Introduction, Legal Foundation, Dispute Resolution

• To Court or Not?

January 18, 2019
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
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
- $1,000 Schiff Hardin Construction Law Group scholarship for best performance
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 architects 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 – led 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
• Designed to protect the rich and the poor – minorities (race, geographic location, etc.) all may have a say
LEVELS OF GOVERNMENT

NATIONAL (not “Federal”)
• May only exercise that power expressly granted to it in the Constitution
• All other powers are reserved for the states
• Constitution, however, may be broad in its application – Congress and what it can do

STATE
• Each state is wholly separate and not obligated to follow another state’s laws
• Full faith and credit clause of the Constitution requires one state to recognize the validity of another state’s decision

MUNICIPAL
• City
• Village
• Separate and independent taxing body (e.g., MPEA)
FUNCTIONS OF LAW

CRIMINAL LAW
• Protects the State
• Protects people
• The jury system – but what is a “jury of your peers?”

CIVIL LAW
• Balancing interests of groups/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 – Federal, State, County, City
3. Executive Order – Federal and State
4. Administrative Order - Part Legislative/Part Executive
5. Common Law (court-made law) – 100s 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

Arch 544 mainly explores civil claims

• Claims against design professionals.
• Claims against owners.
• Claims against contractors.

What is a claim and how is it resolved?
ELEMENTS OF A CLAIM

Generally two categories of civil claims — Tort and Contract

• What makes up a tort?
• What makes up a contract?

Existence of a Duty

• By law, contract, or otherwise

Breach of that Duty

• The failure to perform.
• Performing in a manner not consistent with the standard of care
ELEMENTS OF A CLAIM

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 of the elements of a claim. How does it get resolved?
• Old School …
• Legal Methods
DISPUTE RESOLUTION PROCEDURES
# Dispute Resolution Procedures

<table>
<thead>
<tr>
<th>Binding</th>
<th>Non-Binding</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Litigation/Lawsuit (traditional method)</td>
<td>• Negotiation (always encouraged)</td>
</tr>
<tr>
<td>• Expensive and time consuming</td>
<td>• Limited to skill and attitude of the parties</td>
</tr>
<tr>
<td>• Arbitration (only by agreement)</td>
<td>• Mediation (only by agreement)</td>
</tr>
<tr>
<td>• Can be, but not always, cheaper and faster than litigation</td>
<td>• Often faster and cheaper than other methods</td>
</tr>
</tbody>
</table>
ANATOMY OF A LAWSUIT
ANATOMY OF A LAWSUIT

1. The Plaintiff’s Summons and Complaint
   • Hire the attorney
   • Sue Pro Se (only an individual)
   • Appearance
   • The Process

2. The Defendant’s Initial Responses
   • Appearance
   • Motion to Dismiss
   • Answer
   • Affirmative Defenses
   • Counterclaims
ANA T OMY OF A LAWSUIT

3. Pre-Trial Discovery – Both Parties

- What is the purpose?
- Production of documents
- Interrogatories
- Depositions
- Subpoenas to third parties
- Length of time
- Motion practice
ANATOMY OF A LAWSUIT

4. Trial (Jury or Bench)
   • Jury selection
   • Opening statements
   • Evidence and witnesses
   • Closing arguments
   • Jury instructions
   • Verdict/judgment

5. Appeal
   • Written briefs on limited issues
   • Oral arguments
1. Demand for Arbitration (Claimant)
   • In writing but not as formal as in a lawsuit

2. Arbitrator Selection Process
   • By agreement, contract, define the rules
   • How many panel members

3. Answering Statement and Counter-Demand (Respondent)
   • In writing and may even be a narrative
4. Limited Discovery

- Mutual document exchange
- Interrogatories typically not permitted or very limited
- Depositions also usually limited or prohibited
- Unless defined in the contract or other agreement, decision on amount of discovery falls to the Arbitrator
- Often limited control over discovery produced
- Subpoenas to third parties for documents or attendance at hearing only
5. Evidentiary Hearing
- Opening statements
- Witnesses, but no evidentiary exclusions/objections
- Arbitrator(s) may ask questions
- Closing arguments and/or written briefs
- Award

6. No Right of Appeal
- Arbitrators can make errors of law or fact without being overturned
- Fraud or overt bias can be appealed
- Arbitrator’s lack of jurisdiction
- Reckless disregard of the law
MEDIATION
MEDIATION PROCEDURES

1. It is a Business Resolution Process
   • Generally non-binding
   • Some mediations are combined with arbitration to achieve a final and binding solution

2. Generally Two Types of Mediation
   • Evaluative
     – Evaluate the basis and merits of the claims
     – Evaluates the strengths and weakness of the claims
     – Informs the participants of the validity of a claim
   • Facilitative
     – Does not evaluate the claim
     – Facilitates the conversation between the parties
     – Much more of an intermediary – requires a very skilled mediator with interchanges
MEDIATION PROCEDURES

3. The Mediation Process
- Individual meetings/written submissions to educated the mediator
- Joint session between the parties – often confrontational
- Provides the feeling of having “your day in court”
- Separation of the parties for 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 later can be enforced by a court of law.
QUESTIONS