

California Polytechnic State University, San Luis Obispo

Construction Management Department

CM334-01, Construction Law, Fall 2019

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Office Hours: ¹	Tuesday & Thursday 10:10 – noon Friday noon – 1:00 pm
Class Days/Times:	Monday & Wednesday 10:10 am to 12:00 noon
Classroom:	186-B303
Prerequisite(s):	CM115 and BUS 207

Course Description

The intersection of law and the construction industry. Topics of study include a survey of most major legal issues potentially encountered during construction activity. 2 activities.

Course Goals and Learning Outcomes

Course Goals:

As a result of this course, you should be able to:

- Describe the substance of a construction contract and express the meaning of performance, evidenced by attainment of learning objectives #1 through #3.
- Comprehend contractual responses to changes and disappointed expectations, time as a performance obligation, and judicial interpretation, evidenced by attainment of learning objectives #4 through #7.
- Understand the purpose of suspension and termination clauses; and explain assurance, claims and dispute resolution processes; evidenced by attainment of learning objectives #8 through #10.
- Identify and analyze ethical issues while demonstrating a basic understanding of construction risks, evidenced by attainment of learning objectives #11 through #15.

Course Learning Outcomes (CLOs):

1. Restate basic axioms of construction contract law.
2. Explain the form and substance of written construction contracts.
3. Describe typical contractual payment, pricing and performance processes.
4. Express the rules associated with concealed or unknown conditions.
5. Describe contractual change processes.
6. Cite examples of liabilities arising from time as a performance obligation.

¹ No office hours on holidays; during finals week; or during the ASC Region 3 competition, October 15, 16 and 17.

7. Interpret contract documents.
8. Describe suspension and termination processes.
9. Explain assurance principles such as warranty, inspection and testing.
10. Describe claims and dispute resolution processes.
11. Describe public bid processes and bid irregularities.
12. Restate key subcontracting issues.
13. Cite examples of ethical issues.
14. Differentiate between the common insurance products by their uses.
15. Differentiate between surety bond types by their uses.

Student and Program Learning Outcomes

The American Council for Construction Education (ACCE) is the accrediting body for Cal Poly's construction management program. The ACCE requires achievement of 20 student learning outcomes (SLOs). The construction management program has identified 20 program learning outcomes (PLOs) that equal or exceed the ACCE SLOs and 5 additional idiosyncratic PLOs.

This course supports the following PLOs:

- PLO 6: Analyze professional decisions based on ethical principles.
- PLO 13: Understand construction risk management.
- PLO 17: Understand the legal implications of contract, common, and regulatory law to manage a construction project.

Topical Outline, Outcomes, and Method of Assessment

This course has embedded assessment instruments for the PLO(s) listed below:

- PLO 6: Analyze professional decisions based on ethical principles.
- PLO 17: Understand the legal implications of contract, common, and regulatory law to manage a construction project.

A Method of Assessment gauges student achievement of each CLO. The Methods of Assessment for this course are:

1. Pre-class, online, multiple-choice, formative quizzes to measure individual student achievement for each chapter.
2. In-class activities evaluated to team achievement grading rubrics and modified by a peer evaluation.
3. Post-module, in-class, multiple-choice summative exams to measure individual student achievement for each module.
4. An in-class, multiple-choice/short essay, comprehensive final exam to measure individual student achievement at the conclusion of the course.

An overview of content, course learning outcomes, program learning outcomes, and methods of assessment are listed in the table below.

Unit	Topical Outline	CLOs	PLOs	Method of Assessment
Module I	Performing the Contract	1-3	17	3
	Meaning and reason for contract; sources of law; consideration; remedies; agreements to agree; implied warranty; and good faith and fair dealing.	1	17	1, 2
	The fully-integrated agreement; and roles and responsibilities of owner, contractor, designer & subs.	2	17	1, 2
	Payment processes; pricing methods; and contractual performance.	3	17	1, 2
Module II	Reforming the Contract	4-7	17	3
	Historical background and modern rules for concealed or unknown conditions.	4	17	1, 2
	The changes clause; contractual change processes; the preexisting duty rule; and the uniform commercial code.	5	17	1, 2
	Time as a performance obligation; liabilities; delay; acceleration; and no damages for delay clauses.	6	17	1, 2
	Interpretive evidence; harmony; conflicting information; and misleading information.	7	17	1, 2
Module III	Transforming the Contract	8-10	17	3
	Legal conditions; breached promises; suspension and termination for cause; suspension or termination for convenience; delay and its implication on material breach; and consequential damages.	8	17	1, 2
	Warranty; inspection; and correction of work.	9	17	1, 2
	Claims; dispute resolution; and alternative dispute resolution.	10	17	1, 2

Module IV	Construction Risks	11-15	6, 13, 17	3
	Bidding processes for public projects; bid irregularities; mistakes; and bid protests.	11	13, 17	1, 2
	Subcontracting issues and mechanics' liens.	12	13, 17	1, 2
	Code of ethics; falsities, kickbacks, and collusions; bid shopping; and bid peddling.	13	6, 13, 17	1, 2
	Negligence torts, liability; indemnification; subrogation; fiduciary duties; and insurance products.	14	13, 17	1, 2
	The Miller Act; performance bonds; payment bonds; other bonds (bid bonds, license bonds, lien release bonds); and surety transactions.	15	13, 17	1, 2
Final Exam	Comprehensive.	1-19	6, 13, 17	4

Instructional Activities

This is an activity class. The university policy on activity classes is one hour of outside study for each hour in class. This amounts to two hours of reading and study for each day of class. These are minimum requirements though. Most students will need to commit more time than that.

TEXTBOOK ASSIGNMENTS and ASSESSMENTS – The importance of reading and studying the textbook cannot be overemphasized. Read each of the first 15 chapters of the textbook chapter and complete each chapter's pre-class online quiz by its deadline. These deadlines are the start of class on the "Textbook Reading and Pre-Class Quiz Due" date shown in the course schedule.

The pre-class online quizzes are in PolyLearn. They pose 10 multiple-choice questions, awarding a total of up to 5 grade points for each quiz. On answering a question correctly on the first try, you receive the full amount of points allocated to that question. Your 2nd try reduces your point award by 20%, your 3rd try by another 20% and so forth. Quizzes close at the start of class. Once closed, they are not reopened. Quizzes open at the end of the previous class. There are no makeup quizzes.

CASEBOOK ASSIGNMENT and ASSESSMENTS – The importance of reading and studying the casebook cannot be overemphasized either. Read each case and prepare to answer its "Challenge Questions" by its deadline. These deadlines are the start of class on the "Casebook Reading & Preparation Due" date shown on the course schedule.

In-class team activities cover the legal issues that are posed in the cases and require specific responses to their "Challenge Questions". These activities are performed by teams. On the first day of class you will be organized into teams of 5 to 8 students. These teams are permanent for the quarter.

PEER REVIEW SURVEY - The peer review survey is an assessment of your performance (reading preparation and participation in in-class team activities) by your teammates. It employs a Comprehensive Assessment of Team Member Effectiveness (CATME) on-line survey instrument. Survey scores modify the basis points that you receive for in-class team activities. Peer Review Survey I is informational. It will not modify your grade. Peer Review Surveys II, III and IV are operational. They will modify the grade that you receive for the Module II, III, and IV in-class team assignments. Surveys must be completed by midnight on the "Post-Module Assessment" dates shown on the Course Schedule.

PEER REVIEW GRADING MODIFICATION LIMITS - There are limits to the grading modifications of the peer review surveys. These limits may be as high as +/- 30%. Accordingly, the best performing students can receive as much as 130% of the assignment grades and the worst performing students as little as 70% of the assignment grades. A discussion about grade modifications will be held on the first day of class, followed by a nomination process to select the limits that will be applied for the quarter.

POST-MODULE IN-CLASS EXAMS – You must take post-module, in-class exams on the “Post-Module Assessment” dates shown on the course schedule. These exams pose multiple-choice questions. Unlike the online quizzes, you have only one opportunity to answer correctly: there are no second chances. Post-module in-class exams cover both textbook and casebook material, they are open book, open notes and have a 30-minute time limit. Laptop computers, tablets or smart phones are not allowed.

FINAL EXAM - The final exam will have multiple-choice and short essay questions. It is designed for you to be able to complete it within 1 hour and 50 minutes. It is taken in the classroom. It is open book and open notes. Laptop computers, tablets or smart phones are not allowed. Your short essay answers will be graded to a rubric based on 60% content, 20% writing effectiveness and 20% writing mechanics. Content considers appropriate use of terminology, and evidence of your understanding of the legal concepts that are introduced in the course. Writing effectiveness considers responsiveness to the questions that are posed and the strength of your arguments. Writing mechanics considers syntax, structure, vocabulary, and spelling.

Required Texts/Reading

Textbook and Casebook

The textbook and casebook are required reading. They may be purchased online from the publisher at <https://www.civilisationchronicles.com> or at the Cal Poly University bookstore.

Starzyk, Gregory F. (2015). Construction Law: Contracts, Risks and Regulations. (2nd ed.). San Luis Obispo, CA: Civilisation Chronicles. ISBN 978-0-9907394-1-8

Starzyk, Gregory F. (2015). Construction Law Casebook. (2nd ed.). San Luis Obispo, CA: Civilisation Chronicles. ISBN 978-0-9907394-3-2.

Other Readings

Supplemental readings are posted on the course PolyLearn page.

Other Equipment/Material Requirements

None are required

Classroom Protocol

As a student, you are responsible to:

- Actively participate;
- Engage other students in topical discussion;
- Turn off your cell phones and other electronic devices;
- Exhibit a professional demeanor, behave courteously, respect others; and
- Never sleep, twitter, engage in any social networking, or otherwise digress during class.

If you need help, avail yourself of my help. My office hours are available for walk-ins or you may make a special appointment if my office hours conflict with your academic schedule.

Assignments and Exams

The following assignments and their associated Point Values are subject to change.

Description	Point Values
Pre-Class Online Quizzes (Individual Assessments) Fifteen (15) multiple-choice quizzes worth 5 points each.	75
Team Activities (Team Assessments) Sixteen (16) team activities worth 20 points each.	320
Post-Module In-Class Exams (Individual Assessments) Four (4) multiple-choice exams worth 60 points each	240
Final Exam (Individual Assessment) One (1) in-class, multiple-choice/short essay exam.	365
Total Points Possible	1,000

Late/Missed Work and Make-Up Policy

READING ASSIGNMENTS – The importance of timely completion of reading assignments cannot be over emphasized. Students who fail to commit sufficient time to reading and study are going to struggle to pass the course. **Commit at least 1-hour to your reading assignments for every hour in class.** Complete your reading assignments before the due dates shown on the course schedule.

PRE-CLASS ONLINE QUIZZES - You will be held accountable for knowing the closing date and time for each pre-class online quiz whether you actually know it or not. No relief will be provided for any quiz that is not completed on time. There are no makeup quizzes.

IN-CLASS TEAM ACTIVITIES - A sign-in sheet will be distributed during each class. You will be held accountable to sign-in. Failure to sign-in, regardless of whether or not you actually attend, is a constructive absence. You will not receive any grade credit for an in-class team activity when you are either actually or constructively absent. A makeup assignment requires a timely application for a makeup assignment, and justification and/or an excusable reason for missing class (See Academic Standards and Policies in the Cal Poly University Catalog 2019-2020). **Application for a makeup assignment must be made through the PolyLearn “Makeup Assignment” link.**

POST-MODULE IN-CLASS EXAMS –You will be held accountable for knowing the date of each post-module in-class exam whether you actually know it or not. A makeup requires a timely application for a makeup exam, and justification and/or an excusable reason for missing class (See Academic Standards and Policies in the Cal Poly University Catalog 2019-2020). **Application for a makeup exam must be made through the PolyLearn “Makeup Assignment” link.** A makeup exam will ordinarily be an essay-type exam.

FINAL EXAM - The final exam will be given on the last day of class. To request an alternate date, you must deliver a written petition to me at least three (3) weeks prior to the last day of class. Describe the extenuating circumstances in your petition and provide a justifiable reason for your request.

Grading Policy

Your final letter grade expresses my assessment of your attainment of Course Learning Outcomes. I will make this assessment through both an objective evaluation of Point Values; and a subjective evaluation of your peer evaluation, attendance, participation, academic integrity and other factors. This result may be higher or lower than would be indicated by Point Values alone.

Listed below is the grading scale for this course.

Letter Grade	Percentage	Performance	Definition
A	93 – 100%	Excellent Work	Superior Attainment of Course Learning Outcomes
A-	90 – 92%	Mostly Excellent Work	
B+	87 – 89%	Very Good Work	Good Attainment of Course Learning Outcomes
B	83 – 86%	Good Work	
B-	80 – 82%	Mostly Good Work	
C+	77 – 79%	Very Acceptable Work	Acceptable Attainment of Course Learning Outcomes
C	73 – 76%	Acceptable Work	
C-	70 – 72%	Mostly Acceptable Work	
D+	67 – 69%	Mostly Poor Work	Poor Attainment of Course Learning Outcomes
D	63 – 66%	Poor Work	
D-	60 – 62%	Very Poor Work	
F	0 – 59%	Failing Work	Non-Attainment of Course Learning Outcomes

University Policies

Participation and Attendance

Attend all class sessions, arrive on time, do not leave early, and if you have to be absent or late, have a justifiable reason. Inform me of your absence as soon as possible through the PolyLearn “Makeup Assignment” link. **Do not use email to inform me of your absence.** Email, especially email using services such as Google and Yahoo, is neither private nor secure. The “Makeup Assignment” link is private and secure. Correspondence through the makeup assignment link is not shared with your classmates, other students, other professors, or administrators. It is private and confidential.

Students are responsible for knowing the University policy regarding class attendance. See this link on [Class Attendance Policy](#) provided on the university website.

