books I have read since the Holy Blood and the Holy Grail*" – Colin Wilson. HBHG is extensively cited in the text. After the first annotations at the front of the book in Mr Brown's copy of TR the next significant annotation is at page 39 where HBHG is referred to for the first time. The title of the book is actually underlined and along side it Blythe Brown has written "*get this book*". At page 46 where the text is dealing with HBHG again parts are highlighted. Finally in this context, TR reports on HBHG on page 48 as follows:

"the mass of evidence assembled by Baigent, Leigh and Lincoln in the Holy Blood Holy Grail for the historical existence of the Priory is unassailable. And yet more evidence – which has been amassed by other researchers – was published in the 1996 revised and updated edition of their book. (This is essential reading for anyone interested in this mystery.)"

200. Thereafter the text for a number of pages analyses what is said in HBHG. That part of the text contains markings.
201. At page 66 an express annotation of "HBHG" is made against underlined text showing that the source of that text is HBHG. Now I appreciate that the annotations have not all been made at the same time. TR was apparently purchased in May 2000. On the notes on the front there is a note apparently made on the 14 October 2000 (but still long before the Synopsis was written) reminding Blythe Brown of the fact that

she has just heard a rumour of fact that Pierre Plantard died 13 June 2000. Mr Brown in his evidence suggests that all his books are deeply and extensively and thoroughly researched. Having acquired TR in May 2000 (as is conceded) I cannot accept that HBHG was acquired at a much later time if it is going to be seriously contended that extensive research is gone into before DVC is written.

31 **Criticism of Dan Brown on Books Available when Synopsis Written**

202. The following exchange took place between Mr Brown and myself:-

“MR. JUSTICE PETER SMITH: Before you do, can I ask you to look at page 48 of Templar Revelation, second paragraph at the end. Do you see what they say about Holy Blood, Holy Grail?”

A. The second paragraph?

Q. It starts: "The mass of evidence".

A. On page 49?

Q. 48.

A. "The mass of evidence", yes. (Pause for reading) Yes.

Q. How did you miss it?

A. How did I miss it?

Q. Templar Revelation tells you Holy Blood, Holy Grail is "essential reading" for anyone interested in this mystery and yet that is the only book you did not look at.

A. Actually, I am sure there is an enormous bibliography here of material that we did not look at. In fact, on page 39 there is an actual note that says go and look at the Holy Blood Holy Grail.

Q. That would not really help you. The two things would suggest that you would actually go and get Holy Blood, Holy Grail as "essential reading", it says.

A. And, as I have said, yes, it was essential reading we used it at some point. The question here is when it entered the mix.

Q. You get Templar Revelations around May 2000, you are preparing the synopsis ultimately leading to its release in January 2001. The Templar Revelations is a book that you heavily rely upon and it tells you that HBHG is essential

reading. Yet when leading up to the synopsis you want me to believe that you did not look at it?

A. That is exactly what I want you to believe. It is a very short period of time. I am dealing with broad strokes. I have everything I need in the books in my synopsis, in that bibliography. I would not have been eager to pick up a book this thick about specifics when Templar Revelation so beautifully outlines the points I needed; the same with Margaret Starbird. I am in a synopsis phase. I am looking at the big picture, not the details”.

203. I find his answer unconvincing. In this context the cross examination at T8/1061-1063 and T9/1198-1200 is important. What is extraordinary about Mr Brown’s evidence is that he appears to have acquired all of the books that cover this area apart from the one that is described as essential reading.
204. As that cross examination phase shows Mr Brown has no positive case that he can put forward as to when he acquired HBHG. In reality his sole basis is on the fact that it is not included in the Synopsis. He makes the very good point that he was trying to impress the publishers with the depth of the knowledge that had gone into the book and its research and that it would have been of great assistance to him if he had the book at that time to have mentioned it. The same point could have been made about RBS which would have broadened his knowledge but he accepts that he did not have that until a later stage.
205. There is much force in this contention on his part.
206. Further, it is in my view supported by an analysis of the content of the Synopsis. It is true that there is reference to the Priory of Sion on the very first page and the list of Grand Masters. That however is to be found in TR page 41 (including the two names of Botticelli). The reference to Hiram Abif on page 5 can be found extensively in HK. The further references to the Priory of Sion at pages 9, 12, 15-16, 23 are all references that can be found in the books identified in the partial bibliography as opposed to HBHG. Further on page 23 there is reference to Mary Magdalene fleeing to France where she gave birth to Jesus’ daughter Sarah “**very persuasive historical evidence on this**” (emphasise in the text itself). If there is any such persuasive evidence it cannot come from HBHG which makes no reference to the name of Jesus’ daughter. Such a reference is to be found in WAJ (pages 60-62). Equally the reference to the Council of Nicea on the same page could be derived from HK page 64. I am not sure where the vote 5/4 came from (I suspect it was a literary invention to dramatise the effect of such a narrow vote on allegedly conferring divinity on Jesus). Certainly it cannot have come from HBHG where the correct vote of 218 for 2 against is given (footnote 5 to page 388).
207. The Claimants raised an important point in cross examination of Mr Brown arising out of paragraph 123 of his first witness statement. In that paragraph he gives as an example a point made in the Synopsis at page 48. As he said this was done in January 2001 “**long before we bought or consulted HBHG**”. This paragraph helped him he said work out where the main sources were for the Bloodline point. He refers to the fact that at page 48 of the Synopsis is a reference to “**extends from vine to sea**”. This

at page 48 is said to be a cryptic reference to the more Royal Merovingian bloodline (in French, mer = sea and vigne = vine). This he said came from WAJ page 62. The paragraph then goes on to say that when the bloodline theory is being explained to Sophie by Langdon he included a note to readers that there are countless biblical references to Jesus as a bridegroom and Mary Magdalene as the bride and the vine bearing his sacred fruit. This is dealt with he says in the first three chapters of WAJ.

208. He is quite right in that respect generally. However, reference to page 62 of WAJ shows that the book breaks down Merovingian to be mer and vine as Mary and Vine i.e. not the Sea.
209. At the top there are handwritten pencil notes by Blythe Brown which make the same point. Mer – vin Mary – The Vine. There is therefore nothing in WAJ to analyse Mer = Sea.
210. Confronted with that in cross examination he acknowledged that there is no reference to Mer = Sea at that part of WAJ. His explanation (T8/1072/20) is that he took the French word Mer for Sea as it is much better rhymed for Mary. He said he was fairly certain that it was in other books (it is not). This is terribly weak and he looked like he was making the answer up.
211. Mr Brown walked into a trap that Mr Rayner James set for him. It was put to him that the reference to word Mer = Sea can be found in HBHG page 235. It is also underlined in blue pencil by Blythe Brown. It is worthwhile noting that on page 236 there is further underlining and the notes “*Sauniere have long hair*”. It is unlikely in my view that the underlining on the two pages occurred at a separate time. They appear to be connected with an arrow.
212. Sauniere linked to the curator of the Louvre did not come until after the Synopsis was written. Mr Brown accepted the logic as put to him by Mr Rayner James but disagreed with it. He reiterated that HBHG was not in the mix at that time. He speculated (in my view) that he drew from his knowledge of French that Mer equalled sea.

32 *Absence of Blythe Brown from the Trial*

213. All of this could have been clarified had Blythe Brown given evidence. As shall be shown further in this judgment there are serious issues over the use of HBHG which in reality only she could have explained. I raised her absence at the opening of the trial and drew to the parties’ attention the Court of Appeal decision upholding my decision in *Lennox Lewis v Eliades [2005] EWC 8 Civ1627*. The Court of Appeal upheld my decision to draw adverse inferences from unexplained reasons as to why witnesses who were apparently available when their evidence was crucial to a case were not called. Blythe Brown clearly falls within that context. Faced with that observation the Defendant produced a third witness statement of Mr Brown on 3rd March 2006. In paragraph 19 of that witness statement he set out reasons why Blythe Brown was not called. First he said that he and his wife were very close and that he firmly believed that he could answer any questions regarding her assistance to him in the research of HBHG. Second whilst he felt it important to assist Random House in its Defence of what he regards to be a spurious claim he made it clear to Random House he did not want his wife to be troubled by it. She disliked public attention and

he saw no reason why she should be put through the stress that the glare of publicity would cause. The coverage of the case has been wide spread and he had been thoroughly jostled by the press himself and his wife would have hated it.

