HOWARD KENNEDY

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Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2024	NDI Sopot S.A. v North Macedonia, 6035/17, ECHR, 26 Nov 2024	European Court of Human Rights, Strasbourg	1999 Red	Not specified	Complaint heard in the ECHR regarding two arbitral awards handed down in favour of a Polish company (NDI Sopot). The arbitrations related to a joint venture agreement entered into with a Macedonian company "G" for the construction of a section of a Polish motorway. G refused to comply with the arbitral awards and had no substantial assets abroad. Macedonian courts refused to enforce the arbitral awards in violation of the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. NDI filed a complaint in the ECHR under Article 6 of the European Convention on Human Rights (Right to a fair trial). NDI's grounds were that the Macedonian courts had given insufficient reasons for their decisions to refuse recognition, had not conducted a proper examination of the submissions and evidence presented by the parties, and the courts' reasoning underlying both grounds for the refusal of recognition had been manifestly flawed. The ECHR declared the complaint under Article 6 of the Convention admissible and held that there was a violation of Article 6. The ECHR found that the Macedonian courts failed to comply with statutory law as they failed to respond to NDI's specific and important arguments in their decision, and also that the courts had failed to give an adequate response to NDI's specific arguments which could have been decisive for the outcome of the proceedings. As a result, the courts' reasoning was not sufficient, as the courts did not attach sufficient weight to important aspects of the case. The ECHR found that "the right to recover the amount awarded by the ICC Tribunal was a 'civil right' within the meaning of Article 6."	Link
2024	Topalsson GmbH v Rolls-Royce Motor Cars Ltd [2024] EWCA Civ 1330, Court of Appeal, 9 Oct 2024	Court of Appeal of England and Wales	2017 Red/Yellow	1.15	Judgment of an appeal of a High Court decision in 2023 (*Topalsson GmbH v Rolls-Royce Motor Cars Ltd [2023] EWHC 1765 (TCC)*) to award damages to Rolls Royce regarding a contract terminated for delay. The 2023 decision awarded Rolls Royce damages of €7,962,323. At the point of termination, Topalsson was owed €800,000 for work carried out. The TCC "netted off" these figures before applying the cap, awarding Rolls-Royce a net sum of €5 million. Topalsson appealed on grounds that Rolls-Royce's entitlement to termination damages should have been capped at €5 million before Topalsson's debt was set-off – giving a reduced judgment of approximately €4.2 million. The Court of Appeal agreed with Topalsson, noting that the words "total liability" suggested "a totting up, not a netting off." This was supported by the reference to liability "of either Party", indicating that the liability of each party was to be subjected separately to the cap. The Court also considered that commercial common sense supported this interpretation, as otherwise the cap could be "circumvented by the happenstance of set-off".	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2024	Cardno Middle East Limited v. Central Bank of Iraq, Judgment of the Amsterdam Court of Appeal - 9 Sept 2024 (Case no. 200.333.036/01)	Amsterdam Court of Appeal	2006 White	Not specified	Judgment by Court of Appeal relating to a request for enforcement of an 2023 ICC Award (also shown in table: see below). The Court of Appeal ruled in favor of Cardno in its request to recognize and enforce an arbitral award against the Central Bank of Iraq (CBI). The court rejected CBI's arguments for refusing the exequatur, including claims of material and procedural fraud and violation of public order. The court also denied CBI's request for a stay of proceedings pending the outcome of a French annulment procedure. As a result, the court granted Cardno's request for recognition and enforcement of the arbitral award and ordered CBI to pay the costs of the proceedings.	Link*
2024	DJP, DJQ and DJR v. DJO, ICC Case No. 26733/HTG, [2024] SGHC(I) 24, 15 August 2024	Singapore International Commercial Court	1999 Red	13.7, 13.8, 20.1, 20.6	Judgment of an appeal to set aside a final award in its entirety on the basis of breach of natural justice. The arbitration was seated in Singapore (the "Arbitration") which ran in parallel with two other arbitrations, seated in India - the CP-301 and CP-302 arbitrations. The subject matter of these three proceedings were broadly similar, insofar as it related to a similar notification about an increase in daily rates for minimum wages payable by the Indian Ministry of Labour. Each of the three proceedings had a three-member arbitral tribunal, and the presiding arbitrator (Judge C) of the Arbitration was the presiding arbitrator in all three arbitrations, and therefore fully aware of and immersed in the underlying facts and issues in the two parallel proceedings whilst presiding over the Arbitration. The tribunal elected to use the CP-301 award as a template for the award in the Arbitration. It was evident to the parties that Judge C drew heavily upon and applied his knowledge acquired from the parallel proceedings to the writing of the award of the Arbitration. DJO highlighted the following: (1) the tribunal placed weight on submissions in the earlier arbitrations and did not restrict itself to the submissions made in the Arbitration; (2) drew upon authorities not cited in the earlier arbitrations which were not cited in the Arbitration; (3) recited and relied upon provisions in the CP-301 contract that were not found in the CPT-13 contract; (4) applied the wrong lex arbitri to the assessment of interest and costs; and (5) failed to properly consider the appropriate and certain unique issues to the Arbitration. The main issue for DJO was the scale, scope and source of the cut-and-pasting. The applicant asserted four breaches of natural justice in the making of the award – (1) impermissible pre-judging of the case; (2) the copious copy-and-pasting deprived it of its right to a fair, independent and impartial award; (3) breached its right to a fair hearing which requires a tribunal to deal with the dispute before it; and (4) by lifting the reasoning of the parallel proceedings, the tribunal breach the right to a fair hearing which prevents a tribunal form relying on factual or legal reasoning that has not been canvassed before it without giving the parties the opportunity to respond thereto. Consortium X reasoned that the real issue was whether or not the tribunal applied its mind to the essential issues in the Arbitration, and asserted that the tribunal did do so. The Court concluded that the Award was made in breach of natural justice and was therefore liable to be set aside on that ground.	Link*
2024	Sew Infrastructure Ltd v Ethiopian Roads Authority, ICC Case No. 23274/PTA, Case no. 21/14563 (9 January 2024)	Paris Court of Appeal	Not specified	20.2 - 20.6	This is a judgment of the Paris Court of Appeal, regarding the annulment of a final arbitration award and an additional award, both resolved under the ICC Rules, in a dispute over a project concerning road development and maintenance. The dispute was submitted for determination pursuant to the contractual dispute resolution mechanism in accordance with Sub-Clauses 20.2- 20.4, and was finally following a notice of dissatisfaction, referred to and resolved under arbitration pursuant to Sub-Clause 20.6. Sew was ordered to pay the ERA certain sums, including interest and half of the ICC arbitration costs. Sew filed an appeal for annulment of this award before this court and submitted a request to the arbitral tribunal for correction. The additional award dismissed the motion for rectification. This was followed by an application for an annulment of that additional award. The ERA raised inadmissibility of Sew's claims. Sew sought in the first instance the joinder of the two proceedings for annulment, which was not opposed by the ERA and which was granted by the court in the interests of proper administration of justice. Sew further invoked five grounds of annulment, alleging: (1) a mis-assessment by the arbitral tribunal of its jurisdiction ; (2) irregularity of its constitution; (3) failure to comply with its mission/task; (4) the infringement of the principle of adversarial proceedings; and (5) breach of the recognition or enforcement of the disputed award with international public policy. All of which were dismissed by the court.	Link*

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2024	Micheletti Company Ltd v Ministry of Youth and Sports of Ghana, ICC Case No. 27732/CPB (8 March 2024)	ICC, seated in Nairobi	General Conditions of Contract for EPC/Turnkey Projects 1999 Silver	14.8, 20, 20.2, 20.3, 20.4, 20.5, 20.6	This is a partial award, resolved under the ICC rules, which determined two issues: (1) the issue of the Tribunal's jurisdiction; and (2) the issue as to whether the Claimant's claim was statutorily time barred. The governing law of the arbitration was the laws of the Republic of Ghana. The Arbitration Agreement did not specify the seat of arbitration, and following the parties' failure to agree the seat, the ICC Court in accordance with Article 18(1) of the Rules, fixed Nairobi, Kenya, as the seat of the arbitration. The Respondent objected to the Tribunal's jurisdiction on the basis that it asserted that the Claimant had failed to exhaust the contractual dispute resolution mechanism, in particular, that the dispute should first be submitted to a DAB and attempt amicable settlement, before it may be referred to an arbitral tribunal, pursuant to GCC Sub-clauses 20.2 and 20.4. The Claimant argued that the Respondent waived its rights to amicable settlement due to its failure to respond to and raise concerns on the dispute resolution mechanism. Without prejudice to its primary position concerning jurisdiction, the Respondent further argued that the Claimant's claim was statutorily time barred. The Claimant asserted that (1) pursuant to GCC Sub-Clause 14.8 it was entitled to payment without formal notice and without prejudice to any other right or remedy, and that the Limitation Act of Ghana therefore does not apply; (2) that the Respondent, by reference to a letter, admitted liability and did not act upon it; and (3) that under the Kenya Arbitration Act the claim was not time barred. The Tribunal declared that the Claimant satisfied the requirements under Clause 20 and that the Tribunal had jurisdiction. Further, the Tribunal declared that the Claimant's claims were statutorily time barred under Section 4(1) of the Limitation Act of Ghana and all claims and relief sought by the Claimant were rendered inadmissible and were dismissed.	Link*
2024	The Roads Department of Regional Development and Infrastructure Georgia v Todini Construzioni Generali SpA, ICC Case No. 24851/MHM/HBH - Judgment Case No. 22/14963 (4 June 2024)	Paris Court of Appeal	Not specified	20.2 - 20.6	Judgment of the Paris Court of Appeal, regarding an application for an annulment of an ICC arbitral award, following a dispute concerning the termination of a contract for a road construction project in Georgia. The appeal for an annulment was brought by Todini on four grounds: (1) lack of jurisdiction by the tribunal; (2) failure by the tribunal to comply with its mission; (3) breach of the principle of adversarial proceedings; and (4) conflict with the recognition or enforcement of the disputed award with international public policy. As to the first complaint concerning jurisdiction, Todini argued that the dispute was not referred to arbitration in accordance with the dispute resolution mechanism provided for under the contract, on the basis that the Roads Department had referred the matter to the DB and then brought the arbitration proceedings before the DB determination was issued. The Department asserted that this issue related to the admissibility of claims and not the arbitral jurisdiction. The court held that the issue was that of admissibility of the claims and not within the scope of an annulment, on the basis that temporarily overlapping proceedings do not deprive the tribunal of its jurisdiction. The second ground failed and was rejected on the basis of the absence of a factual basis, and so did the third and fourth grounds. The appeal was dismissed with costs.	Link*
2024	MER Sint Maarten BV v. Sint Maarten Telephone Company NV, 06 February 2024	Court of Appeal in Amsterdam	FIDIC 1999 Yellow	15.3, 20.1, 20.6	Judgement by the Court of Appeal for the annulment of an ICC arbitral award (judgment relating to the appeal against confirmation of enforcement proceedings dated 13 September 2023, elsewhere on this table). MER's claim in the arbitration related to compensation for work done as at (interim) termination, pursuant to GCC Sub-Clause 15.3, which claim the Respondent asserted was time barred pursuant to GCC Sub-Clause 20.1 (and that the tribunal should not have decided on the claim, or at least should have rejected it) and that an Engineer's valuation attracts res judicata. The claims were partially granted and the counterclaims were dismissed – i.e., MER was entitled to an eot, and that TELEM wrongfully terminated the agreement, wrongfully called the bank guarantee and breached its payment obligations. The annulment was sought by TELEM (following an unsuccessful defence to enforcement proceeding brought by MER) on the following grounds: (1) the arbitral tribunal failed to comply with its mandate; (2) the award was not reasoned; and (3) the award, or the manner in which it was reached, was contrary to public policy. The court noted that in its assessment the court must assume that annulment proceedings cannot be used as a form of appeal, unless the award is contrary to public policy the court is not free to review the content of the arbitral award, and that it had to exercise restraint. The court rejected all grounds and the annulment was dismissed with costs. An appeal in cassation against this judgment was then filed by TELEM on 6 May 2024 – reported on below.	Link*

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2024	MER Sint Maarten BV v. Sint Maarten Telephone Company NV, 21 June 2024	Advice of the Attorney General at the Supreme Court of the Netherlands	FIDIC 1999 Yellow	15.3, 20.1, 20.6	Advice of the Attorney General at the Supreme Court of the Netherlands, for an appeal in cassation brought by TELEM raising various complaints, following its unsuccessful appeal - see judgment of 06 February 2024 above. The Attorney General's conclusion was that the appeal in cassation should be rejected. The Attorney General discussed further legal and motivational complaints raised by TELEM, all of which were dismissed. In particular, it was noted that the Court of Appeal was right to apply the standard (concerning enforcement) in accordance with Article 36 Model Law, i.e., that when assessing a request for recognition of enforcement the court must refrain from re-examining the case, and the case for refusal must be interpreted strictly.	Link*
2024	MER Sint Maarten BV v. Sint Maarten Telephone Company NV, 25 July 2024	Court of First Instance of Sint Maarten	FIDIC 1999 Yellow	Not discussed	Combined judgment of two summary proceedings brought by (1) TELEM (following the Amsterdam Court of Appeal's judgment of 06 February 2024), seeking an order to lift the attachments opposed on TELEM by MER and to prohibit MER from further attachment and levying; and (2) enforcement by MER, for the third-party attachments placed against it by TELEM's subcontractors to be lifted and the blocking effects of the attachments to be limited to the part of MER's claim against Telem or at least an amount to be determined in good justice, and for a prohibition on TELEM's subcontractors from seizures and further attachments. MER's primary claim was dismissed (and attachments not lifted) on the basis that the subcontractors still had an interest in collecting their claims. The court, however, held that insofar as the standards of reasonableness and fairness were concerned, the position taken by TELEM and the subcontractors in these proceedings amounted to an unacceptable appeal with a blocking effect. Least not, given TELEM's failed attempts to have the award and enforcement set aside and that the enforceability of the award has not been impeded by TELEM's appeals in cassation. The subcontractors agreed or at least failed to object to conditions included by TELEM in its third-party attachment declarations, which the court held were severely damaging to MER. Contrarily, MER has taken into account the interests of the subcontractors, and the subcontractors did not respond to requests from MER to find a joint solution. The court, weighing the interests of the parties, ordered (1) the subcontractor's third-party attachment claims to be limited; (2) dismissal of TELEM's claim given the aforesaid restrictions which rendered TELEM without an interest in its claim; and (3) TELEM and the subcontractors to pay MER's legal costs.	Link*
2024	MER Sint Maarten BV v. Sint Maarten Telephone Company NV (13 September 2024)	High Council of the Netherlands	FIDIC 1999 Yellow	None discussed	The Supreme Court dismissed the respondent's appeal against a decision to enforce an international arbitration award in favour of the claimant. The Supreme Court did not provide detailed reasoning for its decision, citing that the appeal did not raise questions significant enough to warrant a detailed legal analysis. The respondent was ordered to pay legal costs to the claimant.	Link*
2024	Bosch Munitech (Pty) Ltd v Govan Mbeki Municipality (33425/16) [2024] ZAGPPHC 531	High Court of South Africa, Gauteng	1999 Red	1.1.1.1, 1.1.1.3, 1.1.2.4, 1.4, 2.16, 3.1, 3.4,	Judgment concerning a dispute centred on a contract to execute civil engineering works for the refurbishment of the eMbalenhle Water Works. Notably, it was common cause between the parties that neither party signed the (FIDIC) contract and the plaintiff did not plead any of the terms of the contract in its pleaded case. The plaintiff sought payment and interest for expenses relating to site establishment and standing time, not construction on the basis that the plaintiff never provided any service. The defendant denied the validity and legality of the contract and instituted counterclaims. A special plea of prescription was raised in response to the counterclaims, which the defendant argued was without merit on the basis that the plaintiff was aware of the illegality or should have reasonably known. Whether the claim and counterclaim succeed, revolved largely around the legality challenge made by the Defendant against the validity of the contract – if unsuccessful, it would be the end of the matter for the Defendant. The court found that the defendant's legality challenge was unduly delayed (7 years) and that the defendant had not provided a sufficient explanation for the delay. The court further concluded not to exercise its discretion to condone the undue delay. It followed that the Defendant's defence had not been proven and accordingly its counterclaim also failed. In addition, given the court's acceptance of the Plaintiff's version (unrefuted by objective evidence) the defence on the merits also failed. The Plaintiff's claim (including loss of profit) and interest was granted with costs and the Defendant's legality challenge to the validity of the contract dismissed with costs.	Link

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2024	Marymatha Infrastructure Private Ltd vs State Of Kerala, 5 July 2024, WP(C) No. 28012 of 2020,	High Court of Kerala at Ernakulam, India	Not specified	44.1 and 2.1	Judgment of a writ petition, challenging the Employer's order (Ext. P24) to the extent that it imposes a fine for the extension of time. The dispute centred on a contract to build a flyover at one of the busiest junctions in the state. The contractor sought an extension of time for completion, citing COVID-19 and associated reasons as the cause for delay, to which the employer agreed subject to payment of a fine. The Contractor argued that the Employer had no authority to grant an extension of time, and therefore no authority to impose a fine. The Contractor further asserted that pursuant to Sub-Clause 44.1 the authority for determining an extension of time rests with the Engineer alone, and not the Employer. The Employer argued that pursuant to Sub-Clause 2.1 the Engineer cannot independently decide with respect to an extension of time and that the Engineer should obtain specific approval from the Employer before exercising any authority. The court held that Sub-Clause 2.1 is not applicable to Sub-Clause 44.1, and that the P24 order was therefore issued by the Employer without the necessary authority. The court set aside P24 and directed the Engineer to take the appropriate steps to make a determination.	Link
2024	Marymatha Infrastructure Pvt. Ltd vs Roads & Bridges Development Corporation of Kerala Ltd on 21 June, 2024, WP(C) NO. 12353 OF 2021	High Court of Kerala at Ernakulam, India	Conditions of Contract for Works of Civil Engineering Construction	60.10, 63.1, 67.1, 69.1, 69.3	Petition to the court brought by the Contractor to challenge a notice of termination issued by the Employer. The Contractor terminated the contract for civil and electrical works in January 2021, citing delays in payment. The Employer issued a show-cause notice in June 2021, initiating its own termination proceedings. The contract included a dispute resolution mechanism, specifying steps for amicable settlement and arbitration. The Contractor filed a writ petition challenging the employer's right to terminate the contract, arguing that they had already terminated it and that the Employer had no authority to initiate proceedings to terminate the same. The Contractor also argued that the Employer, being a party to the contract, could not decide on the legality of the termination. The Contractor further sought a declaration that the contract had been validly terminated by it and that the Employer's show-cause notice was invalid, and for directions against the invocation of the bank guarantees. The Employer countered that the Contractor had breached the contract and that their termination proceedings were justified. The Employer argued that the Contractor in any event should have availed itself to the dispute resolution mechanism provided for in the contract, and that the proceedings in court were premature given that the Employer had only issued a show-cause notice at that point. The Employer further argued that payments were made in accordance with the contract, that the Contractor's delay to the works and termination were invalid and that the Contractor's continued defaults forced the Employer to initiate termination proceedings. The court considered whether the writ jurisdiction should be exercised and found that there was no public law element to entertain the writ petition. Accordingly, the Contractor's writ petition was dismissed. Without touching the merits of the matter, the court further held that the matter should be resolved through the contractual dispute resolution mechanism rather than in court on the basis that the Employer had only issued a notice which the Contractor could respond to. The court cited several factors, including the complicated nature of the dispute, the availability of alternative remedies, and the principle that courts should generally avoid interfering in contractual matters.	Link

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2024	Sdb Diamond Bourse vs Psp Project Ltd on 9 May, 2024, C/FA/1309/2024	High Court of Gujarat at Ahmedabad, India	Not specified	9.5, 11.9, 14.10, 14.11, 14.12, 14.13, 14.7	An Appeal against a judgment and order passed by the Commercial Court which partly allowed interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 and directed the appellant to furnish irrevocable bank guarantee and to restrain from auctioning, transferring or creating third party rights in the remaining portion of the SDB Diamond Bourse. The appeal was brought on the ground that the directions of the order were in contradiction to terms and conditions of the contract, which already prescribes the procedure for the final bill. The appellant argued that the Commercial Court erred in its interpretation of the contract terms - the contract provided that the contract provided that the performance certificate could only be issued (within 28 days) after the defects liability period is over and only thereafter is the final payment required and so the Respondent was not entitled to interim relief. The Respondent argued that interim relief granted by the Commercial Court under Section 9 application (of the 1996 Act) fell within the discretion of the court which required the court to balance the equities of the parties on even grounds and preserve the sanctity of the arbitral process. Further, if the discretion was exercised reasonably and in a judicial manner, a different view taken by a trial court would not necessarily justify an interference with such discretion. The court considered the terms of the contract, and agreed with the appellant that the stage of payment for the final bill had not been reached at the point when the Respondent approached the Commercial Court. The Court further held that pursuant to Sub-Clause 11.9 of the contract, the Contractor's obligations are only considered completed when the performance certificate is issued (i.e., acceptance of the works), which is subject to the Contractor supplying the necessary documents, completing all tests and works, and addressing all snags and defects. The court found that on the basis that there existed a dispute regarding items of the final bill (i.e., was not finalised) it was not open for the Commercial Court to issue interim measures as it could not be said that the Respondent had a prima facie case and that the balance of convenience lied in its favour. The court further held that the Commercial Court failed to exercise its discretion under Section 9 which required it to balance the equities between the parties. Accordingly, the appeal was allowed, and the Commercial Court's order was set aside and the interim relief granted quashed. It was further noted that the observations made in the judgment would not affect any future proceedings between the parties.	Link
2024	Sojitz-L&T Consortium vs Dedicated Freight Corridor Corporation of India Ltd on 18 January 2024, O.M.P.(I)(COMM.) 27/2024	High Court of Delhi at New Delhi, India	Comprehensive Economic Partnership Agreement viz. Federation Internationale Des Inquenieulrs Counsel (FIDIC), 1999	3.5, 20	A judgment of an application under Section 9 of the 1996 Act for interim measures, including relief to restrain the Respondents from invoking or cashing retention bank guarantees. The Contractor (petitioner) had executed a contract with the Employer (Respondent) to design and construct a railway line and accordingly furnished retention and performance bank guarantees. The employer had withheld certain amounts from interim payment certificates (IPCs), claiming that the contractor was entitled to a reduced basic customs duty (BCD) on imported rails due to a comprehensive economic partnership agreement (CEPA). The Engineer determined that there was no Change in Law with respect to the applicable Custom Duty, that the funds withheld should be returned to the Contractor (to be certified in the next IPC) and that the contractual (Clause 20) dispute resolution procedure (DAB) was available to Respondent if the latter was aggrieved by the said decision. The Respondent did not follow the Clause 20 procedure and following the above the Engineer reviewed the decision. On review the Engineer came to a different finding, i.e., that sums were due from the Contractor. The court stated that the Engineer did not have the power under the contract to review its earlier decision and that the Respondent should have followed the procedure set us under Clause 20 if it was aggrieved by the said decision. The court also found no breach by the Contractor of its obligations. On the above basis the Respondent was restrained by the court (until the next hearing) from invoking and/or encashing any of the retention bank guarantees.	Link