Add/Drop Policy

Students are responsible for knowing the University policies, procedures, and schedule for dropping or adding classes. See this link on [Add/Drop Policy](#) provided on the university website.

Academic Integrity

Students are responsible for knowing the [Academic Honesty Policy](#).

Students with Disabilities

If you have a disability for which you are or may be requesting an accommodation, you are encouraged to contact both your instructor and the Disability Resource Center, Building 124, Room 119, at (805) 756-1395, as early as possible in the term, as accommodations may take several weeks to arrange. If you are a student with a disability, please consider discussing your needs and possible accommodations with me as soon as possible and visit the [DRC Website](#) for additional information.

SensusAccess

SensusAccess is a self-service, alternate media solution made available by Kennedy Library to automatically convert files into a range of alternate media including audio books (MP3 and DAISY), e-books (EPUB, EPUB3 and Mobi) and digital Braille. The service can also be used to convert inaccessible files such as image-only PDF files, JPG pictures and Microsoft PowerPoint presentations into more accessible and less tricky formats. This service is available at no charge for all Cal Poly students, faculty, staff and alumni. For additional information, visit [SensusAccess at the Kennedy Library](#).

Technical Support and Contact Information

Support is available for troubleshooting and access issues for PolyLearn. Please visit the [PolyLearn Student Support Web Site](#) for further information.

Campus Resources to Support Student Learning

Cal Poly offers programs and resources that are available to assist students during your academic studies, such as the [Cal Poly Student Academic Services Web Site](#).

CM 334-01 Course Schedule Fall 2019						Textbook Reading & Pre-Class Quiz Due	Post-Module Assessment
Construction Law							
MW 10:10 am - 12:00 Building 186 Room B303							
Date	Class Day	Module Activity Topic	Casebook Reading & Preparation Due				
23-Sep	M	Introduction					
		Module I Performing the Contract					
25-Sep	W	Axioms of Construction Contract Law	Arya v. Cher	Spokane v. Equitable	Ch. 1		
30-Sep	M	Written Contract Form & Substance	Barrett v. Gilbertson	Tigges v. Pellom	Ch. 2		
2-Oct	W	Payments and Performance	Murray's I. W. v. Boyce and VanDenHoek v. Bradwisch (written arguments due 10:10 a.m. Oct. 9)			Ch. 3	
		Module II Reforming the Contract					
7-Oct	M	Concealed or Unknown Conditions *	Carlstrom v. German Evan. and Busse v. GSA (written arguments due 10:10 a.m. Oct 9)			Ch. 4	Module I
9-Oct	W	Changes	Peterson v. Container Corp.	White v. Varian	Ch. 5		
14-Oct	M	Time	Amer. Bridge v. New York	Royal Palm v. Clark	Ch. 6		
16-Oct	W	Interpreting the Contract Documents **	Appeal of Amer. Bridge (written arguments due 10:10 a.m. Oct. 21)			Ch. 7	
21-Oct	M	Interpreting the Contract Documents	Cornell v. U.S.				
		Module III Transforming the Contract					
23-Oct	W	Suspension and Termination	Abcon v. U.S. and Reid v. Fine (written arguments due 10:10 a.m. Oct. 28)			Ch. 8	Module II
28-Oct	M	Assurance	Appeal of Bruce	Appeal of Chilstead	Ch. 9		
30-Oct	W	Claims and Dispute Resolution	Ross v. Bridgewater	Lang v. Badger	Ch. 10		
		Module IV Construction Risks					
4-Nov	M	Bidding on Public Projects	Fieldturf v. Idaho and Appeal of Hill Brothers (written arguments due 10:10 a.m. Nov. 6)			Ch. 11	Module III
6-Nov	W	Subcontractor Protections & Vulnerabilities	Brackenridge v. Dunbar	Johnson v. Basic	Ch. 12		
11-Nov	M	Veteran's Day Holiday - No Classes					
13-Nov	W	Ethical Considerations for Constructors	Saliba-Kringlen v. Allen	Titan v. L.A. Unified	Ch. 13		
18-Nov	M	Construction Insurance	Easterly v. Smith	Mutual Benefit v. Bolt	Ch. 14		
20-Nov	W	Surety Bonds	Elkins Manor v. Eleanor	Nova Casualty v. Turner	Ch. 15		
25-Nov	M	Thanksgiving Holiday - No Classes					
27-Nov	W						
2-Dec	M	Course Review					
4-Dec	W	Final Exam - 10:10 am to 12:00 Room 186-B303					

This course schedule is subject to change. Students will be informed of any changes by classroom announcement and/or posting to PolyLearn.

* LPA Office Visit, Los Angeles

** ASC Region 3 Competition, Chicago