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Author : Roger Trett
Title : Introduction - The New Arbitration & Conciliation Ordinance - In India

THE NEW ARBITRATION & CONCILIATION ORDINANCE - IN INDIA

Just as I was about to depart for the airport I was told "Don't forget about your lead article for the Digest. Can you write it as you travel and fax it back?" -and I'm supposed to be the boss! So, what do I do on a Sunday afternoon in New Delhi? Not sit by the hotel pool as they all think back home, but instead do my duty!

As part of Trett Contract Services increased international involvement, Bill Ryder (a non-executive Director of TCS and old India hand) and I are pursuing possibilities in this rapidly developing country. I am aware that many other companies are also now considering India's potential and so thought it might be of timely relevance to those, and of general interest to others, to look at India's arbitral procedure.

Up until now, arbitration in India has been even more time consuming than the UK with cases taking up to twenty years, ten years being quite usual. There has, therefore, been a degree of disillusionment (happens everywhere doesn't it?) both domestically and internationally.

In a developing country such uncertainties can hinder the full participation of the international organisations i.e. funders and contractors. The need for infrastructure and industrial development necessitates external finance and know how" and any moves to boost India's credibility will be a step in the right direction.

On 16th January 1996 with the issue of an "Ordinance" by the President, India has adopted revised rules and procedures relating to domestic arbitration, international arbitration and enforcement of arbitral awards.

These revised rules are largely based on the UNCITRAL model law on International Commercial Arbitration (1985).

The Ordinance has repealed the previous Arbitration Acts 1932/1940 and the Foreign Award Act 1961. It is suggested that the new law provides for a "speedy and comparatively less expensive" remedy of resolution.

The new law recognises the autonomy of the parties and at the same time promotes a greater "seen fairness" because it requires the tribunal to give reasons. The parties are free to agree the number of arbitrators provided it is not an even number. In the absence of such determination, the tribunal shall consist of a sole arbitrator -similar to rules with which most of you are familiar.

If a party wishes to challenge the jurisdiction of the Arbitral Tribunal it has to be raised not later than the submission of the statement of defence. If the Tribunal decides to reject the challenge, the proceedings will proceed and an award made. A party aggrieved by such an award can apply to the court to set aside the award.

On the issue of setting aside, the party seeking to set aside the award must apply within 3 months of receipt of the award. The Court may only set aside an award if it is proved that,

1. a party was under some incapacity
2. the arbitration agreement was not valid

3. the applicant was not given proper notice of appointment of arbitrators or of the arbitral proceedings, or was otherwise not able to present his case
4. the award deals with disputes not falling within the terms of a submission to arbitration, or it gives decisions on matters beyond its scope
5. that the subject matter of the dispute is not capable of settlement by arbitration as the award is in conflict with the public policy of India

An appeal against the Courts decision to set aside the award can be made to the Appellate Court, but no second appeal lies from an order passed in appeal. This does not however take away the right to appeal to the Supreme Court of India.

If no application for setting aside the award is made within three months of receipt of the award, or if application has been made and rejected, the award will be final and binding on the parties and will be enforced under the Code of Civil procedure as if it were a Decree of the Court.

The Ordinance also provides for the parties to give notice of conciliation, with the conciliation reflecting the ADR route as we know it. If the parties reach an agreement then that becomes final and binding in the same manner as an Arbitration award. There is, of course, then no appeal as the parties will have made the Agreement between themselves.

The positive outcome of the Ordinance is that it will enhance the confidence of those seeking to invest and contract in India.

Hey Bill, how about going to the pool?

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Author : D O'Brien
Title : International Experience 8 - Kuwait Revisited

International Experience 8 - Kuwait Revisited

Kuwait, although geographically small, is oil rich and has the highest per capita income in the world. My involvement in this tiny Gulf state began in 1977 when I took up the challenge of unravelling a major claim on a project for the design and construction of two military air bases. Little did I know at the time that Kuwait and its defence facilities were destined to feature so highly in the international news media.

