



Legal Concepts in Contract and Project Management

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Introduction

As a project manager, especially in large engineering projects, there are many legal concerns in contracts, damages and injuries. However different countries and provinces have different law system so it is hard for PMI to integrate the details into the body of knowledge.

I am not a legal practitioner so I cannot deliver professional legal advice. However I got inspired by reading some law articles and would like to introduce some basic concepts and analysis to projects managers regarding to contract and tort laws. Although the legal reference background is based on the Canadian Ontario Engineering Law Examination, it is beneficial for project managers worldwide to grasp those concepts, so that project managers can have a rough idea before consulting their own lawyers.

The scope of this article is as followings. For the contract laws, we are going to introduce five concepts:

- Equitable estoppels
- Fundamental breach
- Unilateral mistakes,
- Contract A in tendering process
- Legality of purpose for non compete clause.

Also we are going to talk about tort laws.

The above legal contracts are presented as a system for case analysis supported by other simple legal concepts. A glossary will be supplemented at the end of the articles.

Contract

Contract is basically a verbal or written agreement between the owner and the service provider. However in order to be legal enforcing (legally binding), five elements have to included inside the contract. This includes:

- Mutual intent
- Offerings and acceptance
- Considerations
- Legality of purpose
- Capacity.

The contract will not be enforceable if any of the above items is missing.

Types of Contracts

There are different types of contracts, using the right type of contract is an effective vehicle to manage the projects.

Type of contract	Description and purpose
Fixed price or lump sum contract	The owner knows the total price needed. It is risky for the contractors if they have a wrong estimation and not good at controlling the scope. There is also an incentive for contractor to cut corners.
Unit-Price contract	It is to choose the lowest price per unit of items. It is used when we are not sure about how many items we want.
Cost Plus Percentage Contract	Provides the contractor with coverage of cost. Percentage of the cost is the rewards. Used when there isn't enough time to finalize the detailed plan. There is an incentive for contractors to increase the cost.
Cost Plus Lump-Sum Fee Contract	Contractors get cost coverage, but instead of a variable rewards, they get a fixed rewards. There is an incentive for contractor to cut corners. Also beware to negotiate the Lump-Sum Fee depending on the scope of the project since it is fixed.
Cost Plus Lump Sum Fee plus Bonus Contract	There is an incentive for contractor to reduce the cost. If the owner has a reasonable original estimation, otherwise the contractor will try to cut cost.
Guaranteed Maximum Price plus Bonus Contract	The capped price control the total cost of the project while the contractor has an incentive to cut cost.
Design-Build Contracts	Owner provides the specification. Allows the work to proceed quickly.

Case study Methodology

To understand the legal principle is one thing. To apply the principles into cases is another thing. To analysis the cases, we use a standard approach:

- Introduction (definition and purpose)
- Legal principles and systems (equitable estoppels, fundamental breach, unilateral mistakes and contract A in tendering process, legality of purpose, tort laws)
- Analysis (mapping the case to the principles)

- Conclusion

In the subsequent section, we present the specification of the legal principle and systems, supported by the glossary. For case analysis, instead of elaborating the whole flow using the methodology, we would just present the analysis mapping after a case is presented.

LEGAL CONCEPTS

Contract Law, Equitable Estoppels

Definition

This is a failure to perform the obligations of a contract because there was no consideration and, as a result, a contract is not formed. This principle is applied when parties re-negotiate terms of a contract but do not exchange “new” consideration. A promise rather than a contract is made.

Purpose

This concept is to prevent a party to a contract from enforcing the strict contractual terms of the contract where doing so would produce an unfair result.

Legal Principles and system

Objects: (defendant), (plaintiff), (initial contract clause), (amended clause), (dependency), (unfair action? not paying, withdraw contract),

Flow:

- 1) Defendant and plaintiff form a contract
- 2) There is a clause that if (plaintiff) does something, the contract is going to be discharged or the payer is not going to pay. (initial contract clause)
- 3) Defendant and plaintiff form a new agreement item, for example a new mutually agreed assumption that has no considerations. (amended clause)
- 4) Amended clause induces a dependency that, plaintiff depends on defendant in order to take certain action otherwise the plaintiff will break the initial contract clause.
- 5) The plaintiff is not giving what the defendant depends on based on amended clause.
- 6) The defendant breach the initial contract clause because of 5)
- 7) The plaintiff is trying to execute the unfair action (refuse to pay or terminate the contract) based on the strict wordings of the initial contract clause.
- 8) Plaintiff ask the court to help
- 9) Court estops the unfair action initiated by the plaintiff.