214. It is undoubtedly the fact that the case has attracted lots of publicity. However that is hardly surprising given the success of DVC and Mr Brown's rise to stardom. I appreciate that a rise to stardom in the modern world creates intolerable pressures and intrusions into privacy. However it is quite clear that Mr Brown has not been able to provide all the answers as to the material which Blythe prepared for him. Second I do not regard the reasons put forward in the third witness statement for her absence as satisfactory. Whilst the litigation is against Random House it is Mr Brown's and his wife's writings which are effectively in the dock. He has just as big a stake in the outcome as the Defendants. How DVC was researched and created is vital to the issues in this case. Blythe Brown's role in that exercise is crucial and I do not accept that there are reasons of a credible nature put forward as to why she has not appeared to give evidence.
215. Accordingly I conclude that her absence is explicable only on the basis that she would not support Mr Brown's assertion as to the use made of HBHG and when that use occurred in that evidence.
216. With that in mind however I accept Mr Brown's evidence that he did not *use* HBHG when he wrote the Synopsis. The single point identified in this extract of cross examination referred to above is equally explicable on the basis of Mr Brown being caught out in paragraph 123 in being overly casual. I do not accept that this single point is sufficient to reject his evidence on this point. It is quite possible that the annotation occurred after the Synopsis was written when Sophie was linked to Sauniere.
217. He is supported in my view by an examination of the theme of the Synopsis. It seems to me that the theme of the Synopsis is clearly derived from WAJ, TR, HK and GG. It concentrates on the artistic elements of Leonardo da Vinci and the Sacred Feminine Line. I accept that this was down to Blythe Brown's beliefs in this area and I can see and determine in my view that those were the sources for the Synopsis.

33 Use of HBHG By Blythe Brown/Dan Brown

218. However that does not lead to the conclusion that Blythe Brown did not have HBHG at that time and had not prepared research based on it. In my view later evidence as I will set out in this judgment plainly demonstrates that she was using HBHG as a source of material to put to Mr Brown when the Synopsis was written and earlier. It is possible (and given the passage of time the omission is quite understandable) that in discussions between Blythe and Mr Brown the word "*Mer*" was discussed in the context the Merovingians. Mr Brown could easily then have incorporated that in the Synopsis *without appreciating* that she had taken it from HBHG already.
219. As appears further in this judgment there is significant other material which points inexorably to Blythe Brown having used HBHG extensively much earlier (as early as 2000 in my view) than Mr Brown admits. I do not accept that he necessarily knew that and I suspect that this is the area of difficulty which has led to Blythe Brown not giving evidence.

220. Nevertheless the overall position in my view is that the most compelling pointer to the fact that Mr Brown did not use HBHG to write the Synopsis is his well made point that if he had it would have been in the Bibliography for the reasons that he gave.
221. The significance of the Synopsis is that it was provided to the Defendants as the basis for DVC. My view, as set out above, is that HBHG did not feature at that stage but I am firmly of the view that HBHG was the essential tool for the Langdon/Teabing Lectures which were written at a later stage. That stage is of course much later, but not as late as Mr Brown suggests in his evidence. The first 190 pages of the book were delivered in March 2002 and it is accepted that there is no use of HBHG in that part. It does not of course follow that whilst Mr Brown up until that stage, might not have used any HBHG material, that Blythe Brown was not *already* extensively researching the remainder of the book for subsequent use by him. This is, in my view, what happened. I find as a fact that Blythe Brown had HBHG (for reasons which will be amplified below in this judgment) since at least 2000 having been clearly pointed towards it by the extensive references in TR. At the end of the day her failure to give evidence without any reasonable excuse is determinative on this issue.
222. She then used that book (and other material doubtless) to provide assistance to Mr Brown to write the second remaining parts of DVC which process commenced in March 2002 and finished substantively in August 2002.
223. It follows that contrary to the impression given the Synopsis, in my view, was prepared on the basis of a very superficial analysis from a small number of books. Mr Brown in his own evidence said that it was meant to be a broad picture. It certainly was. Whether or not the research became more detailed when the relevant parts of DVC came to be written is a matter for debate.

I THE CENTRAL THEMES AND ANALYSIS

34 General Observations

224. I should make a number of general observations. The Claimants allege that the Defendants have infringed the copyright in the original literary work HBHG. The difficulty in presenting the case is that apart from a modest minimal number of textual copyings which are *not* alleged to be copyright infringement, there is no case based on text comparison to support the allegation of copying let alone substantially copying HBHG.
225. The Claimants seek to get round that problem by presenting the Central Theme. It is said that HBHG expresses its Central Theme and without it there is very little to be found in the book. The Central Theme is then used as a bridge to pass to DVC to show the Central Theme has been reproduced in DVC.
226. It is essential therefore, for the Claimants to show that the Central Theme is expressed in HBHG, that expression of Central Theme is capable of protection as a literary work under CPDA 88 and that Mr Brown has not only copied it but has substantially copied it.

35 **Non Protection For Ideas And Facts Alone**

227. Mr Rayner James QC acknowledged as I have set out above that ideas and facts of *themselves* cannot be protected but the architecture or structure or way in which they are presented can be. It is therefore not enough to point to ideas or facts that exist in the Central Themes that are to be found in HBHG and DVC. It must be shown that the architecture or structure is substantially copied. The only structure that has been identified in this case is the presentation of the 15 Themes in a chronological order. A single textual theme has no structure; it is just a piece of text which is the way the Claimants ultimately suggested the Central Themes should be considered.
228. The Claimants themselves in this case chose to dissect their Central Themes ultimately into 15 component parts. Having done that in effect they invited the Defendants to attack those component parts on an individual basis. This is not dissection as such in my view; it is a matter of responding to how the Claimants chose to present their case.

36 **Baigent On Central Themes**

229. The Claimants then chose to deploy Mr Baigent as a witness (inter alia) to demonstrate their case on the Central Theme on a theme by theme basis. In each case Mr Baigent in his evidence set out the theme, explained why it was important and the research that was undertaken. Finally in each case he summarised his evidence by attacking Mr Brown in sarcastic terms “*amazingly Mr Brown ... reached exactly the same historical conjecture that we had done in HBHG*” (paragraph 117 for example). Second he asserted that Mr Brown did not undertake his own original research in relation to the relevant Central Theme (he never said he did).
230. Having chosen to present their case in this way it is unsurprising that the Defendants attacked Mr Baigent’s evidence. They had no choice. Had they not done so the failure to attack Mr Baigent’s assertions would have been paraded as evidence of the Claimants’ case. In other words the Claimants sowed the seed and reaped the whirlwind.

37 **Destruction of Baigent’s Evidence**

231. Mr Baigent was a poor witness. Those are not my words: they are the words of his own Counsel in his written closing submissions (paragraph 111). Those words do not in my view do justice to the inadequacy of Mr Baigent’s performance. His evidence was comprehensively destroyed by the thorough and searching cross examination of Mr Baldwin QC for the Defendant. It is no good for Mr Rayner James QC in closing submissions to say that Mr Baigent was “*over awed by the circumstances and agreed almost without exception anything that was said by the Judge*”. Cross examination is one of the most important (if not the most important) part of any trial. It is what essentially distinguishes the Common Law from the Civil Law jurisdictions. It is the testing of witnesses in cross examination primarily which enables a Judge to assess the truth of the witness and thus the credibility of the case. Of course allowances have to be made for witness nerves in the witness box. One has to be alert to mechanistic and plainly wrong answers being given when a witness’s performance has collapsed in the witness box. These were all summarised in the case of *EPI Environmental Technologies Inc v Symphony Plastic Technologies Inc [2005] 1 WLR 3456*. (The

dismissal of the appeal from that decision did not touch on these points). They are also echoed in the Court of Appeal decision in *Lennox Lewis* referred to above. Merely because (for example) I disbelieve a witness on one point does not mean that I necessarily reject his evidence on other points. I must review the evidence overall.

