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Content update: August 2024

Highlights:

- ▶ Sanctions, shipping and construction contracts
- ▶ Coming soon: Mid-year review of key judgments
- ▶ Hot topics on i-law: January–July 2024
- ▶ Recently published content

Construction on i-law.com

Written by experts in building and contract law, Construction on i-law.com contains an unrivalled collection of commentary, analysis and international and English law case reports – a must-read for legal practitioners, construction industry professionals and contractors working in the sector.

Summer recap

Adjudication – Building Safety Act 2022 – Conditions precedent – Contract – Interim payment – Japanese knotweed – Nuisance – Part 7 and Part 8 claims – Remediation costs

Now the rain clouds have finally cleared and the Summer recess is within reach, it feels like a good time to take stock of the year so far in construction case law.

Available soon in the Special Features section of i-law.com, this article revisits some of the most notable judgments from the UK courts during the first six months of 2024. The facts and key findings of each case are considered in a succinct overview with links through to our in-depth, expert analysis and full judgment text in *Building Law Reports*, *Building Law Monthly* and *Construction Industry Law Letter*.

Featured reports include:

Bellway Homes Ltd v Surgo Construction Ltd [2024] BLR 196
www.i-law.com/ilaw/doc/view.htm?id=438636

Davies v Bridgend County Borough Council [2024] UKSC 15; (2024) 41 BLM 06 1
www.i-law.com/ilaw/doc/view.htm?id=439492

ISG Retail Ltd v FK Construction Ltd [2024] BLR 377
www.i-law.com/ilaw/doc/view.htm?id=439822

Triathlon Homes LLP v Stratford Village Development Partnership and Others [2024] BLR 139
www.i-law.com/ilaw/doc/view.htm?id=438635

The article is written by Jeremy Glover, partner at Fenwick Elliot in London.

Sanctions, shipping and construction contracts

The decision of the Supreme Court in *RTI Ltd v MUR Shipping BV* [2024] 1 Lloyd's Rep 621, while not a “bread and butter” construction case, is one of considerable significance for practitioners in this field and confirms three important points relating to the interpretation of force majeure clauses.

The dispute arose out of a contract of affreightment with the issue being whether the shipowner was entitled to rely on a force majeure clause in order to suspend its obligation to load seven cargoes of bauxite. The force majeure event was the imposition of sanctions on the charterer's parent company, which prohibited the shipowner from accepting payment in US dollars (the currency under the contract).

“The interpretation of force majeure clauses”, available in the July issue of *Building Law Monthly*, examines the points of law which are of particular relevance to construction practitioners, including the essence of force majeure clauses, the doctrine

Back to the 80s – “Ground rules revisited”



In the penultimate instalment of our series of articles commemorating The International Construction Law Review's 40 years in circulation, Sir Robert Akenhead provides an update on a topic he originally covered in the journal's first volume in 1983–1984. In “Laying down the ground rules” [1984] ICLR 126 Sir Akenhead, then a QC of the Inner Temple, reviewed the newly introduced Institute of Civil Engineers (ICE) Conditions of Contract for Use in Connection with Ground Investigation (First Edition).

Forty years since the ICE conditions were published with much fanfare, Sir Akenhead suggests that it is still unclear to what extent the world has accepted the importance of ground or site investigations before building work starts, saying that sometimes lip service is paid to this requirement.

The article revisits some seminal judgments where the disputes raised questions on poor site investigation, ground contamination or “unforeseeable conditions”. These include:

Batty v Metropolitan Property Realisations (1978) 7 BLR 1
www.i-law.com/ilaw/doc/view.htm?id=151127

Obrascon Huarte Lain SA v HM Attorney General for Gibraltar [2014] BLR 484 www.i-law.com/ilaw/doc/view.htm?id=346075

Sir Akenhead also takes a comparative glance at the relevant FIDIC and ACE conditions, as well as providing an update on technical aspects of ground investigations including the site report and specification stages.

