Part I : Extension of Time
Extension of time provisions

A contractor is under a strict duty to complete on time except to the extent that he is prevented from doing so by the employer or is given relief by the express provisions of the contract.

The effect of extending time is to maintain the contractor’s obligation to complete within a defined time and failure by the contractor to do so leaves him liable to damages, either liquidated or general, according to the terms of the contract.
Act of prevention

Lord Fraser’s comment in *Bilton v. GLC (1982)* sums it up: “….. The general rule is that the contractor is bound to complete the work by the date for completion stated in the contract. If he fails to do so, he will be liable for liquidated damages to the employer. That is subject to the exception that the employer is not entitled to liquidated damages if by his acts or omissions he has prevented the contractor from completing his work by the completion date. These general rules may be amended by the express terms of the contract …..”
Time at large

In the absence of extension provisions, time is put at large by prevention and the contractor’s obligation is to complete within a reasonable time.

The contractor’s liability can then only be for general damages, but first it must be proved that he has failed to complete within a reasonable time.
Contractor’s first notice of delay

25.1(1) As soon as practicable but in any case within 28 days of the commencement of an event likely to cause delay to the completion of the Works beyond the Completion Date becoming apparent, the Contractor shall give notice (i.e. first notice) to the Architect.
Details required in first notice

25.1(2) The first notice shall:

(a) state the likelihood and estimated length of the delay beyond the Completion Date;

(b) set out the material circumstances including the cause of the delay; and

(c) identify which of the listed events to be the cause of the delay.
Does a contractor lose entitlements to extensions of time if he fails to submit the appropriate notices and details required by the contract?

The situation of lack of notice was examined in the decision in *Stanley Hugh Leach v. London Borough of Merton (1985)* in relation to JCT 63 where Mr Justice Vinelott summarised the position as follows:

“If the architect is of the opinion that because of an event falling within sub-paragraphs (a) to (k) progress of the work is likely to be delayed beyond the original or any substituted completion date, he must estimate the delay and make an appropriate extension to the date for completion. He owes that duty not only to the contractor but also to the building owner.”

(To be cont’d)
If the architect wrongly assumes that a notice by the contractor is a condition precedent to the performance of the duty of the architect to form an opinion and in consequence refuses to perform such duties, the Employer loses his right to liquidated damages. It may therefore be against the Employer’s interests for an architect not to consider a cause of delay of which late notice is given or of which he has knowledge despite lack of notice.”
Are minutes of site meetings considered to be adequate notices of delay required by extension of time clauses?

Following the Scottish decision of *John L. Haley Ltd v. Dumfries & Galloway Regional Council (1988)*, it would seem that the site meeting minutes will not constitute good notice under the JCT 63 contract unless the parties specifically amend the contract in this respect.
Listed events for extension of time

25.1(3) The listed events are as follows:

(a) force majeure;

   The expression “force majeure” is of French origin. Under the French Civil Code, force majeure is a defence to a claim for damages for breach of contract. It needs to be shown that the event:

   (i) made performance impossible;
   (ii) was unforeseeable;
   (iii) was unavoidable in occurrence and effects.
Force majeure

In English law, there is no doctrine of force majeure. The case of *Taylor v Caldwell* developed the **doctrine of frustration** extending the sphere of impossibility to other instances of frustration.

On basic legal principles, therefore, it is frustration and not force majeure which must be pleaded as a defence in English contract law.