Case Study

An information technology firm submitted a bid to design and install software and hardware for an electronic technology process to control the operation of large scale sorting equipment for a major international courier company. The firm's fixed guaranteed maximum price was the lowest bid and the contract was awarded to it.

The contract conditions entitled the information technology firm to terminate the contract if the courier company did not pay monthly progress payments within 15 days following certification that a progress payment was due.

Pursuant to the contract, the certification was carried out by an independent engineering firm engaged as contract administrator. The work under the contract was to be performed over a 5 month period.

After commencing work on the project the information technology firm determined that it had made significant judgment errors in arriving at its bid price and that it would face a major loss on the project. Its concern about the anticipated loss was increased further when it also learned that, in comparison with the other bidders, its bid price was extremely low and that, in winning the bid, it had left more than one million dollars "on the table".

Two monthly progress payments were certified as due by the independent engineering firm and paid by the courier company in accordance with the terms of the contract. However, after the third monthly progress payment was certified as due by the independent engineering firm, the courier company's finance department asked the information technology firm's representative on the project for additional information relating to an invoice from a subcontractor to the information technology firm.

The subcontractor's invoice comprised a portion of the third progress payment amount. The courier company's finance department requested that the additional information be provided prior to payment of the third progress payment. There was nothing in the signed contract between the information technology firm and the courier company that obligated the information technology firm to provide the additional information on the invoice from its subcontractor. However, the information technology firm's representative did verbally indicate to the courier company's finance department that the additional information would be provided.

The additional information relating to the subcontractor's invoice was never provided by the information technology firm. Sixteen days after the third progress payment had been certified for payment, the information technology firm notified the courier company in writing that it was terminating the contract because the courier company was in default of its obligations to make payments within fifteen days pursuant to the express wording of the contract. Was the information technology firm entitled to terminate the contract in these circumstances? In giving reasons for your answer, identify and explain the relevant legal principle and how it would apply.

Analysis Mapping

Objects and Flows	Corresponding Mapping in the case
Defendant	information technology firm
Plaintiff	courier company
Initial contract clause	The contract conditions entitled the information technology firm to terminate the contract if the courier company did not pay monthly progress payments within 15 days following certification that a progress payment was due

Objects and Flows	Corresponding Mapping in the case
Amended clause	The courier company's finance department requested that the additional information be provided prior to payment of the third progress payment. There was nothing in the signed contract between the information technology firm and the courier company that obligated the information technology firm to provide the additional information on the invoice from its subcontractor. However, the information technology firm's representative did verbally indicate to the courier company's finance department that the additional information would be provided.
Dependency	The courier company's finance department requested that the additional information be provided prior to payment of the third progress payment.
Unfair action? not paying, withdraw contract	The additional information relating to the subcontractor's invoice was never provided by the information technology firm. Sixteen days after the third progress payment had been certified for payment, the information technology firm notified the courier company in writing that it was terminating the contract because the courier company was in default of its obligations to make payments within fifteen days pursuant to the express wording of the contract.

Contract Law, Legality of Purpose for non-compete clause

Definition

Legality of purpose is one of the essential elements of an enforceable contract. A contract is not enforceable if it is against public policy, such as prevent someone from earning a living through a non compete clause. The court must determine whether the non-compete clause is reasonable and in terms of time and geography. If it is reasonable, then it is enforceable.

Purpose

To prevent owners to violate public policy using contracts.