The article is available at www.i-law.com/ilaw/doc/view.htm?id=440012

Excerpts from the original work are included throughout. However, readers wishing to take a trip down memory lane can view the 1984 article at www.i-law.com/ilaw/doc/view.htm?id=440004

of frustration, and “reasonable endeavours”. It concludes that practitioners responsible for drafting hardship clauses in contracts should pay close attention to the judgment.

www.i-law.com/ilaw/doc/view.htm?id=439950

Readers wishing to delve deeper into the history of this dispute can do so via *Lloyd's Law Reports* on the Maritime & Commercial channel.

The first instance judgment ([2022] 2 Lloyd's Rep 297) is available at www.i-law.com/ilaw/doc/view.htm?id=430711

The Court of Appeal judgment ([2023] 1 Lloyd's Rep 463) is available here www.i-law.com/ilaw/doc/view.htm?id=434300

Contact your account manager for further information on accessing this content.

Recently published

Building Law Monthly

Development agreement: sale or agency?

The issue in dispute in *Donowa v Donridge Heights Ltd* [2024] UKPC 18 was whether an agreement relating to the development of 30 acres of land was a contract of sale or whether the agreement had the effect of constituting the developer the agent of the original owners for the purpose of developing the site. (2024) 41 BLM 07 4
www.i-law.com/ilaw/doc/view.htm?id=439951



Adjudicator took erroneously restrictive view of jurisdiction

In *Morganstone Ltd v Birkemp Ltd* [2024] EWHC 933 (TCC) His Honour Judge Keyser KC, sitting as a Judge of the High Court, held that an adjudicator had been correct to conclude that the entitlement of a sub-contractor to make interim payment applications had not come to an end on the expiry of the payment schedule that had been agreed between the parties. (2024) 41 BLM 06 7
www.i-law.com/ilaw/doc/view.htm?id=439495

Adjudicator has no jurisdiction to decide quantum

In *Engenda Group Ltd v Petroineos Manufacturing Scotland Ltd* [2024] CSOH 36, Lord Young held that the petitioner was entitled to reduce the decision of an adjudicator on the ground that the adjudicator had been “clearly wrong” to conclude that the dispute which he had been asked to decide was not the same or substantially the same as a dispute which he had previously decided between the parties. (2024) 41 BLM 05 1
www.i-law.com/ilaw/doc/view.htm?id=439139

Construction Industry Law Letter

Ubhi Construction Ltd v Aspire Enterprises (UK) Ltd [2024] EWHC 1089 (TCC)

Contract – Whether contract was signed – Whether contract was conditional

On 5 February 2016, Ubhi Construction Ltd entered into a JCT contract with Millenium Enterprises Ltd for a residential development in Ironbridge. (2024) CILL 5016
www.i-law.com/ilaw/doc/view.htm?id=439829



Glover and Another v Fluid Structural Engineers & Technical Designers Ltd and Others [2024] EWHC 1257 (TCC)

Expert evidence – Interference in Expert Joint Statement
Jenni Glover and Littleton Glover were the owners of a property in West London. In 2016 they commenced renovation works at the property including the creation of a new basement. (2024) CILL 4993
www.i-law.com/ilaw/doc/view.htm?id=439497

Dawnvale Cafe Components Ltd v Hylgar Properties Ltd [2024] EWHC 1199 (TCC)

Same dispute – Effect of settlement and Tomlin order
By a contract entered into in February 2020, Hylgar Properties Ltd engaged Dawnvale Cafe Components Ltd to design, supply and install the mechanical works at The Beacon, Hoylake, Wirral. (2024) CILL 4989
www.i-law.com/ilaw/doc/view.htm?id=439660

Building Law Reports

TClarke Contracting Ltd v Bell Build Ltd [2024] BLR 409
Part 8 and Part 7 proceedings – Adjudication decision – Review or appeal from adjudication decision – Factual disputes
TClarke Contracting Ltd, the claimant, was a main contractor engaged to construct a data centre at Greenwich Point in London. By a subcontract dated 4 November 2021, the

claimant sub-contracted the supply and installation of the new substructures and superstructures to Bell Build Ltd for a total contract price of £20,013,088.
www.i-law.com/ilaw/doc/view.htm?id=439823

