



**25th Conference of the German International  
Construction Law Committee**



# Earthquakes: Legal Framework and Contractual Practices

The Chilean Experience



Molina Rios Abogados  
V́ctor Ŕos  
Santiago, Chile

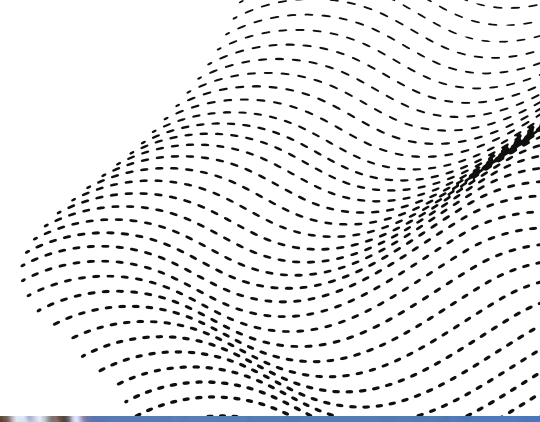


# Chile a seismic country

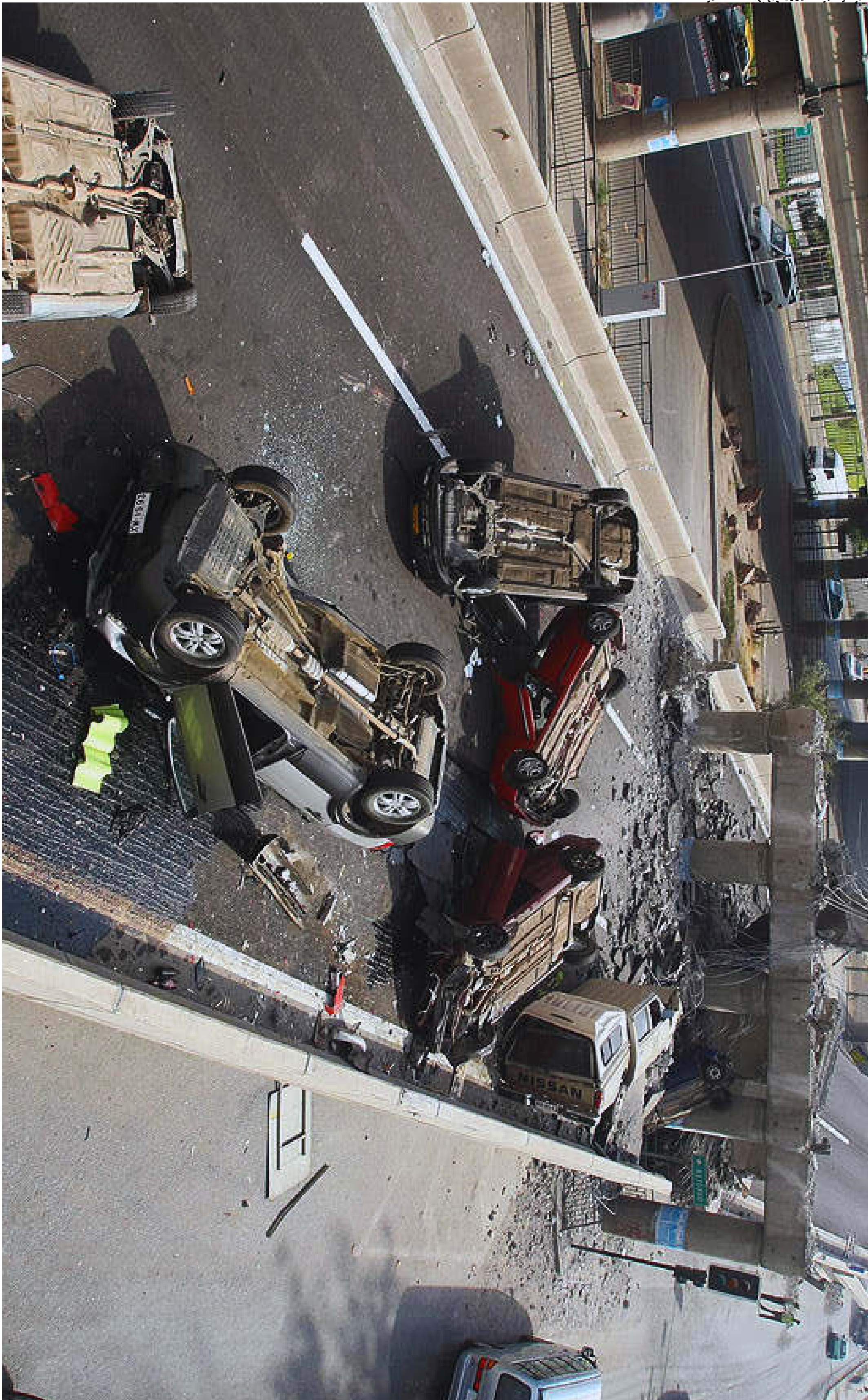
# Valdivia - 1960



# Concepción - 2010



# Santiago - 2010



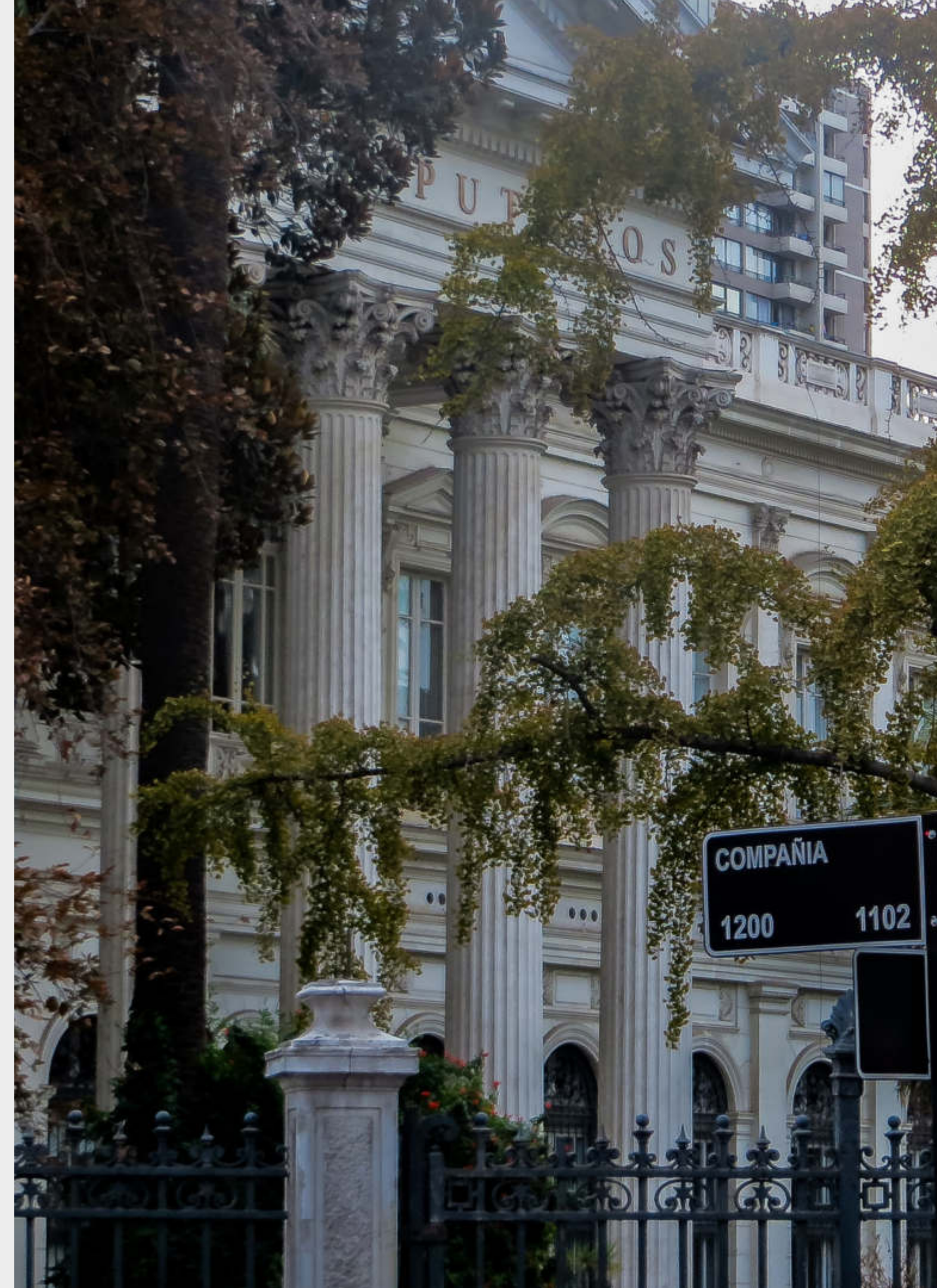
# General principle: Things are lost to its owner.