Force majeure by its nature is a neutral event between the parties and is therefore a **non-reimbursable event** as far as extensions of time are concerned.
Adverse weather

In the case of Walter Lawrence and Son Ltd v. Commercial Union Properties (UK) Ltd (1984) where a contractor was suing for returning of amounts deducted as liquidated damages. Judge Hawser held that: “….. When considering an extension of time under clause 23(b) of JCT 63, on the ground of “exceptionally inclement weather” the correct test for the architect to apply is whether the weather itself was “exceptionally inclement” so as to give rise to delay, and not whether the amount of time lost by the inclement weather was exceptional ….. “
Listed events – inclement weather

(b) inclement weather conditions, being rainfall in excess of 20mm in a 24 hour period as recorded by the HK Observatory station nearest to the Site, and/or his consequences adversely affecting the progress of the Works;

(c) the hoisting of tropical cyclone warning signal No. 8 or above or the announcement of a Black Rainstorm Warning;
Listed events – excepted risks

(d) the Excepted Risks which are defined as

(a) Any consequence of war;
(b) The Architect’s design of the Works insofar as damage, loss or injury is the direct consequence of the design;
(c) A cause due to any neglect or default of the Architect, the Employer or any person for whom the Architect or the Employer is responsible;
(d) Ionizing radiation or contamination by radioactivity from any nuclear fuel or waste; and
(e) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.
Listed events – Special Peril

(e) loss or damage caused by a Specified Peril which is defined under clause 1.6 as “fire, lightning, explosion, storm, tropical cyclone, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped from them”.
Listed events – discrepancy and divergence between documents

(f) an Architect’s instruction to resolve an ambiguity, discrepancy in or divergence between the documents listed;

The documents listed in clause 2.4(1) include the

(a) Contract Drawings;
(b) Specification;
(c) Contract Bills;
(d) descriptive schedules and other similar documents;
(e) The Nominated Sub-contract documents and Nominated Supply Contract documents; and
(f) The further drawings, details, descriptive schedules and similar documents provided from time to time.
Listed events – opening up for inspection

(g) an Architect’s instruction requiring the opening up for inspection or the testing of materials, goods or work and the consequential making good;
Listed events - variations

(h) an Architect’s instruction requiring a Variation;

(i) an Architect’s instruction resulting in an increase in the work to be carried out of sufficient magnitude to cause delay, provided that the variance was not apparent from the Contract Drawings;
Listed events – postponement or suspension

(j) an Architect’s instruction regarding:

(i) The postponement of the Date for Possession of the Site or part of the Site;

(ii) The postponement of the Commencement Date of the whole or part of the Works; or

(iii) The postponement or suspension of the whole or a part of the Works, unless:

• Notice of the postponement or suspension is given in the Contract; or

• The postponement or suspension was caused by a breach of contract or other default by the Contractor or any person for whom the Contractor is responsible;
Listed events - antiquity

(k) compliance with an Architect’s instruction requiring the Contractor to permit the examination, excavation or removal by a third party of an object of antiquity found on the Site;
Listed events – late instructions

(1) late instructions from the Architect, including
   • those to expend a Prime Cost Sum or a Provisional Sum, or
   • the late issue of the drawings, details, descriptive schedules or other similar documents except to the extent that the Contractor failed to comply with clause 5.7(2);
Listed events – delay by NSC

(m) delay caused by a delay on the part of a Nominated Sub-contractor or Nominated Supplier in respect of an event for which the NSC or NS is entitled to an extension of time under the sub-contract or supply contract;
Where delays occur to the main contract works due to the time taken to correct latent defects in a nominated subcontractor’s work after the subcontract works have been completed, does this give the main contractor the right to an extension of time if the contract makes provision for extension of time due to delays on the part of nominated subcontractors?

In the case of Westminster City Council v. J Jarvis & Sons Ltd (1970), it was held that, on a proper interpretation of clause 23(g) of JCT63, delay on the part of a nominated subcontractor only occurred if, by the date for completion in the subcontract, the subcontractor had failed to achieve such completion of his work that he could not hand it over to the contractor.

