

## Principles and conditions of responsibility for building contractors in contrast to the employer and third parties

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**Abstract:** According to construction projects which all over the world have the huge capital today as an "industry" is considered, and expanding and growing trend of construction and building violations and shortcomings subsequently Manufacturers and contractors and a lot of mistakes and blame these people in any country that is one of the major problems of our country has no exception. On the other hand, in most cases, violations of builders and contractors against third parties without compensation remains that the sheer volume of cases in the courts of the judicial confirmation of the claim. Civil liability of civil rights issues is an important part of the legal literature devoted to New Age, while in the past this kind of responsibility was considered one of the sub-themes of civil rights. The theoretical and practical terms, the most important part is the commitment that is also the most important civil rights issue from the other side of any social activity cannot be found today that a civil liability is not involved in it. According to the law any person as a result of their daily activities cause damage to another person is obliged to compensate damages. Check this kind of responsibility to the employer and third party contractors building our understanding of the duties and scope of responsibility of builders and building contractors have taught, as well as ways to compensate the violation of the right of individuals to assess and improve the quality and quantity of work, and the result will be an efficient use of the national capital.

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### 1. Introduction

Responsibility means that people assume acts and actions. Law, the duty to respond to the loss importer loss against Weber undertake civil works penal court, law and whether such a duty to be injured or community. It also means the legal obligation to fix the harm that other person has arrived, whether the loss is due to his fault.

#### The definition of civil liability in general:

The obligation to redress, whether legal or law originating legal act or event.

Legal action so that the origin of individual responsibility with contracts signed another contract and he is required to do something against that of a contractual duty, which is responsible achieved breach. If the event is the responsibility of the legal origin without a will be responsible for creating out-of-contract requirements of this type. Sometimes the origin is responsible for the duty and responsibility to bear the burden of the law. The civil responsibility in the broad sense of the obligation to compensate.

#### Civil liability in a certain sense:

Civil liability in the proper sense of the legal tasks that a person against another to give money instead of getting property or other operation, and this task has been made of any contract or duty of the act or omission that the origin of compensation to the directly material practice and law, the liability of legal event. In the sense that no agreement is reached

compulsory civil liability, including liability and non-contractual obligations or liability compulsory to say. The civil responsibility in terms of contractual obligations and responsibilities natural origin can be divided. But in terms of how compensation can be, the person responsible for restitution, accountability and responsibility to give compensation equivalent to the divided.

#### Employer civil liability insurance for construction workers and employees:

Who is employer?

Client natural or legal person that is an economic unit with one or several runs manpower. In each entity, whether small or large, there are things that may be very simple or beginning or advanced utilities that work with them requires great expertise and the efficiency and accuracy a particular title. However, this means that any work of any kind, as well as more or less risk and can cause injury to personnel. Workshop management and procedures the employer and the employer is solely responsible for it. In other words, everything that happens and noticed the harmful effects human resources working in the workshop, which will be the responsibility of the employer and the employer has no responsibility need to prove fault or short and to the legal term a responsibility, or legal and just to prove the contrary as proof that its workers deliberately put dangerous situations, we can relieve the employer of

responsibility, which of course is very difficult to prove. Civil liability insurance, building contractors, employers and workers against loss of life entered (and if you wish to third parties) under the covers. In this way, in the event of an accident resulting in death or injury compensation for death and disability insurance and medical costs the damage. In construction projects due to the nature of the projects and variability of staff, usually anonymously insurance to cover the workers. According to the law any person as a result of their daily activities cause damage to persons is obliged to compensate for damages. Accordingly, the civil liability of employers of events that led to the failure and negligence of the employee and the employer liable to compensate enter it be known, placed under coverage. This means that if you work in the workplace, in the event of physical damage to insured workers entered the insurer is responsible for this relationship to be established by the insurer for damages will be compensated. The compensation body, including the payment of medical expenses and compensation for disability and death of employees. Since the contractual relationship between the employer and the employee (employment) Bridge or limiting the liability of the employer against the employee is not work-related compensation, the insurance for all employees, whether formal, contractual, daily wage contract that is all time or part-time in the area of insurance coverage is insurance. Liability insurance policy includes compensation for medical expenses and compensation for death and disability in accordance with the law Diya is a liability insurer. Obtaining insurance for all employers subject to a recall is required and necessary. Considering that the civil liability insurance of employer for workers' compensation is paid only if the employer is guilty, so buy accident insurance policy can cover just boarding of the country.

