

Takeaways: Contract Law Update 2026

A reminder of some key principles and how they work in practice. These cases show how disputes arise at every stage – over whether you have a contract at all, if you are bound by a particular clause, how you have to behave when performing your contract, and how to terminate it.

None of these issues are new, but they keep recurring, and illustrate how problems can often arise in contractual relationships and how care needs to be taken in drafting, negotiation, and termination.

Interpretation

The usual rules apply: contracts must be interpreted objectively. What would a reasonable person with the relevant knowledge have understood the words to mean? Look at the words, the contract as whole and the relevant factual context. The clearer the drafting the less weight will be given to the background context. Be very wary of interpreting one clause in isolation. And be aware of how changing one clause might impact others – everything is connected.

Formation

Contracts can be entered into informally – even when they are high value and between sophisticated commercial parties – as long as the key ingredients are there (agreement, intention to create legal relations, certainty and consideration). Be careful when negotiating via WhatsApp and remember to use ‘subject to contract’ if you want to avoid being bound. *DAZN Limited v Coupang Corp* [2025] EWCA Civ 1083 and *Javee Homes Limited v Steve Fincham* [2025] EWHC 942 (TCC)

Agency, authority and contracting parties

To avoid an argument over authority, think about who’s signing a contract and whether they have authority to do so. Remember that apparent/ostensible authority requires a representation by the principal, not the agent, that the agent has authority. If there are any red flags, should you ask for confirmation or get the principal to sign? If you’re acting as agent, make sure your authority is recorded in writing. Always check the party named in a contract actually exists. *Al Othman Holding Company v Al Rajhi Holding WLL* [2025] EWHC 3078 (Comm) and *Xtellus Capital Partners Inc v DL Invest Group PM S.A.* [2025] EWHC 1989 (Comm)

Bye bye, red hands?

You will remember Denning’s red hands from *Spurling v Bradshaw* (70 years ago) and *Thornton v Shoe Lane Parking*. The doctrine remains but is reframed as the less romantic “onerous clauses doctrine”. Onerous clauses must be “fairly and reasonably” brought to the other party’s attention. Consider whether you can contest an onerous clause being used against you. You may be able to but it will be a high bar to show a clause is onerous or unusual, and it will be difficult to rely on the doctrine in a contract between parties of equal bargaining power or where they are professionally represented. If you are relying on standard terms are you hiding an onerous clause? How clear is it? Consider the practicalities of the sign-up journey, the structure of the contract, and details like headings and sub-headings and even font size. *MS Amlin NV v King Trader Ltd & Ors* [2025] EWCA Civ 1387

Discretions

Watch out for discretion-type wording which can be easy to miss and can creep into drafting unintentionally. If a party has a discretion, it might have to exercise it rationally and in good faith. Rationality isn’t the same as reasonableness, so be careful if you’re combining the two – which test you want will depend on which side you’re on. In practice, the bar might be low, but be careful when exercising a discretion and be ready to challenge a decision you’re not happy with. *Braganza v BP Shipping Ltd* [2015] UKSC 17, *Dwyer (UK Franchising) Limited v Fredbar Limited* [2021] EWHC 1218 (Ch) and *Secret Mode Limited v Victura, Inc* [2026] EWHC 2185 (Ch)

Waiver - is ignorance bliss?

A reminder that what you do or don’t do when performing a contract can impact on your contractual rights. Think about estoppel and waiver. In particular, beware of waiving (by election) a right to terminate by acting in a way that is inconsistent with that right. To waive by election you must have knowledge of the facts and of the right, and if you really did not know about the right then you cannot be said to have made that election. It will be difficult to prove that you didn’t know, especially if you had legal advice, but not impossible. You will be bound by your contractual obligations (ignorance is no defence) but may not be held to have waived them if you genuinely did not know what they were. *URE Energy Limited v Notting Hill Genesis* [2025] EWCA Civ 1407

Termination on reasonable notice

What if you want to get out of a contract but there is no breach and no right to terminate for convenience? Can you terminate on reasonable notice and if so what is a reasonable period? Whether there is a right maybe a question of construction of the contract as well as (or instead of) an implied term. Could it have been intended that the contract was perpetual (lasting forever) or indefinite (to end at an undetermined time). Those are not the same thing. If indefinite, then it may be necessary to imply or infer a right to terminate on reasonable notice. *Zaha Hadid Limited v The Zaha Hadid Foundation* [2026] EWCA Civ 192.

The notice period may be shorter than you think – in this case three months for a forty-year relationship. Consider the length of the relationship, how important the business is to the recipient, how onerous are the ongoing obligations, was there any extraordinary investment, any third party commitments, and other factors (like the time of year). The purpose of allowing termination on reasonable notice is to “cushion the blow” not to protect profits. *Anheuser-Busch v Commonwealth Brewery* [2026] UKPC 8

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.



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