



Law and Contract Management Curriculum 2021-2022

Law and Contract Management Curriculum 2021-22

1. **ICE Certificate Law and Contract Management (CLCM)**
 - 1.1 **Module 1 Law Examination: 14th June 2022**
 - 1.2 **Module 2 Contract Management Examination: 21st June 2022**

2. **ICE Advance Certificate Law and Contract Management (ACLCM)**
 - 2.1 **Module 3 Advanced Contract Management Examination: 21st June 2022**

3. **Dispute Resolution Examinations**
 - 3.1 **Adjudicator's Qualifying Examination: 7th February 2022**
 - 3.2 **Arbitrator's Endorsement Examination: TBC**

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1. Introduction and General Information

1.1 ICE Law and Contract Management Examination

Overview

The aim of the ICE Civil Engineering Law and Contract Management Examination and of the ICE approved courses that prepare candidates for the Examination is to promote a better understanding of contract conditions, the legal framework within which they operate, and the management procedures necessary for the successful completion of projects.

The Engineer and Project Manager and their assistants in civil engineering projects are, by the very structure of the Conditions of Contract and the one-off nature of most projects, very heavily involved in decisions, which can have a profound effect on the satisfactory outcome of the construction contract. It is necessary, therefore, that they have a clear understanding of the constraints within which those decisions must be made.

Similarly, the civil engineer working for a contractor needs to know the rights and obligations of the parties to the contract so that he/she may carry out their functions effectively.

Private study is necessary to prepare for the Examination in addition to undertaking a suitable course.

Continuing Professional Development (CPD)

Studying for the Examination will assist applicants for the Chartered and Member Professional Reviews, particularly in developing their 'Commercial Ability'. The completion of an accredited ICE Law and Contract Management Course is likely to be suitable for up to 5 days approved training per Module at the discretion of your Supervising Civil Engineer, Sponsor or Employer.

Structure

The ICE Law and Contract Management Examination consist of three Modules.

- Module 1 - Law
- Module 2 - Contract Management
- Module 3 - Advanced Contract Management

Module 1 - Law

Module 1 is set on Part 1 of the Syllabus. The examination is divided into two sections. Section 1 covers the Law of Contract. Section 2 covers the Law of Tort (Delict in Scotland) and the Law of Evidence. There are no compulsory questions.

Candidates should aim to obtain sufficient legal background to enable them to understand the legal framework within which the Conditions of Contract sit. As a guide, the level of knowledge required is similar to that of the 'A' level examination in law.

Candidates will be expected to analyse problems as well as to write essays, and to show a reasonable grasp of the legal concepts involved. For example, a candidate should not just say 'in this situation X has a claim against Y' but identify the basis of the claim as breach of an express or implied term, or negligence or misrepresentation and so on. Candidates will also be expected to understand the types of evidence used to prove facts and the conditions under which it is admitted.

Candidates are expected to demonstrate some knowledge and application of the provisions of relevant statutes and the legal principles derived from case law. A candidate who has simply learned a set of rules will gain fewer marks than one who demonstrates an understanding of the flexibility and limits of the legal authorities.

Module 2 - Contract Management

Module 2 is set on Part 2 of the Syllabus. It is directed at professionals within the construction industry including architects, QS and engineers. The examination is divided into two sections which covers the NEC4 family of contracts. There are no compulsory questions.

The preparatory courses aim to give candidates the necessary detailed instruction in the basic principles of the NEC4 standard form of contracts in order to provide a sound foundation on which they will build their further experience. The examination tests the extent to which candidates have absorbed this instruction and does not expect a high level of practical experience in the application of the principles.

Module 3 – Advances Contract Management

Module 3 is set on Part 3 of the Syllabus. Candidates are also required to demonstrate knowledge of the topics in the Syllabus for Module 1 and Module 2.

Module 3 is set at a significantly higher level than Module 2. It is directed at the mid-career professionals who has considerable experience of contractual issues. It aims to provide a recognised qualification for mid-career-chartered engineers; and to test and grade candidates seeking inclusion within the ICE lists of Adjudicators and Arbitrators.

The Module 3 examination is in two sections which each include a compulsory question. Section 1 covers the NEC family of contracts and Section 2 is based on “sample” contractual provisions from familiar non-NEC contracts such as the ICC, FIDIC and JCT, although a detailed knowledge of those contracts is not examined.

The Module 3 examination is designed to demonstrate the practical experience that has been gained from solving day-to-day management problems on construction and engineering projects. The factual basis of the compulsory questions in the Module 3 examination will be familiar to the experienced civil engineer and are therefore designed to test presentation, observation and ability to express thoughts clearly.

The ICE Law and Contract Management courses prepare candidates for the Module 3 examination and promote a better understanding of contractual conditions, the legal framework within which they operate and the management procedures necessary for the successful completion of projects.

Case and Reading Lists

To assist candidates in their preparations for Modules 1, 2 and 3 lists of important cases and of reading references have been provided at the end of this document. Candidates should also consult web-based resources for leading Court of Appeal cases on adjudication.

Examination under Scots Law

Candidates may elect to answer Modules 1, 2 or 3 with respect to either Scots or English Law and prepare for the examination accordingly. The topics and case lists included in the syllabus are applicable to English Law. Candidates wishing to answer with respect to Scots Law should contact the ICE Dispute Resolution Service (address on page 15).

The Examination

Date & Time

The examinations take place each year in June. Dates for 2022 are:

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| Module 1 Law Exam | 14th June 2022 , 2.00pm – 5.20pm |
| Module 2 Contract Management Exam | 21st June 2022 , 2.00pm – 5.20pm |
| Module 3 Advanced Contract Management Exam | 21st June 2022 , 2.00pm – 6.00pm |

Additional time

Candidates may apply in advance of Examination dates for additional time where they have a certified learning difficulty such as dyslexia. The additional allowance is 15 minutes for each hour of the examination time.

Stages of Completion

Candidates take Exams at any stage and in any order but at the times and dates determined by ICE. It is recommended that the Module 2 exams be completed before attempting Module 3.

Reference to documents during the examinations

- **Module 1 Law Exam**

Only unmarked copies of Statutes and Statutory Instruments may be taken into the Examination. Delegates are allowed to bring printed versions of the documents, tabbing and highlighting is allowed.

- **Module 2 Contract Management Exam**

Candidates may consult unmarked copies of the, NEC4 Engineering and Construction Contract (ECC), NEC4 Engineering and Construction Subcontract (ECS), Statutes, CDM Regulations and CESMM4. Delegates are allowed to bring printed versions of the documents, tabbing and highlighting is allowed.

- **Module 3 Advanced Contract Management Exam**

Candidates may consult un-annotated copies of Statutes, NEC4 Engineering and Construction Contract (ECC), NEC4 Engineering and Construction Subcontract (ECS), NEC4 Engineering and Construction Short Subcontract (ECSS) and other standard forms of building contracts. Delegates are allowed to bring printed versions of the documents, tabbing and highlighting is allowed.

- **Dispute Resolution Examinations**

For the Arbitrators' Endorsement Paper and Adjudicators' Qualifying Examination reference may be made to any unmarked document.

Editions of Contract Documents

The relevant versions of Contracts will be those editions current on the 1st August preceding the Examination. Exam candidates will be expected to answer Module 3 questions on both the NEC4 family of contracts and "sample" contractual provisions from familiar non-NEC contracts (ICC, FIDIC and JCT)

Application

Application forms are available on the ICE website or from the Dispute Resolution Service at the ICE. Those attending approved courses can usually obtain application forms from their course tutors. The closing date for receipt of completed application forms to sit Examinations at one of the standard centres in the UK is normally one month before the exam date of Examination.

Approved Courses

The Institution gives particular attention to the content and quality of courses specifically designed for preparation for this Examination and, if satisfied, approves a course. Solicitors and other appropriately qualified professionals who have a working knowledge of the construction industry give lectures on ICE approved courses. Course lectures will relate to the practical problems in contract, tort or delict, and evidence, which civil engineers may encounter in their work, rather than esoteric discussion on broader principles of law that would be more suitable for law degree students.

Eligibility

Although the Syllabus has been designed with civil engineers in mind, enrolment for the Examination is not restricted to members of the ICE.

Examination Centres in the UK and Ireland

Universities which run ICE approved courses also act as Examination Centres except in the London area where the Examination is held at the Institution. (Candidates tick on the application form the centre at which they wish to sit the exam). Those who wish to sit the Exam in one of the ICE regional offices may do so by special arrangement. Contact the ICE for details (see page 15).

UK Examination fee

The examination fee for non-members of the ICE is £150.00 Per Module and £300.00 for 2 Modules. For ICE members the fee is £125.00 per Module and £250.00 for 2 Modules at ICE Exam Centres in the UK. The fee is non-refundable.

Overseas candidates - Examination venues, Examination fee

In addition to Examination Centres in the UK and Ireland, it can usually be arranged for Members of the Institution to sit the Examination overseas, provided they give the ICE Dispute Resolution Services 3 months' notice of their wish to do so. The overseas fee is the same as the UK fees for members and non-members of the ICE. Institution Country Representatives are often able to organise accommodation for the Exam. However, in the event that this is not possible, and an alternative is sought (e.g. through the British Council), the candidate is required to pay the additional costs that arise. The fee is non-refundable.

Marking and Results

Results

The results of the Examination are emailed to candidates usually around late September.

