



Lucy Garrett KC



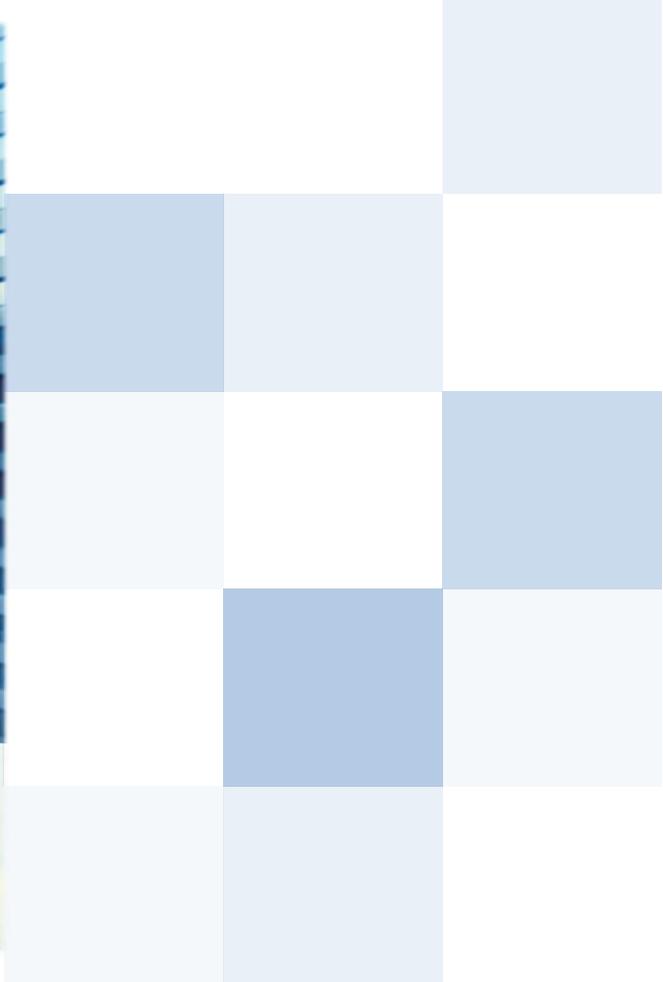
Tom Owen KC



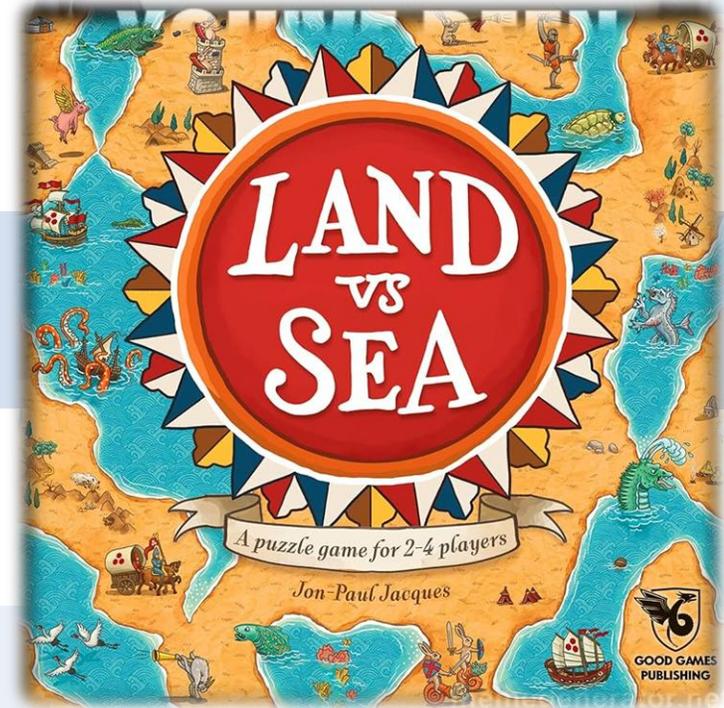
Thomas Lazur

Panel 3: Permissible Delay

Keating Chambers Energy Masterclass
10 March 2026



- (1) Onshore vs offshore.
- (2) Standard forms.
- (3) Delay in the context of termination.



