

Table of Contents

LAW 4170 - CONSTRUCTION LAW: PRINCIPLES AND PRACTICE	1
TOPIC 1: CONSTRUCTION CONTRACTING (FRONT END)	3
CONSTRUCTION CONTRACTS	3
RISK ALLOCATION	3
STANDARD FORMS	3
STANDARD FORM V BESPOKE	3
DRAFTING ISSUES	ERROR! BOOKMARK NOT DEFINED.
TOPIC 2: DELIVERY MODELS (FRONT END)	ERROR! BOOKMARK NOT DEFINED.
DELIVERY METHODS	ERROR! BOOKMARK NOT DEFINED.
TRADITIONAL CONTRACTING	ERROR! BOOKMARK NOT DEFINED.
ALTERNATIVE CONTRACTING	ERROR! BOOKMARK NOT DEFINED.
TOPIC 3: TIME	ERROR! BOOKMARK NOT DEFINED.
HURDLE 1: QUALIFYING EVENTS OF DELAY	ERROR! BOOKMARK NOT DEFINED.
HURDLE 2: QUALIFYING EFFECT OF DELAY	ERROR! BOOKMARK NOT DEFINED.
HURDLE 3: PROCEDURAL REQUIREMENTS	ERROR! BOOKMARK NOT DEFINED.
ENFORCEMENT OF "DELAY COSTS"	ERROR! BOOKMARK NOT DEFINED.
CAN CONTRACTOR (SAVERIO) CLAIM DELAY COSTS?	ERROR! BOOKMARK NOT DEFINED.
IS PRINCIPAL ENTITLED TO DAMAGES FOR DELAY? GENERAL DAMAGES	ERROR! BOOKMARK NOT DEFINED.
ENFORCEMENT OF LIQUIDATED DAMAGES (NOT PENALTIES)	ERROR! BOOKMARK NOT DEFINED.
TOPIC 4: LATENT CONDITIONS	ERROR! BOOKMARK NOT DEFINED.
WHAT DOES THE CONTRACT STIPULATE?	ERROR! BOOKMARK NOT DEFINED.
DOES THE [CONDITION] CONSTITUTE A LC?	ERROR! BOOKMARK NOT DEFINED.
CONSEQUENCES OF DISCOVERING LC (PROCEDURE FOR CLAIMING EXTRA TIME/MONEY)	ERROR! BOOKMARK NOT DEFINED.
ALTERNATIVE EXTRA-CONTRACTUAL CLAIMS	ERROR! BOOKMARK NOT DEFINED.
TOPIC 5: SUPERINTENDENT	ERROR! BOOKMARK NOT DEFINED.
SUPERINTENDENT ROLE	ERROR! BOOKMARK NOT DEFINED.
SUPERINTENDENT'S DUTIES	ERROR! BOOKMARK NOT DEFINED.
SUPERINTENDENT'S LIABILITY	ERROR! BOOKMARK NOT DEFINED.
TOPIC 6: SUBCONTRACTORS	ERROR! BOOKMARK NOT DEFINED.
SUBCONTRACTING GENERALLY	ERROR! BOOKMARK NOT DEFINED.
RULE	ERROR! BOOKMARK NOT DEFINED.
BACK-TO-BACK DRAFTING OF SUBCONTRACTS	ERROR! BOOKMARK NOT DEFINED.
NOMINATED SUBBIES	ERROR! BOOKMARK NOT DEFINED.
CONTRACTUAL LINKS/WARRANTIES	ERROR! BOOKMARK NOT DEFINED.
TOPIC 7: VARIATIONS	ERROR! BOOKMARK NOT DEFINED.
IS THE WORK A VARIATION OR NOT?	ERROR! BOOKMARK NOT DEFINED.
WHAT IS A VARIATION	ERROR! BOOKMARK NOT DEFINED.
POWERS + LIMITATIONS ON POWER TO VARY	ERROR! BOOKMARK NOT DEFINED.
HAVE PROCEDURAL REQUIREMENTS BEEN FULFILLED	ERROR! BOOKMARK NOT DEFINED.

TOPIC 8: PAYMENTS ERROR! BOOKMARK NOT DEFINED.

CAN CONTRACTOR MAKE PAYMENT CLAIM UNDER SOP? (BUILDING & CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2002 (Vic)) ERROR! BOOKMARK NOT DEFINED.

TOPIC 9: QUALITY ERROR! BOOKMARK NOT DEFINED.

STANDING ERROR! BOOKMARK NOT DEFINED.

DOMESTIC BUILDING CONTRACTS ACT 1995 (Vic) ERROR! BOOKMARK NOT DEFINED.

EXTENT OF CONTRACTOR'S RESPONSIBILITY ERROR! BOOKMARK NOT DEFINED.

REMEDIES ERROR! BOOKMARK NOT DEFINED.

DEFENCES – VERY RARE THAT THESE WILL APPLY ERROR! BOOKMARK NOT DEFINED.

TOPIC 10: DUTY OF CARE + PROPORTIONATE LIABILITY ERROR! BOOKMARK NOT DEFINED.

