

Legal Issues Within Construction

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Legal Issues Within Construction

Contracts have been around for years and are essential in most work industries such as housing, construction, employment, sales etc. A contract is an agreement between two or more persons which can either be spoken or written and should be enforced by law. The majority of contracts are written to minimise confusion between the persons involved in the agreement. The issue with spoken or oral contracts is that in agreeing at the first instance later on down the line each parties contract agreement could change which could easily result to a dispute between the persons involved. The purpose of a contract is to create a legal relation and agree terms and conditions to which both parties can agree on. This mainly involves both giving something in exchange for something else. For example *Spencer v Harding* [1870] case were the defendant advertised a sale and would accept an offer, but no reserve was stated in the advertisement. In this case the defendant can choose whether to accept the offer or not, doesn't have to be sold to the highest offerer. Another example would be *Gibson v Manchester City Council* [1979]. In this case Gibson filled in a form to get a mortgage from the council. The councils reply was they maybe able to sell the house at a certain price. After further negotiation Gibson was taken of the councils tenants list due to political changes. Just because Gibson filled in a form doesn't mean he would get the mortgage. There was no contract agreed at the time. Gibson sued the council, but the courts dismissed the appeal as the defendant's clearly stated in there was no firm offer to sell the house to Gibson.

The same principle applies with contracts in construction projects in order to have a successful outcome. Contracts are critical for construction projects as having an agreement before any work is carried out is important. Such contracts especially in the construction industries need to be looked at closely because of the risks involved in the working environment. With contracts in construction there's a huge list of considerations that need to be taken into account. Starting with employment and who will be carrying out the different types of work needed on site. You have to be prepared to work with companies from various backgrounds. Sub-contractors would need to come in to carry out certain jobs. Other considerations would be sales within the construction project on goods, materials and hardware being used on site etc. All materials being used on site have to come from somewhere and its a necessity in order to have a construction project. All companies involved in the project would be involved in the contract from leasing, hardware and working materials. All these companies would also individually negotiate their terms and conditions before any work commences.

These types of contracts can take time to draft because of the amount of legal obligations involved and also making sure regulations are followed accordingly. In order for a contract to be successful it's essential to make sure everything is executed as required. One of the most important aspects of a construction contract is the financing. Major construction projects involve large amounts of finances to cover the work being carried out and also paying the sub-contractor, materials etc. All parties would have to agree costs and

payments of the work they would carry out which also helps the work to flow without any stoppages. Having such a problem while work is in progress would prove costly because of other deadlines agreed with other sub-contractors. An example of a dispute would be [Master contractor and sub-contractor Conciliation Nr. 1, 2001] where a sub-contractor applied for conciliation because the master contractor changed construction work, but did not disclose in the contract they would be changes in the construction in the official or final contract. The sub-contractor then demanded the master contractor pays a fee of over 7 million for the changes in construction for work to continue. The dispute was concluded, this is a good example of an issue that could arise while the project is ongoing.

This is where negotiating is key because the negotiating stage is where the sub-contractors voice their terms and conditions making it clear to what they expect in the contract. The employer can put forward an offer and if the sub-contractors are not satisfied with the offer renegotiations of the terms and conditions can take place until both parties are satisfied. Once both parties are satisfied the contract can be finalised. It's important that all steps of contract drafting are followed precisely because missing out key information could result in the contract being void or either parties suing. For the contract to be lawful, the acceptance of offer has to arrive from the sub-contractors. The *G Percy Trentham v Archital Luxfer Ltd* [1992] case is a good example of an acceptance offer. In this case work was carried out before finalising the contract which led to the employer seeking damages for the work that was done in two phases which was not disclosed in the contract. It was not agreed in the contract that two sub-contractors would carry out the work. Once the acceptance has been offered, the contract is valid and cannot be changed. Breach of contract can occur if one or more parties fails to complete or fails to meet the standard of work required or agreed upon in the first instance. Certain issues need to be addressed and need to benefit both parties of the contract before proceeding to court hearing as this is a criminal case. Privity of contract is one issue that could benefit both parties where a third party can't sue because they were not part of the contract. In some cases privity of contract can be a disadvantage to third parties in certain situations. An example of privity of contract is *Dunlop v Selfridge* [1915] case where a third party could not sue because they were not in the agreement or the contract. This case was taken to court, but couldn't go any further because the third party was not in the contract. They are exceptions to privity of contract (Rights of Third Parties) Act 1999, which allow third parties to enforce some terms of the contract.

