

If, requiring them to
reinstate the disabled
ramp



**ASSIGN
BUSTER**

If, during the running of a construction project, the works do not comply with the contract requirements, the Employer will wish to know what remedies, if any, are available against the Contractor. In the case of *Morrison's Associated Companies Ltd. v. James Rome & Sons Ltd*¹, the builder was not found liable in negligence when a building collapsed after the builder had supported it in accordance with the recognized practice at that time, the builder acted in a reasonable manner. In another case, *P & M Kaye v Hosier and Dickinson*², it was argued that a Contractor who produces defective work during the course of the contract is not in breach of contract until he hands over the defective work because, until then, it is open to him to rectify³ his works. Clause 3.

18. 1 of JCT SBC/Q 2016 provides that where any work or materials are not in conformity with the contract, the architect may instruct the removal from the site of such work, materials or goods. It has been held in cases⁴ under the common law that where the Employer claims damages against the Contractor, the Employer is entitled to (a) to recover in contract for all related losses, except those covered by insurance and (b) liquidated damages, if no time extension was granted for the delays. Here, Pig's Ear owed a duty to carry out their work in conformity⁵ to the contract drawings and construction phase plan, it would be necessary to rectify the works prior to the completion date. Artless must issue an instruction⁶ to Pig's Ear requiring them to reinstate the disabled ramp and fire escape as per contract drawings.

Thereafter, Pig's Ear will need to rectify the defective work within a reasonable time. If Artless does not instruct Pig's Ear or they fail to reinstate

the defective work, the cost of remedying defects not made good maybe deducted from the contract sum. 1. Conclusion In the scenario, Artless and Pig's Ear are at fault for breach of contract and defective works respectively. The remedies available to both the parties under the JCT SBC/Q 2016 contract and common law are adequate to provide relief to the innocent party. However, it is necessary for Artless and Pig's Ear to follow the contract provisions to serve notices and further submit cost and time claims. Word count for Part B of Coursework: 2182 Words PART B – ESSAY Question: Critically evaluate the contractual position regarding variations of works in the JCT Standard Building Contract with Quantities 2016 edition, touching (among other things) upon how such variations impact on the employer's payment obligation and on provisions of the contract allowing for extensions of time. Comment on how effective these contractual mechanisms are in practical terms.

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

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

2, variations will include the imposition by the Employer of obligations or restrictions which may relate to site access, limitations of working space / hours or execution of the work in any specific order. Whether an

instruction amounts to a variation will depend on the nature and terms of the contract. It is noted that there is no obligation on the Employer to pay for work by way of a variation, even if the Contractor incurs additional costs due to the impracticable nature of the design. Items that are of necessity included in a building project – even if not specifically itemised in the contract documents – will not constitute a variation entitling the contractor to a payment over and above the contract price. For instance, the case of *Williams v. Fitzmaurice*⁷ involved a lump sum contract to build a house.

The specification made no provision for flooring. The court rejected the Contractor's claim for the additional installation costs of the flooring on the basis that the flooring was necessarily included in the existing contract price. The variation provision within the JCT 2016 suite allows the Employer the flexibility to accommodate changes within 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 in breach 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 JCT SBC/Q 2016. ⁶ Clause 2. ³⁸. ² of JCT SBC/Q 2016 requires the 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.