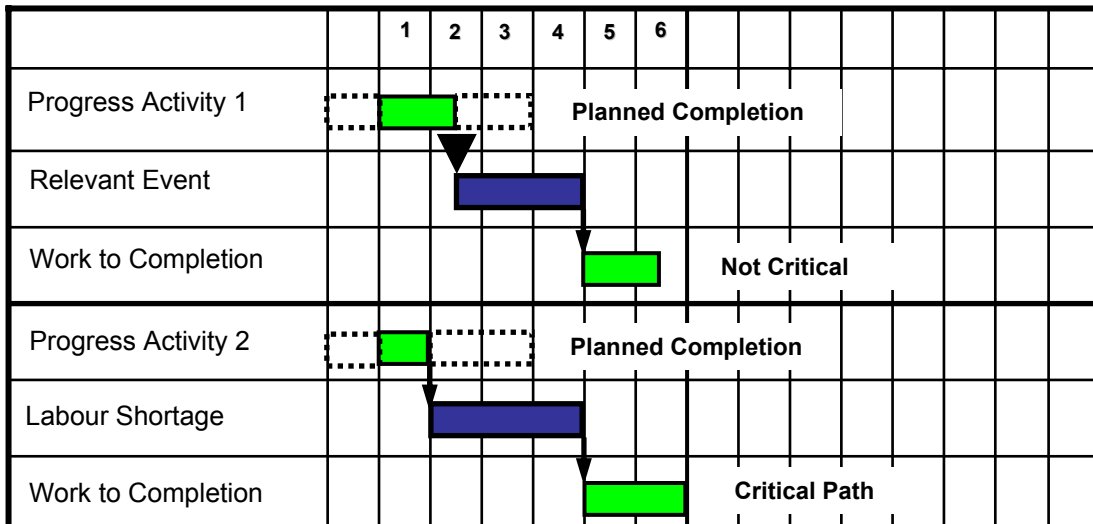


CHAPTER 3 – THE PRINCIPLED APPROACH

the critical path then the initial conclusion is that the Relevant Event did not affect completion.

- 3.53 This is shown below diagrammatically in Figure 2, which shows two activities one of which is on the critical path and the other is not.

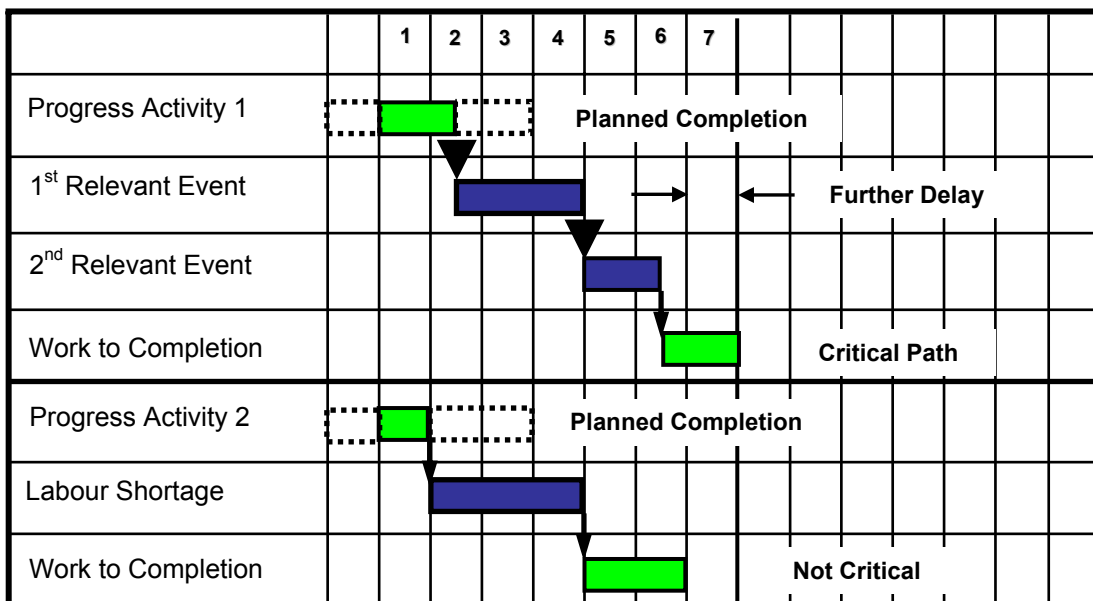
Figure 2 - Separate Events Affecting Different Activities at Date of Activity



- 3.54 The initial conclusion needs to be verified by examination of actual progress to completion. The initial conclusion is only correct if the critical path does not change during the progress of the works. If viewed retrospectively progress is such that the activity affected by the Relevant Event is on the critical path and the event affected by shortage of labour is not, then the timing difference is not sufficient to draw the conclusion that the Relevant Event occurred in the context of the shortage of labour.

- 3.55 This is shown below diagrammatically in Figure 3.

Figure 3 - Separate Events Affecting Different Activities at Completion



CAUSATION IN CONSTRUCTION LAW

- 3.56 Figure 3 above shows that a Relevant Event, which was not on the critical path to completion when it occurred, is on the actual critical path at completion due to the incidence of a subsequent Relevant Event.
- 3.57 In the above case, it cannot be said that the timing difference of the two events of the first Relevant Event and shortage of labour shows that the first Relevant Event could not have affected the completion date. This remains the case even if both events are on separate critical paths or “near” critical paths. In those cases, the proper conclusion is that the condition for causation is satisfied and that the issue of causation in law must then be considered.

Example 1 – Employer’s Claim for Damages for Delay

- 3.58 If the initial condition is satisfied, the approach to be applied when there are concurrent events and the damage claimed is the Employer’s time related loss was established by Colman J in *Balfour Beatty Building Ltd v Chestermount Properties Ltd* [1993]62BLR1 QBD.
- 3.59 The approach was common ground in *Henry Boot Construction (UK) Limited v Malmaison Hotel (Manchester) Ltd* [1999].
- 3.59.1 Mr Justice Dyson accepted the approach as a statement of law without adverse comment.
- 3.59.2 It was agreed that if there are two concurrent causes of delay, one of which is a Relevant Event, and the other is not, then the contractor was entitled to an extension of time for the period of delay caused by the Relevant Event notwithstanding the concurrent effect of the other event.
- 3.59.3 The approach was demonstrated by an example, which has been examined above as Example 1 in which the two events were the Relevant Event under the JCT Form of exceptionally inclement weather and the event of shortage of labour the fault of the contractor.
- 3.59.4 In the example, the Architect was required to grant an extension of time of one week, if the failure to work during that week was likely to delay the Works beyond the Completion Date by one week and if it was fair and reasonable to do so.
- 3.59.5 The Architect could not refuse to grant an extension of time on the grounds that the delay would have occurred in any event by reason of the shortage of labour.
- 3.60 Example 1 is shown diagrammatically below in Figure 4. The two events are shown as being co-extensive in time and both causing the same indivisible damage of delay to completion.