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Contracts in Practice: the latest from the courts

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General Principles Applied by the Courts



Wood v Capita [2015] and Arnold v Britton [2017]

“The meaning of the words is to be assessed in light of:

- (i) the natural and ordinary meaning of the clause,*
- (ii) any other relevant provisions of the contract,*
- (iii) the overall purpose of the clause and the contract itself,*
- (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and*
- (v) commercial common sense, but*
- (vi) disregarding subjective evidence of any party's intention.”*
(Emphasis added)

Sara & Hossein Holdings Ltd v Blacks Outdoor Retail Ltd [2023]

“(1) The contract must be interpreted objectively by asking what a reasonable person, with all the background knowledge which would reasonably have been available to the parties when they entered into the contract, would have understood the language of the contract to mean.

(2) The court must consider the contract as a whole and, depending on the nature, formality and quality of its drafting, give more or less weight to elements of the wider context in reaching its view as to its objective meaning.

(3) Interpretation is a unitary exercise which involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its implications and consequences are investigated.” (Emphasis added)

Prior negotiations and subjective intentions are irrelevant.

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Specific Examples



Westfield Park Ltd v Harworth Estates Investments Ltd [2025] EWCA Civ 1374

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Background:

- The case concerned the sale of the York Holiday Park Development, a former colliery site, from Harworth (seller) to Westfield (buyer).
- The site included an area intended for static caravans but affected by a "Zone of Influence" ("ZOI") around two mineshafts, as designated by the Coal Authority.
- The sale agreement included a deferred consideration clause: if the ZOI was reduced (making more land developable), Westfield would pay Harworth up to £400,000 as a possible extra "Released Land Payment", calculated by the area released, if the Coal Authority "*confirm in writing that the Zone of Influence is reduced*".

Westfield Park Ltd v Harworth Estates Investments Ltd

Dispute:

- Following correspondence between Harworth and the Coal Authorities' consultants, the Coal Authority replied stating that it had "no objection" to the placement of static caravans on part of the ZOI.
- Harworth relied on this response and demanded payment of the Released Land Payment, however, Westfield rejected this on the grounds that the Agreement required an actual reduction in the ZOI, which had not been evidenced.
- The Coal Authority said that "*the calculated zone of influence, where temporary structures (i.e. static caravans) cannot be placed, can be reduced.*" However there remained a single ZOI, unchanged in size.

Westfield Park Ltd v Harworth Estates Investments Ltd

First Instance:

- HHJ Klein was influenced by Coal Authority guidance which he believed meant it lacked power to reduce the zone of influence. Accordingly, he concluded that the words used by the parties could not be given their natural and ordinary meaning as this defied commercial common sense.
- He held that a reasonable person would understand the Agreement to provide for additional payment if the Coal Authority permitted static caravans to be sited within the ZOI.
- Adopting a purposive approach, HHJ Klein treated the Coal Authority's letter of "no objection" as sufficient to trigger the "Released Land Payment". Westfield appealed to the Court of Appeal.

Westfield Park Ltd v Harworth Estates Investments Ltd

- This approach at first instance was criticised by the Court of Appeal (“CoA”) as failing to apply the principles of contract construction explained by the Supreme Court in *Arnold v Britton* [2015]
- The Court of Appeal held that, under the Agreement, payment was only triggered if the Coal Authority “confirm[ed] in writing that the Zone of Influence is reduced [or released]”.
- A reasonable reader with knowledge of the facts, which was available to the parties, would interpret the Agreement according to its plain and ordinary language. This did not refer to permissions, changes of use, or partial releases.
- The Coal Authority’s “no objection” letters therefore did not satisfy the agreed trigger for payment, which was that the defined ZOI had been reduced.

Tyson International Co Ltd v GIC Re, India, Corporate Member Ltd [2026]

EWCA Civ 40

Background:

- The dispute arose from a reinsurance programme involving a Bermudan captive insurer and multiple reinsurers, including GIC Re.
- The parties entered into two Market Reform Contracts (MRCs) commonly used in the London reinsurance market and two reinsurance certificates in the Market Uniform Reinsurance Agreement (MURA) form, more commonly used in the US market.
- The MRCs contained English law governing provisions and exclusive English jurisdiction clauses. Whereas the Certificates contained New York arbitration agreements.
- Each Certificate also included a "Confusion Clause", providing that the MRC would "take precedence over the [Certificate] in case of confusion."
- The parties became embroiled in a jurisdictional dispute over whether the coverage claim should be heard in the English Commercial Court or in arbitration in New York.

Tyson International Co Ltd v GIC Re, India, Corporate Member Ltd

First instance: Held that the dispute should proceed in the English Commercial Court.

