

BOOK REVIEW

Construction Law, 2nd Edition. By Julian Bailey. Informa Law from Routledge, 2016. LCCN: 2016018699. ISBN: 978-1-138-80042-7 (hbk). ISBN: 978-1-315-75546-5 (ebk) available on www.i-law.com. 3 Volumes. 3,670 pp (also available as an e-book) £465.

I have often rejoiced in the fact that the construction industry is one that is, in my view, remarkably unique amongst professional cohorts. The friendly collegiality between practitioners in our free-sharing of ideas and personal intellectual property makes the community one in which knowledge is fostered, legal acumen is tested, and jurisprudence the world over is developed increasingly swiftly. In this context, one could say the international construction industry is a classic ‘chicken or the egg’ conundrum. Is our willingness to share the secrets of our trade with each other a response to the dynamic nature of the industry, or does our practice of such in fact propel the industry to be as dynamic as it is?

Semantics aside, it is the endless cycle of infrastructure investment that shapes the industry and gives rise to the mass of risks and issues within it. Faced with these complexities, when our colleagues publish manuals that collate and present the law in our field, we collectively celebrate their achievement.

Five years ago, Julian Bailey delivered unto the international construction law community an instructional companion of mammoth proportions, one appropriately described by Lord Justice Jackson as a “tour de force” and accurately predicted to become “the standard work of reference for busy practitioners across England, Wales and Australia”. Rising from the humble beginnings of a dedicated lawyer’s “set of notes on construction law”, there is no doubt that the first edition of *Construction Law* is an epitome of comparative analyses of English and Australian construction law. Yet Bailey has now delivered a successive companion to international construction lawyers, this time of even more compendious and thorough terms.

The second edition of *Construction Law* brings with it the substantial expansion of legal analyses to include jurisdictional coverage of the rich construction industries in Hong Kong and Singapore. Practitioners will appreciate from experience the alacrity with which the construction industry and accompanying law has developed in these countries. Bailey has assembled these developments into one publication, and highlights the significance of the jurisprudence arising from their courts to other courts that share their common law heritage.

Like the first edition, the objective of the second edition of *Construction Law* remains the same; to create a general textbook of practical use to persons interested in construction law issues. Bailey has achieved this

spectacularly. When one assesses the success of a “general textbook of practical use”, the salient criteria to consider, in my view, is twofold; the scope of its content, and the structure in which it is presented.

Speaking to the latter element first, the feature of the first edition oft quoted as the key catalyst of the publication’s success is its structure in principle form, rather than by cases or legislation. This enables readers to identify and interpret information within the text with ease. The second edition is no different in this regard. Its accessibility to practitioners, students, and other interested professionals is preserved through the retention of the principle based structure. The sheer breadth and depth of topics covered is astonishing.

Volume I continues to be devoted to the workings of forming and maintaining a contract, focussing on contract formation (Chapter 2), terms (Chapter 3), administration (Chapter 5) and the like. Volume II again examines a number of external factors that may affect a contract, such as breach (Chapter 9), termination (Chapter 9), negligence (Chapter 10), time (Chapter 11) and defects (Chapter 14), as well as rights in damages (Chapter 13), intellectual property (Chapter 16) and insurance (Chapter 17). Volume III also again touches on the various statutes that may regulate a contract, such as in the fields of home building contracts (Chapter 19), employment, health and safety (Chapter 21), and bankruptcy and insolvency (Chapter 22). Chapters 23–26 of Volume III touch on methods of dispute resolution (Chapter 23), including statutory adjudication (Chapter 24), arbitration (Chapter 25), and litigation (Chapter 26). The differences, however, lie in the comprehensive updates to the content of the second edition.

I should pause here and note Chapter 20 on the topic of “Subcontracts, Assignment, Novation, Waiver, and Estoppel”. These are the issues which most commonly arise in construction disputes. As Bailey notes in the introduction to this Chapter, “the mutual expectations of each party represents rights, the flipside of which are obligations on the other party to do what it has promised to do (or not do what it promised not to do)”. It is of no surprise then, that a principal source of complaints arises from any variations of parties responsible for these obligations or in the types of obligations themselves, made whether unilaterally or by mutual agreement. This chapter is streamlined to provide readers with a strong understanding of each issue, starting first with a definition of the issues and then moving to the individual elements that constitute them. The expansion of the chapter to include Hong Kong and Singaporean authorities is seamless and adds substantial depth to the reading. I would be hard-pressed to imagine any practitioner owning a copy of this edition without a dog-eared page at the start of this most useful chapter.

The text itself measures nearly 2,300 pages of analytical content, many of those pages recognising and usefully deconstructing the plethora of new

developments in construction law that have received attention in the past half-decade. These are reflected in the many sections and subsections that have been refreshed since the first edition to include said developments, much in the way of recently enacted statutes and case law, or in those sections and subsections that have been included afresh to reflect the changing topical issues in construction law. Examples of the latter include new sections on building information modelling, contract awarding, economic torts in competition law, physical harm and damage of property in unforeseen site conditions, contractual defences and limitations in contributory negligence, investment treaty arbitration, and costs budgeting in litigation. Many existing sections have been expanded to include the position of Hong Kong and Singapore laws, such as in the sections devoted to public procurement laws, statutory adjudication, and litigation. The explanations in all parts are succinct, methodical, and insightful, and readers are invited to consider further ideas in the cornucopia of footnotes meticulously detailed.

What remains of particular use in the second edition is Bailey's consideration for standard form contracts and their integration with the laws of each country. These include analysis for the JCT Standard Building Contracts, a new suite of which were updated in 2011 and which Bailey comments upon, the Hong Kong Joint Contracts Working Committee Standard Form of Building Contract 2006, the FIDIC suites, the NEC forms, the Australian Standards construction forms, and the Singapore Institute of Architects' Lump Sum Contract, 9th ed 2010. Bailey intentionally does not proffer an exhaustive analysis of these or compare the vast range of standard form contracts available. Instead, his commentary casts light on the interaction between these contracts and statutes which necessarily informs the basis of every construction project. He notes also a variety of updated versions of standard form contracts in the pipelines from a variety of sources, such as FIDIC and the Australian Standards, and laments that he must leave updates thereafter to a third edition of his work pending their publication.

Bailey has once again created a practical epic, establishing himself as a virtuoso of construction law on an international scale. The second edition, like the first, is a friend to construction law, written as a guide to the field's ins-and-outs and a tool to navigate its halls. I have full confidence in recommending this text to any practitioner or student in need of a comprehensive and authoritative collection of all things construction related.

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