
WILMOT-SMITH ON
CONSTRUCTION
CONTRACTS

FOURTH EDITION

RICHARD WILMOT-SMITH QC
PAUL DARLING QC



OXFORD

Wilmot-Smith on Construction Contracts

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Fourth Edition

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Foreword

Back in the halcyon days of the old Official Referee's corridor, high up in the west block of the RCJ, construction barristers (even very young ones) had an advantage over their more experienced commercial/common law opponents: they could usually never find the corridor, so arrived flustered, out of breath, and late. Sadly, such advantages did not accrue when one was against other construction specialists. In the early/mid-1980s, there were two groups of younger barristers: the slightly more senior juniors, like Richard Wilmot-Smith, Robert Akenhead, and Vivian Ramsey; and the upstarts, like Marcus Taverner, Paul Darling, and me.

It is, therefore, a particular pleasure to be asked to write the Foreword for the fourth edition of Richard's book, particularly now that—for the first time—Paul has contributed to it too. I note from earlier editions that Richard has bemoaned the sheer hard work involved in putting together a new edition of a book like this. I sympathize. Everyone always thinks that a new edition involves a little bit of cutting and little bit of adding and that is pretty much it. Sadly, there is so much more to it than that. Indeed, when faced with writing a new edition, I often feel that it would be easier just to start the whole thing from scratch.

Unquestionably the best thing about this book is how readable it is: crisp, clear, and authoritative. Perhaps for obvious reasons, I turned first to Chapter 19 which deals with Adjudication. I would cheerfully concede its clarity and depth of coverage. The same is also true of some of those parts of a textbook like this which rarely get singled out, like Chapter 2, which covers standard forms of contract and bespoke contracts in a very helpful way, and Chapter 7, concerned with exclusion and limitations of liability clauses, and which in my view is one of the very best sections of the whole book.

Reading this comprehensive new edition, one might be forgiven for thinking that we have all come a long way since the old Official Referee's corridor. But it is good to know that at least one of our number was staying on top of the law, and Richard deserves great credit for an excellent new edition.

Lord Justice Coulson
Deputy Head of Civil Justice
13 October 2020

Preface

The biggest change since the third edition is the addition of Paul Darling QC as General Editor. The first (and continuing) General Editor is grateful he has taken on the task, which, it is hoped, not only add to the quality and authority of this edition but will also ensure the future of this work for years to come. Its objective is to provide an authoritative, clear, and accessible textbook on construction law to lawyers and other construction professionals. We hope, with our outstanding and hard-working team, to have done so. Lord Justice Coulson's kind words in the Foreword give us encouragement in that regard.

One unavoidable substantive omission relates to Procurement and the European Community. Uncertainty compels this, with sadness and regret.

We have aimed to avoid simply adding and updating since the third edition, but have rewritten where appropriate; Karim Ghaly's so doing to Chapter 8 being but one example.

The most noticeable change from the third edition is that we have taken on additional editorial support from the most eminent experts and practitioners in their fields. There may be few better or more respected mediators than Edwin Glasgow. His contribution to and stamp of authority on Marion Smith's revision of the chapter on mediation and ADR is, to us—and, we hope, the reader—of great weight. No one understands costs better than Peter Hurst and his editorial help on the Litigation chapter (in a subject where costs play a more and more prominent role) will be invaluable to any practitioner and adds significant authority to it.

International arbitration takes a greater and greater proportion of the practices of construction lawyers causing us to have tapped leading international arbitrators David Bateson, David Brynmor Thomas, and Peter Rees for their help on Chapter 20. Just to take Peter Rees alone, he is a former Member of the Governing Body of the ICC Court of Arbitration, former Member of the Board of the International Institute for Conflict Prevention and Resolution, and former Member of the Board of Trustees of the Chartered Institute of Arbitrators.

We could go on, but we won't.

Frederick Wilmot-Smith is responsible for Chapter 3. As he is one of the pre-eminent scholars in the field of Unjust Enrichment, we have not ventured to add to his chapter. We hope, however, that our involvement and support in all the other chapters of this

work have been useful. While we have enjoyed giving it, with twenty-seven first rate editors and contributors of which seven are QCs, we have sometimes doubted the necessity.

We have aimed to state the law as at September 2020.

Richard Wilmot-Smith QC

Paul Darling QC

7 October 2020

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