Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
1974	International Tank and Pipe S.A.K. v Kuwait Aviation Fuelling Co. K.S.C.	Court of Appeal, England and Wales	Not specified	67	Since there was yet no arbitration in existence by which the validity of the notice could be determined, the court under the governing law, English law, has jurisdiction to determine the application.	*Link**
1981	The Corporation of Trustees of the Order of the Sisters of Mercy v Wormald international Pty Ltd	Supreme Court, Queensland, Australia	Not a FIDIC Contract - Refer to Summary Note	44; 46	In this case, which did not involve a FIDIC contractual provision, the Court considered the date by which a contractor must submit a claim under the contract for costs, losses, damages or delay caused.	
1982	Grinaker Construction (Transvaal) Pty v Transvaal Provincial Administration	Supreme Court, South Africa	Red, Third edition, 1977	51; 51.2	Variations clause similar to cl.51 of FIDIC Red Book 3rd Edition. Held that a mere change in quantities did not amount to a variation. Donaldson J in the English case of Crosby v Portland UDC (1967) had come to the opposite conclusion.	*Link**
1984	Mitsui Construction Co v A-G 1984 WL 283535 (CA), [1985] HKLY 99 26 BLR 113	Court of Appeal, CA	Not a FIDIC Contract - Refer to Summary Note	Not specified	The contract was in the standard form of the Public Works Department of the Hong Kong Government, incorporating provisions of the RIBA JCT standard form (1963 edition) and of the FIDIC and ICE standard forms. The dispute was whether on the true construction of the contract an excess of executed over-billed quantities was a variation. The Contract provided for a tunnel to be lined with any one of six forms of permanent lining, the precise form to be determined at the Engineers' option during the course of the works as and when the geological characteristics of the strata through which the tunnel was driven became known. The BoQ contained estimates of the lengths over which each form of lining would have to be used. In this case the estimates proved to be inaccurate by considerable margins. The Claimant contended that it was unreasonable to apply the rates for the estimated quantities to the rates for the actual (As-Built) quantities and that the latter should be higher rates to be determined upon the basis that the actual quantities constituted a variation. Held: Allowing the Respondent's appeal that on the true construction of the contract mere differences in quantities from those billed as estimated did not constitute a variation since the Claimant had undertaken to construct the scope at the option of the Engineer, at the rates contained in the BoQ. When the Engineer had exercised that option he had simply required the Claimant to make good that obligation and had not varied the scope it in any way	*Link**

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
1985	CMC Cooperativa muratori e cementisti and others v Commission of the European Communities	European Court of Justice, Europe	Refer to Summary Note	Refer to Summary Note	A public works contract was financed by the European Development Fund (EDF) through the European Commission (EC). Invitations to tender were based on FIDIC's "*Notes on Documents for Civil Engineering Contracts* " which contained Instructions to Tenderers whereby they were required to demonstrate experience and technical and financial qualifications for the project. One of the issues was whether the Employer's (not the EC's) own post-tender investigations and requests for clarifications of a tenderer's offer were compatible with internationally accepted standards for an award procedure and in particular whether they were compatible with Clause 12 of the Instructions to Tenderers published by FIDIC. The Court absolved the EC from responsibility to the tenderer given its public duty to ensure lowest and most economically advantageous offer and in any event the Employer's investigations and requests for clarifications were found not to have been to the detriment of the claimant tenderer. Note: 1) The invitation to tender was based on documents published under the title "notes on documents for Civil Engineering Contracts by FIDIC. " 2) The Court was then known as 'Court of Justice of the European Communities'.	*Link*
1985	JMJ Contractors Ltd v Marples Ridgway Ltd	Queen's Bench Division, England and Wales	Red, Second Edition,1969	5.1	Preliminary issue to determine proper law in FCEC subcontract where subcontract was silent as to proper law. Main contract was FIDIC 2nd which provided the proper law to be Iraqi law. Held that the proper law of the contract was the law of Iraq because the subcontract had to operate in conjunction with the main contract and the main contract was governed by the law of Iraq. Conflict of laws. A FCEC subcontract is compatible with a FIDIC 2nd edition construction contract.	*Link**
1987	ICC First Partial Award in Case 5634	Not Specified	Red, Third Edition, 1977	66; 67	The Arbitral Tribunal considered what was required under Clause 67 of the "Third Book" and found that (a) if the Engineer fails to issue a decision on a dispute referred to him or a party is dissatisfied with an Engineer's decision, that party need not file a Request for Arbitration with the ICC, merely a "claim to arbitration", and (b)if the Engineer fails to issue a decision or a party is dissatisfied with the Engineer's decision, that party cannot repeatedly refer the same issue to the Engineer but must issue a notice claiming arbitration.	*Link**
1987	ICC Partial Award in Case 5600	Not Specified	Red, Third Edition, 1977	67	The Arbitrator considered whether the wording of Clause 67 (i.e., that the Engineer's decision is final and binding unless a "claim to arbitration" has been communicated to it by either party within ninety days and that, within this ninety day period, the Contractor, if dissatisfied with Engineer's decision, may, "require that the matter or matters in dispute be referred to Arbitration as hereinafter provided") required the dissatisfied party to serve a formal Request for Arbitration or whether the intention is merely that the dissatisfied party records or notifies his intention to arbitrate. Held that the essential requirement of Clause 67 is the notification of a serious intention to arbitrate.	*Link**
1988	ICC Second Partial Award in Case 5634	Not Specified	Red, Third Edition, 1977	67; 68	The contractor challenged the Architect's Clause 67 decision with a notice of arbitration within the relevant time limit but the letter setting this out was sent by the contractor's solicitors to the employer's solicitors. The letter was not sent direct to the Architect but the Architect later received a copy from the employer within the relevant time limit. In this way it was a "windfall communication". The arbitral tribunal distinguished the Court of Appeal decision in Getreide Import Gesellschaft G.m.b.H. v Contimar S.A. (1953) 1 Lloyds Rep. 572. The Arbitral Tribunal found that the Architect was aware of and had had communicated to him a claim to arbitrate his Clause 67 decision. The Arbitral Tribunal therefore had jurisdiction to entertain the claim.	*Link**
1988	Simaan General Contracting Company v Pilkington Glass Ltd	Court of Appeal, England and Wales	Red, Fourth Edition, 1987	No clauses cited	The court found that the nominated supplier could not have assumed a direct responsibility for the quality of the goods and therefore, the economic loss suffered by the main contractor was irrecoverable.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
1988	Insurance Co of the State of Pennsylvania v Grand Union Insurance Co Ltd and Another	The Supreme Court, Hong Kong	Not Specified - Refer to the Summary Note	Not Specified - Refer to the Summary Note	Although the case itself is on insurance, and the construction contract in question was not a FIDIC contract, it provided for a 12-month period for FIDIC maintenance.	*Link*
1988	Mvita Construction Co v Tanzania Harbours Authority	Tanzania, Court of Appeal	Red, Second Edition, 1969	41; 63; 2.6 of FIDIC Red Book Fourth Edition 1987	The contract incorporated the FIDIC 2nd edition Conditions. Clause 63 does not specify the time within which the employer should act after receiving the engineer's certificate of default. The court of appeal held that the employer will lose his rights if he does not give notice within a reasonable time after the engineer's certificate. The reasonableness of the time, however, only arises, however if during the period there was no continuing breach by the contractor. The judge did not however determine whether, a rectification of the breach following a termination notice within a reasonable period precludes continued exercise of the power of forfeiture.	*Link**
1988	Pacific Associates Inc and Another v BAXTER and Others	Court of Appeal, England and Wales	Red, Second Edition, 1969	11; 12; 46; 56; 60; 67	The Engineer owed the Contractor no duty of care in certifying or in making decisions under clause 67. There had been no voluntary assumption of responsibility by the Engineer relied upon by the Contractor sufficient to give rise to a liability to the Contractor for economic loss.	*Link**
1989	ICC Final Award in Case 5634	Not Specified	Red, Third Edition, 1977	6; 44; 51; 52; 60; 67	The Arbitral Tribunal considered whether or not the contractor could recover global sums for time related loss or disruption caused by an instruction for a variation under Clause 52(2). The Arbitral Tribunal considered whether Clause 52(5) obliged the contractor to give the Architect's Representative and QS Representative particulars of claims for damages for breach of contract and, if so, whether a claim for damages should be valued and certified under Clause 60(5). The arbitral tribunal found that the answer to both questions was "no". The arbitral tribunal also considered whether a failure by the claimant to comply with the requirements of Clauses 6, 44 and 52 as to notices meant that the arbitral tribunal should reject an otherwise valid claim. The arbitral tribunal did not answer this "yes" or "no" but indicated that an answer was not necessary because the claims would fail on other grounds.	*Link**
1989	ICC Partial Award in Case 6238	Not Specified	Red, Third Edition, 1977	67	The Arbitral Tribunal considered whether a submission was correctly made to the engineer under clause 67.	*Link**
1989	ICC Interim Award in Case 6216	Not Specified	Red, Third Edition, 1977	1; 67; 69	A dispute followed the Contractor's termination of contract with a public entity in an African state where the arbitrators assumed the law to be the same as English common law. The Contractor's claims in tort for trespass to land or goods and/or conversion of its property were found to fall within the jurisdiction of the tribunal provided by Clause 67. They were claims which arose "in connection with" or "out of" the contract. The tribunal however refused to consider and determine related matters concerning the constitutional rights of a citizen of the state concerned. The Claimant would have to obtain elsewhere any such redress to which it was entitled.	*Link**
1989	ICC Interim Award in Case 5898	Not Specified	Red, Second Edition, 1969	67	The Arbitral Tribunal considered consolidation of arbitration under the sub-contract and the arbitration under the main contract.	*Link**
1990	ICC Final Award in Case 5597	Not Specified	Red, Third Edition, 1977	11; 12; 41; 52; 55; 56	Original contract and pre-contract documents declared that material was sand, broken shells, silt and clay. Claimant was entitled to assume material was as described and, if different, compensation would be due under Contract, where it meets condition which it could not reasonably have foreseen.	*Link**
1990	ICC Final Award in Case 6326	Not Specified	Red, Third Edition, 1977	51; 52; 67; 93	A plain letter by the Architect is not a Clause 67 decision. The Arbitrators conclude therefore that the Architect gave no decision on the disputes referred to him.	*Link**

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
1990	ICC Partial Award in Cases 6276 and 6277	Geneva, Switzerland	Red, Third Edition, 1977	67	FIDIC Standard Form 3rd Edition, with Clause 67 amended and re-numbered. The project was completed in an Arab country. The arbitral tribunal found that the condition precedent for referral of a dispute to arbitration, whereby it must first be submitted to the Engineer under Clause 67 [here 63], had not been complied with. The Contractor's conclusion of the works and the Employer's failure to notify the Contractor of the Engineer who would decide the dispute were not relevant. The Contractor was in the circumstances obliged to request from the Employer the name of the Engineer for this purpose. The present referral to arbitration was therefore premature.	*Link**
1990	ICC Final Award in Case 6230	Not Specified	Red, Second Edition, 1969	1; 67	Non resort to the Engineer as provided in Clause 67 prior to instituting arbitral proceedings is not a basis for asserting the arbitral tribunal's lack of jurisdiction.	*Link**
1991	ICC Final Award in Case 6216	London, United Kingdom	Red, Edition Not Specified	67; 69	1) "but for" test used to determine the jurisdiction of the tribunal. 2) punitive damages are not allowed for breach of contract (subject to exceptions) 3) punitive damages can be awarded for claims in tort.	*Link**
1991	ICC Partial Award in Case 5948	Not Specified	Red, Second Edition, 1969	1; 63; 67	1) What is required under FIDIC 2nd Edition for valid termination under Clause 63? The AT considered that this is a forfeiture clause and therefore to be strictly construed. It found on the facts that a purported "certificate" was not a certificate in compliance with Clause 63. 2) Is it necessary under Clause 67 to initiate arbitration or can a letter suffice to preserve the right thereafter to arbitrate? The Arbitral Tribunal determined that the correct answer was the latter (letter is sufficient). See also Final Award in this case in 1993.	*Link**
1991	ICC Final Award in Case 5029	Not Specified	Red, Third Edition, 1977	30	The tribunal considered whether the Claimant was entitled to recover interest or other financial costs under the Egyptian Code. Passing reference was made to the cost of financing the execution of the work under the FIDIC 3rd edition.	*Link**
1992	ICC Final Award in Case 6535	Not Specified	Red, Second Edition, 1969	44; 52; 67	The tribunal considered whether a “dispute” existed under the Contract which could be referred to the Engineer. It found that, as at a particular date, the Contractor had merely asked the Engineer to review claims and that (i) there had been no existing dispute at that time, and (ii) the Contractor had not clearly requested a decision from the Engineer under Clause 67.	*Link**
1992	ICC Partial Award in Case 6611	Zurich, Switzerland	Red, Second Edition, 1969	8; 39; 67	See also the final award below. A bespoke sub-contract governed by Swiss law incorporated by reference terms of the main contract (FIDIC 2nd edition 1969), including its arbitration clause at clause 67 which provided for all disputes first to be referred to the Engineer. The project was abandoned and no Engineer was ever appointed under the sub-contract. The sub-contractor referred a dispute over its claim for payment directly to arbitration. The tribunal found the arbitration clause had been incorporated by reference leading to a valid arbitration agreement under Swiss law and the NY Convention. Direct referral to arbitration was also in the circumstances permissible. Further, by expressly accepting the agreement to arbitrate in its Reply to the Request for Arbitration, a new and distinct arbitration agreement was concluded in any event which complied with Swiss law and the NY Convention. Prior reference to the Engineer was irrelevant to that second arbitration agreement. The tribunal therefore had jurisdiction over the dispute.	*Link**

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
1993	ICC Final Award in Case 6611	Not Specified	Red, Second Edition, 1969	No clauses cited	See partial award on jurisdiction above. Swiss substantive law governed a sub-contract derived from FIDIC Conditions (2nd edition 1969). It contained a pay when paid clause. The project was abandoned due to Employer's insolvency after a global advance payment of 15% of total project value had already been disbursed to the main contractor for distribution to all project participants according to their intended work value, including to the sub-contractor. The sub-contractor had by then already done work in excess of its own 15% which work had also been approved by the main contractor and Employer and certified by the Engineer for payment under the main contract prior to the date of its termination. The issue was whether the balance of the global advance payment still in the hands of the main contractor was to be considered, at least in part, as payment made by the Employer for the work performed by the sub-contractor. The tribunal found that the risk lay with the main contractor who indeed could be said to have been paid by the Employer for all work done under the sub-contract. Accordingly, the sub-contractor obtained a majority award for payment.	*Link**
1993	ICC Final Award in Case 5948	Not Specified	Red, Second Edition, 1969	44; 51; 60	The Arbitral Tribunal principally considered a contractor's claims under the "2nd edition". The Arbitral Tribunal considered the ways in which a contractor can recover damages for an employer's failure in breach of contract to pay the Advance Payment on time and how the quantum of damages can be assessed. See also partial award in this case in 1991 above.	*Link**
1995	ICC Partial Award in Case 7423	Nairobi, Kenya	Red, Third Edition, 1977	4; 67; 69	Clause 28 of Sub-contract stated that Sub-contractor shall comply with Main Contract so far as it applies to Sub-contract works and "are not repugnant to or inconsistent with" the Sub-contract. Problem was Sub-contractor was not nominated as per Clause 69, is not under direct control of Engineer, and Engineer has no duties or powers over Sub-contract; therefore, there is no Engineer in Sub-contract. Arbitrator held that the Sub-contract would be redrafted to remove inconsistencies to identify the parties and the works and omit requirements for adjudication by the Engineer.	*Link**
1996	George W. Zachariadis Ltd v Port Authority of Cyprus	Supreme Court of Cyprus	Red, Fourth Edition	70	The applicants in this case challenge the decision of Board of the Cyprus Ports Authority by which the tender was allegedly awarded to the wrong tenderer. The tender documents consisted of, inter alia, the General Conditions of FIDIC 4th with Conditions of Particular Application. The applicants included a VAT of 5% (the rate applicable 30 days before the date of submission of tenders) in their tender price while all other tenderers included a VAT of 8%. Under the FIDIC contract (Sub-clause 70.2) and according to the tender provisions, the increase in the VAT had to be borne by the Employer. The court compared the value of tenders excluding VAT and found that the tender price of the successful tenderer (excluding VAT) was still the lowest and therefore dismissed the applicants' application.	*Link*
1996	ICC Final Award in Case 7641	The Hague, Netherlands	Red, Third Edition, 1977	67; 67.1; FIDIC 4th: 67; 67.4	Under Clause 67, to validly submit a dispute to arbitration, a mere notice of the intention to arbitrate is sufficient; an actual beginning of the arbitration procedure is not required.	*Link**
1996	ICC Final Award in Case 7910	Tunisia	Red, Third Edition, 1977	67	The arbitral tribunal found that it did not have jurisdiction to enforce/consider the final and binding decision of the engineer.	*Link**
1997	ICC Final Award in Case 8677	London, United Kingdom	Red, Fourth Edition, 1987	13.1; 20; 20.2; 20.3; 20.4; 21.4; 52; 54.2; 60.3; 60.6; 62.1; 65.2; 65.3; 65.5; 65.6; 67; 67.1; 67.4	The Contractor's country was invaded and war ensued. As a result of looting by the invading forces, the mobilised Equipment for shipment to site was lost. Under Clause 65.3, the Contractor's claim for Loss of Contractor's Equipment was allowed.	*Link**

