



Building Contract Formation and Case Law

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Building Contract Formation and Case Law

- ▶ Creation of Contract
- ▶ Allocating responsibility, risks and obligations in contract formation
- ▶ Hidden contract terms
- ▶ Fit for purpose
- ▶ Case Law Update

Building Contract Formation and Case Law

- ▶ Offer
- ▶ Acceptance
- ▶ Consideration
- ▶ Intention to create legal relation
- ▶ Certainty of terms
- ▶ Grove Developments Ltd v Balfour Beatty Regional Construction Ltd [2016] EWHC 168 (TCC)
- ▶ Letters of Intent

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- ▶ Allocation of Risk – Follow the money
- ▶ Known Unknowns
- ▶ Design liability
- ▶ Ground Conditions (unforeseen)
- ▶ Contamination

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Risk - Design Risks

- ▶ Design and Build
- ▶ Reasonable skill and care
- ▶ Fitness for purpose
- ▶ Regularly and diligently

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Implied Terms

- ▶ Construction Act 1996
- ▶ Sale of Goods Act 1979
- ▶ Sale and Supply of Goods Act 1994
- ▶ Supply of Goods and Services Act 1982
- ▶ Late Payment of Commercial Debts Act (Interest) 1998

Clin v Walter Lilly & Co Ltd [2018] EWCA Civ 490

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- ▶ S104 – an agreement with a person for
- ▶ S105(1) – construction operations
 - ▶ architectural
 - ▶ advice – construction related
 - ▶ laying out landscape
- ▶ S105(2) – exclusions from construction operation

BHC Ltd v Galliford Try Infrastructure Ltd (t/a Morrison Construction) [2018]
EWHC 368 (TCC)

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Fitness for Purpose

- ▶ Reasonable skill and care
- ▶ Suitable for purpose stated
- ▶ MT Hojgaard A/S v E.ON Climate and Renewables UK Robin Rigg East Ltd [2015] EWCA Civ 407

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Implied Terms

- ▶ MT Hojgaard A/S v E.ON Climate and Renewables UK Robin Rigg East Ltd [2015] EWCA Civ 407
- ▶ Lowe v W Marshall Joinery Ltd [2011] EWCA 794
- ▶ Harrison & Others v Shepherd Homes Ltd [2011] EWCA 1811

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Third Party Agreements

- ▶ Agreements for Lease
- ▶ Funding Agreements
- ▶ Forward Funding
- ▶ Purchase Agreements

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LAD's

- ▶ Cavendish Square Holdings BV & Another v Makdessie/Parking Eye Limited v Beavis [2015] UKSC 57
- ▶ Temloc Limited v Erril Properties Limited [1987] 39 BLR 30
- ▶ Silent Vector Pty Ltd t/as Sizer Builders v Squarcini [2008] WASC 246

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Unfair Contract Terms

- ▶ Ampleforth Abbey Trust v Turner and Townsend Project Management Limited
- ▶ Saint Gobain Building Distribution t/a IDS v Hillmead Joinery (Swindon) London [2015] EWHC B7 TCC

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Case Law Update

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Ground Developments Limited v FCC Construcción SA & Others [2016] EWHC 1946 (TCC)



- ▶ Merseylink Project - £1.8bn
- ▶ Groundworks / Remediation Contract - £6m
- ▶ NEC – Sub-Contract
- ▶ Letter of Intent / Exchange of Letters
- ▶ Adjudication

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Case Law Update

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QUESTIONS

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