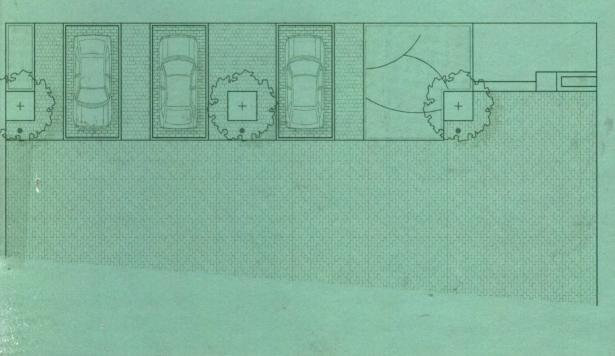


# LANDSCAPE PROFESSIONAL PRACTICE

# GORDON ROWLAND FRASER



# **Landscape Professional Practice**

Gordon Rowland Fraser Chartered Landscape Architect, MBA, Barrister

### © Gordon Rowland Fraser 2015

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the publisher.

Gordon Rowland Fraser has asserted his right under the Copyright, Designs and Patents Act, 1988, to be identified as the author of this work.

Published by Ashgate Publishing Limited Wey Court East Union Road Farnham Surrey, GU9 7PT England

Ashgate Publishing Company 110 Cherry Street Suite 3-1 Burlington, VT 05401-3818 USA

www.ashgate.com

### **British Library Cataloguing in Publication Data**

A catalogue record for this book is available from the British Library

### Library of Congress Cataloging-in-Publication Data

Fraser, Gordon Rowland.

Landscape professional practice / by Gordon Rowland Fraser.

pages cm

Includes bibliographical references and index.

ISBN 978-1-4724-4121-8 (hardback: alk. paper)—ISBN 978-1-4724-4122-5 (ebook) — ISBN 978-1-4724-4123-2 (epub)

1. Landscape architecture—Study and teaching (Higher) 2. Landscaping industry—Management—Study and teaching (Higher) 3. Landscape contracting—Study and teaching (Higher) 4. Industrial management—Study and teaching (Higher) I. Title.

SB469.4.F73 2015 712.076—dc23

2014028397

ISBN: 9781472441218 (hbk) ISBN: 9781472441225 (ebk – PDF) ISBN: 9781472441232 (ebk –ePUB)



### LANDSCAPE PROFESSIONAL PRACTICE

Graduate of the Royal Botanic Gardens, Kew, Chartered Landscape Architect, MBA and Barrister, Gordon Rowland Fraser draws upon 30 years of project management, professional practice and teaching experience to provide an uncomplicated and intuitive guide to the business aspects of the landscape profession. An indispensable reference for seasoned professionals, the book will enable the student or novice practitioner to turn their drawing board inspiration into reality without being overwhelmed or afraid of overseeing the implementation of their proposals.

Guided by the Landscape Institute's 2013 Pathway to Chartership syllabus, this structured, step-by-step, narrative guide sets out the documentation commonly used within the landscape profession and makes accessible a logical and sequential understanding of contractual relationships; procurement strategies; processes of preparing client estimates and obtaining competitive quotations; of preparing contract documentation and administering formal contracts; general concepts of law as they relate to land management and the landscape profession; of business administration, market appraisal and positioning; and of the landscape consultant's appointment.

As an understanding of professional practice is intrinsic to all Landscape Institute accredited courses, this is an essential text for every landscape architecture student during their education and their subsequent journey into professional practice. Those undertaking Garden Design Diplomas will similarly find the book invaluable as they venture into the world of creativity and commerce, while the seasoned practitioner will find it a comprehensive point of reference to add to their bookshelf.

### **Table of Cases**

Adams v Lindsell [1818] 1 B&Ald 681 KB

Addis v Gramophone Ltd [1909] AC 488 HL

Anglia Television Ltd v Reed [1972] 1 QB 60 CA

Ashton v Turner [1981] QB 137

Barnett v Chelsea & Kensington Hospital Management Committee [1969] 1 QB 428

Blyth v Birmingham Waterworks [1856] 11 Ex. 781

Bolam v Friern Hospital Management Committee [1957] 1 WLR 582

Bolton v Stone [1951] AC 850

Bourhill v Young [1943] AC 92 HL

Byrne v Van Tienhoven [1880] 5 CPD 344

Cable & Wireless PLC v IBM United Kingdom Ltd [2002] EWHC 2059 (Comm)