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
1997	Gammon Constano JV v National Highways Authority	High Court of Delhi, India	Red, Fourth Edition		Failure of the Employer to comply with the conditions precedent to the Contractor's performance , such as handing over the site, were briefly considered. In this case, the Claimant's bid was non-responsive which was allegedly due to the poor performance of a completely different contract based on FIDIC between the Gammon (a member of JV) and the Employer.	*Link*
1997	ICC Final Award in Case 8873	Madrid, Spain	Red, Fourth Edition 1987	20.4; 65.5	In a dispute on a contract, which was not a FIDIC form, the claimant argued that the principles contained in FIDIC had become so widely used as to form a trade usage. The dispute related to the force majeure provisions. The arbitral tribunal held that the principles in FIDIC did not satisfy the requirements to become a trade usage as FIDIC was not always used in international construction contracts and therefore there was not a sufficient degree of uniformity to become a trade practice nor did the principles of FIDIC form autonomous principles of law.	*Link**
1998	ICC Partial Award in Case 9202	Paris, France	Red, Second Edition, 1969	1; 5.1; 60; 67; 69	The Arbitral Tribunal considered whether the request for arbitration under clause 67 was admissible, whether the termination of contract was valid and whether the administrative contract was valid under local law.	*Link**
1998	Cegelec Projects Ltd v Pirelli Construction Company Ltd	Technology and Construction Court, England and Wales	Refer to Summary Note	Refer to Summary Note	Respondent requested a declaration that a clause in a sub-contract agreement making a general incorporation of terms from the main contract did not include the incorporation of the sub-contract's arbitration clause. The court established that the test looks at the language of the words used followed by in which they are and the nature of the transaction. The court held that the dispute resolution clause was not incorporated, in part, because the sub-contract already had a dispute resolution clause and a comparison between the two proved they were incompatible. The court added that attempting to equate a complex conciliation procedure with amicable settlement without an express statement would be artificial and removed from reality. Note: The case only mentions FIDIC in passing and the dispute resolution clauses in question have similarities with FIDIC clauses from the 3rd and 4th editions but have been heavily amended.	*Link*
1998	Bouygues SA & Anor v Shanghai Links Executive Community Ltd (4 June 1998)	High Court, Hong Kong	Red, Fourth Edition, 1987	1.1(3)(i); 65.8; 69.3	'Contract Price' does not relate to sums payable to the Contractor pursuant to Sub-Clause 69.3 [Payment on Termination]. Note: See below for the appeal at Bouygues SA & Anor v Shanghai Links Executive Community Ltd (2 July 1998).	*Link*
1998	Bouygues SA & Anor v Shanghai Links Executive Community Ltd (2 July 1998)	Court of Appeal, Hong Kong	Red, Fourth Edition, 1987	1.1(3)(i); 65.8; 69.3	'Contract Price' refers to sums payable to the Contractor for the performance of their obligations, i.e., execution and completion of the work, under the contract and not the sums a Contractor claims, which are payable to it upon termination regardless of whether or not such sums refer to work performed and certified prior to termination. Payments upon termination arise out of Sub-clauses 65.8 and 69.3, which refer to 'work executed prior to the date of termination at the rates and prices provided in the Contract' not the 'Contract Price' as defined in the Contract. Whether the sums refer to on account payments or instalments is irrelevant because the payments had not been made prior to termination. Once the contract is terminated, these sums fall under different payment provisions (i.e., Sub-clauses 65.8 and 69.3). Note: See above for the High Court judgement at Bouygues SA & Anor v Shanghai Links Executive Community Ltd (4 June 1998).	*Link*
1999	ICC Final Award in Case 10079	Columbo, Sri Lanka	Not Specified	No clauses cited - Refer to Summary Note	The case involved a dispute over interest rates and payment of interest.	*Link**

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2000	ICC Final Award in Case 10166	Kuala Lumpur, Malaysia	Red, Fourth Edition 1987	58.3	The Arbitral Tribunal did not have power to draw adverse inferences merely because the claimants' QS was not qualified nor called to give evidence.	*Link**
2000	Hellmuth, Obata v Geoffrey King	Technology and Construction Court, England and Wales	White, Second Edition, 1991	No clauses cited	The claim pleaded in contract and alternatively in quasi-contract.	*Link*
2001	ICC Interim Award in Case 10619	Paris, France	Red, Fourth Edition, 1987	2.1; 67; 67.1; 67.4	The claimant contractor applied for an interim award declaring (1) that the respondent employer must give effect to an Engineer's decision made pursuant to Sub-Clause 67.1, and (2) ordering the respondent to pay the amounts determined by the Engineer as an advance payment in respect of any further payment which would be due from the respondent pursuant to the final award. The Arbitral Tribunal granted the relief sought.	*Link**
2002	ICC Final Award in Case 10619	Paris, France	Red, Fourth Edition, 1987	11; 67; 67.1; 67.3	The Arbitral Tribunal found that the respondent employer, who had not objected within the prescribed time limit to the Engineer's decisions and had not stated his intention to commence arbitration, was nonetheless entitled to take advantage of the notice of arbitration issued by the claimant contractor. The respondent employer could therefore request the arbitral tribunal to reverse the Engineer's decisions. The arbitral tribunal also considered article 11 of the conditions of contract which required "the Employer to have made available to the Contractor, before the submission by the Contractor of the tender, such data from investigations undertaken relevant to the Works, but the Contractor shall be responsible for his own interpretation thereof". The arbitral tribunal found that a "Materials Report" provided by the employer at tender after years of investigation was not contractual and was erroneous and misleading. It also found that the contractor/bidder was justifiably required to interpret the data but was not required to expedite, in the limited time available for its bid, new thorough investigations when the employer had carried out investigations over some years.	*Link**
2002	ICC Interim Award in Case 11813	London, United Kingdom	Yellow, Test Edition, 1998	2.5; 11.3; 14.6; 14.7; 20.4; 20.6	English substantive law. Employer wished to set off delay damages against Contractor's claim for unpaid certified sums. As contemplated by English case of Gilbert-Ash (Northern) Ltd -v- Modern Engineering (Bristol) Ltd [1974] AC 689, clear and express language is required to exclude a right of set-off. Nothing in the TEST edition of the FIDIC Yellow Book 1998 contains express language to this effect. Set-off therefore permitted as a defence to the claim.	*Link**
2002	ICC Final Award in Case 11039	Berlin, Germany	White, Second Edition, 1991	17; 18.1	Whether the FIDIC White Book was incorporated into the agreement between Client and Consultant including the one year limitation for claims; and whether such limitation clause was valid under German law. Held: yes and yes.	*Link**
2002	ICC Final Award in Case 10892	Caribbean	Red, Fourth Edition, 1987	1; 1.1; 2.6; 39; 39.1; 63; 63.1	The Arbitral Tribunal considered the identity and designation of Engineer and whether or not the contract had been lawfully terminated.	*Link**
2002	ICC Partial and Final Awards in Case 11499	Wellington, New Zealand	Red, Third Edition, 1977	11; 12; 39; 65	Partial Award Issue 1: Clause 11 refers to "investigations undertaken relevant to the Works" and the material regarding which unforeseen ground conditions were said to be encountered were not part of "the Works". Furthermore, Clause 12 is directed to conditions on Site. Supply of goods, materials and equipment to incorporate into the works, in this case river materials referred to in tender documentation, are at the Contractor's risk. Partial Award Issue 2: There was no evidence that the activities by third parties which disrupted the works were not peaceful. Therefore, they did not fall within the definition of disorder under Sub-clauses 65(4) and 65(5). Furthermore, at the time of the relevant events, the Contractor did not have a legal right to access the site in question. Final Award: The offer made by the Employer did not constitute a Calderbank offer because it was made 7 months prior to practical completion and some 2 years prior to arbitration proceedings, some of the claims had not yet been ruled by the Engineer and the offer did not coincide with the claim brought to arbitration.	*Link**

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2002	Motherwell Bridge Construction Limited (Trading as Motherwell Storage Tanks) v Micafil Vakuumtechnik, Micafil AG	Technology and Construction Court, England and Wales	Not Specified	Application of FIDIC terms, 1.1;11.2;23;26.1; 26.2;31	If the parties had agreed to conduct their relations within the spirit of FIDIC terms but not to be bound by the strict terms, it was appropriate, as regards extensions of time, not to require the Subcontractor to follow the FIDIC procedural time limits. The Subcontractor was entitled to acceleration costs incurred as a result of trying to finish on time when delay was caused by the Contractor.	*Link**
2002	Royal Brompton Hospital National Health Service Trust v Hammond & Ors	Technology and Construction Court, England and Wales	Not Specified - Refer to Summary Note	Not Specified - Refer to Summary Note	Note: The contract in dispute is not a FIDIC contract but there is reference to FIDIC's definition of project management.	*Link*
2003	ICC First Partial Award in Case 12048	A West African Capital	Red, Fourth Edition, 1987	67	The Respondent Employer, a State entity, challenged the Arbitral Tribunal's jurisdiction and applied to the local courts for an order revoking the tribunal's power to hear the dispute, alleging that the parties had entered into a memorandum of understanding (settlement agreement) referring disputes to the State courts and that the Claimant had made allegations of fraud which could only be dealt with by a State court. The court ruled in favour of the Respondent which considered the arbitral proceedings cancelled. The Claimant appealed and also proceeded with the arbitration seeking an interim award on certain claims. The tribunal considered that it had a duty under Article 6(2) of the ICC Rules to consider and decide upon the matter of its own jurisdiction. It had a duty to ensure that the parties' arbitration agreement was not improperly subverted contrary to international and State law. The tribunal had no jurisdiction to decide upon allegations of fraud. The claims before the tribunal had been properly brought and the tribunal had jurisdiction over them. However, the Claimant's application for an interim award on certain claims was refused. Note: See Second Partial Award and Final Award below.	*Link**
2003	A.G. Falkland Islands v Gordon Forbes Construction (Falklands) No.2	Supreme Court, Falkland Islands	Red, Fourth Edition, Revised 1992	53; 53.1; 53.2; 53.3; 53.4	The Court was asked to consider FIDIC Clause 53 and to provide interpretation of what constitutes a "contemporary record". The Court specifically considered whether witness statements can be introduced in evidence to supplement contemporaneous records. The Court held that in the absence of contemporaneous records to support a claim the claim will fail or that part of the claim which is unsupported will fail.	*Link*
2003	Mabey and Johnson Limited v Ecclesiastical Insurance office Plc	High Court, England and Wales	Red, Fourth Edition 1987	No clause cited	Note: The issues in the case related to insurance cover and claims and not to a FIDIC contract per se.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2003	Mirant Asia-Pacific Construction (Hong Kong) Ltd and Sual Construction Corporation v Ove Arup & Partners & Another	Technology and Construction Court, England and Wales	White, Second Edition, 1991	17; 18; 18.1; 21; 22; 31; 32; 41; 43	Note: The central issue between the parties was whether the agreements in dispute incorporated the FIDIC terms.	*Link*
2003	Ove Arup & Partners & Another v Mirant Asia-Pacific Construction (Hong Kong) Ltd & Another	Court of Appeal, England and Wales	White, Second Edition, 1991	5; 16; 17; 18; 21; 31; 36; 43; 44;	Appeal to CA from TCC decision on various preliminary issues. The central issue was whether the relevant agreements incorporated the terms of the 1991 FIDIC Client/Consultant Model Services Agreement. Were the formalities envisaged in FIDIC of completing the blanks in the schedules and both parties signing the agreement a necessary pre-requisite to the contract being formed?(answer - no). Consideration of the features necessary for the formation of a binding contract and rehearsal of the relevant case law.	*Link*
2003	SCJ Decision No. 3827/2002	Supreme Court of Justice, Romania	Red, Fourth Edition, 1987	53.5	The Respondent disputed the amount claimed by the Claimant in respect of interest and the amount certified in IPCs. The requirements set forth by sub-clause 53.5 were considered by the court.	*Link*
2003	ICC Interim Award in Case 10847	London, United Kingdom	Red, Fourth Edition, Revised 1992	1.5; 1.13.4; 1.19.1; 3.3.3; 3.3.4; 3.3.5; 3.3.6; 6.4; 12.2; 14; 44; 44.1; 44.2; 51; 51.1; 53; 53.1; 53.2; 53.3; 53.4; 60.8; 67.3; 69; 69.1; 69.4	The arbitral tribunal considered the notice provisions in sub-clauses 44.2 and 53.1, the claims for extension of time, the claim for additional costs, and the interest on the sums awarded.	*Link**

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2003	Case No. T 8735-01	Svea Court of Appeal	Unknown FIDIC type contract	Not cited, but 1.4 and 20.6 applicable	The Appellant challenged an Award rendered pursuant a Bilateral Investment Treaty (BIT) between the Netherlands and the Czech Republic on the following grounds: 1) One of the Arbitrators had been excluded from the deliberations; 2) The AT failed to apply the law it was obliged to, according to the BIT; 3) The AT was lacking jurisdiction and, according to *lis pendens* and *res judicata* , the AT had exceeded its mandate; 4) The AT applied the joint tortfeasors principle, not submitted by the parties; 5) The AT determined the amount of damages in violation of the parties' instructions to limit the dispute to the existence of liability for damage; 6) The AT applied the provisions of the BIT not covered by the Arbitration Agreement; and 7) the Award rendered violated public policy. *Held* : The Court rejected the Appeal and did not grant a leave for review of its judgment by the Supreme Court of Sweden on the following grounds: 1) The Chairman of the AT was responsible to issue the Award without delay and had given the arbitrators sufficient time to submit comments. The arbitrator who allegedly was excluded from the deliberations received all essential communications between the other arbitrators and therefore could not be deemed excluded from the deliberations. 2) In principle the AT exceeds its mandate when it applies a different law in violation with the choice-of-law clause. As the AT's interpretation of the wording in the clause allowed the AT to consider other sources of law, they were relevant to the dispute. 3) A fundamental condition for *lis pendens* and *res judicata* is party identity. Here, the identity of a minority shareholder did not equate to the identity of the company. 4) The AT did not apply the 'joint tortfeasors' concept. The State may be held liable for damages suffered by an investor, notwithstanding that the State is not alone in causing the damage. 5) The Appellant waived its right to challenge the mandate of the AT. 6) The Appellant should have raised its objections as to the new claim during the arbitration proceedings. 7) In accordance with section 43, second paragraph of the Arbitration Act, the Court of Appeal's decision regarding a claim against an arbitration award pursuant to sections 33 and 34 of the same Act may not be appealed as during the proceeding it failed to object that the claims fell outside of the BIT. However, in accordance with the same paragraph, the Court of Appeal may allow an appeal of the decision where it is of importance for the development of case law that the appeal be reviewed by the Supreme Court.	*Link*
2004	ICS (Grenada) Limited v NH International (Caribbean) Limited	High Court, Trinidad and Tobago	Red, Fourth Edition 1987	5; 5.2; 5.2.4; 8.1; 11; 11.1; 12; 12.1; 12.2; 20.4; 39; 39.1; 39.2; 51.2; 52.3; 53; 53.1; 53.2; 53.3; 53.4; 63; 63.1; 66; 67;67.3	The Court declined to set aside an ICC Arbitration Award under the Arbitration Act No 5 of 1939 (Trinidad and Tobago) on the basis that there was no technical misconduct or decision in excess of jurisdiction on the arbitrator's part. The ICC arbitration had considered whether the Engineer was independent and partial as required by the FIDIC 4th edition, if not whether or not the relevant Engineer's decisions should be reviewed, whether alleged defects were the result of poor workmanship by NHIC or faulty design supplied by ICS, and whether NHIC's resulting failure to comply with the Engineer's instructions under Clause 39.1 was a valid cause for ICS's subsequent termination of the contract under Clause 63.1. The Court also found that there were no errors on the face of the award. NHIC's attempt to oust the jurisdiction of the Court to review the Award (under Article 28(6) of the ICC Rules) was denied.	*Link*
2004	Mirant-Asia Pacific Ltd & Anor v Oapil & Anor	Technology and Construction Court, England and Wales	No Book Specified	No Clauses cited - Refer to Summary Note	Note: No clauses cited and no FIDIC books referred to; only 'FIDIC' terms are mentioned.	*Link*

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
* Links in italics would require ICC or I-law subscription to access online.

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2004	State v Barclay Bros (PNG) Ltd	National Court, Papua New Guinea	Red, Fourth Edition 1987	67	An arbitration was commenced and the Claimant sought to restrain the arbitration proceedings on the basis of illegality under the contract. The contract was a FIDIC 4th Edition and the reference to arbitration was made under Clause 67. The court ordered that the Respondent by itself, its servants or agents or otherwise howsoever, be restrained from taking any further step in or for the purposes of an arbitration (as amended) commenced by the Respondent in the International Chamber of Commerce International Court of Arbitration at Paris.	*Link*
2004	Rolls-Royce New Zealand Ltd v Carter Holt Harvey Ltd	Court of Appeal, New Zealand	Conditions of Contract for Electrical and Mechanical Works, third edition, 1987	1; 1.1.12; 8.1; 19.1; 30.1; 30.2; 30.3; 30.4; 30.5; 42; 42.1; 42.2; 42.4; 42.6	The case dealt with tortious liability and a limitation clause in a main contract which sought to exclude liability for indirect or consequential losses. There was no contract between the operator of a power plant and the contractor who was constructing it. The operator brought proceedings against the contractor (Rolls Royce). Rolls Royce claimed that there was a duty owed to the operator and sought to rely on limitation of liability clauses in its contract with its Employer. Rolls Royce sought to argue that it could have no greater liability to a third party for defects in the works than it would have to its own employer. The Court of Appeal found that while loss to the operator may have been foreseeable as a consequence of any negligence by the contractor, the relevant contractual matrix within which any duty of care arose precluded a relationship of proximity. In addition, in a situation of commercial parties with an equality of bargaining power, there are strong policy considerations in favour of holding them to their bargains. In these circumstances, it was not fair, just and reasonable to impose such a duty.	*Link*
2004	ICC Second Partial Award in Case 12048	A West African Capital	Red, Fourth Edition, 1987	47; 53.1; 60.1; 60.2; 60.10; 67; 67.1; 67.4	The Engineer issued a decision under Clause 67 accepting in part the Claimant's claim for payment. The decision became final and binding but went unpaid. In the arbitration, the Respondent argued that it was entitled to resist payment of the Claimant's claims, principally because of the Claimant's alleged liability for counterclaims, thus entitling the Respondent to a set-off under Clause 60.2. Held: By the tribunal's First Partial Award it had no jurisdiction over the alleged counterclaims. Further, Clause 60.2 is inapplicable on its face as it relates only to the certification of payments by the Engineer and not to decisions of the Arbitral Tribunal. The Claimant's claim including interest had been wrongly denominated entirely in Euros, contrary to the contract and the Engineer's certificate which involved both local currency and Deutsche Mark portions. The Claimant was entitled to interest on certified sums unpaid in accordance with Sub-Clause 60.10. Note: See First Partial Award above and Final Award below.	*Link**
2005	ICC Final Award in Case 10951	Bern, Switzerland	Conditions of Subcontract for Works of Civil Engineering Construction, 1st edition 1994	18; 18.1; 18.3	Case about wrongful termination for default under FIDIC Subcontract 1994. Held that although subcontractor was liable for delay, defects and other breaches, they were not enough to justify termination.	*Link**
2005	ICC Final Award in Case 12654	An Eastern European Capital	Red, Fourth Edition, 1987	20.2; 20.3; 20.4; 42.1; 42.2; 44.1; 65; 65.2; 65.5	The Arbitral Tribunal addressed costs following alleged failure by a state employer to expropriate and evacuate land for the construction of a highway, whether war-related events constituted a "special risk" under clause 65.2 and whether the claimant contractor should be compensated under clause 65.5 for increased costs arising from these events, and finally whether certain taxes and excises should be reimbursed.	*Link**