—————

This means that in an event of destruction of any kind, initially, it is the owner who loses.

This is a fundamental principle of law, with origins in Roman Law, which is widely included in Chilean legislation:

- *The loss or deterioration or improvement of the building that is sold, belongs to the buyer, from the moment of perfecting the contract, even if the thing has not been delivered.*
- *This principle applies to the loss in structural elements such as constructions and finishes. It makes no distinction.*

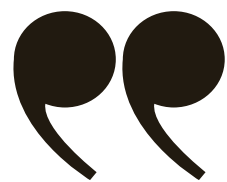


# Exception: Civil Liability

---

Only exceptionally will a third party be responsible for the loss of the property of another.

This type of responsibility eventually occurs for the destruction or deterioration of the property of others, with respect to those who have participated in its construction and provided that this result is the result of "failures, vices or defects" in the construction process. (art.18 LUC y 2003 CC) (Legal responsibility)



If the building perishes or threatens ruin, in whole or in part, in the five years following its delivery due to construction defects, due to soil defects that the developer or the persons employed by him should have known about due to their trade, or due to defects in the materials, the developer will be responsible." (2003 rule 3 CC)



# Failures, vices or defects:

---

It must respond to damages that occur that are a consequence of failures, vices or defects in the construction process, the materials, or other elements related to the art of building constructions. In other words, if these faults, vices or defects had not been occurred, the damage to the construction would not have occurred.

Content of the term "fault, vice or defect" according to the Royal Spanish Academy:

*Material defect of a thing that reduces its resistance.*

*Poor quality, defect or physical damage to things.*

FAIL

DEFECT

VICE

*Lack of some quality of something. Imperfection in something or someone.*



# Failures, vices or defects:

---

In accordance with article 18 of the LUC, the owner, first seller and others will be responsible for damages and losses that come from failures or defects in the construction:

"The first seller owner of a construction will be responsible for all damages and losses that come from failures or defects in it, either during its execution or after completion, without prejudice to their right to recur against those who are responsible for the failures or construction defects that have given rise to the damages." (art.18 LUC)

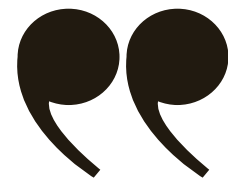
Other responsible: designers, contractors, representatives, independent reviewers

Scope of responsibility: includes damage to structural, construction and finishing elements, as long as they are due to faults or defects in the construction.



