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David Thomas KC

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Areas of practice

- International Arbitration
- Construction & Engineering
- Energy & Natural Resources
- Professional Negligence
- PFI/PPP
- Infrastructure & Utilities
- Offshore Construction & Marine Engineering

Clerks' Details

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Practice overview

David Thomas KC is a hugely experienced advocate.

“Cross-examination skills second to none”

“Extremely hard-working, calm, bright, excellent with clients.”

“He can master complex briefs and articulate arguments speedily and efficiently”

“The doyen of the arbitration world”

“A very modern silk”

are a few of the quotes in Chambers UK, Chambers Global, the Legal 500 and Who's Who Legal where David has been consistently recommended as a leader in his fields. David has recently been awarded Construction Silk of the Year at the 2021 Chambers UK Bar Awards, having also been shortlisted for the award in 2013 and 2017.

David is known for his forceful advocacy, incisive cross-examination skills, commercial awareness, and the clarity and practicality of his advice. He has been instructed in some of the biggest and highest profile cases in the world including the Shard, Wembley Stadium, the Olympic Stadium and the Burj Khalifa.

A large part of David's practice arises from GCC countries, Africa and Asia. Recent international arbitrations have concerned a coal-fired power station in South Africa, a major

road project in Tanzania, iconic developments and infrastructure in the Middle East, on shore and off shore oil and gas facilities, the construction of a hydroelectric power station in Vietnam, and DIFC cases related to “The World” and “The Palm”. In the UK, he is a regular Court of Appeal advocate and frequently appears before the Technology and Construction Court on high profile matters. He 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. David has also provided longterm advisory work in relation to landmark developments around the world.

David has experience of all major standard form contracts including the FIDIC (Red, Yellow, Silver and Gold books) EPC contracts, NEC, JCT, ICE forms, GC/Works/1, CCC/Works/1, ICHME, MF/1 and SAJ. He also has great experience of amended standard forms. He is the Editor of “Keating on NEC3” (First Edition 2012) and writes the commentary on the NEC form in “Keating on Construction Contracts”. He advises regularly on NEC contract disputes and has conducted numerous adjudications and mediations in relation to the engineering and construction contract, the professional services contract, the term services contract and various amended versions thereof. He has lectured on the NEC and FIDIC forms in the UK, Hong Kong, South Korea, Oman and South Africa.

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

Recent Cases

International Arbitration

- An ad hoc international arbitration concerning the construction of a coal-fired power station in South Africa.
- A high value VIAC arbitration concerning the construction of a hydroelectric power station in Vietnam with delay and termination issues.
- Acting for the claimant, a specialist engineering contractor, in an ICC arbitration arising out of a project to upgrade an LNG plant in Qatar.
- Acting for a shipyard in an LCIA arbitration regarding delays and variations on the refurbishment/upgrade of an FPSO.
- An LCIA arbitration concerning the construction of a combined power station and desalination plant in Abu Dhabi.
- An arbitration on a contractor’s delay and disruption claim arising from mechanical and electrical works at a nuclear facility.
- An ICC arbitration relating to a major road building project in Tanzania.
- An ICC arbitration concerning a power plant in the Middle East.
- An ICC arbitration concerning a railway in Singapore.

“He’s wonderful to work with and gets brilliant results. David has always got his eye on how to make progress in a matter and get our client out on top.”

Chambers UK Bar 2024

- A SIAC arbitration concerning industrial equipment.
- An ad hoc arbitration on a major road building project in Oman.
- An ad hoc arbitration relating to infrastructure projects in Oman and the Yemen.

- Acting in an ICC arbitration in relation to the construction of a Power Station in the Bahamas.
- A DIAC arbitration for specialist Chinese contractors in relation to a tall building in Dubai.
- DIAC arbitrations relating to various hotel developments in Dubai.
- Numerous DIAC arbitrations relating to commercial property developments in Dubai.
- An ICC arbitration relating to airport construction.
- AN ICC arbitration for a Japanese contractor relating to road building in the UAE.
- An arbitration for the employer concerning a dredging and reclamation project in Dubai.

Construction & Engineering

- Acting for the developer in a substantial claim against the main contractor for delays and termination of a contract for the refurbishment of a retail and office space in Birmingham city centre.
- Acting for a UK main contractor in a delay disruption and termination dispute relating to the construction of an EfW plant.
- Advising and acting in adjudications in relation to a major UK road building project.
- Claim in the DIFC Court and Court of Appeal by property developer against his bank for wrongful withdrawal of loan facilities causing suspension of project to build a five-star luxury hotel on the Palm in Dubai. Proceedings in the DIFC and subject to UAE law.
- Appearing before the DIFC in relation to a claim by a development company against a number of land owners.
- Advising in relation to an NEC term services contract in respect of military facilities.
- Advising in relation to an NEC engineering and construction contract in relation to a major hospital refurbishment.
- A DIFC case concerning a facilities management contract.
- Acting for the main contractor on Wembley Stadium.
- 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.

“David is great at understanding the best strategy and leading the entire team to deliver on that. He is a very good advocate who is very persuasive. One of the best to have on your team.”

Legal 500 UK 2023

- An arbitration about remediation of a contaminated site including issues as to chemical analysis as well as measurement and valuation questions.
- A TCC trial for a German multi-national supermarket chain in relation to its' obligations under a lease and agreement for a lease. The case also included engineering questions as to causes of subsidence.
- 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.
- 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 an NEC engineering and construction contract for coastal protection works.
- Advising on hotel and residential towers development in Qatar.
- Advising owners in dispute in relation to construction of a sporting facility in Hong Kong.

Energy & Natural Resources

David has a busy energy practice in the UK and internationally. He has widespread experience disputes related to mechanical electrical and process engineering, construction of power stations and CHPs, oil and gas, FPSOs and pipelines, open cast coal mining and coal handling, and nuclear waste disposal.