GIC was given permission to appeal on two principal grounds:

- That the Commercial Court had erred in its interpretation of the Confusion Clause by treating it as applicable only where the Certificate was uncertain in meaning; and
- That the judge should have held that the arbitration clause and the exclusive jurisdiction clause were reconcilable, with the arbitration agreement taking priority and the English courts exercising auxiliary or supervisory jurisdiction over the New York arbitration.

Tyson International Co Ltd v GIC Re, India, Corporate Member Ltd

The Court of Appeal:

- **First ground of appeal:** Court found that on both the natural meaning of the words used, and as a matter of commercial common sense, the Confusion Clause operated to the same effect as a typical hierarchy clause, requiring the MRCs and Facultative Certificates to be read together, with the terms of the MRCs prevailing in case of “*confusion*” between the two.
- **Second ground of appeal:**
- Where the parties’ agreement included an inconsistency or hierarchy clause, the assumption that there is no inconsistency between the terms agreed does not apply.
- The question of construction is to approach the documents “*in a cool and objective spirit*” to see whether there is inconsistency or not.
- The Court found the exclusive jurisdiction clauses and arbitration agreements were “*flatly inconsistent*” and the defendant’s contended construction inverted the bargain struck by the parties as it would in fact give precedence to the Certificates over the MRCs.

Providence Building Services Ltd v Hexagon Housing Association Ltd [2026] UKSC 1

Background:

- The dispute arose under a JCT Design & Build Contract (2016 edition), under which Hexagon Developments Ltd (“Hexagon”) engaged Providence Construction Ltd (“Providence”) to carry out construction works in Purley, London.
- Hexagon failed to make a payment when due, prompting Providence to issue a notice of specified default. Although Hexagon remedied that default within 28 days, it later missed a further payment, after which Providence sought to terminate the contract on the basis of a repeated specified default.

Providence Building Services Ltd v Hexagon Housing Association Ltd

Supreme Court Decision:

- The Supreme Court unanimously allowed Hexagon’s appeal, reversing the Court of Appeal (Coulson, Popplewell and Stuart Smith LJJ).
- The judgment held that on the construction of termination clauses in the JCT Design & Build Contract (2016) a contractor cannot terminate under clause 8.9.4 unless a prior right to terminate under clause 8.9.3 has already accrued (but not been exercised).
- The effect of this is that no termination for successive late payments where earlier rights have not been preserved through an accrued but unexercised termination entitlement.
- The Supreme Court held that this interpretation produced a more rational commercial outcome than Providence’s, which would have permitted termination for potentially minor repeated late payments even where payment had been made within the cure period which may lead to an “extreme outcome”.

Providence Building Services Ltd v Hexagon Housing Association Ltd [2026] UKSC 1

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Cont.d:

- The Court also confirmed that, as part of the unitary exercise of contractual interpretation, courts may prefer the more rational of two competing interpretations.
- The Supreme Court further held that clause 8.4, governing employer termination, has a different effect from the contractor termination provisions: an employer may terminate for repeated defaults without first acquiring a right to terminate. This point, though left undecided at first instance, has now been clarified.
- The decision is of major significance given the widespread use of the JCT D&B form and the adoption of identical termination wording in the 2024 edition. **More broadly, the Court confirmed that industry-wide standard forms are interpreted objectively and consistently with the intentions of their drafters, a different inquiry from interpreting bespoke commercial contracts.**

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Contract Interpretation in Part 8 Claims

Example 1 – Design Obligations

Mace Construct Ltd v Baltic Investment Holdings Ltd [2026] EWHC 976 (TCC)

- Dispute about the scope of Mace’s design responsibility for certain “derogation items” under an amended JCT D&B Contract 2016. Baltic argued that Mace took on the entirety of the design responsibility for those items, either at the time of contract or when the initial design period expired on 2 February 2024.
- The Schedule of Derogations stated that Mace was *“unable to take design responsibility, associated risk of any discrepancies, inconsistencies and inadequacy of the below listed items until the period of initial design development is complete on the 2nd February 2024”* (para 1), and that *“once the derogations listed in this document have been concluded and approval from all parties obtained, and formal instruction received Mace Construct Ltd will take design responsibility on the items listed”* (para 2).
- An adjudicator decided that under amended clause 1.3 of the Contract, the general provisions in the JCT Conditions that Mace took on the entirety of the design responsibility took precedence over the Schedule of Derogations.
- DHCJ Adrian Williamson KC decided on a Part 8 claim that the adjudicator was wrong:
 - **[23]**: the purpose of the Schedule of Derogations was clearly to limit Mace’s obligations on the listed items.
 - **[24]-[27]**: the Court should seek to give effect to the entirety of the agreement, and it would be an odd result not to give effect to the words in para 2 of the Schedule of Derogations and impose a cut-off on 2 February 2024.
 - **[30]**: the Schedule of Derogations does not “modify” the Conditions, but it simply supplements and clarifies the way in which Mace performs its obligations and undertakes design responsibility.

