

Mansion House – 31st January 2007

The Master's Speech

Tonight we celebrate the 10th anniversary of the coming into force of the Arbitration Act 1996.

It was at about that time, 10 years ago, that, having spent three decades dealing with building contracts I read one day an invitation from our good friend the Chartered Institute of Arbitrators asking for volunteers to help the Institute cope with the 1,500 arbitrations they have to process every year brought by people who have had more than usually awful holidays.

A young bridegroom took his art-student bride for a honeymoon to Mexico. It's hot in Mexico. In their chalet there was no glass in the windows but, instead, a series of wooden slats so as to let in the non-existent night breezes.

When, on the first night, the young bride began to prepare to retire, there squeezed itself through these slats a lizard.

It was not a normal lizard: it was the godfather of all lizards. It was an obese lizard: it was a horizontally challenged lizard.

The art-student bride, presumably recalling her notes of the lecture on Symbolism in Modern Art, fled to the bathroom because it had no window and, for greater protection against lizards, she locked the door.

That night she spent, fully dressed, in the bath. The next six nights she spent in the bath. At the end of the week, she brought a claim against the tour operator in Croydon claiming £700 for having been prevented from sleeping in her bed.

The bridegroom also brought a claim against the tour operator for £700 on the grounds that his wife had been prevented from sleeping in his bed.

And so the cases came and went. Then one day I received a phone call from our good friend the Chartered Institute of Arbitrators. This was to remind me that I had recently celebrated a significant birthday, and that it had been decided that, in view of my impending senility, it was no longer fair on the great British holiday makers that they should be subject to my unmentored awards. They thanked me for my help in the past – and that was that.

A few weeks later I received a phone call from our good friend the Chartered Institute of Arbitrators. This was to inform me that the Institute had recently decided to set up a Review Panel of Arbitrators to deal with complaints against arbitrators' awards on the grounds either that the awards were wrong, or totally unreasonable, or both.

I was then asked, in view of my past experience with holiday arbitrations, but particularly in view of my enviable seniority, whether I would consent to become one of the four members of this panel.

Thus one had now to consider not only what had happened on holiday, but what the arbitrator had done about it.

A widow, age undisclosed, had booked a tour entitled 'The Peaks and Dales of Sardinia'. She had done this, not, I inferred, from any particular desire to visit those

peaks or even those dales, or indeed to visit Sardinia at all, but solely because it was stated in the brochure that the party on this tour would not be less than ten.

When she arrived in Sardinia, she discovered that her party consisted of seven persons - including herself.

Here was obviously a blatant breach of contract. The good widow, therefore, decided to have her week's holiday and then claim back, by way of compensation, the full cost of that holiday.

The arbitrator was of a taciturn nature: he merely referred her to clause 15(2)(b) of the Booking Conditions, which stated that the tour operator had full power at any time to increase or decrease the numbers in any tour. He dismissed her claim: costs followed the event.

The widow, of course, immediately appealed on the ground that the award was totally unreasonable – for two reasons.

First, because nobody had told her to read clause 15(2)(b), and secondly that, even if they had, it would have made no difference because at all material times her oculist had failed to return to her, her new National Health glasses.

Then she set out what was the real cause of her problem. Let me quote to you her exact words:

The party of seven on the tour comprised four who were over 80, four were dependent on walking sticks; one had had a stroke, another a heart attack – one had only one eye, another relied on lip-reading. One was on multiple medication; another had a bad knee. One had a phobia about heights; another had a weak bladder.

After about a year dealing with appeals, I was rung up one day by our good friend the Chartered Institute of Arbitrators. This time to remind me that, in the year 2002, Her Majesty's Government had incorporated into English law the European Convention on Human Rights and that the Institute had taken the Opinion of leading counsel – both learned in the law, and exorbitantly expensive. From that Opinion, they had learned that, not only in the United Kingdom of Great Britain and Northern Ireland, but throughout the then 24 other member states of the European Union, Donald Valentine, of whatever age, had a Human Right to do holiday arbitrations.

I was reinstated as a holiday arbitrator just as I had been 10 years ago when the Arbitration Act 1996 came into force.

Please join with me in drinking a Toast to Arbitration.