Northwestern University  
Executive Management for Design and Construction

Construction Law and Risk Management  
PROJ_MGT 463

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.
**Week-by-week description of the course:**

**Week 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

**Week 2**  
**Design Undertakings and Contractors**

**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 of sub vs. supplier
- Selection of subs and suppliers
- Subcontract 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
Week 3  Construction Safety, Payment, Contract Time/Completion, Construction Scheduling

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

Payment cont.
- 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 Claim

Week 4  Changes and Differing Site Conditions

Changes
- Purposes of 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
Week 5  
**Mechanics Liens and Termination & Default**

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

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

Week 6  
**Defective Construction and Insurance & Bonds**

**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

Week 7  
**Damages and Economic Loss Rule in Construction Law**

**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
- Application where parties are in privity of contract
- Application where parties are not in privity of contract
- Economic loss as applied in Torts

Week 8  
**Dispute Resolution Process**

- History of ADR in construction
- Spectrum of dispute prevention
- Application of ADR in construction settings

Week 9  
**Dispute Resolution Process & Review**

- Conclusion of Dispute Resolution Process
- Review of Course for Final

Week 10  
**Final Exam**

- Multiple Choice
- Essay/Written
Grade Determination:
Final Exam ....................................... 75%
Homework/Paper ............................... 15%
Class and Study Participation .......... 10%

Text:
Construction Law by William Russell
Allensworth, Ross J. Altman, Allen L.
Overcash, Carol J. Patterson; ABA, 2009

Legal Aspects of Architecture,
Engineering and the Construction
Process by Justin Sweet, Wadsworth Inc.
Publisher, 8th Edition, 2009

NOTE: This course description explains the essence
of the material covered. Canvas is the best source
for the most up-to-date information about specific
details for any given offering of the course.

Software:
None