



ARCHEUS LAW





Claims in Construction Contracts

Webinar, June 2020






CLAIMS: What are they? - I

Any costs/losses combining one or more of the heads below, which the contract allows, or maybe claimed under common law.

-  Additional costs arising out of actions by the counterparty
-  Additional costs and/ or a reduction in benefits arising out of the counterparty's breach of a contractual condition
-  Loss of anticipated profit, or a shrinking of profit margin.
-  Any special costs/ losses unique to the nature of the contract or of the industry



CLAIMS: What are they? - II

-  Costs/ losses, or loss of anticipated profit, arising out of a misrepresentation or a contractual fraud by the counterparty
-  Losses (actual or estimated) arising out of gross negligence, loss of life, loss of property, third-party losses, etc.
-  Costs/ losses incurred in pursuing the claims above (legal costs/ pendente lite interest)



CLAIMS: What are they? - III



Primarily covered under common law **principle of damages**



Under Indian Contract Act:

- ⚙️ **Sections 73 - 75 of the Contract Act** deal with the general contractual law of damages
- ⚙️ Other sections of the Act dealing with the aspects of compensation: **Sections 19, 53, 55, 64, 65 etc.**



Few other instances:

- **Sale of Goods Act**
- **Principles of Common Law**



CLAIMS: 73 – 75 of the Contract Act

1. Loss/ cost must be **suffered** in fact, or is **legally inevitable**

1A. There must be proof or documented evidence of (1) above

2. Must be **directly connected** to a **breach**, or a **contractual action**, or **fraud/ misrepresentation**.

2A. There must be proof or documented evidence of (2) above

3. No breach by the claimant or not due to supervening events

4. **Usual, Reasonable and Foreseeable** or provided for in the contract

5. Quantification

IN CASE OF LD

- LD is a **maximum limit**.
- Proof & evidence **usually required unless infeasible**

IF NO LD

If no LD, losses/ costs may be claimed on the basis of **actuals, formulae or assessments**, with **proof and evidence**, or reason for applying a **particular formula/ assessment**

Mitigation may reduce quantum of loss/ cost

Claims in Construction Contracts

Deletion of Work Claims

Extra Works Related Claims

Delay Related Claims

Change Related Claims

Payment Related Claims

Acceleration Claims

Loss of Expected Profit
or other such benefits

Losses/ Additional Costs
arising out of uncertain
terms in a contract

Breach for Implied
Warranties

Loss/ cost or reduction
of benefit due to fraud
or misrepresentation

Costs, losses etc arising out
of termination
(rightful or wrongful)

Consequential
Losses

Other costs: Legal, Interest



What do Contracts usually Provide?



Types of Claims:



which **can** be raised



which **cannot** be raised (complete bar)



Timeline and procedure of raising claims



Manner of Quantifying claims



Restriction on claims



When can party raise a claim?



Claims to be **raised as soon as they arise**



Quantification must be done as soon as possible



Rights to raise claim should be reserved at the right opportunities



Keep contractual and legal **limitation** in mind



Submission of claims



Site Records



Financial Records



Assessments at the **time of Tender**

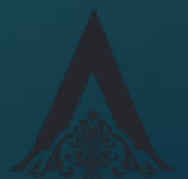


Proof of **loss incurred**



Any other evidence of:

- **breach**
- **delay**



Quantification



Calculating the **Actual Costs**



Generally **approved formulas**



Assessment (**Loss of Profit or Opportunity Costs**)



Interest Claims



Additional legal points to remember



Categorisation, Quantification, Time and Manner of raising claims critical



Certain claims maybe capable of multiple categorization
(**indirect maybe made direct**)



Evidence of actual costs/ losses = Best Evidence



Certain claims barred under contract may be sometimes recoverable under law.



Upcoming Intensive Sessions on Claims



SELECTING CLAIMS: Types of claims and how to select and categorize them (with case examples)



PREPARING CLAIMS: Methods of quantification and evidences and proofs (with case examples)



PRESENTING CLAIMS: Manner of submission and time of submission and limitation (with case examples)

THANK YOU!

Stay safe



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