#### **Liability insurance covers:**

1. Compensation of occupational accidents due to negligence and unintentional mistakes or negligence by staff within the insured.

Sometimes working with his negligence caused injury to workers, despite the negligence of workers in some labor department inspector, the employer responsible for the accident, you know. The result is that the employer's liability insurance coverage, could damage its obligations outside the scope of the above.

2. Compensation of life and medical expenses incurred by employees due to motor vehicle accidents within the space covered by insurance.

3. Liability insurance for the employees and sub-contractors.

4. Liability insurance for the person supervising engineers, consultants, contractors and sub.

#### **Principles and conditions of the contractor**

#### **responsible for the employer:**

Concept of contracting:

Italian scholars express it promised literal meaning of the Treaty, the treaty called the Convention on the Academy, the word means a treaty between two or more people, and two or more States is closed.

Finally, it can be defined thus offered contracts: a contract in which the contractor has already found certain aspects of the implementation of the Convention subject to the employer's obligation.

#### **The responsibility of the contractor:**

Enforcement of the contract and the contractor responsible for the employer:

Contractual liability is the responsibility of the person who under a contract of definite or indefinite contracts, accepted the commitment and lack of commitment to good or bad implementation of the commitments or damage to the commitment in which case the obligation to enter damage to compensate.

While coercive or non-contractual liability, especially given that personal legal obligations and its principled refusal and therefore harmful to others, responsibility for enforcement is the responsibility of, the law.

These two distinct conditions of responsibility, because it is necessary that the promise to undertake the responsibility of bespoke noted that commitment when and how to do and to finish, for example, that engineer supervisor, the employer is obliged to construction will begin the operation to inform the supervisory engineer or the date and time of excavation and foundation phase and the construction phase structure disclosed engineers observer (are) able to fulfill its contractual obligation and commitment, otherwise the responsibility of supervising engineers without follow, because in fact committed the offense Les (the owner) is responsible for supervising engineer is not created. While the responsibility placed outside the notification did not matter because they suffered losses and taking the responsibility upon arrival causal relationship can be fulfilled.

According to the contract signed by the employer to the contractor if the contractor appears to be a violation of the provisions, it is the responsibility of bespoke him of responsibility.

The question that can be asked is that if damage were to be entered in the course of liability to compensate for such loss or bespoke component is responsible for enforcement? It seems that because of the coercive force is not entered or damage arising from non-performance.

To determine whether damage arising from any breach or not to all of the terms and subject matter of the contract and all the essays collected and then examined whether they were created to do or not, and

secondly "losses whether it disorder is?"

In implementing this provision does not matter that one of the things that the parties were willing, or things that the rule of law in the contract. Why not submit to the rule of law as acceptance of all results in contract law and custom, and sometimes things that sometimes justice warrant the contract is in violation under the responsibility of the contract. The result of 220 and 225 of the Civil Code to be understood.

**The nature of the employer and the contractor undertaking the burden of proving infringement:**

After determining the responsibility of the contractor or enforcement contractor, should the nature of the commitment or obligation by the contractor as a result it was examined.

It discusses the benefits of, obligations of proof specifies that if the burden of proving a violation, the employer and the contractor disputes arise specifies who should bear the burden of proving infringement or to take other concept "claim" in this case specifies.

**Obligation or commitment to the result of the commitment by the contractor:**

Contractual obligations are divided into two main groups:

1. Commitment that is desirable to achieve a specific result, such as: cash, commodities and etc.
2. The commitment related to the care and effort to achieve that result, such as: medical obligation to treat, counsel and commitment.

In the first type, to fulfill that promise only to achieve a specific result and given done and care and effort alone do not detract from the debtor or his responsibility. But the second type, try owe rewarded, though not to the desired result and if it can be called fractionation covenant with him, and that effort is not conventional.

This division point of great importance is the commitment to the result, the creditor is sufficient to show that the result has not been achieved and the assumption that it is committed to doing something positive, reaching to the need to bring in the way of obtaining no reason. Read the original because of his position and denied the claim and the debtor to prove you know to fulfill that promise.

