# CONSTRUCTION LAW

## Chapter One: Introduction



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# Outlines:



- **Meaning and Scope of Construction Law**
- **Pre-Contract Preparatory Works**
- **Licensing and Registration of Contractors, Architects and Civil Engineering Consultants**

# 1.1. Construction, Construction Law and Construction Contract



- What is Construction?
- What is Construction law?
- What do you think Construction law is about?
- What is Construction contract ? How you define the term construction contract?
- Do you think construction contract is d/t from other contracts? If so, what do you think makes construction contract

# Construction: Meaning



- **Construction**: the **action or process** of constructing or the industry of erecting buildings. (Oxford dictionary 10th ed)
- The term '**construction**' can include the **erection (building)**, **repair** and demolition of things as diverse as houses, offices, shops, dams, bridges, motorways, home extensions, chimneys, factories and airports.(**Will Hughes & et al, P.1)**
- **Building Proc.624/2009 Art 2(9)**"construction" means the construction(?) of a **new building** or the **modification of an existing** building or **alteration of its use**.

- Although it is difficult to define Construction contract in a single term, it can be considered as one type of general contracts.
- Construction Contract is different from ordinary contracts in that it deals with the construction of various infrastructures.
- A **major** distinguishing feature between construction contracts and ordinary contracts is that the latter (O K) is **bilateral**, affecting only two parties, **whereas** the former (C K) involves **more**

# Construction Contract Definition Contd.



1. Hudson: defines a CC as "an agreement under which a person, called variously the builder or contractor, undertakes for reward to carry out for another person, variously referred to as the building owner or employer, works of a building or civil engineering character."

2. Keating: defines a CC as "any contract **where one person agrees for valuable consideration to carry out building** or engineering works for another." It is a less comprehensive.

# Construction Contract Definition Contd.



**3.** The CC of Ethiopia defines a construction contract:

**Art. 2610** as "a **contract of work and labor** is a contract whereby one party, the contractor, undertakes to **produce a given result**, under his own responsibility, in consideration of a remuneration that the other party, the client, undertakes to pay him."

**Article 2876** goes further to elaborate construction Contract as "a contract whereby one of the parties undertakes to **deliver** to the other party **a house, a flat or**

**Summary:** All the definitions given to construction contract shows that construction contract:

1. Covers the relationship between the parties to the contract;
2. It stipulates the rights and obligations of each party, and
3. Addresses the issue of remuneration and payment that is rightfully due to a party
4. Specifies **what is to be done** … building or other works of engineering

# 1.2. Pre-Contract Preparatory Works



- Before a person signs a construction contract, there are certain pre-contract preparatory works that need to be undertaken. These are:

1. Soil tests and site surveys are needed before a person can plan a suitable design for the construction he/she intends to undertake.
2. It is necessary to get a building permit from an authorized organ of the government of the country where the construction takes place, before starting any type of construction whatsoever.
3. Moreover, a person needs to consider the that the construction he/she considers to undertake will, in no way, infringe upon other's rights.

# Pre-Contract Preparatory Works Contd.

## 1. Soil Testing

- Soil testing is required for securing of building permit.
- Soil engineers will investigate the site for the construction, analyze the site as well as the subsurface conditions and make recommendations for work to take place.

## 2. Building Permit (624/09, Art 4-9)

- In order to secure a building permit, a builder is expected to submit plans, sign-offs from the architect and engineer, and soil reports showing the condition of the construction site.
- In our country, a builder wishing to undertake a construction in a certain sub-city has to secure a building permit from the sub-city administration where the construction work is to be undertaken.

# Pre-Contract Preparatory Works Contd.



## 3. Site Survey

- Once a builder secures a building permit for the construction, he/she wishes to undertake, he/she proceeds to have the construction site surveyed.
- Land/site surveying includes the study and inspection of legal instruments and data analysis in support of planning, designing and establishing of property.
- Site surveying includes services such as mapping and construction layout surveys.
- ✓ Construction layout surveys refer to the process of establishing and marking the position and detailed layout of the new structures of building constructions.

# Summary



- A person who wishes to undertake a certain construction work must necessarily sign a construction contract.
- Before entering in to C K, a person need to undertake pre-contract preparatory works that includes:
  - soil tests.
  - site surveys,
  - securing of a building permit and
  - consideration of the rights of others

## 1.3. Licensing and Registration of Contractors, Architects and Civil Engineering Consults



- Before contractors, architects and engineers undertake any construction work, they need to be registered and licensed.
- **Why? What is the rationale for such requirement?**
- In registering these group of persons, countries may put different criteria's, but the **rational** behind licensing of contractors is **to ensure that applicants for a project have the necessary capability**.

# Licensing and Reg Contd.



- For contracts works in other countries and for multilateral donor projects, this requirement is met through the prequalification process for each tender.
- This requires information on the current status and past performances of the contractor.
- The current procedure of registration and issuance of graded licenses, in Ethiopia, can be seen in two categories:

# 1. Individual Applicant



**Art 9/3**. of **The Draft Construction Industry Registration Proclamation states that,**

Individual applicant for a certificate of competence shall submit the following evidences;

**(a) Academic credential,**

(b) Evidence showing previous **experience** in related fields, as appropriate,

(c) Result of assessment administered by the relevant body.

(d) Other relevant documents required by a regulation to be issued under the proclamation.

# 2. Organizational Application



**Art 9/4**. An organization applying to a certificate of competence shall submit:

(a) The minimum number and type of registered professionals and equipment to be determined by a regulation.

(b) Evidence of minimum annual turnover as determined by regulations.

(c) Other relevant documents required by a regulation to be issued under this proclamation.

- ✓ **Once the requirements are fulfilled, the applicants will be provided with a certificate of license (Art.10).**

# THANK YOU !