Certificates

Candidates who pass both Module 1 and 2 will receive The ICE Certificate in Law and Contract Management (CLCM). Candidates who pass either Module 1 or Module 2 will receive a letter. Candidates who demonstrate exceptional knowledge in Modules 1 and 2 will have their certificate endorsed “Passed with DISTINCTION” in the appropriate subject.

Marking Structure

For guidance purposes only, the normal pass mark for Module 1 is not less than 40%, for Module 2 not less than 50%, and for Module 3 not less than 65%. A distinction mark for Module 1 is not less than 70%, for Module 2 not less than 75%, and for Module 3 not less than 85%.

Marking and Moderation

The Examiner who has set the questions for a section, marks scripts anonymously. The ICE Law and Contract Management Examination Committee then moderate every script anonymously. The Moderators take particular care to ensure that border line scripts are correctly graded, especially those which have failed marginally, have been correctly marked and moderated, and have indeed fallen short of the required standard.

Given the comprehensive procedure for marking scripts, no appeals are undertaken.

Re-sitting

If candidates fail a Module, they will have failed the Examination and will be required to sit the Module again if they wish to obtain a pass.

Past Examination Papers and Examiners’ Reports

Past Examiners’ Reports are available free of charge on the ICE web site. Each Report contains a Moderators’ Report, an Examiners’ Report for each section of the Examination, the Examination Papers for that year, and points for the answer to each question written by the Examiner who set the question.

Qualifications

ICE Registers of Arbitrators, Adjudicators, Conciliators and Mediators.

ICE Dispute Resolution Service maintains separate Registers of Arbitrators, Adjudicators, Conciliators and Mediators. The requirements and application procedures for those wishing to be considered for inclusion in these Registers are available from the ICE web site or the ICE Dispute Resolution Service. One of the requirements for inclusion on any of the Registers is a pass in Modules 1 and 3 of the Examination.

2.0 Dispute Resolution Examinations

2.1 The ICE Adjudicators Qualifying Examination

Overview

Candidates will normally have passed the ICE's Examination in Civil Engineering Law and Contract Management Modules 1 and 3 (or have reached an equivalent standard) and are required to be qualified construction professionals with considerable practical experience in contract management, claims procedures, estimating, costing, and fixing of rates. The Examinations are not restricted to Members of the ICE.

As well as testing candidates' knowledge of their own discipline, the Examination also looks for a sound knowledge of the law and procedure of adjudication, in particular as it applies to references under the ICC Conditions of Contract (formerly known as ICE Conditions of Contract) and their variants, NEC4 Contracts and the ICE Adjudication Procedure.

Guidance is given on the depth to which candidates should study the Syllabus. Candidates are expected to know the basic principles underlying each heading and to be acquainted with the reasoning behind the main leading cases by which the law has been formulated or changed. The details of such cases need not be learned by rote and a candidate will not necessarily be penalised for incorrectly citing the name of a case provided that it is clear which case is intended.

Structure

The ICE Adjudicators' Qualifying Examination consists of two Papers. The first Paper is a three-hour open book, examination requiring the writing of an enforceable decision. The second Paper is a 2-hour closed book, procedural examination. Candidates will be required to answer questions on both ICC Conditions of Contract and NEC4 Contracts.

Date and Time

The date of this year Adjudicator's Qualifying Examination is the 7th February 2022

Reference to Documents during the Examination

Candidates for the Adjudicator's Qualifying Examination may bring any unmarked documents into the first Paper examination room. Delegates are allowed to bring printed versions of the documents, tabbing and highlighting is allowed.

Edition of Contract Documents

The relevant editions of Contracts will be those editions of NEC4 current on the 1st August preceding the Examination. ICC Conditions of Contract Measurement Version dated August 2011, the ICC Conditions of Contract – Design and Construct.

Application

Application forms are available on the ICE website and from the ICE Dispute Resolution Service at the ICE (address on page 15).

The closing date for receipt of application forms to sit the exam at the ICE is normally one month before the exam.

Examination Fee

The examination fee is £200.

Marking and Results

Results

The results of the examination are emailed to all candidates around September.

Certificates

A certificate signed by the Law and Contract Management Examination Committee Chairman will be sent to those successful in passing the Adjudicators Qualifying Exam.

Marking Structure

For guidance purposes the normal pass mark for the Adjudicators' Qualifying Examination is 65%.

Marking and Moderation

Scripts are double marked anonymously by the Examiners who have set the questions. A panel of Moderators then moderates every script anonymously. The Moderators take particular care to ensure that scripts which have not achieved a pass mark, especially those that have failed marginally, have been correctly marked and have indeed fallen short of the required standard.

Given the comprehensive procedure for marking scripts, no appeals are undertaken.

Re-sitting

If candidates fail the Examination, they will be required to sit the Paper again if they wish to obtain a pass. The committee will allow those that have achieved 65%+ in Paper 1 or 2 in the previous exam the opportunity to resit only one Paper next year.

Past Exam Papers

Past Papers are available from the ICE Dispute Resolution Service at the ICE (address on page 15)

2.2 The ICE Arbitrators Endorsement Examination

Qualifications

The ICE Register of Arbitrators is maintained by ICE Dispute Resolution Service. One of the requirements for inclusion in the List of Arbitrators is a pass in the ICE Arbitrators' Endorsement Examination

Overview

This Endorsement Examination Syllabus is intended to supplement the Chartered Institute of Arbitrators syllabus for Domestic Arbitration Modules 1, 2, 3 and 4. Candidates must have passed the Examination in these Modules to be eligible to sit the Endorsement Examination.

Candidates will normally have passed the ICE's examination in Civil Engineering Law and Contract Management Examination Modules 1 and 3 (or have reached an equivalent standard) and are required to be qualified construction professionals with considerable practical experience in contract management, claims procedures, estimating, costing, and fixing of rates. The examinations are not restricted to Members of the ICE.

As well as testing candidates' knowledge, the Examination also looks for a sound knowledge of the law and procedure of arbitration, in particular as it applies to references under the ICC Conditions of Contract (formerly known as the ICE Conditions of Contract) NEC4 Contracts and the ICE Arbitration Procedure.

Guidance is given on the depth to which candidates should study the Syllabus. Candidates are expected to know the basic principles underlying each heading and to be acquainted with the reasoning behind the main leading cases by which the law has been formulated or changed. The details of such cases need not be learned by rote and a candidate will not necessarily be penalised for incorrectly citing the name of a case provided that it is clear which case he means.

Structure

The ICE Arbitrators' Endorsement Examination consists of one Paper of three and a half hours duration. The Paper is divided into three compulsory questions. Question one should be given an hour and a half to complete. The other two questions should be afforded 45 minutes each. The remaining thirty minutes are provided for reading but may also be used as additional time in which to answer questions if the candidate chooses.

Date and Time

The date for this year's Arbitrators' Endorsement Examination is to be confirmed

Reference to Documents during the Examination

Candidates for the Endorsement Examination may bring any unmarked documents into the examination room.

Editions of Contract Documents

The relevant editions of Contracts will be those editions of NEC4 current on the 1st August preceding the Examination. ICC Conditions of Contract Measurement Version dated August 2011, the ICC Conditions of Contract – Design and Construct dated August 2011

Examination under Scots Law

Candidates may elect to answer the Endorsement Examination with respect to either Scots or English Law and prepare for the Examination accordingly. The topics and case lists included in the Syllabus are applicable to English Law.

Application

Application forms are available on the ICE web site and from the ICE Dispute Resolution Services. The closing date for receipt of application forms to sit the Examination at the ICE is one month before the Examination. In certain circumstances an application will be accepted after that date.

Examination Fee

The Examination fee is £200 for all candidates.

Marking and Results

The results of the Examination are posted to all candidates around mid-May

Certificates

A certificate signed by the Law and Contract Management Examination Committee Chairman will be sent to those successful in passing the Endorsement Examination.

Marking Structure

For guidance purposes the normal pass mark for the Endorsement Examination is 65%.

Moderation and Appeals

Scripts are double marked anonymously by the Examiners who set the questions. A panel of Moderators then moderates every script anonymously. The Moderators take particular care to ensure that scripts which have not achieved a pass, especially those that have failed marginally, have been correctly marked and have indeed fallen short of the required standard.

Given the comprehensive procedure for marking scripts, no appeals are undertaken.

Re-sitting

If candidates fail the Examination, they will be required to sit the Examination again if they wish to obtain a pass.

Past Exam Papers

Past Papers are available from the ICE Dispute Resolution Service (address on page 15).

Qualifications

The ICE Register of Arbitrators is maintained by ICE Dispute Resolution Service. One of the requirements for inclusion in the List of Arbitrators is a pass in the ICE Arbitrators' Endorsement Examination.

3.0 Addresses

3.1 General

ICE Dispute Resolution Service
The Institution of Civil Engineers
One Great George Street
Westminster, London SW1P 3AA
Direct Line: 020 7665 2424 Email: contractsanddisputes@ice.org.uk

The following documents on the Law and Contract Management Examination and the Endorsement Examination are available from the ICE website: Curriculum, past Examination Papers, Examiners Reports (these include a Moderators' Report, an Examiner's Report for each section of the examination, Examination questions and points for answer written by the Examiner who set the questions). Information and preparatory material regarding answering Module 1 according to Scots Law and application forms for the Examination.

Contact ICE Dispute Resolution Services, on 020 7665 2424 or at the above address for information about the ICE Registers of Arbitrators, Adjudicators, Conciliators and Construction Mediators.