# Force Majeure:

---

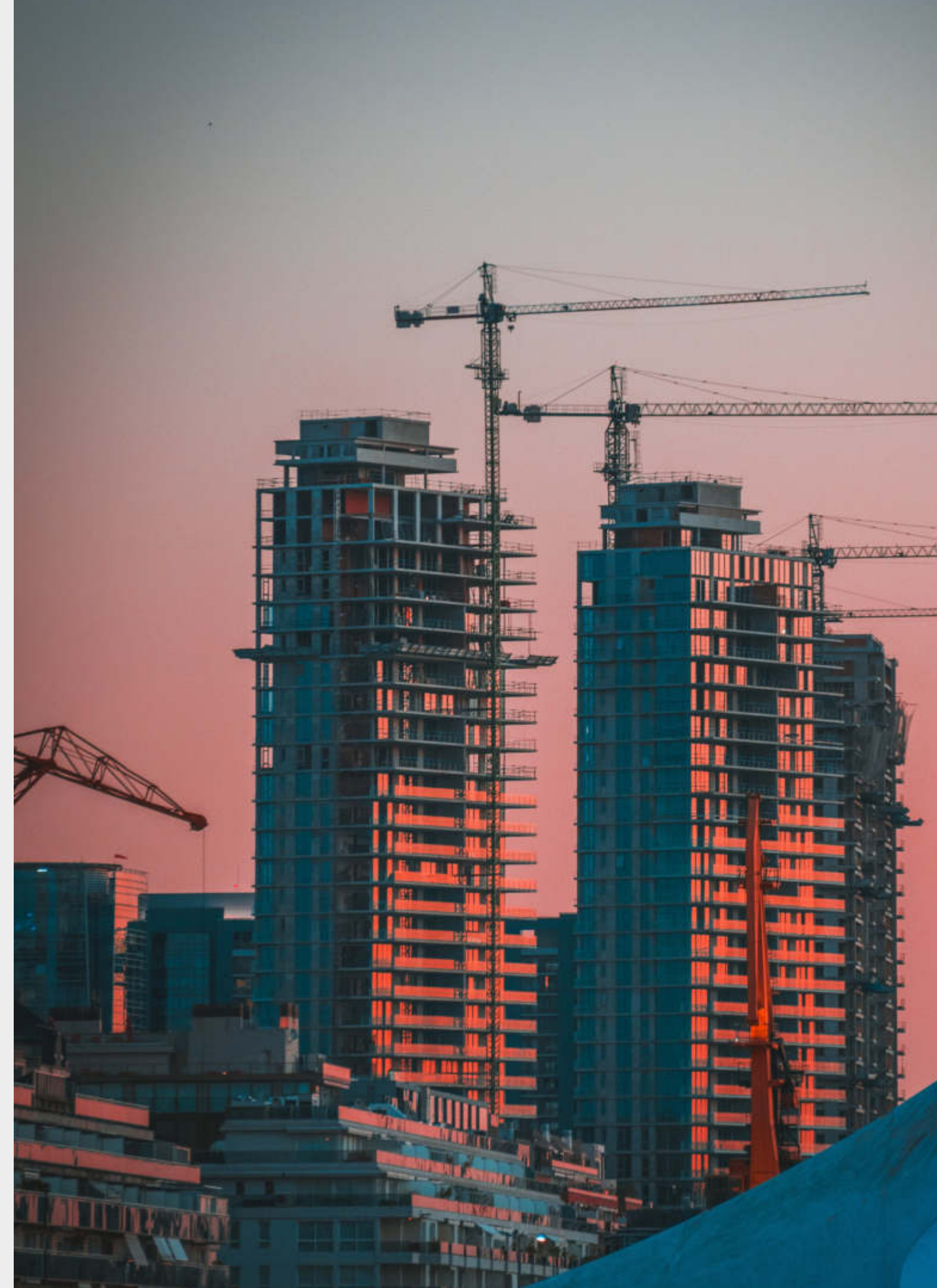


an unforeseen event that cannot be resisted...such as...an earthquake" states article 44 of the Civil Code.

No one is forced to the impossible. It is unreasonable to expect the builder to prevent the effects of an earthquake or to intend his work to do so beyond reason.

*Exception:* unless there are the aforementioned faults, vices or defects in the construction. Only in that case a legal obligation to indemnify arises.

That is, there is no legal link that puts the developer in the need to compensate, unless there are cases of damage caused by faults, defects or defects in the construction, as a result of which the legal obligation arises.





# Responsibility: content

---

The builder will not be responsible for damages when he has acted in compliance with the legal norms that regulate his activity and adhered to the state of the art (practices of his own activity or science) with due diligence. (art.44-1547CC)

On the contrary, he will respond, whatever the damage, if the damages are due to faults, defects or defects in the construction.

It is an objective responsibility: if there are deficiencies, he must respond even when there is no fault.

# Rules governing the activity:

---

1

The construction activity is regulated by the Urban Planning and Construction Law, the General Ordinance and by the Chilean Standards issued by the National Institute for Standardization.

2

“The design of urbanization and building works must comply with the standards established by the General Ordinance regarding stability and seismicity conditions; (Article 105)”

3

Article 106 of the same Law then orders:  
"To achieve the purpose set out in the previous article, the materials and systems to be used in urbanizations and constructions must comply with the "Technical Standards" prepared by the Ministry of Housing and Urban Planning, its dependent services or the National Institute of Standardization."

# OGUC



The ordinance, when dealing with the issue of seismic resistance, makes only 2 allusions; namely:

Art. 5.1.27. The Structural Calculation Project Reviewer will review the project in accordance with the technical standards indicated below and will verify its compliance as applicable:

NCh 433 Seismic design of buildings.

Art.5.4.5. In the stability calculations of all construction, the seismic action will be taken into account according to the official standards and the stresses and fatigues that it produces in its various elements will be established.



