

## ICE – Graduate and Student Network

### Engineers Ireland

### Contract Law for Engineers

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## Contract Law for Engineers

- Some Legal Concepts
  - What is a contract?
  - What is tort?
  - What is statutory liability?
  - “reasonable skill and care”
  - “fitness for purpose”
  - The role of collateral warranties

## Forms of Contract for Engineering Works

- IEI – 3<sup>rd</sup> Edition – same as ICE 5<sup>th</sup>
- FIDIC
  - 1999 Red Book – works only
  - 1999 Yellow Book – Plant Design and Build
  - 1999 Silver Book – Turnkey – No Engineer Role
  - 1995 Orange Book – Plant Design and Build (used on water projects)
- New Government Public Works Contracts
  - Works Designed by the Employer
  - Design and Build
  - What about specialist works?

## Engineer as Designer

- Standard of Care should only be reasonable skill and care – *Bolam v Friern Hospital Management* (1957)
- Never agree to fitness for purpose
- Implied fitness for purpose warranty – *Greaves v Baynham Meike* (1975)
- Standard of care is higher if specialist design skills are involved or the design is a novel design
- Sub-contracting design does not relieve engineer of responsibility – *Moresk v Hicks* (1966)

## Engineer as Designer

- Intellectual Property Rights
- Copyright in Design – Licence to use design
- Never assign your copyright
- Insurance issues
- Health and Safety

## Engineer as Contract Administrator

- The is usually in addition to design role
  
- Significant duties – Contract with Employer and also specified as Engineer in the works contract
  
- Pre-contract issues
  - Design
  - Specification
  - Performance requirements
  - Site conditions – interpreting / advising on tests
  - Recommending form of contract and method of procurement – one contract or a number
  - Local authority issues / planning
  - Award of Contract
  - PDSP / Health and Safety

## Engineer as Contract Administrator

- During Execution of Works
  - Employer's Representative / Engineer / Contract Administrator
  - Role is circumscribed by the Contract
    - Instruction of Contractor
    - Payment
    - Variation
    - Extension of Time
    - Tests on Completion
    - Take over and performance certs
  - To Whom does the Contractor owe duties?
    - Principally the Employer – who appoints the engineer
    - Works contract can specify duty to act fairly and impartially to contractor (IEI) or just reasonably (FIDIC)
    - Contractor generally cannot sue the Engineer

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