3.2 ICE Approved List of Courses

The following is the list of organisations providing approved ICE Law and Contract Management Courses.

ICE West Midlands

Contact: Daniel Stanyard

Regional Coordinator

Institution of Civil Engineers (ICE West Midlands)

Lockside, 5 Scotland Street,

Birmingham

West Midlands

B1 2RR

T: +44 (0) 7500 797218

E: daniel.stanyard@ice.org.uk

University of Leeds

Contact: Jenny Carter

CPD, Conference & Events Co-ordinator

CPD, Conference & Events Unit

Engineering Research & Innovation Service

Faculty of Engineering,

School of Civil Engineering, Room 209

University of Leeds

Leeds, LS2 9JT, UK

T: +44 (0)113 343 8104

E: cpd@engineering.leeds.ac.uk

Quigg Golden Limited – Belfast

Contact: William Brown

18-22 Hill Street

Cathedral Quarter

Belfast

BT1 2LA

T: +44 (0)28 90 321022

E: Belfast@QuiggGolden.com

Quigg Golden Limited - Dublin

Contact: William Brown

31 Waterloo Road

Ballsbridge

Dublin 4

DO4 EOE4

T: +353(0)16766744

E: Dublin@QuiggGolden.com

DWF LLP – London Course

Contact: David McNeice

20 Fenchurch Street

London

EC3M 3AG

T: 0333 320 2220

E: David.McNeice@dwf.law

ICE Training eLearning

<https://www.icetraining.org.uk/courses/law-contracts>

4.0 Syllabus

4.1 Level of knowledge expected for the ICE Law and Contract Management Exam

Module 1 – Law Exam

Candidates are expected to:

- Analyse the rights of parties in a factual matrix
- Make reference to the main legal authorities
- Explore alternative outcomes to demonstrate a depth of understanding of the law
- Draft answers in good English in essay style

Module 2 – Contract Management Exam

Candidates are expected to:

- Demonstrate a knowledge and understanding of pre-tender processes and the general organisations and relationships in the construction industry
- Analyse critically parties' rights in the standard forms of construction contracts in a factual matrix
- Explore alternative outcomes to demonstrate a depth of understanding of construction contracts
- Draft answers in good English in essay style

Module 3 – Advanced Contract Management Exam

Candidates are expected to:

- Demonstrate an understanding of pre-tender processes and the general organisation and relationships in the construction industry
- Analyse critically in-depth parties' rights in the standard forms of construction contracts in a factual matrix
- Analyse complex situations where multiple problems impact upon one another.
- Explore alternative outcomes to demonstrate a depth of understanding of construction contracts
- Demonstrate an understanding of general law where it applies to construction
- Use relevant case law to qualify the answers given
- Draft answers in good English in essay or report style
- Candidates are advised to practice completing questions from past Papers prior to the examination to ensure they can complete the Examination requirements to the time allocated.

ICE Civil Engineering Law and Contract Management Examination Syllabus Module 1 – Law

The syllabus for Module 1 refers to topics under the Law of England and Wales.

Candidates may elect to sit the Examination under the Law of Scotland in which case the equivalent legal topics will apply.

Items marked with an asterisk* will not be examined in detail although candidates will be expected to have some general understanding of their relevance

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| <u>PRINCIPLES</u> | |
| | Statutes and Subordinate Legislation Administrative Structure of the Courts Case Law and the Doctrine of Precedent |
| <u>CONTRACT LAW</u> | <i>Section 1 of the case list on pages 35-40 applies</i> |
| Formation of the Contract | |
| <i>Agreement</i> | Offer: Genuine Offers, Invitation to Treat, Tenders, Termination of Offer Acceptance: General rule, Communication of Acceptance, Acceptance by conduct and performance Negotiations: Battle of the Forms, |
| <i>Consideration</i> | Definition of Consideration Consideration under Contract Maxims and Rules of consideration Formality of contract and deeds. |
| <i>Intention to create Legal Relations*</i> | |
| Terms within a Contract | |
| <i>Express Terms</i> | Parol evidence rule and its exceptions Representations Collateral contracts Distinction between conditions and warranties (innominate terms) |

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|---------------------------------------|---|
| <i>Implied Terms</i> | Terms implied by the courts Terms implied by statute. |
| <i>Exemption Clauses</i> | Incorporation in contract Construction of exemption clauses Effect of implied terms on exemption clauses |
| Defects within a Contract | |
| <i>Defects in Construction</i> | Absence of required formality Contracts required to be under seal, in writing Effect of non-compliance. Contra proferentem rule |
| <i>Misrepresentation</i> | Definition Nature of statement Inducement, Reliance and loss suffered Misrepresentation Act 1967 Types of misrepresentation, Effect of misrepresentation and Remedies. |
| <i>Mistake*</i> | Mutual As to Quality |
| Principles of Contract Law | |
| <i>Privity of Contract</i> | The doctrine and its effect (Contracts (Rights of Third Parties) Act 1999*). |
| <i>Assignment</i> | Assignment vs Novation Provisions for assignment in standard form contracts. |
| <i>Agency</i> | Actual authority, apparent authority, usual authority. |

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| <p>Discharge of Contracts Performance, Agreement and Frustration</p> | <p>Performance:</p> <ul style="list-style-type: none"> • entire contracts • severable contracts • prevention of performance • substantial performance • time of performance • sub-contracting. <p>Agreement to discharge or vary</p> <p>Frustration</p> <ul style="list-style-type: none"> • impossibility • illegality • effects of frustration |
| <p>Breach of Contract</p> | |
| <p>Breach</p> | <p>Actual breach Anticipatory breach Repudiatory breach vs breach of warranty.</p> |
| <p>Bankruptcy or Liquidation*</p> | |

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|-----------------|---|
| Remedies | <p>Damages</p> <ul style="list-style-type: none"> • general principle • remoteness • quantification • mitigation <p>Alternatives</p> <ul style="list-style-type: none"> • set-off and abatement • liquidated damages • interest • *specific performance • *injunctions • unjust enrichment <p>Limitation periods, Limitation Act 1980</p> <p>Payment provisions of the Housing, Grants, Construction and Regeneration Act 1996 as amended 2011.</p> |
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| THE LAW OF TORT (DELICT IN SCOTLAND) | <i>Section 2 of the case list on pages 41-46 applies</i> |
| The Nature of Tort | <p>Compensation Culture*</p> <p>Vicarious Liability</p> <p>Breach of Statutory Duty*</p> |
| Negligence | |
| Elements of Negligence | <ol style="list-style-type: none"> 1. Duty of care 2. Breach of duty 3. Causation 4. Remoteness. |
| Standard and Levels of Care | <p>Professional person</p> <p>Extent of Levels of Care required</p> |
| Negligent Misstatement | The rule in Hedley Byrne v Heller & Partners |

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| Defences | Contributory negligence; Law Reform (Contributory Negligence) Act (1945); <i>Novus actus interveniens</i> ; <i>volenti non fit injuria</i> . |
| Remedies | Damages; <ul style="list-style-type: none"> • mitigation of loss; • remoteness of damage; • policy considerations*; • pure economic loss. Injunctions |
| Nuisance | |
| Private Nuisance | Private v Public Nuisance Extent of Interference Effect of Nuisance on individual Interest in land Deliberate acts |
| Rule in Rylands v Fletcher | Rules as distinguished from private nuisance Strict liability |
| Defences | Contributory Negligence Act of God Common benefit 3 rd Party nuisance |
| Remedies | Damages; <ul style="list-style-type: none"> • mitigation of loss; • remoteness of damage; • policy considerations*; • pure economic loss. Injunctions |
| Dangerous Premises | |
| Position at Common Law | Occupier liability for Contractor's acts |

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| <i>The Occupiers Liability Act 1957</i> | <ul style="list-style-type: none"> • Who is the Occupier • common duty of care; • nature of damage recoverable; • lawful visitors, • under contract, • invitees; • persons other than invitees; • occupier's liability for independent contractors |
| <i>Defences</i> | Contributory Negligence Effect of knowledge of danger Exemptions |
| <i>The Occupiers Liability Act 1984</i> | Status of trespassers Damages for trespassers Occupier Liability exceptions |
| <i>Remedies</i> | Damages; <ul style="list-style-type: none"> • mitigation of loss; • remoteness of damage; • policy considerations*; • pure economic loss. Injunctions |
| Employer's Liability | |
| Employer's Liability to Third Parties | Nature of vicarious liability Employee distinguished from independent contractor; acts carried out in course of employment. |
| Employer's Common Law Duties to Employees | Competent staff proper plant, appliances and premises, safe system of work, contributory negligence. |
| Employer's Liability for Independent Contractors | |
| Employee's duty to Employer | Duty to take reasonable care. |
| <u>HEALTH AND SAFETY*</u> | |

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| Factories Act 1961 as amended | Purpose, method of implementation, the Construction Regulations. |
| Health and Safety at Work etc. Act 1974 as amended | Objectives, Health and Safety Regulations, Codes of Practice, Company Safety Policies, safety officers, representatives and committees. Health and Safety Inspectorate, Inspectors' Powers, Prohibition and Improvement Notices. |
| Construction (Design and Management) Regulations 2016 | |

