

BUILDING AND CONSTRUCTION LAW JOURNAL

Volume 34, Number 3

2018

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ARTICLES

The Measure of Damages for Breach of a Construction Contract Where There Is No Economic Loss: An Examination and Evaluation of the Law in England and Australia
– *Jonathan Korman*

Common law recognises that although a promisee is entitled to contractual performance it will sometime be unreasonable to order damages assessed at the cost of rectifying non-compliance. This article describes the divergent responses of English and Australian common law to the question of when an award of rectification damages will be regarded as unreasonable. The House of Lords has held that damages are unreasonable if disproportional to the suffered loss. This kind of proportionality enquiry requires assessment of subjective experience of breach and subjective intention to reinstate. The Australian High Court’s response eschews subjective analysis and focuses instead on whether the breach discernibly detracts from the objectively determined purpose of the contracted performance. It is contended that the High Court’s doctrinally superior response has unfortunately been diluted by subsequent decisions at Australian intermediate appellate level – in particular, *Stone v Chappel*..... 159

We Need to Talk about the Engineer: A New Zealand Perspective – *Nick Gillies*

As New Zealand experiences intense construction demand, the role of the Engineer to the Contract is coming under increasing scrutiny. The Engineer is placed in the invidious position of acting independently of the contracting parties while in the service of the Principal. This article explores the Engineer’s obligations under New Zealand law, including whether the Contractor is owed a duty of care in tort, and suggests alternative ways to mitigate or avoid the inherent risks associated with the position for the good of construction projects..... 179

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