

# Key Takeaways

## Lee & Thompson Contract Law Update 2025

Take comfort there is no startling new law. But take care: there are plenty of cases showing the scope for argument over the meaning and effect of contractual clauses. Words matter.

### Contractual Interpretation

A reminder of the basics. Interpretation is a mix of textualism (the meaning of the words) and contextualism (the background facts), but meaning is most obviously ascertained by looking at the words: the clearer they are the more difficult it is to depart from them.

(*Wood v Capita Insurance Services Ltd* [2017] UKSC 24)

### MOUs and HOTs

More cases over whether there is a binding contract or what documents comprise the contract. The usual warnings about making clear whether you want MOUs/HOTs to be binding or not and to use (and keep using) 'subject to contract' where appropriate – don't let it drop off the drafts inadvertently. Having a binding MOU pending a long-form does not mean that you cannot create additional binding obligations through other documents.

(*Sundorne Properties (Llanidloes) Ltd v Geminor UK Ltd* [2024] EWHC 1666 (Ch))

### Agreements to Agree

Beware agreements to negotiate (in good faith, using reasonable/best endeavours etc.). Even if contained in a binding contract, they may themselves be unenforceable agreements to agree. Negotiation is a selfish process and an agreement to negotiate may be meaningless. If you want such clauses to be binding set clear objectives and criteria to judge whether the obligation has been met.

(*Salem & Anor v Salem & Ors* [2024] EWHC 3311)

### Mistakes

...are hard to find, and even harder to rectify. Don't assume that just because you think there is a mistake the other side or the Court will agree.

(*Project Angel Bidco Limited v Axis Managing Agency Limited & Others* [2024] EWCA Civ 446)

### Boilerplate

Don't forget your boilerplate clauses. It maybe tempting to cut them down but do so consciously and know that doing so can have a significant impact. **Entire agreement** and **third party rights** clauses can make or break a claim. And remember you need express non-reliance wording to exclude liability for misrepresentation.

(*DEFRA & Others v Public and Commercial Services Union* [2024] UKSC 41, and *JMW Solicitors LLP & Others v Injury Lawyers 4U & Others* [2024] EWHC 3103 (Ch))

### Exclusion and Limitation

These clauses can also make or break a claim and continue to be subject of much argument. Take a step back, think about what the likely losses are and whether your exclusion clause is wide enough (or too wide).

(*EE Limited v Virgin Mobile Telecoms Limited* [2025] EWCA Civ 70, *South East Water Limited v Elster Water Metering Limited* [2025] EWCA Civ 287, and *Topalsson GmbH v Rolls-Royce Motor Cars Ltd* [2024] EWCA Civ 1330)

### Watch How You Behave

However clear your contract, how you behave after the contract has been signed can affect your ability to enforce (or terminate) your contract, and impact the other side's ability to enforce against you. Estoppel and waiver may prevent insistence on strict contractual performance and may prevent termination. Be mindful of the business not following contractual procedures. Don't be shy about reserving rights – some relationship awkwardness may be better than losing them.

(*Tata Consultancy Services Ltd v Disclosure and Barring Service* [2024] EWHC 1185 (TCC), and *Little and Another v Olympian Homes Ltd* [2024] EWHC 1766)

### Termination

Always (always) be really careful about termination. Ensure you know your rights and rely on the correct grounds. Comply with all the formalities and notice requirements. Getting it wrong can be costly. Take advice. From us! Watch what you do once a termination right arises: you might lose the right if you delay (or you might not if you didn't know you had the right).

(*URE Energy Limited v Notting Hill Genesis* [2024] EWHC 2537)

### Contact

Please get in touch if you have any negotiation or drafting issues, if things aren't quite going to plan and you want to sense check your position, if you're looking to renegotiate or maybe exit from a contract, or if you need a serious, cost-effective and outcomes-focussed team to fight your corner. This is what we do every day.



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