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2005	ICC Partial Award in Case 13258	Geneva, Switzerland	Red, Fourth Edition, 1987	51; 63	The Arbitral Tribunal was asked to determine whether (1a) a variation omitting work gave rise to a breach of contract; and (1b) whether that was a fundamental breach amounting to repudiation or giving the Contractor a right of rescission. It held that (1a) the variation was a breach of contract because it limited the Engineer's authority to omit works if the works are omitted from the contract but are not intended to be omitted from the project (i.e., because they are intended to be built by the Employer himself or another contractor). However, the AT also held that (1b) the breach only gave rise to a claim for damages. The second question was whether (2) the Employer's breach of an express duty to arrange works with other contractors other than the contracted Works, (e.g., when the project is divided in lots, or an implied duty thereto), gives rise to a fundamental breach of a fundamental term of the contract. The test for fundamental breach in the country relied on conduct being such as would cause a reasonable person to conclude that the party did not intend to or was unable to fulfil its contract. The test for England relied on whether the party was deprived of a substantial part of the benefit of the contract. The tribunal held that neither the terms nor the breach were fundamental.	*Link**
2005	Lesotho Highlands Development Authority v Impregilo SpA and others	House of Lords, United Kingdom	Red, Fourth Edition, 1987	60.1	The erroneous exercise of an available power cannot by itself amount to an excess of power. A mere error of law will not amount to an excess of power under section 68(2)(b).	*Link*
2005	Bayindir v Pakistan (Decision on Jurisdiction)	ICSID	Red, Fourth Edition, 1987	53; 67.1	The judgement contains the decision on AT's jurisdiction. It was considered, inter alia, whether the Claimant's Treaty Claims in reality Contract Claims, whether the Treaty Claims were sufficiently substantiated for jurisdictional purposes, and whether the tribunal should have stayed the proceedings.	*Link**
2005	State of Orissa and Ors v Larsen and Toubro Ltd	Orissa High Court	Red, Fourth Edition	42.1; 42.2; 53.1; 53.2; 53.3; 67.3	The Respondent Contractor was granted extension of time in return for an undertaking that it would not claim any compensation. After completion, the Respondent issued a notice claiming compensation on the grounds that the appellants had failed to comply with their obligations and alleging that the drawings and the survey results were incorrect. The parties referred to arbitration under clause 67.3. The award issued by the arbitrator which awarded sums to the Respondent was challenged on the grounds that the Respondent had given an undertaking not to claim compensation. Also, arguing that the amounts awarded by the arbitrator for additional work was covered by Clause 53.1, 53.2 and 53.3 for which the contractor failed to issue a 28 days' notice.	*Link*
2005	Ove Arup & Partners International Ltd & ANR v Mirant Asia-Pacific Construction (Hong Kong) Ltd & ANR	Court of Appeal, England & Wales	White, Second Edition, 1991	No clauses cited - Refer to Summary Note	Note: Dispute over breach of ground investigation agreement which incorporated the FIDIC terms.	*Link*
2006	You One Engineering v National Highways Authority	The Supreme Court of India	Red, Fourth Edition	67.3 - Amended	Following the allegedly wrongful termination of the Contract, the Employer commenced arbitration proceedings under the amended clause 67.3 of the contract. The appointed arbitrators failed to agree on the presiding arbitrator.	*Link*

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2006	Hindustan Construction Co Ltd v Satluj Jal Vidyut Nigam Ltd	High Court of Delhi, India	Red, Fourth Edition	10; 44; 60; 67; 70	The Contractor had to furnish one performance and 17 retention money guarantees. The guarantees were to be returned to the Contractor 12 months after completion. The Employer arbitrarily and illegally and without giving any notice to the Contractor invoked all guarantees.	*Link*
2006	Attorney General for Jamaica v Construction Developers Associated Ltd	Supreme Court, Jamaica	Red, Fourth Edition, 1987	2; 3; 67; 67.3	Concerning the conflict between a FIDIC arbitration clause and a bespoke contractual arbitration clause, of which there were two competing versions, set out in separate documents but which formed part of the same agreement. The agreement provided that in the case of "ambiguities or discrepancies" precedence was to be given to the bespoke provisions. The FIDIC condition provided for an ICC arbitration whereas the first version of the bespoke provision permitted, by agreement between the parties, arbitration to be conducted in a manner set out in an in accordance with the Arbitration Act of Jamaica. The second version of the bespoke provision removed reference to the ICC Arbitration or to agreement as between the parties and stipulated that "[a]arbitration shall be conducted in a manner set out in, and in accordance with the Arbitration Act of Jamaica".	*Link*
2006	ICC Procedural Order of September 2006 in ICC Case 14079	Zurich, Switzerland	Not Specified	Not Specified - Refer to the Summary Note	Note: FIDIC was the adjudicator appointing authority.	*Link**
2006	ICC Final Award in Case 12048	A West African Capital	Red, Fourth Edition, 1987	52.1; 52.2; 52.3; 58.1; 60; 60.10; 67; 67.1; 67.3; 70	Governing law was that of a West African state. Re Clause 52.3 for a Contract Price adjustment where additions and deductions taken together exceed 15% of the Effective Contract Price, construing the Clause, the arbitral tribunal held that when the actual quantities resulting are less than the original estimate, the purpose is to compensate the Contractor for under-recovery of overhead. The Contractor must however demonstrate that it was prevented from recovering the jobsite and general overhead costs included in the BOQ due to the decrease in actual quantities of work performed. Re entitlement to interest for the "pre-judgment" period on sums not certified by the Engineer, both the Contract and applicable law are relevant. The tribunal's discretionary powers to award pre-judgment interest were equivalent to those of the courts. Under Clause 67.3, the tribunal could re-open the Engineer's certificates and include interest. The rate of interest on unpaid certified sums in the Contract was also appropriate to such a claim. Note: See First and Second Partial Awards above	*Link**
2006	620 Collins Street Pty Ltd v Abigroup Contractors Pty Ltd	Supreme Court, Victoria, Australia	Not Specified - Refer to Summary Note	Not Specified - Refer to Summary Note	Note: The contract in dispute is not a FIDIC Contract. FIDIC was used as an example of extension of time.	*Link*
2007	Nivani Ltd v China Jiangsu International (PNG) Ltd	National Court, Papua New Guinea	Not Specified- Refer to Summary Note	Not Specified - Refer to the Summary Note	Note: Although the dispute is over a sub-contract, reference was made to variations under the main contract.	*Link*
2007	National Highways Authority v Som Datt Builders	High Court of Delhi, India	Red Book, Fourth Edition	51.1; 51.2; 52.1; 52.2; 52.3; 55.1; 60	The issue was whether the material exceeding the Bo should be paid at contract rates or at a newly negotiated rate.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2007	Jacob Juma v Commissioner of Police	The High Court of Kenya, Nairobi	Not Specified - Refer to Summary Note	Not Specified - Refer to Summary Note	This case is not directly relevant to FIDIC. It only provides a brief explanation of idle time for Plant, Machinery and Equipment, as well as labour.	*Link*
2007	Ahmedabad Vadodara v Income Tax officer	The income tax appellate tribunal, New Delhi, India	Red Book, Fourth Edition	48.1	Although mainly about tax, this case provides brief guidance regarding contractor's obligation after the project is fully operational. The court in this case decided that the contractor's obligation extended to a period even after the project is fully operational.	*Link*
2007	General Earthmovers Limited v Estate Management And Business Development Company	High Court, Trinidad and Tobago	First Edition, 1999	3.1; 14; 14.1; 14.3; 14.6; 14.7; 16.1; 20; 20.4	Application to set aside a default judgement re non-payment of 2 IPCs. Judgement was set aside because there was a realistic prospect of success and that the dispute should have been referred to the DAB under clause 20.	*Link*
2007	Avenge (Africa) Limited (formerly Grinaker- LTA Limited) and Others v Dube Tradeport (Association Incorporated Under Section 21) and Others	High Court, Natal, South Africa	Silver, First Edition 1999	4.12; 8.4; 11.10	This decision relates to an application to compel the production of documents relating to a bid for the construction and maintenance of the King Shaka International airport. There is only a passing mention of FIDIC contract terms.	*Link*
2007	Knowman Enterprises Ltd v China Jiangsu International Botswana	High Court, Republic of Botswana	Red, Fourth Edition, 1987	4.1; 59.1	The Sub-contractor was not granted an injunction against termination of a Sub-contract with the Main Contractor on the grounds that, contrary to the Sub-contractor's argument, it was not a nominated Sub-contractor whose termination would lie within the power of the Employer (meaning that the power to terminate remained on the Main Contractor). Judge also found that the Sub-contractor had other remedies available such as requesting an order compelling the Main Contractor to pay, requesting the nullification of the documents or to sue for the value of the works done so far.	*Link*
2008	Firma ELSIDI v Department of Water and Sewage - Civil and Criminal Decisions October 2008	The Supreme Court of the Republic of Albania	Red, First Edition, 1999	20.6	Both parties to the contract were Albanian entities. The question was whether arbitration under sub-clause 20.6 was the appropriate forum for resolving the disputes.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2008	National Insurance Property Development Company Ltd v NH International (Caribbean)Limited	High Court of Trinidad and Tobago	Red, First Edition, 1999	2.4; 15.2; 16.1	The Arbitrator had decided that the Contractor was entitled to terminate the contract as the Employer was in breach of sub-clause 2.4 (Financial Arrangements). The Arbitrator had decided that the Employer had not satisfied the evidential threshold required by 2.4 and the fact that the Employer was wealthy was not adequate for the purpose of sub-clause 2.4. The court did not find any error in the finding of the arbitrator and refused to interfere with the award.	*Link*
2008	Construction Associates (Pty) Ltd v CS Group of Companies (Pty) Ltd	High Court of Swaziland	Red, First Edition, 1999 - Amended	14 - Amended	Following the Employer's failure to pay the amount certified in the final payment certificate, the Contractor sought summary judgement. The Employer argued that: 1) Parties must refer to arbitration before referring to a court of law, 2) The Contractor has been overpaid and has overcharged the Employer in respect of BoQs, and 3) the quality of the workmanship of the Contractor was poor. The court held that: the Architect/Engineer was the agent of the Employer when issuing the certificates and the Employer would be bound by the acts of his agent, 2) the Employer cannot dispute the validity of a payment certificate merely because it has been given negligently or the Architect/Engineer used his discretion wrongly, 3) there was no "dispute" between the parties, therefore parties were not obliged to refer to arbitration prior to the court, 4) the works were inspected prior to the issue of IPCs, therefore there was no overcharging, and 5) the defect in the workmanship was not identified. The court referred to the FIDIC guidance on BoQ where it is stated that the object of BoQ is to provide a basis assisting with the fixing of prices for varied or additional work. The court also considered whether the obligation to pay the amount in the payment certificate was a binding obligation.	*Link*
2008	Biffa Waste Services Ltd & Anor v Maschinenfabrik Ernst Hese GmbH & Ors	Technology and Construction Court, England and Wales	Red, First Edition, 1999	8.7	Note: The Contract in dispute is not a FIDIC contract but provides useful guidance on the phrase “which sum shall be the only monies due from the Contractor for such Default".	*Link*
2008	National Highways Authority of India v M/S Afcons Infrastructure Limited	High Court of Delhi, India	Not Specified - Refer to the Summary Note	Not Specified - Refer to the Summary Note	The question was whether it would be the Employer or the Contractor who would be responsible for the cess imposed by the government. The contract between the parties was not based on FIDIC. However, reference was made to FIDIC which allows for, inter alia, reimbursement of increase in the works tax.	*Link*
2008	ICC Interim Award in Case 14431	Zurich, Switzerland	Red, First Edition, 1999 and Red, Fourth Edition, Revised 1992	Red 1999: 3.4; 20; 20.2; 20.4; 20.6; 20.8. Red, 1992: 67; 67.1; 67.3	The Arbitral Tribunal decided that referring a dispute to adjudication is a mandatory step before referring to arbitration. It was also found that submission of an unsigned draft of a formal letter is insufficient to inform intention to invoke the DAB unless the draft is later confirmed to be the final version. The arbitration proceedings were stayed to allow parties to refer their dispute to adjudication.	*Link**

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2008	Braes of Doune Wind Farm (Scotland) Ltd v Alfred McAlpine Business Services Ltd	Technology and Construction Court, England and Wales	Silver, First Edition,1999	1.4.1; 8.4; 8.7; 20.2; 20.2.2	The Court was asked to consider enforceability of clauses in an Engineering, Procurement and Construction Contract which provided for liquidated damages for delay. The Claimant (Employer) and Respondent (Contractor) had contracted for the construction of 36 wind turbine generators in Stirling in Scotland. The Claimant contended that the juridical seat of the arbitrator was England whereas the Respondent contended it was Scotland. The Claimant sought leave to appeal an award made by an arbitrator whilst the Respondent sought a declaration that the Court in England and Wales did not have jurisdiction to grant the Claimant's application and to enforce the award as made.	*Link*
2009	Bayindir v Pakistan	ICSID	Red, Fourth Edition, 1987	63.3; 67.1; 67.4	The ICSID tribunal was constituted to make a decision on jurisdiction. The parties' main dispute involved the termination of the contract.	*Link**
2009	Hutama-RSEA joint Operations, Inc. v. Citra Metro Manila Tollways Corporation	Supreme Court, Manila, Republic of the Philippines	First Edition, 1999 - No Book specified, similar provisions	20.4; 20.5; 20.6; 20.7; 20.8	The parties failed to appoint a DAB. Following disputes involving payment of outstanding balance, the Claimant sought to commence arbitration (CIAC Arbitration). The Respondent disputed the jurisdiction of the AT arguing that reference to arbitration was immature because parties failed to comply with sub-clause 20.4. AT rejected the Respondent's argument and ruled that it had jurisdiction. The Respondent appealed, the court held that AT did not have jurisdiction as a result of failure to comply with 20.4. The Claimant appealed, and this time the court held that although reference to DAB is a condition precedent, AT is not barred from assuming jurisdiction over the dispute if 20.4 has not been complied with. The fact that parties incorporated an arbitration clause was sufficient to vest the AT with jurisdiction. This rule applies regardless of whether the parties specifically choose another forum for dispute resolution. NOTE: It was highlighted in the judgement that this is NOT the case wherein the arbitration clause in the construction contract names another forum, not the CIAC, which shall have jurisdiction over the dispute between the parties, rather the said clause requires prior referral of the dispute to DAB.	*Link*
2009	National Highways Authority of India v Som Datt Builders & ORS	High Court of Delhi, India	Red, Fourth Edition, 1987	2.6; 49; 51; 51.1; 51.2; 52; 52.1; 52.2; 52.3; 55.1; 55.2; 67; 67.3	The High Court of Delhi heard an appeal of a lower court's judgment regarding objections under s 34 of the Arbitration and Conciliation Act to the award of an Arbitral Tribunal. The originally estimated quantity of a BOQ item had been exceeded by nearly three times. There had been no instruction from the Engineer. The Employer considered that a variation existed and that under the contractual terms where actual quantities had exceeded the tolerance limits set out in the Contract, the Engineer was entitled to seek renegotiation of the rate for the additional quantities. The Contractor disagreed that there had been a variation and that any re-negotiation was required. The arbitral tribunal found for the Contractor. The High Court held that the arbitral tribunal had erred in its findings and the award and the lower court's order were both set aside.	*Link*
2009	National Highways Authority of India v M/S Youone Maharia JV (1 July 2009)	High Court of Delhi, India	Red, Fourth Edition, 1987	54.1; 60.7; 63.1	The High Court of Delhi considered whether the Employer could keep Contractor's Equipment after termination when such equipment was hired by the Contractor from a third party as opposed to owned by him. The judge held that the third party could approach the Arbitral Tribunal to consider the question. Note: See below for the appeal at National Highways Authority of India v M/S You One Maharia JV (21 September 2010).	*Link*
2009	National Insurance Property Development v NH International (Caribbean) Limited	High Court, Trinidad and Tobago	Red, First Edition, 1999	2.5; 11.10; 13.5; 16.4; 19.6; 20.1; 53 of FIDIC Red Book Fourth Edition	Three questions posed by the Arbitrator were decided: 1. Contemporary records means in clause 20.1, records produced at the time of the event giving rise to the claim whether by or for the contractor or the employer? 2. Where there are no contemporary records the claim fails? 3. The independent quantity surveyor's term of reference override the express provisions of the clause 20.1 and permit the contractor to advance its claims without contemporary records? Note: Under sub-clause 20.1 the contractor is obliged to keep records which would enable the engineer to investigate and substantiate the contractor's claims.	*Link*

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2009	National Highways Authority of India v. M/S ITD Cementation India LTD (Formerly M/S Skansk)	High Court of Delhi, India	Not specified	51; 51.1; 51.2; 52; 52.1; 52.2	This is a decision regarding a petition under Section 34 of the Indian Arbitration and Conciliation Act 1996 seeking the setting aside of an arbitral award which related to the rehabilitation of a road in India. The judge reviewed the arbitral tribunal's decisions on each issue, including amounts payable for varied work under Clause 51.1, 51.2, 52.1 and 52.2 of the FIDIC general conditions, payment due on account for a re-design, payment due on account of change in thickness of a layer of carriageway, reimbursement of increase in royalty charges and interest. In summary, the judge found that the arbitral tribunal's decisions on each issue were reasonable and plausible and therefore upheld them (with one exception where the judge ordered a reduced amount payable). Note: Provides guidance on rate of interest.	*Link*
2009	Russian case - 1	Court of Supreme Supervision, Russia	Red, First Edition, 1999	8.4; 20.1; 20.4	Contractor was granted extension of time as a result of unforeseeable ground conditions that were not identified in the tender documents or the drawings provided by the Employer, as well as delay in the payment by the Employer and suspension of the works. There was no DAB appointed by the parties in this case and the dispute was referred to the court which eventually ruled in favour of the Contractor. (Lucas Klee, International Construction Contract Law, pp 186-189, Claims in the St Petersburg flood protection barrier construction by Aleksei Kuzmin)	*Link*
2010	Russian case - 2	Court of Cassation, Russia	Red, First Edition, 1999	11	(Please refer to Russian Case - 1) The Employer claimed damages as a result of alleged defects and delay in completion of the works caused by the Contractor and refused to pay the Contractor. The Court rejected the Employer's claim and held that as a requirement of Russian law, damages must be proven with substantial evidence and the pre-estimate of damages as mentioned in FIDIC (Russian Translation) is likely to be a penalty and not recognised by Russian law.(Lucas Klee, International Construction Contract Law, pp 186-189, Claims in the St Petersburg flood protection barrier construction by Aleksei Kuzmin)	*Link*
2010	Russian case - 3	Court of Appeal, Russia	Not Specified	Not Specified	There was a dispute between the Contractor and the Sub-contractor regarding the sums due to the Sub-contractor. The Sub-contractor argued that by signing forms KS-2 and KS-3 (which are accounting forms used in construction in Russia), the Contractor had accepted the works. The Contractor, however, argued that the sums due to the Sub-contractor had to be reduced because the additional works were not agreed to and liquidated damages were allegedly owed to the Contractor. The Court decided that the time for completion was not stated in the contract as required by Russian law which provides that time for completion must either be specified by a calendar date or through an inevitable event. As a result there was no contract formed between the parties and the Contractor had to pay the Sub-contractor and return the retention money. However, the amount of interest claimed by the Sub-contractor was reduced by the Court as there was no basis for claiming such interest in Russian law. (Lucas Klee, International Construction Contract Law, pp 186-189, Claims in the St Petersburg flood protection barrier construction by Aleksei Kuzmin)	*Link*
2010	ICC Procedural Order in Case 15956	An Eastern European City	Red, First Edition, 1999	20	The Arbitral Tribunal found that when the DAB has decided on termination of the contract, the employer is entitled to claim for extra costs of completion of the works in arbitration without a need to make its own referral to the DAB. It also noted that a similar position applies wherever a referral covers a matter which might eventually lead to a claim in arbitration by the other party. It gave the example of a contractor seeking an extension of time before the DAB, resulting in a DAB decision which is then subject to a Notice of Dissatisfaction. It would be permissible for the employer in such a case to make a claim for delay damages in a subsequent arbitration without first having to refer the matter to the DAB as the underlying issue of whether the time for completion should or should not be extended had already been the subject of a referral. It also decided that where the employer refused to sign the DAA within 42 days from the commencement date, the DAB was validly appointed solely by the contractor.	*Link**
2010	ICC Partial Award in Case 16119	An Eastern European Capital	Red, First Edition, 1999 and Gold, First Edition, 2008	Red: 20.4; 20.5; 20.6; 20.7; 20.8. Gold: 20.8; 20.9	DAB decisions are binding and must be given effect to by the parties but an Arbitrator cannot grant a partial award determining the matter with finality because the nature of a DAB decision is temporary.	*Link**

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
* Links in italics would require ICC or I-law subscription to access online.