Caparo Industries v Dickman [1990] 1 All ER 568 HL

Carlill v Carbolic Smoke Ball Co. [1893] 1 QB 256 CA

Channel Tunnel Group Ltd & Another v Balfour Beatty Construction Ltd & Others [1992]

OB 656 CA

Chaplin v Hicks [1911] 2 KB 786

Chappell & Co. v Nestle Co. Ltd [1960] HL

Chaudry v Prabhakar [1989] 1 WLR 29

Corenso (UK) Ltd v Burnden Group PLC [2003] EWHC 1805 (QB)

Courtney & Fairbairn Ltd v Tolaini Bros (Hotels) Ltd [1975] 1 WLR 297 CA

Cowl v Plymouth City Council [2001] EWCA Civ 1935

XVI

Dickinson v Dodds [1876] 2 CPD 463 CA

Donoghue v Stevenson [1932] AC 562

Dunnett v Railtrack PLC [2002] EWCA Civ 302

Entores v Miles Far East Corporation [1955] 2 QB 327 CA

Fairchild v Glenhaven [2002] UKHL 22

Farley v Skinner [2001] 4 All ER 801 HL

Felthouse v Bindley [1862] 11 CBNS 86

Fisher v Bell [1961] 1 QB 394

Froom v Butcher [1976] QB 286

Glasbrook Bros. v Glamorgan County Council [1925] AC270 HL

Glasgow Corporation v Muir [1943] AC 448

Hadley v Baxendale [1884] Exch 341

Hadley v London Electricity Board [1965] AC 778 HL

Hartley v Ponsonby [1857] 7 E&B 872

Hedley Byrne & Co v Heller & Partners Ltd [1964] AC 465

Hilder v Associated Portland Cement Manufacturers [1961] 1 WLR 1434

Holwell Securities v Hughes [1974] 1 WLR 155 CA

Hughes v Lord Advocate [1963] AC 837

Hurst v Leeming [2002] EWCA Civ 1173

Hyde v Wrench [1840] 3 Beav 334

Jarvis v Swan Tours [1972] 3 WLR 954

Jones v Livox Quarries Ltd [1952] 2 QB 608

Marc Rich & Co v Bishop Rock Marine Co Ltd [1996] AC 211

McCook v Lobo [2002] EWCA Civ 1760

McKew v Holland [1969] 3 All ER 1621 HL

Mullin v Richards [1998] 1 All ER 920

Murphy v Brentwood District Council [1990] 2 All ER 908

Owens v Liverpool Corporation [1939] 1KB 394

Parsons v Uttley Ingham [1978] QB 791 CA

Partridge v Crittenden [1968] 2 All ER 421

Pinnel's Case [1602] 5 Co Rep 117

Powell v Lee [1908] 99 LT 284

R v Clarke [1927] 40 CLR 227

Rhone v Stephens [1994] 2 AC 310

Roe v Minister of Health [1954] 2 QB 66

Roscorla v Thomas [1842] 3 QB 234

Routledge v Grant [1828] 4 Bing 653

Royal Bank of Canada v Secretary of State for Defence [2003] EWHC 1841

Ruxley Electronics & Construction Ltd v Forsyth [1996] 1 AC 344 HL

Scammell v Ouston [1941] AC 251 HL

Shirlaw v Southern Foundries [1939] 2 KB 206

Smith v Eric S. Bush; Harris v Wyre Forest District Council [1989] 2 WLR 790 HL

Smith v Leech Brain & Co. Ltd [1962] 2 QB 405

Socit Internationale de Telecommunications Aeronautiques SC v Wyatt Co (UK) Ltd (Costs) [2002] EWHC 2401 (Ch)

Spartan Steel & Alloys Ltd v Martin & Co [1973] QBD 27

Stevenson v McLean [1880] 5 QBD 346

Stilk v Myrick [1809] 2 Camp 317

The Wagon Mound (No.1) [1961] AC 388

Tulk v Moxhay [1848] 2 Ph 774

Valentine v Allen [2003] EWCA Civ 1274

Wieland v Cyril Lord [1969] 3 All ER 1006

Williams v Cowardine [1833] 4 B&Ad 621

Williams v Roffey Bros & Nicholls (Contractors) Ltd [1990] 1 All ER 512

Yates v Pulleyn [1975] 119 SJ 370 CA

## **Biographical Note**

One of fewer than 700 people worldwide to have graduated from The Royal Botanic Gardens Kew; a Chartered Member of the Landscape Institute; Master of Business Administration; and Barrister, the author draws upon 30 years' experience of project management and professional practice; his specialism in specifying projects, setting-up and administering contracts and conflict resolution; and his well-received lecture series delivered in some of the country's leading design schools. A former member of the Chartered Institute of Arbitrators trained in mediation techniques by The Inns of Court, the author has employed his unique skill set in the cost-effective resolution of multi-million pound construction and housing disputes, using a range of alternative dispute resolution procedures while simultaneously preserving ongoing contractual relationships between parties.

