

Course Number: RE 612 / JD 612
Course Title: Construction Law
Credits: 2

Semester and Year: Fall 2017

The John Marshall Law School
Center for Real Estate

Syllabus

Contact Information:

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OFFICE HOURS BY APPOINTMENT ONLY

Meeting Dates: Mondays - 6 p.m. – 9 p.m.

Description: A study of the various aspects of construction and design law, including project delivery methods, construction contracting, claims and dispute resolution, and the rights, duties and perspectives of project participants including: owners, developers, contractors, subcontractors, architects, engineers, bonding companies and lenders. An analysis of the issues to consider in choosing project delivery methods; construction contracting; the bidding process and government work; construction liabilities and insurance; the payment process including mechanics lien and bond claims; construction scheduling and delays; warranties, damages, remedies and defenses that frequently arise in construction and design claims; and dispute resolution through processes including mediation, arbitration, or litigation.

Course objectives: (1) to recognize the variety of legal issues, problems, and practical business risks that can confront project participants before, during, and after the construction process; (2) to understand and analyze those issues, problems, and risks, and how they are managed by the design and construction industry; and (3) to provide reasonably valuable advice and guidance to project participants involved in the construction process to achieve successful completion of projects.

Prerequisite: None

Learning Outcomes:

1. Understand the roles and responsibilities of the key players; the different legal and contractual arrangements which can be made to design and construct projects; the advantages and disadvantages of each contractual arrangement or project delivery method; commonly used standard form contracts; and important terms and concepts to be included in design and construction contracts.

2. Demonstrate knowledge of the bid process and the preparation of bid proposals; the use and application of contracts to manage field work; the essential provisions which the contract should contain; and the limitations of a written contract. Become generally familiar with the differences between public and private contracting.
3. Understand basics of construction payment, including the variety of ways that construction work is paid for and the interaction of various payment methods with contractual and statutory requirements. Understand security relied on by parties who perform design and construction work, or invest in construction projects.
4. Understand that unexpected conditions are likely to occur in a construction project and should be considered in the legal agreements executed before project commencement. Demonstrate knowledge of construction commercial management issues including scheduling, delays, insurance, defects, warranties, changes, and termination.
5. Understand how to investigate and address the legal rights and liabilities of parties to a construction project when disputes arise. Demonstrate knowledge of frequent sources of disputes in the design and construction industry, and the damages, remedies, claims and defenses resolved through common methods of dispute resolution.

Course Materials:

REQUIRED BOOK PURCHASE:

Fundamentals of Construction Law, ABA Book Publishing (2nd Edition, Editors: Elmore, Ralls, Catoe), ISBN 978-1-62722-300-3

REQUIRED WEB-BASED MATERIALS (AVAILABLE AT NO CHARGE TO JMLS STUDENTS):

IICLE Construction Dispute Litigation 2013 Edition (Assigned Chapters)

IICLE Mechanics Liens in Illinois 2014 Edition (Assigned Chapters)

IICLE Construction Law: Transactional Considerations 2010 Edition (Assigned Chapters)

CONTRACT HANDOUTS TO BE POSTED TO MOODLE:

American Institute of Architects (AIA) Contract Documents:

A201-2017, General Conditions of Contract for Construction

A101-2017, Standard Agreement between Owner and Contractor

B101-2017, Standard Agreement between Owner and Architect

A312-2010: Performance Bond

A312-2010: Payment Bond

Other handouts to be posted to Moodle

Fundamentals of Construction Law is available for purchase through the John Marshall / DePaul University Book Store. IICLE materials can be accessed through IICLE SmartBooks portal, which is available to students through the John Marshall Law Library (<http://library.jmls.edu>). AIA Contract Documents and other class handouts will be available for download through the Moodle course portal (<http://moodle.jmls.edu>). We intend to share and discuss handout materials for certain classes, which may include seminal cases, sample documents, and statutes. These handout materials are not included in the assigned readings materials for each class, but they will be posted on Moodle for your reference and may be the subject of, or relevant to, the final exam. Students are encouraged to become familiar with all materials posted to Moodle before completing the Final Exam.

