

FIDIC-A Guide for Practitioners

Axel-Volkmar Jaeger • Götz-Sebastian Hök

FIDIC-A Guide for Practitioners

 Springer

Axel-Volkmar Jaeger
Moitzfeldstraße 11
51069 Köln
Germany
consultingservices@online.de

Dr. Götz-Sebastian Hök
Eschenallee 22
14050 Berlin
Germany
kanzlei@dr-hoek.de

ISBN 978-3-642-02099-5 e-ISBN 978-3-642-02100-8
DOI 10.1007/978-3-642-02100-8
Springer Heidelberg Dordrecht London New York

Library of Congress Control Number: 2009929206

© Springer-Verlag Berlin Heidelberg 2010

This work is subject to copyright. All rights are reserved, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilm or in any other way, and storage in data banks. Duplication of this publication or parts thereof is permitted only under the provisions of the German Copyright Law of September 9, 1965, in its current version, and permission for use must always be obtained from Springer. Violations are liable to prosecution under the German Copyright Law.

The use of general descriptive names, registered names, trademarks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

Cover design: WMXDesign GmbH, Heidelberg, Germany

Printed on acid-free paper

Springer is part of Springer Science+Business Media (www.springer.com)

Foreword



In 1999, a suite of three new conditions of contract was published by FIDIC, following the basic structure and wording harmonised and updated around the previous FIDIC Design-Build and Turnkey Contract (the 1992 “Orange Book”).

These conditions, known as the “FIDIC rainbow, were the Conditions of Contract for:

- Construction, the so-called Red Book, for works designed by the Employer
- Plant and Design-Build, the so-called Yellow Book, for works designed by the Contractor
- EPC/Turnkey Projects, the so-called Silver Book, for works designed by the Contractor

The first is intended for construction works where the Employer is responsible for the design, as for per the previous so-called Red Book 4th Edition (1987), with an important role for the Engineer.

The other two conditions of contract are intended for situations when the Contractor is responsible for the design. The Plant and Design-Build Contract has the traditional Engineer while the EPC/Turnkey Contract has a two-party arrangement, generally with an Employer’s Representative as one of the parties.

The 1999 Conditions of Contract for Plant and Design/Build retained the essential elements of the earlier Orange Book. It had been noted, however, that new trends in project financing and management, especially related to PFI and BOT, required a different set of conditions, and the Conditions of Contract for EPC/Turnkey Projects were drafted to cater for to this. The EPC/Turnkey Contract complements, but does not replace, the Plant and Design/Build Contract in that it was intended to be used in a rather specific context.

While it was recognised that there were alternative scenarios encompassing the Design, Build and Operate Service (DBO), the so-called Gold Book concept, FIDIC recognised that the various scenarios required different contract conditions that could be used where long-term operation was involved. The Conditions of Contract for Design, Build and Operate Projects, the so-called Gold Book, for works designed by the Contractor were published in 2008.

Understanding the FIDIC Conditions of Contract is the key to preparing and managing FIDIC contracts. Only a keen and comprehensive understanding of the contracts will help in avoiding disputes and the accompanying cost and time overruns.

However, even though the FIDIC suite of contracts enjoys a worldwide reputation because they are widely accepted by employers, contractors, international financing organizations, engineers and lawyers, regrettably, misunderstanding and poor practices lead to avoidable disputes.

It is with great pleasure that I draw the attention of users of FIDIC contracts to this FIDIC Guide for Practitioners. The authors have shared their huge wide knowledge of the contracts and their implementation in various countries with the FIDIC community. Both are well known and experienced experts and accredited FIDIC trainers, as well as being adjudicators and arbitrators. They have made a major contribution in seeking to give guidance on the use of FIDIC forms of contract. This Guide is easy to read, and engineers, as well as legal advisors, employers and contractors will find it very helpful in daily practice.

In particular, those practitioners in civil law countries will benefit greatly from this Guide, which shows how FIDIC contracts should be interpreted against a civil code background. Common law practitioners will also welcome the Guide as a valuable source of information on how to address issues raised by the FIDIC contracts in a common law jurisdiction. Sample letters, checklists and other features will help to ensure that the Guide will meet with success all over the world.

In summary, I believe the Guide represents an invaluable resource that will raise the awareness of practitioners in the international construction industry to the rights and responsibilities of the parties under an FIDIC contract. Informative and accessible, the Guide provides employers, contractors and engineers with the means to manage FIDIC-based contracts properly and in accordance to with best-practice principles.

Gregs G. Thomopoulos
President, FIDIC

Preface

The idea for this book was born out of the belief that the increasing dissemination of FIDIC forms of contract throughout the Civil Law world requires a different approach to the subject matter than that which is found under the Common Law. An English native speaker will naturally not encounter many difficulties when reading the FIDIC forms, although of course the wording used will sometimes be subject to interpretation. Again an English native speaker will usually be familiar with the underlying legal principles, which mostly derive from Common Law, despite the fact that some Civil Law-inspired features have been incorporated in the FIDIC books. Thus there is a clear need to explain Common Law concepts and legal terms in the context of Civil Law. This may often prove to be difficult as the very nature of Civil Law language is in many respects different from Common Law language. Both systems have terms which are often difficult to translate literally because of the fact that the terms reflect legal concepts which are unknown in the other legal world.

Although many difficulties in understanding the wording may be overcome if the terms and concepts are carefully explained, the English wording may sometimes be in direct contradiction to Civil Law concepts and practice. Whether the FIDIC wording will then prevail depends on the strength of the *pacta sunt servanda* principle. Civil Law systems usually determine and categorise the very nature of a contract. If the contract falls within the limits of a nominated contract, the relevant default rules (*lois supplétives*, *dispositives Recht*) and additionally the relevant mandatory rules will apply. Whether the FIDIC based contract will be recognized as an agreement *sui generis* or at least as a valid agreement although being in contradiction to the law must be ascertained on a case by case basis.

On the other hand, English native speakers will hopefully appreciate this book as a means of understanding better the members of the constructing team originating from Civil Law nations. Common Law practitioners should realise that the export of services does not always follow the export of Common Law practice. Common Law practitioners will encounter unknown legal concepts, such as pre-contractual duties, specific performance, duties to negotiate in good faith and judicial powers to adapt contracts to changed circumstances. They will also become aware of different

approaches as to the designer's scope of service, its content and the resulting duties and obligations.

The authors have combined both practical experiences and an academic approach. They have also combined the views of an engineer with the views of a lawyer, which sometimes proves to be difficult. However, lawyers should understand that the practical needs are sometimes stronger than any sophisticated legal thinking can envisage. Engineers should accept that the law is a useful and a necessary feature because it makes decisions predictable and therefore calculable. It is the law which gives the engineer the powers to do what the parties expect him to do, although it is also the law which places constraints and limits on him when acting as a certifier or decision maker. Thus an exchange of ideas, impressions and experiences between lawyers and engineers appears to be not only helpful, but even essential.

Both authors wish to emphasize that a contract is not only a means to solve misunderstandings and disputes. Thus it should be read and prepared with the common understanding to follow its provisions from the outset. Only then can the contract provide easy answers. Legal help will then quite often be unnecessary. However, if, as is too often the case, the Parties ignore the contract on a day to day basis until it proves difficult to find a common understanding, sophisticated and expensive legal solutions have to be worked out and disputes will then become unavoidable.

The authors are further of the unanimous opinion that even though standard forms of contract may be as good and balanced as possible and even better, they are as good as worthless if the project is badly prepared and if in particular the bespoke documents such as the specifications, schedules, bills of quantities and/or employer's requirements do not reflect the intentions of the employer in a comprehensive and unambiguous way and if the aforementioned documents ignore the basic requirements of a FIDIC contract. Preparing a contract means taking into account that a FIDIC contract includes specific documents, defines terms, contains references to sub-clauses and comprises fall-back clauses. Multiple details must be specified in the documents and they should be implemented as provided and required by the FIDIC documents. It should be the primary interest of both parties to the contract to do so in order to avoid misunderstandings, lacunas and the debate and disputes which will inevitably result.

