

Keating Chambers
15 Essex Street
London
WC2R 3AA

DX: LDE 1045

T +44 (0)20 7544 2600
F +44 (0)20 7544 2700
keatingchambers.com

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CHAMBERS



David Thomas QC

Call: 1982 / **Silk:** 2002

dthomas@keatingchambers.com

Areas of practice

- Construction & Engineering
- Energy & Natural Resources
- Professional Negligence
- International Arbitration
- IT & Technology

Clerks' Details

Declan Redmond

T: +44 (0)20 7544 2616
E: dredmond@keatingchambers.com

Ted Paterson

T: +44 (0)20 7544 2679
E: tpaterson@keatingchambers.com

Sam Fury

T: +44 (0)20 7544 2696
E: sfury@keatingchambers.com

Practice overview

David Thomas QC has a heavy weight practice in construction, engineering, energy and international arbitration as well as related disputes concerning bonds and guarantees.

David is known for his forceful advocacy, incisive cross-examination skills, commercial awareness and the clarity and practicality of his advice. He has been consistently recommended as one of the leading practitioners in his fields by Chambers, Chambers Global and the Legal 500 and he is frequently instructed on high value disputes before international arbitral and other tribunals including the Dubai World Tribunal, as well as the English Courts.

A large part of his practice now arises from GCC countries and Asia. In the UK, he is a regular and notably successful Court of Appeal advocate and frequently appears before the Technology and Construction Court on high profile matters.

In addition, David sits as an arbitrator, adjudicator and mediator both in the UK and internationally.

He is the Editor of "Keating on NEC3" (First Edition 2012) a regular conference speaker and a columnist in the IBA journal "Construction Law International".

David Thomas QC was nominated for **Silk of the Year 2013** at the **Chambers and Partners Bar Awards**.

Recent Cases

David Thomas has won two Court of Appeal cases in 2012, the first concerned with contractual indemnities in the long running Rust v. PB litigation and the second in the performance bond case of *Hackney Empire v Aviva*.

Other recent cases have been international arbitrations concerning a motorway interchange in a GCC country, a combined cycle facility and a major African highway; Dubai World Tribunal cases related to "The World" and "The Palm". In the UK, PFI and PPP disputes in relation to roads, railways and hospitals; advisory work and in relation to the NEC 3 contract including in respect of the Olympic Park and other major infrastructure projects, adjudications of NEC 3 disputes. Long term advisory work in relation to a landmark London development.

Also in the UK and internationally disputes related to mechanical electrical and process engineering; energy sector work including construction of power stations and CHPs, oil and gas including FPSOs and pipelines, open cast coal mining and coal handling equipment disputes as well as nuclear waste disposal; railway engineering and train building contracts; and other major infrastructure projects for public and private sector clients including reservoir, road, dam, airport and stadium construction.

David Thomas frequently deals with highly technical issues which have ranged from soil mechanics, to the behaviour of powders in hoppers, stresses in steel members, lead contamination of water, the properties of concrete and turbine performance. He has a formidable reputation for cross-examination of experts. He has also dealt with a number of cases concerning accountancy issues arising from mergers and acquisitions and insurance issues.

David Thomas has experience of all major standard form contracts including the FIDIC, JCT, ICE, NEC and ECC forms, GC/Works/1, CCC/Works/1, ICHIME, MF/1 and SAJ.

Construction & Engineering

- Appearing before the Dubai World Tribunal in relation to a claim by a Dubai World development company against a number of land owners.
- A Dubai World Tribunal Trial concerning a facilities management contract.
- Acting for the main contractor on Wembley Stadium.
- Acting for Greek contractors in relation to the construction of a major international airport.
- An ICC arbitration concerning a power plant in the Middle East.
- An ICC arbitration concerning a railway in Singapore.
- A SIAC arbitration concerning industrial equipment.
- Acting in an ICC arbitration regarding the construction of a factory in Siberia.
- An arbitration on a major road building project in the Middle East.
- An arbitration about remediation of a contaminated site including issues as to chemical analysis as well as measurement and valuation questions.
- Acting for M&E contractors in a Hospital PFI project dispute, in adjudication, TCC trial and in the Court of Appeal.
- Advisory work and adjudication on Schools PFI Projects.
- A TCC trial for a German multi-national supermarket chain in relation to its' obligations under a lease and agreement for a lease. Also engineering questions as to causes of subsidence.
- Frequently instructed to advise on PFI and PPP contracts and has also carried out expert determinations in this field.
- Acting for assignees in a dispute about accrued rights.
- Acting for a local authority in respect of alleged defects at a sports centre.
- An adjudication and expert determination in relation to a major City of London office development.

- Advising architects and acting in an adjudication in a copyright licence dispute.
- Acting for UK clients in an ICC arbitration in relation to the redevelopment of the harbour side in Gibraltar.
- An arbitration about a collapsed waste tip involving technical soil mechanics issues.
- An arbitration about the construction of a reservoir, valuation issues under the ICE Conditions.
- A TCC trial for a train building company in a dispute as to quality with a train operating company. Issues as to the performance of metals.
- Acting for engineers in the Ladbroke Grove Rail Inquiry. Consideration of Risk/Benefit analysis.
- A TCC trial relating to the underperformance of a waste disposal plant. Issues as to the behaviour of powders in hoppers.
- A TCC trial concerning the accounting treatment of profits earned by engineers on long term projects.
- Advising on all related insurance points.

“Provides thoughtful, clear advice, and is very approachable and easy to work with.”
“He’s user-friendly, responsive and effective.”

Chambers UK Bar, 2015

Energy & Natural Resources

- A dispute related to the control equipment for an undersea gas supply pipeline.
- An arbitration as to an electricity pricing dispute.
- Acting for the manufacturers of coal handling equipment in an ICC arbitration against a mining company, involving factual and expert issues centred on the performance of conveyor belts.
- Acting in an ICC arbitration in relation to the construction of a Power Station in the Bahamas.
- An arbitration on a contractor’s delay and disruption claim arising from mechanical and electrical works at a nuclear facility.
- TCC litigation about the construction of a CHP plant.
- Various disputes about the construction of FPSOs.
- Advising and TCC litigation for contractors in valuation disputes arising under open cast coal mining contracts.
- An ICC arbitration concerning an LNG terminal.
- Advising in relation to offshore wind farm projects.
- An arbitration relating to a combined cycle power and water facility.
- Advising as to quality issues in pipelines and contractual issues as to a lengthy subsea gas pipeline.

“He dealt with complex issues, was always approachable and handled the matter with excellent client care.”

Chambers UK Bar, 2015

Professional Negligence

- An arbitration for a local authority in a professional negligence claim against engineers in respect of the design of a new bridge. Technical issues as to the design of steel columns.
- An adjudication on a claim against engineering consultants on a road building project.
- A long running TCC matter for a specialist engineering company in a professional negligence claim against consulting engineers in respect of work carried out at the Sellafield facility.
- Advising on a claim in relation to geotechnical engineering.
- Advising on a claim relating to M & E engineering in an office development.

“Outstandingly good”...“Extremely hard-working, calm, excellent with clients and fun to work with.”

Chambers UK Bar 2014

IT & Technology

- Acting for contractors in a dispute about alleged under performance of technology at a computerised distribution centre.

Appointments

David is a CEDR accredited mediator who has been appointed to act on construction related mediations and more general commercial disputes.

Examples of successful mediations:

As Mediator

- A multi-party mediation in respect of conversion of a hospital to residential dwellings.
- Defects case in a new block of flats.
- International trade dispute regarding claims for unpaid freight and counterclaims for trading losses.
- Dispute between main and sub-contractor about defective shopping centre floor.

As Counsel

- Delay and disruption claim relating to construction of a power station. Counterclaim for defective work. Settlement achieved.
- Claim related to defective floor in a warehouse. Remedial costs and trading losses.
- Claim related to defective and late design in nuclear industry. Remedial costs and trading losses.
- Defects claim in conversion of a hospital to luxury flats.
- Delay and disruption claim and repudiation counterclaim relating to refurbishment of central London offices.

As Arbitrator and Adjudicator

David sits as an arbitrator and adjudicator.

Examples of recent appointments:

- An NEC 3 dispute arising from an infrastructure project
 - An electricity pricing dispute
 - A Dubai property development
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Selected Reported Cases

