

CM 380 Construction Law and Contracts

Course Syllabus

Mission Statement: Southern New Hampshire University transforms the lives of students. Our success is defined by our students' success. By relentlessly challenging the status quo and providing the best support in higher education, Southern New Hampshire University expands access to education by creating high quality, affordable and innovative pathways to meet the unique needs of each and every student.

The College of Engineering, Technology & Aeronautics (CETA) prepares students to make an immediate contribution in the work place while being responsive to industry's needs. CETA is a place for students to design, create, and serve -- where every student can shape not just his or her own future, but the future of the world.

Course Number/Section: CM 380-09806
Semester: Spring 2021
Class Schedule: Monday and Thursday, 2:00 PM – 3:15 PM each day
Class Location: SYN (Remote – Virtual Classroom)
Prerequisites: CM 100
Co-requisites:
Credits: 3

INSTRUCTOR INFORMATION

Arthur House [Remote] a.house@snhu.edu [207-930-5168]
Remote Hours: By appointment and
Class Sessions: <https://meetings.ringcentral.com/j/7158065817>

Mr. House is a Business Development Consultant, Advisor and retired CEO/ Chairman of Board for Domestic and International firms in Construction Management and Engineering Industry. He structured Strategic Alliances and Partnering Relationships in Renewable Energy, Biomass, Carbon Emission and Greenhouse Gas mitigation fields. A principal in subcontractor, General Contracting and Construction Management firms, with extensive experience in commercial, industrial and retail contracting. Projects include of Condominiums, Planned Unit Developments (PUD), Post Offices, US Army Reserve Headquarters, School Construction, and Concrete Restoration all under various contract delivery processes (e.g., AIA and AGC Contracting, Design/Build, Pure CM, and CM at Risk). His educational background include BS in Business, MBA at N.H. College (SNHU), Nova Southeastern University DBA Program in International Business, and Purdue Global University – Executive Juris Doctor program focused on Corporate and Contract Law. Mr. House taught as adjunct faculty at Florida International University (FIU) in undergraduate and graduate programs in Construction Management and Engineering Division – also, at Lynn University in Florida, Franklin Pierce and Notre Dame in NH.

COURSE DESCRIPTION

This course is taught from a Practitioner perspective, with integration of the legal system, including court structure and procedure, and sources of law as applicable to management and contractual delivery of construction projects. Topics covered include bidding, delays and acceleration, differing site conditions, contract analysis, termination of contract, liability and remedies, contract drafting and interpretation, dispute resolution alternatives, the history and development of construction law will be discussed. Consideration of tort law followed by a review of contract law, including basic elements of a valid contract, enforcement, rights of litigants, and remedies for breach.

REQUIRED MATERIALS

Smith, Currie & Hancock, *Common Sense Construction Law* (Sixth edition), John Wiley & Sons, Inc. ISBN 978-1-119-54017-5. Other readings will be distributed by email.

COURSE OUTCOMES & OBJECTIVES

At the end of this course, students should have a working knowledge of construction contract law, and be able to:

1. Explain the fundamentals of the legal structures pertaining to construction
2. Demonstrate familiarity with various construction contract types
3. Examine and review contract documents, and understand their legal terminology
4. Understand the interplay of contractual relationships among parties involved in a construction project
5. Plan for dispute resolution and assess legal risks and remedies
6. Assist legal counsel in asserting and defending claims
7. Read and understand statutes, regulations and judicial opinions
8. Avoid legal pitfalls in the construction process

COURSE EXPECTATIONS AND ASSESSMENT

Brightspace™

The use of Brightspace™ is required in this course. This is the free software that the university uses to enhance learning. It is available through any web browser (ex., Netscape, Internet Explorer). Instruction in how we will use Brightspace™ will be covered in class.

Common Grading Scale

This policy impacts all SNHU students, regardless of delivery system or major, and creates a consistency throughout the University regarding the numeric grades that equate to the different tiers of letter grades.