Legal Principles and system

Objects: plaintiff, defendant, non-compete clause, breach contract, public policy, consideration if the clause reasonable (time and geography), conclusion if the contract is enforceable or not

Flow

- 1) Plaintiff set a non-compete clause with defendant
- 2) Defendant breach the contract clause
- 3) Plaintiff sue defendant

- 4) Defendant claim clause violate public policy
- 5) Court consider if the non compete clause is reasonable
- 6) Conclude if the contract is enforceable or not

Case Study

A professional engineer entered into a written employment contract with a Toronto-based civil-engineering design firm. The engineer's contract of employment stated that, for a period of five years after the termination of employment, the engineer would not practise professional engineering either alone, or in conjunction with, or as an employee, agent, principal, or shareholder of an engineering firm anywhere within the City of Toronto.

During the engineer's employment with the design firm, the engineer dealt directly with many of the firm's clients. The engineer became extremely skilled in preparing cost estimates, and established a good personal reputation within the City of Toronto. The engineer terminated the employment contract with the consulting firm after three years, and immediately set up an engineering firm in another part of the City of Toronto.

The engineer's previous employers then commenced a court action for an injunction, claiming that the engineer had breached the employment contract and should not be permitted to practise within the City limits. Do you think the engineer's former employers should succeed in an action against the engineer? In answering, state the principles a court would apply in arriving at a decision.

Analysis Mapping

Objects and Flows	Corresponding Mapping in the case
Defendant	engineer
Plaintiff	Owner of the engineering design firm
Non-compete clause	for a period of five years after the termination of employment, the engineer would not practise professional engineering either alone, or in conjunction with, or as an employee, agent, principal, or shareholder of an engineering firm anywhere within the City of Toronto
Breach contract	The engineer terminated the employment contract with the consulting firm after three years, and immediately set up an engineering firm in another part of the City of Toronto
Public policy	Prevent someone for earning a living
Consideration if the clause reasonable(time and geography)	Time: 5 years after termination is too long Geography: City of Toronto is a very large city and the engineer is just trying to open his firm at the north end of the city.

Objects and Flows	Corresponding Mapping in the case
Conclusion if the contract is enforceable or not	The non-compete clause prevent the engineer to make a living in his city for 5 years. Therefore the contract is not enforceable.

Contract Law, Unilateral Mistakes and Contract A in Tendering process

Definition

Tendering process is a process that candidates submit a bid to an owner results in the formation of a contract known as Contract A. Therefore, the owner would have numerous contracts with all the contractors who submitted bids.

Unilateral mistake is a mistake made by one party to a contract. Traditionally, the courts have said that when a mistaken is made, this is too bad the mistaken party has to be bound by the terms of contract.

However in Belle River, the Provincial Court of Appeal state that an offeree cannot accept a contract where he knows of the mistake and it affects the fundamental terms of the contract. However, the Supreme Court of Canada in Ron Engineering mortally wounded the principles outlined in Belle River. The court decided that in the tendering process, a contract is formed between the owner and the bidder – called contract A. The owner’s request’s for bids was the offer and the contractor’s submission of a bid was the acceptance. Consideration is exchanged in the form of deposit.

Purpose

This is a system specified to deal with unilateral mistakes in a tendering process. When a mistake is made, can the mistaken party be relieved of the consequences? Is the mistaken party eligible to get the deposit back?

Legal Principles and system

Objects: owner (plaintiff, other party), bidder (defendant, mistaken party), evidence of fraudulent, Does the plaintiff know about the mistakes before the tender is open?, contract A formed?, Contract A offerer, Contract A offeree, Contract A consideration, Breach of Contract A?, Contract A Damages, Contract A Conclusion. Contract B formed?, Contract B offer, Contract B offeree, Contract B consideration, Contract B damage, Contract B Conclusion.

Flow

- 1) Traditionally the courts have said that when a mistaken is made, this is too bad the mistaken party has to be bound by the terms of contract.
- 2) However in Belle River, the Provincial Court of Appeal state that an offeree cannot accept a contract where he knows of the mistake and it affects the fundamental terms of the contract.
 - a. Do we have any evidence that owner was fraudulent?
 - b. Does the plaintiff know about the mistakes before the tender is open?