Contract Interpretation in Part 8 Claims

Example 2 – EOT Mechanism

Clerkenwell Lifestyle (UK) Ltd v HG Construction Ltd [2026] EWHC 1406 (TCC)

- Dispute between the Employer (Clerkenwell) and the Contractor (HG) about EOTs and LDs in relation to the design and construction of a new hotel and affordable apartments in Central London under an amended JCT D&B Contract 2016.
- During the Project, the Employer's Agent (AY) issued an EOT award on the back of an exchange of email correspondence between December 2022 and February 2023 regarding the time and cost consequences of delays on the Project and also on a related "Office Contract". However, HG considered that it was entitled to further EOTs.
- In an adjudication decision dated 5 January 2026, the adjudicator decided that HG was entitled to further EOTs based on five Relevant Events, fixed the revised sectional completion dates by adding those EOTs to the contractual completion dates, and awarded further LDs of £955K to Clerkenwell.
- HG resisted enforcement and also sought Part 8 declarations that AY's EOT award in February 2023 amounted to a binding agreement. Jefford J rejected HG's case in its entirety:
 - **[83]**: Looking at the context, the parties were agreeing how they would operate the contractual mechanism under clause 2.25.1 of the JCT Contract and not that they would enter into some free-standing and binding agreement to revise the completion dates.
 - **[87]-[88]** and **[90]**: Some of the proposals in the February 2023 emails were expressed in terms that were clearly not intended to lead to a binding agreement. Any agreement would have lacked clarity in any event.
 - **[96]-[101]**: Following the approach in *Uniform Building Contractors Ltd v The Water and Sewerage Authority of Trinidad and Tobago* [2026] UKPC 2, Article 3 of the JCT Contract is not to be read as granting authority beyond their specific terms or allowing AY to make new contracts or depart from the existing contract.

Contract Interpretation and Conditions Precedent – Notification of Claims

Uniform Building Contractors Ltd v The Water and Sewerage Authority of Trinidad and Tobago [2026] UKPC 2

Background:

- The dispute arose under a 2007 contract between the Water and Sewerage Authority of Trinidad and Tobago (“WASA”) and Uniform Building Contractors Ltd (“UBC”) for the design, supply and installation of approximately 28km of pipeline from Rio Claro to Mayaro.
- The contract incorporated the FIDIC Yellow Book (1999 Edition) alongside Conditions of Particular Application, Employer’s Requirements and a Bill of Quantities.
- It was a classic lump-sum design-and-build arrangement in which the contractor assumed broad responsibility for both design and construction and for familiarisation with site conditions.
- The works commenced in May 2007 and were terminated by WASA in May and June 2009 following disputes related to testing and compliance.

Contract Interpretation and Conditions Precedent – Notification of Claims

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First Instance:

- The High Court dismissed both UBC's claim and WASA's counterclaim.
- UBC appealed the trial judge's decision, but WASA did not appeal the dismissal of the counterclaim.

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Contract Interpretation and Conditions Precedent – Notification of Claims

Court of Appeal

- Before the Court of Appeal, UBC limited its claim to four discrete elements of work:
 1. Laying pipework in the roadway (rather than in verges),
 2. Removal of excavated material deemed unsuitable for backfill,
 3. Importation of suitable backfill, and
 4. Night-time working.
- The Court of Appeal found for UBC, holding that the engineer had treated the four items as variations and that WASA had waived strict compliance with notice provisions. WASA appealed to the Privy Council.

Contract Interpretation and Conditions Precedent – Notification of Claims

Privy Council Decision:

- On variations, the Board held that the Court of Appeal had erred by failing to analyse the contract terms.
- The elements of work complained of were within UBC's contractual scope.
- Even if the works had been variations, UBC had wholly failed to notify claims within 28 days under clause 20.1 which was construed as a strict condition precedent, failure of which extinguished UBC's entitlement to any additional payment.
- Waiver and estoppel had not been pleaded, and there was no evidence that WASA, had made any representation that it would not rely on the notice provisions.
- The engineer could not, as a matter of contract, waive or amend the contractual requirements. Reliance on informal site conduct and retrospective impressions of fairness could not supplant clear contractual requirements.