With a vast annual income generated from its oil reserves, Kuwait could afford to invest heavily in its infrastructure, as a consequence of which the construction industry flourished. Those were the boom days when an expatriate's salary was substantially greater than that available at home which, when coupled with a tax free status, made up for the restrictions imposed by the Arabic way of life.

The state has an ancient culture which stems from its Bedouin origins and it has a religion firmly rooted in Islam. As with any foreign culture, the expatriate is well advised to learn the essentials of how things work and to adhere to the rules no matter how alien they seem when compared to our own way of life. This can be difficult at times, but it makes the difference between success and failure when dealing with the Arab businessman.

I learned a severe and lasting lesson once by being seen not to obey the rules. This was after a fancy dress party which I attended as Wee Willie Winkle and my wife as Little Miss Muffett. On the way home in the early hours of the morning we were driven off the road and came to rest upside down on a roundabout.

My wife was taken to hospital and I was taken to the local police station where what seemed to be the entire Kuwait constabulary filtered in to see this Brit dressed in an Arab dishdasha slippers with pom-poms and a nightcap with a bell on the end. I was then questioned by the only available English speaking police officer who persisted in accusing me of drinking whisky. I denied it vehemently as I had in fact stuck to home made wine all evening. He eventually gave up but, to my dismay, insisted that I stay the night. Being a dry country there were no breathalysers and all ended well with my being fined for causing damage to one of the Emir's trees which the car had uprooted on its tour of the roundabout.



The working week for most expatriates was Saturday to Thursday. Most of the time was spent in the office in Kuwait City with periodic visits being made to the air base sites, both of which were some 100 kilometres into the desert. The rules that we never broke were that any journey should be made by two cars in case one broke down or suffered an accident and that we should always run through the check list that was displayed on a large sign at the start of the desert road. During mid summer the shade temperature can exceed 50 degrees Celsius and to venture into the desert without taking adequate precautions can prove fatal.

Contracts for major projects were normally based on the standard FIDIC form but invariably contained numerous particular conditions which confused rather than clarified the intent of the contract. As always this opens up loopholes which lead to differences of opinion between the parties and eventually gives rise to disputes.

The technical aspects of dealing with disputes are the same the world over; however , the approach required to successfully negotiate and resolve the matters differs with every culture. In the Middle East, to adopt a confrontational attitude or to hint that the opposition is incompetent would result in nothing short of an award at arbitration being required for any further payment. I always found that when a claim was rejected, for whatever reason, the best way forward was to give the opposition the opportunity to backtrack without losing face. This approach worked well for me and enabled the disputes with which I was involved to be settled amicably.

In 1979 I left Kuwait to work firstly in the United Arab Emirates and then in the Antipodes before returning to Kuwait in 1988. During my 9 year absence things had changed; the city was much bigger and even more affluent but the regime had become far stricter. The differential between Kuwait and UK salaries had all but disappeared and it was only the income tax situation which made a Middle East posting a financially viable proposition.

Despite the difficulties we were able to enjoy both our business and our social lives and were never bored. There was no shortage of entertainment as Kuwait had exceptionally good restaurants, health clubs, cinemas etc. which complemented the expatriate's natural ability to generate his own amusement. Life was fun and no one had any inkling of the disaster that was soon to strike. Iraq had been a threat for many years but the general consensus of

opinion was that it was too weak after its war with Iran to pose any serious threat for some time to come. Oh how wrong can one be?

Iraq invaded Kuwait on 2nd August 1990 whilst myself and my wife were on leave in the UK. We were the lucky ones as, although we lost all of our prize possessions, we escaped the fate that befell many of our friends who were used as human shields. Some of those friends returned to Kuwait after its liberation but found that it had changed so dramatically that their stay was short lived. We never returned.

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Author : S Lewis
Title : Back to Square 1

Back To Square One

Remember what it was like after the decisions in **D & F Estates -V- Church Commissioners [1989]** and **Murphy -V- Brentwood District Council [1991]** when you knew where you stood when it came to assessing whether you (or your client) had any liability in tort for economic loss? The answer was, probably not very much at all. Unfortunately, that is no longer the case.