### **Foreword**

Since the first publication of the book of the same title by Hugh Clamp in 1988, the profession of landscape architecture has 'grown-up' significantly. For many years, and most certainly since the Landscape Institute (LI) obtained its Royal Chartered status in 1997, practitioners, potential LI members, and students alike have been underpinning their baseline knowledge on the information presented in Hugh Clamp's original book for want of any comparable alternative – a fact that Gordon Fraser highlights quite pertinently in his introduction. Just a brief dip into the contents of that original publication indicates what might now be considered a degree of naivety and a lack of the professionalism that is necessary to compete in the highly professional world of landscape architecture and the built environment today. This is not, in any way, to denigrate or dismiss the importance of Hugh Clamp's original book to the development of our profession, merely to highlight the need for someone to review the material and bring it, necessarily, into the twenty-first century.

Many of us may have been tempted to take on that considerable challenge but until now we have all failed to do so. Gordon Fraser has brought his wealth of knowledge, understanding, experience and perhaps quite unique skillset to bear in a manner that, as he suggests, 'is considered relevant to all landscape professionals'. He should be highly applauded for having done so.

Each chapter begins by clearly identifying the aims of the topic about to be discussed – these are presented in a series of concise, precise and comprehensive bullet points. The chapters are equally summarised in a series of short, similarly constructed, conclusive sentences leaving the reader in no doubt as to what has just been interrogated. In taking great pains to present a highly detailed 'Contents' page, the author presents the reader with an exceptionally accessible reference book that offers equally accessible information across the widest range of professional landscape architectural needs.

The range of information presented has also increased and improved considerably since Hugh Clamp's original publication adorned our office shelves. The author has not only brought the standard information up to date but has used his extensive

knowledge of the law to introduce a wide range of baseline legal cases that help to explain and identify the various legal precedents against which we as professionals might be judged in this increasingly litigious world. Once again an invaluable reference resource, set within the general narrative of each chapter that is easily understood and highly accessible for everyone, irrespective of whether they are established practitioners, students or someone with just a passing interest.

It is rare in today's demanding professional world that a landscape architect can define her or himself as purely a 'designer' – with that role comes many more professional responsibilities and demands than many may imagine and thus, this book will be of benefit to every established and budding professional in the landscape architectural industry. Just as Hugh Clamp's *Landscape Professional Practice* was a 'must have', 'must study', 'must refer to' professional reference of the late twentieth century, so Gordon Fraser's new reference will be the favoured reference of the early twenty-first century.

This book will be an important reference guide for many years to come, helping to identify, clarify and elucidate many of the fundamental elements of professional practice for landscape architects not only in the UK but around the world.

Nigel Thorne MSc FRSA FIHort FLI PPLI Consultant Landscape Architect / Specialist Landscape Manager

# Acknowledgements Without the tremendous support, encouragement and practical assistance of Carol and Niall Watkins and Frank Afful this book might never have completed its long

Gordon Rowland Fraser Dip Hort Kew LLDip MBA BVC CMLI

# **Contents**

List of Figu	ures	xiii
Table of Co	ases	XV
Biographi	cal Note	xviii
Foreword		xix
Acknowle	dgements	XXI
Introduct	ion	1
Section l	Professional Judgment Ethics and Values	
1 Profe	essional Association	11
1.1	The Landscape Institute	11
1.2	Standards of Conduct and Practice for Landscape Professionals	13
1.2	2.1 To preserve the character and quality of the environment	13
1.2	2.2 To uphold the reputation and dignity of the profession	14
1.2	2.3 To actively promote the code of conduct	14
1.2	2.4 To actively promote and further the Landscape Institute	
	objectives	15
1.3	2.5 To act with integrity consistent with professional	
	obligations	15
1.3	2.6 To only undertake professional work for which	
	competent	17
1.2	2.7 To maintain and promote professional competence	17
1.3	2.8 To organise professional work responsibly with regard	
	to clients	18
1.3	2.9 To carry out professional work with care and to relevant	
	standards	18
1.3	2.10 To promote professional services in a truthful and	
	responsible manner	19

