

COURSE SYLLABUS
CONSTRUCTION LAW: NEGOTIATION AND MANAGEMENT

SPRING 2017
PLAN6740
1.5 CREDITS

Mondays, 4:00-6:00PM
200 S Fayerweather

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Class assistant: Patrick Taylor
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I. COURSE DESCRIPTION

This course is designed to prepare business students to identify legal opportunities and issues involved in construction when developing real estate.

We will achieve a useful understand of construction law to enable successful negotiation and management of key legal issues typically arising during construction. Using standard industry forms (owner-architect, owner-contractor, contractor-subcontractor, etc.) as well as legal texts, students will develop the knowledge and skills necessary to successfully navigate the relationships that are governed by these agreements. Key principles include fees, project delivery and administration, completion, defects, delays, warranties, insurance and liens.

II. COURSE REQUIREMENTS AND ASSIGNMENTS

Each reading assignment is to be completed BEFORE class. Participation through discussions of materials and posed hypotheticals/exercises demonstrates understanding of concepts and enriches the class experience. In addition to a final exam, students will be asked to draft a mid-term essay to demonstrate the ability to spot key legal concepts and assessment of the likely resolution.

III. COURSE GRADING CRITERIA

Course grading criteria are as follows:

- Completion of readings (prior to class) 20%
- Participation: 10%
- Mid-term essay: 30%
- Final exam: 40%

IV. READINGS

Reading assignments in advance is expected with additional material available as needed or desired to enhance further understanding of the concepts addressed.

Required text: Construction Law, Allensworth, et al, (2009) ISBN-10: 1-60442-323-4, ISBN13- : 978-60442-323-5

Recommended readings: See below

V. COURSE OUTLINE

Class 1, March 6: Process, Participants and Project Delivery

Construction law generally defines the rewards and allocation of risks among the various parties largely through precedent rather than statute. Accordingly, we will exam the traditional approach that courts take to distribute those risks and rewards among the web of relationships involved in construction as well as how this allocation integrally effects the “Deal” and reputations.

In class: Risk Assignment Exercise.

Required readings prior: Text pages 35-94.

Class 2, March 20: Contracts

Key contracts are among developers, designer, construction, subcontracts and other consultants. We will survey the various key terms and how they relate to each other and the deal including lender consents, intellectual property and guarantees.

In class: Negotiation Exercise.

Required readings prior: Text pages 123-185 and 219-257.

Recommended readings: *Getting to Yes: Negotiating Without Giving In*, by Roger Fisher and William Ury.

Class 3, March 27: How to Build it: Administration

In this class we will test how the key contract terms play out in the field. Controlling product delivery, payment, and safety to get a project to success takes an understanding of the day-to-day issues confronted in project management.

Required readings prior: Text pages 279-307, 343-359 and 369-398.

Recommended readings: *From Values to Action: The Four Principles of Values-Based Leadership*, by Harry M. Jansen Kraemer Jr.

Class 4, April 3: Ethics and Legality

Construction is lightly regulated and highly investigated. In order to remain mindful of the pitfalls that can shadow administration and avoid personal risk, we will explore the areas of risk inherent in the construction process.

Assignments due: Mid-term essay.

In class: Ethical Blindspot Exercise.

Required readings prior: “Ethical Breakdowns”, Max H. Bazerman and Ann E. Tenbrunsel, *Harvard Business Review*, April 2011, and excerpts from select deferred prosecution agreements in construction, posted.

Recommended readings: Yates Memorandum and 2016 Pilot Plan of Enforcement Department of Justice, posted.

Class 5, April 10: Insurance

While there may be contractual commitments on risk, the potential damages if one of those risks is realized, may be beyond that parties’ financial wherewithal to satisfy. Parties therefore can utilize other vehicles to manage certain of those risks. We will survey those vehicles including insurance, bonding, letters of credit, Imprest and guarantees.

Required readings prior: Text pages 401-429 and 531-557.

Recommended readings: Excerpts from World Trade Center Properties (Silverstein Properties), 2nd Circuit Court of Appeals Opinion, Case Nos. 13-3619, 13-3782, posted.

Class 6, April 17: Disputes

Despite intensely negotiated contracts, disagreements will arise in the construction process. Understanding the key legal concepts that commonly arise in such disputes help keep all parties moving to completion. Such concepts include notice, waiver, entitlement, authorization, delay, mechanics liens, prompt payment laws, and anticipatory breach. This class will provide guidance to successfully navigate this process.

In class: Issue Identification Exercise.

Required readings prior: Text pages 176-185, 332-341 and 431-513.

Class 7, April 24: Disputes Resolution Methods

When disputes *do* spiral out of control, the financing and control of the project can be put in jeopardy. Litigation is not the most reliable or timely process. As a result, alternative dispute resolution tools are commonly utilized in construction. We will review those risks of default and methods of resolution.

In class: Dispute Resolution Exercise.

Required readings prior: Text pages 513-76 and 667-700.

Class 8, May 1: FINAL EXAM. There will be no review session. If there are any questions regarding the material, please discuss at the end of classes. Please contact Patrick with any other questions.