***Consequently, in accordance with the provisions of the LUC and the OGUC, the builder who has adequately applied the rules of the NCh433 has complied with his obligations.***





# CHILEAN STANDARD 433

That standard establishes the “minimum requirements for the seismic design of buildings”. (1.1)

It was approved as an official standard by Decree No. 172 of 5/12/1996, of MINVU, DO. No. 35,648, of 12/23/1996. It is a legal norm in Chile.

The standard “is aimed at achieving structures that: (5.1)

**A**

Withstand seismic movements of moderate intensity without damage

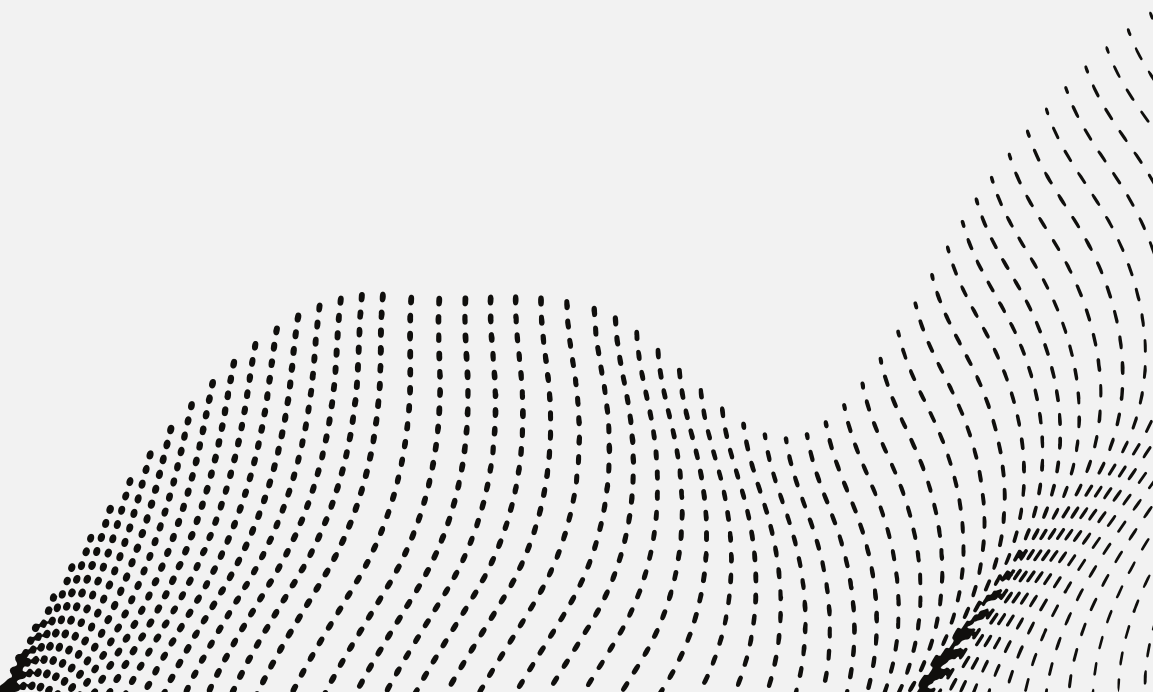
**B**

Limit damage to non-structural elements during medium-intensity earthquakes

**C**

Even if they show damage, they avoid collapsing during earthquakes of exceptionally severe intensity.

**Compliance with the provisions of these standards does not ensure, in all cases –says the standard– compliance with the aforementioned objectives. (5.1)**



