

---

# Index

---

## **Accrual of the cause of action**

- limitation periods and, 172–174
- mediation clauses in contracts, 328–351

## **“Actual ... cost payable”**

- meaning of phrase, 193–228

## **Adjudication**

- determination of an adjudicator appointed under the Act, 328–351
- Dispute Adjudication Boards, 301–302
- is challenge to determination precluded?, 243–258
- judicial review of reference date, 97–131
- repayments set by, 352–365
- submissions and investigations during, 89–96, 103–105
- valuation of work in, 328–351

## **Alternative dispute resolution** *see also*

### **Adjudication**

- expert determinations, 32–48, 370–405
- Official Referees (UK), 160–161
- in Public Private Partnerships, 300–310
- use of Referees, 231–232, 430–449

## **Ancillary documents**

- incorporation into contracts, 311–327

## **Australian Constitution**

- jurisdictional error claimed under, 253–254

## **Bank guarantees**

- as security for performance, 406–429

## **Bespoke items**

- procurement decisions, 77–78

## **Bias, in adjudication**

- rule against, 94–95

## **Book review**

- Construction Contract Variations, 70–75
- Understanding Construction Law, 68–69

## **Breach of contract**

- liquidated damages clauses and, 259–284
- termination due to, 132–155

## **Canada**

- concurrent liability in, 289–291
- interpretation of LEG 2 clauses, 25–31

## **Cause–effect analysis**

- quantifying loss, 17–19

## **Christie SC, Michael**

- becomes Editor, 5

## **Collateral stipulation, extravagant and unconscionable**

- dispute regarding, 276–281

## **Common law**

- contribution of construction cases, 160–169

## **Competitive bid process**

- cost and, 304–305

## **Concurrent liability**

- in contractual matrix, 289–299

## **Consent**

- required for alternative dispute resolution, 303

## **Construction Contract Variations**

- book review, 70–75

## **Construction law**

- contribution to common law, 160–169
- negligence in, 289–299

## **Contract Works policies**

- industry body exclusions, 21–31

## **Contractor’s All Risk policies**

- industry body exclusions, 21–31

## **Contracts**

- accrued rights and obligations upon termination, 406–429
- adjudication regarding restitution, 352–365
- assumption of acceptance of terms of, 311–327
- clauses calling for expert determination, 32–48
- construction and interpretation, 311–327
- Construction Contract Variations, 70–75
- contracting out of legislation, 176–183
- contractual matrix and negligence, 289–299
- dispute resolution clauses, 397–398
- enforceability of extended warranties in, 170–192
- expert determination clauses, 378–381, 403–404
- formation of in UK construction law, 161–163
- inconsistency with the Act, 328–351
- interpretation of, 165–166
- jurisdictional error and, 67
- liquidated damages provisions, 259–284
- mediation clauses in, 328–351
- oral, enforceability of, 58–63
- principles for implying term, 193–228
- procurement decisions in, 76–82

- proper construction of, 49–57
- reference dates in, 97–131, 132–155
- relation with side deed, 193–228
- security for performance, 406–429
- standard form contracts, 287–288
- Costs** *see also* **Pricing**
  - of alternative dispute resolution, 304–305
  - of expert determinations, 373, 402
- Court-appointed referees** *see* **Referees**
- Damages**
  - recovery for genuine loss or uncovenanted profit, 430–449
  - reliance on expert advice and, 430–449
  - scope of works and, 430–449
  - in UK construction law, 166–167
- DE design clauses**
  - insurance policies, 21–28
- Decision-making**
  - in procurement, 76–82
- Defective work and materials**
  - expert advice in respect of, 430–449
  - LEG defects wording, 21–23, 25–28
  - pure economic loss claims, 233–242
- Delay**
  - liquidated damages for, 424–428
- Design**
  - DE design clauses, 21–28
  - negligence in, 289–299
- Dispute boards**
  - Public Private Partnerships, 300–310
- Dispute resolution, alternative** *see* **Alternative dispute resolution**
- Disruption**
  - common causes of, 8
- Dorter, John Beresford**
  - obituary, 3–4
- “Duly made” submissions**
  - in adjudication of payment claims, 93–96
- Duty of care**
  - in UK construction law, 167–169
- Duty of good faith** *see* **Good faith**
- Dyson MR, Lord**
  - Keating Lecture by, 159
- Enforcement**
  - of expert determinations, 373
  - of extended contractual warranties, 170–192
  - of oral contracts, 58–63
- Error on the face of the record**
  - jurisdictional error and, 254–255
- Evaluative mediation** *see* **Mediation**
- Evidence**
  - admissibility of, 311–327
  - application to adduce, 128–130
  - of industry practice, 311–327
- Exclusionary rule**
  - proposed for pure economic loss claims, 239–242
- Exemption clauses**
  - drawing to other party’s attention, 311–327
- Expert advice**
  - scope of works and, 430–449
- Expert determinations**
  - challenges to, 370–405
  - final and binding nature of, 388–390
  - whether open to court review, 32–48
- Expert witnesses**
  - challenge to advice from, 430–449
- Extended contractual warranties**
  - example of, 171–172
- Extension of time clauses**
  - meaning of “reasonable time”, 49–57
- Extravagant and unconscionable collateral stipulation**
  - dispute regarding, 276–281
- Formation of contract**
  - in UK construction law, 161–163
- “Generally in accordance with”**
  - meaning of, 311–327
- Good faith**
  - in expert determinations, 390–392
- Hearing rule**
  - in adjudication of payment claims, 92–93