Finally the authors wish to apologise to their wives and families for the time spent on this book, and neglecting their needs and hopes, and also wish to thank all those who have contributed to this book, in particular Mr. Robert Leadbeater and Mr. Henry Stieglmeier.

Berlin and Cologne
September 2009

*Axel-Volkmar Jaeger
Dr. Götz-Sebastian Hök*

Contents

1	Legal Systems	1
1.1	English Contract Law	3
1.1.1	Relevant Provisions	3
1.1.2	English Legal System	4
1.1.3	Entering a Contract	4
1.1.4	Validity of Contract	9
1.1.5	Express Term or Representation	9
1.1.6	Implied Terms	10
1.1.7	Discharge	11
1.1.8	Common Features of English Construction Contracts	13
1.2	Finnish Contract Law	16
1.3	French Contract Law	17
1.3.1	Relevant Provisions	17
1.3.2	Entering a Contract	18
1.3.3	Contract Interpretation	20
1.3.4	Effects of a Contract	21
1.3.5	Limitation Periods	22
1.3.6	Pre-contractual Liability	23
1.3.7	Good Faith	23
1.3.8	Performance	23
1.3.9	Damages and Limitation of Liability	25
1.3.10	Penalty Clauses	26
1.3.11	Subcontracting	26
1.4	German Contract Law	27
1.4.1	Relevant Provisions	27
1.4.2	German Legal System	27
1.4.3	Entering a Contract	29
1.4.4	Contract Interpretation	30
1.4.5	Construction Contract	31
1.4.6	German Legal Concepts as to Construction Contracts	32
1.5	Romanian Law	46

1.5.1 Relevant Provisions	46
1.5.2 Definition of Contract Under Romanian Law	46
1.5.3 Effects of the Contract	47
1.5.4 Limitation Periods	47
1.5.5 Does Romanian Law Recognize Pre-contractual Liability?	47
1.5.6 Non-performance Remedies	47
1.5.7 Damages and Limitation of Liability	48
1.5.8 Penalty Clauses	49
1.6 Islamic Law	49
References	53
2 Conflict of Laws	55
2.1 Introduction	55
2.2 Nature of the Cause of Action	56
2.3 Pre-contractual Stage	57
2.4 Proper Law of the Contract	58
2.4.1 Rome Convention	58
2.4.2 Rome I Regulation	60
2.5 Tort Law	61
2.6 Quasi Contracts	64
2.7 Choice of Law as to Extra-contractual Claims	65
2.8 In Rem Claims	66
2.9 The Importance for Choice of Law Issues	66
2.10 Compliance Rules	69
References	70
3 English and International Standard Forms of Contract	71
3.1 Introduction	71
3.2 Types of Contracts	72
3.3 Common Characteristics of Standard Forms	73
3.3.1 The Position of the Engineer	73
3.3.2 Certification	74
3.3.3 Time	74
3.3.4 Programming	75
3.3.5 Substantial Completion and Taking Over	75
3.3.6 Liquidated Damages	75
3.3.7 Claims	76
3.3.8 Dispute Resolution	76
3.4 Contract Forms Overview	77
References	79
4 Civil Law Business Terms	81

5	Development Stages	83
5.1	Overview	83
5.2	Pre-contract Stage	86
5.2.1	Base Date	92
5.2.2	Information Transfer and Research	93
5.2.3	Survey Report	95
5.3	Tender Stage	95
5.4	Performance	96
	References	98
6	Understanding FIDIC: A Civil Law Approach	99
6.1	Introduction	99
6.2	Legal English	101
6.3	Conceptual Legal Background	102
6.4	Lex Mercatoria	106
6.5	English and Other Legal Terms	108
6.6	FIDIC Contracts Guide, Time Lines and Other Support	108
6.7	Unidroit Principles	120
	References	122
7	FIDIC Contract Documents	125
7.1	FIDIC Rainbow	125
7.1.1	Overview	125
7.1.2	Balanced Forms of Contract	127
7.1.3	International Scope	127
7.1.4	Interpretation	129
7.2	Drafting a Contract	131
7.3	General Observations as to the FIDIC Contract Documents	133
7.4	Contract Documents Book by Book	134
7.4.1	Red Book	134
7.4.2	Green Book	135
7.4.3	Yellow Book	136
7.4.4	Silver Book	138
7.4.5	Gold Book	140
7.5	Contract Documents Manual	141
7.5.1	Contract Agreement	141
7.5.2	Particular Conditions	142
7.5.3	Employer's Requirements	144
7.5.4	Contractor's Proposal	154
7.5.5	Payment Schedule	155
7.5.6	Drawings	158
7.5.7	Specifications and Bills of Quantities	159
7.5.8	Further Documents (Gold Book)	159

7.5.9 Dispute Adjudication Agreement	160
7.5.10 Guarantees	160
7.6 Contract Preparation and Pitfalls	161
7.6.1 Technical Standards	161
7.6.2 Delay Damages	162
7.6.3 Performance Damages	164
7.6.4 Defects Notification Period	165
7.6.5 Retention Money	166
7.6.6 Sections	166
7.6.7 Taxes, Levies and Customs	167
7.6.8 Copyright	168
7.6.9 Labour	169
7.6.10 Handback Requirements	169
7.7 Alteration of FIDIC Conditions	170
7.7.1 Guiding Principles	170
7.7.2 Preparing Tender Documents – The FIDIC Contracts Guide –Guidance for the Preparation of Particular Conditions	170
7.7.3 Complementary Terms of Contract	171
7.7.4 Recommendations	173
7.7.5 Pitfalls and Issues	174
References	175
8 Employer's Duties	177
8.1 Introduction	177
8.2 Arrangement for Payments	177
8.3 Duty to Pay	178
8.3.1 Introduction	178
8.3.2 Contract Price	178
8.3.3 Provisional Sums	179
8.4 Duty to Co-operate	181
8.4.1 Access to the Site	181
8.4.2 Permits, Licences or Approvals	184
8.4.3 Duty to Minimise Delay	184
8.4.4 Duty to Make Financial Arrangements	184
8.4.5 Duty to Provide Information	185
8.4.6 Estoppel	185
8.5 Duty to Compensate	186
8.5.1 Compensation for Interference by Employer	189
References	190
9 Contractor's Duties	191
9.1 Introduction	191
9.1.1 Pre-contractual Duties	191
9.1.2 Completion of the Works	192

9.1.3 Design	193
9.1.4 Operation	193
9.2 Quality and Defects	198
9.2.1 Overview	198
9.2.2 Workmanlike Manner	198
9.2.3 Design Skills	200
9.2.4 Definition of the Term “Defect”	200
9.2.5 Operation Service	204
9.2.6 Final Remarks	206
9.3 Time for Completion	206
9.3.1 Duty to Comply with Time for Completion	206
9.3.2 Programme	206
9.3.3 Obligation to Proceed in Accordance with the Programme	207
9.3.4 Extension of Time	208
References	208
10 Design Responsibility	209
10.1 Introduction	209
10.2 Employer’s Design	210
10.3 Contractor’s Design	212
10.4 Contractor’s Design Liability	213
10.5 Design Procedure	216
10.6 Design Warranties	218
10.7 Design Update	218
10.8 Deliverables	219
References	219
11 Engineer	221
11.1 Introduction	221
11.2 The Role and Function of the Engineer	221
11.3 Determinations	227
11.4 Constraints and Restrictions on the Engineer	228
11.5 Powers of the Engineer	229
11.6 Instructions	230
11.7 White Book	230
11.7.1 Overview	231
11.7.2 Cooperation	231
11.7.3 Liability	232
11.7.4 Scope of Services	233
11.7.5 Payments	234
11.7.6 Changed Circumstances	234
11.7.7 Intellectual Property	235
11.7.8 Disputes	235
References	236