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2010	ICC Partial Award in Case 16262	London, United Kingdom	Yellow, First Edition, 1999	1.5; 1.6; 20; 20.2; 20.3; 20.3; 20.4; 20.5; 20.6; 20.7; 20.8	The meaning of DAB "in place" in Sub-Clause 20.8 is validly appointed; those words do not require that the dispute adjudication agreement between the parties of the DAB has been executed.	*Link**
2010	ICC Partial Award in Case 15956	An Eastern European City	Red, First Edition, 1999	2.5; 3.5; 4.19; 4.20; 14.12; 15.2; 15.3; 15.4; 20; 20.3; 20.4; 20.5; 20.6; 20.7; 20.8	The Arbitral Tribunal found that when the DAB has decided on termination of the contract, the employer is entitled to claim for extra costs of completion of the works in arbitration. It also decided that where the employer refused to sign the DAA within 42 days from the commencement date, the DAB was validly appointed solely by the contractor.	*Link**
2010	National Highways Authority of India v Unitech-NCC Joint Venture (8 March 2010)	High Court of Delhi, India	Not Specified	Refer to Summary Note	In considering an Arbitral Tribunal's award under Section 34 of the Arbitration & Conciliation Act of India 1996, the High Court of Delhi found that a sub-clause, which allowed the Engineer to correct ambiguities or errors if the Contractor discovered any in the Drawings or other Contract Documents, permitted the Engineer and the Arbitrator to correct a sub-clause that contained an error that resulted in an inconsistency with other contract provisions. Note: This case considers the scope of an amended FIDIC 4th Edition Sub-clause 5.2. Therefore, the differences between the FIDIC and the amended sub-clauses may allow for differences in interpretation. See below for appeal.	*Link*
2010	National Highways Authority of India v Unitech-NCC Joint Venture (30 August 2010)	High Court of Delhi, India	Not Specified	Refer to Summary Note	The High Court of Delhi dismissed the appeal of National Highways Authority of India v Unitech-NCC Joint Venture (8 March 2010) on the same terms as the appealed judgement. Note: Go to 8 March 2010 judgement above for more details.	*Link*
2010	National Highways Authority of India v M/S You One Maharia JV (21 September 2010)	High Court of Delhi, India	Red, Fourth Edition, Revised 1992	1.1; 54.1; 61; 61.1; 63.1, 63.1(4)	On Appeal, the High Court of Delhi held that the Employer was entitled to retain and use the Contractor's Equipment brought to site after the Contractor had been expelled under an amended FIDIC 4th Sub-clause 63.1. It was held that the Contract made no distinction between equipment owned by the Contractor and equipment hired or otherwise not owned by it. Note: Even though Sub-clause 63.1 of FIDIC 4th is amended, the decision is still useful in interpreting the standard form. See above for appealed judgement.	*Link*
2010	ICC Interim Award in Case 16155	Paris, France	Red, First Edition, 1999	20.1; 20.2; 20.4; 20.6; 20.8	Claimant gave only notice of claim under 20.1. No material was provided in support of claim, despite the Engineer's request. Accordingly, there was no Engineer's determination. The Claimant requested a joint appointment of a DAB which went unanswered. The Claimant referred the dispute to arbitration and Respondent contested jurisdiction for want of an Engineer's determination and a DAB's decision. The Contract was terminated. The Arbitral Tribunal found that despite a failure to submit claim information, there was nothing in the Contract to prevent the Claimant from proceeding to the next step of the dispute resolution procedure. Failure to substantiate a claim did not prevent the contractor from referring the dispute to arbitration. The contractor was entitled to refer the dispute to arbitration because there was no DAB in place.	*Link**

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2010	ICC Final Award in Case 15789	An Eastern European Capital	Red, Fourth Edition, 1987	5.2; 9; 48.1; 48.2; 49; 49.1; 50; 60.3; 64.1	Release of retention after a 12-month defects period was found to be compatible with a statutory 5-year warranty period.	*Link**
2010	State Of West Bengal vs Afcons Infrastructure Ltd	High Court, Calcutta	Red, Fourth Edition, 1987	53.1; 53.2; 53.3; 53.4; 53.5; 67.3	Application to the High Court of Calcutta pursuant to section 34 of the Indian Arbitration and Conciliation Act 1996 for the setting aside of an arbitral award. Requirement in section 28(3) of that Act for the arbitral tribunal to decide in accordance with the terms of the contract and in section 31(3) of that Act for arbitral tribunal to give reasons for its award. Failure by the arbitral tribunal to give reasons. Award set aside.	*Link*
2010	ICC Final Award in Case 15282	An Eastern European Capital	Red, Fourth Edition, 1987	7.2; 51; 52; 52.1; 52.2; 53; 53.1; 53.3; 53.4; 67; 67.1	Claim time-barred under 4th Edition clause 67.1 where Engineer gave no decision within 84 days and notice of intention to arbitrate was received a week later than 70 day limit. Another claim for a variation was also time-barred when the 14-day notice period under clause 52.2 and the 28-day notice period under clause 53 were both missed. A notice posted on the last day of a time-limit and received after the deadline was held to be too late.	*Link**
2010	National Highways Authority v M/S You One Maharia	High Court of Delhi, India	Red, Fourth Edition, 1992	1.1(f)(v); 54.1; 61; 61.1; 63.1(4)	During the course of the project, it was found that the bank guarantees provided by the contractor were forged and fabricated. As a result, the employer terminated the contract and sought to exercise its rights to seize equipment that was brought to the site by the contractor.	*Link*
2010	PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation	High Court, Singapore	Red, First Edition, 1999. Red, Fourth Edition. Gold, First Edition, 2008.	Red (1999): 20; 20.4; 20.5; 20.6; 20.7; 20.8. Red (1987): 67 Gold (2008): 20.9	Persero 1 - DAB enforcement - High Court set aside a final ICC award enforcing a binding but not final DAB decision on the basis that the failure to pay did not go to the DAB prior to arbitration.	*Link**
2010	Cybarco PLC v Cyprus (Case Nos. 543/2008 and 544/2008)	Supreme Court, Cyprus	Red, First Edition, 1999	1.6	The case concerned contradicting terms between the letter of tender under which the contractor was responsible for payment of stamp duty and the clause 1.6 of the contract where the employer is responsible.	*Link*
2010	ICCJ Decision No. 3639/2010	Romania High court of Cassation and Justice	Yellow, First Edition 1999	3.1; 3.2;	Following a court order requiring a revision of the tender awarding criteria and the technical and financial proposals, the Respondent invited bidders to submit new tenders for works which overlapped with works under the first tender. It was assumed that the second public procurement was organised to circumvent the consequences of the judgement. Following an action by the claimant, the court compared the provisions and extent of obligations under both contracts, one being based on the FIDIC Yellow Book. The court decided that the duties are almost identical to the obligations under the FIDIC Yellow Book. It was also found that organisation of the second tender was likely to harm the legitimate interests of the claimant for services already in proceedings for which the claimant had a real chance of winning. Therefore, the claimant's appeal to annul an award for cancellation of the tender procedure was rejected.	*Link*
2010	ICC Interim Award in Case 16083	Paris, France	Silver, First Edition, 1999	20; 20.2; 20.3; 20.4; 20.5; 20.6; 20.7; 20.8	The Arbitral Tribunal considered the law governing the dispute resolution clause where the parties had not chosen an applicable law to the arbitration agreement but had agreed on the seat of arbitration. Also, the tribunal found that the parties' conduct confirmed that neither party considered DAB to be an essential step prior to referring disputes to arbitration.	*Link**

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2010	Francistown City Council v Vlug and Another	The High Court of Botswana	Red, Fourth Edition, 1987	63; 63.1	The Court considered an application to set aside an arbitrator's decision on the basis that he dealt with matters not submitted to him and went beyond the parameters of the parties submission in making his decision. The material contract was subject to the Red Book FIDIC 4th Edition (1987).	*Link*
2010	ICC Final Award in Case 16205	Singapore	Orange, First Edition, 1995	1.1.5.6; 13.1; 13.3; 13.8; 13.11; 13.13; 13.16	Final payment certificate "agreed" by Employer's Representative did not bind the Employer as the ER had no authority to reach the agreement. Findings in relation to Employer's liability for taxes, financing charges, overheads and exchange rate losses.	*Link**
2010	ATA Construction, Industrial & Trading Company v Hashemite Kingdom of Jordan (18 May 2010)	ICSID	Red, Fourth Edition, 1987	67	An ICSID arbitration concerning the validity of the annulment by Jordanian court of an Arbitral Award rendered in favour of the Claimant.	*Link*
2010	Mersing Construction & Engineering Sdn Bhd v Kejuruteraan Bintai Kin denko Sdn Bhd	High Court, Malaysia	Unknown FIDIC type contract - 1999?	20.4; 20.6	The court considered clause 20.4 and 20.6 and the meaning of the word 'dispute'. The Contract did not incorporate the arbitration clause in its conditions as only the Appendix to the Contract was produced in evidence. This Appendix only referred to DAB and not to arbitration. *Held:* There was no agreement to arbitrate as clause 20.4 only referred to the DAB. The court could not make a decision based on a conjecture or whether it was the parties' intention that the whole provision on resolving disputes be based on the FIDIC Conditions. There was no provision for Clause 20 to apply and the only reference to FIDIC was a clause providing that the procedure for the DAB be in accordance with FIDIC.	
2011	ICCJ Decision No. 2473/2011	Romania High court of Cassation and Justice	Yellow, First Edition, 1991	1.4; 4.4;	The Contractor was found to be in breach of the general and particular conditions in sub-clause 4.4, by sub-contracting the works to 14 sub-contractors (13 of whose value did not exceed 1% of the total contract value) without the engineer's prior and express consent. Also, the fact that another language than that specified in sub-clause 1.4 was used, did not give rise to the documents being null and invalid.	*Link*
2011	ICCJ Decision No. 287/2011	High Court, Romania	Red, Yellow and Green Book	13.8; 20;20.2;	The parties to the contract had a dispute regarding the reference date for determining the RON to EURO exchange rate. This dispute was settled by arbitration. However, one of the parties issued proceedings claiming that the arbitrator's decision should be set aside because (1) the dispute was not capable of settlement by arbitration, (2) the arbitration agreement was not valid, (3) the arbitration award violated mandatory provisions of law. The appeal was rejected. The court decided, inter alia, that the arbitration agreement was valid and met the basic requirements for validity (capacity, consent and specific object). FIDIC Red, Yellow and Green Books were introduced into the Romanian Legislation by Order No.915/2008.	*Link*
2011	ATA Construction, Industrial & Trading Company v Hashemite Kingdom of Jordan (7 March 2011)	ICSID	Red, Fourth Edition, 1987	67 - Refer to the Summary Note	The issue between the parties were whether the final award extinguished the Arbitration Agreement under Jordanian Law, whether the Arbitration Agreement can be restored and whether the application meets the requirements for an ICSIC Article 50 post-award interpretation.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2011	ATA Construction, Industrial & Trading Company v Hashemite Kingdom of Jordan (11 July 2011)	ICSID	Red, Fourth Edition, 1987	Not Specified - Refer to the Summary Note	This case involved a conditional application for partial annulment of 18.05.2010 Award granted if the Tribunal were to adopt ATA's interpretation. Following the rejection of ATA's interpretation, the Applicant sought to terminate the proceeding and claimed all the costs in connection with it.	*Link*
2011	Amira Furnishing Company Ltd v New India Assurance Company Limited	High Court, Fiji	Not Specified	Not Specified	This case is not directly relevant to FIDIC. The Claimant in this case clamed £10k as a contingency sum for unknown works. Reference was made to FIDIC Building Contract which sets a percentage figure as construction contingency for unforeseen emergencies or design shortfalls identified after construction of a project.	*Link*
2011	ICC Final Award in Case 16948	An Eastern European Capital	Red, First Edition, 1999 and Red, Fourth Edition 1987	Red 1999: 20; 20.1; 20.4; 20.5; 20.6; 20.7. Red 1987: 67	Enforcement of DAB decision without consideration of merits: the Arbitral Tribunal held that non-payment amounts to breach of contract and a new dispute. Referring non-payment back to the DAB for a Decision made the Employer liable for damages for breach of contract plus interest.	*Link**
2011	CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK	Court of Appeal, Singapore	Red, First Edition, 1999	20; 20.4; 20.5; 20.6; 20.7; 20.8	Persero 1 - DAB enforcement - Court of Appeal upheld High Court's decision which set aside the final award on the basis that the merits were not before the tribunal. They want on to state that as long as the merits are placed before the arbitral tribunal, in principle, an interim or partial award enforcing a binding DAB's decision should be possible. Note: This case makes reference to the Interim Award in ICC Case 10619 in relation to clause 67.1.	*Link*
2011	State of West Bengal v. Afcon Infrastructure Ltd [January 2011]	High Court, Calcutta	Red, Fourth Edition, 1987	53; 53.1; 53.2; 53.3; 53.4; 67.3	This was an application to the court under Section 34 of the Indian Arbitration and Conciliation Act 1996 seeking the setting aside of an arbitral award on the grounds of illegality. The petitioner argued that the contractual procedure for claims was not followed but the court rejected this argument because sub-clause 53.4 of the contract permitted an arbitral tribunal to assess a claim based on verified contemporary records even if they were not previously placed before the Engineer. The court thus dismissed the application to set aside.	*Link*
2011	Progressive Construction Ltd v Louis Berger Group Inc. & Others	High Court, Andhra	Red, Fourth Edition	6.1(b); 9.5.1; 9.5.4; 10.1; 63.1	This case involved an application for injunction restraining the respondent from invoking the performance bank guarantee. The right of the employer to expel the contractor from the site was also considered in this case.	*Link*
2011	Uniphone Telecommunications Berhad V Bridgecon Engineering	Court of Appeal, Malaysia	Orange, First Edition, 1995	Refer to Summary Note	The court considered the default in payment under the deed of assignment executed by the Respondent. Note: The Deed of Assignment refers to the FIDIC terms.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2011	Tanzania National Roads Agency v Kundan Singh Construction Limited and Another	Court of Appeal at Mombasa	Red, Fourth edition	Not Specified - Refer to Summary Note	As a result of disputes between the parties, the Contractor commenced proceedings seeking to restrain the Employer from making demands on the guarantees executed or repossessing any assets and machinery. The Employer also commenced proceedings seeking to enforce the guarantees and recover damages for breach of contract. The court held that the suit commenced by the employer raised similar issues as the first suit and therefore the proceedings must be stayed pending the ruling of the superior court in the first suit. The employer appealed against the decision arguing that the issues under the two proceedings are different.	*Link*
2011	State of West Bengal, Public Works (Roads) Department v. AFCONS Infrastructure Ltd [September 2011]	High Court, Calcutta - Appeal against Judgement on 06.01.2011	Red, Fourth Edition, 1987	53.1; 53.2; 53.3; 53.4; 53.5; 60; 67.3	This was an appeal to the High Court at Calcutta. The appellants argued that an arbitral award, which had been upheld by a trial judge, was opposed to public policy being in contravention of Sections 26(3) and 31(3) of the Indian Arbitration and Conciliation Act 1996 as the Arbitral Tribunal had failed to adjudicate the dispute in terms of the FIDIC contract between the parties. The High Court found that the point for consideration in the appeal was whether the arbitral tribunal and consequently the trial judge committed any error in law while upholding the claim partially. The High Court reviewed each of the heads of claim and, apart from one claim, upheld the claims awarded by the Arbitral Tribunal and the trial judge.	*Link*
2011	Swiss Civil Court decision 4A_46/2011	First Civil Law Court, Switzerland	Red, First Edition 1999	18.3; 20	The court examined whether pre-arbitral steps were mandatory before commencing arbitration and considered the possible consequences of failure to follow the multi-tier dispute resolution procedure.	*Link*
2012	Bulgarian case	Arbitral tribunal of the Bulgarian Chamber of Commerce and Industry	Yellow, First Edition, 1999	3.5; 20.1; 20.4	The contract between the parties set a time limit of 28 days for referral of disputes to the Engineer under sub-clause 20.1. The contractor argued that the contractual time limit was a waiver of rights and is therefore void under the provisions of Bulgarian law. The arbitral tribunal rejected the contractor's argument and held that the clause provided for timely referral and consideration of disputes.	*Link*
2012	R.A Murray International Ltd v Brian Goldson	Supreme Court of Judicature of Jamaica	First Edition, 1999	Not specified	Although the contract between the parties was based on FIDIC, the issues in this case are not relevant to FIDIC. The case involves removal of an arbitrator as a result of misconduct.	*Link*
2012	ICC Partial Award in Case 16570	An Eastern European Capital	Yellow, First Edition, 1999	15.3; 15.4; 16.3; 16.4; 20.2; 20.3; 20.4; 20.5; 20.6; 20.7; 20.8	The Arbitral Tribunal considered the effect of statute of limitation in relation to claims referred to arbitration. The constitution of the DAB was also considered in this case.	*Link**
2012	Kmc Construction Ltd, Hyderabad v Department of Income Tax	The income tax appellate tribunal, New Delhi, India	Fourth Edition - Refer to Summary Note	20.1;20.2;20.3 - Refer to Summary Note	The issue in this case is not relevant to FIDIC. The issue in the case is related to sales tax refund. The FIDIC contract that one of the parties had entered into was considered by the court and the duty of the Contractor after the handing over of the site was mentioned in passing.	*Link*

