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## The Building Blocks of Modern Construction Law: A Curated Selection of Cases Shaping Interpretation, Notices, Risk and Remedies

### **DDA Curated Series**

#### **Key Words:**

*Contractual interpretation, surplusage, commercial common sense, factual matrix, conditions precedent, notices, risk allocation, contra proferentem, delay analysis, professional negligence, damages, adjudicator's powers*

#### **Summary:**

From time to time, it is helpful to distil the recurring principles that underpin adjudication, arbitration and construction litigation. This article highlights a curated selection of authorities that continue to shape how contracts are interpreted, notices are assessed, risk is allocated, and disputes are resolved. These cases serve as practical “building blocks” of modern construction law—useful tools for anyone framing, defending or deciding a dispute.

1. **Contractual Interpretation - The Unitary, Objective Approach** – The courts adopt a holistic approach: reading the contract as a whole, objectively, and in its commercial context.
  1. **Reading the Contract as a Whole**
    1. **Wood v Capita Insurance Services Ltd [2017] UKSC 24** – The Supreme Court confirmed the now-settled unitary approach: text and context operate together; neither dominates.
    2. **Eco World-Ballymore Embassy Gardens Company Ltd v Dobler UK Ltd [2021] EWHC 2207 (TCC)** – The courts begin with the natural and ordinary meaning of the words used. Mrs Justice O’Farrell summarised the modern approach at [54]: the court asks what a reasonable person, with all background knowledge available at the time, would have understood the parties to mean. Interpretation requires consideration of:
      - (i) the natural and ordinary meaning of the clause;
      - (ii) other relevant provisions;
      - (iii) the purpose of the clause and the contract;
      - (iv) the facts and circumstances known or assumed at the time; and
      - (v) commercial common sense;but (vi) **excluding any subjective intentions**—consistent with *Arnold v Britton [2015] UKSC 36* per Lord Neuberger Paras.15-23, *Rainy Sky [2011] UKSC 50* per Lord Clarke Paras.21-30, and *Chartbrook [2009] UKHL 38* per Lord Hoffmann

Paras.14-15, 20-25.

3. ***EE v Mundio* [2016] EWHC 531 (TCC)** - The contract must be read as a coherent whole, not as isolated parts.

## 2. Avoiding Redundancy & Reconciling Clauses

1. ***PBS Energo AS v Bester Generacion UK Ltd* [2020] EWHC 223 (TCC)** - Words are not to be treated as surplusage without good reason.
2. ***Dwr Cymru Cyfyngedig (Welsh Water) v Corus UK Ltd* [2007] EWCA Civ 285** - No term should be construed so as to become redundant.
3. ***Pagnan v Tradax* [1987] 3 All ER 565** - Courts will, where possible, reconcile seemingly conflicting provisions.

## 3. Bespoke Amendments, Clarifications & Interactions

1. ***Steve Ward Services (UK) Ltd v Davies & Davies Associates Ltd* [2022] EWCA Civ 153** - Bespoke amendments prevail over standard form provisions where inconsistent.
2. ***Clancy Docwra Ltd v E.ON Energy Solutions Ltd* [2018] EWHC 3124 (TCC)** - Specific clarifications qualify more general obligations.

## 4. The Role of the Factual Matrix

1. ***Schofield & Anor v Smith & Anor* [2022] EWCA Civ 824** - The factual matrix assists in interpretation but cannot override clear wording.

## 5. Commercial Common Sense

1. ***Hyundai Merchant Marine Company Ltd v Trafigura Beheer BV* [Daelim Corporation was the original defendant] [2011] EWHC 3108 (Comm)** - Commercial sense cannot displace unambiguous text.
2. ***Mirant Asia-Pacific Construction (Hong Kong) Ltd v Ove Arup and Partners International Ltd & Anor* [2007] EWHC 918 (TCC)** - Commercial common sense assists only where ambiguity exists.
3. ***K/S Victoria Street (A Danish Partnership) v House of Fraser (Stores Management) Ltd & Ors* [2011] EWCA Civ 904** - The objective intentions of the parties remain paramount.