12 Time for Completion	237
12.1 Introduction	237
12.2 The English Concept of Time for Completion	238
12.3 Civil Law Approach	242
12.4 Time Control	245
12.5 Extension of Time	247
12.6 Concurrent Delay	247
12.6.1 Common Law	249
12.6.2 Civil Law	252
12.6.3 FIDIC	254
12.7 SCL	256
12.8 Liquidated Damages and Penalties	256
12.8.1 Validity of Liquidated Damages Clauses	256
12.8.2 Delay Damages	258
12.8.3 Milestone Damages	259
References	259
13 Variations	261
13.1 Introduction	261
13.1.1 Variations in General	261
13.1.2 Contract Clauses	262
13.1.3 Extent of Change Allowance Rules	263
13.1.4 Change Orders	264
13.1.5 Control	265
13.1.6 Consequences	266
13.1.7 Remarks	267
13.2 Variations Under FIDIC	268
13.2.1 Yellow, Silver and Gold Book	271
13.2.2 Red Book	273
13.3 Variation Procedure	276
13.4 Avoidance of Variations	279
References	281
14 Tests	283
14.1 Introduction	283
14.2 Tests Until Completion	284
14.3 Tests on Completion	284
14.4 Tests After Completion	286
14.5 Tests During the Defects Notification Period	286
14.6 Delayed Tests	286
14.7 ISO Standard	287
14.8 Tailoring Test Procedures	288
References	288

15 Certificates	289
15.1 Introduction	289
15.2 Taking Over	289
15.3 Performance	291
15.4 Payments	292
15.4.1 Introduction	292
15.4.2 Measurement	296
15.4.3 Valuation	299
15.4.4 Payment Procedures	299
15.4.5 Payment Delays	303
15.4.6 Late Payment	303
15.4.7 Retention Monies	304
15.5 Disputes	304
References	304
16 Defects Notification Period and (Post Contractual)	
Defects Liability	305
16.1 Introduction	305
16.2 Duration of the Defects Notification Period	305
16.3 Duty to Remedy and to Search	306
16.4 Meaning of the Duty to Remedy	307
16.5 Removal of Defective Work	312
16.6 Failure to Remedy defects	312
16.7 Extension of the Defects Notification Period	313
16.8 Legal Liability	313
16.8.1 Normal Liability	313
16.8.2 Decennial Liability	314
References	315
17 Termination	317
17.1 Introduction	317
17.2 Termination for Convenience	319
17.3 Termination with Good Cause	319
17.4 Notice	320
17.5 Particular Reasons for Termination	321
17.6 Consequences of Termination	321
17.6.1 Works	322
17.6.2 Payments	322
17.7 Termination Agreements	324
18 Discharge, Frustration and Force Majeure	325
18.1 Risk and Risk Allocation	325
18.2 Normal Discharge	327
18.3 Rebus Sic Stantibus	329

18.4 Force Majeure	330
References	333
19 Risk, Insurance and Exceptional Risk	335
19.1 Introduction	335
19.2 Legal Risk Allocation	336
19.3 Risk Assessment	339
19.3.1 Overview	339
19.3.2 Employer's Risk	340
19.3.3 Care for the Works	340
19.3.4 Sub-contractor's Risk	342
19.3.5 Fencing, Lighting and Guarding	342
19.3.6 Misinterpretation of Data	342
19.3.7 Bodily Injury	343
19.3.8 Caps	343
19.4 Insurance	344
19.5 Contractor's All Risk Insurance	347
19.6 Uninsurable Risk	350
References	350
20 Bonds, Guarantees, Letters of Credit	351
20.1 Introduction	351
20.2 Civil Law Security Types	352
20.3 Common Law Types	352
20.4 Letters of Credit	353
20.5 FIDIC	354
20.5.1 Performance Security	354
20.5.2 Advance Payment Security	355
20.6 Conclusion	356
21 Claim Management	357
21.1 Introduction	357
21.2 Procedural Rules	361
21.3 Claim Review and Preparation	365
21.4 Claim Notice	371
21.5 Documentation Requirements	376
21.6 Presentation of Claims	376
21.7 Claim Avoidance	377
21.8 Extension of Time Claims	378
21.9 Money Claims	382
21.9.1 Cost	383
21.9.2 Profit	386
21.9.3 Loss of Productivity Claims	387

21.9.4 Legal Claims	387
21.10 Gold Book	388
References	391
22 Disputes	393
22.1 Introduction	393
22.2 Dispute Resolution Methods	394
22.2.1 Introduction	394
22.2.2 Mediation	394
22.2.3 Dispute Review	396
22.2.4 Dispute Adjudication	396
22.2.5 Arbitration	397
22.2.6 Summary	398
22.3 FIDIC Dispute Adjudication	398
22.3.1 Introduction	398
22.3.2 Function and Role of the DAB	400
22.3.3 Appointment	400
22.3.4 Dispute Adjudication Agreement	401
22.3.5 Dispute Avoidance	402
22.3.6 Referral of a Dispute	402
22.3.7 Jurisdiction	402
22.3.8 Procedure	404
22.3.9 Applicable Law	406
22.3.10 Reaching a Decision	406
22.4 Issues	407
22.5 Dispute Adjudication in Civil Law Countries	409
22.5.1 Enforceability of Dispute Adjudication Agreements	410
22.5.2 Jurisdiction	411
22.5.3 Binding Effects of DAB Decisions on the Parties	411
22.6 New Features	413
References	416
23 Samples	417
23.1 Sample I: Notice of Commencement Date	417
23.2 Sample II: Notice of an Event or Circumstance	418
23.3 Sample III: Notice that Work Is Ready	420
23.4 Sample IV: Notice of Approval	421
23.5 Sample V: Instruction	422
23.6 Sample VI: EOT Claim Following Variation	423
23.7 Sample VII: Rejection of Work	424
23.8 Sample VIII: Application for Taking-Over Certificate	425
23.9 Sample IX: Letter from Engineer, if Employer's Approval Is Late ...	426
23.10 Sample X: Determination	427

23.11 Sample XI: Notice of Dissatisfaction with a Determination of the Engineer	428
23.12 Sample XII: Notice of Referral of Dispute	429
23.13 Sample XIII: Chairman of the DAB to Parties: Establishment of the Procedure	430
23.14 Sample XIV: Notice of Dissatisfaction with a Decision of the DAB	431
23.15 Sample XV: Addendum	432
24 Delay Schedule	433
Index	437

Cases

English Cases

Adams v. Richardson and Starling Ltd	(1969) 2 All ER 1221	Chap. 16 Fn 11
AIC Ltd v. Its Testing Services (UK) Ltd	[2005] EWHC 2122 (Comm) (07 October 2005)	Chap. 14 Fn 1
Air Foyle Ltd & Anor v. Center Capital Ltd	[2002] EWHC 2535 (Comm) (03 December 2002)	Chap. 2 Fn 11
Alfred McAlpine Capital Projects Ltd v. Tilebox Ltd	[2005] EWHC 281 (TCC); [2005] BLR 271	Chap. 7 Fn 14; Chap. 12 Fn 6
Antaios Compania Naviera SA v. Salen Rederierna AB	[1985] AC 191	Chap. 1; Chap. 7 Fn 4
Apple Corps Ltd v. Apple Computer, Inc	[2004] EWHC 768 (Ch)	Chap. 1 Fn 11
Balfour Beatty Building Ltd v. Chestermount Properties Ltd	(1993) 62 BLR 12	Chap. 7 Fn 17; Chap. 12 Fn 16
Barrett Bros (Taxis) Ltd v. Davies Lickiss and Milestone Motor Policies at Lloyd's, Third Parties	[1966] 1 WLR 1334	Chap. 21 Fn 12
Beaufort Developments (NI) Ltd v. Gilbert-Ash NI Ltd and Others	[1998] 2 All ER 778; [1999] 1 AC 266	Chap. 11; Chap. 13 Fn 4
Bernhard's Rugby Landscapes Ltd v. Stockley Park Consortium Ltd	[1998] EWHC (TCC) (22 April 1998)	Chap. 1 Fn 22
Beximco Pharmaceuticals Ltd & Others v. Shamil Bank of Bahrain EC	[2004] EWCA Civ 19 (28 January 2004)	Chap. 1 Fn 54, 55, 59
Billyack v. Leyland Construction Company Ltd	[1968] 1 All ER 783	Chap. 16 Fn 9
Blackpool and Fylde Aero Club v. Blackpool Borough Council	[1990] 1 WLR 1195	Chap. 5 Fn 3
Bouygues (UK) Ltd v. Dahl-Jensen (UK) Ltd	[2000] BLR 522, CA	Chap. 22 Fn 8
Boys v. Chaplin	[1971] AC 356	Chap. 2
Breas of Doune Wind Farm (Scotland) Ltd v. Alfred McAlpine Business Services Ltd	[2008] EWHC 426 (TCC)	Chap. 12 Fn 26

