

# BUILDING AND CONSTRUCTION LAW JOURNAL

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## EDITORIAL

**Don't think, can't communicate** ..... 71

## ARTICLES

**Rectifying defects in legal doctrine (the alignment of historical curiosities with modern legal principles) – Adrian Baron**

It is without controversy that, upon the repudiation of a contract by a contracting party, the other “innocent” party is entitled to terminate the contract, to enforce any contractual rights which have accrued before the termination of the contract, and to recover damages for breach of contract. What is not without controversy, and is the subject of this article, is why the “innocent” party is able to put to one side the contract and prosecute an alternative remedy on a quantum meruit. This would appear to be contrary to well-settled legal principle flowing from clear High Court authority. .... 72

**Expert evidence – a review of court rules – Keith Redenbach**

This article aims to clarify and reinforce the duties of the expert at common law to the court over and above any other countervailing interest. It also notes and comments upon changes to Australian court rules regarding the regulation of expert evidence as a result of similar reforms in the United Kingdom in the late 1990s. It will also comment on the rules surrounding the use of expert evidence in arbitral tribunals. .... 87

**Are delays by subcontractors delays beyond the control of the contractor? – Adrian Bellemore**

It is commonplace for delays to occur in construction, supply and similar type contracts and where the delay may be beyond the control, or reasonable control of the contractor or the supplier. These delays regularly spring from a delay by a sub-contractor or sub-supplier. In such a case can the contractor or supplier be entitled to say, subject to the terms of the contract, that the delay thus caused was beyond its control? The answer depends on the wording of the relevant contract and the ability of the contractor or supplier to have the work done by, or the relevant goods supplied by, another entity. .... 98

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