232. I make allowances for the fact that Mr Baigent performed so badly he plainly missed obvious points when answering questions (these were mostly revived by Mr Rayner James QC in re-examination). Nevertheless the Defendants are right in their submissions even when taking in to account the factors mentioned above to submit that he was a thoroughly unreliable witness. They say that they do not know whether he was deliberately trying to mislead the court or was simply deluded and that he is either extremely dishonest or a complete fool. I do not need to decide that issue; it does not matter why he said what he did. I can place no reliance on any part of his evidence.
233. I accept the numerous examples that they give in paragraph 75 through to 89 of their closing submissions which show the comprehensive destruction of his evidence. I agree with that analysis by the Defendant.
234. I do not understand the implied criticism in the Claimants' closing that he accepted most of everything the Judge put to him. If it is to be inferred that he was somehow browbeaten by me in to meekly accepting everything I said I reject that suggestion.
235. Mr Baigent did not confine his wild evidence to matters concerning the subject matter of the litigation. He plainly attempted to bolster the credibility of his evidence by attempting to draw on other supposed factual areas to give credibility to his evidence. Thus in paragraph 318 he suggested that Sir Steven Runciman in an account of the dealing with the Crown of Jerusalem after its capture in the First Crusade suggested that in the account that Raymond of Toulouse was tricked. Having read Runciman and re read parts of it for this trial it seemed to me that he did not accurately summarise Runciman's paragraph. It was pointed out in Runciman that Raymond of Toulouse was offered the Crown and refused it. It was then offered to Godfroi. Mr Baigent acknowledged to me that his witness statement did not accurately reflect what was said in Runciman.
236. Second at paragraph 328 he stated that any good history of the Holy Land will talk about the Order of Sion. In fact the "*good histories*" do not refer to the Order of Sion at all. Runciman's book for example (which is generally regarded as a leading authority on the Crusades in English) makes no mention of it. This too he was forced to concede.
237. I was criticised by Rayner James QC for putting these points to Mr Baigent. It was suggested that I should confine my observations to the material that was deployed in front of me. Even if that is a valid criticism (which I do not accept) Mr Baigent chose to bolster his evidence by spurious references to a well known text on the Crusades. It is not unreasonable for the Judge to examine those references himself provided of course that the parties are aware that he is doing it. I fully accept that a Judge should not privately decide a case by reference to his own private researches without telling the parties what he is referring to. I pointed out to Mr Rayner James QC that I had drawn to the attention of his side that I had read Runciman and it was open to them to check whether what I had said was true (of course Mr Baigent agreed with it). Mr

Rayner James' response that he had had enough books to read already was somewhat lame to put it mildly. It is not a difficult exercise to cross check what is said in Runciman. I do not think a Judge should accept as truth something that he knows is untrue provided the parties are given an opportunity to deal with it. It was not suggested I was wrong.

238. This is important because it is a separate example of the way in which Mr Baigent exaggerated his evidence for effect.

38 Change of Course By The Claimants

239. Faced with the patent inadequacy of Mr Baigent's evidence the Claimants in their written closing submissions retreated to the stance that his evidence on the Central Theme s was irrelevant anyway as it was a matter for the Court to decide as to whether or not there was a Central Theme. I wonder whether such a stance would have been taken if Mr Baigent had performed well as a witness?

240. It seems to me that if the Claimants as authors are going to assert in their case what the Central Theme of their book is and give evidence of that the Defendants are bound to respond by testing that evidence in cross examination. Further I am entitled to see whether or not the Claimants evidence about *their* Central Theme is credible. At the end of the day if they are unable to say in a coherent way what their Central Theme is that is strongly supportive of the proposition that there is no such Central Theme as alleged. In addition by dividing their Central Theme up they invited dissection and attempts at elimination of parts by the Defendants.

39 Claimants Closing on Central Themes

241. Despite that dissection the Claimants in their closing submissions retreated to the submission that the Central Theme should be read as a whole it being the Central Theme of HBHG. They submit that it does not have to be the only possible description of what is to be found in the book in that there can be other themes that are dealt with in the book. It was not intended to be a précis full or partial nor was it to be approached as if it were a substitute for the book. Nevertheless they acknowledge that without the Central Theme there is little left for HBHG. The Claimants also retreated from the 15 point division. It was stated not to be critical and was there merely to make the resulting analysis of HBHG and DVC more manageable.

242. They then submitted that if the Central Theme is dissected into 15 separate and discreet points in the course of analysis it should "*not ultimately be left dismembered on the mortuary slab. It or at least those parts which survive the analysis (i.e. as to whether they appear in HBHG) should be re-assembled in to a whole and read as a whole*". They did not say how many of the Themes could be attacked before they become too generalised or too low a level of abstraction.

243. Further they deal with the fact that significant parts of the Central Themes were successfully attacked by the Defendants in cross examination of Mr Baigent. That does not pose a problem for the Claimants; they simply excise those words as being irrelevant (see the abandonment of parts of CT6 and CT15 in paragraph 71 of their closing submissions).

244. Finally it is asserted that the Central Theme is merely intended to be an aid. It is not to be construed as if it were a statute let alone by adopting a literal approach (I agree with that). The language of the Central Theme should be understood to be ordinary language to see what it is saying (I agree with that). If the idea or concept to what it is saying is understood then the exercise is to see whether that idea or concept considered in the context of other Central Theme points is found expressed in HBHG and in DVC (I agree with that). Equally the precise language is not to be necessarily found in either book and indeed will probably not be found in most cases in either book. Given the use of the VSS by the Claimants that is in my view an extraordinary submission to make and I fundamentally disagree with that.
245. All of this analysis by the Claimants arises out of the way in which they chose to present their case and their attempts, to recover their position following the destruction of Mr Baigent's supporting evidence. It seems to me inevitable that one starts with the Claimants' proposition that HBHG always expressed a Central Theme and that is the Central Theme as presented to the court. The Claimants second proposition is that without the Central Theme there is very little in HBHG. It follows therefore that if overall the Central Theme cannot amount to any literary work because it is too general or too low a level of abstraction or because it is a collection of facts and ideas without any architecture or structure then the same must be said of HBHG which is allegedly copied. The Claimants cannot avoid the consequences of their submission and the way the case is presented.
246. Equally it seems to me that if I reject their submission that the Central Theme as put by them is the Central Theme of HBHG it cannot be said that even if Mr Brown copied it that he has thereby copied HBHG or a substantial part thereof.

40 Claimants' Difficulties of Formulation

247. I accept the Claimants submissions that one should not overly dissect the literal language of the Central Themes. Thus the use of casual words by the Claimants should be disregarded. There are a number of examples where the Claimants are casual in their Central Themes or are trying to be too clever. For example the reference in CT8 to "*Pauline*" Christianity is simply too clever. It is not to be found anywhere in HBHG or DVC but its absence from CT8 does not detract from CT8 overall. Equally the abandonment of part of CT6 and CT15 do not diminish the overall impact of those themes. The detailed cross examination of Mr Baigent about CT12 "*administrative and executive arm*" did not advance the overall understanding of the case. It is well known the Knights Templar was a military order and the importance of CT12 is the assertion that the Priory of Sion created the Knights Templar as a front for their activities. This was an example of Mr Baigent becoming over elaborate and confused as a result of the cross examination when he entered in to a debate about the Knights Templars having clerks and administrators. He was led down this path in my view by an over dissecting cross examination by Mr Baldwin QC.
248. Nevertheless for the Claimants case to have any credibility the Central Theme has to be found in HBHG at the first stage before one even comes to consider whether Mr Brown copied it or even substantially copied it because that is the medium through which it is asserted that HBHG itself has been substantially copied.

