

Table of Contents

CHAPTER 1. CONTRACTS

§ 1:1	Contractual relationships in the construction industry
§ 1:2	Construction protocols
§ 1:3	Contracts, torts, and warranties
§ 1:4	Oral and written contracts
§ 1:5	Mutual assent
§ 1:6	Busted sub bids may be enforced—Promissory estoppel
§ 1:7	Privity of contract
§ 1:8	Third party beneficiary
§ 1:9	Third party beneficiaries of roofing contracts
§ 1:10	Mutuality
§ 1:11	Meeting of the minds
§ 1:12	Uncertain contracts
§ 1:13	Offer; counter-offer; acceptance
§ 1:14	Reading contract
§ 1:15	Electronic transactions
§ 1:16	Consideration
§ 1:17	Other essential elements of contract
§ 1:18	Illegal contracts
§ 1:19	Interpretation of contracts
§ 1:20	Construction against party who wrote contract
§ 1:21	Construction to avoid forfeiture
§ 1:22	Custom
§ 1:23	Particular provisions control
§ 1:24	Written versus printed
§ 1:25	Performance specifications
§ 1:26	Exculpatory clauses
§ 1:27	Exculpatory clause versus indemnity clause
§ 1:28	Unconscionable provisions
§ 1:29	Attorney fees
§ 1:30	“No damages for delay” clauses
§ 1:31	Parol evidence rule
§ 1:32	Rule enforced
§ 1:33	Rule not enforced
§ 1:34	Personal liability
§ 1:35	Pay-when-paid clause
§ 1:36	Pay-if-paid clause
§ 1:37	Fraud and mistake
§ 1:38	Unilateral mistake

§ 1:39	Mutual mistake
§ 1:40	Extra work clause
§ 1:41	Waiver of requirement of a writing
§ 1:42	Waiver by payment
§ 1:43	Waiver by conduct
§ 1:44	Unauthorized agent
§ 1:45	Waiver—Accord and satisfaction clause
§ 1:46	Modification of contract—Consideration
§ 1:47	Oral modification of written contract
§ 1:48	Written modification of oral contract
§ 1:49	Abandonment
§ 1:50	Adequacy of consideration and busted bids
§ 1:51	Subcontractors' listing law—Reverse promissory estoppel
§ 1:52	Bid by material supplier
§ 1:53	Estimates
§ 1:54	Performance and breach
§ 1:55	Substantial performance
§ 1:56	Severability
§ 1:57	Part performance
§ 1:58	Impossibility
§ 1:59	Destruction of the project
§ 1:60	Subrogation
§ 1:61	Temporary impossibility
§ 1:62	Default—Breach of contract
§ 1:63	Default by contractor
§ 1:64	Default by owner
§ 1:65	Pleading damages by incorporation by reference
§ 1:66	Waiver of breach
§ 1:67	Anticipatory breach
§ 1:68	Stop work notice
§ 1:69	Rescission
§ 1:70	Restitution versus damages for breach of contract
§ 1:71	Benefit of bargain
§ 1:72	Market value damages
§ 1:73	Cost of correction, cost of completion
§ 1:74	Cost of repair versus diminution in value
§ 1:75	Emotional distress
§ 1:76	Collateral source rule
§ 1:77	Community property
§ 1:78	General damages versus special damages
§ 1:79	Interest as damages
§ 1:80	Usury; late charges
§ 1:81	Does contractor guarantee plans and specifications?

TABLE OF CONTENTS

§ 1:82	Owner's obligations—Implied covenants
§ 1:83	Pass-through claims
§ 1:84	Implied covenants
§ 1:85	When may owner eject contractor from job?
§ 1:86	Owner's damages for delay
§ 1:87	Failure to give written notice
§ 1:88	Liquidated damages
§ 1:89	Penalties versus liquidated damages
§ 1:90	Apportionment of liquidated damages
§ 1:91	Contractor's damages for delay
§ 1:92	<i>Eichleay</i> formula
§ 1:93	No damage for delay clauses
§ 1:94	Unjust enrichment
§ 1:95	Negligence versus unjust enrichment
§ 1:96	Measure of the quantum
§ 1:97	Indemnity contracts
§ 1:98	Interpretation of indemnity clauses
§ 1:99	Indemnity statutes
§ 1:100	Design professional as indemnitor
§ 1:101	Type II indemnity clause
§ 1:102	Type III clause
§ 1:103	Indemnitee as third party beneficiary or assignee
§ 1:104	Indemnity and other statutes
§ 1:105	Insurance clause
§ 1:106	Prompt payment requirements
§ 1:107	Prompt payment of the amount received
§ 1:108	Prompt payment of progress payments
§ 1:109	Funds withheld by a public agency in response to a stop notice are not "undisputed"
§ 1:110	Payment of retentions
§ 1:111	Prompt payment by surety
§ 1:112	Payments by and to prime design professionals
§ 1:113	Dump truck payments
§ 1:114	Prompt payments by state agencies
§ 1:115	Lost profits

CHAPTER 2. WHAT TO INCLUDE IN (AND EXCLUDE FROM) CONTRACTS

§ 2:1	Wild clauses
§ 2:2	Why have a written contract?

