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## Practical Completion

What is it and why is it important?

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## Practical completion

- ▶ Why is it important?
  - ▶ Legal and practical consequences
  - ▶ Obligations under related contracts
  - ▶ Payment of profit on FF/FP development




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## Contractual and legal implications

- ▶ LADs (but consider Sectional Completion/Partial Possession)
- ▶ Release of retention
- ▶ Rectification period
- ▶ Risk/insurance
- ▶ No "variations"
- ▶ Final account process
- ▶ Limitation period/P11



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## But what is practical completion?


- ▶ No precise legal definition
- ▶ Meaning derived from case law:
  - ▶ Westminster Corp v Jarvis [1970]
  - ▶ P & M Kaye v Hosier & Dickinson [1972]
  - ▶ HW Nevill (Sunblest) v William Press [1981]
  - ▶ Emson Eastern v EME Developments [1991]

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## But what is practical completion?

- ▶ Completion of all Works required under the contract
- ▶ Latent (hidden) defects
- ▶ No patent defects
- ▶ *de minimis* outstanding works



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## Contractual definition

- ▶ JCT
- ▶ NEC
- ▶ PPC2000


**def·i·ni·tion**  
 \dē-'fō-ni-shən\  
 meaning of a word;  
 can be subjective

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## Patent defects

- ▶ Theory v reality
- ▶ Use of “snagging” lists
- ▶ Practical reasons for wanting PC:
  - ▶ Trigger lease/sale
  - ▶ Tenant fit out Works
  - ▶ LADs
- ▶ Are the Works capable of being used for their intended purpose?



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## Beneficial occupation or possession


- ▶ Question of fact whether occupation = PC
- ▶ “use or occupy” or “take possession”
- ▶ Guidance from case law:
  - ▶ Impresa Castelli SpA v Cola Holdings Ltd [2002]
  - ▶ English Industrial Estates Corp v George Wimpey & Co Ltd [1973]
  - ▶ Skanska Construction (Regions) Ltd v Anglo-Amsterdam Ltd

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## Deemed practical completion

- ▶ Consequences:
  - ▶ Rectification period
  - ▶ LADs
  - ▶ Risk/insurance
  - ▶ Retention
- ▶ Whether Works are actually complete is irrelevant



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## Early use


- ▶ Express contract provisions (e.g. JCT DB 2016 clause 2.5)
- ▶ Contractor’s consent required
- ▶ For any purpose?
- ▶ Consequences?
  - ▶ not PC
  - ▶ risk/insurance (additional premium?)
  - ▶ sub-licence?
  - ▶ disruption = extension of time?
- ▶ Distinction between early use and possession?

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## Avoiding disputes

- ▶ Clear contract provisions
- ▶ Contract amendments
- ▶ Implications
- ▶ Paper trail (e.g. contractor’s consent to early use or possession)
- ▶ Whether early use/possession of part or whole of the Works



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## Conditions of practical completion

- ▶ For example:
  - ▶ EPC
  - ▶ Building Regulations Final Certificate
  - ▶ Satisfaction of Planning Conditions
  - ▶ H&S File
  - ▶ NHBC Warranty (or equivalent)
  - ▶ As-built drawings (e.g. JCT DB 2016 clause 2.37)
  - ▶ Collateral Warranties

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### Related Contracts

- ▶ Agreement for Lease/SPA/O&M Contract:
  - ▶ Trigger for sale/lease
  - ▶ Rent/rent free period
  - ▶ Access for fit out works
  - ▶ Insurance arrangements
- ▶ PC under building contract = PC under the related contract?
- ▶ What about sub-contracts?

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### Avoiding disputes

- ▶ Automatic PC?
- ▶ Additional Conditions (including Conditions Precedent?)
- ▶ What happens if there is a disconnect?
- ▶ Ensure contractual machinery complied with (e.g. giving of all required notices)
- ▶ Inspections
- ▶ Avoid waiver/estoppel by raising concerns promptly

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## We are now practically complete!

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### Questions



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### Thank you

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