249. The fact that the Claimants had difficulty formulating their own Central Theme which was allegedly always in their minds when they wrote HBHG is incredible. I can forgive the obvious blunder of missing the Grail out of the first 19 but there are limits to forgiveness. No satisfactory explanation has been given as to why the original CT16 (colloquially “the Splitting of the Elm at Gisors” in 1188) has disappeared. I would have thought that that was important. Old CT14 and 15 which dealt with Godfroi and his special circle of counsellors (allegedly the Order of Sion) and the creation of the Knights Templar by the Order of Sion to act on their behalf (now CT11 and 12) show the chronological development of the Order of the Sion. I cannot see how the dissolution of the relationship between the Order of Sion and the Knights Templar is so insignificant compared with the creation of the two that it disappears as a Central Theme. Equally the removal of old CT9 with the collapse of “*the empire*” (unspecified) (Roman or Byzantine) is not explained either. It is a significant part of that theme that the Church of Rome made a pact with Clovis the most powerful of the Merovingian monarchs. In return for that conversion it is alleged the church pledged itself in perpetuity to his bloodline. The betrayal of that pledge survives in new CT9 which was a distillation of old CT10, 11 and 12. This is the converse of the splitting of the Elm problem. The surviving parts are the breaking of the pact between the Church and the Dynasty but the creation of the pact is left out. This is unbelievable in my view.

J CONCLUSION ON CENTRAL THEMES

250. What is going on I conjecture? It seems to me (and this is what the Defendant submit) is that the Central Theme is not a genuine Central Theme of HBHG and I do not accept that the Claimants genuinely believe it is as such. In my view it is an artificial contrivance designed to create an illusion of a Central Theme for the purposes of alleging infringement of a substantial part of HBHG.
251. I come to that conclusion for a number of reasons.

41 Reasons for Rejecting Central Themes

252. First I reject the suggestion that the Central Theme as such exists in HBHG. I have read HBHG many times (over the 20 years since its publication) and to attempt to find the Central Theme as one cohesive statement as representing in effect the major substantial part of HBHG by reading the text is a task in my view beyond any reader. One simply cannot read HBHG and then having read it discern from that reading that the Central Theme (whether dissected or not) is the Central Theme of HBHG. If it was one would have expected at least to find somewhere a statement that this is the Central Theme. This is where the Green case is relevant.
253. To suggest HBHG has very little in it apart from this Central Theme does a great disservice to the Claimants and I do not believe for one minute they genuinely believe it. It is impossible in my view to dismiss Part One for example which was of course the original platform for their investigations. It is impossible to dismiss the substantial parts of Part Two that are omitted viz Louis VII, the Cutting of the Elm (chapter 7). Chapters 6, 7, 8 and 9 which are largely omitted from the Central Theme.
254. If there is a Central Theme it is the one adverted to by Mr Leigh namely the merger of the Merovingian bloodline with the Royal Bloodline of Mary Magdalene. As such it

is self evident in my view that is an idea which is of a too general level of an abstraction to be capable of protection. Nor is there any architecture or design in HBHG if that were the theme which can be said to have been appropriated. The Claimants simply do not reveal how they came to their idea or conjecture as they prefer to call it. It not being revealed it cannot be appropriated.

42 *The Task of Analysis*

255. I adopt the Claimants analysis of my task in paragraph 33 and 34 of their closing submissions. Copyright should not protect against the borrowing of an idea contained in a work. It is necessary to strike a fair balance between protecting the rights of the author and allowing literary development. It is that fair balance which is in question in my view in this case. Of course it is dependant on the facts of any particular case.
256. Having read the Central Theme as I have said I am unable to find the Central Theme expressed as such in HBHG.
257. The reason is obvious from a reading of the Central Themes individually and as a whole. They consist of a series of generalised ideas, assertions or facts. Some are incredibly general (CT1-3 and 5 for example).
258. As I have said as a Central Theme they cannot as a whole or individually be found in HBHG. It has many other facts, ideas or assertions which are not in the Central Theme. It is quite wrong to assert that HBHG has very little apart from the Central Theme.

43 *Central Themes, What Are They?*

259. Even if there is a Central Theme as alleged by the Claimants in HBHG its expression in the Central Theme it is merely an expression of a number of facts and ideas at a very general level. There is nothing in them in my view that goes beyond that proposition. It follows therefore that the Central Theme as expressed is not such as to justify being protected against copying.
260. In this context I follow the accepted submissions of Mr Laddie in *Ravenscroft* and the expansion in Lord Hoffman's speech in *Designer Guild*. When a book is put forward as being a non fictional book and contains a large number of facts and ideas it is always going to be a difficult exercise in trying to protect against copying of those facts and ideas because as such they cannot be protected. It is the effort and time that has gone into the way in which those ideas and facts that are presented that is capable of protection.

44 *Natural Chronological Order*

261. Even if the Claimants can overcome the fundamental primary difficulties which I have set out above, I do not see that there is a role of "*natural chronological order*". That in my view is a meaningless expression. It is significant that the Claimants have always been coy about their structure and architecture. It is clear that they were alert to the difficulties of their case and the need to identify such matters to formulate a claim. They never formulated any such basis for a claim in a coherent way. That is why the Defendant sought a strike out claim and that is why Lewison J's order

required them to do it again. They singularly failed to do so. Instead suggested non lineal connections were dangled in front of the Defendant in Mr Baigent's witness statement and expanded on in the Claimants' opening submissions. When they were ordered to explain it all of the complicated inter-relating adverted to in Mr Baigent's witness statement and the Claimant's skeleton fell away leaving in my view a complete denouement with a lame chronological order. It is not significant in my view that a series of stated factual events or asserted factual events is listed in a chronological order. What other order could there be? It is itself too general and a low level of extraction itself to justify protection against copying.

45 False Creation

262. Further there is no such chronological order in HBHG as an examination of the location of the themes in the VSS demonstrates. This too demonstrates the falsity of the Central Theme and provides clear indication that they are an artificial creation simply to provide a platform for the present litigation. The Claimants know that their idea of the merger of the two lines of itself is not protectable. Equally they know that mere statements of ideas and fact are not protectable. It is necessary therefore to create a pretence of a structure to found the cause of action. That is what the Central Theme is about and their repeated re-drafting of it is demonstrative again of its falsity.

46 Conclusion on Rejection of Central Themes

263. The conclusion I draw from this is that the Claimants started with DVC to find things in it and worked backwards from that exercise to create the Central Theme in HBHG rather than identifying the Central Theme in HBHG and seeing whether it was to be found in DVC.

264. It is equally the case that when one looks at the counterpart asserted infringements in DVC there is no chronological deployment in that book either.

265. Once again this demonstrates that the chronological order is a lame attempt to find an architectural structure to protect something which is otherwise not protectable.

266. It follows therefore that the Claimants case fails at this preliminary stage. Mr Brown is perfectly entitled to copy these themes. Further these themes do not in my view amount to a substantial part of HBHG for the reasons that I have set out above.

267. The changes of the Central Themes and Mr Baigent's inability to support even the revised Central Themes support this conclusion also. I reject any suggestion that HBHG was always about these Central Themes as alleged by him in his evidence.

268. Why do the Claimants bring the claim I conjecture? I reject Mr Leigh's reason. It seems to me that they have received a genuine and handsome recognition of their role in DVC. Further of course as I have said that recognition accrued benefits to them in financial terms. They may be disappointed that Mr Brown has done so well by DVC. There are a number of reasons for that. First the Claimants' book is categorised as a book of non fiction (although many would suggest it should be truly categorised as fiction). Even as non fiction it is doubtful whether the Claimants have any genuine belief in the conjecture they present. That is why they call it historical conjecture. It is also why the fruits of their labour are hidden away. In truth as I have said the

Rennes-le-Chateau material which leads to the Priory of Sion and which therefore comprises a substantial part of HBHG derives from material delivered to them via Pierre Plantard and his associates. The other major part is of course the Grail legacies of which Mr Leigh clearly has a profound knowledge but which is material well in the public domain. I accept the originality of their thought is in the blending of the two theories.