I. BASIC PRIME CONTRACT

§ 2:3	Preamble
-------	----------

- § 2:4 Description of work
- § 2:5 Plans, specifications, permits
- § 2:6 Payment
- § 2:7 Time for completion of work
- § 2:8 Labor and materials
- § 2:9 Contract, plans, specifications
- § 2:10 Extra work
- § 2:11 Allowances
- § 2:12 Delay
- § 2:13 Completion and occupancy
- § 2:14 Damage to project, insurance
- § 2:15 Right to stop work
- § 2:16 Attorney fees
- § 2:17 Clean-up
- § 2:18 Taxes and assessments
- § 2:19 Arbitration
- § 2:20 Notices
- § 2:21 Notice before contracting for residential work

II. OPTIONAL PROVISIONS FOR PRIME CONTRACT

- § 2:22 Conflict between contract documents
- § 2:23 Extra work
- § 2:24 Right to approve financial arrangements
- § 2:25 Disputes—Continued performance
- § 2:26 Owner's right to cancel if construction loan falls through
- § 2:27 Subrogation between insurers
- § 2:28 Contract not conditioned on financing
- § 2:29 No contract until both parties receive signed copies
- § 2:30 Right to repossess
- § 2:31 Prohibition of assignment
- § 2:32 Insolvency
- § 2:33 Right to demand bond
- § 2:34 Individual responsibility
- § 2:35 Mechanics lien releases
- § 2:36 Requirements of building officials
- § 2:37 Payment does not constitute approval
- § 2:38 Final payment waives claims
- § 2:39 Independent investigation
- § 2:40 Time is of essence—Progress of work
- § 2:41 Limitations
- § 2:42 Indemnity
- § 2:43 Bonus for early completion

TABLE OF CONTENTS

- § 2:44 Arbitration
- § 2:45 Payment bond
- § 2:46 Late payments
- § 2:47 No waiver of remedies

III. SPECIALIZED CONTRACT FORMS

- § 2:48 Federal truth in lending act
- § 2:49 Contract requirements for construction of single-family dwelling
- § 2:50 Notice to owner describing mechanics lien law
- § 2:51 Insurance attachment for single-family dwelling contracts
- § 2:52 Home improvement contracts
- § 2:53 Requirements for home improvement contracts
- § 2:54 Service and repair contracts
- § 2:55 Home solicitation contracts for disaster repair
- § 2:56 Changes to home improvement contracts
- § 2:57 Insurance checklist for home improvement contracts
- § 2:58 Checklist for homeowners
- § 2:59 Criticism of statutory requirements for home improvement contracts
- § 2:60 Written contract required for asbestos abatement work
- § 2:61 Home solicitation contract requirements
- § 2:62 Landscape architect must provide customer with a detailed written contract
- § 2:63 Special arbitration requirements for residential improvement contracts

IV. BASIC SUBCONTRACT

- § 2:64 Description of subcontract work
- § 2:65 Payment schedule
- § 2:66 Plans, specifications
- § 2:67 Labor and materials
- § 2:68 Commencement of work
- § 2:69 Withdrawal of bid
- § 2:70 Extra work
- § 2:71 Destruction of premises, subcontractor's rights
- § 2:72 Delay
- § 2:73 Pass-through claims
- § 2:74 Attorney fees
- § 2:75 Insolvency
- § 2:76 Time of the essence
- § 2:77 Contractor's license
- § 2:78 Permits

- § 2:79 Indemnity
- § 2:80 Insurance
- § 2:81 Protection of the work
- § 2:82 Default
- § 2:83 Guarantee
- § 2:84 Arbitration
- § 2:85 Notices

V. ADDITIONAL SUBCONTRACT CLAUSES

- § 2:86 Progress of the work
- § 2:87 Indemnity by subcontractor
- § 2:88 Assessments and reimbursement charges
- § 2:89 Payments from construction loan to subcontractor
- § 2:90 Subcontractor's right to stop work
- § 2:91 Mechanics lien releases
- § 2:92 Payment bond
- § 2:93 Responsibility for subcontract price
- § 2:94 Repossession by subcontractor
- § 2:95 Extra work
- § 2:96 Work required by public agency
- § 2:97 Pay-when-paid
- § 2:98 Payment not approval
- § 2:99 Right to demand bond
- § 2:100 Extra work
- § 2:101 Time schedule
- § 2:102 Trade unions
- § 2:103 Permits, laws
- § 2:104 Backcharges against subcontractor
- § 2:105 Delay by subcontractor, withholding of damages
- § 2:106 Flow-down clause
- § 2:107 Ejection of subcontractor from job
- § 2:108 Prime contractor as conduit for payment
- § 2:109 Nonaward
- § 2:110 Subcontractor's work not limited to particular section of specifications
- § 2:111 Alternates
- § 2:112 OSHA compliance
- § 2:113 Subcontractor's claims against owner

CHAPTER 3. ARBITRATION

I. ARBITRATION AGREEMENTS

- § 3:1 Support for settlement of disputes by arbitration

TABLE OF CONTENTS

§ 3:2	Immunity of arbitrators and arbitration associations
§ 3:3	Submission agreements
§ 3:4	Arbitration agreement in contract
§ 3:5	Arbitration agreement in CC&Rs
§ 3:6	Arbitration agreement in residential construction contract
§ 3:7	Venue of arbitration proceedings
§ 3:8	Public agency arbitration
§ 3:9	Real estate contracts
§ 3:10	Self executing agreements
§ 3:11	Termination of contract
§ 3:12	Rescission of contract
§ 3:13	Contracts of adhesion
§ 3:14	Unconscionable arbitration agreement
§ 3:15	Judicial reference agreement not unconscionable
§ 3:16	Public policy
§ 3:17	Illegal contracts
§ 3:18	Oral arbitration agreement
§ 3:19	Limitations
§ 3:20	Waiver of right to compel arbitration
§ 3:21	Arbitrator need not know the law

II. ENFORCEMENT OF ARBITRATION AGREEMENT

§ 3:22	Enforcement of arbitration agreement
§ 3:23	Enforcement under the Federal Arbitration Act
§ 3:24	Choice of law clause
§ 3:25	Determination of arbitrability

III. STAYS

§ 3:26	Arbitration may be stayed to avoid conflicting awards
§ 3:27	Litigation may be stayed to avoid conflicting awards
§ 3:28	Circumstances in which litigation <i>must</i> be stayed by federal courts when a dispute is subject to arbitration under the Federal Arbitration Act
§ 3:29	Commencement of arbitration tolled

IV. THE ARBITRATOR

§ 3:30	Partisan and neutral arbitrator
§ 3:31	Replacement of the arbitrator
§ 3:32	Arbitrator disclosures
§ 3:33	Arbitrator violates agreement: award vacated
§ 3:34	Mediator/arbitrator

- § 3:35 Bias
- § 3:36 Impression of bias
- § 3:37 Presumption of bias
- § 3:38 Minimum levels of integrity
- § 3:39 Homeowner/developer proceedings

V. THE HEARING

- § 3:40 Determination of issues to be arbitrated
- § 3:41 Waiver—Limitations
- § 3:42 Conduct of hearings
- § 3:43 The arbitrator, and not the court, controls arbitration proceedings
- § 3:44 Due process
- § 3:45 Summary judgment
- § 3:46 Evidence
- § 3:47 Counsel from out-of-state

VI. PROVISIONAL AND EQUITABLE REMEDIES

- § 3:48 Mechanics liens
- § 3:49 Provisional remedies
- § 3:50 Equitable remedies
- § 3:51 Arbitrators may not appoint a receiver
- § 3:52 Class actions

VII. THE AWARD

- § 3:53 Time for award
- § 3:54 Award
- § 3:55 Ambiguous award
- § 3:56 Error of law
- § 3:57 Manifest disregard of law
- § 3:58 Utterly irrational
- § 3:59 Collateral estoppel
- § 3:60 Enforcement of award
- § 3:61 Attorney fees
- § 3:62 Error of law—Attorney fees
- § 3:63 Attorney fees incurred in enforcement of the award
- § 3:64 Punitive damages
- § 3:65 Change of award
- § 3:66 General partner bound by award
- § 3:67 Appeal of award
- § 3:68 Grounds for vacating award

VIII. ADVANTAGES AND DISADVANTAGES OF ARBITRATION

- § 3:69 Expertise of arbitrator

TABLE OF CONTENTS

§ 3:70	Technical evidence
§ 3:71	Bias
§ 3:72	Speed of proceedings
§ 3:73	Formality
§ 3:74	Cost
§ 3:75	Finality of decision
§ 3:76	Immunity
§ 3:77	Multiple parties
§ 3:78	Subcontractor
§ 3:79	Surety
§ 3:80	Consolidation
§ 3:81	Provisional remedies
§ 3:82	Jury trial
§ 3:83	Discovery
§ 3:84	Punitive damages
§ 3:85	American Arbitration Association Construction Industry Arbitration Rules and Mediation Procedures
§ 3:86	CSLB Mandatory and Voluntary Arbitration Programs

IX. MEDIATION

§ 3:87	Mediation legislation
§ 3:88	Mediation of earthquake claims
§ 3:89	Criminal cases
§ 3:90	Court-ordered mediation
§ 3:91	Voluntary mediation

CHAPTER 4. CONTRACTORS' LICENSE LAW

§ 4:1	Necessity of license
§ 4:2	Entire contract is void
§ 4:3	Surety exemption
§ 4:4	Labor contractor
§ 4:5	Exemption for minor work
§ 4:6	Exemption for rural fire prevention work
§ 4:7	Federal contracting
§ 4:8	Classifications
§ 4:9	License bonds
§ 4:10	Joint licenses
§ 4:11	Responsible managing employee
§ 4:12	Bankruptcy
§ 4:13	Diversion of funds
§ 4:14	Willful or deliberate failure to pay
§ 4:15	Contractor must maintain workers' compensation insurance and liability insurance

- § 4:16 Proving a compensable injury under the worker's compensation system
- § 4:17 Unsatisfied judgments
- § 4:18 Failure to pay taxes
- § 4:19 Breach of contract
- § 4:20 Vendor to unlicensed contractor
- § 4:21 Civil penalties for nonlicensure
- § 4:22 Potential for liability—Unfair competition
- § 4:23 Building inspectors
- § 4:24 Corporate franchise
- § 4:25 Disclosure of disciplinary actions
- § 4:26 Regulation of contractors by local agencies
- § 4:27 What is a contractor?
- § 4:28 Hauling and equipment rental
- § 4:29 Landscaping contractors
- § 4:30 Supervisors and employees
- § 4:31 Unlicensed prime versus licensed subcontractor
- § 4:32 Architects
- § 4:33 Construction managers
- § 4:34 CM who is a registered professional engineer
- § 4:35 Architect acting as construction manager
- § 4:36 Material suppliers
- § 4:37 Out-of-state work
- § 4:38 Citations and disciplinary proceedings
- § 4:39 Compensation denied to unlicensed contractors
- § 4:40 License not effective for full period of job
- § 4:41 Equitable indemnity—Counterclaim—Warranty
- § 4:42 Earnings may be offset
- § 4:43 Unlicensed contractors must disgorge
- § 4:44 Unlicensed contractor may pursue race discrimination claim
- § 4:45 Substantial compliance
- § 4:46 Doctrine of illegality extends to other licensed professions
- § 4:47 Disassociation of responsible managing employee
- § 4:48 Nonlicensure is a defense to a fraud action
- § 4:49 Burden of proof
- § 4:50 Unlicensed developer cannot collect compensation for infrastructure improvements
- § 4:51 Promissory notes
- § 4:52 Wrong license
- § 4:53 Reverse application
- § 4:54 Unlicensed subcontractor
- § 4:55 Partial recovery
- § 4:56 Home improvement contracts

TABLE OF CONTENTS

§ 4:57	Service and repair contracts
§ 4:58	Oral contract to construct a residence
§ 4:59	Liability of owner who employs unlicensed contractor
§ 4:60	No civil damages
§ 4:61	Homeowner who hires unlicensed tree trimmer is not required to comply with Cal OSHA regulations
§ 4:62	Owner's liability for acts of unlicensed contractor
§ 4:63	Geology, geophysicist license
§ 4:64	Failure to obtain permit as a willful violation of the Contractors' State License law
§ 4:65	Statutory attorney fees for violation of the Contractor's State License Law
§ 4:66	Statute of limitations
§ 4:67	Application and enforcement of licensing law
§ 4:68	Willful departure from accepted trade standards for good and workmanlike construction

CHAPTER 5. CONSTRUCTION DEFECTS

§ 5:1	Construction defects—SB 800 (Right to Repair Act)
§ 5:2	Class actions under the Right to Repair Act
§ 5:3	Liability of developer or contractor to owner
§ 5:4	Admissibility of expert testimony
§ 5:5	Violation of building code is not necessarily negligence per se
§ 5:6	Deceit and negligence
§ 5:7	Deceit in processing of claim
§ 5:8	Nondisclosure
§ 5:9	Fraud, punitive damages
§ 5:10	Reliance on misrepresentations
§ 5:11	Liability for fraud of agent
§ 5:12	Purchaser of view lots versus developer
§ 5:13	False advertising—False claims
§ 5:14	Dust no trespass
§ 5:15	Damages—Stigma and emotional distress
§ 5:16	Emotional distress damages
§ 5:17	Punitive damages for housing discrimination
§ 5:18	Class action
§ 5:19	Standing to sue
§ 5:20	Collateral source rule
§ 5:21	Necessary and indispensable parties
§ 5:22	Strict liability
§ 5:23	Express warranty
§ 5:24	Subcontractors, third parties
§ 5:25	Engineers
§ 5:26	Bystanders

- § 5:27 Small builders
- § 5:28 Limits of the doctrine
- § 5:29 Types of product defects
- § 5:30 Non-defective product
- § 5:31 Assumption of the risk
- § 5:32 Expert testimony
- § 5:33 Doctrine of equitable indemnity
- § 5:34 The economic loss defense
- § 5:35 No tort remedy for economic loss caused by
construction defects—The *Aas* decision
- § 5:36 Rollback of *Aas*
- § 5:37 Liability for physical injury—*Jimenez*
- § 5:38 Component injures other components
- § 5:39 Contract for services
- § 5:40 Identification of the “product”
- § 5:41 Economic loss defense absent privity
- § 5:42 Damage to the product itself
- § 5:43 Economic loss—Fraud
- § 5:44 Breach of warranty
- § 5:45 Doctrine of implied warranty applies to real estate
- § 5:46 Waiver of implied warranty
- § 5:47 Remote purchaser versus remote purchaser—No
implied warranty
- § 5:48 Comparative negligence no defense
- § 5:49 Magnuson-Moss—Attorney fees
- § 5:50 Building materials supplied by a contractor are not
“consumer goods” under Song-Beverly
- § 5:51 Privity is an essential ingredient of warranty claims
- § 5:52 Standing of homeowners associations
- § 5:53 No equitable indemnity against directors or unit
owners
- § 5:54 Association has no duty to disclose construction
defects
- § 5:55 Information to members
- § 5:56 Dispute resolution requirements are expanded
- § 5:57 Liability for residential construction defects—SB 800
- § 5:58 Actionable defects
- § 5:59 The standards
- § 5:60 Warranties
- § 5:61 Chapter 4 pre-litigation procedure
- § 5:62 Statutes of repose
- § 5:63 Damages and defenses
- § 5:64 Loopholes
- § 5:65 Liability to third parties
- § 5:66 Completion and acceptance is [not] a defense

TABLE OF CONTENTS

§ 5:67	Contractor is liable for negligence of subcontractor
§ 5:68	Responsibility of prime contractor for job safety
§ 5:69	Responsibility of subcontractor
§ 5:70	Responsibility of owner
§ 5:71	Responsibility of project manager
§ 5:72	Delay installing traffic signal
§ 5:73	Pipeline puncture
§ 5:74	Responsibility to patron
§ 5:75	Responsibility to construction lender
§ 5:76	Trust deed holder versus contractor
§ 5:77	Owner versus subcontractor—Tort theory
§ 5:78	—Contract theory
§ 5:79	Tenant versus contractor for economic loss
§ 5:80	Personal liability of contractor's president
§ 5:81	Spoliation of evidence
§ 5:82	Jobsite as attractive nuisance
§ 5:83	Recreational use statute
§ 5:84	Liability of building department inspector
§ 5:85	Association of plumbing officials could be liable for negligence
§ 5:86	Liability of construction lender
§ 5:87	Lender not liable to contractor for impaired bonding capacity
§ 5:88	Construction manager has no duty to architect
§ 5:89	Liabilities of design professionals
§ 5:90	Estimates
§ 5:91	Negligent design and supervision
§ 5:92	Signing plans
§ 5:93	Application of strict liability doctrine to design professionals
§ 5:94	Third party versus design professional
§ 5:95	Patron versus architect
§ 5:96	Contractor versus architect
§ 5:97	Third party versus environmental consultant
§ 5:98	Negligence per se
§ 5:99	Soils design, nuisance
§ 5:100	Certificate of merit requirement
§ 5:101	Certificate of merit may be amended
§ 5:102	Voluntary structural inspection after earthquakes
§ 5:103	Limited immunity of certain plan checkers and inspectors
§ 5:104	Expert fees
§ 5:105	Peculiar risk doctrine
§ 5:106	Non-negligent general contractor— <i>Privette</i>
§ 5:107	<i>Privette-Toland</i>

