CONSTRUCTION LAW AND RISK MANAGEMENT

Course Objective:

The objective of this course is to take an advanced look at the legal principles of construction law and how it applies to engineering and project management and to explore best practices of dispute resolution as it relates to project management.

Topics will include:

- General principles of construction law including completion, defects, retention, certification, licensing and contract provisions
- Practical focus upon legal concepts applicable to the construction industry
- Relevant provisions of standard form building contracts
- Contractual relationships in the engineering and construction industry and the actions that result in disputes. Major emphasis is on the principal contractual relationships (owner-contractor, owner-architect/engineer, contractor-subcontractor, and architect/engineer-consultant)
- Contractual relationships, contract performance, liability and negligence, surety bonds, insurance, mechanics' liens, bidding and procurement rules and change orders
- Legal issues and business issues that impact project management
- Emphasis on techniques for preventing disputes and techniques for resolving them (negotiating, mediation, arbitration, and litigation the steps required for rapid, cost-effective resolution)
- Claims avoidance & analysis procedure

Students will also explore in-depth the relevant case law and statutory information pertaining to the leading construction and engineering law impacting project management along with practical insights with group analysis and discussion.

Provided below is a class by class description of the course:

Class 1:

- Introduction/Historical Perspective of Construction Law
- Players in the Construction Process
  - Owner
  - Design Team
  - Construction Team
- Owner’s role/Spearin Doctrine
- Project Delivery Systems
  - Overview
  - Evolution of different approaches
  - Design – bid – build
  - Construction management
  - Agency
- At-risk construction management
- Design-Build

**Contracting for Construction Projects**
- Contract formation
- Selecting contract form
- Overview of Standard Industry forms
  - AIA
  - AGC
  - EJCDC

**The Contract**
- Design Agreement (Owner – A/E)
- Contract Documents (Owner – Contractor)
- Integration Clause
- Incorporation by reference vs. enumeration of documents
- Conflicts

**Contract Interpretation**
- Rules of construction contract interpretation
- Parol evidence
- Ambiguity and intent of parties
- Reasonable and logical interpretation of entire contract
- Interpretation against drafter
- Course of performance and prior dealings
- Custom and usage

**Parties to the Construction Contract**
- Owner – Engineer
- Owner – Contractor
- Third Party Beneficiaries
- Other Parties

**Class 2:**

**Design Undertakings**
- Overview of contractual relationship among parties: Owner/Engineer/Contractor/Subs
- Statutory Regulations and Licensure of Design Professionals
- Building Codes and Design professional
- Standard of Care Applicable to Design Services
- Implementation of the Design through Contractors
  - Value – engineering
  - Common Law
  - Contractual Standard of Care
  - Implied Warranties

**Contractor Selection**
- Private procurement
- Public procurement

**Pricing Construction Contracts**
- General pricing mechanisms
- Stipulated – sum
- Cost – Plus
- Guaranteed Maximum Price
- Unit – Price
- Specific price related terms
- Contract terms related to pricing
  - Material price escalation clause
  - Interim payment clause

- Subcontractors & Suppliers
  - Difference between a sub and a supplier
  - Selection of subs and suppliers
  - Subcontractor bidding – who is bound by bid
  - Flow-down obligations and rights
  - Coordination of subcontractor work
  - Subcontractor indemnity obligations
  - Payment to subcontractors and suppliers
  - Subcontractor claims

**Class 3:**

- **Construction Safety**
  - Accident Prevention
    - State legislation
    - OSHA
    - Contractual responsibility
  - Recovery of Compensation for Construction Accidents
    - Workers compensation
    - Tort
  - Risk Allocation and Transfer of Risk
    - Insurance
    - Indemnity
    - Assumption of risk
    - Workers compensation

- **Payment**
  - Basis of Payment
  - Payment Process
  - Substantial Completion/Substantial Performance
  - Final Completion/Final payment
  - Specific Payment issues
    - Paid if Paid
    - Pay when Paid
    - Prompt Payment Act
    - False Claims
    - Lender Liabilities
- **Contract Time & Completion**
  - Significance of Time for Performance
  - Critical Path Method Schedules
  - Legal Significance of Construction Schedules
  - Time of Commencement and Time for Completion
  - Waiver of Time for Completion
  - Compensable & Excusable Delays
  - Substantial completion
  - Damages for Late Completion
  - Liquidated Damages
  - No Damage for Delay Clause

- **Construction Scheduling**
  - Types of Schedules
    - Bar Chart
    - Critical path Method
  - Standard Schedule Specifications
  - Baseline Schedule
  - Schedule Updates
  - CPM Proof of Delay Claims

**Class 4:**
- **Changes**
  - Purposes of a change order clause
  - Change order process
  - Authority to issue changes
  - Notice requirements for claims for changes
  - Adjustments to contract price and completion date
  - Constructive changes
  - Duty to perform changed work
  - Cardinal changes
  - Administration of changes
  - Release – Accord & Satisfaction

- **Differing Site Conditions**
  - Common Law
  - Regulatory and other standard frameworks
  - Elements of a federal differing site condition claim
    - Type 1
    - Type 2
  - Limitations on claims for a differing site condition claim
  - How states handle differing site condition claims

**Class 5:**
- **Mechanics Liens**
  - History
  - Statutory framework
  - Lien categories
Requirements for a lien
What is lienable
Interest subject to a lien
Perfecting the lien
Priorities
Public Projects
Waiver & Release
Bankruptcy

Termination & Default
Contractual termination provisions
Material breach
Termination by Agreement
Notice & Opportunity to cure
Wrongful termination
Termination & the Surety

Class 6:
Defective Construction
Overview
Owner claims against the Contractor
Claims against the Design Professional
Spearin Doctrine & conflicting warranties
Time based defenses to liability

Insurance & Bonds
Role of Insurance
Contractual Insurance Requirements
Workers Compensation Insurance
General Liability Insurance Policies
Builders Risk
Waivers of Subrogation
Professional Liability Insurance
Surety Bonds
Performance Bonds
Payment Bonds

Class 7:
Damages
Introduction
General measures of damages
Entitlement/quantification of damages
Calculation and proof of compensatory damages
Mitigation of damages
Contractual and other limitations of liability

Economic Loss Rule in Construction Law
Economic loss rule
Scope and purpose
Class 8:
- **Dispute Resolution Process**
  - History of ADR in construction
  - Spectrum of dispute prevention
  - Application of ADR in construction settings

Class 9:
- **Dispute Resolution Process**
  - Conclusion of Dispute Resolution Process
- **Review of Course for Final**

Class 10:
- **Final Exam**
  - Multiple Choice
  - Essay/Written

**Text:**


**Software:** None

**Grade Determination:**

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