GOLDFIELDS
TVET COLLEGE

BASIC COMMON LAWS APPLICABLE TO CONSTRUCTION
TOPIC 2 : UNIT 1
LEVEL 4

Lecturer Miss Moeti

SUBJECT OUTCOME

❖ Understand rights, responsibilities and risks in construction contracting

LEARNING OUTCOMES

❖Explain the concept 'builder's lien' and common law rights of the builder.

❖Explain the concept 'implied terms'

❖Explain ownership of buildings/permanent structures on land.

❖Explain the concept of excavation with respect to 'lateral support' of neighbouring property

CONCEPT OF 'BUILDER'S LIEN' AND COMMON LAW RIGHTS OF THE BUILDER.

❑ A **builders lien** is a **common law** right that comes into **effect** when the **contractor takes possession of the site and starts construction.**

❑ The builders lien allows the contractor to keep possession of the site until he is paid for work done. Payment dates are defined in the contract and contractor doesn't do site hand over till employer pays debt

❑ Contractor must have continuous occupation of property for builders lien to be effective.

❑ Builders lien is usually acted upon when employer has financial problems and cannot pay contractor.

❑ If builders lien has been invoked the contractor can claim against payment guarantee that employer has to take as part of contract.

❑ When builders lien is put into place, this requires the employers guarantor will require the contractor to set aside his right to builders lien.

❑ If contractor gives employer or client keys or does site hand over before he is paid he can't revoke his lien.

❑Builders lien is effective when contractor comes into possession of the site, during construction and it expires and is replaced by construction guarantee.

EXCAVATION WITH RESPECT TO NEIGHBOURING PROPERTY

❑ In construction there is a rule that a neighbour's property may not be negatively affected by any work that is done on the building site.

❑ Every building needs excavations for foundations and this process my cause a loss of lateral support of neighbouring property and may result in cracks in neighbours property, unless artificial support is provided so that cracks don't occur.

❑ Cracks happen due differential settlement.

❑ The owner of land being excavated is obliged to ensure uninterrupted lateral support of the neighbours adjacent property.

IMPLIED TERMS IN CONSTRUCTION CONTRACTS

In contracts some terms are implied and not stated, it nevertheless forms a provision in the contract that binding parties together.

The implied terms come from common and statute laws :

❑ The **common law** is it accepted that the parties will act **in good faith** and the contractor has a lien over property.

❑ In **statue law** there are laws relating to obligations in terms of the supply and sale of goods and laws relating to environmental protection. The contractor must also abide by all laws applicable to the contract, such as employment, safety, skills development and tax laws.

OWNERSHIP OF BUILDINGS AND PERMANENT STRUCTURES ON LAND

❑ The ownership of the land which project is constructed is usually with the client who has ownership of property.

❑ The contractor has no ownership of land, his sole reason of being there is to construct the property.

❑ When contractor takes possession of the property it becomes his duty to take care of it and not cause any damage such as soil erosion, waste pollution and noise pollution.

❑ Although property belongs to the client of which property is being erected for the contractor can still claim lien over project. These isn't ownership but a right of possession.

DEFINITIONS

Word	Description
Excavation	Is the action of making a hole or channel by digging
Lateral support	Is the means of holding back the sides of an excavation in a situation where they might otherwise collapse.
Title deed	Is an official document confirming ownership of property
Common law	Law that comes from custom and previous judgements
In good faith	To act with honesty or sincerity of intention
Statute law	The body of principles and rules laid down in statues (Laws are written and passed by parliament)

END,THANK YOU.