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2024	Estate Management and Business Development Company Ltd v Junior Sammy Contractors Ltd (Trinidad and Tobago) [2024] UKPC 33 (29 October 2024)	Judicial Committee of the Privy Council; appeal from the Court of Appeal of the Republic of Trinidad and Tobago	1999 Red	3.1, 14.6, 14.3, 14,7, 10.1.	Decision of the Judicial Committee of the Privy Council upholding a decision of the Court of Appeal of Trinidad and Tobago. The judge at first instance, upheld by the Court of Appeal, granted Junior Sammy summary judgment on seven unpaid interim certificates relating to infrastructure works for a major housing development in Trinidad. Estate Management argued before the Privy Council that judgment should be set aside because there was reason to believe that the certificates had been obtained fraudulently and, in any event, Junior Sammy had no right to bring the claim because there had been an absolute assignment of the debt to their bank. The Privy Council dismissed the allegations of fraud as being of no substance and gave guidance on the legal principles of the law of assignment and the distinction between an absolute legal assignment and an assignment by way of charge only. On the assignment point, the essential question was whether the bank had granted a loan secured by a charge on the debt or instead had acquired the debt owed by employer to Junior Sammy. The Board reviewed the authorities on the distinction between legal and equitable assignments and approached the matter considering all the relevant instruments. There were indicators within the terms of the instruments which supported different conclusions. A key factor that suggested a loan was a factoring agreement, which provided that Junior Sammy retained the right to bring proceedings against the employer. This was an indicator (with others) that the assignment was to take effect by way of charge only. Accordingly, it was not necessary for the Privy Council to determine whether a failure to assign the right to sue on its own entailed that the assignment was not absolute. The Privy Council therefore expressed no concluded view on that question, save to say that the failure to assign the right to sue to the assignee is at least a 'very strong indicator' that the assignment is not absolute. Further, when the question does arise for decision, the Privy Council stated that much may be said in favour of the view that it does entail that the assignment was by way of charge only.	Link
2024	Strabag International GMBH v National Irrigation Authority (Formerly the National Irrigation Board) (Commercial Case E219 of 2023) [2024] KEHC 3744 (KLR) (Commercial and Tax) (19 April 2024) (Ruling)	In the High Court at Nairobi, Republic of Kenya	Not specified	20.4, 20.5 and 20.6	Judgment for an application for summary judgment against the defendant, to enforce five DB decisions. The plaintiff's case was that the 5 DB decisions were binding on the defendant, and on the basis that none had been revised, the defendant was to promptly give effect to the decisions pursuant to Sub-Clause 20.4 of the contract. The plaintiff also asserted that its claim was liquidated and thus appropriate to be determined summarily and that the defendant lacked any reasonable or triable defence for non-payment. The defendant admitted that the five decisions were issued, but opposed the application on the basis that notices of dissatisfaction were issued, accordingly it took the position that this application was premature for failure to exhaust the internal dispute mechanisms under Sub-Clause 20.5, which required parties to submit to amicable settlement and finally arbitration. The defendant further averred that it had a good defence. The court noted that whilst the defendant issued the notices of dissatisfaction, there was no effort to complete the dispute resolution clauses pursuant to Sub-Clauses 20.4 – 20.6. The court found that the defendant failed to raise any triable or reasonable defence to merit a trial, and at the time of this application had yet to invoke the arbitration clause which the court found to be out of time. The court confirmed that plaintiff's claim was a liquidated claim, and the DB decisions were binding on both parties who were to promptly give effect to the decisions which were not revised and were final. Summary judgment was granted, and the plaintiff was awarded the costs of the application.	Link

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2024	Machiri Limited v Kenya Airport Authority (Commercial Arbitration Cause E057 & E053 of 2023 (Consolidated)) [2024] KEHC 3303 (KLR) (Commercial and Tax) (21 March 2024) (Ruling)	In the High Court at Nairobi, Republic of Kenya	FIDIC Conditions of Contract for Design-Building and Turnkey, First Edition (1995 Orange Book)	2.2, 3.5, 8, 8.3, 13.8	Judgment concerning two applications: (1) the respondent's application to set aside the arbitral award; and (2) the claimant's application for enforcement of the aforesaid arbitral award. Application to set aside. The respondent contended that the tribunal failed to consider the effect of the agreement and the tender provisions on the FIDIC Conditions of Contract, instead the tribunal was said to have faulted by holding that the contract was governed only by the 1995 Orange Book. Accordingly, the respondent asserted that the tribunal considered matters that were not before it, that the tribunal re-wrote the contract between the parties and that the award was against the public policy of Kenya in respect of its decision regarding the rate of interest (computed monthly as opposed to the prevailing lending rates). The claimant opposed the application on the basis that the agreement between the parties took precedence over all other agreements, Sub-Clause 8 of the contract provided for a variation of price, and that the eot was granted pursuant to Sub-Clauses 2.2, 3.5 and 8.3 of the contract due to delays occasioned by the respondent (for which the award allowed for additional costs). As to the respondent's allegation that the award was against public policy, the claimant averred that the arbitration act granted the tribunal the discretion to determine the rate of interest to be applied to the award, that Sub-Clause 13.8 of the contract provided for the agreed interest rate and that the PPDR (Public Procurement and Disposal Regulations) provided that interest would be commercial rates. The main issue before the court for determination was whether or not the applicant (respondent) met the threshold for setting aside the arbitral award. The court found that the respondent failed to demonstrate how the award offended public policy, that there existed no sufficient grounds to warrant setting aside the arbitral award. Accordingly, the threshold was not met. Consequently, claimant's application for recognition and enforcement of the said arbitral award was allowed, and the respondent was ordered to pay the costs of both applications.	Link
2023	Decision 982/2023/QD-PQTT (20 June 2023)	People’s Court of Ho Chi Minh City, Vietnam	1999 Red	2.4, 3.5	Judgment to set aside an arbitral award granted in favour of the Employer. The arbitration related to a construction contract wherein the employer and contractor agreed to appoint the engineer as the sole authority to confirm the quality, volume, and progress of the contractor's work, and that only work confirmed by the engineer would be legally binding. The employer terminated the contract, citing serious breaches by the contractor. The contractor disputed the termination, claiming it was unjustified. The tribunal partially sided with the employer, ordering the contractor to pay outstanding balances, interest, and arbitration fees, but rejecting the employer's claim for delay damages. The contractor appealed the award on grounds that: the tribunal failed to consider the role of the engineer as the sole authority for confirming work; the tribunal relied on the employer's figures, which were not confirmed by the engineer; the tribunal did not summon the engineer to provide expert testimony; and the tribunal's decision violated the contractual agreement between the parties and undermined the principle of equality. The court upheld the appeal and cancelled the award.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2023	Tower-EBC G.P./S.E.N.C. v. Baffinland Iron Mines LP and Baffinland Iron Mines Corporation, Judgment of the Court of Appeal of Ontario 2023 ONCA 353 - 16 May 2023	Court of Appeal of Ontario	Red Book 4th Edit	None discussed	Cost order for the judgment of the appeal dated 13 April 2023 (dismissing the Respondent's motion to quash and the appeal) - judgment of 13 April 2023 can be found elsewhere on this table.	Link*
2023	Eskom Holdings SOC Limited v TSSA (Pty) Ltd and Others (038256/2022) [2023] ZAGPJHC 1469 (21 December 2023)	High Court of South Africa, Gauteng Local Division, Johannesburg	Yellow Book 1999	None discussed	Judgment handed down in relation to an application for an interim interdict to stay the adjudication of two disputes (the claims dispute and the termination dispute) pending the outcome of: (1) arbitration proceedings relating to a time-bar dispute between the parties; and (2) finalisation of an investigation following allegations of maladministration and corruption in the business and operations (the 'SIU Investigation'). The contract, based on the 1999 FIDIC Yellow Book, was entered into for works at the Kusile Power Plant and comprised of three parts. The dispute between the parties arose under the second part of the contract (called the 'P24E Contract') which related to limestone works. The first dispute (the claims dispute), related to claims between the parties for additional costs and eot, and was bifurcated into two separate DAB proceedings; (1) in relation to a time-bar, which became the subject of arbitration proceedings, and (2) the merits and quantum of the claims, which the respondent before the court argued should be stayed pending finalisation of the arbitration proceedings and finalisation of the SIU Investigation. The DAB conveyed that the adjudication on the merits should proceed unless interdicted through an order of court. The respondent conceded the stay in proceedings (in relation to the merits) pending the arbitration, after the application was made to the court. The applicant, therefore, sought punitive costs. The court ordered for the merits aspect to be stayed pending the arbitration of the time-bar aspect of the claims dispute, but dismissed the applications for stay of those proceedings and stay of the termination dispute pending the SIU investigation. Each party was ordered to pay their respective legal costs.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2023	Mota-Engil Ingenieria y Construcción S.A. – Sucursal Paraguay v. Ministry of Public Works and Communications of Paraguay, PCA Case No. 2020-14, Final Award 8 Dec 2023	Permanent Court of Arbitration, Paraguay	Not specified	17, 20	This decision concerns a metrobus project in Paraguay. The contract underwent seven signed modifications. A draft eighth modification was rejected, which was followed by termination of the contract. Disputes between the parties included: whether or not access to site was given, delays to approval of the final design, rejection of the claimant's proposed value engineering, validity of termination of the contract, whether or not the guarantees were performed in accordance with the contract, certain counterclaims and a dispute over the jurisdiction of the court particularly the admissibility of claims pursuant to the dispute resolution mechanisms set out under clause 20 and its interpretation in accordance with the Paraguayan laws. The contract underwent 7 signed modifications and one draft modification. The contract was terminated after draft modification number 8 was rejected. As to the admissibility of claims, the parties disagreed over how the contract should be interpreted in the event of any contradictions between the usual interpretation of FIDIC contracts and the rules of interpretation under the laws of Paraguay. The respondent argued for a strict interpretation of the contract and asserted that the claims had lapsed as a result of non-compliance with the requirements under sub-clause 20.1. The claimant rejected the respondent's assertion that the claims lapsed on the basis that the parties agreed under the second memorandum of understanding for all claims under the contract to be submitted to arbitration and the requirements, particularly the 28-day period in sub-clause 20.1, were thus not applicable. The tribunal agreed with the claimants that the terms of the second memorandum of understanding reflected the willingness of the parties to submit any claim under the contract to arbitration, including the present claims. The court noted that under Paraguayan law, the court must interpret the contract without limiting itself to the literal meaning of its terms, but in accordance with the common intention of the parties, considering their total behaviour, even after conclusion of the contract.	*Link**
2023	Westcon Contractors Limited v Kenya Airways Authority (Civil Suit 3 of 2018) [2023] KEHC 24142 (KLR) (24 October 2023) (Judgment)	High Court at Mombasa, Kenya	Conditions for contract works of civil engineering construction (fourth edition, re-printed 1992)	Variations	Judgment handed down concerning a claim for outstanding payments pursuant to a contract for fencing and associated civil works for the Moi International Airport. The issue for determination was whether the defendant was in breach of the contract, entitling the plaintiff to the relief sought. The court noted that proof of performance of obligations or breach of contract is a matter of law of contract, therefore, civil law, and a party is required to prove its case on a balance of probabilities. The plaintiff's claim was for outstanding payment for work done and a retention amount. The plaintiff failed to plead quantum meruit in the alternative The defendant contended that the plaintiff was not entitled to the full payment of the contract price, as claimed, on the basis that the plaintiff had failed to complete the works. The court had to consider whether or not there was a variation to the contract, without which there could be no basis for payment over and above the contract price. The contractual procedures for a variation, including obtaining the Engineer's approval, was not followed. The court noted that the plaintiff was claiming under the contract and not under any variation, and were bound to their pleadings. On that point, the court held that it was not the court's duty to amend the contract and insert into it a further sum. The plaintiff did not pursue a final certificate for the remainder of the works, did not get a variation for work outside of the contractual scope and was bound by the contract it had entered into. The court found that there was no prayer to dispense with any requirement of the contract, that all valid certificates were paid, the purported draft final certificate was extra contractual, and therefore, there was no breach of contract on the part of the defendant who paid all valid certificates raised to date. Accordingly, the plaintiff's claim was held to be baseless and untenable in law, it failed to invoke the court's equity jurisdiction to quantum meruit, and the entire claim in limine was dismissed with costs to the defendant. The only rider was that, whilst the plaintiff did not demand payment of the retention money (which was thus not in dispute), that sum was due to them.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2023	CZS v. CZQ and CZR, Grounds of Decision of the Singapore International Court [2023] SGHC 16 - 27 Oct 2023	Singapore International Court	Yellow Book 1999 + PCC	20.2, 20.5, 20.6	Decision concerning jurisdiction of the arbitral tribunal and whether or not the provisions under a completely overhauled Sub-Clause 20.5 were a condition precedent to arbitration. The Singapore court stated that as a general principle, clear words are necessary to create a condition precedent to the commencement of arbitration. Various English and Singapore cases were referred to. On the facts of this case, the question that arose was whether Sub-Clause 20.5 (which was entirely substituted as set out below) constituted a condition precedent to arbitration. The Court concluded that it was not. This case does not assist with the interpretation of unamended Sub-Clause 20.5 of FIDIC. In this particular matter, Sub-Clause 20.5 was substituted as follows: "(a) If any dispute arises out of or in connection with the Contract, or the execution of Works, including any dispute as to certification, determination, instruction, opinion or valuation of the Engineer, then either Party shall notify the other Party that a formal dispute exists. Representatives of the Parties shall, in good faith, meet within 7 days of the date of the notice to attempt to amicably resolve the dispute, (b) If the representatives of the Parties cannot resolve a dispute within 7 days from the first meeting, 1 or more senior officer(s) from each Party shall meet in person within 14 days from the first meeting of the representatives in an effort to resolve the dispute. If the senior officers of the Parties are unable to resolve the dispute within 7 days from their first meeting, then either Party shall notify the other Party that the dispute will be submitted to arbitration in accordance with Sub-Clause 20.6."	*Link**
2023	Sogea-Satom SAS v National Irrigation Authority formerly National Irrigation Board (Commercial Case E320 of 2022) [2023] KEHC 22767 (KLR) (Commercial and Tax) (26 September 2023) (Ruling)	High Court at Nairobi, Kenya	Pink Book 2010 + PCC	20.2, 20.4, 20.7	A judgment concerning the application for summary judgment for payment following four dispute board decisions. The plaintiff's position was that pursuant to Sub-Clause 20.4 the defendant was required to promptly give effect to the decision of a DB, regardless whether it was binding or final and binding, and that the defendant therefore had no reasonable defence for non-payment of sums awarded. The defendant opposed the application and sought its dismissal on the basis that there were triable issues, which it held, ought to be referred to arbitration on the basis that under the FIDIC Pink Book the decision of a DB is not final and open to review or appeal through arbitration and that enforcement of a DB decision could only follow once the mechanism for arbitration had been exhausted – i.e., a three-pronged dispute resolution mechanism being: determination by DB, amicable settlement and lastly, arbitration. The defendant held that the plaintiff's application was therefore not ripe for determination and that it should be granted leave to defend the suit on the basis that the DB decision was non-contractual, unlawful and illegal and that all claims were settled following termination of the contract. The defendant, accordingly, applied for a stay in proceedings pending reference to arbitration. The court held that: (1) under Sub-Clause 20.4 the obligations imposed by a DB decision is binding on the parties and enforceable unless it is set aside by amicable settlement or by arbitration, following a Notice of Dissatisfaction – the wording "unless and until" underpins the duty to comply with its obligations; (2) the right to enforce the DB decision is preserved by Sub-Clause 20.7, either by arbitration or through court action; and (3) there was no reason to stay the proceedings as the defendant failed to raise any issue for trial or determination by the court. The court dismissed the defendant's application, allowed the plaintiff's application and granted judgment against the defendant as requested by the plaintiff.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2023	Republic v Director General Kenya National Highways Authority; SBI International Housing Holdings (Kenya) (Exparte); Kenya Revenue Authority (Interested Party) (Application E034 of 2022) [2023] KEHC 22567 (KLR) (Judicial Review) (25 September 2023) (Judgment)	High Court at Nairobi, Kenya	Pink Book 2005 + PCC (original case)		An application before court for an order of mandamus against the respondent, to direct and compel the latter to satisfy a court order. The applicant's case was that aforesaid judgment and decree stemmed from the FIDIC contract, which by design enjoins any party to urgently settle and pay any amount determined payable by the party. On this basis the applicant asserted that it was necessary for those sums to be paid immediately. The respondent opposed the applicant and argued that they were precluded from paying because they had received notice of preservation of funds from the Kenya Revenue Authority, and were required to comply with the preservation order until it was discharged. This was largely a matter of domestic laws. The applicant was successful, and an order of mandamus was issued against the respondent. No order on costs was made on the basis that it would ultimately be borne by the tax-payer.	Link
2023	MER Sint Maarten BV v. Sint Maarten Telephone Company NV, Judgment of the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba - 13 Sept 2023	Joint Court of Justice from Aruba, Curaçao, Sint Maarten and from Bonaire, Sint Eustatius and Saba	Yellow Book 1999		The parties have entered into a dispute about the (interim) termination of the agreement and the project, as well as some related issues. MER subsequently initiated ICC arbitration proceedings in accordance with the provisions of the agreement. The ICC issued an award, in which the conventional claims were (partly) granted and the counterclaims were rejected. MER requested Telem to (voluntarily) comply with the arbitral award. Telem did not do this, instead they initiated proceedings before the Amsterdam Court of Appeal to annul the award. The Court granted MER's (primary) request for leave to enforce the arbitral award, which the court noted was a request for recognition and enforcement of an arbitral award. The starting point was held to be granting leave and it was up to Telem to demonstrate that a ground for refusal existed as referred to in Article 36(1)(a) of the Model Law. The court noted that if, after summary assessment, it is sufficiently plausible that a ground for refusal exists, the court may refuse permission, but there was no room for the court's own investigation or a full review of certain points of the arbitral proceedings or the arbitral award, as argued by Telem. The court held that: (1) the formal requirements under article 35 of the Model Law were met and that none of the provisions under article 36.1 arose; (2) Telem had not sufficiently substantiated its defense and appeal complaints that various grounds for refusal applied; and (3) the court saw no reason to make use of the provisions in art. 36 to suspend enforcement or to make it subject to the provision of security.	*Link**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2023	WBHO-Lubocon JV v Eskom Holdings SOC Limited and Another (005599/2022) [2023] ZAGPJHC 1008 (8 September 2023)	High Court at Gauteng Division Johannesburg, South Africa	1999 Red Book		The First Respondent successfully defended a high court application to review and set aside its disqualification for a tender at the Kusile Power Station and the award of the tender to the Second Respondent. There were two grounds for review before court, one in relation to non-compliance with tender requirements, and second relating to change in specification, including major design changes, which the Applicant asserted amounted to tender manipulation (to the advantage of the Second Respondent). Both grounds were found without foundation, a summary regarding the first follows. Mandatory requirements were set out in the bid document, and it was made clear that a bidder would be disqualified if the "mandatory returnables" were not completed. The issue before court was what was meant by one of the returnables - described as the "completed FIDIC schedule and contract data", which included an appendix. The First Respondent's primary position was that the Applicant had not provided the mandatory information, without which it was unable to properly assess a bid. The appendix was available on the website and it contended that the bidder had a duty to access documents online, fill it in and return it. The Applicant asserted that the mandatory requirements were cryptic and unclear and that it was impossible to comply with as the term FIDIC contract data had no generally accepted meaning. Whilst it was accepted that a meaning was included in the second edition of the red book (2017), there was no reference to such a term in the 1999 FIDIC red book which was the version used for this contract. The Applicant further questioned why the appendix was not expressly referred to as the mandatory returnable document. On the basis that the appendix was available on the website, the court held that there was no burden to decipher unclear directions, and that a diligent bidder would have accessed the document from the website as instructed and seen from its contents that it was something that it was required to complete and return. The court found that the tender was not unfair, nor was it irrational for the First Respondent to have disqualified the bidder for non-compliance. Accordingly, the application was dismissed.	Link
2023	SBI International Holdings AG v Kenya National Highways Authority (Civil Case E968 of 2022) [2023] KEHC 20793 (KLR) (Commercial and Tax) (28 July 2023) (Ruling)	High Court at Nairobi, Kenya	Pink Book 2005 + PCC (original case)	20.4, 20.5, 20.6, 20.7	Judgment concerning an application for a stay of proceedings so that the matter could be referred to arbitration. The dispute concerned a DAB decision in respect of which the defendant had issued a notice of dissatisfaction and intention to commence arbitration pursuant to Sub-Clause 20.4. The applicant (defendant) asserted that the plaintiff's application for enforcement of the said decision was premature. The plaintiff took the view that the defendant's application was bad in law and res judicata applied on the basis that similar applications had been previously determined and dismissed. The question before court centred around the interpretation of Sub-Clause 20.4 and whether it permits enforcement of a DAB decision once issued or whether enforcement had to await completion of the arbitration process in circumstances where a notice of dissatisfaction and intention to commence arbitration had been given. The court noted that with regards to interpretation, the court had to consider the contract as a whole and determine the intention of the parties and the purpose of agreeing the dispute resolution process. The defendant argued that under Sub-Clause 20.4 the DAB decision was binding, but provisional and not final and therefore not yet enforceable. Also, the defendant took the view that a notice of dissatisfaction required the parties to engage in attempting settlement, failing which, proceed with arbitration. The court held that whilst provisional at this stage, the intention of the parties was to have the decision promptly effected, the other processes (amicable settlement and arbitration) notwithstanding. Accordingly, the court found that: (1) it was the intention of the parties that the DAB decision under Sub-Clause 20.4 though not final, was nonetheless binding and enforceable and must be enforced on the basis that it immediately confers a positive obligation on the paying party; (2) that the next stage of proceedings would not prevent implementation of that decision; (3) the final and binding decision from arbitration is not a condition precedent to enforcement of the DAB decision; and (4) agreed with the plaintiff that the application was res judicata, the court having already pronounced itself on the issues and interpretation of the contentious clauses. The application was dismissed with costs.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2023	Umlazi Civils Pty Ltd v Concor Construction t/a Conradie Development and Another (20967/2021) [2023] ZAWCHC 161 (10 July 2023)	Western Cape High Court, South Africa	Red Book 1st Edition 1999	3.1, 3.3, 13.3, 14.3, 14.6, 14.7, 20.1, 20.2, 20.4, 20.6	Judgment concerning the applicant's claim for payment in terms of interim payment certificate no.17, signed by the Engineer, plus interest, which were the subject of dispute under arbitration proceedings. The arbitration hearing and proceedings were still in progress when this application was brought and argued. The first respondent's position was that IPC no. 17 included amounts relating to certain variation orders which it held the applicant was not entitled to on the basis that those were not issued in compliance with the contract and had not been approved by the first respondent. It asserted that the contract provisions authorised the Engineer to revise and correct IPC no. 17 with IPC no. 18 (which, in contrast with IPC no. 17, was not signed by the Engineer). IPC no.18 reversed the disputed variation orders and included delay damages (as a deduction) for which it said the applicant was liable. Accordingly, the first respondent admitted liability to the applicant for a specific amount. Under scrutiny was the legal effect of interim payment certificates. The court held that none of the contractual provisions granted interim payment certificates the character of something that vests an absolute or temporarily final right to payment of the amount certified thereby if it is in dispute. That nothing was found or had been referred to that indicated the first respondent waived or abandoned the right to raise a contractual defence to resist a claim for payment in terms of an IPC. The court held that the parties agreed that the arbitration would finally settle their disputes, therefore, the applicant could not obtain enforcement of the disputed IPC prior to the final arbitration award, save insofar as the first respondent's admitted indebtedness. Accordingly, the certificate would only be enforceable to the extent of its consistency with the award. For this reason, the court found the application premature prior to completion of the arbitration proceedings since the right to payment of the balance of IPC no.17 would be determined by the arbitrator's award. Regarding IPC 18, the court held that nothing in the contract prescribed the form of IPCs and it was deemed immaterial that it was not signed by the Engineer. However, the court held that it was doubtful that Sub-Clause 14.6 provided the Engineer with authority to issue a certificate correcting an earlier contested certificate which was the subject of arbitration proceedings as that would trench, impermissibly, on the arbitrator's function concerning the dispute. Accordingly, such purported correction or modification could not be deemed to have been properly made within the meaning of the relevant phrase under Sub-Clause 14.6. The first respondent was ordered to pay the admitted indebted sum under IPC no. 17, together with interest, the applicant's application otherwise was dismissed, and various orders on costs were made.	Link
2023	Lonerock Construction v South African National Roads Agency (SOC Limited) [2023] ZAGPPHC 2245; 89831/2018 (27 June 2023)	High Court at Gauteng Division Johannesburg, South Africa	1999 Red Book	14, 20.2	The project concerned an upgrade of 2km of road in the Eastern Cape. The original contract period was 18 months, but the plaintiff applied for and was granted an extension of time. However, the project overran the extended date by an additional 11 months for which the plaintiff neither applied for, nor was granted, a further extension of time, entitling the defendant to delay damages. Two IPC 36's were issued, one on 6 August 2015 and a revised IPC 36 on 1 September 2016, which the defendant asserted was agreed by the parties (signed) and replaced the previous one. The second IPC 36, the centre of this dispute, was issued not only deducting sums for delay damages, but also excluding payment to the plaintiff for preliminaries and generals (P&G) and a contract price adjustment (CPA). The dispute before court was whether or not the plaintiff was entitled to be paid its P&Gs and the CPA certified under the first IPC 36. In relation to P&Gs, the court held that the contract was clear – unless the plaintiff receives an eot, it is not entitled to its P&G for that period. The plaintiff did not apply for one. As to the amendment of IPC 36, it cannot be withdrawn and its only amendment is to be in the form of a further interim payment certificate. The court held that Sub-Clause 14.6 clearly provides that an amount may be rectified in a subsequent payment certificate or under the final accounting exercise pursuant to Sub-Clause 14.13. Accordingly, the defendant had no right to object to this IPC and the Engineer had no right to amend it. As to the defendant's assertion that the parties agreed to replace this IPC, no waiver or acquiescence was pleaded or properly proven. The plaintiff succeeded in its claim.	Link
2023	Panther Real Estate Development LLC and Modern Executive Systems Contracting LLC	Dubai	Red Book, First Edition, 1999	1.9; 3.5; 8.4; 8.7; 20.1; 21.1	DIFC Court of Appeal revisited the question as to when a FIDIC Sub-Clause 20.1 28-day notice must be given and challenged the findings of Mr Justice Akenhead in Obrascon Huarte SA v Attorney General for Gibraltar. The Court of Appeal agreed with the Court of First Instance and held that the 28-day notice period is triggered by the event or the circumstance giving rise to the claim for an extension of time and not by the delay or likely delay under Sub-Clause 8.4. In relation to the time limitation pursuant to Sub-Clause 3.5, the Court of Appeal held that unless the 14-day notice of dissatisfaction is given within that time period, the Engineer's determination stands.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2023	Tower-EBC G.P./S.E.N.C. v. Baffinland Iron Mines LP and Baffinland Iron Mines Corporation, Judgment of the Court of Appeal of Ontario 2023 ONCA 245 - 13 April 2023	Ontario Court of Appeal, Canada	Red Book 4th Edition.	20.6, 20.7	Judgment concerning the applicant's application for leave to appeal a judgment dismissing its application to appeal an arbitration award. The central issue before court was whether the arbitration agreement between the parties denied them the opportunity to seek leave to appeal an arbitration award on errors of law. The court noted that the Arbitration Act contemplated three different scenarios regarding appeals to the court on questions of law - the arbitration agreement may expressly provide for, be silent on, or preclude such appeals. In this case the arbitration agreement did not positively provide that a party could appeal an award. The applicant sought leave to appeal on the basis that the arbitration agreement did not address appeals at all, including appeals on questions of law. The application judge dismissed the request for leave to appeal and held that the arbitration agreement (contract) dealt with appeals - it precluded them by saying that disputes would be "finally settled" by arbitration and by incorporating the ICC Rules, including the rule stating that parties agreed to carry out any award and waived any form of recourse. In short, leave to appeal was not possible, both under contract and the ICC Rules, thus the precondition to seeking it under s. 45(1) of the Arbitration Act was not met. The applicant sought to: (i) reverse the application judge's decision about the arbitration agreement precluding appeals on questions raised; (ii) grant leave to appeal on the questions raised; and (iii) for the appeal itself to be determined by the Superior Court. The application was dismissed and the court found that the application judge made no reversible error in correctly concluding that the arbitration agreement precluded appeals to the court on any question, including questions of law.	*Link**
2023	Decision 868/2023/QD-PQTT, D2 Joint Stock Company v T Public Company Limited and TVC Company Limited (5 June 2023)	People's Court of Hochiminh City, Vietnam	Silver 1999	2.5	An application to set aside an arbitral award, on the basis that the arbitration proceedings were contrary to the Commercial Arbitration Law and the award violated the basic principles of the law of Vietnam, on the following 4 grounds: (1) the tribunal violated the regulations on the statute of limitations for commencing legal proceedings; (2) the award violated the basic principles of fair, equitable and non-discriminatory treatment; (3) the award violated the basis principles of evidence evaluation pursuant to the Civil Procedure Code; and (4) the award violated the basic principles of freedom, voluntary commitment and respect for the parties' agreement. As to the first ground, the period pursuant to the statute of limitations for filing a lawsuit had expired, the tribunal nonetheless accepted the referral. The court held that the award was inappropriate and the violations of procedural errors were irreparable. The court confirmed that the award was contrary to the basic principles of the law of Vietnam and the provisions of the Commercial Arbitration Law, and the court accepted the request to set aside the award. The court also agreed with the second ground, but disagreed with the third ground on the basis that an application to set aside an arbitral award was not an opportunity for a retrial of the content of the dispute. Concerning the fourth ground, which related to Sub-Clause 2.5 [Employer's Claims], the Contractor argued that the Employer failed to issue a valid Sub-Clause 2.5 claim, and therefore, lost its right to claim. The court disagreed with this and held that the contract did not contain provisions limiting the Employer's claim against the Contractor.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2023	Decision 66/2023/KDTM - PT, Mac Construction Joint Stock Company v BTC Joint Stock Company (11 April 2023)	People's Court Hanoi City, Vietnam	Red Book 1999	3.1, 7.5, 7.6, 8,7, 13.1, 13.3, 15.2	Judgment concerning an appeal, brought by both parties. The plaintiff's partial appeal. The plaintiff's appeal concerned a claim for damages resulting from the defendant's unilateral termination. The court, however, found that the breach of contract was entirely the plaintiff's fault and that the defendant's termination was valid. The court held that the plaintiff had to bear its own damages. The plaintiff asserted that the slow progress was caused by the defendant, due to: (1) late handover of the premises; (2) late payments by the defendant; and (3) slow approval of VOs. In respect of the first, the court agreed that the site handover was late. As to late payments, the court rejected the plaintiff's arguments on the basis that by the date of termination the plaintiff received an amount beyond the actual value (advanced payment plus payments received during construction). Regarding late approvals of VOs, the court disagreed with the plaintiff on the basis that the latter did not comply with the contractual procedures. The plaintiff further asserted that the defendant implicitly extended the contractual period for completion by agreeing to extend the advance guarantee and performance guarantee. The court rejected this argument, and held that those are only measures to ensure financial security when executing the contract, and did not automatically extend the contract. The defendant appealed the entire judgment on the basis that the court of first instance failed to fully consider the agreement between the parties and specific evidence when allowing the plaintiff's request, and by denying the defendant's counterclaim. The defendant asserted that as a result of the contractor's delayed progress, it had to reduce the contractor's scope of work and employ and assign those over to other contractors in order to progress the project (decreasing the contractor's contract, the parties agreed the fair value). The defendant sought payment for damages, for: (1) delay damages; (2) difference paid by the defendant to replacement contractors; (3) compensation for materials left overdue, damaged, or lost by the plaintiff; (3) damages for costs incurred due to delay in handing over the site to the interior finishings contractor; and (4) remedial costs. The court granted all, except #3 (materials), of the defendant's counterclaims. The defendant also appealed against the decision that the advance guarantee was no longer valid. The court noted that defendant's termination due to the plaintiff's fault, does not take away the right to request performance of the guaranteed obligation and that the bank had an obligation to perform. Both the guarantee to repay the advance payment and the contract performance guarantee were held to be unconditional and irrevocable. The court further noted that the guarantor was entitled to request repayment from the claimant, failing which, it was entitled to liquidate assets of the claimant held as collateral. On the above basis, the court accepted part of the plaintiff's appeal, partly accepted the defendant's appeal and amended the judgment of the court of first instance.	Link
2023	Cardno Me Limited v. Central Bank of Iraq, ICC Case No. 26290/AYZ/ELU, final Award 26 Feb 2023	Paris, ICC	White Book 4th Edition 2006	5, 8.1.1, 8.2	Dispute concerning the Respondent's failure to settle outstanding invoices, which breach led to the Claimant suspending the works and demobilising. The Claimant's claims included: (1) payment of the outstanding invoices; (2) payment of the remaining contract value for the services which were supposed to be performed until the end of the contract; (3) interest; and (4) and order directing the Respondent to return to the Claimant the performance bond and legals costs associated with opposing the call before the Dubai Courts. The Respondent failed to file any submission during the normal course of the proceedings, instead after the closing of pleadings and without leave from the Tribunal, filed an application making submissions on alleged fraudulent representation and legal consequences. The submissions and evidence produced were declared inadmissible. Pursuant to Sub-Clause 8.1.1 the parties attempted to resolve the dispute amicably. Two meetings between the parties were noted, with the Claimant's representatives arrested during the second meeting, which effectively ended any reasonable prospect of amicable resolution between the parties. The Claimant issued a notice of mediation in accordance with Sub-Clause 8.2.1, which received no answer from the Respondent. The Claimant elected not to request the appointment of a mediator and asserted that Sub-Clause 8.2.1, by use of the word may, granted an option to request that the mediator be appointed. The tribunal found that the word may does not make mediation optional as such interpretation would be irreconcilable with Sub-Clause 8.2.7. The tribunal had to decide to what extent the Claimant was entitled to commence the arbitral proceedings in light of its failure to comply with Sub-Clause 8.2.7. Under French law the issue of non-compliance raised a question of admissibility and not one of jurisdiction and that under French law such non-compliance could be excused on the grounds of futility – the claims were held to be admissible. As to the claims, the Tribunal found that the invoices were validly dispatched in accordance with Sub-Clause 5, the principles of good faith and estoppel. On the basis that the Respondent failed to contest the invoices in accordance with the time-limit and mechanism under Sub-Clause 5, the Claimant had a contractual right to payment. Accordingly, the Respondent breached its payment obligations by failing to make payment within 30 days, was held to have no valid reasons for non-payment and was ordered to pay the outstanding amount plus interest.	*Link**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
					Re the remaining value of the contract. The Claimant asserted that under Iraqi law, damages are recognised to include loss of profit to the extent this is reasonably foreseeable and would definitely be incurred in the future. The Claimant was wrongly deprived of the outstanding value as a result of the Respondent's unjustifiable breach of contract, which forced its suspension and demobilisation. The Respondent was ordered to pay those damages, consisting of actual losses (salaries and other costs) and loss of profit, plus interest. With regards to the Claimant's claim in relation to the performance bond. The Tribunal held that there was no evidence to indicate that the Claimant breached any of its contractual obligations, the Respondent therefore wrongfully called the guarantee and accordingly the costs incurred to oppose the call had to be compensated for in accordance with the Iraqi Civil Code. Further, pursuant to Sub-Clause 5.1.5, the Tribunal held that the guarantee had to be released and that the Respondent should no longer be able to call on the guarantee, and ordered the Respondent to take the necessary steps to release it.	
2022	Serviam S.A. Sucursal Paraguay v. Ministerio de Obras Públicas y Comunicaciones, ICC Case No. 25027/JPA/AJP (31 December 2022)	ICC	2010 Harmonised Red Book (Pink Book)	1.1.5.8, 14.3, 20.5, 20.6, 1.4, 1.1.2.11, 14.7, 14.1, 10.1, 4.2, 14.2, 17, 17.6, 8.7, 11.2, 15.4, 16.4, 17.1, 17.4, 17.5, 16.2, 19.6, 20, 20.1, 20.4, 19.2, 20.2, 4.10, 16.2, 20.8, 20.3, 20.4, 20.2, 3.5, 8.4, 11.9, 14.9, 1.1.5.6, 10.2, 14.6, 14.7, 14.8.	Final award issued under the auspices of the ICC. The tribunal considered and decided upon claims and counterclaims relating to a contract for the execution of rehabilitation and maintenance road works on National Route PY08 and the lack of payment for certain works on National Route PY06 in the Republic of Paraguay. The matters in dispute related to admissibility as well as substantive issues, including: compliance with notice provisions and the procedure before the Engineer, alleged violations of the duty of good faith, payment disputes, disputes relating to performance guarantees, retention, alleged unlawful termination, claims for additional payment, extensions of time and damages including for loss of profit, loss of opportunity and repatriation of equipment.	Link*
2022	Tribunal Arbitral de Consorcio Epic Quibdo v Fiduciaria La Previsora S.A., Rad. 123928, 03 June 2022	Arbitration and Conciliation Centre of the Chamber Commerce of Bogotá (Columbia)	2010 Harmonised Red Book (Pink Book)	20.5, 1.4, 20.6, 15.1, 15.2, 8.2, 7.6, 9.2, 6.4, 3.3, 4.1, 4.8, 17.2, 4.1, 4.8, 4.2, 20.1, 8.4, 3.5, 4.12, 13, 13.3, 8.3, 13.2, 12, 17.4, 17.3, 4.7, 4.10, 3.1, 15.2, 15.5, 1.7, 14.2, 2.5, 10.2, 8.1, 5, 7.4, 14.3, 1.5, 3.3, 4.1, 10.1, 17.3, 8.2, 9, 19.6, 8.7, 4.4.	Arbitral award issued under the auspices of the Arbitration and Conciliation Centre of the Chamber of Commerce of Bogotá (Columbia). The tribunal considered and decided upon claims and counterclaims relating to a contract for the improvement and expansion of a sewage system in Quibdó (Columbia) relating to (among other things): the sufficiency of the design, instructions and whether they were issued on time, the physical conditions on site (foreseen versus actual), agreements (or lack of agreements) regarding public service installations on site, alleged unforeseeable events such as disturbances of public order, greater than expected rainfall which increased the flow of a key river, and the Covid 19 pandemic, alleged defects and failures to correct, payment of wages for workers, alleged failures in relation to safety and signalling activities, advance and performance guarantees, and termination of the contract.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2022	Ledger v Leeor [2022] DIFC CA 013 (26 October 2022)	The Dubai International Financial Centre Courts	General Conditions of Contract for Works of Civil Engineering Construction Fourth Edition, reprinted in 1992	5.1, 6, 67	A Court of Appeal judgment, heard ex parte, against a judgment refusing an urgent ex parte application for an interim anti-suit injunction. The court looked at the applicable test for anti-suit injunctions where the seat of the arbitration is in contention and discussed circumstances in which the DIFC might have jurisdiction to grant such relief in circumstance where it is not the seat. The project concerned construction of a residential building in Dubai. A dispute (relating to delay and monies owed) arose out of a 4th edition FIDIC Red contract, modified by particular conditions which provided for arbitration as the final mode of dispute resolution (the "Arbitration Agreement"). The particular conditions provided that disputes were to be (1) resolved by an Engineer's Decision, and if such decision has not become final and binding, (2) parties were to attempt reaching an amicable settlement, (3) failing which, disputes were to be finally settled under the Rules of Arbitration and Conciliation of the DIFC-LCIA (Dubai International Financial Centre and the London Court of International Arbitration) by an arbitral tribunal consisting of three members. The PCs further provided that the place of arbitration was Dubai. The Respondent notified the Appellants of the Engineer's failure to give notice of the decision referred to it, of its intention to commence arbitration proceedings and requested an amicable settlement meeting. Notwithstanding the aforesaid notice, the Respondent commenced proceedings in the Dubai Court of First Instance instead in breach of the provisions of the Arbitration Agreement. This was met by a jurisdictional challenge by the Appellant with reference to the Arbitration Agreement. Appellant also made a further application to the Joint Judicial Committee seeking a stay of the proceedings – which was not granted. The Appellants were unsuccessful in both actions and the Dubai Court then proceeded to consider the case on its merits. The Appellant then instituted Part 8 proceedings in the DIFC-CFI for a declaration, inter alia, that the seat of the arbitration under the Arbitration Agreement was the DIFC. The Court noted that in circumstances where the parties are bound by an arbitration agreement and the seat is the DIFC, the DIFC Court will grant anti-suit injunctions where necessary. On the basis that this was an application in circumstances where the seat of arbitration was disputed, the Court accepted it had the power to exercise grant an interim anti-suit injunction, but had to consider the Appellant's submissions as to the test to be applied to the exercise of that power – i.e., the applicant had to show to a high degree of probability that there was a binding agreement that disputes would be determined by arbitration seated in the DIFC. Alternatively, if the seat was not DIFC, whether this was an exceptional case in which the Court could nevertheless grant an anti-suit injunction.	Link*
					The judge rejected the notion that 'place' meant 'venue' on the basis that venue does not form part of the Arbitration Agreement, and in any event, is usually agreed and determined by the parties and tribunal, but accepted that it was "at least likely" that the parties agreed the seat as Dubai. The Judge did not finally decide the interpretive issue – as it could not be said that there was a high degree of probability of a binding Arbitration Agreement with DIFC as its seat. He could not therefore grant an anti-suit injunction on that basis, even assuming that he was satisfied that the Respondent was in breach of the Arbitration Agreement – which breach the Appellants argued made this case exceptional The application was dismissed and the Appellants were granted permission to appeal on the basis that there is another compelling reason for the appeal to be heard – this was to give the Court an opportunity to give guidance on the interpretation of Decree 43 and on the test to be applied in granting anti-suit injunctions in arbitration matters where there is a dispute as to the identity of the seat - demonstrating the intertwined issues of procedural fairness and judicial comity between the two court systems in Dubai.	

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2022	ICC Decision 25066/DDA/AZO (28 February 2022)	ICC Arbitration with Paris as seat	General Conditoins of Contract for Building and Engineering Works Designed by the Employer: the Multilateral Development Bank Edition (May 2005)	8.4, 8.5, 20.1 and 20.6	An ICC award concerning a dispute between the parties relating to the Engineer's determinations regarding Extension of Time (EOT) and Additional Payments which the Engineer either denied partially or in full. The Contractor submitted 22 claims to the Engineer. The Contractor asserts that some of its claims were wrongly rejected by the Engineer, which led to the commencement of this arbitration. The Respondent denied the Claimant's claims on the basis that the contract was amended by subsequent addendums, following which the Claimant was either estopped from bringing claims and/or the claims was not made in accordance with the contract (as amended), alternatively that the Claimant failed to provide the requisite supporting evidence. The Respondent also brought a counterclaim, claiming a refund of amount allegedly overpaid to the Claimant for costs of the delay caused by the general elections, inclement weather and costs associated with VAT administration plus interest. The Respondent argued that the Tribunal had the power pursuant to Sub-Clause 20.6 to open up and review and revise any determination of the Engineer. The Claimant averred the Respondent's counterclaim had no legal basis and was unsubstantiated by any evidence. The Tribunal held that Addendum 2 did not waive the contractual requirement for notice under Sub-Clause 20.1 in respect of the claims brought which were not listed under Addendum 2. Those claims brought which did not fall under Addendum 2 did not comply with the notice requirement and therefore rightly rejected by the Engineer and that the Claimant was not entitled to EOT in respect thereof. The Claimant also failed to demonstrate its entitlement to additional payments such as delay/prolongation costs (as a result of no EOT). The Claimant was also not entitled to disruption costs (for lack of evidence), fluctuation of currencies, VAT or interest. The Respondent's counterclaim also failed for lack of evidence. Accordingly, neither party established its entitlement to any of the reliefs sought in these proceedings. As to costs, each party was ordered to bear its own legal costs and	Link*
2022	Constructora OAS Ltd v National Infrastructure Development Company Limited, LCIA Case No. 163399, Case no. CV2022-01832 (14 December 2022)	High Court of Justice of Trinidad and Tobago	Modified Yellow	15.2, 14.6, 20.10, 16.1	A judgment for an application to set aside an arbitral award, concerning a dispute arising on a project for the design and construction of an extension of the Sir Solomon Hochoy Highway to Fortin. In the arbitration, the central dispute revolved around whether or not NIDCO's termination of the contract (pursuant to Sub-Clause 15.2) was valid, and if so, what the entitlement to quantum and damages were. The tribunal concluded that the termination was invalid and NIDCO was ordered to pay certain sums to OAS, whilst the tribunal reserved its ruling on OAS' claim for damages. The grounds for the proceedings before court, and the issues on which the court was asked to rule on included inter alia: (1) was this proceeding legally impermissible as an attempt to appeal the award and/or expressly foreclosed by Sub-Clause 20.10; (2) a question whether certain documents referred to in the Statement of Case incorporated into the award and whether NIDCO was entitled to rely on them for the purposes of its challenge to the award; (3) did the tribunal err in law on the face of the arbitration including in relation to the power of AECOM to determine deductions or adjustments pursuant to 14.6 and the validity of IPC 55; (4) did the tribunal err in law in its finding concerning OAS's conduct following its Sub-Clause 16.1 notice; (5) did the tribunal err in its findings regarding the waiver in clause 5 of Addendum 2. The award was set aside by the court with costs, and the issues initially referred to the tribunal remitted for reconsideration by the tribunal.	Link*