Undergraduate Grading Scale:			Assignment	Points	%
Grade	Numerical Equivalent	Points	Assigned Tasks		
A	93-100	4.00			
A-	90-92	3.67	Attendance	100	10%
B+	87-89	3.33	Quizzes: MC - Overall	300	30%
B	83-86	3.00	Graded Discussions	50	5%
B-	80-82	2.67	Mid Term Exam	200	20%
C+	77-79	2.33	Case Briefing - Oral	100	10%
C	73-76	2.00	Final Exam – MC/Essay	250	25%
C-	70-72	1.67			
D+	67-69	1.33	Total Course Grading	1000	100%
D	60-66	1.00			
F	0-59	0.00			

Expectations

Regular attendance is required with exceptions where the instructor is provided advance notice of the expected absence or a valid absence is approved by the instructor after any missed attendance. Opportunities to “make up” for missed classes through extra work will be allowed on a limited basis but only after initiated by the student. The goal of this instructor is to help students to achieve their goals and all assistance possible will be expended.

Attendance is a part of your overall grade and as an example here the total points possible for attendance is 100 points or 10% of the total course grade. Periodic Quizzes are presented as MC questions or short Essay Quiz. These are not in every Session however periodically placed and appropriately announced in the individual Session. The overall MC Quiz points are 300 and accordingly worth 30% of the total course grade. Most sessions provide an opportunity for students to share in an ungraded discussion however there will be one or two graded discussions with a total 50 point value or 5% of the total grade. There will be a Mid Term Exam worth 200 points and 20% of the total grade. Students will have an opportunity to make a 10-minute oral presentation to brief a case from the course readings. The presentation will be worth 100 points or 10% of the total grade. Your Final Exam will be administered to include both MC (100 points) and Essay (150 points). Essays will be assessed for content rather

than writing style and will require you to assess brief fact patterns taken from actual cases and explain how you would analyze them legally.

The Final Exam is worth 250 points and 25% of the final grade. The grading is presented so students may take advantage of a variety of ways to maintain a good grade point standing in this course.

Readings are assigned in preparation for each class. Students are expected to read the assigned materials and be prepared to discuss them. If you do not understand a principle or a distinction, raise your question promptly for class discussion. Portions of the material are strictly lectured where the subject matter is voluminous and best delivered as a lecture. Students' questions are encouraged during any class lecture or discussion.

Mid-Term Exam is estimated to be completed within a one hour and fifteen minute exam schedule for a full class session (accommodation may be made for the actual test time frame to be a full 1.5 hours or 90-minutes for student convenience and benefit. Students need not enter into a group class session on the day of the Mid Term Exam however, they must open, answer and complete the Mid Term Exam during that specified class session. It is expected that students shall be available for this class session and shall complete the exam on line during that time. The Mid Term shall consist of two (2) Essay Questions, related to and arising from the readings from both the text material and assigned cases up to and including materials to the date of the Mid Term Exam.

COURSE SCHEDULE

As in construction: Not everything goes according to plan. Modifications are often needed to address the unexpected. The instructor reserves the right to make changes to the following schedule when necessary, in which case the changes will be announced in advance -- but all of the following topics will be covered in this class:

WEEK	DATES	TOPICS	ASSIGNMENTS
1	January 11 & 14	Sources of Law; Judicial System; History of Construction Law; Elements of an Enforceable Contract, Elements of Contract Breach, Tort Concepts; Negligence; Strict Liability; Business Integrity – Intro to Corporate Social Responsibility (CSR). Contract Drafting; Contract Ambiguity; Interpretation and Enforcement Contracts; Offer and Acceptance; Good Faith and Fair Dealing; Pricing Construction Contracts; Fixed-Price vs. Cost-Plus; the Bid Process;	Smith, Currie & Hancock: Chapter 1, and 2, Chapter 24 Part I (pages 651 through 655); Reading: https://www.upcounsel.com/new-hampshire-contract-law and https://www.smithcurrie.com/publications/common-sense-contract-law/construction-law-the-history-is-ancient/pdf/ and https://www.cronuslaw.com/breach-of-contract-elements/ https://www.schwartz-lawyer.com/wp-content/uploads/sites/3651/2016/07/Resolving-Contract-Ambiguity.pdf
2	January 18 & 21	No Class January 18 – Holiday: Roles and Relationships: Owner, Designer, General Contractor, Subcontractors, Suppliers, Lenders, Sureties, Insurers; Privity of Contract; Government Contracts; The Federal Acquisition Regulation (FAR) Part 31 Project Delivery Systems; Construction Manager vs. General Contractor; Design-Build Issues; Basic Contract Forms; AIA Contract Documents; Uniform Commercial Code (U. C. C.)	Smith, Currie & Hancock Chapters 3 & 7 - AIA form A201 (2017); Cases: Marbucco Corp. v. Manchester (N.H. 1993). Kenneth E. Curran, Inc. v. Auclair Transportation (N.H. 1981); Midway Excavators, Inc. v. Chandler (N.H. 1986); (https://contractdocs.aia.org/PreviewFiles/Preview_A201-2017.pdf); Read: http://www.casefilemethod.com/Statutes/Short%20UCC.pdf
3	January 25 & 28	Subcontracting; Incorporation by Reference; Flow Down Provisions; The Severin Doctrine and Liquidating Agreements; Contract Administration; Payment Terms and the Requisition Process; "Pay When Paid" Provisions; "Prompt Pay" statutes	Smith, Currie & Hancock Chapter 10; AIA form A401 (2017) Cases: Seaward Const. Co., Inc. v. City of Rochester (N.H. 1978); and Holden Engineering & Surveying v. Pembroke Road Realty (N.H. 1993); Read: https://contractdocs.aia.org/PreviewFiles/Preview_A401-2017.pdf ; https://law.justia.com/codes/us/2011/title-31/subtitle-iii/chapter-39

