

高等学校双语教学系列教材

建设合同商务与法律原理

(英文版)

Construction Contracting Business and Legal Principles

[美] Stuart H. Bartholomew 著



中国建筑工业出版社

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China Architecture & Building Press

著作权合同登记图字：01-2006-0625 号

图书在版编目(CIP)数据

建设合同商务与法律原理(英文版)/(美)Bartholomew 著. —北京: 中国建筑工业出版社, 2006
(高等学校双语教学系列教材)
ISBN 7-112-07634-X

I. 建... II. B... III. 建筑工程—经济合同—高等学校—教材—英文
IV. D913

中国版本图书馆 CIP 数据核字(2005)第 156260 号

Authorized Adaptation from the English language edition, entitled CONSTRUCTION CONTRACTING: BUSINESS AND LEGAL PRINCIPLES, 2nd Edition, 0130910554 by BARTHOLOMEW, STUART H., Published by Pearson Education, Inc, publishing as Prentice Hall, Copyright © 2002, 1998 by Pearson Education, Upper Saddle River, New Jersey 07458.

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English language adaptation edition published by PEARSON EDUCATION ASIA LTD. and CHINA ARCHITECTURE & BUILDING PRESS Copyright © 2006.

本书由美国培生教育出版集团授权在中国大陆出版、发行

责任编辑: 戚琳琳 尹珏祥
责任设计: 郑秋菊
责任校对: 王雪竹 张 虹

高等学校双语教学系列教材

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中国建筑工业出版社出版、发行(北京西郊百万庄)

新华书店经销

北京嘉泰利德公司制版

北京建筑工业印刷厂印刷

*

开本: 880 × 1230 毫米 1/16 印张: 21¼ 字数: 500 千字

2006 年 1 月第一版 2006 年 1 月第一次印刷

定价: 45.00 元

ISBN 7-112-07634-X

(13588)

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(邮政编码 100037)

本社网址: <http://www.cabp.com.cn>

网上书店: <http://www.china-building.com.cn>

出版说明

教育部于2001年出台了《关于加强高等学校本科教学工作提高教学质量的若干意见》，明确了高等学校要积极开展双语教学工作。目前各高校根据教育部的要求，陆续开设了双语教学课堂。

为了配合建筑院校的双语教学，满足双语教学的需要，我社策划引进了这套《高等学校双语教学系列教材》。通过本系列教材的学习，可以使学生有效提高外语水平，了解和掌握学科专业及其前沿内容。该套丛书中，我们率先引进了《结构分析》(Structural Analysis)、《土木工程材料科学与技术》(The Science and Civil Engineering Materials)、《工程项目管理》(Construction Project Management)和《建设合同商务与法律原理》(Construction Contracting)四册，土木工程其他专业课程英语原版教材，根据需求，我们会陆续引进，不断充实和完善。为了更好地适应我国双语教学的专业特点，我们分别邀请了北京工业大学建筑工程学院的高向宇老师审阅了《结构分析》分册、李悦老师审阅了《土木工程材料科学与技术》分册、章慧蓉老师审阅了《工程项目管理》和《建设合同商务与法律原理》分册，他们对不符合我国建筑行业标准 and 教学内容的章节进行了删节，同时保持了原版教材的特点。

《结构分析》一书工程背景强，附有大量例题、习题和综合训练。《土木工程材料科学与技术》内容全面翔实、深入浅出、细节清晰。《工程项目管理》涵盖面广，包括了施工管理、招投标和合同法规等方面的内容。《建设合同商务与法律原理》侧重于商务和法律原理，理论性强，内容严谨系统，每章都有问题与训练。本套丛书可作为建筑院校本科生的双语专业教材使用。

本书为《高等学校双语教学系列教材》之《建设合同商务与法律原理》分册，可供工程管理、土木工程专业的双语教学使用，也可供相关专业师生、工作人员学习参考。

《高等学校双语教学系列教材》是我们进行双语教学教材工作的一种尝试，在引进和编辑过程中难免会有不足之处，敬请广大读者批评指正。

中国建筑工业出版社

2005年12月

Foreword

After completion of my formal civil engineering training, I pursued a career as an engineer and executive employed by contractors in the heavy construction industry. Before too long, I became involved with a number of intractable disputes with a project's owner in connection with a tunnel contract I was managing. My employer suggested that I meet with our firm's lawyer to obtain guidance regarding some contract issues, and during that meeting and subsequent ones, I quickly came to realize how little I knew about some of the legal and practical aspects of construction contracts, despite having been exposed to an engineering school course on contracts. I also became aware that most of the lawyers with whom I was dealing had less than a full appreciation of the real-world challenges imposed upon those who manage construction.