- c. No matter what, contract B is not formed since it is not defendant intention to form contract B. Go to Stage three.
- 3) However, the Supreme Court of Canada in Ron Engineering The court decided that in the tendering process, a contract is formed between the owner and the bidder – called contract A. The owner’s request’s for bids was the offer and the contractor’s submission of a bid was the acceptance. Consideration is exchanged in the form of deposit.
- 4) If the owner (plaintiff) tried to recover additional damages, then consider if contract B is formed and whether the plaintiff is entitled to additional money. Usually, plaintiff is not entitled because it is not defendant intention to form contract B.

Case Study

An information technology hardware supplier ("BIDCO") for part (a)) submitted a fixed price bid on a major computer installation project for a large engineering firm, in response to the engineering firm's request for proposals. BIDCO included with its tender, as required, a certified cheque for \$100,000 payable to the engineering firm as a tender deposit. The request for proposal also provided that if the tender was accepted by the engineering firm and the successful bidder did not execute the contract enclosed with the request for proposal the engineering firm would be entitled to retain the tender deposit for its own use and to accept any other tender.

BIDCO made a clerical error in compiling its tender submission, omitting an amount of \$1,000,000 from its tender price of \$6,000,000. BIDCO drew the clerical error to the attention of the engineering firm within 5 minutes after the official time for submitting bids had expired. BIDCO indicated that it wished to withdraw its tender but the engineering firm refused to allow it to do so and awarded the supply contract to BIDCO.

Was BIDCO entitled to withdraw its bid? Was the engineering firm entitled to keep the tender deposit? Please provide your reasons and analysis, explaining the relationships and indicate a likely outcome.

Analysis Mapping

Objects and Flows	Corresponding Mapping in the case
Owner (plaintiff, other party),	engineering firm
Bidder (defendant, mistaken party),	BIDCO
Evidence of fraudulent,	No evidence
Does the plaintiff know about the mistakes before the tender is open?,	BIDCO drew the clerical error to the attention of the engineering firm within 5 minutes after the official time for submitting bids had expired.
Contract A formed?, Contract A offerer, Contract A offeree, Contract A consideration	Contract A formed. Owner is offerer. Bidder is offeree. Consideration is a certified cheque for \$100,000 payable to the engineering firm as a tender deposit. engineering firm

Objects and Flows	Corresponding Mapping in the case
Breach of Contract A?,	If BIDCO withdraw its tender
Contract A Damages,	Damages are the amount arising naturally from a breach or those that are reasonably foreseeable or contemplated by the parties when they entered the contract. This case is the \$100,000 deposit.
Contract A Conclusion	engineering firm entitled to keep the tender deposit
Contract B formed?, Contract B offer, Contract B offeree, Contract B consideration, Contract B damage, Contract B Conclusion.	There is no need to consider since Plaintiff is not asking for additional damage recovery. Usually, plaintiff is not entitled anyways because it is not defendant intention to form contract B.

Contract Law, Fundamental Breach

Definition

A fundamental breach of contract is defined as a breach of such a nature that it goes to the root of the contract.

The contract included an exemption clause that limited the defendant liability to certain amount of money for any loss, damage or injury resulting from defendant performance of its service under the contract.

According to Harbutt's Plasticine, if there is a fundamental breach of contract, then the exemption clause attempting to limit liability to a nominal sum is ineffective. At the same time, in England, this principle was overruled by a case called Photo Production, saying that the parties should be bound by the strict wording of the contract and the fundamental breach was irrelevant.

However there has been a move away from the fundamental breach in some country like Canada. According to a decision of the Supreme Court Canada in Syncrude v. Hunter Engineering, if there is a clear and direct language in the exemption clauses, and where the parties are of equal power, the exemption clause will be upheld. Essentially the court preferred to allow parties to agree on whatever terms they wanted to, provided that they had equal bargaining power.

Purpose

To determine the exemption clause is enforceable and the amount of the claim that can be made against defendant.

Legal Principles and system

Objects: Fundamental breach, Exemption clause, Damages

Flow:

- 1) Fundamental Breach
 - a. What is the fundamental breach?
 - b. Why this is a fundamental breach?