THE PLAINTIFF'S PURSUIT OF AN ACTION IN NEGLIGENCE ERROR! BOOKMARK NOT DEFINED.

1. WHEN SHOULD YOU PURSUE AN ACTION IN NEGLIGENCE? ERROR! BOOKMARK NOT DEFINED.

PART IV AND PART IVAA WRONGS ACT ERROR! BOOKMARK NOT DEFINED.

TOPIC 11: SECURITY FOR PERFORMANCE ERROR! BOOKMARK NOT DEFINED.

SECURITY UNDER AS4000 ERROR! BOOKMARK NOT DEFINED.

CONTRACTOR PREVENT [x] FROM CALLING GUARANTEE ERROR! BOOKMARK NOT DEFINED.

TOPIC 12: INSURANCE ERROR! BOOKMARK NOT DEFINED.

ANSWER OUTLINE ERROR! BOOKMARK NOT DEFINED.

TYPES AND PERIODS OF INSURANCE (UNDER AS4000) ERROR! BOOKMARK NOT DEFINED.

WHO DOES INSURANCE COVER UNDER AS4000? ERROR! BOOKMARK NOT DEFINED.

WHAT SORTS OF LOSS COVERED UNDER AS4000 INSURANCE? ERROR! BOOKMARK NOT DEFINED.

INSURANCE RELATED RIGHTS AND OBLIGATIONS UNDER AS4000 ERROR! BOOKMARK NOT DEFINED.

UNDER CASE LAW/PARTICULAR INSURANCE CONTRACT ERROR! BOOKMARK NOT DEFINED.

TOPIC 13: REGULATORY REGIME ERROR! BOOKMARK NOT DEFINED.

KEY LEGISLATION ERROR! BOOKMARK NOT DEFINED.

KEY PLAYERS – POWERS AND FUNCTIONS ERROR! BOOKMARK NOT DEFINED.

Topic 1: Construction Contracting (Front End)

Construction Contracts

- A construction contract is a highly ambitious document – it aims not only to ensure the enforceability of the underlying bargain (by avoiding problems which plague oral contracts), but also to allocate a wide variety of risks b/w parties, and increasingly, as a tool to manage disagreements and preserve workable relations
- Thus, it is crucial to select both:
 - Select the right contract (Which SF – AS4000? Bespoke?)
 - Ensure contractual provisions well-drafted in light of case law and legislation

Risk Allocation

- ‘Risk’ is defined within AS 4360-2004 as the ‘chance of something happening that will have an impact on objectives’ (B&B)
- An underlying tenet of the contractual allocation of risk is **Abrahamson’s principles** = *the party best able to deal with and manage a particular risk ought to assume responsibility for it* (B&B, 2011)
 - Recently, strong tendency towards more **one-sided contracts**, where one party carries **all risk** (Oxbrough, 2014), however this can lead to counter-productive performance
 - Primary purpose of a construction contract is to record the parties’ agreement as to who is to bear the responsibility for these risks and their financial consequences, or whether the risks are to be shared in some way (Oxbrough, 2014)

Standard Forms

- Each standard form is, effectively, a pre-set risk allocation model which each party will seek to mould, to the extent necessary and commercially possible, to reflect its desired outcomes for the project (B&B)
- All AS Forms usually require amendment (unless very, very simple project – highly unlikely) (B&B)
 - **Contractual allocation of risk:** reflect the commercial deal (B&B)
 - **Meet legislative requirements:** including GST, OHS, Security of Payment Legislation (B&B)

AS4000	<ul style="list-style-type: none"> • 18% of all standard form projects were governed by AS4000 (Sharkey et al, 2014) • Contractor friendly • Construct Only Contract
AS4902	<ul style="list-style-type: none"> • 14% of all standard form projects were governed by AS4902 (Sharkey et al, 2014) • Design and Construct • AS4903-2000 is the relevant subcontract under AS4902

Standard Form v Bespoke

Why SFKs?

- For ease of reference and use, the industry has developed a number of SFK (Standard Form Contracts)
- In addition to the benefits that come with familiarity, using an SFK may also minimise the need for costly legal drafting (naturally, the fact that the majority of the industry believes all SFKs require substantial amendment throws this benefit into question: Sharkey et al 2014)

Why Bespoke?

- Bespoke K are more likely to be required where: Sharkey et al 2014
 - Projects valued over \$100M
 - Projects relate to infrastructure

Which SFK?

- Need for relational approach to contracting
 - NEC3
- Relative power principal to contractor
 - Principal friendly = Property Council of Australia SFKs
 - Contractor = AS contracts, ABIC
- Complexity of works (FIDIC)

- Red Book (Building & Engineering works, Principal as designer)
- Yellow Book (Plant, Design-Build)
- Silver Book (EPC/Turnkey projects)
- Gold Book (Design, Build & Operate)
- Type of project
 - Construction management
 - D&C (AS43000)
 - Construct Only (AS4000)
 - EPC/Turnkey (Silver Book FIDIC)