For example, if the due date is subject to the obligation to deliver the apartments and creditor (committed Crush) is committed to delivering an obligation to fulfill that promise and now wants damages, the court does not want to commit him for not having done but it is committed to fulfill that promise the due date will be sentenced prove otherwise.

Commitment to deliver an object or a building defect that prevents normal use in accordance with order and without it (such commitments vendors, and rentals and contractors in the delivery and guarantees)

and liabilities of the service which is the subject of an object. Such as repair shops obligations of the result.

More commitments contractual obligation to make a commitment to make money today. For this reason is called the most important and most common for violation of a contractual obligation is not a fault condition, the creditor does not have to prove the fault is due to the lack of commitment (covenant breach is the fault).

While the commitment or obligation by the care and effort, such as reaching a specific conclusion on the debtor (committed) is not, to prove the broken promises and the damage, are crushed or creditor or debtor must prove commitment Failure a. The result is deprived of sufficient proof and the principle of not shelter him.

Safety Commitment sales (construction) in construction contracts can be seen as a commitment to achieve a certain result if it does not act committed as a result of any obligation to the other, compensation is required, even if the necessary precautions is fulfilled.

Obligation (contractor or builder building) that obligation only when the results do not prove, the absence of which is the result of external causes cannot be attributed to him, will be exempt from responsibility.

In general, commitment to results and determine which is which by the judge in each case is dealt with.

**Abuse burden of proof in case of dispute:**

We are the responsibility of the contractor to the employer, a contractor is responsible for undertaking the commitment to the result, we want to deal with that in the case of occurrence of dispute between the employer contractor is responsible for the burden of proof dispute or in other words, the claim is who?

Magistrate always based on the "principle of suspicion dominant and sufficient" to address the adequacy of reasons.

According to the prevailing suspicion is not necessary and sufficient reason for claiming a comprehensive and impenetrable to bring its claim and every reason is there to prove it. Thus, in the example cited, he will not want to deal with it properly all elements of contract and fraudulent health conditions and absence of coercion and wrong is not to prove.

For general descriptions of concluding a contract that has the court is sufficient (the suspicion is enough). And the agreement to satisfy the judge that there is a commitment undertaken now have to prove that the contract is carried out and if the defendant is a defect in the contract to prove it.

According to the above-mentioned points, it is likely that, in the proceedings due to alternating load placed upon each of the parties. The law, known as the practice of the Prophet (PBUH) and the Infallible Imams. Time of the claim and vow to deny.

In general, when the contract with the building supervisor engineer in monitoring the accuracy not sufficient and therefore contrary to the principles of defective materials and in the built or carrying out construction or architectural license is not prepared in accordance with the map and thus Article 100 of the City Commission voted to allow the demolition of buildings. As a result of all the above-mentioned examples are good for your mashed been achieved, because it is committed to fulfill its obligations and has refused or it is faulty. The fault is a contract violation. So famous is the responsibility of the contractor, objective and pure as a breach of contract and breach of contract must take a responsible and committed to handle compensation if to prove that the provision of all the necessary care, every effort has been the opening of the responsibilities will not release unless the breach of contract due to the external (force majeure), the non-contractual liability arises when the fault occurred, and the burden of proof on the victim's fault.

As a result, thanks to the commitment of the contractor, the employer is obligated to result in the creation of dispute between the employer and the contractor's responsibility to prove the infringement according to the type of commitment, the employer is not obligated just have to be and no longer have to specify No fault or negligence and failure to prove the contractor. But the contract that the employer must prove that the violation was due to force majeure or external factors to blame and is not otherwise. However, the commitment by committed Crush (employer) must prove fault and was soon known to the contractor at fault and responsible.

#### **Terms of contractor liability against the employer:**

The contractor is the employer's responsibility to fulfill the 3 condition is necessary:

First: the existence of a valid contract between the damage and loss factors,

Second: the need for damage resulting from non-performance of contractual obligations,

Third: there is no causal link between the contract and loss (whether direct damages).

