



# Construction Contracting: Business and Legal Principles (2nd Edition)

By Stuart H. Bartholomew

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Exceptionally practical and authoritative, this introduction to construction contracting as it applies to typical, every-day situations explains “theoretical” ideas in terms of what *really* happens in practice. It emphasizes the more common case law holdings and industry customs that help avoid troublesome legal issues during the completion of a project. Chapter topics cover the law and the construction industry; contract formation, privity of contract, and other contract relationships; an overview of the prime contract—its format and major components; owner-construction contractor prime contract “red flag” clauses; labor agreements; purchase order and subcontract agreements; insurance contracts; surety bonds; joint-venture agreements; bid and proposals; mistakes in bids; breach of contract; contract changes; differing site conditions; delays, suspensions, and terminations; liquidated damages, *force majeure*, and *time extensions*; *allocating responsibility for delays*; *constructive acceleration*; *common rules of contract interpretation*; *documentation and records*; *construction contract claims*; and *dispute resolution*. *For construction managers and other industry professional concerned with legal and business aspects of construction and construction contracting.*

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## **Construction Contracting: Business and Legal Principles (2nd Edition) By Stuart H. Bartholomew** **Bibliography**

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## **Editorial Review**

From the Back Cover

Construction Contracting: Business and Legal Principles, Second Edition, provides an updated, improved look at the impact of contractual issues on the construction industry. Intended for managers rather than lawyers, this guidebook explains the principles and practices of every aspect of the contractual relationship. It emphasizes the more common case law holdings and industry customs so the manager can avoid troublesome legal issues during the completion of the project.

### **Key features of this edition:**

- Examples and illustrations added to aid in reader understanding of the more complex subject matter.
- A completely new chapter on contract claims now precedes the chapter on dispute resolution.
- Several subjects reorganized to provide a smoother flow between chapters.

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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 Luber, Esq., all with Greensfelder, Hemker & Gale; and William McNerney, Esq., and Robert Leslie, Esq., with the law firm of McNerney 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

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Stuart H. Bartholomew  
Chico, California  
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## **Users Review**

### **From reader reviews:**

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