Brinkibon Ltd v. Stahag Stahl	[1983] 2 AC 34	Chap.1 Fn 10
British Bank for Foreign Trade Ltd v. Novinex	[1949] 1 KB 628	Chap.1
British Steel Corporation v. Cleveland Bridge and Engineering Co Ltd	[1984] 1 All ER 504, at 509	Chap.1 Fn 9; Chap.21 Fn 22
British Westinghouse v. The Underground Railway of London	[1912] AC 673	Chap.1
Brogden v. Metropolitan Railway	(1877) 2 AC 666	Chap.1
Cammell v. Sewell	(1860) 5 H&N 728	Chap.2
CFW Architects (A Firm) v. Cowlin Construction Ltd	[2006] EWHC 6 (TCC) (23 January 2006)	Chap.1 Fn 19, 20
City Inn Ltd v. Shepard Construction Ltd	2003 SLT 885	Chap.12 Fn 4
Clifford v. Watts	(1870) LR 5 CP 577	Chap.1 Fn 16
Commissioner of Public Works v. Hills	[1906] AC 368	Chap.7 Fn 13
Costain Ltd & Others v. Bechtel	[2005] EWHC 1018 (TCC)	Chap.3 Fn 7
Cundy v. Lindsay	(1873) 3 App Cas 459	Chap.1
Currie v. Misa	(1875) LR 10 Ex 153	Chap.1
Department of National Heritage v. Steensen Varming Mulchay, Balfour Beatty Ltd, Laing Management Ltd	[1998] EWHC 305 (TCC) (30 July 1998)	Chap.11 Fn 6
Dunlop Pneumatic Tyre Company v. New Garage and Motor Company Ltd	[1915] AC 79	Chap.1 Fn 24
Engineered Electric	ENG BCA No. 4944, 84- 2 BCA 17,316	Chap.12 Fn 25
Entores v. Miles Far East Corporation	[1955] 2 QB 327	Chap.1 Fn 10
Equitable Debenture Assets Corporation Ltd v. William Moss Group Ltd	(1984) Con LR 1	Chap.11 Fn 7
ERDC Group Ltd v. Brunel University	[2006] EWHC 687 (TCC) (29 March 2006)	Chap.21 Fn 15
Fairweather & Co Ltd v. London Borough of Wandsworth	(1988) 12 BLR 40	Chap.7 Fn 2
Falkland Islands v. Gordon Forbes Construction (Falklands) Ltd	[2003] BLR 280, Falkland Islands Supreme Court, (14 March 2003)	Chap.21 Fn 7
Fastrack Contractors Ltd v. Morrison Construction Ltd	[2000] BLR 168	Chap.22 Fn 1
Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd	[1943] AC 32	Chap.2 Fn 10
Gibson v. Manchester City Council	[1979] 1 WLR 294	Chap.1
Gilbert-Ash (Northern) Ltd v. Modern Engineering (Bristol) Ltd	[1974] AC 689	Chap.7; Chap.16 Fn 10, 14
Greaves & Co. (Contractors) Ltd v. Baynham Meikle & Partners	[1975] 1 WLR 1095; (1975) 4 BLR 4, CA	Chap.1 Fn 14; Chap.9 Fn 12, 17; Chap.10 Fn 6, 9
Gunthing v. Lynn	(1831)	Chap.1
H.W. Nevill (Sunblest) Ltd v. William Press and Son Ltd	(1981) 20 BLR 78	Chap.16 Fn 12
Hadley v. Baxendale	(1854) 9 Ex. 341	Chap.21 Fn 26

Halpern v. Halpern	[2007] EWCA Civ 291 (03 April 2007)	Chap.1 Fn 55
Hancock v. B. W. Brazier (Anerley) Ltd	[1966] 1 WLR 1317; [1966] 2 All ER 901	Chap.9 Fn 10; Chap.16 Fn 11
Harmon CFEM Facades (UK) Ltd v. The Corporate Officer of the House of Commons	[1999] EWHC 199 (TCC)	Chap.5 Fn 1, 8, 9, 13
Henry Boot Construction (UK) Ltd v. Malmaison Hotel (Manchester) Ltd	(1999) 70 Con LR 32	Chap.12 Fn 17
Henry Boot Construction v. Alstom Combined Cycles	[2000] BLR 247, CA	Chap.21 Fn 23
Herschel Engineering Ltd v. Breen Properties Ltd	[2000] BLR 272	Chap.22 Fn 8
Heyman v. Darwins	[1942] AC 356, HL	Chap.1 Fn 17
Hillas v. Arcos	(1932) 38 Com Cas 23	Chap.1
Hoening v. Isaacs	[1952] 2 All ER 176; [1952] EWCA Civ 6 (13 February 1952)	Chap.1; Chap.7; Chap.18 Fn 1
Household Fire Insurance Co v. Grant	(1879) 3 Ex D 216	Chap.1
Hyundai Heavy Industries Co Ltd v. Papadopoulos	[1980] 1 WLR 1129	Chap.7
I.R.C. v. Williams	[1969] 1 WLR 1197	Chap.13 Fn 2
IBA v. EMI Electronics and BICC Construction Ltd	(1980) 14 BLR 1	Chap.9 Fn 13, 16
Interfoto Picture Library Ltd v. Stiletto Visual Programmes Ltd	[1987] EWCA Civ 6 (12 November 1987)	Chap.5 Fn 11
Investors Compensation Scheme Ltd v. West Bromwich Building	[1998] 1 WLR 896	Chap.1
John Mowlem & Co plc v. Eagle Insurance Co Ltd	(1992) 62 BLR 126	Chap.11 Fn 3
Joinery Plus Ltd v. Laing Ltd	[2003] EWHC 213 (TCC) (15 January 2003)	Chap.21 Fn 8
Laserbore Ltd v. Morrison Biggs Wall Ltd	(1993) CILL 896	Chap.21 Fn 25
Lindeberg v. Canning	(1992) 62 BLR 147	Chap.9 Fn 20
Lipkin Gorman v. Karpnale Ltd	[1991] 2 AC 548	Chap.2
Livingstone v. Rawyards Coal Co	(1880) 5 App Cas 25	Chap.1
London Borough of Hounslow v. Twickenham Garden Developments Ltd	[1971] 1 Ch 233	Chap.11
Lynch v. Thorne	[1956] 1 WLR 303	Chap.1; Chap.9 Fn 18, 19; Chap. 10 Fn 7
Macmillan Inc v. Bishopsgate Investment Trust Plc	[1996] 1 WLR 387	Chap.2 Fn 1
Macob Civil Engineering Ltd v. Morrison Construction Ltd	[1999] EWHC 254 (TCC) (12 February 1999)	Chap.22 Fn 4
Mannai Investments Co Ltd v. Eagle Star Life Assurance Co Ltd	[1997] AC 749	Chap.1
Masons (A Firm) v. WD King Ltd & Anor	[2003] EWHC 3124 (TCC) (17 December 2003)	Chap.7 Fn 5
McAlpine Humberberoak v. McDermott	(1992) 58 BLR 1	Chap.21 Fn 10