Lloyds Developments Ltd (in administration) v Accor HotelServices UK Ltd [2024] BLR 388

Civil procedure – Unless orders – Relief from sanctions – Extensions of time

Lloyds Developments Ltd was the owner of a building at Clyde Street, Glasgow that entered into agreements with Accor HotelServices UK Ltd to develop and operate it as a 17-storey hotel. The parties concluded three agreements.
www.i-law.com/ilaw/doc/view.htm?id=439819

Jalla and Others v Royal Dutch Shell plc and Others [2024] BLR 327

Costs – CPR 44 – Whether cost should be awarded on the indemnity basis – Whether a proportional costs order should be made – Payment on accounts of costs – Wasted cost order – Senior Courts Act 1981, section 51 – CPR 46.8 – Practice Direction 46 – Non-party costs order – Application for disclosure against a non-party – CPR 31.17

The underlying dispute arose out of an oil spill that occurred in the Bonga oilfield off the coast of Nigeria on 20 December 2011. The spill emanated from an offshore floating production, storage and off-loading facility located approximately 120 km off the Nigerian coastline of Bayelsa State and Delta State.
www.i-law.com/ilaw/doc/view.htm?id=439520

Construction Law Reporter

Abbey Healthcare (Mill Hill) Ltd v Augusta 2008 LLP (formerly Simply Construct (UK) LLP) [2024] UKSC 23

The claimant sought to enforce the decision of an adjudicator but the defendant resisted enforcement on the ground that the collateral warranty, on the basis of which the claim was brought, was not a construction contract as defined in section 104(1) of the Housing Grants, Construction and Regeneration Act 1996.
www.i-law.com/ilaw/doc/view.htm?id=439849

Don't forget that the Construction Law Reporter case reporting service is included with your Construction on i-law and Building Law Reports subscriptions. To opt in to the fortnightly emails, go to the "My tools" tab on i-law then select and update the Reporter in the "Publication Alerts" options

International Construction Law Review

Extra-contractual claims against state entities under civil law

In researching differences between common law and civil law in the field of construction contracts for a book, I found the most striking difference to be the existence in French civil law, in the case of contracts with state entities, of the right of the contractor to make claims against a state entity on grounds having no counterpart in the common law. [2024] ICLR 330
www.i-law.com/ilaw/doc/view.htm?id=439965

Use of PDMS models in offshore construction contracts – the importance of specific contractual regulations

The use of Plant Design Management Systems (PDMS) for collaboration has become an integrated part of the planning, designing, construction and operation of offshore wind or oil and gas projects. This article addresses certain critical aspects of 3D models and PDMS in offshore construction projects, focusing on the contractual regulations required to manage these digital tools effectively. [2024] ICLR 278
www.i-law.com/ilaw/doc/view.htm?id=439966



Popular articles in *Construction Industry Law Letter*

Some of the most read articles in the Construction Industry Law Letter news service year to date – including archive content – are featured below.

Access to justice – the interim report of Lord Woolf

Lord Woolf was appointed by the Lord Chancellor in March 1994 to review the current Rules and Procedures of the Civil Courts in England and Wales. (1995) CILL 1059

www.i-law.com/ilaw/doc/view.htm?id=36837

University of Exeter v Allianz Insurance plc [2023] EWCA Civ 1484

Insurance cover – Unexploded ordnance – Proximate cause of loss
In 1942, a bomb was dropped by hostile German forces in Exeter. The bomb did not explode, and lay undiscovered until 2021. (2023) CILL 4930

www.i-law.com/ilaw/doc/view.htm?id=437316

Main contractor in repudiatory breach by introducing other labour on subcontract work

Sweatfield Ltd v Hathaway Roofing Ltd (1997) CILL 1235

The plaintiff, formerly known as JT Design Build Ltd, subcontracted roofing and cladding work to Hathaway. (1997) CILL 1235

www.i-law.com/ilaw/doc/view.htm?id=36999

Lidl Great Britain Ltd v Closed Circuit Cooling Ltd t/a 3CL

Enforcement – Application of Grove principle – Prohibition on true value adjudication where notified sum not paid