If the subcontract works are apparently completed and taken over by the main contractor, delays caused by the subcontractor returning to site to correct latent defects will not rank for an extension of time.
Listed events – NSC or NS

(n) delay caused by a sub-contractor or supplier nominated by the Architect despite the Contractor’s valid objection;

(o) delay caused by the nomination of a replacement NSC or NS (including any prolongation of the period of the relevant sub-contract or the time for the supply and delivery of materials and goods), provided that the determination of the employment of the original NSC or the termination of the original NS Contract was not in the opinion of the Architect a consequence of a breach of contract or other default by the Contractor;
Listed events – persons engaged by Employer

(p) delay caused by a Specialist Contractor which is defined as “a person engaged by the Employer to carry out work directly connected with or ancillary to but not forming part of the Works”;
Listed events – statutory undertaker or utility company

(q) delay caused by a statutory undertaker or utility company failing to commence or to carry out its work in due time, provided that the Contractor has taken all practicable measures to cause it to commence and to carry out and complete its work on time;
Listed events – Employer’s failure to supply materials, goods, etc.

(r) the failure of the Employer to supply or supply on time materials, goods, plant or equipment that he agreed to provide for the Works;
Listed events – Employer’s failure to give possession of site

(s) the failure of the Employer to give possession of the Site or,
a part of the Site on the Date for Possession of the Site or the part of the Site stated in the Appendix, or
the Employer subsequently depriving the Contractor of the whole or a part of the Site;
Listed events – obtaining government’s approval or consent

(t) delay to the Works due to time not reasonably foreseen by the Contractor in obtaining approval or consent from a Government department;
Listed events – special circumstance & act of prevention

(u) a special circumstance considered by the Architect as sufficient grounds to fairly entitle the Contractor to an extension of time; and

(v) an act of prevention, a breach of contract or other default by the Employer or any person for whom the Employer is responsible.

This is a “catch-all” extension provision used to cover any delay caused by the employer. However, the courts may apply the contra proferentem rule to stop the employer benefiting from lack of clarity in the contract.
What is meant by a contractor having to use constantly his best endeavours to prevent delay?

With regard to the JCT forms of contract, Keating on Building Contracts says that

“This proviso is an important qualification of the right to an extension of time. Thus, for example, in some cases it might be the contractor’s duty to reprogramme the works either to prevent or to reduce delays. How far the contractor must take the other steps depends upon the circumstances of each case, but it is thought that the proviso does not contemplate the expenditure of substantial sums of money.”

(To be cont’d)
In *Terrell v. Maby Todd & Co (1952)*, the judge held that a best endeavours obligation only required a party to do *what was commercially practicable* and what it could reasonably do in the circumstances.
25.1(4) The Contractor shall:

(a) continuously use his *best endeavours* to prevent or mitigate delay to the progress of the Works, however caused, and

- to prevent the completion of the Works being delayed or further delayed beyond the Completion Date,

provided that the words ‘best endeavours’ shall not be construed to mean that the Contractor is obliged to spend additional money, without reimbursement under clause 26, to accelerate the carrying out of the Works to recover delay that the Contractor did not cause; and

(b) do all that may reasonably be required to the Architect’s satisfaction to proceed with the Works
Contractor’s second notice and its required particulars

25.2(1) The Contractor shall, as soon as practicable but in any case within 28 days of giving the first notice, submit a second notice to the Architect giving:

(a) Substantiation that the listed event is the cause of the delay; and

(b) Particulars of the cause, effect and length of the delay to the completion of the Works beyond the Completion Date in sufficient detail to enable the Architect to make a decision.
Contractor’s second notice – delay later than 28 days

25.2(2) Where the delay envisaged by the Contractors’ first notice of delay commences later than 28 days after the Contractor has given the first notice to the Architect, the Contractor shall give the Architect a statement to this effect and shall submit the second notice within 28 days of the commencement of the delay.
Contractor’s second notice – continuing effect

25.2(3) Where the listed event has **continuing effect**, the Contractor shall:

(a) give the Architect a statement to that effect together with:

(i) Substantiation that the listed event is the cause of the delay; and

(ii) **Interim particulars** including details of the cause and effect and an estimate of the length of the delay to the completion of the Works beyond the Completion Date;
Contractor’s second notice – continuing effect (cont’d)

