

Review



Although not a legal 'handbook', this book provides essential guidance to construction professionals on the principles governing professional negligence, concludes **Ian Wright**.

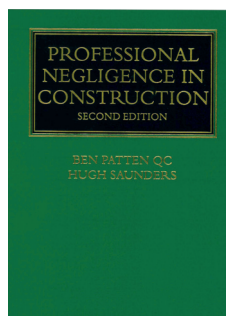
Professional negligence in construction (2nd ed.)

Authors: Ben Patten QC and Hugh Saunders

Publisher: Routledge (Informa Law)

Price: £170

ISBN: 978-1-13855-358-3



This book considers the liabilities of construction professionals in contract and in tort. In particular, when, and in what circumstances, will a construction professional be liable to a client; and for what loss?

The topics covered in the book include the roles of engineers, architects, quantity surveyors, project managers and building surveyors in the construction process; the obligations of construction professionals, including the difficult areas in tort of assumption of responsibility and economic loss; the requisite standard of the duty of care; common issues which arise in construction contracts; causation and how financial liability is determined; insurance; potential liability when acting as experts, arbitrators and adjudicators; and dispute resolution processes.

The commentary on obligations includes the formation of a contract; express and implied terms; the tort of negligence and the duties of care that may arise. The obligations are considered in the context of the court's general approach to the provision of professional services, rather than from the position of each profession. There are, however, some examples of the court's approach in cases concerning the provision of particular services.

The roles of construction professionals at the various stages in a commercial development are set out in one section: from preliminary works through outline scheme design, the tender process, the building

contract, construction, defects liability period, to dispute resolution. There is, however, no mention of building information modelling (BIM), which has become an increasingly important part of the modern construction process in the UK, or of the responsibilities of construction professionals which arise in relation to BIM.

In relation to the appointments of architects and engineers, the authors' views are that there is no legal requirement for a particular form of contract, but that it is 'prudent' for such agreements to be in writing, or at least evidenced by an exchange of correspondence. However, a qualification to the authors' views would be relevant to many construction professionals because, excepting the strict legal requirements, they do not sit squarely with the code of conduct of many institutions (including IStructE, ICE and RIBA) which require agreements with clients to be in writing.

Both authors are experienced and highly regarded counsel in the field of construction law and the book provides an authoritative commentary on legal issues relating to construction professionals. It is written in a concise style, discusses key legal principles and analyses certain key judicial decisions. The reader's understanding is assisted by each topic being broken down under subheadings. The result is a format in which the text is clear, easily read and comprehensible.

However, various typographical errors

have been missed during editing. There are also obvious factual errors which include a reference to a judgment of the Court of Appeal which cites an excerpt from an earlier judgment attributed (correctly) to a judge in the Privy Council but as if the judge had sat in the later case in the Court of Appeal. Also, members of the ICE will be surprised to read that their institution is not the beneficiary of a Royal Charter (in fact awarded in 1828). The mistakes are unfortunate but detract only to a minimal extent from the overall quality of the materials in the book.

The second edition has been extensively revised and provides up-to-date references to key case law, including *Marks & Spencer v BNP Paribas* (implied terms); *Burgess v Lejonvarn* (no intention to contract); *MWB Business Exchange v Rock Advertising* (oral variation to written contract); *Wellesley v Withers* (concurrent liability in tort); *MT Højgaard v E.ON* (design obligations); *Hughes-Holland v BPE* (extent of monetary recovery); *Riva Properties v Foster* (cause of loss); *IMI v Delta* (liability in contribution); *Bank of Ireland v Watts* and *ICI v Merit* (both judicial criticism of expert); *Cofely v Bingham and Knowles* (arbitrator's impartiality); and *Beumer v Vinci* (adjudicator's conflict of interest).

The content of the book is more like a construction law text than a legal 'handbook' for everyday use by construction professionals. Nevertheless, the book will provide essential guidance to construction professionals on the principles governing professional negligence which may give rise to liability. It will also provide a useful reference work for construction lawyers.

Ian Wright

BSc, MSc, DIC, CEng, MStructE, MICE, Dip.Law, CIARB, QDR

Ian Wright is a barrister in full-time practice at Crown Office Chambers, London. He is also a Member of the Institution. His practice includes work as an advocate, arbitrator, expert, adjudicator and mediator; specialising in design and construction, engineering, railways and other technical matters; and the negligence of construction professionals.