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NEWSLETTER · NOVEMBER 2026

TAKING THE BENEFIT AND THE BURDEN

The Supreme Court on arbitration agreements and third parties

BY JOHN ABBOTT FCIARB

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9 TO 13 NOVEMBER 2026

SEE US AT DUBAI ARBITRATION WEEK

Members of ArbDB Chambers will be attending Dubai Arbitration Week from 9 to 13 November 2026, and Chambers is delighted to be sponsoring the DALDS Dinner on Tuesday 10 November. To arrange a meeting during the week, contact Martin Poulter, Clerk to Chambers.

martin.poulter@arbdb.com



NEW MEMBER

GEOFF FARNSWORTH JOINS ARBDB CHAMBERS

International commercial arbitrator Geoff Farnsworth is qualified in England and Wales and in Australia, and is the current President of the Australia Branch of the Chartered Institute of Arbitrators. He is experienced in maritime and international trade disputes, including charterparties, cargo claims, marine insurance and GAFTA arbitrations.

"His experience and expertise in commodities and maritime disputes is a really good fit with our existing practices in the sector." Michael Cover, Founder Member

Read the announcement



19 NOVEMBER 2026

STEPHEN HIBBERT SPEAKS ON BALI'S FINANCIAL HUB

Professor Stephen Hibbert will speak on a Bali International Arbitration and Mediation Centre webinar: "No Trust, No Capital - Arbitration as the Backbone of Bali's Financial Hub".

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27 TO 28 JANUARY 2027

JULIA SULLIVAN AND MICHAEL COVER IN HOUSTON

Julia Sullivan is Joint Course Director and Michael Cover is on the Faculty of the CIArb North America "Applied Arbitration for Fellows" course in Houston, Texas. Booking is open. Julia is also now listed on the DIAC List of Arbitrators.

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14 OCTOBER 2026

STEPHEN BATE AT THE ICC ARBITRATION CONFERENCE

Stephen Bate attended the ICC Arbitration Conference on 'Dispute Resolution in a Geopolitical World'. The highlight, he reports, was an address by Sir Geoffrey Vos, Master of the Rolls, on machine-based decisions.

Read his reflections



FEATURED ARTICLE

TAKING THE BENEFIT AND THE BURDEN: THE SUPREME COURT ON ARBITRATION AGREEMENTS AND THIRD PARTIES

A party wishing to take the benefit of a third-party contract must also take the burden of that contract.

The Supreme Court's recent judgment in *The Kingdom of Spain and another v The London Steam-Ship Owners' Mutual Insurance Association Ltd (No 2)* [2026] UKSC 36 is an important decision for arbitration practitioners. It addresses the circumstances in which a party that was not an original party to a contract may nevertheless be bound by its arbitration agreement, the remedies available for breach of that obligation, and the proper limits of an appeal under section 69 of the Arbitration Act 1996.

At its heart lies a straightforward proposition: a party seeking to take the benefit of contractual rights cannot disregard the associated contractual burden of arbitration.

BACKGROUND

The case arises out of the sinking of the oil tanker *Prestige* off the Spanish coast in November 2002, resulting in extensive pollution damage to Spain and France.

The vessel was insured by The London Steam-Ship Owners' Mutual Insurance Association Ltd (the Club). The insurance contract contained an arbitration agreement providing for London arbitration under English law. It also included the familiar "pay to be paid" provision, under which the Club's liability was dependent upon the insured first satisfying the underlying liability.

The Kingdom of Spain and the French State brought claims directly against the Club in Spain under Spanish law. Neither State was, of course, an original party to the insurance contract.

The Club commenced arbitration in London. The arbitrators concluded that, by seeking to enforce rights derived from the insurance contract, the States were also subject to the arbitration provision contained within it. In broad terms, they could not take the benefit of the contract without accepting its corresponding burden.

The arbitrators also concluded that the Club had no liability because the "pay to be paid" condition had not been satisfied. The resulting awards were enforced in England.

Proceedings nevertheless continued in Spain, ultimately producing a substantial judgment against the Club. Further arbitrations followed in London concerning the States' failure to observe their obligation to arbitrate.

The arbitrators awarded monetary relief against the States by way of equitable compensation. That raised the central issue which ultimately reached the Supreme Court.



John Abbott FCIArb
Arbitrator and Mediator
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A Fellow of the Chartered Institute of Arbitrators and a former partner at Laytons, John has more than 30 years' experience in dispute resolution.
View profile

THAT GIVES THE ARBITRATION AGREEMENT CONSIDERABLY GREATER PRACTICAL FORCE.

THE PROBLEM OF STATE IMMUNITY

The unusual involvement of sovereign States complicated the remedies normally available to enforce an arbitration agreement.

