Book review

The Expert Witness in Construction

Robert Horne and John Mullen. Wiley, Chichester, UK, 2013, ISBN 978-0-470 65593-1, 358 pp, hbk, £84.95.

This book focuses on the role of the expert witness in the particular context of the construction industry. The authors both have extensive experience of the resolution of construction disputes, but obtained from different perspectives: one as a lawyer representing clients, who also acts as an adjudicator and chartered arbitrator; the other as a chartered quantity surveyor, who has had many appointments as an expert witness. The result of this collaboration is an excellent book providing a comprehensive coverage of the many facets of the work of an expert witness, both from a legal and practical viewpoint. The topics are covered in sufficient depth to be of real value and help to experienced practitioners as well as being written in a style that is accessible and informative to the less experienced but aspiring expert or party representative, the parties themselves seeking to understand better what might be expected of an expert, and indeed anyone with an interest in the subject.

The book is divided into two parts. Part 1 covers legal issues and principles. Chapter 1 'Introduction' sets the scene with short sections on 'What is expert evidence?', 'The expanding role of the expert witness', 'What makes a good expert witness?', 'What is an expert witness and what is an expert witness for?', 'Duties of the expert witness' and the 'Use of expert evidence'. Chapter 2 'Independence and duties' explains the legal background, which gives rise to the 'Duties of expert witnesses', citing principles derived from the two leading English law cases (*National Justice Compania Naviera SA v. Prudential Assurance Company [Ikarian Reefer]* [1995] 1 Lloyd's Rep. 455; *Anglo Group plc v. Winther Brown and Co Limited and BML (Office Computers) Limited* [2000] EWHC Technology 127), and goes on to consider the issues of 'Partiality and impartiality', 'Failings in obligations', 'Investigations', 'Conflict of interest' and the duties owed to 'Those giving instructions' as distinct from the expert witness's primary and overriding duty to the legal tribunal appointed to determine the matters in dispute. Chapter 3 'Roles in different forums' describes the differences in the approach to be considered by an expert witness in different dispute forums 'Litigation', 'Arbitration', 'Adjudication', 'Mediation', 'Expert determination', and 'Informal processes'. Chapter 4 'Different types of

expert' explores in some detail the differences between 'The expert witness', 'The expert advisor', 'Tribunal-appointed experts', 'The single joint expert', 'Assessors', 'Expert determination', 'Expert evaluation', 'ICC expertise rules' and 'The advocate and expert witness'. Chapter 5 'Procedural rules, evidential rules and professional codes' covers the rules and procedures under which an expert must act in both the UK ('Civil procedure rules', 'Domestic arbitration') and internationally ('International arbitration', 'The IBA rules of evidence'), as well as some 'Professional institute rules' (the Institution of Civil Engineers, the Royal Institute of British Architects and the Royal Institution of Chartered Surveyors). The final chapter in Part 1, Chapter 6 'The international dimension', identifies key factors that expert witnesses should keep in mind when working internationally including 'Key differences in approach', 'International legal issues' and 'International application of professional standards'.

Part 2 addresses the practicalities of acting as an expert witness and offers much useful and valuable guidance to experts and those instructing experts in six further chapters: Chapter 7 'Selection and appointment'; Chapter 8 'Obtaining information'; Chapter 9 'Writing reports'; Chapter 10 'Meetings of experts'; Chapter 11 'Giving evidence'; and last, but not least, Chapter 12 'Liability and immunity' (written from an English law perspective).

There are three appendices: Appendix 1 – Useful websites for further information and common abbreviations; Appendix 2 – Tables comparing rules for different types of expert involvement; Appendix 3 – Typical tribunal order for 'hot tubbing'.

This book is not a weighty tome, but its 358 pages are packed with information, commentary and guidance. There is a good mix of historical background, legal commentary and practical advice. The topics are covered in some detail, not just a listing of principles, and the authors sometimes offer alternative viewpoints, resulting in an interesting and thought-provoking read. There are many footnotes, citing legal cases and other references, with further commentary and cross-references, and there is a helpful and extensive Index. The joint authors appear to have collaborated closely to produce a comprehensive, coherent and valuable source of reference on the often misunderstood and different roles of the expert in construction disputes.

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