Partly, this has been as a result of the increased likelihood of the imposition of a duty of care in tort concurrent with a duty of care in contract, a topic discussed in a previous issue of the Digest. It is the purpose of this article, however, to consider how the Courts have reacted to the loophole left open by Murphy concerning the possibility that economic loss arising in tort may be recovered under the principle of negligent misstatement derived from the decision in **Hedley Byrne & Co Limited -V- Heller & Partners Limited [1964]**

The development of the negligent misstatement doctrine is typical of the manner in which the English Courts progress: a gradual, step by step expansion of a doctrine beyond its original bounds presumably until the point that the Courts have had enough and begin restricting it once again. This is to be compared with the more robust approach adopted by some Commonwealth Courts, who have simply decided that Murphy was not as conclusive in this area as the English Courts have assumed.

THE ENGLISH DECISIONS

As is well known, **Hedley Byrne** concerned the recipient of a bank reference who would (but for a disclaimer of liability) have been able to recover the financial loss suffered by it as a result of the Defendant's negligence in giving the reference, notwithstanding that there was no contract and no obligation on the part of the Defendant bank to give the reference. It is necessary to prove a "special relationship" or proximity between the parties, that one party is holding itself out as an expert in that particular field and that the other party relies upon that expertise to its detriment.

As will be demonstrated below, whilst the requirement for some sort of proximity or special relationship and reliance upon expertise remain essential elements of the tort of negligent misstatement, a number of recent cases has expanded the concept of "statement" far beyond that contemplated in **Hedley Byrne**.

The first decision is that of **Henderson -V- Merrett Syndicates Limited [1994]**. This case discussed the question of concurrent duties in tort and contract but it is also important as regards the development of negligent misstatement. The case concerned claims brought by Lloyds' Names against various Defendant underwriters relating to underwriting agency agreements. The issues raised, however, have direct significance to the construction industry. It is not necessary for the purposes of this article to go into the facts in detail, but simply to note that Henderson demonstrated that the **Hedley Byrne** principle is as applicable to negligent acts giving rise to purely economic loss, as it is to negligent statements.

A further, significant development is the decision in **White -V- Jones [1995]**. There the House of Lords (by a 3 - 2 majority) allowed the Plaintiffs, two daughters, to recover from their father's solicitors where the father had executed a will disinheriting the daughters but, after a

reconciliation, instructed his solicitors to change his will so as to benefit the daughters. This they failed to do for some months, during which time he died.

It was decided that the solicitors had made an assumption of responsibility" to their client and had extended that responsibility to an intended beneficiary for whom they were not acting in circumstances where the solicitors could reasonably foresee that a consequence of their negligence might be the loss of the intended legacy.

It is important to note that there was no relationship at all between the daughters and their father's solicitors and yet the case extends the category of "special relationship" established in **Hedley Byrne** because, apparently if it had not, the only people who might have a valid claim against the solicitors (the father's Estate) had suffered no loss and the persons who had actually suffered a loss (the daughters) had no claim.

Whilst this may be an example of the Courts plugging a black hole" in much the same way that they did in the **Linden Gardens** case, **White** is framed in terms Of negligent misstatement. It is important to note that the claim related to a simple omission by the solicitors - there was no act, statement or advice at all. Accordingly, the "statement" in **Hedley Byrne** now extends to include an act or an omission.

It is clear from the dissenting Judgments in **White** that the case was not regarded as turning on its own facts. Consequently. it is possible that construction professionals and contractors may now find themselves liable in tort to tenants, purchasers and occupiers of developments for defective design or defective work for which they are responsible. Subcontractors carrying out design work are probably in the same position.

It must now be at least arguable that the English Courts are tending towards a general test of "assumption of responsibility" by one party to another, a test that has extended the **Redley Byrne** principle well beyond its original limits.

THE COMMONWEALTH DECISIONS

In contrast to the expansion and development of the negligent misstatement remedy in England, Commonwealth decisions have taken a more direct and robust approach in holding that the decision in **Murphy** was not as conclusive as the English Courts may have imagined. Whilst these cases are, obviously, not binding upon the English Courts, they provide an interesting comparison.