2) Exemption Clause

- a. What is exemption clause?
- b. Is it clear?
- c. Is there evidence proving this is unfair bargaining of power?
- d. The parties should have no objections to the exemption clause. If it is not the case, these terms would not have been agreed to.

3) Damages

- a. Damages are the amount arising naturally from a breach or those that are reasonably foreseeable or contemplated by the parties when they entered the contract
- b. Because the total liability was contemplated to be (exemption clause monetary amount), when entering into the contract, damages are foreseeable.
- c. Even though the plaintiff needed to pay more to compensate, the defendant's liability is limited by the exclusion clause.
- d. Therefore, the defendant is only responsible for amount outlined in the exemption clause rather than the full amount paid by the plaintiff to repair the problem.
- e. If the defendant tries to limit its liability to any consequential damages, the direct damages are recoverable but not the consequential damages.

4) Conclusion

- a. According to Supreme Court of Canada in Syncrude v. Hunter Engineering, the wordings of the contract between the parties are "clear/unclear".
- b. Therefore the exemption clause is effective and in the circumstances of a fundamental breach of contract and the defendant is liable/not liable for the amount stated in the exemption clause.

Case Study

ACE Construction Inc. is a company primarily engaged in the business of supplying heavy equipment used in construction. As part of the company's economic plan to expand its business, ACE became interested in the rock crushing business. ACE had become aware that International Metals Company LTD. ("IMCO") required a contractor to crush, weigh and stockpile approximately 250,000 tons of ore. As ACE believed this was an excellent opportunity to venture into the rock crushing business, it decided to tender on the IMCO contract.

In order to tender on the contract, ACE set out to purchase the necessary equipment to crush the material. ACE was contacted by a representative of Rock Busters Ltd., a company which sold such equipment. After visiting the IMCO site and determining the nature of the material to be crushed, the representative discussed the IMCO's contract with ACE. After performing a number of calculations, the representative

determined and guaranteed that the equipment Rock Busters would provide would be capable of crushing the material at a rate of 175 tons per hour.

On the basis of the guarantee, Rock Busters and ACE entered into a contract. Rock Busters agreed that if ACE were successful in its tender to IMCO, Rock Busters would provide the equipment for a price of \$400,000. The contract also contained a provision limiting Rock Buster's total liability to \$400,000 for any loss, damage or injury resulting from Rock Buster's performances of its services under the contract. Based on the information provided by the representative, ACE prepared and submitted its tender to IMCO. IMCO accepted the tender and entered into a contract with ACE to crush the material.

The rock crushing equipment was set up at the IMCO site by employees of Rock Busters and crushing operations commenced. However, from the beginning there was trouble with the operation. One of the components of the crusher, called the cone crusher consistently became plugged by the accumulation of material. Each time the cone crusher became plugged, the operation would have to shut down and the blockage cleared manually. In some cases, such blockages caused damage to the equipment.

Rock Busters made several unsuccessful attempts to correct the defect by making modifications at the site and at its factory. The crushing equipment was never able to crush more than 30 tons of materials per hour.

In order to meet its obligations under the IMCO contract, ACE hired another supplier to correct the defects in the Rock Busters equipment. For an additional \$500,000 the supplier replaced the cone crusher with one manufactured by another company. The modified equipment was able to crush the material at the rate of 180 tons per hour. The total amount which had been paid by ACE to Rock Busters was \$350,000.

Explain and discuss what claim ACE can make against Rock Busters in the circumstances. Would ACE be successful in its claims? Why? In answering, please include a summary of the development of relevant case precedents. In particular, point out how the law changed because of these relevant case precedents. Identify the legal principles on which the precedent decisions were based and apply the appropriate legal principle to the facts.

