Trip to the Royal Courts of Justice, June 2006

June 15th saw six students of the MSc. in Construction Law and Arbitration at King's College visit the Royal Courts of Justice to witness the formalities of court procedures. Many thanks to Anne Wright for organising the trip.

The case was an appeal against a high court judgment concerning the JCT Minor Building Works contract clause 6.3B. The question being at what time in the contract does the clause cease to be operative? A flood, causing damage, had occurred due to an alleged failure of a contractor to replace a rainwater downpipe. The flood took place between practical completion and the end of the defects liability period. That contract is silent as to how long the insurance under clause 6.3B is to be effective, whereas other JCT forms require that the insurance be taken out until practical completion. I will leave this cliff-hanger for other commentators to expound upon.

The day commenced with a brief meeting with Lord Justice Dyson, head of the Technology and Construction Division, who took time out to outline the case and the problems that the decision might make. Again, many thanks to him and his staff.

Further interest was added when it was discovered that the appellant's barrister was Peter Aeberli, one of the college lecturers. One wondered whether at the end of the outline of his skeletal arguments we were to, celebrity-performer-like, hold up score cards of his performance.

The format followed the traditional procedure of appellant's arguments, respondent's arguments and response. A further respondent's response was allowed as the appellant added an argument, which was omitted from the opening speech. The process, although formal included several interjections by the judges, inquisitorially exploring the potential effects of the meaning of the clause beyond the strict limits of the case, but in so doing enabling a fuller interpretation of its intent. Being an appeal, the facts of the case were not questioned; the purpose being to explore and determine the intent of the clause. Whilst arguments over clause interpretation may not sound exciting they were well presented such that the case proved very interesting.

Following the presentation of the arguments, the three judges retired, returning a little later to give their judgment. This was brief as a full written judgment would be issued subsequently. The appeal had taken under three hours. This was welcome. The court room was light, cool and modern catering for IT facilities, but the seats were not made for lasting comfort.

The trip concluded with a guided tour of the building, illuminating in its history and architecture and equally enjoyable.

If any other students are fortunate enough to be offered a similar trip I can fully recommend that they avail themselves of such an opportunity.

Trevor Sharpe