The first decision to consider is the Canadian case of **Winnipeg Condominium Corporation -V- Bird Construction Company Limited [1995]**. The Plaintiff bought an apartment block and some years later a section of cladding fell from the ninth floor. The Plaintiff carried out remedial work to the cladding at a cost of £1.5m which it sought to recover from the contractor; architects and cladding sub-contractor by way of a claim in negligence. The State Court of Appeal struck out the claim on the basis that the expenses were for the repair of the building itself and were therefore pure economic loss and irrecoverable.

The Supreme Court, however, disagreed. It concluded that where a building is found to contain defects resulting from negligence which posed a real and substantial danger to the occupants of the building, the reasonable costs of repairing the defects and putting the building back into a safe condition are recoverable in tort by the occupants. The rationale for this conclusion is that a person who participates in the construction of a large and permanent structure which, if negligently constructed, has the capacity to cause serious damage to other persons and property in the community should be held to a reasonable standard of care.

The New Zealand Court of Appeal in **Invercargill City Council -V- Hamlin [1994]** had to consider a decision that had more than a passing similarity to the facts in the decision in **Anns -v- Merton London Borough Council [1978]** (which was, of course, overruled in **Murphy**) During the construction of a house, the Council carried out inspections of the

foundations. The owners discovered various problems and commissioned an engineer's report which found that large sections of the foundations had been taken down to an inadequate depth. The owners brought proceedings against the Council to recover the costs of repairing the foundations.

The Court held that New Zealand case law had been reasonably consistent and that "the upheavals in high level precedent in the United Kingdom had no counterpart in New Zealand". Accordingly the case against the Council succeeded notwithstanding the absence of any contract. Whilst this case does provide evidence of a willingness in New Zealand to reconsider **Murphy** if necessary, it should be remembered that the particular circumstances of the house building market in New Zealand, where it is traditional to rely upon surveys carried out by the local authority rather than commissioning individual surveying reports, mean that a greater reliance would be placed upon the local authority inspections than would be the case in this country.

Finally, in the Australian case of **Bryan -V- Maloney [1995]**, the High Court of Australia considered a case where a subsequent purchaser sought to recover from a builder the cost of remedying defective foundations, basing the claim in tort rather than contract. A majority of the Court found the builder to be liable. The case refers to an "assumption of responsibility" test and, in that respect, is tantalisingly similar to the position at which we have, arguably, arrived in this country. The High Court of Australia noted the following:

"One cannot but be conscious of the fact that the conclusion that Mr Bryan is liable in damages to Mrs Maloney in the present case is contrary to the views expressed by the members of the House of Lords in D & F Estates Limited -V-Church Commissioners and Murphy... Their Lordships' view ... seems to us, however; to have rested upon a narrow view of the scope of the modern law of negligence and a more rigid compartmentalisation of contract and tort that is acceptable under the law of this country".

CONCLUSION

None of this is good news for professionals, contractors or subcontractors. When the development of concurrent duties in contract and tort is allied to the developments outlined above, it seems reasonable to say that we are truly back to square one: the position in tort is now as unclear as it was prior to the decisions in **D & F Estates** and **Murphy**.

The differing approaches taken by the English and Commonwealth Courts provide an instructive comparison: we can expect the English Courts to continue (if they continue at all) to expand the ambit of the negligent misstatement remedy gradually. The Commonwealth Courts, on the other hand, may simply take the view that they do not feel themselves to be bound by the decision in **Murphy** and will continue to establish their own tests of liability in tort for economic loss based principally upon the founding decision in **Donoghue -v- Stevenson**. Interestingly enough, it would appear that both English and some Commonwealth decisions are arriving at a similar test of "assumption of responsibility" by one party to another.

Practically speaking, we can now assume that the **Hedley Byrne** "statement" can extend to virtually any sort of advice, statement or act during the construction process or, possibly, even any omission to provide such advice, statement or act. It is, of course, still necessary to prove the special relationship and reliance upon the "statement" and that this "statement" was given (or omitted) negligently and so the general advice is, as always, be careful.