- § 5:108 General contractor protected by *Privette-Toland*
- § 5:109 Property owner
- § 5:110 Hirer
- § 5:111 Negligent hirer
- § 5:112 *Privette* rule does not protect owner or contractor
from liability for negligence
- § 5:113 —Express indemnity
- § 5:114 Non-delegable duty
- § 5:115 Liability of material suppliers
- § 5:116 Lack of privity
- § 5:117 Liability of contractors on public jobs
- § 5:118 Interference with traffic
- § 5:119 Liability of public agency—Immunity
- § 5:120 Fraud of inspectors
- § 5:121 Permit to unlicensed contractor
- § 5:122 Rumble at jobsite
- § 5:123 Design immunity
- § 5:124 Statutes of limitation and repose
- § 5:125 Concealment of cause of action—Discovery rule
- § 5:126 Appreciable and actual harm
- § 5:127 Progressive injury
- § 5:128 Four-year statute of repose
- § 5:129 Latent versus patent
- § 5:130 Defect became patent after substantial completion
- § 5:131 Malpractice actions
- § 5:132 Two-prong test
- § 5:133 Injury to real property—Three-year statute
- § 5:134 The problem of virtually unlimited liability
- § 5:135 Ten-year statute of repose
- § 5:136 Two-step analysis
- § 5:137 Substantial completion of what?
- § 5:138 CERCLA preempts California 10-year statute
- § 5:139 Patent defect?
- § 5:140 Willful misconduct
- § 5:141 Bodily injury
- § 5:142 Manufacturers
- § 5:143 Estoppel to rely on the statute
- § 5:144 Waiver of defense
- § 5:145 Tolling
- § 5:146 Five-step process, equitable tolling, estoppel
- § 5:147 Equitable tolling versus equitable estoppel
- § 5:148 Fraudulent concealment
- § 5:149 Indemnity claims
- § 5:150 Private statutes of limitations

TABLE OF CONTENTS

§ 5:151	Homeowner earthquake claims revived
§ 5:152	Claims against public entities
§ 5:153	Statutes of repose applicable to actions under SB 800
§ 5:154	Equitable indemnity
§ 5:155	Comparative fault
§ 5:156	Joint fault
§ 5:157	Allocation of fault
§ 5:158	Indemnity and comparative fault
§ 5:159	Willful misconduct and fraudulent concealment
§ 5:160	Express indemnity displaces implied indemnity
§ 5:161	Express indemnity
§ 5:162	Duty to defend: tender
§ 5:163	Fault of indemnitor
§ 5:164	Faultless indemnitor
§ 5:165	Indemnity clause in light type
§ 5:166	Indemnity agreement unsigned by indemnitee
§ 5:167	No enforcement by third party beneficiary
§ 5:168	Obligation to provide insurance
§ 5:169	Negligent claims handling
§ 5:170	Liability insurance
§ 5:171	There is no cause of action for negligent claim handling
§ 5:172	Interpretation of insurance policies
§ 5:173	“Accident”
§ 5:174	Linguist testimony
§ 5:175	“Occurrence,” emotional distress
§ 5:176	“Occurrence,” includes installation of substandard work
§ 5:177	No “occurrence” unless substandard work caused property damage
§ 5:178	No “occurrence” until pipe leaked
§ 5:179	Occurrence of property damage triggers coverage
§ 5:180	Loss-in-progress rule
§ 5:181	The work exclusion
§ 5:182	Products-completed operations
§ 5:183	Diminished value
§ 5:184	Broad form
§ 5:185	Work exclusion versus negligence of other contractors
§ 5:186	Professional services exclusion
§ 5:187	Business exclusion
§ 5:188	Liability assumed by contract
§ 5:189	Tort versus contract versus fraud
§ 5:190	Property damage caused by breach of contract
§ 5:191	Additional insured
§ 5:192	Coverage of additional insured endorsement

- § 5:193 Policy covers negligence of additional insured
- § 5:194 Bad faith, punitive damages
- § 5:195 Suretyship, bad faith
- § 5:196 Continuous injury trigger: progressive loss
- § 5:197 Trigger for asbestos damage
- § 5:198 Retained limits
- § 5:199 Eleven claims, eleven deductibles
- § 5:200 No suit: no coverage
- § 5:201 Hazardous waste cleanup costs
- § 5:202 Emotional distress
- § 5:203 Emotional distress caused by economic loss
- § 5:204 Advertising injury
- § 5:205 Ground water contamination—Trespass
- § 5:206 Duty to defend
- § 5:207 Punitive damages
- § 5:208 “Possibility” of coverage
- § 5:209 Duty to defend claim asserted as an affirmative defense
- § 5:210 Duty to defend environmental cleanup proceedings
- § 5:211 Duty to defend additional insured
- § 5:212 Additional insured is entitled to a “100% defense”
- § 5:213 Tender to excess carrier
- § 5:214 Pre-tender defense costs
- § 5:215 Voluntary payment
- § 5:216 Reimbursement of costs of defense
- § 5:217 No discovery on issue of duty to defend
- § 5:218 No duty to defend claim based on performance bond
- § 5:219 Insured may be entitled to independent counsel
- § 5:220 Incompetent independent counsel
- § 5:221 Declaratory relief action was malicious prosecution
- § 5:222 Property insurance
- § 5:223 Efficient cause
- § 5:224 Homeowners insurance
- § 5:225 Wet or dry rot exclusion or mold exclusion
- § 5:226 Latent defect exclusion
- § 5:227 Earth movement exclusion
- § 5:228 Faulty workmanship exclusion
- § 5:229 Third party negligence exclusion
- § 5:230 Impaired property exclusion
- § 5:231 An exception to an exclusion does not extend coverage
- § 5:232 Rain damage
- § 5:233 Pollution exclusion
- § 5:234 Collapse coverage
- § 5:235 Limitations

