

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 – 3rd Edition – same as ICE 5th
- 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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