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| <u>THE LAW OF EVIDENCE*</u> | |
| Types of Evidence | Physical, documents, oral |
| Witness | Fact and opinion; competence under oath or affirmation; legal fitness to give testimony |
| Admissibility | Whether a tribunal is bound to receive the evidence |
| Relevance | Probative value related to the matter in question |
| Weight | Balance or preponderance of evidence; hearsay |
| Proof | Civil Standard and Legal and Evidential burden |

| | |
|--|---|
| <u>STATUTES</u> | Relevant Statutes as included elsewhere above |
| Unfair Contract Terms Act 1977, The Consumer Rights Act 2015 | |
| Misrepresentation Act 1967 | |
| The Occupiers Liability Acts 1957 and 1984 | |
| Law Reform (Contributory Negligence) Act (1945) | |
| Factories Act 1961 | |
| Health and Safety at Work etc. Act 1974 | |
| Limitation Act 1980 | |
| Latent Damage Act 1986 | |

Housing, Grants, Construction and Regeneration Act 1996 Part II as amended by the Local Democracy, Economic Development and Construction Act 2009 The Scheme for Construction Contracts

Construction (Design and Management) Regulations 2015

Contracts (Rights of Third Parties) Act 1999

The Late Payment of Commercial Debt (Interest) Act 1998 as amended

ICE Civil Engineering Law and Contract Management Examination Syllabus – Module 2 – Contract Management NEC4

A candidate's understanding and application of topics in the Syllabus will be tested against the following standards:

| Standard | Level of Knowledge | How the Standard is reflected in the Examination Paper |
|----------|--------------------|---|
| 1 | Detail | A sound grasp of the detail is required. A whole question may be devoted to the topic. |
| 2 | General | A good general knowledge of the topic is required. Half a question, at most, will be devoted to the topic. |

Candidates are strongly advised to read any Guidance Notes associated with the various Conditions of Contract

| NEC 4 Contracts | |
|---|---|
| General Matters | |
| Tendering and Procurement of NEC4 Contracts | 2 |
| Selecting the correct NEC4 Contract and Options | 1 |
| Contract Options | |
| Main Options A to F – main features and respective advantages | 1 |
| Resolving and Avoiding Disputes – W1, W2 and W3 | 1 |
| Secondary Options 'X', 'Y' | 1 |
| All X clauses | 1 |
| Y(UK)1, Y(UK)2, Y(UK)3 | 1 |

| | |
|---|---|
| Z Clauses – application and use of Z clauses in practice | 2 |
| Contents of the NEC4 – Management Tools | |
| Scope | 1 |
| Site Information | 2 |
| Contract Data: Part 1 | 1 |
| Contract Data: Part 2 | 1 |
| Schedule of Cost Components | 2 |
| Short Schedule of Cost Components | 2 |
| Duties and responsibilities of the Project Manager | 1 |
| Organisation of the Project Manager's site staff | 2 |
| Duties and responsibilities of the Supervisor | 2 |
| Organisation of the Contractor's site staff | 2 |
| Duties and responsibilities of the Contractor and its staff | 1 |
| Core Clauses and Contract Management | |
| Core Clause 1 – General | |
| Clause 11 Identified and defined terms | 2 |
| Clause 13 Communications | 1 |
| Clause 15 Early warnings | 1 |
| Clause 16 Contractor's proposals | 1 |
| Clause 17 Requirements for notifications | 1 |
| Core Clause 2 – The Contractor's main responsibilities | |
| Clauses 21, 22 Contractor's design | 1 |
| Clause 24 People | 2 |
| Clause 26 Subcontracting | 1 |
| Core Clause 3 – Time | |
| Clause 30 Starting, Completion, take over and Key Dates | 1 |
| Clauses 31, 32 Programme and revisions | 1 |
| Clauses 33 – 35 Access, instructions to stop/not start, take over | 1 |
| Core Clause 4 – Quality management | |
| Clause 40 Quality management system | 1 |

| | |
|--|----------|
| Clauses 41, 42 Tests and inspections | 2 |
| Clauses 44, 45 Correcting and accepting Defects | 1 |
| Clause 46 Uncorrected Defects | 1 |
| Core Clause 5 – Payment (Main Options A to F) | 1 |
| Clause 50 Assessing the amount due | 1 |
| Clause 51 Payment | 1 |
| Clause 52 Defined Cost | 1 |
| Clause 53 Final assessment | 1 |
| Core Clause 6 – Compensation events | 1 |
| Clause 60 Compensation events | 1 |
| Clause 61 Notifying compensation events | 1 |
| Clause 62 Quotations for compensation events | 1 |
| Clauses 63, 64 Assessment | 1 |
| Clauses 65, 66 Proposed instructions, implementing compensation events | 1 |
| Core Clause 7 - Title | 2 |
| Core Clause 8 – Liabilities and insurance | 2 |
| Clauses 80, 81 Client and Contractor liabilities | 2 |
| Clauses 83 – 86 Insurances | 2 |
| Core Clause 9 – Termination | 2 |
| Dispute resolution – W1, W2 and W3 | 2 |
| Other NEC4 Contracts | |
| Engineering and Construction Subcontract | 2 |
| Engineering and Construction Short Contract | 2 |
| Engineering and Construction Short Subcontract | 2 |
| Professional Service Contract (and short) | 2 |
| Term Service Contract (and short) | 2 |

ICE Civil Engineering Law and Contract Management Examination Syllabus Module 3 – Advanced Contract Management – NEC4

A candidate’s understanding and application of topics in the Syllabus will be tested against the following standards:

| Standard | Level of Knowledge | How the Standard is reflected in the Examination Paper |
|----------|--------------------|---|
| 1 | Detail | A sound grasp of the detail is required. A whole question may be devoted to the topic. |
| 2 | General | A good general knowledge of the topic is required. Half a question, at most, will be devoted to the topic. |

Candidates are also be required to demonstrate knowledge of the topics in the Syllabus’ for Module 1 and Module 2

Candidates are strongly advised to read any Guidance Notes associated with the various Conditions of Contract

| Subject | Standard |
|--|----------|
| GENERAL | |
| Promotion, Tendering Procedure and Documentation | |
| Authority for the Project; client and project manager's investigations | 1 |
| Entering and creating a contract | 1 |
| Miscellaneous (Key Contract Principles) | |
| Equitable Estoppel | 1 |
| Collateral Warranties | 1 |
| Remoteness | 1 |
| Mitigation | 1 |
| Subject | |
| Quantum merit | 2 |
| Contracts (Rights of Third Parties Act) 1999 (E&W) | 2 |
| Contract (Third Party Rights) (Scotland) Act 2017 (Scotland) | 2 |
| Conflict of laws | 2 |
| | 1 |

| Subject | | Standard |
|---|--|----------|
| Late Payment of Commercial Debt (Interests) Act 1998 | | |
| Termination at Common Law as well as in contract termination provisions. | | 1 |
| Miscellaneous (Ancillary Contract Principles) | | |
| Contra Proferentum | | 1 |
| Misrepresentation | | 1 |
| Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy Economic Development and Construction Act 2009) | | 2 |
| Construction Contract Concepts | | |
| Completion date control | | 1 |
| Payment mechanisms | <ul style="list-style-type: none"> • Bills of Quantities | 1 |
| Varying the Works | <ul style="list-style-type: none"> • Instructing & controlling change • Valuing change | 1 |
| Control of Quality of Work | | 1 |
| Miscellaneous performance obligations | <ul style="list-style-type: none"> • Programming • Control of constraints | 1 |
| Employer claims | <ul style="list-style-type: none"> • Delay Damages • Cross-setoff | 1 |
| Design and Build | <ul style="list-style-type: none"> • Fit for Purpose • Reasonable Skill and Care | 1 |

| | | |
|---|--|---|
| Termination at Common Law as well as in contract termination provisions. | | 1 |
| Miscellaneous (Ancillary Contract Principles) | | |
| Contra Proferentum | | 1 |
| Misrepresentation | | 1 |
| Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy Economic Development and Construction Act 2009) | | 2 |
| Construction Contract Concepts | | |
| Completion date control | | 1 |

| | | |
|--|--|---|
| Payment mechanisms | <ul style="list-style-type: none"> • Bills of Quantities | 1 |
| Varying the Works | <ul style="list-style-type: none"> • Instructing & controlling change • Valuing change | 1 |
| Control of Quality of Work | | 1 |
| Miscellaneous performance obligations | <ul style="list-style-type: none"> • Programming • Control of constraints | 1 |
| Client claims | <ul style="list-style-type: none"> • Delay Damages • Cross-setoff | 1 |
| Design and Build | <ul style="list-style-type: none"> • Fit for Purpose • Reasonable Skill and Care | 1 |
| NEC4 Engineering and Construction Contract | | |
| Main Options A-F – main features and respective advantages | | 1 |
| Secondary Options X, Y and Z clauses | | 2 |
| Scope | | 1 |
| Site Information | | 1 |
| Contract Data: Part 1 | | 2 |
| Contract Data: Part 2 | | 2 |
| Section 1 – General | | 1 |
| Clause 11.2 Definitions | | 2 |
| Clause 13 – communications 13.1, 13.2, 13.7 | | |
| Clause 14.2 Delegation of responsibilities | | 2 |
| Clause 15 Early warnings | | 1 |
| Section 2 – The Contractor's main responsibilities – 20.1 | | 1 |
| Clause 23, 11.2(9) Design of Equipment | | 2 |
| Clauses 23 and 27 Responsibility for design and safety | | 2 |
| Section 3 – Time | | 1 |
| Clause 30 Starting, Completion and Key Dates | | 1 |
| Clauses 31, 32 Programme and revisions | | 1 |
| Clauses 30.2, 35 Certification and take over | | 1 |

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|---|---|
| Section 4 – Quality management | 1 |
| Clause 43.3 Defects Certificate | 2 |
| Section 5 – Payment (Main Options A to F) – PWDD, SCC, SSCC etc. Audit regime – 52.2 | 1 |
| Section 6 – Compensation events | 1 |
| Clause 60 Compensation events | 1 |
| Clause 61 Notifying compensation events | 1 |
| Clause 62 Quotations for compensation events | 1 |
| Clauses 63, 64 Assessing compensation events | 1 |
| Clause 65 Proposed instructions | 1 |
| Clause 66 Implementing compensation events | 1 |
| Schedule of Costs Components | 1 |
| Other NEC4 Contracts | |
| Engineering and Construction Subcontract | 2 |
| Engineering and Construction Short Contract | 2 |
| Engineering and Construction Short Subcontract | 2 |
| Professional Service Contract (and short) | 2 |
| Term Service Contract (and short) | 2 |

4.2 ICE Dispute Resolution Examinations

Syllabus for ICE Adjudicators' Qualifying Examination

Candidates are expected to have a 'Working Knowledge' of the topics in the Syllabus demonstrated by competence in the application of the principals involved.