- An ad hoc international arbitration concerning the construction of a coal-fired power station in South Africa.
- Acting for the claimant, a specialist engineering contractor, in an ICC arbitration arising out of a project to upgrade an LNG plant in Qatar.
- A high value VIAC arbitration concerning the construction of a hydroelectric power station in Vietnam with delay and termination issues.
- An arbitration on a contractor's delay and disruption claim arising from mechanical and electrical works at a nuclear facility in the UK.
- Advising and acting on an adjudication on an NEC long term framework agreement concerning the replacement of gas mains.
- An arbitration between the UK government and a specialist contractor concerning variations and delays at the Radioactive Effluent Treatment Plant at the Atomic Weapons Establishment at Aldermaston in the UK. The case involved numerous design issues as well as issues as to requirements in the specification of specialised large-scale welding and whether the welding in fact gave rise to variations.
- An LCIA arbitration concerning the construction of a combined power station and desalination plant in Abu Dhabi.

“David’s great. He has a nice, calm, authoritative manner, which is great for clients to turn to him for guidance on strategy.”

Chambers UK Bar 2024

- Advising on a dispute as to the port facilities for nuclear powered submarines.
- A dispute concerning delays and termination of a contract for the construction of a process

plant for handling nuclear waste at Sellafield in the UK and in particular the design and construction of a top up system, mechanical outcell equipment and hatches and a glove box assembly and operations cell.

- 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.
- Advising and TCC litigation for contractors in valuation disputes arising under open cast coal mining contracts.
- An ICC arbitration concerning an LNG terminal.
- An arbitration relating to a combined cycle power and water facility.
- Acting for Korean contractors on an EPC contract on a gas project in Iraq.

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.

“David is excellent at determining a strategy, getting the team to deliver and persuading the decision makers. All round, he is very successful at winning.”

Legal 500 UK 2024

PFI/PPP

David is frequently instructed to advise and conduct adjudications on PFI and PPP contracts in relation to waste, roads, railways, prisons and hospitals. His recent cases include acting for authorities, building contractors, funders and FM contractors:

- Advisory work and adjudications for building contractors and FM contractors on numerous hospital projects including fire issues.
- Acting for the Contracting Authority in the PFI procurement of a waste disposal service, including an EfW plant.
- Acting for M&E contractors in a Hospital PFI project dispute, in adjudication, TCC trial and in the Court of Appeal.
- Advising a Project Company as to the obligations of the various parties with regard to cladding in a PFI project concerning a numerous high rise buildings.

- Advisory work and adjudication on Schools PFI Projects.
- Advisory work on prison PFI contracts for the FM contractors.
- Advisory work in relation to alleged defects in a major highway bridge.

Infrastructure & Utilities

David's experience in this area includes disputes relating to 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.

- Advising and acting in adjudications on NEC engineering and construction contracts relating to two major UK highway projects.
- Acting for Greek contractors in relation to the construction of a major international airport.
- Arbitrations on five major road building projects in Oman and Yemen.
- Acting for engineers in the Ladbroke Grove Rail Inquiry. Consideration of Risk/Benefit analysis.
- An ICC arbitration relating to a major road building project in Tanzania.
- Advising in relation to a major Hong Kong infrastructure project.
- Advising in relation to utility maintenance contracts.
- Acting for contractors on FIDIC Yellow Book contract (and related Red Book contracts) in project in Kazakhstan. Exclusions of liability time bars and design liability issues (Kazakh law).
- Acting for Korean contractors on port project in Iraq.
- Acting for contractors in relation to a Middle Eastern airport.

“With his wealth of experience, David brings a cool and calm presence to the dispute and is concise and clear with instructing solicitors and clients as to the immediate and overall strategy.”

Construction, Legal 500 EMEA 2024

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- A dispute related to a drainage project in Hong Kong.
 - An ICC arbitration relating to a major road building project in Tanzania.
 - Advising and acting in adjudications in relation to a major UK road building project.
 - An ICC arbitration concerning a railway in Singapore.
 - An ad hoc arbitration on a major road building project in Oman.
 - Acting for UK clients in an ICC arbitration in relation to the redevelopment of the harbour side in Gibraltar.
 - 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.
 - Advising and acting on an adjudication on an NEC long term framework agreement concerning the replacement of gas mains.
 - Advising on a dispute as to the port facilities for nuclear powered submarines.
 - An arbitration as to an electricity pricing dispute.
 - An adjudication on a claim against engineering consultants on a road building project.

Offshore Construction & Marine Engineering

- Acting for a shipyard in an LCIA arbitration regarding delays and variations on the refurbishment/upgrade of an FPSO.
- Various disputes about the construction of FPSOs.
- Advising in relation to offshore wind farm projects.
- Advising as to quality issues in pipelines and contractual issues as to a lengthy subsea gas pipeline.
- A dispute related to the control equipment for an undersea gas supply pipeline in the Middle East.
- A dispute concerning an offshore LNG facility in the Mediterranean Sea.

Selected Reported Cases

- Mailbox (Birmingham) Ltd v Galliford Try Building Ltd [2017] EWHC 1405 (TCC)
- Interserve Construction Ltd v Hitachi Zosen Inova AG [2017] EWHC 2633 (TCC)
- 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

- Co-author, Keating on Construction Contracts - Tenth Edition (2016)
- “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
- “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.

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

Panel of Arbitrators at the Delhi International Arbitration Centre (“DIAC”)
Technology and Construction Bar Association (TEC BAR)
UK Energy Law Group
Professional Negligence Bar Association
The Society of Construction Law
ICC United Kingdom
Dispute Resolution Board Foundation

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.