

EM 632 LEGAL ASPECTS OF CONSTRUCTION

Text: Sweet & Schneier: Legal Aspects of Architecture, Engineering and the Construction Process, 9th Edition; Thomson, 2013, ISBN #10 111-57871-0

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Grading: Mid-term 25%; Final 30%; Term Paper 30%; Hwk/Participation 15%

The NJIT Honor Code will be upheld and any violations will be brought to the immediate attention of the Dean. Students will be consulted with by the instructor and must agree to any modifications or deviations from the syllabus throughout the course of the semester. The normal turnaround time for exams and assignments to be graded and returned is two weeks after submission.

<u>Week</u>	<u>TOPIC</u>	<u>Chapter(s)</u>
1	US Legal System(s); Dispute Resolution	1, 2, 27
2	Forms of business association & representation	3, 4
3	Contract law; term paper topic due	5
4	Tort law: responsibility & liability	6, 9, 11, 12
5	The construction process; land ownership	7, 8, 10, 11, 12
6	Project management; Bidding	14, 15
7	Midterm	1-12, 14, 15
8	Intellectual property protection & use	13
9	Contract interpretation DRAFT of TERM PAPER (Optional) DUE	17
10	Changes; payment	18.19
11	Subsurface conditions, time FINAL DATE FOR SUBMISSION OF TERM PAPER	20, 21
12	Claims in Owner/contractor disputes, subcontracts	22, 23, 27
13	Performance: good and bad, indemnification	24, 25
14	Bonds & Termination	26
15	Final Exam	13, 17 -27

Term Paper

A 10-page [double-spaced, approximately 2500 words) term paper must be submitted by
9th week of the semester

[Note: I will review a draft of your term paper – without any effect on your final grade for the paper – if you submit it to me on or before **two weeks prior to the due date**. Since the practice of engineering and/or architecture in the real world inevitably involves disputes between and among various parties, a knowledge of the legal system in which such disputes will be settled [if the parties cannot resolve things amicably] is essential. My crystal ball is a bit cloudy but I am certain that at least once in your life you will be bothered by a problem not covered in this course. Therefore the intent is to make sure you know how to do basic legal research. Of course in many instances you will still have to consult an attorney, but at least you will understand what he/she is talking about. Thus one of the major sources for your grade for this class will be based on this ten-page research paper.

Although the term paper topic is your choice, I suggest that you choose a problem, situation or question you have encountered at work – or talked about at a tailgate party. Using basic legal research tools, determine and explain the specific nature of the “legal” problem, what “law” applies, how the courts generally rule in such cases, and what steps should have been taken to avoid the problem and its complications in the first place. You may write from the point of view of a particular party to the dispute, as the judge or arbitrator, as an employee writing a memo to the boss on how to alter his business practices to avoid legal complications; whatever works. With respect to the report, including your analysis and judgments, let me make one point perfectly clear. Failure to include a complete list of your sources is plagiarism and will result in a grade of “F”. In addition to footnote or endnotes as explained below, a complete bibliography of the books and articles you use, as well as a list of cases cited must be included.

IF YOU QUOTE DIRECTLY FROM ONE OF YOUR SOURCES, QUOTATION MARKS AND AN APPROPRIATE FOOTNOTE OR ENDNOTE MUST IDENTIFY THE QUOTATION. If you have merely summarized information you have read, then quotation marks are, of course, unnecessary, but you must include a note, identifying the source of the information you are paraphrasing or summarizing. **IF YOU DID NOT KNOW THE INFORMATION BEFORE YOU RESEARCHED THE PAPER, THEN YOU MUST ATTRIBUTE THE STATEMENT TO YOUR SOURCE** by means of a footnote or endnote. Any omission is plagiarism and the mandatory “F” will automatically follow. **THERE WILL BE NO EXCEPTIONS.**

Many students present long, rambling papers describing the situation, a few paragraphs paraphrasing legal citations and no **PERSONAL ANALYSIS** of the crucial elements of the case. Your personal judgment as to the appropriate final decision, as well as the reasoning that led to that conclusion is essential and will be a vital part of your grade.

Style of citation is discussed in the handout on research.

You will be graded on both content and grammatical presentation with the most weight given to the thoroughness of your research and the clarity and logical progression of your analysis. **The instructor must approve your topic prior to submission of the paper.**

There will be no exceptions.

Research

Since as explained in the first classes, the basis of the legal system in the United States is a combination of statutes and rules passed by the various government authorities as well as the precedent value of prior legal opinions in relevant jurisdictions, legal research is more complex than merely reviewing a bunch of laws.

Although there is a place for secondary sources, since all information relied upon must be both accurate and up to date, it is critical to insure that you are using reliable web sites, i.e. those that are credible, up-to-date and objective. For investigative and business research, search engines are useful (Google, etc), but for those doing legal research (case law, statutory and regulatory law) the number of search engine results make it difficult to evaluate reliability. Using sites that are authorized to print original case decisions and statutes for your research obviously avoids a multitude of problematic re-checking of private versions of what the law is in a particular instance.