(b) make further submissions to the Architect at intervals not exceeding 28 days giving further interim particulars and estimates of the length of the delay until the delay ceases;

(c) within 14 days after the delay ceasing, submit to the Architect final particulars of the cause, effect and length of the delay to the Works beyond the Completion Date in sufficient detail to enable the Architect to make a decision.
Fixing a new Completion Date

25.3(1) After receipt of the Contractors’ second notice, the Architect shall give an extension of time to the Contractor by fixing a later Completion Date if he is satisfied that the completion of the Works is being or is likely to be delayed beyond the Completion Date by the listed event.
Deciding an extension of time within 60 days

25.3(2) The Architect shall give the extension of time, and the reasons for his decision as soon as practicable but in any case within 60 days after the receipt of the particulars submitted with the second notice.
Not to grant an extension of time or fix a later date with further particulars

25.3(3) If, after receiving the first and second notices, the Architect decides not to fix a later date as a new Completion Date:

(a) The Architect shall notify the Contractor of this, giving the reasons for his decision, as soon as practicable but in any case within 60 days of receipt of the particulars submitted with the second notice; and

(b) The Architect may revise his decision and fix a later date as the new Completion Date if the Contractor provides further and better particulars within 28 days of the Architect’s notification under clause 25.3(3)(a).
Fixing a new Completion Date based on available information

25.3(4) If the Contractor fails to submit the notices within the prescribed time frame but a first notice is nevertheless submitted, the Architect shall, if he is satisfied that the completion of the Works has been delayed by the listed event, give an extension of time to the Contractor to the extent that he is able to on the information available.
Can an architect fix an earlier Completion Date due to the omissions?

In the case of *Balfour Beatty Building Ltd v. Chestermount Properties Ltd* (1993), Mr Justice Colman said that when the architect reviews extensions of time under clause 25.3.3.2 of JCT80 following practical completion, he is entitled to reduce the extended contract period to take account of omissions. These may have been issued during a period of culpable delay. It would, therefore, be illogical for the architect to have to deal with additions differently to the way he deals with omissions.
Fixing an earlier Completion Date

25.3(5) If after fixing a new Completion, the Architect issues an instruction under:

(a) Clauses 13.1 for the omission of work or the omission or diminution of an obligation; or

(b) Clause 13.2 resulting in a substantial reduction of the work to be carried out, provided that the variance was not apparent from the Contract Drawings,

the Architect may fix an earlier Completion Date, though not earlier than the Completion, if it is fair and reasonable to do so.
If the architect issues a variation after the extended completion date but before practical completion, can an extension of time be granted or will liquidated damages become unenforceable?

Where an architect issues a variation after the contract completion date but before practical completion, it is appropriate where resultant delays occur for an extension of time to be granted. Such extension of time will be calculated by extending the completion date by the net period of delay.
Granting an extension of time after Completion Date

25.3(6) If the Architect gives an extension of time to the Contractor because of a listed event that occurs in the period of delay after the [Completion Date] but before the Date of Substantial Completion, he shall add this extension of time to the total of any extensions of time previously granted.
Fixing an earlier or later Completion Date

25.3(7) The Architect may fix a new Completion Date earlier or later than that previously fixed, during the period of delay between the Completion Date and the Date of Substantial Completion, taking into account any further and better particulars submitted by the Contractor, or any extension of time granted under clause 25.3(6).
Deciding the final extension of time within 90 days

25.3(8) The Architect shall finally decide the overall extension of time, whether by reviewing any extension of time previously granted or otherwise, and shall fix the Completion Date, which may be the same as but not earlier than the Completion Date previously fixed, within 90 days after Substantial Completion or such later date as may be agreed by the parties.
If the architect fails to grant an extension of time within a timescale laid down in the contract, will this prevent the employer from levying liquidated damages?