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2012	Esor Africa (Pty) Ltd /Frankl Africa (Pty) Ltd Joint Venture v Bombela Civils Joint Venture (Pty) Ltd	South Gauteng High Court, Johannesburg, South Africa	Red, First Edition 1999	20; 20.4; 20.6; Refer to Summary Note	In this matter the Court was asked to consider an application for payment under two Engineer's Progress Certificates where the Respondent did not dispute the validity of the certificates but had presented a counterclaim based on a third Engineer's Progress Certificate. The Plaintiff disputed the counterclaim but stated that it was agreed the matters in dispute were to be referred to the Dispute Adjudication Board for adjudication and if either party was dissatisfied with the decision to arbitration for final determination. The Court in this instance postponed the Claimant's application pending the finalisation of the proceedings before the Dispute Adjudication Board or Arbitration Note: Unreported - This case was also considered in Stefanutti Stocks (Pty) Ltd v S8 Property (Pty) Ltd.	*Link*
2012	ICC Final Award in Case 18096	An Eastern European Capital	Red, First Edition, 1999	1.2; 20.2; 20.4; 20.6	The parties' poor drafting of the DAB agreement led to disputes as to whether the DAB was ad hoc or permanent and consequently a dispute on Dispute Adjudication Agreement's termination.	*Link**
2012	Abbas & Hayes (t/a A H Design) v Rotary (International) Ltd	High Court, Northern Ireland	Conditions of Sub-contract for Works of Civil Engineering Construction, First Edition, 1994	No clauses cited - Refer to Summary Note	In this case the Court considered what the consequences for a party bringing legal proceedings where they have disregarded a dispute resolution scheme provided for in the contract as between the parties in dispute. The Court stated that where the scheme is sufficiently certain so as to be enforceable it may result in a stay of Court proceedings. Further, that where provision for a scheme has been made in the contract the burden in on the litigating party to show why the agreed method for dispute resolution should not operate. The clause in this case allowed for adjudication in accordance with a separate sub contract which is an amended form of the FIDIC conditions of subcontract for works of civil engineering construction 1st Edition (1994). The Court also considered how to interpret the clause where the drafting had been imperfect.	*Link*
2013	ICC Final Award in Case 18320	An Eastern European Capital	Yellow, First Edition, 1999	10.2; 16.1; 16.2; 20; 20.4; 20.5; 20.6; 20.7	(1) Whether a Notice of Dissatisfaction (NoD) needs to set out the reasons of the dissatisfaction. The Respondent had identified the letter as a Sub-clause 20.4 NoD and listed out the matters in dispute but did not include the reasons of the dissatisfaction. The Arbitral Tribunal held that the reasons were not necessary for the notice to be compliant. Sub-clauses 20.4 and 20.7 do not provide that failing to set out the reasons renders the notice void or non-existent. The notice must be "expressly defined or at least unambiguously identifiable as such", i.e., be titled Notice of Dissatisfaction under Sub-clause 20.4 and identify the claims the party wishes to bring to Arbitration. The Arbitral Tribunal also held in obiter that even the party who did not submit a NoD may rely on it to raise the dispute to Arbitration. (2) Whether the Arbitral Tribunal can order the Respondent to comply with Sub-clause 20.4 and pay a binding DAB decision without looking at the merits of the dispute. The Arbitral Tribunal held that, whereas the binding effect of a DAB decision is not lost when a NoD is served, if any of the parties dispute the decision during the Arbitration, it cannot be given effect without considering the merits. However, the binding nature of the decision means the affected party may request contractual or legal remedies for failure to comply or even the provisional performance of the decision by way of an interim award or measure.	*Link**
2013	ICC Final Award in Case 16765	An Eastern European Capital	Yellow, First Edition, 1999	2.5; 3.5; 5.2; 20.1; 20.4	Final award by an arbitral tribunal relating to a dispute over a waste water treatment plant. The tribunal found that a counterclaim by the employer for delay damages was inadmissible because the employer had not previously given notice of the claim, referred it to the engineer or referred it to the DAB. The tribunal dismissed claims by the contractor for an extension of time and additional cost because the contractor had failed to comply with the notice provisions in sub-clause 20.1.	*Link**

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2013	ICC Final Award in Case 17146	Paris, France	Red, First Edition, 1999	1.4; 4.2; 20.4; 20.6; 20.8	The Arbitral Tribunal decided that it had exclusive jurisdiction to rule on objections to its jurisdiction. When the Arbitration Clause does not contain any specific choice of law the arbitrator considered that the arbitration clause should be interpreted pursuant to three generally accepted principles. On the issue of validity of the arbitration clause, the arbitrator considered the criteria set out in Article II(1) of the New York Convention and considered that the only important question is whether the parties in fact intended to resort to arbitration and if so, which parties and for which types of dispute. The arbitral institution was decided to be ICC when there was no evidence that the parties ever discussed any other institution. It was also decided that the European convention can in certain circumstances govern all stages of arbitration.	*Link**
2013	National Insurance Property Development Company Ltd v NH International (Caribbean)Limited	Court of Appeal, Trinidad and Tobago	Red, First Edition, 1999	2.4; 3.5; 8.3; 14; 14.6; 14.7; 16; 16.1; 16.2; 20.6; 26; 30	The proper construction of clause 2.4. Held that the arbitrator was mistaken in thinking that evidence of Cabinet approval was needed to satisfy clause 2.4 in the light of the assurance and the arbitrator was effectively demanding the highest standard rather than reasonable evidence of assurance.	*Link*
2013	Sedgman South Africa (Pty) Limited & Ors v DiscoveryCopper Botswana (Pty) Limited	Supreme Court, Queensland, Australia	Silver, First Edition 1999	1.3; 2.5; 3.5; 11.4; 13.3; 13.7; 14; 14.3; 14.4; 14.6; 14.7; 14.9; 14.10; 14.11; 20; 20.4	The Supreme Court of Queensland analysed the meaning of sub-clause 14.6 of an amended Silver Book, in particular, the words 'payments due'. Sedgman contracted to design and construct parts of the Boseto Copper Project in Botswana for Discovery Copper. Sedgman applied for an interim payment of USD 20 million. Amended sub-clause 14.6 required Discovery Copper to give notice within 7 days if they disagreed with any items in the application. Discovery Copper failed to give the notice and did not contest the application until 14 days later. Sedgman applied to the Court for payment of the sum claimed. The Court dismissed Sedgman's application for payment, holding that there was a genuine dispute and that Sedgman's interpretation of the contract was incorrect. The Court held that: 'This contract did not entitle the applicants to be paid the sum which they now claim, simply from the fact that there was no response to their interim claim within the period of seven days stipulated in the contract.' McMurdo J considered the words 'payments due shall not be withheld' at sub-clause 14.6 of the contract and stated that they were 'different from saying that a payment will become due if a notice of disagreement is not given,' as Sedgman contended. The Judge held: 'The alternative view [...] is that it does not make a payment due. Rather, it governs payments which, by the operation of another term or terms, have [already] become due.' The Judge stated that, if Sedgman were correct, the operation of the contract clauses to determine claims and variations could otherwise be displaced by the operation of sub-clause 14.6. If the contractor included a claim in his application for payment which was inconsistent with, e.g., a DAB's determination, and the employer did not notify disagreement, the outcome would be that the DAB's determination would be displaced.	*Link*
2013	Johannesburg Roads Agency (Pty) Ltd v Midnight Moon Trading 105 (Pty) Ltd and Another	High Court, North Gauteng, Pretoria, South Africa	Not Specified	Not Specified	FIDIC mentioned in passing only. A procedural decision setting aside a default judgement.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2013	Doosan Babcock v Comercializadora De Equipos y Materiales Mabe 11/10/13	Technology and Construction Court, England and Wales 11/10/13	Red, First Edition, 1999	4.2; 10; 20.2; 20.4; 20.8	There was no DAB in place, therefore parties were entitled to refer the dispute directly to arbitration. There was also an additional claim regarding performance guarantee under clause 4.2 which was replaced by the parties. The case concerned the Claimant's application for an interim injunction to restrain the Respondent from making demands under two "on demand" performance guarantees. In doing so, the Claimant argued that the Respondent has wrongfully failed to issue a taking-over certificate. The Claimant contended that they had a strong claim that demand for payment would constitute breach of contract as the Respondent had failed to issue Taking Over Certificates for plant that had been taken in to use by the Respondent. The contract between the parties was based on the FIDIC form with some modifications including the deletion and replacement, in its entirety, of clause 4.2 concerning Performance Security.	*Link*
2013	State Of West Bengal vs Afcons Pauling (India) Ltd	High Court, Calcutta	Red, Fourth Edition, 1987	12.1; 12.2; 53.1; 53.2; 53.3; 53.4; 53.5; 67.3	This was an application to the High Court of Calcutta pursuant to Section 34 of the Indian Arbitration and Conciliation Act 1996 for the setting aside of an arbitral award. The underlying dispute related to a road improvement contract which incorporated FIDIC conditions. The court set aside the arbitral award on the basis that it conflicted with Indian public policy because it was not decided in accordance with the contract and was not based on cogent evidence.	*Link*
2013	Man Enterprise v Al-Waddan Hotel	Technology and Construction Court, England and Wales	Red, Fourth Edition, Revised 1992	67	Right of Contractor to start arbitration where Employer fails and refuses to appoint a new Engineer; no need to wait the 84 days.	*Link*
2013	Stefanutti Stocks (Pty) Ltd v S8 Property (Pty) Ltd	High Court, South Gauteng, Johannesburg, South Africa	Red, First Edition, 1999	20; 20.4; 20.6; Refer to Summary Note	This is not a FIDIC case but referred to the case of Esor Africa (Pty) Ltd/Franki Africa (Pty) Ltd JV and Bombela Civils JV (Pty) Ltd, SGHC case no. 12/7442. In Esor the parties had referred a dispute to the FIDIC DAB under clause 20.4 of the FIDIC Conditions of Contract. The DAB gave its decision which was in favour of the contractor. The employer refused to make payment relying on the fact that it had given a notice of dissatisfaction and the contractor approached the Court for an order compelling compliance with the decision. Spilg J held that he found the wording of the relevant contractual provisions to be clear and that their effect is that whilst the DAB decision is not final "the obligation to make payment or otherwise perform under it is…" (at para 12 of the judgment). The court found the key to comprehending the intention and purpose of the DAB process to be the fact that neither payment nor performance can be withheld when the parties are in dispute: "the DAB process ensures that the quid pro quo for continued performance of the contractor's obligations even if dissatisfied with the DAB decision which it is required to give effect to is the employer's obligation to make payment in terms of a DAB decision and that there will be a final reconciliation should either party be dissatisfied with the DAB decision…" The court further held at para 14 that the respondent was not entitled to withhold payment of the amount determined by the adjudicator and that he "is precluded by the terms of the provisions of clause 20 (and in particular clauses 20.4 and 20.6) from doing so pending the outcome of the Arbitration."	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2013	Eskom Holdings SOC Limited v Hitachi Power Africa (Proprietary) Ltd and Hitachi Power of Europe GMBH	Supreme Court, South Africa	Red, Fourth Edition, 1999	2.5; 2.4; 15.2;	The Court interpreted the provisions of a performance security that was issued in compliance with Sub-Clause 4.2 of an amended FIDIC 1999 standard form. The contract in question was the performance security itself, not the construction contract. The Respondent argued that prior to making a demand on the performance security on the basis of any of the grounds in Sub-Clause 4.2(a) to (d), the Claimant was required to serve notice under Sub-Clause 2.5. The performance security incorporated the grounds under Sub-Clause 4.2(a) to (d) by reference. The Court decided that the performance security was an on demand bond and its interpretation relied on the bond itself, not the construction contract necessarily. On the basis of this bond the Claimant was not required to serve a Sub-Clause 2.5 notice in order to make a call, i.e., the Sub-Clause 2.5 notice is not a requirement under the on demand bond. The only relevant notice under Sub-Clause 4.2(d) is a Sub-Clause 15.2 termination notice. However, Sub-Clause 4.2(d) expressly allows calling the bond on the basis of Sub-Clause 15.2 grounds irrespective of whether the termination notice has been given. The Court also recognised that Sub-Clause 4.2(b) refers to a Sub-Clause 2.5 notice. However, reference to the notice is not tantamount to a requirement that a Sub-Clause 2.5 notice is given in order to trigger Sub-Clause 4.2 and allow the Employer to call on the bond without breaching the construction contract.	*Link*
2013	ICC Final Award in Case 18505	An Eastern European Capital	Yellow, First Edition, 1999	20; 20.1; 20.2; 20.3; 20.4; 20.5; 20.8	(1) The Arbitral Tribunal held that a Claimant does not need to refer the dispute to DAB before referring to Arbitration. The circumstances by which a DAB is not in place which trigger Sub-clause 20.8 (i.e., the dispute may be raised to arbitration without the need for a DAB decision or amicable settlement) are not limited to those similar to the expiry of the DAB's appointment. In addition, a party cannot rely on its own refusal to sign a DAB agreement to argue that the Arbitral Tribunal has no jurisdiction because the other party has not complied with the dispute resolution procedure under Sub-clause 20.1. A party cannot justify its refusal to sign the DAB agreement by stating that the dispute has not been raised with the Engineer because an Engineer's determination is not required for the signature. (2) Also, the Arbitral Tribunal held that an Engineer's determination is not required for a dispute to be formed. Sub-clause 20.4 allows disputes "of any kind whatsoever" to be referred to the DAB.	*Link**
2013	National Highways Authority of India v Ncc-Knr	High Court of Delhi, India	Red, Fourth Edition	52.1; 52.2; 60	Various claims were considered including claims for unforeseen costs that were incurred as a result of late hand-over of the site and sums for idle the plant and machinery.	*Link*
2013	ICC Final Award in Case 16435	Port Louis, Mauritius	Not Specified - Refer to Summary Note.	20	The Arbitral Tribunal was asked to determine (1) whether an identifiable dispute about an Adjudicator's decision was necessary before the obligation to give notice arose, and (2) whether referring an Adjudicator's decision to ICC Arbitration required a Request for Arbitration or, merely, a notice of intention. The Arbitral Tribunal decided that (1) a fresh dispute was not necessary since one already existed when the Contractor disagreed with the Project Manager's decision, the Contract was clear in that each party would have a dispute at the moment it disagreed with the Adjudicator's decision and the provision referred to referral from date of written decision, not the dispute; and (2) the purpose of a fixed period is prompt settlement of disputes and certainty, therefore, the clauses are interpreted so that referral of the decision to Arbitration under ICC rules means filing of a Request for Arbitration within the requisite time. Although the award does not refer to FIDIC in particular, it was published by the ICC together with other awards relating to "international construction contracts predominately based on FIDIC conditions". Note: The Contract in dispute is not a FIDIC Contract but reference is made to Mr. Christopher Seppälä's article titled "Pre-Arbitral Procedure on Settlement of Disputes under the FIDIC Conditions" [(1983) 3ICLR 316].	*Link**
2013	Tubular Holdings (Pty) Ltd v DBT Technologies (Pty) Ltd	High Court, South Gauteng, Johannesburg, South Africa	Red, First Edition, 1999	20.4; 20.6	Binding but not final decision of the DAB must be complied with pending the arbitration.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2013	Midroc Water Drillining Co Ltd v Cabinet Secretary, Ministry of Environment, Water & Natural Resources & 2 others	High Court of Kenya	Red, Fourth Edition, 1987	67	The Respondent argued that the suit was premature. The court made an order to stay the proceedings so parties could commence settlement of their dispute in accordance with the settlement procedure set forth by FIDIC.	*Link*
2013	M/S Jsc Centrodostroy v M/S National Highways Authority	High Court of Delhi, India	Red, Fourth Edition	52 - Amended	Certain quantities in the BoQ were reduced or omitted by the Engineer. The claimant claimed for price variation as a result of such reduction.	*Link*
2013	National Highways Authority v MS Kmc-Rk-Sd JV	High Court of Delhi, India	Red, Fourth Edition	14.4; 60.1; 70.3 - Amended	The question in this case was whether the contractor was entitled to payment towards price adjustment on all items of work referred to in the BoQ.	*Link*
2013	Doosan Babcock v Comercializadora De Equipos y Materiales Mabe 24/10/13	Technology and Construction Court, England and Wales	First Edition, 1999	1.1.3.4; 7.4; 8.2; 9; 10; 12	Following the judgement on 11/10/2013, the Respondent made an application to discharge the injunction.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2013	Case No. T 3735-12 03 May 2013	Svea Court of Appeal	Unknown FIDIC type contract -	Not cited, but 1.4 and 20.4 applicable	The Claimant (Contractor) entered into a contract with the Respondent - Tanzania National Roads Agency (TNRA). The applicable law was Tanzanian law. The Engineer failed to issue an Interim Payment Certificates (IPC). A dispute arose mainly as to whether the Respondent was responsible for certain delays and whether, consequently, the Claimant was entitled to recover damages. The Claimant sent a referral to the DAB and terminated the Contract without waiting for the DAB's decision. Later, dissatisfied with the DAB's decision, the Claimant filed for arbitration. During the Arbitration, the parties agreed to waive the requirement to bring disputes before the DAB prior to referring them to arbitration. The Engineer's relationship with the Respondent (TNRA) was also an issue. To determine this relationship, the arbitral tribunal first examined the relationship between English law and Tanzanian law, as both parties had referred to a number of English court decisions. *The AT Decided:* A condition for termination of the contract was lacking because the Claimant had not waited for the DAB's decision and the Claimant was ordered to pay a considerable sum to the Respondent. On the Engineer's relationship with TNRA, the arbitral tribunal concluded that the Engineer did not represent the Respondent (TNRA) and that, consequently, the Engineer's failure to issue the IPC could not be attributed to the Respondent (TNRA). The Contractor filed a challenge of the Award arguing that the AT had exceeded its mandate and committed a procedural error as it failed to apply the parties' choice of applicable law. *Held* : If an arbitral tribunal committed an error in its interpretation or application of a choice of law rule, this is considered a substantive error and, under Swedish law, does not constitute a ground for annulment of an arbitral award. It concluded that the majority had not failed to apply Tanzanian law and that the possibility that the majority may have been in error regarding the meaning of Tanzanian law would not constitute a ground for annulment of the award.	*Link*
2014	ICC Procedural Order of February 2014 in ICC Case 19105	Bucharest, Romania	Not Specified	2.5; 14.9; 14.11; 14.13; 20.6	In this case the Arbitral Tribunal considered whether it was appropriate to allow new claims to be introduced and considered the delay and disruption as a result of introducing new claims.	*Link**
2014	ICC Final Award in Case 13686	Paris, France	Not Specified	20	This case is not directly relevant to FIDIC. It only refers to the pre-arbitral negotiation procedure which is to be regarded as a pre-requirement to commence arbitration. If these pre-requirements are not met, claims will either be dismissed without prejudice or proceedings stayed pending the completion of pre-arbitral negotiation procedures.	*Link**
2014	ICC Final Award in Case 19346	An Eastern European Capital	Yellow, First Edition, 1999	2.5; 20; 20.4; 20.5; 20.6	The Claimant contended that the Arbitral Tribunal lacked jurisdiction to determine certain issues from a DAB decision because the Respondent failed to issue its Notice of Dissatisfaction (NoD) on those particular issues in time. However, the Claimant had served timely NoDs on other issues from the same DAB decision. Therefore the Arbitral Tribunal held that it was not prevented from examining the issues subject of the Respondent's NoDs because Sub-clause 20.4 refers to disputes and it is the dispute which defines the scope of the Arbitral Tribunal's jurisdiction, not the NoD. The question is then whether a particular issue is relevant to the dispute, in which case, it falls within the jurisdiction. The Arbitral Tribunal also held in obiter dictum that even if the final Contract Price increases between the Claim and the Arbitration or the percentage of delay damages amounts to more than the 5%, it would be the same claim and dispute between the parties so that the increase would not have to be referred to a DAB before reaching Arbitration.	*Link**