269. This makes HBHG a very interesting book to read whether or not it is credible. It is unfortunate that the Claimants were not willing to bask in the glow of recognition that the book gave them when it was published in 1982 and the subsequent revival of interest in their book entirely as a result of DVC.
270. The latter is of course a work of fiction and its special attractiveness is the way in which Mr Brown has put together these generalised facts and ideas in to a well received thriller. By writing in such genre he hugely increases the available audience. That is something in my view that the Claimants cannot complain about.
271. My assessments above and determinations marks the end of the Claimants' case. However I should not avoid dealing with the other parts of the case because of the possibility that the Claimants might try to overturn my factual determination. In that eventuality it is essential that I address the remaining issues as well.

K INDIVIDUAL POINTS ON CENTRAL THEMES

47 Use of HBHG

272. I will now analyse the individual components of the Central Themes by reference to the relevant component, its supplementing in VSS and in the light of the evidence.
273. I place no reliance on Mr Baigent's evidence as it was in the light of the destructive cross examination completely useless. I was greatly helped by Annex 5 to the Claimants' closing submissions which is a shorter version of the VSS with references to Mr Brown's US HBHG. As I have said my firm view is that the Langdon and Teabing lectures were written at stage 2 of writing DVC. When Mr Brown wrote stage 2 which in my view is when the character of Teabing was created the US copy of HBHG possessed by Mr Brown and Blythe Brown was used as the primary vehicle for those lectures almost exclusively. I accept that they had recourse to the other material but I do not believe that other material was used significantly for that part of DVC. When I say "*used*" it is my firm view that HBHG was used by Blythe Brown to provide the material. I am unsure as to whether or not Mr Brown knew that, but it does not matter as he incorporated it whether he knew its source or not. I make no finding in that regard.
274. With that in mind I revert to the Central Themes in order. However I should indicate that I am considering them in the context of language similarities and the source of such similarities. I am not considering them in the context of textual infringements as there are not to be any textual infringements. Although in this judgment when analysing the Central Themes I am using that description as a shorthand description I am not intending to imply that the texts identified in DVC are thus evidence of textual or non textual infringement. With that in mind I now consider the Central Themes in the light of the VSS and the evidence.

48 *Central Theme 1*

275. It is plain that this theme is to be found extensively in HBHG and is also to be found in DVC. Further the Brown's US HBHG has been extremely annotated in this area.

49 *Central Theme 2*

276. Once again I accept that this is to be found in HBHG and DVC. Further more I accept that the relevant parts of Mr Brown's US HBHG are annotated. On page 331 for example there is a pink sticker marked "*the marital status of Jesus*".

50 *Central Theme 3*

277. Once again there is the linkage as between HBHG, DVC and the annotations in HBHG.

51 *Central Theme 4*

278. Once again in my view there is a connection of this theme in both HBHG and DVC. Annotations are to be found. There is a further significant annotation at US HBHG 283 where a corner has been turned down and Blythe Brown has written "*what is Grail?*"

52 *Central Theme 5*

279. There is the same connection in this theme also.

53 *Central Theme 6*

280. This too is made out in my view in favour of the Claimants.

54 *Central Theme 7*

281. I disregard the loose use of the word "Franks". The essence is the inter marriage between Jesus' bloodline and the Merovingian dynasty, and that is to be found both in HBHG and DVC and the in the annotations at pages 313 and 399 of Mr Brown's US HBHG as asserted by the Claimants. In addition there are further annotations at page 314 which support the Claimants' case.

55 *Central Theme 8*

282. I have already discounted the unhelpful word "Pauline". Once again the linkage between HBHG and DVC and the annotations in US HBHG is made out.

56 *Central Theme 9*

283. I have already commented on the disappearance of the making of the pact with Clovis as opposed to the church reneging on it earlier in this judgment. Once again, the Claimant's case is made out. The annotations are in US HBHG at page 257 and carry on to page 258.

57 *Central Theme 10*

284. I do not see that this theme is made out. It is based on the assumption that Godfrey embarked to reclaim his birthright. I do not find that in the passages in DVC.

58 *Central Theme 11*

285. Whilst this Central Theme can be discerned from the text of HBHG I do not find it is correspondingly discernable from DVC.

286. The essence of the theme seems to me, to be Godfrey surrounding himself with a circle of special counsellors; something more than merely the founding of the firing time, the latter part is there to be found, but the former part is not.

59 *Central Theme 12*

287. I have already disregarded the slackness as regards military in this theme. Mr Baigent should have simply said that he'd made a mistake. The important part of this theme is that the Priory of Sion created the Knights Templar. That is to be found in both HBHG and DVC. Further the annotations at US HBHG page 106 cross refer to further annotations at page 214.

60 *Central Theme 13.*

288. I do not see that this theme is found in DVC.

61 *Central Theme 14.*

289. I do not see that page 106 HBHG supports Central Theme 14 which is concerned with the protection of (and thus keeping secret) the Merovingian bloodline, the blood royal and the so call Holy Grail (see declaration of Sophie's grandmother referred to above). In contrast that part of the text declares an avowed intention to restore merely the Merovingian Dynasty and bloodline to the whole of France. It will be recalled that one of the criticisms of HBHG was that the Merovingians were not kings of France but were merely kings *in* France, so there was nothing to restore. Mr Plantard, of course, denied that he was any part of the royal bloodline descended from Mary Magdalene. I do not see that the text in HBHG supports the Central Theme although it is fair to say that that Central Theme as alleged is to be found in the text of DVC identified.

62 *Central Theme 15.*

290. I have already dealt with the additional hyphens and the word "Nautonniers". It is plain that the list in DVC was created from the list set out in US HBHG at page 131. The annotations of Blythe Brown on that page in pencil show the completion of the list by the date of death of John Cocteau in 1963 and the change of the name from Filipepi to Botticelli.

291. There are however annotations on the page also in red biro which continue the list of Grand Masters, starting with Abe Francois Du Cord – Borguet (a misspelling of the name to be found at page 211 HBHG). The next Grand Master is stated to be Pierre Plantard, 1981-1984. It has a note "died June 2000" and the Grand Masters since

1984 are “a matter of speculation”. These notes the Claimants suggest (their closing appendix 6 on language similarities) have come from page 211-214 HBHG. I cannot see that. Pierre Plantard was not dead when HBHG was written. Nor is there any reference to the “matter of speculation” elsewhere in HBHG. I have already observed Blythe Brown’s notation earlier, 14th October 2000 the discovery of the death of Pierre Plantard. These additional notes did not find their way into DVC (see page 431). What they do show, however, is that Blythe Brown was not working exclusively from HBHG. I do not see that it can therefore be said that the DVC text is drawn exclusively from HBHG; all it provided was 2 hyphens and the date of the death of Jeanne Cocteau; hardly of any high level of abstraction at all.

292. It is plain from my analysis above that a majority of the individual Central Theme points can be found both in HBHG and DVC in terms of language similarity. That does not take the claimant’s case very far for the reasons that I have set out earlier in this judgment.
293. The failure to establish 4 and possibly 5 of the Central Themes as being either in HBHG or replicated in DVC weakens the Claimants’ case even further. It makes the residual Central Themes even more general and of an even lower level of abstraction and therefore less Central and less a substantial part of HBHG. It reinforces the lack of genuineness of the Claimants case; even after 3 attempts they still cannot get their Central Themes correct to a significant degree.
294. Further, the Defendant deny that these themes are to be found *exclusively* in HBHG. They have no positive case because Mr Brown has no clear recollection with the passage of time and an unfortunate loss of documentation when the cellar of the house was flooded. Elucidation could have been provided, in my view, to a significant degree by Blythe Brown. I have already determined that when he wrote the Synopsis, Mr Brown did not use HBHG. The Synopsis does not, in reality, have what is in effect the Claimants’ case of the Langdon and Teabing lectures. As I have set out above those lectures are where the Central Themes are found. I have rejected Mr Brown’s evidence that he acquired HBHG late in the process of writing DVC.
295. Having rejected that evidence I go on to consider whether he copied from HBHG. I bear in mind that the Claimants do not rely upon textual copying as a basis for primary liability. They say that there are four grounds for saying that Mr Brown has been copying:-
296. Points of Central Theme appear in DVC (I agree in a language sense).
297. Language copying occurred and Mr Brown admitted it (see below).
298. There are numerous references to HBHG and the sources used by Mr Brown and his wife (see below).
299. There are two instances of use of supporting arguments (see below).

