

Private owner
Express contract

CM 460

WRITING ASSIGNMENT

You are the CEO of Chico Contracting Inc. ("CCI"), a construction general contracting firm. You have completed a project for Sacramento Racing Group ("SRG") during which CCI constructed, in Butte County, California, a racetrack, bleachers, pit area, and ancillary buildings. The contract used for the project is the Form AGCC-01. You are about to enter binding arbitration, during which a retired judge will hear your claim against SRG for additional cost and time due to several instances of alleged "Breach of Contract" (i.e. both CCI and SRG are asserting that the other breached the contract). These instances are:

1. CCI was delayed in starting work, for thirty (30) days after receiving the notice to proceed, due to SRG's failure to obtain the required building permits.
2. CCI discovered, while doing site excavation work, that a Native American burial site (the "Site") was located on the job site. The Site was not shown on the soils report provided to CCI by SRG prior to the signing of the contract. Protecting and remediating the Site resulted in additional costs and a sixty (60) day delay.
3. CCI was delayed by ten (10) days due to torrential rains that prevented all work on the job.
4. SRG refused to grant CCI an extension of time for the issues described in paragraphs 1, 2, and 3 above. The refusal to grant the time extension caused CCI to have to work evenings and weekends (at overtime rates) to complete the job on time.
5. SRG ordered (by change order) CCI to construct an apartment building in Sacramento County that was not part of the general scope of the work described in the contract. CCI refused to build the apartment building and SRG is claiming that CCI breached the contract.

For this writing assignment you will assume that your attorney has requested from you a draft of the "brief" that will eventually be transmitted to the arbitrator before the arbitration begins. The "brief" is a complete and detailed statement of your case against SRG.

The final document of your brief must contain a MINIMUM of three thousand (3,000) words.

RULES FOR WRITING YOUR "BRIEF":

1. The brief must be in the format of Exhibit "A" attached hereto and hereby incorporated by reference. The brief must contain all of the sections and headings described in Exhibit "A".
2. Consider this to be a combined research and "creative writing" assignment to the extent that you will use the course materials, your intellect, and your imagination to create all necessary facts, the nature and specifics of the claimed breach, to which you will then apply the law. In other words, you will create the statement of facts for the project which incorporates the facts provided to you on page 1 of this assignment.
3. REQUIRED VOCABULARY: Somewhere in your brief you must appropriately and in context use (at least once) each of the legal terms provided to you in the Legal Terms for CM 460 Writing Assignment (Exhibit "B") attached hereto and hereby incorporated by reference.
4. The writing assignment is to be submitted in two parts. Part 1 (the "outline") will consist of all pertinent information in outline form, including, per section, the citing of all of the legal terms you will be using in each section. The outline must follow the form of, and include the headings found in, Exhibit "A". Part 1 will be due at the beginning of class on Thursday, November 17, 2016. Part 2 (the "final document") is your complete written brief. Part 2 will be due at the beginning of class on the date of your final exam.
5. Grading will be as follows:
 - a. As stated in the course syllabus, the entire writing assignment will constitute 10% of your final grade in this course.
 - b. A MINIMUM GRADE OF C (70%) WILL BE REQUIRED ON THE WRITING ASSIGNMENT IN ORDER TO QUALIFY TO RECEIVE ANY GRADE IN THE OVERALL COURSE.
 - c. The outline will be worth 30% of the total grade on the writing assignment. It will be graded on form (use standard outline form), appropriateness of data, and completeness.

- d. The final document will be worth 70% of the total grade on the writing assignment. It will be graded on form, final content, appropriate and correct use of all required legal terms, spelling, grammar, punctuation, typographical correctness, sentence structure, paragraphing, and all other elements comprising PROFESSIONAL WRITTEN COMMUNICATION AT AN "EXCELLENT" LEVEL.
6. **BOTH** the outline and the final document will be typed or word processed, double-spaced, Times New Roman #12 font, 1" margins top, bottom and sides, numbered pages (bottom right corner), on white 8-1/2" x 11" paper, stapled in the upper left corner, with your name on the top right corner of the first page, placed (but not bound) inside a letter size manila file folder, with your name written on the tab of the folder.
7. Late papers will be penalized 5% per calendar day.
8. There will be no second chances, re-works, do-overs, make-up-later's, etc.
9. IF, AT ANY TIME, THE INSTRUCTOR HAS REASONABLE CAUSE TO BELIEVE THAT ANY WRITTEN WORK TURNED IN BY ANY STUDENT WAS NOT PRODUCED SOLELY BY THAT STUDENT, THE CONSEQUENCES WILL BE DIRE - MOST PROBABLY THE RECEIPT OF AN "F" FOR THE COURSE.
10. You may find that you need to do some advanced reading of text chapters to compose elements of your brief, and you will want to use appropriate reference materials relating to professional writing practices and standard outlining formats.

EXHIBIT "A"

ARBITRATION BRIEF

I. Introduction

- A. Parties
- B. Project
- C. Disputes

II. Statement Of Facts

- A. Pre Contract $\Rightarrow$ what happened before contract
- B. The Contract $\Rightarrow$ what's inside contract.
- C. Post Contract $\Rightarrow$ what happened After contract

III. Analysis

A. The Contract

Explain how the contract was entered into and why it is a legally enforceable agreement (by reference to the six elements).

B. CCI Performance

Explain why CCI's performance was complete and/or substantial (i.e. - why CCI did what was required by the contract).

C. SRG Breach

Explain exactly how SRG breached the contract, including the citing of the breached contract provisions and/or other legal obligations, a citing of all legal elements necessary to establish the claimed breach, and an explanation of how SRG breached those provisions and/or laws.

D. Damages

Explain the impact of the SRG breach in terms of additional cost and/or time, and explain the method of determining the extent of the additional cost and/or time. Explain the manner in which your damages were calculated.

IV. Conclusion

EXHIBIT "B"

LEGAL TERMS TO BE USED IN THE CM 460 WRITING ASSIGNMENT

1. Contract Liability Theory 1
2. Contract Liability Theory 3
3. Agreement
4. Offer
5. Acceptance
6. Consideration
7. Legal Objective
8. Capable Parties
9. Assent
10. Statute of Frauds
11. Benefit of Bargain "BOB"
12. Notice
13. Differing Site Condition
14. Fixed Price
15. Liquidated Damages
16. Critical Path
17. Owner Responsible Delay
18. Privity
19. Specific Duty to Perform
20. Failure to Perform
21. Spearin Doctrine
22. Unilateral Right to Change the Work
23. Duty to Perform the Changed Work
24. Additional Cost
25. Additional Time
26. Substantial Performance
27. Material Breach
28. Request for Information
29. Change Order
30. Intended Third Party Beneficiary