

Preface

This book is intended to provide a comprehensive study on construction dispute. Most of the chapters are findings of research projects undertaken by the Construction Dispute Resolution Research Unit (CDRRU) at the City University of Hong Kong. Construction dispute has been a topical research subject in the construction community; moreover, most of the studies either take a legal perspective or have chosen to focus on a particular aspect. The studies presented in this book are mostly framed from a management perspective drawing on methods and concepts in contract law, economics, psychology and management science. There are three specific purposes of *Construction Dispute Research*. First, this volume aims to summarise studies on construction dispute. Second, apart from the theoretical constructs, appropriate empirical tests are employed. This approach serves to go beyond the commonly used anecdotal approach. Third, it is the sincere hope of the authors that this book will help in shaping the agenda of construction disputes research.

The studies present a holistic approach to construction dispute research. Each chapter can be read as a study on its own. The studies have not taken a legal approach, as others would have performed this task far better than we could. *Construction Dispute Research* will be useful to construction professionals involved in contract management and administration. Practitioners will find the book a handy reference in dispute management and resolution. Students will find the book useful in explaining in detail the causes of disputes and the processes to resolve them. The research design and empirical approaches will be particularly useful to students in construction management, architecture, surveying and civil engineering programmes both as textbook as well as reference readings.

The book has 20 chapters that are arranged in four parts covering conceptualization, avoidance, negotiation and mediation. Part I is devoted to dispute conceptualization. A building is only as strong as its foundation. Thus it is no better start to study construction dispute by its conceptualisation. Typically, construction dispute has been identified by the subject matter. Moreover, this approach offers little to the understanding of the underlying causes. An anatomy of construction disputes is offered followed by an empirical check on whether construction disputes are inevitable. Aggressive behavior is often found in protracted disputes. It is

found that the change in contracting behavior from cooperative to aggressive is bimodal. The absence of protracted dispute can be an indicator of project satisfaction. Analytical tools are employed to identify key predictors of this form of project satisfaction.

The theme of Part II is dispute avoidance. The conventional wisdom of ‘prevention is better than cure’ can be applied to all problems. As far as construction dispute is concerned, equitable risk allocation and trust are the two most commonly accepted avoidance strategies. To this end, a risk allocation model based on widely recognised allocation principle is proposed. The use of the tool for risk allocation and evaluation of risk pattern is demonstrated. Trust is a controversial proposition in construction contracting. Its existence is often questioned. Nonetheless, trust is believed to be the most significant contributor to project success in general and dispute avoidance in particular; four chapters are used to discuss trusting observations, trust bases and building mechanisms and trust measurement.

Parts III and IV are linked as both deal with dispute resolution through negotiation. Part III focuses on negotiation—the gateway to resolution as almost all disputes are negotiated first before the service of other mechanisms. Negotiation is sometimes described as an art because settlement may not be reached solely from legal and rational approaches. Part III discusses the behavioural dimensions of construction dispute negotiation. When a negotiator loses interest to continue, the negotiation is doomed. This situation is identified as withdrawal and is considered as a form of negotiation failure. The symptoms and triggering factors of withdrawal are discussed in detail.

When a negotiation fails, what is the best alternative? Facilitated settlements are considered commercially more worthy than seeking award and judgement from arbitration and the court. In particular, voluntary contractual use of mediation as an alternative to arbitration and litigation to resolve construction disputes has gained popularity. Part IV deals with Mediation—A Form of Assisted Negotiation. The skill of the mediators in facilitating settlement, the interrelationships among dispute sources, mediator tactics and mediation outcomes are explored.

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