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2014	ICC Final Award in Case 19581	An Eastern European Capital	Red, First Edition, 1999	3.5; 4.2; 11.9; 14.9; 20; 20.1; 20.4; 20.6; 20.7; 20.8	(1) The Arbitral Tribunal held that a Claimant is not required to give notice to the Engineer and await its determination under Sub-clause 3.5 before referring a dispute to arbitration if reference to Sub-clause 3.5 is not explicitly provided for in the Contract. The claims in question involved Sub-clauses 4.2, 11.9 and 14.9 regarding performance bonds, performance certificates and retention money, respectively, none of which refer to Sub-clause 3.5. Sub-clause 3.5 only applies when the relevant Sub-clause so provides and Sub-clause 20.1 only applies to extensions of time or additional payments. The return of a retention money guarantee does not constitute consideration given in exchange for works, therefore it is not "additional payment". Also, compensation for damages and reimbursement of expenses is also outside of Sub-clause 20.1 because they do not constitute consideration in exchange for works. (2) The Arbitral Tribunal also held that the term "or otherwise" in Sub-clause 20.8 which provides a reason for a DAB not to be in place is triggered when the DAB lacks independence or impartiality.	*Link**
2014	Honeywell International Middle East Ltd v Meydan Group LLC	Technology and Construction Court, England and Wales	Not specified, First edition, 1999 - Refer to Summary Note	14.6; 14.7; 16.2; 16.4; 20.6	Contracts to bribe are unenforceable, however, contracts procured by bribe are not unenforceable. Note: Clauses cited are not specific to a particular Book.	*Link*
2014	National Highway Authority v Som Dutt Builders NCC	High Court of Delhi, India	Red, Fourth Edition	70.2 - amended	The question in this case was whether the entry tax introduced was recoverable from the Employer under the subsequent change in the legislation clause.	*Link*
2014	Peterborough City Council v Enterprise Managed Services Ltd	Technology and Construction Court, England and Wales	Silver, First Edition 1999	1.2.6; 1.4.1; 20.2; 20.3; 20.4; 20.5; 20.7; 20.8	Can a party go straight to arbitration under Sub-Clause 20.8 when no DAB is in place or is it mandatory to put a DAB in place prior to referral to arbitration? What if one party tries to scupper the process? A party refusing to sign the DAA can be compelled to do so by an order of specific performance. Thus, failure to agree on DAA does not demand the application of sub-clause 20.8.	*Link*
2014	Francistown City Council v Vlug and Another	High Court, Singapore	Red, First Edition, 1999	20; 20.4; 20.5; 20.6; 20.7	Persero 2 - DAB enforcement - these proceedings in the High Court were a second attempt to enforce the DAB's binding but not final decision. This time, following the guidance of the CA in Persero 1, the merits were placed before the arbitral tribunal and the arbitrator issued an interim award which was not set aside by the court.	*Link*
2014	Chennai Metro Rail Limited v M/S Lanco Infratech Limited	High Court of Judicature at Madras	Red, First Edition, 1999	20.6- amended	The contract between the parties was FIDIC, however, the case is concerning removal of arbitrators.	*Link*

