

RECOVERIES OF DIFFERING SITE CONDITIONS IN  
CONSTRUCTION CONTRACTS

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A thesis submitted in fulfillment of the  
Requirements for the award of the degree of  
Master of Science in Construction Contract Management

Faculty of Built Environment  
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OCTOBER 2008

## ABSTRACT

When a construction contract was established between the employer and the contractor, a variety of construction disputes are inevitable. Construction disputes are often the rule, not the exception. The main issue in this research relates to disputes in differing site condition (DSC). First, the nature and meaning of differing site conditions had discovered in Chapter 1. Various types of differing site conditions clauses in standard forms of contracts had been highlighted such as ICE Conditions 7<sup>th</sup> Edition, PAM 2006, JKR 203A, the EJCDC Contract and others. Most of the standard form contracts typically arise in two main situations, for instance, subsurface or other physical conditions, which are materially different from those indicated in the contract documents and unknown physical conditions which differ materially from those ordinarily encountered. During the tendering stages, a potential contractor is deemed to have carried out site investigation in order to ensure the appropriate construction method and bidding costs. Without any site investigation, it could bring about extra claims, unnecessary site delay and work disruption. Furthermore, the lack of a differing site conditions clause does not necessarily preclude recovery by the contractor. A contractor may base a claim on legal theories such as misrepresentation, breach of warranty, or mutual mistake. The approach of this research is case laws based. There are not restricted as the court cases referred to this topic of research in terms of types of projects. And, the most important part of this research is to determine the court cases is relevant to 'differing site conditions'. According to the findings of case laws, an equitable adjustment is importantly required by the employers and the contractors for recovery the risks between them especially MONEY.

## ABSTRAK

Dalam setiap Kontrak Pembinaan di antara Kontraktor dan Pemaju, adalah amat susah untuk mengelakkan perselisihan daripada berlaku. Dalam penyelidikan ini, topik utama ialah tentang 'Kelainan Keadaan Tapak' (KKT). Terlebih dahulu, sifat dasar dan makna KKT telah diterangkan di Bab 1. Banyak akta KKT telah pun dimasukkan dalam 'Standard Form of Contracts' seperti 'ICE Conditions 7th Edition', 'PAM 2006', 'JKR 203A', 'EJCDC Contract' dan sebagainya. KKT kebanyakan akan timbul dalam situasi di mana keadaan fizikal atau bawah tanah adalah berbeza daripada yang dinyatakan di dalam Dokumen Kontrak, ataupun keadaan fizikal yang tidak diduga walaupun tapak pembinaan telah dilawat oleh Kontraktor sebelum pembinaan dimulakan. Semasa tahap tender, Kontraktor adalah dianggap telah melawat tapak pembinaan untuk memastikan tender yang akan diserahkan kepada Pemaju, adalah tepat dari segi kos dan kaedah pembinaan. Jikalau Kontraktor tidak melawat tapak terlebih dahulu, kemungkinan akan berlaku tuntutan yang berlebihan dan juga menyebabkan kerja pembinaan tergendala. Lagipun, kekurangan akta KTT tidak semesti dapat mencegah Kontraktor daripada melakukan tuntutan berlebihan, kerana Kontraktor masih boleh menggunakan teori undang-undang seperti 'misrepresentation', 'breach of warranty' dan 'mutual mistake'. Penyelidikan ini adalah berdasarkan maklumat yang didapati daripada kes-kes mahkamah. Kes-kes yang dibincang dalam penyelidikan ini adalah tidak tertakluk kepada kes-kes dalam negara sahaja, tetapi akan tertakluk kepada kandungan kes yang berkaitan dengan KKT. Berdasarkan pengajian terhadap kes-kes mahkamah, pelarasan yang seimbang adalah amat diperlukan untuk kedua-dua pihak Pemaju dan Kontraktor mengurangkan kadar risiko terutamanya risiko yang melibatkan kewangan.