

The Legal Content and Performance of Obligations Under Construction Contracts

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Abstract

This article examines the legal framework and performance metrics associated with obligations in construction contracts. It delves into the essential elements of construction agreements, including the rights and responsibilities of parties involved, the significance of contract terms, and the implications of non-compliance. Through a comprehensive analysis, the article highlights various legal principles governing construction contracts, such as breach of contract, remedies, and dispute resolution mechanisms. By exploring case studies and legal precedents, the article aims to provide insights into best practices for ensuring compliance and mitigating risks in construction projects. Ultimately, it serves as a valuable resource for legal professionals, contractors, and stakeholders in the construction industry seeking to navigate the complexities of contractual obligations.

Keywords: Construction contracts, legal framework, obligations, contract performance, breach of contract, rights and responsibilities, dispute resolution, compliance risk mitigation, case studies.

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1. Introduction

In a market economy, the construction industry is one of the most important sectors for economic stability, and the strength of the legal order within it directly impacts the interests of many economic entities. Today, contracts are widely used in practice. At the same time, despite the detailed development of legislative norms governing the relations arising during the conclusion and execution of contracts, and numerous scientific and practical works devoted to contracts, various conflict situations related to their execution arise in practice. In particular, the study of the application of the interpretation of civil liability for failure to fulfill obligations to a construction contract is

of particular interest today. This is due to the numerous difficulties encountered in fairly and reasonably determining liability for failure to fulfill obligations under a construction contract. Timely, high-quality, and complete fulfillment of contractual obligations ensures not only economic results but also the safety of the facility, the targeted use of resources, and the legal stability of the parties to the contract. Therefore, the definition and application of civil liability for failure to fulfill obligations is one of the key legal institutions of a construction contract.

The parties to the contract are the customer and the contractor. The customer and contractor may be legal

entities, sole proprietors, citizens – in other words, any person within their legal status. When entering into a contract with a legal entity, it is important to verify its existence. Unfortunately, recently, there has been an increase in the number of contracts being entered into with non-existent organizations [1].

If a contract is concluded prior to the organization's registration, or if the organization is removed from the register during the execution of the contract, the contract is automatically considered invalid. The right to invalidate a contract belongs to a person who acted in good faith when entering into the transaction. A court may, at the request of a bona fide party, obligate a person who signed the contract on behalf of a non-existent organization to perform the contract.

The customer is the person acquiring the work product, which has a specific value to them. The customer has the right to monitor the progress of the work and its quality. In the event of poor performance, the customer has the right to demand that the contractor correct the defects free of charge. In the event of a serious breach of the terms of the contract, the customer has the right to refuse to perform the contract. Termination of the contract is possible both during its execution, if it is obvious that the work will not be completed within the timeframe specified in the contract, and after completion, if the result does not meet statutory and/or contractual requirements. In the event of termination of the contract after completion of the work, the customer is obligated to provide a reasoned explanation for the termination. If the contractor fails to commence work without good cause, the customer has the right to terminate the contract at this stage. According to the Civil Code, the following elements are required for liability to arise:

1. Breach of contractual obligations (delay, poor quality, incomplete performance, etc.);
2. Damages (actual losses and lost profits);
3. A causal relationship between the act and the damage;
4. Fault (negligence or intentional action of the contractor or client).

The specific nature of a construction contract involves the execution of work on a real estate property inextricably linked to a land plot. Therefore, an important criterion for distinguishing a construction contract as a type of contract is the provision of a land plot for the execution of the work.

An alternative obligation implies the receipt of remuneration or other counter-guarantee from the counterparty for the fulfillment of contractual obligations. A literal interpretation of the provisions of the Civil Code clearly indicates that remuneration must be paid in all cases under a construction contract.

The relationship between the client and the contractor under a construction contract can be simple or complex. A simple contractual relationship between the client and the contractor arises when the contractor personally performs the construction work specified in the contract. However, complex contractual relationships often arise between the parties. The general contractor model is widely used, according to which the client enters into a construction contract with the general contractor. The latter transfers part of its obligations under the contract to other entities specializing in certain types of work – subcontractors. The relationship between the general contractor and subcontractors is formalized by a construction subcontract agreement. For example, according to Part 1 of Article 634 of the Civil Code of the Republic of Uzbekistan, if legislation or the contract does not stipulate the contractor's obligation to personally perform the work specified in the contract, the contractor has the right to engage other parties (subcontractors) to fulfill part of its obligations. This situation demonstrates the direct connection between the general contractor's system and the main contract. In this case, subcontractors are directly liable to the client for failure to perform or improper performance of work. The client, in turn, is obligated to fulfill its obligations directly to the subcontractors, including payment for the work performed.

Academic literature contains varying opinions on the legal nature of a construction contract and its relationship to other types of contracts. For example, some individuals consider a contract for participation in a joint capital construction project with a share to be a construction contract, which is not the case [2].

In the event of termination of a contract for participation in joint capital construction, a shareholder may demand from the builder a refund of the funds paid toward the contract price and interest for the use of funds in this amount. This means that a participant in joint capital construction does not acquire ownership of the work product, as in the case of a construction contract, but rather an obligation to demand the repayment of the funds and interest from the builder. Furthermore, the builder has the right to enter into a contract with another

participant for the same project, which is not permitted under a construction contract.

Thus, a construction contract is a specific, separate contract, subject to the general provisions of the contract but with its own specific features. A construction contract incorporates special features arising from contractual relationships in the law of obligations.