Contract Interpretation and Conditions Precedent – Notification of Claims

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Three key takeaways:

- Variations are determined by the contract, not by conduct or opinion
- The engineer has no power to vary the contract or waive contractual rights
- Clause 20.1 is a hard condition precedent, with express approval of *Obrascon*

Contract Interpretation and Conditions Precedent – “Deemed” Fulfilment

***King Crude Carriers SA and Others v Ridgebury November LLC and Others* [2025] UKSC 39**

- Dispute under contracts for the sale of three vessels on the Norwegian Saleform 2012. Under the contracts, the buyers were obliged to lodge a deposit of 10% of the purchase price with a deposit holder. The deposit was required to be paid within three banking days of the deposit holder confirming in writing that the deposit account had been opened. The parties were obliged to provide all necessary documentation for the opening of the account.
- In breach of contract, the buyers never fulfilled the conditions. The sellers terminated the three contracts and claimed the deposits in debt, relying on the *Mackay v Dick* principle to argue the “deemed fulfilment” of the conditions.
- In the Supreme Court, Lord Hamblen and Lord Burrows concluded that the *Mackay v Dick* principle was not a principle of law in English law for six reasons at [61]-[68]:
 - i. Lord Watson in *Mackay v Dick* did not cite or rely upon any English law authorities in support of the principle.
 - ii. The English law authorities do not speak with one voice, and the cases which appeared to support the *Mackay v Dick* principle could have been decided in the same way through the application of the law on damages.
 - iii. Such a principle of law would fundamentally undermine the law on contracts for the sale of goods and also the sale of land if it were to be applied in respect of a failure to fulfil a condition precedent to the passing of property.
 - iv. The various formulations or explanations of the *Mackay v Dick* principle of law are all fictional, and there is no convincing explanation for *Mackay v Dick* as a principle of law.
 - v. The English law of contract proceeds on the basis of the terms of the contract, express and implied, and their proper interpretation. This is consistent with the importance which English law attaches to freedom of contract and enforcing the terms of the parties’ bargain, which promotes certainty and predictability.
 - vi. Where a condition precedent has not been fulfilled because of the debtor’s breach of contract, that breach is appropriately and adequately dealt with in English law through damages as a remedy.

Interpretation of Contractual Right to Adjudicate

Example 1 – Assignee of Employer’s Rights

Paragon Group Limited v FK Facades Limited [2026] EWHC 78 (TCC)

- Article 6 of the JCT Minor Works Contract provided that “[I]f any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 7.2”. Clause 7.2 then provided that the Scheme for Construction Contracts shall apply.
- FK argued that (1) an assignee does not become a party to the construction contract and does not fall within the Scheme; and (2) the assigned claim was not a dispute arising under the contract.
- HHJ Stephen Davies held that the assignee did have the right to adjudicate under the contract:
 - **[63]**: A statutory assignment of the benefit of a contract passes the legal right to the thing and all legal rights and other remedies for the same, which are transferred to the assignee as if they had been theirs from the beginning, and (absent express provision to the contrary) would include the right to adjudicate.
 - **[64]-[74]**: The potential practical complications raised by FK were more apparent than real and do not in any event provide a compelling reason not to allow an assignee to adjudicate.
 - **[75]**: Difficulties would arise if the only way an assignee could adjudicate a claim was by forcing or persuading the assignor to lend their name to an adjudication against the other original party. That is potentially fraught with difficulty and delay.
 - **[77]**: The contract and the Scheme can be read as if the words “or any legal assignee of such party, where applicable” are read into the definition of a party.

Interpretation of Contractual Right to Adjudicate

Example 2 – Member of Unincorporated JV

Darchem Engineering Ltd v Bouygues Travaux Publics & Another [2026] EWHC 220 (TCC)

- Amended NEC3 Subcontract, under which Darchem and Framatome (formerly Efinor) were “*acting jointly and severally*” as the “*Subcontractor*”. Darchem referred a number of disputes to adjudications and sought to enforce those decisions.
- The Main Contractor (BYLOR – a JV of Bouygues and LOR) argued that the party to the Subcontract was the “*Subcontractor*”, and that only Darchem and Framatome acting jointly had the right to refer a dispute to adjudication.
- Constable J accepted BYLOR’s jurisdictional challenge:
 - **[17]-[20]**: the bulk of the provisions were drafted in a way which indicated that the Subcontract was bilateral between two parties (e.g. references to “*either*” or “*neither*” party, and the insolvency provisions which provides that if a party is a JV, then insolvency of a constituent of the JV suffices).
 - **[24]**: because the unincorporated JV is not a separate entity, it is natural and necessary for each constituent entity to execute the contract, but that does not make each entity a party.
 - **[31]**: clause 12.6 provides for a JV leader to be notified, failing which BYLOR was entitled to rely on each constituent as having authority to bind the other. This would be otiose if there is an automatic right to act severally.
 - **[38]-[41]**: there are potential complications – if each constituent JV entity was indeed a separate party, each of them could separately commence an adjudication against each of the other JV entities, nominating a different adjudicator for each in relation to an identical issue. There is no mechanism for preventing this situation, and one would expect clearer and more comprehensive procedural safeguards.

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Any Questions?
Thank you.

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