4	February 1 & 4	The Change Order Process; Scope of Work Issues and Disputes; Inefficiencies as a Basis for Change Orders; Contract Time and Completion; The Scheduling Process; Delays and Extensions; Acceleration	Smith, Currie & Hancock Chapter 11 & 13 Case: Prime Financial Group, Inc. v. Masters (N.H. 1996); Town of Bedford v. Brooks (N.H. 1981); Zafer Taahhut Insaat ve Ticaret A.S. v. United States (Fed. Cir. 2016) Read: Choosing the Best Construction Project Scheduling Methods https://constructionblog.autodesk.com/construction-project-scheduling/
5	February 8 & 11	Differing Site Conditions; Limits to Pre-Contract Inspection Clauses; Contract Warranties, Express and Implied; Waivers and Disclaimers; Duty to Cure; Right to Cure	Smith, Currie & Hancock Chapter 12 & 14 Part III (pages 355 through 358); 48 C.F.R. § 52.236-2 (https://www.law.cornell.edu/cfr/text/48/52.236-2); Frederick Snare Corp. v. Maine-New Hampshire Interstate Bridge Authority (D.N.H. 1941); Metcalf Construction Co. v. United States (Fed. Cir. 2014); Lempke v. Dagenais (N.H. (1988)); Wroblewski v. Constellation Corp. (N.H. 1978); RSA 359-G https://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-XXXI-359-G.htm
6	February 15 & 18	Role of the Design Professional; Workmanship Issues; the Effect of Building Codes; Standards and Tolerances; “Perfect Tender” and Adequacy of Performance; Design Specs vs. Performance Specs; Shop Drawing and Submittal Approvals; Pitting Contractor against Design Professional; Spearin Doctrine	Smith, Currie & Hancock Chapter 9; RSA 155-A:2, :3 and :7 Zurich, <i>Building Code Compliance: Managing the Risks</i> (Fall 2016) http://www.gencourt.state.nh.us/rsa/html/xii/155-a/155-a-mrg.htm ; https://www.constructionrisk.com/wp-content/uploads/2018/01/Building-Code-Compliance-Zurich-briefing.pdf ; Cases Island Shores Estates Condominium Ass’n v. Concord (N.H. 1992); Jacob & Youngs, Inc. v. Kent (N.Y. 1921); Corson v. Liberty Mutual Insurance Co. (N.H. 1970); ; Waldinger Corp. v. CRS Group Engineers, Inc. (7th Cir. 1985)
7	February 22 - 25	This week is schedule for students to take a break, catch up on any work that may still remain incomplete, and or this time will provide opportunity for reading and research for upcoming classroom discussions.	Your instructor will remain available through all normal SNHU channels of communication for any student seeking counsel, advice and or open dialogue beneficial to a better understanding of course materials, outcome determinative performance expectations and or general support.
8	March 1 & 4	[Full Class Period Session MID-TERM EXAM – March 1st] Exam shall consist of two (2) Essay Questions, related to and arising from the readings from both the text material and the assigned cases up to and including materials to the date of the Exam. Terminations for Cause and for Convenience; Wrongful Terminations; Cardinal Changes; Legal Remedies for Non-Payment; Mechanics Liens; Priorities Among Competing Claimants	Smith, Currie & Hancock Chapter 17 Part II (pages 465 through 479); McNeal v. Lebel (N.H. 2008); Westinghouse Electric Supply Co. v. Electromech, Inc. (N.H. 1979); Lewis v. Shawmut Bank, N.A. (N.H. 1994) Cardinal Changes Read: https://www.forcon.com/userfiles/file/ssfcc/1997/Harrison.pdf RSA 447 http://www.gencourt.state.nh.us/rsa/html/xli/447/447-mrg.htm ;
9	March 8 & 11	SPRING BREAK	SPRING BREAK
10	March 15 & 18	Payment and Performance Bond Claims; Miller Act and analogous state statutes; Dealing with the Surety; Indemnity, Express and Implied.	Smith, Currie & Hancock Chapter 16, Chapter 17 Part I (pages 451 through 465); General Insulation Co. v. Eckman Construction (N.H. 2010); Gulf Ins. Co. v. AMSCO, Inc. (N.H. 2005); United States for Use and Benefit of Water Works Supply Corp. v. George Hyman Const. Co. , (1st Cir. 1997); Gray v. Leisure Life Industries (N.H. 2013); RSA 338-A:1 and

