

# PROFESSIONAL PRACTICE 544

INTRODUCTION, LEGAL FOUNDATION, DISPUTE RESOLUTION

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# HOW THIS CLASS WORKS

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- 1. First Half (through the mid-term): THEORY**
- 2. Second Half (through the final): PRACTICAL APPLICATION**
- 3. Syllabus - Contact Information, Lecture Topics, Key Documents for Class**
- 4. Lectures and Reading (AIA Documents) Very Important**

# How This Class Works

## 5. Grading based on mid-term and final exams combined

- Both multiple choice, open book – open notes
- No homework
- Lecture based – no book. Will need two AIA Forms – A201 and B101
- Opportunity to raise grades of C or below by writing papers
- Attendance is critical for full understanding
- Lectures are posted on the website
- Merit Award of \$1,000 for best performance in the class based on raw exam scores

# How This Class Works

## 6. Objectives of the Course

- Understand the jargon
- Understand the types of practices (partnerships, corporations, LLCs, etc.)
- Understand dispute resolution, including the courts, mediation and arbitration
- Understand business agreements and contracts
- How the practice of architecture is regulated by the State and others
- Learning/understanding an architect's professional practice responsibilities
- Understanding the economics of architecture and real estate development
- Recognizing an architect's place in the business world



# THE LAW – AN OVERVIEW

# LEVELS OF GOVERNMENT

## ➤ THE LAWS OF NATURE

## ➤ OTHER LAWS FOLLOWING NATURE

- Monarchy – let to tyranny
- Complete and pure Democracy (Athens) – Unworkable
- Socialism, communism, etc.

## ➤ CONSTITUTIONAL DEMOCRACY

- Our form of government
- A democracy where the majority does not always rule
- Intended to protect the rich and the poor – designed to allow all to have a say

# LEVELS OF GOVERNMENT

## ➤ **NATIONAL LEVEL (not “FEDERAL”)**

- May only exercise that power expressly granted to it in the Constitution
- All other powers are reserved for the states
- The Constitution, however, may be broad in its application – Congress and what it can do

## ➤ **STATE LEVEL**

- Each state is wholly separate and not obligated to follow another state’s laws
- Full faith and credit clause in the Constitution requires one state to recognize the validity of another state’s decision
- Intended to protect the rich and the poor – designed to allow all to have a say

## ➤ **MUNICIPAL LEVEL**

- City
- Village
- Separate and independent taxing body (e.g., MPEA)



# FUNCTIONS OF LAW

## ➤ **CRIMINAL LAW**

- Protects the State
- Protects people
- Base on the jury system – although, what really is a “jury of your peers?”

## ➤ **CIVIL LAW**

- Balancing interests of groups and individuals
- Ensuring predictability
- Statutes and common law
- Uses the jury system as the criminal system – but with different parameters

# HIERARCHY OF LAWS

1. **Constitution** – Federal and State
2. **Statute (Legislative)** – Federal, State, County, City
3. **Executive Order** – Federal and State
4. **Administrative Order** – Part Legislative/Part Executive
5. **Common Law** – Court-Made Law – Hundreds of years old
6. **Contracts and Agreements** – Oral, Written, or Implied
7. **Custom and Practice** – Implied and over time



CLAIMS

# WHAT IS A CLAIM?

- **Because there are claims, we need laws**
- **Civil and Criminal**
- **This class principally explores civil claims**
  - Claims against design professionals
  - Claims against owners
  - Claims against contractors
  - Claims against subcontractors, consultants, and others.
- **What is a claim and how is it resolved?**

# ELEMENTS OF A CLAIM

- **Generally, there are two categories of civil claims – Tort and Contract**
  - What makes up a tort claim?
  - What makes up a contract claim?
- **Existence of a Duty**
  - Duty created by law, contract, or otherwise
- **Breach of that Duty**
  - The failure to perform
  - Performing in a manner that is not consistent with the standard of “care”

# ELEMENTS OF A CLAIM

## ➤ **Injury**

- Were you physical injured – Tort
- Was there a contractual loss? – Contract

## ➤ **Causation**

- Was the injury or loss “caused” by the breach of the duty

## ➤ **Damages**

- Is there a value to the injury or loss such that you may be compensated?

