

# MEASURE OF DAMAGES FOR DEFECTIVE BUILDING WORK

WONG BI XIA

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Faculty of Built Environment  
Universiti Teknologi Malaysia

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## ABSTRACT

Industry players, particularly employers are concerned about the defects in building. Needless to say, defects are constant problems that are often heard in the construction projects. Ironically, although everyone in the industry aware of this problem, defective building works are still unpreventable. In respect to this, what is the legal position of employer if defect arises? In order to let the industry players, especially the employer to realise the legal measure adopted for recovery of damages upon breach of contract for defective building work by the contractor, the objective of this study is to identify the measure of damages for breach of contract for defective building work. This is important because according to *Mcgregor* in his book of book on “*Damages*”, he observes that the measure of damages in building contracts is sparse, which in view of the existence of so many such contracts is surprising. Moreover, in dealing with the defect case, judges are concerned with the measure of damages which the employer is entitled to recover, rather than with the right to recover damages in respect of the contractor’s original breach. In view of these issues, this study is executed and the data are collected by using Lexis-Nexis database. Subsequently, the related cases are gathered and analysed. There are six measures of damages have been identify, namely, cost of rectification/cost of reinstatement, diminution in value, the difference in cost to the builder of the actual work done and work specified, loss of amenity, physical inconvenience, discomfort and mental distress and lastly, loss of rent. Judges will depend on the facts in every single case, award appropriate measure of damages. They will put in reasonableness as a judicial guideline to determine each judgment awarded by them. It is to reaffirms the compensation of damages consequent of the defects provide the element of fairness.

## ABSTRAK

Pihak yang terlibat di dalam industri binaan, terutamanya majikan sering bimbang akan kecacatan bangunan. Kecacatan bangunan adalah masalah yang sering kali kedengaran dalam projek-projek pembinaan. Yang ironiknya, walaupun semua orang dalam industri telah maklum dengan masalah ini, kecacatan bangunan masih tidak dapat dielakkan. Berhubung dengan perkara ini, apakah posisi undang-undang dan kedudukan majikan jika kecacatan timbul? Maka, untuk menyedarkan pihak-pihak di dalam industri, terutamanya majikan ke atas kedudukan undang-undang bagi pemulihan ganti rugi ke atas kemungkiran kontrak kecacatan binaan oleh kontraktor, objektif kajian ini adalah untuk mengenalpasti pengukuran ganti rugi untuk kemungkiran kontrak bagi kerja kecacatan pembinaan. Ini adalah penting kerana menurut *Mcgregor* dalam bukunya yang bernama “*Damages*”, dia mendapati yang pengukuran ganti rugi dalam kontrak pembinaan adalah jarang, manakala kewujudan kontrak-kontrak seumpama ini adalah mengejutkan. Tambahan pula, dalam kes kecacatan, hakim adalah lebih mengambil berat tentang pengukuran ganti rugi yang mana majikan berhak untuk menuntut, daripada hak ke atas ganti rugi dalam kemungkiran kontrak oleh kontraktor. Berdasarkan isu-isu ini, kajian telah dijalankan dan data dikumpul dengan menggunakan pangkalan data Lexis-Nexis. Kemudiannya, kes-kes berkaitan dikumpul dan dianalisis. Terdapat enam pengukuran ganti rugi telah dikenalpasti, iaitu, kos pembaikan, pengurangan nilai, perbezaan kos pembinaan antara kerja sebenar yang telah dilaksanakan dan kerja yang ditentukan, kehilangan kepuasan, kesulitan fizikal, ketidakselesaian dan penderitaan mental dan akhirnya, kerugian sewa. Hakim-hakim akan bergantung kepada fakta-fakta dalam setiap kes, menganugerahkan pengukuran ganti rugi yang sesuai. Mereka akan memasukkan kewajaran dalam menentukan setiap keputusan yang dianugerahi mereka. Ia bertujuan untuk mengesahkan pampasan ganti rugi kecacatan bangunan itu mamaparkan unsur keadilan.