L CENTRAL THEME IN DVC

300. As I have said I accept that submission as regards language but I must also deal with the Defendant’s claim that those Themes are to be found in the other books which Mr

and Mrs Brown undoubtedly relied upon. The Claimants in their closing (appendix 3) helpfully set out the quotes provided in schedule 1 to the Amended Defence being the book cited. They face a difficulty in relying upon TR because it plainly draws from HBHG as the source of a lot of its contentions. It is of no defence to say “we copied from TR” if TR itself was copied from HBHG. However for this case of indirect copying to be made out the Claimants must prove if TR is the sole source that TR has been copied from HBHG. Although there are many attributed references it does not follow from that the authors of TR did not do their own research. The text suggests they did. I do not accept the Claimants can prove indirect copying on the evidence before me via the use of TR.

301. It is even clearer in the case of WAJ where Margaret Starbird, in her preface, sets out why she came to write the book. As part of her interest in Judeo – Christian Scriptures in 1985 she read HBHG. She says she was frankly appalled and believed that the authors of HBHG were not only wrong but their book bordered on blasphemy. She says (rightly in my opinion) that the core of HBHG was the marriage of Jesus and Mary Magdalene. She, being a catholic, assumed the authors of the heretical book were mistaken and that therefore it is quite wrong to believe that the established church had suppressed ruthlessly the important female role in the early church. She set about finding the truth. She believed it would be an easy exercise and interestingly she started at the paintings and the symbolism to be found in paintings. After her detailed investigations she completely turned round and came to the conclusion that *“there was real substance in their theories set forth [HBHG]”*. It is clear, therefore, that WAJ is the product of an independent process of reasoning on the part of Margaret Starbird. One example suffice is to show that this is the case. She refers (page 61) to the child of Jesus and Mary Magdalene being called Sarah. That is plainly the product of her researches; as I have already said it is not to be found in HBHG. I have already observed that that aspect is also to be found in DVC.
302. Looking at the Claimants’ appendix 3 analyses the other books referred to in Amended Defence theme by theme (taking into account the above mentioned themes which I have identified as either not being in HBHG or not being in DVC) it will be seen that themes 1-4 and 5 can be found in TR, WAJ, and GG. They can also be found in DVC. The reference to the womb on page 335 DVC is in my view (theme 4) plainly from page 60 of WAJ which also is where the reference to Sarah is to be found.
303. Theme 6, in my view, is derived from WAJ. Theme 7 is to be found in TR, WAJ and GG.
304. I did not find any parts of themes 8, 9 or 15 in any of the books. The position is equivocal as regards themes 10 and 11. There are references in TR and WAJ for themes 12 and 14 and TR for theme 13.
305. As the analysis at appendix 3 of the Claimants’ closing shows, HBHG is heavily annotated mostly by Blythe Brown. In the case of the copying text Mr Brown conceded that it appears that most of those were drawn from HBHG (see below). In addition there are separate documents prepared by Blythe Brown which, in my view, the Claimants establish were also drawn from HBHG (again see below). The picture in respect to the source of the books for the Central Themes is a difficult one. The major reason for this is the generality of the themes. As they are general it not

surprising to find them in such a general way in different books. Equally, it is not surprising to find those generalised statements being drawn from HBHG by other books (TR is a possible but not proven example of this). Some items clearly come from HBHG. Some items plainly do *not* come from HBHG. Mr Brown's evidence is of no assistance because of his vagueness. The person who could have unlocked this complex area is Blythe Brown. She is not here.

306. Taking into account the generality of the central themes and the repeated references to them, not only in HBHG and DVC, and bearing in mind that Blythe Brown has not come to explain how she did her research, I conclude that, in the main, the majority of the Central Themes were drawn from HBHG in a language sense but it was not the sole source of Blythe Brown's efforts. She had the other books and they were used for the Synopsis. However, it seems to me clear that when it came to providing the Langdon and Teabing lectures a different pattern emerges. The Teacher, so called in the Synopsis, had no name. When it came to write the rest of the book at a later stage he was given the name Leigh Teabing, which is drawn from HBHG. It is logical, in my view, that having drawn the name from the authors of HBHG, Mr and Mrs Brown would do that at the time when they were writing the lecture parts of the second part of DVC. That is when they introduce HBHG into the list of books and it is in my view when the detail of the language of the Themes is created. I have already observed that in my view Blythe Brown had done significant research using HBHG from some time in 2000. I do not believe Mr Brown used it, as I have said, for the Synopsis, but it was deployed at this later stage when these lectures were written. As the bulk of the material set out in the themes is to be found in HBHG, I can not believe that Blythe Brown would have adopted a scatter gun approach to find these various themes in a series of other books. She used the other books to expand slightly the material which came from HBHG.
307. If it was otherwise she should have come to Court and said so. Mr Brown in reality as the cross examination showed had no idea what Blythe was researching and when. He just incorporated it. At that stage they might discuss what to incorporate but only in the context of writing the book not in the context of evaluating her research material and its sources.
308. I therefore conclude that the historical parts in the Synopsis were written using TR, WAJ and GG mainly and not using HBHG. When the later material was deployed, however, I find that it was done using HBHG possibly supplemented by already accrued material from, mainly, WAJ.
309. That I deduce from the language of the remaining parts of the Central Themes as they appear in the DVC. I therefore accept the Claimants' first point to show that there are grounds that Mr Brown copied language from HBHG. I do not accept they are evidence of copyright infringement by substantial copying of HBHG whether textual or non textual as they are as I have said too general and too low level of abstraction.

M LANGUAGE COPYING

310. I stress again that it is no part of the Claimants case that any language copying is a copyright infringement in respect of HBHG.

311. Mr Brown was extensively cross examined on the copying examples. I permitted the Claimants to add to those copying examples at the opening of the trial by which time they numbered 9.
312. Mr Rayner James QC's careful and cumulative cross examination forced Mr Brown in my view to accept that the 9 language similarities were drawn from the corresponding text in HBHG.
313. This is self evident in my view when one compares the annotations on the US HBHG and the subsequent counterpart text in the manuscript of DVC of 15th August 2002 which led to the final DVC. It was reinforced by the concessions that Mr Brown made. He was driven to deny matters only when a page was not marked (item 3 for example).
314. Once again the overwhelming majority of the annotations are from Blythe Brown and she is not before me. If there are any residual doubts as to the source of the language similarities (and I have none) her absence would be the final justification for rejecting the Defendant's case on the language similarities.
315. In so doing I reject Mr Brown's evidence that HBHG was acquired later and was not used in any significant way. Blythe Brown's underlinings (absent any other explanation from her) tell their own story. In my view as I have said this is overwhelmingly supportive of the view that when Mr Brown came to write the second part of DVC the historical context that was then inserted was the Langdon and Teabing lectures. At that time Sophie was linked to Sauniere (he was then given a name). Teabing was similarly created from the anagram of the Claimants and the textual insertions show that they were drawn from HBHG.
316. I regard the suggestion that Mr Brown and Blythe Brown created the Langdon/Teabing lectures from the other sources as completely unsustainable. It flies in the face of logic and the documents as carefully demonstrated by the Claimants in the annex of language similarities set out in their closing submissions. The conclusion is irresistible. Blythe Brown provided the material for the lectures with HBHG in her hands.
317. Once again I do not necessarily accept that Mr Brown knew that is what was happening. Much of the material provided by Blythe Brown is unattributed. I do not accept he knew necessarily where she was obtaining her material from. I do not think for one minute he cross-checked his wife's work. That was her valuable input in to DVC. Mr Brown has always acknowledged this and it would be a pointless waste of exercise if he went over the same ground. As I have said elsewhere the fact that Blythe Brown was the true researcher of historical facts and not Mr Brown has certainly caused him difficulties when he submitted to the glare of publicity.
318. None of this actually matters very much in the overall scheme. First, Mr Brown has always acknowledged that he used HBHG at some stage. Second, the use of HBHG for copying of these generalised parts of the text is not of itself actionable. They have no independent cause of action. They fall with the primary decision that I have made above.