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2014	Obrascon Huarte Lain SA -v- Her Majesty's Attorney General for Gibraltar	Technology and Construction Court, England and Wales	Yellow, First Edition, 1999	1; 1.1.6.8; 1.13; 1.3; 3.3; 4; 4.1; 4.10; 4.11; 4.12; 5; 5.2; 8; 8.1; 8.2; 8.3; 8.4; 8.6; 8.7; 13; 15.1; 15.2; 15.3; 15.4; 20; 20.1	Amended FIDIC Yellow Book. In reaching the decision that the Employer had lawfully terminated the Contract, the Court found inter alia that: • The Contractor had failed to proceed with the design and execution of the works with due expedition and without delay. • The Engineer was entitled to issue various Clause 15.1 notices to correct and made some general points on their limits. • The Employer served a notice of termination on the grounds set out in Clauses 15.2(a), (b) and (c), and the Contract was lawfully terminated by the Employer on these grounds. • Service of the termination notice to the technically wrong address was not fatal. • Termination could not legally occur if the Contractor has been prevented or hindered from remedying the failure for which the notice is given within the specified reasonable time. • Termination events do not have to amount to repudiation. • Clause 8.4 states that the entitlement to an extension of time arises if, and to the extent that, the completion "is or will be delayed" by the various events. The wording is not: "is or will be delayed whichever is the earliest" . Therefore, notice does not have to be given for the purpose of Clause 20.1 until there is actually delay although the Contractor may give notice with impunity when it reasonably believes that it will be delayed.	*Link*
2014	Al-Waddan Hotel Limited v Man Enterprise Sal (Offshore)	Technology and Construction Court, England and Wales	Red, Fourth Edition, Revised 1992	1.5; 2.1; 2.6; 49; 66; 67; 67.1; 67.2; 67.4; 68.2	The contractor was entitled to refer the dispute directly to arbitration when the engineer's appointment had clearly terminated. (In this case, the parties could refer the dispute to arbitration after the engineer's decision or if the engineer failed to give notice of its decision within 84 days.)	*Link*
2014	M/S National Highways Authority v M/S Hcc Ltd	High Court of Delhi, India	Fourth Edition	1.1; 6.4; 12.2; 42.2; 44.1;	The contract between the parties was based on FIDIC with conditions of particular application. A dispute arose between the parties as to additional sums claimed by the Contractor. The dispute was referred to the DRB but the DRB failed to issue its recommendation within the allowable time period. The dispute was therefore referred to arbitration. The Arbitral Tribunal decided in favour of the Contractor. The Employer applied to the Court seeking to set aside the Arbitral Tribunal's award. The Court considered a few issues: a) whether profit was recoverable by the contract? and b) whether the definition of 'costs' is wide enough to encompass the other charges connected with the delay caused?	*Link*
2014	True North Construction Ltd v Kenya National Highways Authority [2014] eKLR	High Court of Kenya, Nairobi	FIDIC Red 1999	56.1; 60; 70	The Claimant (Contractor) claimed a Variation in Price under Clause 70. The Employer evaluated and reduced the sum. The Contractor claimed that Employer was not in compliance with Clause 70 and had never expressly disputed the Certification of Variation. It therefore urged the court to enter judgment on admission against the Employer. The Respondent (Employer) did not dispute the Contractor's entitlement to a Variation in Price under Clause 70, but denied that the Contractor had submitted a Variation Certificate for the claimed amount. The Employer admitted to owing an amount equivalent to the achieved progress (75%) but argued that Clause 70 the FIDIC conditions had to be read and interpreted together with Clause 56.1. Payments under the Contract were to be made on the basis of works undertaken, measured, approved and certified for payment in accordance with Clause 60. *Held* : The Court referred to Clause 67, stating that there was an elaborate dispute mechanism in place and, as such, the matter ought to be referred to the Engineer in the first instance and then follow the agreed dispute mechanism.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2014	Talewa Road Contractors Limited v Kenya National Highways Authority [2014] eKLR	High Court of Kenya, Nairobi	FIDIC 4th Ed. 1987	67	The Respondent (Employer) terminated the contract with the Claimant (Contractor). The Claimant acknowledged the dispute resolution mechanism under clause 67, but stated that it was too elaborate and time-consuming and considered that a preservatory order was required to maintain the status quo. It therefore sought a court order for an interim measure of injunction preventing the Employer 1) from assigning the contract to another contractor and 2) confiscating, removing or selling the plant, machinery and equipment situated at site, pending the hearing and determination of the intended arbitration. *Held* : 1) The court declined an injunction with respect to assigning the contract to others and applied *Cetelem v Roust Holdings,* stating that the purpose of interim measures or injunctions was to preserve an asset and evidence. The contract between the Employer and Contractor could not be deemed an asset, tangible or otherwise and '*restraining the Respondent from assigning the contract to other parties would amount to this court rewriting the contract, something a court would not have jurisdiction or power to do...'* 2) The court granted an injunction on the balance of convenience in respect of confiscation etc. of plant, equipment and machinery as these were *'items that were capable of being dissipated if not preserved.'* The court found that it would be just, equitable, proper and fair to grant an injunction as an interim measure of protection, pending the referral of the dispute to the AT for its determination in line with the provisions of clause 67.	*Link*
2014	South Shore International Limited v Talewa Road Contractors Limited & another [2014] eKLR	High Court of Kenya, Nairobi	FIDIC 4th Ed. 1987	63.1	The Claimant supplied bitumen to the 1st Respondent, who ordered it for its FIDIC Contract with the 2nd Respondent (Kenya National Highways Authority). The Contract was terminated by mutual agreement. The Claimant claimed that the 2nd Respondent had paid the 1st for the bitumen, however, this payment had not reached the Claimant at all. The 1st Respondent argued that, due to delay in supply of the bitumen, it had purchased bitumen from another supplier, informing the Claimant that its supplies were no longer required. Nevertheless, the 2nd Respondent delivered the bitumen to site, simply to be put in storage and used (or a portion used) later, should the need arise. The 1st Respondent argued that this bitumen did not belong to the 2nd Respondent. The 3rd Respondent claimed that the restraining order from the earlier proceedings (*see T*alewa Road Contractors Limited v Kenya National Highways Authority [2014] eKLR*) was delaying its release to the Claimant. *Held* : The Court found that the bitumen ordered by the Claimant did not belong to the 1st Respondent and it was therefore not subject to the aforementioned restraining Court Order. It also found that the 2nd Respondent had obtained title for the stored bitumen, once it transferred the payment for it to the 1st, because the latter was acting as an agent for the 2nd Respondent (Kenya National Highways Authority) and was entitled to the use of bitumen as per clause 63.1 of the Contract.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2014	Decision 4A_124/2014	Swiss Supreme Court	FIDIC Red 1999, 4th Ed.	1.2; 2; 20; 20.2; 20.4; 20.5; 20.6; 20.7; 20.8	The Contractor notified the Employer of its intention to refer the dispute to the DAB. The constitution of the DAB was delayed and, when finally appointed, the DAA (as per 20.2) was not executed. Later the Contractor filed for arbitration with the ICC. Alongside the arbitral proceedings, the parties continued their exchanges as to the constitution of the DAB. 2 months after filing, the DAB chairperson circulated a draft DAA, the Employer proposed some changes to it and passed it to the Contractor for signature. The Contractor stated that it had commenced arbitration because of the fact that the DAB was still not formally in place 18 months after the start of the contract. The Employer challenged the Arbitral Tribunal's jurisdiction on the basis that the Contractor had failed to comply with the DAB procedure. The parties agreed to bifurcate the proceedings and obtain an interim award on the Employer's jurisdictional point. The Tribunal upheld its jurisdiction. It held that as per clause 20 the DAB procedure was only optional and non-mandatory because - 1) the term 'shall' in 20.2 must not be read in isolation but in the broader context of the dispute resolution mechanism instituted by Clause 20 and the use of the term 'may' in 20.4 indicated that the DAB was only optional. This interpretation is supported by Sub-Clause 20.4, §6, 2nd sentence, which mentions two exceptions to the principle that no party can introduce an arbitration request without tendering a notice of dissatisfaction to the other after receiving the DAB decision, 2) Clause 20.8 permitted the parties to resort to Arbitration where one party had attempted to resolve a dispute through the DAB, but no DAB was in place and 3) the fact that the FIDIC conditions did not include a deadline within which the DAB was to be consulted which further supported the argument that the DAB procedure was optional. Following issue of the Interim Award, the Employer filed request with other Swiss Courts to set aside the interim award for lack of jurisdiction. *Held* : The DAB procedure was a mandatory pre-arbitral step, however according to clause 2, the DAA comes into force when the principal, the contractor and all members of the DAB have signed it. Failing this, legal writing considers that there is no validly constituted DAB and that the only remedy a party has when faced with the refusal of the other party to sign the DAA is to go direct to arbitration pursuant to Sub-Clause 20.8 (Baker, Mellors, Chalmers and Lavers, op. cit., p. 520, n. 9.71).	*Link*
2015	NH International (Caribbean) Limited v National Insurance Property Development Company Limited (No.2)	The Judicial Committee off the Privy Council, Trinidad and Tobago	Red, First Edition, 1999	2.4; 2.5; 14; 15.3; 16; 16.1; 16.2; 16.3; 16.4; 19.6	The proper construction of clause 2.4. In the Board's view, the decision of the Court of Appeal cannot stand. There was no suggestion that the Arbitrator had misconstrued, his conclusion was that the employer had to produce evidence that Cabinet approval for payment of the sum due under the Agreement had been obtained. So the Agreement was validly terminated by the contractor. In relation to 2.5, any of those sums which were not the subject of appropriate notification complying with the clause and cannot be characterised as abatement claims as opposed to set-offs or cross-claims must be disallowed.	*Link*
2015	M/S Gammon v M/S Chennai Metro Rail Limited	High Court of Judicature at Madras	Not Specified	Not Specified - Refer to the Summary Note	A member of JV unilaterally suspended their works and vacated the premises. The Employer terminated the contract and invoked the guarantees arguing that the JV met the pre-qualification criteria but not the Applicant. The Applicant argued that bank guarantees are independent contracts and cannot be subject to Arbitration under the relevant acts of the country. The Employer further argued that the Applicant cannot file applications independently when the contract was entered by the Employer on one side and the JV on the other. The court decided that the guarantees were not independent contracts and as a result were subject to arbitration. It was also decided the Applicant being the lead party could file applications.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2015	Obrascon Huarte Lain SA v Her Majesty's Attorney General for Gibraltar	Court of Appeal, England and Wales	Yellow, First Edition, 1999 (Amended)	1.1; 1.1.6.8; 4.1; 4.12; 5.1; 5.2; 8; 8.1; 8.4; 13; 13.1; 15.1; 15.2; 15.3; 15.4; 20	In reaching the decision that the Employer had lawfully terminated the Contract, the Court found inter alia that: • The Contractor had failed to proceed with the design and execution of the works with due expedition and without delay. • The Engineer was entitled to issue various Clause 15.1 notices to correct and made some general points on their limits. • The Employer served a notice of termination on the grounds set out in Clauses 15.2(a), (b) and (c), and the Contract was lawfully terminated by the Employer on these grounds. • Service of the termination notice to the technically wrong address was not fatal. • Termination could not legally occur if the Contractor has been prevented or hindered from remedying the failure for which the notice is given within the specified reasonable time. • Termination events do not have to amount to repudiation. • Clause 8.4 states that the entitlement to an extension of time arises if, and to the extent that, the completion "is or will be delayed" by the various events. The wording is not: "is or will be delayed whichever is the earliest" . Therefore, notice does not have to be given for the purpose of Clause 20.1 until there is actually delay although the Contractor may give notice with impunity when it reasonably believes that it will be delayed.	*Link*
2015	Bosch Munitech (PTY) Ltd v Govan Mbeki Municipality	High Court of South Africa, Gauteng, Pretoria	Red Book, First Edition, 1999	14; 14.3; 14.6; 14.7	The Court considered the formation of the contract and incorporation of FIDIC's General Conditions of Contract. The Court held that no contract was formed between the parties.	*Link*
2015	PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation	Court of Appeal, Singapore	Red, First Edition, 1999. Red, Fourth Edition, Revised 1992. Yellow, First Edition, 1999. Silver, First Edition, 1999	Red (1987): 67; 67.1 ; 67.3; 67.4. Red (1999): 14; 20; 20.4; 20.5; 20.6; 20.7; 20.8; 20.9. Yellow and Silver (1999): 20; 20.3; 20.4; 20.5; 20.6; 20.7	Persero 2 - DAB enforcement - Court of Appeal upheld the award enforcing the DAB's decision dismissing the appeal. The CA ruled that it was not necessary to refer the failure to pay back to the DAB (contrary to the decision in HC Persero1) and it was not necessary for the Contractor to refer the merits in the same single application as its application to enforce (contrary to the CA in Persero 2).	*Link*
2015	Taisei Corporation v West Bengal State Electricity	High Court of Calcutta	Red, Fourth Edition	70	The dispute between the parties revolved around the price adjustment formula stipulated in the Appendix to Tender. The court considered 1)whether the contract was a dual currency contract and 2) the method of application of the price adjustment formula.	*Link*
2015	Venture Helector v Venture Tomi SA	Supreme Court, Cyprus	Red, First Edition, 1999	1.6	The question in this case was whether the stamp duty was payable by the contractor as specified in the conditions of offer or the employer as specified by the contract.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2015	National Highways Authority v M/S Ltd Cementation India	The Supreme Court of India	Red, Fourth Edition	70 - Amended, Refer to Summary Note	The disputes relate to consequences of additional amount of royalty payable by the respondent as a result of the notification for upward revision of royalty imposed by the government, price adjustment under the contract and jurisdiction of the arbitral tribunal.	*Link*
2015	Commercial Case No. 4069/2014	Appellate Court, Sofia (Commercial Division)	Red, Fourth Edition, Revised 1992	67.3	The court in this case affirmed the decision of the Sofia City Court, namely, it enforced the ICC arbitral award in which the arbitrator refused to consider the counterclaims by the Contractor which were not previously referred to the Engineer. The Contractor's main argument was that sub-clause 67.3 was in contradiction with the Bulgarian mandatory rules and public order and therefore was void. This case was referred to the Supreme Court (see below).	*Link*
2015	DBT Technologies (Pty) Limited v August General Servicing South Africa (Pty) Limited and others	High Court of South Africa, Gauteng Local Division, Johannesburg	Yellow, First Edition, 1999	4.1; 7.7	The question for the court was whether the Applicant in this case became the owner of the plant and material when the Respondent received payment from them.	*Link*
2015	Ntpc v Hindustan Construction Company	High Court of Delhi, India	Red, Fourth Edition	Refer to the Summary Note	Although the contract between the parties was based on FIDIC 4th, the issue in this case was whether the appellants had, by their petition, made an unequivocal, categorical and unambiguous admission of liability with regards to the claims arising out of the contract. The Court decided that even when a part of a document gives an impression that there is admission of liability, the document has to be read as a whole which may dispel that impression.	*Link*
2015	Aircraft Support Industries Pty Ltd v William Hare UAE LLC	Court of Appeal, New South Wales, Australia	Conditions of Subcontract for Works of Civil Engineering Construction - No further information given	1.6; Refer to Summary Note	Note: FIDIC conditions mentioned seem to be heavily amended.	*Link*
2015	Triple Eight Construction (Kenya) Ltd v Kenya Pipeline Company Limited	High Court of Kenya, Nairobi	Fourth Edition	67	The applicant in this case applied to court seeking order that the main suit before this court be referred to arbitration under clause 2 of the Form of Agreement as read with clause 67.3 of the FIDIC Conditions. The questions for the court were whether there was an arbitration agreement in place and whether the Applicant could refer to arbitration at this stage. In this case, the Respondent had not executed the Form Agreement and denied that there was a binding contract pursuant to Form of Agreement. The court found that the arbitration clause was not binding on the Respondent and a full hearing was required. In regards to the second question the court held that the applicant was in significant delay in commencing this application considering that the main suit before this court was pending in this court since 2009. The court agreed with other judgements stating that although there was a dispute that was capable of being determined, the dispute could not be referred to arbitration as the court was seized of the matter and that the application should have been made at the time of entering appearance not after appearance and filing of defence. Therefore, the court rejected the application.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2015	Kisii County Government v Masosa Construction Company Ltd [2015] eKLR	Court of Appeal of Kenya, Kisumu	FIDIC 4th Ed. 1987	48.3; 60	The Appellant (Employer) entered into two contracts with the Respondent (Contractor). The first contract was completed and the second was 'abandoned' following mobilisation. The contractor claimed that Employer remained indebted to it under the first contract and, under the second, that a commitment fee that ought to have been paid was not paid and following "the termination and or abatement of the second contract" its submitted contractual claim was certified. The Employer denied the claim as being time-barred, asserted that the Contractor had not complied with the terms of the contract and claimed entitlement to LADs. The High Court found that the Employer had admitted the debt and that the claim was not time-barred as the cause of action was the Employer's statement two years later that it was not going to pay the outstanding amount. The Employer appealed under Clause 48.3. It asserted that the Contractor should have demonstrated that it had completed the works under the contract by producing a "Taking-Over Certificate" issued by the Engineer to show substantial and satisfactory completion of the works under the Contract. Also that no evidence was presented before the trial court demonstrating compliance with Clause 60 requiring the Contractor to submit to the Engineer on a monthly basis valuations of work done for certification to facilitate issuance of payment certificates on the basis of which payments would then be made. The Court of Appeal held that the trial judge was wrong and the cause of action rightly accrued upon the issuance of the Final Payment Certificate, however the Limitations of Actions Act did apply as the Employer was a local authority. In conclusion, the Court held that it was unnecessary to establish the claim beyond the Employer's admission of the debt.	*Link*
2015	True North Construction Company Limited & 3 others v Eco Bank Kenya Limited & another [2015] eKLR	High Court of Kenya, Nairobi	FIDIC 4th Ed. 1987	Not Specified	True North entered into a FIDIC contract with the 2nd Respondent (KNHA). The subject of the case was the Tripartite Agreement (no arbitration provisions) through which True North was granted a loan from Eco Bank to finance the project, backed and secured by KNHA. It was argued that KNHA reneged on the Tripartite Agreement by failing to pay the balance to True North and the latter sought relief from the courts. It was the 2nd Respondent position that the Genera Conditions of the Contract (GCC) provided that the general conditions shall be those forming part 1 of the FIDIC conditions of the construction contract between the 1st Claimant and 1st Respondent. KNHA sought a stay of proceedings on the basis that the dispute should be referred to arbitration. Held: The Tripartite Agreement was a commercial loan agreement separate from the construction contract and did not fall within FIDIC Conditions. The request for the stay of proceedings in favour of arbitration was therefore rejected.	*Link*
2015	Sekikubo & Ors v Attorney General (Misc. Cause No. 092 of 2015) [2016] UGHCCD 26 (4 April 2016)	High Court OF Uganda at Kampala, Civil Division	Unknown FIDIC type contract		The Applicant - Members of Parliament (MP) sought judicial review to challenge the decision of the Government of Uganda (Ministry of Works & Transport - (MWT)) to enter into contract under the FIDIC Conditions with China Harbour Engineering Company (CHEC) on the basis of illegality. They argued that the Contract should be deemed null and void as it was biased and contrary to public policy. They sought a Certiorari Order to quash the contract and an Order of Prohibition barring MWT from implementing the Contract. It was claimed that CHEC had insufficient inexperience and that a proper technical evaluation would save the Government and the people of Uganda. The Contract was also criticised as it provided for variations, which were likely to increase the cost of the project. *Held* : The Applicant (MPs) had no locus standi as they could not show they were 'personally affected' by the decision. Where public rights were involved, the Applicant has to prove that is acting in relation to a decision which directly affects its own interests, because it would be acting in the same way as an individual. The Court concluded stating that 'the Applicants in this case are simply busy bodies or Mischief Makers.'	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2015	Active Partners Group Limited v. The Republic of South Sudan (PCA Case No. 2013/4) – Final Award – 27 January 2015	Arbitral Tribunal under UNCITRAL	FIDIC Yellow Book 1999	4.2; 8.6; 20	The Republic of South Sudan ("Respondent") opened up a tender for the construction of an electrification project. Claimant was the successful bidder and received the Final Letter of Award. Claimant asserted that, before the contract was signed, Respondent modified the contract to include only five towns rather than eight. By that time, Claimant had already carried out surveys of the eight towns. The contract was formalized and the signed Financial Agreement stipulated the date of Site possession by the Contractor and the requirement of a Letter of Guarantee. However, the Letter of Guarantee was not submitted by Respondent to Claimant. As such, Claimant terminated the Contract and sought to obtain reparation by recourse to arbitration. The Claimant claimed entitlement for: 1) Lost Profit - Claimant asserted that when it won the tender, Respondent had accepted Claimant's gross profit as it was the most competitive. 2) Claimant claimed consequential damages based on Respondent's failure to provide the payment guarantee, which caused Claimant's financier to withdraw from the South Sudan market. As a result, Claimant lost a potential contract where it was expected to realise a substantial profit. *Held* : The Republic of South Sudan had breached its obligation under the Contract. As a result of this breach, Claimant was entitled to terminate the Contract and to damages plus interest. In ordering damages, the Tribunal sought to restore Claimant's position to what it would have been had the contract been performed. The AT concluded that Claimant was entitled to 'lost profits' net of tax. The Tribunal found that Claimant was entitled to a 25% profit margin for the net loss of profit. The AT also found that Claimant had shown extensive evidence of the sums incurred in expectation of the contract's performance and that Respondent was aware of their activities. As such, the AT ordered Respondent to pay the Contractor's direct damages and indirect costs. The LDs and consequential damages claims were dismissed.	*Link*
2015	Omega Construction Company v Kampala Capital City Authority Case No. 780 of 2015	High Court OF Uganda at Kampala, Civil Division	FIDIC 4th Ed. 1987	58.2, 39.3, 39.4, 39.6, 42, 43, 60.2 60.8	The Claimant (Omega) brought an action for recovery of the amount certified in a Final Certificate issued by the Project Manager under a contract. The Respondent (Kampala) objected to the payable figures outlined in the Final Certificate due to alleged performance shortfall on the part of the Claimant. The Respondent unilaterally reviewed the certificates before issuing a final certificate with a reduced outstanding payment. Establishing which set of certificates was legally enforceable formed the heart of this case. *Held* : The court ruled in favour of the Claimant, finding the Respondent's claims to be substantially impaired on several grounds. The Respondent's unilateral amendment of the Final Certificate did not accord with the GCC and it was not delivered to the Claimant, nor agreed to in writing. In principal the issuing of final certificates creates a liquid debt – discrepancies ought to have been raised prior to certification and resolved by adjudication or arbitration as per the parties' agreement. Failing this, the court found that the set-off sought ought to have been raised in the current suit via counterclaim and not through unilateral adjustment of the final certificate. The Respondent was found further to have misrepresented the Final Certificate of Completion to the Claimant, following the Project Manager's issue, and consequently was estopped from raising the erroneous conduct of its project manager as a justification for its non-payment. The plaintiff was awarded damages with interest.	*Link*
2016	Roads Authority v Kuchling	High Court of Namibia, Main Division, Windhoek	Red Book, First Edition, 1999	20.4; 20.6	The High Court of Namibia upheld an interim DAB decision on jurisdiction, scope of the dispute and some procedural matters. The court concluded that the applicant failed to establish any contractual right which the court needed to protect by stopping the adjudication process.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2016	J Murphy & Sons Ltd v Beckton Energy Ltd	High Court of Justice Queens Bench Division - Technology and Construction Court, England and Wales	Amended FIDIC Yellow Book	2.5; 3.5; 8.7	The Court found: • The Employer's right to delay damages under an amended Sub-clause 8.7 was not conditional upon an agreement or determination by the Engineer under Clauses 2.5 and 3.5 [although in the unamended form Sub-clause 8.7 is expressly stated as being subject to Sub-clause 2.5]. • Sub-clause 8.7 set out a self-contained regime for the trigger and payment of delay damages. • A call on the bond would not be found to be fraudulent where the Employer believed it was entitled to delay damages under Sub-clause 8.7, even though no entitlement had been determined under Sub-clauses 2.5 and 3.5.	*Link*
2016	Divine Inspiration Trading 130 (PTY) Limited v Aveng Greenaker-LTA (PTY) Ltd and others	High Court of South Africa, Gauteng Local Division, Johannesburg	Red, First Edition, 1999	20; 20.2; 20.4; 20.5; 20.8	This case highlights the problems caused by not appointing a standing DAB. The contract provided for appointment of DAB which was not complied with, when the other party referred to arbitration, the applicant argued that the arbitrator had no jurisdiction to hear the dispute. However, the applicant amended its submissions at the stage of arguments to request that the Court should order the respondent to appoint another tribunal. The question then was whether the applicant could seek a further or alternative relief than that included in the Notice of Motion.	*Link*
2016	M/S Hindustan Construction Co v M/S National Highways Authority	High Court of Delhi, India	Red, Fourth Edition	1; 6.4; 12; 42; 44; Partly amended	The Contractor sought to claim, inter alia, profit and loss of earning capacity. The Court considered the reason and liability for the delay and held that: 1) the Engineer was correct to consider the critical activities when assessing the delay; and 2) the Contractor was entitled to profit and loss of earning capacity.	*Link*
2016	Ennore Port Limited v Hcc-Van Oord JV	High Court of Judicature at Madras	Fourth Edition	51.1; 52.1;	The Engineer omitted part of the works. The Contractor claimed disruption and abortive costs as a result. The issues considered by the court in this case were, inter alia, 1) whether the relevant clause of the Arbitration Act was wide enough to cover the challenge to the Arbitral Tribunal's award and 2) whether the Claimant being a successor-in-title to one of the parties to the arbitration agreement, was itself a party to the arbitration agreement.	*Link*
2016	ICC Final Award in Case 16247	Paris, France	Red, Fourth Edition	Not Specified	Although the Contract between the Parties was based on FIDIC, the case itself is not directly relevant to FIDIC. The question for the arbitrator was whether the law governing limitation should be the substantive or the procedural law. The arbitrator decided that in exercise of its discretion, under Art 15(1) of the ICC Rules, the substantive law of the Contract (State X) would be applicable to limitation, particularly since all construction works subject to the Contract were carried out in State X.	*Link**
2016	National Highways Authority v M/S Jsc Centrodostroy	The Supreme Court of India	Red, Fourth Edition	70 - Amended	Two claims were raised by the contractor in arbitration. One for compensation for additional cost for increase in the service tax on insurance premium. The other for the additional cost on account of service tax on Bank Guarantees as a result of change in the legislation. The award of the tribunal was challenged by the employer. The employer argued that the service on the bank guarantee could have been avoided by the claimant if the bank guarantee was replaced by tendering cash and that the facility of bank guarantee was optional and at the discretion of the contractor. The contractor argued that furnishing a performance bank guarantee was a mandatory condition of the contract and it fell under clause 70.8. The Court decided that construction of the terms of a contract is primarily for the AT to decide and unless the AT construes the contract in such way that no fair minded or reasonable person could do, no interference by court is called for. Therefore, the court did not find any reason to interfere in the matter. Therefore, the appeal was rejected.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2016	General Electric International Incorporated v Siemens (NZ) Limited	Court of Appeal, New Zealand	Silver, First Edition, 1999	1.10.	GE purchased a gas turbine by Siemens. GE was willing to export the machine and disassemble it, acquiring know-how that it would allow it to compete with Siemens in the market. Siemens secured an interim injunction pending the trial. The contract by Sub-clause 1.10 (similar to FIDIC) provided that the copyright in construction and other design documents relating to works (including the turbine) remained with Siemens.	*Link*
2016	Commercial Management (Investment) Ltd v Mitchell Design and Construct Ltd & Anor	Technology and Construction Court, England and Wales	Red, First Edition, 1999 - Refer to the Summary Note	20 - Refer to the Summary Note	Clause 20 FIDIC 1999 was used as an example of a time bar clause. In this case, the parties entered into a sub-contract. Defects appeared nearly 9 years after completion. The issues in dispute were 1) whether a clause in the standard terms and conditions of the Respondent, requiring the defects to be notified within 28 days from the date of appearance, was incorporated into the sub-contract, 2) if so, was that subject to Unfair Contract Terms Act 1977's reasonableness test.	*Link*
2016	Smatt Construction Co Ltd v The Country Government of Kakamega	High Court of Kenya, Kakamega	Not Specified	15	This was an application for an injunction by the contractor preventing the employer from terminating the contract and awarding the contract to a new contractor. The employer sought to terminate the contract by alleging that the contractor abandoned the works and failed to proceed with the works without delay. The contractor opposed this allegation. The application was successful.	*Link*
2016	Eastern European Engineering (Ltd) v Vijay Construction (Pty) Ltd	Seychelles Court of Appeal	First Edition, 1999	6.6	The Appellant in this case alleged fraudulent misappropriation of construction materials, i.e. a prefabricated house used to accommodate workers in the project implementation. One of the issues in dispute was whether the advance payment could be used to purchase temporary house accommodating the workers. Another issues was whether the structure accommodating workers could be removed by the contractor because it qualified as Temporary Works under the FIDIC Contract.	*Link*
2016	Lafey Construction Co Ltd v Prism Investments Ltd	High Court of Kenya, Nairobi	First, Green	Not Specified	The dispute in this case is not directly relevant to FIDIC. It has been only mentioned that the contract between the parties incorporates the terms of the FIDIC Green Book. The court considered the issues of fraud, mistake (three categories) and misrepresentation.	*Link*
2016	Peeraj General Trading & Contracting Company Ltd v Mumias Sugar Company Ltd	High Court of Kenya, Nairobi	Fourth Edition	67	The dispute in this case was not directly relevant to FIDIC, however, there is a reference to the dispute settlement mechanism in FIDIC and whether non-payment of outstanding amounts was a dispute that could trigger arbitration under FIDIC.	*Link*
2016	Decision 4A_490/2016	First Civil Law Court, Switzerland	Not Specified	Not Specified	A Libyan corporation commenced arbitration against two Libyan Respondents based on FIDIC terms between the Claimant and the 1st Respondent. During the arbitration both Respondents raised jurisdictional objections and claimed that the matter should be resolved by the Libyan Courts, referring to the jurisdictional clause in the second contract. The tribunal dismissed the argument and the Respondents appealed to the Supreme Court. *Held* : The Court rejected the application. The Arbitral Tribunal had not violated the right of the parties to be heard. Further, the 2nd Respondent did not raise the fact that it was not part of the FIDIC Contract during the arbitration, therefore it was precluded from invoking this argument in the setting aside proceedings.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2016	Climate Control Limited v C.G. Construction Services Limited [2016] Claim No: CV2015-03486	HC of Trinidad & Tobago	FIDIC 1988, presumably reprinted 1987	67.3	CG (Main Contractor) subcontracted with Climate Control (CCL). CG claimed that the subcontract was governed by the terms of the Main Contract. The dispute resolution procedure in the Main Contract required referral of a dispute to the Engineer with escalation to Arbitration. CCL completed the work and submitted invoices. CG paid some, but not all, of them. CCL filed a debt collection claim to the court. CG failed to attend the proceedings and judgment was entered in default against it. CG then made an application to stay or set aside the judgment on the basis that the subcontract incorporated the terms of the Main Contract, which provided for arbitration, but failed to provide evidence that the terms of the Main Contract were incorporated into the subcontract. CG's application was dismissed.	*Link*
2017	AIS Pipework Limited v Saxlund International Limited	Technology and Construction Court, England and Wales	Not Specified	Not Specified	Although the Main Contract between the Employer and the Contractor was based on FIDIC, this case involves a dispute which arose under the Sub-Contract. The Claimant made an application for summary judgement claiming sums for the works carried out under the Sub-Contract. The Court considered the Respondent's argument for non-payment due to alleged defective works, the contractual mechanism for payment and approval of the invoices and rejected the application for summary judgement. The case is to proceed to trial.	*Link*
2017	Symbion Power LLC v Venco Imtiaz Construction Company	Technology and Construction Court, England and Wales	Red, First Edition, 1999	20.6	The Contract between the Contractor and the Sub-Contractor was based on the Red Book 1999. There was an arbitral award rendered in 2016. The Claimant applied to the court under section 68(2)(d) of the Arbitration Act 1996 [serious irregularity] alleging that the Arbitral Tribunal had failed to deal with all issues referred to it. The court considered whether it had to set aside the award or remit it to the Arbitral Tribunal. The issues of bias and breach of duty to act fairly and impartially were also considered due to communication of one of the Arbitrators with the appointing party's counsel. The court rejected the Claimant's application. (Please note that there were further proceedings for enforcement of the arbitral award, challenging the arbitral award and staying the proceedings in the UK, in this case.)	*Link*
2017	Case No. 788/2016	Bulgarian Supreme Court of Cassation (Comm Div)	Red, Fourth Edition, Revised 1992	67.1; 67.2; 67.3	The Supreme Court in this case refused to allow appeal from the Decision of the Appellate Court in case No. 4069/2014 (above). The court held that clause 67 is not void, however, an Engineer's decision is not enforceable if one party refuses to comply with it. A party dissatisfied with the Engineer's decision may refer the dispute to an arbitral tribunal or the court under sub-clause 67.3. In doing so, the sub-clauses 67.1 and 67.2 do not apply.	*Link*
2017	Narok County Government v Prime Tech Engineering Ltd	High Court of Kenya, Narok	Red, First Edition 1999	Not Specified	In this case the contractor started works on a road which was not part of the contract. As a result there was a meeting in which parties agreed to stop the works and the contractor to be paid for the works already done and to vacate the site. However, the contractor continued with the works. There was then an arbitration between the parties in which the arbitrator issued an award ordering the employer to pay the contractor on basis of quantum meriut. The employer argued that the arbitrator exceeded its jurisdiction as these works were not part of the contract. The contractor argued that the employer did not file an application to set aside the arbitrator's award and that the court does not have jurisdiction to correct errors of fact. The court agreed with the employer that the contractor unilaterally started the works and continued the works after the meeting between the parties. The court stated that the arbitrator's jurisdiction over the dispute on the second road ended the moment it became clear to him that the parties had mutually agreed not to continue the works (in the meeting). The court also considered the four elements that must be established for payment on the basis of quantum meriut. The court decided that under FIDIC, the maximum contract variation was 15% of the contract sum.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2017	County Government of Homa Bay v Oasis Group International and GA Insurance Limited	High court of Kenya, Migori	Silver, First Edition, 1999	14	The dispute in this case was not directly relevant to FIDIC, however, the court stated that IPCs are not finally agreed payments and are subject to verification by the Employer.	*Link*
2017	Prime Tech v Engineering v Narok County Government	High Court of Kenya, Narok	Not Specified	Not Specified	In this case the court stated that the arbitrator wrongly calculated the sum the contractor was entitled to as the sum exceeded the Contract Sum and 15% (maximum variation allowed under the Contract). The court also stated that an error on the fact of record must be crystal clear and reasonably capable of one opinion.	*Link*
2017	Salz-Gossow (PTY) Ltd v Zillion Investment Holdings (PTY) Ltd	High Court of Namibia, Main Division, Windhoek	First Edition, 1999	20.4	The Respondent in this case refused to comply with the DAB award stating that the Notice of Dissatisfaction suspended the enforcement of the DAB ruling. The Court held that the parties should promptly give effect to the decision of the DAB and that negative liquidity is not a ground for non-enforcement of the DAB ruling. The court decided that it has discretion in exceptional circumstances not to order specific performance but in this case the Respondent failed to prove the special circumstance.	*Link*
2017	SPX Flow Technology New Zealand Limited v Gas 1 Limited	High Court of New Zealand	Yellow, First Edition, 1999	1.1.3.6; 12	The question for the court was whether the tests agreed in a settlement agreement between the parties were Tests After Completion under Sub-clause 12.2 of the Contract. The court referred to Sub-clause 1.1.3.6 which defined the Tests at Completion as tests "which are specified in the Contract..." and held that the tests did not have to be for FIDIC to apply. The court held "When the term sheet variation was entered into, the parties incorporated into their settlement the terms of the contract including FIDIC, except to the extent they were varied by the term sheet variation." Therefore, the tests were Tests at Completion under Clause 12.	
2018	Ongata Works Limited v Tatu City Limited	High Court of Kenya, Nairobi	First Edition, 1999	20	This case concerned an application for injunction preventing the Respondent from termination of the contract pending resolution of disputes in accordance with clause 20 of the contract. The court considered, inter alia, the importance of disclosure of facts by the applicant and the powers of the court to order interim measures.	*Link*
2018	Republic v Director General of Kenya National Highways Authority (DG) & 3 Others Ex-parte Dhanjal Brothers Limited	High Court of Kenya, Mombasa		67	The respondent in this case commenced proceedings in court for Judicial Review. The applicant applied to stay the proceedings pending its determination through arbitration, and requested that the dispute between the parties be referred to arbitration. The Applicant claimed that the Dispute Resolution procedure in the contract was exhausted and the adjudication award must be enforced by way of a summary judgement.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2018	Steenkampskraal Holding Ltd v (1) Eres Engineering Projects (Pty) Ltd; (2) Vincent Raphael Mora; (3) Jan Albert Dreyer [2018]	High Court of South Africa, Pretoria, Case No. 10906/2013	Not specified	15.2 (f)	A Fixed Price Contract varied to three times its Original Contract Sum through variations. The Claimant claimed rescission or alternatively cancellation of the two Contracts entered into with the first Respondent as it was alleged that both were awarded and appointed as a result of bribery. It was found that two of the Respondents colluded to fraudulently inflate supplier's invoices and as such false and overpriced invoices were paid to them. The First Respondent submitted a counterclaim for 2 unpaid invoices. The Contract contained DAB and Arbitration clauses, however, the Parties agreed to take the matter to the Court. *Held* : The Court was convinced that the Claimant had proved commercial bribery and that both contracts were lawfully rescinded. On the restitution point, the Court declined to order repayment of the total amount payed by the Claimant with interest and declined to order the amount claimed in the alternative as well, on the basis of Claimant's admission that work for the value of "millions of Rands was done".	*Link*
2018	Teichmann Structures (Pty) Ltd v (1) Hollard Insurance Company Ltd (2) ELB Engineering Services (Pty) Ltd [2018]	High Court of South Africa, Johannesburg Case No.. 24233/18	FIDIC Red 1999, 4th Ed.	4.2; 14.2	The Main Contractor (Respondent) provided 3 Advanced Payments (AP) to the Subcontractor (Claimant). Two of them were secured by a Performance Guarantee (PG) and recovered through the IPC mechanism. The 3rd AP was unsecured. The Main Contractor issued a demand to the bank. The Subcontractor brought an urgent application seeking an order stopping the bank from making the payment. As the PG was unconditional, the only ground on which the bank could deny the call was fraud. The Subcontractor therefore claimed that the bond was called fraudulently. It claimed that the Main Contractor had recovered the entire amount of the APs secured by the PG. It conceded that the outstanding amount was not secured and should be treated as a loan as it was a transaction entirely separate from the building contract, to be recouped through either the certification process or through the Final Account. *Held* : The Court found in favour of the Main Contractor because: 1) The IPC made no distinction between secured and unsecured PGs in the section "Repayment of Advance Payments" thus indicating that the Parties treated all Advance Payments as made under the Contract and not outside and 2) The Claimant did not put forward any evidence to prove an agreement that the outstanding amount was to be treated as an unsecured loan.	*Link*
2018	Republic v Engineers Board of Kenya ex parte Godfrey Ajoung Okumu [2018] eKLR	High Court of Kenya, Nairobi	Gold Book	6.8; 6.10	The Applicant (Consulting Engineer) entered into a design only contract with a Main Contractor for the construction of a bridge. The bridge later collapsed. The Applicant claimed that under the contract he did not have any supervisory responsibilities. The Main Contractor accepted the fault and began the rectification work. The Engineers Board of Kenya commissioned an inquiry into the collapse. The inquiry claimed that the Applicant failed to provide adequate design and sufficient information as stipulated under the Contract under which the Engineer, who designs the drawings, has a duty to ensure that he supervises his drawings until completion of the project, hence, the ex parte applicant was negligent in failing to supervise his drawings and thus he breached clauses 6.8 and 6.10 of FIDIC.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2018	Republic v Kenya Airports Authority Ex Parte Seo & Sons Limited [2018] eKLR	High Court of Kenya, Nairobi, Constitutional and Judicial Review Division Misc. Civil Application No.338/206	Not specified	No clause cited	The bid for qualification of the Applicant Contractor (Seo & Sons) was rejected for failure to comply with various mandatory requirements. The Applicant argued that the basis on which its bid had been considered non-complaint (did not meet the required threshold in annual turnover for the last three years) was baseless and unjustified, and was based on unknown calculations. Further, it claimed that its disqualification on the grounds that one of its corporate directors did not provide its national identity card was unfair and violated the law. The Applicant referred the matter to the Public Procurement Review and Appeals Board, which ordered the rejection be set aside and the procuring entity to re-admit the Applicant's tender for a thorough technical and financial re-evaluation. The Board also ordered that the successful tenderer be set aside. The successful tenderer filed for judicial review and in the meantime, the Applicant (Seo & Sons) was awarded the Contract and mobilized immediately. Following the withdrawal of the original successful tenderer, the Kenya Airports Authority (KAA) terminated the Contract based on alleged misrepresentation in respect of the Applicant's (Seo & Sons) qualification documents. The Applicant claimed that the termination was premature and *ultra vires* . *Held* : The Applicant's case was merited as KAA did not arrive at a decision after hearing the Applicant's position on an allegation, which had a serious nature itself. The Court issued an Order of Certiorari, quashing the termination of the Contract.	*Link*
2018	Machira Limited v China Wu Yi Limited & Another [2018] eKLR	High Court of Kenya, Nairobi	FIDIC 4th Ed. 1987	60.14 (PCC) 67	The Employer and Applicant in this case (KNHA) contracted the Respondent (China Wu Yi Limited). The Respondent (China Wu Yi Limited) subcontracted with Machira Limited (the Claimant in this case). Upon completion of the works, China Wu Yi Limited issued the statement of final account for evaluation to the Engineer, who verified and certified the same. The certificate was then forwarded to the Applicant to settle. The Applicant claimed that during the preparation of the statement of final account the Contractor excluded the work done by subcontractor Machira. Machira then issued court proceedings against China Wu Yi for recovery of the unpaid sums. China Wu Yi was granted leave to issue a Third Party Notice against KNHA. KNHA argued that it only became aware of the dispute upon being served with the pleadings and argued further that the Machira suit against China Wu Yi was premature for failure to exhaust all available dispute resolution mechanisms in the contract. KNHA asserted that clause 67 (Settlement of Disputes) of the contract executed between China Wu Yi and KNHA provided an elaborate dispute resolution mechanism whereby disputes between China Wu Yi and KNHA were to be referred to the Engineer in the first instance. Furthermore, KNHA contended that China Wu Yi failed to adhere to the mandatory statutory provisions to serve KNHA with one month's notice outlining its claim. Finally, KNHA submitted that China Wu Yi's claim was statute barred since an action against KNHA had to be instituted within twelve months after the default complained of. KNHA therefore applied to stay the proceedings, subject to arbitration. *Held* : China Wu Yi's claim was not statute barred. KNHA could not use a Preliminary objection to stay the proceedings and the Court declined to stay the proceedings.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2018	Maeda Corporation and China State Construction Engineering (Hong Kong) Ltd v Bauer Hong Kong Ltd [2019] HKCFI 916	Hong Kong High Court	Similar Notice Provisions to FIDIC 2017	4.12.1	The Claimant MCSJV (Main Contractor) was granted leave to appeal the Arbitral Tribunal's (AT) Award. The point of appeal was related to the validity of a contractual notice. MCSJV subcontracted with Bauer. During the course of the work, unforeseeable ground conditions were established and Bauer had to do additional excavation. Bauer, having experienced difficulties with the ground conditions, proceeded with the extra work required without securing an instruction first. Later, Bauer gave notice of its loss and expense entitlement, referring specifically to the variation, being the additional excavation. In its notice, It did not refer to an entitlement arising under the ground conditions provision. Disputes arose and the matter was referred to arbitration. Bauer submitted its claim on two alternative bases: both as a variation and as a ground conditions claim. AT observed that the circumstances gave rise to a valid ground conditions claim but there was no notice issued to the Engineer, describing the ground conditions and reasons why they should be considered unforeseeable. Bauer had not given notice under clause 21 of his contract by reference to the event (similar to the requirements of Clause 4.12.1 of FIDIC Red 2017 [Contractor's Notice] and increase in cost of the execution of the works. Considering the facts, AT said that it had no entitlement to be paid as a variation because no instruction had been issued, however decided that the notice Bauer had given was equally valid as a notice based on unforeseen ground conditions and that fact that Bauer had made its claim on the basis of a Variation did not preclude it from making a claim on a new legal basis. The costs awarded by the AT included the standby costs of plant and equipment MCSJV appealed the AT's second interim award on points of law and claimed that the AT had included sums in the evaluation that had not actually been incurred by Bauer. *Held* : The AT's conclusion failed to give effect to the express wording of Clause 21 (similar to clause 4.12.1 FIDIC 2017) and that the AT did not misdirect itself in regards to awarded costs as it had received and considered evidence before making its valuation of a fair and reasonable price.	*Link*
2018	Sinolanka Hotels & Spa (Private) Limited v Interna Contract SpA[2018] SGHC 157	High Courts	FIDIC 1999	20.6	This case is an application by the Claimant (Sinolanka - a Sri Lankan incorporated company) under the IAA and the UNCITRAL Model Law for a ruling on the jurisdiction of an AT or, alternatively, an order that the Award rendered by the AT be set aside on the basis that it lacked jurisdiction to hear and determine the dispute between the parties. The contract was based on FIDIC with amended Clause 20.6 in the PCC. There were some discussions and suggestions between the parties about the Rules and Seat of Arbitration, which were not reflected in the signed contract. The contract was terminated by Sinolanka on the ground that Interna failed to furnish a performance guarantee as required under the contract. By this time, Interna had completed a portion of the contracted works and had incurred significant expenditure in relation to such works. Interna referred the dispute to ICC arbitration. Sinolanka raised objections to the jurisdiction of the tribunal arguing that the parties had not agreed to ICC arbitration and that an alternative Sri Lankan arbitration clause was applicable as Interna had made its offer to contract on the basis of that clause and it had been accepted when the parties signed the Contract. The AT ruled against Sinolanka on both jurisdiction and the merits, and awarded Interna damages plus interest, legal costs and costs of the arbitration. *Held:* The parties had indeed agreed to the ICC arbitration clause and it followed that the relief of setting aside sought should be denied.	*Link*