You cannot avoid giving advice or making "statements" - indeed they will be part of the duties and obligations incumbent upon every party to the construction process -but care must be taken to ensure that they are not made negligently. Most importantly, do not assume that simply because there is no contract between you and the recipient of the "statement" you do not have to worry. Unfortunately, you do!

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Author : F Kirkham
Title : Buying Euro Trouble

Buying Euro Trouble

It may surprise you to know that construction contracts in the UK for works in the public sector have been regulated by EC legislation for the past 24 years. Despite this, there is still a general lack of awareness of the EC procurement regime.

Furthermore, contractors have been slow to take advantage of the new remedies now available to them for losses arising from infringement of the UK regulations which implement the EC directives. Recent developments remind us that the public procurement regime has a major impact on many projects and -perhaps surprisingly -impacts on various policies of the UK Government.

Before looking in some detail at the ways in which the European procurement measures have affected Government policy it may be useful briefly to summarise what the regime is, what demands it makes on contracting authorities and what remedies are available to tenderers if there is non compliance with the regime. We will then consider the recent High Court decision in **R -v- Secretary of State for the Environment, Ex parte Harrow London Borough Council** before concluding with a look at how the regime may affect the tendering procedures for projects that are subject to the Government's Private Finance Initiative.

THE EC PROCUREMENT REGIME

The EC public procurement regime consists of a series of directives (now implemented into UK law by statutory instruments or regulations) which specify the detailed rules which are to be followed when a contract is to be awarded by a public sector body. There is a different directive (and corresponding UK regulation) for each of the three different categories of contracts, namely works, services and, of less significance to the construction industry, supplies. Although the three directives are similar there are differences between them. The most important distinction is in the threshold values. Service contracts generating less than £158,018 in fees and construction contracts valued at less than £3.950m do not fall within the regime.

The directives exempt various contracts. Some exemptions are of general application and are found in all the directives, for example, contracts excluded on the grounds of national security. Other exemptions are specific, an example being the exemptions in the Services Directive excluding employment contracts or contracts for arbitration services.

It is important to remember that the Services Directives divides services into two categories. The first or primary category contains those services to which the full rigour of the regime applies. Architectural and quantity surveying services fall into this first category. The remaining services are residual services where the awarding authorities need comply only with requirements to place a notice in the *Official Journal* when a contract has been awarded and to collate certain statistical data.

At the heart of the procurement regime is competition based on a transparent contract award procedure free from discrimination. Accordingly, contracts falling within the ambit of the directives must, as a general rule, be subject to call for competition by publishing a notice in the *Official Journal*. The directives specify minimum periods for responses or tenders.

The regime accommodates three award procedures, namely the open, (unlimited) tender list, restricted (the tender list is limited to a number of contractors, in the case of works contracts usually five) and the negotiated procedure (limiting participation to one or two bidders). In the public sector the awarding authority has a free choice to use either the open or the restricted procedure. The directives make it clear that the use of the negotiated procedure is to be limited to exceptional circumstances.

The directive contains an exhaustive list of the permitted exceptional circumstances and it will be up to a contracting authority to prove that the use of the negotiated procedure was justified in a particular case. The contract must be awarded on the basis of either the lowest price only or; alternatively, the most economically advantageous tender (this being Eurospeak for best value for money).

The directives contain non exhaustive lists of the matters which a contracting authority can consider when excluding a contractor from a tender list. The list includes matters such as technical ability, financial standing and payment of taxes and national insurance contributions.

Bidders can now seek redress for non compliance by awarding authorities. This includes injunctive relief as well as damages. Additionally the European Commission can intervene on behalf of a complainant and, in extreme cases, stop the award procedure or even suspend the contract if already awarded.

THE PROCUREMENT DIRECTIVES AND UK GOVERNMENT POLICIES

What is the position where the EU procurement regime comes face to face with UK domestic policy? We shall now briefly consider two recent situations. In the first case the clash between the regime and domestic policy was identified and reconciled In the second case study the potential conflict has not yet manifested itself.