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2022	The Joint Venture "JV Copri Construction Enterprises W.L.L. & Aktor Technical Societe Anonyme" 2. Copri Construction Enterprises W.L.L. 3. Aktor S.A. v. Albanian Road Authority under the Authority of the Ministry of Public Works and Transport, ICC Case No. 23988/MHM/HBH (c-24011/MHM/HBH), Judgment Case No. 20/17978 (31 May 2022)	Paris Court of Appeal	Red Book 2005	20.2 - 20.8	Judgement of an appeal for the annulment of an ICC final award pertaining to a dispute concerning a project for the construction of a motorway. The final award is elsewhere on this table. The project was divided into three sections, JV Copri (the Contractor) was awarded all three contracts all of which were modified forms of the FIDIC Red book, and all of which incorporated the tiered dispute resolution mechanism. The Contractor submitted two claims relating to two of the contracts for additional time and remuneration for costs incurred as a result of delays caused by the Employer. The Engineer granted the Contractor an eot and additional remuneration in its determination, which the Employer contested. The parties realised that the DAB had yet to be constituted. This led to an agreed amendment to the contracts concerning the dispute resolution mechanism up to before referral of the dispute to arbitration. Following this ad hoc DAB proceedings were instituted which two decisions also decided that the Contractor was due monies, albeit no reference was made to VAT (the contract price excluded VAT). Following the DAB decisions, an independent audit was instituted by the Public Finance Inspectorate on suspicion that irregularities may have occurred during the conclusion of the amendments, which irregularities were finally found. The Director General of ARA and the former Director of PMU were both charged, however, the charges of fraud were dropped and they were acquitted from the charges of abuse of authority. In the meantime, and as a result of the Employer's failure to make payment in accordance with the DAB decisions, the Contractor referred the two disputes to arbitration, which were joined under a single case number. The Tribunal firstly declared that it had the requisite jurisdiction to hear the matter and declared the DAB decisions final and binding on the Employer who was ordered to pay the Contractor immediately. The Respondent/Employer brough this appeal on grounds of (1) alleged incompetence of the Tribunal; (2) alleged lack of jurisdiction of the Tribunal on the VAT claims; (3) an alleged violation of international public policy; (4) an alleged abuse of procedure, and asked for an annulment of the award. The Contractor resisted the appeal on all grounds. As to the first ground, the court rejected the appellant's argument and held that the amendments to the contract only made changes to the dispute resolution process prior to referral of the dispute to arbitration and that the parties' common will to submit their dispute to arbitration was not modified by the amendments. The second ground, concerning the Tribunal's jurisdiction regarding VAT, was also rejected on the basis that this was a question of admissibility and did not fall within consideration of an annulment. As to the question of public policy, whilst the court noted that the charges against the DG of ARA and Director of PMU were abandoned, such circumstance alone would in any event not necessarily constitute a violation of international public policy. As to the final ground, the court held that the appellant was mistaken about the extent of its rights. Accordingly, the court dismissed all grounds of this annulment with costs.	Link*
2022	Eastern European Engineering Limited v Vijay Construction (Proprietary) Limited) (MA 35 of 2022) [2022] SCCA 56 (21 October 2022)	Seychelles Court of Appeal	Not specified	15.2 and 16.2	Judgment concerning the appeal of the appellant (project manager and also Employer) who commenced proceedings against the respondent (contractor), alleging fraudulent misappropriation of construction materials - imported prefabricated houses (to accommodate workers on the project site). The structure was imported from Singapore by the Respondent, cleared through customs, but never delivered to site. The contract was terminated by the Appellant. The structure was not returned to the Appellant, which it asserted should have devolved to it upon completion or termination of the contract. The Respondent asserted that ownership in the structure did not pass to the Appellant, that it had used it to discharge its obligation under the contract (to provide accommodation), that temporary facilities provided under the contract always remain the property of the contractor, and that it was under a duty to remove it following the Appellant's termination of the contract since only permanent works devolve to the Employer. The appellant appealed on grounds that the trial judge erred by: (1) allowing the respondent to amend its pleadings after close of pleadings; (2) an incorrect interpretation of Sub-Clause 16.2 of the contract; (3) failing to find that pursuant to Sub-Clause 16.2 the appellant was the owner of the prefabricated houses; and (4) finding that the respondent had no obligation to build living quarters for the workers. The appellant failed on all 4 grounds, accordingly the application was dismissed. As to ground 1. The court found that the amendment had to do with evidence which had already been introduced during the hearing and without objection by the Appellant. Accordingly, it was found that the amendment was to align the pleadings with the evidence subject to the Appellant's right to adduce evidence relating to the new pleading. Ground 1 thus had no merit and was dismissed. Grounds 2 – 4 related to the interpretation of and applicability (scope and limitations) of Sub-Clauses 15.2 and 16.2. The court considered the items of work that must be returned to the Employer, and held that 'other work' related to the Permanent Work and not temporary work. Therefore, Sub-Clause 15.2 applied, not Sub-Clause 16.2. The court also failed to see how the prefabricated house imported by the Respondent could be the property of the Appellant. The court also found that the contract did not require the respondent to build living quarters for the workers on the site.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2022	Decision 1230/2022/QD-PQTT, BG Vietnam Company Limited v BW Company Limited (5 August 2022)	People's Court of Hochiminh City, Vietnam	Red Book 1999	None	An application by the defendant to set aside an arbitral award on the grounds that there was no arbitration agreement, as the legal representatives of either company had not signed the agreement. The signor of the agreement for the defendant was not the legal representative of the company and only occupied a managerial role who had no authority to sign the letter of acceptance on behalf of the defendant. The court set aside the award on the basis that there was no legally established arbitration agreement between the parties.	Link
2022	Arabian Jacking Enterprises for Contracting & Trading Company (AJECT) v Municipal Corporation of Greater Bombay, through the Chief Engineer (SP) Cement Godown Building	India	Not specified	70	Appeal challenging judgment dated 31 March 2017 of the High Court of Bombay in a dispute between the same parties. The appeal was successful and finding that the arbitral tribunal did not fail to exercise its jurisdiction, the court upheld the original tribunal's award. Further, the court held that pre-bid data cannot override the particular conditions of contract as it would reduce the FIDIC Contract to a shadow of itself. A price adjustment clause that allows for both escalation and reduction of price is a commercial term and does not constitute unjust enrichment.	Link
2022	Decision 578/2022/QD-PQTT, ACC PCN Joint Stock Company v TT CR Joint Stock Company (9 May 2022)	People's Court of Hochiminh City, Vietnam	Red Book 1999	1.4, 16.4, 17.1, 20.6	An application to set aside an arbitral award. The parties agreed to terminate the contract, and referred three main disputes (claims) to arbitration: (1) the value of the completed works; (2) value of works outside of the original scope of works; and (3) costs and damages as a result of delays to the works. The arbitral tribunal issued and award, which the court was asked to set aside on the basis that the arbitrator's decision was contrary to the basic principles of the law of Vietnam, since the award: (1) did not consider the plaintiff's request for loss of costs arising from the change in scope of works (contract adjustment regarding the height of the buildings); and (2) the tribunal made a decision on the payment of the warranty amount which was beyond the plaintiff's request. The court agreed and ordered for the award to be set aside.	Link
2022	Jay L W Contractors Ltd v Covec PNG Ltd	Papua New Guinea	Pink Book 2005	14.2	This dispute relates to a road works project in Papa New Guinea. The Main Contractor, China Railway Company International (PNG) Ltd, contracted with the Government for the construction of 65km of road. The main contract adopted the terms of the FIDIC Pink Book 2005. The Defendant Covec, a subsidiary of the Main Contractor, sub-contracted 13km to the Claimant. This was subsequently reduced to 7.25km by a Complementary Agreement as they were falling behind. Whilst the main contract made provision for an Advance Payment per Sub-Clause 14.2 [Advance Payment], Schedule B of the Sub-Contract specifically stated that this did not apply to the Sub-Contract, even though the Claimant was required to pay the Performance Security. Even though the claimant received K799,325.60 for mobilisation, the court dismissed their action for 10% of the sub-contract value.	Link
2022	Masosa Construction Limited V SBI International Holdings AG (KENYA) & 2 Others	Kenya	Red Book 4th Edition 1987	59.1	This claim relates to a sub-contract to build schools in Kenya as part of the Northern Corridor Transport Improvement Project. The subcontractor was sourced, approved and selected / nominated for the project by representatives of the Employer. The Court considered whether the subcontractor was a nominated subcontractor by reference to Sub Clause 59.1 [Definition of "Nominated Subcontractors"] of the FIDIC Red Book 4th edition (1987). Reference was also made to the 3rd Edition of the Building Contract Dictionary. The Court considered it was glaringly evident that the subcontractor was the Employer's nominated subcontractor.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2022	Ndlambe Local Municipality v Quality Filtration Systems (Pty) Ltd and Another (3574/2022)	South Africa	Gold Book 2008	1.3, 14.7, 14.8, 16.1, 16.2, 20	The claim relates to the suspension of works by the First Respondent (Contractor) for non-payment of funds by the Applicant (Employer) which had been certified by the Second Respondent (Employer's Representative). The Employer alleged that the Contractor had breached their contract by suspending works and for not giving requisite notice per Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work]. The Employer applied for an order for specific performance also alleging that the Contractor had failed to achieve mandated performance levels. The Court noted that the contract provided for payment certification in Sub-Clause 14.7 [Issue of Advance and Interim Payment Certificates] and payment in Sub-Clause 14.8 [Payment]. The Court noted that Sub-Clause 14.8 did not require a formal notice to be raised for non-payment. The Contractor informed the Employer that payment was overdue on 09/09/2022 in breach of Sub-Clause 14.8. The letter was not produced before the court. On 26/09/2022 the Contractor issued a letter marked as a notice, referring to the letter dated 09/09/2022 and stating it would suspend work on 30/09/2022 if payment was not satisfied. The Employer objected that the Notice was not contractual, giving them only 4 days to resolve matters and did not sufficiently refer to Sub-Clause 16.1. The Court did not agree. Acknowledging it did not possess the letter dated 9 September 2022 it held that the letter dated 26 September 2022 was a reminder and that the Employer would have been fully aware of the potential suspension. As the Contractor was entitled to suspend the works the Employer's request for an order of specific performance failed. Sub-Clause 16.2 [Termination by Contractor] was discussed but only in the context of this being a consequence had the Applicant failed to resolve the non-payment of funds. Sub-Clause 1.3 was referenced as requiring a notice to be described as such and that it must include a reference to the clause under which it is issued. During the application proceedings the Employer referred to a DAB decision against the Contractor and penalties awarded to the Employer which were meant to set off against IPC payments. The Court noted that it was important that neither of the IPC's the Employer failed to pay in full referred to a DAB decision or an entitlement to make deductions. The Court added that the Employer made no mention of the DAB proceedings until the Reply stage and that they were initiated after the application in hand was issued.	Link
2022	Albanian Road Authority v. Aktor S.A., Copri Construction Enterprises W.L.L., JV Copri Construction Enterprises WLL & Aktor Technical Enterprise	France: Paris Court of Appeal	Multilateral Development Bank Harmonised Edition 2005		This was an application for annulment of an arbitral award relating to contracts for construction of a road in Albania. The application alleged lack of jurisdiction of the arbitral tribunal and a violation of international public policy. The arbitral final award is dated 2020 and shown in this table below. On jurisdiction, the court found that the common will of the parties to submit their dispute to arbitration, which had not been disputed under the initial contracts, had not been altered by the conclusion of two amendments to the dispute resolution process, and so dismissed the application. On public policy, the court did not find a violation, and so dismissed the application.	Link
2022	Tower-EBC G.P./S.E.N.C. v. Baffinland Iron Mines LP and Baffinland Iron Mines Corporation ONSC 1900 (11 April 2022)	Ontario Superior Court of Justice	Bespoke FIDIC	20.6 and 20.8	This project experienced lengthy and unanticipated delays in obtaining necessary permits, the absence of which led BIM to send notices of termination to TEBC pursuant to the Contracts. TEBC challenged BIM's right to terminate the Contracts and claimed damages arising from the termination, including recovery of outstanding standby charges, the cost of spare parts and the loss of profit. The arbitral tribunal awarded TEBC damages for breach of contract and costs against BIM. BIM brought an application for an order: to set aside the awards, to grant BIM leave to appeal, and if appeal is granted, an order granting the appeal and setting aside or varying the awards as necessary. The application was dismissed on the basis that there were no grounds upon which to set aside the Award pursuant to s. 46 of the Arbitration Act 1991, S.O. 1991, c.17 (the "Act"), either with respect to lack of jurisdiction or failure to be treated equally and fairly. The court further confirmed that BIM could not rely on s. 45(1) of the Act to obtain leave to appeal as the arbitration agreement between the parties precluded an appeal from any decision of the Tribunal.	*Link**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2022	Decision 03/2022/KDTM-GÿT, R Joint Stock Company (REE) v Company B (International Construction Company Limited B) and Limited Liability Company H (22 March 2022)	People's Supreme Court, Vietnam	Red/Yellow Book 1999, and 1987 Red Book	8.2, 10.1, 16, 20.1 (subcontract), and 59.5 of the 1987 Red Book	A review of the Court of Appeal's decision concerning a dispute relating to the Contractor's (co-respondent) failure to fulfil payment obligations to the Subcontractor (plaintiff) and the interpretation of Sub-Clause 59.5 of the 1987 FIDIC Red Book. The parties entered into a subcontract, wherein the Subcontractor provided mechanical and electrical services to the Contractor, who was employed by HVTS (the Employer, together the Respondents). During the project, the claimant's value of works carried out increased beyond the initially agreed amount. Upon completion of the project, the claimant submitted requests for payment from the Contractor, which was paid in part (the original contract amount). The claimant commenced proceedings against both the Contractor and Employer for the outstanding amount, against the latter pursuant to Sub-Clause 16.7 of the subcontract which specified that pursuant to Sub-Clause 59.5 of the Main Contract (1987 Red Book), the Subcontractor was entitled to receive certified payments, not made by the Contractor, directly from the Employer. The claimant (Subcontractor) asserted that the Employer was liable for payment on behalf of the Contractor as a result of the latter's breach of its payment obligations. The respondents (HVTS together with BUCG) argued that the claimant was only entitled to the initial amount, due to various factors during the project, including: fines relating to safety violations, construction quality issues, violating the construction schedule, previously agreed negotiations between the parties to cut or change certain expenses, and a warranty fee, of which the respondents were entitled to keep 50% up to 2 years after the completion of the project. The respondents also argued that the claimant was not entitled to payment from the Employer as the project manager had not issued a Taking Over Certificate (10.1) nor had they confirmed that the contractor had not paid in full. Both the Court of first instance and Court of Appeal agreed with the Claimant. The Supreme Court, however, disagreed with the preceding judgments. The Supreme Court held that the conditions in the subcontract agreement were not met (i.e., the Taking Over Certificate), and that the correct interpretation of Sub-Clause 16.7 (referring to Sub-Clause 59.5) was that the Subcontractor merely had a right to receive payment from the Employer (provided that it was certified), and not a right to claim payment from the Employer on the basis that the Employer was not a party to the agreement. Further, the court held that the Subcontract and other agreements between the claimant and Contractor took precedence over the principle of 'fairness', and that the claimant had agreed to the provisions deducting certain fees and allowing the Contractor to maintain part of their fees as a warranty fee. The preceding judgments were overturned, and the matter was sent back to the lower court for retrial.	Link
2022	II CSKP 217/22	The Supreme Court of the Republic of Poland	Not specified	20.1	Judgment concerning the interpretation of Sub-Clause 20.1 and its compliance with Polish law. In the case, the Court of Appeal held that notification period contained in FIDIC by the Contractor of the circumstances constituting grounds for demand for additional remuneration, does not have the same effect to a reduction of the limitation period, and does not violate or circumvent Polish laws as the parties agree such time-limits voluntarily under the principle of freedom of contract. The court confirmed the position that the inclusion of this clause in the FIDIC contracts are to ensure that the Employer is positioned to predict the amount necessary to finance the performance of the contract.	Link
2022	Decision 06/2022/KDTM-PT, Thuan H Joint Stock Company v Textile and Dyeing Joint Stock Company (13 September 2022)	People's Court Hanoi City, Vietnam	Red Book 1999	2.4, 15.2, 16.1	The court had to consider the interpretation of Sub-Clause 2.4 [*Employer's Financial Arrangements*]. Pursuant to the contract, the Employer had to issue a bank payment guarantee to the Contract in accordance with the agreed form. The Employer, when issuing the payment bank guarantee, however, unilaterally and without the Contractor's consent changed some of the contents. The Contractor did not agree with those changes and suspended the works, which was followed by the Employer's termination of the contract. The Employer sought damages from the Contractor pursuant to Sub-Clause 15.2, asserting that the Contractor suspended the works without reasonable excuse. The court disagreed and held that the Employer's unilateral change was in breach of Sub-Clause 2.4. Accordingly, the Contractor's suspension was found to be valid.	Link
2022	Haraf Traders Limited v Narok County Government [2022] eKLR (Civil Suit 1 of 2019)	In the High Court of Kenya at Narok	FIDIC Fourth	2.2, 16.1, 60.10	Following completion of the works, the plaintiff issued a claim for payment of outstanding payment certificates, interest, and cost. The defendant disputed the claim on grounds of breach of contract by the plaintiff, including substandard work and a unilateral extension of performance of the Contract. The parties reached settlement of the principle sum outside of court. The only issue left for determination, therefore, was whether costs and interest on the principal sum were awardable and chargeable, respectively, in light of the parties' settlement and the lawful steps taken in pursuit of remedy. Notwithstanding the allegations of breach of contract against the plaintiff, and in exercise of its discretion 'in order to meet the interests of justice for both parties', the court found no reason to deny the plaintiff costs. The court, however, declined to award interest on the principal sum.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2021	Pro-Khaya Construction CC v Tony Ashford and others 1107/2020 (19 January 2021)	In the High Court of South Africa	Not specified	3.3	The matter before court concerned an application to review and set aside an arbitration award. This review was confined to the procedural irregularity and the court did not have to decide on the merits of the counterclaim. The Applicant argued that it was not afforded an opportunity to present evidence or arguments on its counterclaim and that the First Respondent (arbitrator) committed a gross irregularity in the conduct of the arbitration proceedings. This was confirmed by the court. The court noted that the First Respondent in his email acknowledged that some further representations on the counterclaim would warrant consideration and that no evidence was presented on the counterclaim. The court found that the First Respondent's failure to afford the Applicant an opportunity to lead evidence and/or make submissions caused severe prejudice to the Applicant and prevented a fair trial. The award was set aside.	Link
2021	State Road Agency of Ukraine - Ukravtodor v. Todini Costruzioni Generali Spa, 9 March 2021	Cour d'appel de Paris (Pole 5 - Ch.16)	Not stated although references to the FIDIC 2017 editions.	20.4, 20.5, 20.6, 20.7	The dispute involved a road rehabilitation project in Ukraine. There were two contracts and both provided that disputes should first be submitted to a Dispute Board then, if necessary, to ICC arbitration as set out in clauses 20.4 to 20.7 of the contracts. Disputes were duly submitted both to a Dispute Board and ICC arbitration. The arbitral tribunal issued a first partial award in which, among other things, it held that decisions of the Dispute Board should be executed. Uktravtodor brought annulment proceedings in the Cour d'appel de Paris in respect of this first partial award. Arguments before the court included alleged breach of the right to a fair trial, regarding documentary evidence, jurisdiction of the arbitral tribunal, the application for annulment of the first partial award, alleged breach by the arbitral tribunal of article 1520(3) of the French Code of Civil Procedure and alleged disregard of international public order (article 1520(5) of the French Code of Civil Procedure). The Cour d'appel de Paris rejected the application for annulment of the first partial award.	*Link**
2021	Shapoorji Pallonji & Company Private Ltd v Yumn Ltd & Anor [2021] EWHC 862 (Comm) (06 April 2021)	In the High Court of Justice Business and Property Courts of England and Wales Commercial Court	Not specified	8.7, 20.1	The court was approached for injunctive relief requiring the beneficiary of the proceeds of a bank guarantee to reverse its call on the bond. The Court held that there were no conditions precedent to the making of a valid demand under the bond, other than the requirement contained in the bond. Court dismissed the application. A further issue was whether the court should apply a different test to the strict English law principles in determining the grant of an injunction when dealing with an underlying dispute that an emergency arbitrator in a Singapore-seated arbitration would not be constrained to apply. The court noted that English law governed the contract (FIDIC) and the bond, and rejected the argument that it should not apply established merits. The fact that Singapore law was the curial law was immaterial.	Link
2021	Toucan Energy Holdings Ltd & Anor v Wirsol Energy Ltd & Ors [2021] EWHC 895 (Comm) (14 April 2021)	In the High Court of Justice Business and Property Courts of England and Wales Commercial Court	FIDIC Silver		Dispute regarding the construction and sale of 18 industrial solar parks. Toucan alleged that Wirsol had failed to properly construct the solar parks such that they were defective and made further related claims, including blight and that it had to refinance the debt of the project. Toucan further submitted that the alleged defects were such as to remove the premium that would otherwise be payable (FIDIC Silver Book template), which could never be restored. Court dismissed the vast majority of Toucan's claim (and the claims for blight and consequential losses entirely) and awarded damages to Wirsol in terms of its counterclaim.	Link
2021	ICT-Works Proprietary Limited v City of Cape Town (6582/2020) [2021] ZAWCHC 119 (18 June 2021)	In the High Court of South Africa Western Cape Division, Cape Town	1999 Yellow Book		In the first application, ICT sought declaratory and interdictory relief to enforce the contract until its expiration in August 2025 ("the main application"). Whilst it was accepted that the contract in its (then) current form was to expire in August 2025, the main application was opposed on the basis that the contract was unenforceable due to a mistake relating to the duration of the contract and the person who signed the contract on behalf of the City lacked the requisite authority to sign a contract which expires in August 2025. Court held that section 33 of the Municipal Finance Management Act 56 of 2003 did not prohibit contracts with a variable termination date. It was further argued that a standard FIDIC contract made provision for the issue of variation orders where there may be a delay in the completion of the Works or if the scope of the Works was to be increased. This would invariably push forward the completion date of the project. Court held that the contract entered into was clearly unlawful on the undisputed facts before it with regard to the section 33 process, and therefore, declared the contract invalid and set it aside.	Link
2021	Bengaluru Water Supply And vs M/S. Larson & Turbo Limited, 27 August 2021, CCH84	Bangalore District Court	Not specified	60.10, 67	Application to set aside an arbitral award relating to a water supply scheme (raw water transfer, water treatment plant, transfer of treated water to reservoirs) on public policy grounds (including allegations that the plaintiff party was denied natural justice and that the arbitral tribunal failed to consider various claims). The court found that (in the 'peculiar circumstances' of this case) certain aspects of the award could be set aside but others maintained. The application was permitted in part.	Link
2021	SA National Roads Agency SOC Limited v Fountain Civil Engineering (Pty) Ltd and Another (395/2020) [2021] ZASCA 118 (20 September 2021)	The Supreme Court of Appeal South Africa	1999 Red Book	4.2, 15.2, 16.3	Appeal against an interdict restraining the beneficiary of an unconditional performance guarantee (following termination of the contract) from making a claim under it, pending an arbitration to resolve disputes arising from the execution of a building and engineering contract. Court held the High Court had no power to compel the parties to submit to arbitration to resolve their disputes. The effect of the high court's order referring the disputes between the parties to arbitration, was to amend the contract. It was held that Clause 4.2 does not require SANRAL to prove an entitlement under the contract before it can make a demand on the guarantee, on the basis that the purpose of the performance guarantee 'undoubtedly was to secure SANRAL's position in the event of a dispute and pending resolution thereof'. Any other construction would render meaningless the indemnity in clause 4.2. A claim on the guarantee is permissible, regardless of disputes under the contract (unconditional). Appeal was upheld with costs.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2021	The National Gas Company of Trinidad and Tobago Limited v. Super Industrial Services Limited CV2019-05069 (7 December 2021)	High Court of Justice of Trinidad and Tobago	1999 General Conditions of Contract for Plant and Design Build	First Award: 20.5; Second Award: 15.4, 2.5, 3.5	Determination whether to set aside two preliminary arbitration decisions. The first arbitral decision considered was to determine whether the proper procedure was followed to appoint the Arbitrator. The main point in contention was whether the UNICITRAL Article 8 list-procedure was applicable in the contractual framework governing the Parties. Court held that there was no justification, either based on alleged non-compliance with UNICTRAL Article 8 procedures or breach of implied terms on impartiality, to challenge the Arbitrator's appointment, and no grounds for setting aside the First Award. The second decision was a Partial Award. The court had to decide whether the Employer failed to fulfil the condition precedent to its claim of having a duly appointed Engineer provide the assessments and if so, whether the claim should be dismissed. The challenge to the second Award succeeded in part. Court held that the Engineer's determination of claims is a condition precedent to the Employer advancing its claim (Clause 3.4), however, failure in this respect does not preclude the referral to the DRC (Dispute Resolution Centre of Trinidad and Tobago Chamber of Industry and Commerce) of a claim as there is no specific timeframe for the Engineer's determination in Clause 3.4. Issues regarding finalisation, revision or preparation of an Engineer's determination can be addressed in the arbitration proceedings. Court accepted appointment of the Engineer.	*Link**
2021	The National Gas Company of Trinidad and Tobago Limited v. Super Industrial Services Limited CV2019-05197 (7 December 2021)	High Court of Justice of Trinidad and Tobago	FIDIC General Conditions of Contract for Plant and Design Build Construction, 1st edition 1999 ("the Conditions")	1.1.2.4, 3.1, 3.4	Court was approached to determine whether there was an error of law on the face of the Arbitrator's Award in her construction of the contractual terms governing the procedure to replace the Engineer, and whether the Arbitrator correctly applied principles on construction of written contracts in deciding that the (replacement) Engineer was not properly appointed. Court dismissed the claim and held there was no detectable error of law in the Arbitrator's construction of the contractual provisions. Further held that when Clauses 1.1.2.4 and 3.4 are examined in the context of all other contractual terms the objective meaning still accords with the plain English meaning and that the literal meaning against the wider context does not yield a more commercially viable construction. Compliance with clause 3.4 as a condition precedent to replacement of the Engineer, therefore, does not produce an unreasonable commercial result.	*Link**
2021	Shepherd Construction Ltd v Drax Power Ltd [2021] EWHC 1478 (TCC)	Technology and Construction Court, England and Wales	Yellow Book 1999	14	Amended FIDIC Yellow Book. The judge held that an employer was entitled to withhold sums from the final milestone payment for a project that consisted of two distinct packages of work, even though the amounts withheld related to the first package, which had been completed some time earlier. Discussion (obiter) of applicability of set-off and abatement and requirements for interim applications.	Link
2021	Universal Coal Development (Pty) Ltd v Mineral Resources Development (Pty) Ltd (33182/2021) [2021] ZAGPPHC 839	High Court of South Africa (Gauteng Division, Pretoria)	Gold	1.1.53, 1.5, 9.2, 8.1, 8.2, 13	Dispute whether a contract for the operation of a coal processing plant was for a fixed period of 96 months or whether its duration was only until coal reserves at a certain colliery became depleted, and in the meantime, whether the applicant should continue to pay the respondent the agreed fixed monthly contract price until the return of the Plant. Applicant argued that the anticipated period inserted in the agreement was calculated on the initial proposed rate at which the coal reserve could be mined and processed, rounded off to 8 years (96 months). This was necessary because the standard wording of the FIDIC Gold contract required a time period, rather than a term until the coal reserve is depleted. Court found that there was a prima facie case that the contract included a tacit term or by way of interpretation that all the time clauses in the contract relating to operation of the Plant should be read to mean until the depletion of the coal reserves or 96 months, whichever comes first. Respondent was directed, pending final determination of arbitration proceedings, to hand over possession, operation and control of the Plant within 24 hours from service of the court order, and to pay the applicant's costs.	Link
2021	China International Water and Electric Corporation v. National Highway Authority (Pakistan), ICC 21004/CYK/PTA (C-22431/PTA)	Paris Court of Appeal	Not specified	20.6	Appeal for the annulment of the sole Arbitrator's award on the grounds of a lack of independence and impartiality. Court held the few examples cited with a view of establishing lack of impartiality were irrelevant and under cover of such lack the Applicant actually invited the Court of Appeal to review the merits of the final award, which is prohibited. Action for the annulment against the award rendered was dismissed.	*Link**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2021	Decision 01/2021/KDTM-PT, LG Foundation Construction Joint Stock Company v K Agricultural Materials Group Joint Stock Company (9 March 2021)	People's Court of Khanh Hoa Province, Vietnam	Red Book 1999	4, 10.2, 16.2	An appeal by the defendant seeking to set aside the court of first instance's judgment, due to the court's alleged failure to apply temporary emergency measures and an alleged violation of on-site review and appraisal on the basis that the defendant's legal representative at the time of hearing was not properly appointed and, therefore, was allowed to be present but not to attend. The appeal court agreed that Mr Quang was not the legal representative of the defendant. Regarding the interim measures, the appeal court held that the measures were not applied since the dispute had been resolved by the court in accordance with the law and that this was not a basis to set aside the first judgment. The temporary measures related to security on site, and the court held that pursuant to Sub-Clause 10.2, the plaintiff (contractor) was only responsible for maintaining security and order on site during the construction process, which ended when the contract was terminated and the site was handed back to the defendant. As to the merits of the first judgment. The project concerned a commercial and housing complex building. It was the plaintiff's case that 7 phases of construction were completed and all appropriate documents for payment instalments were issued, all in accordance with the regulations, accompanied by value-added invoices, and all documents related to its payment requests and advances were sent to the defendant. The defendant did not make payment to the plaintiff, in breach of its payment obligations. The defendant asserted that this was as a result of poor quality of construction carried out by the plaintiff. Following several requests for payment, and a notice to suspend, the contract was finally terminated pursuant to Sub-Clause 16.2. The plaintiff commenced proceedings against the defendant, claiming damages for late payment: (1) payment of the entire amount outstanding, specifically the value of the completed phases 1 – 7 (the 7 instalments less the advance payment) plus interest; and (2) damages caused by termination of the contract, including costs of labour, machinery, equipment and materials on site between the period of suspension until demobilisation. The plaintiff also requested the court to declare that its obligation to pay the performance bond to the defendant was not trigger as a result of the defendant's breach of contract and that the guarantor (Bank D) did not need to fulfil its guaranteed payment obligation in accordance with the letter of guarantee. The court found that the plaintiff validly terminated the contract and that the defendant was liable to pay the entire value of completed works (all 7 instalments) to the plaintiff, on the basis that the acceptance records of the phases all confirmed the quality met the required technical standards. Concerning the performance guarantee, the court noted that pursuant to Sub-Clause 16.2, the plaintiff had the right to terminate the contract due to the defendant's (Employer's) breach of contract. The court further noted that the termination was in accordance with Sub-Clause 16.2, and therefore the obligation to pay the guarantee deed to the defendant, was not triggered.	Link
2021	M/S Nitesh Residency Hotels Pvt v M/S Ani Marbles & Granites	Bangalore District Court	Not specified		Challenge of an arbitral award on the basis that the arbitral tribunal lacked jurisdiction to decide the dispute pertaining to structural work and the roof top bar. The parties initially entered into a contract for hardscape work, which FIDIC contract included a clause for arbitration. Following the above, two further (separate) agreements for roof top and structural works were concluded between the parties, which the claimant held were not related to the first contract. It was the claimant's position that only the dispute with regard to the hardscape contract was referred to arbitration, and that it was not the intention of the parties to refer the dispute of all the three agreements to arbitration. It was argued that the tribunal erred in its conclusion that the parties agreed to accept the arbitration clause in the FIDIC contract to be applicable to the roof top and structural works, and therefore, erred in finding that the disputed three contracts were arbitrable under single reference. Tribunal noted that a jurisdiction point can be raised at any stage, however, jurisdiction has to be considered with reference to the facts of the case and it found that the work of the roof top bar and structural work were also covered by the arbitration clause in the FIDIC contract. Court held that the award could not be considered as beyond the terms of the contract and the arbitrator did not travel beyond the scope of the contract.	Link
2020	Joint Venture between Aveng (Africa) (Pty) Ltd and Strabag International GmbH v South African National Roads Agency Soc Ltd and Another (577/2019) [2020] ZASCA 146; 2021 (2) SA 137 (SCA) (13 November 2020)	The Supreme Court of Appeal of South Africa	Not specified	20	This was an appeal from the High Court decision summarised elsewhere on this table. The dispute related to clause 20 and whether site disruptions constituted force majeure. The JV asserted that SANRAL was restricted from calling up the performance guarantee on the basis that it would be unlawful since SANRAL allegedly had not met certain conditions in the underlying contract which JV considered limited its right to call up the guarantee. The High Court judge did not make a decision on whether or not the right to call up the guarantee was limited by the underlying contract. The learned judge held that the JV failed to make out a prima facie case that disruption of works constituted force majeure, and dismissed the application but subsequently granted leave to appeal. The appeal related to whether or not the first respondent was restricted by the underlying contract from demanding payment in terms of the performance guarantee issued in its favour, i.e., whether the beneficiary of a performance guarantee could be prevented from demanding payment in a construction agreement dispute. Whilst the court acknowledged the potential for development under South African law, it held that – similar to a bank guarantee - the autonomy of a performance guarantee allows it to be called upon independently of the underlying contract. Appeal was dismissed with costs.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2020	Decision number 09/2020/QD-PQTT - H Group v HC Industrial Design Joint Stock Company, NS Trading and Service Joint Stock Company, and M Construction and Investment Consulting Joint Stock Company (16 September 2020)	People's Court Hanoi City, Vietnam	Silver Book 1999	20.2 and 14.1	Following its unsuccessful jurisdictional challenge, see decision 02/2020/QD-PQTT (summarised elsewhere on this table), the VIAC tribunal issued an award in favour of the plaintiffs. The defendant applied to the court to have the award set aside. Procedurally, the defendant sought this relief on the same grounds as its previous jurisdictional challenge – i.e., non-compliance with pre-arbitration procedures (DAB and amicable settlement, pursuant to Sub-Clauses 20.2 – 20.5). The court rejected the defendant's position and found it was res judicata, on the basis that court had already pronounced itself on this issue under the decision of 02/2020. Substantively, the defendant alleged that the tribunal failed to consider evidence relating to the applicable currency exchange rate. The court held that this fell within the merits of the dispute, which were not subject to review in an application to set aside an award. The respondent's application was dismissed.	Link
2020	Decision 296/2020/KDTM-PT, A Joint Stock Company v C Joint Stock (13 May 2020)	People's Court of Hochiminh City, Vietnam	Red Book 1999	3.3, 8.7, 15.2	An appeal concerning a claim for damages following termination of the contract for works on the A&B Saigon Tower project in Nha Trang, Vietnam. The disputes between the parties included delays to the project and poor quality of works, which the contractor failed to remedy, and which led to the plaintiff terminating the contract. A new contractor was engaged to complete the works and carry out the necesary remedial works. The plaintiff commenced proceedings against the defendant (contractor) claiming payment for: (1) delay damages; (2) refund of the sum with which the advance payment exceeded the actual construction value; and (3) damages for completion and remedial costs necessary as a result of the defendant's poor quality of works (after deducting the liquidated value of machinery that remained on site). The defendant denied the allegations made against the quality of its work and that the plaintiff did not comply with the Sub-Clause 3.3 notice (to correct) provisions and could, therefore, not hold the defendant liable for the remedial costs of its new contractor. It also asserted that both parties voluntarily agreed to terminate the contract. The defendant further denied liability for delay damages, asserting in the first instance that the plaintiff did not have a valid construction permit, without which none of the progress milestones were valid. In any event, it rejected the plaintiff's interpretation of delay damages calculated at 12% of the value of the contract, and asserted that the contract provided a rate calculated on the contract value of each violated part and not the entire contract value. The court ruled in favor of the claimant, finding the respondent liable on all grounds. On appeal the defendant did not present any new evidence, nor did they attend the appeal hearing. The Supreme Court dismissed the defendant's application and upheld the original judgment in favour of the plaintiff. Notably, during the appeal proceedings the plaintiff corrected its claim for delay damages to comply with the law of Vietnam, i.e., 8% of the value of the breached (delayed) contract – i.e., delayed volume (confirming that currently, under the law of Vietnam, FIDIC delay damages are treated as a penalty and are therefore capped).	Link
2020	Decision 02/2020/QD-PQTT, HC Industrial Design Joint Stock Company, NS Trading and Service Joint Stock Company, and M Construction and Investment Consulting Joint Stock Company v Vietnam Chemical Group (23 April 2020)	People's Court Hanoi City, Vietnam	Silver Book 1999	20.2, 20.3, 20.6, 20.8	Court decision concerning a petition to reverse a VIAC (Vietnam International Arbitration Centre) tribunal's decision issued in respect of its jurisdiction. Following a dispute between the parties, the plaintiffs commenced arbitration proceedings with the VIAC. The defendant challenged the jurisdiction of the tribunal, arguing: (1) that the plaintiffs commenced arbitration under Sub-Clause 20.6 prematurely, i.e., without following the mandatory DAB and amicable settlement procedures required pursuant to Sub-Clauses 20.2 – 20.5; and (2) that the arbitration agreement only selected the procedural rules of the VIAC and Vietnam as the place of arbitration, and did not specifically refer to it as the administering institution. The plaintiffs asserted that they had no choice but to refer the dispute directly to arbitration on the basis that: (1) the respondent unilaterally took measures to recover certain provisional payments, which caused financial damage to the plaintiffs; and (2) that the parties had at that point been engaged in discussions for over two years in an attempt to settle, and the DAB and amicable settlement procedures, therefore, would only have prolonged the dispute. The VIAC denied the defendant's jurisdiction challenge. The court agreed with the VIAC's decision and rejected the defendant's application. The court found that reference to the VIAC rules was sufficient to demonstrate the parties' intention and choice of the VIAC as the administering institution. As to the validity of the arbitration agreement, that was considered with reference to the Law on Commercial Arbitration (LCA). The court noted that non-compliance with pre-arbitration procedures was not listed as a legal ground under the LCA. The court further held that commencing arbitration without engaging in DAB and amicable settlement procedures were not inconsistent with the agreed dispute resolution mechanisms, also in light of the fact that the dispute remained unresolved despite extensive correspondence between the parties for a period of over 2 years.	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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2020	Airports Authority of Trinidad and Tobago v Jusamco Pavers Limited, Claim No. CV2018-02353 (17 February 2020)	High Court of Justice of Trinidad and Tobago	Yellow Book 1999	2.5, 3.2, 3.4, 3.5, 20.1	Airports Authority of Trinidad and Tobago engaged Jusamco Pavers Limited to rehabilitate the runway. The contract appeared to be completed and retentions released following the end of the defects notification period, but the parties engaged in discussions in relation to defective work and its rectification. Eventually, AATT was advised to commence arbitration proceedings to preserve its position. JPL responded by denying liability for most of the defective works and refused to accept the appointment of an arbitrator. JPL argued that 1) there was an inordinate delay in commencing arbitration, 2) the dispute had not yet crystallised, 3) the Engineer had not been properly replaced and so the determination was not valid and 4) a valid Engineer's determination is a pre-requisite to commencing arbitration. Held: 1) Due to the negotiations, and the apparent good faith of JPL, the delay was not inordinate - AATT believed things could be resolved amicably. 2) The dispute had clearly crystallised, as JPL had denied liability for defects AATT was seeking rectification for. 3) AATT had not given the requisite notice in order to replace the Engineer, and JPL had refuted its appointment. However, the Court noted that consent must not be reasonably withheld, and obiter stated that in this case, it appeared that JPL would have refused consent to any engineer, as it would not want AATT to get an engineer's determination as preparation for arbitration, and so hinted that this would likely be a situation in which consent was unreasonably withheld. 4) An engineer's determination is not a pre-requisite to commencing arbitration.	Link
2020	GCC JV AEC v Rajasthan Urban Infrastructure Development Program, 6 March 2020	High Court of Rajasthan at Jaipur	FIDIC 2008	20.8, 20.11	Application to appoint an arbitral tribunal to adjudicate disputes between the parties after failure to appoint a DAB. The court granted the application.	Link
2020	Junior Sammy Contractors Limited v Estate Management and Business Development Limited (Claim No. CV2018-4840) (11 March 2020)	In the High Court of Justice Republic of Trinidad and Tobago	1999 FIDIC Red	14.3, 14.6, 14.7 and 14.8	Extensive road works were completed by Junior Sammy (Contractor) in 2016 for its Employer EMBD. Approximately USD 82 million was certified for payment for those works by the Engineer issuing 7 IPCs. The IPCs remained unpaid for 3 years, which led to the Contractor instituting a claim against the Employer, seeking recovery of half of the Retention Monies which it claimed they were entitled to pursuant to Sub-Clause 14.9, on the basis that the Engineer had issued the taking over certificate and on the basis that the Defects Notice period had come to an end. The defendant raised three defences: (1) due to the assignment of all their receivables under the contract to a third party, the latter was the only party with the right to institute proceedings; (2) the IPCs were incorrect and allegedly could be re-opened; and (2) the defendant had not been able to conclude its analysis of the IPCs since it was awaiting specific disclosure of documents. Following the defence, the claimant brought an application for summary judgment, and the defendant almost simultaneously filed an application for specific disclosure. The court granted the claimant summary judgment against the defendant and dismissed the application for specific disclosure.	Link
2020	Italian Thai Development Public v Mcm Services Ltd, 27 May 2020	New Delhi High Court	Not specified	4.1, 67, 12.1, 42.2, 44, 73, 12.1, 67	Challenge to an arbitral award (which followed a DRB decision). Disputed: 1) Refund of liquidated damages; 2) Payment for ground investigation; 3) Payment of withheld certified amount; 4) Interest. Arbitral award upheld.	Link
2020	Estate Management & Business Development Company Limited v Junior Sammy Contractors Limited TT 2020 CA 31 (29 June 2020)	Court of Appeal, Republic of Trinidad & Tobago	1999 FIDIC Red	14	Following summary judgment (in favour of the claimant) and the dismissal of its application for specific disclosure (see above judgment dated 11 March 2020), the defendant filed its appeal against both decisions as well as an application for stay of execution pending an appeal. This judgment concerns the latter application in which the court was engaged to exercise its discretion to order a stay of execution, whilst recognising the starting principle that a party is not lightly to be deprived of its judgment. The court recognised that giving effect to the overriding objective may warrant a practical common-sense approach in balancing the relative risk of harm to both parties while the appeal is pending. Main question the court had to answer was whether there was a risk of injustice to either of the parties if the stay was granted or refused, and secondly if a stay would be appropriate, what terms or conditions would be appropriate which are also just and proportionate in the circumstances. The court considered the following: (1) whether or not EMBD demonstrated that its appeals have a good prospect of success; (2) that it would be ruined, or its appeal otherwise stifled if forced to pay JS immediately instead of after the (unsuccessful) appeal; and (3) the risks that JS would be unable to enforce the judgment if the stay is granted and EMBD's appeal fails. The court found that a stay of execution on specific conditions was warranted.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2020	Crsc Research and Design Institute Group Co. v Dedicated Freight Corridor Corporation of India Ltd & Ors, 30 September 2020	Delhi High Court	Yellow Book 1999	8.4, 19.1, 19.2, 19.4, 19.7, 15.2, 15.1, 8.2, 1.1.3.3, 3.5, 20.2, 15.5, 15.3, 15.4, 2.5, 4.2	A terminated contractor sought an injunction restraining the employer from calling on various guarantees under the contract. The contractor's petition was denied.	Link
2020	Maeda Corporation and China State Construction Engineering (Hong Kong) Limited v Bauer Hong Kong Limited [2020] HKCA 830	Hong Kong Court of Appeal	Similar notice provisions to FIDIC 2017		Appeal from the 2019 High Court decision. Appeal dismissed. The Court of Appeal held that Bauer had failed to give proper notice and that the arbitrator's decision on this point was wrong. Bauer was not entitled to bring a claim in the arbitration on a different contractual basis to the one notified.	Link
2020	SBI International Holdings (Kenya) v Kenya National Highway Authority	High Court of Kenya at Nairobi (Milimani Law Courts)	Not specified	20.4, 20.5, 20.6, 20.7 (amended)	Enforcement of DAB Decision. Stay of proceedings pending reference to arbitration. Plantiff argued that Defendant had waived its right to apply for a stay on the basis that Defendant had filed an unconditional Memorandum of Appearance. This was dismissed by the court: Defendant had not filed any defence or taken any steps which would be construed as acknowledging Plaintiff's claim. The court declined to stay the proceedings.	Link
2020	1. The Joint Venture "JV Copri Construction Enterprises W.L.L. & Aktor Technical Societe Anonyme" 2. Copri Construction Enterprises W.L.L. 3. Aktor S.A. v. Albanian Road Authority under the Authority of the Ministry of Public Works and Transport, ICC Case No. 23988/MHM/HBH (c-24011/MHM/HBH)	Paris, France	Pink Book 2005	20	Road construction contracts. Claim for EOT and costs. Dispute over the establishment of a DB and whether DB decisions are final and binding. DB decisions determined to be final and binding. Respondent ordered to pay Claimant as determined in the DB Decisions. VAT due.	*Link**
2020	Ministry of Environment and Forestry v Kiarigi Building Contractors & another [2020] eKLR, Miscellaneous Civil Application E320 of 2019	High Court of Kenya at Nairobi	Not specified	69.3, 60.13, 69.3, 65.6, 69.1, 69.2, 69.3, 69.5, 65.8(c)	Applicant attempted to set aside an arbitral award. The contract had been terminated. The applicant alleged that the arbitrator acted beyond the scope of reference in awarding compound interest which was not provided for as part of the contract. In relying on a non-existent formula to make the award, the arbitrator had re-written the contract. It also contended that the arbitrator had ignored the express provisions of the contract in the calculation of interest and by so doing awarded interest that was injurious to the national and economic interests of Kenya as taxpayer funds would be used to settle the award if it was not set aside. Further, the arbitrator had acted in excess of jurisdiction by awarding a sum for a Variation despite this Variation being rejected by the applicant, by awarding a sum on account of an unpaid certificate which was not certified by the project manager and by awarding a sum for idle time and equipment that was not based on the contract nor supported by the BOQ. The applicant also argued that it should keep the retention money. It also argued that the claim was time barred. The court held that the compounded interest was 'inordinately high, [did] not constitute compensation but [was] punitive and amounts to unjust enrichment to the extent that if it [was] enforced, would injure the public finances'. The award of such interest was set aside for violation of public policy. Regarding the Variation, the court held that it was a matter within the contract which the arbitrator considered and came to a conclusion. This was contemplated by the parties for determination. The court also held that the uncertified amount was also within the arbitrator's reference. The arbitrator held that retention money was due to the respondent as the contract was terminated prematurely due to the applicant's default. The court held that this was a matter within the scope of the arbitration. The court came to a similar conclusion regarding the idle time claim. The applicant was precluded from raising limitation at this stage of the proceedings. The award was set aside only to the extent of compound interest applied to each head of claim.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2020	Zakhem International Construction Ltd v Kenya Pipeline Company Ltd [2020] eKLR, Civil Case No. E322 of 2019	High Court of Kenya at Nairobi	Conditions of Contract for Works of Civil Engineering Construction, 1992		Application for defence to be struck off on the grounds that it was scandalous, frivolous or vexatious (etc) and for judgment to be entered for the applicant. The dispute related to a contract for the construction of a replacement pipeline. The applicant contractor sought compensation for delays on the project, etc. The respondent employer argued that the matter should proceed to a full trial. The court entered summary judgment for the applicant contractor in accordance with the overriding objective of the courts which was to adjudicate disputes expeditiously and efficiently at a reasonable cost. The court noted obiter that the dispute was straightforward and was more in the nature of a reconciliataion of accounts in respect of a project which was completed and handed over four years ago.	Link
2020	Intex Construction Limited v Kenya Rural Roads Authority [2020] eKLR, Civil Suit 80 of 2019	High Court of Kenya at Nairobi	Not specified	67.1	The applicant sought an order (via application for summary judgment) to enforce two adjudicator's awards against the respondent in relation to two contracts for road projects. The respondent argued that there was no decision to enforce because the applicant had failed to submit an original or certified copy of the adjudicator's awards and that according to the contract an appeal against an adjudicator's award should take the form of arbitration. The court found that, save for a technical objection, the respondent had not raised any legal objection and granted the application.	Link
2020	Okiya Omtatah Okoiti & 2 others v Attorney General & 4 others [2020] eKLR, Civil Appeal 13 of 2015	Court of Appeal at Nairobi	Possibly Silver Book		The dispute related to the Standard Gauge Railway (SGR) in Kenya. This appeal related to (a) various disputes concerning the legality of procurement of the project, in respect of which the court partially set aside the judgment of the High Court and found that the procuring entity had failed to comply with and violated certain provisions of the Constitution and of the Public Procurement and Disposal Act 2005, and (b) whether certain documentary evidence should remain expunged from the record, in respect of which the court upheld the decision of the High Court.	Link
2020	Omega Construcciones Industriales, S.A DE C.V., Sinohydro Costa Rica, S.A., Desarrollo y Construcciones Urbanas, S.A. DE C.V. and Caabsa Infraestructura, S.A. DE C.V. v. Comisión Federal de Electricidad, LCIA Case No. 163471	Mexico City, Mexico	Not FIDIC (but similar clause)		Not FIDIC - similar to clause 5.1 (see paragraph 522 of the award; regarding the contractor carrying out its own risk analysis prior to submitting a proposal). Contract for the construction of a hydroelectric project. The claims related to alleged differences in the conditions offered by Respondent when the project was tendered, including restrictions on trucks entering the Site, the lack of skill and disposition of local workers, restrictions on other areas of the Site, implementation of shutdowns and blocades that impacted access to the Site, and as a result of these various acts and omissions of the Respondent, it was impossible for Claimant to complete the project. Respondent denied the claims and challenged the scope of the arbitration agreement, including that the arbitral tribunal lacked jurisdiction to resolve technical and administrative disputes including those relating to force majeure events, since the parties agreed that these should be resolved not through arbitration but by expert proceedings. The tribunal found that it had jurisdiction and, on the merits, that Respondent had breached various obligations regarding access to the Site, cooperation, etc.	*Link**
2020	Godfrey Ajoung Okumu & another v Engineers Board of Kenya [2020] eKLR, Civil Appeal No. 89 of 2019	Court of Appeal at Nairobi	Not specified		Bridge collapsed during construction causing injury to persons. The Engineers' Board of Kenya commissioned an enquiry, found that the appellants were guilty of professional misconduct having breached certain codes of conduct, and sanctioned the appellants for this breach including removing their names from the relevant professional register. The appellants sought in the High Court to quash the respondent's decisions on various grounds including that: their role on the project was limited, the main construction contract - which was a FIDIC design and build contract - was between other parties and the appellants had no role in that contract, the accident arose because of errors in the sequence of concreting (i.e., errors during construction) by the contractor to the FIDIC contract, plus other procedural grounds. Respondent maintained that the primary cause of the collapse was wrong sequencing of concreting as a result of failure by the appellants to provide adequate design information to the contractor. The High Court upheld the respondent's decision on the basis that judicial review is concerned with the decision making process, not the decision itself or the merits of the decision and that, as long as the process followed by the decision maker is proper, and the decision is within the law, a court will not interfere, and administrative decisions can only be challenged for irregularity, irrationality and procedural impropriety. The Court of Appeal found that the respondent failed the rationality and proportionality tests and held that the judge ought to have quashed the respondent's desicion, which was made on the basis that the design was flawed and on the fact that the appellants had failed to supervise the works. The appeal partially succeeded (the removal of the appellants' names from the register for other procedural grounds was upheld).	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2020	Department of Public Works and Highways (DPWH) vs Italian-Thai Development Public Company Ltd (ITD) and Katahira & Engineers International. (KEI) G.R. No. 235853 (13 July 2020)	Supreme Court Manila, Republic of the Phillipines	General Conditions of Contracts for Works of Civil Engineering Constructions [FIDIC] Fourth Edition 1987, and 1988 with Editorial Amendments and 1992 with further Amendments (FIDIC Conditions); and Part II – Conditions of Particular Application (COPA).		This matter concerned a petition for review, seeking the reversal of a decision issued by the Court of Appeal following its confirmation of an arbitral award. The Supreme Court confirmed that, unless the claiming party can show any of the exceptional circumstances, the court is duty-bound to uphold the integrity of the arbitration process and ensure that the parties do not undermine the process they voluntarily engaged themselves in. Following an instruction to widen the carriageway of the road, and several variation orders, ITD submitted a claim for overrun earthwork quantities. A joint survey was conducted by the parties to evaluate and resolve the claims. KEI advised ITD that its claim for additional compensation on the overrun earthwork quantities could not be allowed. The matter was referred to the Construction Industry Arbitration Commission ("CIAC"). DPWH submitted counterclaims against ITD. In its final award, CIAC found that DPWH was liable for ITD's claim for overrun earthwork quantities (with interest). According to CIAC, ITD's claims were not barred by waiver, abandonment or estoppel despite its failure to comply with the notice requirement under FIDIC and COPA, on the basis that its non-compliance with the notice requirement is mooted by the express provision under FIDIC which allows claims to be decided under arbitration, even though a party failed to comply with timely notice and submission of contemporary records requirements. Further, DPWH was estopped from raising this issue when it decided to conduct a joint survey to evaluate and resolve the claims. The CIAC also held that there can be no waiver because ITD officially notified KPWH and KEI of its intention to be paid for its claims. Each party was ordered to shoulder their respective legal expenses. The counterclaims were denied. DPWH filed a petition for review of the final award, however, the Court of Appeal ("CA") dismissed the petition and ruled that the CIAC did not err in its ruling. DPWH applied to the Supreme Court ("SC") for an exception (to the rule that only pure questions of law may be raised) and reversal of the CA decision. The SC held that the findings of the CIAC were final and conclusive and are not reviewable by court save under narrow exceptions. The SC found that none of the exceptional circumstances existed in this case. DPWH's claim for exception was denied and the CIAC's arbitral award ruled as final and unappealable and only questionable before court on pure questions of law.	Link
2019	Decision 11/2019/QD-PQTT, HydroChina HuaDong Engineering Corporation and China Railway 18th Bureau Group v Vinh Son – Song Hinh Hydropower JSC (14 Novembr 2019)	People's Court Hanoi City, Vietnam	FIDIC Yellow/Silver Book 1999	20.6	Decision setting aside an arbitral award under Vietnamese Laws. The case concerns construction of a hydropower plant project. The contractor (claimant) terminated the contract on the basis of delays and escalated costs, and following disagreement with the employer (respondent) on sums owning to the claimant, the latter referred the dispute to arbitration and was granted an award in its favour. The respondent filed a request to this court to set aside the award, on three grounds: (1) the tribunal's decision to change the hearing venue, thus outside of the parties' agreement; (2) the tribunal's failure to take into consideration the respondent's factual witness evidence pursuant to the IBA Rules, in violation of the arbitral procedures; and (3) tribunal was said to have failed to make its own assessment of the quantum of damages, instead it was alleged that the tribunal relied solely on the expert evidence produced by the claimants. Regarding the first ground, the court noted that the parties agreed Hanoi as the place of arbitration, as recorded in the tribunal's procedural order. However, during the course of the proceedings, the tribunal granted certain interim relief against the respondent. The respondent instituted proceedings in the Hanoi Court against the tribunal in their personal capacity, which was followed by (and the reason for) the tribunal's decision to use its discretion to change the location of the hearing to Osaka in Singapore. The court held that a change departing from the parties' agreement was sufficient to warrant setting aside the award. The second ground. Whilst the respondent filed factual witness evidence, those witnesses were not present at the hearing, and the respondent decided not to participate in the hearing. The tribunal viewed this as a general lack of cooperation in the arbitration and decided to not attach any weight to the factual witness statements. The court held that the tribunal had violated Article 56.2 of the Law on Commercial Arbitration (LCA), to settle the dispute on available documents and evidence, and by not taking into account the respondent's evidence and its application of the IBA Rules, the tribunal adversely affected the respondent's interest. The third ground. The court held that the tribunal failed to embark on its own exercise of properly assessing the quantum, in contravention of Article 46.3 of the LCA.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2019	PCVN Mechanical and Construction Company v HQ Investment and Development Company Limited, Decision number 09/2019/QD-PQTT (24 September 2019)	People's Court of Hanoi City, Vietnam	1999 Red Book	1.1.3.10, 10.1, 20.2, 20.3, 20.4, 20.5, 20.6, 20.8	Decision concerning an application to set aside an arbitral award. The requesting party contended that the award violated local laws, and that the VIAC (Vietnam International Arbitration Council) lacked jurisdiction on the basis that the parties failed to comply with the requirement to pursue amicable settlement pursuant to Sub-Clause 20. 5, instead the dispute was referred directly for arbitration (under Sub-Clause 20.6). They further asserted that the tribunal's decision relating to the cost of scaffolding fell outside the scope of contract, i.e., formed a completely separate agreement, and therefore outside of the tribunal's jurisdiction. It was further contended that the tribunal's decision regarding payment of a retained warranty (pursuant to Sub-Clauses 1.1.3.10 and 10.1) was wrong on the basis that the project was not eligible for actual completion since certain legally required tests had not been completed, and the decision was therefore not in accordance with the law. The related party opposed the application on the basis that parties deleted Sub-Clause 20.2 and 20.3 relating to DRB proceedings, and asserted that the requirement for amicable settlement pursuant to Sub-Clause 20.5 was only applicable following DRB proceedings and a decision under Sub-Clause 20.4. Accordingly, Sub-Clause 20.5 was not applicable, and the parties had the right to refer disputes directly for arbitration. In relation to the allegations of matters outside of the tribunal's jurisdiction and the warranty, the related party asserted that for the present application before court, the court could only consider the procedural aspect and not the content of the dispute as the latter had already been resolved by the tribunal. The court agreed. The court confirmed that pursuant to Sub-Clauses 20.8, the amicable settlement requirement in accordance with Sub-Clause 20.5 was only mandatory in cases where Sub-Clauses 20.2 – 20.4 were applicable. On procedural grounds, the court found that the requesting party's application failed. The issues regarding the warranty were said to fall within the content of the dispute and not within the scope when considering an application to set aside an arbitral award as this court would not entertain a re-trial as the dispute had already been resolved. The court concluded that there was no legal basis for setting aside the arbitral award.	Link
2019	M/S National Highways Authority v M/S Sunway Construction Sdn Bhd, 22 January 2019	New Delhi High Court	FIDIC 4th Ed. 1987	11.1	Price adjustment and toll tax disputes. 1) Whether excise duty exemption on the cost of materials was to be included while calculating and determining the price adjustment for bitumen and fuel. Held: the excise duty should not be included in the valuation. 2) Whether contractor was entitled to reimbursement of toll tax as a result of failure by employer to hand over a bridge on which the contractor was working. Held: The contractor should have full access to the bridge. There was no stipulation in the contract that the toll had to be paid by the contractor.	Link
2019	The Municipal Corporation of Greater Mumbai v Angerlehner Structural and Civil Engineering Company, 27 February 2019	Bombay High Court	FIDIC 4th Ed. 1987	51.1, 55.1, 56.1, 60.1, 60.2, 51.2	Payment disputes. Lump sum v remeasurable contract. Whether additional quantities caused by contractor's construction methodology and design. Extra quantities not a result of a variation but actual quantities over and above those stated in the BOQ. Additional quantities were not caused by the contractor's construction methodology or design. Arbitration award upheld.	Link
2019	Republic of the Philippines, represented by the Department of Public Works and Highways (DPWH) v. Roguza Development Corporation, GR No. 199705, 3 April 2019	Supreme Court Philippines, Baguio	Not specified	42.2, 54.1	Appeal against lower court decisions concerning an arbitral award issued in respect of a dispute about a road rehabilitation project. The project was commenced but suspended because of right of way problems. The suspension lasted 32 months meaning that the project completed late. The contractor made monetary claims under the contract regarding this suspension. The contractor argued that it was constrained to accept payment from the employer of a lower amount than claimed because of financial distress it was suffering which was aggravated by the length of time that had elapsed since the claim was made and the employer made its offer. The contractor commenced arbitral proceedings for the original claimed amount. The arbitral tribunal found the that contractor had established that it was in financial distress at the time the employer offered to pay the reduced amount and that it was constrained to accept the offer (the 'letter-waiver') to facilitate payment. The arbitral tribunal declared the 'letter-waiver' to be 'inefficacious' and awarded the contractor some of the additional sums claimed. There followed numerous conflicting court decisions regarding the arbitral award. The Supreme Court noted that the existence of conflicting decisions appeared to result from failure by the contractor's counsel to disclose the identity of the parties and issues in two of the court cases. The Supreme Court found that elements of res judicata existed and granted the appeal against certain of the lower court decisions.	Link
2019	Group Five Construction (Pty) Ltd v Transnet SOC Limited (45879/2018) [2019] ZAGPJHC 328 (28 June 2019)	South Gauteng High Court, Johannesburg, South Africa	NEC	W1.3(8), W1.4(3)	The contract in this case was not FIDIC but NEC 3. However, for the purposes of this table, the case is considered instructive in relation to time limits for adjudicator decisions. Following a dispute between the parties an adjudicator was appointed. The adjudicator's determination was due after an exchange of documents between the parties and within four weeks of the end of the period of received information (which was 29 June 2018). The adjudicator requested an extension of time for his decision (which was due 27 July 2018). This was refused by Transnet but agreed by Group Five. Even though both parties had not consented, the adjudicator continued with the adjudication and finally published his determination on 18 September 2018. Group Five applied to the High Court for an order to give effect to the adjudicator's determination. Transnet resisted. The court found that the contract failed to stipulate what would happen if the parties failed to agree to an extension and considered that the requirement for parties' consent was to give them some control over the process. The court held that the adjudicator was not competent to proceed beyond the initial deadline in the absence of both parties' consent and, accordingly, the determination was late, in breach of the terms of the contract, and was not binding or enforceable.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2019	Gammon India Limited v National Highways Authority of India, 2 July 2019	High Court of Delhi	Not specified		Contract for road widening project. Referral to DRB for recommendations and then to arbitration. Challenges to arbitral award. The court rejected the challenges. The court urged the NHAI not to challenge awards unless there was a reasonable chance of success, noting the public funds involved.	Link
2019	Indeen Bio Power Limited v M/S. Efs Facilities, 24 July 2019	High Court of Delhi	Not specified		EPC contract relating to biomass plant. Appeal against arbitral award. The arbitral tribunal found that it did not have jurisdiction to hear the dispute. The court did not agree with the arbitral tribunal's conclusion that it had no juridiction and allowed the appeal.	Link
2019	Wapcos Ltd v Salma Dam Joint Venture, 14 November 2019	Supreme Court of India	Not specified	20.1, 20.6, 1.14, 4.3	Concerned the right to invoke arbitration where the contract had been subsequently amended. Held: it was clear from the nature of the amendment that all pending claims of the contractor, as of the date of amendment, were intended to be 'buried' and the arbitration clause could not be invoked except for claims arising out of force majeure events. The Contractor was a consortium. One member could not invoke arbitration on behalf of the consortium after its authority to do so had been specifically revoked by another member.	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
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
2019	Pride Enterprises Limited v Kenya National Highways Authority, Misc. Application No. 124 of 2019	High Court of Kenya at Nairobi	Not specified	67.3	Application for recognition and enforcement of arbitral awards in respect of FIDIC-based contract for the reinstatement of a road in Kenya. Court ordered the filing of the original arbitration agreement and awards before considering the application.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2019	Associated Construction Company (K) Limited v Ministry of Transport, Infrastructure Housing Urban Development Public Works & another, Civil suit no. 189 of 2019	High Court of Kenya at Nairobi (Commercial and Tax Division)	FIDIC 4th Ed. 1987	67.3, 60.2, 60.4, 60.5	The Plaintiff sought an order (a) restraining the Defendant from terminating the contract pending the referral of the dispute to arbitration and (b) that the dispute be referred to arbitration pursuant to clause 67 of the contract. The court held that the conditions for granting an interim measure of protection were not fulfilled. The Plaintiff's application was dismissed.	Link
2019	ICC Case No. 23652/MHM	Bucharest, Romania	FIDIC 4th 1987 (amended)	67	Rail rehabilitation contract. Claimant contractor, Respondent employer. Claimant argued that Respondent was contractually obliged to comply forthwith with a DAB decision and asked the arbitral tribunal to order Respondent to make payments as directed by the DAB (primary claim). In the alternative, only if its primary claim failed, Claimant asked the arbitral tribunal to open up, review and confirm the DAB decision and order Respondent to pay VAT, interest and penalties as owed under the contract and the applicable law (secondary claim). Respondent argued that the claim was not arbitrable and was inadmissible, that one of the DAB decisions violated Romanian law and public policy and that the arbitral tribunal should open up, review and revise the DAB decision. The arbitral tribunal granted Claimant's primary claim so the arbitration did not need to proceed to a second phase. The arbitral tribunal considers (para 324) other cases regarding the enforcement of DAB decision. The arbitral tribunal states (para 326) that it has the power and is in fact obliged to order Respondent to abide by the DAB decision and that this result 'reached with respect to a FIDIC-based contract under Romanian law - is also consistent with the FIDIC Guidance Memorandum of 1 April 2013'.	*Link**
2019	WBHO v Nelson Mandela University and Another (2121/19) [2019] ZAECPEHC 68	High Court of South Africa	Silver Book 1999	13.8	The applicant was an unsuccessful tenderer whose tender was disqualified for non-responsiveness. The project was to be a turnkey project based on the FIDIC 1999 Silver Book. The applicant had included a clause in the Contract Data of its tender permitting escalation where completion was delayed beyond May 2020 through no fault of its own and price adjustments where the contract was not awarded within 2 months of the tender submission. The respondent submitted that the applicant was seeking to introduce price adjustments specifically not contemplated by the FIDIC Silver Book and was attempting to transfer risks that the first respondent had specifically transferred to the successful bidder. The court held that the applicant's tender did not adhere to the conditions of tender or to the tender terms. The proposal amounted to an open-ended transfer of risk to the first respondent. The first respondent acted lawfully, reasonably and procedurally fairly in its assessment of the responsiveness of all the tenders received.	Link
2019	Ganuni Construction Co Ltd v County Government of Garissa & another [2019] eKLR, Civil Suit No. 2 of 2017	High Court of Kenya at Garissa	FIDIC 4th Ed. 1987	67.1, 67.2, 67.3	Application for a stay of court proceedings in favour of the FIDIC dispute resolution mechanisms. The court declined to stay the proceedings as the defendant had already participated in the court proceedings.	Link
2019	AIA Architects Ltd Formerly Advents In House Limited v Yooshin Engineering Corporation [2019] eKLR, Civil Case No. 36 of 2019	High Court of Kenya at Mombasa	FIDIC Client/Consultant Model Services Agreement 3rd Ed (1998 White Book).	9(1)	The plaintiff sought orders to restrain the defendant from among other things terminating the plaintiff's sub-consultancy agreement and from continuing with work using the plaintiff's designs, however altered or manipulated, and from engaging another sub-consultant, plus orders for payment of sums of money the plaintiff considered due. The project related to infrastructure at Lamu Port Manda Bay. The defendants sought an order that the court lacked jurisdiction and the matter should be referred to arbitration. The court found that there was an arbitration agreement between the parties under the Arbitration Act 1995 Laws of Kenya. The court found that as the defendant had sought to terminate the agreement incorporating the arbitration clause, there was a dispute for reference. The question was whether the defendant had acted within the time frame fixed by the law, i.e., whether the defendant's notice of preliminary objection, the only step taken by the defendant to enforce its right to the arbitration clause, was in time, by reference to section 6(1) of the Arbitration Act. The court found: that the defendant made an appearance before filing the preliminary objection and so the statutory time for insisting on the arbitration clause had passed and the defendant was deemed to have forfeited the right to insist on reference to arbitration; and that the plaintiff had established a prima facie case. The court granted the plaintiff the orders it sought.	Link
2019	Dubai Court of Appeal Case No. 32/2019	Dubai Court of Appeal	FIDIC 4th Ed. 1987	67.1	Failure to comply with pre-arbitral conditions. Annulment of tribunal's affirmative award on jurisdiction.	*Link**
2019	Muri Mwaniki & Wamiti Advocates v Draft & Develop Engineers Limited, Misc. Application No. E252 of 2019	High Court of Kenya at Nairobi	Not specified		Application to set aside certificate of taxation of costs in case which involved voluminous documents and highly technical FIDIC construction contract. Application dismissed.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2018	Bucharest Court of Appeal decision no. 162 of 3 July 2018	Bucharest Court of Appeal, uphoding the challenged CICA Case 39/2016 award			This decision of the Bucharest court of appeal is not publicly available. It is, however, referred to by the tribunal in the award in ICC case no. 23652/MHM (which appears elsewhere in this table). See para 324(f) of the award in ICC case no. 23652/MHM in which the tribunal refers to this decision in the context of tribunals and courts within and outside Romania which have acknowleged that a merely binding DAB decision may be 'enforced' in arbitration in a partial final award.	No link available
2018	National Highways Authority of India v Patel-Knr (JV), 14 May 2018	High Court of Delhi at New Delhi	FIDIC 4th edition 1987	14, 42.1, 42.2, 44, 52.2, 60, 67.1,	Challenge to arbitral award. Challenge dismissed.	Link
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
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 [107 of 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
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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2018	Machira Limited v China Wu Yi Limited & Another [2018] eKLR Civil Suit No. 213 of 2016	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
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