## 6. Labels, Descriptions & Incorporation

1. ***Reardon Smith Line Ltd v Hansen-Tangen* [1976] 1 WLR 989 (HL)** - Identifiers and descriptions do not automatically create conditions; commercial purpose governs.
2. ***Association of British Travel Agents v British Airways* [2000] EWCA Civ 10516-1** - Contractual terms incorporated by reference are enforceable; commercial practice may inform (but cannot override) the text.

## 2. Standards, Negligence & Repudiatory Breach

### 1. Professional Negligence

1. ***Costain Ltd v Charles Haswell & Partners Ltd* [2009] EWHC 3140 (TCC)** - Professionals must meet the standard of the reasonably competent practitioner; causation and foreseeability remain central.

### 2. Repudiation & Termination

1. ***De Beers UK Ltd v Atos Origin It Services UK Ltd* [2010] EWHC 3276 (TCC)** - Repudiatory breach is assessed objectively; failure to perform core obligations can justify termination and damages.

### 3. Conditions Precedent & Notices

#### 1. Strict Compliance

1. **WW Gear Construction Ltd v McGee Group Ltd** [\[2010\] EWHC 1460 \(TCC\)](#) – Conditions precedent must be complied with strictly; non-compliance bars recovery.
2. **Tata Consultancy Services Ltd v Disclosure and Barring Service** [\[2024\] EWHC 1185 \(TCC\)](#); [\[2025\] EWCA Civ 380](#) – Reaffirms strictness in notice-based conditions precedent.
3. **Glen Water Ltd v Northern Ireland Water Ltd** [\[2017\] NIQB 20](#) – Failure to comply with notice requirements defeats the claim.

#### 2. Purpose Over Form

1. **Obrascon Huarte Lain SA v Her Majesty's Attorney General for Gibraltar** [\[2014\] EWHC 1028 \(TCC\)](#) – The court assesses whether the notice fulfilled its purpose, not whether it followed perfect form.

#### 3. Objective Recipient Test

1. **Mannai Investment Co Ltd v. Eagle Star Assurance** [\[1997\] UKHL 19; \[1997\] AC 749](#); [\[1997\] 3 All ER 352](#); [\[1997\] 2 WLR 945](#) – The question is how a reasonable recipient would understand the notice.

#### 4. Commercial Construction

1. **Walter Lilly & Company Ltd v Mackay & Anor** [\[2012\] EWHC 1773 \(TCC\)](#) – Notices should be construed sensibly and commercially.

### 4. Risk Allocation & Scope of Obligations

#### 1. Respecting the Bargain

1. **Triple Point Technology, Inc v PTT Public Company Ltd** [\[2021\] UKSC 29](#); [\[2019\] EWCA Civ 230](#) – Courts give natural meaning to risk allocation provisions; parties are free to allocate as they choose.
2. **Transocean Drilling UK Ltd v Providence Resources Plc** [\[2016\] EWCA Civ 372](#) – Commercial bargains will be upheld even if they seem onerous.

#### 2. Responsibility Follows Allocation

1. **Brookfield Construction (UK) Ltd v Foster & Partners Ltd & Anor** [\[2009\] EWHC 307 \(TCC\)](#) – Liability follows the contractual allocation of responsibility.

### 5. Contra Proferentem – Now a Limited Tool

1. **Persimmon Homes Ltd v Ove Arup & Partners Ltd & Anor** [\[2017\] EWCA Civ 373](#) – Contra proferentem has marginal relevance in modern commercial contracts.
2. **Persimmon Homes (South Coast) Ltd v Hall Aggregates (South Coast) Ltd & Anor** [\[2008\] EWHC 2379 \(TCC\)](#) – Ordinary and natural meaning prevails.