319. The Claimants were right not to rely upon these as evidence of textual infringement because an examination of them shows they are extremely generalised. Many of them are in effect the only way in which they can be expressed. The Claimants were alive to this as Mr Leigh's evidence showed when he was cross examined about his approach to lifting sentences and text from other books, as he acknowledged in cross examination (he really put it forward as a matter of pride).

N REFERENCES TO HBHG IN SOURCES USED BY DAN AND BLYTHE BROWN

320. As I have said I am firmly of the view that Blythe Brown at least had access to HBHG before the Synopsis was written. It does not actually matter when she used it or had access to it or when Mr Brown saw it or had access to it. The real question to be answered is the extent to which it was used. I have already set out my finding as to when HBHG was used by Blythe Brown.
321. This is supported in my view by reference to three research documents provided by the Defendants in disclosure namely "Jesus survived", "Langdon reveals" and "Constantine".

63 *Jesus Survived*

322. This is a composite document. The first part came from the internet an article at www.proaxis.com.
323. The second part of the document (which starts at page 13) is headed "Jesus the Man". The source of pages 13-25 has been largely agreed. In a copy produced for the trial the words coloured red have been agreed as being drawn from HBHG. That represents the vast amount of that part of this document. It is reflected in the fact that on page 352 of US HBHG there is a pencil marking and the page is turned over and in pencil is written "Jesus survived" in Blythe Brown's handwriting.
324. Faced with this Mr Brown wriggled in the witness box. He picked on the word "behaviour" in the last line on page 25. This was spelt in UK style and he opined that Blythe would not write a piece of text using an English spelling. He suggested there were instances of English style in the text. He expressed the view that this was a complete document which had been downloaded from the internet. He was unable to identify the relevant internet document and none has been identified. This is a classic example of where Blythe's absence in my view tells against the Defendants. I should observe that in the text at page 19 the word "behavior" is spelt in US style. This is a US spelling out of the US version of HBHG.
325. I was unimpressed with Mr Brown's attempts to explain away this document. It is plain that the document was drawn from HBHG and I am satisfied that the Claimants' case is made out that this document was created by Blythe Brown before the Synopsis using HBHG.
326. In the "properties" of "Jesus Survived" it is stated that it had been edited for a total of 18 minutes. The Defendants rely on this point as showing that it is far more likely that the complete document had been downloaded from the internet which could reflect 18 minutes. That length of time cannot possibly reflect copying out by Blythe

Brown and creating “Jesus The Man” (I agree). There maybe something in that point but I have not had a full and complete explanation. If I had been shown internet documents that would have been of assistance. If I had had evidence from Blythe Brown on this point that would have been of considerable assistance. There remains the possibility that the final produced document was downloaded in 18 minutes or copied in 18 minutes from another document which reflects Blythe Brown’s true work and is now lost. Once again in my view Blythe Brown’s absence counts against the Defendants and this point cannot be used against the Claimants detailed analysis in the respect of the balance of the document.

327. Nevertheless once again this does not take the matter much further. I do not accept that Mr Brown used it when he wrote the Synopsis. I am not convinced that it can be established that he was aware of it at the time he wrote the Synopsis.

64 *Langdon Reveals*

328. This document is agreed to have been distilled from three sources, namely the History of the Knights Templar, HK and HBHG. The Claimants’ case has this dated after the Synopsis. Once again the document was put extensively to Mr Brown in Mr Rayner James QC’s careful and cumulative cross examination and I accept what the Claimants say about it. However this too does not advance the matter any further for the same reasons. That is further reinforced by the fact that HBHG (with other books) is acknowledged in the notes to the text.

65 *Constantine*

329. This document too is virtually entirely drawn from HBHG. This document also the Claimants contend postdates the Synopsis.
330. I accept that these are instances which show the text of HBHG was copied by Blythe Brown when she prepared research material for Mr Brown to write the second part of DVC.
331. However these are not relied upon by the Claimants as evidence of textual infringement.
332. The point however is that all these matters do not lead to a conclusion that Mr Brown copied the Central Theme. Indeed as the Defendant in its closing point out (paragraph 320 and following) it was never put to Mr Brown that he had copied the Central Themes. That in my view is a surprising failure. It may be capable of being explained away on the grounds of something that can be inferred. Nevertheless it is something in my view which should have been put to Mr Brown as it is central to the Claimants’ case.
333. As I have said above there are no Central Themes in HBHG. Mr Brown cannot have copied the Central Themes in any event. It is true that aspects of the Central Themes can be traced through the textual parts identified by the Claimants. That is because the Central Themes are too general and nothing significant is to be concluded from that identification. If it was the Claimants would have elevated the textual citings of the Central Themes to evidence of textual infringement. However they have studiously avoided doing that.

334. All of this material therefore shows simply that as part of a mechanistic exercise Blythe Brown used HBHG in providing generalised and low level abstract material primarily from HBHG but also from other sources as background material for Mr Brown when he wrote DVC.
335. It follows therefore that there has been no copying of the Central Themes and the Claimants' case is not made out based on this material. If there is no copying of the Central Themes there is no copying of the Central Themes when they are to be found in HBHG.
336. Equally there can be no substantial copying of the Central Themes for the same reason and thus no substantial copying of HBHG.
337. None of this material even though established by the Claimants, assist them in their case because they do not lead to a direct allegation of textual infringement.
338. The destruction of Mr Baigent's evidence shows that the Claimants have not in my view created the Central Theme as alleged as a substantial part of HBHG by their time and effort (as opposed to writing HBHG generally). It is true that the determination of that issue is for me and not Mr Baigent but the destruction of his evidence reinforces my own view that the Central Themes are not a substantial part of HBHG and they have not been substantially copied by Mr Brown in DVC.

O WITNESSES

339. I should say something about various witnesses in addition to the specific points I have made. I will exclude Mr Baigent from that analysis as there is nothing more that can be said about his evidence.

66 Mr Leigh

340. I am not sure what Mr Leigh thought was the purpose of his evidence. He seemed to want to have a fight over something and was clearly disappointed at the relative shortness of his cross examination. I did not find his evidence of any significant use in the case save the telling observations that I have already referred to, namely that there is one theme only of HBHG and that he will lift textual matters if he likes them and it suits him.
341. Other than that his evidence did not in my view assist me in the overall evaluation of the case.
342. Mr Lincoln did not give evidence. He is a key part of the saga of HBHG but I do not see that his absence has any significant impact on the overall case.

67 Mr Brown

343. The Claimants say I should treat his evidence with caution. That is too high in my opinion. He started confidently enough but ultimately his confidence was gradually eroded by Mr Rayner James QC's protracted and carefully measured cross examination. In that cross examination Mr Rayner James QC established that in reality Mr Brown knew very little about how the historical background was researched. He in my view simply accepted Blythe Brown's research material when

incorporating it in to the writing of part two of DVC. I do not believe for one minute he was analytical of it or critical of it; he simply accepted it.