With regard to the effect on the employer’s entitlements should the architect fail to give his decision within the timescale, Lord Justice Croom-Johnson said in *Temloc v. Errill* that:

“In my view, even if the provision of JCT 80 clause 25.3.3 (requirement for the architect to review extensions of time within 12 weeks of practical completion) is applicable, it is directory only as to time and is not something which would invalidate the calculation and payment of liquidated damages. The whole right of recovery of liquidated damages under clause 24 does not depend on whether the architect, over whom the contractor has no control, has given his certificate by the stipulated day”.
Contractor’s default involved in the delay

25.4 Where and to the extent that a listed event resulting in delay was, in the Architect’s opinion, contributed to, or aggravated by a breach of contract or other default by the Contractor, the Architect shall take the effects of that contribution or aggravation into account in fixing the new Completion Date.
Concurrent delay

- **The Devlin approach**: “If a breach of contract is one of two causes of a loss, both causes co-operating and both of approximately equal efficacy, the breach is sufficient to carry judgment for the loss.”

- This would apply where, for example, there were two competing causes of delay which entitled a contractor to an extension of time, one a neutral event such as excessively adverse weather and the other being a breach such as late issue of instructions by the architect. Following the Devlin approach, the contractor would be entitled to extra time and loss and expense due to the late issue of instructions.
Concurrent delay

- The dominant cause approach: “If there are two causes, one the contractual responsibility of the defendant and the other the contractual responsibility of the plaintiff, the plaintiff succeeds if he establishes that the cause for which the defendant is responsible is the effective, dominant cause. Which cause is dominant is a question of fact, which is not solved by the mere point of order in time, but is to be decided by applying common sense standards”.
Concurrent delay

- **The burden of proof approach**: “If part of the damages is shown to be due to a breach of contract by the plaintiff, the claimant must show how much of the damage is caused otherwise than by his breach of contract, failing which he can recover nominal damages only”.

- An example would be a delay caused by the contractor having to correct defective work running at the same time as a delay caused by the employer. Little in the way of extra cost would be recoverable as it would be difficult for the contractor to demonstrate that his losses were due to the employer’s actions and not his own.
Rate of progress

25.5(1) If, in the Architect’s opinion, the rate of progress of the Works is too slow to ensure that the Works will be completed by the Completion Date for any reason which does not entitle the Contractor to an extension of time, the Architect may notify the Contractor accordingly.

25.5(2) After receiving the Architect’s notification, the Contractor may, at his own discretion and with no entitlement to receive additional payment, take the measures that he considers necessary to expedite the progress to complete the Works by the Completion Date.
Nominated Sub-contractors and Suppliers to be kept informed

25.6(1) Where the first notice includes a reference to work carried out by a Nominated Sub-Contractor or materials or goods supplied by a Nominated Supplier, the Contractor shall give a copy of the first and second notices to the NSC or NS.

25.6(2) The Architect shall notify each NSC and NS of any new Completion Date fixed.
Part II : Liquidated and Ascertained Damages
Difference between liquidated damages and penalty

In *Dunlop Pneumatic Tyre Co Ltd v. New Garage & Motor Co Ltd (1915)*, Load Dunedin said

- The essence of a penalty is payment of money stipulated as *in terrorem* of the offending party; the essence of liquidated damages is a genuine covenanted pre-estimated of damage.

- If the sum is extravagant and unconscionable in amount in comparison with the greatest loss that could conceivably be proved to have followed the breach, it will be regarded as a penalty and unenforceable.
Advantages of liquidated damages provision

It was said by Lord Woolf in the case of *Philips Hong Kong Ltd v. The Attorney General of Hong Kong* (1993):

“Since it is to the parties’ advantage that they should be able to know with a reasonable degree of certainty the extent of their liability and the risk which they run as a result of entering into the contract. This particularly true in the case of building and engineering contracts. In the case of those contracts provision for liquidated damages should enable the employer to know the extent to which he is protected in the event of the contractor failing to perform his obligations.”
Burden of proof

- The burden of proving that a stipulated sum is a penalty and not liquidated damages rests on the party making the challenge.
- A simple assertion that liquidated damages are a penalty will not suffice and a demand that loss be proved to show that the stipulated sum is not a penalty will fail.
- It has to be shown that the stipulated sum is not a genuine pre-estimate of loss.
If the employer suffers no loss as a result of a contractor’s delay to completion, is he still entitled to deduct liquidated damages?