- 
- High Court decisions**  
on concurrent liability, 289  
pure economic loss claims, 233–242  
on “self-protection”, 292–296
- Illegality**  
is it a bar to enforcement?, 58–63
- Impartiality**  
of adjudication determinations, 385–386
- Implied terms**  
principles for, 193–228  
in UK construction law, 163–165
- Incorporation of terms** *see* **Terms**
- Independence**  
of expert determinations, 387
- Independent Certifiers**  
role in assessing practical completion, 259–284
- Industry body exclusions**  
insurance policies, 21–31
- Industry practice**  
evidence of, 311–327
- Inefficient work hours**  
calculating, 16–17
- Inferred terms**  
principles for, 193–228
- Insurance policies**  
industry body exclusions, 21–31
- Judicial review**  
of adjudication determinations, 328–351  
of availability of reference date, 97–131  
of expert determinations, 32–48, 381–385, 390–399  
limited jurisdiction of, 243–258
- Jurisdictional error**  
challenge to expert determinations, 387–388  
increasing importance of, 67  
relating to reference date, 97–131, 132–155  
in reviewing adjudicator’s determination, 243–258  
whether error of law amounting to, 328–351
- Keating Lecture**  
contribution of construction cases to common law, 160–169  
by Lord Dyson MR, 160–169
- LEG defects wording**  
insurance policies, 21–23  
judicial interpretation, 25–28
- Legislation**  
contracting out of, 176–183
- Liability**  
two-stage test of, 239
- Limitation of liability clauses**  
effect of, 311–327
- Limitation periods**  
contractual warranties exceeding, 170–192
- Liquidated damages provisions**  
for delay, 424–428  
whether a penalty?, 259–284
- Loss of productivity**  
quantifying, 6–20
- “Manifest error”**  
in expert determinations, 394–395
- Materiality**  
of submissions to adjudication, 91–92
- Measured mile methodology**  
quantifying loss with, 6–20
- Mediation**  
mediation clauses in contracts, 328–351
- Melbourne University Law School**  
Research Report, 287–288
- Natural disasters**  
expert determinations in, 32–48
- Natural justice**  
alleged breach of, 67  
expert determinations, 385–387  
expert determinations challenged on grounds of, 385–386  
security of payments legislation and, 83–96
- Negligence**  
alleged, in expert determinations, 395–396  
in design and construction, 289–299
- New South Wales**  
Public Private Partnerships, 300–310  
status of adjudication decisions, 251
- North West Rail Link (NSW)**  
dispute board for, 306–307
-

**Notice of contention**

jurisdictional error claimed, 110–111, 154–155

**Official Referees (UK)**

role in construction law, 160–161

**Off-the-shelf items**

procurement decisions, 78

**Oral contracts**

enforceability of, 58–63

**Payment claims**

adjudication of challenged, 243–258  
impugned, 132–155

**Penalties**

liquidated damages provisions as, 259–284

**Practical completion**

meaning of, 259–284

**Practitioners**

in UK construction law, 160–161

**Pricing** *see also* **Costs**

essential to contract validity, 161–162  
methodology for, 76–82

**Procedural fairness**

alleged breach of, 67  
of expert determinations, 386–387

**Procurement decisions**

methodology for, 76–82

**Production vs productivity**

valuation of, 8

**Progress claims and payments**

adjudicated amounts, 352–365  
contractual clauses, 342–343  
following termination of contract, 132–155  
legislative basis for, 83–96

**“Proximity” concept**

pure economic loss claims, 235–236

**Public Private Partnerships**

alternative dispute resolution in, 300–310

**Pure economic loss claims**

defective work and materials, 233–242  
recovery for, 291–292

**“Reasonable time”**

meaning of, 49–57

**Recovery**

for pure economic loss claims, 291–292

**Rectification work**

expert advice in respect of, 430–449

**Referees**

appropriateness of using, 231–232  
court-appointed, 231–232  
Official Referees (UK), 160–161  
whether court can reject report by, 430–449

**Reference dates**

whether availability of subject to review, 97–131  
whether existence of is jurisdictional fact, 132–155

**Repayments**

by contractors, 352–365

**Restitution**

set by adjudication, 352–365

**Security for performance**

unconditional bank guarantees, 406–429

**Security of payments legislation**

natural justice and, 83–96

**“Self-protection”**

increasing importance of, 292–298

**Services**

procurement decisions, 78

**Set off**

of liquidated damages, 428–429

**Side deed**

relation with contract, 193–228

**Site access**

time to completion and, 259–284

**Standard form contracts**

Melbourne University Law School research  
report, 287–288

**Standards**

technical breach of, 430–449

**Submissions**

during adjudication, 89–96, 103–105

**Superintendents**

adoption by adjudicator of price stipulated by,  
328–351  
repayment of amounts exceeding amounts  
assessed by, 352–365

**Sweet, Justin**

on construction law, 287

**Sydney Light Rail project**

dispute board for, 307

**Termination of contract**

accrued rights and obligations upon, 406–429

payment claims following, 132–155

**Terms**

objective approach taken by the Courts in respect

of incorporation of terms, 311–327

**Two-stage test**

of liability, 239

**Unconditional bank guarantees**

as security for performance, 406–429

**Unconscionable conduct**

extravagant and unconscionable collateral

stipulation, 276–281

**Understanding Construction Law**

book review, 68–69

**United Kingdom**

concurrent liability in, 289–291

contracting out of legislation, 176–177

contracting out of limitation periods, 177–183

interpretation of DE3 clauses, 23–25

**United States**

contracting out of limitation periods, 174–176

**“Unusual and onerous”**

whether a term is, 311–327

**Victorian Constitution**

jurisdictional error claimed under, 248

**“Vulnerability” concept**

pure economic loss claims, 237–239

**Warranties**

extended, enforceability of, 170–192

**Water damage costs**

liability for, 440–448

**Work hours, inefficient**

calculating, 16–17