

BOOK REVIEW

Delay and Disruption in Construction Contracts 5th edition, Andrew Burr (Didcot: Routledge, 2016), 1152pp, hardback, £375, ISBN: 978-1-13894-066-6

The “Delay in Disruption in Construction Contracts” series was first published in 1997 and since then Keith Pickavance, a name closely associated with all things delay in the construction world, has guided the publication through another four editions. In the process, the publication has earned its reputation as the most comprehensive English work dedicated to delay, disruption and related issues and remains for many the leader in its field. Many English decisions on delay will be followed elsewhere in the common law world, leading this established title to have more than mere local relevance.

The fifth edition sees Pickavance assuming a contributor’s role, while the editorial chair has been filled by the previous assistant editor, Andrew Burr. Burr has drawn on the experience and expertise of a formidable editorial team including Francis Barber, Steve Briggs, Wolfgang Breyer, Joe Castellano, David-John Gibbs, Wendy McLaughlin, Chris Miers and Rob Palles-Clark.

For those unfamiliar with the contents of the book and indeed the subject of delay and disruption in construction and related issues, it is worthwhile to summarise the structure of the book. The first four chapters offer an introduction to the subject and the parties involved in the construction process, the risks inherent in construction, how projects are procured and how standard forms of contract deal with time and costs.

The authors tease out with impressive clarity a number of important distinctions on the characteristics of some standard forms of contract and the application of such by reference to the decisions of the courts and in particular the [City Inn v Shepherd Construction](#) case¹.

The sections dealing with recovery of loss and expense under numerous standard forms of contract provide essential reading on a subject which is often misinterpreted in the industry. A new section on “Cost and time management in the JCT Major Projects Contract and the CIOB Complex Projects Contract – a comparative analysis” is a worthy addition to the previous editions.

Chapters 5 and 6 introduce the reader to contractual notices, early warnings and conditions precedent, the subject of extensions of time and the concept of time at large. The impressive range of standard forms of contract considered in these chapters provides a useful point of reference for professionals administering such contracts in the working environment. Chapters 7–10 deal with the mechanics of the Planning and Programming of construction projects including the presentation and approval of programmes, revising, updating, monitoring, and reporting of programmes, and project control. A number of these sections draw rather heavily on the CIOB “Guide to Good practice in the Management of Time in Complex Projects”.

¹ *City Inn Ltd v Shepherd Construction* [2007] CSOH 190

Issues such as contractors producing attractive yet entirely meaningless programmes, difficulties arising from the inability of sub-contractors’ and contractors’ programmes to co-exist, and deficiencies in the drafting of time

provisions in standard forms are given sufficient voice. On the last topic, detailed consideration is given to a number of standard forms including the Irish government standard forms.

Chapters 11–13 deal with a number of day to day issues faced by construction professionals: mitigation, recovery and acceleration, variation and change, and construction records. These topics are timeless and universal for all involved in the construction process in both delivery of projects and the resolution of disputes. The writing is clear and concise whilst each topic has numerous case law references cited which greatly reinforces the readers understanding of the topic. Particularly effective is the inclusion of “Illustration” boxes which summarise a particular issue and give the facts of a relevant case complete with the judge’s commentary.

A considerable addition to the 5th edition is the impressive extension of the previous 3 pages on Building Information Modelling (“BIM”) to a fully expanded section which provides the reader with useful definitions of what BIM is and, rather appropriately, what it is not, complete with a balanced review of the benefits and difficulties of BIM, the incorporation of BIM into standard forms and the likely effect of BIM on claims and disputes. In due course as the industry adopts the technology of BIM, it will prove to be an interesting exercise to look back at the 5th edition and see what the future delivered.

Chapter 14 draws the reader into the world of cause and effect. This world is often not fully appreciated as being critical to the understanding of delay, disruption, loss and expense, and damages. This chapter offers the reader a comprehensive introduction to the topic and is essential reading.

Chapters 17–25 can be loosely grouped together as the “disputes” section as it is here that the topics of disruption, concurrency, claims, apportionment, damages, dispute resolution and adjudication in the UK are detailed.

