

# [If, requiring them to reinstate the disabled ramp](https://assignbuster.com/if-requiring-them-to-reinstate-the-disabled-ramp/)

If, during the running of aconstruction project, the works do not comply with the contract requirements, the Employer will wish to know what remedies, if any, are available against theContractor. In the case of Morrison’sAssociated Companies Ltd. v. James Rome & Sons Ltd1, the builder was not found liable in negligence when a building collapsed afterthe builder had supported it in accordance with the recognized practice at thattime, the builder acted in a reasonable manner. In another case, P & M Kaye v Hosier and Dickinson2, it was argued that a Contractor who produces defective work during the courseof the contract is not in breach of contract until he hands over the defectivework because, until then, it is open to him to rectify3his works.  Clause 3.

18. 1 of JCT SBC/Q 2016 provides that where anywork or materials are not in conformity with the contract, the architect mayinstruct the removal from the site of such work, materials or goods. It hasbeen held in cases4under the common law that where the Employer claims damages against theContractor, the Employer is entitled to (a) to recover in contract for all relatedlosses, except those covered by insurance and (b) liquidated damages, if notime extension was granted for the delays.  Here, Pig’s Ear owed a duty to carryout their work in conformity5to the contract drawings and construction phase plan, it would be necessary torectify the works prior to the completion date. Artless must issue aninstruction6 toPig’s Ear requiring them to reinstate the disabled ramp and fire escape as percontract drawings.

Thereafter, Pig’s Ear will need to rectify the defectivework within a reasonable time. If Artless does not instruct Pig’s Ear or they failto reinstate the defective work, the cost of remedying defects not made good maybe deducted from the contract sum. 1.      ConclusionIn the scenario, Artless and Pig’s Ear are at faultfor breach of contract and defective works respectively. The remedies availableto both the parties under the JCT SBC/Q 2016 contract and common law areadequate to provide relief to the innocent party. However, it is necessary forArtless and Pig’s Ear to follow the contact provisions to serve notices and furthersubmit cost and time claims.   Word count for Part B of Coursework: 2182Words      PART B – ESSAY Question: Criticallyevaluate the contractual position regarding variations of works in the JCTStandard Building Contract with Quantities 2016 edition, touching (among otherthings) upon how such variations impact on the employer’s payment obligationand on provisions of the contract allowing for extensions of time. Comment onhow effective these contractual mechanisms are in practical terms.

Answer: What are variationsof works?   The scope of variations isdealt under Section 5 of the JCT SBC/Q 2016. Under clause 5. 1.

1, it may bedefined as the (a) addition, omission or substitution of any work (related todesign, quality or quantity of works), (b) alteration of the kind or standardof any of the materials to be used in the works or (c) removal from the site ofany work executed, or site materials. As provided under clause 5. 1.

2, variationswill include the imposition by the Employer of obligations or restrictions whichmay relate to site access, limitations of working space / hours or execution ofthe work in any specific order.  Whether an instructionamounts to a variation will depend on the nature and terms of the contract. Itis noted that there is no obligation on the Employer to pay for work by way ofa variation, even if the Contractor incurs additional costs due to theimpracticable nature of the design. Items that are of necessity included in abuilding project – even if not specifically itemised in the contract documents– will not constitute a variation entitling the contactor to a payment over andabove the contract price. For instance, the case of Williams v. Fitzmaurice7involved a lump sum contract to build a house.

The specification made noprovision for flooring. The court rejected the Contractor’s claim for theadditional installation costs of the flooring on the basis that the flooringwas necessarily included in the existing contract price. The variation provisionwithin the JCT 2016 suite allows the Employer the flexibility to accommodate changeswithin the project, within the contract time period and agreed (or similar) prices. In addition, it will ensure that the contract is not frustrated or result inbreach of contract, if it is necessary to alter the agreed contract work. 1 (1964) (SLT)2 (1972) 1 WLR 1463 It is based on the concept of ‘ temporary disconformity’. 4 Surrey Heath Borough Council v.

Lovell Construction Ltd. and Another(1988) B. L. R 25. 5 Clause 2.

1 of JCTSBC/Q 2016. 6 Clause 2. 38. 2 of JCT SBC/Q 2016 requiresthe architect/contract administrator may “ whenever he considers it necessary” issue instructions requiring such defects etc. to be made good by the Contractor. 7 (1858) 3 H. & N.

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