McGlinn v. Waltham Contractors Ltd	[2007] EWHC 149 (TCC) (21 February 2007)	Chap. 16 Fn 4
Mersey Steel & Iron Co Ltd v. Naylor	(1884) 9 APP Cas 434, HL	Chap. 1 Fn 19
Midland Expressway v. Carillion Construction & Others	[2006] EWCA Civ 936	Chap. 8
Mirant Asia-Pacific Construction (Hong Kong) Ltd v. Ove Arup and Partners International Ltd & Anor	[2007] EWHC 918 (TCC) (20 April 2007)	Chap. 21 Fn 17, 19, 20
Mitchell Engineering & Construction Co, Inc	ENG BCA No. 3785, 89- 2 BCA 21,753	Chap. 12 Fn 24
Modern Engineering (Bristol) Ltd v. Gilbert-Ash Northern	[1974] AC 689	Chap. 7 Fn 10
Moorcock, The	(1889) 14 PD 64	Chap. 7 Fn 3; Chap. 19 Fn 1
Mowlem v. BICC	(1978) 3 Con LR 64,	Chap. 10 Fn 8
Multiplex Constructions (UK) Ltd v. Honeywell Control Systems Ltd (No. 2)	[2007] EWHC 447 (TCC)	Chap. 12 Fn 2, 5; Chap. 21 Fn 3
Musawi v. RE International (UK) & Others	[2007] EWHC 2981 (Ch)	Chap. 22 Fn 2; Chap. 1 Fn 54
Neodox Ltd v. Borough of Swinton and Pendlebury	(1958) 5 BLR 38	Chap. 13 Fn 3
New Zealand Shipping Co Ltd v. A. M. Satterthwaite & Co Ltd	[1974] 1 Lloyd's Rep 534; [1975] AC 154	Chap. 1
Northern Regional Health Authority v. Derek Crouch Construction Co Ltd	[1984] QB 644	Chap. 11
Oval (717) Ltd v. Aegon Insurance Co (UK) Ltd	[1997] 54 Con LR 74	Chap. 9 Fn 1; Chap. 16 Fn 2
Oxonica Energy Ltd v. Neuftec Ltd	[2008] EWHC 2127 (Pat) (05 September 2008)	Chap. 1 Fn 4
P and M Kaye Ltd v. Hosier & Dickinson Ltd	[1972] 1 WLR 146	Chap. 9 Fn 2; Chap. 16 Fn 3, 5
Pacific Associates v. Baxter	[1990] 1 QB 993	Chap. 13 Fn 1
Pagnan S p A v. Feed Products Ltd	[1987] 2 Lloyd's Rep 601	Chap. 1 Fn 12
Peak Construction (Liverpool) Ltd v. McKinney Foundations Ltd	(1970) 1 BLR 114	Chap. 19 Fn 11
Pearce & High Ltd v. Baxter	[1999] EWCA Civ 789 (15 February 1999); [1999] BLR 101	Chap. 9 Fn 6; Chap. 16 Fn 1, 6, 7
Percy Bilton Ltd v. Greater London Council	[1982] 1 WLR 794	Chap. 12 Fn 15
Percy Trentham Ltd v. Archital Luxfer Ltd	[1993] 1 Lloyd's Rep 25; (1992) 63 BLR 44	Chap. 1 Fn 12; Chap. 1
Peyman v. Lanjani	[1985] Ch 457	Chap. 1 Fn 20
Philips Hong Kong Ltd v. Attorney General of Hong Kong	(1990) 50 BLR 122	Chap. 7 Fn 18
Phillips v. Eyre	(1870) LR 6 QB 1	Chap. 2
Photo Production v. Securicor	[1989] AC 827, HL	Chap. 1 Fn 18
Pigott Foundations Ltd v. Shepherd Construction Ltd	(1993) 67 BLR 48	Chap. 19 Fn 11
Platform Funding Ltd v. Bank of Scotland Plc (Formerly Halifax Plc)	[2008] EWCA Civ 930 (31 July 2008)	Chap. 10 Fn 10
Quietfield Ltd v. Vascroft Construction Ltd	[2006] EWCA Civ 1737 (20 December 2006)	Chap. 1

Raiffeisen Zentralbank Österreich AG v. Five Star Trading LLC ("The Mount I")	[2001] QB 825	Chap.2 Fn 1
Red Sea Insurance Ltd v. Bouygues SA	(1995) 1 AC 190	Chap.2 Fn 7
Rickards v. Oppenheim	[1950] 1 KB 616 at 626	Chap.21 Fn 13
Royal Brompton Hospital NHS Trust v. Hammond (No 7)	(2001) 76 Con LR 148	Chap.12
Ruxley Electronics and Construction Ltd v. Forsyth	[1996] AC 344	Chap.16 Fn 16
Scheldebouw BV v. St. James Homes (Grosvenor Dock) Ltd	[2006] EWHC 89 (TCC) (16 January 2006)	Chap.11
Sealand of the Pacific v. Ocean Cement Ltd	(1973) 33 DLR (3d) 625	Chap.9 Fn 8
Sinclair v. Brougham	[1914] AC 398	Chap.2
Smith v. Hughes	(1871) LR 6 QB 597	Chap.1 Fn 12
Steria Ltd v. Sigma Wireless Communications Ltd	[2007] EWHC 3454 (TCC) (15 November 2007)	Chap.21 Fn 3, 16
Sutcliffe v. Thackrah	[1974] AC 727	Chap.3 Fn 5; Chap.11 Fn 1, 2
T Comedy (UK) Ltd v. Easy Managed Transport Ltd	[2007] EWHC 611 (Comm) (28 March 2007)	Chap.1 Fn 8
Temloc Ltd v. Errill Properties Ltd	(1987) 39 BLR 30	Chap.19 Fn 11
Tesco Stores Ltd v. Costain Construction Ltd & Others	[2003] EWHC 1487 (TCC) (02 July 2003)	Chap.1 Fn 13, 15; Chap.9 Fn 7, 14, 19; Chap. 10 Fn 5
The Board of Governors of the Hospital for Sick Children v. McLaughlin & Harvey plc	[1987] 19 Con LR 25	Chap.1
The London Borough of Hounslow v. Twickenham Gardens Development	(1970) 78 BLR 89	Chap.8 Fn 2
The Wagon Mound	[1961] AC 388	Chap.1 Fn 21
The Wagon Mound No. 2	[1967] 1 AC 617	Chap.1 Fn 21
Thorn v. London Corporation	(1876) 1 App Cas 120	Chap.18 Fn 5; Chap.21 Fn 24
Tombs v. Wilson Connolly Ltd	[2004] EWHC 2809 (TCC) (09 November 2004)	Chap.16 Fn 1
Total Gas Marketing Ltd v. ARCO British Ltd & Others	[1998] UKHL 22 (20 May 1998)	Chap.18 Fn 6
Trollope & Colls Ltd v. Atomic Power Constructors Ltd	[1963] 1 WLR 333	Chap.1
Trollope & Colls Ltd v. North West Metropolitan Regional Hospital Board	[1973] 1 WLR 601	Chap.9 Fn 7
Wayne Tank & Pump Co Ltd v. Employers Liability	[1974] 1 QB 57	Chap.19 Fn 16
Wells v. Army and Navy Co-operative Society	1903, 86 LT 764	Chap.12
Westdeutsche Bank v. Islington L.B.C.	[1996] AC 669	Chap.2 Fn 9
White v. Jones	[1995] 2 AC 257	Chap.13 Fn 1

