

PROFESSIONAL PRACTICE 544

INTRODUCTION, LEGAL FOUNDATION, DISPUTE RESOLUTION

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HOW THIS CLASS WORKS

How This Class Works

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



ANATOMY OF A LAWSUIT

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1. The Plaintiff's 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
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- 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

ARBITRATION

1. Demand for Arbitration (Claimant – not Plaintiff)

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

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

- Also is 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