Chapter 17 draws on the SCL Protocol 2002 “Delay & Disruption”, which is to be updated in the not-too-distant future. The chapter has some very useful references to cases in the UK which considered disruption disputes and the use of a “measured mile” approach to quantification of disruption in the US jurisdiction. There is some very appropriate material in this chapter for anybody contemplating putting together a disruption claim or improving their skills in this area.

Chapter 18 deals with one of the most contentious and vexed areas of construction law, that of concurrency. It provides a detailed and comprehensive analysis of the many facets of concurrency including causation, parallel delay, concurrent/sequential delays, pacing, principles of inferred causation, but for tests, dominant cause and prolongation. Each topic is addressed in a manner which leaves the reader confident in their understanding and the relevance of the issue and how it might be applied in practice. It does, however, fail to provide a definition or accepted meaning of prolongation which unfortunately is not uncommon in numerous construction law texts and would be of considerable benefit to this publication.

² Mid Glamorgan (1912) 8 Const.L.J. 61

Chapter 19’s discussion of global claims, how to defend them, the principles to be adopted in dealing with the proof of causation as outlined in the [Mid Glamorgan](#)² case and a summary of numerous cases on the subject of global

claims, including Akenhead's approach in the *Walter Lilly* case, make this chapter required text on the subject.

Chapter 20 provides significant commentary on the dominant cause theory, complete with full consideration of the *City Inn* case and the contrasting approaches taken by the English and Scottish courts in dealing with apportionment. The sections dealing with methods of apportionment of loss or expense serve as a guide to what is appropriate in various jurisdictions such as the "jury verdict approach" in the United States.

Chapters 21 and 22 on damages, settlements and dispute resolution provide the grounds for, and a checklist of, heads of claim based on the recovery of damages, complete with a section on the use of formulae in calculating overhead recovery. The latter chapter serves as an introduction to the host of disciplines and options in the dispute resolution sphere.

Chapters 23–25 are new and very welcome additions to the 5th Edition. A whole chapter on Adjudication in the UK skilfully explains the main characteristics of the process and will be of particular interest to Irish readers since the dawn of Statutory Adjudication in this jurisdiction. Chapter 24, "Dispute Boards" and Chapter 26, "Mandatory Laws in International Contracts", will appeal to those who operate in a more international sphere. The sections relating to developments in the use of dispute boards and how mandatory law operates irrespective of the construction contract or common construction law principles are worthy of merit.

A suite of new appendices are also added to this edition, including a "Retrospective Analysis" of the SCL Delay and Disruption Protocol by Julian Bailey and "Selecting the appropriate delay analysis methodology: A decision-making model for facilitating the process" by Nuhu Braimah. Whilst the former will be soon redundant when the new SCL protocol is published, the latter offers a tool for assisting analysts in justifying their choice of delay analysis model.

The preface notes that "as regards recent amendments and revisions to the standard forms of construction contract

... there has been insufficient time in which to update", which is somewhat unsatisfactory considering the updates to the JCT 2011 contract suite. This will, however, be rectified by a supplement to the 5th edition.

One of the finer attributes of the series is the use of case law and the skilful incorporation of decisions into sections dealing with the myriad of topics that occur in the construction law world. This edition adds over 100 new authorities. The 5th edition has incorporated many of the important cases since the 4th edition (2010) including *Walter Lilly and Co. Ltd v McKay*³ and Ramsey J.'s decision in 2013's *Vivergo Fules v Redhall Engineering Solutions Ltd*. Strangely, the case of *Leander Construction Ltd v Mullalley & Co. Ltd*⁴ of 2011 is not included. It offers much food for thought in how the English courts deal with implied terms requiring a party to proceed regularly and diligently.

Nonetheless, Burr and his team have, if anything, enhanced the book's well-earned reputation by the addition of particularly relevant and informed discussions on a number of topics as well as the inclusion of online resources,

³ *Walter Lilly & Co Ltd V Mackay* [2012] EWHC 1773(TCC); [2012] B.L.R.

⁴ *Leander Construction Ltd V Myllalley & Co Ltd* [2011] EWHC 3449

which offer over one hundred bespoke figures that “illuminate some of the concepts in the book”.

It would seem that the future of *Delay and Disruption in Construction Contracts* is in safe hands. The book remains the standard point of reference for construction professionals and legal practitioners when any of the issues which it deals with arise.