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Construction Law

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Preface

The term 'Construction Law' is used in three senses:

- (i) the principles which govern the duties and liabilities of the parties involved in the construction process and which arise out of that process;
- (ii) the law which affects the construction industry; and
- (iii) the rules governing the administration of a construction contract.

It is only the first of these senses which is Construction Law proper. Under this definition, Construction Law is that body of law which governs civil liability for the construction of defective buildings. The second two senses are not Construction Law properly defined. Thus, (ii) above would cover a range of subjects going beyond the scope of Construction Law in the first sense; it would, for example, include torts affecting the use of land, employment law and health and safety law. (iii) above is concerned with the application of the standard form contracts, such as the JCT and the ICE, to the running of a construction project and the resolution of disputes which may arise out of the project. This, in my view, is more properly referred to as 'construction contract administration' and is essentially a matter for quantity surveyors rather than lawyers.

This book is concerned with Construction Law in the first of the senses defined above. Essentially it examines three questions:

- (1) Who can be sued if a building is defectively constructed?
- (2) Who can sue – building owner, tenant, subsequent owner, etc.?
- (3) What damages are recoverable?

This book is not, therefore, concerned with liability for matters which may arise *in the course* of building works. Rather it examines the position *after* the work is complete, and the building has been taken over.

There are, I think, three reasons why Construction Law thus defined is worthy of study as a separate branch of the law. In the first place, construction and building cases have been, and continue to be, a source of important developments in the common law. The famous (or infamous) advance and retreat of the tort of negligence and economic loss have

involved largely this category of case. Secondly, liability for buildings is an important matter for the individual consumer. For the most part, buildings liability is looked on as of import for construction companies or their professional advisers. Indeed it is, but it is too often forgotten that the victim of defective building works or of unsound advice in relation thereto is an individual. To this extent, Construction Law is an aspect of consumer law. Thus, the recent retreat in the law of negligence has had particularly serious effects for the consumer; it is contract which is now the major source of liability for defective buildings, but in many cases concerning domestic buildings the purchaser will not have a contract with the builder or designer. Thirdly, many recent and forthcoming developments in Construction Law now emanate from the EC. These developments have as their aims the promotion of competition throughout the Community and the protection of the consumer.

The major sources of the general law of construction are common law, statute, private law (i.e., the provisions of any of the standard form building and engineering contracts which may apply to a particular contractual relationship) and, as mentioned in the previous paragraph, EC law. There is no shortage of books on the standard form building and engineering contracts and no independent chapters are devoted to that aspect of Construction Law. Instead, attention is devoted to the relationship between contract and tort and the effect of changes in that relationship upon liabilities in the construction industry and its related professions. Thus, a separate chapter is devoted to collateral warranties and buildings insurance as a result of the impact of the decision in *Murphy v. Brentwood DC*. Throughout the book the need for the law to find a balance between professional and consumer interests in the area of civil liability for defective buildings is kept uppermost in mind.

The parameters to Construction Law, as in other areas of law, are set by the appellate courts in the landmark cases. But how those parameters are applied falls usually to the judges at first instance. In the field of Construction Law these judges are known as Official Referees. They are High Court judges with a specialist knowledge of this subject, and it is one of the purposes of this book to examine carefully their most important decisions.

One final point by way of introduction needs to be made. This is not intended to be a book for a beginner. It is intended principally for use by students reading Construction Law as a specialist subject in the later stages of their degree. As such, it assumes a knowledge of the principles of contract and tort. (It is worth stressing at this point the importance of mastering these subjects, without which more specialist areas of law cannot hope to be understood. Not for nothing are contract and tort among the 'core' legal subjects demanded by the Law Society and the Bar

Council!) Nor is this intended to be a practitioner's work, though it is hoped that some practitioners will find in it stimulation to debate further the problematical issues raised by this subject.

The law is as stated at 1 March 1994.

Swansea/University of Surrey

M.F.J.

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xiv *Acknowledgements*

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Abbreviations

AC	Law Reports, Appeal Cases
ACE	Association of Civil Engineers
ALR	Australian Law Reports
All ER	All England Reports
B	Baron
BLM	Building Law Monthly
BLR	Building Law Reports
CBNS	Common Bench Reports, New Series, 20 vols, 1856–65
Ch	The Law Reports, Chancery Division
CILL	Construction Industry Law Letter
Cl&F	Clark and Finnelly's Reports, House of Lords, 12 vols, 1831–46
CLJ	Cambridge Law Journal
CLY	Current Law Year Book
Cmd/Command	Command Paper
Co Litt	Coke on Littleton (1 Inst)
Con LR	Construction Law Reports
Const. LJ	Construction Law Journal
DC	District Council
DoE	Department of the Environment
DTI	Department of Trade and Industry
EC	European Community (sometimes referred to as the EEC – European Economic Community)
EG	Estates Gazette
EGCS	Estates Gazette Case Summaries
EGLR	Estates Gazette Law Reports
Ex.	Exchequer Reports
ICE	Institution of Civil Engineers
ICR	Industrial Cases Reports
ISVA	Incorporated Society of Valuers and Auctioneers
J.	Justice
JCT	Joint Contracts Tribunal
KB	The Law Reports, King's Bench Division
Law Com.	Law Commission Report
LBC	London Borough Council

xvi *Abbreviations*

L.J. & L.J.J.	Lord Justice, Lord Justices
LQR	Law Quarterly Review
LR Ex	Law Reports, Exchequer Division, 5 vols, 1875–80
MBC	Metropolitan Borough Council
MLR	Modern Law Review
MR	Master of the Rolls
M&W	Meeson and Welsby's Reports, Exchequer, 16 vols, 1836–47
NILR	Northern Ireland Law Reports
NLJ	New Law Journal
NZLJ	New Zealand Law Journal
OJ	Official Journal of the European Communities
OJC	Official Journal of the European Communities: Information and Notices
OJL	Official Journal of the European Communities: Legislation
PN	Professional Negligence
QB	The Law Reports, Queen's Bench Division, 1952–
RIBA	Royal Institute of British Architects
RICS	Royal Institution of Chartered Surveyors
SI	Statutory Instrument
SLT	Scots Law Times
Stark	Starkie's Reports, Nisi Prius, 3 vols, 1814–23
UDC	Urban District Council
US	United States Reports
WLR	The Weekly Law Reports

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