A question may be devoted to a single topic in the Syllabus.

Candidates are strongly advised to read any Guidance Notes associated with the various Conditions of Contract and Procedures

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|--|--|
| Subject | |
| Syllabuses for Modules 1, 2 and 3 | |

| | |
|---|--|
| Subject | |
| Dispute Resolution Framework | |
| Housing, Grants, Construction and Regeneration Act 1996 Part II as amended by the Local Democracy, Economic Development and Construction Act 2009 | |
| Scheme for Construction Contracts Regulations 1998 as amended 2011 | |
| Exclusion Orders | |
| Leading cases on Adjudication | |
| ICE Adjudication Procedure 2011 | |
| Enforcement of Adjudicator's Decision | |
| NEC4 Dispute Resolution Service Contract | |
| Understanding of the Practice of Adjudication | |
| Identifying the contract, written and oral | |
| Identifying the dispute and dealing with multiple disputes | |
| Fairness, impartiality, natural justice and efficiency | |
| Practical constraints and difficulties | |
| Dealing with challenges to jurisdiction | |
| Setting the timetable, rights of reply and new evidence | |
| Dealing with evidence, meeting, experts, own knowledge | |
| Fees, Adjudicator's contract, payment and lien | |
| Methods of assessment | |
| Implications of leading cases | |
| Decision Writing | |
| Ability to write a concise, clear, reasoned, severable and enforceable Decision | |

4.3 ICE Dispute Resolution Examinations

Syllabus for ICE Arbitrators Endorsement Examination

Candidates are expected to have a 'Working Knowledge' of the topics in the Syllabus demonstrated by competence in the application of the principals involved.

A question may be devoted to a single topic in the Syllabus.

Candidates are strongly advised to read any Guidance Notes associated with the various Conditions of Contract.

Subject

GENERAL

Promotion, Tendering Procedure and Documentation

Authority for the Project; client and project manager's investigations

Bills of Quantities, Methods of Measurement CESMM4

Tender Pricing Methods

Alternative tenders and the Assessment of tenders

Acceptance of tenders and Notification of results

Formalities and forming the Contract

Miscellaneous

Construction (Design and Management) Regulations 2015 (CDM)

Letters of intent, Cash flow, Collateral warranties, Working Rule Agreement

Disputes

Housing Grants Construction and Regeneration Act 1996 (amended 2011)

Scheme for Construction Contracts Regulations 1998 (amended 2011)

Exclusion Orders

Arbitration Act 1996

Leading cases on Arbitration

Leading cases on Adjudication

ICE Arbitration Procedure 2012

ICE Adjudication Procedure 2011

ICE Mediation / Conciliation Procedure 2011

Enforcement of Adjudication Decision

Enforcement of Arbitrator's Award

CONDITIONS OF CONTRACT

Candidates are expected to have a 'Working Knowledge' of the topics in the principal

Conditions of Contract as required for Module 3, namely

ICC Conditions of Contract Measurement Version

NEC4 Engineering and Construction Contract

| | |
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| Candidates are expected to be familiar with the topics in the other Conditions of Contract as required for Module 3, namely | |
| ICC Model Conditions of Contract – Other Forms | |
| ICC Design and Construct | |
| ICC Conditions of Contract Design and Construct | |
| ICC Conditions of Contract Minor Works | |
| ICC Conditions of Contract Term Version | |
| ICC Conditions of Contract Target Cost Version | |
| CECA Form of Sub-contract (Blue Form) | |
| NEC4 Contracts – Other Forms | |
| Engineering and Construction Subcontract | |
| Engineering and Construction Short Contract | |
| Engineering and Construction Short Sub-contract | |
| Professional Service Contract | |
| Term Service Contract | |
| Dispute Resolution Service Contract | |

4.4 Case lists

Section 1: The Law of Contract

Module 1 and 2

Formation of the Contract

Offer and Acceptance

| | |
|---|--|
| Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Limited (1953, C.A.) | Display on shelf not an offer |
| Carlill v Carbolic Smoke Ball Co. (1893, C.A.) | Advert for reward amounted to an offer |
| Brogden v Metropolitan Railway (1877, HL) | Acceptance by performance |
| Jones v Daniel (1894) | Acceptance must exactly fit offer |
| Butler Machine Tool Co. Ltd. v Ex-Cell-o Corporation (England) Ltd. (1979, C.A.) | Battle of the forms |

| | |
|---|---|
| Tekdata Interconnections Ltd v Amphenol Ltd [2009] EWCACiv1209 (CA) | Course of dealings |
| Adams v Lindsell (1818) | Acceptance by post on posting |
| Felthouse v Bindley (1862) | Acceptance must be communicated |
| G Percy Trentham v Archital Luxfer Ltd (1992, C.A.) | Acceptance by conduct – The test of necessity |
| Entores v Miles Far East Corp [1955] 2 QB 327; [1995] 2 All ER 493 | Postal rule does not apply to ‘instantaneous communications’ such as telex. |
| The Brimnes [1975] QB 929; [1974] 3 All ER 88 | Withdrawal effective on receipt of telex not when read |
| Brinkibon Ltd v Stahag Stahl GmbH [1983] 2 AC 34; [1982] 1 All ER 293 | Communication |
| Hyde v Wrench (1840) | Counteroffer destroys offer |
| Dickinson v Dodds (1876) | Revocation |
| Quenerduaine v Cole (1883) | Lapse of Time |
| Scammell v Ouston (1941, H.L.) | No Contract because of uncertainty – Essential terms |
| Harvela Investments Ltd v. Royal Trust Co. of Canada [1986] AC 207. | Tender |
| Blackpool and Fylde Aero Club v. Blackpool BC [1990] 3 All ER 25. | Tender |
| L’Estrange v F Graucob Limited [1934] 2 KB 394 Autoclenz Ltd v Belcher [2011] UKSC 41 (SC) | Totally written terms. |
| Consideration | |
| Currie v Misa (1875) | Consideration must be valuable |
| Tweddle v Atkinson (1861) | Consideration must move from Plaintiff |
| Roscorla v Thomas (1842) | Past consideration is no consideration |
| Lampleigh v Brathwait (1615) | Service done at request of promisor |
| Stilk v Myrick (1809) | No new consideration |
| Hartley v Ponsonby (1957) | Consideration provided under new contract |

| | |
|--|---|
| Williams v Roffey Bros & Nicholls (Contractors) Limited (1991) 1 QB1; (1990) 2WLR 764 | Performance of contractual duty |
| Pinnel's Case (1602) | Payment of a lesser sum cannot be in satisfaction for a larger debt |
| Foakes v Beer (1884, H.L.) | Payment of a lesser sum cannot be in satisfaction for a larger debt |
| D & C Builders Ltd. V Rees (1966, C.A.) | Payment of a lesser sum cannot be in satisfaction for a larger debt |
| Hughes v Metropolitan Railway Co. (1877 H.L.) | Equitable Estoppel |
| Intention to Create Legal Relations | |
| Balfour v Balfour (1919, C.A.) | Agreement between husband and wife not a contract |
| Rose and Frank Co. v Crompton (1925, H.L.) | Express term providing that arrangement not a legal agreement |
| <u>Contract Terms</u> | |
| MT Hojgaard AS v E. ON Climate and Renewables UK Robin Rigg East Ltd & Anor [2017] UKSC 59 | Design obligations |
| Arnold v Britton [2015] UKSC 36 | Contract interpretation |
| Express Terms | |
| Edwards v Aberayron Mutual Ship Insurance Society Limited (1876) | Incorporation of referred document |
| Henderson v Arthur (1907, C.A.) Shogun Finance Ltd v Hudson [2003] UKHL 62 (HL) | Parol evidence rule |
| Joscelyne v Nissen (1970, C.A.) | Parol evidence rule does not apply to rectification |
| Pym v Campbell (1856) | Parol evidence rule does not apply to show contract does not yet operate or has ceased to operate |
| Hutton v Warren (1836) | Parol evidence rule does not apply re evidence of custom |
| Malpas v London & S.W. Rail Co. (1866) | Parol evidence rule does not apply re incompleteness |

