



PSLS Session: 505 Contract Basics 101

January 13, 2026

FRP PROFESSIONAL RISK PRACTICE

KEVIN SCOTT NORRIS LAW





Contract Basics

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What Are The Elements of a Contract

1. Offer
2. Acceptance
3. Consideration
4. Capacity
5. Legality

What Are The Elements of a Contract

OFFER

- Definiteness and Certainty
- Material Terms
- Manifestation of Intent
- Capable of Mutual Assent
- Reasonable Certainty of Enforcement
- Invitation to Accept

What Are The Elements of a Contract

ACCEPTANCE

- **Manifestation of Mutual Assent**
- **Unconditional and Unequivocal Acceptance**
- **Reasonable Manner of Acceptance**

What Are The Elements of a Contract

CONSIDERATION

- Mutual Promises
- Benefit to the Promisor or Detriment to the Promisee

What Are The Elements of a Contract

CAPACITY

- **Legality**

- **Contract cannot be for something illegal**
- **You cannot contract for a crime**

What Are The Elements of a Contract

CAPACITY

- **Legality**
 - **Contract cannot be for something illegal**
 - **You cannot contract for a crime**

What Should Be Included In a Surveyor's Contract

- Clear Offer of Both Parties
- Scope
- Schedule
- Required Authorizations
- Owner/Client Responsibilities
- Payment

What Should Be Included In a Surveyor's Contract

- Standard of Care
- Changes
- Suspension/Termination
- Risk Allocation/Limitation of Liability/Consequential Damages
- Assignment/Successors
- Applicable Law/Dispute Resolution

Define: Standard of Care

LAND SURVEYOR and its employees, will exercise the degree of care and skill ordinarily practiced at the *same point in time* and under *similar circumstances* by professionals *providing similar services*.

Client agrees that services provided will be rendered without any warranty, express or implied.

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Standard of Care

Common Law



Responsible to your client to meet the standard of care for your *profession*

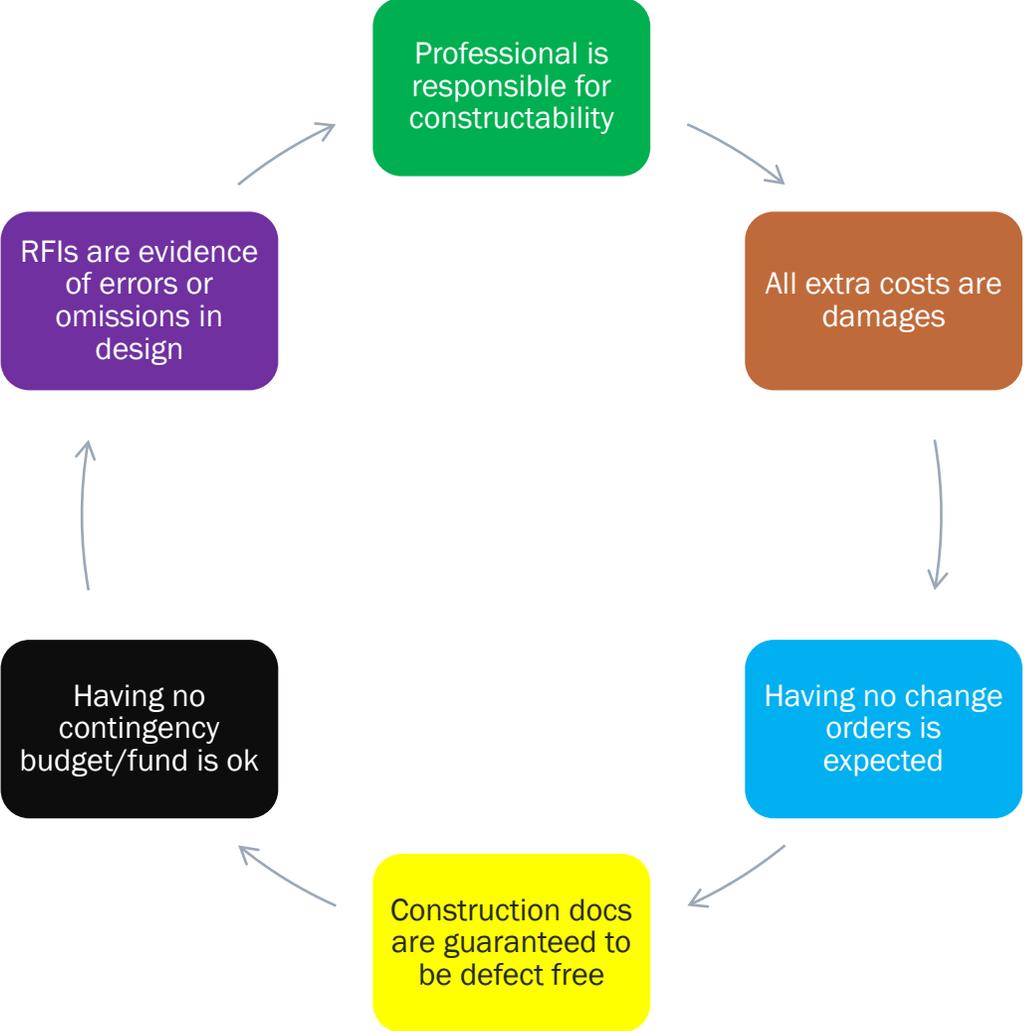
Design professionals don't manufacture products; projects are one-of-a-kind

Perfection is not
Contemplated



Those who sell services for guidance of others in their economic, financial and personal affairs *are not liable* in absence of negligence or intentional misconduct

Standard of Care Misconceptions





Let's Negotiate!

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What is Indemnification?