### 6. Expert Evidence & Delay

1. **The Ikarian Reefer** [\[1993\] 2 Lloyd's Rep 68](#) – The foundation of expert witness duties.
2. **Thomas Barnes & Sons Plc v Blackburn with Darwen Borough Council** [\[2022\] EWHC 2598 \(TCC\)](#) – Delay analysis must be robust, evidence-based, and aligned with contractual mechanisms.
3. **Balfour Beatty Construction Ltd v London Borough of Lambeth** [\[2002\] EWHC 597 \(TCC\)](#) – Global or inadequately evidenced claims fail; adjudicators must stay within jurisdiction and parties must present coherent evidence.

### 7. Conclusiveness, Certificates & Adjudicator's Powers

#### 1. Jurisdiction & Power

1. **Beaufort Developments (NI) Ltd v. Gilbert-Ash NI Ltd and Others** [\[1998\] UKHL 19](#); [\[1999\] AC 266](#); [\[1998\] 2 All ER 778](#); [\[1998\] 2 WLR 860](#) – An adjudicator's powers derive strictly from the contract.
2. **Fenice Investments Inc v Jerram Falkus Construction Ltd** [\[2009\] EWHC 3272 \(TCC\)](#) – Adjudicator's decisions are binding unless and until overturned: the "pay now, argue later" rule reinforced.

**2. Reopening Assessments**

1. **Imperial Chemical Industries Ltd v Merit Merrell Technology Ltd (No. 2)** [\[2018\] EWHC 1577 \(TCC\)](#) – Cogent evidence is needed to revisit interim assessments.

**3. Certificates – "In Rem" vs "In Personam"**

1. **Minster Trust v Traps Tractors** [\[1954\] 1 WLR 963](#) – Certificates may set objective (in rem) or contract-specific (in personam) standards depending on the parties' agreement.

**4. Limits on Varying Extensions of Time**

1. **John Barker v Portman Hotel** [\(1996\) 83 BLR 31](#); [50 ConLR 43](#) and **Global Time Investments v Super Keen Investments** [\[2000\] HKFCA 104](#) – An architect's decision may be reviewed by the court where the architect has not exercised his contractual duty to act fairly and reasonably, or where the contractual machinery breaks down; otherwise, the court cannot simply re-exercise the architect's discretion; note differing statutory regimes. *John Barker* pre-dated the introduction of the HGCRA and The Scheme. The HGCRA and The Scheme did not apply to *Global Time Investments*.

## 8. Loss, Expense & Damages

1. **Alfred McAlpine Homes v Property and Land Contractors** [\(1995\) 76 BLR 56](#) – Head-office overheads and profit are recoverable where properly evidenced and causally linked.

## Key Takeaway

Across the authorities, several themes emerge:

1. **Text, context and commercial purpose work together**—but clear wording prevails.
2. **Strict compliance with notice provisions** is essential; conditions precedent are unforgiving.
3. **Risk allocation stands unless the contract says otherwise.**
4. **Expert evidence must be disciplined and robust.**
5. **Certificates, valuations and adjudicator powers are strictly governed by the contract.**

These principles shape the outcome of disputes and remain the essential tools for those drafting, advising, or deciding within the construction sector.

#ConstructionLaw #ContractualInterpretation #CommercialCommonSense #FactualMatrix  
#ConditionsPrecedent #Notices #RiskAllocation #ContraProferentem #DelayAnalysis  
#ExpertEvidence #ProfessionalNegligence #AdjudicatorsPowers #ConstructionDisputes  
#Arbitration #Adjudication #DDALegal #DDACurated

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FIDIC Adjudication Panel Member since 2021

ICE Adjudication Panel Member since 2021

Law Society Panel Arbitrator

RIBA Adjudication Panel Member since 2018

RICS Adjudication Panel Member since 2006

RICS Dispute Board Registered since 2013

TECSA Adjudication Panel Member since 2012

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