William Tomkinson v. Parochial Church Council of St. Michael	[1990] CLJ 319	Chap.16 Fn 1
William Tomkinson v. St Michael's P.C.C.	[1990] CLJ 319	Chap.16 Fn 8
Woolwich Equitable Building Society v. Inland Revenue Commissioners	[1993] AC 70	Chap.2
Yorkshire Water Services Ltd v. Taylor Woodrow Construction Northern Ltd	[2004] EWHC 1660 (TCC) (08 July 2004)	Chap.21 Fn 21, 27
Young & Marten Ltd v. McManus Childs	[1969] 1 AC 454, HL	Chap.9 Fn 9, 11, 15

Irish Cases

Campus and Stadium Ireland Development Ltd v. Dublin Waterworld Ltd	[2006] IEHC 200 (21 March 2006)	Chap.1 Fn 23
Superquinn Ltd v. Bray U.D.C.	[1998] IEHC 28; [1998] 3 IR 542 (18 February 1998)	Chap.18 Fn 7

French Cases

Cour de Cassation	23.01.2007	Juris-Data no. 2007 – 037027	Chap.1 Fn 25
Cour de Cassation	02.07.1975	(1975) Bull.III, 1978	Chap.1 Fn 28
Cour de Cassation	27. 09. 2006	(2006) D., I. R. 2416	Chap.1 Fn 29
Cour de Cassation	20.01.1993	File number 91-10-900/C, no. 115 P + F, Voisin c/ Correia: (1993) Bull. civ. III, no. 5	Chap.1 Fn 30
Cour de Cassation, Première chambre civile	11.05.1999	(1999) JCP G Semaine Juridique (édition générale), no. 42, 1890, 1893, jurisprudence 10 183	Chap.2 Fn 8
Cour de Cassation	07.03.1968	(1970) D. 27	Chap.9 Fn 4
Cour de Cassation	18.12.1996	arrêt no. 1987 D	Chap.9 Fn 5
Cour de Cassation (commerciale)	09.03.1965	(1965) Bull.civ. IV no. 175	Chap.11 Fn 5; Chap.21 Fn 9
Cour de Cassation	08.11.2005	(2006) RD. Imm. 55 annotation Malinvaud	Chap.19 Fn 2
Cour de Cassation	22.06.2004	SCI Cosma v. Diffot, req. No. 800 F-D	Chap.19 Fn 3
Cour de Cassation	13.09.2005	file number 04-16852	Chap.19 Fn 4
Cour de Cassation	28.01.1998	RD imm 1998, 265	Chap.19 Fn 5
SA Prisunic v. SA Services Installations Frigorifiques, Court of Appeal Paris	08.01.1999	(1999) RD imm. 261	Chap.19 Fn 6

Cour de Cassation,	11.06.1985	JCP (G) 1985 IV, 295	Chap.19 Fn 7
Cour de Cassation	03.10.2001	RD. Imm. 2001, 498	Chap.19 Fn 7
Cour de Cassation	16.02.2005	Mon TP 2005, 104	Chap.19 Fn 7
Cour de Cassation	19.03.1986	file number 84-17.424	Chap.19 Fn 8
Cour de Cassation	17.11.1999	RD imm. 2000, 52	Chap.19 Fn 9
Cour de Cassation	15.01.2003	RD imm. 2003, 259	Chap.19 Fn 10
CA Paris	20.06.1996	(1996) Rev.arb. 657	Chap.1 Fn 28
Cour de Cassation	15.11.1972	file number 71-11.651, Bull.civ. III no. 611	Chap.21 Fn 4
Cour de Cassation	11.05.2006	file number 04-18.092	Chap.21 Fn 5
Cour de Cassation	8.10.1974	file no. 73-12.347, Bull.civ. III no. 337	Chap.18 Fn 3
Cour de Cassation	20.1.1982	file no. 80-16.415, Bull.civ. III no. 20	Chap.18 Fn 4
Cour de Cassation	27.09.2006	file no. 05-13.808, D. 2006, 2416	Chap.1 Fn 26
Cour de Cassation	20.11.2002	file no. 00-14.423, RD imm. 2003, 60	Chap.1 Fn 27
Cour de Cassation, mixed chamber	30.11.2007	file no. 06-14006	Chap.1 Fn 31
Cour de Cassation	04.08.1915	(1916) D.P. 1, 22	Chap.18 Fn 8

German Cases

BAG	December 12th, 2001; file no. 5 AZR 255/00; [2003] IPRax 258	Chap.2 Fn 2
BGH	June 7th, 1984; file no. IX ZR 66/83; [91] BGHZ 325	Chap.1 Fn 33
BGH	February 27th, 2003; file no. VII ZR 169/02; [2003] ZfBR 367	Chap.11 Fn 8
BGH	November 24th, 1969; file no. VII ZR 177/67; [1970] NJW 421	Chap.18 Fn 2
BGH	November 24th, 1969; file no. VII ZR 177/69; [1970] NJW 421	Chap.1 Fn 44, 47; Chap.15 Fn 1
BGH	September 8th, 1998; file no. X ZR 4/97; [1998] NJW 3636 at 3636 et seq.	Chap.5 Fn 17
BGH	May 17th, 1967; file no. VIII ZR 58/66; [48] BGHZ 25	Chap.6 Fn 1
BGH	January 27th, 1971; file no. VIII ZR 151/69; [55] BGHZ 248	Chap.6 Fn 1
BGH	Schäfer-Finnern, Z 2.311 Bl. 22 and 29	Chap.6 Fn 2
BGH	October 22th, 1981; file no. VII ZR 310/79; [82] BGHZ 100	Chap.7 Fn 1; Chap.19 Fn 13
BGH	February 14th, 2001; file no. VII ZR 176/99; [2001] NJW 1196	Chap.7 Fn 1
BGH	October 8th, 1969; file no. VIII ZR 20/68; [1970] NJW 29	Chap.7 Fn 15
BGH	November 8th, 2007; file no. VII ZR 183/05; [2008] IBR 77	Chap.9 Fn 3
BGH	January 14th, 1993; file no. VII ZR 185/91; [1993] IBR 368	Chap.12 Fn 9

