Construction Law Conferences: Lessons Learned

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Construction law conferences: lessons learned

The editors of CLInt are proud to launch a new regular feature, ‘From the Construction Law Campus’. This column will provide a forum for those who teach construction law to describe ‘academic’ or ‘theoretical’ topics they have encountered as teachers that may be of interest to construction law practitioners. We are fortunate to have assembled a roster of distinguished construction law academics from around the world, including England, Austria, Hong Kong, Australia, France, Singapore, the Netherlands and the United States. To inaugurate our new feature we have a contribution from Professor Justin Sweet of the University of California at Berkeley. Enjoy!

I am privileged to inaugurate this new feature for CLInt. Each issue will include a forum for those academics who teach construction law. They will be able to bring an academic approach to this newly emerging body of law. I am sure authors will welcome comments to their observations.

Members of the IBA’s International Construction Projects Committee are construction lawyers from all over the world. At a social level they band together to get to know one another. At a professional level they exchange information that enables them to provide their clients with top quality legal services. Particularly, they want to help their clients negotiate contracts and resolve disputes.

The international nature of the IBA sets it apart from domestic professional legal associations. Often they speak different languages. They are educated and trained in different legal systems that provide the background and rules for the transactions for which they provide services. They may understand their own but may not be familiar with the legal systems of those with whom they deal. Also, they may not be familiar with the contracting practices or customs of those with whom they deal. Finally, the legal history and cultural practices (what does silence or a shake of the head with a smile mean?) may be unfamiliar to them.

Their work often takes them to strange countries far away from their homes. They often have to endure long plane rides, fight jet lag and need to take unusual methods of transportation to unfamiliar places. So they are different.

Most of them are likely to be years away from their formal education and our teachers. There is often a barrier between practitioners and their teachers. This column and those that will follow seek to break down any such barriers.

‘There must be mutual respect between lawyers and their teachers.’

I have taught and written books for many years and have always felt my work is respected by practitioners. Conversely, I admire practising lawyers, those tough individuals who must enter the fray on behalf of their clients and engage in the not always pleasant tasks of negotiating and drafting. I hope that this column and ones that will follow will bring us closer together.

My long term goal, and I am sure the same is true of the authors who will follow, is to make negotiating, drafting and resolving disputes for your clients more professional.
(and less costly) and serve your clients’ needs. This can be difficult enough when all the attorneys are from one country and one legal system. But in the international context, often with the absence of a common language and legal system, they can become even more treacherous.

I cannot teach you the language of the people with whom you must deal. But I hope I can help you understand the rules, practices and traditions of the legal systems of those with whom you deal.

This is a tall order. I propose to outline projects that can bring you closer together to other international construction lawyers.

The first is the proposed Pacific Rim Program being developed by Professor Philip Chan of the National University of Singapore. It is designed to expose graduate students in the building professions to legal systems other than their own.

In this program, students will be required to take an intensive one-month course at an allied foreign university. Current planning involves students from the National University of Singapore, Hong Kong University, the University of Melbourne, Australia, the University of British Columbia and the University of California (Berkeley). The courses will be taught by professors and lawyers from the host university.

In addition to being taught by foreign lawyers, students would live together during the one-month programme, another feature that will generate contact and useful exchanges with students of other countries.

This Pacific Rim Program is in the developmental stage. I mention it because its goal is to familiarise students from one country with the laws and procedures of another in a collegial context. This should enable the students to grapple with laws that are often different, with those from countries with different construction practices (financing methods often differ) and lawyers who have been trained in other legal systems.

The second example is a series of international construction law conferences which I developed with Professor Peter Gauch from the University of Fribourg in Switzerland.

The genesis of these conferences was a visit to Berkeley by Peter Gauch. He was weary of the typical conferences on construction law and its ‘cast of thousands’ and their display of experts searching for clients. He suggested that we bring together a small group of construction law scholars from different countries to come together and discuss papers they had prepared for the conference. The first conference was held in Fribourg in 1982, the second in Berkeley in 1987 and the third, unfortunately the last, in Washington, DC in 1991.