I subsequently discovered that the ignorance I just described is common. Unfortunately, many, if not most, professionals involved in the construction process do not have a thorough practical understanding of the law as it applies to the contracting business. Those of us involved in the industry work in a highly complex and constantly evolving world. In addition to the obvious expertise required in engineering, construction methods, equipment, and costs, our knowledge must also encompass such other disciplines and specialties as politics, the environment, labor, finance, banking, accounting, taxes, safety, insurance, and bonding. With all of these burdens, it is not surprising that many practitioners have only a rudimentary and sometimes mistaken understanding of our construction contracts and the law that applies to them. Both owners and contractors have great sensitivity and concern with securing and protecting their rights. Many disputes would be avoided, however, if more of those involved had knowledge, greater sensitivity, and concern regarding their responsibilities as parties to the process.

Over the years, our industry has burdened the nation's courts and other resources with many disputes that the contracting parties have been unable to resolve internally. The industry has been making heroic efforts to reduce this burden

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with some success, but much more needs to be done. The enhancement of the parties' practical knowledge of the law will be helpful. Many disputes have at their core a lack of understanding of the law and its application to construction contracts. Construction professionals are not the only ones who are ignorant. The problem is complicated by an occasional, poorly considered, and confusing court decision that complicates and modifies long-settled legal principles.

With this background, the author presents a comprehensive overview of some of the legal principles and practices that relate to contracting for construction. While this book is designed for use as a text for a university course, students as well as practitioners employed by all of the parties will be better equipped to confidently supervise and manage the construction of our infrastructure armed with the information and wisdom contained herein. The incidence of disputes no doubt will be reduced, and our society and industry will be the beneficiary.

Norman A. Nadel, P. E.

Former Chairman & CEO, MacLean Grove & Company, Inc.

Fellow, American Society of Civil Engineers

Member, National Academy of Engineering

Preface to the Second Edition

In general, this second edition incorporates numerous changes and additions to every chapter of the first edition based on three years of the book's use as a classroom text since the publication of the first edition in 1998. Most of these changes are minor and are in response to student questions and comments. Numerous additional examples have been included to illustrate points that needed clarification.

More specifically, the material on reports of physical site conditions has been shifted from its previous location in Chapter 4 to a more appropriate place in Chapter 5 on contract "red flag" clauses. Chapter 18, on allocating responsibility for delays, has been extensively revised and expanded with new material and illustrations. Finally, a new Chapter 22 on the important subject of construction contract claims has been included before the final chapter in the book on dispute resolution, which now appears as Chapter 23.

The response from university faculty who use the book has been encouraging and my sincere thanks are due to them for the helpful comments I have received. I would also like to thank the reviewers of this second edition, who include David Bilbo, Texas A&M University; Dianne H. Kay, Southern Illinois University; and John Wiggins, New Jersey Institute of Technology. Finally, I remain grateful to Ed Francis, Executive Editor at Prentice Hall, for his continued encouragement and support; to the entire Prentice Hall editorial staff; and especially to my students at California State University, Chico, who have been immensely helpful in revising this second edition.

Stuart H. Bartholomew
Chico, California
March 2001

Preface to the First Edition

This book was written primarily as a teaching text for senior students in baccalaureate university programs in construction engineering or construction management who plan careers in the contracting or construction management segments of the industry. It should also serve as a useful reference for the younger, less-experienced person in construction contracting or construction management organizations as well as owners of small contracting firms or related businesses. The material, drawn from various sources, has been organized and presented in the light of the writer's many years in the industry and 13 years' experience in teaching construction management courses at California State University, Chico.

I am not a lawyer, and this book does not purport to offer legal advice. A competent construction attorney should always be sought for that purpose. This book does, however, furnish practical guidance for construction practitioners in typical everyday situations empirically by examination of the more common case law holdings and the customs and practices of the industry.