# What should be understood by "severe" intensity of the earthquake.



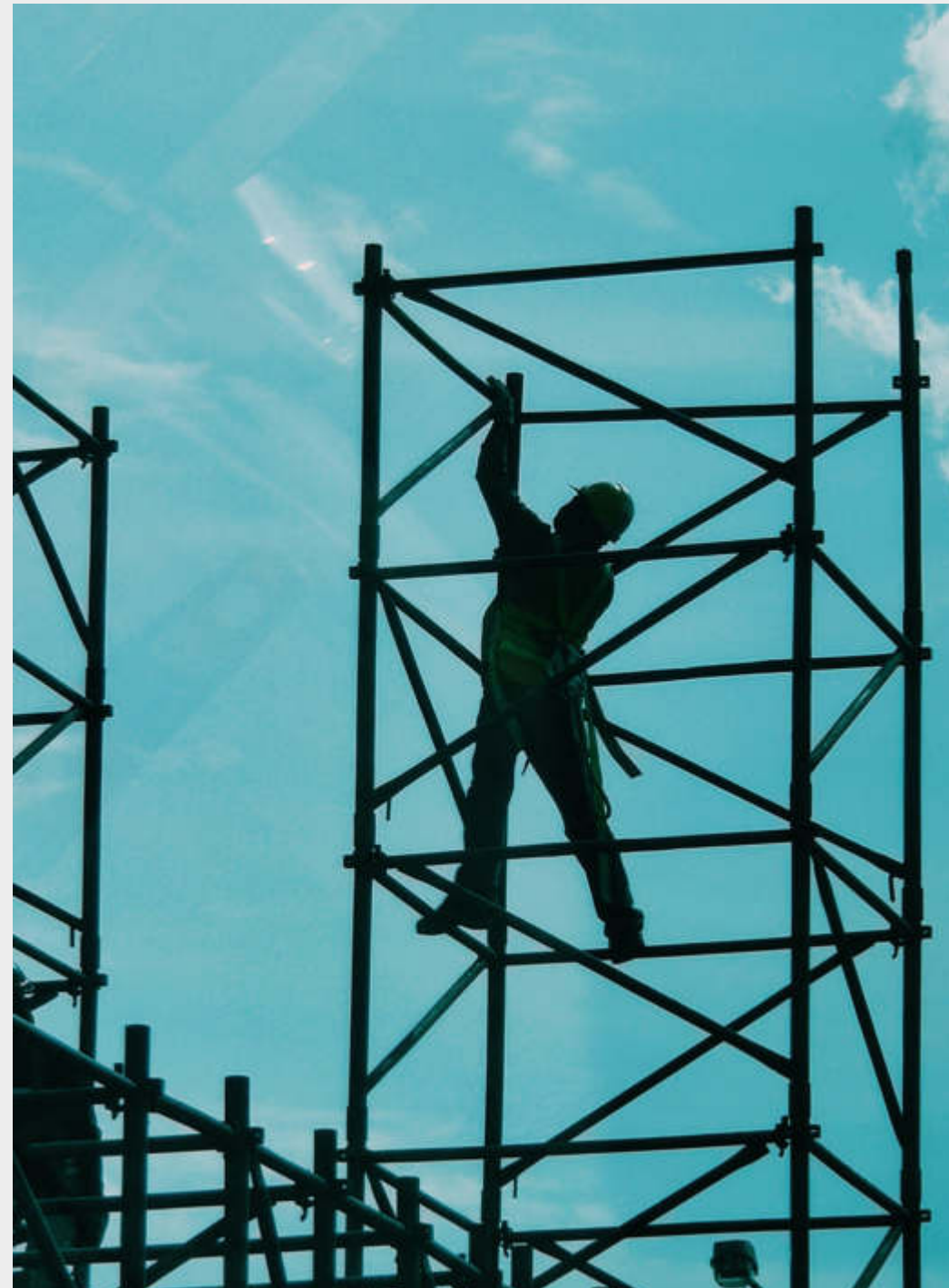
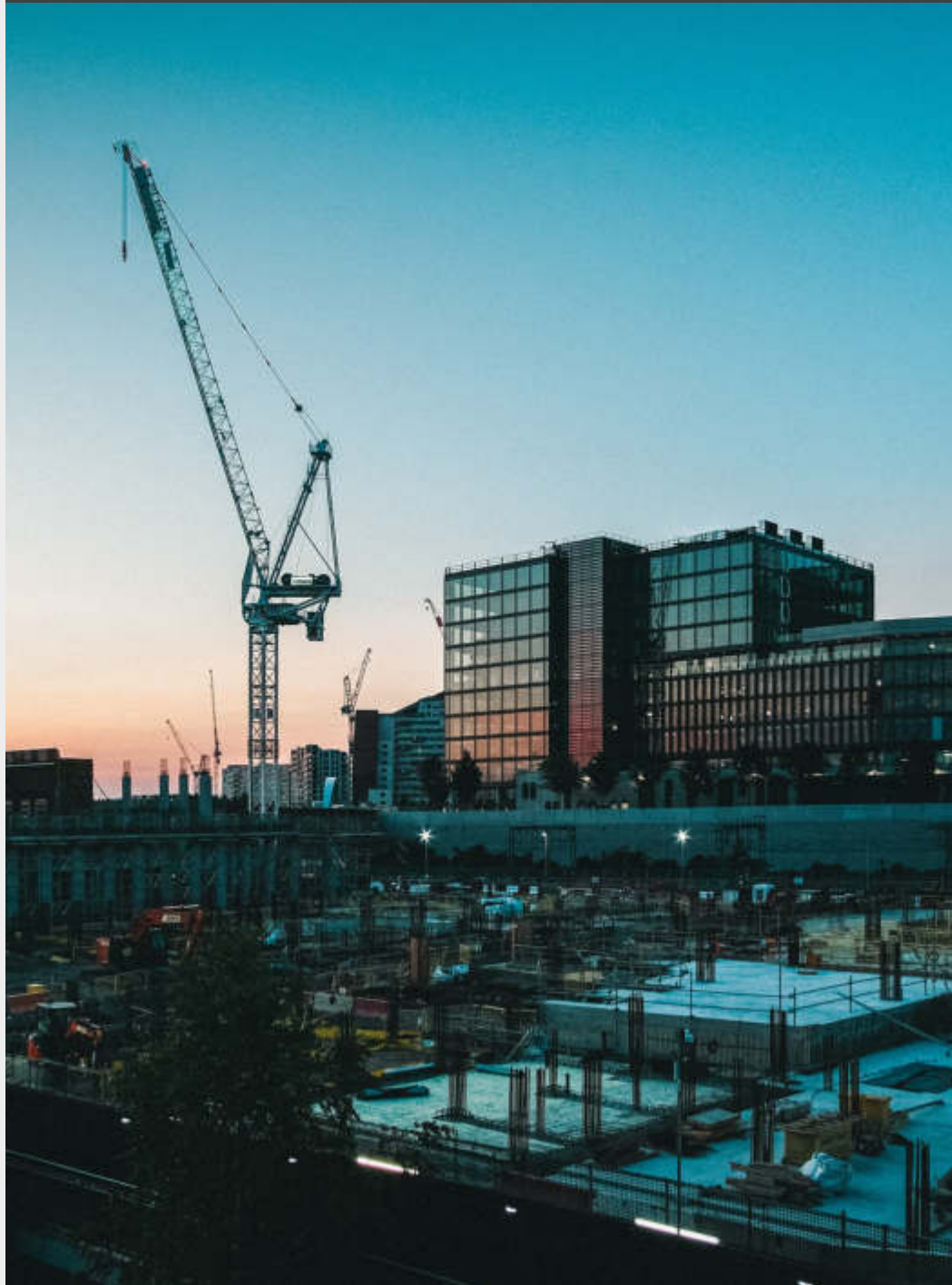
We must bear in mind that NCh 433 was issued as a result of the 1985 earthquake. That earthquake was rated 7.5 and considered severe. That of 2010 is 8.8. Note that this is an exponential scale. Think Haiti was grade 7.

