

How far can you push the boundaries of design obligations, implied terms of fitness for purpose, and causation and with what implications for insurance cover?

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Standing on one foot...

**What is hateful to
thyself do not do to
another. That is the
whole Law, the rest is
Commentary.**

Hillel

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Overview

- ▶ What are the 'normal' design obligations?
- ▶ *Højgaard* and beyond
- ▶ Insurance implications



What are the 'normal' design obligations?

- ▶ Whatever your contract says
- ▶ The reasonably competent professional
- ▶ *Bolam* and beyond?
- ▶ Designer vs Contractor



Højgaard



Højgaard

- ▶ All depends on construction of the contract – “*Minimum*”
- ▶ But “...courts are generally inclined to give full effect to the requirement that the item as produced complies with the prescribed criteria, on the basis that, even if the customer or employer has specified or approved the design, it is the contractor who can be expected to take the risk if he agreed to work to a design which would render the item incapable of meeting the criteria to which he has agreed”
- ▶ What did ensuring 20 year design life mean?

Post-Højgaard

- ▶ *125 OBS (Nominees1) v Lend Lease* [2017]
- ▶ *SSE Generation v Hochtief* [2018]
- ▶ *Williams Tarr v Anthony Roylance* [2018]
- ▶ *Blackpool BC v Volkerfitzpatrick* [2020]

Insurance – what's the problem?

- ▶ *“We will not indemnify you against liabilities arising under any contract or agreement unless such liability would have attached in the absence of such contract or agreement”*
- ▶ Performance specifications
- ▶ Fitness for Purpose
- ▶ Collateral Warranties



Case List:

- ▶ Bolam v Friern Hospital Management Committee [1957] 1 WLR 582
- ▶ Montgomery v Lanarkshire Health Board [2015] UKSC 11
- ▶ Højgaard A/S v E.On Climate & Renewables [2017] EKSC 59
- ▶ 125 OBS (Nominees1) v Lend Lease [2017] EWHC 25 (TCC)
- ▶ SSE Generation v Hochtief [2018] CSIH 26
- ▶ Williams Tarr Construction Ltd v Anthony Roylance Ltd [2018] EWHC 2339 (TCC)
- ▶ Blackpool BC v Volkerfitzpatrick [2020] EWHC 1523 (TCC)

Thank you! Any questions?

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