Grading:	Final Exam: 70% Class Attendance, Preparation, and Participation: 30%
Exam:	Take-home exam and instructions will be posted to Moodle. The exam will consist mostly of short answer essay questions, but may include some multiple choice or other types of questions. The exam will be “open book” regarding class notes, Course Materials identified above, or handouts that we post to Moodle. The exam will be “closed book” regarding any other materials, literature, or the internet.
Notes:	We reserve the right to make adjustments or changes to this syllabus throughout the semester. Students are responsible to learn about these potential changes by checking Moodle each week , particularly if they miss any class time.

JMLS Policies:

Students should refer to the JMLS catalogue and student handbook for information on the law school’s policies and grading scale.

Plagiarism

Plagiarism is a serious offense that may cause disciplinary action. There are two major types of plagiarism: (1) Failure to cite the source of an idea; and (2) Failure to use quotation marks around a direct quote. If you use the idea (or an organization) of another author, you must attribute that idea to the other author. Merely paraphrasing the other author’s words is not sufficient. You must also cite to the other source. If you use the idea and the words of another author, you must put quotation marks around those words and cite to the source. Both are required. If either the quotation marks or the citation is missing, you have plagiarized the other author’s work. Intent is not required for a writing to be plagiarized. Using the ideas or words of another student may also be plagiarism. Regardless of what rules you may have followed on this subject before law school, or what practices you may observe elsewhere, this is the standard you must adhere to in all of your Lawyering Skills classes, in all seminar papers, in all Moot Court briefs, and in all *Law Review* or *Computer Journal* papers. This definition may be supplemented for Lawyering Skills classes.

Attendance Policy

The Board of Law Examiners in each state requires a certificate of attendance from the law schools attended by the applicant in order to take the bar examination. To execute this certificate faithfully, the school must insist on regular attendance. Therefore, students must attend all classes scheduled. **It is the responsibility of each student to ensure that he or she has signed the attendance sign-in sheets to be circulated during each class session.**

A student absent for over 25 percent of the total number of class meetings may not write the examination and will receive a grade of WF (withdraw/fail) for the course, unless permission has been granted by the Assistant Dean for Academic Services. The number of absences permitted may be

reduced by the professor on notice to the class. The John Marshall Law School recognizes the diversity of religious practices of its students, faculty, and staff. Therefore, we have established a new policy of attendance to accommodate religious observance. In addition to the 25 percent allowed, students are excused for religious observance from two class sessions in each course enrolled in every semester.

Recording

Students may not record class sessions without securing our advanced written permission, which we will give only in circumstances we deem to be extenuating. A student who records this class without securing our advance written permission will be violating the student code of conduct.

Please note that you may request a school-made recording if any of the following applies: (1) you have a documented, ongoing serious medical situation as determined by the Associate Dean for Faculty Affairs or the Associate Dean's designee; (2) Birth of a child (either parent); (3) Religious observance; (4) To provide reasonable accommodation for a student with a disability; (4) Jury duty expected to last more than one day; (5) Military commitment expected to last more than one day; or (6) Other comparable reasons, as determined by the Vice Dean for Academic Affairs, or the Vice Dean's designee. For a school-made recording, please direct questions to the Academic Services Office.

WEEK 1: **Introduction to Construction Law: the Roles and Responsibilities of Project Participants, and Project Delivery Systems**

Reading Assignment:

ABA Fundamentals of Construction Law:

Chapter 1, The Owner's Perspective, pg. 1 – 9

Chapter 3, The Design Professional, pg. 49 – 62

Chapter 4, The Role of the Prime Contractor, pg. 83 – 87

Chapter 8, Delivery Systems, pg. 189 – 204

IICLE Construction Dispute Litigation

Chapter 1, Architect and Engineer, Sections 1.2 – 1.19

Chapter 2, General Contractor, Sections 2.2 – 2.7

Chapter 3, Subcontractors, Sections 3.1 – 3.17

Chapter 12, Owners, Sections 12.1 – 12.6

Chapter 12, Delivery Systems, Sections 12.49 – 12.58

WEEK 2: **Contract Documents and Contract Terms**

Reading Assignment – familiarize yourself with these documents at a high level:

B101-2017, Standard Agreement between Owner and Architect (skim first)

A101-2017, Standard Agreement between Owner and Contractor (skim second)

A201-2017, General Conditions of Contract for Construction (skim third)

WEEK 3: **Procurement of Design and Construction Services**

Reading Assignment:

IICLE Construction Law: Transactional Considerations 2010 Edition

Chapter 1, Bidding the Construction Contract

Chapter 3 – Negotiating the Construction Contract

Sections 3.1 – 3.23; 3.84 – 3.95; 3.108 – 3.128; 3.137 – 3.148

WEEK 4: **Payment, Mechanics Liens, and Surety Law**

Reading Assignment:

ABA Fundamentals of Construction Law:
 Chapter 9, Payment

IICLE Construction Law Transactional Considerations:
 Chapter 3, Sections 3.64 – 3.83

IICLE Mechanics Liens
 Chapter 1, Introduction to Mechanics Lien Statute
 Chapter 2, Requirements for Original Contractor's Lien; Private Projects
 Sections 2.4 – 2.5; 2.10; 2.26 – 2.27; 2.41– 2.44
 Chapter 3, Subcontractor Liens
 Chapter 5, Mechanics Liens on Funds for City, County, and State Projects

IICLE Construction Dispute Litigation
 Chapter 4, Claims Against Sureties

AIA Document A201-2007
 Articles 9, Payments and Completion

Optional Supplemental Reading: IICLE Mechanics Liens, Chapter 6, Public Bond Claims. AIA A312: Performance Bond 2010. AIA A312: Payment Bond 2010

WEEK 5: **Project Time, Scheduling, and Delay**

Reading Assignment:

ABA Fundamentals of Construction Law:
 Chapter 10, Construction Project Scheduling

IICLE Construction Law Transactional Considerations:
 Chapter 3, Sections: 3.24 – 3.27; 3.40 – 3.47; 3.104 – 3.107

AIA Document A201-2017
 Article 8, Time

WEEK 6: **Contract Changes; Design and Construction Defects**

Reading Assignment:

ABA Fundamentals of Construction Law:
 Chapter 11, Changes in the Work
 Chapter 14, Construction Defects

IICLE Construction Law Transactional Considerations:
 Chapter 3, Sections: 3.96 – 3.103

AIA Document A201-2007
 Articles 7, 11, 12

Optional Supplemental Reading: IICLE Construction Law: Transactional Considerations, Chapter 6 – Construction Insurance; IICLE Construction Dispute Litigation, Chapter 10 – Insurance coverage for construction defect claims

WEEK 7: **Allocation and Management of Risk**

Reading Assignment:

ABA Fundamentals of Construction Law:

Chapter 7, Insurance

Chapter 12, Termination

IICLE Construction Law Transactional Considerations:

Chapter 3, 3.173 – 3.188

AIA Document A201-2007

 Article 14, Termination or Suspension of the Contract

Optional Supplemental Reading: IICLE Construction Dispute Litigation: Chapter 7 – Claims involving termination or suspension

WEEK 8: **Damages, Remedies, Claims and Defenses**

Reading Assignment:

IICLE Construction Dispute Litigation:

Chapter 1, Responsibilities and Liabilities of Architects and Engineers

 Sections 1.21– 1.25; 1.28 – 1.30; 1.37

Chapter 2, Claims Against General Contractors

 Sections 2.4 – 2.12; 2.49 – 2.54

Chapter 15, Special Defenses to Construction Claims

 Sections 15.1 – 15.62

Chapter 16, Owner's Recovery of Damages

 Sections 16.9 – 16.16

Chapter 17, Contractors and Subcontractor Damages

 Sections 17.2 – 17.15; 17.20 – 17.30

WEEK 9: **Dispute Resolution**

Reading Assignment:

ABA Fundamentals of Construction Law:

Chapter 16, ADR in the 21st Century, pg. 349 – 364

IICLE Construction Dispute Litigation:

Chapter 1, Arbitration and Consolidation, Section 1.42

Chapter 12, Representing the Owner, Sections 12.8 – 12.15; 12.65 – 12.67; 12.73

Chapter 17, Pass-Through Claims, Sections 17.16 – 17.19

Chapter 18, Recovery of Attorneys' Fees, Costs and Expenses

Chapter 20, Arbitration

IICLE Construction Law Transactional Considerations:

Chapter 13, ADR Terms in Construction Contracts (a Moodle handout)

AIA Document A201-2017

 Article 15, Claims and Disputes

Optional Supplemental Reading: IICLE Construction Dispute Litigation: Chapter 13, Sources of Evidence, Chapter 14, Expert Witnesses