BGH	December 6th, 2007; file no. VII ZR 28/07	Chap.12 Fn 18, 23
BGH	March 21st, 2002; file no. VII ZR 224/00; [2002] IBR 354	Chap.12 Fn 20
BGH	February 24th, 2005; file no. VII ZR 141/03; [2005] IBR 246	Chap.12 Fn 20
BGH	January 14th, 1993; file no. VII ZR 185/91; [1993] BauR 600	Chap.12 Fn 22
BGH	February 14th, 2001; file no. VII ZR 176/99; [2001] NJW 1276	Chap.19 Fn 12
BGH	December 4th, 1996; [1997] NJW-R 690, 691 sub II. 2. (b) (bb)	Chap.21 Fn 11
BGH	October 10th, 1991; file no. VII ZR 2/91; [115] BGHZ 329	Chap.22 Fn 3
BGH	November 11th, 1998; file no. VII ZR 344/97; [1999] NJW 647	Chap.22 Fn 5
BGH	September 9th, 1997; file no. VII ZR 559/95; [1997] NJW 1577	Chap.5 Fn 12
BGH	May 23rd, 1996; file no. VII ZR 245/94[1996] BauR 542	Chap.21 Fn 6
BGH	March 7th, 2002; file no. VII ZR 1/00; [2002] BauR 1536	Chap.10 Fn 3
BGH	October 9th, 1986; file no. VII ZR 245/85; [1987] NJW-RR 144	Chap.1 Fn 32
BGH	June 7th, 1984; file no. IX ZR 66/83; [91] BGHZ 325	Chap.1 Fn 33
BGH	February 28th, 2002; file no. VII ZR 376/00; [2002] IBR 231	Chap.1 Fn 36, 37
BGH	June 27th, 1996; file no. VII ZR 59/95; [1996] IBR 487	Chap.1 Fn 38, 39
BGH	May 14th, 1998; file no. VII ZR 184/97; [1998] BauR 872	Chap.1 Fn 48, 49
BGH	April 10th, 2008; file no. VII ZR 159/07	Chap.1 Fn 49
BGH	March 12th, 1992; file no. VII ZR 5/91; [117] BGHZ 318	Chap.1 Fn 52
BGH	November 30th, 2004; file no. X ZR 43/03; [2005] IBR 80	Chap.1 Fn 52
BGH	October 11th, 2007; file no. VII ZR 99/06; [2008] IBR 18; [2008] NJW 145; [2008] IBR 17;	Chap.1 Fn 52, 53
BGH	November 27th, 2008; file no. VII ZR 206/06; [2009] IBR 90	Chap.1 Fn 52
BGH	January 18th, 2001; file no. VII ZR 238/00; [2001] IBR 165Annotation Schulze-Hagen	Chap.12 Fn 11
BVerfG	June 13th, 2006; file no. 1 BvR 1160/03	Chap.2 Fn 3, 4
BVerwG	March 13th, 1970; file no. VII C 80.67; [35] BVerwGE 103 at 104	Chap.5 Fn 16
KG Berlin	September 24th 2004; file no. 7 U 228/03; [2005] IBR 719	Chap.22 Fn 6
KG Berlin	January 28th, 2000; file no. 21 U 5379/98; [2003] IBR 67	Chap.12 Fn 21
LAG Düsseldorf	November 15th, 1972; file no. 2 SA 200/72; [1973] DB 84	Chap.7 Fn 16
LG Duisburg	November 30th, 2006; file no. 7 S 172/06; [2007] IBR 246	Chap.1 Fn 51
LG Karlsruhe	December 7th, 2007; file no. 6 C 482/06; [2008] IBR 1108, Annotation Neumann	Chap.10 Fn 1

OLG Brandenburg	December 20th, 2006; file no. 13 U 55/06; [2007] IBR 315, Annotation Löffelmann	Chap. 10 Fn 4
OLG Brandenburg	July 16th, 2008; file no. 4 U 484/07; [2008] IBR 636	Chap. 1 Fn 43
OLG Brandenburg	October 10th, 2008; file no. 12 U 92/08; [2008] IBR 724	Chap. 1 Fn 50
OLG Braunschweig	July 14th 1999; file no. 1 O 85/98; [2000] IBR 116	Chap. 8 Fn 3
OLG Celle	September 21st, 2004; file no. 16 U 111/04; [2006] IBR 245	Chap. 12 Fn 7
OLG Celle	July 14th, 2005; file no. 14 U 217/04; [2005] IBR 520	Chap. 1 Fn 39
OLG Dresden	December 20th, 2007; file no. 10 U 293/07; [2009] IBR 71	Chap. 1 Fn 40
OLG Düsseldorf	April 28th, 1999; file no. 11 U 69/98; [2000] NJW-RR 279	Chap. 22 Fn 3
OLG Düsseldorf	November 11th, 1988; file no. 19 U 16/88; [1989] BauR 483, 485	Chap. 21 Fn 6
OLG Düsseldorf	November 13th, 2007; file no. 21 U 256/06; [2008] IBR 633	Chap. 1 Fn 36
OLG Düsseldorf	May 13th, 1998; file no. 22 U 245/96; [1998] IBR 437	Chap. 1 Fn 48
OLG Frankfurt	Dezember 3rd, 1998; file no. 3 U 257/97; [1999] NJW-RR 379	Chap. 22 Fn 7
OLG Hamm	May 29th, 1996; file no. 25 U 154/95; [1996] IBR 509	Chap. 12 Fn 8
OLG Hamm	February 10th, 2000; file no. 21 U 85/98; [2000] IBR 489	Chap. 12 Fn 13
OLG Hamm	February 17th, 1993; file no. 26 U 40/92; [1994] IBR 95	Chap. 1 Fn 42
OLG Hamm	June 9th, 1989; file no. 26 U 126/88; [1990] BauR 104	Chap. 1 Fn 51
OLG Jena	April 10th, 2002; file no. 7 U 938/01; [2002] IBR 542	Chap. 12 Fn 10
OLG Jena	February 19th, 1998; file no. 1 U 931/97; [1998] IBR 491	Chap. 19 Fn 14
OLG Jena	February 7th, 2008; file no. 1 U 102/07; [2008] IBR 210	Chap. 10 Fn 2
OLG Jena	December 19th, 2001; file no. 7 U 614/98; [2003] IBR 122	Chap. 1 Fn 43
OLG Koblenz	March 23rd, 2000; file no. 2 U 792/99; [2000] IBR 535	Chap. 12 Fn 12
OLG München	March 4th, 2008; file no. 9 U 4539/07; [2009] IBR 39	Chap. 1 Fn 53
OLG Naumburg	January 8th, 2004; file no. 4 U 154/03; [2004] BauR 1831 (Ls.); [2004] ZfBR 791	Chap. 1 Fn 46
OLG Naumburg	March 18th, 2004; file no. 4 U 127/03; [2004] IBR 481	Chap. 1 Fn 41
OLG Schleswig	April 11th, 1984; file no. 9 U 229/83; [1985] DNotZ 310	Chap. 7 Fn 16
OLG Stuttgart	May 15th, 2006; file no. 5 U 21/06; [2006] IBR 1407	Chap. 6 Fn 4
OLG Stuttgart	July 25th, 2007; file no. 6 U 242/03; [2008] IBR 433	Chap. 1 Fn 49
OLG Zweibrücken	March 3rd, 2006; file no. 1 U 48/04; [2006] IBR 246	Chap. 12 Fn 19
RG	June 8th, 1920; file no. II 549/19; [99] RGZ 147	Chap. 1 Fn 34
RG	November 11th, 1913; file no. III 270/13; [83] RGZ 279	Chap. 1 Fn 35
RG	April 24th, 1925; file no. IV 10/25; [110] RGZ 404, 406	Chap. 1 Fn 45

Vergabekammer bei der Bezirksregierung ins Arnsberg/ Procurement Chamber at the District Government Arnsberg	January 28th, 2004; file no. VK 1 – 30/2003	Chap.8 Fn 1
VG Gelsenkirchen	October 15th, 2004; file no. 12 L 2120/04; [2005] NWVB1 40 et seq.	Chap.5 Fn 16
VG Karlsruhe	June 14th, 2006; file no. 8 K 1437/06	Chap.5 Fn 2, 15

USA Cases

American Home Assurance Co v. Larkin General Hospital	593 So.2d 195 (Fla. 1992)	Chap.20 Fn 1
Big Chief Drilling Co v. United States	26 Cl.Ct. 1276 (1992)	Chap.7 Fn 6, 8
Burton-Dixie Corporation v. Timothy McCarthy Construction Company	436 F.2d 405 (5th Cir. 1971)	Chap.16 Fn 15
Clark v. Clark	79 So.2d 426 (Fla. 1955)	Chap.20 Fn 4
Crabtree v. Aetna Cas & Sur Co	438 So.2d 102 (Fla. 1st DCA 1983)	Chap.20 Fn 2, 5
J.L. Simmons Co v. United States	188 Ct.Cl. 684 (1969)	Chap.7 Fn 7
Jemco, Inc v. United Parcel Service, Inc	400 So.2d 499 (Fla.3d DCA 1981), review denied, 412 So.2d 466 (Fla.1982)	Chap.2 Fn 5
John McShain, Inc v. United States	375 F.2d 829 (Ct.Cl. 1967)	Chap.8 Fn 4
Lincoln P. Tang-How, d/b/a Tang How Brothers, General Contractors v. Edward J. Gerrits, Inc and others	961 F.2d 174	Chap.2 Fn 5
Nat Harrison Associates, Inc. v. Gulf States Utilities Company	491 F.2d 578 (5th Cir. 1974) rehearing denied, 493 F.2d 1405 (5th Cir. 1974)	Chap.21 Fn 14
North Star Alaska Housing Corp v. United States	30 Fed.Cl. 259 (1993)	Chap.7 Fn 9
Olympus Corp v. United States	98 F.3d 1314 (Fed. Cir. 1996)	Chap.8 Fn 4, 5
Roff v. Southern Construction Corporation, La.App., 3 Cir.	163 So.2d 112, 115–116 (1964)	Chap.21 Fn 14
Underwood v. Underwood	64 So.2d 281 (Fla. 1953)	Chap.20 Fn 3
Vann v. United States	420 F.2d 968 (Ct.Cl. 1970)	Chap.8 Fn 6
Wood Bros. Homes, Inc. v. Walker Adjustment Bureau	198 Colo 444; 601 P.2d 1369 (1979)	Chap.2 Fn 6