- *Hackney Empire v Aviva Insurance Ltd* [2012] EWCA Civ 1716; [2013] B.L.R. 57; 146 Con. L.R. 1
- *Hackney Empire Ltd v Aviva Insurance UK Ltd* [2011] BLR 728 TCC
- *Rust Consulting Ltd v PB Ltd (decision of Edwards-Stuart J)* [2011] EWHC 1622 (TCC); [2011] PNLR 33; [2011] All ER(D) 201 (Jun); in the Court of Appeal: [2012] EWCA Civ 1070; [2012] BLR 427; (2012) 144 Con LR 63
- *Rust Consulting Ltd v PB Ltd (decision of Akenhead J)* [2010] EWHC 3243 (TCC); [2011] 1 All ER (Comm) 951; [2010] All ER(D) 271 (Dec); (2010) 135 Con LR 69; in the Court of Appeal, twice: [2011] EWCA Civ 899; (2010) 137 Con LR 92; [2012] 1 All ER (Comm) 455 and [2012] EWCA Civ 1070; [2012] BLR 427; (2012) 144 Con LR 63
- *Fitzpatrick Contractors Ltd v Tyco Fire and Integrated Solutions (UK) Ltd* [2008] 119 Con LR 155 TCC and [2008] EWHC 1301 (TCC)
- *Taylor Woodrow Construction v RMD Kwikform Ltd* [2008] BLR 383 TCC, [2008] 2 Lloyd's Rep 345, [2008] 1 CLC 793, [2009] 1 All ER (Comm) 770, 118 Con LR 57, [2008] EWHC 825 (TCC) and [2009] Bus LR 292
- *Tyco Fire & Integrated Solutions (UK) Ltd v Rolls-Royce Motor Cars Ltd* [2008] [2008] 1 CLC 625, [2008] Lloyd's Rep IR 617, [2008] EWCA Civ 286, [2008] 2 All ER (Comm) 584, [2008] BLR 285, 118 Con LR 25 and [2008] 14 EG 100
- *Aldi Stores Limited and WSP Group plc, WSP London Limited and Aspinwall & Company Limited* [2007] EWCA Civ 1260, [2007] BLR 113, [2007] EWHC 55 (TCC), EWHC 55 LAWTEL TCC, BLM Vol. 25 No. 1 CA and 115 Con LR 49 CA
- *Multiplex Constructions (UK) Ltd v Honeywell Control Systems Ltd* [2007] BLR 195 TCC, [2007] Bus LR D109, [2007] CILL 2458, [2007] EWHC 447 (TCC) and 111 Con LR 78
- *Epping Electrical v Briggs & Forrester* [2007] CILL 2438, [2007] EWHC 4 (TCC), 113 Con LR 1, (2007) 23 Const LJ 239 and [2007] BLR 126
- *Shawton Engineering Ltd v DGP International* [2006] CILL 2306 CA
- *Safeway Stores v Interserve* [2005] All ER (D) 07 TCC
- *Costain Ltd v Bechtel Ltd* [2005] TCLR 6 and [2005] BLM Vol. 22 No. 8 p.1 TCC
- *Emcor Drake & Scull Ltd v Sir Robert McAlpine Ltd* [2005] 98 Con LR 1 CA
- *AMEC Capital Projects Ltd v Whitefriars City Estates Ltd* [2004] 96 Con LR 142, [2005] BLR 1 CA, [2004] 20 Const LJ 338 and [2004] EWHC 393 (TCC)
- *Road Management Services (A13) plc v London Power Networks plc* [2003] All ER (D) 342 TCC (construction of the NRSWA)
- *Canary Riverside Development v Timtec International Ltd* [2003] Con LJ Vol 19, No 5 283 QBD

Seminars, Publications & Paper

- "Keating on NEC 3" David Thomas QC 1st Ed, May 2012
 - "NEC Contracts: A Lawyers Perspective" SCL Annual Conference, Leeds 2013
 - "Discharge of Bondsmen after Hackney Empire v Aviva". SCL Lecture, London 2013
 - "Practical issues on Projects using NEC 3" Hong Kong SCL Conference, Hong Kong, October 2012
 - "The FIDIC Dispute Resolution Machinery following CRW Joint Operation v PT Perusahaan Gas Negara" Singapore CI Arb and SCL, Singapore, October 2012
 - "International Construction Arbitration: Current Topics." Korea International Arbitration Summit, Seoul 2012
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- “The 2012 International Arbitration Survey” Construction Law International, March 2013
- “Contractual Obligations of Good Faith” Construction Law International, December 2012
- “Standard Form Construction and Engineering Contracts: Current and Recent Developments” Construction Law International September 2012
- “The New Edition of the I Chem E Suite” Construction Law International June 2013

Lecturer

Sometimes lecturer at Queen Mary University of London, International Construction Contracts and Arbitration. Contributor, Keating on Construction Contracts – Eighth Edition (2006).

Education & Professional Career

BA in Jurisprudence (First Class Honours), Wadham College, Oxford	1981
Middle Temple Astbury Law Scholar	1981-1982
Called to the Bar (Middle Temple)	1982
MA Oxon	1984
Called to the Bar of Gibraltar	1996
Queen’s Counsel	2002
CEDR Accredited Mediator	2003
Trained in Dispute Adjudication Board Hearings and Procedure	2005
Approved Arbitrator, Kuala Lumpur Regional Centre for Arbitration	2015
Approved Mediator, Kuala Lumpur Regional Centre for Arbitration	2015

Memberships

Technology and Construction Bar Association (TECBAR)
 UK Energy Law Group
 Professional Negligence Bar Association
 The Society of Construction Law
 ICC United Kingdom
 Dispute Resolution Board Foundation
 Commercial Bar Association (COMBAR)

Additional Information

David is a keen gardener with a particular interest in fruit growing and topiary. He also enjoys cricket and is a member of the MCC.