			:2 http://www.gencourt.state.nh.us/rsa/html/xxxi/338-A/338-A-mrg.htm)
11	March 22 & 25	Insurance Coverage; Insurance Claim Disputes; Subrogation; Jobsite Safety; Personal Injuries; Liability Insurance; Workers Compensation; OSHA Regulation	Smith, Currie & Hancock Chapter 20; Brown v. Concord Group Ins. Co. (N.H. 2012); Coqswell Farm Condo. Ass'n v. Tower Group, Inc. (N.H. 2015); Fletch's Sandblasting and Painting, Inc. v. Colony Insurance Co. (D.N.H. 2017); P. Gioioso & Sons, Inc. v. Occupational Safety and Health Review Commission (1 st Cir. 2012)
12	March 29 & April 1	Labor Relations; the Statutory Framework (FLSA, Davis-Bacon, state laws); Independent Contractors vs. Employees; Borrowed Servants; Dealing with Component Suppliers; Product Warranties; Uniform Commercial Code and its Applicability in the Construction Process	Smith, Currie & Hancock Chapter 8, In re Ann Miles Builder (N.H. 2003); Appeal of Longchamps Electric, Inc. (N.H. 1993); Kelleher v. Marvin Lumber & Cedar Co. (N.H. 2005); In re Trailer and Plumbing Supplies (N.H. 1990) Smith, Currie & Hancock Chapter 21 Parts I through III (pages 566 through 581); RSA 282-A:9 http://www.gencourt.state.nh.us/rsa/html/XXIII/282-A/282-A-9.htm ;
13	April 5 & 8	Damages Principles: Limitations, Tort Recovery; Contractual and Judicial; Calculation; Damages for Delay Liquidated Damages; Lost Productivity; Extended Overhead; Consequential Damages; Economic Loss; Equitable Remedies; Damage Mitigation; Collateral Source Rule	Smith, Currie & Hancock Chapter 18; M. W. Goodell Const. Co., Inc. v. Monadnock Skating Club, Inc. (N.H. 1981); Holloway Automotive Group v. Lucic (N.H. 2011); Axenics, Inc. v. Turner Construction Co. (N.H. 2013); Plourde Sand & Gravel Co. v. JGI Eastern, Inc. (N.H. 2007)
14	April 12 & 15	Preparing Claims; Notice Conditions Precedent to Suit; Statutes of Limitation and the "Discovery" Rule; Tolling Agreements; Statutes of Repose	Smith, Currie & Hancock Chapter 23 Parts I through V (pages 624 through 629); RSA 508:4 (http://gencourt.state.nh.us/rsa/html/LII/508/508-4.htm); Mountain Environmental, Inc. v. Abatement International/ Advatex Associates, Inc. (N.H. 2003); RSA 508:4-b http://www.gencourt.state.nh.us/rsa/html/lii/508/508-4-b.htm
15	April 19 & 22	Arbitration; Mediation; Settlement Strategies; Trials and Trial Preparation; Appeals; Collecting on a Judgment; Bankruptcy: Overview and Construction-related Issues.	Smith, Currie & Hancock Chapter 22, Chapter 23 Parts VII through IX (pages 630 through 649); Masse v. Commercial Union Ins. Co. (N.H. 1993); Case: In re Charwill Const., Inc. (Bkrtcy. D.N.H. 2007) Findlaw, Trial and Verdict https://litigation.findlaw.com/filing-a-lawsuit/trial-and-verdict.html ;
16	April 26 & 29	Wrap-Up; Student Questions and Discussion; Q & A Session – Review for FINAL EXAM	Session on April 26 will be online and in class. FINAL EXAM is on line only with no class session required.