Oxford Definition:

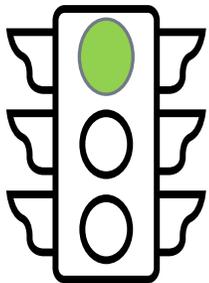
Compensation for harm or loss

Legalese:

Outlines how the party who suffers damages (i.e. bodily injury, property damage, or economic loss) will be compensated or “held harmless” by the other party whose actions were the proximate cause of the loss.

Manage Indemnity Obligations

The duty to indemnify is owed only to your client(s).



1
Parties

2
Overbroad
Claims

3
Duty to
Defend

Potential Red Flags to Negotiate

Beware of terms/phrases such as:

“agents”

“insurers”

“representatives”

“lenders”

“affiliates”

“consultants”

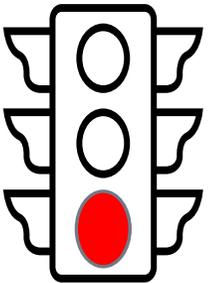
“servants”

“subconsultants”

“members”

“contractors”

...or any such extended list of indemnitees



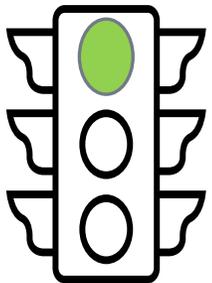
1
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Duty to
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Indemnity and Insurance

The duty to indemnify arises only once your negligence has been established.



1
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Potential Red Flags to Negotiate

1. Manage Indemnity obligations

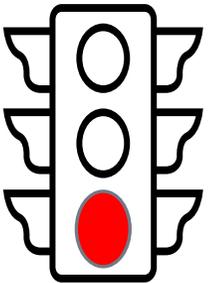
Beware of claims:

Not directly caused by your negligence:

“arising out of/from”
“in any way connected with”
“regardless of”
“whether or not caused by”
“allegedly caused”
“solely liable and responsible”

Not limited to negligent acts:

“intentional fraud or misconduct”
“recklessness”
“willful misconduct”
“tortious misconduct”
“intentional acts”
“other improper conduct”



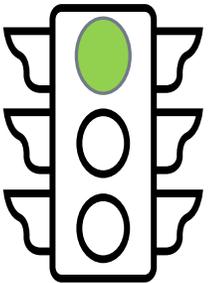
1
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Overbroad
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Duty to
Defend

Manage Indemnity Obligations

The duty to indemnify is limited only to damages you've caused.



1
Overbroad
Parties

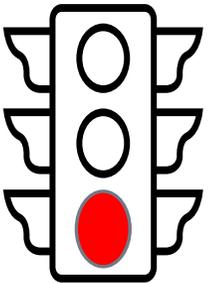
2
Claims

3
Duty to
Defend

Potential Red Flags to Negotiate

Beware of terms/phrases such as:

- “any,” “all” ... claims, etc.
- “suits or causes of action”
- “fines or penalties”
- “attorneys’ fees and defense costs”
- “other liabilities”
- “other obligations”
- “any other kind of expense”



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Potential Red Flags to Negotiate

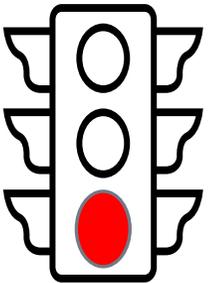
No duty to defend. Why?

Duty to Indemnify

Arises **once negligence**
has been established.

Duty to Defend

Arises **regardless of negligence.**



1
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Parties

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Overbroad
Claims

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Duty to
Defend

Bad Indemnity Clauses

To the fullest extent permitted by law, Consultant shall defend, indemnify and hold harmless Developer...against any and all claims... including the reasonable fees of attorneys, arising out of or in any way connected with any act or omission of Consultant...whether such claims, liens, demands, damages, losses or expenses are based upon...any other legal...theory whatsoever, and regardless of whether or not such claim...is caused in part by a party indemnified hereunder, including the partial negligence of any such party.

Bad Indemnity Clauses

To the *fullest extent permitted by law*, Consultant shall *defend*, indemnify and hold harmless Developer...against *any and all claims*... including the reasonable fees of attorneys, arising out of *or in any way connected with any* act or omission of Consultant...whether such claims, liens, demands, damages, losses or expenses are based upon...any other legal...theory whatsoever, and *regardless* of whether or not such claim...*is caused in part by a party indemnified* hereunder, including the partial negligence of any such party.

Beware the Flow Down

Financing sources continue to evolve, and this changes the project delivery method

What is the Land Surveyor's responsibility when they are hired by another design firm?

Has the Land Surveyor received/reviewed the Prime Agreement?

Does the Prime Agreement supersede any other contracts?

What are the payment methods?

Dangerous Flow Down Provisions

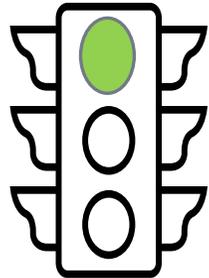
“The Subconsultant further agrees to be bound by any modification of the Prime Agreement that may occur from time to time. The Consultant agrees to notify of all such changes on a timely basis.”

“Subconsultant agrees to comply with and be subject to the same contractual requirements with respect to Consultant as the Consultant is subject to with respect to Client under the Prime Agreement...”

“A copy of the Prime Agreement is attached hereto and by reference made a part of this Subcontract Agreement”

Know When to Fold ‘Em

Suspension and Termination rights should address the following:



- 1** Your right to suspend or terminate services
- 2** Client’s right to suspend or terminate services
- 3** Rights and obligations of the parties in the event of a suspension or termination.

When in Doubt: Contact Mark or Kevin



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SESSION EVALUATION

