Book review

Keating on Construction Contracts (Ninth Edition). First Supplement to the Ninth Edition

Stephen Furst QC and the Hon. Sir Vivian Ramsey, Sweet & Maxwell, London, UK, ninth edition, 2011, ISBN 9780414047921, 1351 pp. with First Supplement to the Ninth Edition published 2013, ISBN 9780414028913, 108 pp. £598.00

Now in its ninth edition, *Keating on Construction Contracts* has long been a standard reference work for practitioners seeking guidance on legal matters relating to construction contracts subject to English law. Until the eighth edition was published in 2006, the work was titled *Keating on Building Contracts*, with the first edition produced by Donald Keating QC in 1955. The current authors, Stephen Furst QC and the Hon. Sir Vivian Ramsey, both pre-eminent in the field of construction law, take responsibility for the content of the book but acknowledge contributions from Sarah Hannaford QC (for a chapter on procurement), Adrian Williamson QC (for a commentary on JCT Forms of Contract) and John Uff CBE, QC (for a commentary on the Infrastructure Conditions of Contract), as well as support and assistance from the members of Keating Chambers, regarded by many as the leading set of construction law barristers in the UK, and other experienced construction professionals. With such a team of contributors and researchers, it is perhaps not surprising that the book has established itself as an authoritative and reliable text.

The ninth edition contains 22 chapters covering pretty much everything to do with the English law of construction contracts, which is part of the English general law of contract. Those elements of the general law that commonly arise in relation to construction contracts are explained in detail but, not unreasonably, matters that are rarely encountered in construction contracts are only presented in outline. The first chapter deals with 'The nature of a construction contract', with references to the particular persons (such as employer, contractor, engineer, quantity surveyor, project manager, etc.), documents (drawings, bills of quantities, specifications, etc.) and contractual arrangements (traditional, design and build, management, etc.) usually encountered in construction projects. The next two chapters describe the 'Formation of contract' and 'Construction of contracts' ('construction' here being used in the sense of the interpretation of contracts). Although these topics are of general application in the English law of contract, they are, again, explained as far as possible in the context of building and construction contracts.

Chapter 4 addresses 'The right to payment and varied work' and Chapter 5 explores the issues of 'Employer's approval and architect's certificates'. Chapter 6 tackles 'Excuses for non-performance', with sections on misrepresentation, collateral warranties, death, frustration and impossibility, illegality, economic duress and repudiation. Chapter 7 discusses 'Negligence and economic loss', with reference to the leading cases that developed the modern English law in the tort of negligence. The relationship between the tort of negligence and contract is discussed in the context of claims for professional negligence.

Chapter 8 moves into the field, some would say minefield, of 'Delay and disruption claims', which is of particular interest to many involved in construction contracts. This chapter covers the topics of time for completion; extension of time; delay analysis; and disruption claims. Chapter 9 is about 'Financial recovery and causation', with separate sections for contractor and employer claims. Chapter 10 deals with 'Liquidated damages and penalties'. Chapter 11 is entitled 'Default of the parties – various matters' and looks at

such matters as forfeiture clauses; ownership of materials and plant; lien; defects and maintenance issues; guarantees and bonds; liability to third parties. Chapter 12 touches on 'Various equitable doctrines and remedies': estoppel; waiver; variation and rescission; rectification; specific performance; and injunction.

Chapter 13 is on 'Assignments, substituted contracts and sub-contracts', including a section on nominated sub-contractors and suppliers. Chapter 14 delves into the roles, duties and liabilities of 'Architects, engineers and surveyors' but is predominantly about the Architect, perhaps reflecting the original focus of the earlier editions of the book on building contracts.

Chapter 15 'Public procurement' provides a lot of information about European community legislation, with further brief sections on common law remedies relating to public procurement, and local government procurement legislation in England. Chapter 16 covers 'Various legislation' relevant to construction projects: Defective Premises Act 1972; Control of Pollution Act 1974 and Environmental Protection Act 1994; Limitation Act 1980 and Latent Damage Act 1986; Building Act 1984 and Building Regulations; Insolvency Act 1986; Party Wall, etc. Act 1996; and the Anti-Social Behaviour Act 2003.

Chapter 17 turns to 'Arbitration', with several sections concerning arbitration of disputes under the Arbitration Act 1996, and one on 'International Arbitration Under ICC Rules'. Chapter 18 then concentrates on 'The Housing, Grants, Construction and Regeneration Act 1996' and matters arising from the statutory right, which that Act provides under English law for the Adjudication of disputes arising under a 'construction contract' (as defined within the Act). Chapter 19 covers 'Litigation' procedures in the English courts.

Chapter 20 is the largest chapter in the book and is devoted to an extensive commentary on 'The JCT standard form of building contract (2011 edition)'. Chapter 21 similarly provides a commentary on 'The infrastructure conditions of contract', which, until August 2011, was known as the ICE (Institution of Civil Engineers) Conditions of Contract, 7th edition. On that date, the ICE withdrew its support for those conditions of contract in order to focus on the promotion of its New Engineering Contract (NEC 3), also known as the Engineering and Construction Contract. The authors note that, while the editors decided to maintain the commentary on the ICE Conditions of Contract for the ninth edition, that policy is likely to be reviewed for the tenth edition. The final chapter very briefly then describes the 'Engineering and Construction Contract (NEC 3) and International Federation of Consulting Engineers Conditions (FIDIC)'.

There are two appendices: Appendix A, which provides the full text of 'The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009'; and Appendix B, which likewise provides the full text of 'The Scheme for Construction Contracts (England and Wales) Regulations 1998', as amended in 2011.

Finally, as would be expected, there are extensive tables listing the references in the book to English law Cases, Statutes and Statutory Instruments, as well as Tables of European Cases and Legislation, a Table of the English Civil Procedure Rules and Tables of References to the JCT Standard Form of

Building Contract and the Infrastructure Conditions of Contract (formerly the ICE Conditions of Contract).

The first supplement to the ninth edition aims to provide an update which states the law up to 31 July 2013. It follows the same structure as the main work and is easy to use. The mini table of contents from each chapter of the main work is reproduced and a symbol ■ is placed against those headings for which relevant information is provided in the Supplement.

It is 60 years since the first edition of *Keating on Building Contracts* and, through subsequent editions and Supplements, *Keating on Construction Contracts* has maintained a well-deserved status as an essential reference work for anyone seeking information and guidance on the law affecting construction contracts in England and Wales.

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