II - Civil Engineering Contracts and Contract Documents

The first part of this chapter is concerned with the general characteristics of contracts and the remedies available when a contract is broken by a party to it. It gives the legal background to work under a contract and is required by many examining bodies. For more comprehensive and detailed information on the law of contracts, which is a most complicated subject, the reader might consult, for example, the books of reference (1), listed at the end of the chapter.

The Nature and Form of Contracts

The law relating to civil engineering contracts is one aspect of the law relating to contract and tort or civil wrongs. It is, therefore, desirable to have some knowledge of the law relating to contracts generally before the main characteristics and requirements of civil engineering contracts are considered.

A simple ‘contract’ consists of an agreement entered into by two or more parties, whereby one of the parties undertakes to do something in return for something to be undertaken by the other. A ‘contract’ has been defined as an agreement which directly creates and contemplates an obligation. The word is derived from the Latin ‘contractum’, meaning drawn together.

We all enter into contracts almost every day for the supply of goods, transportation and similar services, and in all these instances we are quite willing to pay for the services we receive. Our needs in these cases are comparatively simple and we do not need to enter into lengthy or complicated negotiations and no written contract is normally executed. Nevertheless, each party to the contract has agreed to do something, and is liable for breach of contract if he fails to perform his part of the agreement.

In general, English law requires no special formalities in making contracts but, for various reasons, some contracts must be made in a particular form to be enforceable and, if they are not made in that special way, then they will be ineffective. Notable amongst these contracts are contracts for the sale, disposal, etc., of land, and ‘land’, for this purpose, includes anything built on the land, as for example houses.

Some contracts must be made ‘under seal’, e.g. Deeds of Gift or any contract where ‘consideration’ is not present (consideration is defined later in the chapter). Some other contracts must be in writing, e.g. that covering the Assignment of Copyright, where an Act of Parliament specifically states that writing is necessary. Contracts covering guarantee
and land transactions may be made orally but will be unenforceable unless they are in writing, by virtue of the Law Reform (Enforcement of Contract) Act, 1954.

Since the passing of the Corporate Bodies Contracts Act, 1960, the contracts entered into by corporations, including local authorities, can be binding without being made under seal. The standing orders of most local authorities, however, will require major contracts to be made under seal, but the new Act will avoid a repetition of the results of Wright v. Romford Corporation, where the local authority was able to avoid its responsibilities under a contract, merely because the contract had not been made under seal.

It is sufficient in order to create a legally binding contract, if the parties express their agreement and intention to enter into such a contract. If, however, there is no written agreement and a dispute arises in respect of the contract, then the Court which decides the dispute will need to ascertain the terms of the contract from the evidence given by the parties, before it can make a decision on the matters in dispute.

On the other hand if the contract terms are set out in writing in a document which the parties subsequently sign, then both parties are bound by these terms even if they do not read them. Once a person has signed a document he is assumed to have read and approved its contents, and will not be able to argue that the document fails to set out correctly the obligations which he actually agreed to perform. Thus by setting down the terms of a contract in writing one secures the double advantage of affording evidence and avoiding disputes.

The law relating to contracts imposes upon each party to a contract a legal obligation to perform or observe the terms of the contract, and gives to the other party the right to enforce the fulfilment of these terms or to claim 'damages' in respect of the loss sustained in consequence of the breach of contract.

**Enforcement of Contracts**

An agreement can only be enforced as a contract if:

1. The agreement relates to the future conduct of one or more of the parties to the agreement.
2. The parties to the agreement intend that their agreement shall be enforceable at law as a contract.
3. It is possible to perform the contract without transgressing the law.

**Validity of Contracts**

The legal obligation to perform a contractual obligation only exists where the contract is valid. In order that the contract shall be valid the following conditions must operate: