I. TIME AND LOCATION

Time: Mondays, 5:30 - 7:20 p.m.
Location: Room 172

II. INSTRUCTORS

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III. GRADING

Your grade will be based on a written essay-type examination at the end of the course. Class participation, or lack thereof, may be considered in determining your final course grade.

IV. COURSE OBJECTIVES

To recognize the variety of legal issues and problems that can confront owners, contractors, subcontractors, and suppliers during the construction process.

To be able to understand and analyze those issues and problems.

To be able to provide reasonably valuable advice and guidance to clients involved in the construction process.
V. COURSE TOPICS AND READING ASSIGNMENTS

Class 1 – August 20, 2012

A. Overview of Course
   2. American Institution of Architects contract forms.
   3. Additional cases and statutes are listed in this Course Outline.
   4. The grade will be based on final exam (essay format).
   5. Class participation may improve grade.

B. Overview of Construction Industry and Construction Legal issues
   1. The Legal Context of Construction.
   2. What Construction Lawyers Do.
   3. The Players on a Construction Project.
   4. Types of Project Delivery Systems.
   5. Pricing Variations and Risk Allocation.

Assignment:

*Common Sense Construction Law*, Chapters 1 and 2

AIA Contract A101-2007

AIA General Conditions A201-2007

(These two AIA documents are on the disk at the inside back cover of *Common Sense Construction Law*.)
Class 2 – August 27, 2012

A. Contract Formation

B. Requirements for Entering a Valid Construction Contract
   1. Qualified to Transact Business
   2. General Contractors License

C. What is the Contract?
   1. Bid Documents
   2. Contract
   3. General Conditions
   4. Special Conditions
   5. Specifications
      a) Design specifications
      b) Performance specifications
   6. Drawings

D. Contract Interpretation
   1. Defined terms
   2. Parole Evidence
   3. Prior Dealings
   4. Custom and Usages in the Industry

E. Implied Obligations
   1. Duty to Cooperate

Assignment:

Stephenson Brick Co. v. Bessemer Eng’g & Const. Co., 118 So. 570 (Ala. 1928) (contract formation)

Ala. Code, § 10-2B-15.02

Wallace Construction Co. v. Industrial Boiler Co., 470 So. 2d 1151 (Ala. 1985) (qualification)


Ala. Code § 34-8-1, -2


McNairy v. Sugar Creek Resort, Inc., 576 So. 2d 185 (Ala. 1991) (licensing)

Common Sense Construction Law, Chapter 3 I – 3 III (qualifying to do business)

Common Sense Construction Law, Chapter 5 (contract interpretation)


Commercial Contractors, Inc. v. USF&G Co., 524 F.2d 944 (5th Cir. 1975) (Part IV) (parol evidence)

George A. Fuller Co. v. U.S., 69 F. Supp. 409 (Ct. Cl. 1947) (implied duty to cooperate)
Class 3 – September 10, 2012

A. Competitive Bidding on Public Projects
   1. Lowest Responsible and Responsive Bidder
   2. Bid Mistakes
   3. Bid Protests

Assignment:

Common Sense Construction Law, Chapter 4

Ala. Code § 39-2-1 et seq. (public bid laws in Alabama); 39-5-1 et seq. (bid protests)

White v. McDonald Ford Tractor Co., 248 So. 2d 121 (Ala. 1971) (awarding authority discretion; sole source)

Anderson v. Fayette County Bd. of Ed., 738 So. 2d 854 (Ala. 1999) (awarding authority’s discretion; remedies)

General Electric Co. v. City of Mobile, 585 So. 2d 1311 (Ala. 1991) (sole source exception)


Class 4 – September 17, 2012

A. Changes Clause

B. Recovery under the Changes Clause

C. Constructive Changes

D. Cardinal Changes

Assignment

Common Sense Construction Law, Chapter 9

AIA General Conditions A201-2007, Article 7 only

Commercial Contractors, Inc. v. USF&G Co., 524 F.2d 944 (5th Cir. 1975) (oral change)

Ex parte Coleman, 751 So. 2d 1080 (Ala. 2003) (oral change, waiver of writings clause)

Medical Clinic Bd. v. Smelley, 408 So. 2d 1203 (Ala. 1981) (notice of extra work)

Allied Mills, Inc. v. St. John, 152 So. 2d 133 (Ala. 1963) (cardinal change)
Class 5 – September 24, 2012

A. Payment Clauses
   1. Progress Payments
   2. Remedies for Nonpayment
   3. Retainage
   4. Final Payment

B. Substantial Completion

C. Inspection and Acceptance

D. Warranties
   1. Express Warranties
   2. Implied Warranties
   3. Warranty of Plans and Specifications

Assignment:

Common Sense Construction Law, Chapter 12 I – 12 III

AIA General Conditions A201-2007, Articles 3.3.3, 3.5, 4.2.2, 4.2.3, 4.2.6, 4.2.9, 9, 12, 13.5

Ala. Code, § 39-2-12

Dial v. Graves, 351 So. 2d 598 (Ala. 1977) (latent defects)

Mcfadden v. Ten-T Corp., 529 So. 2d 192 (Ala. 1988) (acceptance and negligence)


United States v. Spearin, 248 U.S. 132 (1918) (implied warranty of specifications)


Cochran v. Keeton, 252 So. 2d 313 (Ala. 1971) (implied warranty of habitability)
Broyles v. Brown Engineering, 151 So. 2d 767 (Ala. 1963) (implied warranty)

CONSTRUCTION AND THE LAW
FALL 2012 – COURSE OUTLINE

Class 6 – October 1, 2012

A. Differing Site Conditions
   1. Significance of unforeseen site conditions
   2. Liability for increased costs caused by site conditions
   3. Contractual risk allocation for added site costs

B. Force Majeure Events and Impossibility

Assignment:

Common Sense Construction Law, Chapter 10
AIA General Conditions A201-2007, Article 3.7.4
Mobile Turnkey Housing, Inc. v. Ceafco, Inc., 321 So. 2d 186 (Ala. 1975) (differing site conditions)
C.F. Halstead v. Dirt. Inc., 320 So. 2d 657 (Ala. 1975) (differing site conditions)
Berkel & Co. Contractors v. Providence Hospital, 454 So. 2d 496 (Ala. 1984) (differing site conditions)
AIA General Conditions A201-2007, Article 8.3.1
Alpine Constr. Co. v. Water Works Board of City of Birmingham, 377 So. 2d 954 (Ala. 1979) (force majeure)
Silverman v. Charmac, Inc., 414 So. 2d 892 (Ala. 1982) (commercial impracticability)
Blount Brothers Corp. v. United States, 872 F.2d 1003 (Fed. Cir. 1985) (commercial impracticability)
Commercial Contractors, Inc. v. USF&G Co., 524 F.2d 944 (5th Cir. 1975) (commercial impracticability)
Class 7 – October 8, 2012 and Class 8 – October 15, 2012

A. Time Requirements
   1. Substantial Completion

B. Scheduling Requirements

C. Extensions of Time
   1. Excusable and Non-Excusable Delays
   2. Compensable and Non-Compensable Delays

D. Causes of Delay

E. Claims Process

F. Damages
   1. Contractor
   2. Owner

G. Acceleration

Assignment:

Common Sense Construction Law, Chapter 11
AIA General Conditions A201-2007, Article 3.10, 15.1.5
AIA General Conditions A201-2007, Article 8
Marriott Corp. v. Dasta Construction Co., 26 F.3d 1057 (11th Cir. 1994) (delay)
Pertun v. Harvesters Group, Inc., 918 F.2d 915 (11th Cir. 1990) (no damage for delay conditioned on grant of time extension)
Commercial Contractors, Inc. v. USF&G, 524 F.2d 944 (5th Cir. 1975) (part V, pp. 951-54) (waiver of notice requirement)
Medical Clinic Bd. v. Smelley, 408 So. 2d 1203 (Ala. 1981) (actual notice)
Class 9 – October 22, 2012

A. Remedies for Breach of Contract
   1. Specific Performance
   2. Money Damages
   3. Limitations on recoverable damages

B. Methods for Pricing Claims
   1. Total Cost Method
   2. Segregated Cost Method

C. Measurement of Contractor Damages
   1. Direct Costs
   2. Delay Damages
   3. Acceleration Costs
   4. Inefficiency

D. Measurement of Owner Damages
   1. Direct Damages
   2. Consequential Damages
   3. Liquidated Damages

Assignment:

Common Sense Construction Law, Chapter 16

AIA General Conditions, A201-2007, Article 15.1.6 (waiver of consequential damages)


Fox v. Webb, 105 So. 2d 75 (Ala. 1958) (damages – repair costs)

So. Metal Treating v. Goodner, 125 So. 2d 268, 274-76 (Ala. 1960) (consequential damages)

Milton Constr. Co. v. Alabama Highway Dept., 568 So. 2d 784 (Ala. 1990) (liquidated damages)
Class 10 – October 29, 2012

A. Subcontractor Selection

B. Subcontractor Bidding

C. Key Subcontract Provisions
   1. Flow-Through Clauses
   2. Scope of Work
   3. Payment Clauses
   4. Termination
   5. Directive Power
   6. Indemnification

D. Claims and Disputes
   1. Duty to Coordinate Subcontractor
   2. Responsibility to Owner
   3. Subcontractor Claims Against the Prime Contractor
   4. Pass-Through Claims Against the Owner
   5. Claims Against Third Parties

Assignment:

Ala. Code §§ 8-29-1 to 8 (Prompt Payment Act)

Common Sense Construction Law, Chapter 8, Chapter 4 XV


AIA Contractor-Subcontractor Agreement A401 – 2007

Class 11 – November 5, 2012

A. Risk Management through Contractual Disclaimers

B. Risk Management through Indemnity Provisions and Claims

C. Type of Insurance
   1. Commercial General Liability (CGL) Insurance
   2. Builder’s Risk Insurance

D. Subrogation Rights
   1. Waiver of Subrogation

Assignment:

AIA General Conditions A201 – 2007, Articles 11, 3.18, 10.3.3

Common Sense Construction Law, Chapters 13 I, 13 III, 13 IV, 18


Craig Constr. Co. v. Hendrix, 568 So. 2d 752 (Ala. 1990) (indemnification)

Reliance Ins. Co. v. Gary C. Wyatt, 540 So. 2d 688 (Ala. 1988) (failure to obtain insurance for another)

Commercial Fire Ins. Co. v. Capital City Ins. Co., 8 So. 222 (1886) (builder’s risk)

Class 12 – November 12, 2012

A. Mechanic’s Lien Laws
   1. Who has lien rights
   2. What kind of work supports the right to a lien
   3. Full price lien vs. unpaid balance lien
   4. Requirements to perfect a lien
      (a) Notice
      (b) Statement of Lien
      (c) Suite
      (d) Judgment
   5. Lien priorities
   6. Bonding off a lien

B. Sureties and Bonds
   1. The parties
   2. Bonds governed by general contract law
   3. Kinds of bonds
      (a) Bid bonds
      (b) Payment bonds

Assignment:

Common Sense Construction Law, Chapter 3 VI, 14


Bolvig, Rogers, Sears, Alabama Lien and Bond Law (handout)

Davis v. Gobble-Fite Lumber Co., 592 So. 2d 202 (Ala. 1991) (full price vs. unpaid balance lien)


Common Sense Construction Law, Chapter 14

Alabama Code § 39-1-1

Fidelity & Cas. Co. of New York v. Central Bank of Birmingham, 409 So.2d 788 (Ala. 1982) (payment bond surety right of subrogation)

Ex parte Theresa Lawson, 6 So. 3d 7, 2008 WL 2780780 (Ala., July 2008) (equitable subrogation)

AIA A312 – 2010 Payment Bond (handout)
Class 13 – November 19, 2012

A. Sureties and Bonds (cont.)
   3. Kinds of Bonds
      (c) Performance Bonds
   4. The surety’s rights and defenses

B. Termination
   1. By agreement of the parties
   2. Contractual termination
      (a) For cause
      (b) For convenience
   3. Termination by law
   4. Termination and subcontractors

C. Arbitration
   1. Peculiarities, advantages, disadvantages
   2. Enforceability

D. Mediation and Other Forms of Alternative Dispute Resolution

Assignment:

Common Sense Construction Law, Chapters 15, 21

AIA General Conditions A201 – 2007, Articles 14, 15

AIA A312 – 2010 Performance Bond (handout)

Alabama Code § 39-1-1

Commercial Contractors Ins. v. USF&G, 524 F.2d 944 (5th Cir. 1975) (Part VI, p. 954) (waiver of termination rights)

Watts Const. Co. v. Cullman Co., 382 So. 2d 520 (Ala. 1980) (termination by agreement)
Ex parte Woodward Constr., 627 So. 2d 393 (Ala. 1993) (wrongful termination)

Class 14 – November 26, 2012

A. Exam Review – sample questions