The field of construction law is so broad that difficult choices must be made in deciding what to include in a text primarily intended for a single three-semester-hour university course. Accordingly, I have tailored the material to those areas that, in the light of my own experience, seem most fundamental, leaving such topics as claims preparation, presentation, and defense; damages quantification; and CPM scheduling techniques, and the like to the authors of the many excellent specialized texts on these subjects available today. Similarly, I have excluded detailed discussion of mechanic lien laws and similar topics that vary widely from state to state.

The Table of Contents should provide the reader an immediate referral to topics of particular interest. The key words and concepts used and developed in each chapter are listed in the beginning of the chapter. These should prove helpful as a study guide and to test recollection as the reader completes the chapter. Also, each chapter concludes with a series of questions and problems. The questions provide a direct opportunity for testing comprehension of the material. The problems have

been designed to develop the reader's understanding in the context of typical industry situations.

Many individuals have indirectly contributed to this book. They include Harvey Slocum, a legendary figure in heavy construction, who gave me my first job more than 50 years ago, and John Soult, Wallace Hunt, and Floyd Crawford (all now deceased) who furnished continual encouragement and support during my years at Fruin-Colnon Corporation. Also, extremely capable construction attorneys have skillfully guided me over the years and contributed to my understanding of legal matters. They include Harold Blasky, Esq., with both the law firms of Max E. Greenberg, Trayman, Cantor & Blasky and Schnader, Harrison, Segal & Lewis; Overton Currie, Esq., Aubrey Currie, Esq., and Tom Kellerher, Esq., all with the law firm of Smith, Currie & Hancock; John Tracy, Esq., at various times with the law firms of Lewis, Mitchell, & Moore, Gadsby & Hanna, and Thompson & Waldron; Lewis Baker, Esq., with the law firm of Watt, Tieder & Hoffer; James Hawkins, Esq., Michael Wilson, Esq., and Larry Lubner, Esq., all with Greensfelder, Hemker & Gale; and William McInerney, Esq., and Robert Leslie, Esq., with the law firm of McInerney and Dillon. In addition, I would like to thank Robert Leslie, who stole many hours from his busy schedule to review an early draft of the book and offered countless helpful criticisms and suggestions for improvement.

Finally, shared construction experiences with my many friends—engineers, owners, and contractors alike—have inevitably shaped the content of this book. These individuals will have no difficulty in recognizing much of themselves in its pages.

To all who have shared and influenced my life in construction, named and not named, I am profoundly grateful. This book is my offer of thanks—by the means of passing on to young people today, with their careers ahead of them, what we collectively learned and wish we had known when we were their age.

Stuart H. Bartholomew
Chico, California
August 1996

Contents

CHAPTER 1 INTERFACE OF THE LAW WITH THE CONSTRUCTION INDUSTRY 1

The Typical Parties 2

- Construction Contractors and Subcontractors 2
- Architect/Engineers 2
- Construction Owners 2
- Service and Supply Organizations 3
- Labor Force 3
- Local, State, and Federal Governments 3
- General Public 4

Rules for Participants 4

- Contracts 4
- Laws, Statutes, and Regulations of Governmental Agencies 5
- Tort Law 7

Liability in the Construction Process 7

- Contract Liability 7
- Tort Liability 8
- Statutory Liability 8
- Strict Liability 8

Conclusion 9

Questions and Problems 10

**CHAPTER 2 CONTRACT FORMATION, PRIVACY OF CONTRACT,
AND OTHER CONTRACT RELATIONSHIPS 13****What Constitutes a Contract? 14**

Offer 14

Acceptance 16

Consideration 17

Contract Must Not Be Contrary to Law—Nonenforceable Contracts 18

Privacy of Contract and Other Contract Relationships 18

Privacy of Contract 18

Third-Party Beneficiary Relationship 19

Third-Party Beneficiary Intent 20

Multiple Prime Contracts 20

Conclusion 22**Questions and Problems 22**

CHAPTER 3 THE PRIME CONTRACT—AN OVERVIEW 25**The Parties to Construction-Related Prime Contracts 26**