Risk allocation: onshore vs offshore

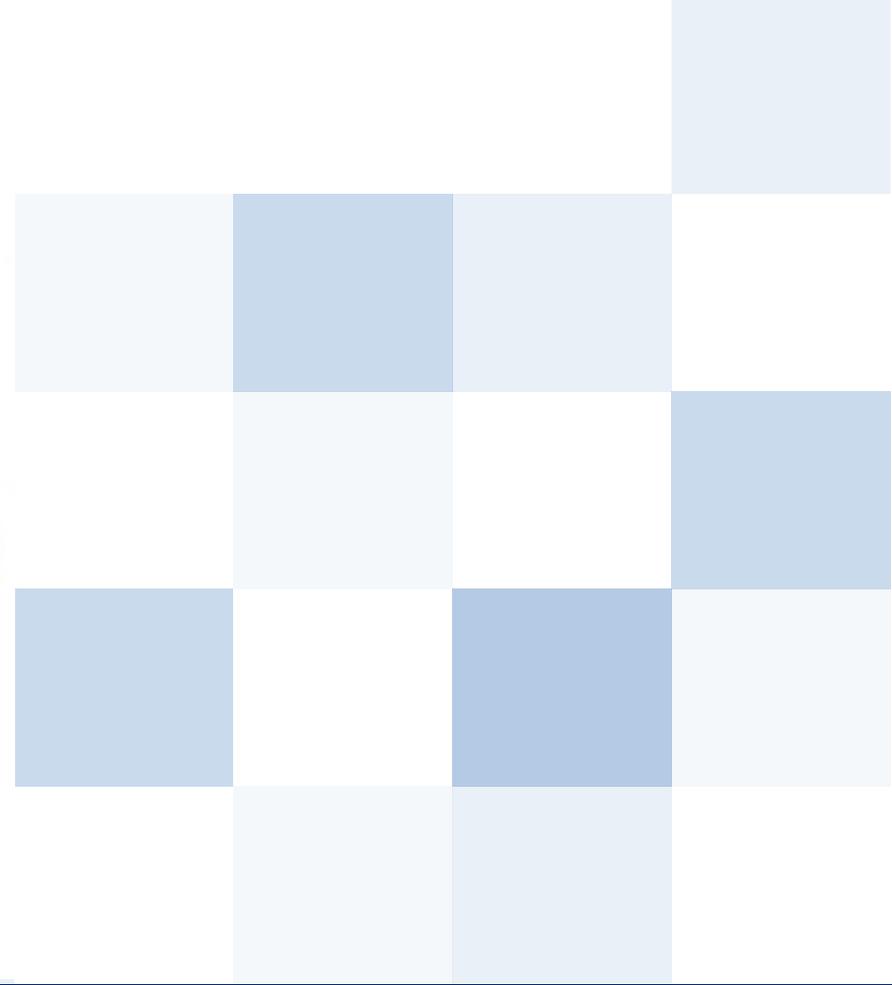


- FIDIC.
 - 1) Rights of the Contractor to extensions of time.
 - a) Clause 8.4: subject to notification: (a) a Variation, (b) a cause giving entitlement contractually, (c) any delay, impediment or prevention caused by or attributable to the Employer
 - 2) Rights of the Employer to terminate.
 - a) E.g. clause 15.2 (for cause, unamended): no express right to terminate for delay *per se*. Often amended to include the expiry of a Maximum Delay Period. Otherwise: abandonment of the Works, or without reasonable excuse fails to proceed.

- NEC.
 - 1) Rights of the Contractor to extensions of time.
 - a) Clause 63.3: subject to notification, the assessment of a compensation event.
 - b) Clause 60.1(18): *“a breach of contract by the Employer which is not one of the other compensation events in this contract”*, and (19).
 - 2) Rights of the Employer to terminate.
 - a) Clause 90: invoking a valid reason prescribed by the Termination Table in clause 90.2 and reasons at clause 91. No express right to terminate for delay *per se*.

➤ SBCs [*SAJ focus*].

- 1) Tripartite classification: (i) permissible, (ii) non-permissible, (iii) excluded delays.
- 2) Rights of the Builder to extensions of time; and to terminate. E.g. SAJ, Article VIII.3.
 - a) If the total of all “*non-permissible delays*” accumulates beyond a certain level (either 150 days on their own, or 180 days when aggregated with “*permissible delays*”).
 - a) No right to terminate for “*excluded delays*”. They do not count for the thresholds.
 - b) What about prevention, or “*other causes beyond the control of*” the Yard / Seller / Builder?



A party cannot, in the absence of clear terms, take advantage of their own wrong



Multiplex Ltd v Honeywell Ltd (No 2) [2007] Bus LR Digest defines the modern understanding of the Prevention Principle in English Law:

- Actions by the employer which are perfectly legitimate under a construction contract may still be characterised as prevention, if those actions cause delay beyond the contractual completion date.
- Acts of prevention by an employer do not set time at large if the contract provides for extension of time in respect of those events.
- In so far as the extension of time clause is ambiguous, it should be construed in favour of the contractor.