The 1982 conference in Fribourg consisted of participants from Australia, the Netherlands, Switzerland, Italy, Norway, the UK and the US. As can be seen this was a Western-orientated group (later conferences broadened the countries represented). Here the real dividing line was common law and civil law jurisdictions. The topics presented to the conference were delays, defects, prices and subcontracting. Each paper was approached from common law and civil law perspectives and was subsequently published.1

The number of participants is crucial. They must all fit around a medium-sized table of around eight to ten people. There must be time for questions and answers. We hoped for true ‘give and take’. This will be important when I outline what I think to be programmes that will accomplish the goals I have set forth.

The second conference was held in Berkeley, California. It consisted of participants from Switzerland, Egypt, Hungary, Norway, China, Italy, the US, the UK and Japan. We also included technical advisors from the US and Switzerland. The topic selected was ‘Variations’ (‘Changes’).2

While we expanded the countries from whom we chose participants, the discussion was led mainly by participants from Western countries, both because the language was English and the most experienced and vocal participants came from Western countries.

The third conference took place in Washington, DC. Participants came from

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Australia, China, Japan, Switzerland and the US. As the topic was the New Engineering Contract published by the English Institution of Civil Engineers, we had representatives of its drafting committee. A reporter published the conclusions.²

I have emphasised the importance of the exchange of ideas. I had hoped that this would enable the participants to truly understand the law, practices and customs of countries with different legal systems. But in that sense these conferences were a failure.

Participants were well-known 'experts' in their countries. Often they spoke ex cathedra, from on high. My sense is they did not learn much from each other. Nor, unlike the planned Pacific Rim Project, except for formal sessions they did not spend much time together. There was not the 'give and take' that would lead to real understanding. And, as I have indicated, the Western people were 'in charge'.

For me there was a bittersweet outcome as far as advancing understanding of foreign legal systems in these conferences. The sweet part was that the published reports might advance the understanding of different legal systems (distribution is crucial). But the bitter part was that there would be no more such conferences after 1991.

We had hoped to make this a regular event. We wanted a permanent director, a board of directors, a small staff, a base of operations where material relating to the conference could be stored, stabilised funding sources (the conferences were not expensive), a method of setting up new conferences and a system to disseminate the research generated. I wanted to institutionalise this operation. Each conference would build on the preceding ones. Our hopes were not fulfilled.

With this background let me move to my long term goal; that of training people who can provide the skills needed to properly negotiate international construction contracts and resolve disputes that can rise from them.

Of the first example I have noted, the proposed Pacific Rim Project, we need a method to train students and young lawyers to be good international lawyers. We need programmes that bring these people together, at both professional and social levels. The groups should be small; around eight to ten participants.

Secondly, looking at the international construction law conferences as a model, we need small groups of experienced construction people, both practitioners and scholars, experts not only in their own legal systems but with some understanding of foreign legal systems. Just as programmes similar to the proposed Pacific Rim Project these groups should be regional. They should be brought together for highly concentrated periods where they can observe those from other legal systems and cultures at close hand to see how the systems work and how those who operate the systems think. Such a group should contain no more than ten people and meet for at least two weeks. Such groups should generate publishable material that deal with the topics they study that can be distributed. The IBA could organise such projects. If it does, we can have better international construction lawyers.

Notes
CASE UPDATES

NORTHERN IRELAND

15 per cent per annum interest clause held to be a penalty and not enforced

Rupert Choat
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The case, Fernhill Properties (Northern Ireland) Ltd v Mulgrew [2010] NICH 20, is one of many to arise out of the property boom in Northern Ireland from 2005 to 2007 and the subsequent crash. The facts were simple. The defendant defaulted on a contract to buy an apartment (having bought in good faith but been unable to raise the necessary mortgage finance when the time came). The vendor-claimant obtained a judgment for damages. This included the interest that the claimant had lost on the purchase monies that the defendant had not paid.

