# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter 1. GENERAL PRINCIPLES OF LAW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1.1: Introduction</td>
</tr>
<tr>
<td>Section 1.2: Formation of Contract</td>
</tr>
<tr>
<td>(1) Elements of a Contract</td>
</tr>
<tr>
<td>(2) Offer</td>
</tr>
<tr>
<td>(3) Withdrawal of an Offer and Counter-offer</td>
</tr>
<tr>
<td>(4) Acceptance</td>
</tr>
<tr>
<td>(5) Agreements to Agree and Vagueness</td>
</tr>
<tr>
<td>(6) Agreements Subject to Conditions, Letters of Intent, Agreements “Subject to Contract”</td>
</tr>
<tr>
<td>(7) Consideration</td>
</tr>
<tr>
<td>(8) Compromise and Settlement of Debts and Claims</td>
</tr>
<tr>
<td>(9) Economic Duress</td>
</tr>
<tr>
<td>(10) Intention to Create Legal Relations</td>
</tr>
<tr>
<td>Section 1.3: Deeds</td>
</tr>
<tr>
<td>Section 1.4: Variation of Contracts</td>
</tr>
<tr>
<td>Section 1.5: Interpretation and Construction of Contracts</td>
</tr>
<tr>
<td>(1) Generally</td>
</tr>
<tr>
<td>(2) The Background</td>
</tr>
<tr>
<td>(3) Previous Negotiations and Subsequent Conduct</td>
</tr>
<tr>
<td>(4) Business Common Sense</td>
</tr>
<tr>
<td>(5) Ambiguity, or Conflicting Interpretations</td>
</tr>
<tr>
<td>(6) Interpretation and Rectification</td>
</tr>
<tr>
<td>(7) Deletions</td>
</tr>
<tr>
<td>(8) Exemption Clauses</td>
</tr>
<tr>
<td>(9) Priority of Documents</td>
</tr>
<tr>
<td>Section 1.6: Implied Terms</td>
</tr>
<tr>
<td>(1) Generally</td>
</tr>
<tr>
<td>(2) Reasonableness</td>
</tr>
<tr>
<td>(3) Good Faith</td>
</tr>
<tr>
<td>(4) Meaning of Good Faith</td>
</tr>
<tr>
<td>(5) Ad Hoc Implication of Good Faith</td>
</tr>
<tr>
<td>(6) Implication of a Term of Good Faith More Generally</td>
</tr>
<tr>
<td>Section 1.7: Custom and Trade Usage</td>
</tr>
<tr>
<td>Section 1.8: Collateral Agreements</td>
</tr>
<tr>
<td>Section 1.9: Mistake and Frustration</td>
</tr>
<tr>
<td>(1) Introduction</td>
</tr>
<tr>
<td>(2) Rectification</td>
</tr>
<tr>
<td>(3) Mistake as to Identity</td>
</tr>
<tr>
<td>(4) Mistake as to Subject-matter</td>
</tr>
</tbody>
</table>
### Contents

1. Introduction .................................................................................. 6-066
2. Assessment of Contractor's Loss Resulting From Employer's Acts of Prevention ................................................. 6-068
3. Contractor's Claims for the Effect of Partial Prevention ......................................................................................... 6-069
4. Head Office Overheads .................................................................. 6-070
5. Site Overheads ............................................................................. 6-072
6. Disruption to Plant and Labour .......................................................... 6-073
7. Acceleration Claims ...................................................................... 6-075
8. Global or Total Loss Claims ............................................................. 6-076
9. "No Damage for Delay" Clauses ......................................................... 6-080

#### Section 6.16: The Employer's Progress-related Money Claims ................................................................. 6-081

#### Chapter 7. DAMAGES AND REMEDIES

**Section 7.1: Damages** ...................................................................... 7-001

1. Introduction .................................................................................. 7-001
2. General Principles in Contract and Tort .................................................. 7-002
3. Defective or Incomplete Work ............................................................. 7-006
4. Mitigation of Damages .................................................................... 7-015
5. Betterment .................................................................................... 7-017
6. Loss of a Chance ........................................................................... 7-020
7. Date of Assessment ...................................................................... 7-021
8. Changes in the Value of Currency ...................................................... 7-025
9. The Effect of Knowledge Acquired After the Date of Breach .......................................................... 7-026
10. Effect of Subsequent Transfer of Property ............................................. 7-027
11. No Loss Cases ............................................................................. 7-028
12. Consequential Loss ...................................................................... 7-030
13. Delay and Consequential Loss ........................................................... 7-037
14. Failure to Complete ...................................................................... 7-038
15. Sub-contracts .............................................................................. 7-039
16. Management Costs ...................................................................... 7-040
17. Breach by the Employer ................................................................. 7-044
18. Settlement .................................................................................. 7-043
19. Damage Caused by More Than One Party ............................................. 7-047
20. Interest ..................................................................................... 7-050

