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EDITORIAL 287

ARTICLES

Negligence in Design and Construction: The Impact of the Contractual Matrix – *Lucas Shipway*

Claims in negligence for defective design and construction generally fall to be resolved against a contractual backdrop. This article examines the impact of that “contractual matrix” on liability in negligence. After revisiting the principles that have traditionally governed the interplay between tort and contract, the article considers some significant recent decisions, including *Brookfield Multiplex Ltd v Owners Corp Strata Plan 61288* (2014) 254 CLR 185. It concludes that the existence and scope of a duty of care can be affected not just by the terms of any contract to which the plaintiff and defendant are parties but also by implication from the wider contractual matrix more generally. This has important ramifications not only for principals and contractors but also for others, such as prospective purchasers. 289

Dispute Boards in Public Private Partnerships: Best Practice or an Impossible Dream? – *Michael Van Der Ende*

Despite a strong record of success in avoiding and resolving disputes on projects, it is exceedingly rare for dispute boards to be utilised on public private partnerships. This is, in part, because of difficulties created by the involvement of multiple parties in PPP projects – in particular, the issue of consent to a contractually-based dispute resolution mechanism, and the nature of disputes on PPP projects. Two recent PPPs in New South Wales, the North West Rail Link and Sydney Light Rail projects, have taken contrasting approaches to overcoming these issues by providing for differently structured dispute boards in their respective primary contracts. This paper considers the primary issues with the dispute board mechanism in the context of PPPs and the dispute boards included on the NSW projects with a view to determining if the best practice in relation to dispute boards on PPPs may be ascertained. 300

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