CORBETT & CO

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2018	Ecobank Kenya Ltd v True North Construction Company Limited & another [2018] eKLR	High Court of Kenya, Nairobi - Civil Case No. 26 of 2014	Fourth Edition	60	Read more at: https://www.law360.com/articles/1221155?copied=1	*Link*
2019	Zillion Investment Holding (Pty) Ltd v Salz-Gossow (Pty) Ltd (SA 17/2017) [2019] NASC 10 (17 April 2019); (Case No. SA 17/2017)	Supreme Court of Namibia	FIDIC Red 1999, 1st Ed. 1999 (amended)	20.4	DAB terms in the Contract were unaltered. DAB ordered Zillion to pay Salz-Gossow an amount of money. Zillion submitted an NOD after the DAB's decision and did not pay as ordered. Salz-Gossow brought a court application seeking implementation of the DAB's decision. Zillion opposed this application on the basis that the NOD suspended the operation of DAB's decision. Zillion argued that the Court should not exercise its discretion to order Specific Performance. Zillion brought a counter application to the Court to set aside the DAB's decision as the main relief. *CFI Held:* The Court granted Salz-Gossow's application finding that, pending the arbitration, the ruling of the DAB needed to be complied with and that there was no reason why specific performance should not be granted as contemplated in the agreement. The Court made an Order for the amount to be paid to the Salz-Gossow and dismissed the counter application of Zillion. Zillion appealed the decision of the High Court. The Appeal was for the invalidity of the DAB decision on the following grounds: 1) Zillion could not afford the amount determined and, as the contentions were more legal than factual, the Court should assume jurisdiction; and 2) as to the awarded interest amount in the DAB's decision - applying the 'Reasonable Man' test, the decision was 'unreasonable, improper, irregular and wrong, leading to 'patently inequitable' result and 'unjust evaluation' and should be set aside. *SC Held:* Zillion's financial position was such that it had never been unable to pay the amount determined by the DAB. For the purpose of the application to stay, Zillion attempted to make out a case that raising finance to pay the amount determined by the DAB would prejudice them in the project, whereas the real prejudice would be that they would not be able to recoup the amount from Salz-Gossow, should they be successful in the arbitration proceedings. The SC upheld the DAB decision.	*Link*
2019	Joint Venture Between Aveng (Africa) Pty Ltd and Strabag International GmbH v South African National Roads Agency Soc Ltd and Another (8331/19) [2019] ZAGPPHC 97; [2019] 3 All SA 186 (GP) (22 March 2019)	South Africa	FIDIC Red 1999, 1st Ed. 1999	4.2; 17.3, 17.4	A contract for construction of river bridge was awarded by SANRAL to ASJV. ASJV provided SANRAL with Performance Guarantees (PG). During the course of the project the parties agreed to suspend the Works due to violent protests enacted by a local radical group. Eventually ASJV delivered a notice of termination for having been prevented from executing the works for a continuous period of 84 days by reason of force majeure. ASJV also requested that SANRAL undertake not to make a demand on the PG without giving 14 days notice as they were only allowed to make a demand under the provisions of Clause 4.2 of the Contract. SANRAL disputed ASJV's right to terminate the contract and did not agree that the protests constituted force majeure. It also argued that it was the law that the PG must be paid and the parties may consider entitlement at a later stage. *Held* : The Court held on the evidence before it that the protests did not constitute force majeure. Accordingly, SANRAL was justified in accepting ASJV's actions as repudiatory and presenting the PG for payment.	*Link*

Corbett and Co's FIDIC Case Law Table

¬ The information and summaries in this table should not be relied upon and are offered as guidance only.
¬ If you are aware of any cases or awards that refer to FIDIC which are available to the public and not listed, please let us know at info@corbett.co.uk .
*** Links in italics would require ICC or I-law subscription to access online.**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2019	Entes Industrial Plants Construction and Erection Contracting Co. Inc v The Ministry of Transport and Communications of the Kyrgyz Republic	US District Court for District of Columbia	Unknown FIDIC type Contract	60.8; 67.3;	The Petitioner (Entes) sought an order from the Court to enforce an Arbitral Award which included an award of costs plus post-judgment interest at statutory rate by the Respondent (Ministry), pursuant to the NY Convention. The Arbitration was filed under the UNCITRAL Rules over the cost of delays, design changes, additional work and late instructions by the Respondent and their inability "to make important decisions" because of the country's April Revolution. The Ministry counterclaimed its legal fees. The AT rendered its Award, unanimously finding that Entes was owed compensation for the extended timeframe of the Works project plus interest. *Held* : The Court granted the Petition on the basis that: 1) all statutory conditions for confirmation and enforcement were satisfied; and 2) none of the limited grounds for refusal to confirm exist. 'Confirmation proceedings under the NY Convention are summary in nature, and the court must grant the confirmation unless it finds that the arbitration suffers from one of the defects listed in the Convention.'	*Link*
2020	PBS Energo AS v Bester Generation UK Ltd [2020] EWHC 223 (TCC)	Technology and Construction Court, England and Wales	Fidic Silver Book 1999, amended	2.5; 4.10; 4.12;8.4; 14.5;14.6;15.7; 15.8; 16.2(b); 16.3; 17.3; 17.4; 20.1	The Technology and Construction Court rejected a sub-contractor's claim that it had been entitled to terminate a sub-contract based on the FIDIC Silver Book 1999, instead finding that it was the main contractor that had been entitled to terminate due to abandonment of the works by the sub-contractor. In reaching its conclusion, the court made various findings in relation to (among other things) responsibility for ground conditions, implied terms relating to performance security, whether the rejection of a valid extension of time (EOT) claim amounted to a material breach, the prevention principle in the context of abandonment of the works and whether the right to liquidated damages survived termination. Case References: *Triple Point Technology Inc v PTT Public Company Ltd* [2019] EWCA Civ 230, 183 ConLR 24	*Link*
Following **Order No. 915/2008**, FIDIC Conditions became mandatory for contracts entered into by Romanian authorities for a period of time. As a result, there are a number of cases on FIDIC in Romania (in Romanian language). Please click on the link for more Romanian cases on FIDIC.						*Link*