



Legal Concepts for Facility Managers

LINDA THOMAS-MOBLEY



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Linda Thomas-Mobley

Former Associate Chair, School of Building Construction,
College of Architecture

Dean, Former Chair of the Construction Management Department

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Legal Concepts for Facility Managers

*To Joyce and Alvin Thomas, I would like to publicly
acknowledge your interminable support, you taught me to look
at the world as it is, and face life head-on with my eyes
wide-open, thanks for making me resilient.*

About the Author

Linda Thomas-Mobley is Dean and former Chair of the Construction Management Department at the NewSchool of Architecture and Design in San Diego, California. She formerly served as Associate Chair of the School of Building and Construction at the Georgia Institute of Technology. She is a veteran academic with professional experience as a Construction Manager, Facility Manager and an attorney at law. As a professor teaching graduate and undergraduate students how to navigate the US legal system and avoid exposure to liability, she discovered the need for an illustrated legal textbook for built environment professionals. She holds a Juris Doctorate in law, a BS and MS in Civil Engineering and a PhD.

Acknowledgments

To my love, Michael, you poor soul; thanks for taking care of me, keeping me safe and accompanying me along this unfamiliar journey. To my daughter, Morgan; thanks for your encouragement, never forget who you are, where you come from and how to balance your checkbook. And to my sister, Carroll; thanks for always setting the bar just beyond my reach.

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Preface

In the state of nature. . . all men are born equal, but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the law.

Charles de Montesquieu, French lawyer and philosopher (1689–1755).

Studying the law is thought by many to consist of memorizing a fixed set of rules, often called “black letter law”. Black letter law refers to the basic rules of law accepted by most judges in most areas. Knowledge of these rules is important but simply knowing applicable rules does not do justice to the study of law. For example, merely knowing that thou shall not kill is inadequate. What exactly is “killing”? Also, if someone kills according our definition, shall we punish the killer by killing her? Would we then be killed? The act may be the result of war or in defense of a spouse, or in the case of capital punishment, even authorized by the state. Simply memorizing black letter law prevents one from fully understanding, disguising the beauty of its logic, and how legal theory evolves over time.

For example, Hammurabi, a First Dynasty king of the city-state of Babylon in 1792 BCE, is best known for proclaiming a new code of Babylonian law called the Code of Hammurabi. Many consider this code one of the first written laws in the world¹. Paraphrasing Hammurabi’s Code, if a builder constructs a house and it falls and kills the owner, the builder is to be slain². Memorizing this rule is useless for modern built environment disputes, but understanding that the builder has a special duty to build a structure that does not fall and kill the owner, is a legal principle that has survived. The deeper we investigate the study of law the sooner we learn that “there is no abstract rule of law outside of any specific fact situation”³. That means the answer to the often-asked question, “Can I get sued if. . . ?” is always “yes”; because anyone with the requisite filing fee following the court’s procedures can sue. It also means the answer to the follow up question, “Will I be held liable if. . . ?” is a resounding “maybe”, because it all depends on the specific facts.

This text is not written to impress my peers but to help non-lawyers understand the legal system and determine where the built environment professional fits into the larger picture. Those who have studied the law may find some

¹ Breasted (2003)

² King (2007)

³ Mentschikoff and Stotzky (1981)

sections elementary, but I expect you will find the application of the law to the practice of facility management and examples used instructional. As a former Construction Manager, Facility Manager and practicing attorney, I've written this text not only for students studying facility management but for all who intend to work in the built environment industry. This text focuses on the application of law to the role of the Facility Manager and thereby fills a much-needed gap in instructional literature. Many US undergraduate and graduate facility management programs teach legal issues in the context of construction or business law. However, prior to this text, courses on legal issues for Facility Managers tended to utilize construction law texts and either supplement them with additional case studies and legal topics or simply ignore the subject altogether. It is my intention to address this oversight. I hope to fill the gap experienced by those studying facility management or working in the industry who seek an understanding of legal concepts beyond construction issues. The instructor, either lawyer or non-lawyer, is now equipped with a resource for explaining legal concepts from the viewpoint of the built environment professional managing the facility.

As with any text expressly written for non-legal professionals, the objective is to both enlighten the reader and help keep her free from unnecessary court proceedings. Although the average cost of a trial in the USA is almost impossible to predict, any day a Facility Manager can spend managing facilities rather than sitting in a courtroom is a good day. It is my hope that this text will also demonstrate that the US legal system is not one organism; rather it is a web of integrated organisms.

Currently, standard higher education courses require the student to spend three hours working each week for every one credit awarded. Additionally many accrediting bodies and the US Department of Education are requiring schools to show evidence that this directive is followed. This book was designed with such a formula in mind, and it is estimated that the average student will require six hours each week, reading and preparing for a three-credit class in Facility Management Law. With the exception of cases reported throughout the book, students will find the reading comparable to most undergraduate textbooks.

For reference and explanation of specific legal terms used, it is recommended that the student have access to a legal dictionary. Legal dictionaries, such as *Black's Law Dictionary*, published by West, contain well-written definitions of concepts you will learn about in this textbook.

The text is organized in three main parts, Part I focuses on an introduction to the US legal system and form of government. Part II introduces the major areas of law. Finally, Part III applies concepts and knowledge gained from Part I and II to modern built environment problems.

Instructional goals for this book include the following:

1. Demystify the US legal system.
2. Link the US legal system to the practice of facility management.
3. Help students acquire and retain legal information.
4. Create “law-literate” citizens.

The specific learning objectives, or what students will be able demonstrate after a course using this textbook include:

- Understand how the US legal system operates.
- Describe what is legally required from a Facility Manager.
- Analyze legal issues faced by Facility Managers.
- Evaluate the legal risks involved in the management of the built environment.
- Illustrate how to mitigate risks faced by the typical Facility Manager.

Additional learning outcomes for specific chapters will be presented at the beginning of each chapter in hopes of helping the student to focus.

Finally, relevant chapters will end with discussion questions to help students recall salient information and are intended to be used as homework assignments or prompts for classroom discussions.

Now let’s get on with learning about the law!

Ut humiliter opinor

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Part I

Fundamentals

Introduction

This section serves as an introduction to the US legal system and its unique form of government. The chapters are written to assume that the student has no background in the subject and makes an attempt to define what “law” means. As you will quickly discover, defining the law is difficult because it is more concept or theory than specific rules.

Understanding the three main functions that include regulator, facilitator and dispute resolver is also considered. Finally, appreciating legal theory is difficult without basic knowledge of the US Government and the operation of its three branches.