344. The Claimants in cross examination also in my view as I have said established that HBHG was possessed by the Browns far earlier than Mr Brown was stating in his evidence. However I do not believe that those failures of Mr Brown's evidence lead me to conclude that I must reject everything he says. For the reasons already set out for example I have accepted his evidence concerning the books he had when he wrote the Synopsis.
345. It ought to have been obvious to Mr Brown that if he had carefully prepared his witness statement that his case on HBHG as he put it would simply fall apart on an examination of the US HBHG, the copying similarities and the other documents to which I have referred. I do not believe he consciously lied. His failure to address these points in my view shows once again that the reality of his research is that it is superficial. This in my view is the explanation for his evidence. He has presented himself as being a deep and thorough researcher for all of the books he produced.
346. The evidence in this case demonstrates that as regards DVC that is simply not correct with respect to historical lectures. The Synopsis was prepared using a minimal amount of material from the books TR, WAJ and GG primarily. The major part of the writings of the lectures at a later stage have substantially come from HBHG.
347. I am aware (this may be an understatement) that the case has wide interest. It is very important that people do not take parts of the judgment out of context.
348. Mr Brown is a fiction writer. As a device to writing fiction he is perfectly entitled to dress up factual scenarios to give an illusion that supports his fiction. He is not (contrary to the complaints of the Claimants) going into deep and detailed research for these factual matters. Indeed as he said in his evidence that would be counterproductive; he wishes to create "grey" areas not black and white. He simply needs therefore a mystery and a series of unanswered questions. He can do that without deep research and that he has done. As he has taken matters at a general and low level of abstraction and he has only taken ideas and facts without any of the architecture (if any) he has done nothing wrong. It would be quite wrong if fictional writers were to have their writings pored over in the way DVC has been pored over in this case by authors of pretend historical books to make an allegation of infringement of copyright. I accept that if that was allowed to happen it would have a serious impact on writing. This case whatever its result would not have that impact in my view. However cases can be used for improper purposes.
349. It should also be appreciated that this case is about the taking a substantial part out from HBHG and placing it in DVC. It does not cover the large significant other aspects of DVC. First there is the material from other sources vis the detail about Leonardo da Vinci and the art forms. Second there is the input of the locations and finally there is the interweaving of these factual and locational parts with the thriller elements. This is where the effort and skill really lies. This judgment should have no impact on Mr Brown's reputation as a thriller writer.
350. Mr Brown should not be denigrated because of the adverse findings I have made against him in respect of some aspects of his evidence. Nor should his book be

criticised or his writings skills be criticised because of those matters. They reflect but a part of the overall package. The package has proved to be extremely successful and like everything (in any sphere) that is successful when one reads Mr Brown's evidence it seems very easy to do.

351. It was said in evidence that there is at least one book in every person. The skill of the great is always (in whatever area is being talked about) in making it all seem very easy.

68 Blythe Brown

352. I have already commented on her absence in certain areas.
353. This case does not involve any further examination of how she did her research. Nor does it involve any criticism of that research and none should be drawn in my view from this judgment.

69 Mr Ruben

354. Mr Ruben's evidence in my view simply demonstrated how important the art of publicity is in the world of publishing. His enthusiasm of the book knew no bounds. I am not sure that it is as good as he says but then I am no literary person.

70 Mr Janson-Smith

355. His evidence did not assist me at all in the overall pattern except to suggest there might have been discussions between him and Mr Leigh when Mr Leigh may have given an impression that litigation was brought for the purpose of extracting money in the expectation of settlement. I do not need to form a view as to that. All I will say is that if Mr Leigh believed that he demonstrated a folly which inflicts Claimants from time to time. It is a very dangerous exercise to commence litigation in the hope that the other side will settle and make a payment. I rather suspect this will be driven home to Mr Leigh (if that was his thought) at the conclusion of this judgment.

P OTHER MATTERS

356. Both sides left no stone unturned in attempting to reconcile every part of the Central Themes, every part of the text of HBHG and DVC and to recreate a factual scenario in a complete way.
357. This provides assistance for me in writing a judgment but it does not mean that all of the material will be used.
358. A judgment is not a work of fiction (I hope) nor is it a piece of conjectural fact. It is a document which ought to deal with the major facts to resolve the dispute. That necessarily involves distillation. It means that unlike literary works of the type featured in this case it is not necessary or productive to attempt to resolve every factual disagreement that arises. Indeed it is quite wrong for a Judge to attempt to reconcile everything and to create his own account. A Judge distils the facts and determines those facts which he concludes are necessary to enable him to come to a decision in the case. That is what I have attempted to do.

359. I am nevertheless grateful for the great amount of work that has gone in to the presentation of the case by both sides.

Q END GAME

360. For the reasons set out in this judgment I dismiss the Claimants' action.

R THE CENTRAL THEME

Central Theme Point
1. Jesus was of royal blood, with a legitimate claim to the throne of Palestine
2. Like any devout Jew of the time, and especially like a Rabbi and any royal or aristocratic claimant, he would have been married.
3. As expected of any Jew at the time, he would have children.
4. At some time after the crucifixion, Jesus' wife, the figure known as Mary Magdalene, fled the Holy Land and found refuge in one of many Judaic communities then scattered around the south of France. When she fled the Holy Land, the Magdalene might have been pregnant with Jesus' offspring, or such offspring might already have been born and brought with her. We concluded from studying the Grail Romances and early manuscripts that Mary Magdalene fled the Holy Land with the Sangraal and that by turning Sangraal into 'Sang Raal' or 'Sang Réal' we suggested that Mary Magdalene fled with the royal blood.
5. We considered what the Holy Grail was, whether the Holy Grail was a cup or whether the Grail was in some way related to Mary Magdalene and the Sang Real. We concluded that the Grail would have been at least two things simultaneously. On the one hand it would have been Jesus's bloodline and descendants and it would have been quite literally the vessel that contained Jesus's blood. In other words it would have been the womb of the Magdalene and by extension the Magdalene herself.
6. In a Judaic community in the South of France, the bloodline of Jesus and the Magdalene would have been perpetuated for some five centuries - not a particularly long time, so far as royal and aristocratic blood lines are concerned.
7. Towards the end of the 5 th century, Jesus' bloodline intermarried with that of the royal line of the Franks. From this union, there issued the Merovingian dynasty.
8. In the meantime, the Roman Empire in the fourth century AD, under the auspices of Constantine, had adopted "Pauline" Christianity as its officially sanctioned and tolerated form of Christianity. This was done as a matter of convenience to foster unity; and once "Pauline" Christianity became the official orthodoxy, all other forms of Christianity became, by definition, heresies. By the end of the century Christianity had become the official religion of the Roman Empire. The Church's dogmatic religious stance thus benefited from the support of secular authority.

9. When the Merovingian dynasty grew weaker under Clovis' successors, the Church reneged on its pact and colluded in the assassination of Dagobert II, last of the Merovingian rulers. Although Dagobert died and the Merovingians were deposed, Dagobert's son, Sigisbert, survived and perpetuated the Merovingian bloodline through a number of noble houses. Towards the end of the 11th century, the Merovingian blood line emerged on the central stage of history in the person of Godfroi de Bouillon, Duke of Lorraine.

10. When Godfroi embarked on the first crusade in 1099, he was, in effect seeking to reclaim his birthright and heritage, the throne of Palestine to which his ancestors had possessed a claim a thousand years before.

11. Godfroi surrounded himself with a circle of counsellors, who were endowed with the Abbey situated on Mount Sion in Jerusalem and became known as the Ordre de Sion, or, subsequently, the Prieuré de Sion (Priory of Sion).

12. The Ordre or Prieuré de Sion created the Knights Templar as their administrative and executive arm.

13. In the mid-12th century, members of the Ordre de Sion established themselves in France, from where they subsequently spread out to own properties across the whole of Europe. When the Holy Land was lost, France became the Prieuré's primary base and headquarters.

14. The Prieuré continued to act as protectors and custodians of the Merovingian bloodline, the "blood royal" or "sang réal", the so-called "Holy Grail".

15. During its early history - until the 14th century - the Grand Masters of the Prieuré were drawn from a network of interlinked families, all of whom could claim Merovingian descent. From the 14th century on, the Prieuré (according to its purported statutes, which Brown would appear not to have seen) would, for complicated reasons, move outside the family. Grand Masters would then be, on occasion, illustrious names - Leonardo, for example, Botticelli, Sir Isaac Newton, Victor Hugo, Debussy, Cocteau. Sometimes, however, the names would be rather more obscure, like Charles Nodier. In any case, all "outsiders" listed as Grand Masters still have close connections with the network of families claiming Merovingian descent.