Construction Law Practice

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**NOTE: This syllabus is designed for a three-credit, simulation course that satisfies the ABA accreditation standards for experiential learning. By adjusting the reading assignments and omitting or limiting exercises and problems, it may be adapted for a standard two or three credit lecture course. The core reading assignments are from the American Bar Association Forum on Construction Law textbook, *Construction Law* (2d ed. 2019).**

**General Information**

This syllabus provides basic information about class requirements, policies, grading, and the main reading assignments. This information remains subject to clarification and variation in my discretion based on developments as the term progresses.

Learning Objectives. Through a series of simulations and exercises, including a major project due around the end of the semester, you will have the opportunity to develop and demonstrate many of the skills of the specialized construction lawyer and to explore some of the most important legal issues that construction lawyers and their clients face. When you have completed this course, you should be able to assess and advise clients at a basic level about the most common legal considerations and disputes that arise in the construction and design industries from the perspectives of different industry participants, including project owners, designers, general building contractors, specialty contractors, subcontractors, suppliers, and construction lenders. You should also be familiar with some of the most important contractual terms commonly used in construction industry documents.

**Required Text and recommended supplemental resources**

The required text is Construction Law (Carol J. Patterson, et al. eds., 2d ed., 2019). In this syllabus, I will refer to this text as the “Forum Text” because it is the work product of the ABA’s Forum on Construction Law. The ABA Forum is the largest professional organization of the construction bar in the United States. The main reading assignments for this course are from the Forum Text. Additional reading materials will be applicable to most of the course simulations and exercises.

In addition to the Forum Text, we will frequently refer to contract forms promulgated by industry groups, such the ConsensuDocs forms sponsored by a coalition of industry organizations or the forms published by the American Institute of Architects (AIA). After the semester begins, I will provide information to you about the industry documents we will use regularly.

Supplemental resources. A comprehensive and practical resource available on Westlaw is Philip L. Bruner & Patrick J. O’Connor, Jr., Bruner and O’Connor on Construction Law. A similar treatise available on Lexis is Steven G. M. Stein, Construction Law. Westlaw and Lexis regularly update these multi-volume treatises. The best sources for current practice articles are the ABA Forum on Construction Law’s journal, The Construction Lawyer, and the American College of Construction Lawyers Journal, both of which you can access on Westlaw.

**Grading**

Grading will be based on (1) performance on assignments (simulations and practical exercises) that I designate for grading points, (2) quizzes (scheduled and announced in advance—all relatively early in the semester), and (3) participation. There will be multiple minor graded assignments during the semester and one major graded assignment that will be due near the end of the semester.

Some minor assignments (graded or ungraded) will be performed in class, others will require that you (either individually or as part of a group of students working together) submit written work product or make group presentations. Many of the assignments will place you in the simulated role of a junior lawyer working for an experienced construction lawyer, a construction law department in a firm, or the general counsel’s office of a construction industry participant. My grading standard for all assignments will reflect what I would expect from an entry-level lawyer (a totally inexperienced one at the beginning of the semester, and a progressively more experienced one later in the semester). **Your enrollment in the course constitutes your consent to have your performance in class observed by others, recorded, and shared and critiqued with other students and guest practitioners.**

Quizzes will test your mastery of the fundamentals of construction law, which you can acquire from a careful study of the reading assignments from the Forum Text. Three quizzes will be spread over the first several weeks of the semester. Each one will be announced in advance and will test over concepts that are adequately covered in the assigned materials.

**Note that because this is an experiential course designed to teach practice competencies, you will spend most of your time during our class sessions developing and practicing skills that are important for construction lawyers to master. Although I will periodically offer short lectures, some in class and others that may be recorded for your review outside of class, you must learn much of the relevant law on your own through the assigned materials and supplemental resources, just as you will do when you begin to practice law and you encounter a legal issue or problem that is new to you.**

**Experiential requirements**

Because this is an experiential course, enrollment is limited to assure that you have the opportunity to develop the skills involved and to benefit from individualized assessments based on your performance. You must actively engage in the class, and you must repeatedly practice the professional skills involved. In many of the assignments and in-class activities you will work with one or more other students in the class. I expect each of you to participate in all the in-class assignments. Students who miss significant exercises or graded events due to an absence will be expected to complete make-up assignments.

**Outside Preparation**

In accordance with ABA requirements and law school policy, the structure of this course anticipates that for every hour of scheduled class time you should spend an average of at least 2 hours outside of class reading, reviewing, listening to recorded lectures, preparing for or conducting assigned exercises, studying, or otherwise engaging with course materials.

**[Add relevant details based on institutional policies or instructor practices, such as grading standards, attendance and participation requirements, inclement weather arrangements, accommodations, office hours, instructor contact details, artificial intelligence policies, and the use of an online course management system.]**

**Topics Covered and Main Reading Assignments**

Topics may vary from the order listed below to accommodate guest practitioners, simulations, and exercises. For most weeks there will be additional materials for simulations and exercises (whether graded or ungraded), including special reading assignments that will be especially relevant to the major graded exercise.

The assigned chapters from the Forum Text are listed below. The Forum Text reading assignments are front-end loaded and listed in an order that differs from that of the Forum Text. This is to allow you to acquire knowledge of the fundamental principles of construction law that will be most important to the exercises and problems that will be our focus during class sessions. Supplemental reading assignments will be available on Westlaw or Lexis, posted to [the online course management system], or sent via email.

Week 1: Historical Perspective (Chapter 1); Participants in the Design and Construction Process (Chapter 2); Project Delivery Systems (Chapter 4); Public Construction Contracting (Chapter 23); and review syllabus and course requirements and policies.

Week 2: The Owner’s Role (Chapter 3); Contracting for Construction Projects (Chapter 5); The Design Team’s Role and Contracts (Chapter 6); Contractor Selection (Chapter 8); and Pricing Construction Contracts (Chapter 9).

Week 3: Architect’s Contract Administration (Chapter 7); Subcontractors and Suppliers (Chapter 10); Contract Time and Completion (Chapter 11); and Payment (Chapter 12).

Week 4: Changes (Chapter 14); Differing Site Conditions (Chapter 15); Termination of Contract (Chapters 16); and Defective Construction (Chapter 20).

Week 5: Dispute Resolution Processes (Chapter 19); and Damages (Chapter 22).

Week 6: Mechanic’s Liens (Chapter 17); and Insurance and Bonds (Chapter 18).

Week 7: Economic Loss Rule (Chapter 21).

Week 8: Technological Advances in Construction (Chapter 24)

Week 9: Construction Safety (Chapter 13).

Week 10 to end of term: Class exercises and individual or group presentations—supplemental readings TBA

**[As appropriate, add a schedule of assignments for specific simulations, problems and exercises, or incorporate them into the weekly reading list.]**