The judge (Deeny J) declined to enforce the contractually agreed interest rate, holding that ‘the high and round figure of 15% was clearly, on the balance of probabilities, a penalty designed to deter a purchaser from defaulting on completion.’ When the contract was concluded in April 2007, the Bank of England’s base rate was 5.25 per cent per annum, in contrast to 0.5 per cent when the case was decided. The judge instead awarded the claimant interest to reflect its actual loss finding that ‘a fair measure’ was five per cent per annum.

While the courts of Northern Ireland (despite being a separate jurisdiction) have provided cases that have helped develop English law, this judgment is unlikely to be followed in England and Wales. This is primarily because of the following:

In a similar case in 2009, the English Court of Appeal held that ‘a contractual rate of 15% was [not] in any way exorbitant in July 2001 [when the base rate was also 5.25 per cent]’ (Taiwan Scot Company Ltd v The Master Golf Company Ltd [2009] EWCA Civ 685 at [17]). For Deeny J, that judgment was only strongly persuasive, adding that such English judgments may be less relevant to Northern Ireland following the constitutional devolution of justice there.

Deeny J distinguished Taiwan Scot because the contract in issue was between two commercial concerns, whereas the contract before him was between a commercial entity and an individual. While the courts may be more likely to find penalty clauses in contracts challenged by individuals (and some appellate authority confirms this), there is no basis under English law for the judge’s distinction. The key is the function of the alleged penalty clause, not whether one of the parties is an individual.

In fact, Deeny J felt he did not need to apply the authorities because the claimant-vendor was unable or unwilling to offer evidence that 15 per cent was, in April 2007, a genuine pre-estimate of its loss in the event of non-completion by the purchaser-defendant. The English authorities, at least, put the burden of proof upon the party asserting that a clause is a penalty to show that it is. Furthermore, the English law test for a penalty clause is not simply whether it is or is not a genuine pre-estimate of loss. The test is, as Deeny J confirmed (relying upon previous English judgments), ‘a matter of construction to be resolved by asking whether at the time the contract was entered into the predominant contractual function of the provision was to deter a party from breaking the contract or to compensate the innocent party for breach’.

It is the exorbitant or oppressive nature of a clause that is critical to it being struck down as a penalty clause. Fernhill Properties should not herald greater intervention in clauses judged to be unfair. However, it does show that the historic rule against penalties lives on. In extreme cases, clauses will be struck down as penalties (such as the provision for interest at 260 per cent per annum on late payments in Jeancharm Ltd v Barnet Football Club Ltd [2003] All ER 69).

Conversely, while courts and arbitrators look at the substance of clauses (such that describing a provision as a ‘penalty’ is not necessarily fatal), they tend to distinguish between sums payable on a breach (which may fail as a penalty) and sums payable without a breach, such as interest provisions under loan contracts (which are less vulnerable to the rule against penalties). The judgment does, though, highlight litigation risk even when (as in this case) the defendant is unrepresented and ‘unable to help on the legal issues’.

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Case law update: England and Wales

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This case law update looks at some recent decisions of the Technology and Construction Court and the Court of Appeal. The first case is of interest as it considers on-demand performance bonds and the grounds on which a party can prevent another from making a call on the bond. It was held that not only were the terms of the bond material to a call but also the underlying contract, if it imposed terms on the party making a call on the bond. The second case looks at when and how a party should reserve its position if it intends to proceed with an adjudication but where it claims that the adjudicator lacks jurisdiction. Although the case deals with adjudication under the HGCRA 1996, the principles apply equally to arbitrations. The third case deals with claims for contributions from third parties. Here the court made it clear that a contribution could only be recovered where the third party had been the cause of the same damage. The fourth case deals with concurrent duties in contract and tort. The Court of Appeal in this case has now stated that a contractor (including a contractor under a FIDIC form of contract) owes no duty of care in tort to an ownder under the bond. However, the following day SCL was notified that a call on the bond had already been made. A further hearing then took place three days later where SCL sought to vary the terms of the injunction to the effect that Ensus should withdraw its demand on the bank. The varied injunction was granted subject to SCL giving an undertaking that the bond in the sum of £2.3m should be extended until the end of April 2011. A further hearing then took place at which Ensus argued that English jurisprudence over the years had established that there is only one ground upon which a call on an on-demand bond can be restrained and that is fraud; furthermore fraud needs to be shown by the clearest or very clear evidence to justify intervention by injunction. SCL argued that there was a serious issue to be tried and that there was no reason in principle or practice why the Court could not and should not restrain any breach of contract by way of injunction on ordinary Cyanamid principles.