Where proceedings are brought in another jurisdiction in breach of an arbitration agreement, an English court may, where appropriate, protect that agreement by granting an anti-suit injunction.

That remedy was not available here. Section 13(2)(a) of the State Immunity Act 1978 restricted the court's ability to grant an injunction against the States. Nor were damages in lieu of an injunction available.

The question was therefore whether monetary relief could nevertheless be awarded for the breach of the obligation to arbitrate.

The arbitrators considered that it could and awarded equitable compensation. Butcher J upheld that conclusion. The Court of Appeal disagreed and set the monetary awards aside.

The Supreme Court unanimously allowed the Club's appeal.

THE SUPREME COURT'S DECISION

The important feature of the Supreme Court's reasoning is that it reached the same practical result as the arbitrators, but on a different legal basis.

The obligation imposed upon Spain and France to arbitrate was not merely an equitable obligation.

The States were asserting rights derived from the insurance contract. The conditional benefit principle meant that, if they wished to take the benefit of those rights, they were also subject to the sufficiently connected burdens imposed by the same contract.

Crucially, the obligation did not cease to be contractual merely because Spain and France had not originally signed the insurance policy.

Accordingly, the obligation to arbitrate remained contractual in nature.

From that conclusion the remedy followed. Breach of the obligation to arbitrate could give rise to common law damages for breach of contract. There was therefore no need to construct a separate remedy based upon equitable compensation.

The distinction may appear technical, but it is significant. It puts the remedy on a conventional contractual footing: there is an obligation to arbitrate, a breach of that obligation and, subject to the ordinary principles governing contractual damages, a monetary remedy for the consequences of the breach.

WHY DOES IT MATTER FOR ARBITRATION?

There are several important consequences.

1. Third parties cannot necessarily avoid the arbitration agreement

The decision is an important reminder that absence of a signature is not necessarily the end of the inquiry.

Where a third party seeks to enforce rights derived from a contract, the conditional benefit principle may require it to accept an associated obligation to arbitrate.

This is potentially important beyond the particular circumstances of *Prestige*, whenever rights originating under a contract are asserted by someone other than an original contracting party.



THE INABILITY TO OBTAIN ONE FORM OF RELIEF DOES NOT NECESSARILY EXTINGUISH OTHER CONSEQUENCES

2. Damages may protect the agreement to arbitrate

The decision confirms the importance of damages as a remedy for breach of an arbitration obligation.

Anti-suit relief remains an important mechanism for restraining proceedings brought in breach of an arbitration agreement. But an injunction is preventative. What happens when proceedings have continued, or where, as here, an injunction cannot be granted?

The Supreme Court's analysis provides an answer. If the obligation to arbitrate is contractual, its breach can engage the normal contractual remedy of damages.

That gives the arbitration agreement considerably greater practical force.

3. State immunity does not make the arbitration obligation meaningless

The State Immunity Act prevented injunctive relief against Spain and France. It did not, however, turn the agreement to arbitrate into an obligation without an effective remedy.

That distinction is particularly important in disputes involving States and State entities. The inability to obtain one form of relief does not necessarily extinguish other consequences flowing from breach of the arbitration obligation.

4. Section 69 remains tightly constrained

There is another important aspect of the judgment.

The Supreme Court criticised the Court of Appeal for going beyond the questions of law properly raised on the appeal under section 69 of the Arbitration Act 1996.

A section 69 appeal is not an opportunity for a general reconsideration of an arbitral award. It is a statutory appeal on a question of law and must remain within the limits prescribed by the legislation.

For practitioners, this is an important reminder that section 69 should not become an indirect route to rehearing issues determined by the tribunal. It reflects the wider policy of the Arbitration Act in favour of arbitral finality and limited court intervention.

CONCLUSION

Spain v London Steam-Ship is significant well beyond the remarkable facts surrounding the *Prestige*.

Its central message is a practical one. A party seeking to take the benefit of contractual rights may also have to accept the contractual obligation to arbitrate disputes concerning those rights. If it breaches that obligation, damages may follow.

The judgment therefore reinforces both the contractual nature and practical effectiveness of the arbitration agreement.

Equally importantly, the Supreme Court's approach to section 69 confirms the limited supervisory role of the courts. Arbitration is intended to produce finality. An appeal on a question of law remains just that, and not an invitation to reopen the arbitration more generally.

For arbitration practitioners, the combined message is clear: English law will give real effect to the obligation to arbitrate, while keeping judicial intervention in the resulting award within carefully defined limits.

November 2026

John Abbott FCIArb
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ENGLISH LAW WILL GIVE REAL EFFECT TO THE OBLIGATION TO ARBITRATE



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