It was made clear by the decision in *BFI Group of Companies v. DCB Integration Systems Ltd (1987)* that an employer may, where they are provided for in the contract, deduct liquidated damages even though in the event he has suffered no loss.

Therefore, if one party wishes to challenge the sum so calculated and stated in the contract as liquidated damages, the best time to do so is before the contract is signed. Post contract challenges to liquidated damages on the grounds that they are not a genuine pre-estimate of loss have had a poor record of success in the counts in the past.
Are liquidated damages based on a percentage of the contract sum enforceable?

It has been argued that as the definition of liquidated damages is a genuine pre-estimate of loss, damages based on a formula which includes an estimate only of the value of work cannot be a genuine pre-estimate of damage.

In the case of *J.F. Finnegans v. Community Housing (1993)* the calculation of liquidated damages included the following formula:

Liquidated damages = (estimated total scheme cost x corporation lending rate x 85%) / 52

The court held that the formula was a genuine attempt to estimate in advance the loss the defendant would suffer from late completion.
Architect to certify Contractor’s failure to complete on time

24.1(1) If the Contractor fails to complete the Works by the Completion Date, the Architect shall issue a certificate (i.e. certificate of non-completion) to that effect

- confirming that all claims for extensions of time have been addressed and
- stating the date by which the Works ought to have been complete.
Works & Completion Date

The Works are defined in SFBC2005 clause 1.6 as “the work briefly described in the Articles of Agreement and shown upon, described by or referred to in the Contract including any change made to the work in accordance with the Contract”.

The Completion Date is defined in SFBC2005 clause 1.6 as “the date stated in the Appendix by which the Works are to be completed or such later date to be fixed by the Architect under clause”.
If the contractor delays completion but no effective non-completion certificate is issued by the architect, will the employer lose his right to deduct liquidated damages?

In the case of *A Bell & Son (Paddington) Ltd v. CBF Residential Care & Housing Association (1989)*, it was held that the issue of an architect’s non-completion certificate had not been fulfilled and the employer therefore lost the right to deduct liquidated damages. Therefore the employer will lose the right to deduct liquidated damages if the architect fails to issue a proper non-completion certificate under clause 24.1(1).
Architect to certify Contractor’s failure to complete on time

24.1(2) If a new Completion Date is fixed after the issue of the certificate of non-completion, the fixing of the new Completion Date shall cancel that certificate and the Architect shall, if appropriate, issue another certificate to correspond to the new Completion Date.
Liquidated and ascertained damages

24.2(1) If the Architect issues a certificate of non-completion, the Contractor shall, if required to do so by a notice from the Employer, pay or allow to the Employer liquidated and ascertained damages for the period between the Completion Date and the Date of Substantial Completion.
24.2(2) The Employer’s notice under clause 24.2(1) shall not be given either
• before the certificate of non-completion is issued or
• after the Final Certificate is issued.

The Employer must give notice after the issue of certificate of non-completion and before the issue of the Final Certificate of his intention to claim or deduct liquidated damages.
Notice of claim for liquidated damages

In *J.F. Finnegan v. Community Housing (1993)*, it was held that a written notice from the employer under JCT80 is a condition precedent to the right to deduct liquidated damages.
Amount of liquidated damages

24.2(3) The rate per day of liquidated and ascertained damages for the Works shall be as stated in the Appendix and adjusted in accordance with clause 18.4 in regard to the completion of any Relevant Part.
Recovery of liquidated damages

24.2(4) The Employer may recover the liquidated and ascertained damages from the Contractor under clause 40 or as a debt.
Employer’s power to recover damages, etc.