	1	.2.11	To ensure personal and professional finances are managed prudently	20
	1	.2.12	To maintain adequate and appropriate professional	20
		.2.12	indemnity insurance	20
	1	.2.13	To deal with professional complaints promptly and	-\
		.2.15	appropriately	21
	1.3	Conti	inuing Professional Development	22
Se	ction	II C	Organisation and Management	
2	The	Law	of Contract	27
	2.1	Invita	ation to Treat	28
	2.2	Offer		28
	2.3	Acce	otance	29
	2.4	Cons	ideration	31
	2.5	Cont	ract Terms	32
	2.6	Privit	y of Contract	33
	2.7	Agen	су	34
	2.8	Disch	parge of Contracts	34
	2.9	Reme	edies for Breach of Contract	35
	2.10	Misre	epresentation	37
3	The	Tort	of Professional Negligence	41
	3.1	Legal	Duty of Care	41
	3.2	Bread	:h of Duty	43
	3.3	Causa	ation	44
	3.4	Remo	oteness of Damage	45
	3.5	Defe	nces	46
	3	3.5.1	Willing assumption of risk	47
	3	3.5.2	Exclusion of liability	47
	-3	3.5.3	Contributory negligence	48
	3.6	Reme	edies	49
	3.7	Negli	gent Misrepresentation	50
	3.8	Profe	ssional Indemnity Insurance	51
4	Hea	alth an	d Safety Legislation	53
	4.1	Healt	h and Safety at Work Act	54
	4.2	The N	Management of Health and Safety at Work Regulations	55
	4.3	Meth	od Statements	57
	4.4	The C	Control of Substances Hazardous to Health Regulations	
		(COS	HH)	57
	4.5	The F	Reporting of Injuries, Diseases and Dangerous Occurrences	
			lations (RIDDOR)	58
	4	1.5.1	Death or major injuries	58
	4	1.5.2	Over-three-day injuries	59

	4.5.3	Work-related diseases	59
	4.5.4	Dangerous occurrences	59
	4.6 Enfo	rcement	59
5	Business	Performance and Development	63
		Transformation Process	63
		parison of Goods and Services	65
		ormance Analysis	66
	5.3.1	Quality	66 67
	5.3.2	Speed	67
	5.3.3 5.3.4	Dependability Flexibility	67
	5.3.5	Cost	67
		Historical performance	68
	5.3.7	Target performance	68
	5.3.8	Competitor benchmarking	69
		Business Environment	70
	5.4.1	Legal	70
	5.4.2	Political	71
	5.4.3	Economic	71
	5.4.4	Social	72
	5.4.5	Technological	72
		ket Appraisal	73
	5.5.1	Resources	73
	5.5.2	Resource markets	74
	5.5.3	Customers	74
	5.5.4	Competitors	74 75
	5.6 Busi	ness Promotion	, , , , , , , , , , , , , , , , , , ,
6	Business	s Management	77
	6.1 Priva	ate Sector Organisations	77
	6.1.1	Sole trader	77
	6.1.2	Partnership	78
	6.1.3	Limited company	79
	6.1.4	Public limited company	79
		-for-Profit Organisations	80 80
	6.2.1	Charitable incorporated organisation Company limited by guarantee	81
	6.2.2 6.2.3	Consumer co-operative society	81
	6.2.4	Workers co-operative	81
		lic Sector Organisations	82
		ncial Accounting	83
	6.4.1	Profit and loss accounts	83
	6.4.2	Balance sheets	85
	6.4.3	Cash flow forecasting	85

CONTENTS

vii

7	Engaging a Landscape Professional	89
	7.1 Scope of Services	89
	7.2 Form of Agreement	90
	7.3 The Landscape Consultant's Appointment	9
	7.4 The Professional Practitioner's Fees	93
	7.4.1 Calculating professional fees	93
	7.4.2 Percentage fees	96
	7.4.3 Time charged fees	97
	7.4.4 Lump sum fees	97
	7.4.5 Expenses and disbursements	98
Se	ection III Legislative Bases of Assessment and Anal	ysis
8	Development Control and Environmental Managem	ent 103
	8.1 Permitted Development	105
	8.2 Environmental Impact Assessment	107
	8.3 Tree Preservation Orders	112
	8.4 Conservation Areas	114
	8.5 Forestry Regulations	114
	8.6 Hedgerows Regulations	116
	8.7 Habitats Regulations	118
Se	ection IV Project Implementation	
9	<b>Understanding Contractual Relationships</b>	123
	9.1 Roles and Responsibilities	12:
	9.1.1 The role of the client	123
	9.1.2 The role of the contractor	125
	9.1.3 The role of the professional practitioner	120
	9.2 Procurement Strategies	129
	9.2.1 Traditional procurement	130
	9.2.2 Design and build procurement	133
	9.2.3 Management procurement	133
10	O Construction Design and Management Regulations	14
	10.1 The Requirement for Notification	14:
	10.2 Obligations of the Client	14:
	10.3 Obligations of the Construction Design and Manag	gement
	Coordinator	14:
	10.4 Obligations of Designers/Professional Practitioners	140
	10.5 Obligations of the Principal Contractor	148
	10.6 Obligations of All Contractors and the Self-Employe	
	10.7 Competence and Training	15
11	1 Estimating Project Budgets	155
	11.1 Measurement	158