| | |
|---|---|
| Hutton v Watling (1948, C.A.) | Parol evidence rule does not apply re incompleteness |
| Schawel v Reade (1913, H.L.) | Representation compared to contractual terms, strength of Statement |
| Bannerman v White (1861) | Representation compared to contractual terms, Importance of Statement |
| Dick Bentley Productions Limited v Harold Smith Motors Limited (1965, C.A.) | Representation compared to contractual terms, relative degrees of knowledge |
| De Lassalle v Guildford (1901, C.A.) | Collateral contract |
| Shanklin Pier Ltd. V Detel Products Ltd. (1951) | Collateral contract with 3 rd Party |
| Hong Kong Fir Shipping Co. Ltd. V Kawasaki Kizen Kaisha Limited (1962, C.A.) | Conditions, Warranties – consider result of breach |
| The Mihalis Angelos (1971, C.A.) | |
| The Hansa Nord (1976, C.A.) | Intermediate terms |
| <u>Cavendish Square Holdings BV and Another v Makdessi [2012] EWHC 3582 (Comm)</u> <u>Specified damages vs penalty clauses in contracts</u> | Specified damages vs penalty clauses in contracts |
| Implied terms | |
| The Moorcock (1889, C.A.) | |
| Shirlaw v Southern Foundries (1926) Ltd, (1939, C.A.) | Officious bystander test |
| Hutton v Warren (1836) | Terms implied by custom |
| Exemption Clauses | |
| Edwards v Aberayron Mutual Ship Insurance Society Limited (1876) | Incorporation of referred document |
| Parker v South Eastern Railway (1877, C.A.) | Notice |
| British Crane Hire Corporation Ltd. V Ipswich Plant Hire (1975, C.A.) Limited (1975, C.A.) | Clauses common in the business |
| Baldry v Marshall (1925, C.A.) | Contra Proferentem Rule |
| Photo Production Ltd. V Securicor Transport Ltd. (1980, H.L.) | |

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|---|---|
| Curtis v Chemical Cleaning and Dyeing Co. (1951, C.A.) | Misrepresentation |
| Evans (J.) & Son (Portsmouth) Ltd. V Andrea Merzario Ltd. (1976, C.A.) | Overriding oral undertaking |
| Andrews v Hopkinson (1957) | Collateral Contract |
| Scruttons Ltd. V Midland Silicones Ltd. (1962, H.L.) | Third parties and exemption clauses |
| Hollier v Rambler Motors [1972] 2 Q.B 71 | Incorporation of exclusion clauses |
| Chapelton v Barry Urban District Council [1940] 1 KB 532 | Incorporation where an exclusion clause is not in a signed document |
| Interfoto Picture Library v Stiletto Visual Programmes Ltd [1989] QB 433, CA | Incorporation of onerous or unusual exclusion clauses |
| Olley v Marlborough Court Hotel [1949] 1 KB 532 | Incorporation of express terms / exclusion clauses |
| <u>Defects within a Contract</u> | |
| Misrepresentation | |
| Bisset v Wilkinson (1927, P.C.) | Must be of fact not opinion |
| Edgington v Fitzmaurice (1885, C.A.) | Fact not intention |
| Fletcher v Krell (1873) | Generally, silence is not misrepresentation |
| Derry v Peek (1889, H.L.) | Narrow meaning of fraud |
| Hedley Byrne & Co. Ltd. V Heller & Partners Ltd. (1964, H.L.) | Negligent misrepresentation in tort |
| Mistake | |
| Shogun Finance Ltd v Hudson [2003] UKHL 62 (HL) | Mistaken Identity |
| Great Peace Shipping Ltd. v Tsavlis (International) Ltd [2002] EWCA Civ 1407 (CA) | Mutual Mistake |
| Bell v Lever Bros. (1932, H.L.) | As to quality |
| <u>Privity of Contract</u> | |
| Dunlop v Selfridge (1915, H.L.) | |
| <u>Discharge of Contract</u> | |
| Performance | |
| Cutter v Powell (1795) | Entire contracts |
| Ritchie v Atkinson (1808) | Severable contract |

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|---|--------------------------------------|
| Planché v Colburn (1831) | Prevention of performance |
| Hoenig v Isaacs (1952, C.A.) | Substantial performance |
| Bolton v Mahadeva (1972, C.A.) | Substantial performance |
| Startup v Macdonald (1843) | Tender of performance |
| Rickards (Charles) Ltd. V Oppenheim (1950, C.A.) | Time of the essence |
| British Waggon Co. v Lea (1880) | Vicarious performance |
| Southway Group Ltd. V Wolff (1991, C.A.) | Personal performance/sub-contracting |
| Agreement to discharge or vary a contract | |
| Berry v Berry (1929) | Formality of variation |
| Frustration | |
| Taylor v Caldwell (1863) | Subject matter destroyed |
| Davis Contractors Ltd. V Fareham UDC (1956, H.L.) | Contract radically different |
| Breach | |
| Johnson v Agnew (1980, H.L.) | |
| Photo Production Ltd. V Securicor Transport Ltd. (1980) | |
| Frost v Knight (1872) | Anticipatory breach |
| White and Carter (Councils) Ltd. V McGregor (1962, H.L.) | Anticipatory breach |
| Remedies | |
| Hadley v Baxendale (1854) | Remoteness of Damage |
| Diamond v Campbell-Jones (1961) | Remoteness of Damage |
| Cottrill v Steyning and Littlehampton Building Society (1966) | Remoteness of Damage |
| Jackson v Royal Bank of Scotland [2005] UKHL 3; [2005] 2 All ER 71 | Remoteness of Damage |
| W.L. Thompson Ltd. V Robinson Gunmakers Ltd. (1955) | Quantification |
| Charter v Sullivan (1957, Q.B.) | Quantification |
| Chaplin v Hicks (1911, C.A.) | Speculative Damages |
| British Westinghouse Co. v Underground Electric Rys. Co. of London (1912) | Mitigation |

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|--|--|
| Pilkington v Wood (1953) | Mitigation |
| Alfred McAlpine Capital Projects v Tile Box Ltd (2005) Parking Eye v Beavis [2015] UKSC | Penalty Clauses |
| Davis Contractors Ltd. V Fareham U.D.C. (1956, H.L.) | Quantum meruit |
| Ruxley Electronics and Construction Ltd v Forsyth [1996] AC 344; [1995] 3 All ER 268 | Recovery of non-pecuniary losses (loss of amenity). |
| Farley v Skinner [2001] UKHL 49; [2002] 2 AC 732 | Recovery of non-pecuniary losses for breach of contract (loss of amenity/enjoyment). |

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|---|---|
| Section 2: The Law of Tort | |
| Modules 1, 2 and 3 | |
| <u>The Nature of Tort</u> | |
| Breach of Statutory Duty | |
| <u>Negligence</u> | |
| The Elements of Negligence: Duty of care, breach of duty, damage, causation, foresee ability | |
| Donoghue v Stevenson (1932 AC 562) | Neighbourly principle outlined – Principles as per Lord Atkin |
| Home Office v Dorset Yacht Co (1970, H.L.) | |
| Best v Samuel Fox & Co Ltd (1952) | No damage without violating a right. |
| Electrochrome Ltd v Welsh Plastics Ltd (1968) | A person cannot receive compensation on the basis of damage suffered by someone else. |
| Proximity | |
| Caparo Industries plc v Dickman [1990] 2 AC 60 | In addition to the need for foreseeability there should exist a relationship of proximity such that a court will consider it fair & reasonable to impose a duty of care |
| Foreseeability | |
| Roe v Minister of Health (1954) | Was the injury foreseeable? |
| Wagon Mound (2) | |
| Causation | |
| Barnett v Chelsea Hospital Management Committee (1969) | Defendant's breach must cause damage |
| McWilliams v Arrol (1962) | 'But for' test. |
| Kuwait Airways Corp v Iraq Airways Co [2002] 2 AC 883 | 'But for' test need not be satisfied in cases involving multiple wrongdoers |
| Standard of Care | |
| Wells v Cooper (1958) | This case provides the opposite contention, i.e. a householder carrying out repairs has been held to have to conform to the standards of a reasonable tradesman |

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|---|--|
| Bolam v Friern Hospital Management Committee (1957) | Defendant does not have to be best in field but must follow established practices. A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art |
| Trustees of Ampleforth Abbey Trust v Turner & Townsend [2012] EWHC 2137 | Re-state Bolam test but apply to anyone |
| Bolton v Stone (1951) | Greater the risk greater the care required. * no liability where it was reasonable to ignore a small risk |
| Glasgow Corporation v Taylor (1922) | More care may be needed to protect children. |
| Watt v Hertfordshire CC (1952) | Sometimes necessity may justify taking what otherwise would be an unnecessary risk. |
| Thompson v Home Office [2001] EWCA Civ 331 | The risk has to be weighed against the benefit arising from the action |
| Negligent Misstatement | The rule in Hedley Byrne v Heller & Partners |
| Hedley Byrne v Heller & Partners (1964) | Liability for careless statement causing economic loss. Special relationship upon which reliance is placed. |
| Defences | |
| Contributory Negligence | |
| Law Reform (Contributory Negligence) Act (1945) | Liability is proportioned between Plaintiff & Defendant |
| Froom v Butcher (1976) | Failure to wear a seat belt. |
| O'Connell v Jackson (1971) | Motor cyclist failing to wear crash helmet is contributory negligence. |
| Sayers v Harlow UDC (1958) | Plaintiff injured when trying to climb out of a public toilet. |
| Jones v Boyce (1816) | Plaintiff does not contribute if he makes a reasonable decision in the agony of the moment. |
| Anderson v Newham College of Further Education [2002] EWCA Civ 505 | If the evidence shows 100% liability lies with the Claimant, no liability falls on the defendant. If not, the court will consider the extent of the Claimant's responsibility |