Sites such as wikipedia and the like are NOT acceptable as the source of information cited as legal precedent – just as “hearsay” evidence is not admissible in court. You must utilize the original source not someplace where someone is saying they heard someone else or read someone else declaring whatever.

The first lectures explain the setup of the legal system in the U.S., a dual system in which each state is independent and the federal court system which has its own rules ---- on a tiny minority of cases ever go from the State system (after traversing all three layers of the state system) to the U.S. Supreme Court. Finding the law of New York will not help you at all if your dispute is in New Jersey!

*Note: There are “real books” (? does anyone still read them?) available in Rutgers Law Library, the libraries of many of the state colleges, the State Bar Association Library, county courthouses, etc. where this information can be found. You may use the Rutgers and Seton Hall law schools, the state universities and the county court house libraries. In many ways, books may be a simpler place to conduct your search.

For Internet web research on legal issues, the **NJIT library** subscribes to the **LEXIS/NEXIS** academic system which makes available almost all original case law and statutes for federal and state government. In addition, there are a number of free sites that offer valuable information.

<http://www.findlaw.com> is one of the most popular and easy to use sites for general information, **BUT IT DOES NOT SPECIFICALLY COVER NJ.**

<http://www.lexisone.com> is a partially free and partially pay site (requiring registration) with full-text searchable case law databases. – the free portion only includes information for the past five years, except in the case of Supreme Court decisions which are complete.

<http://www.law.cornell.edu> has a searchable database and an internal search engine that searches its “Law about” section which has pop-up screens listing more legal topics and a link to “all topics alphabetically.” This site also has a “Law of” section for all fifty states [http://www.law.cornell.edu/topics/state_statutes.html]

FEDERAL:

Free access to searchable databases for the United States Code:

<http://www.uscode.house.gov/usc.htm> or the Cornell site [[/uscode](http://www.uscode.org)]

For regulatory law: <http://www.gpoaccess.gov/executive.html>

United States Supreme Court:

The official site [supremecourtus.gov] does not have a searchable database
You may use lexisONE <http://www.lexisone.com> or
Find Law <http://www.findlaw.com/casecode/supreme.html>. These two sites may also be
use to search for Court of Appeals decisions. There is no free searchable database for the
Federal District Courts.

NEW JERSEY:

Rutgers law school's site is the most complete and well-annotated list of links to NJ state
government and legal research websites:

<http://law-library.rutgers.edu/ilf/ilg.html>

For links to NJ Supreme Court, Appellate, Trial, Municipal and Tax Courts see
To begin your search at njcourtsonline.com you may use a keyword search using the
internal search engine, click on links on the home page or click on the drop-down menu.
An archive of NJ Supreme, Appellate Division and Tax Court opinions for the
last nine years or so:

<http://lawlibrary.rutgers.edu/search.shtml#search>

Federal Courts covering NJ (again only 9 years or so):

3rd Circuit Court of Appeals:

<http://www.ca3.uscourts.gov/indexsearch/archives.asp>

Villanova, Findlaw and Lexisone may also be helpful.

Other helpful sites include:

<http://www.lawguru.com>

<http://www.ljx.com/>

<http://www.nolo.com>

<http://www.law.vill.edu>

<http://www.law.indiana.edu>

<http://www.yahoo.com/Government/Law/http://www.findlaw.com>

<http://www.law.cornell.edu>

Citations For Footnotes and/or Endnotes

Cases (decisions by judges deciding legal disputes in courts) are identified by the title of
the book, but not by the publisher. Thus, the “correct” citation of *Roe v. Wade* (the
abortion decision) is

Roe v. Wade, 485 U.S. 328, {xxx}, 1973,

that is, Plaintiff (*Roe* – the made-up name of the woman in whose name the case was
brought) v. Defendant (*Wade* – the attorney general who represented the state of Texas),
volume (485), book (U.S. – the official name abbreviation of the book that reports all of
the cases of the U.S. Supreme Court), page (328 – the first page of the report.) In
footnotes, this information would be followed by the exact page where your quote or
paraphrased information appears.)The last number is the year in which the case was
decided (1973.)

In addition to the above information, if you have found the case in a book other than the
official reporter or on a website, this information must be included.

For example

Roe v. Wade, 485 U.S., 328, 340, 1973, cited in *The Abortion Decision That Changed a Nation* by John Smith, XYZ Publishing Co., 1980.

If you read the case at a website, you must include the complete address of the portion of the website where you located the case, not merely the basic site address (not www.findlaw.com)

Remember, if you are not using original material, i.e., actual statutes or case decisions by judges, you must evaluate your sources carefully – anyone can claim to “know” what the law on a specific subject is. Check and double check whether your source has a vested interest in portraying the law in a particular way. For example, individual lawyers and/or lawfirms often give information on websites – but these are for advertising purposes and may or may not be accurate.

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