The facts
On 6 October 2006, Simon Carves Ltd (SCL) was employed by Ensus UK Ltd to construct a process plant to produce bioethanol. The contract was an amended IChemE Red Book. One of the obligations on SCL was to provide a performance bond. Following completion of the plant, and the issue of an acceptance certificate, Ensus received complaints about foul smelling gases. This then led to an enforcement notice from the Environment Agency. SCL argued that once the acceptance certificate was issued the bond was to be considered null and void as between the parties (save in respect of any pending or previously notified claims). There were discussions between the parties regarding the bond but these broke down and Ensus made a call on the bond (unknown to SCL) and SCL sought an injunction restraining a call on the bond.

SCL’s injunction was granted; however, the following day SCL was notified that a call on the bond had already been made. A further hearing took place three days later where SCL sought to vary the terms of the injunction to the effect that Ensus should withdraw its demand on the bank. The varied injunction was granted subject to SCL giving an undertaking that the bond in the sum of £2.3m should be extended until the end of April 2011. A further hearing then took place at which Ensus argued that English jurisprudence over the years had established that there is only one ground upon which a call on an on-demand bond can be restrained and that is fraud; furthermore fraud needs to be shown by the clearest or very clear evidence to justify intervention by injunction. SCL argued that there was a serious issue to be tried and that there was no reason in principle or practice why the Court could not and should not restrain any breach of contract by way of injunction on ordinary Cyanamid principles.

The decision
Akenhead J considered the case of Sirius International Insurance Co v FAI General Insurance Ltd [2003] 1 WLR 2214. In the Sirius case there were terms in the underlying contract that the claimant would not make a call on a bond without notifying the defendant in advance and without the defendant’s consent in writing. In breach of this obligation, the claimant made a call on the bond. May LJ in the Court of Appeal held that an injunction could be granted for breach of this negative covenant. Akenhead J then summed up the state of the law regarding the calling of bonds. He held that one can draw from the authorities the following:

- Unless material fraud is established or there is clear evidence of fraud, the court will not act to prevent a bank from paying out on an on-demand bond provided that the conditions of the bond itself have been complied with (such as formal notice in writing). However, fraud is not the only ground upon which a call on the bond can be restrained by injunction.
- The same applies in relation to a beneficiary seeking payment under the bond.
- There is no legal authority which permits the beneficiary to make a call on the bond when it is expressly disenfranchised from doing so.
- In principle, if the underlying contract, in relation to which the bond has been provided by way of security, clearly and expressly prevents the beneficiary party to the contract from making a demand under the bond, it can be restrained by the court from making a demand under the bond.
- The court when considering the case at a final trial will be able to determine finally what the underlying contract provides by way of restriction on the beneficiary party in calling on the bond. However,
given the importance of bonds, it would be necessary at an early stage when an injunction is sought for the court to be satisfied on the arguments and evidence put before it that the party seeking an injunction against the beneficiary had a strong case.

Akenhead J concluded that not only was there a serious issue to be tried but that on the evidence and argument put before the Court, SCL’s case was a strong one. The injunction was ordered to continue.

