

Spring Semester 2018

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# Professional Practice 544

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# Professional Practice 544

## Introduction, Legal Foundation, Dispute Resolution – To Court or Not?

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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 for Contact Information and Documents for Class
4. Lectures and Reading (AIA Documents) Very Important

# HOW THIS CLASS WORKS

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## 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

# HOW THIS CLASS WORKS

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## 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

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## 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

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## 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

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## 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

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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?

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Because of 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

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Is the claim based in tort or 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

Causation

Damages

# DISPUTE RESOLUTION PROCEDURES

# DISPURE RESOLUTION PROCEDURES

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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 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

# ANATOMY OF A LAWSUIT

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## 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

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## 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

# ARBITRATION

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## 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

# ARBITRATION

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## 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

# ARBITRATION

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## 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

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## 1. 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

## 2. It is a Business Resolution Process

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

# MEDIATION PROCEDURES

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## 3. The Mediation Process

- Individual meetings/written submissions to educate 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

# QUESTIONS