TABLE OF CONTENTS

§ 5:236	Equitable tolling
§ 5:237	Suit on homeowners' policy was timely
§ 5:238	No physical damage
§ 5:239	Sue and labor clause
§ 5:240	Destruction of project under construction
§ 5:241	The doctrine of subrogation
§ 5:242	Waiver of subrogation
§ 5:243	Replacement cost
§ 5:244	Repair by insurer
§ 5:245	Quake insurance claims revived
§ 5:246	Good faith settlement
§ 5:247	The indispensability of allocation
§ 5:248	Improper allocation
§ 5:249	Effect of allocations
§ 5:250	Valuation not supported by substantial evidence
§ 5:251	Dismissal of cross-complaints
§ 5:252	Costs
§ 5:253	Disclosure of settlement agreement
§ 5:254	Good faith settlement survives attack
§ 5:255	Credit for settlement money
§ 5:256	Settlement does not bind liability insurer
§ 5:257	Settlement does not bind homeowners association
§ 5:258	Settlement intended to injure
§ 5:259	Settling defendant remains a party
§ 5:260	Joint tortfeasors
§ 5:261	Assigned indemnity agreement, attorney fees
§ 5:262	"Genuine dispute" defense
§ 5:263	Insurance Code § 533—Statutory exclusion of coverage for willful acts of the insured
§ 5:264	Equitable contribution
§ 5:265	<i>Brandt</i> damages for attorney fees incurred seeking coverage

CHAPTER 6. MECHANICS LIENS, STOP PAYMENT NOTICES, AND PAYMENT BONDS

§ 6:1	Mechanics lien, stop payment notice, and prompt payment laws are recast
§ 6:2	Basic theory
§ 6:3	Unclean hands
§ 6:4	Constitutionality of the mechanics lien statute
§ 6:5	What is a mechanics lien?
§ 6:6	Constitutional provision
§ 6:7	Who may claim a mechanics lien?
§ 6:8	Subcontractor versus material supplier

§ 6:9	Delivery to the jobsite
§ 6:10	Lien for project that is not built
§ 6:11	Design professionals liens
§ 6:12	Labor contractor
§ 6:13	ERISA
§ 6:14	Personal property
§ 6:15	Time limits and procedure
§ 6:16	Contents of mechanics liens
§ 6:17	Notice of mechanics lien
§ 6:18	Amount of mechanics lien
§ 6:19	Abandonment, breach of contract
§ 6:20	Extra work
§ 6:21	Delay damages not includable
§ 6:22	Mechanics lien claim does not include attorney fees
§ 6:23	Effect of mechanics lien
§ 6:24	Bankruptcy
§ 6:25	Extent of lien
§ 6:26	Slander of title
§ 6:27	Malicious prosecution
§ 6:28	Public property
§ 6:29	Indian land
§ 6:30	False lien
§ 6:31	Policy against clouds on title
§ 6:32	Release decree
§ 6:33	Notice of completion
§ 6:34	Notice of recording notice of completion or notice of cessation
§ 6:35	Effect of notice of completion
§ 6:36	Estoppel
§ 6:37	Substantial compliance
§ 6:38	Material suppliers
§ 6:39	Definition of completion
§ 6:40	Premature recording of mechanics lien
§ 6:41	Acceptance of work by public agency
§ 6:42	Approval by a public agency is not the equivalent of “completion”
§ 6:43	Separate residential units
§ 6:44	Notice of completion of separate original contracts
§ 6:45	Cessation without completion
§ 6:46	Notice of cessation
§ 6:47	Limitations
§ 6:48	Effect of bankruptcy
§ 6:49	Proper court
§ 6:50	Fictitious defendants
§ 6:51	Notice of lis pendens

TABLE OF CONTENTS

§ 6:52	Arbitration of mechanics lien claim
§ 6:53	Mechanics lien notice to owner
§ 6:54	Preliminary notice
§ 6:55	Who must give notice
§ 6:56	Lowball estimate
§ 6:57	Who gets the notice
§ 6:58	What notice must contain
§ 6:59	Work covered by notice
§ 6:60	How notice served
§ 6:61	Proof of service
§ 6:62	Strict compliance
§ 6:63	Preliminary notice may be recorded
§ 6:64	Premature notice
§ 6:65	Reputed, not actual, owner
§ 6:66	Improvements not ordered by owner
§ 6:67	Notice of nonresponsibility
§ 6:68	Effect of notice of nonresponsibility
§ 6:69	Interplay of preliminary notice requirement with notice of nonresponsibility
§ 6:70	Mechanics lien releases
§ 6:71	Statutory release forms
§ 6:72	Release does not bar subsequent claim
§ 6:73	Tender
§ 6:74	Problems with progress release forms
§ 6:75	Form: declaration to procure payment
§ 6:76	Release does not cover unpaid retention
§ 6:77	Effective period covered by the release
§ 6:78	Release signed under economic duress
§ 6:79	Pay-if-paid clause is unenforceable
§ 6:80	Pay-if-paid clause in public works subcontract is void
§ 6:81	Joint checks
§ 6:82	Garnishment versus joint check agreement
§ 6:83	Release bonds
§ 6:84	Summary proceedings
§ 6:85	Attorney fees
§ 6:86	Exoneration
§ 6:87	Payment (labor and material) bond
§ 6:88	Statute of limitations
§ 6:89	Preliminary notice requirement
§ 6:90	20-Day notice versus 15/75-day notice
§ 6:91	Payment bond surety is liable for attorney fees based on clause in subcontract
§ 6:92	Third-tier subcontractors protected
§ 6:93	Subrogation
§ 6:94	Payment bonds—Fringe benefits