## ➤ **You have all the elements of a claim. Now, how does it get resolved?**

- Duty; Breach of the Duty; Injury; Causation; Damages
- Old school ... (eye for an eye)
- Legal methods



# DISPUTE RESOLUTION PROCEDURES

# Dispute Resolution Prodecures

| Binding  | Non-Binding  |
|--|--|
| <ul style="list-style-type: none"><li>• Litigation/Lawsuit (traditional method)</li><li>• Expensive and time consuming</li></ul>                       | <ul style="list-style-type: none"><li>• Negotiation (always encouraged)</li><li>• Limited to skill and attitude of the parties</li></ul> |
| <ul style="list-style-type: none"><li>• Arbitration (only by agreement)</li><li>• Can be, but not always, cheaper and faster than litigation</li></ul> | <ul style="list-style-type: none"><li>• Mediation (only by agreement)</li><li>• Often faster and cheaper than other methods</li></ul>    |





# ANATOMY OF A LAWSUIT

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## 1. The Plaintiffs Summons and Complaint

- Hire the attorney
- Bring a suit Pro Se (only an individual)
- File an Appearance
- Service of the Pleading

## 2. The Defendant's Initial Responses

- File an Appearance
- Possible Motion to Dismiss – wrong party, improper claim, etc.
- File an Answer to the Complaint
- Are there Affirmative Defenses
- Are there Counterclaims

# ANATOMY OF A LAWSUIT

## 3. Pre-Trial Discovery – Both Parties

- What is the purpose of Discovery
  - Production of documents
  - Interrogatories
  - Depositions
  - Subpoena to third parties
  - Length of time to be in Discovery
  - Motion practice to get through Discovery
- 
- This is the most expensive and longest portion of any lawsuit

# ANATOMY OF A LAWSUIT

## 4. Trial (Jury or Bench)

- Jury selection
- Opening Statement
- Evidence and witnesses
- Closing Arguments
- Jury Instructions
- Verdict/Judgment

## 5. Appeal

- Written briefs on limited issues
- Oral arguments are possible, but rare



# ARBITRATION

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## **1. Demand for Arbitration (Claimant – not Plaintiff)**

- In writing but the process is not as formal as in a lawsuit

## **2. Answering Statement and Counter Demand (Respondent – not Defendant)**

- In writing and may even be a narrative

## **3. Arbitrator Selection Process**

- By agreement, contract, and the rules are defined
- How many panel members – again by contract or by the size of the dispute

# ARBITRATION

## 4. Limited Discovery

- Mutual document exchange
- Interrogatories typically not permitted or are very limited
- Depositions also usually are limited or prohibited
- Unless defined in the contract or other agreement, decisions on an amount of Discovery falls to the Arbitrator
- Often limited control over Discovery produced
- Subpoenas to third parties for documents or attendance at hearing only

# ARBITRATION

## 5. Evidentiary Hearing

- Opening statements
- Witnesses, but limited evidentiary exclusions/objections
- Arbitrator(s) may ask questions
- Closing arguments and/or written briefs
- Award – in writing but may or may not be a “reasoned” decision

## 6. No Right of Appeal

- Arbitrators can make errors of law or fact without being overturned
- Fraud or over bias can be appealed – but very little else
- Arbitrator’s lack of jurisdiction can be an issue – but very rare
- Reckless disregard of the law





# MEDIATION

# MEDIATION

## 1. Acts as a Business Resolution Process

- Generally, it is non-binding
- Some mediations are combined with an arbitration to achieve a final and binding solution

## 2. Two Primary Types of Mediation

- Evaluative
  - Evaluates the basis and merits of the claims
  - Evaluates the strength and weakness of the claims
  - Informs the participants of the validity of a claim
- Facilitative
  - Does not evaluate the claim in great detail and through specific legal precedent
  - Facilitates the conversation between the parties
  - Much more of an intermediary process – requires a skilled mediator with interchanges and the ability to read people and the issues

# MEDIATION

## **3. The Mediation Process**

- Individual meetings/written submissions to educate the mediator
- Joint sessions between the parties – often confrontational
- Provides the feeling of having “your day in court”
- Separate of the parties for the negotiation portion
- Shuttle diplomacy

## **4. Mediation May Be Interrupted or Continued**

## **5. Resolution - Hopefully**

- Settlement may occur during the mediation or at a later date
- Parties enter into some sort of binding agreement that can later be enforced by a court of law



QUESTIONS