
Book review

Best Practice in Construction Disputes by Paula Gerber and Brennan Ong (LexisNexis, 2013) ISBN: 9780409333077, RRP AU\$110

Dr Paula Gerber and Brennan Ong have produced a “break-through” text on the avoidance, management and resolution of construction disputes. The book leaves its reader not only thoroughly enlightened on best practice for the various dispute avoidance and resolution methods being used around the world, but also imparts a comprehensive understanding of why a persisting destructive dispute culture has been fostered by the construction industry, and sets out a clear and inspiring path for a way forward out of what has become this “status quo”. As such, the book is essential reading for all construction and legal professions who (according to Justice Peter Vickery in his Foreword) “have a duty to actively promote the implementation of the dispute avoidance, management and resolution methodologies described in this book”. Furthermore, due to its progressive nature and potential to encourage a huge positive change in construction industry culture, the book should be a compulsory text for all students of construction law and contract administration.

In terms of style, the text is lucid and enjoyable to read. The book is well structured. For example, prior to discussing the various forms of dispute resolution, there is a chapter on the key elements of a successful system of binding dispute resolution which forearms the reader with knowledge of the concepts of procedural fairness, accessibility and finality necessary for an informed appraisal of the dispute resolution methods. The authors’ use of excellent case studies and examples throughout the book to illustrate and clarify concepts means that the reader is never left confused or wondering. The reviewer, for example, has never encountered such an apt case study demonstrating how game theory can be used to explain why parties to a traditional construction contract frequently adopt competitive rather than co-operative behaviour. The text is underpinned throughout by a wealth of references to leading academic works, judicial authorities, and government and professional body reports. There is excellent use of colour visuals – diagrams, graphs, photographs, and even the occasional cartoon – to enhance reader engagement and understanding. The book also makes delightful use of quotations from a wide variety of sources (ranging from the Dalai Lama to Ronald Reagan to Thomas Edison).

The book “breaks the mould” for texts on construction disputes by taking a holistic approach to the extremely important and costly problem of construction disputes. As such, the cause and prevention of disputes is paid at least as much attention as is the resolution. The initial chapters provide an in-depth diagnosis as to the reasons for the construction industry’s dispute-ridden culture. These initial chapters are an important precursor to the subsequent consideration of dispute avoidance and resolution techniques, developing the reader’s understanding of key concepts and characteristics relating to, amongst others, trust and communication on construction projects, conflict management and the role the construction contract has to play in facilitating both project management and dispute avoidance.

The book is unparalleled in its comprehensive and excellent consideration of the various types of dispute avoidance processes (DAPs), with chapters devoted to dispute resolution boards (DRBs), dispute adjudication boards (DABs), dispute resolution advisers (DRAs), and other forms of evolving DAPs. The authors explain and appraise the operation of the various DAPs in the context of real-life case studies. For example, the discussion of best practice in the use of DRBs draws lessons from a comparison of their use on two major infrastructure projects – the Sydney Desalination Plant project, a highly successful project, and the “Big Dig” project in Boston, where project outcomes were far less successful. The development and widespread success of the DRA in Hong Kong is well chartered and its highly successful use on the Queen Mary Hospital, which completed ahead of time and within budget despite numerous difficulties being encountered, is the subject of a case study. The design and use of the highly successful Independent Dispute Avoidance Panel (IDAP) on the construction contracts to deliver the venues and infrastructure for the London 2012 Olympic and Paralympic Games is reviewed and analysed in depth.

Although the book places an emphasis on the importance of relational contracting and prevention of disputes as the way forward for the construction industry, the authors in no way neglect the various

alternative and binding dispute resolution methods being used by the industry. As such, there are chapters on negotiation, mediation, mini-trials, expert determination and early neutral evaluation, ADR hybrids, adjudication, arbitration, and litigation. In its coverage of dispute resolution methods, the book stands out above other texts in that it not only considers their provenance and describes how they operate, but also provides invaluable insights and guidance as to how they may be operated to maximum effect. This is epitomised in the chapter on litigation which focuses on six elements – including, amongst others, pre-action requirements, case management, and hot-tubbing of expert witnesses – that can contribute to an improvement in the efficiency and effectiveness of construction litigation. The recommendations for best practice are typically drawn from observations of practice over multiple international jurisdictions. The excellent chapter on construction adjudication, for example, considers best practice by critically reviewing and comparing the differing models of adjudication in the United Kingdom and Australian jurisdictions.

Not leaving any stone unturned, the final chapter considers the challenges to the implementation of the best practices set out in the book, and even proposes three avenues of reform – expanding education and training programs, transforming the role of construction lawyers, and reforming standard form construction contracts – that would help the construction industry achieve best practice when it comes to the avoidance, management and resolution of disputes.

The authors are to be congratulated for this book has set a new standard for texts on construction disputes. It does not merely inform, but is packed with invaluable concepts, and original insights and ideas which have real potential to lead the construction industry to much needed, and long overdue, reform of its entrenched dispute-ridden culture.

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