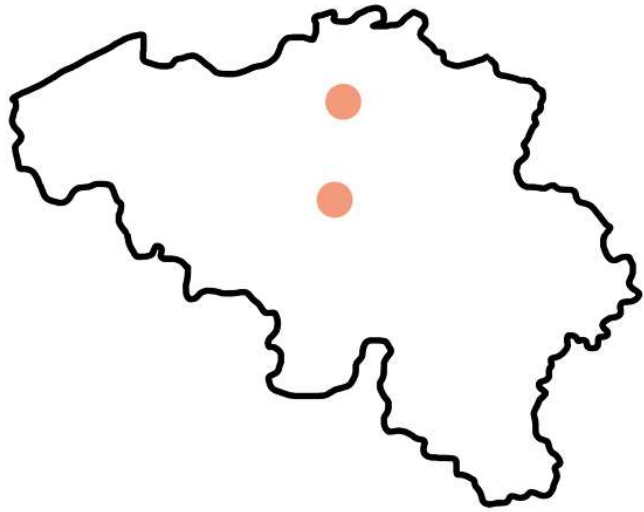


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## Common standards of contractors and technical advisor's liability

*Civil law*





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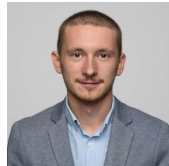
## Common standards of contractors and technical advisor's liability – Civil law



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### I. Civil liability : Contractual and extra-contractual liability

- The contractual liability can arise in the event of a contractual non-performance from the debtor : when a contracting party fails to fulfil a contractual obligation arising from the contract in a manner which is accountable to the contractor.
- The extra-contractual liability can arise in the event of a tort/unlawful act from a person with whom no contract has been concluded : fault, damage and causality between the fault and the damage.



## II. Elements of extra-contractual liability

*Some exemples :*

Two contractors are working on the same site. One contractor's crane falls on the other's truck → The owner of the crane may be held extra-contractually liable.

As a result of a fault in the way the work was carried out, a contractor caused damage to the house of the client's neighbor → The contractor may be held extra-contractually liable.

*NB :* In Belgian civil law, there are cases of no-fault liability.

*Ex.:* By driving piles into the ground, the contractor drilled pipes that had not been identified during preliminary surveys.

If the studies have been carried out correctly by the contractor, he is not at fault.

Despite this, he may be required to compensate the owner of the pierced pipe.



### III. Elements of contractual liability

#### i. Generality

1. A valid and still existing agreement between damaging party and co-contractor at the time of the damaging event
2. The co-contractor is the victim of the damaging event
3. The damaging party is culpable of a shortcoming in one of the obligations arising from the contract : Culpable of a shortcoming?
  1. Obligation of result
  2. Obligation of means ☐ Abstract criterion ☐ *bonus pater familias*, recently became “prudent and reasonable person”



### III. Elements of contractual liability

#### ii. The rules of the art and the technical specification

Under Belgian law,

Compliance with the rules of the art → Mandatory

Compliance with the technical specification → Not mandatory

But,

Rules of the art = Technical specification...

NB: The legal framework of the technical specifications has been partially harmonized at European level (see Directive 2015/1535)





### III. Elements of contractual liability

#### iii. Non-culpable shortcomings

##### ➤ Provided by law

- Force majeure

Ex.: Covid-19

- Change of circumstances

Ex.: Ukrainian war - Higher material costs and longer construction times

##### ➤ Provided by contract clauses

Ex.: “The contractor will not be liable for any damage to underground pipes.”



### III. Elements of contractual liability

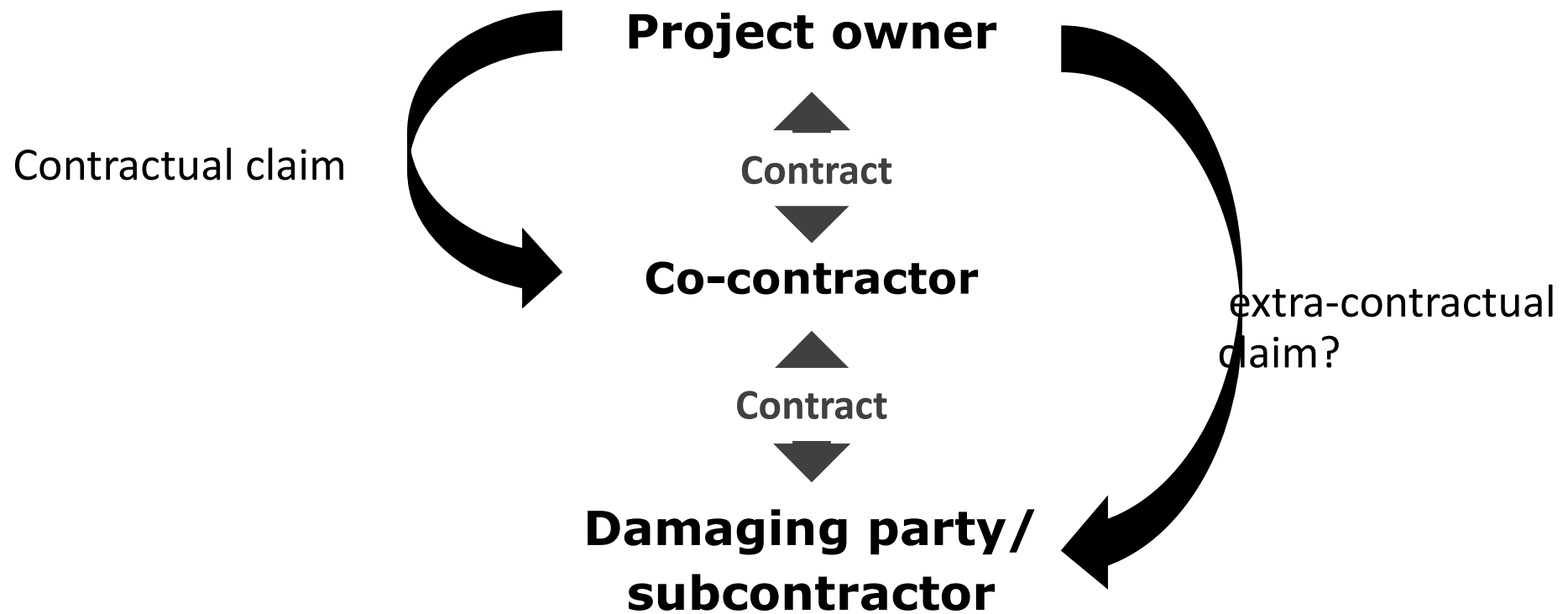
#### iv. Forced execution of contracts

In case of a culpable non-performance of a contractual obligation, these are the main remedies:

- Execution or reparation in kind  
*Ex.:* repairing a leaky roof
  
- Repair of the damage
  - Financial compensation
  - Compensation of the impairment loss



#### IV. Quasi-immunity of the subcontractor



Q&A

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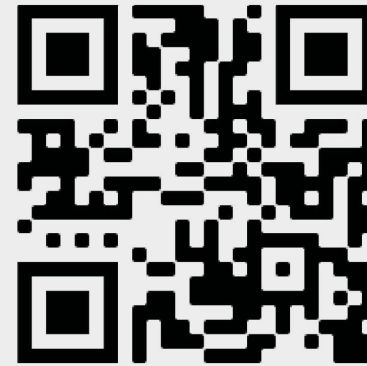
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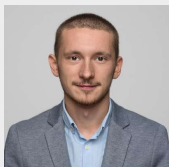
Thank you for your attention



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