Adjudication – enforcement

The case of CN Associates (A Firm) v Holbeton Ltd [2011] EWHC 43 (TCC) considered the issue of enforcement of an adjudicator’s decision. In this case the court had to consider whether a party who proceeded with an adjudication then lost the right to challenge the jurisdiction of the adjudicator if it had not raised the jurisdiction issue during the course of the adjudication. The Court referred to a number of authorities and stated that: ‘If [a party] does not reserve its position effectively, generally it cannot avoid enforcement on jurisdictional grounds.’ The Court went on to state that, where the adjudicator deals with their own jurisdiction, their decision would only be binding if the parties ‘either expressly or impliedly’ agreed that it would be binding.

An express agreement creates no difficulty but concluding that there is an implied agreement is where the ‘parties and indeed adjudicators get into murkier waters’. The Court stated that, in order to ascertain whether there is an implied agreement giving the adjudicator jurisdiction to decide their own jurisdiction, one must look ‘at everything material that was done’ and what the parties must be taken to have agreed about the jurisdiction of the adjudicator. The Court held that if one party had given a clear reservation that it was proceeding without prejudice to its objection to the jurisdiction of the adjudicator then no implied agreement arose. Words such as ‘I fully reserve my position about your jurisdiction’ or ‘I am only participating in the adjudication under protest’ will usually suffice to make an effective reservation. However, if that party failed to make a clear reservation then it may be treated as having impliedly agreed to the jurisdiction of the adjudicator.

Contributions – The Civil Liability (Contribution) Act 1978

The case of Mouchel Ltd v Van Oord (UK) Ltd [2011] EWHC 72 (TCC) provides an interesting restatement of the law relating to contributions. Kier entered into a contract with Mouchel regarding the design of an off-shore cooling water system for a power station. Van Oord was appointed by Kier to undertake the necessary dredging works. Defects arose and Van Oord carried out remedial works. Kier sued Mouchel who sought a contribution from Van Oord. A settlement was reached between Kier and Mouchel. Mouchel then proceeded with its claim for a contribution from Van Oord.

The judge found that there were two relevant breaches of contract – the first was a breach by Van Oord in failing to lay rock to the depth of 500mm and the second breach was by Mouchel in failing to design the scour protection with a filter layer. The question that the judge then had to address was ‘Do the relevant breaches against Mouchel and Van Oord give rise to liability for the same damage?’ The question is important because a party can only recover a contribution under the Civil Liability (Contribution) Act 1978 if there is the ‘same damage’; materially the same or substantially the same is not good enough – per Lord Steyn in Royal Brompton NHS Trust v Hammond [2002] 1 WLR 1397. On the evidence the judge held that ‘both breaches caused the same damage and led to the need to carry out remedial work.’ It followed that Mouchel was entitled to a contribution from Van Oord, although on the facts the contribution was small.

Concurrent duties of care – the position of the contractor

The question whether building contractors owe concurrent duties of care in tort to protect their employers against economic loss has been discussed in a number of first instance decisions of official referees and TCC judges. In Storey v Charles Church Developments plc [1995] 73 Con LR 1, Judge Hicks QC, sitting as official referee, held that there was such a duty. In Payne v John Setchell Ltd [2002] BLR 489, Judge Humphrey Lloyd QC considered that there was not (see paragraph 30). In Tesco Stores Ltd v Costain Construction Limited [2003] EWHC 1487 (TCC), Judge Seymour QC considered that there was such a duty (see paragraph 230). In Mirant–Asia Pacific Limited v OAPIL [2004] EWHC 1750 (TCC), Judge Toumin CMG QC held that engineers owed concurrent duties of care in contract and tort to protect their clients against economic loss. However, he indicated that contractors might be in a different category (see paragraphs 395 to 397).

Keating on Construction Contracts (8th edition 2006, edited by Stephen Furst QC and Mr Justice Ramsey) reviews the conflicting authorities in this area and then concludes as follows at paragraph 7-018:

'It is difficult to disagree with the view that a contract which stipulates that the contracting party will perform certain services involves an assumption of responsibility which will normally be relied upon by the other contracting party. On the other hand it is true that the authorities prior to Henderson v Merrett, and in particular Murphy, did not envisage a builder (or possibly a builder-designer or a pure designer and supervisor of work) owing duties of care in respect of economic loss. This difference of view requires a reconciliation.
of these two different streams of authority which will have to await a decision from the Court of Appeal or the House of Lords.’

