

# **Construction Law**

From beginner to practitioner

**Jim Mason**



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# Construction Law

This innovative book provides a thorough and comprehensive guide to construction law by blending together black letter law and sociolegal approaches. This mixed methodology makes an ideal introduction to the subject for those studying to enter the Architecture, Engineering and Construction (AEC) industry in a professional capacity. Designed to equip the student with all they need to know about construction law, the topics covered include:

- the fundamentals of law and the English legal system;
- contract, business, tort and property law;
- procurement, subcontracting and partnering;
- Building Information Modelling and best practice;
- dispute resolution including mediation, arbitration, litigation and adjudication.

The book's suitability for study is enhanced by its logical structure, chapter summaries and suggestions for further reading, whilst the role of law in achieving a more collaborative and less confrontational AEC industry is examined in detail.

*Construction Law: From beginner to practitioner* takes the reader on a journey from basic legal concepts through to a more detailed appreciation of what the AEC industry needs as a specialist client for legal services. This book is useful not only for understanding the basics but also as a reference that practitioners will use time and again.

**Jim Mason** is Programme Leader on the Masters in International Construction Law in the Department of Architecture and the Built Environment at the University of the West of England.

**For Becky**

**Thanks**

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# Foreword

The purpose of this book is to guide the student from the first tentative steps in a law subject through to the development of a detailed understanding of this fascinating field of study. The aim is to give the student knowledge of construction law and confidence to rely on their own ability to research and resolve any issues arising in this area. As such, an appreciation of the matters discussed forms a starting point for a wider study into all aspects of construction law.

The layout of the book takes the student through subject areas broken down into sections. The sections build on the concepts introduced in the preceding chapters to allow students to expand their knowledge at their own pace. The sections range from basic legal concepts in Part 1 through to a more detailed analysis of the background to construction law in Part 2. The notion that the construction industry is a specialist user of legal services is explored in Part 3. Part 4 takes the student through the dispute resolution mechanisms available to the construction industry. The distinctive and innovative features of the construction industry and the legal ramifications are considered in Part 5.

The book is intended to support the study of construction law as a component of both undergraduate and postgraduate degree courses in the built environment. Equally, the work supports a study of construction law as a discrete discipline. In part, the style adopted follows the textbook approach of disseminating information in a methodical manner. Elsewhere, the writing is intended to be more academic in terms of making connections between different parts of the law and the specific character of the construction sector through exploration of developing themes. In some areas, consistency of approach has given way to the desire to put across my approach on construction law for the reader's benefit. As a result, this is more than just a law book. Aspects of construction and project management are drawn on when necessary to give the reader a holistic view of the applications of law in this field. This book also provides an opportunity to reflect on recent initiatives within the built environment sector. I have set out, therefore, to add my contribution, seeking to encourage the compelling case made by the agents of change who would see the construction industry continue to take measures to improve its practices.



The main stimulus for writing this book is a desire to plug a gap I perceive to be evident between the 'black letter law' approach taken by many legal writers and the expectation of professionals working and studying in this area. I have sought, throughout my career as a solicitor and then as an academic, to make the law accessible to everyone. Any failures on my part to follow the norms of legal writing are acknowledged as a conscious decision to present the law in a more accessible way than is the case in a good number of legal textbooks. The expectation, which I recall vividly from my time as a law student, that the reader will invest the time needed to locate, print and read the law cases referred to belongs to a different era. I hope that the reader will be able to follow and make the necessary connections and reflections on what you already know, thereby unlocking a deeper appreciation of construction law.

Jim Mason

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September 2015

# Preface

This book is intended to be a stand-alone reference point for those studying construction law. I have included further reading sections at the end of chapters which identify textbooks containing more information for the student to follow up on should they wish. Where multiple chapters refer to the same books, I have identified the sections to which particular attention should be paid.

This book refers to the 'employer', by which reference is intended to the client or buyer of construction services. The 'contractor' refers to the building company supplying the construction services. References to 'he' and 'him' should be taken to imply equally to 'she' and 'her'.

This book refers to the 'AEC industry', by which reference is made to the Architecture, Engineering and Construction industry. The integration of these previously separate fields of practice is one of the major changes in the sector in the last 20 years.

The numbering system used by the book is intended to assist navigation around the various chapters, and there are cross-references made in the text.

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