CASE 1. R -v- SECRETARY OF STATE FOR THE ENVIRONMENT EX PARTE HARROW LONDON BOROUGH COUNCIL

In this case the local authority, Harrow London Borough Council, wanted to transfer part of its housing stock in accordance with the Housing Act 1985. It appeared sensible to Harrow to co-ordinate and restrict bids for its housing management contracts to bidders who would ultimately be able to accept the transfer of the housing stock. The 1985 Act required Harrow to obtain ministerial approval of the scheme. When the minister refused, Harrow applied for judicial review.

The High Court rejected the application, saying that by restricting the tender list for the housing management contracts to those bidders who were capable in law of accepting a subsequent transfer of the housing stock, Harrow had been in breach of the Services Directive and Service Contracts Regulations. The Court rejected Harrow's argument that long term commercial considerations, going beyond the specific contracts that were being tendered, could be taken into account when determining the most economically advantageous tender

It is ironic to note that in this case a Government minister cited breach of a European Directive as the basis of his refusal to sanction the actions of a local authority apparently attempting to comply with a domestic policy concerning public sector housing.

CASE 2 THE PRIVATE FINANCE INITIATIVE

The Government has recently published its new guide to the Private Finance Initiative. In so doing the Treasury acknowledge that, in the vast majority of cases, the procurement regime will govern the award procedure of contracts let as part of the initiative. The guidance does not directly deal with the apparent paradox of a procurement regime on one hand which

requires competitive bidding, and the need, on the other hand, under the PFI to negotiate with (possibly) a single preferred bidder.

Use of the negotiated procedure (whereby the authority is permitted to negotiate with one or two bidders) is, of course, restricted to specified exceptional circumstances. The Government's PFI guidance suggests that awarding authorities may take advantage of the exception permitted by Regulation 10 (2) (c) of the Public Works Contracts Regulations 1991. This regulation provides that the negotiated procedure may be used

"exceptionally when the nature of the work to be carried out under the contract is such, or the risks attaching thereto are such, as not to permit overall pricing".

The Guidance suggests that the Reg. 10 (2) c exemption may apply to PFI projects because PFI is still an innovative means of public sector procurement. It is worth bearing in mind, therefore, that as the PFI matures, that exemption may no longer apply to the award of PFI contracts.

It looks as though the Government guidance may be ambitious in its interpretation of the Works Directive. It is far from clear that the Reg 10(2) (c) exemption can be used for the risks that are created by the procurement procedure prescribed by government (PFI) as opposed to the inherent risk of the project itself. Furthermore, where is the justification for the use of the exemption where a contractor who was precluded from tendering is able to establish that it was in fact possible to price the project?

The practical problem for the tenderer is that slavish observance of the Government guidance will not be a defence to a challenge from an aggrieved contractor, or worse still, the Commission. Contractors run the risk of the award procedure being aborted with all the wasted costs that would mean. When awarding PFI contracts, authorities must satisfy themselves that, if they are going to use the negotiated procedure, the circumstances of the particular case justify its use.

CONCLUSION

Only time will tell whether contractors in the UK and other member states will bid protest to the same extent as contractors presently do in the USA. The new Government Purchasing Agreement which effectively extends the EC public procurement regime to contracts from countries such as the USA, Japan and Korea may accelerate the trend towards bid protesting. In the meantime it is already clear that the regulation by the EC of public sector procurement is impacting on players in the UK market and UK domestic policies.

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Author : P Harvey
Title : Please Sir

Please Sir...

After more than 30 years working as an engineer with a contractor I joined Trett Contract Services and became involved in the seminar and in-house' training which Trett provide. Over the last few years we have run various seminars around the U.K. and overseas, and have had a number of one or two day sessions with individual companies of different sizes and disciplines. It has been an interesting experience.

I was reluctant to become involved at all in the first instance, convinced that it would be impertinent to suppose I could offer any useful advice or information to others in the industry. Certainly I felt there was little an engineer could say that would be of use to a lawyer or a surveyor I also recalled the seminars I had attended over the years as a delegate. Truth to tell, I don't recall the content at all - I remember when we met, that the lunch was so-so, or that it broke up a weekend, hut what it was about, what I learned - pass.