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	Garnishee sought the dismissal of the Garnishee Proceedings. In the earlier application for Judgment on Admission (HCC 164 of 2013) the court noted that the one Interim Certificate was not signed by the Resident Engineer and held that the Resident Engineer was required to approve the Certificate that the Plaintiff relied upon (in accordance with Clause 60). It was therefore evident that the Certificate for payment was a pertinent and central issue of dispute between the parties, which raised a triable issue preventing the court from entering Judgment on Admission. After dismissing that application, the Judge ordered the dispute to be referred to Arbitration. On the basis that it was clear that the alleged indebtedness by the Garnishee was contested and yet to be proved, and that the Arbitral Proceedings were yet to be concluded the court in this application held that it would be premature and futile to make an order attaching a debt which is still disputed and the subject of Arbitral Proceedings. The Garnishee Proceedings were struck out with costs to the Garnishee. Read more at: https://www.law360.com/articles/1221155?copied=1	Link
2018	Dunway Electrical and Mechanical Engineering LLC v Tanmiyat Global Real Estate Development LLC at Dubai Appelate Court in Appeal No. 795 of 2018	Dubai Appelate Court	FIDIC 1999	20	The court upheld the Contract which provided for the referal of a dispute to a DAB as a condition precedent to arbitration. See First Instance Case No. 2657 of 2017 above. The originals of these two cases are in Arabic.	Link
2018	Zenith Steel Fabricators Limited v Continental Builders Limited & another [2018] eKLR Civil Appeal No. 111 of 2010	In the Court of Appeal at Nairobi	Not specified	31	Appeal concerned three issues: (1) the true meaning of a nominated Sub-Contractor in the context of the building construction industry; (2) who between the Employer and the main Contractor is bound to pay the sub-contractor; and (3) whether there was privity of contract between the Employer and Sub-contractor. The court held that the Contractor appointed the Sub-Contractor and was consequentially liable for the payments due to it, and that there was no privity of contract between the Employer and Sub-Contractor. Appeal upheld and the judgment of the lower court was set aside and substituted. There was no formal contract but the judge made reference to FIDIC contracts.	Link
2018	National Highway Authority of India v M/S Progressivemvr (JV)	Supreme Court of India	Tender document modelled on generic FIDIC construction contracts		Dispute concerned the interpretation of a provision giving price adjustment formulae. Base rate or current cost of the material in a particular month. The court found that for bitumen the base rate should be applied and not the current rate. The court found that the arbitral tribunal did not decide the case with the correct application of the formula and thus that the arbitral award was contrary to the terms of the contract. Normally the court would not interfere but here arbitral tribunals had given conflicting awards and so the court reached its decision in the interests of justice so that the price adjustment formula would be applied the same way in other pending cases. Decisions of the lower courts and the arbitral award were set aside but with no order as to costs.	Link
2018	Doosan Heavy Industries & Construction Co., Ltd. v. Damietta International Port Company S.A.E. and Kuwait Gulf Link Ports International, ICC Case No. 21880/ZF/AYZ	Paris, France	Yellow Book 1999	16.2, 16.4, 19.7, 19.6, 2.1, 15.5, 17.6, 19.1, 19.2, 20.6.	Contract for the supply of ship-to-shore gantry cranes to be delivered in two phases. The project was abortive due to: non-delivery of land free of obstacles, missing design approvals, design changes, insufficient financing, delays caused by the Arab Spring, termination of the governmental concession. None of the cranes were ever delivered or installed. Doosan terminated and sought redress. Damietta and KGL argued force majeure and impossibility, Doosan delivery risk, waiver of claims pursuant to an amended supply agreement, missing delivery readiness. Held: Damietta and KGL ordered to pay Doosan, material breach of the Supply Agreement which was not excused by force majeure, Doosan validly terminated, Damietta and KGL not entitled to return of Advance Payment.	*Link**
2018	Todini Costruzioni Generali S.p.A. v. Ukravtodor - State Road Agency of Ukraine, ICC Case No. 22628/MHM	Paris, France	Not specified	20.4, 20.5, 20.6, 20.7, 20.8	First partial award issued by the arbitral tribunal later considered by the Cour d'appel de Paris (see judgment of 9 March 2021 below in this table). The First Partial Award has not yet been made public, only the appeal judgment is available.	*Link**
2018	Marg Limited v Van Oord Dredging and Marine, OP No. 650 of 2013	Madras High Court	Not specified		Dredging contract. Employer request to set aside arbitral award. Court denied the request.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2018	M/S National Highways Authority vs M/S Itd-Sdb(Jv) on 31 October, 2018, OMP 622/2014	High Court of Delhi at New Delhi	Not specified	52, 53, 60	Challenge to an arbitral award (which followed a DRB decision). Disputed: 1) Refund of liquidated damages; 2) Payment for ground investigation; 3) Payment of withheld certified amount; 4) Interest. Arbitral award upheld.	Link
2018	Republic v Engineers Board of Kenya Ex-Parte Oliver Collins Wanyama Khabure [2018] eKLR, Misc. Civil Application No. 108 of 2018	High Court of Kenya at Nairobi	Not specified	6.8, 6.10	First instance decision; judicial review of decision of the Engineer's Board of Kenya regarding a bridge collapse. This decision was overturned on appeal; see Court of Appeal decision in Godfrey Ajoung Okumu & Another (Civil Appeal No. 89 of 2019).	Link
2018	1) Grupo Unidos por el Canal, S.A., (2) Sacyr, S.A., (3) Webuild, S.p.A. (formerly Salini-Impregilo S.p.A.), (4) Jan De Nul, N.V. v. Autoridad del Canal de Panamá (II), ICC Case No. 20910/ASM/JPA (C-20911/ASM)	Miami, USA	Not specified	20.4, 20.6	Contracts related to the design and build of the 'Third Set of Locks' at the Panama Canal. Primary matter in dispute was whether certain advance and other payments were due under various of these contracts including in light of numerous related arbitrations which were ongoing. Issues in respect of FIDIC included whether the tribunal had jurisdiction over certain claims where there had been no DAB. One of the parties asserted that the reference to a DAB was a condition precedent to arbitration and another that a contractor may refer a dispute directly to arbitration without going through a DAB referral in circumstances where the employer has acted inconsistently with the dispute resolution procedure envisaged by the contract. On this issue, the tribunal found that it had jurisdiction over the relevant claims; any insistence on the DAB pre-condition would be futile and unwarranted under the circumstances of the case; the relevant party had waived any entitled to seek compliance with pre-arbitral steps by proceeding in other fora.	*Link**
2017	Tribunal Arbitral de Noarco S.A. v Sociedad Aeroportuaria de La Costa S.A. (Sacsa), Rad. 3860, 18 April 2017	Arbitration and Conciliation Centre of the Chamber Commerce of Bogotá (Columbia)	1999 Silver Book	8.9, 5.1, 13, 2.1, 4.6, 12.1, 3.5, 13.3, 8.7, 1.8, 5.2, 5.6, 5.7, 1.1.6.1, 4.1, 3.4, 2.5, 4.7, 4.9, 17.1, 17.2, 4.19, 18, 7.1, 5.8, 11.1, 11.2, 11.4, 10.1, 6.9, 8.1, 8.3, 3.1, 3.2, 3.3, 4.3, 20, 8.4, 8.7, 20.1, 14.2, 14.4, 12, 12.1, 19, 14.3, 14.9, 14.4, 3.4, 13.3, 13.2, 13.8, 14.10, 14.11, 10.1, 7.6, 18, 5.5, 5.7, 12.1, 9.4, 8.2, 19, 5.1, 7.1, 4.14.	Arbitral award issued under the auspices of the Arbitration and Conciliation Centre of the Chamber of Commerce of Bogotá (Columbia). The tribunal considered and decided upon claims and counterclaims relating to a contract for works at the terminal of the Internation Airport Rafael Nunez in the city of Cartagena (Columbia) relating (among other things) to: claims for additional payment and extensions of time, payment for alleged variations including significant additional works, claims for alleged loss of profit and other financial claims, and claims relating to an extension of the defects notification period.	Link
2017	C.E. Construction Ltd. V Intertoll ICS Cecons O&M Company Ltd & Ors, 4 January 2017	High Court of Delhi at New Delhi	FIDIC 3rd edition, 1987		Application to appoint a sole arbitrator to adjudicate disputes between the parties. Whether an arbitration agreement in a tripartite agreement survived a later settlement deed. The court found that the arbitration agreement did not survive and dismissed the application.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2017	National High Ways Authority of India v Gammon Atlanta FAO (OS) 7/2017 (18 January 2017)	Delhi High Court	Not specified	70	Appeal against the finding in respect of a claim pertaining to the reimbursement of excise duty. The relevant Export Import (Exim) Policy underwent an amendment, which limited the benefit of exemption. Respondent claimed the benefit of Sub-Clause 70.8 on the basis that it incurred additional cost because of the burden of payment of excise duty which was exempt until the subsequent legislation. The court noted that the price adjustment formula (Sub-Clause 70.3) accounted for labour costs, change in the wholesale price index and diesel fuel costs. It held that the excise duty component was part of the wholesale price covered by Sub-Clause 70.3, and the benefit under Sub-Clause 70.8 could not be given as it would have amounted to double benefit. However, on the basis that the change was in Exim policy (and not in the excise duty) the court found that there was no double benefit to the Respondent. Appeal was dismissed with no order as to costs.	*Link**
2017	M/S Zillion Infraprojects Pvt v Alstom Systems India (P) Ltd, 10 February 2017	New Delhi High Court	Not specified	14,2, 14.3, 14.4	Call on Advance Payment Guarantees. Whether clause 14.2 of the Main Contract was incorporated into the Subcontract. Appeal dismissed: the court declined to order an interim measure to restrain the call on the bonds.	Link
2017	M/S Angerlehner Structural and Civil Engineering Co. v Municipal Corporation of Greater Mumbai, 31 March 2017	Bombay High Court	Not specified		Interpretation of the price escalation clause.	Link
2017	The Municipal Corporation of Greater Mumbai v M/s Arabian Jacking Enterprises for Contracting and Trading Co. (AJECT), 31 March 2017	High Court of Bombay	Not specified	15.2, 15.5, 31.4	Dispute regarding price escalation clause; whether the formula was open to interpretation. Two arbitral tribunals had taken diametrically opposite views. The court found that one of these tribunals failed to exercise their jurisdiction to interpret the price escalation clause and set aside that award.	Link
2017	NHAI v. Hindustan Con	Delhi High Court	Not specified	21,28,44	Appeal against the Arbitral Tribunal's decision that if the delay, and EOT, was on account of compensation events, and EOT had been granted under Clause 28, read with Clauses 44 and 21 of the Contract, the respondent would necessarily be entitled to additional costs. Clauses 21.1 and 44.1 of the Conditions of Contract defined compensation events as those which were not attributable to the respondent. Appeal failed and was dismissed. The court further noted that the purpose of the alternative dispute redressal mechanism was to ensure that business disputes were dealt with in a speedy manner and that appeals should not be 'mechanically' made to all Arbitral decisions, making the High Court a "Court of Appeal". This was in reference to the numerous challenges brought to court by the appellant seeking re-examining of arbitral awards.	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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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
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.	
2017	Dunway Electrical and Mechanical Engineering LLC v Tanmiyat Global Real Estate Development LLC at First Instance Case No. 2657 of 2017	Dubai First Instance Court	FIDIC 1999	20	The court upheld the contract which provided for the referal of a dispute to a DAB as a condition precedent to arbitration. See Dubai Appelate Court in Appeal No. 795 of 2018 below. The originals of these two cases are in Arabic.	Link
2017	Noarco S.A. -en Liquidación por Adjudicación- v Sociedad Aeroportuaria de la Costa S.A. -SACSA-	National Arbitration under Centro de Arbitraje y Conciliación de la Cámara de Comercio de Bogotá (Bogota Chamber of Commerce Arbitration and Conciliation Centre)	Amended Silver Book 1999 in Spanish	1.1.3.6, 1.1.4.7, 1.1.6.1, 1.8, 2.1, 2.5, 3.1, 3.2, 3.3, 3.4, 3.5, 4.1, 4.3, 4.6, 4.7, 4.9, 4.19, 5.1, 5.2, 5.5, 5.6, 5.7, 5.8, 6.9, 7.1, 7.6, 8, 8.1, 8.3, 8.4, 8.7, 8.9, 10, 10.1, 11.1, 11.2, 11.4, 12, 12.1, 13, 13.2, 13.3, 13.8, 14.2, 14.4, 14.9, 14.10, 14.11, 17.1, 17.2, 18, 20	National Arbitration Award in Spanish (translated) seated in Colombia on an amended Spanish version of the Silver Book 1999 in respect of construction works in an international airport in Colombia. The Contractor raised claims relating to extensions of time, additional work, variations and prolongation. The Employer raised counterclaims relating to unfinished and defective works, failure to supply materials and equipment, bodily injury claims, failure to renew insurance policy, supply of electricity and other utilities, interest, delay damages and failure to provide documents.	Link
2017	International Construction & Engineering (Seychelles) v. Bea Mountain Mining Corporation	Ad hoc arbitration, seat in London, England	Red Book 1999	1.9, 3.1, 4.7, 13.1, 12.3, 13.8, 14.1, 14.8, 15.3, 20.6	Contract for civil and earthworks relating to the construction of the New Liberty Gold Mine in Liberia. Claims relating to alleged breaches of contract, delayed design and instructions, variations, price adjustment due to inflation, financing charges, valuation post-termination, disruption and quantum meruit. Counterclaims related to advance payments pre-termination and payments to third companies that completed the works. Tribunal dismissed the claims, found that there were proper and lawful grounds for termination of the contract and upheld the counterclaims.	*Link**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2017	(1) Grupo Unidos por el Canal, S.A., (2) Sacyr S.A., (3) Salini-Impregilo S.p.A, and (4) Jan de Nul N.V. v. Autoridad del Canal de Panama (I), ICC Case No. 19962/ASM	ICC arbitration with seat in Miami	Yellow Book 1999	1.4, 2.1, 3.5, 4.1, 4.10, 4.12, 5.2, 8.4, 10.1, 13, 20.1, 20.6	This was the 'Pacific Entrance Cofferdam Arbitration'. The Claimants' primary case related to alleged failures by Respondent to provide accurate and reliable geotechnical data and an alleged withholding of crucial geotechnical information in connection with the design and construction of the main cofferdam and the feasibility of a diversion of the Cocoli River. According to Claimants, these failures were breaches by Respondent of certain duties and it led to Claimants entering in the contract under financial terms that were more advantageous to Respondent than Claimants would have agreed to had Respondent provided all infromation and performed its duties at tender stage. Claimants therefore sought extensions of time and damages. Alternatively, Claimants sought compensation for unforseeable physical conditions. Respondent's position was that the allocation of risk and responsibility of physical conditions is common in construction and engineering contract and, in a design and build contract, since it is the contractor that must come up with a design suitable for the physical conditions, it is logical that the risk of such design should remain with the contractor. The contract provides for the party's agreement as to the risk of unexpected physical conditions including agreement as to the claims a contractor may claim in defined parts of the site. Also, geotechnical information was provided. The parties agreed that the contract was an administrative contract but disagreed about many aspects of Panamanian law which were considered at length by the tribunal. There was a dissenting opinion from one of the arbitrators in respect of certain issues, including the principle of good faith. The tribunal, deciding in the majority, rejected all of Claimants' claims.	*Link**
2016	Decision 15/2016/KDTM-GÿT, Service and Engineering Joint Stock Company A v Company B, (7 September 2016)	People's Supreme Court, Vietnam	Red/Yellow Book 1999	2.5, 3.5, 4.23, 8.2, 8.7, 10.1	A review of the Court of Appeal's decision concerning the court's interpretation and application of a liquidated damages clause. Company A completed the project 288 days after the contractual completion date. Company B asserted that Company A was in breach of contract. For this reason, Company B: (1) withheld payment of the remaining amount due to Company A; and (2) argued that Company A was liable to pay liquidated damages for the said breach, 5% of the contract value, which Company B would deduct against its payment obligations. Both the court of first instance and Court of Appeal agreed with Company B. The Supreme Court, in its cessation decision, had to consider the applicability of this liquidated damages clause under the law of Vietnam, and the deduction of such penalty (by Company B) from the outstanding sum owed to Company A. As to the deduction, the court held that pursuant to Sub-Clause 2.5, Company B would only be entitled to deduct or reduce the amount of an IPC according to a claim and that Company B had failed to bring such a claim. As to the validity of the liquidated damages clause, the court held that this was a penalty clause under the law of Vietnam (2005 Commercial Law) and that the penalty had to be based on the value of the breached contract, instead of the entire contract value. The Court of Appeal's judgment was overturned and the case was referred back to the People's Court of Hanoi City for retrial.	Link
2016	CICA Case 39/2016		1999 (otherwise not specified)		The award in this CICA case no.39/2016 is not publicly available. It is, however, referred to by the tribunal in the award in ICC case no. 23652/MHM (which appears elsewhere in this table). See para 324(e) of the award in ICC case no. 23652/MHM in which the tribunal refers to the award in CICA case no.39/2016 in the context of tribunals and courts within and outside Romania which have acknowleged that a merely binding DAB decision may be 'enforced' in arbitration in a partial final award.	No link available
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
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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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
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
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
2016	Dubai Court of First Instance Commercial Case 757	Dubai Court of First Instance	FIDIC 4th Ed. 1987	67.1	Engineer decision is a pre-condition to the validity of the arbitration.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2016	Konoike Construction Co. Limited v. The Ministry of Works, Tanzania National Roads Agency, The Ministry of Transport, The Attorney General of the United Republic of Tanzania, ICC Case No. 18806/ARP/MD/TO	London, England	FIDIC Yellow Book		Contract for the design and upgrade of a road. The dispute related to variations, price escalation, suspensions and finally termination of the contract. The contractor claimed: (a) payment for completed work, (b) delay and disruption arising from the suspensions, (c) costs and losses arising from wrongful termination of the contract. The employer counterclaimed: exclusions of sums paid that should not have been paid; recovery of overpaid amounts; declaration that the contractor failed to complete on time; declaration that the employer validly terminated; liquidated damages for delay; costs of repairing defective work. Tribunal found for the contractor.	*Link**
2016	JV Monteadriano - Engenharia e Construção, SA / Sociedade de Construções Soares Da Costa SA (Portugal) v. The Romanian National Company of Motorways and National Roads S.A. (Romania), ICC Case No. 20632/MHM	Bucharest, Romania	Red Book 1999	13.8, 20	Contract for construction of a by-pass road. 1 year and 5 months after signing relevant addenda, the Engineer issued a Determination finding that the method of calculation used in respect of the addenda was erroneous and requiring the Contractor to pay the Employer EUR 3m. By reference to Romanian law, the Tribunal held that the addenda were binding on the Parties. By signing the addenda, the Parties intended to change the Accepted Contract Amount, despite being calculated using an erroneous formula. Issues of call on the Performance Security: Employer wrongly called on the Performance Security due to non-compliance with clause 20.	*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
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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2015	PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation [2015] SGCA 30	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 Persero 1) 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
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