Canadian Cases

Best Cleaners & Contractors Ltd v. R. in Right of Canada	[1985] 2 FCR 29	Chap.5 Fn 6
Ellis-Don Ltd v. The Parking Authority of Toronto	(1978) 28 BLR 98, HC (Ont)	Chap.2
Northern Construction v. Gloge Heating & Plumbing	(1986) 27 DLR (4th) 265	Chap.5 Fn 5
The Queen in the Right of Ontario v. Ron Engineering & Construction (Eastern) Ltd	[1981] 1 SCR 111	Chap.5 Fn 4

Australian Cases

Alucraft Pty Ltd v. Grocon Ltd (no. 2)	[1996] 2 VR 386	Chap.16 Fn 13
Baltic Shipping Co v. Dillon	(1993) 176 CLR 344	Chap.7
Chinook Aggregates Limited v. Abbotsford (Municipal Districts)	(1989) 35 CLR 241	Chap.5 Fn 7
Emery Construction Limited v. St John's (City) Roman Catholic School Board	(1996) 28 CLR (2d) 1	Chap.5 Fn 10
Gaymark Investments Pty Ltd v. Walter Construction Group Ltd	[1999] NTSC 143; (2005) 21 Const. LJ 71	Chap.12 Fn 1; Chap.21 Fn 2
GEC Marconi Systems Pty Ltd v. BHP Information Technology Pty Ltd	[2003] FCA 50	Chap.7
Onerati v. Phillips Constructions Pty Ltd (in liq)	(1989) 16 NSWLR 730	Chap.9 Fn 21
Ownit Homes Pty Ltd v. Batchelor	[1983] 2 Qd R 124	Chap.7
Pavey & Matthews Pty Ltd v. Paul	(1987) 162 CLR 221	Chap.2
Peninsula Balmain Pty Ltd v. Abigroup Contractors Pty Ltd	[2002] NSWCA 211	Chap.12 Fn 3
Perini Corporation v. Commonwealth of Australia	[1969] 12 BLR 82	Chap.11
Phillips v. Ellinson Brothers Pty Ltd	(1941) 65 CLR 221	Chap.7
S.M.K. Cabinets v. Hili Modern Electrics Pty Ltd	[1984] VR 391	Chap.12
Speno Rail Maintenance Australia v. Hamersley Iron Pty Ltd	[2000] WASCA 408	Chap.19 Fn 15
Steele v. Tardiani	(1946) 72 CLR 386	Chap.7
Tan Hung Nguyen v. Luxury Design Homes	[2004] NSWCA 178	Chap.7 Fn 11, 12
Turner Corporation Ltd (Receiver and Manager Appointed) v. Austotel Pty Ltd (2nd June 1994)	(1997) 13 BCL 378	Chap.21 Fn 1
Walsh v. Kinnear	(1876) 14 SCR (NSW) 434	Chap.7

Scottish Cases

City Inn Ltd v. Shepherd Construction Ltd	[2007] CSOH 190 (30 November 2007) [ScotCS]	Chap. 12
Marjandi Ltd v. Bon Accord Glass Ltd	[1998] ScotSC 55 (15 October 2007)	Chap. 1 Fn 6
Stewart & Anor v. Malik	[2008] ScotSC 12 (29 April 2008)	Chap. 1 Fn 7

Malaysian Cases

Chong Kok Hwa v. Taisho Marine & Fire Insurance Co Ltd	[1977] 1 MLJ 244	Chap. 19 Fn 17
Putra Perdana Construction Sdn Bhd v. AMI Insurance Bhd	[2004] Part 4 Case 14 [HCM]	Chap. 19 Fn 18

South African Cases

B C Plant Hire cc t/a B C Carriers v. Grenco (SA) (PTY) Ltd (1090/2002)	[2003] ZAWCHC 70 (12 December 2003)	Chap. 1 Fn 5
BK Tooling (Edms) Bpk v. Scope Precision Engineering (Edms) Bpk	[1979] (1) SA 391 (A) at 418 B - C	Chap. 1 Fn 3
Kamaludin v. Gihwala	[1956] (2) SA 323 (C) at p. 326	Chap. 1 Fn 2

Trinidad and Tobago Case

National Insurance Property Development Co Ltd v. NH International (Caribbean) Ltd, High Court of Justice Trinidad und Tobago, decision from 14.11.2008	CV 2007-0224	unreported
---	--------------	------------

India Cases

Hind Construction Contractors v. The State of Maharashtra	[1979] AIR 720, 1979 (2) SCR1147, 1979 (2) SCC 70
Mohinder Singh and Co v. Executive Engineer, CPWD	[1971] AIR J&K 130
Ramnath International Construction Pvt. Ltd v. Union of India	2007 AIR 509, 2006 (10) Suppl. SCR 570, 2007 (2) SCC4 53, 2006 (14) SCALE 49
Shambhulal Pannalai, Secretary of State of Rajasthan v. Chandra Mehan	[1940] AIR Sind 1 [1971] AIR, Raj. 229

English Abbreviations

AC	See “LRAC”
All ER	All England Law Reports
App Cas	See L.R.App.Cas.
Arb Intl	Arbitration International
BCA	Building and Construction Authority
BCL	Building and Construction Law (Australia)
BLR	Building Law Reports
Ch	Law Reports, Chancery Division (Third Series)
Chi-Kent L. Rev.	Chicago Kent Law Review
Cl.Ct.	United States Claims Court Reporter (USA)
CLJ	Cambridge Law Journal
CLR	Commonwealth Law Reports (Australia)
Colo	Colorado Reports (USA)
Com Cas	Commercial Cases
Con LR	Construction Law Reports
Const LJ	Construction Law Journal
Const. & Eng. L.	Construction & Engineering Law
Ct Cl	Court of claims Report (USA)
DLR (3d)	Dominion Law Reports, Third Series (Canada)
DLR (4th)	Dominion Law Reports, Fourth Series
ENG BCA	Engineers Board of Contract Appeals
EWCA Civ	Media neutral citation from the Court of Appeal (Civil Division)
EWHC	Media neutral citation from the High Court
Ex D	See LREx
F.2d	Federal Reporter, Second Series (USA)
F.3d	Federal Reporter, Third Series (USA)
FCA	Federal Court of Australia (Neutral Citation) (Australia)
FCR	Canada Federal Court Reports (Canada)
Fed.Cl.	Federal Claims Reporter (USA)
H & N	Hurlston & Norman
ICLR	International Construction Law Review (International)
IEHC	High Court of Ireland [Neutral Citation] (Ireland)
IR	Irish Reports (Ireland)
J.Int.Arb.	Journal of international Arbitration
KB	See LRKB
L.R.App.Cas.	Law Reports (Second Series) Appeal Cases
Lloyd’s Rep	Lloyd’s Law Reports
LRAC	Law Reports (Third Series) Appeal Cases