#### **Different scenarios responsibility of the contractor:**

A: Because of their practice (delays, delays leading to damage, delay terminate)

B: the second act (violation of workers and crew, operated by subcontractors)

#### **Principles and conditions of contractor liability against third parties:**

Foundations responsibility of the contractor in accordance with the general rules of civil liability. Unlike criminal law, it is difficult to accept that someone be punished for another crime in the privacy of the variety can be another person that is responsible for compensation. The social interests of justice that

the civil liability not only on enamel and sometimes not blame those who are responsible to come. According to Article 12 of the Law of the civil liability of employers who are subject to labor law are responsible for the damage compensation provided by the staff or their employees during work or on occasion it has been entered. Social justice demands that those who profited from the workshops, it also bear losses. In addition to the workshop, he should work with the employer to establish that the harm to others resourceful bring order to prevent and the manner in which employers have adopted virtually insure themselves against third parties is the responsibility of the employer, contrary to the principle that everyone is responsible for their errors and carelessness is responsible for the error and carelessness of workers and is responsible for the victim against.

This responsibility also has features such as an employer to allow and observe the precautions necessary to prove your innocence and the employer is entitled to working conditions. Due to these features to express different views have been expressed on the responsibility of the contractor which are as follows:

A. fault theory: the theory that the victim can obtain compensation must prove the fault of the other party.

B. risk theory: the theory is not the fault of the principles of civil liability. That creates a need to compensate for the loss of personal or his action is right or wrong. In other words, anyone who touches a dangerous activity should not tolerate and compensate for damages caused by it. The main root of this theory can be traced Ferry School fulfillment Italy and theory.

C. Thought of fruition

D. Loss attributable theory: the theory that as soon as practical person did not actually injurious to his assignment may be person will be responsible for the operation, even though he is not voluntary.

In general, the rules on the responsibilities of a particular process is not at fault and sometimes based on risk, but it can be achieved and it is a principle of law that the principle of liability without fault and fault exception. In case of conflict between fault-based liability and responsibility for risk-based, principle-based responsibility.

In fact, the responsibility of the employer or contractor mixture of liability arising from the actions and practices of his working against the injured worker and the employer must be responsible, workers due to their fault pursuant to a law of civil liability and employer on the assumption fault civil liability and guaranteed in Article 12 of the Law of the working religion, and damaged the choice offered to go to anyone who wants to know.

As a result, given that the affected parties, any

contract with a contractor or builder building and are, on the responsibility of the contractor in case of loss of responsibility enforced against third parties and according to the general rules of civil liability that is based fault this is the injured party must prove fault or error contractor.

However, it can be harmful act on waste contractor and causality examined under the titles:

Article 328 of the Civil Code, if a person deliberately or by unintentional injury and damage to property is non stewardship and responsible for his actions is a waste of damages, it is not necessary waste in a loss fault Flutters and, as soon as it is liable to compensate the damages suffered sharp losses for the damage does not need to prove the fault of the injured party.

It should be noted that failure to achieve a lower level of culpability and responsibility is required under Article 330 of the Civil Code stated that a prejudicial error is not the fault and not no choice but to defend himself, unless killing or maiming an animal belonging to the other. According to this article, if one animal belonging to another kill to defend itself does not sponsor or incomplete.

In fact, the existence of fault and liability losses and otherwise shall be established by law or by court. Article 1216 of the Civil Code also confirms the idea that the persons mentioned in that article when damage is not your fault, but when will it be liable for damages due to an error in the exercise of their responsibility in cases of causality that are listed in Articles 331 to 335 of the Civil Code are also responsible for the error condition. The difference is that the principle of no fault and no liability and to fulfill its responsibility to the contrary must be established by law or by court. In this case Article 332 of the Civil Code provides that "if a person could create financial losses and other loss of the property to be foreman is responsible, not the cause, but the cause is stronger view so that mystics are a waste of his documentary," after if the steward and causing interference in the same tradition as the steward of this Article shall be responsible for identifying the total damage caused and the steward brought.

According to Article 15 of the Law of architecture and construction "If as a result of non-compliance with regulations and technical principles or the use of inappropriate materials or negligence and recklessness and non-sufficient Structural Engineering, Technical Supervisors, contractors and architects and in general those

responsible for accuracy Jeremy will be responsible for building their respective charge of the case will be prosecuted under criminal law."

Contractor with responsibility for:

To fulfill any responsibility for any three conditions that include:

A. Despite the loss (direct, certain of the damages, not compensation for loss, damage compensation claim legitimacy).

B. there are harmful act (waste, cause, community causes and steward).

C. causal relationship between the act and the loss (or causal relationship between the harmful act and losses).

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