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 rejected.	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
2015	Midroc Water Drilling Co. Ltd v National Water Conservation & Pipeline Corporation [2015] eKLR, Civil Suit 45A of 2013	High Court of Kenya at Nairobi	Not specified	67.3	The defendant applied to take over from the plaintiff a construction site at Badasa Dam and for all further proceedings to be stayed and referred to arbitration. The court refused to issue orders for taking over and (on the basis that the application regarding arbitration was out of time) refused to stay proceedings or refer the dispute to arbitration.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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
2014	Decision 4A_124/2014 (7 July 2014)	Swiss Federal Tribunal	1999 (unspecified)	2, 20	Judgment of an appeal for an annulment of a partial award in which the Tribunal found that it had jurisdiction to hear a case under Clause 20, despite DAB proceedings not having been instituted. The court had to consider whether or not DAB proceedings (under Clause 20) are a condition precedent for referring a dispute to arbitration. The court disagreed with the Tribunal and found that the use of the word "shall" in Sub-Clause 20.2 created an obligation rather than an option. This was supported by the use of the word "may" under Sub-Clause 20.4, which did not qualify as a condition precedent. The court, however, accepted certain exceptions to the precondition, i.e., under the principle of good faith, Sub-Clause 20.8 and that the purpose of the DAB (permanent not ad hoc) was to allow for an efficient resolution of disputes in a manner that would not put the works into jeopardy. However, the court held that given the particular circumstances before it, it could not be said that the Tribunal's jurisdiction was affected. In particular, there was an ad hoc DAB the constitution of which there was no agreed time limit, and the implementation of which was done only after the works were completed thus effectively akin to a tribunal of first instance on the basis that the parties' positions were arguably already irreconcilable. There could, therefore, not be said that the implementation was absolutely necessary given the economy of the system. Moreover, the procedure was instituted 15 months before the Respondent filed its request for arbitration which is five times longer than the 84 days within which the DAB procedure normally runs and the Respondent tried on several occasions to restart it without the cooperation of the Appellant. Finally, the court noted that Sub-Clause 20.2 requires the parties to enter into a DAA and that pursuant to Clause 2, the DAA only comes into force when its signed by both parties and all members of the DAB. Failing this or when a party refuses to sign the DAA, the recourse available to the other party is to go to arbitration directly in accordance with Sub-Clause 20.8. The court, therefore, held that as a result of the parties having failed to sign a DAA it cannot be said that the DAB was in place when the arbitration was initiated. Further, given that there is no clause with which the Appellant could have been compelled to sign the DAA, the Respondent could not be criticised for skipping the DAB phase despite its mandatory nature in order to refer the dispute to arbitration. The appeal was rejected with costs.	Link*
2014	LLC Plastikana and JSC Yaroslavlvodokanal, Case No. A82-8698/2013, 29 August 2014	Arbitration court of cassation instance, Volga-Vyatsk District, Russia	1999	14.8 and 20.1	This case concerns the enforceability of time bar under subclause 20.1 and the applicability of this in relation to claims for financing charges within the context of Russian law. Russian courts concluded that the 20.1 time bar clause is not applicable to claims for financing charges. The court noted that under Russian law, failure to give notice of its claim for financing charges did not amount to a waiver or its rights and the Russian Civil Code gives a creditor the right to demand a penalty determined by law or agreement in the event of non-fulfilment of an obligation by a debtor. This was upheld on appeal.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2014	Nazir Basic Joint Venture, OSE and CPC Joint Venture, Islam Trading Corporation Limited (ITCL) and Bengal Development Corporation Ltd. (BDC) v. Roads and Highways Department, Roads Division, Ministry of Communication and Government of Bangladesh, ICC Case No.15642/JEM/MLK/CYK, 19 February 2014	High Court of Bangladesh	Not specified	67, 67.3, 70.1, 70.2	Application to set aside arbitral award. Arbitration dispute related to changes in cost due to subsequent legislation. Whether application was time barred. The court found that the application was time barred, restored the award (which had been subject to a stay) and ordered the applicant to take immediate steps to pay as per 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**
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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2014	PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation (Indonesia) and another matter [2014] SGHC 146	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
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
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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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
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
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**
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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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
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. State of West Bengal v Afcons Interrelated Case 4 of 4 – Decision 10/09/2013 re Tender Notice S-09	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