If applied, the orthodox view is that time becomes “at large”



Multiplex Ltd v Honeywell Ltd (No 2) [2007] EWHC 447 TCC:

“In the field of construction law, one consequence of the prevention principle is that the employer cannot hold the contractor to a specified completion date, if the employer has by act or omission prevented the contractor from completing by that date. Instead, **time becomes at large and the obligation to complete by the specified date is replaced by an implied obligation to complete within a reasonable time.**”

Quoting from Peak Construction (Liverpool) Limited v McKinney Foundation [1970] 1 BLR:

“the employer, in the circumstances postulated, is left to his ordinary remedy; that is to say, to recover such damages as he can prove flow from the contractor's breach.”

Coulson LJ reiterated that view in North Midland Building Ltd v Cyden Homes [2018] EWCA Civ 1744

Land-Based construction contracts changed to avoid the impact of the prevention principle



- Extension of time provisions typically incorporate **all potential acts of prevention** so as to maintain the contractual machinery for completion and liquidated damages:
 - **NEC: 19 compensation events including:**
 - *“A breach of contract or act of prevention on the part of the Employer (except to the extent caused or contributed to by the Contractor or any Subcontractor or any person for whom those parties are responsible) which is not one of the other compensation events in this contract.”*
 - **JCT: 14 Relevant Events including:**
 - *“Any impediment, prevention or default, whether by act or omission, by the Employer or any of the Employer’s Persons.”*

Employers have successfully curtailed the principle through express terms



Making notice a condition precedent:

- *“Contractual terms requiring a contractor to give prompt notice of delay serve a valuable purpose; such notice enables matters to be investigated while they are still current. Furthermore, such notice sometimes gives the employer the opportunity to withdraw instructions when the financial consequences become apparent.”* Jackson J in Multiplex Construction v Honeywell Control Systems [2007] EWHC 447 (TCC)

Removing a right to extensions of time where there is concurrent delay:

- *“Clause 2.25.1.3(b) was an agreed term. There is no suggestion in the authorities noted above that the parties cannot contract out of some or all of the effects of the prevention principle: indeed, the contrary is plain. Salmon LJ’s judgment in Peak v McKinney ... expressly envisaged that, although it had not happened in that case, the parties could have drafted an extension of time provision which would operate in the employer’s favour, notwithstanding that the employer was to blame for the delay.”* Coulson LJ in North Midland Building Ltd v Cyden Homes Ltd [2018] EWCA Civ 1744

Acknowledged in the context of shipbuilding contracts...



Adyard Abu Dhabi v SD Marine Services [2011] EWHC 848 (Comm) at paragraph 242:

- *“(1) In a basic shipbuilding contract, which simply provides for a Builder to complete the construction of a vessel and to reach certain milestones within specific periods of time, the Builder is entitled to the whole of that period of time to complete the contract work.*
- *“(2) In the event that the Buyer interferes with the work so as to delay its completion in accordance with the agreed timetable, this amounts to an act of prevention and the Builder is no longer bound by the strict requirements of the contract as to time.*
- *“(3) The instruction of variations to the work can amount to an act of prevention.”*

Zhoushan v Golden Exquisite Inc [2015] Vol 1 283 at 45-46

- *“There is a well-established presumption that a contract is not to be construed in a way which allows a party to rely on its own breach of the contract in order to obtain a benefit....I of course recognise the force of the general presumption...”*

Jiangsu Guoxin Corp v Precious Shipping [2020] 1 CLC at 20:

- *“I accept that a term is to be implied into the SBCs, as into very many contracts, that neither party should prevent the other from performing its obligations under the contract.”*

...but never applied



Adyard Abu Dhabi v SD Marine Services [2011] EWHC 848 (Comm) at paragraph 242:

*“Delays on account of such clauses as specified in Clause 1 of this Article (i.e. force majeure causes) **and any other delays of a nature which under the terms of this Contract permits postponement of the Delivery Date.**”* was a general sweep up

Zhoushan v Golden Exquisite Inc [2015] Vol 1 283 at 45-46

*“If, ...the VESSEL...is delayed due to war, blockade, revolution, insurrection...**or other causes beyond the control of the BUILDER...** the BUILDER shall not be liable for such delay...”* notwithstanding the presumption that a buyer cannot rely on delay caused by its own breach, the contract provides for permissible delays, non-permissible delays and excluded delays that are intended to cover the whole field, so where buyer breach was foreseeable and no express entitlement, the seller had no right to an extension

