BOOK REVIEW:
PRACTICAL GUIDE TO ENGINEERING AND CONSTRUCTION CONTRACTS

Reviewed by Tómas Kennedy-Grant QC

The publishers describe this book as “a concise, practical guide to the law relating to construction contracts in Australia .. intended for end users who work at the ‘coalface’ negotiating and administering construction contracts”.

The book is indeed practical, drawing as it does on the business experience of Mr Loots and the engineering experience of Dr Charrett, as well as the legal knowledge and experience of both.

The introductory section of the book includes, in addition to chapters on contract law generally and some specific aspects of that law as it applies to construction contracts, a very interesting and helpful description of the wide range of standard conditions of contract in use in Australia (these include the FIDIC conditions, which have also been used, on occasion, in New Zealand). The main body of the text comprises chapters on:

- Entry into a contract
- General provisions
- The Employer
- The Engineer
- The Contractor
- Nominated Subcontractors
- Design
- Staff and Labour
- Plant, Materials and Workmanship
- Commencement, Delays and Suspension
• Tests on Practical Completion
• Owner’s Taking-over
• Defects Liability
• Measurement and Evaluation
• Variations and Adjustments
• Contract Price and Payment
• Termination by the Employer
• Suspension and Termination by Contractor
• Risk and Responsibility
• Insurance
• Force majeure

The final part of the book includes a chapter on claims and disputes and a chapter headed “Case Studies” in which the authors endeavour to “illustrate the practical application of the issues discussed … in the preceding chapters, by looking at some of the features of the contracts in a number of major construction projects”. The case studies include the Westgate Bridge project in Victoria in 1970 and the Øresund Bridge project linking Sweden and Denmark in 2000 (under which the reviewer had the pleasure of sailing two years ago).

The most valuable features of the text are:

• The discussion of standard form contracts and “bespoke” contracts
• The review (already referred to) of the range of available standard conditions of contract, including the Australia Standards, FIDIC, ICE, and NEC3, and newer standards not well known in Australasia, such as ConsensusDOCS (USA) and LOGIC (UK)
• The discussion of proportionate liability, which has been introduced by statute in most Australian jurisdictions but not yet in New Zealand
• The discussion of the Engineer’s obligations to the Employer and to the Contractor
• The discussion of unforeseeable physical conditions
• The discussion of the scope of, and contractual responsibility for, design
• The discussion of the general requirements regarding the provision of a programme and the rights of the parties in relation to the programme float (if any)
• The discussion of variations and adjustments
• The discussion of force majeure
• The table (in the chapter on claims and disputes) of the dispute resolution mechanisms provided for in the various standard conditions discussed in the book.
• The inclusion of a glossary of terms

I recommend the book.

To obtain a copy of this book, published on 24 September 2009, please contact CCH Australia Ltd. The ISBN number is ISBN 978 1 921593 52 9 and the cost including shipping and GST $127.00