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
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

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
2013	BSC-C&C JV a.k.a. BSC-C&C 'JV' v. The Louis Berger Group, Inc. / Black Veatch Special Projects Corp. Joint Venture, ICDR Case No. 50-110-T-00415-11	Morristown, New Jersey	Not specified	65	Road project in Afghanistan. Security was a major concern and issue. Clause 65 of the contract related to special and Employer risks. Contractor made numerous claims including 8 claims under clause 65 (equipment damage and injury or death of persons; site and home office overhead; supporting documentation; subcontractor equipment; equipment downtime; and others). Tribunal awarded sums to Contractor.	*Link**
2013	Archirodon-Arab Contractors Joint Venture v. Damietta International Port Company S.A.E., ICC Case No. 17071/VRO/AGF	Paris, France	Not specified	1.4, 20.6	Contract for the constrution of the quay walls for a new container terminal. The contractor claimed: payment for works done; suspension costs; financing charges; payment for plant and materials. The employer opposed the jurisdiction of the tribunal on various grounds (citing Egyptian law) alternatively submitted defences to the claims, in particular that the contractor's suspension of the work was not justified, that the engineer could not bind the employer and that the contractor failed to mitigate. Tribunal dismissed the employer's objections to jurisdiction and on the money claims found largely for the contractor.	*Link**
2013	G.P. Zachariades Overseas Ltd. v. Arcapita Bank B.S.C., ICC Case No. 17855/ARP/MD/TO	Manama, Bahrain	Red Book 4th Edition 1987		Dispute arising out of a Parent Company Undertaking in which Respondent undertook to pay to Claimant, upon first written demand, certain sums and in respect of which Respondent failed to make such payments. Underlying the PCU was a FIDIC-based contract for the construction of residential villas. The arbitrator considered various issues relating to the PCU, including whether or not it was an 'on demand' guarantee, and a claim of unjust enrichment. The arbitrator found Respondent liable to pay pursuant to the PCU.	*Link**
2013	Glocoms, Inc. v. Vietnam Bank for Agriculture and Rural Development, UNCITRAL arbitration	Hanoi, Vietnam	Not specified		Final award in dispute relating to the acquisition of an intrabank payment and customer accounting system and alleged failures to make payment for services related to the same. Arbitration agreement referred to FIDIC.	*Link**
2013	Mohamed Abdulmohsen Al-Kharafi & Sons Co. v. Libya and others, ad hoc arbitration	Cairo, Egypt	Client-Consultant Model Services Agreement, 3rd Edition, 1998		Investor-state arbitration regarding the establishment of a touristic investment project in Libya. Lease of land. Assualts on plaintiff's workers who were asked by defendant to stop the works until the matter was resolved. Defendant proposed an alternative plot of land for project execution but plaintiff refused this proposal and chose to wait for the resoluion of the problems on the initial site. The tribunal found among other things that the lease was an investment project governed by the Unified Agreement for the Investment of Arab Capital in the Arab States, that defendants committed various contractual and delictual faults, and ordered the defendants to pay plaintiff significant damages in compensation.	*Link**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2013	Karachi Development Company v IM Technologies Pakistan & another, Judicial Miscellaneous No. 12 of 2013	High Court of Sindh at Karachi	Not specified	20.2, 20.3, 20.4, 20.6, 20.7	The applicant challenged a reference to arbitration under clause 20.6, arguing that the arbitration agreement did not apply to a dispute regarding termination of the contract or relating to the post-termination phase of the contract, and that instead the the courts of Pakistan had jurisdiction. The court dismissed the application.	Link
2012	SAM ABBAS and Anthony Hayes trading as AH Design v Rotary (International) Limited [2012] NIQB 41 (28 May 2012)	High Court of Justice in Northern Ireland	Amended FIDIC Conditions of subcontract for works of civil engineering construction first edition 1994	19	This matter concerned the Defendant's application for stay of proceedings pending adjudication. The dispute related to the scope of a consultancy agreement, which contained conflicting dispute resolution clauses. The project was for the construction of two hospitals in the Turks and Caicos Islands. In August 2006 the defendant engaged the plaintiff to provide preliminary drawings for the scheme. On 11 January 2008 the defendant entered into a subcontract (with the main contractor) to design, and construct works for the two hospitals. In April 2008 the plaintiff and defendant signed a consultancy agreement. The plaintiff claimed for certain additional works at the request of the defendant, which claim it split between fees due for services rendered prior to 11 January 2008 and those post 11 January 2008. The defendant maintained that the consultancy agreement contained an exclusive adjudication clause and applied for a stay for adjudication. The plaintiff argued that the adjudication clause was not incorporated into the consultancy agreement, and in the event that it was, the clause would only apply to the fees post 11 January 2008. Three questions considered by the court: (1) was the subcontract's adjudication clause incorporated into the consultancy agreement; (2) was it enforceable; and (3) whether or not to order a stay of proceedings. The court held that the consultancy agreement was the governing contract, of which the incorporated terms from the subcontract became part. The court noted that clause 12: contained a mandatory provision for reference to adjudication; stated that the reference to adjudication shall be on the same basis as SC 19 of the subcontract; and stated that the adjudicator's decision is final. The court held that this suggested that the dispute resolution process concludes with adjudication and was not intended to extend to arbitration and confirmed that the subcontract was incorporated into the consultancy agreement and thus enforceable. As regards to a stay of proceedings, on the basis that the issue as to whether or not the consultancy agreement covered both parts of the fees, was still undecided and in the event that the plaintiff was correct in that regard, that part of the claim would not be subject to the consultancy agreement and could not be stayed. On this basis, and the defendant's failure to refer to the matter for adjudication, the court refused the application for a stay.	Link
2012	National High Ways Authority of India v Afcons Infrastructure Ltd FAO(OS) 120/2012 [2 July, 2012]	Delhi High Court	Not specified	70	Appeal regarding an Arbitral Award in which the Respondent claimed reimbursement of excise duty due to subsequent change in legislation The contract provided that rates and prices quoted were subject to adjustment during the performance of the contract in accordance with Sub-clause 70. The prevailing Exim Policy at the relevant time of bidding provided that supplies to this work were eligible for classification as "Deemed Exports", which entitled a refund of the excise duty element. The Exim Policy underwent an amendment and the goods became ineligible to the "deemed export" benefit or facility. Court held that the withdrawal of the "deemed export" facility resulted in a new tax liability, and dismissed the appeal.	Link
2012	International Electromechanical Services Co LLC v (1) Al Fattan Engineering LLC and (2) Al Fattan Properties LLC [2012] DIFC CFI 004, 14 October 2012	Dubai International Financial Centre Courts (DIFC)	Red Book 1999		Subcontract, back-to-back contracting, whether there was a valid arbitration agreement incorporated into the subcontract. The court found a prima facie case that a valid arbitration agreement existed in the subcontract; found that it had jurisdiction to order a stay of proceedings; and that the court should exercise its discretion to stay the proceedings.	Link
2012	NHAI v. Hindustan Construction Company Ltd. FAO (OS) 48/2012 [8 November 2012]	Delhi High Court	Not specified	60	An appeal in which the court examined three issues: i) the extra amount awarded for the making of embankment; ii) the allowing of the claims of the respondent in relation to toll tax and service tax on transportation imposed by a subsequent legislation; and iii) the award of compound interest post the award period, on both the principal and the interest amounts. Court set aside the tribunal's award relating to Dispute No.4, relating to executed work of embankment, while upholding the award in all other respects.	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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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
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
2012	Maeda Corp v. Government of HKSAR (CACV 230/2011)	In the High Court of the Hong Kong Special Administrative Region, Court of Appeal	General Conditions of Contract for Civil Engineering Works (1999)	59(4)	Issue: adjustment of BoQ rates under the contract. Clause 59(4)(b) required only that the quantities were substantially different before they acted as a trigger for the engineer to embark on a rate review. The contractor had performed substantially greater quantities of a particular work item than estimated and the dispute over his entitlement to payment was referred to arbitration. The contractor regarded the employer's BoQ estimates as a considerable underestimate and took advantage by transferring into his tender rate for that item an additional preliminary sum that had originally formed part of another unconnected rate (and was set to make a large 'windfall' profit). The arbitrator held that the preliminary sum transferred across should be excluded as that made the contract rate for the item unreasonable and inapplicable. His view was that in cases where a rate was a composite one involving a number of activities, he could adopt such a position. The Court of Appeal endorsed the arbitrator's findings. This was a long running case. Other decisions in the case appear elsewhere in this table. Further reading: https://www.corbett.co.uk/boq-rates-neither-immutable-nor-sacrosanct/	Link
2012	The Louis Berger Group Inc. / Black & Veatch Special Projects Corp. Joint Venture v. Symbion Power LLC, ICC Case No. 16383/VRO	Paris, France	Red Book 1999	15.2	Contract for the design, procurement and construction of a power plant near Kabul in Afghanistan. The claimant was the prime contrator. The respondent was the subcontractor. The subcontract was terminated. Each party maintained that it properly terminated the Subcontract on the basis of breach by the other. There were disputes about payment and performance. The prime contractor's claims included: extra costs to complete the work; additional insurance costs; liquidated damages. The subcontractor's counterclaims included: payment for work done and equipment retained by the prime contractor and a performance bond it claimed was wrongfully collected. The central question was whether the prime contrator was in material breach of the subcontract at the date the subcontractor gave notice of breach and withdrawal from site. If the prime contractor was not in material breach then the subcontractor had no right to abandon the works and the prime contractor was then justified in terminating on the grounds of abandonment. Tribunal among other things: found that the subcontractor was entitled to terminate for material breach by the prime contractor; found that the subcontractor was responsible for delay and so awarded liquidated damages to the prime contractor; awarded sums to the subcontractor for work performance and the performance bond (etc).	*Link**
2012	(1) Kenneth David Rohan (2) Andrew James Mostyn Pugh (3) Michelle Gemma Mostyn Pugh (4) Stuart James Cox v Daman Real Estate Capital Partners Limited [2012] DIFC CFI 025	Dubai International Financial Centre Courts (DIFC)	FIDIC 4th Ed. 1987 (reprinted 1992)	12, 13	Sale & purchase of flats. Termination of agreement and restitution of sums. Delayed completion under an underlying FIDIC contract terminated due to delay. Defects and EOT.	Link

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2012	SYIVT AS v SC A. Satu Mare 4613/2012 Civil Section	High Court of Cessation and Justice of Romania	FIDIC Red	20.1 - 20.7	In this matter the court had to decide whether or not a DAB decision was final and binding and could be considered an arbitral award, enforceable under the New York Convention, which states that recognition and enforcement of a foreign award may be refused if the award has yet to become finding and binding. A DAB decision was issued, which was followed by a notice of dissatisfaction within the 28 days' period. The claimant submitted an application to the court for recognition of an arbitral award and approval of enforcement under the New York Convention. Whilst this was pending, the matter as also referred to ICC arbitration under Sub-Clause 20.7. The court held the DAB decision did not fulfil the conditions of admissibility under the New York Convention on the basis that the decision was issued during proceedings preliminary to the arbitration, and that preliminary process was not finalised in light of the respondent's notice of dissatisfaction.	Link
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
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 went 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. [2011] SGCA 33	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. State of West Bengal v Afcons Interrelated Case 2 of 4 – Decision 06/01/2011 re Tender Notice S-11	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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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
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. State of West Bengal v Afcons Interrelated Case 3 of 4 – Decision 22/09/2011 re Tender Notice S-11	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
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 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**
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	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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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**
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. State of West Bengal v Afcons Interrelated Case 1 of 4 – Decision 07/07/2010 re Tender Notice S-10.	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. [2010] SGHC 202	*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**
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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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.	
2010	M/S Spencon (K) Ltd v. Ministry of Local Government with Mombasa Municipal Council	Ad hoc arbitration, seat not specified	Not specified		Payment delays, interest and VAT. Outstanding amounts, interest and VAT awarded.	*Link**
2010	ICC Partial Award in Case No. 15956	City in Eastern Europe	Red Book, First Edition, 1999	2.5; 3.5; 15.2; 15.3; 15.4; 20.2; 20.3; 20.4; 20.5; 20.6; 20.7; 20.8	Partial Award from arbitral tribunal dealing with (1) the jurisdiction of the arbitral tribunal and (2) whether the DAB's decisions are valid and binding. In relation to (1) the tribunal found that the Employer was entitled to submit certain claims directly to arbitration without first notifying such claims or following the pre-arbitral procedures in the contract (including the DAB) because such claims related to the extra cost of completing works following a termination and the DAB had already considered and ruled on the appropriateness of such termination. Accordingly the tribunal found that it had jurisdiction in respect of such claims. In relation to (2) the tribunal noted that the parties did not enter into the DAB agreement within 42 days after the commencement date as provided for in clause 20.2. Respondent sought Claimant's agreement to the appointment of a DAB but Claimant never answered this request. Respondent ultimately applied to the president of FIDIC for such appointment, pursuant to clause 20.3, and the sole DAB member that was appointed proceeded to issue two decisions. Claimant argued that these decisions were not binding because the DAB was improperly appointed. The parties did not agree on the interpretation of the DAB-related provisions in the contract (the general conditions had been amended by particular conditions). The tribunal considered the contractual provisions and the facts and found that the appointment of the DAB was validly made. The tribunal further found that decisions of the DAB should be complied with by the parties, subject to the tribunal retaining the power to 'open up, review and revise' such decisions as per clause 20.6. As a result, the tribunal ordered Claimant to comply with the DAB decisions, reserving the merits of the case.	*Link**
2010	ICC Procedural Order in Case No. 15956	City in Eastern Europe	Red Book, First Edition, 1999	20	Procedural order. Request by Claimant for interim measure namely the suspension, until the ultimate determination of the dispute on the merits, of points in the Partial Award rendered by the same tribunal for (1) the return of performance security to Respondent, and (2) the payment of the sum established by the DAB to Respondent. The tribunal considered whether the relief sought was urgent in order to avoid serious and irreparable harm to Claimant and found that it was not. Request denied.	*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**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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
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	Pantechniki S.A. Contractors & Engineers v. Republic of Albania, ICSID Case No. ARB/07/21	ICSID	FIDIC 4th Ed. 1987 reprinted in 1992	20.4, 11.1	Severe civil disturbances in Albania in 1987. Contractor's work site was overrun and ransacked by looters. Each of its two contracts contained a provision to the effect that the Albanian Government's Road Directorate accepted the risk of losses due to civil disturbance. Contractor sought USD4.8m. A special commission was created by the Road Directorate to value the claim which it did at USD1.8m. Contractor said it accepted that amount in the interest of good relations. That amount was not paid. Contractor commenced court proceedings in Albania but the Court of Appeal ruled that the relevant contractual provision was a nullity and Contractor abandoned its appeal to the Supreme Court because it believed that it could not get a fair disposition of its claim there. In 2007, Contractor commenced an ICSID arbitration invoking the protection of the Albania-Greece BIT. Tribunal considered legal questions: was there an 'investment'; did Contractor's actions before the Albanian courts foreclose arbitration under the BIT; was there a denial of justice; did Albania violate the duty of full protection and security; or the duty to accord fair and equitable treatment. Tribunal found for Albania; the claim did not fail for lack of inherent validity but faltered because the treaty was unavailable to Contractor in the circumstances.	*Link**
2009	Ijm-Scl Jv v M/S National Highway Authority, 15 November 2009	High Court of Judicature at Madras	FIDIC 4th edition 1987	2.6, 42.1, 52, 52.1, 58, 58.3, 60.1, 67.1, 67.3, 82	Construction of a bypass. Challenges to two arbitral awards. The court found that part of the awards violated public policy and so partially set them aside.	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
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
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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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**
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
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
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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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
2007	Mirant Asia-Pacific Construction (Hong Kong) Ltd v Ove Arup and Partners International Ltd & Anor [2007] EWHC 918 (TCC) (20 April 2007)	In the High Court of Justice Queens Bench Division, Technology and Construction Court	Not specified		Dispute over damages caused by defective boiler foundations at a power station claimed by the Contractor against the Engineer. The court rejected all claims, except for the cost of remedial works of the Unit 1 Boiler foundations. The key consideration was the critical path analysis (court provide useful guidance on the use of cpa on construction projects), and whether the boiler foundations were on the critical path. This was a long running case. Other decisions in the case appear elsewhere in this table. The judgment here related to the level of damages.	Link
2007	Kalyan Constructions v Kayson Constructions Company, 31 August 2007	Andhra Pradesh High Court	Conditions of Subcontract for Works of Civil Engineering Construction	67	Subcontract for the widening and strengthening of a road. Nominated subcontractor for 50% of the works. Application seeking the appointment of an arbitrator in substitution of an earlier arbitrator appointment which was terminated. Whether the arbitration agreement was for an 'international commercial arbitration'. Whether the court had the necessary jurisdiction. Consideration of the Aribtration and Conciliation Action 1996. The court found that it did not have jurisdiction to appoint the arbitrator and the application was dismissed.	*Link**
2007	Dubai Court of Cassation Case No. 140/2007	Dubai Court of Cassation	Not specified	67.1	Conditions precedent to arbitration mandatory.	*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
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**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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
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**
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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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
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**
2004	CPconstruction Pioneers Baugesellschaft Anstalt v. Government of the Republic of Ghana, Ministry of Roads and Transport, ICC Case No. 12048/DB/EC	United States District Court for the District of Columbia	Not specified	67	Petition for confirmation of ICC Second Partial Final Arbitration Award. Contract for the construction and rehabilitation of a road in Ghana. ICC tribunal ordered Ghana to pay Claimant certain sums as also determined in an Engineer's Decision which had become final and binding. Pursuant to the New York Convention and the Federal Arbitration Act, the court found that the petitioner was entitled to confirmation of the Second Final Partial Award.	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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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
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**
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

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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**
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
2002	Hochtief Aktiengesellschaft Vorm. Gebr. Helfmann and Consolidated Contractors Company S.A.L. v. the Republic of Lebanon (UNCITRAL arbitration)	Paris, France	Not specified		Partial Award on Tranche 1 relating to various claims for additional payment and extensions of time arising in respect of works at an airport. The contract included many standard FIDIC clauses but was not a 'straightforward' FIDIC 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**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
2001	Salini Costruttori S.P.A. v. The Federal Democratic Republic of Ethiopia, Addis Ababa Water and Sewerage Authority, ICC Case No. 10623/AER/ACS	Addis Ababa	FIDIC 4th, 1987	67	Preliminary award on a) suspension of arbitration proceedings as a consequence of decisions taken by the Federal Supreme Court and Federal First Instance Court of Ethiopia; b) whether the Tribunal had jurisdiction over the proceedings notwithstanding an objection raised by the Respondent. Tribunal held that the arbitral proceedings should not be suspended and that it had jurisdiction.	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
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**
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
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**
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**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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**
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**
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**
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**
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**
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**
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**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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**
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**
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
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**
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**

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	Link
1987	Impresa Castelli Construzioni Edilizie S.P.A v. State of Kuwait - the Ministry of Public Works, ICC Case No. 5403/RP/BGD	Paris, France	FIDIC 2nd Ed. 1969	20.1, 52, 67	Claims related to the BoQ, an increase in fuel and bitumen prices and reimbursement of costs, expenses and loss. The arbitral tribunal appointed an expert to report to it on technical matters. The arbitral tribunal found for the Claimant on most of the claims albeit in lower amounts than claimed.	*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**
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**
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**
1981	The Corporation of Trustees of the Order of the Sisters of Mercy (Qld) v Wormald international (Aust.) 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 and finds that it is not until the events and circumstances occur (which must include both the act or event from which loss is said to flow and the events and circumstances which constitute the loss) that the time for submitting a notice of claim starts to run. Citation: (1981) 5 BCL 77	No link available
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**
Date not known	ICC Case No. 21477/MHM	Romania	Yellow Book 1999		The award in this ICC case no.21477/MHM is not publicly available. It is, however, referred to by the tribunal in the award in ICC case no. 23652/MHM (which appears elsewhere in this table). See para 324(d) of the award in ICC case no.23652/MHM in which the tribunal refers to the award in ICC case no.21477/MHM in the context of tribunals and courts within and outside Romania which have acknowledged that a merely binding DAB decision may be 'enforced' in arbitration in a partial final award.	No link available

Year	Case Name	Jurisdiction	FIDIC Books	Clauses Cited	Summary	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). Please click on the link for more Romanian cases on FIDIC.						Link