Analysis Mapping

Objects and Flows	Corresponding Mapping in the case
owner	ACE
defendant	Rock Busters
Fundamental breach? Why?	<p>Yes. A fundamental breach of contract is defined as a breach of such a nature that is goes to the root of the contract</p> <p>The equipment Rock Busters would provide would be capable of crushing the material at a rate of 175 tons per hour.</p> <p>Rock Busters made several unsuccessful attempts to correct the defect by making modifications at the site and at its factory. The crushing equipment was never able to crush more than 30 tons of materials per hour.</p>

Objects and Flows	Corresponding Mapping in the case
Exemption Clause	The contract also contained a provision limiting Rock Buster's total liability to \$400,000 for any loss, damage or injury
Is Exemption clear?	clear
Is there evidence proving this is unfair bargaining of power?	Don't think so Based on the information provided by the representative, ACE prepared and submitted its tender to IMCO. IMCO accepted the tender and entered into a contract with ACE to crush the material.
Damages	Damages are the amount arising naturally from a breach or those that are reasonably foreseeable or contemplated by the parties when they entered the contract. This case is the \$400,000 Because the total liability was contemplated to be (exemption clause monetary amount), when entering into the contract, damages are foreseeable.
Conclusion	According to Supreme Court of Canada in Syncrude v. Hunter Engineering, the wordings of the contract between the parties are "clear/unclear". The exemption clause is effective and in the circumstances of a fundamental breach of contract and the defendant is liable for \$400,000 stated in the exemption clause.

Tort Law

Definition

Tort is a wrong committed by the one person against another. There is no need for a contractual relationship to exist between the parties. In order for a tort action to succeed, it is essential to prove the following on a balance of probabilities:

- 1) The defendant owned a duty of care to the plaintiff.
- 2) The defendant breached the duty of care by his/her conduct
- 3) The defendant caused the plaintiff's injuries.

Purpose

It is to compensate a party that has suffered damages as a result of a negligent act or omission.

Legal Principles and system

Object: plaintiff, defendants (party of defendant, employer, employee), tasks to perform, negligence of firm, negligence of employee, damages

- 1) Duty of care means there is an obligation to perform services using a reasonable degree of care and skill of a prudent and diligent worker in the circumstances
 - a. The parties of defendant should know they plaintiff rely on their expertise to do the work.
 - b. Negligence of firm
 - c. Negligence of employee
 - d. Negligence of employer
 - e. Damages were incurred by the plaintiff from the defendant's negligence.
 - f. Therefore, the defendant breached the duty of care owed to the plaintiff.
- 2) Employee's Liability
 - a. Duty of care means there is an obligation to perform services using a reasonable degree of care and skill of a prudent and diligent worker in the circumstances
 - b. The employee should know the following:
 - i. Negligence of the employee
 - ii. Plaintiff depends on employee expertise to do (tasks to perform)
 - iii. Damages were incurred by the plaintiff because of employee's negligence.
 - iv. Therefore, defendant breached the duty of care owed to the plaintiff.
- 3) Employer Liability
 - a. As the employee employer, employer is vicariously liable for the employee's negligent actions or omissions. As a result the, the employer is negligent and responsible for the damages suffered by the plaintiff.
- 4) Damages
 - a. List out what damages the plaintiff suffered from. The defendants could have reasonably foreseen that its actions could have caused damage
 - b. List out the damages and the amount to repair the product

5) Conclusion

- a. Court would balance the probabilities, determine that the defendants were negligent as they own duty of care, breach the duty of care and caused injuries to the plaintiff.
- b. Damages (quantify the amount) were sustained by the plaintiff and should be recovered against the defendants.

Case Study

An information technology firm assigned to one of its junior employee engineers the task developing special software for application on major bridge designs. The employee engineer had recently become a professional engineer and was chosen for the task because of the engineer’s background in both the construction and the “software engineering” industries.

The resulting bridge software package was purchased and used by a structural engineering design firm on a major bridge design project on which it had been engaged by contract with a municipal government. Unfortunately, the bridge collapsed in less than one year after completion of construction. Motorists were killed and injured.

The resulting investigation into the cause of the collapse concluded that the design of the bridge was defective and that the software implemented as part of the design did not address all of the parameters involved in the scope of this particular bridge design. The investigators concluded that although the design software would suffice for certain types of structures it was not appropriate in the circumstances of the particular subsurface conditions and length of span required for this particular application.

The investigators’ report also indicated that the design software package was not sufficiently explicit in warning users of the software of the scope of the design parameters addressed by the software.