- § 6:95 Certain project owners must furnish payment bonds or other security
- § 6:96 Priorities
- § 6:97 Priority from commencement of improvement
- § 6:98 Lien loses priority when release is recorded
- § 6:99 Priority over trust deeds
- § 6:100 Effect of foreclosure of trust deed
- § 6:101 Optional advances
- § 6:102 Special rules for site improvements
- § 6:103 Commencement of site work
- § 6:104 Priority of mechanics liens for site work
- § 6:105 Stop payment notices
- § 6:106 Stop notice claimants may recover attorney fees
- § 6:107 Stop notice claimants may not recover arbitration attorney fees
- § 6:108 Foreign projects
- § 6:109 Personal property contract
- § 6:110 What is a stop payment notice?
- § 6:111 Targets of stop payment notices
- § 6:112 Stop notice bond
- § 6:113 Form: affidavit of surety
- § 6:114 Effect of stop payment notice
- § 6:115 Stop payment notice time limits and procedure
- § 6:116 Equitable tolling
- § 6:117 Stop payment notice release bonds and payment bonds
- § 6:118 Stop payment notice demand
- § 6:119 Some equitable lien claims are abolished
- § 6:120 Federal projects
- § 6:121 Trust fund theory
- § 6:122 What stop payment notices do to construction lenders
- § 6:123 Design professionals liens
- § 6:124 Prejudgment interest

CHAPTER 7. PUBLIC CONTRACTS

- § 7:1 Formation—Competitive bidding requirements
- § 7:2 Competitive bidding requirements
- § 7:3 Plan rooms
- § 7:4 Re-recodification
- § 7:5 Exceptions to competitive bidding requirements
- § 7:6 Exemptions from competitive bidding requirements
- § 7:7 Architects and engineers—Competitive selection
- § 7:8 Indemnity—Design professionals
- § 7:9 Effect of award

TABLE OF CONTENTS

§ 7:10	Agency bid rigging
§ 7:11	Manipulating alternates
§ 7:12	Award to other than low bidder
§ 7:13	Right of public agency to reject all bids
§ 7:14	Right of contractor to withdraw bid
§ 7:15	Estoppel to accept bid
§ 7:16	Cause of action for second low bidder
§ 7:17	Highest responsible bidder
§ 7:18	Most responsible bidder
§ 7:19	Remedies of low bidder
§ 7:20	Nonresponsive bid rejected
§ 7:21	City properly rejected low bid based on a domestic partner ordinance
§ 7:22	Irresponsible bidder
§ 7:23	Debarment
§ 7:24	Potential delay excuses competitive bidding
§ 7:25	Bid depository plan as restraint of trade
§ 7:26	Qualification
§ 7:27	Oral contracts
§ 7:28	Contracts wrongly awarded are void
§ 7:29	Inconsequential irregularity
§ 7:30	Prequalification
§ 7:31	Private infrastructure development
§ 7:32	Job order contracts
§ 7:33	Design-build-value engineering
§ 7:34	Charter cities
§ 7:35	Public employees may be cited if they award contract to unlicensed contractor
§ 7:36	Bribery to obtain a contract
§ 7:37	Extra work
§ 7:38	Change order for excavation
§ 7:39	Minority and women business enterprises
§ 7:40	Determination of good faith efforts
§ 7:41	Good faith efforts requirement violates equal protection clause
§ 7:42	Mbe/wbe outreach program does not violate equal protection clause
§ 7:43	U.S. Supreme Court requires narrow tailoring
§ 7:44	Revised federal DBE programs do not violate the equal protection clause
§ 7:45	Proposition 209
§ 7:46	Proposition 209 upheld
§ 7:47	Affirmative action—Standing to sue
§ 7:48	Force account
§ 7:49	Competitive bidding required on leases

- § 7:50 Interpretation of public contracts
- § 7:51 Implied covenants
- § 7:52 Written notice requirement
- § 7:53 Or equal requirements
- § 7:54 Roofing—Or equals
- § 7:55 Contract terms required (or prohibited) by law
- § 7:56 Certain insurance requirements are prohibited
- § 7:57 Payment
- § 7:58 Prevailing wages
- § 7:59 Determination of prevailing wage rates
- § 7:60 Prevailing wages—Limitations
- § 7:61 Prevailing wages not required in some projects
- § 7:62 Worker cause of action for prevailing wages
- § 7:63 Prompt payment requirements
- § 7:64 Subcontractors listing law
- § 7:65 Failure to list locations
- § 7:66 Substantial compliance satisfied two-day written notice requirement
- § 7:67 Statutory rights of subcontractor
- § 7:68 Claim of subcontractor that was substituted out
- § 7:69 Clerical error—Suit by subcontractor
- § 7:70 Penalty
- § 7:71 Contractor cannot enforce claim arising from illegally awarded subcontract
- § 7:72 Portion of work versus percentage of work
- § 7:73 Hearing
- § 7:74 Minority, women and veterans listing law
- § 7:75 Enforcement of subcontractor's bid
- § 7:76 Extra work
- § 7:77 Abandonment theory
- § 7:78 Change orders to county contracts
- § 7:79 Hazardous materials
- § 7:80 Warranty of plans and information
- § 7:81 Nondisclosure
- § 7:82 Implied representations
- § 7:83 Implied warranty
- § 7:84 County contracts
- § 7:85 Determination by engineer
- § 7:86 Recovery of lost profit when work deleted
- § 7:87 Damages for delay in public contracts
- § 7:88 Penalties
- § 7:89 Liquidated damages
- § 7:90 Liquidated damages allowed
- § 7:91 Apportionment of liquidated damages
- § 7:92 Apportionment approved

TABLE OF CONTENTS

§ 7:93	Contractor's damages for delay by public agency
§ 7:94	No damage for delay clauses
§ 7:95	Damages for delay legislation
§ 7:96	Code violation
§ 7:97	Delay caused by negligence
§ 7:98	Total cost theory
§ 7:99	Sham bond
§ 7:100	Legislation re sham bond
§ 7:101	Judgment for lost bonding capacity
§ 7:102	Arbitration—State contracts
§ 7:103	—Local agency disputes
§ 7:104	Claims against public entities
§ 7:105	Claims for breach of contract
§ 7:106	Threatening letters
§ 7:107	“Pass-through” claims
§ 7:108	False Claims Act
§ 7:109	Reckless disregard
§ 7:110	Misrepresentations in catalog
§ 7:111	Prevailing wages
§ 7:112	Litigation privilege
§ 7:113	No false claim
§ 7:114	Performance bonds
§ 7:115	Qui tam plaintiff must be “original source”
§ 7:116	Attorney fees
§ 7:117	Conflict of interest
§ 7:118	Recovery of costs spent on invalid contracts
§ 7:119	Apprenticeship requirements

CHAPTER 8. CLAIMS OF SUBCONTRACTORS AND SUPPLIERS ON PUBLIC JOBS

§ 8:1	Pay-if-paid clauses
§ 8:2	Stop payment notices
§ 8:3	No preemption by ERISA
§ 8:4	Stop payment notice
§ 8:5	Service of stop payment notice
§ 8:6	Time limit for stop payment notice
§ 8:7	Suit on stop payment notice
§ 8:8	Five-day notice
§ 8:9	Preliminary notice
§ 8:10	Effect of stop payment notice
§ 8:11	Interest on funds subject to stop notice
§ 8:12	Release of funds from effect of stop payment notice
§ 8:13	Payment bonds

- § 8:14 Attorney fees
- § 8:15 Payment bond surety bad faith
- § 8:16 Statute of limitations
- § 8:17 Commencement of six-month period
- § 8:18 Independent remedy
- § 8:19 Right to require subcontractor's bond
- § 8:20 Release of claims
- § 8:21 Liability of public agency to surety
- § 8:22 Claim on subcontractor's bond
- § 8:23 Claims under the 1911 act
- § 8:24 Prompt payment
- § 8:25 Notice of progress payments
- § 8:26 Subletting and Subcontracting Fair Practices Act

CHAPTER 9. OTHER RULES OF LAW

- § 9:1 Diversion of funds
- § 9:2 False vouchers
- § 9:3 Willful diversion
- § 9:4 Advice to divert
- § 9:5 Drainage, roots, and mud
- § 9:6 Rule of reasonableness
- § 9:7 Flood waters
- § 9:8 300-Year flood—Reasonable design
- § 9:9 Roots of a neighbor's tree
- § 9:10 Landslide liability
- § 9:11 Copyright of plans
- § 9:12 Payroll tax liability
- § 9:13 Truth-in-lending
- § 9:14 Disclosure
- § 9:15 Finance charge
- § 9:16 Annual percentage rate
- § 9:17 Rescission
- § 9:18 Advertising
- § 9:19 Penalties
- § 9:20 Lateral support of adjacent property
- § 9:21 Shop stewards on construction site
- § 9:22 False imprisonment claims of union reps
- § 9:23 Discriminatory business license taxes
- § 9:24 Competition with former joint venturer
- § 9:25 Developer corporation may be sued after dissolution
- § 9:26 Bankruptcy—Preferential payment
- § 9:27 Trustee cannot recoup funds paid to material supplier
- § 9:28 Payments to subcontractors are not preferences
- § 9:29 Construction defect claim discharged

TABLE OF CONTENTS

§ 9:30	Publicizing complaints—Unhappy homebuyer
§ 9:31	Prevailing wages
§ 9:32	Due process
§ 9:33	Prevailing wages on private projects
§ 9:34	Independent contractors vs. employees
§ 9:35	ERISA preemption
§ 9:36	Backpay and penalties
§ 9:37	Debarment for prevailing wage violations
§ 9:38	Penalties
§ 9:39	Accord and satisfaction
§ 9:40	Construction crimes—Asbestos
§ 9:41	Attorney fees—Asbestos
§ 9:42	Clean water act
§ 9:43	RICO
§ 9:44	Anti-SLAPP motions
§ 9:45	Good faith settlement
§ 9:46	Concealment
§ 9:47	Condemnation
§ 9:48	Bankruptcy
§ 9:49	Adverse possession
§ 9:50	Manslaughter due to safety violation
§ 9:51	Attorney disqualification
§ 9:52	Constitutional violations
§ 9:53	Inverse condemnation
§ 9:54	Labor laws
§ 9:55	Environmental impacts
§ 9:56	Compliance with administrative rules
§ 9:57	Design professional to certify performance

APPENDICES

APPENDIX A.	Disposition of former Civil Code sections 3081.1 to 3267
APPENDIX B.	California Construction-Related Laws Passed in 2024
APPENDIX C.	Construction Arbitration

Table of Laws and Rules

Table of Cases

Index