Jiangsu Guoxin Corp v Precious Shipping [2020] 1 CLC at 20:

*“If, ... the VESSEL...is delayed due to war, blockade, revolution, insurrection, ...**or other causes beyond the control of the SELLER ... or by force majeure of any description, the SELLER shall not be liable for such delay ...**”* should be given a meaning which embraces matters other than what might be described as “conventional” force majeure events

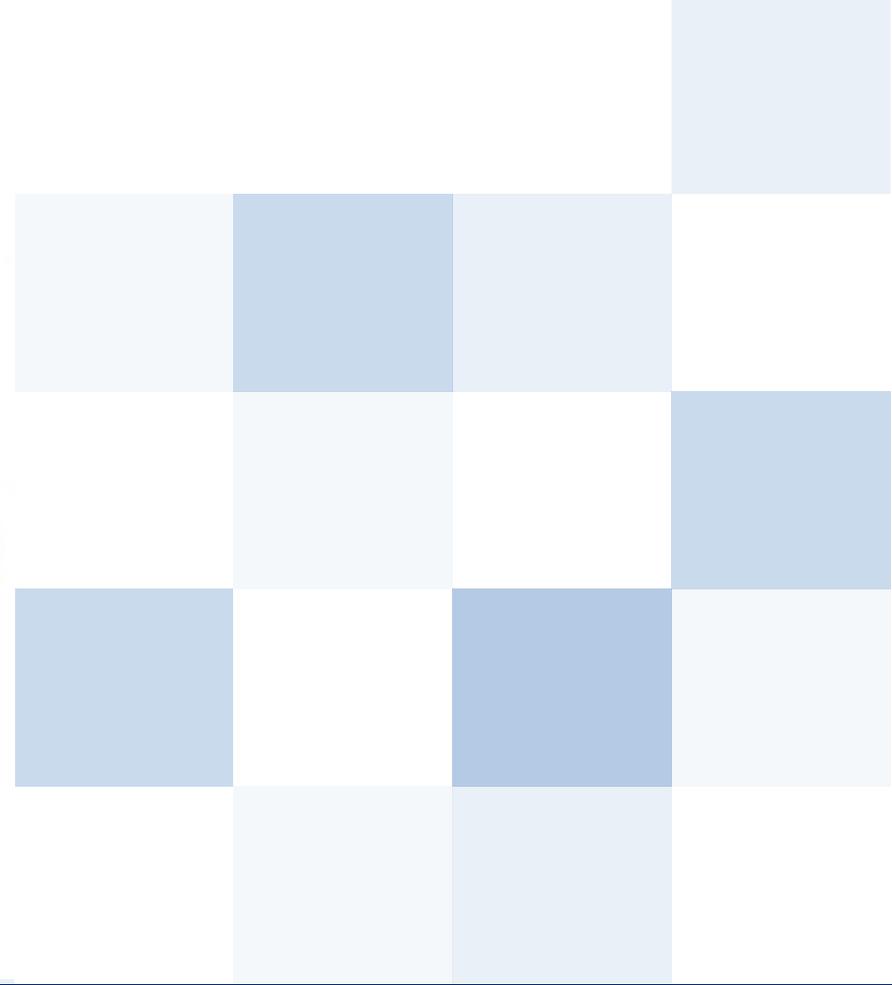
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“...the inability – absent clear words to the contrary – of party A to hold a party B to a stipulation if Party A itself has prevented party B from complying with that stipulation is a basic presumption compatible with ordinary rules of construction. It is “obvious”. It is no different to the rebuttable presumption when construing a contract, for example, that absent clear words a party will not give up their common law rights. The suggestion that the modern shipbuilding world is so different from other commercial and construction spheres that such an obvious starting point from which to construe a contract might be excluded is, it is suggested, wrong.”

‘...There is also a very interesting analysis of the principle of prevention and time at large, which has been developed from nineteenth century decisions. It raises for consideration whether the principle is correct. The proposition that an act of prevention by the employer can, in the absence of an extension of time provision for that eventuality, lead to the replacement of the agreed time for completion by a reasonable time is startling. In Chapter 7, the authors question whether that proposition is consistent with existing case law....’