The fault that they proved ineffective was probably mine, hut perhaps not entirely so Most, if not all, of the speakers who sought to tell us how to do our job better and run our business more efficiently convinced me that they had never had to do either. They showed slides which purported to illustrate the psychological relationships between us. They told us about body language and quoted from law reports and contract conditions in a manner I found almost impossible to relate to the real engineering-in-the-mud world in which I actually worked

Of course, none of the problems which actually arose on site were ever remotely like the examples discussed in the seminars, and people never ever responded as we were told they would. The other problem, of course, was that there was never the time available to deal with the issues in the sensible, cool, exemplary manner which the lecturer advised. Contracting, in fact, seemed to comprise a succession of crises interspersed with fighting forest fires. It was always like that.

Over most of my contracting life I only referred to the conditions of contract when I needed to search desperately for a let out from some difficulty in which I found myself due to the obviously unreasonable behaviour of the Engineer, the main contractor or a sub-contractor (or even all three). A single sentence, or even a phrase, would be grasped for salvation, though it never really worked like that, and I never really learned either. We never seemed to have time to understand what it was all about.

It was only when one had the opportunity to stand back, and see the sort of difficulties other companies got into, that any sort of perspective emerged. The fact is, of course, that the same sorts of problems are arising, the same mistakes being made, the same misunderstandings exist as I encountered, made and suffered. I found comfort in the fact that I was not alone and, indeed, that others had often fared even worse than I had. With the benefit of hindsight, and with what one suddenly realises is considerable experience in the business, the best way of dealing with these matters becomes evident.

Most of the problems could have been nipped in the bud, or better argued, or ditched before they began if only one had known then what one knows now. If only people with hands-on practical experience of real contracting had explained the facts of contractual life to us, how much more effective we would have been. Somehow they never did - they told us about body language. So I persuaded myself that there was a contribution to be made - a gap to be filled - and became involved.

Doing it, I have discovered how isolated people are at work. People who work for years in adjacent offices with little idea of what the other does or who he (or she) is. Is it natural reticence, or insufficient time, or lack of interest, or what? How reluctant people are to seek advice, both within and from outside their own company. Frightened of displaying ignorance? How easily we deceive and persuade ourselves. There is a sort of built-in behaviour mechanism which distorts arguments in our own favour. How obsessed people can become to be proved right, whatever the personal cost. How reluctant people are to listen, they're usually just waiting to speak. And how rare for people to admit to mistakes.

The distrust in the industry is extraordinary. Experienced it and probably contributed to it. Meeting people at seminars from all sides of the industry one quickly recognises the similarities - in professional terms we are generally more or less interchangeable. Any of us could just as easily have been working for another contractor, or a consulting engineer, or the employer. Most of our problems are caused by distrust and most of the distrust is groundless. A lot of it is due to our simply not doing what we say we will do. Seminar discussions, involving people from both sides of the industry, have shown me just how artificial, pointless, avoidable, and counterproductive most of the hostility is.

Quite apart from imparting new information, the principal benefit of the seminars seems to be the opportunity they provide for people to stand back from their daily work and take a fresh overview of the business. A lot of what is said is familiar, but is seen from a different angle and in a different context. A chance to look at the whole wood instead of hacking our way through the trees. The basic rules of the game are fairly straightforward and easily understood, provided they are explained in the first place.

It is frequently the case that many of the people who come to the seminars have one or two burning issues in mind, and seek to relate what is said to their own specific problems. It is surprising how often the preferred solution arises, not from discussion about the particular matter, but from exchanges on some apparently unrelated topic, frequently initiated by someone in a different discipline. Throwing a question back at the questioner, perhaps phrased in a different way, often precipitates the answer.

It doesn't seem to make much difference which particular branch of construction is involved, the same problems and difficulties arise time after time. Learning from experience is a terribly slow business, many companies make no effort to do so and consequently don't. But the experience is there, we all share it, and it seems to me that the seminar is one of the most effective ways of disseminating it and learning from it. Whatever benefit the delegates may have enjoyed, I've certainly learned a lot. I hope a little at least rubs off on the people who come.