

# Construction All-Day Conference

Thursday 12 October 2023 11:00 – 16:30

## Panel 4:

14:20 to 15:20



**PAUL DARLING KC**  
39 Essex Chambers



**VIVEK KAPOOR**  
39 Essex Chambers



**HANNAH MCCARTHY**  
39 Essex Chambers



**DAVID ALDRIDGE**  
The ADR Experts

- Time at Large – Extension of Time – Liquidated Damages – Penalty – The Modern Approach. Is the old technical law now dead?



# Time at Large – Extension of Time – Liquidated Damages – Penalty – The Modern Approach. Is the old technical law now dead? (1)

- Building contracts normally contain stipulations as to time for completion
- Breach, ie failure to complete, leads to a claim for damages
- Those damages can either be unliquidated or liquidated or both

# Time at Large – Extension of Time – Liquidated Damages – Penalty – The Modern Approach. Is the old technical law now dead? (2)

- Liquidated damages normally an exhaustive remedy for delay
- In *Temloc v Errill the Court of Appeal* enforced the figure £ NIL to mean no damages
- All a question of construction
- Court's general approach has become more liberal

# Time at Large – Extension of Time – Liquidated Damages – Penalty – The Modern Approach. Is the old technical law now dead? (3)

- Liquidated Damages will not be enforceable if they are a penalty
- Again, the Courts have relaxed the test
- Dunlop lives, but Cavendish rules



# Time at Large – Extension of Time – Liquidated Damages – Penalty – The Modern Approach. Is the old technical law now dead? (4)

- Need for extension of time for potential acts of prevention
- If not, time will be at large

# Time at Large – Extension of Time – Liquidated Damages – Penalty – The Modern Approach. Is the old technical law now dead? (5)

- Clear that prevention principle is subject to the parties' agreement
  - *North Midland v Cygon*
  - Again how any change to contract date calculated a matter for the contract
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- *Balfour Beatty v Chestermount*