*Hamblen LJ
Sir Vivian Ramsey*



Article II

3.3 If the builder fails to complete either of the stages in clause 3.1(c) or (e) [Sea Trials] by the dates specified therein, then the buyer may... rescind this contract... provided always that, to the extent any delays are caused by the buyer's default or any permissible delay, that period shall be extended to the same extent.

NB. In Adyard the termination was at the date for Sea Trials rather than Delivery

1. Modifications of Specifications

1.1 The work to be performed by the builder under this contract can be modified and/or changed by written request from the buyer, **provided that the buyer shall first agree** in writing, before such modifications and/or changes are carried out, **to such adjustments as are reasonably required by the builder in the contract price, the delivery date...**

2. Change in Class Requirements

[Similar provisions for both compulsory and non-compulsory changes in clauses 2.1(b) and (c)]

Adyard

1. Causes of Delay

1.1 **The builder shall under no circumstances be liable for any delay or default caused by fire, flood [etc] ... resulting from any cause beyond the builder's control (hereafter "Force Majeure")**

Adyard

3. Definition of Permissible Delay

3.1 [1] Delays on account of such causes as specified in clause 1 of this Article and

[2] any other delays of a nature which under the terms of this contract permits postponement of the delivery date

[3] shall be understood to be permissible delays and

[4] are to be distinguished from unauthorized delays on account of which the contract price is subject to adjustment as provided for in Article III hereof [liquidated damages].

Termination Rights



The Golden Exquisite

1(c) If the delay in the delivery of the Vessel continues for a period of **210** days (**being the total “non-permissible” delays and 30 days allowance**) after the Delivery Date... then in such event, the Buyer may... rescind or cancel this Contract....

NB: Delivery Date in both The Golden Exquisite & Jiangsu defined in Art. VII as the date stated in that clause or “**such later date to which delivery is extended pursuant to the terms of this Contract.**”

Jiangsu

1(c) If the delay in the delivery of the Vessel continues for a period of **150** days (**being the total of non permissible delays and excluding extensions of delivery date by reason of [specific Articles] and... permissible delays...**) after the Delivery Date... then in such event, the Buyer may... rescind or cancel this Contract...

1(d) ... However, notwithstanding anything stated herein, if the **total delay (inclusive of all permissible and non-permissible delays... exceeds 180** days from the... delivery date... Buyer shall be entitled to rescind...

The Golden Exquisite

Jiangsu

1. Cause of Delay

If... the Vessel... is delayed due to war, blockade [etc] or other causes beyond the control of the Seller... the Builder shall not be liable for such delay and **the time for delivery of the Vessel under this Contract shall be extended without any reduction in the Contract Price... **subject nevertheless to the Buyer's right of cancellation under Paragraph 3 of this Article...****

1. Cause of Delay

If... the Vessel... is delayed due to war, blockade [etc] or other causes beyond the control of the Seller... or by force majeure of any description... then... the Seller shall not be liable for such delay and **time for delivery of the Vessel under this Contract shall be extended without any reduction in the Contract Price... **nevertheless subject to the Buyer's right of cancellation under Paragraph 3 of this Article...****

Article VIII.3 – Right to cancel for excessive delay



The Golden Exquisite

Jiangsu

[1] If the total accumulated time of all delays on account of the causes specified in **Paragraph 1 of [this] Article** aggregate to **225** days or more,

[2] or if the total accumulated time of all delays on account of the causes specified in Paragraph 1 of the Article and “non-permissible” delays as described in [Art III.1] aggregate to **270** days or more, in any circumstances,

[3] excluding delays... **due to default in performance by the Buyer...**

[4] and excluding **delays due to causes which, under [specific Articles] permit extension or postponement of the time for delivery** of the Vessel,

[5] then in such event, the Buyer may... cancel this Contract...

[1] If the total accumulated time of all non-permissible delays on account of the causes specified in **[Art III.1]** aggregate more than **150** days,

[2] or if the total accumulated time of all permissible days [sic] on account of the causes specified in Paragraph 1 of this Article and non-permissible delays as described in [Art. III.1] aggregate to **180** days in any circumstances,

Article VIII.4 – Definition of Permissible Delay



The Golden Exquisite & Jiangsu

[1] Delays on account of such causes as provided for in **Paragraph 1 of this Article**

[2] excluding **any other extensions of a nature which under the terms of this Contract permit postponement of the Contract Delivery Date**

[3] shall be understood to be (and are herein referred to as) **permissible delays**

[4] and are to be distinguished from **non-permissible delays on account of which the Contract Price of the Vessel is subject to adjustment** as provided for in Article III hereof [liquidated damages].

Thank You For Listening

Any Questions?