In the case of Robinson v PE Jones (Contractors) Ltd [2011] EWCA Civ 9, the Court of Appeal decided this issue. Jackson LJ, giving the leading judgment of the court, stated that:

‘Building contracts come in all shapes and sizes from the simple house building contract to the suite of JCT, NEC or FIDIC contracts. The law does not automatically impose upon every contractor or subcontractor tortious duties of care co-extensive with the contractual terms and carrying liability for economic loss. Such an approach would involve wholesale subordination of the law of tort to the law of contract.’

He concluded that in the absence of any assumption of responsibility the law of tort imposes a different and more limited duty upon the manufacturer or builder than a professional person. That more limited duty is to take reasonable care to protect the client against suffering personal injury or damage to other property. Stanley Burton LJ also agreed with Jackson LJ and stated: ‘In my judgment, it must now be regarded as settled law that the builder/vendor of a building does not by reason of his contract to construct or to complete the building assume any liability in the tort of negligence in relation to defects in the building giving rise to purely economic loss.’ It follows that if an employer needs to bring a claim in negligence against a building contractor then it can only do so if there is some assumption of responsibility by the building contractor. In order for there to be an assumption of responsibility a builder must give advice or take some step beyond its contractual obligations which it knows or ought reasonably to know that the employer will rely upon and which have financial or economic consequences.

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In a landmark decision handed down on 30 March 2011, a majority of the Supreme Court decided that the immunity from suit for breach of duty enjoyed by expert witnesses instructed in legal proceedings, which dates back over 400 years, should be abolished.

Background

The appellant Jones had suffered injuries when he was knocked down by a drunk, uninsured, disqualified driver and subsequently brought claims for personal injury.

The respondent, Kaney, a consultant clinical psychologist, was instructed by Jones’s solicitors to examine the appellant and prepare a report for the purposes of litigation. In her report, Kaney expressed the view that the appellant was at that time suffering from post-traumatic stress disorder. The defendant’s expert had alleged that the appellant was exaggerating his symptoms.

Kaney had discussions with her opposite number, who then prepared and sent to her a joint statement which Kaney signed without amendment or comment. The statement was damaging to Jones’s claim. Jones’s position was that his solicitors were then constrained significantly to under settle the claim. Jones issued proceedings against Kaney alleging that Kaney was negligent in signing a joint statement.

That claim was struck out at first instance on the basis that, as an expert, Kaney was immune from suit. Given that the case involved a point of law of general public importance, leave to appeal direct to the Supreme Court was granted by way of a ‘leapfrog certificate’.

The decision to remove expert immunity

An expert who acts in civil litigation owes his or her client a duty to act with reasonable skill and care. Until 30 March 2011, experts enjoyed immunity from suit in respect of evidence given in court and work done in contemplation of or preparation for legal proceedings. The Supreme Court, by a majority of 5-2, has now clearly stated that this immunity has now been removed. However the abolition of immunity does not extend to the absolute privilege that expert witnesses enjoy in respect of claims in defamation.

The majority of the Court dismissed fears that the eradication of immunity would prevent experts from providing the court with full, frank and objective advice. They also rejected concerns that increased litigation against experts would ensue and that the decision would have a ‘chilling effect’ on the supply of expert witnesses by making potential experts reluctant to act for fear of being sued and the cost of insurance. Furthermore, the majority considered that the abolition of immunity would ultimately lead to better quality evidence.

