Construction Law: Fall Semester 2013

Tentative Course Plan

Pre-class: Reading Assignments: Article, "The Case for Construction Law Education"; Chapter 1, "Construction Law: The Historical Perspective"; Chapter 2, "Participants in the Design and Construction Process"; Chapter 3, "The Owner’s Role"; Chapter 4, "Project Delivery Systems".

Class #1: August 26, Project Tour

Field trip to construction project ("focus project"); Review the project under the direction of the manager of the project, including a walk-through of the site and extended discussion of the background and logistics of the project. Prior to the class, the students were given a copy of the form of contract used on the project (AIA Document A133 - 2009).

Learning objective: Understand by practical example, the estimation of the cost of a real project, the nature of the contracts between the parties, and the handling of problems on the project, including delays and changes in design. The facts of this project are to be used as illustrations in class during the semester.

Assignment for next class: Readings previously assigned to the students. Consider amendments to the standard form of contract actually used on the focus project.

Class #2: September 9, Project Delivery Systems

Introduction to class; discuss syllabus; student introductions; grading system; interchange of information online; class participation; discuss preparation of papers, etc.

Discuss pros and cons of various delivery systems as they might apply to the focus project and other projects. Consider problems with the choices made for the focus project, including changes made in the form of contract that was used by the parties.

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Learning objective: Understand the different legal arrangements which can be made to construct projects and the respective advantages and disadvantages of each system, using the focus project as a practical example.

Assignment for next class: Chapter 5, "Contracting for Construction Projects", as well as on-line postings relating to the form of contracts used for construction projects.

Class #3: September 16: Construction Contracts

Discussion: In depth look at the organization and form of construction contracts and their legal effect. Illustrations include the changes to the form of contract on the focus project, as well as other form contracts used in the industry.

Assignment for next class: Construction Law, Chapter 6, "The Design Undertaking," and Chapter 13, "Architect’s Contract Administration"; sample contract form; possible power point presentation by architecture?; student postings on contract form or presentation?; design-build hypothetical?

Class #4: September 23, Design and Design-Build

Discussion: The circumstances of designers' responsibilities and liabilities independently (reference sample contract form) and in the design-build context (reference hypothetical?).

Learning Objective: Comprehend what designers do and the process they use in preparing a finished design. Understand the significance and meaning of contract provisions dealing with design work and their effect upon legal responsibilities and liabilities of designers.
Assignment for next class: Construction Law, Chapter 8, "Contractor Selection"; judicial and legislative authority on public bidding; hypothetical postings.

Class #5: September 30, Public Bidding and Contracting

Discussion of peculiar rules regarding the bidding and performance of public construction work and the liabilities attended to it - consider hypothetical and/or postings? Discussion of the preparation and submission of bids for construction projects.

Learning Objective: Become familiar with the general differences between public contracting as its form is dictated by statutes and regulations and private contracting whose form is determined by agreement. Become familiar with the preparation and consideration of bid proposals in both public and private work.


Class #6: October 7, Low-Tier Construction Parties

Discussion centering on the legal effect of an absence of privity between parties performing work on a construction project, including consideration of the form of subcontracts between the parties and to legal claims by and against such parties relating to them as demonstrated by the hypothetical.

Learning Objective: Comprehend the methods of administering and concluding a construction project which has many unrelated parties working together on the project and understand the effect of this on their rights and responsibilities.


Class #7: October 14, Pricing and Payment for Construction Contracts

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Discussion of advantages and disadvantages of various forms of pricing (such as cost plus with a guaranteed maximum amount) and the administration of partial payments. Consider hypotheticals and/or postings.

Learning Objective: Become familiar with the variety of ways that construction work is paid for and the interaction of various payment methods with the contract requirements of particular projects.

Assignment for next class: Construction Law, Chapter 17, "Differing Site Conditions"; postings on differing conditions - including sample contract provisions and case authority; hypothetical; student postings.

Class #8: October 21, Differing Conditions

This class occurs on Tuesday as a result of the fall break on Monday. Discuss the relative rights and liabilities of the parties under various hypothetical cases and various contract provisions.

Learning Objective: Understand that unexpected conditions are likely to occur in a construction project and should be considered in the legal agreements executed in advance of the project.

Assignment for next class: Construction Law, Chapter 16, "Changes";

Class #9: October 28, Differing Conditions and Changes

Discussion of the legal implications of contract provisions regarding project conditions as well as the handling of a differing conditions problem based on the hypothetical. Consideration of student postings. Also, discussion of changes in the work and their impact on the construction project, considering various contract provisions.

Learning Objective: Understand the relationship of changes and different conditions unexpectedly encountered on a construction project and how these occurrences can impact the project.
Class #10: November 4, Pricing Changes in Work and Schedules

Discussion concentrating on the manner of administering and pricing changes, in light of sample contract provisions and information in lecture. Consideration of student postings.

Learning Objective: Understand why changes are made in the design of construction projects and learn to prepare construction agreements that deal with such changes in advance of their occurrence. Comprehend how important time is to the performance of construction work and how alteration of the performance time can affect the assumptions of the project—consider how contract provisions should deal with this problem.

Assignment for next class: Construction Law, Chapter 19, Mechanic’s Liens, and sections 20.09 - 20.13 of Chapter 20, Insurance and Bonds, in Construction Law, Neb. Rev. Stat. §§ 52-118 through 52-118.02 (Little Miller Act) and 52-126 through 52-159, and four court cases.

Class #11: November 11, Construction Security; Liens and Bonds

Discussion of mechanics liens and surety bonds.

Learning Objective: Understand the security of parties performing construction work, as well as the risks and security of parties investing in construction projects. Consider what security parties who participate in construction projects have if payment to them fails and learn to investigate and advise them of that problem in advance.


Class #12: November 18, Construction Claims and Disputes

Discussion based on effect of contract provisions on common construction claims for changes and differing conditions. Consideration of contractual provisions which limit the rights of parties to assert claims for time and money.

Learning Objective: Understand how to investigate and deal with the legal rights and liabilities of parties to a construction project where a dispute arises between several parties.
Assignment for next class: Construction Law, Chapter 21; Dispute Resolution Processes.

Class #13: November 25, Dispute Resolution

Discussion based on the relative advantages and disadvantages of various methods of dispute resolution. Consideration given to the function of counsel representing parties in differing resolution systems.

Possible discussion of student papers.

Class #14: December 2, Discussion of Student Papers

Summary presentation by each student of the information in their paper with limited questions and discussion from other class members.