

Interpretation of Exemption Clauses in Commercial Contracts

The Court of Appeal has given a clear signal in [Persimmon Homes Ltd & Ors v Ove Arup & Partners Ltd](#) [2017] EWCA Civ 373 as to how exemption clauses in commercial contracts should be interpreted. Jackson LJ noted the now very limited role of the *contra proferentem* rule (which requires any ambiguity to be resolved against the party relying on it) in commercial contracts negotiated between parties of equal bargaining power. Moreover, his Lordship cast doubt on the relevance of the [Canada Steamship](#) guidelines on exemption clauses in modern contractual construction generally, and especially in commercial contracts:

"In major construction contracts the parties commonly agree how they will allocate the risks between themselves and who will insure against what. Exemption clauses are part of the contractual apparatus for distributing risk. There is no need to approach such clauses with horror or with a mindset determined to cut them down. Contractors and consultants who accept large risks will charge for doing so and will no doubt take out appropriate insurance."
(paragraph 57)

Parties to commercial contracts should therefore fully expect exemption clauses to be construed as reflecting the intended allocation of risk. It was suggested that insofar as the [Canada Steamship](#) guidelines may continue to be of relevance, they apply more to indemnity clauses than to exemption clauses.

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