There are various steps to overcome, from legal requirements on a building site to health and safety requirements. Legal requirements should be the main consideration before starting a business, without these requirements in place the construction project wouldn't proceed. Besides legal requirements, health and safety is another issue that needs to be addressed. Health and safety plans should be accessible to each sub-contractor involved in the construction project and it's their responsibility to outline the guidelines of the health and safety plan and what is expected from them whilst on the construction site. This role is allocated to a planning supervisor whose job is to clearly outline the risks and implications

involved when working on a construction site. The health and safety (health and safety at work act 1974), which also include manual handling of equipment, wearing PPE, moving and handling of dangerous substances and moving heavy materials.

If a contractor wants to burn waste on the site of construction they should seek advise and obtain permission to do so. This information should be disclosed within the contract and outlined. Materials used on construction sites can be dangerous and harmful to the environment. In order to burn any waste on a building construction, a license needs to be obtained because in not doing so this would result in statutory nuisance. Statutory nuisance (Noise and Statutory Nuisance Act 1993) is an act that outlines smoke from premises and smell from industry. Causing harm or producing an odour within the environment is an offence. There's a criteria for suing with statutory nuisance were damage or harm has been caused, also it has to be a reoccurring case. A notice can be issued to the contractor to halt all burning schedules and failure to do so would result in legal action. The persons affected by the waste being burnt on site would have the right to take legal action against the contractors. This is also known as a breach of their duty of care (Negligence) and can result in fines being issued and also being prosecuted. Negligence is not being able to take care of something. A good example of negligence is the *Donoghue v Stevenson* [1932] case. It was the manufacturers fault in failing to identify contents of the ginger beer bottle. The claimant sued the manufacturer and was successful because of the negligence shown by the manufacturer. This sort of action is under tort law which is a type of liability. In this case the contractor would be held liable for committing the tort. (Environmental Protection Act 1990) states that every business producing waste on their site should dispose of it in a suitable manner and failure to do so would implicate them.

Some construction sites may or may not have security and for those sites without any sort of security they are more likely to be broken into. If a site is broken into and materials are removed, this could cause a problem between the parties involved. Who is liable and who would pay damages for materials missing would be an issue. These are the sort of issues that would arise in this case. Outlining such problems in the first instance when the contract is being drafted is important. This covers both parties in the long run mainly the sub-contractors as they would not be at fault if there was no security in place. It's the occupiers responsibility if materials go missing on site. Whilst the site is broken into the perpetrator injures themselves, this is an issue that would implicate the occupier if they are no signs outlining the dangers of the site. In this case the occupier would have to put signs up on the property clearly indicating the site is a dangerous place. Even when someone is trespassing and entering land or property without permission the occupier can always be sued. The occupier owes a duty of care to all visitors as stated under occupier's liability Act 1957. There is a standard of care expected from the land owner to protect anyone who visits the construction site. For example if an inspector visits the site, its the employers responsibility to provide the visitors with the right PPE to enter the site. This eliminates injuries being caused because of negligence from the employer and failing to do so would

result in breach of statutory duty. *Ferguson v Welsh* [1987] is a good example where the plaintiff sued for damages after being injured whilst working with a sub-contractor, but was not known to the council. The council was not liable because the contract was offered to the brothers who were the sub-contractors, but took it upon themselves to seek help. The appeal was dismissed due to unsafe work carried out by the brothers. There was clear evidence that the plaintiff's work was not up to the satisfactory standard and therefore the case could not go any further.

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