The development strategy for the new Uzbekistan includes doubling the production of building materials, preventing construction defects or problems during construction, digitalizing cities, improving the quality of construction and design work and developing them in line with the "smart city" concept, integrating scientific research in architecture and construction at higher education institutions with practical experience and technical regulation in the construction industry. The strategy also includes developing and implementing a program to radically improve the system for developing urban planning documentation for populated areas and providing them with urban planning documentation, as well as developing a master plan for population resettlement. It is noted that it is necessary to build more than 19 million square meters of modern housing in cities to replace dilapidated buildings through reconstruction and housing construction programs, and to create conditions for the relocation of more than 275,000 families to new residential complexes [3].

Law enforcement agencies face a number of challenging issues that require resolution and the elimination of ambiguities. Therefore, a construction contract requires careful examination from both a theoretical and practical perspective.

To characterize a construction contract, it is also necessary to determine what activity constitutes "work." Current civil law does not define the term "work." Civil law distinguishes the following specific characteristics of work.

First, it is a tangible or materialized result of the contractor's activity, which involves the creation of a new material thing, which then becomes an object of property rights, or the destruction of a material thing. According to M.I. Braginsky, if the client takes back what they provided, the result of the activity is considered non-existent. That is, a result (work), distinct from an activity, is created through the creation of something new and does not arise from the processing of an existing thing [4].

Secondly, the presence of a result means that the work has been completed, and this result can be separated from the contractor's activities or from the contractor themselves, and therefore can be transferred to the client. Civil law offers various interpretations regarding the separation of the result from the contractor. In particular, Ya. D. Sheshenin writes that if the result of the activity does not exist separately from the contractor and is not recognized as a product, then it should be classified as a service, not work. This means that the result must be separable from the person of the contractor [5]. According to I.V. Romanes, division occurs even when the result of an activity exists separately from it, and then it is possible to determine which part of the work is completed [6].

Thirdly, when performing a work, the client's primary interest lies not in the work itself or its subject matter, but in the result of the work. According to L.V. Sannikova, the subject matter should be viewed as a symbol of the work—that is, the subject matter is something that the performer influences, something they isolate and materialize [7].

Thus, legal scholars have developed a number of criteria for the concept of "labor," allowing for its proper distinction from the concept of "services" and determining the contractual or paid service models used to regulate certain relationships between the parties.

As a result of the above theoretical analysis, the following definition of "work" is proposed:

"Work is the result of the contractor's activities performed under the contract, expressed in tangible form, possessing individual characteristics, divisible, and transferable to the client.

The general characteristics of the construction contract under consideration are as follows:

First, the contractor performs the work in accordance with the client's instructions.

Second, upon completion of the work, a result distinct from the work itself must be achieved. The contract is aimed at achieving a specific result. If such a result is not achieved during the work, the contract may be deemed unfulfilled or improperly fulfilled. Consequently, failure to perform the contract is justified by the failure to achieve the result.

Third, the result of the work must be individual in nature.

The specific nature of a construction contract involves the execution of work on a real estate property inextricably linked to a land plot. Therefore, an important criterion for classifying a construction contract as a type of contract is the provision of a land plot for the execution of the work.

The purpose of the work is to improve the strength, stability, and reliability of the property, as well as to install equipment and other measures at the construction site. The work is aimed at constructing a new facility or reconstructing an existing one. As K.N. Annenkov wrote, the subject of the contract is work performed for a fixed fee and having an economic result. The result of the work may be the construction or reconstruction of a building or structure [8]. It's worth noting that the work also results in the demolition of the existing structure.

By its legal nature, a construction contract is a mutually agreed-upon, bilateral, and mutually binding agreement.

By virtue of consent, it is considered concluded upon the parties reaching agreement on all essential terms of the contract, that is, expressed in the acceptance of the offer. Although the definition of a construction contract is set forth in legislation, the parties are free to determine the terms of the contract.

A bilateral contract imposes mutual rights and obligations on its parties. The contractor's primary obligation is to construct a specific structure or perform other construction work on behalf of the client. The client's obligations are to create the necessary conditions for the performance of the work inherent in the relationship under the construction contract, accept its results, and pay the agreed amount.

The element of counter-obligation means the receipt of payment or other counter-guarantee from the counterparty for the fulfillment of obligations under the contract. A literal interpretation of the provisions of the Civil Code indicates that payment must be made in all cases under a construction contract.

The relationship between the client and contractor under a construction contract can be simple or complex. A simple contractual relationship between the client and contractor is considered to be one in which the contractor personally performs the construction work specified in the contract. However, complex contractual relationships are often established between the parties. The general contractor model is widely used, according to which the client enters into a construction contract with the general

contractor. The latter transfers part of its obligations under the contract to other entities specializing in specific types of work—subcontractors. The relationship between the general contractor and subcontractors is formalized by a construction subcontract. For example, according to the first part of Article 634 of the Civil Code of the Republic of Uzbekistan, if legislation or the contract does not stipulate the contractor's obligation to personally perform the work specified in the contract, the contractor has the right to engage other entities (subcontractors) to fulfill part of its obligations. In this case, the general contractor system is directly linked to the main contract. In this case, subcontractors are directly liable to the client for failure to perform work or for improper performance. The customer, in turn, is obliged to fulfill its obligations directly to subcontractors, in particular, to pay for the work performed.

From the above analysis, it can be concluded that the theoretical and historical foundations of construction contracts do not fully correspond to the content of the regulations currently in force in practice. Legislators should clearly define the important features of construction contracts, which will improve the quality of dispute resolution regarding contractual obligations that may arise in practice.

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