Owner–Architect Contracts and Owner–Engineer Contracts 26

Owner–Construction Manager Contracts 26

Owner–Contractor Contracts 26

The Nature of the Contractual Services Provided 27

Design Only Services 27

Construct Only Services 27

Design–Construct Services 27

Turnkey and Fast-Track Design–Construct Services 28

Construction Management Services 29

Commercial Terms 30

Cost Plus Percentage Fee Terms 31

Cost Plus Fixed Fee Terms 32

Target Estimate (Cost Plus Incentive Fee) Terms 32

Guaranteed Maximum Price Terms 33

Fixed-Price Contracts 33

Conclusion 35**Questions and Problems 35**

CHAPTER 4 PRIME CONTRACT—FORMAT AND MAJOR COMPONENTS 39**Standard Forms-of-Contract 40**

- Federal Government Construction Contract 40
- American Institute of Architects Contracts 41
- Associated General Contractors Contracts 41
- Engineers Joint Contract Documents Committee Contract 41
- State Highway Department Contracts 41
- Other Agency Contracts 42
- One-of-a-Kind Contracts 42

Typical Documents Comprising the Contract 42

- Bidding Documents 43
- General Conditions of Contract 45
- Supplementary Conditions of Contract 45
- Specifications 46
- Drawings 46
- Reports of Investigations of Physical Conditions 46

Conclusion 47**Questions and Problems 47**

**CHAPTER 5 OWNER-CONSTRUCTION CONTRACTOR
PRIME CONTRACT "RED FLAG" CLAUSES 51****Threshold "Red Flag" Clauses 52**

- Dispute Resolution and Governing Law Clause 53
- Changes Clause 54
- Differing Site Conditions Clause 54
- Delays and Suspensions of Work 54
- Terminations and Partial Terminations 55

Other Important "Red Flag" Clauses 56

- Time Provisions 57
- Liquidated or Actual Damages for Late Completion 57
- Site Availability and Access to the Site 58
- Payment and Retention Provisions 60
- Reports of Physical Site Conditions 62
- Exculpatory Clauses in General 65
- Insurance and Bond Provisions 65
- Indemnification Requirements 65
- Measurement and Payment Provisions 66

Variation in Quantities Clause	66
Equal Employment Opportunity and Disadvantaged/ Women-Owned Business Requirements	67
Escalation Provisions	68

Conclusion **68**

Questions and Problems **68**

CHAPTER 6	LABOR AGREEMENTS	71
	The Parties	72
	Common Types of Labor Agreements	73
	Labor Agreement Threshold "Red Flag" Provisions	76
	Union Security Provisions	76
	Hiring Hall Provisions	77
	Grievance Procedures	77
	Work Stoppage/Lockout Provisions	78
	Subcontracting Clause	78
	Other "Red Flag" Provisions	78
	Wage/Benefits Hourly Rates	79
	Normal Workday and Workweek	79
	Overtime Definition and Pay Premium	80
	Shift Work and Pay Premium	80
	Work Rules and Manning Provisions	81
	Steward Provisions	82
	Me Too/Most Favored Nation Provisions	83
	Conclusion	83
	Questions and Problems	84

CHAPTER 7	PURCHASE ORDER AND SUBCONTRACT AGREEMENTS	87
	Purchase Orders	88
	Goods or Provision of Services?	88
	Use of Purchase Orders for Certain Jobsite Services	89
	Purchase Order Quantity Limitations	89
	Conflicts with Seller's Sales Quotations	89
	Flow-Down Language from Prime Contracts	90

"Red Flag" Purchase Order Provisions 91

Necessary Identifying Information	91
Description of the Goods Purchased	91
Shipping Instructions	91
Pricing and Basis of Quantity Measurement	92
Payment and Retention Provisions	92
Specified Delivery Schedule	94
Required Delivery Point	94
Sales Taxes	95
Purchase Order General Conditions	95
Special or Supplementary Provisions	96
AGCC Forms of Purchase Order Agreements	97

Subcontract Agreements 97**Subcontract "Red Flag" Provisions 98**

Necessary Identifying Information	98
Description of the Subcontract Work	98
Pricing and Basis of Quantity Measurement	99
Payment and Retention Provisions	99
Contractor Control of Performance Time Requirements	99
Damages in the Event of Late Completion	100
Subcontract Changes Clause	101
Insurance and Bond Requirements	101
Indemnification	101
48-Hour and 72-Hour Clauses	102
Union Labor Only Clause	102
AGCC Forms of Subcontract	103