40(1) The Employer may make any deduction authorised by the Contract or at law (including deductions for costs, damages, liquidated and ascertained damages, debts, expenses or other sums for which the Contractor is liable to the Employer) from amounts due to the Contractor (including Retention).
Condition precedent to the Employer’s right of deduction

40(2) It is a **condition precedent** to the Employer’s right of deduction under clause 40.1(1) that he gives a notice to the Contractor by *special delivery* stating the amount of the deduction and the reason for it at least 7 days before making the deduction. *Special delivery* is defined as “the communication which is either delivered by courier or sent by registered post or recorded delivery”.
Refund if Completion Date revised

24.3 If the Architect fixes a later Completion Date, the Employer shall refund to the Contractor the amount of liquidated damages paid or allowed to the Employer for the period from the original Completion Date up to the later Completion Date plus interest at 1% below the judgment debt rate within 28 days of the Architect fixing the later Completion Date.
If liquidated damages become unenforceable and hence an entitlement to unliquidated damages arises, can the unliquidated damages be greater than the liquidated damages?

- In the old case *Wall v. Rederiaktiebolaget Luggude* (1915), it was held that, where a liquidated damages figure was held to be inappropriate, the unliquidated damages which were proved to have been incurred could be levied in full even though they exceeded the amount of liquidated damages.


(To be cont’d)
• As the case law on this subject is inconsistent, it may be relevant to apply an old rule to the situation that a party cannot benefit from his own breach.

• In light of the decision of the Alghussein Establishment v. Eaton College (1988), it would seem that an employer who caused a delay for which there was no provision for an extension of time and so rendered time at large should not be able to recover in respect of the contractor’s delays general damages which exceed the liquidated damages stated in the contract.
Test
Note: If you are not able to find the answer directly from the relevant contract provisions, you should always justify your answer by fundamental principles.
What should the Architect do before the Employer is entitled to deduct liquidated damages for delay against the Contractor?

What would be the redress under the Contract if the Architect’s confirmation under Clause 24.1(1) that all claims for extensions of time have been addressed is subsequently found to be not true such that further extensions would be required?
What would be the implication if the words “confirming that all claims for extension of time have been addressed in accordance with clause 25” are deleted from clause 24.1(1)?

Would the Contractor lose his entitlement to extension of time if he fails to submit the notices prescribed under Clause 25 within the specified time?
Should extension of time be granted if inclement weather conditions and hoisting of tropical cyclone warning signal occur at the pre-fabrication yard outside of Hong Kong?

Should extension of time be granted if the Specified Peril such as “bursting or overflowing of water tanks, apparatus or pipes” was due to the Contractor’s neglect or willful conduct?
Should extension of time be granted if the Contractor fails to find earlier than desired an ambiguity or discrepancy in or divergence between the documents in accordance with clause 2.4(1)?

Should extension of time be granted if provisional items have been grossly understated in the bills of quantities, but such understatement could have been apparent from the contract drawings?
What would be the implication if clause 25.1(3)(m) permitting extension of time for delay caused by a delay on the part of a nominated sub-contractor or nominated supplier is deleted from the contract?

Can the contractor cease work if the employer deprives the contractor of a part of the site for the purpose of operating a sales office and thereby seek for extension of time?
Should extension of time be granted under clause 25.1(3)(t) if the obtaining of government approval and consent is specified to be part of the contractor’s obligation such as contractor’s design for temporary or permanent works?

Is the contractor obliged to spend money to accelerate the works in order to mitigate the effects of delays?
Homework

1. Compare the liquidated damages and extension of time clauses between the old and new standard forms of building contract.

2. Investigate the relationships between extension of time and direct loss and expense clauses.