

# The cheque is in the mail: Liquidated Damages and the rule against penalties updated

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PRACTICES International Arbitration

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*Eco World - Ballymore Embassy Gardens Company Ltd v Doblér UK Ltd* [2021] EWHC 2207 (TCC) and *Buckingham Group Contracting Ltd v Peel L&P Investments and Property Ltd* [2022] EWHC 1842 (TCC) are two recent first instance decisions which are useful on the question of whether, if an agreed damages clause is unenforceable, and the innocent party has to prove their real loss, the agreed damages amount will serve as a cap on the damages which may be recovered at common law.

## Agreed damages clauses

Contracts routinely contain agreed damages clauses specifying what damages will be payable if the contract is breached. Thus, in a construction or similar contract, if the work is not completed by a promised date, the contractor agrees to pay the employer a certain amount each day or week until it is. A benefit of such clauses is that the employer need not spend time and money investigating and proving the real loss they have suffered, and avoids any arguments about whether loss is too remote or could have been mitigated, leading to a faster, cheaper resolution.

[Read the full article here.](#)