Lidl Great Britain Ltd engaged 3CL, an industrial refrigeration and air-conditioning contractor, under a framework agreement. The first order issued under the framework agreement was for refrigeration works at Lidl's Belvedere 2 Regional Distribution Centre. (2023) CILL 4921

www.i-law.com/ilaw/doc/view.htm?id=437190

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Still available

Construction law in 2023: a review of key legal and industry developments

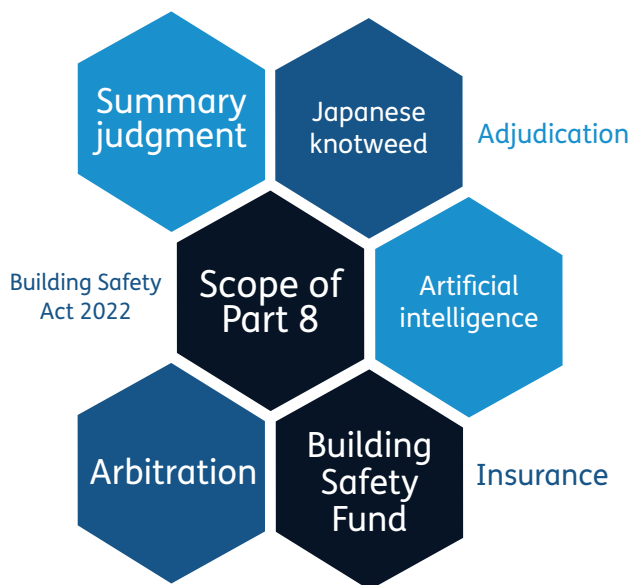
The year 2023 was a particularly special one for construction practitioners in the UK, not least because it was the 150th anniversary of the Technology and Construction Court. To match the significance of this occasion, there has been a string of important case law emerging from the courts which is sure to have broader ramifications for construction disputes generally. This article celebrates this momentous year by providing a concise overview of the most recent developments in the ever-evolving legal landscape in the UK, Hong Kong (SAR), Singapore and UAE.

www.i-law.com/ilaw/doc/view.htm?id=438082



Hot topics January–July 2024

Click on this year's commonly recurring keywords to review a relevant Construction on i-law article



End of term trivia

- ▶ The *Building Law Reports* archive on i-law.com contains 1,763 judgments (accurate at 24 July 2024).
 - ▶ The earliest report included in the online archive is *Hanak v Green* [1976] 1 BLR 1. This is actually a judgment from 1958 and at the time was considered valuable for its historical analysis on the origins and development of set-off and counterclaims.
 - ▶ More recently, *Hanak* was referred to in *John Doyle Construction Ltd (in liquidation) v Erith Contractors Ltd* [2021] BLR 717.
- ▶ 26 judgments have been reported year to date in *Building Law Reports*. The most read of these case reports on i-law is *Vale SA v BHP Group (UK) Ltd and BHP Group Ltd* [2024] BLR 1, which also happens to be the first decision reported in the 2024 volume.
- ▶ The most read judgment in July was *Morganstone Ltd v Birkemp Ltd* [2024] BLR 361.

To view the latest *Building Law Reports* judgments and archive back to 1976 [click here](#).

Building safety remediation orders in the First-tier Tribunal

Readers will be aware that the first judgments on claims under section 124 of the Building Safety Act 2022 are now being published (for example, *Triathlon* [2024] BLR 139). Construction on i-law will continue to monitor the First-tier Tribunal's decisions in this area and relevant cases will be reported in *Building Law Reports* and the news services.

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i-law.com is your essential online legal companion, combining user-friendly functionality with our quality law content. Our construction law library features *Building Law Reports*, *Building Law Monthly* and *Construction Industry Law Letter*, plus a selection of notable reference texts. Our analytical focus on the most influential court decisions ensures you have the right information available for your research and to inform your clients.

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