

**MNE 697D Introduction to Engineering Contract Law
Fall Semester 2008**

Instructors: Brett Gross and James Shultz, Adjunct Professors

Credit: 1 credit, 100%

Grade: A,B,C,D,E

Catalog Description:

The global mining industry currently enjoys commodity demand, and corresponding business investment, of historic breadth and magnitude; this, on the tail of a protracted period of depressed activity. The industry is thus facing record demands for goods and services, while hampered by a limited pool of skilled personnel to provide them.

The mining professional working in such a market must therefore be prepared to handle outsourcing a significant portion of services that, in the past, would have been performed by the mining company with in-house resources. Whether you work for the purchasing company or the goods or services provider, understanding the contract forming the basis of the relationship between the two is essential to a successful transaction.

This course will introduce the basics of contract formation, risk allocation and management, applied to a representative cross section of contract types, with the objective of equipping you with the basic tools for functioning effectively in this challenging business environment.

Course Objectives:

Outsourcing is an important business strategy for doing business and service contracts govern that business. The objectives of this Introduction to Engineering Contract Law are to:

1. Provide an understanding and working knowledge of different types of service contracts.
2. Understand the contract terms and conditions, delivery methods and risk allocation/management for successful mineral development.

Topics:

- I General discussion of contracts; objectives, means, enforceability issues (freedom of contract vs. public policy, etc.), risk allocation, risk efficiency
- II Goods vs. services
 - a. Goods – Uniform Commercial Code
 - i. Cover short list of major topics; battle of the forms, acceptance/rejection of goods, etc.
 - ii. Equipment leases
 - b. Life Cycle Services
 - i. Engineering/design
 - Prefeasibility
 - Bankable Feasibility
 - ii. Consulting; e.g. business systems management
 - iii. Construction management (including procurement and CM)
 - iv. Operations management
 - v. Reclamation
- III. The risk/contingency relationship
 - a. Understanding Risk – Use example of Which Flight to Take
 - b. Short list of terms and conditions for typical of service contracts and the impact on risk allocation

- c. Revisit risk efficiency

IV. Four corners of a Contract

- a. Scope of work
- b. Schedule
- c. Price / Compensation
- d. Risk Allocation

IV. Types of project delivery methods

- a. Pure cost reimbursable
- b. CM at risk
- c. Guaranteed maximum price
- d. Fixed unit price
- e. Lump sum

V. Evening Exercise - What needs to be in a prime contract to be acceptable to you?

VI. Variations on risk allocation among project delivery methods

- a. Incentives/disincentives
 - i. Target pricing
 - ii. KPI's
 - iii. Liquidated damages
 - iv. Etc.

VII. International issues

- a. Jurisdictional considerations
 - i. Political risk
 - ii. Enforceability of contracts/judgments
 - iii. International arbitration and the New York Convention
 - iv. FCPA
 - v. Export controls
 - vi. Boycott of Israel

VIII. Sample Contracts for discussion (materials to be distributed the day (or more) before class)

IX. Case Studies

IX. Contract Administration Considerations and Dispute Resolution

- a. Documentation
 - i. for project management
 - ii. Claims
 - iii. for litigation
- b. Time related issues
 - i. CPM scheduling

Grading:

	Total
Take Home Final Exam (60%)	60%

Analyze two contracts provided (one for professional services and one for EPC) and describe in detail what terms are important to your company and why, apply the risk allocation and management issues covered in class

Quizzes (2x10%)	20%
Homework	20%

Given a scenario between contractor and a mining company, what terms would you negotiate to accomplish the task in the scenario.

Grading Policy:

90-100%=A

89-80%= B

79-70%= C

69-60%= D

Less than 60%=E

Text books:

“The Construction Contracts Book: How to Find Common Ground in Negotiating Design and Construction Contract Clauses”; Brennan and Lowe (ISBN 1-59031-469-7)

Contracts: Gilbert Law Summaries, 2002, Melvin Eisenberg: Thomson West Publishing, Chicago, IL. ISBN 13 978-0-159-00776-1

Papers:

Contract Document Excerpts (to be posted on-line for student use prior to class)

Standard Form Agreements:

AIA (American Institute of Architects)

AGC (Associated General Contractors)

EJCDC (Engineers Joint Contract Documents Committee)

FIDIC (International Federation of Consulting Engineers)

Agreement from Industry Use:

One each professional services agreement and construction (EPC) agreement

Recommended Prerequisites:

None