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|---|---|
| Novus actus interveniens | |
| McKew v Holland, Hannen and Cubitts (1969) | Employee injured at work made injury worse when descending stairs at his house. Defendant not liable for further damage. |
| Barings plc (in liquidation) v Coopers Lybrand [2003] EWHC 1319 | Where there are two causes of loss, one reckless the other negligent, the reckless will ordinarily be treated as the sole cause of loss |
| Volenti non fit injuria | |
| Simms v Leigh Rugby Football Club (1969) | Injuries obtained in dangerous sport not actionable. this case applies more closely to liability under Occupiers Liability * |
| Cutler v United Dairies (1933 2KB 297) | The danger had passed, and the claimant was held to have accepted the risk involved in the rescue |
| Letang v Ottawa Electric Rly Co [1926] AC 725 | To succeed the defendant must show the claimant freely and voluntarily with full knowledge of the nature & extent of the risk, impliedly agreed to incur it |
| Nettleship v Weston [1971] 2 QB 691 | Nothing will suffice short of an agreement to waive any claim for negligence |
| Others | |
| Bradford Corp. v Pickles (1895) | No liability if no tort committed. |
| Stephens v Anglian Water Authority [1987] 1 WLR 1381 | No liability when the Defendant had an unqualified right to extract water |
| Remedies | |
| Injunctions | |
| Damages | |
| Mitigation of loss | |
| Remoteness of damage | |
| The Wagon Mound (Nr. 1) (1961) | Defendant only liable for type of damage, which was reasonably foreseeable. |

| | |
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| The Wagon Mound (No.2) [1967] 1 AC 617 | However once foreseeability is established, liability is established irrespective of the likelihood of the damage occurring |
| Hughes v Lord Advocate (1963) | Only type of damage needs to be reasonably foreseen. Nature and extent do not. |
| Jolley v Sutton LBC [2000] 1 WLR 1082 | As above |
| Vacwell Engineering v BDH Chemicals (1961) | Extent of damage not foreseen but not too remote. |
| Smith v Leech Brain (1962) | The defendant must take the victim as he finds him (Eggshell rule). |
| Greater Nottingham Co-Op v Cementation Foundation & Engineering Co. (1989) | Liability in Tort no greater than that in Contract. |
| Policy considerations* | |
| Economic loss | |
| Spartan Steel and Alloys Ltd v Martin & Co (Contractors) Ltd (1972) | Compensation for melt in progress but not those stopped. |
| Murphy v Brentwood DC (1990) | Not normally recoverable. |
| Hedley Byrne v Heller & Partners | Recoverable when reliance on special relationship. |
| D& F Estates Ltd v Church Commissioners [1989] AC 177 | No recovery for pure economic loss |
| Nitrogin Eireann Teoranta v Inco Alloys Ltd [1992] 1 WLR 498 | No liability for repair costs |
| Limitation of Actions | Limitation Act 1980; Latent Damage Act 1986; When cause of action arises; Limitation periods |
| Exemption | |
| Smith v South Wales Switchgear (1978) 1 All ER 18, HL | Terms were incorporated but were inapt to exclude liability for Def's own negligence |
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| Nuisance | |
| Rule in Rylands v Fletcher | |
| Rylands v Fletcher (1868) 3HL 330 | Strict liability. Where a person keeps anything on his land likely to cause mischief if it escapes |
| Charing Cross Electricity Supply Co v Hydraulic Power Co (1914) | Does not depend on ownership of land but plaintiff must have some interest in it. |

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| Cambridge Water Co Ltd v Eastern Counties Leather plc [1994] 22 AC 264 | No liability for damage of a type which could not reasonably be foreseen |
| Private Nuisance | |
| Robinson v Kilvert (1889) 41 ChD | An interference, which alone causes harm to something of abnormal sensitiveness, does not of itself constitute a nuisance. |
| Fay v Prentice (1845) 1 CB 828 | A right to commit a private nuisance may in certain circumstances be acquired by prescription as an easement. |
| Campbel v Paddington BC (1911) Attorney General v Gastonia Coaches (1976) | Tort only actionable if individual suffered damages over and above public as a whole. |
| Jan de Nul (UK) v NV Royal Belge [2000] 2 LLR 700 | See above |
| Halsey v Esso Petroleum (1961) | Individual may sue for personal injury when there was an excess of noise, smell and fumes from a business. |
| Hunter v Canary Wharf Ltd [1997] AC 655 | Upholds test that interest in land is necessary to found case in nuisance |
| Miller v Jackson [1977] QB 966 | Nuisance is actionable even where the claimant comes to the nuisance |
| Christie v Davey (1893) | Acts done deliberately to annoy will be a nuisance |
| Defences | |
| Law Reform (Contributory Negligence) Act (1945) | |
| Nichols v Marslands (1876) | Act of God. ** note this is the only case where Act of God provides a defence – may rely on the judgment of a jury - see Greenock below |
| Greenock Corp v Caledonian Rly [1917] AC 556 | Nichols doubted |
| Rickards v Lothian (1913) | Escape due to wrongful act of a stranger. |

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| Peters v Prince of Wales Theatre (Birmingham) Ltd (1943) | Damage caused by artificial works done for common benefit of plaintiff and defendant. No liability where a party consents to a dangerous thing being brought to a place where it might cause harm if it escapes unless he can show negligence |
| Goldman v Hargrave [1967] 1 AC 645 | PC held landowner liable to abate a fire started naturally by lightning |
| Leakey v National Trust [1980] QB 485 | As above, liable for collapse of slip of hill |
| Davey v Harrow Corp. (1957) | Nuisance will lie where tree branches or roots extend to other's land |
| Public Nuisance | Is a criminal offence |
| Attorney General v Gostonia Coaches (1976 The Times) | Coaches parked on highway inevitably interfered with free passage of traffic. |
| Defences | |
| Bradford Corp. v Pickles (1895) | Nuisance arose from lawful use of land. |
| Allen v Gulf Oil Refining Oil [1981] AC 1001 | By necessary implication the Act authorising purchase of the land for the refinery authorised its operation |
| Bliss v Hall (1838) | Plaintiff does not imply consent when coming to premises knowing of the nuisance. |
| Statutory Nuisance | |
| <u>Dangerous Premises</u> | |
| The Position at Common Law | |
| Cook v Broderip (1968) | Occupier not liable for contractor's negligence under OLA 1957 s2(4)(b) |
| O'Connor v Swan Edgar Ltd (1963) 107 SJ | Occupier not liable for injuries caused by contractor |
| Phipps v Rochester Corp (1955) | Volenti available to occupier. Special care needed for children. |
| British Railways Board v Harrington (1972) 1All ER 749 | |

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| Gough v National Coal Board | Not necessary to prop that part of the coal face being excavated [Mines & Quarries Act 1957] |
| Billings (AC) & Sons Ltd v Riden (1958) | Duty can be discharged by erecting notices, fences or guards. |
| Ashdown v Samuel Williams & Son Ltd [1957] 1 QB 409 | Liability can be excluding liability by erecting notice in common law case |
| White v Blackmore [1972] 2 QB 651 | For distinction between excluding a duty and satisfying it by a warning |
| The Occupiers Liability Act 1957 | Who is the Occupier; common duty of care; nature of damage recoverable; defences: contributory negligence, effect of knowledge of danger; lawful visitors. Under contract, invitees; persons other than invitees; occupier's liability for independent contractors, trespassers. |
| The Occupiers Liability Act 1984 | Damages for trespassers Occupier liable if (a) he knows or has reasonable grounds to believe of the existence of danger on his land (b) he knows or has reasonable grounds to believe the trespasser is in vicinity of the danger or is likely to come to it and (c) the risk is one which in all the circumstances, he may reasonably be expected to offer some protection |
| White v St Albans CC (1990) | No liability if reasonable knowledge of trespassers. |
| Swain v Puri [1996] PIQR P442 | Claimant has to show D had actual knowledge of facts which would lead reasonable person to the requisite conclusions |
| <u>Employer's Liability</u> | |
| Employer's Liability to Third Parties | |
| Vicarious Liability | Vicarious liability, its nature, employee distinguished from independent contractor, acts carried out in course of employment. |

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| Limpus v London General Omnibus Co (1862) | An employer is vicariously liable for torts of employees committed in course of employment. |
| Kay v ITW Ltd [1968] 1 QB 140 | Even if the act is unauthorised cf <i>Beard</i> below |
| Beard v London General Omnibus Co (1990) | But not if not during course of employment. |
| Rose v Plenty (1976) | Liable if employee acts in course of employment even if contrary to instructions. |
| Twine v Bean's Express (1946) | But not if instruction forbids certain types of duty. |
| Hilton v Thomas Burton (Rhodes) Ltd (1961) | Not if employee "on a frolic" |
| Mersey Docks & Harbour Board v Coggins & Griffith (Liverpool) Ltd (1947) | Employer who is responsible for workers will be vicariously liable. |
| Kealey v Heard (1983) | Owner can be liable if he does not supervise independent contractors properly. |
| Employer's Common Law duties to Employees | Competent staff of man, proper plant, appliances and premises, safe system of work, contributory negligence. |
| Jones v Lee & Another (1980) ICR 310 | Wrongful dismissal occurs when insufficient notice is given. |
| Addis v Gramophone Co (1909) AC 488 | Damages not affected by motive of Employer Motive is a relevant in assessment of damages in tort but not in contract |
| Employee's duties to Employer | Duty to take reasonable care |
| Laws v London Chronicle (1959) 1WLR 698 | One act of disobedience can justify summary dismissal. |
| Employer's Liability for Independent Contractors | |
| Kealey v Heard (1983) | Owner liable for tort of independent contractor due to lack of providing supervision. |

Case List for Module 3

General Principle

Wells v Army and Navy Co-operative Society (1902) 86 LT 764

Incorporation of Method Statement

Yorkshire Water Authority -v- Sir Alfred McAlpine & Son (Northern) Limited (1985) 32 BLR 114.