The minority of the Court was concerned with the uncertain boundaries of the decision. For example, the position regarding jointly instructed experts and court appointed experts, who may have several ‘clients’, is not clear. The minority was perturbed that the decision could increase the pressure on an expert to stick to his or her initial opinion and considered that the increase in risk could deter potential experts from acting, resulting in a shortage of experts in certain specialised fields.
Implications of the decision

Quality of evidence

An expert must exercise caution from the outset to ensure accurate and consistent advice is given. Experts must comply with their duty to the court, their client and any rules prescribed by their professional body. Instructions should be carefully assessed and further clarification should be requested if necessary prior to providing a report or any views as to the merits. Notes of expert discussions should always be carefully checked and amendments should be requested where necessary. Lord Brown of the majority considered that the most likely consequence of the decision will be ‘... a sharpened awareness on the part of experts of the risks of pitching their initial views of the merits of their client’s case too high or too inflexibly ...’. Lady Hale of the minority stated that the decision may also have the welcome effect of reducing the practice of recruiting experts to act as a ‘hired gun’.

Policy cover and effect on premiums

Although expert witnesses now face the risk of being sued for breach of duty, some comfort may be taken from the experience gained following the abolition of advocate immunity in 2002 which did not open the floodgates for claims against advocates. Experts who hold cover should review this to ensure that it is suitable for the work that they undertake. Experts who do not currently hold cover for expert witness work should consider obtaining this in light of this decision. Premiums for cover are likely to increase to take account of the new risk and potential exposure. Furthermore, this decision is likely to have retrospective effect and, as such, experts should be aware that they could potentially be faced with claims dating back several years but which are still within the relevant limitation period. Consideration should be given as to whether it is necessary to make a notification of any such claims/circumstances.

Exclusion/limitation of liability

Experts should seek to exclude or limit their liability in their terms of appointment for claims brought against them for breach of contract and negligence, although it is not currently clear how effective such provisions will be.

Joe Eizenberg is a partner at Beale and Company, Bristol. Reproduced with permission. For enquiries related to this article please contact Joe Eizenberg at j.eizenberg@beale-law.com or Kristina Vongas at k.vongas@beale-law.com.

The IBA’s Human Rights Institute

The International Bar Association’s Human Rights Institute (IBAHRI), established in 1995, has become a leading global force in human rights, working to promote and protect the independence of the judiciary and the ability of lawyers to practice freely and without interference under a just rule of law. The IBAHRI runs training programmes and workshops, capacity building projects with bar associations, fact-finding missions, trial observations; issues regular reports and press releases disseminated widely to UN bodies, international governmental and non-governmental organisations and other stakeholders; and undertakes many other projects working towards its objectives.

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Our work around the world
We write this report to you as we shake the dust off our feet upon returning from a highly successful working weekend to Chateau St Just, near Chantilly in France.

Over the working weekend, some 40 lawyers from 16 countries gathered to discuss a number of cutting edge issues introduced by pre-selected moderators.

The three sessions on Saturday on Insurance and the Construction Industry; Key issues in Bonds and Guarantees; and the Role of the Expert were the subject of lively and informed debate. They were followed by a group outing to the nearby mediaval town of Senlis and dinner at a restaurant located in the countryside nearby. On Sunday, the topic of Governing Law and Jurisdiction Issues was considered. The extent of discussion and level of interest in the session is a clear indication that ICP would do well to devote further time to the subject.

We wrapped up with a varied session on current law updates from the UK, Brazil and Spain; reports from our Subcommittees on their current and future activities; and a discussion on future plans.

It was a weekend that combined an invigorating level of professional expertise with stimulating discussion, as well as the chance to catch up with old friends whilst making new ones. All in all, ICP at its best!

With our working weekend completed, our thoughts now turn to putting the final touches to the ICP programme for the IBA Annual Conference in Dubai in October 2011. Our plans and organisation are well advanced. Session chairs will be providing us with their proposed platform of speakers by the end of May. We have found an excellent restaurant in Dubai for our ICP Dinner on the Wednesday evening of the Conference week, through the kind assistance of Vice-Chair Tom Wilson. Tom has also been key in the planning of our ICP outing on the conference Friday which will include a visit to the Grand Mosque in Abu Dhabi and a lunch stop in the desert.

Dubai promises to offer much to ICP members - well organised and cutting edge sessions, and very congenial good fellowship.

We look forward to seeing you all there in the autumn!

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