

# CONSTRUCTION MANAGEMENT INSTITUTE



## Training on Construction Law for

Addis Ababa Design and Construction Works Bureau  
(Day-1)

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## A. Definition:

- No universally accepted definition of construction law
- So, it can be defined variably
- Deals with legal issue related to the construction of a building, civil engineering works and other structures

In English law, construction contract means “an **agreement** with a person for any of the following:

- The carrying out of construction operations;
- **Arranging** for the **carrying out** of construction operations by others, whether under subcontract to him or otherwise; providing his own labour, or the labour of others, for the carrying out of construction operations.



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This includes an agreement-

- To do architectural, design, or surveying work,
- To provide advice on building, engineering, interior or exterior decoration or on the laying out of landscape in relation to construction operations [Section 104, Housing Grants, Construction and Regeneration Act, 1999, UK.

For the purpose of this training, it may be defined as an area of law directing the making and enforcement of construction contracts



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## B. Sources of Construction Law

Construction law is spread in various laws; is not available in a form of distinct proclamation, like labour law, tax law, commercial law, family law, etc.



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## Main sources of construction law

- General contract law,
- Administrative contract law,
- Negligence law
- Contract procurement law,
- Insurance law, and
- Case law



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## 1. General contract law

A key principle of contract law according to which:[Art. 1731]

- The provision of a contract lawfully made is binding as though they were law.
- The contents of a contract shall be determined by the parties subject to the mandatory provisions of the law.





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## 2. Contract of Work and Labour –for Private Contract (Civil Code Art. 3019- 3040):

- **Regulates contracts of building, repair or installation of immovables. According to this law:**



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- **Formation of contract shall be complete if the work to be done and the price are agreed and evidenced by the carrying out of the work by the contractor to the knowledge of the client or receiving an advance from the client**
- **Description of work may be made by means of a plan or other document;**





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- If so described, shall be complied with by the contractor.
- Price may be lump sum or estimated;
- or price shall be deemed to be fixed having regard to the value of the materials and importance of the work necessary to perform the contract.



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- **Payment of price** raises presumption that the work has been examined and accepted.
- **Alteration of work** may be required by the client or contractor for technical reasons;
- **Termination** may be made by client at any time with no fault of contractor; if terminated for contractor's default, he may be paid in proportion to the work executed.



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## Contractor's Warranty for defects in the works (Art. 3039)

- shall be 10 years from delivery;
- shortening of this period or excluding the warranty shall be of no effect;
- BUT, the 10 years warranty has not been enforced in Ethiopia. Instead, 1 year has been agreed under the contracts. Discuss reasons!!



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## Claim by sub-contractors or workmen against client:

- Possible to the extent of the amount due by the client to the principal contractor on the day the claim is made;
- This has to be reconciled with labor law.



## 3. ADMINISTRATIVE CONTRACT [Art. 3132]

A contract shall be deemed to be an administrative contract where:

(a) it is expressly qualified as such by the law or by the parties; or





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(b) It is connected with an activity of the public service and implies a permanent participation of the party contracting with the administrative authorities in the execution of such service; or

(c) It contains one or more provisions which could only have been inspired by urgent considerations of general interest extraneous to relations between private individuals.



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- **As such it is distinguished from private contracts**
- **Must follow public procurement laws and regulations**



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## Time for completion of works (Art. 3174)

- **Must be fixed by the contract, or**
- **Within a reasonable time if completion time is not specified in the contract.**



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## 4. CONTRACT OF PUBLIC WORKS [Art. 3244-]

**Definition:** a contract with administrative authority to construct, maintain or repair a public work in consideration of a price;



## Formation:

- May put up the working out of a project for completion
- May fix conditions - this part of the law is replaced by PPA law [art. [Art. 3246- 3249]



## Section 2. Normal performance of contract [Art. 3250-3260]

### Paragraph 1. - Direction of work

- Supervision, prescribing manner of performance
- Types of contracts
- Price, how paid, advance payment, final calculation
- Others

All regulated in a standard contact





**Paragraph 2. - Payment of price [Art. 3261- 3282]**

**Paragraph 3. - Acceptance of work [Art. 3274- 3272]**

**Provisional: joint ascertainment of the works after completion**

## **Effects**

- Shall not release the contractor from defects after acceptance
- Marks the beginning of warranty period



## Risks of loss or deterioration [Art. 3276]

- 1) Destructions or damage resulting from force majeure shall be borne by the contractor so long as the works have not been provisionally accepted by the administrative authorities.
- (2) The general clauses and conditions may derogate such rule.



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**(3) In such case, they shall fix the amount of the right to compensation of the contractor as well as the conditions regarding the form and time of his claim.**



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## Period of warranty [Art. 3277]

### Nature

- A period during which the employer controls the proper performance of the works before their final acceptance.
- Duration of warantess shall be fixed by the contract.



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## Effect [Art. 3278]

- The contractor shall maintain the works.
- He is liable to maintain defects when instructed by the employer



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## Final Acceptance of work [Art. 3279]:

**Nature: it is the act:**

- **Whereby the employer definitively takes the works after ascertaining that the contractor has performed his obligations in their entirety;**
- **Acceptance shall be made jointly and recorded**





## Effect [Art. 3281]

- Shall release the contractor from his obligation to maintain the works;
- Shall entitle the contractor to:
  - i) Payment of the balance of the contract price,
  - ii) Reimbursement of the amount retained as guarantee and of the security.



## Warranty in respect of defects in construction [Art. 3282]

- 10 years, unless otherwise provided in the contract. It is generally provided in standard forms of contract.
- **Shall** not be due for defects apparent during final acceptance;
- **Shall** apply to such defect which prevent the work from being used for its purpose, renders such use more onerous or less profitable.



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## Standard forms of contracts used in Ethiopia

### Issued by:

- **BaTCoDA (Building and Transport Construction and Design Authority);**
- **Ministry of Works and Urban Development**
- **Public Procurement Agency**



## International standard forms of construction contract

- Set uniformly applicable general conditions of contract, while directing contracting parties to incorporate their individual needs in the particular/special conditions of the contract;
- Are the product of extensive legal and engineering research globally,



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- Are used by borrowers of several international development banks,
- Are the true centers for the development and advancement of construction law.

They include: **FIDIC forms**

- FIDC 1987,
- FIDIC 1995, and
- FIDIC 1999
- FIDIC 2017



# Thank You!