	11.2 Formu	ulating a Schedule	158
	11.3 Attrib		161
	11.4 Source		162
		Previously quoted schemes	163
	11.4.2	Manufacturer's or supplier's costs	163
	11.4.3	Indicative quotations from contractors	163
	11.4.4	Spon's Landscape and External Works Price Book	164
12	Specificat	ion Fundamentals	169
	12.1 Contra	act Documentation	169
	12.2 Buildi	ng Information Modelling	171
	12.3 Specif	fication Structure	171
	12.4 The C	ommon Arrangement of Work Sections	173
	12.5 Prelim	ninaries/General Conditions	174
	12.5.1	Project particulars	174
	12.5.2	Drawings	174
	12.5.3	The site/existing buildings	174
	12.5.4	Description of the work	174
	12.5.5	Conditions of contract	175
	12.5.6	Employer's requirements: tendering sub-letting & supply	175
	12.5.7	Employer's requirements; management of the works	175
	12.5.8	Employer's requirements: quality standards/control	176
	12.5.9	Employer's requirements: security/safety/protection	176
	12.5.10	Employer's requirements: facilities/temporary	
		work/services	176
	12.6 Mater	rials and Workmanship	177
	12.6.1	Materials	177
	12.6.2	Workmanship	177
	12.6.3	Quality assurance	178
	12.6.4	British Standards	178
	12.6.5	Specification by type	178
	12.6.6	Specification by proprietary name	179
	12.6.7	Specification by minimum standard	179
	12.6.8	Specification by supplier	179
	12.6.9	Specification by method	180
	12.6.10	Specification by finished effect	180
	12.7 Stand	lard Specification Clauses	180
	12.7.1	NBS Landscape	181
	12.7.2	National Plant Specification	181
	12.7.3	Code of Practice for Handling & Establishing Landscape	
		Plants	183
	12.7.4	Other sources	184
13	Condition	s of Contract	187
	13.1 Sub-C	Contracts	188
		s of Agreement	189
	13.3 The JCLI Conditions of Contract		

### LANDSCAPE PROFESSIONAL PRACTICE

	13.3.1	Details of the parties	192
	13.3.2	Nature and location of the works	192
	13.3.3	The contract documents	192
	13.3.4	The contract sum	192
	13.3.5	Professional practitioner's details	193
	13.3.6	The Construction Design and Management Regulations	193
	13.3.7	Dispute resolution	194
	13.3.8	Construction Industry Scheme	195
	13.3.9	Supplemental provisions	196
	13.3.10	Construction Design and Management planning period	197
	13.3.11	Duration of the works	197
	13.3.12	Liquidated damages	197
	13.3.13	Defects and establishment of plants	198
		Theft or malicious damage	199
		Retentions	200
		Supply of documents	201
		Contribution, levy and tax changes	201
		Contractor's liability insurance	202
	13.3.19	Insurance of the works	202
	13.3.20	Attestation	203
14	Single Sta	ge Selective Tendering	205
	14.1 Pre-Te	ender Evaluation	206
	14.2 Prelim	ninary Enquiry	209
	14.3 Invita	tion to Tender	210
	14.4 Tende	er Evaluation	211
	14.5 Tende	er Outcome	213
15	Contract A	Administration	215
	15.1 Certif	ication	216
	15.1.1	Landscape Architect's/Contract Administrator's	
		Instruction	217
	15.1.2	Interim Payment Certificate	218
	15.1.3	Payless Notice(s) (Type 1)	220
	15.1.4	Payless Notice(s) (Type 2)	220
	15.1.5	Certificate of Practical Completion	221
	15.1.6	Certificate of Making Good	222
	15.1.7	Final Certificate	223
	15.2 Drawi	ing Office Records	224
	15.2.1	Job lists	224
	15.2.2	Contract documentation	225
	15.2.3	Valuations, certificates and variations	225
	15.2.4	Correspondence	225
	15.2.5	Practice timesheets and invoices	226