#### Section 7.2: Remedies Other Than Damages ........................................ 7-064

1. General Principles .......................................................................... 7-064
2. Specific Performance of a Building, Engineering or Technology Contract ........................................................ 7-069
3. Injunctions Which May Be Issued, to Prevent a Serious Breach ............................................................ 7-075
4. Injunctions Arising Out of Real Property Rights ........................................ 7-083

#### Chapter 8. TERMINATION VESTING AND SEIZURE

**Section 8.1: Introduction to Termination** ........................................................................................................ 8-001

**Section 8.2: Repudiation and Termination for Breach** ..................................................................................... 8-004

1. Generally ................................................................................... 8-004
2. What Breaches are Repudiatory? ......................................................... 8-005
3. Need for Clear and Prompt Election .................................................. 8-009
4. Wrong Interpretation of Contract ...................................................... 8-111
5. Payment Obligations and Set-off ......................................................... 8-013
6. Powers to Suspend ........................................................................ 8-014
7. Anticipatory Breach or Renunciation .................................................. 8-015
8. Effects of an Accepted Repudiation or Renunciation ........................................ 8-016
9. The Right to Damages .................................................................. 8-017
10. Quantum Meruit or Restitution: a Remedy on Termination ......................... 8-019

#### Section 9.1: Assignment ................................................................ 9-001

1. Introduction .................................................................................. 9-001
2. Assignment of Contractual Rights ....................................................... 9-005
3. Assignment of Contractual Liabilities, or the Burden of the Contract .......................................................... 9-019
4. Unassignable Contractual Rights and Remedies, and the Damages Recoverable on Assignment .............................................. 9-022
5. Assignment of Monies Due ............................................................. 9-034
6. Provisions Against Contractual Assignment ........................................ 9-039
7. Assignment by Operation of Law ....................................................... 9-041
8. Novation and Other Transfers ............................................................ 9-047
9. Vicarious Performance of Contractual Liabilities ..................................... 9-050

**Section 9.2: Sub-contracts** ................................................................ 9-053

1. Generally ................................................................................... 9-053
2. Employer and Sub-contractor ............................................................ 9-060
3. Employer and Main Contractor .......................................................... 9-076
4. Main Contractor and Sub-contractor ................................................... 9-080
5. Payment Direct Provisions ............................................................... 9-089

#### Chapter 10. INSURANCE, INDEMNITIES, GUARANTEES AND BONDS

**Section 10.1: Insurance** .................................................................. 10-001

1. Generally ................................................................................... 10-001
2. Insurance of Works ...................................................................... 10-012
3. Adjoining Property Insurance ............................................................ 10-016
4. Third Party Liability Insurance .......................................................... 10-017
5. Construction Professional's Indemnity Insurance ...................................... 10-019

**Section 10.2: Indemnities** .............................................................. 10-022

1. Generally ................................................................................... 10-022
Chapter 11. ADJUDICATION AND CONSEQUENCES OF INSOLVENCY

Section 11.1: Process of Adjudication

(1) Generally

(2) Statutory Adjudication in UK Jurisdictions

(3) Payment under Contracts Regulated by the Housing Grants, Construction and Regeneration Act 1996 as Amended

(4) Other Commonwealth Jurisdictions

Section 11.2: Statutory Adjudication

(1) Application of Statutory Adjudication in UK Jurisdictions

(2) Procedure in Statutory Adjudication in UK Jurisdictions

(3) Enforcement of Adjudication Decisions and Associated Litigation in UK Jurisdictions

(4) Statutory Adjudication in Other Commonwealth Jurisdictions

(5) Statutory Payment and Adjudication Regime Generally

Section 11.3: Consequences of Insolvency

(1) Introduction

(2) General Principles

(3) Claims Against Assets of the Insolvent Company

(4) The Effect of Insolvency on Building Contracts

(5) Winding Up and Insolvency Set-off

(6) Effect on Claims

Index