

Principles of
CONSTRUCTION LAW

MICHAEL PATRICK O'REILLY

Principles of construction law

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Abbreviations

The abbreviations used for case citations are found in standard lists (e.g. those in the current Law Yearbook). They are referenced in most specialist libraries by their abbreviations. Abbreviations for cases, specialist reports and other references are as follows in this book:

For case citations

AC	Appeal Cases
All ER	All England Reports
BLR	Building Law Reports
B&S	Best and Smith Reports
CA	Court of Appeal
Ch App	Chancery Appeals
Ch D	Chancery Division
CILL	Construction Industry Law Letter
Constr LJ	Construction Law Journal
CP	Common Pleas
C&P	Carrington and Payne Reports
DLT	Dominion Law Times
E&B	Ellis and Blackburn Reports
EG	Estates Gazette
ER	English Reports
Giff	Giffard Reports
H&C	Hurlston and Coltman Reports
HL	House of Lords
H&N	Hurlston and Norman Reports
IR	Irish Reports
KB	King's Bench
LGR	Local Government Reports
LI Rep	Lloyd's Reports
LR	Law Reports
M&W	Meeson and Welsby Reports
NY Supp	New York Supplement
NZLR	New Zealand Law Reports
QBD	Queen's Bench Division
SC	Scottish Cases
TLR	Times Law Reports
WLR	Weekly Law Reports

Others

ICE	Institution of Civil Engineers
JCT	Joint Contracts Tribunal
RIBA	Royal Institute of British Architects
RICS	Royal Institute of Chartered Surveyors

Preface

In writing this book I wished to produce a short work in which the presentation of the detailed rules of law would take second place to an exposition of the fundamental principles involved. Hence the title: 'Principles of Construction Law'.

The book originated as a compilation of the material which I taught in a variety of undergraduate and postgraduate courses at the University of Nottingham and on the Construction MSc course at Loughborough University of Technology. I decided to publish my notes in the present form when I was unable to refer my students to a single inexpensive book which covered all my lecture material. As I began to write, I realised that this book would also be of use to practising construction professionals and I have expanded the material so that it would be of maximum benefit to that readership. It will also, I believe, be of assistance to lawyers whose experience of construction law is limited.

The standard texts *Keating* and *Hudson* (see bibliography for details of all books and other materials referred to in the text) deal with issues relating to contracts with far more authority than I could hope to do. This is a much shorter book and aims to summarize the principal elements of the law of construction. The major texts assume an understanding of the legal system and the law. I have designed this book to be a beginner's text since construction students and indeed many practising construction professionals have no prior knowledge of the law, except as citizens. Through this book I also wished to familiarise them with a wider variety of topics than are dealt with in the major texts; in particular I wished to discuss tortious obligations in some detail and also to give them an introduction to international issues in construction law. I should also like to mention the book *Construction Law* by John Uff, now in its fifth edition. Dr Uff's book deals with a wide range of topics and includes short commentaries on the main standard forms of contract. There is, I believe, a fundamental difference in approach between my work and his; he aims to cover a wide field (and does so admirably) whereas my prime objective is to provide a fundamental understanding uncluttered by detailed rules and conditions from standard contracts.

Preface

In this book I have aimed to present the basic law and to illustrate it with the words of the judges so that the reader may see the way in which legal rules are formulated. The quotations and the case histories are selected as much for their clear language and their obvious bearing on practical problems in construction as for their weight as precedent. Accordingly, there are as many, if not more, passages from the judgments of the Official Referees as there are from the Law Lords. I make no excuse for this.

I would like to thank Dr Mick Mawdesley, Dr Andrew Newport, Mr Arthur O'Reilly and Miss Anne Dennett, each of whom read through and commented critically on the text in preparation. They have pointed out many faults; needless to say, any errors or misunderstandings which remain are wholly my responsibility. I would also like to thank Miss Rachel Ramsden and Miss Selina Willis for helping me to prepare the manuscript and proofs.

Most thanks, however, go to Professor Stephen Brown and all the students and staff of the Department of Civil Engineering at Nottingham University for providing me with the stimulation, facilities and space to write this book. I dedicate this book to them all.

*Michael P O'Reilly
Nottingham,
September 1992*

A note on the arrangement of the book

This book has been arranged into four parts.

Part 1, 'Introductory Topics', contains three chapters, each concerned with background material or introductory aspects of construction law. They are also concerned with a number of aspects relating to the general legal system which are important for or affect construction law, including the legislation affecting construction.

The second and third parts deal respectively with the laws of Contract and Tort, the two major constituents of construction law. Contractual obligations arise when two parties make an agreement; tortious obligations arise independently of agreement. Thus, if a contractor and a landowner agree that for a certain sum of money the contractor will build a house a contract comes into existence. If the contractor builds the house but the owner refuses to pay, then the contractor's claim is for breach of contract. However, if the house subsequently collapses and thereby damages property on a neighbour's land, that neighbour's claim (either against the building owner or the constructor or both) will be in tort. This is because the obligation not to damage the neighbour's property arises independently of an agreement to which the neighbour is a party.

In Part 2, 'Contract', Chapters 4 to 8 deal with general principles and Chapter 9 to 16 deal with specific aspects of contract law relating to construction. This part of the book contains thirteen chapters, approximately half the book, reflecting the overriding importance of contracts in construction law.

Part 3, 'Torts in Construction', contains five chapters. The topics dealt with here are important for an overall understanding of the subject but the coverage is less detailed than that of the section on contracts since, in practice, the law of tort plays a less significant role in construction law.

Part 4, 'Miscellaneous Topics in Construction Law', contains six chapters dealing with a variety of topics. Some of these are relevant both to contractual and tortious aspects of construction law; some deal with topics which could not satisfactorily be included within either.

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