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CIVL 402


Contracts

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September 11, 2025

Agenda

Contracts

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- Contract Fundamentals
 - Various Issues
 - Two Contract Model
 - Breach of Contract
 - Important Terms for Engineers

Contract Fundamentals

Definition

“A promissory agreement between two or more parties that creates, modifies, or destroys a legal relationship.”

Contract Fundamentals

Essential Ingredients

- Offer
- Acceptance
- Consideration
- *Consensus ad idem*
- Legality
- Competent parties

Relevant Issues

Verbal vs. Written

- Oral contracts are binding
- Written contracts are better
 - Volume of terms
 - Passage of time
 - Parties' understanding
 - Evidentiary issues

Relevant Issues

Express and Implied Terms

- Express terms: appear in the contract itself
- Implied terms: form part of the contract via other laws
 - Standard of work or services
 - Reasonable time
 - Site access and space
 - Warranties
 - Duty of good faith/fairness

Relevant Issues

Unenforceable Contracts

- Misrepresentation
- Mistake
- Duress/undue influence
- Illegal
- Lack of capacity

Two-Contract Model

The Formal Tender/Bid Process

- Invitation to treat
- Invitation to tender
- Contract “A”
- Contract “B”
- Know the difference!

Breach of Contract

What is a breach?

- One party fails to meet an agreed upon term(s)
 - Failure to perform work in accordance with specifications
 - Failure to complete on time
 - Failure to pay

Breach of Contract

Rights and Remedies

- Termination
- Specific performance
- Liquidated damages
- Other express provisions triggered (termination, delay, etc.)
- Damages

Breach of Contract

Damages

- A monetary sum awarded to the innocent party for breach of contract
- Designed to put the innocent party in the position it would have otherwise been in had the contract been performed successfully
- Unpaid invoice, cost of remediating work, losses caused by delays, loss of sale price, loss of opportunity, diminution in value of property
- The damages being claimed must be:
 - Caused by the breach
 - Reasonably foreseeable (not too remote)
- Duty to mitigate

Important Contractual Provisions

For Engineers...

- Scope of work
- Contract price
- Timeline
- Limitation of liability
- Exclusion clauses
- Intellectual property



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Thank you. Any questions?

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V2.25

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