Conclusion 103**Questions and Problems 103**

CHAPTER 8 INSURANCE CONTRACTS 107**Worker's Compensation and
Employer's Liability Policies 108**

Worker's Compensation Section	109
Employer's Liability Section	109
USL&HW Act and the Jones Act	109
Premium Structure	110
Premium Modifiers	110

Public Liability Policies 111

- Normal Liabilities That Are Covered 112
- Exclusions, Endorsements, and Deductibles 113
- Monetary Limits—Primary and Umbrella Policies 113
- Premium Structure 113
- Definition of Occurrence 114
- P & I Policies 114

Builder's Risk Policies 114

- Limitation on Policy Coverage 115
- Named Peril v. All Risk Policies 115
- Exclusions and Deductibles 115
- Temporary Structures 117
- Premium Structure 117
- Monetary Limits of Policy 117
- Reasons for Carrying Builder's Risk Insurance 118

Equipment Floater Policies 118

- Method of Determining Loss 118
- Premium Structure 119
- Equipment Floater Insurance for Marine Equipment Operations 119
- Evaluating the Need for Equipment Floater Insurance 119

Miscellaneous Policies for Special Situations 119**Owner-Provided Insurance Programs 120****"Red Flag" Insurance Provisions 120**

- Named Exclusions 120
- Additional Named Insureds 121
- Deductibles 121
- Policy Term 121
- Subrogation 122
- Policy Cancellations 122

Recent Trends in the Construction Insurance Industry 122

- Claims-Made v. Occurrence Policies 122
- Premium Escalation and Diminished Coverage 123

Conclusion 123**Questions and Problems 123**

Relevant Parties and Surety Bond Terms 128

Surety 128
Principal 128
Obligee 128
Guarantee 129
Penal Sum 129
Premium 129
Indemnitor 129

How Do Surety Bonds Work? 130

Indemnity Agreement 130
Surety Bonds v. Insurance Contracts 130
How Good Is the Guarantee? 130
Surety's Belief in Contractor's Ability to Perform 131

Bid Bonds 131

Bid Bond Guarantee 131
Bid Bond Penal Sum 131

Performance Bonds 132

Performance Bond Guarantee 132
Surety's Options to Make Good the Guarantee 132
Penal Sum—How Much Does the Surety Pay? 133
Owner's Misconception About Performance Bonds 133
Excess Early Contract Payments 134
Contractor Protection of Bonding Capacity 135

Labor and Material Payment Bonds 135

Labor and Material Payment Bond Guarantee and Claimants 135

Other First-Tier Bonds 137

Work Guarantee Bonds 137
Lien Discharge Bonds 138

Subcontract Bonds and Material Supplier Bonds 138**Conclusion 138****Questions and Problems 139**

CHAPTER 10 JOINT-VENTURE AGREEMENTS 141**Joint and Several Liability 142**

Conventional v. Item Joint Ventures 142**Conventional Joint Ventures 143**

- Formation and Termination Matters 143
- Participation Percentages 144
- General Management Matters 145
- Working Capital Matters 146
- Accounting Matters 147
- Bond and Indemnification Matters 147
- Insurance Matters 148
- Partner Bankruptcy Provisions 149
- Construction Equipment Acquisition and Disposal 149

Item Joint Ventures 150

- Comparisons with Conventional Joint-Venture Agreements 150

Conclusion 151**Questions and Problems 151**

CHAPTER 11 BIDS AND PROPOSALS 153**Public and Private Sector Bidding 154****Public Bidding Statutes 154**

- Federal Construction Contract Procurement Policy 155

Public Owners' Actions After Bids Received 156

- Material Improprieties 156
- Factual Determination of the Low Bid 156
- Responsive and Responsible Bidders 158
- Rejection of Late Bids 160
- Rejection of All Bids 161

Bid Irregularities/Informalities 161

- Major and Minor Irregularities/Informalities 162
- Rule for Determining Major or Minor Irregularities 162

Bidder's Property Right to the Contract 163**Bid Protests 163**