The investigators’ report also stated that even an experienced user of the software might reasonably assume that the software would be appropriate for application on this particular project and that too little attention had been paid to ensuring that adequate warnings had been provided to software users of the limitations on the application of the software.

What potential liabilities in tort lawyer in this case? In your answer, explain what principles of tort law are relevant and how each applies to the case. Indicate a likely outcome to the matter.

Analysis Mapping

Objects and Flows	Corresponding Mapping in the case
Plaintiff	structural engineering design firm
Defendants (party of defendant)	information technology firm, junior employee engineers
Employer	information technology firm
Employee	junior employee engineers

Objects and Flows	Corresponding Mapping in the case
Tasks to perform	special software for application on major bridge designs
Negligence of firm	the design software package was not sufficiently explicit in warning users of the software of the scope of the design parameters addressed by the software vicariously liable fail testing and review of the software
Negligence of employee	design of the bridge was defective
Damages	<p>The bridge collapsed in less than one year after completion of construction. Motorists were killed and injured. The resulting The defandants could have reasonably forseen that its actions or omission could have caused damage. The defendant caused the plaintiffs damages by breaching their duty of care. The damages are the bridge collapsed in less than one year after completion of construction, and motorists were killed and injured.</p> <p>A court would, on a balance of probabilities, determine that the defendants were negligent as: there was a duty of care owed, they breached their duty of care and cuased injuries to the plaintiff. Damages were sustained by the plaintiff and should be recovered against the defandants.</p>

Conclusion

The article introduces equitable estoppels, fundamental breach, unilateral mistakes and contract A in tendering process, legality of purpose for non compete clause, tort laws.

The above legal contracts are presented as a system for case analysis supported by other simple legal concepts. A glossary will be supplemented at the end of the articles.

Although this article focus on legal issues of project and contract management, it is beneficial for project managers worldwide to understand those concepts, so that project managers can have a rough idea before consulting their own lawyers.

Glossary

Consequential Damage

Damage or injury that does not directly and immediately result from a wrongful act, but instead indirectly and/or after elapse of some time. Consequential damage usually

cannot be foreseen and is often unrecoverable through litigation, unless the offending party was notified in advance that the aggrieved party would suffer such damage. Also called indirect damage or special damage. See also consequential loss.

Defendant

A person, company, etc., against whom a claim or charge is brought in a court (opposed to plaintiff).

Exemption clause

Provision in a contract under which one party (usually the one which drafted the agreement) is protected from being sued by the other party for damages, loss, negligence, non-performance, etc., or its liabilities are severely restricted

Liability

A liability can mean something that is a hindrance or puts an individual or group at a disadvantage, or something that someone is responsible for, or something that increases the chance of something occurring

Plaintiff

A person who brings suit in a court

Vicariously Liable

Vicarious liability is a form of strict, secondary liability that arises under the common law doctrine of agency – respondent superior – the responsibility of the superior for the acts of their subordinate, or, in a broader sense, the responsibility of any third party that had the "right, ability or duty to control" the activities of a violator. It can be distinguished from contributory liability, another form of secondary liability, which is rooted in the tort theory of enterprise liability.

Reference

[1] D.L. Marston, "Law for Professional Engineers, Canadian and Global Insights" 4th Edition, 2008, McGraw-Hill Ryerson. ISBN: 978-0070985216

The Author

Eric Tse is an international recognized expert/consultant in Enterprise Access and Identity Management Architecture Design and Implementation. He has been working with international renowned experts in information technology in many prestigious companies. He also pursues research interests in project management, financial models, application/enterprise/solution architectures, compilation technology and philosophy of science.

About Project Perfect

Project Perfect is a project management software consulting and training organisation based in Sydney Australia. Their focus is to provide organisations with the project infrastructure they need to successfully manage projects.

Project Perfect sell “Project Administrator” software, which is a tool to assist organisations better manage project risks, issues, budgets, scope, documentation planning and scheduling. They also created a technique for gathering requirements called “Method H”™, and sell software to support the technique. For more information on Project tools or Project Management visit www.projectperfect.com.au