The Richter scale considers earthquakes of  $8^{\circ}$  or greater to be at the (upper) limit of its intensity, defining them as a "big earthquake". An earthquake of  $7^{\circ}$  to  $7.9^{\circ}$  is already a major earthquake that causes serious damage.

The above elements, added to the fact that it is the 5th earthquake in intensity of those that have been measured by man, allows us to affirm that it is indeed an earthquake of severe intensity, which makes the provisions of numeral 5.1 of the NCh433 applicable.



It will be up to the buyer to prove (a) the damage and (b) the existence of faults or defects as (c) the causal relationship.



Remember that we assume that we do not use the cause of force majeure as an exemption from liability.

**The proof:**

---

# The prescription

The actions to make effective the responsibilities to which we refer:

**A**

10 years in the case of failures or defects that affect the structures or bearing of the property.

**B**

5 years in the case of failures or defects in the construction elements or facilities.

**C**

3 years if there are failures or defects that affect finishing elements or finishing of the works.

**D**

5 years in failures or defects not expressly incorporated in the previous numerals.

The terms are counted from the date of final reception for numbers 1 and 2 and from the date of registration of the property in the name of the buyer in the respective Real Estate Registrar in number 3.

— 2023



# Thank You.

Earthquakes:  
Legal Framework and  
Contractual  
Practices

**The Chilean  
Experience**

Molina Rios Abogados  
V́ctor Ŕos  
Santiago, Chile