Academic Policies

ADA/504 Compliance Statement: Southern New Hampshire University is dedicated to providing equal access to individuals with disabilities, including intellectual disability, in accordance with Section 504 of the Rehabilitation Act of 1973, Title III of the Americans with Disabilities Act (ADA) of 1990, and the Americans with Disabilities Act Amendments Act of 2008. The University prohibits unlawful discrimination on the basis of disability and takes action to prevent such discrimination by providing reasonable accommodations to eligible individuals with disabilities.

At the beginning of each term, or as soon as you become aware of a disability, we encourage you to contact the Campus Accessibility Center (CAC) to discuss accommodations for which you may be qualified. Reasonable accommodations are established through an interactive process between the student and the CAC. Please note

that accommodations are not retroactive and that disability accommodations are not provided until acceptable documentation of disability and its impact is received and an accommodation letter has been processed.

For questions concerning support services, documentation guidelines, or general disability issues, please visit the Campus Accessibility Center's webpage: <https://my.snhu.edu/Offices/DisabilityServices/Pages/default.aspx>

Campus Accessibility Services,
Green Center for Student Success, Suite 120
603.644.3118

cac@snhu.edu

If you feel you have been denied appropriate disability related accommodations, including appropriate auxiliary aids and services, you may file a grievance in the ADA/504 Grievance [policy](#).

Attendance Policy: The major responsibility for education belongs to the student. An assumption of responsibility is at the center of learning and accomplishment. Each student is expected to arrange a class schedule in such a way that conflicting employment or personal activities are held to a minimum. Attendance is required in all courses. Excessive absences may result in failure or dismissal. More than three absences may be considered excessive. Each student is responsible for all assignments and class work regardless of attendance requirements. Faculty office hours have been established to provide extra class assistance for students. These faculty office hours are not intended to make up missed class time.

Academic Honesty Policy: Southern New Hampshire University requires all students to adhere to high standards of integrity in their academic work. Activities such as plagiarism and cheating are not condoned by the university. Students involved in such activities are subject to serious disciplinary action. Plagiarism is defined as the use, whether by paraphrase or direct quotation, of the published or unpublished work of another without full and clear acknowledgment. Cheating includes the giving or receiving of unauthorized assistance on quizzes, examinations or written assignments from any source not approved by the instructor.

Class Cancellations: Class cancellations will be announced in person at the classroom by either a faculty or staff member of the university or posted on official forms issued by the school's dean's office. When in doubt as to whether a class has been cancelled, students should check with the school administrative staff. Unofficial cancellation notices attached to doors or information posted on blackboards should be disregarded.

Copyright Guide & Policy: Southern New Hampshire University abides by the provisions of United States Copyright Act (Title 17 of the United States Code). Any person who infringes the copyright law is liable. Questions regarding copyright may be addressed to the Dean of the University Library.

Course Add and Drop: Undergraduate day students who wish to change their schedules must do so during add/drop period beginning with registration and ending at the end of the fifth class day. Students who miss the first two sessions of a class may be dropped by that instructor without prior notice.

Grade Scale and GPA: This policy impacts all SNHU students, regardless of delivery system, or major and creates a consistency throughout the University regarding the numeric grades that equate to the different tiers of letter grades.

Inclusivity & Non-Discrimination Policy: Southern New Hampshire University values and promotes social diversity, inclusivity, and social justice.

Library Resource Statement: In addition to the intellectual resources available on site and [online](#), Shapiro Library makes available group and one-on-one instruction in information literacy, enabling students to define and articulate what knowledge-based resources are relevant to their research interests. Library staff are available to assist students in effectively and efficiently accessing information from credible sources, to compare new knowledge with prior beliefs, and to consider the related ethical, legal, and socio-economic issues that are inherent in scholarly investigation.

Student Academic Complaint: If a student in University College has a complaint about an instructor or course, then they should speak first to the instructor. If the student is not satisfied or cannot resolve the issue at that level, then they should speak to the Program Coordinator/Department Chair. If the student is still not satisfied, then they should speak to the school Dean or Program Director. If the student wishes to pursue the matter further, then they should speak to the Provost, who will review the matter and make a final decision.

More information about SNHU policies can be found on the policy [page](#).

11-14-19