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| <p>Provision of Information to contractor - enabling contractor to complete in accordance with its programme</p> <p>Neodox Limited -v- The Mayor Alderman & Burgesses of the Borough of Swinton and Pendlebury (1958) 5 BLR 38.</p> <p>Glenlion Construction Limited -v- The Guinness Trust (1988) 39 BLR 89.</p> | |
| <p>Implied Terms</p> <p>London Borough of Merton -v- Stanley Hugh Leach (1985) 32 BLR 51.</p> | |
| <p>Engineer - Agent or Independent Certifier</p> <p>Balfour Beatty Civil Engineering Limited -v- Docklands Light Railway (1996) 78 BLR 42.</p> <p>Tarmac Construction Limited -v- Esso Petroleum Limited (1996) 51 Con LR187.</p> <p>John Barker Construction Limited -v- London Portman Hotel Limited (1996) 50 Con LR43.</p> <p>Lubenham Fidelities & Investment Co Ltd -v- South Pembrokeshire District Council and Another (1986) 33 BLR 39.</p> <p>Pacific Associates -v- Baxter (1988) 44 BLR 33.</p> <p>Scheldebouw BV and St James Homes (Grosvenor Dock) Ltd [2006] EWHC 89 (TCC)</p> | |
| <p>Liquidated Damages and Extensions of Time</p> <p>Peak Construction (Liverpool) Ltd -v- McKinney Foundations Ltd (1970) 69 L.G.R. 1.</p> <p>Balfour Beatty Building Ltd -v- Chestermount Properties Ltd (1993) 62 BLR 1.</p> <p>Phillips - v - Attorney General of Hong Kong</p> <p>Alfred McAlpine Capital Projects v Tilebox Ltd, Part 5 (2005) BLR 271.</p> <p>Parking Eye v Beavis [2015] UKSC</p> | |
| <p>Global Claims</p> <p>Henry Boot Construction (UK) Ltd v Malmaison Hotel (Manchester) Ltd (1999) 70 ConLR 32 (TCC)</p> <p>City Inn Limited v Shepherd Construction Limited [2006] CSOH 94</p> <p>Adyard Abu Dhabi v SD Marine Services [2011] EWHC 848 Comm</p> <p>Walter Lilly & Co Ltd v Mackay [2012] EWHC 1773 (TCC), [2012] All ER (D) 213 (Jul).</p> | |
| <p>Quantum Meruit</p> <p>British Steel Corporation -v- Cleveland Bridge and Engineering Co Limited (1983) 24 BLR 94.</p> <p>Costain Civil Engineering v. Zanen Dredging and Contracting Company Ltd (1996) 85 BLR 85.</p> <p>ERDC Group v Brunel University. CILL 2348 (2006).</p> | |

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| Variations and Change | |
| Amec Building Limited -v- Cadmus Investments Co Limited (1996) 51 Con LR105. | |
| English Industrial Estates Corp -v- Kier Construction (1991) 56 BLR 93. | |
| Henry Boot Construction Ltd v. Alstom Combined Cycles Ltd Part 6 (2000) BLR 274 CA | |
| Frustration | |
| Davis Contractors Ltd -v- Fareham Urban District Council [1956] A.C. 696. | |
| Clause 12 of the ICC Conditions of Contract | |
| Humber Oil Terminals Trustee Ltd -v- Harbour and General Works (Stevin) Ltd (1991) 7 Const LJ 333. | |
| Physical Impossibility | |
| Turriff Ltd -v- Welsh National Water Development Authority (1979) 32 BLR 117. | |
| Implication of a Term of Fitness for Purpose in Construction Contracts | |
| Rotherham Metropolitan Borough Council -v- Frank Haslam Milan & Co Limited and M J Gleeson (Northern) Limited (1996) 78 BLR 1. | |
| (now CECA Form of Sub-Contract) | |
| Mooney -v- Henry Boot Construction Limited and Balfour Beatty Construction Limited -v- Kelston Sparkes Contractors Limited (1996) 80 BLR 66. | |
| Existence of a Dispute | |
| Cruden Construction Ltd v Commission for New Towns (1994). 75 BLR 134 | |
| Amec Civil Eng. Ltd v Secretary of State for Transport (CoA) Part 5 (2005) BLR 227 | |
| Adjudication | |
| Macob Civil Engineering v. Morrison Construction Ltd. (1999) BLR 93, TCC | |

Bouygues (UK) Ltd v Dahl-Jensen (UK) Ltd [2000] BLR 49, [2000] BLR 522.

Aveat Heating Ltd v Jerram Falkus Construction Limited [2007] EWHC 131 (TCC), 113 Con LR 13 [2007].

Systech International Ltd v PC Harrington Contractors Ltd [2011] EWHC 2722 (TCC)

Jacobs UK Ltd v Skanska Construction UK Ltd [2017] EWHC 2395 (TCC)

Grove Developments Limited and S&T(UK) Limited [2018] EWCA Civ 2448.

PBS Energo AS and Bester Generacion UK Ltd

Imperial Chemicals Industries Ltd and Merit Merrell Technology [2018] EWHC 1577 (TCC)

Northern Ireland Housing Executive v Healthy Buildings Ltd [2017] NIQB 43

Formation

Ampleforth Abbey Trust v Turner & Townsend Project Management Ltd [2012] EWHC 2137 (TCC)

Arcadis Consulting (UK) Ltd v AMEC (BCS) Ltd [2018] EWCA Civ 2222

BIM

Trant Engineering Ltd v. Mott MacDonald Ltd [2017] EWHC 2061 (TCC)

Payments

S&T (UK) Ltd v Grove Developments Ltd [2018] EWCA Civ 2448

Grove Developments Ltd v Balfour Beatty Regional Construction Ltd [2016] EWHC 168 (TCC)

Interpretation

Northern Ireland Housing Executive v Dixons Contractors Ltd. Neutral Citation No. [2019] NIQB 19

Extensions of Time

North Midland Building Ltd v Cyden Homes Ltd [2018] EWCA Civ 1744

4.5 Recommended Reading List

| Law | | |
|--|----------------------|-------------------|
| Title | Author | Publisher |
| Cheshire Fifoot & Furmston Law of Contract | Furmston M.P. | Butterworth |
| Torts | A Mullis, K Oliphant | Palgrave McMullen |
| Construction Law | John Off QC | Sweet and Maxwell |
| Davies on Contract | F R Davies | Sweet and Maxwell |

| Law | | |
|---|--------------------------------------|--|
| Title | Author | Publisher |
| ICE Manual of Construction Law | Ramsey, Minogue, Baster, O'Reilly | Thomas Telford Limited ISBN 978-0-7277-4087-8 |
| More Detailed Reading | | |
| Design Liability in the Construction Industry | D L Cornes | Blackwell Scientific Publications |
| Salmond and Heuston on Law of Tort | Salmond and Heuston | Sweet and Maxwell |
| Keating on Building Contracts | A May D Keating | Sweet & Maxwell |
| Health and Safety in Construction: Guidance on the Duties of Construction Professionals | John Barber | Thomas Telford Ltd |
| Contract Management | | |
| Civil Engineering Procedure | ICE | Thomas Telford Ltd |
| Keating on Construction Contracts | Furst, Ramsey et al | Sweet and Maxwell ISBN 978-0-41404-792-1 |
| Liquidated damages and extensions of time | Eggleston | Wiley-Blackwell ISBN 978-1-4051-1815-6 |
| The CESMM4 Handbook | Dr M Barnes | Thomas Telford Ltd |
| CESMM4 Examples | Dr M Barnes | Thomas Telford Ltd |

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|---|-----------------------|--------------------|
| Successful Contract Administration | T Boyce | Thomas Telford Ltd |
| Engineering and Construction Risks: A Guide to Project Risk Analysis and Management – Implications for Project Clients and Project Managers | Thompson P Perry J | Thomas Telford Ltd |

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|--|---------------------------------------|--------------------|
| Contractual Procedures in the Construction Industry | A Ashworth | Longman |
| Guidance Notes – ICC, Design & Construct and Minor Works | (ACE/CECA) | |
| Tendering for civil engineering contracts in the UK | (ACE/CECA) | |
| NEC4 User Guides (Vol 2 and Vol 4, June 2017) | ICE | Thomas Telford Ltd |
| NEC - Managing Reality Books 1 to 5 | Bronwyn Mitchell and Barry Trebes | Thomas Telford Ltd |
| Chitty on Contracts Volumes 1&2 | Beele H | Sweet and Maxwell |
| NEC3 and NEC4 Compared | Robert Gerrard | ICE Publishing |
| NEC4 Resolving and Avoiding Disputes | Robert Gerrard and Patrick Waterhouse | ICE Publishing |
| Construction Adjudication | HHJ Peter Coulson | |